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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

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

2013 MAY 28 P 2:57

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAY 28 2013

DOCKETED BY *AM*

IN THE MATTER OF THE INVESTIGATION OF THE FAILURE OF BELLEMONT WATER COMPANY, AN ARIZONA PUBLIC SERVICE CORPORATION, AND BELLEMONT WATER COMPANY SHAREHOLDERS BRAD NESS, GLORIA NESS, ERIK NESS, DIANAH NESS (AKA DIANA NESS), OPERATING AS AN ARIZONA PUBLIC SERVICE CORPORATION IN FACT, TO COMPLY WITH ARIZONA STATUTES AND COMMISSION RULES AND REGULATIONS.

DOCKET NO. W-02526A-10-0499

**FIFTEENTH**  
**PROCEDURAL ORDER**  
**(Amends Fourteenth**  
**Procedural Order)**

**BY THE COMMISSION:**

On December 16, 2010, the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") filed a Complaint against Bellemont Water Company ("BWC" or "Company") and certain of its shareholders as follows: Brad Ness; Gloria Ness; Erik Ness; and Dianah Ness (aka Diana Ness) (collectively "Respondents") for alleged violations of Arizona law and Commission Decisions.

On January 6, 2011, a Joint Answer was filed by BWC, Brad Ness, Gloria Ness, Erik Ness and Dianah Ness.

On January 12, 2011, a separate response was filed by Klaudia Ness who was not named as a Respondent in the Complaint.

On January 14, 2011, by Procedural Order, a procedural conference was scheduled on February 8, 2011.

On February 8, 2011, Staff appeared with counsel and Respondents appeared on their own behalf. The parties discussed the issues between the parties, but were unable to reach a satisfactory resolution of the Complaint. Staff indicated that it may seek injunctive relief in the proceeding and

1 may require a court order. At the conclusion of the procedural conference, Staff requested that a  
2 hearing be scheduled.

3 On February 14, 2011, a response was filed by Erik Ness as president of BWC.

4 On February 16, 2011, by Procedural Order, a hearing was scheduled on May 3, 2011, and  
5 other procedural filing dates were established for the Staff Report (April 8, 2011) and a response by  
6 Respondents (April 22, 2011).

7 On April 5, 2011, Brad, Gloria, Erik and Dianah Ness filed a response to Counts 1 through 4  
8 of the Complaint.

9 On April 8, 2011, Staff filed a Motion for Extension of Time ("Motion") in which to file its  
10 report, which was due to be filed on that date. Staff requested an extension of time until April 15,  
11 2011, in which to file its report due to the discovery of new facts and the complicated nature of the  
12 proceeding. Staff further stated Respondents' response to the Staff Report should be extended to  
13 April 29, 2011.

14 On April 12, 2011, by Procedural Order, Staff's Motion was granted and extensions were  
15 authorized for Staff to file its report and for Respondents to file their response.

16 On April 18, 2011, Staff filed a Motion to Amend Complaint to add an additional Count to  
17 the Complaint herein based on recently discovered evidence. Additionally, Staff filed a Motion for  
18 Preliminary Injunction.

19 On April 28, 2011, Brad, Gloria, Erik and Dianah Ness filed a request for an extension of time  
20 to respond to the amended Complaint together with a request for a continuance of the proceeding.

21 On April 29, 2011, by Procedural Order, Staff's Motion to Amend Complaint was granted.  
22 Staff's Motion for Preliminary Injunction was taken under advisement. With respect to Respondents'  
23 request for an extension of time to respond to the Amended Complaint, Respondents' request was  
24 granted. Respondent's request for a continuance of the proceeding was taken under advisement  
25 pending a discussion to be held at the outset of the hearing on May 3, 2011, to determine whether  
26 additional time was required for Respondents' defense to the allegation in the Amended Complaint.

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1 On May 3, 2011, at what was to be the initial hearing in the proceeding, Staff appeared with  
2 counsel and Respondents appeared on their own behalf. Klaudia Ness, who is not a named  
3 Respondent, but is BWC's corporate secretary and a part owner, also appeared.

4 Subsequently, Respondent Erik Ness testified that he is now the president of BWC replacing  
5 his father, Respondent Brad Ness. Respondent Erik Ness stated that neither he nor any of the other  
6 individually named Respondents who own the majority of the stock in BWC would access any of  
7 BWC's bank accounts or revenues. He acknowledged that the Respondents did not oppose the  
8 issuance of a preliminary injunction by the Commission which orders the Respondents to refrain  
9 from taking any part in BWC's financial dealings or taking part in its management. He also stated  
10 that the majority of the shareholders in BWC wished to sell their stock in the Company to a  
11 prospective purchaser who will need to see BWC's records and bank statements.

