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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

2010 JUN 21 A 9:54

DOCKETED

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

AZ CORP COMMISSION  
DOCKET CONTROL

JUN 21 2010

DOCKETED BY [Signature]

IN THE MATTER OF THE APPLICATION OF  
ADAMAN MUTUAL WATER COMPANY  
FOR APPROVAL TO ISSUE STOCK.

DOCKET NO. W-01997A-09-0297

PROCEDURAL ORDER

**BY THE COMMISSION:**

On June 4, 2009, Adaman Mutual Water Company ("Adaman" or "Company"), filed with the Arizona Corporation Commission ("Commission") an application for approval to issue stock ("Application").

On June 12, 2009, the Company filed its first Amended Application.

On October 7, 2009, the Company filed an Affidavit of Publication indicating that it had published notice of the Application in *The Record Reporter* on October 5, 2009.

On February 5, 2010, the Commission's Utilities Division Staff ("Staff") filed its Staff Report in this docket concluding that Commission approval of Adaman's Plan of Reorganization is not required and recommending approval of the authorization to issue stock.

On February 19, 2010, Adaman filed its Comments to Staff Report requesting certain changes to the Staff Report ("Comments").

On February 25, 2010, a Procedural Order was issued directing Staff to file its Reply to Adaman's Comments ("Reply").

On March 22, 2010, the Company filed a Motion to Amend Application ("Second Amended Application"), in which it requested additional relief ("Motion").

On March 24, 2010, Staff filed a Request for Extension of time to file its Reply to Adaman's Comments.

On March 31, 2010, a Procedural Order was filed granting the Company's Motion and Staff's Request for Extension.

1 On April 13, 2010, the Company filed an Affidavit of Publication indicating that it had  
2 published notice of the Second Amended Application in *The Record Reporter* on April 7, 2010.

3 On April 14, 2010, Staff filed its Supplemental Staff Report, again concluding that  
4 Commission approval of Adaman's Plan of Reorganization is not required and recommending  
5 approval of the authorization to issue stock.

6 On May 6, 2010, Lise A. LaBarre filed with the Commission a Request for Hearing. In the  
7 Request for Hearing, Ms. LaBarre stated, "[w]e plan to submit an Intervener (*sic*) and are hiring  
8 legal counsel to that end."

9 On May 14, 2010, a Procedural Order was issued setting a Procedural Conference for June 17,  
10 2010, to address the Request for Hearing and possible intervention by Ms. LaBarre.

11 On May 24, 2010, Adaman filed a Response to Request for Hearing ("Response"), in which it  
12 stated its opposition to Ms. LaBarre's Request for Hearing and intervention.

13 On June 8, 2010, Ms. LaBarre filed a Reply to the Request, and on June 14, 2010, she filed a  
14 formal Motion to Intervene.

15 In its Response, Adaman asserts that Ms. LaBarre's Motion to Intervene must be dismissed  
16 with prejudice because it (1) was untimely filed, (2) failed to state the basis for the motion, and (3)  
17 granting the motion would unduly broaden the issues. (Arizona Administrative Code ("A.A.C.")  
18 R14-3-105.)

19 Adaman notes that it first published notice of the Application on October 5, 2009, in *The*  
20 *Record Reporter* which required any motions to intervene to be filed by October 26, 2009. After  
21 Adaman filed its Second Amended Application, the Company states that in an abundance of caution,  
22 it published notice of the Second Amended Application on April 7, 2010, also in *The Record*  
23 *Reporter*. Under this notice, any motions to intervene should have been filed no later than April 22,  
24 2010. Adaman states that Ms. LaBarre did not file her Request for Hearing until May 6, 2010.  
25 Additionally, Adaman notes that Ms. LaBarre has known about the Application, and the activities  
26 underlying it, for over a year, therefore any request for intervention or hearing should have been made  
27 sooner. As such, Adaman asserts that Ms. LaBarre's requests are untimely.  
28

1  
2 As a member/customer of Adaman, Ms. LaBarre has standing to intervene. The Commission  
3 gives wide latitude in granting laypersons' intervention requests in order to assure that members of  
4 the public have adequate opportunities to be heard in matters affecting them as customers. Further,  
5 the Commission does not require a customer to file a motion to intervene the moment the customer is  
6 aware that they may have an issue with a company's application.

