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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED
MAY - 4 2011
DOCKETED BY

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF WILLOW VALLEY WATER COMPANY, INC. FOR AN EXTENSION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY.

DOCKET NO. W-01732A-05-0532

DECISION NO. 72295

ORDER EXTENDING TIME DEADLINE CONTAINED IN DECISION NOS. 68610, 71174 AND 71861

Open Meeting
April 27 and 28, 2011
Phoenix, Arizona

BY THE COMMISSION:

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

FINDINGS OF FACT

1. On March 23, 2006, the Arizona Corporation Commission ("Commission") issued Decision No. 68610 which approved the application of Willow Valley Water Company, Inc. ("Company" or "Applicant") for an extension of its Certificate of Convenience and Necessity ("Certificate") to provide public water utility service to 48 acres of land consisting of Parcels A, B and C in Mohave County, Arizona.

2. As a condition of the Commission's approval, the Company was required to file, by March 23, 2007, copies of the developer's Letter(s) of Adequate Water Supply ("LAWS") which is to be issued by the Arizona Department of Water Resources ("ADWR") for each parcel.

3. On March 21, 2007, the Company filed a Motion for Extension of Time ("Motion") to file copies of the developer's LAWS stating that it needed an additional twelve months, until March

23, 2008, to secure and file copies of the LAWS to be issued by ADWR. The developer was encountering delays due to litigation which involved the Mohave Valley Irrigation and Drainage District ("MVIDD") and a 2005 recall election in Mohave County ("County") that involved its board of directors.

4. On April 4, 2007, the Commission's Utilities Division ("Staff") filed a Memorandum which stated that Staff did not object to the Company's Motion and recommended that the requested extension be approved.

5. On April 19, 2007, by Procedural Order, an extension of time was granted for the Company to file copies of the developer's LAWS by March 23, 2008.

6. On March 21, 2008, the Company requested an additional one year extension of time, until March 23, 2009, in which to file a copy of the developer's LAWS for Parcel C to be issued by ADWR. The Applicant in the proceeding had secured and filed copies of the developer's LAWS for Parcels A and B in the extension area.

7. In its March 2008 filing, the Company stated that the developer was proceeding with the development of Parcel C and had experienced some delays with the Mohave County Planning and Zoning Department ("MCPZD"). At that time, the developer expected to resolve those issues with the MCPZD after which the developer would secure a LAWS for Parcel C and provide it to the Company to file with the Commission if an extension was granted.

8. On April 16, 2008, Staff filed a Memorandum which recommended approval of the Company's request for an extension of time, until March 23, 2009, in order to file a copy of the developer's LAWS for Parcel C.

9. On April 29, 2008, by Procedural Order, the Company was granted an extension of time, until March 23, 2009, in which to file a copy of the developer's LAWS for Parcel C.

10. On March 23, 2009, the developer of Parcels A, B and C, McKellips Land Corporation ("MLC"), filed an Application to Intervene ("Application") in this docket. MLC described what had happened since the granting of the extension of the Company's Certificate on March 23, 2006, and requested intervention pursuant A.A.C. R14-3-105(A) because it alleged that it

was directly and substantially affected by the Commission's proceedings.

11. MLC, in its Application, further indicated that the Company did not oppose its Application. Additionally, together with its Application, MLC filed a Conditional Motion for Extension of Time ("Conditional Motion"), until March 23, 2010, in which to secure a LAWS for Parcel C and provide it to the Company for filing in compliance with the Commission's Decision No. 68610.

12. On April 7, 2009, by Procedural Order, Staff and the Company were each ordered to file a response to MLC's Application and to its Conditional Motion.

13. On April 30, 2009, the Company filed its response to MLC's Conditional Motion and indicated that the Company did not oppose MLC's request for an extension of time on behalf of the Company.

14. On May 8, 2009, Staff filed its response to MLC's Conditional Motion. Staff stated that "the downturn in the economy has put a damper on much of the development in the state," but recognized that MLC and the Company "have made significant progress in the extension area" with the LAWS for Parcel C remaining as the last required compliance item from Decision No. 68610, and recommended approval of MLC's Conditional Motion.

15. Staff further recommended that no further extension of time be granted.

16. Neither Staff nor the Company objected to MLC's Application and therefore MLC was granted intervention for the limited purpose of explaining why additional time for compliance was necessary. The Commission found that the request for an extension of time was reasonable and issued Decision No. 71174 (June 30, 2009) which authorized the Company to file a copy of the LAWS for Parcel C as recommended by Staff by March 23, 2010; however, the Commission placed the Company on notice that any further requests for an extension of time to comply would have to demonstrate that extraordinary circumstances existed that would warrant an additional extension.

17. On March 23, 2010, MLC filed another Motion in this proceeding requesting an additional year, until March 23, 2011, for the company to file a copy of the LAWS which would be issued by ADWR to the developer for Parcel C. Further, MLC indicated in its Motion that the

Company did not object to MLC's request and concurred in the Motion.