12 BWC's corporate secretary, Klaudia Ness, testified that she works as the Company's day-to-  
13 day operator. She stated that her husband, Elliot Ness, who also has not been named as a  
14 Respondent, wished to sell his shares in BWC, but she does not wish to sell her shares. Ms. Ness  
15 further stated that she would notify Staff if she becomes aware of any of the individually named  
16 Respondents accessing any of BWC's accounts or revenues, and will continue to cooperate with Staff  
17 during the pendency of the proceeding. Because Erik Ness had explained that the prospective  
18 purchaser of BWC will need to review the Company's records and bank statements, Klaudia Ness  
19 was directed to make copies of the documents for the past two years available through Rodney  
20 Wilson, BWC's accountant, by the middle of the following week.

21 At the conclusion of the proceeding on May 3, 2011, Respondents were granted leave, until  
22 June 1, 2011, to file their response to the amended Complaint.

23 On May 27, 2011, the Commission issued Decision No. 72376 which orders the named  
24 Respondents to not access the Company's funds or revenues.

25 On June 1, 2011, Respondents filed their response to the Amended Complaint and noted that  
26 BWC's accountant had not provided copies of BWC's bank statements for the past two years and had  
27 reported that Klaudia Ness had instructed him not to give them to the Respondents.

28 On June 24, 2011, by Procedural Order, a status conference was scheduled on July 26, 2011.

1 On July 14, 2011, Staff filed a Motion for a Continuance of the Status Conference because  
2 Staff's counsel had a schedule conflict due to another proceeding having been scheduled previously.

3 On July 18, 2011, by Procedural Order, the status conference was continued to August 22, 2011.

4 On August 22, 2011, at the status conference, Staff appeared with counsel, and Respondents  
5 Brad, Erik and Dianah Ness appeared on their own behalf. Klaudia Ness, who is managing the utility  
6 on a day-to-day basis, appeared telephonically.

7 Respondents Brad, Erik and Dianah Ness indicated that Klaudia Ness had still not turned over  
8 copies of BWC's records and bank statements as previously ordered. Klaudia Ness responded that  
9 she had been confused, and was again directed to provide copies of the documents to the Respondents  
10 by August 25, 2011.

11 Staff indicated that there have been no complaints from customers regarding the provision of  
12 service. However, Staff had learned that notice had been given of a Trustee's Sale on November 3,  
13 2011, for the sale of BWC's assets which it was believed would include the utility's well site, storage  
14 facilities and related assets. The sale arose due to the alleged unauthorized long-term debt incurred by  
15 Respondents who used the proceeds of a loan from third parties to pay for their stock in BWC as set  
16 forth in the Complaint which was filed by Staff on December 16, 2010. Staff was to investigate  
17 possible legal options with respect to the impending Trustee's Sale.

18 On August 23, 2011, by Procedural Order, a status conference was scheduled on October 6,  
19 2011.

20 On October 6, 2011, at the status conference, Staff appeared with counsel. Erik and Dianah  
21 Ness appeared on their own behalf. Klaudia Ness also appeared. Staff's attorney indicated that Staff  
22 had been in contact with Pioneer Title and a Flagstaff attorney. Staff believed that the Trustees' Sale  
23 had been placed on hold, and Staff agreed to follow this matter closely.

24 Erik Ness indicated that a realtor had approached him concerning the possible sale of the  
25 Company or its stock. Mr. Ness also requested some additional records from Klaudia Ness who was  
26 to provide copies of the records at BWC's accountant's office.

27 The parties agreed that an additional status conference was to be scheduled in approximately  
28 60 days.

1 On October 7, 2011, by Procedural Order, another status conference was scheduled on  
2 January 5, 2012.

3 On January 5, 2012, at the status conference, Staff appeared with counsel and Erik and  
4 Dianah Ness appeared on their own behalf. Klaudia Ness, the Company's corporate secretary, did  
5 not enter an appearance. Staff was continuing to monitor the situation and BWC remained for sale.  
6 Staff reported that the Trustee's Sale had been delayed until April 2, 2012, and other legal issues  
7 involving title insurance were pending. Erik Ness requested that Staff contact Klaudia Ness to direct  
8 her to send bank statements directly to him to help facilitate BWC's sale. Staff concluded by  
9 requesting that another status conference be scheduled before the pending Trustee's sale on April 2,  
10 2012.

