

COMMISSIONERS
BOB STUMPE
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

OPEN MEETING ITEM



0000142994

ARIZONA CORPORATION COMMISSION

RECEIVED

2013 FEB 27 P 2:29

DATE: FEBRUARY 27, 2013

DOCKET NOS.: W-02059A-11-0172 AND W-20801A-11-0172

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

**W.M. WOOTTON/DESERT VALENCIA WATER SYSTEM AND
DESERT VALENCIA WATER COMPANY, INC.
(SALE/TRANSFER 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:

MARCH 8, 2013

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:

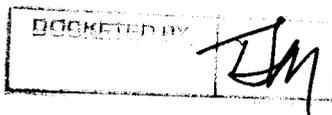
MARCH 12, 2013 AND MARCH 13, 2013

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

FEB 27 2013



Jodi A. Jerich
JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347
www.azcc.gov

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SBernal@azcc.gov.

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

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

IN THE MATTER OF THE APPLICATION OF
W.M. WOOTTON/DESERT VALENCIA WATER
SYSTEM FOR APPROVAL OF THE TRANSFER
OF ITS ASSETS AND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY TO DESERT
VALENCIA WATER COMPANY, INC.

DOCKET NO. W-02059A-11-0172
DOCKET NO. W-20801A-11-0172
DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: September 25, 2012
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Ms. Pamela Walsma, SHADLE & WALSMAS, PLC, on behalf of Applicant; and
Ms. Robin Mitchell, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On April 22, 2011, W.M. Wootton/Desert Valencia Water System ("DVW") filed with the Arizona Corporation Commission ("Commission") an application requesting Commission approval for the transfer of its assets and its Certificate of Convenience and Necessity ("Certificate") to Desert Valencia Water, Inc. ("Company" or "Applicant"). The Company is a privately held Arizona corporation operated and managed by W.M. Wootton's son, Scott Wootton who is its president. According to the application, DVW and the Company entered into an agreement on April 13, 2011, under which DVW will transfer all of its assets and its Certificate to the Company.

On May 16, 2011, DVW filed certification of publication showing that notice of the application had been published in the *Yuma Sun* on April 28, 2011. DVW also filed certification that it had provided notice to its customers by mail on April 30, 2011.

On June 10, 2011, the Commission's Utilities Division Staff ("Staff") issued a Notice of

1 Insufficiency pursuant to A.A.C. R14-2-411 along with a request for additional data.

2 On June 13, 2012, Staff issued a Notice of Sufficiency stating that DVW's application had
3 met the sufficiency requirements of A.A.C. R14-2-411.¹

4 On August 3, 2012, the Commission issued a Procedural Order scheduling the proceeding for
5 a hearing on September 25, 2012.

6 On September 4, 2012, the Company filed certification that it had both mailed and published
7 public notice of the proceeding pursuant to the Commission's Procedural Order.

8 On September 25, 2012, a full public hearing was convened before a duly authorized
9 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Company and
10 Staff appeared with counsel. No members of the public appeared at the hearing. At the conclusion of
11 the proceeding, the matter was taken under advisement pending submission of a Recommended
12 Opinion and Order to the Commission.

13 On December 17, 2012, the Company filed a request for an extension of time in which to file
14 certification that water meters had been installed as recommended by Staff in the proceeding.

15 On February 7, 2013, Staff filed a Memorandum which indicates that Staff does not object to
16 an extension of the time until March 31, 2013 for the Company to install water meters.

17 * * * * *

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

20 **FINDINGS OF FACT**

21 1. Pursuant to Decision No. 39772 (October 8, 1968) DVW provides water service to an
22 area located approximately 30 miles east of the City of Yuma, in Yuma County, Arizona.

23 2. DVW currently provides water to approximately 12 residential customers.

24 3. DVW is currently owned by W.M. Wootton who was issued the original Certificate to
25 provide water service, but it is currently being operated by Mr. Wootton's son, Scott Wootton. Scott
26 Wootton has been acting under the terms of a Power of Attorney granted by his father who is 90
27 years old and has medical problems.

28 ¹ The Notice of Sufficiency was not received by the presiding Administrative Law Judge until August 1, 2012.

1 4. On April 22, 2011, DVW filed the application to transfer its assets and Certificate to
2 the Company.

3 5. Scott Wootton is the president and manager of the Company.

