

OPEN MEETING ITEM



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Executive Director

COMMISSIONERS
KRISTIN K. MAYES - Chair
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

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ARIZONA CORPORATION COMMISSION

2010 FEB 11 P 2:03

DATE: FEBRUARY 11, 2010

DOCKET NOS.: W-02784A-09-0276 and W-20682A-09-0276

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harpring. The recommendation has been filed in the form of an Opinion and Order on:

TONTO CREEK UTILITY CO. and
TONTO CREEK WATER COMPANY, LLC
(SALE/TRANSFER CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

FEBRUARY 22, 2010

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MARCH 2, 2010 and MARCH 3, 2010

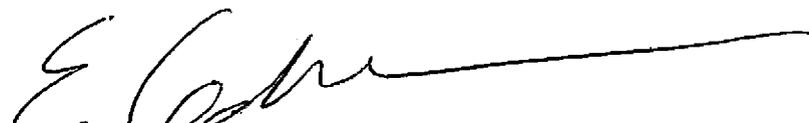
For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

FEB 11 2010

DOCKETED BY 


ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION OF
9 TONTO CREEK UTILITY CO. FOR APPROVAL
10 OF THE SALE OF ITS ASSETS AND TRANSFER
11 OF ITS CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO TONTO CREEK WATER
13 COMPANY LLC.

DOCKET NO. W-02784A-09-0276
DOCKET NO. W-20682A-09-0276

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: October 27 and December 14, 2009
11 PLACE OF HEARING: Phoenix, Arizona
12 ADMINISTRATIVE LAW JUDGE: Sarah N. Harpring
13 APPEARANCES: Mrs. Pam Fisher, Secretary/Treasurer, TONTO CREEK
14 UTILITY CO., on behalf of Tonto Creek Utility Co.;
15 Mr. James Rea, Vice President, TONTO CREEK
16 WATER COMPANY LLC on behalf of Tonto Creek
17 Water Company LLC; and
18 Ms. Ayesha Vohra, Staff Attorney, Legal Division, on
19 behalf of the Utilities Division of the Arizona
20 Corporation Commission.

19 **BY THE COMMISSION:**

20 This case involves an application by Tonto Creek Utility Co. ("TCUC") requesting Arizona
21 Corporation Commission ("Commission") approval for the sale of its assets and the transfer of its
22 Certificate of Convenience and Necessity ("CC&N") to Tonto Creek Water Company LLC
23 ("TCWC"). TCUC is a Class E, for-profit corporation providing water utility service to 73 metered
24 residential customers in a service area approximately 14 miles east of Payson and two and one-half
25 miles north of Kohl's Ranch in Gila County.

26 * * * * *

27 Having considered the entire record herein and being fully advised in the premises, the
28

1 Commission finds, concludes, and orders that:

2 **FINDINGS OF FACT**

3 **Background**

4 1. TCUC is a Class E, for-profit corporation providing water utility service to 73 metered
5 residential customers in an approximately 76-acre service area located approximately 14 miles east of
6 Payson and two and one-half miles north of Kohl's Ranch in Gila County.

7 2. TCUC received its CC&N in Decision No. 58936 (January 12, 1995), in which the
8 Commission approved the sale of assets and transfer of a CC&N from the Tonto Creek Estates Water
9 System to TCUC.

10 3. TCUC's current rates and charges were set in Decision No. 70707 (January 20, 2009).

11 4. TCUC is wholly owned by Jerry and Pam Fisher. Mr. Fisher serves as TCUC's
12 President and Certified Operator, and Mrs. Fisher serves as its Secretary/Treasurer. The Fishers own
13 a home in TCUC's service area and live there full time.

14 5. TCWC was formed in April 2009 and has two members, Julie and James Rea. Mrs.
15 Rea serves as President/General Manager, and Mr. Rea serves as Vice President. Mr. Rea intends to
16 become a Certified Operator within the next few months,¹ after completing the requisite training and
17 going through the application process. The Reas own a home in TCUC's service area and spend
18 every weekend there.

19 6. The Fishers and the Reas are not related in any way. (Tr. at 23.)

20 7. TCUC's system consists of a well producing approximately 16 gallons per minute,
21 two 15,000-gallon storage tanks, a 2,000-gallon pressure tank, and a distribution system serving 73
22 connections. Staff determined that TCUC's water system has adequate well production and storage
23 capacity to serve its existing connections. Very little, if any, growth is expected to occur in the
24 service area in the next five years, primarily because TCUC's service area is surrounded by the Tonto
25 National Forest, and no new lots can be added.

26 8. The Arizona Department of Environmental Quality ("ADEQ") has determined that

27 _____
28 ¹ At the hearing on December 14, 2009, Mr. Rea projected that he would be certified within five to six months. (Tr. at 27.)