11 On January 6, 2012, by Procedural Order, another status conference was scheduled to be held  
12 on March 12, 2012.

13 On March 12, 2012, at the status conference, Staff appeared with counsel. Erik Ness  
14 appeared as the president of BWC and on his own behalf telephonically. Klaudia Ness, BWC's  
15 corporate secretary, who is not a party, also appeared telephonically. Staff believed that the Trustee's  
16 Sale would be vacated or continued in April. Klaudia Ness was also directed to be sure to provide  
17 any past and future bank statements of BWC to Erik Ness in a timely fashion. Staff further requested  
18 that another status conference be scheduled in approximately six months to review the Company's  
19 status and its prospects for sale.

20 On March 15, 2012, by Procedural Order, another status conference was scheduled on  
21 September 13, 2012.

22 On September 7, 2012, Steven D. Adams and Jane A. Adams, husband and wife (collectively  
23 "Adams"), filed an application to intervene in the above-captioned proceeding pursuant to A.A.C.  
24 R14-3-105. Their application described the facts surrounding a September 13, 2010, loan agreement  
25 between Adams and BWC and the majority of its shareholders. The loan funds were used to resolve  
26 litigation involving the purchase of BWC from its former owner. Adams stated further that one day  
27 before the close of the loan transaction, several of the Ness family members executed an amended  
28 loan agreement which substituted BWC as the sole borrower with the loan secured by a deed of trust

1 on real property that is owned by BWC. Subsequently, after BWC defaulted on the loan, Adams was  
2 advised that the subject loan had not been approved previously by the Commission as required by law  
3 pursuant to A.R.S. § 40-301, et seq. and therefore the loan was void. As a result, Adams stated that  
4 they have a direct interest in this proceeding, and Adams further stated that a lawsuit for monies  
5 owed and other relief had been filed in the Coconino County Superior Court against BWC and the  
6 individual members of the Ness family who are shareholders.

7 On September 10, 2012, Adams filed notice with the Commission of the related civil  
8 Complaint which had been filed against BWC and the Ness family shareholders in the Coconino  
9 County Superior Court, Case No. CV2012-00590.

10 On September 12, 2012, the status conference was continued, and the parties herein were  
11 ordered to file responses to the application by Adams to intervene in this proceeding by September  
12 26, 2012.

13 On February 5, 2013, Mr. Rodney C. Wilson, a Certified Public Accountant ("CPA") who had  
14 provided professional services to BWC, filed a letter which requested Commission authorization for  
15 the Company to pay his accounting fees from the Company's restricted separate interest bearing  
16 account that was a result of Decision No. 70482 (September 3, 2008).

17 On February 19, 2013, Dianah Ness, a BWC shareholder and a named Respondent in this  
18 proceeding, filed a letter of complaint against Klaudia Ness, BWC's corporate secretary and day-to-  
19 day operator. Dianah Ness alleged in her letter that Klaudia Ness was refusing to turn over corporate  
20 minutes and Company records as previously ordered. Additionally, Dianah Ness alleged that Klaudia  
21 Ness was misusing Company funds for personal purposes. It was not indicated whether a copy of  
22 this letter was sent to Klaudia Ness. Additionally, there had been no responses filed to the  
23 application for intervention filed by Adams in this proceeding.

24 On February 26, 2013, by Procedural Order, a copy of Dianah Ness' letter of complaint  
25 against Klaudia Ness was attached to the Procedural Order as Exhibit "A" and sent to Klaudia Ness  
26 who is not a party in this proceeding. Klaudia Ness was ordered to file a response to Dianah Ness'  
27 allegations by March 18, 2013. Further, the application to intervene which was filed by Adams, was  
28 granted, and lastly, a status conference was scheduled on March 20, 2013.

1 On March 15, 2013, Klaudia Ness filed a letter requesting an "extension" of time to prepare  
2 for the status conference, but the letter failed to contain any information whether service was made on  
3 the other parties to the proceeding. Klaudia Ness did indicate that she had spoken to Staff and that  
4 Staff did not oppose the requested extension.

5 On March 19, 2013, by Procedural Order, the request for additional time was granted, and the  
6 parties were ordered in the future, to make all filings with an original and 13 copies when filed at the  
7 Commission. Additionally, the filing party was ordered to send copies of the filing to all parties to  
8 the proceeding as it appeared at page eight of the Thirteenth Procedural Order, except Arizona  
9 Reporting Service, Inc.

10 On April 25, 2013, at the status conference, Staff appeared with counsel, Adams was  
11 represented by counsel, and Klaudia Ness appeared on her own behalf. There were no appearances  
12 made by the named Respondents. Klaudia Ness responded to Dianah Ness' allegations and also filed  
13 a written response after the status conference. Copies of Default Judgments which had been obtained  
14 by Adams against Brad Ness, Gloria Ness, Erik Ness, Dianah Ness, and Elliott Ness, the estranged  
15 husband of Klaudia Ness, in the total amount of \$141,014 were also filed. These judgments ordered  
16 that the Ness' stock certificates or other documents of title in BWC be transferred to Adams in partial  
17 satisfaction of the judgments.<sup>1</sup>

18 Counsel for Adams indicated that his clients are attempting to resolve the stock ownership  
19 issue for BWC since apparently the Ness family members may not have actual possession of the  
20 Company's stock certificates. In the interim, Staff and counsel for Adams indicated that they believe  
21 that the day-to-day management of the Company should remain with Klaudia Ness.

