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

ORIGINAL



ARIZONA CORPORATION COMMISSION

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2011 NOV 28 P 2:21

DATE: NOVEMBER 28, 2011
DOCKET NO.: W-03936A-10-0446

AZ CORP COMMISSION
DOCKET CONTROL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Order on:

EAGLETAIL WATER COMPANY, L.L.C.
(FINANCE)

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:

DECEMBER 7, 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:

DECEMBER 13, 2011 and DECEMBER 14, 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

NOV 28 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 OF
9 EAGLETAIL WATER COMPANY, L.L.C., FOR
10 APPROVAL OF FINANCING.

DOCKET NO. W-03936A-10-0446

DECISION NO. _____

11 ORDER

12 Open Meeting
13 December 13 and 14, 2011
14 Phoenix, Arizona

15 **BY THE COMMISSION:**

16 * * * * *

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

19 FINDINGS OF FACT

20 1. On November 2, 2010, Eagletail Water Company, L.L.C., ("Eagletail" or "Company")
21 filed with the Commission an application for approval of financing. By its application, Eagletail
22 seeks authority to incur long-term debt in order to obtain a loan for \$57,400.

23 2. On February 17, 2011, the Commission's Utilities Division ("Staff") filed its Staff
24 Report. Staff recommended denial of the application.

25 3. According to the Staff Report, Eagletail is a water company that provides service to
26 approximately 55 customers in Harquahala Valley, in Maricopa County, Arizona. The Company is
27 owned by approximately 20 individuals, and is categorized as a "Class E" public service corporation.
28 (Staff Report, at 1.)

4. Eagletail provided an affidavit of publication indicating that notice of the application
was published in the *Buckeye Valley News* on November 4, 2010.

1 5. As described in Decision No. 67982 (July 18, 2005), prior to January 2000, the utility
2 assets of what was formerly known as Eagle Water Company (“Eagle”) were owned by four different
3 individuals or entities. In January 2000, the utility assets were abandoned and sold at a sheriff’s
4 auction to Randolph Brownell, the owner of Sunup Water Company, dba Eagle. The assets were then
5 purchased for \$80,000 in May 2000 by a group of 20 individuals, who formed Eagletail. In Decision
6 No. 63684 (May 24, 2001), the Commission approved the issuance of a Certificate of Convenience
7 and Necessity for Eagletail, and a transfer of assets from Mr. Brownell to the Company. (Decision
8 No. 67982, at 2.)

9 6. Staff indicates that, according to Eagletail, Mr. Brownell represented to the current
10 owners that no property taxes were owed because the Company was sold at a sheriff’s auction.
11 However, the owners later discovered that the Company owed approximately \$234,000 in delinquent
12 property taxes that should have been paid by the prior owners. (Staff Report, at 1.)

13 7. In Decision No. 68344 (December 9, 2005), the Commission authorized Eagletail to
14 obtain a \$82,000 loan from the Harquahala Valley Community Benefits Foundation (“Foundation”)
15 in order to take advantage of a limited tax amnesty offered by the Maricopa County Treasurer’s
16 Office to settle the full amount of the delinquent property taxes for approximately \$82,000. The
17 Decision indicates that although Staff does “not normally recommend approval of a financing that
18 helps owners to repay a debt that ratepayers had long ago recovered through rates,” the unique
19 circumstances of the requested financing warranted an exception because “the current owners...did
20 not cause the tax liability, have paid all current taxes and have brought the system into compliance
21 with ADEQ.” (Decision No. 68344, at 3.)

22 8. In this case, Eagletail has requested financing authority for \$57,400, an amount which
23 Staff claims the former owner, Mr. Brownell, has offered to settle the \$80,000 note incurred by the
24 current owners to purchase the Company from Mr. Brownell. Staff notes that the \$80,000 note is not
25 a debt incurred by the Company; nor was the debt authorized by the Commission. Rather, according
26 to Staff, it is the debt of the current owners for their purchase of the Company. (Staff Report, at 2.)¹

27 ¹ Staff points out that although Eagletail is requesting approval of only \$57,400 in this case, it intends to obtain a loan for
28 \$119,533 from the Foundation that would be used to pay the \$57,400 debt to Mr. Brownell, and to refinance \$62,133 still
owed to the Foundation on the \$82,000 loan approved by Decision No. 68344. (*Id.*)

1 2. The Commission has jurisdiction over Eagletail and of the subject matter of the
2 application.

3 3. Notice of the application was given in accordance with the law.

4 4. The requested financing is not compatible with the public interest, with sound
5 financial practices, and within proper performance of service as a public service corporation, and the
6 financing may impair the Company's ability to provide service.

7 5. Staff's recommendation to deny the proposed finance application is reasonable and
8 should be adopted.

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ORDER

IT IS THEREFORE ORDERED the request by Eagletail Water Company, L.L.C., for authority to secure a \$57,400 loan is not in the public interest and is hereby denied.

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 _____ day of _____ 2011.

ERNEST G. JOHNSON
EXCUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: EAGLETAIL WATER COMPANY, L.C.

2 DOCKET NO.: W-03936A-10-0446

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