1 TCUC is in compliance with ADEQ requirements and is delivering water that meets state and federal
2 drinking water quality standards.

3 9. TCUC is not located in an Arizona Department of Water Resources ("ADWR")
4 Active Management Area ("AMA") and is not subject to any AMA reporting and conservation
5 requirements. ADWR has determined that TCUC is in compliance with ADWR requirements
6 governing water providers and/or community water systems.

7 10. Staff's Compliance Section reports no delinquent compliance items for TCUC.

8 11. Staff's Consumer Services database shows no complaints against TCUC for the last
9 three years.

10 12. Both TCUC and TCWC are in good standing with the Commission's Corporations
11 Division.

12 Procedural History

13 13. On June 1, 2009, TCUC filed with the Commission an application requesting
14 Commission approval for the sale of its assets and the transfer of its CC&N to TCWC. With the
15 application, TCUC included a copy of an Agreement through which TCUC would sell all of the
16 assets of TCUC, other than Lot 23A, to TCWC for \$15,000 ("Agreement 1"). Agreement 1 stated
17 that ownership of Lot 23A² would be transferred in a separate contract.

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

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

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

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

26 18. On August 24, 2009, a Procedural Order was issued scheduling a hearing in this

27 _____
28 ² Agreement 1 referred to this property as Lot 23, but Mrs. Fisher clarified in her testimony that it is Lot 23A and is also known as Parcel 24A. (Tr. at 23.)

1 matter for October 27, 2009, and establishing other procedural requirements and deadlines. Among
2 the procedural requirements were requirements for publication and mailing of notice.

3 19. On September 9 and 11, 2009, TCUC and TCWC filed resolutions authorizing Mrs.
4 Fisher and Mr. Rea, respectively, to represent them before the Commission for purposes of this
5 matter.

6 20. Also on September 11, 2009, TCUC filed a Gila County Board of Supervisors
7 Resolution, dated August 17, 2009, transferring TCUC's water franchise to TCWC.³ TCUC also
8 filed an Affidavit of Publication showing that public notice had been published in the *Payson*
9 *Roundup* on September 4, 2009, and an affidavit stating that notice had been inserted into each
10 customer bill mailed on September 1, 2009.

11 21. On September 14, 2009, a Procedural Order was issued requiring TCUC to resend and
12 republish notice because the original notice included errors that rendered it ineffective.

13 22. On October 6, 2009, TCUC filed certification that notice had been mailed to its
14 customers on June 2, 2009, with a copy of the notice provided; filed an Affidavit of Publication
15 showing that compliant notice had been published in the *Payson Roundup* on September 18, 2009;
16 and filed certification that compliant notice had been mailed to its customers on September 16, 2009.

17 23. On October 8, 2009, Staff filed a Staff Report recommending approval of the sale of
18 TCUC's assets and the transfer of TCUC's CC&N to TCWC.

19 24. On October 27, 2009, an evidentiary hearing convened before a duly authorized
20 Administrative Law Judge of the Commission at the Commission's offices in Phoenix, Arizona.
21 TCUC appeared through Mrs. Fisher, TCWC appeared through Mr. Rea, and Staff appeared through
22 counsel. Official notice was taken of all of the documents that had been submitted by TCUC in the
23 docket, as neither TCUC nor TCWC had prepared exhibits, and both Mrs. Fisher and Mr. Rea were
24 sworn as witnesses. Mrs. Fisher was the first witness called. During her testimony, it was revealed
25 that the well that serves the system is located on Lot 23A. (Tr. at 10-11.) This information was
26

27 ³ The Resolution first transferred the water franchise from Tonto Creek Estates Water System's ("TCEWS") to TCUC,
28 as TCEWS and TCUC had not had the water franchise transferred when the sale and CC&N transfer from TCEWS to
TCUC occurred in approximately January 1995.

1 contrary to the information in the Staff Report,⁴ upon which Staff had relied in making its
 2 recommendations. As a result, it was determined that Staff needed additional time to gather data and
 3 file an Amended Staff Report and that the hearing should be continued until a later date. It was
 4 determined that the Amended Staff Report would be due on November 24, 2009; that any response to
 5 the Amended Staff Report from TCUC and/or TCWC would be due on December 8, 2009; and that
 6 the evidentiary hearing would reconvene on December 14, 2009. These procedural requirements and
 7 dates were memorialized in a Procedural Order issued the same date.

8 25. On October 30, 2009, Staff issued a Follow-Up Data Request to TCUC and TCWC.

9 26. On November 16, 2009, TCUC filed an amended application and an amended
 10 agreement showing that TCUC would be selling its assets, including Lot 23A, to TCWC for \$20,000
 11 ("Agreement 2"). Agreement 2 was executed by TCUC on November 5, 2009, and by TCWC on
 12 November 12, 2009.

