

OPEN MEETING ITEM



0000125110

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

ORIGINAL



ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

RECEIVED

2011 MAY -9 A 9:48

DATE: MAY 9, 2011

DOCKETED

DOCKET NO.: W-01808A-10-0390

MAY 9 2011

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

TO ALL PARTIES:

DOCKETED BY

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harpring. The recommendation has been filed in the form of an Opinion and Order on:

RIGBY WATER COMPANY
(TRANSFER OF ASSETS/CANCEL 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 18, 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.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF
RIGBY WATER COMPANY FOR APPROVAL OF
A TRANSFER OF ASSETS AND CONDITIONAL
CANCELLATION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-01808A-10-0390

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: April 14, 2011
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Sarah N. Harpring
APPEARANCES: Mr. Stanley B. Lutz, BRYAN CAVE LLP, on behalf of
Rigby Water Company;
Mr. Craig A. Marks, CRAIG A. MARKS, PLC, on
behalf of the Estate of Charles J. Dains; and
Ms. Bridget A. Humphrey, Staff Attorney, Legal
Division, on behalf of the Utilities Division of the
Arizona Corporation Commission.

BY THE COMMISSION:

This case involves an application filed with the Arizona Corporation Commission
("Commission") by Rigby Water Company ("Rigby") requesting Commission approval under A.R.S.
§ 40-285 for Rigby to transfer its assets and operations to the City of Avondale and to cancel its
Certificate of Convenience and Necessity ("CC&N"), conditioned upon the entry of a final order of
condemnation in a pending condemnation case in Maricopa County Superior Court. If the transfer of
assets and CC&N cancellation is approved by the Commission, Rigby will cease operations and
dissolve.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the

1 Commission finds, concludes, and orders that:

2 **FINDINGS OF FACT**

3 **Background**

4 1. Rigby is a public service corporation currently providing water utility service to
5 approximately 326 customers in Maricopa County pursuant to a CC&N issued in 1962. (Ex. S-1.)
6 Rigby's current CC&N area¹ includes approximately three square miles in the West Valley bordered
7 by the City of Avondale ("City"). (*Id.*) The legal description for Rigby's current CC&N is set forth
8 in Exhibit A, attached hereto and incorporated herein.

9 2. The City is a municipal corporation located within Maricopa County, Arizona, and
10 duly organized and existing under the laws of the State of Arizona. (Ex. A-1.)

11 3. On May 14, 2009, the City filed in Maricopa County Superior Court a First Amended
12 Complaint in Condemnation (Eminent Domain), Case No. CV2009-003060 ("condemnation action"),
13 requesting that the Court enter judgment allowing the City to acquire Rigby's water utility plant,
14 system, property, and other facilities used or which may be used to provide water service to the
15 public. (Ex. A-1.) The City requested to acquire Rigby's utility assets free and clear of any financial
16 obligations or liabilities of Rigby. (*Id.*) The City did not seek immediate possession of Rigby's
17 assets and operations. (*Id.*)

18 4. Through mediation, Rigby and the City reached a tentative settlement in the
19 condemnation action in August 2010. (Ex. A-1.) The City Council approved the terms of the
20 tentative settlement on September 7, 2010. (*Id.*)

21 5. Rigby and the City have executed a Settlement Agreement embodying the terms of the
22 tentative settlement, which by its own terms is effective as of September 7, 2010.² (LFE A-4.)

23 **Procedural History**

24 6. On September 23, 2010, Rigby applied to the Commission for approval to transfer its
25 assets and operations to the City and to cancel its CC&N, conditioned upon the entry of a final order

26 ¹ Official notice is taken of Decision No. 66172 (August 13, 2003), in which, in the context of a condemnation
27 proceeding, the Commission approved transfer of the water utility assets for Rigby's Childers Division to the City of
Phoenix and cancelled the portion of Rigby's CC&N pertaining to the Childers Division.

28 ² The Settlement Agreement was executed by Rigby on December 9, 2010, and by the City on January 12, 2011. (LFE
A-4.)

1 of condemnation in the pending condemnation action.

