

OPEN MEETING ITEM



0000136101

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



ARIZONA CORPORATION COMMISSION

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL

EXECUTIVE DIRECTOR

ORIGINAL

2012 APR 25 5 11 01

DATE: APRIL 25, 2012
DOCKET NO.: W-01351A-11-0089

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Opinion and Order on:

ELFRIDA DOMESTIC WATER USERS ASSOCIATION
(TRANSFER ASSETS/CANCEL CC&N)

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:

MAY 4, 2012

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:

MAY 22, 2012 and MAY 23, 2012

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

APR 25 2012

DOCKETED BY

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF
ELFRIDA DOMESTIC WATER USERS
ASSOCIATION FOR AUTHORIZATION TO
TRANSFER ASSETS TO ELFRIDA WATER
IMPROVEMENT DISTRICT AND
CANCELLATION OF CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-01351A-11-0089

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: February 7, 2012
PLACE OF HEARING: Tucson, Arizona
ADMINISTRATIVE LAW JUDGE: Belinda A. Martin
APPEARANCES: Mr. Andrew Warn, on behalf of Elfrida Domestic Water Users Association; and
Ms. Bridget Humphrey, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

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

* * * * *

FINDINGS OF FACT

Procedural History

1. On February 25, 2011, Elfrida Domestic Water Users Association ("EDWUA" or "Company") filed an application with the Commission for authority to transfer its assets and operations to Elfrida Water Improvement District ("EWID") and to cancel the Company's Certificate of Convenience and Necessity ("CC&N") ("Application"). Attached to the Application was an

1 Affidavit of Publication averring that notice of the Application was published in *The Douglas*
2 *Dispatch* on February 9, 2011.

3 2. On September 6, 2011, the Commission's Utilities Division Staff ("Staff") filed a
4 Sufficiency Letter stating that the Application met the sufficiency requirements set forth in the
5 Arizona Administrative Code.

6 3. On October 26, 2011, a Procedural Order was filed setting a procedural conference for
7 November 30, 2011, which was held as scheduled. During the procedural conference it was
8 determined that it would be necessary to hold a hearing on the Application.

9 4. A Procedural Order was filed December 5, 2011, setting the hearing for February 7,
10 2012, and setting other procedural deadlines and suspending the time clock.

11 5. On January 23, 2012, EDWUA filed a Notice of Mailing stating that the Company
12 mailed notice of the hearing to customers and property owners within its certificated area, and an
13 Affidavit of Publication indicating that notice of the hearing was published in *The Douglas Dispatch*
14 on December 28, 2011. The Company also filed a letter authorizing board member Andrew Warn to
15 represent EDWUA at hearing. No customers filed comments with the Commission in response to the
16 notices.

17 6. The hearing convened on February 7, 2012, before a duly authorized Administrative
18 Law Judge at the Commission's Tucson offices. EDWUA was represented by Andrew Warn and
19 Staff appeared through counsel. EDWUA presented three witnesses: Andrew Warn, an EDWUA
20 board member and president of EWID;¹ Michael Coyle, Jr., manager of both entities;² and James
21 Fletcher, treasurer for EWID.³ Kiana Sears, Staff Executive Consultant, and Jian Liu, Staff Engineer,
22 testified on behalf of Staff. No members of the public provided comment at the hearing.

23 7. At the conclusion of the hearing, the matter was taken under advisement pending the
24 submission of a Recommended Opinion and Order to the Commission.

25 **Background**

26 8. EDWUA is an Arizona non-profit corporation that provides water utility service to

27 _____
¹ Transcript of February 7, 2012, Hearing, page 8. (Hereinafter, "Tr. at ____.")

28 ² Tr. at 27.

³ Tr. at 38.

1 approximately 230 customers in the unincorporated community of Elfrida, located northeast of
2 Bisbee in Cochise County. The Company's original CC&N was granted in Decision No. 22912 (June
3 12, 1952). The Company's current rates and charges were established in Decision No. 63443 (March
4 13, 2001). Under the approved rates, customers on 5/8-inch x 3/4-inch meters were assessed a
5 monthly usage charge of \$10.00 and a commodity charge of \$1.10 per 1,000 gallons.

6 9. At a public hearing on November 30, 2010, the Cochise County Board of Supervisors
7 passed and adopted Resolution 10-84 establishing EWID, finding that EWID has the powers of a
8 municipal corporation, appointing EWID's Board of Directors and setting EWID's boundaries.⁴

9 10. By Quitclaim Deeds dated February 16, 2011, EDWUA transferred its assets to EWID
10 at no cost and EWID assumed operation of the water system.⁵

11 Application

12 11. EDWUA filed its Application on February 25, 2011, requesting Commission authority
13 to transfer the Company's assets and operations to EWID and cancel EDWUA's CC&N.

