

ORIGINAL

OPEN MEETING ITEM



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Executive Director

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



ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

MAY 07 2012

DOCKETED BY *JM*

DATE: MAY 7, 2012
DOCKET NO.: W-20589A-08-0173
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 Order on:

RIDGELINE WATER COMPANY, L.L.C.
(EXTENSION OF TIME DEADLINE CONTAINED
IN DECISION NO. 70748)

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 16, 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.

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Ernest G. Johnson
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 RIDGELINE WATER COMPANY, L.L.C. FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY FOR WATER SERVICE.

DOCKET NO. W-20589A-08-0173

DECISION NO. _____

ORDER EXTENDING TIME
DEADLINE CONTAINED IN
DECISION NO. 70748

12 Open Meeting
13 May 22 and 23, 2012
14 Phoenix, Arizona

15 **BY THE COMMISSION:**

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

18 **FINDINGS OF FACT**

19 1. In Decision No. 70748 (February 12, 2009) the Commission granted an Order
20 Preliminary to the issuance of a Certificate of Convenience and Necessity ("CC&N") to Ridgeline
21 Water Company, L.L.C. ("Ridgeline" or "Company") for authorization to provide water service to
22 Ridgeline Estates. This development will consist of 136 single family homes on four-to-five acre
23 lots, located near Madera Canyon, south of Tucson in Pima County. The developer of the project is
24 Pollux Properties, L.L.C. ("Pollux"), which formed the Company to provide water to Ridgeline
25 Estates.¹

26 2. Pursuant to the Order Preliminary, Ridgeline is required to comply with five
27 conditions within three years of the effective date of the Decision before the Company may request
28 the Commission to issue a CC&N.² Specifically, the Company has to file: 1) a public utility license

¹ Decision No. 70748, page 3.

² In its Motion for Extension of Compliance Filing Date Deadline, Ridgeline states that under the Order Preliminary it was required to comply with six conditions precedent to the issuance of a CC&N. However, the sixth condition noted by the Company (relating to best management practices) was not a condition precedent for the issuance of the CC&N.

1 agreement from Pima County; 2) documents related to Pollux's financial structure; 3) a curtailment
2 tariff; 4) a backflow tariff; and 5) a copy of the Pima County Department of Environmental Quality
3 Approval to Construct ("ATC") for water system facilities needed to serve Ridgeline Estates.³ Based
4 on the effective date of the Decision, these five compliance items were due to be filed with the
5 Commission no later than February 12, 2012. The Decision also states that if Ridgeline fails to
6 comply with these terms, this Order Preliminary will be deemed null and void, and Staff must file a
7 memorandum to close the docket.⁴ The Decision further states that if the Company meets the Order
8 Preliminary conditions and the Commission issues a CC&N, there are additional compliance
9 requirements that must be met. Failure to meet these terms "will render the [CC&N] null and void,
10 after due process, unless the Commission grants an extension of time for compliance with those
11 requirements".⁵

12 3. On December 2, 2011, Ridgeline filed with the Commission a Motion for Extension of
13 Compliance Filing Deadline ("Motion") requesting an extension of time to file the ATC.

14 4. According to the Motion, the 2008 downturn of the real estate market negatively
15 affected the timing of Ridgeline Estates' development; nevertheless, Pollux has continued to move
16 forward with the project as best as it is able given the current economic environment. Ridgeline
17 notes that the Pollux has obtained the necessary easements for the placement of underground utility
18 facilities and has been working with the Arizona State Land Department to obtain the needed ingress
19 and egress easements.⁶ Attached to the Motion is a letter from Pollux supporting the Motion and
20 stating that it intends to complete the project and still desires that Ridgeline serve as the water utility
21 provider for the development.⁷ The Company notes that it has complied with four of the five
22 compliance conditions, leaving only the ATC filing outstanding.⁸

23 5. Accordingly, Ridgeline requests that the Commission grant its Motion and extend the
24 time for filing the required ATC for the water system facilities necessary to provide water service to
25

26 ³ Decision No 70748, pages 25-26.

27 ⁴ *Id.*, page 26.

⁵ *Id.*, page 30.

⁶ Motion, pages 2-3.

⁷ Motion, Attachment A.

28 ⁸ Motion, page 2.

1 Ridgeline Estates from February 12, 2012, to February 12, 2014.⁹

2 6. On April 10, 2012, the Commission's Utilities Division Staff ("Staff") filed a Staff
3 Report confirming that the Company has met the conditions of the Order Preliminary except for the
4 ATC filing requirement.

5 7. In the Staff Report, Staff stated, "[A]lthough extensions of time are not typical in
6 situations in which an Order Preliminary is granted by the Commission, Decision No. 70748 does not
7 specifically consider the possibility of an extension of time in this matter."¹⁰ Staff noted, however,
8 pursuant to the Decision, the Company's failure to comply with stated the terms and conditions of the
9 Decision would render the CC&N null and void unless an extension of time for compliance is
10 granted.¹¹ Based on the information provided by the Company, Staff recommended approval of
11 Ridgeline's Motion to extend the ATC filing deadline from February 12, 2012, to February 12, 2014.
12 Staff also recommended that no further compliance extensions should be granted.¹²

13 8. Under the terms of the Decision, Ridgeline's failure to file the ATC by February 12,
14 2012, would render the Order Preliminary null and void.¹³ The Decision does not contemplate an
15 extension of the Order Preliminary to the issuance of a CC&N, nor does it state that it cannot be
16 extended, although, as noted by Staff, extensions of time to comply with Order Preliminary
17 requirements are not typical.

18 9. We note that, in this instance, the circumstances impeding Pollux's ability to move
19 forward with the development, and therefore Ridgeline's ability to file the ATC, are out of the
20 entities' control. The Company has timely complied with four of the five conditions to the Order
21 Preliminary and the information provided by Ridgeline demonstrates that the developers are
22 continuing to move forward with Ridgeline Estates as best they are able in the current economic
23 climate. We note that there are no other water companies in Ridgeline Estates' vicinity that might
24 provide water service to the development,¹⁴ so there is no detriment to extending the Order

25 _____
⁹ Motion, page 3.

26 ¹⁰ Staff Report, page 2.

27 ¹¹ This portion of the Decision applies once the Commission has issued the CC&N; not to the conditions precedent to the
issuance of the CC&N.

28 ¹² Staff Report, page 2.

¹³ Decision No. 70748, page 26.

¹⁴ Decision No. 70748, page 3.

1 Preliminary at this time. However, we agree with Staff that there should be no further extensions of
2 the conditions to the Order Preliminary.

3 10. Given the circumstances, and based on the information provided by the Company, we
4 find that Staff's recommendations are reasonable and we adopt them.

5 **CONCLUSIONS OF LAW**

6 1. Ridgeline is a public service corporation within the meaning of Article XV of the
7 Arizona Constitution and A.R.S. §§40-281 and 40-282.

8 2. The Commission has jurisdiction over Ridgeline and the subject matter of the Motion
9 for extension for time to comply with Commission Decision No. 70748.

10 3. Staff's recommendations are reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that Ridgeline Water Company, L.L.C.'s Motion for extension of time to comply with Decision No. 70748 is granted, extending the Order Preliminary to the issuance of a Certificate of Convenience and Necessity compliance deadline for filing the Pima County Department of Environmental Quality Approval to Construct to February 12, 2014.

IT IS FURTHER ORDERED that no further extensions of the conditions to the Order Preliminary to the issuance of a Certificate of Convenience and Necessity shall be granted, absent extraordinary circumstances.

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
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

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

2 DOCKET NO.: W-20589A-08-0173

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