2 7. On October 22, 2010, the Commission's Utilities Division ("Staff") issued an
3 Insufficiency Letter and data request.

4 8. On November 12, 2010, Rigby filed responses to Staff's data request. In its responses,
5 Rigby stated that it would continue to pay refunds under its single outstanding main extension
6 agreement ("MXA") for the remaining term of the MXA, using annual water sold and revenue data
7 provided to Rigby by the City to allow Rigby to calculate the refund amount.

8 9. On November 30, 2010, a Motion to Intervene was filed by the Estate of Charles J.
9 Dains ("Estate"), the other party to the MXA, stating that the Estate would be directly and
10 substantially affected by the resolution of the MXA refunds issue and that the Estate did not agree
11 with Rigby's proposed resolution of the MXA refunds issue. The MXA refunds were the subject of a
12 formal complaint filed by Mr. Dains against Rigby in Docket No. W-01808A-09-0137 ("Complaint
13 Docket"), which was pending at the time. Mr. Dains died during the pendency of the proceedings in
14 the Complaint Docket.

15 10. On December 1, 2010, Rigby filed a Response to the Motion to Intervene, stating that
16 Rigby did not oppose the intervention.

17 11. On December 7, 2010, Rigby filed a letter to clarify water use data previously
18 provided in response to Staff's data request.

19 12. On December 20, 2010, Staff issued a Sufficiency Letter, stating that Rigby's
20 application had met the sufficiency requirements outlined in the Arizona Administrative Code.

21 13. On December 23, 2010, Rigby filed a letter following up on its previous response to
22 Staff's data request by providing additional information regarding the MXA and past and future
23 MXA refunds.

24 14. On December 29, 2010, the Estate filed a Motion to Consolidate this docket with the
25 Complaint Docket, asserting, *inter alia*, that the disposition of the MXA refunds is an issue that needs
26 to be addressed in this proceeding and that the Estate disagreed with Rigby's proposed resolution of
27 the refund issue.

28 15. On January 7, 2011, Rigby filed a Response to the Estate's Motion to Consolidate,

1 asserting that consolidation of the two dockets would result in unnecessary confusion, wasted
2 Commission resources, and impermissible delay and prejudice to Rigby's rights.

3 16. On January 12, 2011, a Procedural Order was issued requiring Staff to file responses
4 to the Estate's Motion to Intervene and Motion to Consolidate.

5 17. On January 14, 2011, the Estate filed a Reply to Rigby's Response to the Estate's
6 Motion to Consolidate.

7 18. On January 28, 2011, Staff filed its Response to the Estate's Motion to Intervene and
8 Motion to Consolidate, asserting that Staff had no objection to the Estate's intervention, but that Staff
9 opposed consolidation.

10 19. On February 2, 2011, a Procedural Order was issued granting the Estate's Motion to
11 Intervene, denying the Estate's Motion to Consolidate, scheduling a hearing in this matter, and
12 establishing other procedural requirements and deadlines.

13 20. On March 14, 2011, Rigby filed a Declaration of Judy Lopez, asserting that Rigby had
14 mailed notice of its application to all of its current customers on February 17, 2011, and that notice of
15 Rigby's application had been published in the *West Valley Business*, a newspaper of general
16 circulation in the City, on February 22, 2011. (Ex. A-3.) With the letter, Rigby included an Affidavit
17 of Publication showing that notice had been published in both the *West Valley View* and the *West*
18 *Valley Business* on February 22, 2011. (*Id.*)

19 21. On March 15, 2011, Staff filed its Staff Report, recommending approval of Rigby's
20 application, subject to the following conditions:

- 21 a. That Rigby be required to file with Docket Control, as a compliance item in
22 this docket, copies of all documentation transferring ownership of its water
23 systems and assets to the City, within 120 days of the effective date of a
24 Decision in this matter;
- 25 b. That Rigby's CC&N stay in effect, for the sole purpose of the MXA refunds,
26 until all the MXA is paid or the MXA term elapses, whichever comes first;
- 27 c. That Rigby be required to file a motion with Docket Control, as a compliance
28 item in this docket, within 30 days after all the MXA is paid or the MXA term

1 expires, requesting cancellation of its CC&N, in response to which Staff would
2 be required, within 90 days, to verify the MXA status and prepare and docket
3 for Commission consideration a Recommended Order granting the CC&N
4 cancellation; and

- 5 d. That the Commission's Decision granting approval of the transfer of assets to
6 the City and the conditional CC&N cancellation be considered null and void,
7 after due process, if Rigby fails to meet the first three conditions within the
8 specified times. (Ex. S-1.)

