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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

2009 OCT 27 P 2:25

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

OCT 27 2009

DOCKETED BY [Signature]

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 had 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 and 11, 2009, TCUC and TCWC filed resolutions authorizing Pam Fisher, Secretary/Treasurer of TCUC, and James C. Rea, Vice President of TCWC, respectively, to represent

1 them before the Commission for purposes of this matter.

2 Also on September 11, 2009, one of the parties filed a Gila County Board of Supervisors
3 Resolution, dated August 17, 2009, transferring TCUC's water franchise¹ to TCWC, and TCUC filed
4 an Affidavit of Publication showing that public notice had been published in the *Payson Roundup* on
5 September 4, 2009, and an affidavit stating that notice had been inserted into each customer bill
6 mailed on September 1, 2009.

7 On September 14, 2009, a Procedural Order was issued requiring TCUC to re-mail and
8 republish notice because the original notice included errors that rendered the notice ineffective.

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

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

15 On October 27, 2009, an evidentiary hearing convened before a duly authorized
16 Administrative Law Judge of the Commission at the Commission's offices in Phoenix, Arizona.
17 TCUC appeared through Ms. Fisher, TCWC appeared through Mr. Rea, and Staff appeared through
18 counsel. During Ms. Fisher's testimony, material information was revealed that was contrary to
19 information in the Staff Report. As a result, it was determined that Staff needed additional time to
20 gather data and file an Amended Staff Report and that the hearing should be continued until a later
21 date. It was determined that the Amended Staff Report would be due on November 24, 2009; that
22 any response to the Amended Staff Report from TCUC and/or TCWC would be due on December 8,
23 2009; and that the evidentiary hearing would reconvene on December 14, 2009. TCUC and TCWC
24 were directed to ensure that they provide Staff with responses to its inquiries in a rapid manner and to
25 ensure that the information provided to Staff is accurate and complete.

26
27 ¹ The Resolution first transferred Tonto Creek Estates Water System's ("TCEWS's") water franchise to TCUC, as
28 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).

1 IT IS THEREFORE ORDERED that **Staff** shall file an Amended Staff Report in this matter
2 by **November 24, 2009**.

3 IT IS FURTHER ORDERED that **TCUC and TCWC** shall file any response that either may
4 have to the Amended Staff Report by **December 8, 2009**.

5 IT IS FURTHER ORDERED that the **evidentiary hearing** in this matter shall reconvene on
6 **December 14, 2009, at 10:00 a.m., in the 2nd Floor Conference Room** at the Commission's Offices
7 at 1200 West Washington, Phoenix, Arizona.

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

11 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113—Unauthorized
12 Communications) applies to this matter and shall remain in effect until the Commission's Decision in
13 this matter is final and non-appealable.

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

16 DATED this 27th day of October 2009.

18
19 
20 SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

21 Copies of the foregoing mailed/delivered
22 this 27th day of October 2009 to:

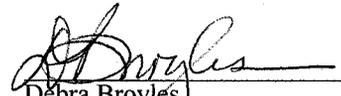
23 Pam Fisher, Secretary/Treasurer
24 TONTO CREEK UTILITY CO.
25 HC 2 Box 94G
26 Payson, AZ 85541

27 James C. Rea, Vice President
28 TONTO CREEK WATER CO. LLC
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By: 
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Secretary to Sarah N. Harpring