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MEMORANDUM
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Arizona Corporation Commission
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FROM: Steven M. Olea
Director
Utilities Division

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

JAN 15 2010

DATE: January 15, 2010

DOCKETED BY

RE: DELLS WATER COMPANY, INC. - REQUEST FOR EXTENSION OF TIME
(DOCKET NO. W-01384A-07-0314)

In Decision No. 70102, dated December 21, 2007, the Arizona Corporation Commission (“Commission”) approved the application of Dells Water Company, Inc. (“Dells” or “Company”) for a permanent rate increase.

As part of Decision No. 70102, the Commission ordered that Dells provide:

“...by December 31, 2008, with the Commissions Docket Control, as a compliance item in this docket, a copy of the Arizona Department of Environmental Quality Certificate of Approval of Construction for the plant to increase storage capacity.”

In Decision No. 70953, dated April 7, 2009, the Company filed an application for authorization to incur long-term debt to construct the increased storage capacity in the form of two new 10,000 gallon storage tanks. During this case, the original December 31, 2008 due date for the above Approval of Construction (“AOC”) was discussed, and ultimately extended until December 31, 2009.

On December 11, 2009, in both Docket No. W-01384A-07-0314 and W-01384A-08-0048, Dells docketed a filing with the Commission, requesting an additional extension of time from the current December 31, 2009 due date until May 1, 2010 for the provision of the required AOC. Because the Company filed this extension of time in both dockets, this Staff memorandum is being docketed in both Docket No. W-01384A-07-0314 and Docket No. W-01384A-08-0048.

The Company filing stated that Dells has made application to the Arizona Department of Environmental Quality (“ADEQ”) related to the Storage facility but had not yet received the ADEQ Approval to Construct (“ATC”) relating to the new storage facility. In addition, the Company stated that they only recently received notification that the Water Infrastructure Finance Authority (“WIFA”) loan was approved. However, the loan must still be closed and these loan funds are fundamentally necessary for construction of the additional storage. Finally, the Company states that “because of the delay in obtaining financing and the uncertainty of the ADEQ review process, the Company respectfully requests an extension of time to file the AOC until May 1, 2010.”

On January 8, 2010, Staff contacted Ms. Judy Navarrete, Executive Director of WIFA, to discuss the Dells request for extension of time. Ms. Navarrete stated that the Dell's loan application went to the WIFA Board of Directors in October 2009 and was approved. Since the loan was approved, the loan documents were sent to the Company on November 3, 2009. However, she noted that the loan closing has not taken place. Typically, the loan documents are reviewed by the Company and must be agreed to before closing can take place. Ms. Navarrete further stated that the Environmental Protection Agency now has new labor law requirements, relating to the Davis-Bacon Act, which Dells must allot for and include in the Company's construction contracts. She implied that this would add additional time to the processing of the loan paperwork and the closing of the loan.

On January 8, 2010, Staff contacted Mr. Jim West, Company consultant, to discuss the Dells request for extension of time and the processing of the loan closing. Mr. West stated that the approval was received from WIFA and the ATC has now been received from ADEQ but the remainder of the entire process has been compromised by the effects of the Davis-Bacon Act. Mr. West went on to clarify that, in addition to increasing the loan processing and closing time, he expects the requirements of the Davis-Bacon Act to increase the actual costs associated with the storage project by approximately 15-20 percent. These costs were not considered when the Company received loan approval from the Commission in Decision No. 70953 and he stated that the Commission authority is no longer technically sufficient for the project. Mr. West has commented that he has been waiting on information from Staff to determine the appropriate action to take in order to address the pending shortfall in the Commission authorization.

When viewing the application and the previous decisions, Staff became concerned about the Company's inability to see this loan finalized and the construction completed. Decision No. 70102 was issued on December 27, 2007 and ordered compliance with the required AOC by December 31, 2008. Decision No. 70953 then extended the due date to December 31, 2009. Now the Company has requested a subsequent extension and has stated that it is awaiting information from Staff before they continue processing the loan. Staff reminds the Company that it has already received every consideration from this Commission and that it is currently out of compliance with the AOC requirement for the plant to increase storage capacity.

More to the point, Dells has already used twice the amount of time that the Commission originally intended for the completion of this compliance item. In that time, the Company has only been able to receive the WIFA authorization and the ATC from ADEQ. Further, the Company application requested an extension of time until May 1, 2010 for the provision of the required AOC. In order to meet that new date, the Company would still be required to complete closing on the loan, contract with a construction firm, see construction completed and apply for and receive the AOC – all within a little more than three months. Even though the Company has now received the ATC, it faces a difficult task that will not be easily accomplished.

At this point, the Company should either finalize its \$30,000 loan with WIFA and complete the project; or if the \$30,000 is insufficient to complete the project, it should apply to the Commission for additional financing authority.

In summary, the swift processing of the WIFA loan is a vital and necessary element in the Company completing the construction and providing the AOC to the Commission. Staff therefore does not object to the Company proposal for extension of time for provision of the AOC related to the plant to increase storage capacity. However, Staff recommends that the Commission extend the due date of the AOC until June 30, 2010. Staff further recommends that no further time extensions be granted in this matter.

SMO:BKB:lm

Originator: Brian K. Bozzo

SERVICE LIST FOR: DELLS WATER COMPANY, INC.
DOCKET NO. W-01384A-07-0314

Robert Conlin
DELLS WATER COMPANY, INC.
P.O. Box 870
901 1st South Street
Clarkdale, Arizona 86370-0870

Jim West
WEST & COMPANY, L.L.C.
365 East Coronado Road, Suite 200
Phoenix, Arizona 85004-1560
Authorized representative for the Dells Water Company, Inc.

Ms. Janice Alward
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ms. Lyn Farmer
Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Steven M. Olea
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007