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COMMISSIONERS

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2011 APR 29 P 2: 24

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

APR 29 2011

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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, DINAH 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

STAFF'S RESPONSE TO MOTION FOR AN EXTENSION OF TIME

The Arizona Corporation Commission Utilities Division Staff ("Staff") hereby responds to Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness' ("The Ness") Motion for Extension of Time to respond to the Staff Report and hearing date extension. Staff opposes the Motion for Extension of Time for several reasons.

Without specifying how long of an extension they are requesting, The Ness' state, "Staff has enlarged their findings, therefore, we find it necessary to ask for adequate time to prepare and respond." The initial Complaint in this matter was filed On December 16, 2010. The Complaint contained a majority of the factual allegations contained in the Amended Complaint, filed on April 18, 2011, as well as those contained in the Staff Report. Staff's Amended Complaint contains only one additional count, namely that "Erik Ness used standpipe revenue in violation of A.R.S. § 40-202(L) and Commission Decision No. 71868 by failing to deposit revenue collected from the standpipe service into a separate interest bearing account and using such funds for purposes other than the design, approval, and construction of a new water source." This new allegation pertains to actions of which only Erik Ness and possibly Brad Ness, Gloria Ness, and Dianah Ness have first-hand knowledge.

...

1 The Ness' further state that they "do not have access to any records regarding Bellemont
2 Water Company." However, The Ness' have never clearly stated what specific documents they
3 require that they are unable to obtain or why The Ness,' who represent a majority of the
4 shareholders and corporate officers, cannot access corporate documents. More importantly, it is
5 unclear how an extension of time will allow Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness
6 to obtain the records they claim lack of access to. The Ness' have expressed to Staff on several
7 occasions since December, 2010 that they lack access to Bellemont Water Company ("Company"
8 or "BWC") records. It is unclear to Staff how an extension of time will allow The Ness' to obtain
9 records they have been unable to acquire since December, 2010. Furthermore, The Ness' have not
10 demonstrated any efforts to obtain the Company records they seek.

11 The Ness' state that they cannot afford legal counsel. Staff understands that The Ness' do
12 not have legal counsel. However, The Ness' have lacked legal counsel in this matter since
13 December, 2010 and have known since the February 16, 2011 Procedural Order issued in this
14 matter that the hearing was scheduled for May 3, 2011. The Procedural order also provided time
15 frames for the filing of the Staff Report and the Respondent's Response. Although an extension
16 was granted for the filing of the Staff Report, a concomitant extension of time was also granted to
17 the Respondent's to file their Response.

18 While Staff opposes any extension of time for The Ness' Response or the Hearing date, if
19 the Administrative Law Judge deems some extension appropriate, Staff respectfully requests that,
20 at a minimum, the Motion For A Preliminary Injunction be heard on May 3, 2011. This matter has
21 been pending since December, 2010, and Staff has serious concerns regarding the financial health
22 of the Company if The Ness' named in the Complaint and the Motion For A Preliminary
23 Injunction are not enjoined from accessing Company accounts and revenues.

24 RESPECTFULLY SUBMITTED this 29th day of April, 2011.

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26 
27 Ayesha K. Vohra
28 Attorney, Legal Division
Arizona Corporation Commission
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Phoenix, Arizona 85007
(602) 542-3402

1 The original and eighteen (13) copies
of the foregoing were filed this
2 29th day of April, 2011 with:

3 Docket Control
Arizona Corporation Commission
4 1200 West Washington Street
Phoenix, Arizona 85007
5

6 Copy of the foregoing mailed this
29th day of April, 2011 to:

7
8 Bellemont Water Company
P.O. Box 31176
9 Flagstaff, Arizona 86003

10 Brad Ness
Gloria Ness
11 Erik Ness
Dianah Ness
12 3960 N. Pinal Street
13 Kingman, Arizona 86409

14 Elliot Ness
15 Klaudia Ness
7350 Hutton Ranch Rd.
16 Flagstaff, Arizona 86004

17 Mary Keller Wong
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