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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
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COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF WHY UTILITY COMPANY, INC., FOR AUTHORIZATION TO SELL AND TRANSFER WATER SYSTEM ASSETS TO WHY DOMESTIC WATER IMPROVEMENT DISTRICT AND CANCELLATION OF CERTIFICATE OF CONVENIENCE AND NECESSITY.	DOCKET NO. W-02052A-10-0020 DECISION NO. **72382** **OPINION AND ORDER**

DATES OF HEARING: January 20 and February 10, 2011

PLACE OF HEARING: Tucson, Arizona

ADMINISTRATIVE LAW JUDGE: Belinda Martin[1]

APPEARANCES: Mr. Stephen R. Cooper, Cooper & Reuter, LLP, on behalf of Why Utility Company, Inc.; and

Ms. Ayesha Vohra, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On January 21, 2010, Why Utility Company, Inc. ("Why" or "Company"), filed with the Arizona Corporation Commission ("Commission") an application for approval to transfer its assets and operations to the Why Domestic Water Improvement District ("District") and to cancel the Company's Certificate of Convenience and Necessity ("CC&N").

On February 22, 2010, the Commission's Utilities Division ("Staff") filed an Insufficiency Letter directing Why to provide additional information regarding the application.

On October 25, 2010, the Company filed responses to Staff's information requests.

On October 28, 2010, Staff filed a Sufficiency Letter stating that the application met the

[1] Administrative Law Judge Belinda Martin conducted the hearing in this matter and Administrative Law Judge Dwight Nodes drafted the Recommended Opinion and Order.

sufficiency requirements set forth in the Arizona Administrative Code.

On November 8, 2010, a Procedural Order was issued setting the hearing in this matter for January 20, 2011, directing the Company to publish and mail notice of the application and hearing date, and establishing other procedural requirements.

On December 23, 2010, Why filed the required affidavits of mailing and publication.

On December 23, 2010, Staff filed its Staff Report recommending approval of the application subject to certain conditions.

The hearing convened, as scheduled, on January 20, 2011, before a duly authorized Administrative Law Judge at the Commission's offices in Tucson, Arizona. The Company and Staff appeared through counsel. The Company offered the testimony of a consultant, Fred Warren, but no officers or employees of Why were able to attend the hearing due to scheduling conflicts. As a result, the Administrative Law Judge directed that the hearing be reconvened at a later date to hear testimony from a representative of Why in support of the application.

On January 24, 2011, a Procedural Order was issued scheduling a date of February 10, 2011 for the hearing to reconvene. The Procedural Order indicated that all parties were permitted to participate in the reconvened hearing telephonically.

On February 20, 2011, the hearing reconvened. Both Staff and the Company appeared through counsel via telephone. At the hearing, Why provided sworn testimony by the Company's president, Vern Denning, and the Company's bookkeeper, Betty Tibbitt. Staff offered the testimony of Marlin Scott, Jr., Staff Engineer, and Blessing Chukwu, a Staff Executive Consultant.

At the conclusion of the hearing, the matter was taken under advisement pending the submission of a Recommended Opinion and Order to 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. Why is an Arizona corporation that provides water utility service to approximately 100

customers in the community of Why, approximately 10 miles south of Ajo, Arizona, in Pima County. The Company's original CC&N was granted by Decision No. 40053 (June 9, 1069). (Ex. S-1, at 1.) The Company's current rates and charges were established in Decision No. 68609 (March 23, 2006).

2. The District was created by a vote of the Pima County Board of Supervisors on July 14, 2009. As described in the application, "the sole purpose of [forming the District] is to acquire the assets and facilities of Why and provide on-going management to supply the Community of Why, Arizona, with domestic water service and campground facilities for RVers." (*Id.*).

3. According to the Staff Engineering Report, Why's water system [prior to acquisition by the District] consisted of two wells (producing 157 gallons per minute), two storage tanks totaling 164,000 gallons, and a distribution system serving approximately 100 connections. (*Id.,* Attach. A, at 1; Tr. 36.) Staff stated that the water system had adequate well production and storage capacity to serve the existing service connections.

4. The Staff Report indicates that Why's assets totaled $2,765,719. It also appears that, as of the time of the Staff Report, the District had assets of $578,576 (consisting of land, a new well, and well pump). In addition, Staff indicated that $109,776 in assets related to an RV park were to be transferred to the District. (*Id.* at 2-3.)

5. Staff indicated that, according to an Arizona Department of Environmental Quality ("ADEQ") compliance report dated November 18, 2010, the Company's system (ADEQ Public Water System No. 10-118) was delivering water that met ADEQ water quality standards and regulations. (*Id.* at 4.)