9 22. On March 29, 2011, Rigby filed a Response to the Staff Report, objecting to Staff's
10 second and third recommended conditions.

11 23. On April 7, 2011, the Commission issued Decision No. 72252 in the Complaint
12 Docket, requiring Rigby to pay the Estate \$209,727.25 within 30 days after the effective date of the
13 Decision or by another payment date agreed upon by Rigby and the Estate.³

14 24. On April 12, 2011, the City filed public comment in support of Rigby's application
15 and Response to the Staff Report.

16 25. On April 14, 2011, a full evidentiary hearing was held before a duly authorized
17 Administrative Law Judge of the Commission at the Commission's offices in Phoenix, Arizona.
18 Rigby, the Estate, and Staff appeared through counsel. Rigby presented the testimony of Fred T.
19 Wilkinson, President of Rigby, and David Pennartz, of Gust Rosenfeld P.L.C., the lead attorney for
20 the City in the condemnation action. The Estate did not present any witnesses. Staff presented the
21 testimony of Del Smith, Supervisor of Staff's Engineering Section, and Blessing Chukwu, Staff
22 Executive Consultant III. George Tewksbury, a Rigby customer and a resident of county land near
23 the City, provided public comment to express his concerns about the City's taking over Rigby's
24 operations and how it will affect him as a non-resident of the City. During the hearing, Rigby and
25 Staff were both directed to file late-filed exhibits ("LFEs"). In addition, the parties were directed to
26 make a joint filing regarding the resolution of the MXA refund payment issue.

27
28 ³ Official notice is taken of Decision No. 72252 (April 7, 2011).

1 have been of property which is not useful or necessary in the
 2 performance of its duties to the public as to any purchaser of the
 3 property in good faith for value.

4 30. A.R.S. §§ 9-515 *et seq.* require a municipality that desires to provide utility service in
 5 an area already receiving adequate utility service of the same type from a public utility first to acquire
 6 the public utility's property, plant, and business that is used and useful in providing the service to the
 7 area. The statutes require the municipality to pay the public utility a fair value for the property, plant,
 8 and business, which value can be determined by agreement, through arbitration, or by a court of
 9 competent jurisdiction. The statutes further provide that once a municipality has acquired the public
 10 utility plant or property, the Commission may not grant a new CC&N to any person to provide the
 11 same kind of public utility service within the area unless the municipality refuses to provide utility
 12 service to a portion of the area, in which case the Commission may issue a new CC&N to a public
 13 utility to provide utility service in the unserved portion of the area.

14 31. In Arizona Attorney General Opinion No. 62-7 (January 8, 1962) ("AG Op. 62-7"),⁵
 15 the Arizona Attorney General ("AG") responded to Commission questions about the Commission's
 16 jurisdiction to hold a hearing regulating the transfer of assets from a privately owned water utility to a
 17 municipality and to enter an order approving or disapproving such a transfer. The Commission also
 18 asked about the scope of the Commission's inquiries, if such a hearing were permissible, and about
 19 the effect of what is now A.R.S. § 9-516(D) on the Commission's jurisdiction. The AG determined
 20 that the Commission has jurisdiction over a public service corporation's sale of assets to a
 21 municipality because A.R.S. § 40-285 requires a public service corporation to obtain Commission
 22 approval before it may dispose of its assets, but that the Commission's inquiries essentially must be
 23 limited to whether the proposed transfer will be injurious to the rights of the public and whether any
 24 person will thereby be left without service.⁶

25 ⁵ Attorney General opinions are advisory in nature and are not binding, although they "should be accorded respectful
 26 consideration." (*Ruiz v. Hull*, 191 Ariz. 441, 449 (1998).)

