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BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

COMMISSIONERS

DOCKETED

FEB 17 2012

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

DOCKETED BY *NR*

IN THE MATTER OF THE APPLICATION OF
BRADSHAW WATER COMPANY, INC. FOR A
PERMANENT RATE INCREASE

DOCKET NO. W-02476A-10-0495

DECISION NO. 72895

ORDER

Open Meeting
February 14 and 15, 2012
Phoenix, Arizona

BY THE COMMISSION:

In Decision No. 72584 (September 15, 2011), issued in this docket, the Arizona Corporation Commission ("Commission") granted Bradshaw Water Company, Inc. ("Bradshaw"), a rate increase and, in addition, required a second phase in this docket specifically to address the resolution of Bradshaw's request for authority to include a \$1,650 impact fee in its tariff. The impact fee is passed through by Bradshaw to the Town of Prescott Valley pursuant to a 2002 agreement. This Order addresses Bradshaw's requested impact fee authority.

* * * * *

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

FINDINGS OF FACT

Background

1. Bradshaw is a for-profit C corporation providing water utility service to approximately 173 metered customers in a service area of approximately 490 acres located near the Town of Prescott Valley ("Town"), in Yavapai County, pursuant to a Certificate of Convenience and Necessity ("CC&N") granted in Decision No. 55018 (May 6, 1986). Bradshaw has been classified as a Class D water utility. The vast majority of water Bradshaw serves to its customers is obtained from

1 the Town.

2 2. Bradshaw's current rates and charges were approved in Decision No. 72584
3 (September 15, 2011), issued in this docket, and became effective on October 1, 2011.

4 3. Bradshaw is in compliance with Arizona Department of Environmental Quality
5 ("ADEQ") requirements, with Arizona Department of Water Resources ("ADWR") requirements,
6 and with property and sales tax payment requirements. Bradshaw is also in good standing with the
7 Commission's Corporations Division and has no delinquent compliance items according to Staff's
8 Compliance database.

9 **Procedural History**

10 4. Decision No. 72584 required a second phase of this matter for the purpose of
11 addressing Bradshaw's request to have a \$1,650 impact fee authorized in its tariff. The Decision
12 further required the Commission's Hearing Division to schedule and hold a procedural conference to
13 discuss the process for the second phase, to determine the process to be followed for the second
14 phase, to oversee the process for the second phase, and to issue a Recommended Order or
15 Recommended Opinion and Order to resolve the second phase after completing the process.

16 5. On September 27, 2011, a Procedural Order was issued scheduling a procedural
17 conference to be held on October 24, 2011, at 10:00 a.m., at the Commission's offices in Phoenix,
18 Arizona.

19 6. On October 24, 2011, the procedural conference was held as scheduled before a duly
20 authorized Administrative Law Judge of the Commission at the Commission's offices in Phoenix,
21 Arizona. Bradshaw appeared through its owner, Don Bohler, and Staff appeared through counsel. It
22 was determined that Staff would be required to issue a Staff Report analyzing specific issues
23 regarding the impact fee, to which Bradshaw would file a response. No decision was made
24 concerning whether an evidentiary hearing would be needed for the second phase.

25 7. Also on October 24, 2011, a Procedural Order was issued memorializing the
26 requirements for a Staff Report to be filed by November 30, 2011, and for a Bradshaw response to
27 the Staff Report to be filed by December 16, 2011. Staff was required to provide a legal analysis of
28 the arrangement and agreement under which Bradshaw had been collecting the \$1,650 impact fee,

1 including, at a minimum, whether the arrangement and/or agreement had resulted in violation of
2 A.R.S. §§ 40-361, 40-334, and/or 40-374. Staff was also directed to determine and explain whether
3 Bradshaw's ceasing to collect the impact fee would have any effect on Bradshaw's ability to obtain
4 its water supply from the Town and, if so, what the effect on Bradshaw's water supply would be.
5 Bradshaw was required to file a response to the Staff Report.

