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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

IN THE MATTER OF THE APPLICATION OF
TONGO CREEK UTILITY CO. FOR APPROVAL
OF THE SALE OF ITS ASSETS AND
TRANSFER OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY TO TONGO
CREEK WATER COMPANY LLC.

DOCKET NO. W-02784A-09-0276

DOCKET NO. W-20682A-09-0276

PROCEDURAL ORDER

BY THE COMMISSION:

On June 1, 2009, Tonto Creek Utility Co. ("TCUC") filed with the Arizona Corporation Commission ("Commission") an application requesting Commission approval for the sale of its assets and the transfer of its Certificate of Convenience and Necessity ("CC&N") to Tonto Creek Water Company LLC ("TCWC").

On June 18, 2009, TCUC filed an affidavit of publication showing that notice of the application had been published in the *Payson Roundup* on June 5, 2009. TCUC did not provide any proof that the notice had been sent to its customers.

On July 1, 2009, the Commission's Utilities Division Staff ("Staff") issued an Insufficiency Letter along with a request for additional data.

On July 23, 2009, TCUC filed a response to the Insufficiency Letter.

On August 21, 2009, Staff issued a Sufficiency Letter stating that TCUC's application has met the sufficiency requirements outlined in the Arizona Administrative Code ("A.A.C.").

On August 24, 2009, a Procedural Order was issued scheduling a hearing in this matter for October 27, 2009, and establishing other procedural requirements and deadlines. Among the procedural requirements were requirements for publication and mailing of notice.

On September 9, 2009, TCWC filed a resolution authorizing James C. Rea, Vice President, to represent TCWC before the Commission for purposes of this matter.

1 On September 11, 2009, TCUC filed a resolution authorizing Pam Fisher,
2 Secretary/Treasurer, to represent TCUC before the Commission for purposes of this matter.

3 Also on September 11, 2009, one of the parties filed a Gila County Board of Supervisors
4 Resolution, dated August 17, 2009, transferring TCUC's water franchise¹ to TCWC.

5 On September 11, 2009, TCUC also filed an affidavit of publication showing that public
6 notice had been published in the *Payson Roundup* on September 4, 2009, and an affidavit stating that
7 notice had been inserted into each customer bill mailed on September 1, 2009.

8 Unfortunately, the public notice published and mailed included erroneous information.
9 Specifically, the telephone number shown for TCWC is incorrect both as to area code and the final
10 four digits, and the website address for the Commission's public comment form includes an extra "s"
11 that renders the address ineffective.² In addition, the copy of the newspaper notice fails to use the
12 format prescribed in the Procedural Order, making it difficult to read, and does not include the entire
13 text of the notice, making it impossible to determine whether the remainder of the text of the
14 published notice is correct.

15 As a result of the errors included in the published and mailed notice, which render the notice
16 ineffective, it is necessary to order TCUC again to publish and mail notice to its customers.

17 IT IS THEREFORE ORDERED that TCUC shall provide public notice of the application and
18 hearing in this matter, **in the following format and style**, with the heading in no less than 12-point
19 bold type and the body in no less than 10-point regular type:

20 **IN THE MATTER OF THE APPLICATION OF TONTO CREEK**
21 **UTILITY CO. FOR APPROVAL OF THE SALE OF ITS ASSETS AND**
22 **TRANSFER OF ITS CERTIFICATE OF CONVENIENCE AND**
NECESSITY TO TONTO CREEK WATER COMPANY LLC
(Docket No. W-02784A-09-0276 et al.)

23 **Summary**

24 On June 2, 2009, Tonto Creek Utility Co. ("TCUC") filed with the Arizona
25 Corporation Commission ("Commission") an application for approval of the sale of its
assets and the transfer of its Certificate of Convenience and Necessity ("CC&N") to

26 ¹ The Resolution first transferred Tonto Creek Estates Water System's ("TCEWS's") water franchise to TCUC, as
27 TCEWS and TCUC apparently failed to have the water franchise transferred when the sale and CC&N transfer from
TCEWS to TCUC occurred. The Commission approved the sale of assets and CC&N transfer in Decision No. 58936
(January 12, 1995).

28 ² The address ends with "public_comment.pdf" as opposed to "public_comments.pdf" as was included in the notice.

1 Tonto Creek Water Company LLC ("TCWC"). Per the application, TCUC and
 2 TCWC entered into an agreement on June 1, 2009, under which TCUC will transfer all
 3 of its assets to TCWC in return for \$15,000. The agreement states that there is a
 4 separate agreement for the transfer of ownership of Lot 23 in Tonto Creek Estates.
 5 The agreement states that, at closing on the transaction, TCUC will pay all main
 extension agreement refunds due and all meter and service line installation charge
 refunds due. TCUC has asserted that TCWC will charge customers the same rates and
 charges currently assessed by TCUC, that the current Certified Operator will continue
 to operate the system, and that TCWC currently plans no changes to the operation and
 maintenance of the system.

6 The Commission's Utilities Division Staff ("Staff") is in the process of analyzing the
 7 application and has not yet made any recommendations in this matter. The
 8 Commission is not bound by the proposals made by TCUC, TCWC, Staff, or any
 9 intervenors. The Commission will determine whether to approve the sale of assets and
 CC&N transfer based on the evidence received through an evidentiary hearing in this
 matter.