27 ⁶ The AG concluded, in pertinent part:

28 5. This statute is a permissive statute passed for the protection of the public interest. The
 Corporation Commission may only concern itself with questions relating to whether or not the proposed
 transfer will be injurious to the rights of the public. The Commission has nothing to do with the rights of
 the intended purchaser and has no power to determine the validity of the contract, fairness of the
 purchase price, or feasibility of the project.

8. In the situation when the entire assets of the private utility are acquired by a municipality and all

1 32. The Commission has previously exercised jurisdiction under A.R.S. § 40-285 in the
2 context of condemnation by a municipality. (*See, e.g.*, Decision No. 66172 (August 13, 2003).)

3 **Outstanding Rigby Liabilities**

4 33. Rigby currently is a party to only one outstanding MXA, which is the MXA entered
5 into in approximately March 1999 with a partnership including Charles J. Dains and his son, for the
6 infrastructure to serve a residential subdivision in the City being developed by the Dains partnership.

7 34. Decision No. 72252, issued on April 7, 2011, in the Complaint Docket, ordered that
8 the amount of \$209,727.25 was immediately due and payable to the Estate and ordered Rigby to pay
9 the Estate within 30 days after the effective date of the Decision, unless Rigby and the Estate were
10 able to reach an agreement as to a later payment date.⁷

11 35. Mr. Wilkinson testified that Rigby does not have the funds to pay the Estate and that
12 Rigby plans to use funds from its lump sum payment from the City in the condemnation action to do
13 so. (Tr. at 22.)

14 36. Rigby, the Estate, and the City have agreed that the \$209,727.25 will be paid directly

16 the customers are to be served by it, the utilities' [sic] public service function is ended. The Corporation
17 Commission cannot prohibit the sale of its assets. The hearing and order must be directed only to a
18 determination that there are no other customers or persons who have been served by the private utility
19 and that it will, in fact, have been relieved of all its duties to serve such customers. The Commission's
20 determination is to be made relating only to these matters. They may not enter an order denying the
21 public utility the right to dispose of its assets, except upon the grounds that the utility is not in fact
22 terminating its function in the service of its customers. This is the effect of A.R.S. § 40-285(C).

9. The Corporation Commission in its order approving any sale under A.R.S. § 40-285, must give
effect to § 9-516(C) to the extent that it shall protect from encroachment by additional certification the
rights of the holder of the certificate of convenience and necessity of the utility being purchased and can
only terminate the certificate of the privately owned public utility being purchased and relieve it from the
duties of a public service corporation after it is apparent that the municipal corporation has not and will
not refuse "to provide utility service to a portion or part of the area or territory previously authorized to
the public utility."

10. If the municipality refuses to serve customers in the area taken over, the Corporation
Commission then may issue a new certificate of convenience and necessity to a public utility to provide
service to that portion of the area or territory which the municipality has refused to service. Its power of
investigation to determine the necessary facts is preserved. To perform these duties the Commission
retains jurisdiction over the utility after sale and has full power to investigate completion of sale.
(AG Op. 62-7 at 13-14.) While the AG was concerned with the sale of a public service corporation's assets to a
municipality outside the context of condemnation, we find the analysis in AG Op. 62-7 persuasive as to the Commission's
jurisdiction and the scope of the Commission's inquiry in the context of condemnation as well. We are mindful that,
although the City is proceeding with the acquisition through a condemnation action, the City and Rigby have reached a
settlement agreement as to the terms of the transfer arrangement.

⁷ The Decision further required, if an agreement for later payment were reached, that Rigby file, within 30 days after
the Decision, a document signed by Rigby and the Estate memorializing the later payment agreement. In addition, the
Decision required Rigby, within 10 days after making payment to the Estate, to file proof of having made the payment.