7 The Company also argues that Ms. LaBarre's Request for Hearing and Motion to Intervene do  
8 not adequately state a basis for granting her requests. Contrary to Adaman's arguments, Ms.  
9 LaBarre's Request for Hearing generally states the reasons for her exceptions to Adaman's issuance  
10 of stock, and her Reply states in some detail the reasons behind her desire to intervene in this matter.

11 Finally, Adaman asserts that the issues raised by Ms. LaBarre in her Request for Hearing and  
12 Motion to Intervene unduly broaden the issues properly before the Commission. However, if Ms.  
13 LaBarre is permitted to intervene, any conclusion that her arguments go beyond the scope of the  
14 issues before the Commission would be made by the Administrative Law Judge, and Ms. LaBarre  
15 would be required to limit any inquiries or presentation of evidence to specific issues at hand.

16 Accordingly, in the interest of ensuring fair participation by a customer who wishes to  
17 intervene in this matter, Ms. LaBarre's Motion to Intervene should be granted pursuant to A.A.C.  
18 R14-3-105.

19 After review of Adaman's Application, the Staff Report, and information asserted by Ms.  
20 LaBarre, a hearing should be held. At the hearing, the parties should be prepared to address the  
21 following issues:

- 22 1) The permissibility of converting from a non-profit corporation to a for-profit  
23 corporation under Arizona law and under the Company's Certificate of Convenience and  
24 Necessity ("CC&N"), which granted the CC&N to Adaman as an Arizona non-profit,  
25 member-owned entity.
- 26 2) The necessity of converting from a non-profit corporation to a for-profit corporation to  
27 accomplish the goals stated in its Application, such as the consummation of the bulk water  
28 sales agreement and the financial effect of any condemnation proceeding.

1           3)     The adequacy of the notice provided by Adaman to its members regarding the extent  
2           of Commission oversight required of the Company's actions.

3 This list of issues is intended to be illustrative, not comprehensive, and other issues may be addressed  
4 at the hearing as necessary.

5           IT IS THEREFORE ORDERED that the Motion to Intervene of Lise A. LaBarre is hereby  
6 granted.

7           IT IS FURTHER ORDERED that the **hearing** in the above-captioned matter shall be held on  
8 **August 17, 2010, at 10:00 a.m.**, or as soon thereafter as is practical, at the Commission's offices,  
9 1200 West Washington, Hearing Room 1, Phoenix, Arizona 85701.

10           IT IS FURTHER ORDERED that the Company shall **mail** to each of its customers a copy of  
11 the notice below by **July 12, 2010**, and shall cause the notice to be published at least once in a  
12 newspaper of general circulation in its service territory, with **publication** to be completed no later  
13 than **July 12, 2010**.

14           IT IS FURTHER ORDERED that the Company shall **file certification of mailing and**  
15 **publication** no later than **July 30, 2010**.

16           IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105,  
17 except that all **motions to intervene** must be filed on or before **July 30, 2010**.

18           IT IS FURTHER ORDERED that any **objections to motions to intervene** must be filed on or  
19 before **August 10, 2010**.

20           IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing and  
21 publication of same, notwithstanding the failure of an individual customer to read or receive the  
22 notice.

23           IT IS FURTHER ORDERED that the Company shall provide public notice of the hearing in  
24 this matter, in the following type size, form and style with the heading in no less than 14 point bold  
25 type and the body in no less than 10-point regular type:

26 ...

27 ...

1                    **PUBLIC NOTICE OF THE HEARING ON THE APPLICATION OF**  
2                    **ADAMAN MUTUAL WATER COMPANY, INC.,**  
3                    **FOR APPROVAL TO ISSUE STOCK.**  
4                    **(Docket No. W-01997A-09-0297)**

5                    **Summary**

6                    On June 4, 2009, Adaman Mutual Water Company ("Company"), filed with the  
7                    Arizona Corporation Commission ("Commission") an application for approval to issue  
8                    stock; on June 12, 2009, the Company filed an amended application; and on March 22,  
9                    2010, the Company filed a second amended application (together, the "Application").  
10                   On April 14, 2010, the Commission's Utilities Division ("Staff") recommended  
11                   approval of the Application. On May 6, 2010, a Request for Hearing was filed with  
12                   the Commission. The Commission is not bound by the proposals or recommendations  
13                   made by the Company or Staff. The Commission will issue a decision regarding the  
14                   Company's application following consideration of testimony and evidence presented  
15                   at an evidentiary hearing.