6 8. On November 30, 2011, Staff filed Staff's Response to Procedural Order ("Staff
7 Report"), in which Staff recommended that Bradshaw be authorized to collect the impact fee.

8 9. On December 22, 2011, Bradshaw filed a Response to the Staff Report, agreeing with
9 Staff's recommendations.

10 **Bradshaw's Relationship with the Town; the Impact Fee**

11 10. Bradshaw's water system is interconnected with and currently obtains approximately
12 90 to 96 percent of its annual water supply from a water system owned and operated by the Town.
13 This Town water system was previously held and operated, in order of succession, by Shamrock
14 Water Company ("Shamrock") and the Prescott Valley Water Company/Prescott Valley Water
15 District ("PVWC/District").

16 11. In March 1993, Bradshaw, Shamrock, and Lynx Creek Ranch, Inc. ("Lynx Creek")
17 entered into an Agreement for the Purchase and Sale of Groundwater ("1993 Agreement"). (*See*
18 *Decision No. 58435 (October 18, 1993)*). At the time, Shamrock was a public service corporation
19 and CC&N holder, and Bradshaw was wholly owned by Lynx Creek, which was the developer of a
20 new development known as Lynx Mountain View Estates. (*Id.*) The 1993 Agreement was formed to
21 enable Bradshaw to provide service to Lynx Mountain View Estates Units V through VII because
22 Lynx Creek could not obtain a Certificate of Assured Water Supply ("CAWS") for Units V through
23 VII without Bradshaw's acquiring additional sources of groundwater. (*Id.*) The 1993 Agreement
24 provided that the connection between the Shamrock and Bradshaw systems would be constructed,
25 and Bradshaw would begin purchasing water from Shamrock, once Bradshaw was serving at least
26 121 single family homes in Units I through IV of Lynx Mountain View Estates. (*Id.*) The 1993
27 Agreement required Bradshaw to pay Shamrock a commodity rate per thousand gallons plus a
28 minimum service charge per service connection within the Bradshaw system, calculated based on the

1 prior month's gallons delivered by Shamrock to Bradshaw as compared to the prior month's gallons
2 supplied to customers by Bradshaw. (*Id.*) The 1993 Agreement also required Bradshaw to pay a
3 \$100 connection charge for each existing connection served by Bradshaw at the time Shamrock first
4 provided water to Bradshaw and to pay annually for each new connection added by Bradshaw during
5 the prior year. (*Id.*; 1993 Agt.) The 1993 Agreement was approved by the Commission in Decision
6 No. 58435.

7 12. In 1997 and 1999, Bradshaw entered into main extension agreements ("MXAs") with
8 North Nugget Development, L.L.C. ("North Nugget"), for Bradshaw to provide water service to
9 North Nugget's development known as Creekside of Prescott ("Creekside"). (Decision No. 72584
10 (September 15, 2011).) At the time, North Nugget was affiliated with both Bradshaw and Lynx
11 Creek.¹

12 13. In September 1998, the Town created the District as a community facilities district for
13 the purpose of purchasing Shamrock and operating Shamrock's water system. In December 1998,
14 the Commission granted Shamrock's application to cancel its CC&N and sell its stock to the District.
15 (Decision No. 61296 (December 16, 1998).) In January 1999, the Town converted Shamrock to the
16 non-profit corporation PVWC, with the District as PVWC's sole member and the District Board as
17 PVWC's Board of Directors.

18 14. In February 2002, Bradshaw, North Nugget,² and the District entered into an
19 Agreement for Recovery of Effluent Storage Credits ("2002 Agreement"). The 2002 Agreement
20 stated that North Nugget, the developer of Creekside of Prescott ("Creekside"), had obtained a
21 CAWS from ADWR for Creekside Phases 1 and 2, but could not obtain a CAWS for Creekside
22 Phase 3 without obtaining approximately 6.72 acre-feet per year ("AFY") of long-term storage
23 credits. The 2002 Agreement explained that effluent from Creekside Phases 1 and 2 was delivered by
24 the Creekside Sanitary District to the City of Prescott ("Prescott") for treatment and storage; that
25 effluent from Creekside Phase 3 would be delivered in the same manner for treatment and storage;

26
27 ¹ Official notice is taken of the Commission's Corporations Division STARPAS database record showing Don
Lovell's various positions with each of these entities. *See also* Decision No. 72584 at 9.