1 to the Estate by a separate check from the City concurrently with the City's payment of the lump sum
2 payment of \$2.56 million to Rigby under the Settlement Agreement. (Joint Report) As of April 28,
3 2011, Rigby, the Estate, and the City were in the process of documenting this payment agreement,
4 which they intended to execute within a week. (*Id.*)

5 37. As of November 8, 2010, Rigby reported that it held \$856.00 in customer meter
6 deposits. (Ex. A-2.)

7 38. The Settlement Agreement provides that customer meter deposits will be transferred to
8 the City and that Rigby will be held harmless from any customer claims for meter deposits that are
9 turned over to the City with the pertinent account records. (LFE A-4.) Mr. Pennartz testified that the
10 meter deposits will come to the City; will continue to be held to the credit of customers; and will be
11 handled like meter deposits originally collected by the City, meaning that they will be kept on deposit
12 and handled under the City's general rules and regulations, which provide for refund when they are
13 no longer needed or when someone is no longer a customer. (Tr. at 43-44.) Mr. Pennartz testified
14 that the City and Rigby negotiated this meter deposits arrangement, which obviates the need for the
15 customers to receive refunds from Rigby and then be required to pay a new deposit, which is likely
16 higher, to the City. (Tr. at 42.)

17 39. As of November 8, 2010, Rigby reported that it held \$3,210.00 in customer security
18 deposits. (Ex. A-2.)

19 40. The Settlement Agreement does not include any provision related to customer security
20 deposits. (LFE A-4.) Mr. Wilkinson declared that upon transfer of Rigby's operations to the City,
21 Rigby will return the remaining customer security deposits to each depositing customer either
22 through refund or through applying the security deposit to the customer's outstanding balance for
23 service. (LFE A-5.)

24 **The Transfer of Assets and CC&N Cancellation**

25 41. Rigby seeks to transfer to the City all of the assets and operations pertaining to its
26 CC&N service area. (Ex. A-1; Tr. at 19-20.) Mr. Wilkinson testified that after the transfer, no Rigby
27 assets will remain, all of Rigby's customers and service area will be served by the City, and Rigby
28 will cease operations and dissolve. (Tr. at 19-20, 25.)

1 42. Rigby has two separate water systems, Holly Acres, Arizona Department of
2 Environmental Quality ("ADEQ") PWS ID #07-608, and Rigby, ADEQ PWS ID #07-062, both of
3 which are delivering water that meets federal and state water quality standards. (Ex. S-1.) Rigby is
4 also in compliance with Arizona Department of Water Resources ("ADWR") requirements governing
5 water providers and/or community water systems and has no outstanding Commission compliance
6 issues. (*Id.*)

7 43. The City's water system, ADEQ PWS ID #07-088, also is delivering water that meets
8 federal and state water quality standards. (Ex. S-1.)

9 44. Mr. Smith testified that the City intends to make improvements to Rigby's system by
10 replacing mains and interconnecting it with the City's system and that the City ultimately will
11 abandon Rigby's wells. (Tr. at 49.) Mr. Smith testified that from a quality of service perspective, no
12 negative impacts on Rigby's customers are expected to result from the transfer and that the level of
13 service is likely to improve as a result of the interconnection with the City's system. (Tr. at 50.)

14 45. Ms. Chukwu testified that Staff has no concerns about detriment to Rigby's customers
15 as a result of the transfer of assets and cancellation of Rigby's CC&N and instead believes that
16 benefits will result. (Tr. at 53.) Ms. Chukwu testified that to Staff's knowledge, the transfer of assets
17 and CC&N cancellation would not be injurious to the rights of any of Rigby's customers or to any of
18 the rights of the public. (Tr. at 64.) Ms. Chukwu also testified that no Rigby customer will be left
19 without service as a result of the transfer and CC&N cancellation and that Staff has no reason to
20 believe that the City will not be able to provide adequate service to Rigby's customers. (Tr. at 64-
21 65.) Ms. Chukwu testified that if Rigby were to pay the Estate the entire MXA refund amount within
22 30 days after Decision No. 72252 or within another time period agreed upon by Rigby and the Estate,
23 Staff would have no objection to an approval of the transfer of assets and an unconditional
24 cancellation of the CC&N. (Tr. at 66.) Ms. Chukwu testified that Staff would also be agreeable to
25 making the CC&N cancellation automatic upon full payment to the Estate, without any additional
26 filings or action by the Commission. (Tr. at 66-67.)

