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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

COMMISSIONERS

2011 JUN 24 P 4: 28

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JUN 24 2011

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

AZ CORP COMMISSION
DOCKET CONTROL

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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, DIANAH 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

**AMENDED FIFTH
PROCEDURAL ORDER**
(Schedules Status Conference)

BY THE COMMISSION:

On December 16, 2010, the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") filed a Complaint against Bellemont Water Company ("BWC" or "Company") and certain of its shareholders as follows: Brad Ness, Gloria Ness; Erik Ness; and Dianah Ness (aka Diana Ness) (collectively "Respondents") for alleged violations of Arizona law and Commission Decisions.

On January 6, 2011, a Joint Answer was filed by BWC, Brad Ness, Gloria Ness, Erik Ness and Dianah Ness.

On January 12, 2011, a separate response was filed by Klaudia Ness who was not named as a Respondent in the Complaint.

On January 14, 2011, by Procedural Order, a procedural conference was scheduled on February 8, 2011.

On February 8, 2011, Staff appeared with counsel and Respondents appeared on their own behalf. The parties discussed the issues between the parties, but were unable to reach a satisfactory resolution of the Complaint. Staff indicated that it may seek injunctive relief in the proceeding and may require a court order. At the conclusion of the procedural conference, Staff requested that a hearing be scheduled.

1 On February 14, 2011, a response was filed by Erik Ness as president of BWC.

2 On February 16, 2011, by Procedural Order, a hearing was scheduled on May 3, 2011, and
3 other procedural filing dates were established for the Staff Report (April 8, 2011) and a response by
4 Respondents (April 22, 2011).

5 On April 5, 2011, Brad, Gloria, Erik and Dianah Ness filed a response to Counts 1 through 4
6 of the Complaint.

7 On April 8, 2011, Staff filed a Motion for Extension of Time ("Motion") in which to file its
8 report, which was due to be filed on the date. Staff requested an extension of time until April 15,
9 2011, in which to file its report due to the discovery of new facts and the complicated nature of the
10 proceeding. Staff further stated Respondents' response to the Staff Report should be extended to
11 April 29, 2011.

12 On April 12, 2011, by Procedural Order, Staff's Motion was granted and extensions were
13 authorized for Staff to file its report and for Respondents to file their response.

14 On April 18, 2011, Staff filed a Motion to Amend Complaint to add an additional Count to
15 the Complaint herein based on recently discovered evidence. Additionally, Staff filed a Motion for
16 Preliminary Injunction.

17 On April 28, 2011, Brad, Gloria, Erik and Dianah Ness filed a request for an extension of time
18 to respond to the amended Complaint together with a request for a continuance of the proceeding.

19 On April 29, 2011, by Procedural Order, Staff's Motion to Amend Complaint was granted.
20 Staff's Motion for Preliminary Injunction was taken under advisement. With respect to Respondents'
21 request for an extension of time to respond to the amended Complaint, Respondents' was granted.
22 Respondent's request for a continuance of the proceeding was taken under advisement pending a
23 discussion to be held at the outset of the hearing on May 3, 2011, to determine whether additional
24 time was required for Respondents' defense to the allegation in the amended Complaint.

25 On May 3, 2011, at what was to be the initial hearing in the proceeding, Staff appeared with
26 counsel and Respondents appeared on their own behalf. Klaudia Ness, who is not a named
27 Respondent, but is BWC's corporate secretary and a part owner, also appeared.

28 Subsequently, Respondent Erik Ness testified that he is now the president of BWC replacing

1 his father, Respondent Brad Ness. Respondent Erik Ness stated that neither he nor any of the other
2 individually named Respondents who own the majority of the stock in BWC would access any of
3 BWC's bank accounts or revenues. He acknowledged that the Respondents did not oppose the
4 issuance of a preliminary injunction by the Commission which orders the Respondents to refrain
5 from taking any part in BWC's financial dealings or taking part in its management. He also stated
6 that the majority of the shareholders in BWC wished to sell their stock in the Company to a
7 prospective purchaser who will need to see BWC's records and bank statements.

8 BWC's corporate secretary, Klaudia Ness, testified that she works as the Company's day-to-
9 day operator. She stated that her husband, Elliot Ness, who also has not been named as a
10 Respondent, wished to sell his shares in BWC, but she does not wish to sell her shares. Ms. Ness
11 further stated that she would notify Staff if she becomes aware of any of the individually named
12 Respondents accessing any of BWC's accounts or revenues, and will continue to cooperate with Staff
13 during the pendency of the proceeding. Because Erik Ness had explained that the prospective
14 purchaser of BWC will need to review the Company's records and bank statements, Klaudia Ness
15 was directed to make copies of the documents for the past two years available through Rodney
16 Wilson, BWC's accountant, by the middle of the following week.

17 At the conclusion of the proceeding on May 3, 2011, Respondents were granted leave, until
18 June 1, 2011, to file their response to the amended Complaint.

19 On May 27, 2011, the Commission issued Decision No. 72376 which orders the named
20 Respondents to not access the Company's funds or revenues.

21 On June 1, 2011, Respondents filed their response to the amended Complaint and noted that
22 BWC's accountant had not provided copies of BWC's bank statements for the past two years and had
23 reported that Klaudia Ness had instructed him not to give them to the Respondents.

24 Under the circumstances, a status conference should be scheduled in this proceeding and Staff
25 should prepare an Order for the Commission's approval consistent with the agreement of
26 Respondents for a preliminary injunction to insure the compliance of the named Respondents to not
27 access any BWC accounts or revenues.

28 IT IS THEREFORE ORDERED that a **status conference** shall be held on **July 26, 2011, at**

1 11:00 a.m., at the Commission's offices, 1200 West Washington Street, **Hearing Room No. 1**,
2 Phoenix, Arizona, as previously ordered.

3 IT IS FURTHER ORDERED that Bellemont Water Company's day-to-day manager, Klaudia
4 Ness, shall cause the Company's records and bank statements for the past two years to be provided to
5 the named Respondents herein as directed previously within ten days of this Procedural Order.

6 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
7 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
8 *pro hac vice*.

9 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance
10 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
11 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances
12 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is
13 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the
14 Administrative Law Judge or the Commission.

15 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
16 Communications) is in effect and shall remain in effect until the Commission's Decision in this
17 matter is final and non-appealable.

18 IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter,
19 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by
20 ruling at hearing.

21 DATED this 24th day of June, 2011.

22
23
24 
25 MARC E. STERN
26 ADMINISTRATIVE LAW JUDGE
27
28

1 Copies of the foregoing mailed/delivered
2 this 24th day of June, 2011 to:

3 Brad Ness
4 Gloria Ness
5 Erik Ness
6 Dianah Ness
7 3960 North Pinal Street
8 Kingman, AZ 86409

9 Klaudia Ness
10 BELLEMONT WATER COMPANY
11 P.O. Box 31176
12 Flagstaff, AZ 86003

13 Mary Keller Wong
14 Estate of George Wong
15 10476 West Harmon
16 Peoria, AZ 85345

17 Janice Alward, Chief Counsel
18 Legal Division
19 ARIZONA CORPORATION COMMISSION
20 1200 West Washington Street
21 Phoenix, AZ 85007

22 Steve Olea, Director
23 Utilities Division
24 ARIZONA CORPORATION COMMISSION
25 1200 West Washington Street
26 Phoenix, AZ 85007

27 By: 
28 Debra Broyles
Secretary to Marc E. Stern