

ORIGINAL



0000128534

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

2011 AUG 23 P 3:46

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

AUG 23 2011

DOCKETED BY [Signature]

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

**SEVENTH
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

1 hearing be scheduled.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 On June 24, 2011, by Procedural Order, a status conference was scheduled on July 26, 2011.

26 On July 14, 2011, Staff filed a Motion for a Continuance of the Status Conference because
27 Staff's counsel had a schedule conflict due to another proceeding having been scheduled previously.

28 On July 18, 2011, by Procedural Order, the status conference was continued to August 22, 2011.

1 On August 22, 2011, at the status conference, Staff appeared with counsel, and Respondents
2 Brad, Erik and Dianah Ness appeared on their own behalf. Klaudia Ness, who is managing the utility
3 on a day-to-day basis, appeared telephonically.

4 Respondents Brad, Erik and Dianah Ness indicated that Klaudia Ness had still not turned over
5 copies of BWC's records and bank statements as previously ordered. Klaudia Ness responded that
6 she had been confused, and was again directed to provide copies of the documents to the Respondents
7 by August 25, 2011.

8 Staff indicated that there have been no complaints from customers regarding the provision of
9 service. However, Staff has only recently learned that notice had been given of a Trustee's Sale on
10 November 3, 2011, for the sale of BWC's assets which it is believed would include the utility's well
11 site, storage facilities and related assets. The sale has arisen due to the alleged unauthorized long-term
12 debt incurred by Respondents who used the proceeds of a loan from third parties to pay for their stock
13 in BWC as set forth in the Complaint which was filed by Staff on December 16, 2010. Staff is
14 investigating possible legal options with respect to the impending Trustee's Sale.

15 Accordingly, another status conference should be scheduled.

16 IT IS THEREFORE ORDERED that a **status conference shall be held to October 6, 2011,**
17 **at 11:30 a.m.,** at the Commission's offices, 1200 West Washington Street, **Room 100,** Phoenix,
18 Arizona.

19 IT IS FURTHER ORDERED that Bellemont Water Company's day-to-day manager, Klaudia
20 Ness, shall cause the Company's records and bank statements for the past two years to be provided to
21 the named Respondents herein as previously ordered.

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

25 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance
26 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
27 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances
28 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is

1 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the
2 Administrative Law Judge or the Commission.

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

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

9 DATED this 23rd day of August, 2011.

10
11
12
13 
14 MARC E. STERN
15 ADMINISTRATIVE LAW JUDGE

16 Copies of the foregoing mailed/delivered
17 this 23rd day of August, 2011 to:

17 Brad Ness
18 Gloria Ness
19 Erik Ness
20 Dianah Ness
21 3960 North Pinal Street
22 Kingman, AZ 86409

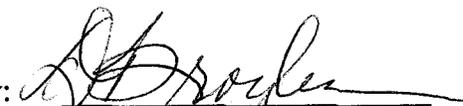
23 Klaudia Ness
24 BELLEMONT WATER COMPANY
25 P.O. Box 31176
26 Flagstaff, AZ 86003

27 Mary Keller Wong
28 Estate of George Wong
10476 West Harmon
Peoria, AZ 85345

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

Steve Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
Phoenix, AZ 85004-1481

By: 
Debra Broyles
Secretary to Marc E. Stern