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BRENDA BURNS

ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

DATE: APRIL 11, 2011
DOCKET NO.: W-01676A-10-0400

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Opinion and Order on:

PINEVIEW WATER COMPANY, INC.
(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:

APRIL 20, 2011

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:

APRIL 27, 2011 and APRIL 28, 2011

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

APR 11 2011

DOCKETED BY

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

IN THE MATTER OF PINEVIEW WATER
COMPANY, INC. FOR AN OPINION AND
ORDER (i) AUTHORIZING SALE AND
TRANSFER OF WATER SYSTEM ASSETS, AND
(ii) CANCELING CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-01676A-10-0400

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: March 15, 2011
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes
APPEARANCES: Mr. Lawrence V. Robertson, Jr., on behalf of Applicant;
Mr. F. Morgan Brown, on behalf of the City of Show Low, Arizona; and
Mr. Wes Van Cleve, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On October 4, 2010, Pineview Water Company, Inc. ("Pineview" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for authority to sell and transfer its water system assets to the City of Show Low, Arizona ("City" or "Show Low"), and to cancel its Certificate of Convenience and Necessity ("CC&N"). (Ex. A-1.)

On October 14 and October 26, 2010, the Company filed additional information in support of its application.

On November 3, 2010, the Commission's Utilities Division ("Staff") filed an Insufficiency Letter stating that additional information was needed to satisfy the sufficiency requirements set forth in Arizona Administrative Code ("A.A.C.") R14-2-402.D.

On November 17 and 19, 2010, and December 15, 2010, Pineview filed additional

1 information in response to Staff's Insufficiency Letter.

2 On December 20, 2010, Staff filed a Sufficiency Letter indicating that Pineview's application
3 met the sufficiency requirements outlined in A.A.C. R14-2-402.D.

4 By Procedural Order issued January 6, 2011, a hearing was scheduled for March 15, 2011, the
5 Company was directed to mail to customers and publish notice of the proposed transaction and
6 hearing date, and other procedural dates were established.

7 On February 2, 2011, Pineview filed affidavits of mailing and publication of the prescribed
8 notice. (Exs. A-4 and A-5.)

9 On February 15, 2011, Staff filed its Staff Report recommending approval of the application
10 subject to certain conditions.

11 On February 28, 2011, Pineview filed its Response to the Staff Report.

12 On March 3, 2011, the Company filed Supplemental Information Regarding Effect of Show
13 Low Acquisition on Pineview Water Company Customer Monthly Bills.

14 On March 11, 2011, the City of Show Low filed an Application to Intervene.

15 On March 15, 2011, the hearing was held as scheduled before a duly authorized
16 administrative law judge. Show Low's intervention request was granted at the hearing. Pineview,
17 Show Low, and Staff appeared at the hearing through counsel. At the conclusion of the hearing, the
18 matter was taken under advisement pending submission of a late-filed exhibit and issuance of a
19 Recommended Opinion and Order.

20 The late-filed exhibit (Ex. A-21) was mailed by counsel for Pineview to the administrative
21 law judge and the other parties on March 16, 2011.

22 * * * * *

23 Having considered the entire record herein and being fully advised in the premises, the
24 Commission finds, concludes, and orders that:

25 **FINDINGS OF FACT**

26 Overview of Application

27 1. As described in the Staff Report (Ex. S-1), Pineview is a Class C utility that is
28 authorized to provide water utility services in an area that includes a portion of Show Low and areas

1 adjacent to the City's boundaries in Navajo County. Pineview's CC&N was originally established by
 2 Decision No. 32007 (December 28, 1959), and the Company currently serves approximately 1,000
 3 residential and 150 commercial customers.

4 2. Pineview's service area comprises approximately 3 and $\frac{3}{4}$ square miles contiguous to
 5 or near the City's western, northern, and eastern borders. (*Id.* at 1.) Staff states that, according to the
 6 Company, Show Low desires to acquire Pineview to "establish and expand its presence as a regional
 7 water provider." (*Id.*)

8 3. The City currently provides water service to approximately 3,922 residential and 515
 9 commercial customers. (Ex. A-1, at 2.) According to Staff, Show Low also provides wastewater
 10 service to the area and therefore acquisition of the Pineview system would result in provision of
 11 water and wastewater service by a single municipal provider, for customers that receive wastewater
 12 service from the City. (Ex. S-1, at 1.) The application states that the City has access to financing for
 13 infrastructure additions and improvements that are not available to the owners of Pineview, and that
 14 Show Low would be better able to accommodate growth in Pineview's current CC&N area. (*Id.*)
 15 Staff also indicated that the Company's owners are advanced in years and desire to relieve
 16 themselves of the responsibilities of operating a water utility. (*Id.* at 2.)