13 27. On November 24, 2009, Staff issued an Amended Staff Report recommending
 14 approval of the sale of assets and transfer of CC&N with conditions.

15 28. On December 14, 2009, the evidentiary hearing in this matter reconvened before a
 16 duly authorized Administrative Law Judge of the Commission at the Commission's offices in
 17 Phoenix, Arizona. TCUC appeared through Mrs. Fisher, TCWC appeared through Mr. Rea, and Staff
 18 appeared through counsel. TCUC presented the testimony of Mrs. Fisher. TCWC presented the
 19 testimony of Mr. Rea. Staff presented documentary evidence and the testimony of Jian Liu, Staff
 20 Utilities Engineer; Juan Manrique, Public Utilities Analyst I; and Vicki Wallace, Executive
 21 Consultant.

22 **The Sale of Assets and CC&N Transfer**

23 29. Under Agreement 2, TCUC agrees to transfer to TCWC all of its assets, including
 24 ownership of Lot 23A,⁵ in return for \$20,000. TCUC also agrees to assume responsibility for any
 25 existing taxes, liens, encumbrances, or other issues prior to the finalized contract date. TCWC agrees
 26 to assume ownership of the assets; to pay \$20,000 for the assets; and to assume responsibility for any

27 ⁴ TCUC had intended to sell Lot 23A to the Reas as individuals, rather than to TCWC, for \$5,000. Staff had stated in
 28 the Staff Report that no plant in service was located on Lot 23A.

⁵ Lot 23A is the location for most of the system's plant, including the well and tanks.

1 future taxes, liens, encumbrances, or other issues after the finalized contract date. TCUC warrants
 2 that it has good and marketable title of the assets; that the assets will be free from encumbrances at
 3 closing; and that there are no judgments, claims, liens, or pending proceedings against TCUC, the
 4 business, or the assets.⁶ TCUC also asserts that it will make a full refund of all main extension
 5 agreements and meter and service line installation deposits due at closing.⁷ Agreement 2 specifies
 6 that closing will take place upon the date of Commission approval.

7 30. Mr. Manrique determined that the book value of the assets to be transferred, including
 8 Lot 23A, is \$20,986 and, thus, that the \$20,000 purchase price agreed to by the parties is reasonable.

9 31. TCWC will make full payment of the \$20,000 purchase price at closing, without
 10 incurring any debt.

11 32. Mr. Rea has worked for Salt River Project ("SRP") for 26 years in various capacities
 12 and currently serves as SRP's manager of construction. (Tr. at 28-29.) Over the years, Mr. Rea has
 13 served as a laborer, meter reader, designer, and manager of four different departments for SRP. (Tr.
 14 at 29.) Mr. Rea is intimately familiar with running a utility.⁸ (*Id.*) As Vice President, Mr. Rea will
 15 perform monthly reads of the meters, support the President/General Manager, and eventually act as
 16 the Certified Operator. Mr. Fisher has agreed to continue serving as the Certified Operator for the
 17 system while Mr. Rea completes the requirements to become a Certified Operator.

18 33. Mrs. Rea will serve as the President/General Manager for TCWC, managing all day-
 19 to-day and financial operations, other than the maintenance of the equipment and the well site itself.
 20 (Tr. at 29.) Mrs. Rea does not have prior experience with a utility, but has served for approximately
 21 10 years as a cafeteria manager for the Gilbert School District. (Tr. at 29-30.) Mrs. Rea has
 22 familiarized herself with the software used by TCUC for billing, which TCWC intends to continue
 23 using. (Tr. at 30.)

24 34. TCWC does not intend to make any changes to the operation and maintenance of the
 25 system, intends to charge the same rates and charges, and is not currently planning any future rate

26 ⁶ Mrs. Fisher testified that there is not any lien or encumbrance of any type on Lot 23A. (Tr. at 24-25.)

27 ⁷ Mrs. Fisher testified that the current outstanding amount under a main line extension agreement is between \$600 and
 \$700 and that TCUC will refund that at the sale. (Tr. at 23.) Mrs. Fisher testified that the service line and meter
 installation charges have all been refunded already and that there are no customer deposits outstanding. (Tr. at 23-24.)

28 ⁸ Mr. Rea is also the President of the local Homeowners Association. (Tr. at 24.)

1 increases. TCWC does intend to make improvements to the well site and to add storage capacity in
2 the future, all without incurring any debt. Mr. Rea testified that he does not intend for TCWC to
3 borrow any money at any time. (Tr. at 32.)

