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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

2010 DEC 16 P 3: 03

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

DEC 16 2010

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IN THE MATTER OF THE INVESTIGATION OF THE FAILURE OF BELLEMONT WATER COMPANY, AN ARIZONA PUBLIC SERVICE CORPORATION, AND BELLEMONT WATER COMPANY SHAREHOLDERS BRAD NESS, GLORIA NESS, ERIK NESS, DIANAH NESS (AKA DIANA NESS), OPERATING AS AN ARIZONA PUBLIC SERVICE CORPORATION IN FACT, TO COMPLY WITH ARIZONA STATUTES AND COMMISSION RULES AND REGULATIONS.

DOCKET NO. W-02526A-10-0499

COMPLAINT

Staff of the Utilities Division (“Staff”) of the Arizona Corporation Commission (“Commission”), for its Complaint against Bellemont Water Company, Inc. (“BWC” or “Company”), an Arizona public service corporation, and against Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness (AKA Diana Ness), operating as an Arizona public service corporation in fact, alleges:

JURISDICTION

1. The Commission has jurisdiction to hear complaints against public service corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to supervise and regulate public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

2. BWC is a public service corporation as defined by Article XV, § 2 of the Arizona Constitution and A.R.S. §§ 40-281 and -282.

3. Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness (AKA Diana Ness) are serving as a public service corporation in fact by virtue of their disregard for the corporate form, their use of company revenue for personal expenses, and their co-mingling of corporate and personal funds.

BACKGROUND

4. BWC, a subchapter “C” Corporation, was incorporated in Arizona in 1989.

1 Arizona. The Staff Report was filed on February 10, 2010, recommending a rate decrease and a
2 denial of the request to incur long-term debt.

3 15. On March 5, 2010, the recommended opinion and order ("ROO") was filed generally
4 agreeing with Staff's recommendations. The item was scheduled to be heard at the March 31, 2010
5 open meeting.

6 16. On March 26, 2010, Rodney Wilson, certified public accountant for the Company,
7 contacted the Commission, requesting that the Commission's consideration of the ROO be postponed
8 due to potential management changes in the Company. The item was pulled from the March 31,
9 2010 open meeting and was eventually heard at the July 27-28, 2010 open meeting and the August
10 24-25, 2010 open meeting, as discussed below.

11 17. The item was heard by the Commission on July 27, 2010. No Company officer
12 appeared at the open meeting. Rodney Wilson appeared telephonically and mentioned ongoing
13 lawsuits and other issues but did not provide specific information. The Commission did not vote on
14 the item and moved it to the August open meeting in order to have a representative of the Company
15 present.

16 18. At the August 24, 2010 open meeting, Company President Brad Ness and Company
17 Vice President Erik Ness were present. Additionally, Rodney Wilson, the Company's certified
18 public accountant, and Klaudia Ness, BWC's Secretary, appeared telephonically.

19 19. Klaudia Ness alleged that there had been some mishandling of Company funds.
20 Specifically, Klaudia Ness stated that BWC funds had been used by Brad Ness to make payments on
21 personal debt owed to the McClains by certain Ness family members.

22 20. Klaudia Ness also stated that the standpipe service meter was within Brad Ness' sole
23 control and that she was concerned that standpipe revenue was not being deposited into the separate
24 standpipe service meter bank account. She stated that approximately \$6,000 of standpipe revenue
25 was unaccounted for.

26 21. The Commission voted on the rate and financing applications and issued Decision No
27 71868. That Decision specifically reaffirmed the Commission's previous order "that all revenue
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1 collected from the standpipe service shall be deposited in a separate interest bearing account and such
2 funds shall be used exclusively for the design, approval and construction of a new water source[.]”¹

3 22. Additionally, the Commission directed Staff to investigate the allegations of
4 mismanagement made at the open meeting.

5 STAFF INVESTIGATION

6 23. On September 13, 2010, Staff mailed data requests via certified mail to BWC, Klaudia
7 Ness, Brad Ness, Elliott Ness, and Erik Ness. Return receipts were received from Klaudia Ness and
8 Brad Ness. Mailings were returned unclaimed by Elliott Ness and Erik Ness.

9 24. On October 1, 2010, Staff received a response to the data request via fax from Klaudia
10 Ness. In her written response, Klaudia Ness reiterated allegations of inappropriate handling of
11 Company funds.

12 25. On October 13, 2010, Staff met with Klaudia Ness and Rodney Wilson at the offices
13 of Rodney Wilson in Flagstaff, AZ, and conducted a limited review of the Company’s books and
14 records.

15 LONG-TERM DEBT INCURRED BY BWC IN 2010

16 26. In approximately 2006, individual members of the Ness family purchased 118,179
17 shares of BWC stock from various members of the McClain family through a stock purchase
18 agreement. The purchase price of the 118,179 shares of BWC stock included an initial down
19 payment, a promissory note for a single payment one year later, and long-term debt in the form of a
20 promissory note.