28 ² At the time of the Effluent Agreement, North Nugget was affiliated with Bradshaw; the Effluent Agreement was
signed by Don Lovell for both North Nugget and Bradshaw.

1 and that ADWR had issued Prescott long-term storage credits for the storage of effluent, which
2 credits could be assigned to North Nugget to meet Creekside Phase 3's assured water supply
3 requirements. The 2002 Agreement further explained that Prescott, Bradshaw, and North Nugget had
4 recently entered into a separate Agreement for the Sale and Purchase of Effluent Storage Credits,
5 under which Prescott agreed to reserve and assign to North Nugget, and North Nugget agreed to
6 purchase, the amount of long-term storage credits needed to obtain a CAWS for Creekside Phase 3.
7 In the 2002 Agreement, the District agreed to have one of its wells designated as a recovery well for
8 stored effluent; to recover, on behalf of North Nugget, up to 7 AFY of reserved long-term storage
9 credits after the issuance of the CAWS for Creekside Phase 3; and to use the well to provide water to
10 Bradshaw and Creekside Phase 3 under the 1993 Agreement. Bradshaw agreed to deliver the
11 reserved water received by it solely to Creekside Phase 3 and further agreed, on behalf of North
12 Nugget, to reimburse the District each year for the District's payment of the long-term storage credit
13 recovery fee set forth in A.R.S. § 45-874.01. North Nugget further agreed to notify each purchaser of
14 a lot in Creekside Phase 3 that the purchaser must pay to Bradshaw an amount equal to the System
15 Capacity Charge ("impact fee") established from time to time by District Resolution and set at
16 \$1,650.00 per "residential dwelling unit equivalent" at the time of the 2002 Agreement, which impact
17 fee was to be passed through to the District before Bradshaw would install a meter and provide the
18 customer domestic water service. In addition, the 2002 Agreement prohibited Bradshaw from
19 initiating domestic water service to any lot in Creekside Phase 3 until the impact fee had been paid.
20 The 2002 Agreement has a term of 100 years following the issuance of a CAWS for Creekside Phase
21 3 and was signed by Don Lovell both as Managing Director of North Nugget and on behalf of
22 Bradshaw.

23 15. Don Bohlier, Bradshaw's current owner, purchased Bradshaw from Lynx Creek in
24 2002. (Decision No. 72584 (September 15, 2011).)

25 16. In 2008, the Town dissolved the PVWC/District.

26 17. Staff's Engineer has determined that Bradshaw's system does not have a sufficient
27 supply of water to meet the demands of its current customer base without the water supplied by the
28 Town. Bradshaw's water system has three active wells with a total production capacity of 43 gallons

1 per minute (“GPM”) and unreliable production. The intertie with the Town’s system has a capacity
2 of 100 GPM and is the main source of water for Bradshaw. Without the purchased water from the
3 Town, Bradshaw would not have an adequate supply of water to serve its current customers.

4 18. To date, Bradshaw has collected a \$1,650.00 impact fee and passed the impact fee
5 through to the Town a total of 13 times. Bradshaw has requested to have the \$1,650.00 impact fee
6 authorized by the Commission and included in Bradshaw’s tariff.