4 35. Mr. Rea testified that during weekdays, he is approximately one hour and 45 minutes
5 away from the service area and thus will be able to respond to emergency situations within a
6 reasonable amount of time. (See Tr. at 28.) Mr. Rea also intends to arrange for someone from
7 another water company in the vicinity to respond to emergency situations if he is unable to respond
8 and perhaps to enlist Mr. Fisher to respond as well as a part-time field person. (*Id.*)

9 36. Mr. Rea has been familiarizing himself with the Commission's rules and the statutes
10 governing water utilities. (Tr. at 30-32.)

11 37. Ms. Wallace testified that TCWC has the technical capability to operate the utility, has
12 the financial resources to operate the utility, and is a fit and proper entity to hold a CC&N. (See Tr.
13 at 48.) Ms. Wallace further testified that TCWC's plan for providing customer service is adequate.
14 (Tr. at 48.)

15 **Staff's Recommendations**

16 38. Staff recommends that the transfer of assets and CC&N be approved, subject to the
17 following conditions:

- 18 a. That TCUC and TCWC file the finalized contract with the Commission's
19 Docket Control, in this docket, within 30 days after closing; and
20 b. That TCWC advise customers, through individual notice, of the completion of
21 the transfer and provide all contact information for the new owners.

22 39. Ms. Wallace testified that if TCUC and TCWC do not intend to execute another
23 document, beyond Agreement 2, to memorialize the sale, she is satisfied with Agreement 2. (Tr. at
24 46-47.) Ms. Wallace indicated that she does not need to see the actual deed. (Tr. at 47.) Mrs. Fisher
25 testified that TCUC and TCWC do not intend to execute another document for the sale, that
26 Agreement 2 is the finalized contract. (Tr. at 49-50.)

27 40. Mr. Rea testified that TCWC agrees with Staff's recommendations. (Tr. at 27.)

28 41. Staff's recommendations in Findings of Fact No. 38(b) are reasonable and should be

1 adopted.

2 **CONCLUSIONS OF LAW**

3 1. TCUC is a public service corporation within the meaning of Article XV of the Arizona
4 Constitution and A.R.S. §§ 40-281 and 40-282.

5 2. Upon receiving a CC&N, TCWC will be a public service corporation within the
6 meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

7 3. The Commission has jurisdiction over TCUC and TCWC and the subject matter of the
8 application.

9 4. Notice of the application and this proceeding was given in accordance with the law.

10 5. There is a continuing need for water utility service in TCUC's certificated service
11 area.

12 6. TCWC is a fit and proper entity and has the technical capabilities and financial
13 resources necessary to receive TCUC's assets and CC&N to provide water utility service.

14 7. TCWC has received a water franchise from the Gila County Board of Supervisors
15 authorizing TCWC to provide water utility services in the certificated service area currently held by
16 TCUC.

17 8. Pursuant to Article XV of the Arizona Constitution and the Arizona Revised Statutes,
18 it is in the public interest for TCWC to provide water utility service to the public in the certificated
19 service area currently held by TCUC.

20 9. Staff's recommendations set forth in Findings of Fact No. 38(b) are reasonable and
21 should be adopted.

22 10. TCWC should be required to provide service using TCUC's currently authorized rates
23 and charges and in accordance with TCUC's current approved tariffs until further Order of the
24 Commission.

25 **ORDER**

26 IT IS THEREFORE ORDERED that the application for approval of the sale of Tonto Creek
27 Utility Co.'s assets and the transfer of its Certificate of Convenience and Necessity to Tonto Creek
28 Water Company LLC is hereby approved, subject to the condition in the next ordering paragraph.

1 IT IS FURTHER ORDERED that Tonto Creek Water Company LLC shall, within 30 days
2 after the effective date of this Decision, send to each customer in the certificated service area a notice
3 advising of the transfer and including all contact information for Tonto Creek Water Company LLC
4 and file with the Commission's Docket Control, as a compliance item in this docket, a copy of the
5 notice sent.

6 IT IS FURTHER ORDERED that Tonto Creek Water Company LLC shall continue to charge
7 the customers in the certificated service area the rates and charges authorized in Decision No. 70707
8 (January 20, 2009), until further Order of the Commission.

9 IT IS FURTHER ORDERED that Tonto Creek Water Company LLC shall provide water
10 utility service to the customers in the certificated service area in accordance with the tariffs approved
11 by the Commission for Tonto Creek Utility Co. until such time as new tariffs for Tonto Creek Water
12 Company LLC are approved by the Commission.

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IT IS FURTHER ORDERED that Tonto Creek Water Company LLC shall file, as part of its annual report, an affidavit with the Utilities Division attesting that the company is current in paying its property taxes in Arizona.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN _____ COMMISSIONER _____

COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2010.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
SNH:db

1 SERVICE LIST FOR:

TONTO CREEK UTILITY CO. and TONTO
CREEK WATER COMPANY LLC

3 DOCKET NO.:

W-02784A-09-0276 and W-20682A-09-0276

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