

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION  
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GARY PIERCE - Chairman  
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PAUL NEWMAN  
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ARIZONA CORPORATION COMMISSION

DATE: MAY 6, 2011

DOCKET NO.: W-04081A-10-0145

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:

WINCHESTER WATER COMPANY, LLC  
(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:

MAY 16, 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:

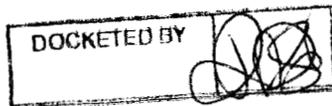
MAY 24, 2011 and MAY 25, 2011

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

MAY 6 2011



ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE - Chairman  
4 BOB STUMP  
5 SANDRA D. KENNEDY  
6 PAUL NEWMAN  
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION OF  
9 WINCHESTER WATER COMPANY, LLC, FOR  
10 APPROVAL OF SALE OF ASSETS AND  
11 TRANSFER OF CERTIFICATE OF  
12 CONVENIENCE AND NECESSITY.

DOCKET NO. W-04081A-10-0145

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

9 DATE OF HEARING: December 7, 2010  
10 PLACE OF HEARING: Tucson, Arizona  
11 ADMINISTRATIVE LAW JUDGE: Belinda A. Martin<sup>1</sup>  
12 APPEARANCES: Mr. Phil Auernheimer and Mr. Charles Cardinal on  
13 behalf of Winchester Water Company, LLC; and  
14 Ms. Kimberly A. Ruht, Staff Attorney, Legal Division,  
15 on behalf of the Utilities Division of the Arizona  
16 Corporation Commission.

**BY THE COMMISSION:**

16 On April 15, 2010, Winchester Water Company, LLC (“Winchester” or “Company”), filed  
17 with the Arizona Corporation Commission (“Commission”) an application for approval to sell its  
18 water system assets and transfer its Certificate of Convenience and Necessity (“CC&N”) from  
19 managing member Charles Cardinal and member Penny Cardinal to new managing member Phil  
20 Auernheimer and member Phyllis Auernheimer.

21 On May 19, 2010, Winchester filed a certification that it had mailed notice of the application  
22 to its customers.

23 On July 27, 2010, the Commission’s Utilities Division Staff (“Staff”) filed an Insufficiency  
24 Letter in this docket.

25 On September 10, 2010, Staff filed a Sufficiency Letter in this docket indicating the  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Administrative Law Judge Belinda Martin conducted the hearing in this matter and Administrative Law Judge Dwight  
Nodes drafted the Recommended Opinion and Order.

1 application met the sufficiency requirements set forth in the Arizona Administrative Code.

2 On September 17, 2010, Staff filed its Staff Report in this matter recommending approval of  
3 the application.

4 By Procedural Order issued October 15, 2010, a hearing was scheduled to commence on  
5 December 7, 2010, and the Company was directed to publish and mail notice of the hearing.

6 On November 10, 2010, Winchester filed an authorization for Charles Cardinal to represent  
7 the Company at the hearing.

8 On November 24, 2010, the Company filed notice of compliance with the mailing and  
9 publication of notice as prescribed by the October 15, 2010, Procedural Order. The Affidavit of  
10 Publication indicates that notice of the hearing was published in the *Sierra Vista Herald* and *Bisbee*  
11 *Daily Review* on November 6, 2010, and that the notice was mailed to all property owners and  
12 customers in Winchester's service area. No customer comments have been received in response to  
13 the notice.

14 The hearing was convened on December 7, 2010 before a duly authorized Administrative  
15 Law Judge at the Commission's offices in Tucson, Arizona. Winchester was represented by Charles  
16 Cardinal who, along with Phil Auernheimer, also offered testimony in support of the application.  
17 Staff was represented by counsel and presented testimony by Kiana Sears and Jian Liu. No members  
18 of the public appeared to make public comment. Following the hearing, the matter was taken under  
19 advisement pending the submission of a Recommended Opinion and Order to the Commission.

20 On January 6, 2011, Winchester filed its current franchise authority from Cochise County in  
21 accordance with the directive by the Administrative Law Judge at the conclusion of the December 7,  
22 2010, hearing.

23 \* \* \* \* \*

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

26 **FINDINGS OF FACT**

27 1. On April 15, 2010, Winchester filed an application for approval to sell and transfer the  
28 Company's water system assets, and to transfer its CC&N, to Mr. Phil Auernheimer and Phyllis

1 Auernheimer. According to Staff, Mr. Cardinal is no longer physically able to operate the Company,  
2 which necessitated the sale to a new owner. The sale and transfer transaction closed on January 13,  
3 2010, and Mr. Auernheimer has been the managing member of Winchester since that time.

4 2. Winchester is an Arizona public service corporation that currently provides water  
5 utility service to approximately 137 metered residential customers in an area approximately ten miles  
6 northwest of Willcox, in Cochise County, Arizona. (Ex. S-1, at 1.)

7 3. The Company's initial rates were established in Decision No. 35366 (August 14,  
8 1964), when the Commission granted the original CC&N for the service territory to Joseph V.  
9 Padula.

10 4. The Commission subsequently granted the CC&N to James M. Knox and Gary L.  
11 Campbell, General Partners dba Winchester Water Company ("Partnership") in Commission  
12 Decision No. 46038 (May 3, 1972) for the service territory that Winchester currently serves.

13 5. On October 2, 1987, the Partnership transferred its water utility assets to Charles D.  
14 Cardinal as payment for a debt. An application for approval to transfer the assets was not filed until  
15 2002, in Docket No. W-04081A-02-0077; however, subsequent to the 1987 sale of assets, Mr.  
16 Cardinal consistently filed Annual Reports with the Commission, listing Charles D. Cardinal as the  
17 owner of the Company. (*See*, Decision No. 65219, September 24, 2002, at 3.)