6. The Staff Report states that Why is not located in an Arizona Department of Water Resources ("ADWR") Active Management Area ("AMA") and, according to an ADWR compliance status report dated August 18, 2010, the Company was in compliance with ADWR requirements governing water providers and/or community water systems. (*Id.*)

7. Staff stated that, according to the Compliance Division database, the Company has no delinquent Commission compliance items. (*Id.*)

8. Staff indicated that, based on information set forth in the application, Why had no refunds due on main extension agreements, or on water and service line installations, and that the

Company would transfer all customer security deposits to the District following approval by the Commission. (Ex. S-1, at 2.) At the hearing, Company witness Denning testified that Why held $1,265 in customer security deposits that would be transferred to the District after Commission approval of the application. He indicated that security deposits are normally returned to customers after one year, absent late or missed payments during that time. (Tr. 53-54.)

9. In Decision No. 68609 (March 23, 2006), Why was granted a rate increase that resulted in an increase to an average customer of 156 percent, from $22.32 to $57.13 per month. The Company was also authorized to incur debt of up to $185,000 from the Rural Utilities Service ("RUS") of the United States Department of Agriculture which, in addition to other grants from RUS, was to be used for funding improvements to the Company's water system. (Decision No. 68609, at 6-7.)

10. As described in that Decision, Why's system experienced a water loss rate of 14.5 percent during the test year due to a distribution system that was apparently in disrepair. In addition, the arsenic level of the Company's wells registered more than 150 parts per billion ("ppb"), 15 times the maximum contaminant level (10 ppb) permitted under the U.S. Environmental Protection Agency's rules. (*Id.* at 8.)

11. During the hearing in this proceeding, the Company's witnesses, Fred Warren and Vern Denning, indicated that the primary purpose in creating the District[2] was to allow the Why water system to receive federal grants to correct the arsenic problem and replace the entire system. (Tr. 39, 59.) Mr. Warren stated that the District has received $5.1 million in federal grants to replace "all pipes, all mains, and all laterals, and the treatment system itself, and the storage tanks." (*Id.* at 33, 39.) He added that the Company would not have been able to obtain the grant money, whereas formation of the District allowed the federal grants to be received. (*Id.* at 14, 16, 18, 34.) Mr. Warren testified that without the grant funding the Company would have been unable make the needed repairs and improvements; and, further, the Why community would have been unable to afford the

[2] According to Mr. Denning, the delay in seeking approval from the Commission of the transfer of the Company's assets to the District and cancellation of the CC&N was due to the need to quickly act in applying for the limited federal grant funding, which likely would not have been available if there had been delays in seeking the funds. (*Id.* at 65.) He also stated that the same officers in charge of Why Utility Company were appointed as the five board members of the new District when it was formed in July 2009 by the Pima County Board of Supervisors. (Tr. 62-63.)

necessary arsenic treatment and system replacements without the grant money received by the District. Mr. Warren indicated that, by forming the District, the Why community has been the beneficiary of $5.1 million of non-repayable federal funds that have been used to install the treatment system, storage and new water mains and lines. (*Id.* at 18.)

12. Staff witnesses Marlin Scott, Jr., and Blessing Chukwu testified that the transfer of Why's assets to the District, and cancellation of the Company's CC&N, is in the public interest and should be approved. (*Id.* at 70-76.) Ms. Chukwu stated that, although Staff prefers that companies seek Commission approval prior to transferring assets, in this case she believes the necessity to obtain grant funding on an expedited basis is understandable. (*Id.* at 75.)

13. Accordingly, Staff recommends that the Commission approve Why's application to transfer assets to the District, and to cancel the Company's CC&N, subject to the Company "be[ing] required to file with Docket Control, as a compliance item in this docket, copies of all documentation transferring ownership of its water system and assets to [the District], within 120 days of the effective date of a decision in this matter." (Ex. S-1, at 3.) The Company indicated that it is in agreement with Staff's recommendation and condition of approval. (Tr. 55.)

14. Based on the testimony and exhibits presented on the record of this proceeding, we believe Why's application for authority to transfer its water system and assets to the District, and to cancel its CC&N, is in the public interest and should be approved, subject to compliance with Staff's recommendation.

CONCLUSIONS OF LAW

1. Why 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 Why 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 Why's certificated area.

5. The District is a fit and proper entity that is ready, willing and able to assume the responsibilities of providing water utility service within Why's existing certificated area.

6. Staff's recommendation for approval of the application, subject to compliance with its

sole condition, is reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of Why Utility Company, Inc., for authority to transfer its water system and assets to the Why Domestic Water Improvement District, and to cancel its CC&N, is in the public interest and is hereby approved, subject to compliance with Staff's recommendations.

IT IS FURTHER ORDERED that Why Utility Company, Inc., shall file with Docket Control, as a compliance item in this docket, copies of all documentation transferring ownership of its water system and assets to the Why Domestic Water Improvement District, within 120 days of the effective date of this Decision.

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IT IS FURTHER ORDERED that, upon filing of the documentation required by Staff's recommendation, the CC&N of Why Utility Company, Inc., shall be cancelled without further action of the Commission.

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 27th day of MAY, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

SERVICE LIST FOR: WHY UTILITY COMPANY, INC.

DOCKET NOS.: W-02052A-10-0020

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