14 12. According to the Staff Engineering Report, EDWUA's water system consisted of two
15 wells, three pressure tanks, two storage tanks and a distribution system serving approximately 230
16 metered customers. Staff stated that the water system had adequate well production and storage
17 capacity to serve the existing service connections and reasonable growth.

18 13. Staff indicated that, according to an Arizona Department of Environmental Quality
19 ("ADEQ") compliance report dated May 20, 2011, EDWUA's water system was delivering water that
20 met ADEQ water quality standards and regulations.

21 14. The Staff Report states that EDWUA is not located in an Arizona Department of
22 Water Resources ("ADWR") Active Management Area ("AMA") and is not subject to any AMA
23 reporting and conservation requirements. According to an ADWR compliance status report dated
24 May 5, 2011, the Company was in compliance with ADWR requirements governing water providers
25 and/or community water systems.

26 15. According to the Staff Report, a search of the Commission's Compliance Division's
27

28 ⁴ Hearing Exhibit S-1, Application, Resolution of the Cochise County Board of Supervisors.

⁵ Copies of the Quitclaim Deeds are attached to the Company's Application, Hearing Exhibit S-1.

1 database indicated that EDWUA has no delinquent Commission compliance items. Staff testified the
 2 Consumer Services Section reported that no complaints have been filed against EDWUA.⁶ The
 3 Commission's Corporations Division administratively dissolved EDWUA on September 14, 2011,
 4 for failure to file its Annual Report.⁷

5 16. According to the Company, EDWUA had no refunds due on main extension
 6 agreements or on water and service line installations and the Company transferred all customer
 7 security deposits to EWID.⁸

8 17. EDWUA's certificated area is situated entirely within EWID's boundaries.⁹

9 18. According to the Company's witnesses, EDWUA had been in severe financial straits
 10 and operating at a loss for a number of years and the over 50 year-old water system was in need of
 11 repairs and upgrades.¹⁰ Mr. Warn testified that prior to the transfer of the Company, EDWUA was
 12 unable to pay its bills and was in danger of having its electricity shut off.¹¹ Further, Mr. Warn and
 13 Mr. Fletcher testified that the Company had been behind on payment of its taxes and, as the Company
 14 was in the process of transferring assets and accounts to EWID, the Internal Revenue Service seized
 15 the money in EDWUA's bank accounts.¹²

16 19. Mr. Warn testified that the Company had initially considered filing a rate application
 17 with the Commission, but he thought that it might take a year before a rate increase could be
 18 approved. He stated that the Company also considered taking out a loan, but given its financial
 19 difficulties, EDWUA's board did not believe that would be a viable option.¹³ The members of
 20 EDWUA's board spoke with board members of water improvement districts and learned that if it
 21 formed a water improvement district it would have access to a wider variety of funding options and
 22 would save some money because, as a water improvement district, it would no longer have to pay
 23

24 _____
⁶ Tr. at 56.

⁷ Hearing Exhibit A-1, Certificate of Dissolution.

⁸ Hearing Exhibit S-1; Tr. at 17-18.

⁹ Tr. at 25, 57. EWID's boundaries encompass an area greater than EDWUA's certificated area. See Hearing Exhibit S-1, EWID boundary map, and Hearing Exhibit S-2, Attachment B.

¹⁰ Tr. at 13-15, 35-36, 41-42.

¹¹ Tr. at 14-15. Mr. Fletcher testified that, in spite of EDWUA's precarious financial state, customers' service was never disrupted. Tr. at 43.

¹² Tr. at 13-14, 40-41.

¹³ Tr. at 11, 14.

1 property taxes.¹⁴ Mr. Warn stated that he went door-to-door within the proposed water improvement
 2 district boundaries to discuss the creation of a water improvement district with customers and
 3 property owners. EDWUA subsequently obtained more than the required number of signatures from
 4 property owners needed to apply to the Cochise County Board of Supervisors for the district's
 5 formation.¹⁵