7 **Effect of Non-Collection on Water Supply**

8 19. Staff expressed uncertainty regarding whether Bradshaw’s ceasing to collect and pass
9 through the impact fee would jeopardize the continued provision of water by the Town under the
10 1993 Agreement, but opined that Bradshaw’s failure to collect the impact fee if a new customer were
11 added in the Creekside Phase 3 development would constitute a breach of the 2002 Agreement. Staff
12 also asserted that Bradshaw is obligated to serve within its CC&N and must connect a new customer
13 where Bradshaw is physically and financially able to do so, absent a moratorium on new connections.
14 Staff suggested that Bradshaw could request a moratorium on new connections pending Commission
15 approval of Bradshaw’s request for authority to charge the impact fee.³

16 20. In November 2011 correspondence included by Staff in the Staff Report, the Town
17 Attorney characterized the 2002 Agreement as a supplemental agreement to the 1993 Agreement and
18 asserted that Bradshaw’s failure to collect an amount equal to the Town’s current impact fee⁴
19 applicable to Creekside Phase 3, for any home in Creekside Phase 3, which is located outside of the
20 Town’s limits, would breach the 2002 Agreement. The Town Attorney further asserted that a breach
21 of the 2002 Agreement would allow the Town to terminate the 2002 Agreement and to cease
22 delivering water to Bradshaw for purposes of supplying Creekside Phase 3. The Town Attorney
23 further asserted that the current impact fee is \$1,311.00 and that Town records show that 13 payments
24 of \$1,650.00 have been received from Bradshaw between October 2004 and July 2009 pursuant to the
25 2002 Agreement.

26 ...

27 _____

28 ³ Bradshaw has not filed a request for a moratorium.

⁴ The Town and the 2002 Agreement use the term “System Capacity Charge” rather than the term “impact fee.”

1 Report. In its response to the Staff Report, Bradshaw stated that it agreed with Staff's
 2 recommendation that Bradshaw be permitted to continue collecting the \$1,650.00 fee and further
 3 asserted that Bradshaw's failure to do so would be a violation of the 2002 Agreement.

4 24. We find that Bradshaw's charging of the impact fee to its new customers in Creekside
 5 Phase 3 was in violation of A.R.S. §§ 40-334, 40-361, and 40-374. Because the impact fee had not
 6 been approved by the Commission as just and reasonable before it was charged, and the Commission
 7 had not approved the distinction between new customers residing in Creekside Phase 3 and new
 8 customers residing elsewhere within Bradshaw's service area, it was unjust, unreasonable, and
 9 unlawfully discriminatory for Bradshaw to charge the Creekside Phase 3 customers the much larger
 10 impact fee. Likewise, because the impact fee had not been included in Bradshaw's Commission-
 11 approved tariffs, Bradshaw's charging of the impact fee was in violation of A.R.S. § 40-374. The
 12 Commission has previously applied A.R.S. § 40-374 to non-common-carrier⁵ public service
 13 corporations and determined that A.R.S. § 40-374 requires a public service corporation to charge only
 14 the rates and charges authorized under its current tariff on file with the Commission. (See Decision
 15 No. 66949 (April 30, 2004); Decision No. 71869 (September 1, 2010).)

16 25. Although we find that Bradshaw has violated several Commission statutes, we also
 17 find that it would not be reasonable and appropriate to assess a penalty upon Bradshaw or otherwise
 18 to take punitive action against Bradshaw in this matter, such as through initiation of an Order to
 19 Show Cause. In reaching this determination, we have considered Bradshaw's compliance with other
 20 Commission regulatory requirements and with ADEQ and ADWR requirements; Mr. Bohler's
 21 apparent lack of involvement in forming the 2002 Agreement; Bradshaw's apparent lack of financial
 22 gain from collecting the impact fee; and the benefits received by Bradshaw's system (and thereby its
 23 customers) because Bradshaw collects and passes through the impact fee—*i.e.*, up to 7 AFY of water
 24

25 ⁵ A.R.S. § 40-201 defines "common carrier" to mean "a railroad or street railroad." The definition of "public service
 26 corporation," established in Article 15, § 2 of the Arizona Constitution, is much broader:

27 All corporations other than municipal engaged in furnishing gas, oil, or electricity for light, fuel, or
 28 power; or in furnishing water for irrigation, fire protection, or other public purposes; or in furnishing,
 for profit, hot or cold air or steam for heating or cooling purposes; or engaged in collecting,
 transporting, treating, purifying and disposing of sewage through a system, for profit; or in transmitting
 messages or furnishing public telegraph or telephone service, and all corporations other than
 municipal, operating as common carriers, shall be deemed public service corporations.