27 46. Upon the transfer of assets and cancellation of Rigby's CC&N, Rigby's former
28 customers will be charged the City's rates, which are lower than Rigby's rates (both as to monthly

1 minimum charges and commodity charges) until monthly consumption reaches 9,000 gallons, at
2 which point the commodity charge is generally higher.⁸ (LFE S-2.)

3 47. Mr. Pennartz testified that the City is ready, willing, and able to provide service to
4 Rigby's entire CC&N area. (Tr. at 30.)

5 48. Mr. Pennartz testified that the Settlement Agreement requires Rigby to obtain an
6 unconditional approval of the transfer of assets to the City and deletion of Rigby's CC&N and that
7 the City will not pay Rigby until it gets a "clean" transfer of assets and CC&N deletion. (Tr. at 31.)
8 Mr. Pennartz testified that the City cannot pay until it knows that it is getting a clean transfer and that
9 anything other than a clean approval will impede implementation of the Settlement Agreement. (Tr.
10 at 35.)

11 49. The Settlement Agreement defines Commission approval, in pertinent part, to mean
12 "approval of the ACC, . . . under A.R.S. § 40-285, of the disposition by Rigby of the Subject Water
13 Facilities . . . and extinguishment of Rigby's CC&N." (LFE A-4 at 1.)

14 50. The next step if the Commission grants approval of the transfer of assets and CC&N
15 cancellation is for Rigby and the City to file a stipulated judgment with the Court in the
16 condemnation action, so that the Settlement Agreement will be effectuated. (Tr. at 37.) If the
17 Settlement Agreement falls through, the condemnation action will go back onto the Court's active
18 calendar for a trial. (Tr. at 33-35.)

19 51. Under the terms of the Settlement Agreement, Rigby and the City will agree to a
20 transfer date on which possession and operation of the water facilities will be transitioned from Rigby
21 to the City. (LFE A-4 at 7.) On the transfer date, Rigby and the City will jointly read all customer
22 meters and agree upon all meter readings. (*Id.*) Then, Rigby will bill customers for water served by
23 Rigby before the joint meter reading, and the City will bill customers for all water served by the City
24 after the joint meter reading (*Id.*)

25 52. The Settlement Agreement provides that the City will timely pay the lump sum
26 payment of \$2.56 million to Rigby upon entry of the Final Judgment in Condemnation by the Court

27 ⁸ For usage between 9,000 and 12,000 gallons, the commodity charge is \$0.16 higher per thousand gallons; for usage
28 between 12,000 and 13,000 gallons, the commodity charge is \$0.14 lower per thousand gallons; and for usage exceeding
13,000 gallons, the commodity charge is \$1.00 higher per thousand gallons. (LFE S-2.)

1 and entry of an order granting Commission approval.⁹ (LFE A-4 at 7.)

2 **Staff's Recommendations**

3 53. As per the Joint Report, Staff now recommends that the Commission approve Rigby's
4 application for transfer of its assets to the City and cancellation of its CC&N, subject to the following
5 conditions:

6 a. That Rigby be required to file with Docket Control, within 180 days after the
7 effective date of the Decision in this matter, as a compliance item in this
8 docket, copies of the Maricopa County Superior Court order transferring
9 ownership of Rigby's assets to the City and documentation of payment in full
10 of the amount set forth in Decision No. 72252; and

11 b. That cancellation of Rigby's CC&N be considered null and void, after due
12 process, should Rigby fail to meet the first condition within the specified time.
13 (Joint Report.)