18. MLC, in its Motion, described the difficulties it had encountered in securing the LAWS for Parcel C. The Motion described the ongoing political and litigation problems which have been affecting the MVIDD and its board. MLC also claimed to have encountered further complications with various Mohave County administrative departments and, as a result, MLC was required to commence the subdivision process all over again "under a new ordinance." MLC asserted that the preliminary plat for Parcel C was submitted and resubmitted multiple times in order to meet new county requirements and additional delays were caused by the parent company of the title company involved in the subdivision process going into reorganization. According to MLC, these events further delayed the issuance of a deed that would enable MLC to file a parcel plat that defines a retention basin which receives storm drainage from all three parcels in the extension area approved in Decision No. 68610.

19. According to MLC's Motion, the developer believed that the plat issues have been resolved and the subdivision process could resume. MLC stated that it "has arranged the financing to complete the subdivision and has performed rough grading." MLC indicated that the preliminary plat was complete and the final plat and drafts of the improvement plans have also been completed.

20. MLC's Motion also states that the Company has adequate water to serve Parcel C and that the Company was the "only feasible service provider" within the expansion area and that it was already providing water service to homes within Parcels A and B.

21. MLC further stated that it "has diligently pursued the LAWS" to be issued by ADWR and that delays in the process were caused by others and not the fault of MLC or the Company.

22. On June 9, 2010, Staff filed its response which indicated that Staff had no objections to the most recent request by MLC for an extension of time for the Company to have until March 23, 2011, to file a copy of the developer's LAWS for Parcel C. Staff stated that it recognized MLC was moving forward with the development of Parcel C and the only remaining compliance item from Decision No. 68610 was for the Company to file a copy of the LAWS for the subject parcel. Therefore, Staff did not oppose the Motion, but recommended that no further extensions be granted.

23. On September 1, 2010, the Commission issued Decision No. 71861, which authorized a

further extension of time until March 23, 2011, for the Company to file a copy of the developer's LAWS for Parcel C, and stated "that no further extension of time to file the aforementioned document shall be granted absent extraordinary circumstances."

24. On March 1, 2011, MLC filed yet another Motion in this proceeding and requests a further extension of time until March 23, 2012, to file a copy of the developer's LAWS for Parcel C.[1]

25. In MLC's most recent Motion, MLC describes in great detail what it believes are "extraordinary circumstances," which have prompted MLC to seek an additional extension of time from the Commission to enable the Company to file the required compliance documentation that ultimately will authorize the Company to be the certificated water service provider to Parcel C.[2] Based on MLC's detailed description of the circumstances, it appears that MLC is nearing the "finish line" of a long and difficult race in order to proceed with the development of Parcel C.

26. On March 16, 2011, the Company filed a response and indicated that it has no objections to MLC's Motion.

27. On April 8, 2011, Staff filed a memorandum which recognizes the economic downturn has contributed to the delay in development of Parcel C, but also recognizes MLC's ongoing efforts and financial expenditures which have been made in order to proceed with the development of Parcel C. Based on these factors, Staff has no objections to MLC's current Motion and does not oppose an extension of time until March 23, 2012, for the Company to file a copy of the developer's LAWS for Parcel C. Staff also recommends that no further extensions be granted.

28. Under the circumstances, based upon MLC's ongoing development efforts for Parcel C, we believe that an extension of time until March 23, 2012, for the Company to file a copy of the

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[1] In MLC's most recent Motion, MLC states Parcel C has now been renamed Willow Valley Estates 21, but will continue to refer to it as Parcel C for continuity and convenience.

[2] MLC described having to reapply and obtain an allocation of water from the MVIDD for Parcel C. MLC also described the delays and difficulties it has experienced in its dealings with the MCPZD as a result of which parcel C had to be put through the subdivision process repeatedly with Parcel C's preliminary plat being submitted to three other County departments for their approval. MLC further stated that the County's various departments are understaffed and overworked due to the economic downturn resulting in extensive delays during the review process. MLC also stated that it had encountered similar delays with its own engineering company. MLC now believes that all plat revisions have been completed to the County's satisfaction, and barring unforeseen circumstances, Parcel C should be on the agenda of the County Board of Supervisors for approval of the preliminary plat in June 2011 so that MLC may move quickly to process the final subdivision plat within the timeframe of the extension requested herein. MLC further pointed out that it has paid $26,500 to the MVIDD as a fee for Parcel C's water allocation and that it signed a Water Facilities Extension Agreement with the Company for Parcel C on December 10, 2010.

developer's LAWS for Parcel C is reasonable and should be granted.

CONCLUSIONS OF LAW

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

2. The Commission has jurisdiction over the Company and the subject matter of the extension request addressed herein.

3. MLC has previously been granted intervenor status pursuant to A.A.C. R14-3-105 for the purpose of filing for an extension of time on behalf of the Company.

4. The Motion requesting an extension of time for the Company to file a copy of the required documentation without objection by Staff as set forth in Findings of Fact No. 27 should be approved, but absent extraordinary circumstances, no further extensions should be granted.

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ORDER

IT IS THEREFORE ORDERED that Willow Valley Water Company, Inc. shall be granted an extension of time, until March 23, 2012, to file a copy of the developer's Letter of Assured Water Supply for Parcel C to be issued by Arizona Department of Water Resources as previously ordered in Decision Nos. 68610, 71174 and 71861.

IT IS FURTHER ORDERED that no further extension of time to file the aforementioned document shall be granted absent extraordinary circumstances.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 4th day of MAY, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

SERVICE LIST FOR: WILLOW VALLEY WATER COMPANY

DOCKET NO.: W-01732A-05-0532

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