1 to serve Creekside Phase 3. In addition, we have considered that the Town would consider
2 Bradshaw's ceasing to collect the impact fee to be a breach of the 2002 Agreement, which the Town
3 has asserted would allow the Town to cease providing Bradshaw water to serve Creekside Phase 3.
4 While we need not and will not approve the 2002 Agreement, and we take no position regarding the
5 Town's legal analysis of the provisions of the 1993 Agreement or the 2002 Agreement, we recognize
6 the Town's stated position and the consequences that would likely result from our prohibiting
7 Bradshaw from collecting the impact fee for the Town. Those consequences would harm Bradshaw,
8 its customers in Creekside Phase 3, and probably all of Bradshaw's other customers, as the
9 consequences would likely include an insufficient water supply and legal expenses that could
10 potentially threaten Bradshaw's viability as a small water company.

11 **Staff's Recommendations**

12 26. Staff has recommended that the Commission approve Bradshaw's collection of the
13 impact fee to be paid to the Town and require Bradshaw to file a tariff, as a compliance item in this
14 docket, for Staff approval. Staff asserted that a hearing was not necessary to resolve the impact fee
15 issue and recommended that a proposed order be prepared for Commission consideration.

16 **Resolution**

17 27. We find that it is just, reasonable, and in the public interest to authorize Bradshaw to
18 charge to each new service connection to Bradshaw's system, made for a property located within
19 Creekside Phase 3, an impact fee equal to the current Town System Capacity Charge, as established
20 from time to time by Resolution of the Town Council. Further, we find that it is reasonable and
21 appropriate to require Bradshaw to file, as a compliance item in this docket, for Staff approval, a
22 tariff that includes the impact fee approved herein.

23 28. We also find that it is just, reasonable, and in the public interest to require Bradshaw,
24 each time the Town Council passes a Resolution changing the Town System Capacity Charge, to file,
25 in this docket, for Staff approval, an updated tariff that includes an impact fee conforming to the new
26 Town System Capacity Charge, along with a copy of the Town Council Resolution adopting the new
27 Town System Capacity Charge.

28 29. We also find that it is just, reasonable, and in the public interest to require Bradshaw,

1 if the Town Council passes a Resolution eliminating the Town System Capacity Charge, to file, in
2 this docket, a Notice explaining that Bradshaw is no longer obligated to collect and pass through the
3 impact fee, along with the Town Council Resolution eliminating the Town System Capacity Charge.

4 30. We also find that it is just, reasonable, and in the public interest to require Bradshaw,
5 if the 2002 Agreement is canceled or modified in any manner to eliminate Bradshaw's obligation to
6 collect and pass through the impact fee, to file, in this docket, a Notice explaining that Bradshaw is
7 no longer obligated to collect and pass through the impact fee, along with documentation
8 demonstrating that the obligation has been eliminated.

9 31. Further, we find that it is necessary and appropriate and in the public interest to
10 admonish Bradshaw for violating A.R.S. §§ 40-361, 40-334, and 40-371 and to require Bradshaw to
11 ensure that it does not enter into any future contract that would alter any rate and/or charge to be
12 assessed to its customers for its services or commodities without first either determining through
13 consultation with Staff that there is no need for Commission approval of the contract or applying for
14 and obtaining Commission approval of the contract.

15 **CONCLUSIONS OF LAW**

16 1. Bradshaw is a public service corporation within the meaning of Article XV of the
17 Arizona Constitution and A.R.S. §§ 40-250, 40-251, 40-334, 40-361, 40-367, and 40-374.

18 2. The Commission has jurisdiction over Bradshaw and over the subject matter of this
19 second phase of this ratemaking docket.

20 3. Bradshaw's charging of the impact fee to its new customers in Creekside Phase 3 was
21 in violation of A.R.S. §§ 40-334, 40-361, and 40-374.