17 Terms of Asset Purchase and Sale Agreement

18 4. The Asset Purchase and Sale Agreement ("Agreement") was signed by the president
 19 of Pineview on August 31, 2010, approved by the Show Low City Council, and signed by the mayor
 20 of Show Low on September 7, 2010. (Ex. A-21.)¹ The Agreement provides that:

- 21 a. The City must provide a continuous, adequate and reliable water
 22 supply to all customers currently served by Pineview;
 23 b. The purchase price of Pineview's assets is \$3.2 million;
 24 c. Closing of the transaction is conditioned on, among other things,
 approval by the Commission;
 25 d. Closing must occur within 10 days following receipt of all
 regulatory approvals, and by no later than June 30, 2011;
 26 e. All advances in aid of construction ("AIAC") agreements for
 which refunds are not due as of closing will be transferred to the
 City, including all associated future refund obligations;
 27 f. Prior to closing, Pineview is responsible for making all customer

28 ¹ A First Amendment extended the feasibility period of the Agreement for an additional 90 days and a Second
 Amendment extended the closing deadline of the transaction from March 31, 2011 to June 30, 2011, to allow additional
 time for regulatory approval. (Exs. A-2 and A-3.)

1 deposit refunds. Show Low is obligated to make all customer
2 deposit refunds that occur after the date of closing; and
3 g. The City will obtain a loan from the Water Infrastructure
4 Financing Authority of Arizona ("WIFA") of up to \$4.8 million to
5 finance the purchase of the assets and to make necessary
6 improvements to the system. (Ex. S-1, at 2; Ex. A-21.)

4 Engineering Analysis

5 5. As described in the Staff Engineering Report, Pineview's water system consists of 5
6 wells that produce a combined 663 gallons per minute ("gpm"), 4 storage tanks with a total capacity
7 of 2,570,000 gallons of capacity, 147 fire hydrants, booster systems, and 35.1 miles of water mains.
8 Staff indicated the Company's water system has adequate well production and storage capacity to
9 serve its existing service connections. (Ex. S-1, at Ex. 2.)

10 6. Staff states that Show Low intends to interconnect its water system with Pineview's
11 system, thereby increasing the quality and quantity of water available to the City's current and future
12 customers. According to Staff, the City believes the interconnection will result in economies of scale
13 and increased operational efficiencies. (*Id.* at 1.) Based on information provided by the Company,
14 Staff indicates that the total plant-in-service value of the assets to be transferred to Show Low is
15 \$4,937,632. (*Id.* at 2; Ex. A-10.)

16 7. According to Staff, the Arizona Department of Environmental Quality ("ADEQ")
17 reported that Pineview's water system (Public Water System No. 09-022) has no major deficiencies
18 and is currently delivering water that meets water quality standards under Arizona law. Show Low's
19 water system (Public Water System No. 09-026) also meets applicable ADEQ water quality
20 standards. (Ex. S-1, at Ex. 2.)

21 8. Staff's Engineering Report indicates that the Pineview and Show Low systems are not
22 located in an Active Management Area ("AMA") pursuant to Arizona Department of Water
23 Resources ("ADWR") guidelines. ADWR compliance reports issued September 20, 2010 and
24 October 15, 2010, respectively, state that the Pineview and Show Low water systems are in
25 compliance with ADWR requirements governing water providers and/or community water systems.
26 (*Id.*)

27 9. Staff stated that Pineview has no delinquent compliance issues at the Commission.
28 Staff concluded that, from an engineering perspective, the proposed sale of assets and CC&N

1 cancellation would not have an adverse impact on Pineview's current customers and their water
2 service. (*Id.* at 3.)

3 Water Loss Issues

4 10. In Decision No. 71693 (May 3, 2010), Pineview was directed to reduce its water loss
5 rate to less than 10 percent or to provide a detailed cost analysis showing why it is not economically
6 feasible to do so. Attached to the Staff Report in this case is an exhibit that shows the efforts the
7 Company has made to identify and reduce system losses including: replacing inaccurate meters;
8 repairing visible leaks; recording water lost through system flushing; and installing "clay dams"
9 where leaks were found in areas in which cinders were used as backfill by other utilities. (*Id.* at Ex. 4;
10 Ex. A-11.) Despite these efforts, Pineview continues to register a water loss rate of greater than 10
11 percent, leading the Company to identify the Scotts Pine Meadow ("Scotts Pine") subdivision as the
12 most likely source of leaks causing the excessive water loss rate. (*Id.*)

13 11. In August 2010, Pineview received a Planning and Design grant from WIFA to
14 determine the estimated cost of replacing the Scotts Pine distribution system. The Company retained
15 Tetra Tech Engineering to develop plans for replacing the Scotts Pine system. According to
16 testimony provided by Show Low's public works director, Bill Kopp, based on the Tetra Tech
17 engineering plans the estimated cost of replacing the Scotts Pine system is approximately \$1.2
18 million. (Tr. 83-84; Exs. A-19 and A-20.)²