18 6. On July 18, 1995, Winchester Water Company, LLC, was formed. Subsequent to the  
19 formation of Winchester, the Annual Reports filed with the Commission listed Winchester Water  
20 Company, LLC, as the owner of the Company. (*Id.* at 4.)

21 7. Winchester has applied for, and received, rate increases on three occasions since 2002.  
22 (Decision No. 65219, September 24, 2002; Decision No. 70291, April 24, 2008; Decision No. 72004,  
23 December 10, 2010.)

24 8. Prior to closing of the sale and transfer agreement, Mr. Cardinal was the general  
25 manager and managing member of Winchester. Those roles have been assumed by Mr.  
26 Auernheimer, who is now responsible for reading and setting meters, and making system repairs.  
27 According to Staff, Mr. Cardinal mentored Mr. Auernheimer regarding these duties for more than a  
28 year in order to provide a seamless transfer of operations. (Ex. S-1, Attach. 1, at 1.)

1           9.       According to Staff, Winchester's service territory is located in a rural area and the goal  
2 of Mr. Cardinal in selling the Company was to find someone that would continue to provide clean  
3 and safe water to the community. (Ex. S-1, at 1.)

4           10.       Staff claims that the new owners, Mr. and Mrs. Auernheimer, previously owned the  
5 Desert Racing Association for 23 years. Staff stated that Mrs. Auernheimer currently works for the  
6 Arizona Board of Regents, while Mr. Auernheimer is now retired and has time to devote to running  
7 the utility company. Staff indicated that there were no judgments against the Auernheimers' former  
8 business, and there are none pending against the Winchester Water Company, LLC. (*Id.*)

9           11.       The new owners have retained the services of the Company's bookkeeper for many  
10 years, Maryanne Wagner, and Staff found that the Company's accounting records are in line with the  
11 guidelines of the National Association of Regulatory Commissioners ("NARUC"). (*Id.*)

12           12.       Winchester also has a certified operator, Chuck Sumner, of Whetstone Environmental  
13 Services, LLC. Mr. Sumner is responsible for day-to-day operations, including testing and system  
14 repairs. (Ex. S-1, Attach. 1, at 1.)

15           13.       Based on its analysis, Staff concluded that the Winchester system has adequate  
16 production and storage capacity to serve existing customers and reasonable growth. The system  
17 consists of two wells, two 2,000 gallon pressure tanks, three storage tanks, and a distribution system  
18 serving approximately 137 residential customers. (*Id.*)

19           14.       Staff reported that the Company's non-account water was less than two percent for  
20 each of the last five years, well below the normal maximum acceptable loss rate of 10 percent. (*Id.* at  
21 2.)

22           15.       According to the Staff Report, the Arizona Department of Environmental Quality  
23 ("ADEQ") has determined that the Winchester system (ADEQ Public Water System No. 02-110) has  
24 no deficiencies and is currently delivering water that meets the required water quality standards. (*Id.*)

25           16.       Winchester is not located in an Active Management Area ("AMA") and is therefore  
26 not subject to AMA reporting and conservation requirements. Staff indicated that it received an  
27 Arizona Department of Water Resources ("ADWR") compliance report on June 23, 2010. According  
28 to that report, Winchester is currently in compliance with ADWR requirements governing water

1 providers and/or community water systems. (*Id.*)

2 17. Staff stated that the Company has no current delinquent compliance items with the  
3 Commission, based on a review of the Utilities Division Compliance Section database. (*Id.*)

4 18. Based on its review, Staff recommends that the Commission approve the requested  
5 sale and transfer of assets, as well as the transfer of the Company's CC&N.

6 19. Based on the testimony and exhibits presented on the record of this proceeding, we  
7 believe Winchester's application for authority to sell and transfer its water system and assets, and to  
8 transfer its CC&N, to Mr. and Mrs. Auernheimer (dba Winchester Water Company, LLC) is in the  
9 public interest and should be approved, in accordance with Staff's recommendation.

10 **CONCLUSIONS OF LAW**

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

13 2. The Commission has jurisdiction over Winchester and the subject matter of the  
14 application.

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

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

17 5. Phil Auernheimer and Phyllis Auernheimer (dba Winchester Water Company, LLC)  
18 are fit and proper individuals that are ready, willing and able to assume the responsibilities of  
19 providing water utility service within Winchester's certificated area.

20 6. Staff's recommendation for approval of the application is reasonable and should be  
21 adopted.

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**ORDER**

IT IS THEREFORE ORDERED that the application of Winchester Water Company, LLC, for authority to sell and transfer its water system and assets, and to transfer its CC&N, to Mr. and Mrs. Auernheimer (dba Winchester Water Company, LLC) is in the public interest and is hereby approved.

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 \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: WINCHESTER WATER COMPANY, LLC

2 DOCKET NO.: W-04081A-10-0145

3 Phil and Phyllis Auernheimer  
4 WINCHESTER WATER COMPANY, LLC  
5 5625 West Frier Drive  
6 Glendale, AZ 85301

7 Charles and Penny Cardinal  
8 7608 North La Cholla Boulevard  
9 Tucson, AZ 85741

10 Janice Alward, Chief Counsel  
11 Legal Division  
12 ARIZONA CORPORATION COMMISSION  
13 1200 West Washington Street  
14 Phoenix, AZ 85007

15 Steven M. Olea, Director  
16 Utilities Division  
17 ARIZONA CORPORATION COMMISSION  
18 1200 West Washington  
19 Phoenix, AZ 85007  
20  
21  
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23  
24  
25  
26  
27  
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