4 6. Scott Wootton indicated that if the utility ceased operations it would cause a hardship
5 on its customers.

6 7. Scott Wootton testified that he had reviewed the Staff Report recommending approval
7 of the application and is in agreement with its recommendations and will comply with Staff's
8 requirements.

9 8. Mr. Wootton testified that DVW has provided public notice of the application
10 pursuant to the Commission's Procedural Order and has not received any objections to the proposed
11 transfer of assets and Certificate to the Company.

12 9. The Company has been granted a franchise by Yuma County to provide water service.

13 10. The water source for the utility is the Wellton-Mohawk Irrigation and Drainage
14 District ("WMIDD"). The water is treated so that it is potable.

15 11. According to Mr. Wootton, it was originally planned that the area served by the utility
16 would be a residential area with water rights sufficient to serve several hundred customers.

17 12. Although the Commission in Decision No. 39672 authorized DVW to charge metered
18 rates according to its tariff, it has been charging flat rates of \$35.00 a month. However, the Company
19 will install meters and charge customers the metered rate after the Commission approves the
20 application for the transfer of DVW's assets and Certificate.

21 13. According to Mr. Del Smith, the Staff Engineering Supervisor, since the Company has
22 fewer than 15 connections, the Arizona Department of Environmental Quality ("ADEQ") categorizes
23 DVW as a non-public water system and normal monitoring and reporting requirements for its
24 operation and maintenance requirements do not apply. However, Mr. Smith indicated that Staff has
25 discussed with the Company that its water should be tested to ensure its potability. Water test results
26 revealed that the system is delivering potable water to its customers for drinking purposes. Staff has
27 learned that the utility has two systems; one for potable water and a separate system which delivers
28 non-potable water which can be used for other purposes such as irrigation.

1 14. During the hearing, Staff agreed that the Company should have 180 days from the
2 effective date of the Decision to file proof of the transfer of the ownership of the water rights from
3 the WMIDD.

4 15. According to the Staff Report, there are no refunds due any customers for deposits or
5 any payments to be made pursuant to main line extension agreements.

6 16. Staff indicates that the Company has an experienced operator to oversee the operations
7 of the water utility.

8 17. Staff has concluded that the 250 acre feet of water which the Company is able to
9 receive pursuant to its agreement with the WMIDD is adequate for the Company's existing customers
10 and for reasonable growth in the future. The utility also has adequate storage facilities, which include
11 a 20,000 gallon storage tank and two pressure tanks along with its distribution system.

12 18. Although Staff originally recommended that the Company complete the installation of
13 individual water meters for each customer by December 31, 2012, after a request for a 90 day
14 extension from the Company, Staff is recommending that the Company be granted until March 31,
15 2013, to allow the Company time to install the individual water meters.

16 19. Staff stated that there are no delinquent compliance items for the Company, but noted
17 that it is not charging its tariff rates due to a lack of meters being installed for its customers, Staff is
18 addressing this issue in its recommendations with respect to the Company's application.

19 20. Staff has concluded that the Company has sufficient financial resources to provide the
20 requested service.

21 21. Staff has concluded that the Company's management has the ability to operate a
22 public water utility service and that the transfer of assets and Certificate are in the public interest.

23 22. Staff is recommending approval of the transfer of assets and Certificate to the
24 Company, subject to the following conditions:

- 25
- 26 a. that the Company install meters on each currently actively customer service
27 connection to measure the amount of water delivered to the water system by
28 WMIDD by March 31, 2013;
- b. that as each additional connection is made, the Company install additional
meters;