19 12. The City's finance director, Doug Sandstrom, testified that approval for the \$4.8
20 million WIFA loan was received on February 16, 2011, of which \$3.2 million will be used to
21 purchase the Pineview assets and the remaining \$1.6 million will be used for system improvements
22 and upgrades. (Ex. A-14; Tr. 57-58.) Mr. Sandstrom indicated that \$1.2 million will be used for the
23 Scotts Pine system replacement, with the remaining \$400,000 being used for interconnection of the
24 Show Low and Pineview water systems and for additional system repairs. (*Id.*)

25 Rate Effect of Acquisition

26 13. Mr. Sandstrom also presented an analysis of the rate effect of the acquisition on

27 _____
28 ² Mr. Kopp explained that the excessive leaks in Scotts Pine are due to installation of what are now considered sub-
standard materials when the subdivision was constructed, including asbestos cement pipe. He stated that the City intends
to replace the distribution system with C900 water lines consistent with current standards. (Tr. 86-87.)

1 Pineview's current customers. (Exs. A-9, A-12, A-13.) He stated that approximately two to three
 2 hundred of Pineview's customers reside within the Show Low city limits with the remainder of
 3 customers located adjacent to the City in Navajo County. (Tr. 52, 66.) As set forth in Exhibit A-13, a
 4 Pineview 5/8-inch residential customer with usage of 3,000 gallons per month ("gpm") currently pays
 5 \$26.25 per month whereas a City of Show Low customer with the same usage currently pays \$26.17
 6 per month. (Ex. A-13.)³

7 14. For current Pineview residential customers located outside the city limits, the City
 8 plans to impose a 25 percent rate premium.⁴ (Ex. A-13; Tr. 65.) Thus, for a Pineview customer
 9 located outside the city limits with usage of 3,000 gpm, the monthly bill would increase from the
 10 current \$26.25 to an estimated \$32.71. (Ex. A-13.) However, as monthly usage increases, the rate
 11 disparity for non-resident Pineview customers would disappear, and would actually result in lower
 12 rates. For example, a non-resident customer with usage of 5,000 gpm under Pineview's rates incurs a
 13 monthly bill of \$34.25, compared to a monthly charge of \$32.71 under Show Low's estimated rates
 14 for the same customer. (*Id.*)

15 15. Mr. Sandstrom and Mr. Kopp testified that the non-resident Pineview customers would
 16 be treated fairly by the City. (Tr. 68-69; 88-91.) Both witnesses cited to the City's plan to invest \$1.2
 17 million in the Scotts Pine⁵ system replacement as an indicator of Show Low's commitment to
 18 customers located outside the City's borders. (*Id.* at 83-84, 92.) Mr. Kopp also testified that the non-
 19 resident customers currently served by Pineview have expressed support for Show Low's acquisition.
 20 (*Id.* at 58, 89.) Mr. Sandstrom indicated that rate premiums were justified for non-resident customers
 21 because the City's residents are essentially assuming the risk of operating the utility and, in the event
 22 of a need for major system improvements, Show Low could potentially be required to engage in

23 ³ Pineview's General Manager, Ron McDonald, testified that although average customer usage is 3,000 to 5,000 gpm, on
 24 an annualized basis, most of Pineview's customers are seasonal and therefore have lower than average usage in the winter
 25 months and higher than average usage in summer months. (Tr. 40.) Mr. McDonald also indicated that the Company has
 not received any negative comments from customers regarding the proposed acquisition, and that many customers
 expressed an interest in "online bill pay," a service offered by the City but not by Pineview. (*Id.* at 41.) To date, no public
 comment has been received in opposition to the proposed acquisition of Pineview by the City.

26 ⁴ According to the analysis provided by the City in Exhibit A-13, many municipal systems in Arizona impose rate
 27 premiums on utility customers located outside city boundaries. The exhibit shows that although Mesa, Tempe, and
 Tucson have no premium for non-residents, non-city water customers served by municipal systems in Flagstaff,
 Tombstone, Glendale, Kingman, Yuma, Prescott, Chandler, and Phoenix, as well as other smaller towns, are assessed rate
 28 non-resident water customers. (*Id.*)

⁵ The Scotts Pine Meadows subdivision is located entirely outside the Show Low city limits.

