

ORIGINAL

OPEN MEETING ITEM



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



ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

NOV 30 2012

DATE: NOVEMBER 30, 2012

DOCKET NO: G-20471A-12-0425

TO ALL PARTIES:

DOCKETED BY *ESM*

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

SEMSTREAM ARIZONA PROPANE, L.L.C.
(WAIVER)

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:

The parties have waived the 10 days for filing of exceptions

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 Working Session and Open Meeting to be held on:

DECEMBER 11, 2012 AND DECEMBER 12, 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
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE OF SEMSTREAM
 ARIZONA PROPANE, L.L.C.'S NOTICE OF
 INTENT TO REORGANIZE PURSUANT TO
 A.A.C. R14-2-803, OR, ALTERNATIVELY,
 APPLICATION FOR A LIMITED WAIVER OF
 THE AFFILIATED INTEREST RULES
 PURSUANT TO A.A.C. R14-2-806.

DOCKET NO. G-20471A-12-0425

DECISION NO. _____

ORDER

Open Meeting
December 11 and 12, 2012
Phoenix, Arizona

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

1. On October 1, 2012, SemStream Arizona Propane, L.L.C. ("SemStream or SemStream Arizona") filed with the Arizona Corporation Commission ("Commission") a notice of intent to reorganize pursuant to A.A.C. R14-2-803, or, alternatively, application for a limited waiver of the affiliated interest rules pursuant to A.A.C. R14-2-806.
2. On October 9, 2012, Alliant Gas, L.L.C. ("Alliant") filed an Application to Intervene. Alliant stated that it entered into a Purchase and Sale Agreement with SemStream's parent company, SemStream LP, for the purchase of all outstanding units of membership interest in SemStream.
3. On October 30, 2012, SemStream filed a Request for Procedural Conference for the purpose of addressing various procedural issues.
4. On October 31, 2012, a Procedural Order was issued setting a telephonic procedural conference for November 2, 2012, and granting intervention to Alliant.

1 5. On November 2, 2012, the telephonic procedural conference was conducted as
2 scheduled, with SemStream, Alliant, and the Commission's Utilities Division ("Staff") participating
3 through counsel.

4 6. On November 2, 2012, SemStream filed a Notice of Proposed Customer Notice.
5 SemStream stated that both Alliant and Staff were in agreement with the proposed notice.

6 7. On November 5, 2012, a Procedural Order was issued directing SemStream to mail to
7 each of its customers, and publish in a newspaper of general circulation in its service area, a copy of
8 the notice set forth in the Procedural Order.

9 8. On November 19, 2012, SemStream filed Affidavits of Publication attesting that the
10 required notice was published in the *Payson Roundup* on November 9, 2012, and in the *Arizona*
11 *Daily Sun* on November 12, 2012.

12 9. On November 20, 2012, SemStream filed certification that the required notice was
13 mailed to all of its Payson and Page customers in the first billing cycle of November 2012.

14 10. On November 29, 2012, Staff filed its Staff Report recommending approval of the
15 application subject to certain conditions.

16 11. SemStream Arizona is a Delaware limited liability company that provides
17 underground propane gas utility service in and around the Payson and Page, Arizona, pursuant to
18 authority granted by the Commission in Decision Nos. 69394 (March 22, 2007) and 69579 (May 21,
19 2007). (Application, at 2.) SemStream Arizona is wholly owned by SemStream LP, a Delaware
20 limited partnership, which, in turn, is a subsidiary of SemGroup Corporation ("SemGroup"), a
21 Delaware corporation. (*Id.*)

22 12. As described in its application, SemStream's parent company, SemStream LP and
23 Alliant entered into a purchase and sale agreement on September 12, 2012, whereby Alliant will
24 acquire from SemStream LP all of the issued and outstanding units of membership interest in
25 SemStream Arizona. Pursuant to the agreement, SemStream Arizona will remain a wholly owned
26 subsidiary within a larger corporate structure (under Alliant), and although SemStream Arizona's
27 name will change "its personnel and operations will remain the same in all material respects." (*Id.*)

28 13. The application states that Alliant is a Texas limited liability company that provides

1 underground propane service to residential and commercial developments in several areas of Texas
2 where natural gas service is not available. (*Id.* at 3.) Alliant is a wholly owned subsidiary of Pinnacle
3 Propane, LLC (“Pinnacle”), a limited liability company that operates traditional retail propane
4 delivery services. Pinnacle is a subsidiary of JP Energy Partners LP (“JP Energy”), a Delaware
5 limited partnership that distributes approximately 50 million gallons of propane annually through
6 Alliant and Pinnacle. (*Id.*)

7 14. According to the application, the purchase price for the SemStream membership units
8 is approximately \$9.2 million, which includes certain non-regulated assets held by SemStream.
9 Following closing, SemStream Arizona will remain the same legal entity, but will be renamed by
10 Alliant. The application states that the transaction “does not involve the sale, lease, assignment,
11 encumbrance, transfer or conveyance of any of SemStream Arizona’s used and necessary plant,
12 assets, revenue or property.” (*Id.*)

13 15. SemStream’s application claims that the proposed reorganization of SemStream
14 Arizona will not impair its financial status or ability to attract capital, and that Alliant’s propane
15 services are much more extensive than SemStream Arizona’s limited operations. In addition, the
16 application indicates that Alliant’s parent company, Pinnacle, is one of the largest propane
17 distributors in the country. (*Id.* at 4.)