22 Staff reported that no complaints have been received from any customers regarding BWC's  
23 operations. Staff also requested that counsel for Adams keep Staff apprised concerning the progress  
24 made to secure ownership of BWC's stock certificates. However, a question has arisen with respect  
25 to the corporate status of BWC since the Commission's records indicate that the Company failed to  
26 file its 2012 Annual Report ("Report"), and effective January 10, 2013, the corporation was

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28 <sup>1</sup> As a result of the order of the court, Klaudia Ness shall not be required to provide copies of any company records or  
bank statements on an ongoing basis to Erik Ness any longer.

1 dissolved. However, Klaudia Ness indicated that the Company had received its cancelled check for  
2 the filing fee which was paid, and she is going to investigate the matter further and seek reinstatement  
3 of BWC's corporate status. Further, Klaudia Ness disclosed that she had retained a new accountant  
4 for BWC due to a disagreement with the Company's former accountant over a past billing dispute.

5 Under the circumstances, Klaudia Ness should file a report which indicates whether BWC's  
6 corporate status has been resolved or whether any remedial measures are required.

7 Additionally, a status report should be filed by Adams by August 1, 2013, which describes the  
8 Company's ownership structure, and corporate status, if any changes have taken place. Staff should  
9 follow these proceedings and file timely responses to the filings made by Klaudia Ness and Adams.

10 IT IS THEREFORE ORDERED that Klaudia Ness shall file by June 3, 2013, a status report  
11 which states whether Bellemont Water Company has had its corporate status restored.

12 IT IS FURTHER ORDERED that Adams shall file a status report by August 1, 2013, which  
13 describes the current ownership structure and corporate status of Bellemont Water Company together  
14 with their future operating plans for the utility.

15 IT IS FURTHER ORDERED that Staff shall, after the filings by Klaudia Ness and Adams,  
16 file its responses as to the further disposition of this docket.

17 IT IS FURTHER ORDERED that Bellemont Water Company's corporate secretary, Klaudia  
18 Ness, shall no longer be required to provide copies of the Company's records and bank statements to  
19 Erik Ness.

20 IT IS FURTHER ORDERED that all parties and Klaudia Ness shall file, in any Commission  
21 filings, an original and 13 copies and also mail copies of said filing to the respective parties or their  
22 counsel as they appear on the service list of this Procedural Order concerning this proceeding.

23 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules  
24 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission  
25 *pro hac vice*.

26 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance  
27 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
28 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances

1 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is  
2 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the  
3 Administrative Law Judge or the Commission.

4 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
5 Communications) is in effect and shall remain in effect until the Commission's Decision in this  
6 matter is final and non-appealable.

7 IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter,  
8 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by  
9 ruling at hearing.

10 DATED this 28<sup>th</sup> day of May, 2013.

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14 MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

15 Copies of the foregoing mailed/delivered  
16 this 28<sup>th</sup> day of May, 2013 to:

- |                            |  |
|----------------------------|--|
| 17 Brad Ness               | Phoenix, AZ 85014                          |
| 18 Gloria Ness             | Attorneys for Steven D. and Janet A. Adams |
| 19 Erik Ness               |  |
| 20 Dianah Ness             | Janice Alward, Chief Counsel               |
| 21 3960 North Pinal Street | Legal Division                             |
| 22 Kingman, AZ 86409       | ARIZONA CORPORATION COMMISSION             |
|                            | 1200 West Washington Street                |
|                            | Phoenix, AZ 85007                          |
| 23 Klaudia Ness            |  |
| 24 BELLEMONT WATER COMPANY | Steve Olea, Director                       |
| P.O. Box 31176             | Utilities Division                         |
| Flagstaff, AZ 86003        | ARIZONA CORPORATION COMMISSION             |
|                            | 1200 West Washington Street                |
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| 25 Mary Keller Wong        |  |
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|                              |  |
|------------------------------|--|
| 25 Andrew Abram              |  |
| 26 David M. Villadolid       |  |
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| BURCH & CRACCHIOLO, P.A.     | By:  |
| 702 E. Osborn Rd., Suite 200 | Tammy Velarde  |
|                              | Assistant to Marc E. Stern   |