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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

2011 OCT -7 A 11: 10

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

OCT 7 2011

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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

**EIGHTH**  
**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 had learned that notice had been given of a Trustee's Sale on November 3,  
10 2011, for the sale of BWC's assets which it was believed would include the utility's well site, storage  
11 facilities and related assets. The sale arose due to the alleged unauthorized long-term debt incurred by  
12 Respondents who used the proceeds of a loan from third parties to pay for their stock in BWC as set  
13 forth in the Complaint which was filed by Staff on December 16, 2010. Staff was to investigate  
14 possible legal options with respect to the impending Trustee's Sale.

15 On August 23, 2011, by Procedural Order, a status conference was scheduled on October 6,  
16 2011.

17 On October 6, 2011, at the status conference, Staff appeared with counsel. Erik and Dianah  
18 Ness appeared on their own behalf. Klaudia Ness also appeared. Staff's attorney indicated that Staff  
19 has been in contact with Pioneer Title and a Flagstaff attorney and believes that the Trustees' Sale has  
20 been placed on hold. Staff will follow this matter closely.

21 Erik Ness indicated that a realtor has approached him concerning the possible sale of the  
22 Company or its stock. Mr. Ness also requested some additional records from Klaudia Ness who is to  
23 provide copies of the records at BWC's accountant's office.

24 The parties agreed that an additional status conference be scheduled in approximately 60  
25 days.

26 Accordingly, another status conference should be scheduled.

27 IT IS THEREFORE ORDERED that a **status conference shall be held on January 5, 2012,**  
28 **at 11:00 a.m.,** at the Commission's offices, 1200 West Washington Street, **Room100,** Phoenix,

1 Arizona.

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

5 IT IS FURTHER ORDERED that any party wishing to appear at the status conference  
6 telephonically shall contact the Hearing Division at (602) 542-4250 at least even days prior to the  
7 scheduled date for instructions on how to appear telephonically.

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

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

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

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

23 DATED this 7<sup>TH</sup> day of October, 2011.

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28 MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

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Copies of the foregoing mailed/delivered  
this 7<sup>th</sup> day of October, 2011 to:

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Gloria Ness  
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By:   
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