1 bonding to raise revenue for needed investments in the system. (*Id.* at 93-95.) He also stated that City
2 residents pay a local two percent sales tax on utility bills, but non-resident customers would not pay
3 sales taxes on their bills. (*Id.*)

4 Overall Public Interest of Transaction

5 16. Based on its review, Staff found that the proposed acquisition of Pineview's assets by
6 the City of Show Low is in the public interest subject to compliance with Staff's recommendations
7 that the Company file documentation of closing of the sale and that the City honor all of Pineview's
8 obligations regarding customer deposits, service line and meter installations, and mainline extension
9 agreements. The Staff Report indicates that Show Low has extensive experience operating a
10 municipal water utility, and that Pineview's current customers should benefit from Show Low's
11 acquisition through increased availability of water quality and quantity. (Ex. S-1, at 5.)

12 17. Mr. Sandstrom indicated that the City will benefit from the transaction due to
13 anticipated economies of scale related to increasing its customer base by approximately 20 percent,
14 and that acquisition of Pineview should result in operational efficiencies and mitigate the impact of
15 future rate increases for all customers due to the larger customer base. (Tr. 47-48.) He stated that
16 Show Low would have the resources to make needed system improvements (such as the Scotts Pine
17 replacement) that Pineview's owners would likely not be able to make absent substantial rate
18 increases. (*Id.* at 67.)

19 18. Mr. Kopp described additional benefits to the City from the Pineview purchase,
20 including acquisition of Pineview's two million gallon storage reservoir and the proximity of
21 Pineview's infrastructure to Show Low Lake, where the City currently has certain water rights but no
22 nearby water mains. (*Id.* at 78-80.) Mr. Kopp indicated that the City currently plans to construct a
23 surface water treatment plant adjacent to Show Low Lake in 2016. (*Id.*)

24 19. Staff witness Darron Carlson testified that he believes the transaction is in the public
25 interest and should be approved. He stated that despite the rate disparity between residents and non-
26 residents as a result of the acquisition (at lower usage rates), the transaction is appropriate because it will
27 result in a smaller utility being taken over by a larger entity. According to Mr. Carlson, an acquisition
28 such as the one proposed by this application promotes "the general welfare of the public" because:

[a] size C utility, which this company is, can be profitable, but it's always on the verge of the next big accident before it has problems. And by this purchase, it will help solve that type of problem....And you can drop back to the expected expenditure of \$1.2 million that they [the City] plan to do with the problem system [Scotts Pine]. That kind of investment by the current owners [Pineview] probably couldn't be made, number one, and, number two, would have a very large effect on future rates for the customers anyway.

(Tr. 105-107.)

Conclusion

20. Based on the testimony and exhibits presented on the record of this proceeding, we believe Pineview's Application for authority to sell and transfer its water system assets to the City of Show Low and to cancel its CC&N is in the public interest and should be approved, subject to compliance with Staff's recommendations as described hereinabove.

CONCLUSIONS OF LAW

1. Pineview is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

2. The Commission has jurisdiction over Pineview and the subject matter of the application.

3. Notice of the application was provided as required by law.

4. There is a continuing need for water utility service in Pineview's certificated area.

5. The City of Show Low is a fit and proper entity that is ready, willing and able to assume the responsibility of providing water utility service within Pineview's presently certificated area.

6. Staff's recommendations as described above are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of Pineview Water Company, Inc. to sell its assets to the City of Show Low and to cancel its Certificate of Convenience and Necessity is hereby approved, and that the CC&N cancellation will be effective upon the closing of the sale and transfer of assets to the City of Show Low.

1 IT IS FURTHER ORDERED that Pineview Water Company, Inc. shall notify the
2 Commission by a filing in this docket within 30 days of the closing of the sale and transfer of assets
3 to the City of Show Low.

4 IT IS FURTHER ORDERED that in accordance with the City's agreement through the
5 testimony given by its witnesses on the record, the City of Show Low shall comply with Staff's
6 recommendation to honor all obligations and liabilities of Pineview relating to customer deposits,
7 service line and meter installations, and mainline extension agreements.

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

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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12 CHAIRMAN

COMMISSIONER

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14 COMMISSIONER

COMMISSIONER

COMMISSIONER

15
16 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
17 Executive Director of the Arizona Corporation Commission,
18 have hereunto set my hand and caused the official seal of the
19 Commission to be affixed at the Capitol, in the City of Phoenix,
20 this _____ day of _____, 2011.

21 ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

22 DISSENT _____

23
24 DISSENT _____

1 SERVICE LIST FOR: PINEVIEW WATER COMPANY, INC.

2 DOCKET NO.: W-01676A-10-0400

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4 Lawrence V. Robertson, Jr.
ATTORNEY AT LAW
5 P.O. Box 1448
Tubac, AZ 85646
Attorney for Pineview Water Company, Inc.

6

7 F. Morgan Brown
BROWN & BROWN LAW OFFICES, P.C.
8 P.O. Box 3128
Pinetop, AZ 85935
Attorney for City of Show Low

9

10 Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
Phoenix, AZ 85007

12

13 Steven M. Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
Phoenix, AZ 85007

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