- 1 c. that the Company begin charging its tariffed rates as soon as all active
2 customers are metered, but no later than March 31, 2013;
- 3 d. that the Company be required to coordinate the reading of its source meter and
4 individual customer meters on a monthly basis and report this data in its
5 Commission Annual Report for the year ending December 31, 2013 (“Annual
6 Report”);
- 7 e. that if the reported water loss in the Annual Report is greater than 10 percent,
8 the Company prepare a report containing a detailed analysis and plan to reduce
9 water loss to less than 10 percent. If the Company believes it is not cost
10 effective to reduce the water loss to less than 10 percent, it should submit a
11 detailed cost benefit analysis to support its opinion. In no case shall the
12 Company allow water loss to be greater than 15 percent. The water loss
13 reduction report or the detailed analysis, whichever is submitted, shall be
14 docketed as a compliance item no later than March 31, 2014;
- 15 f. that the Company maintain its books records, and bank accounts separately
16 from its sole shareholder and other affiliated companies;
- 17 g. that, in addition to its regular rates and charges, the Company be allowed to
18 collect from its customers the appropriate privilege, sales or use tax;
- 19 h. that, the Company, within 180 days from the effective date of this Decision,
20 file proof of ownership of the water rights from WMIDD;
- 21 i. that the Company sample monthly for Coliform and annually for nitrates to
22 ensure continued compliance with A.A.C. R14-2-407(A). Staff further
23 recommends that the Company file with the Commission’s Docket Control, as
24 a compliance item in this docket, an affidavit indicating that the testing
25 recommended herein has been complied with and that the Company is
26 delivering water to its customers that complies with water quality standards.
27 Staff further recommends that the Company file this affidavit each January
28 with the first affidavit due no later than March 31, 2013. Such quarterly
reports shall continue to be filed until ADEQ public water system monitoring
and reporting requirements and operation and maintenance requirements apply;
- j. that the Company file a curtailment tariff as soon as possible, but no later than
45 days after the effective date of the Commission’s Decision in this matter.
The tariff shall be filed with the Commission’s Docket Control as a
compliance item in this docket for Staff’s review and certification. Staff
further recommends that the Company file such a tariff found on the
Commission’s website at
www.azcc.gov/Divisions/Utilities/forms/Curtailment%20Consecutive%202009.doc; and
- k. that the Company file a backflow prevention tariff as soon as possible, but not
later than 45 days after the effective date of the Commission’s Decision in this
matter. The tariff shall be filed with the Commission’s Docket Control as a
compliance item in this docket for Staff’s review and certification. Staff
further recommends that the Company file such a tariff in the form found on
the Commission’s website at
www.azcc.gov/Divisions/Utilities/forms/CrossConnectBackflow.pdf.

1 23. Due to the timing of this Decision, it is appropriate to allow the Company until April
2 30, 2013 to install the meters.

3 24. Staff's recommendation that the application be approved, with its additional
4 recommendations as modified herein and as set forth hereinabove should be adopted.

5 **CONCLUSIONS OF LAW**

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

8 2. Upon receiving a Certificate, the Company will be a public service corporation within
9 the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

10 3. The Commission has jurisdiction over DVW and the Company and the subject matter
11 of the application.

12 4. Notice of the application in this proceeding was given in accordance with the law.

13 5. There is a continuing need for water utility service in DVW's certificated area.

14 6. The Company is a fit and proper entity to acquire the assets and Certificate of DVW
15 and to provide water service to the customers.

16 7. The Company has secured a water franchise from the Yuma County Board of
17 Supervisors authorizing it to provide water utility service in the certificated service area currently
18 held by DVW.

19 8. It is in the public interest for the Company to acquire and operate DVW's assets.

20 9. DVW's application should be approved subject to the Company complying with the
21 conditions recommended by Staff in Findings of Fact No. 22 subject to the Company being
22 authorized to install meters by April 30, 2013.

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

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 the application of W.M. Wootton/Desert Valencia Water System for approval of the transfer of its assets and Certificate of Convenience and Necessity to Desert Valencia Water, Inc. is hereby approved subject to the conditions as set forth in Findings of Fact Nos. 22 and 23 hereinabove.

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, JODI JERICH, 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 _____ 2013.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: W.M. WOOTTON/DESERT VALENCIA WATER
2 SYSTEM AND DESERT VALENCIA WATER, INC.

3 DOCKET NOS.: W-02059A-11-0172 AND W-20801A-11-0172

4 Scott Wootton, President
5 DESERT VALENCIA WATER SYSTEM
6 DESERT VALENCIA WATER CO., INC.
7 2000 Forest Hills Road
8 Prescott, AZ 86303

9 Pamela Walsma
10 SHADLE & WALSMAN, PLC
11 833 East Plaza Circle, Suite 200
12 Yuma, AZ 85365-2017
13 Attorneys for Desert Valencia Water Co., Inc.

14 Janice Alward, Chief Counsel
15 Legal Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, AZ 85007

19 Steven M. Olea, Director
20 Utilities Division
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
23 Phoenix, AZ 85007

24
25
26
27
28