21 27. From December 17, 2007 to September 23, 2009, BWC funds were used to pay
22 approximately \$16,590.90 of certain Ness family members’ personal indebtedness to the McClains.

23 28. In June of 2010, the McClains filed a Superior Court complaint against individual
24 Ness family members, alleging a breach of contract for failure to pay in full a promissory note and a
25 violation of the security agreement associated with the original stock purchase.

26 29. Subsequently, a settlement of the personal debt certain Ness family members owed to
27 the McClains was negotiated and refinanced by a loan from Steven and Janet Adams, entered on
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¹ Commission Decision No. 71868 at 9:22-24 and 12:10-12.

1 August 31, 2010. Per stipulation, the McClain lawsuits were dismissed. The Adams loan, which
2 originally named BWC, as well as Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness (AKA Diana
3 Ness), as borrowers, was amended on September 13, 2010 to name BWC as the sole borrower.

4 30. BWC incurred this long-term debt without Commission approval and for the purpose
5 of settling the personal debt owed by certain Ness family members related to the original stock
6 purchase from the McClains.

7 **USE OF STANDPIPE SERVICE REVENUES**

8 31. The standpipe service is a cash-only service in which customers take water from the
9 standpipe after depositing cash in a lock-box placed by the standpipe service location. The standpipe
10 has a meter on it similar to an odometer on a car so that the Company will have a record of
11 cumulative activity.

12 32. The log of the meter activity provided by Klaudia Ness indicates that \$15,274 is
13 unaccounted for during the period July 23, 2010 through October 9, 2010.

14 33. On November 4, 2010, Staff conducted a telephonic meeting with Brad Ness. Brad
15 Ness stated that he had used monies collected from the standpipe service to pay attorney's fees
16 related to foreclosure litigation with the McClain family. Brad Ness was unable to explain how the
17 attorney's fees were related to the "design, approval and construction of a new water source" as
18 required by Decision Nos. 70482 and 71868. The attorney's fees paid out of the Company standpipe
19 revenues were related to litigation involving certain Ness family members' shares of BWC stock.

20 34. From July 23, 2010 to October 9, 2010, Brad Ness collected monies from the
21 standpipe service meter sales, but did not deposit those funds into the separate interest-bearing
22 account established for that purpose.

23 35. Contrary to the provisions of Decision Nos. 70482 and 71868 that restrict the use of
24 standpipe revenues, Brad Ness has used standpipe revenues in a manner inconsistent with
25 Commission orders.

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COMPLAINT**Count One****(Violation of A.R.S. § 40-301(B))**

36. Staff incorporates the foregoing allegations as if they were fully set forth herein.

37. Arizona Revised Statutes ("A.R.S.") § 40-301(B) states, "A public service corporation may issue stocks and stock certificates, bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, only when authorized by an order of the commission."

38. On August 31, 2010 and September 13, 2010, BWC incurred long term debt in the form of a loan from Steven and Janet Adams.

39. Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness (AKA Diana Ness) were the shareholders, officers, and/or directors who caused BWC to incur long-term debt in the form of a loan from Steven and Janet Adams.

40. This loan was not incurred for any utility purpose but was instead used to satisfy the personal debt owed by certain Ness family members to the McClains.

41. This long-term debt was incurred without Commission approval in violation of A.R.S. § 40-301(B).

Count Two**(Violation of A.R.S. § 40-302(A))**

42. Staff incorporates the foregoing allegations as if they were fully set forth herein.

43. A.R.S. § 40-302(A) states, "Before a public service corporation issues stocks and stock certificates, bonds, notes and other evidences of indebtedness, it shall first secure from the commission an order authorizing such issue and stating the amount thereof, the purposes to which the issue or proceeds thereof are to be applied, and that, in the opinion of the commission, the issue is reasonably necessary or appropriate for the purposes specified in the order, pursuant to § 40-301, and that, except as otherwise permitted in the order, such purposes are not, wholly or in part, reasonably chargeable to operative expenses or to income."

Count Four**(Violation of A.R.S. § 40-204 and A.A.C. R14-2-411.D.4)**

54. Staff incorporates the foregoing allegations as if they were fully set forth herein.

55. Pursuant to A.R.S. § 40-204 and Arizona Administrative Code ("A.A.C.") R14-2-411.D.4, all public service corporations in Arizona are required to file with the Commission on or before April 15 of each year for the preceding year, a Utilities Division Annual Report.

56. BWC has failed to provide a complete Utilities Division Annual Report for calendar year 2009.

57. The failure of BWC to provide a complete 2009 Annual Report represents a violation of both A.R.S. § 40-204 and A.A.C. R14-2-411.D.4.