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

17                   Copies of the Application are available at the Company's offices [COMPANY  
18                   INSERT ADDRESS HERE] and the Commission's offices at 1200 West  
19                   Washington, Phoenix, Arizona, for public inspection during regular business hours and  
20                   on the internet via the Commission website (www.azcc.gov) using the e-docket  
21                   function.

22                   **Arizona Corporation Commission Public Hearing Information**

23                   The Commission will hold a hearing on this matter beginning **August 17, 2010, at**  
24                   **10:00 a.m.**, at the Commission's offices, 1200 West Washington, Hearing Room 1,  
25                   Phoenix, Arizona. Public comments will be taken on the first day of the hearing.  
26                   Written public comments may be submitted via email (visit  
27                   [http://www.azcc.gov/divisions/utilities/forms/public\\_comment.pdf](http://www.azcc.gov/divisions/utilities/forms/public_comment.pdf) for instructions), or  
28                   by mailing a letter referencing Docket Number W-01997A-09-0297 to: Arizona  
29                   Corporation Commission, Consumer Services Section, 1200 West Washington,  
30                   Phoenix, AZ 85007. If you require assistance, you may contact the Consumer Services  
31                   Section at (800) 222-7000.

32                   **About Intervention**

33                   The law provides for an open public hearing at which, under appropriate  
34                   circumstances, interested parties may intervene. Any person or entity entitled by law  
35                   to intervene and having a direct and substantial interest in the matter will be permitted  
36                   to intervene. If you wish to intervene, you must file an original and 13 copies of a  
37                   written motion to intervene with the Commission no later than **July 30, 2010**, and mail  
38                   a copy of the motion to the Company or its counsel and to all parties of record. Your  
39                   motion must contain the following:

- 40                   1.     Your name, address, and telephone number and the name, address and  
41                   telephone number of any party upon whom service of documents is to  
42                   be made, if not yourself.
- 43                   2.     A short statement of your interest in the proceeding (e.g., a customer of  
44                   the Company, a shareholder of the Company, etc.).

3. A statement certifying that you have mailed a copy of the motion to intervene to the Company or its counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before July 30, 2010. If representation by counsel is required by Rule 31 of the Rules of the Arizona Supreme Court, intervention will be conditioned upon the intervenor obtaining counsel to represent the intervenor. For information about requesting intervention, visit the Commission's website at <http://www.azcc.gov/divisions/utilities/forms/iinterven.pdf>. The granting of intervention, among other things, entitles a party to present sworn evidence at the hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and providing public comment on the Application or from filing written comments in the record of the case.

**ADA/Equal Access Information**

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting the ADA Coordinator Carolyn Buck, E-mail CDBuck@azcc.gov, voice phone number 602/542-3931. Requests should be made as early as possible to allow time to arrange the accommodation.

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

IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the Rules of Arizona Supreme Court). Representation before the Commission includes appearances at all hearings and procedural conferences, as well as all Open Meetings for which the matter is scheduled for discussion, unless counsel has previously been granted permission to withdraw by the Administrative Law Judge or the Commission.

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

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...  
...

1 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or waive  
2 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

3 Dated this 18<sup>th</sup> day of June, 2010.

4  
5   
6 BELINDA A. MARTIN  
ADMINISTRATIVE LAW JUDGE

7 Copies of the foregoing mailed/delivered  
8 this 18<sup>th</sup> day of June, 2010, to:

9 Michele Van Quathem, Esq.  
10 James E. Brophy, Esq.  
11 RYLEY CARLOCK & APPLEWHITE  
12 One North Central Avenue, Suite 1200  
13 Phoenix, AZ 85004

14 Lise A. LaBarre, M.D.  
15 7102 North 35<sup>th</sup> Avenue, Suite #3  
16 Phoenix, AZ 85051

17 Janice Alward, Chief Counsel  
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19 ARIZONA CORPORATION COMMISSION  
20 1200 West Washington Street  
21 Phoenix, AZ 85007

22 Steven M. Olea, Director  
23 Utilities Division  
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25 1200 West Washington  
26 Phoenix, AZ 85007

27 ARIZONA REPORTING SERVICE, INC.  
28 2200 N. Central Avenue, Suite 502  
Phoenix, AZ 85004-1481

By:   
Belinda A. Martin