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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

JAN - 6 2012

COMMISSIONERS

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

DOCKETED BY [Signature]

IN THE MATTER OF THE APPLICATION OF WOODRUFF WATER COMPANY, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE WATER SERVICE IN PINAL COUNTY, ARIZONA.

DOCKET NO. W-04264A-04-0438

IN THE MATTER OF THE APPLICATION OF WOODRUFF UTILITY COMPANY, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE SEWER SERVICE IN PINAL COUNTY, ARIZONA.

DOCKET NO. SW-04265A-04-0439

IN THE MATTER OF THE APPLICATION OF ARIZONA WATER COMPANY, AN ARIZONA CORPORATION, TO EXTEND ITS EXISTING CERTIFICATES OF CONVENIENCE AND NECESSITY AT CASA GRANDE AND COOLIDGE, PINAL COUNTY, ARIZONA.

DOCKET NO. W-01445A-04-0755

DECISION NO. 72729

ORDER EXTENDING TIME DEADLINE CONTAINED IN DECISION NO. 68453

Open Meeting
December 13 and 14, 2011
Phoenix, Arizona

BY THE COMMISSION:

This case concerns a request from Woodruff Water Company, Inc. ("Woodruff Water") and Woodruff Utility Company, Inc. ("Woodruff Utility") (jointly "Companies") to modify Decision No. 68453 (February 2, 2006) by extending the deadline for the Companies to file their rate case applications.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. In Decision No. 68453 (February 2, 2006), Woodruff Water was granted a Certificate of Convenience and Necessity ("CC&N") to provide water utility service, and Woodruff Utility was

1 granted a CC&N to provide wastewater utility service, each for a 3,200-acre parcel located between
 2 Casa Grande and Coolidge, in Pinal County, that was to be developed as a master-planned
 3 subdivision known as Sandia (“Sandia parcel”).¹

4 2. Decision No. 68453 found that Woodruff Water and Woodruff Utility were both
 5 owned by Pivotal Sandia, L.L.C. (“Pivotal Sandia”), which was ultimately controlled by the F.
 6 Francis Najafi Family Trust.² The Decision further found that Francis Najafi served as the sole
 7 director for each of the Companies. (Decision No. 68453 at 5 n.1.)

8 3. The Decision found that the Sandia parcel was being purchased from the Wuertz³
 9 family, who had been using the Sandia parcel for agricultural purposes for a number of years and
 10 who had requested water and wastewater service from the Companies, thereby providing a
 11 mechanism to convert the Wuertz family’s irrigation rights to Type 1 non-irrigation rights that could
 12 be used for a development. The Decision further found that Woodruff Water had commenced
 13 providing water utility service to the Wuertz family in approximately September 2004 to satisfy an
 14 Arizona Department of Water Resources (“ADWR”) requirement for non-agricultural service to be
 15 provided for one year as a prerequisite to converting the irrigation rights. (Decision No. 68453 at 9.)
 16 Woodruff Water had expected to have the rights converted by September 2005. (*Id.*)

17 4. Decision No. 68453 required each of the Companies to file a rate application no later
 18 than three months following the fifth anniversary of the effective date of the Decision. (*Id.* at 26, 27,
 19 32.) The Decision also required each of the Companies to file notice of having initiated service
 20 within 30 days after initiating service to its first customer. (*Id.*) The Decision further required
 21 Woodruff Utility to post a performance bond in the amount of \$250,000 no later than 15 days before
 22 providing wastewater service to any customer and required that the performance bond be maintained
 23 and copies of the performance bond filed annually, on the anniversary date of the initial filing, until

24 ¹ Decision No. 68453 also dealt with an Arizona Water Company (“AWC”) application to extend its CC&N to include
 25 the Sandia parcel, an area known as Martin Ranch, and other surrounding parcels. (Decision No. 68453 at 5-6.) The
 26 Decision granted AWC’s application as to Martin Ranch, but denied AWC’s application as to the Sandia parcel and the
 27 other surrounding parcels. (*Id.* at 21, 28, 32-33.) Decision No. 68453 was appealed by AWC and ultimately affirmed by
 the Arizona Court of Appeals (*Arizona Water Co. v. Arizona Corp. Comm’n*, 217 Ariz. 652 (Ariz. Ct. App. 2008).

