

OPEN MEETING ITEM



0000127743

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



ORIGINAL

Executive Director.
RECEIVED

ARIZONA CORPORATION COMMISSION

2011 JUL 22 P 3:15

DATE: JULY 22, 2011
DOCKET NO.: W-02234A-07-0371
TO ALL PARTIES:

AZ CORP COMMISSION
DOCKET CONTROL

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

H2O, INC.
(EXTENSION OF TIME DEADLINE CONTAINED
IN DECISION NO. 70207)

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:

AUGUST 1, 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:

AUGUST 16, 2011 and AUGUST 17, 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

JUL 22 2011

DOCKETED BY

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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
9 OF H2O, INC. FOR AN EXTENSION OF ITS
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE WATER SERVICE
12 IN PINAL COUNTY, ARIZONA.

DOCKET NO. W-02234A-07-0371

DECISION NO. _____

**ORDER EXTENDING TIME
DEADLINE CONTAINED IN
DECISION NO. 70207**

11 Open Meeting
12 August 16 and 17, 2011
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

17 * * * * *

18 **FINDINGS OF FACT**

19 1. H2O, Inc. ("H2O") is an Arizona public service corporation authorized to provide
20 water utility service in parts of Pinal and Maricopa Counties pursuant to a Certificate of Convenience
21 and Necessity ("CC&N") originally granted in Decision No. 43476 (July 23, 1973).

22 2. In Decision No. 70207 (March 20, 2008), H2O was granted an extension of its CC&N
23 to include Arizona State Land Department-owned ("ASLD-owned") land in Pinal County comprising
24 a school parcel of approximately 108 acres in size and a residential parcel of approximately 212 acres
25 in size (collectively the "CC&N extension area"). The school parcel was to be used by J.O. Combs
26 School District # 44, pursuant to a long-term lease from ASLD, for development of the J.O. Combs
27 Academic Campus, to include an elementary school, a middle school, and a high school. The
28 elementary school and high school were already under construction at the time of hearing, and

1 construction of the middle school was expected to be completed in 2010. At the time of hearing,
2 there were expectations for the residential parcel to be sold by ASLD for development, but no
3 specific development plans were yet in place. The Decision found, however, that the residential
4 parcel would be difficult to use for agricultural purposes because of its proximity to the schools and,
5 further, would be completely surrounded by H2O's service area once the CC&N extension as to the
6 school parcel was granted. The Decision granted the CC&N extension as to both parcels and
7 required H2O to file, within three years after the effective date of the Decision (by March 20, 2011),
8 (1) a copy of an Arizona Department of Environmental Quality ("ADEQ") Approval to Construct
9 ("ATC") for the water plant facilities needed to serve the residential parcel and (2) a copy of an
10 Arizona Department of Water Resources ("ADWR") Certificate of Assured Water Supply ("CAWS")
11 for the residential parcel. The Decision provided that H2O's failure to comply with the filing
12 requirements would render the CC&N extension as to the residential parcel null and void after due
13 process.

14 3. On March 18, 2011, H2O filed a Notice of Compliance with Decision No. 70207, with
15 attachments. The attachments included a copy of an ATC, dated March 27, 2008, for construction of
16 approximately 1,250 linear feet of 8-inch PVC line, one fire hydrant, and other appurtenances for the
17 Coyote Road waterline main extension; a copy of a 2009 ADEQ letter extending until March 27,
18 2010, the time to begin construction under the ATC; and a copy of a 2010 ADEQ letter extending
19 until March 27, 2011, the time to begin construction under the ATC. H2O stated in its Notice that the
20 ATC is for the residential parcel of the CC&N extension area.

21 4. Also on March 18, 2011, H2O filed a Motion for Extension of Time to Comply with
22 Decision No. 70207, requesting that the deadline for H2O to file a CAWS for the residential parcel be
23 extended until March 20, 2014, due to the extraordinary economic conditions currently existing in
24 Arizona, which have prevented development within the CC&N extension area. H2O explained that
25 the residential parcel is still owned by ASLD and that no development has taken place. H2O asserted
26 that the additional time requested would provide ASLD time to sell the property and H2O time to
27 work with the potential developer to obtain the CAWS.

28 5. On May 26, 2011, H2O filed a Notice of Late-Filed Exhibit to Comply with Decision

1 No. 70207, which included a copy of a May 17, 2011, letter from ASLD Deputy State Land
2 Commissioner Vanessa Hickman, stating that H2O's CC&N has the continued support of ASLD and
3 that ASLD requests to have water service for the CC&N extension area.

4 6. On June 17, 2011, the Commission's Utilities Division ("Staff") issued a
5 Memorandum stating that Staff does not object to H2O's requested extension of time and
6 recommends that the due date for the provision of the CAWS be extended from March 20, 2011, to
7 March 20, 2014.

8 7. In light of the severe economic downturn that has affected development in Arizona for
9 the past several years and the ASLD's continued desire for the CC&N extension area to be included
10 in H2O's CC&N service area, it is reasonable and appropriate to extend H2O's CAWS filing deadline
11 as requested in its Motion and as recommended by Staff. Thus, we will extend, until March 20, 2014,
12 the deadline for H2O to file a CAWS for the residential parcel of the CC&N extension area.

13 **CONCLUSIONS OF LAW**

14 1. H2O is a public service corporation within the meaning of Article XV of the Arizona
15 Constitution and A.R.S. §§ 40-252, 40-281, and 40-282.

16 2. The Commission has jurisdiction over H2O and the subject matter of H2O's Motion.

17 3. Staff's recommendation to extend H2O's compliance filing deadline for the CAWS
18 for the residential parcel of the CC&N extension area, established in Decision No. 70207, is
19 reasonable and should be followed.

20 **ORDER**

21 IT IS THEREFORE ORDERED that H2O, Inc. is hereby granted an extension of time, until
22 March 20, 2014, to file with the Commission's Docket Control, as a compliance item in this docket,
23 copies of an Arizona Department of Water Resources Certificate of Assured Water Supply for the
24 residential parcel of the CC&N extension area granted in Decision No. 70207 (March 20, 2008).

25 ...
26 ...
27 ...
28 ...

1 IT IS FURTHER ORDERED that all other requirements of Decision No. 70207 shall remain
2 in effect.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5

6

7 CHAIRMAN _____ COMMISSIONER _____

8

9 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

10

11

12

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.

13

14

15

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

16

17

18 DISSENT _____

19

20 DISSENT _____

21

22

23

24

25

26

27

28

1 SERVICE LIST FOR: H2O, INC.

2
3 DOCKET NO.: W-02234A-07-0371

4 Patrick Black
5 FENNEMORE CRAIG, P.C.
6 3003 North Central Avenue, Suite 2600
7 Phoenix, AZ 85012
8 Attorney for H2O, Inc.

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

14 Steve Olea, Director
15 Utilities Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, AZ 85007

19
20
21
22
23
24
25
26
27
28