22 4. It is just, reasonable, and in the public interest not to assess a penalty upon Bradshaw
23 or otherwise to take punitive action against Bradshaw in this matter for its violation of A.R.S. §§ 40-
24 334, 40-361, and 40-374.

25 5. Bradshaw's fair value rate base is \$313,874, as determined in Decision No. 72584
26 (September 15, 2011).

27 6. The impact fee authorized herein is just and reasonable and in the public interest.

28 7. It is just, reasonable, and in the public interest to take the actions described in Findings

1 of Fact Nos. 27 through 31.

2 **ORDER**

3 IT IS THEREFORE ORDERED that Bradshaw Water Company, Inc. is hereby authorized
4 and directed to file with the Commission's Docket Control, as a compliance item in this docket, on or
5 before March 1, 2012, for Staff approval, a tariff that authorizes Bradshaw Water Company, Inc. to
6 charge to each new service connection to Bradshaw Water Company, Inc.'s system, made for a
7 property located within Creekside Phase 3, an impact fee equal to the current Town of Prescott
8 Valley System Capacity Charge, as established by Resolution of the Town Council.

9 IT IS FURTHER ORDERED that Bradshaw Water Company, Inc. shall, each time the Town
10 Council for the Town of Prescott Valley passes a Resolution changing the Town's System Capacity
11 Charge, within 30 days after the Resolution is passed, file with the Commission's Docket Control, in
12 this docket, for Staff approval, an updated tariff that includes an impact fee conforming to the new
13 System Capacity Charge, along with a copy of the Town Council Resolution adopting the new
14 System Capacity Charge.

15 IT IS FURTHER ORDERED that Bradshaw Water Company, Inc. shall, if the Town Council
16 for the Town of Prescott Valley passes a Resolution eliminating the Town's System Capacity Charge,
17 within 30 days after the Resolution is passed, file with the Commission's Docket Control, in this
18 docket, a Notice explaining that Bradshaw Water Company, Inc. is no longer obligated to collect and
19 pass through the impact fee, along with a copy of the Town Council Resolution eliminating the
20 System Capacity Charge.

21 IT IS FURTHER ORDERED that Bradshaw Water Company, Inc. shall, if the 2002
22 Agreement for Recovery of Effluent Storage Credits is canceled or modified in any manner to
23 eliminate Bradshaw's obligation to collect and pass through the impact fee, within 30 days after the
24 cancellation or modification, file with the Commission's Docket Control, in this docket, a Notice
25 explaining that Bradshaw Water Company, Inc. is no longer obligated to collect and pass through the
26 impact fee, along with documentation demonstrating that the obligation has been eliminated.

27 IT IS FURTHER ORDERED that Bradshaw Water Company, Inc. shall ensure that it does
28 not enter into any future contract that would alter any rate and/or charge to be assessed to its

1 customers for its services or commodities without first either determining through consultation with
2 Commission Staff that there is no need for Commission approval of the contract or applying for and
3 obtaining Commission approval of the contract.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

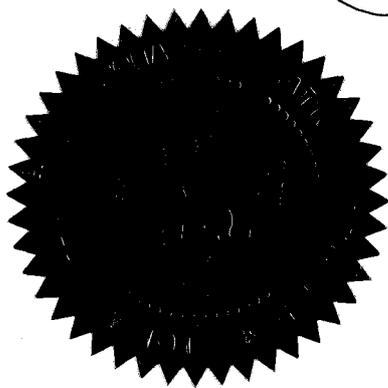
6
7 
8 CHAIRMAN


COMMISSIONER

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10 COMMISSIONER


COMMISSIONER


COMMISSIONER



11
12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 17th day of FEBRUARY 2012.

17 
18 ERNEST G. JOHNSON
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____

1 SERVICE LIST FOR: BRADSHAW WATER COMPANY, INC.

2 DOCKET NO.: W-02476A-10-0495

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4 Don Bohlier, Owner
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