6 20. Upon formation of EWID, its board approved a rate increase from \$10 to \$25 for the
 7 monthly usage charge and increased the commodity charge from \$1.10 to \$1.55 per 1,000 gallons.
 8 Certain service charges and service line and meter installation charges were also increased.¹⁶ Mr.
 9 Warn testified that when he went door-to-door to talk to customers about the Company's efforts to
 10 form a water improvement district, he advised them that there would likely be a rate increase.¹⁷ Mr.
 11 Warn stated that EWID has not received any complaints from customers about the increased rates and
 12 charges.¹⁸ Mr. Coyle and Mr. Fletcher testified that the financial outlook has improved since
 13 EDWUA's transfer of assets to EWID¹⁹ and EWID is in the process of applying for grants to fund
 14 needed system improvements.²⁰

15 21. Staff witness Kiana Sears testified that, although EWID's rates are higher than
 16 EDWUA's, Staff believed that the Company's rates were very low and concluded the rates charged
 17 by EWID are reasonable.²¹

18 22. Staff acknowledged that water improvement districts are eligible for loans and grants
 19 that are not available to private water companies and Staff believes access to these funds will benefit
 20 both the Company and customers.²² As such, Ms. Sears testified that EDWUA'S Application to
 21 transfer its assets and operations from EDWUA to EWID and to cancel the Company's CC&N is in
 22 the public interest should be approved.²³

23 23. When asked whether EDWUA was aware that Arizona statutes and Commission

24 ¹⁴ Tr. at 10-14, 22.

25 ¹⁵ Hearing Exhibit S-1; Tr. at 10-11, 21-22.

26 ¹⁶ Tr. at 36-38.

27 ¹⁷ Tr. at 15.

28 ¹⁸ Tr. at 16.

¹⁹ Tr. at 35-36, 42-43.

²⁰ Tr. at 19-20, 41.

²¹ Tr. at 55.

²² Tr. at 55-56.

²³ Tr. at 59.

1 regulations require a regulated utility to seek Commission approval prior to transferring its assets, Mr.
 2 Warn responded that the Company was not initially aware of that requirement.²⁴ Mr. Coyle testified
 3 that he learned about this requirement when the Arizona Department of Revenue informed him that
 4 the CC&N was still in effect and the Company was still under obligation to pay property taxes. Once
 5 the Company learned of its error, it promptly filed its Application with the Commission.²⁵

6 24. Ms. Sears acknowledged that, although Staff prefers that companies seek Commission
 7 approval prior to transferring assets, in this case Staff believes that the circumstances necessitating
 8 the prompt transfer of EDWUA's assets to EWID were compelling and the Company should not be
 9 fined for its oversight.²⁶

10 25. Accordingly, Staff recommends that the Commission approve EDWUA's Application
 11 to transfer its assets and operations to EWID and to cancel the Company's CC&N.²⁷

12 26. Based on the record in this matter, we believe EDWUA's Application for authority to
 13 transfer its assets and operations to EWID and to cancel the Company's CC&N is in the public
 14 interest and should be approved.

CONCLUSIONS OF LAW

15
 16 1. EDWUA is a public service corporation within the meaning of Article XV of the
 17 Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

18 2. The Commission has jurisdiction over EDWUA and the subject matter of the
 19 Application.

20 3. Notice of the Application and the hearing were provided as required by Arizona law.

21 4. There is a continuing need for water utility service in EDWUA's certificated area.

22 5. EWID is a fit and proper entity that is ready, willing and able to assume the
 23 responsibilities of providing water utility service within EDWUA's existing certificated area.

24 6. Staff's recommendation to approve the Application is reasonable and should be
 25 adopted.

26

27 ²⁴ Tr. at 14-15.

²⁵ Tr. at 35.

²⁶ Tr. at 58-59.

28 ²⁷ Hearing Exhibit S-2, page 2; Tr. at 54.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

IT IS THEREFORE ORDERED that Elfrida Domestic Water Users Association's Application for authority to transfer its assets and operations to the Elfrida Water Improvement District and to cancel its CC&N is in the public interest and is approved.

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 _____ 2012.

ERNEST G. JOHNSON
EXCUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: ELFRIDA DOMESTIC WATER USERS
2 ASSOCIATION

3 DOCKET NO.: W-01351A-11-0089

4 Andrew Warn
5 ELFRIDA DOMESTIC WATER
6 USERS ASSOCIATION/
7 ELFRIDA WATER IMPROVEMENT DISTRICT
8 P. O. Box 356
9 10394 "C" North Highway 191
10 Elfrida, AZ 85710

11 Janice Alward, Chief Counsel
12 ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
14 Phoenix, AZ 85007

15 Steven M. Olea, Director
16 Utilities Division
17 ARIZONA CORPORATION COMMISSION
18 1200 West Washington Street
19 Phoenix, AZ 85007
20
21
22
23
24
25
26
27
28