14 54. Rigby and the Estate do not object to Staff's proposed conditions, but speculated that
15 the second condition could result in the City's refusing to provide funding pursuant to the Settlement
16 Agreement. (Joint Report.) The parties had been unable to obtain the City's reaction before filing
17 the Joint Report. (*Id.*)

18 **Resolution**

19 55. In the present context,¹⁰ the scope of the Commission's inquiry is limited to
20 determining whether the transfer and cancellation will leave any persons without utility service and
21 whether the transfer and cancellation will be injurious to the rights of the public.¹¹ In this case, the
22 evidence shows that the City is ready to provide and intends to provide service to every person within
23 Rigby's CC&N area and thus that no person in the affected area will be left without water utility
24 service as a result of the transfer of assets and cancellation of Rigby's CC&N. There also is no

25 _____
26 ⁹ The Settlement Agreement also states that Rigby will receive future payments annually for a period of 10 years (from
27 January 1, 2011, through December 31, 2020), provided that a certain number of new residential water units are
developed in the geographic area currently included in Rigby's CC&N. (LFE A-4 at 8, Att. A.)

28 ¹⁰ By this, we mean in the context of an application for transfer of all of a public service corporation's assets and for
CC&N cancellation arising from a condemnation action by a municipality.

¹¹ See AG Op. 62-7 at 13-14.

1 cancellation of Rigby's CC&N will not leave any persons without utility service and will not result in
2 injury to the rights of the public.

3 6. Staff's recommendation set forth in Findings of Fact No. 53(a) is reasonable and
4 should be adopted, with the modifications described in Findings of Fact No. 56.

5 7. It is reasonable and appropriate and in the public interest to approve Rigby's
6 application, as described in Findings of Fact No. 56.

7 **ORDER**

8 IT IS THEREFORE ORDERED that Rigby Water Company's application for transfer of all
9 of its water utility assets to the City of Avondale and for cancellation of its Certificate of
10 Convenience and Necessity for the area legally described in Exhibit A, attached hereto and
11 incorporated herein, is hereby approved, subject to the condition in the following ordering paragraph.

12 ...
13 ...
14 ...
15 ...
16 ...
17 ...
18 ...
19 ...
20 ...
21 ...
22 ...
23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

1 IT IS FURTHER ORDERED that the cancellation of Rigby Water Company's Certificate of
2 Convenience and Necessity shall not become effective until the date upon which Rigby Water
3 Company files with the Commission's Docket Control, as compliance items in this docket, copies of
4 the Maricopa County Superior Court order transferring ownership of Rigby's water utility assets to
5 the City of Avondale and documentation of the payment in full of \$209,727.25 to the Estate of
6 Charles J. Dains.

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

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
9

10
11 CHAIRMAN _____ COMMISSIONER

12
13 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

14
15 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
16 Executive Director of the Arizona Corporation Commission,
17 have hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this _____ day of _____, 2011.

20 _____
21 ERNEST G. JOHNSON
22 EXECUTIVE DIRECTOR

23
24 DISSENT _____

25
26 DISSENT _____
27 SNH:db

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST FOR: RIGBY WATER COMPANY

DOCKET NO.: W-01808A-10-0390

Stephen A. Hirsch
Stanley B. Lutz
BRYAN CAVE LLP
2 North Central Avenue, Suite 2200
Phoenix, AZ 85004-4406
Attorneys for Rigby Water Company

Craig A. Marks
CRAIG A. MARKS, PLC
10645 North Tatum Boulevard, Suite 200-676
Phoenix, AZ 85028
Attorney for the Estate of Charles J. Dains

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

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

EXHIBIT ACorrected Legal Description of Rigby Water Company's
Certificate of Convenience and Necessity

Section 25, Township 1 North (T1N), Range 1 West (R1W); the Southeast Quarter (SE1/4)
Section 26, Township 1 North (T1N), Range 1 West (R1W); the Northeast Quarter (NE1/4)
Section 35, Township 1 North (T1N), Range 1 West (R1W); and the North Half (N1/2) of
Section 36, Township 1 North (T1N), Range 1 West (R1W); and the South Three Quarters
(S3/4) Section 30, Township 1 North (T1N), Range 1 East (R1E); and the North Half
(N1/2) Section 31, Township 1 North (T1N), Range 1 East (R1E), of the Gila and Salt River
Base and Meridian, in Maricopa County, Arizona.