18 16. The application claims that Alliant has not identified and of SemStream Arizona’s
19 operations that would require workforce changes; and Alliant expects to retain all positions in the
20 Payson and Page areas following the acquisition by Alliant. (*Id.*)

21 17. As described in the application, following the acquisition SemStream Arizona will
22 have access to necessary capital needs and propane supplies as part of a much large corporate
23 structure provided by JP Energy and its subsidiaries. SemStream asserts that JP Energy has access to
24 numerous lending institutions and credit facilities which enhances negotiating power and will create
25 greater economies of scale. (*Id.*)

26 18. SemStream’s application states that service to customers will not be impacted in any
27 way as a result of the transaction, SemStream will continue to operate as a public service corporation
28 subject to the Commission’s jurisdiction, and it “will continue to provide safe, reliable and adequate

1 propane service to customers in its service territories under the same rates and tariffs approved by the
2 Commission.” (*Id.* at 5.)

3 19. Based on its analysis, Staff found that Alliant is a fit and proper entity to acquire all of
4 the issued and outstanding membership units in SemStream Arizona and to retain SemStream’s
5 existing CC&N. According to Staff, Alliant has adequate resources and expertise to operate
6 SemStream’s propane distribution service in Arizona, based on the substantial assets and experience
7 provided by Alliant’s parent company, Pinnacle. (Staff Report, at 4.)

8 20. Staff indicated that although transfer of SemStream’s membership interests to Alliant
9 is in the public interest, Staff does not recommend that a waiver of the affiliate interest rules should
10 be granted. Staff states that JP Energy is a growing company and the Commission has an ongoing
11 interest in receiving the annual reports required by the affiliate interest rules. (*Id.*)

12 21. The Staff Report indicates that, as discussed above, Alliant intends to retain
13 SemStream’s current employees after completion of the transaction, and there are currently no
14 outstanding safety issues pending with the Commission’s Pipeline Safety Division. (*Id.*)

15 22. Staff states that SemStream is in good standing with the Commission’s Corporations
16 Division. The Consumer Services database shows that SemStream had six complaints filed since
17 2009 related to billing and service issues; however, according to Staff, all of the complaints have
18 been resolved and closed. (*Id.* at 4-5.)

19 23. Staff recommends approval of the reorganization of SemStream Arizona, or the
20 successor named entity in which Alliant Gas, LLC, will acquire all of the issued and outstanding
21 units of membership from SemStream Arizona’s direct parent, SemStream, LP, subject to the
22 following conditions:

- 23 • That SemStream Arizona retains the tariff, rates and charges approved by the
24 Commission in Decision No. 73160 for the Payson Division, and in Decision No.
25 66101 for the Page Division, pending conclusion of a subsequent rate case.
- 26 • That SemStream Arizona maintain separate accounting records for the Payson and
27 Page Divisions and retain copies of the related books and records in Arizona.
- 28 • That SemStream Arizona and its parent companies make available to Staff all

1 requested books and records during a rate case or other proceedings before the
2 Commission.

- 3 • That SemStream Arizona shall not seek regulatory recovery of any costs arising from
4 the transaction in a future rate case.
- 5 • That the Commission deny SemStream Arizona recovery of any acquisition
6 adjustment resulting from the transaction.
- 7 • That if the Commission decides to defer consideration of regulatory recovery of
8 acquisition costs and adjustments to a future rate proceeding, SemStream Arizona
9 should be required to “demonstrate that clear, quantifiable and substantial net benefits
10 to ratepayers have resulted from the acquisition of the Page and Payson Divisions’
11 systems that would not have been realized had the transaction not occurred, before the
12 Commission would consider recovery of any acquisition adjustment in a future rate
13 proceeding.” (*Id.* at 5.)
- 14 • That SemStream Arizona be required to maintain adequate levels of staffing, including
15 qualified technical personnel, sufficient to avoid a degradation of service to customers
16 in Arizona.
- 17 • That SemGroup Corporation assume full responsibility for any gain or loss arising
18 from the reorganization of SemStream Arizona.
- 19 • That SemStream Arizona comply with all Commission rules, orders and other
20 applicable requirements relevant to the provision of service in Arizona.
- 21 • That SemStream Arizona file timely financial and other reports required by the
22 Commission in the proper format.
- 23 • That SemStream Arizona maintain all procedures and records needed to demonstrate
24 compliance with pipeline safety regulations at the Page and Payson offices. (*Id.* at 6.)