27 ² Decision No. 68453 found that Woodruff Water and Woodruff Utility were both owned by Pivotal Sandia, L.L.C.,
 which was controlled by Pivotal Group X, L.L.C., which was controlled by the F. Francis Najafi Family Trust. (Decision
 No. 68453 at 5 n.1.)

28 ³ The family’s name was misspelled in the Decision as Wurtz.

1 further order of the Commission or until 10 years had passed, whichever came first, at which time
2 Woodruff Utility could file an application for termination of the bonding requirement. (*Id.* at 31-32.)

3 5. On March 3, 2006, the Companies made a joint compliance filing including copies of
4 their tariffs and notice that Woodruff Water had commenced water service to its first customer on or
5 about September 1, 2004.⁴

6 6. Woodruff Water made a compliance filing on January 23, 2007, providing the arsenic
7 level for its only well in use; reporting that plans were underway to construct a water campus that
8 would include a treatment process for arsenic and fluoride; and reporting that, although its well water
9 was above the maximum contaminant level (“MCL”) for arsenic, Woodruff Water was not out of
10 compliance with Arizona Department of Environmental Quality (“ADEQ”) requirements because it
11 was only serving four service connections and thus was not yet classified as a public water system
12 under ADEQ regulations. Woodruff Water also reported that construction had not yet begun on
13 Sandia and that it was providing service to four service connections on the Wuertz farm.

14 7. Woodruff Utility made a compliance filing on January 23, 2007, reporting that it had
15 submitted a preliminary treatment plant design and specifications to ADEQ for review, with final
16 design to be completed the following month; that construction had been delayed due to a downturn in
17 the real estate market but should begin later in 2007; and that because no construction had yet begun
18 on a wastewater treatment facility, there was no effluent being produced or used.

19 8. The Companies made a joint compliance filing on January 15, 2008, including a
20 Woodruff Utility report that no effluent had been produced or used in 2007 because construction on
21 the wastewater treatment facility had not yet begun; an ADEQ Certificate of Approval to Construct
22 (“ATC”) for Woodruff Water’s water treatment facility; an ATC for Woodruff Water’s water
23 production plant including storage tanks and booster pumps; an ADEQ letter of extension for each
24 ATC, obtained because construction had not yet commenced one year after issuance of the original
25 ATCs; an ADEQ Aquifer Protection Permit for Woodruff Utility’s planned wastewater treatment
26 facility; and three separate ADWR Certificates of Assured Water Supply that together covered the
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28 ⁴ The Companies explained that the information concerning service to Woodruff Water’s first customer had previously been provided during the evidentiary hearing for the case and cited to the hearing transcript.

1 entire Sandia parcel. The Companies asserted that with the joint compliance filing, each had timely
2 met each of the conditions of Decision No. 68453 for which noncompliance could have rendered
3 their respective CC&Ns null and void and, accordingly, that their respective CC&Ns had vested.

4 9. The Companies made no filings in the docket during the remainder of 2008 or during
5 2009.

6 10. On January 20, 2010, Desert Troon Companies (“Desert Troon”) made a filing
7 updating the contact information for Woodruff Water and Woodruff Utility to that of Gary S.
8 Elbogen, General Counsel for Desert Troon. With the filing, Desert Troon included Amended and
9 Restated Articles of Incorporation for the Companies, which named Mr. Elbogen as the sole director
10 and incorporator for each, effective August 14, 2009.⁵ Also on January 20, 2010, Desert Troon filed
11 a letter stating that there had been no development of golf courses, ornamental lakes, or other water
12 features that would incorporate the use of effluent water.

13 11. On January 31, 2011, Desert Troon filed a letter stating that there had been no
14 development of golf courses, ornamental lakes, or other water features that would incorporate the use
15 of effluent water.

16 12. On May 31, 2011, Desert Troon filed two letters requesting, on behalf of the
17 Companies, that the compliance requirements of Decision No. 68453 be amended so that the
18 Companies would not be required to file rate applications until project development commences. The
19 letters stated that ownership and management of the entities owning the Sandia parcel and the
20 Companies had been transferred in late 2009; that “[g]iven the current economic state and lack of
21 demand for new residential development, there are no plans to develop the community any time in
22 the near future”; and that public water services and wastewater treatment would not be provided in
23 the near future. The letters requested that a five-year extension be granted to submit the rate
24 applications, if the Commission would not amend the Decision so that rate applications would not be
25 required until after development commences.