RELIEF

58. Wherefore, Staff requests that the Commission issue an order that provides the following relief:

- Finding that BWC has violated A.R.S. § 40-301(B).
- Finding that Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness (AKA Diana Ness), operating as a public service corporation in fact, have violated A.R.S. § 40-301(B).
- Finding that BWC has violated A.R.S. § 40-302(A).
- Finding that Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness (AKA Diana Ness), operating as a public service corporation in fact, have violated A.R.S. § 40-302(A).
- Finding that BWC has violated A.R.S. § 40-202(L).
- Finding that Brad Ness, operating as a public service corporation in fact, has violated A.R.S. § 40-202(L).
- Finding that BWC has violated Commission Decision Nos. 70482 and 71868.
- Finding that Brad Ness, operating as a public service corporation in fact, has violated Commission Decision Nos. 70482 and 71868.
- Finding that BWC has violated A.R.S. § 40-204.
- Finding that BWC has violated A.A.C. R14-2-411(D)(4).

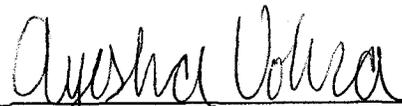
- 1 • Ordering the appointment of a qualified Interim Manager, selected by Staff, if the
2 Company cannot demonstrate that it has taken all actions necessary to remedy the
violations.
- 3 • Ordering that the Company establish protocols to ensure that all shareholders,
4 directors, employees, or officers of BWC are prohibited from using Company
5 revenues for personal expenses, including payments on personal debt.
- 6 • Ordering BWC to pursue whatever action may be necessary to refinance the loan from
Steven and Janet Adams, thereby removing BWC as the obligor.
- 7 • Ordering Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness (AKA Diana Ness) to
8 refinance the loan from Steven and Janet Adams removing BWC as the obligor.
- 9 • Entering a preliminary injunction to enjoin the Company from allowing Brad Ness,
10 Gloria Ness, Erik Ness, or Dianah Ness (AKA Diana Ness) access to Company funds
and bank accounts
- 11 • Permanently enjoining the Company from allowing Brad Ness, Gloria Ness, Erik
12 Ness, or Dianah Ness (AKA Diana Ness) access to Company funds and bank accounts
until further order of the Commission.
- 13 • Entering a preliminary injunction to enjoin Brad Ness, Gloria Ness, Erik Ness, or
14 Dianah Ness (AKA Diana Ness) from accessing Company funds and bank accounts.
- 15 • Permanently enjoining Brad Ness, Gloria Ness, Erik Ness, or Dianah Ness (AKA
16 Diana Ness) from accessing all Company revenues and bank accounts until further
order of the Commission.
- 17 • Ordering BWC to pursue whatever action may be necessary to obtain reimbursement
18 from any shareholder, officer, director, or employee who has used Company funds for
19 personal obligations or has otherwise taken funds from the Company.
- 20 • Ordering Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness (AKA Diana Ness) to
21 repay any Company funds used by him/her to pay personal expenses, including but not
22 limited to payments on the long-term debt owed to the McClains and payments on the
long term debt owed to Steven and Janet Adams.
- 23 • Ordering Brad Ness and Gloria Ness to repay all standpipe revenues used for purposes
24 other than the design, approval, and construction of a new water source.
- 25 • Ordering the Company to pursue whatever action may be necessary to obtain
26 repayment of all standpipe revenues used by Brad Ness for purposes other than the
design, approval, and construction of a new water source.
- 27 • Ordering BWC to provide information to the Commission explaining how BWC
28 intends to operate in the future, whether BWC intends to continue to operate as a
corporation, and if so, what controls will be utilized to prevent further disregard of the

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corporate form, co-mingling of funds, and further violation of applicable statutes, rules, and orders.

- Imposing fines and penalties for each violation pursuant to Article XV, Sections 16 and 19 of the Arizona Constitution and A.R.S. §§ 40-424 and 425 in an amount to be determined by the Commission after a hearing.
- Ordering such other relief as the Commission may find just and reasonable.

RESPECTFULLY SUBMITTED this 16th day of December, 2010.



Ayesha Vohra
Attorney, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-6521

Original and thirteen (13) copies of the foregoing were filed this 16th day of December, 2010 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

1 SERVICE LIST FOR: Bellemont Water Company
2 DOCKET NO. W-02526A-10-0499

3 Bellemont Water Company
4 P.O. Box 31176
5 Flagstaff, Arizona 86003

6 Brad Ness
7 3960 N. Pinal Street
8 Kingman, Arizona 86409

9 Gloria Ness
10 3960 N. Pinal Street
11 Kingman, Arizona 86409

12 Erik Ness
13 3960 N. Pinal Street
14 Kingman, Arizona 86409

15 Dianah Ness
16 3960 N. Pinal Street
17 Kingman, Arizona 86409

18 Elliot Ness
19 7350 Hutton Ranch Rd.
20 Flagstaff, AZ 86004

21 Klaudia Ness
22 7350 Hutton Ranch Rd.
23 Flagstaff, AZ 86004

24 Mary Keller Wong
25 Estate of George Wong
26 10476 W. Harmon
27 Peoria, Arizona 85345

28 Steve Olea
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

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