10 **If You Are a TCUC Customer**

11 If the sale of assets and CC&N transfer are approved, TCWC will be the exclusive
 12 provider of water utility service to your area. TCWC is under the jurisdiction of the
 Commission. TCWC's address is 4486 East Ford Avenue, Gilbert, AZ 85234. Phone:
 480-664-0220.

13 If you have a claim against TCUC, such as a claim for refund of a security deposit or
 14 service line and meter installation charges or for refund on a main extension
 agreement, and you have not been contacted by TCUC regarding your claim, you must
 15 present your claim to TCUC by **October 15, 2009**. Direct your claim to TCUC at
 HC2 Box 94G, Payson, AZ 85541. Phone: 928-478-4384.

16 **How You Can View or Obtain a Copy of the Application and Other Documents**

17 Copies of the application and the other documents filed in this matter are available at
 18 TCUC's offices [**COMPANY INSERT ADDRESS HERE**]; at the Commission's
 Docket Control Center at 1200 West Washington, Phoenix, Arizona, for public
 inspection during regular business hours; and on the Internet via the Commission's
 website (www.azcc.gov) using the e-Docket function.

19 **Arizona Corporation Commission Public Hearing Information**

20 The Commission will hold a **hearing** in this matter beginning on **October 27, 2009**, at
 21 **10:00 a.m.**, in Hearing Room #1 at the Commission's offices, 1200 West Washington
 Street, Phoenix, Arizona. Public comments will be taken on the first day of the
 22 hearing. Written public comments may be submitted by mailing a letter referencing
 Docket No. W-02784A-09-0276 et al. to Arizona Corporation Commission, Consumer
 Services Section, 1200 West Washington, Phoenix, AZ 85007, or by e-mail. For a
 23 form to use and instructions on how to e-mail comments to the Commission, go to
http://www.azcc.gov/divisions/utilities/forms/public_comment.pdf. If you require
 24 assistance, you may contact the Consumer Services Section at 1-800-222-7000 or 602-
 542-4251.

25 **About Intervention**

26 Any person or entity entitled by law to intervene and having a direct and substantial
 27 interest in the matter will be permitted to intervene. If you desire to intervene, you
 must file a written motion to intervene with the Commission no later than **October 15,**
 28 **2009**. You must send a copy of the motion to intervene to TCUC and TCWC, or to
 their counsel, and to all parties of record. Your motion to intervene must contain the
 following:

- 1 1. Your name, address, and telephone number and the name, address, and
2 telephone number of any person upon whom service of documents is to be
3 made, if not yourself;
- 4 2. A short statement of your interest in the proceeding (e.g., a customer of TCUC,
5 etc.); and
- 6 3. A statement certifying that you have mailed a copy of the motion to intervene
7 to TCUC and TCWC, or their counsel, and to all parties of record in the case.

8 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
9 that all motions to intervene must be filed on or before **October 15, 2009**. If
10 representation by counsel is required by Rule 31 of the Rules of the Arizona Supreme
11 Court, intervention will be conditioned upon the intervenor's obtaining counsel to
12 represent the intervenor. For information about requesting intervention, visit the
13 Commission's website at <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>.
14 The granting of intervention, among other things, entitles a party to present sworn
15 evidence at hearing and to cross-examine other witnesses. However, failure to
16 intervene will not preclude any interested person or entity from appearing at the
17 hearing and providing public comment on the application or from filing written
18 comments in the docket for the case.

11 **ADA/Equal Access Information**

12 The Commission does not discriminate on the basis of disability in admission to its
13 public meetings. Persons with a disability may request a reasonable accommodation
14 such as a sign language interpreter and request this document in an alternative format
15 by contacting the ADA Coordinator, Shaylin Bernal, at sabernal@azcc.gov, voice
16 phone number (602) 542-3931. Requests should be made as early as possible to allow
17 time to arrange the accommodation.

16 IT IS FURTHER ORDERED that **TCUC** shall, by **September 24, 2009**, mail a copy of the
17 above notice to **each TCUC customer**, by first-class U.S. Mail, and cause the above notice to be
18 **published in a newspaper** of general circulation in its service area.

19 IT IS FURTHER ORDERED that **TCUC** shall file **certification of mailing and publication**
20 as soon as practicable after mailing and publication has been completed, but no later than **October 8,**
21 **2009**.

22 IT IS FURTHER ORDERED that all other remaining requirements and deadlines outlined in
23 the August 24, 2009, Procedural Order remain in effect.

24 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
25 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
26 *pro hac vice*.

27 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113—Unauthorized
28 Communications) applies to this matter and shall remain in effect until the Commission's Decision in

1 this matter is final and non-appealable.

2 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
3 pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

4 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
5 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

6 DATED this 14th day of September, 2009.

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SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

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11 Copies of the foregoing mailed/delivered
this 14th day of September, 2009, to:

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Pam Fisher, Secretary/Treasurer
TONTO CREEK UTILITY CO.
13 HC 2 Box 94G
14 Payson, AZ 85541

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James C. Rea, Vice President
TONTO CREEK WATER CO. LLC
15 4486 East Ford Avenue
16 Gilbert, AZ 85234

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Janice Alward, Chief Counsel
Legal Division
18 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
19 Phoenix, AZ 85007

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Steve Olea, Director
Utilities Division
21 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
22 Phoenix, AZ 85007

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By: 
Debra Broyles
Secretary to Sarah N. Harpring

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