26 13. On July 5, 2011, the Commission’s Utilities Division (“Staff”) filed a Memorandum
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28 ⁵ The copies filed were virtually illegible.

1 repeating the Companies' statement regarding the lack of development in the Sandia parcel since
2 Decision No. 68453, stating that there is still no guarantee that development will occur or a
3 significant number of customers will require service within the next five years, and stating that
4 neither the Companies' requested five-year extension nor a shorter extension appear to be warranted.
5 Staff recommended that the due date for the rate case applications be extended to a period no later
6 than five years after service is provided to the Companies' first customer. Staff further recommended
7 that the Companies file notice in the docket within 15 days after commencing such service, with the
8 notice indicating the date that service began to the first customer.⁶

9 14. On July 11, 2011, a Procedural Order was issued stating that the docket did not
10 contain sufficient information to determine whether extending the rate case filing deadlines for the
11 Companies would be in the public interest. The Procedural Order required the Companies to provide
12 additional information regarding their ownership; the past and current ownership of the Sandia
13 parcel; the transactions that led to the current ownership of the Sandia parcel; the current state of
14 development in the Sandia parcel; the current infrastructure of the Companies; whether and to what
15 extent utility service has been and is being provided in the Sandia parcel and by whom; the plans for
16 development in the Sandia parcel, with a projected timeline for development; and whether the
17 Companies desire to retain CC&N authority for the Sandia parcel and, if so, for what purpose, if they
18 have no plans to develop the community any time in the near future. The Procedural Order further
19 required Staff to review the information filed by the Companies and to make a supplemental filing
20 providing any revised or new Staff recommendations in light of the filed information.

21 15. On July 28, 2011, the Companies filed a Request to Extend Filing Deadline, stating
22 that the Companies needed additional time to assemble the information required by the Procedural
23 Order and requesting that both the Companies' filing deadline and Staff's filing deadline be extended
24 by two weeks. The Companies further asserted that the extensions had been discussed with Staff,
25 who expressed no objection.

26 16. On August 1, 2011, a Procedural Order was issued extending the Companies' filing

27 ⁶ Staff's Memorandum did not indicate that Woodruff Water was already providing service and did not provide any
28 additional information concerning the status of development in the Sandia parcel or any details regarding a change in
ownership.

1 deadline to August 25, 2011, and extending Staff's filing deadline to September 26, 2011.

2 17. On August 25, 2011, the Companies filed a Notice of Filing Additional Information in
3 Support of Request to Extend Compliance Deadline in Decision 68453, explaining the following:

4 (a) The Companies are still directly owned by the same entity, which is currently
5 known as Sandia 2009, LLC ("Sandia 2009") and was formerly known as Pivotal Sandia, LLC.

6 (b) In August 2009, Pivotal Group X, LLC and Arizona PSPRS Trust, then the
7 owners of Sandia 2009, assigned all of their respective member interests in Sandia 2009 to DT
8 Lifestyle, LLC ("DT Lifestyle")(formerly known as DTR1B, LLC). DT Lifestyle is owned and
9 controlled by DTR1, LLC, which is owned and controlled by Desert Troon Limited, LLC and
10 Arizona PSPRS Trust. With the change in control of Sandia 2009, new officers and directors were
11 appointed for the Companies.

12 (c) The Sandia parcel is currently owned under a beneficiary trust arrangement;
13 the settlors of the trust are various entities owned and controlled by the Wuertz family, and the
14 beneficiary of the trust is Sandia 2009. The trust agreement allows for gradual takedowns of the
15 Sandia parcel by Sandia 2009, which is currently entitled to request an immediate deed for
16 conveyance of approximately 22 percent of the Sandia parcel. The Sandia parcel is still occupied and
17 farmed by the Wuertz family.

18 (d) The Sandia parcel is still mostly undeveloped, although a fire station and major
19 arterial street have been constructed.

20 (e) Woodruff Water owns two established wells. Well No. 1 has complete
21 improvements including well head, pump assembly, piping, manifold, and small structures for the
22 pump and electrical service section and controls. Well No. 2 has been drilled and improved and is
23 ready to deliver water. The system also has approximately 5,300 feet of distribution lines and four
24 digital water meters that serve current customers.

25 (f) Woodruff Utility has no physical utility infrastructure, although engineering
26 design plans have been prepared for it.