25 24. Pursuant to Arizona Administrative Code (“A.A.C.”) R14-2-803, SemStream
26 Arizona’s application to reorganize in the manner described herein should be approved, subject to
27 compliance with Staff’s recommendations set forth above.
28

CONCLUSIONS OF LAW

1
2 1. SemStream Arizona is a public service corporation within the meaning of Article 15,
3 Section 3 of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

4 2. The Commission has jurisdiction over SemStream Arizona and the subject matter of
5 the Notice of Intent to Reorganize, pursuant to Article 15, Section 3 of the Arizona Constitution and
6 the Commission's Affiliated Interests Rules, A.A.C. R14-2-801 through 806.

7 3. Public notice of the Notice of Intent was given in accordance with Arizona law.

8 4. The public interest requires that the Commission apply the Affiliated Interests Rules in
9 a manner that will maximize protection to ratepayers.

10 5. Approval of the proposed transaction would serve the public interest only if the
11 conditions set forth and discussed herein are imposed to provide adequate protection to ratepayers.

12 6. It is in the public interest to approve the proposed transaction subject to compliance
13 with the conditions set forth and discussed herein.

14 7. Pursuant to A.A.C. R14-2-801 *et seq.*, the proposed transaction will not impair the
15 financial status of the public utility, otherwise prevent it from attracting capital at fair and reasonable
16 terms, or impair the ability of the public utility to provide safe, reasonable and adequate service.

17 8. The transaction proposed in the Notice of Intent, with the conditions set forth and
18 discussed herein, is reasonable and in the public interest and should be approved.

ORDER

19
20 IT IS THEREFORE ORDERED that the transaction proposed by SemStream Arizona, LLC's
21 Notice of Intent is hereby approved, as a reorganization of a holding company pursuant to A.A.C.
22 R14-2-803, subject to the conditions set forth hereinabove as recommended by Staff.

23 IT IS FURTHER ORDERED that SemStream Arizona, LLC, shall, within thirty days of the
24 close of the transaction, in a form approved by the Commission's Utilities Division, notify its
25 customers of the change in ownership of the utility, and shall file, as a compliance item in this docket,
26 proof of such customer notice.

27 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,
28 shall retain the tariff, rates and charges approved by the Commission in Decision No. 73160 for the

1 Payson Division, and in Decision No. 66101 for the Page Division, pending conclusion of a
2 subsequent rate case.

3 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,
4 shall maintain separate accounting records for the Payson and Page Divisions and retain copies of the
5 related books and records in Arizona.

6 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,
7 and its parent companies shall make available to Staff all requested books and records during a rate
8 case or other proceedings before the Commission.

9 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,
10 shall not seek regulatory recovery of any costs arising from the above-described transaction in a
11 future rate case.

12 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,
13 shall not be permitted recovery of any acquisition adjustment resulting from the above-described
14 transaction.

15 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,
16 shall maintain adequate levels of staffing, including qualified technical personnel, sufficient to avoid
17 a degradation of service to customers in Arizona.

18 IT IS FURTHER ORDERED that SemGroup Corporation shall assume full responsibility for
19 any gain or loss arising from the reorganization of SemStream Arizona, LLC.

20 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,
21 shall comply with all Commission rules, orders and other applicable requirements relevant to the
22 provision of service in Arizona.

23 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,
24 shall file timely financial and other reports required by the Commission in the proper format.

25 ...
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1 IT IS FURTHER ORDERED that SemStream Arizona, LLC, or its successor named entity,
2 shall maintain all procedures and records needed to demonstrate compliance with pipeline safety
3 regulations at the Page and Payson offices.

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

9
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 _____ day of _____ 2012.

17
18 _____
19 ERNEST G. JOHNSON
20 EXECUTIVE DIRECTOR

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1 SERVICE LIST FOR: SEMSTREAM ARIZONA PROPANE, L.L.C.

2 DOCKET NO.: G-20471A-12-0425

3
4 Michael M. Grant
5 Jennifer A. Cranston
6 GALLAGHER & KENNEDY, P.A.
7 2575 E. Camelback Road
8 Phoenix, AZ 85016-9225
9 Attorneys for SemStream Arizona Propane, L.L.C.

10
11 Todd C. Wiley
12 Jay L. Shapiro
13 FENNEMORE CRAIG, P.C.
14 3003 N. Central Ave., Suite 2600
15 Phoenix, AZ 85012-2913
16 Attorneys for Alliant Gas, L.L.C.

17
18 Janice Alward, Chief Counsel
19 Legal Division
20 ARIZONA CORPORATION COMMISSION
21 1200 W. Washington Street
22 Phoenix, Arizona 85007

23
24 Steven Olea, Director
25 Utilities Division
26 ARIZONA CORPORATION COMMISSION
27 1200 W. Washington Street
28 Phoenix, Arizona 85007