27 (g) Woodruff Water commenced water service to its first customer on or about
28 September 1, 2004, and currently has four residential water customers served by ¾" meters. The four

1 customers are served from Well No. 1 via a distribution pipeline approximately one-half mile long.
2 Woodruff Water charges its customers the rates authorized in the tariffs approved in Decision No.
3 68453.

4 (h) Sandia 2009 intends to develop the Sandia parcel according to the original
5 vision under Sandia 2009's prior ownership, which was for a master-planned subdivision of
6 approximately 9,500 residential units along with commercial development, schools, parks, and a golf
7 course. Sandia 2009 intends to commence development when market conditions improve and create
8 demand for new housing in the area between Casa Grande and Coolidge. The Companies expect to
9 receive requests for new water and wastewater services in the next two to five years.⁷

10 (i) The Companies believe that it would not be prudent to incur the costs of a rate
11 case at this time, when Woodruff Water has only four customers, and Woodruff Utility has no
12 customers. The Companies request a five-year delay in the requirement to file a rate case application.

13 (j) The Companies desire to retain their CC&Ns for the Sandia parcel because
14 Sandia 2009 intends to proceed with development as soon as the market creates a demand for
15 residential housing in the area, Woodruff Water currently is serving four customers, and Woodruff
16 Utility is essential to Sandia 2009's plan for integrated water and wastewater service.

17 18. On September 30, 2011, Staff filed a Memorandum reiterating information provided
18 by the Companies in their filing and asserting that Staff agrees with the Companies that there are an
19 insufficient number of customers to make rate applications meaningful at this time. Staff stated that
20 an extension of time is reasonable considering the facts in this matter and recommended that the due
21 dates for the Companies to file their rate applications be extended five years from the date of a
22 decision in this matter.

23 19. In light of the severe economic downturn that has affected development in Arizona for
24 the past several years, Woodruff Water's currently limited operations, Woodruff Utility's current lack
25 of operations, Sandia 2009's continued intent to commence development of the Sandia parcel as soon
26 as the market creates demand for residential development in the area, and Staff's recommendation, it

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28 ⁷ In support, the Companies cited a March 2011 *Cromford Report* asserting that there are signs of stabilization in the Phoenix metropolitan area.

1 extension of time, until the date five years after the effective date of this Decision, to file with the
2 Commission's Docket Control, as a compliance item in this docket, an application for a permanent
3 rate case.

4 IT IS FURTHER ORDERED that Woodruff Utility Company, Inc. is hereby granted an
5 extension of time, until the date five years after the effective date of this Decision, to file with the
6 Commission's Docket Control, as a compliance item in this docket, an application for a permanent
7 rate case.

8 IT IS FURTHER ORDERED that all other requirements of Decision No. 68453 shall remain
9 in effect, as discussed herein.

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

11 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

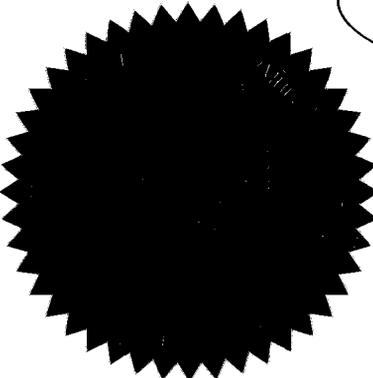
12
13 *Gary A. Reem*
14 CHAIRMAN

Bob [unclear]
COMMISSIONER

15 *Andrew J. [unclear]*
16 COMMISSIONER

Paul [unclear]
COMMISSIONER

Barbara [unclear]
COMMISSIONER



18 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
19 Executive Director of the Arizona Corporation Commission,
20 have hereunto set my hand and caused the official seal of the
21 Commission to be affixed at the Capitol, in the City of Phoenix,
22 this 6th day of JANUARY 2012.

Ernest G. Johnson
ERNEST G. JOHNSON
EXCUTIVE DIRECTOR

24 DISSENT _____

26 DISSENT _____

1 SERVICE LIST FOR: WOODRUFF WATER COMPANY, INC.;
2 WOODRUFF UTILITY COMPANY, INC.; AND
3 ARIZONA WATER COMPANY

4 DOCKET NOS.: W-04264A-04-0438, SW-04265A-04-0439, and W-
5 01445A-04-0755

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