

OPEN MEETING ITEM



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



ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
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AUG 26 2013

DATE: AUGUST 26, 2013
DOCKET NO.: W-20460A-13-0004

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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:

ST. DAVID SPRINGS, LLC
(CANCELLATION OF CC&N/SALE OF ASSETS)

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:

SEPTEMBER 4, 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:

SEPTEMBER 10, 2013 AND SEPTEMBER 11, 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.

JODI JERICH
EXECUTIVE DIRECTOR

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

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 BOB STUMP - Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION OF ST.
9 DAVID SPRINGS, LLC FOR APPROVAL OF THE
10 SALE OF ASSETS AND/OR CANCELLATION OF
11 ITS CERTIFICATE OF CONVENIENCE AND
12 NECESSITY.

DOCKET NO. W-20460A-13-0004

DECISION NO. _____

ORDER

13 Open Meeting
14 September 10 and 11, 2013
15 Phoenix, Arizona

16 **BY THE COMMISSION:**

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

19 FINDINGS OF FACT

20 Procedural History

21 1. On January 4, 2013, St. David Springs, LLC ("St. David" or "Company") filed with
22 the Commission an application for approval to cancel its Certificate of Convenience and Necessity
23 ("CC&N") ("Application").

24 2. On February 1, 2013, the Commission's Utilities Division ("Staff") submitted an
25 Insufficiency Letter and Data Requests and St. David provided its responses on March 11, 2013.

26 3. Staff docketed a second Insufficiency Letter and Data Requests on March 22, 2013.
27 The Company responded on April 3, 2013.

28 4. On April 19, 2013, Staff filed a copy of a letter sent via first class registered mail to
one of St. David's customers regarding the Application. On June 27, 2013, Staff docketed a copy of
the returned envelope bearing a notation from the U.S. Post Office that the letter was unclaimed.

5. On May 8, 2013, Staff docketed its Sufficiency Letter stating that St. David's
Application met the requirements of Arizona Administrative Code ("A.A.C.") R14-2-411(C).

1 but estimated it would begin development in two or three years. The Decision required St. David to
2 file a rate application within six months of the fifth anniversary of the Decision's effective date.

3 13. On February 28, 2012, the Company filed a request to extend the filing deadline for
4 the rate application because Enclave's planned development had not occurred. Decision No. 73226
5 (June 5, 2012) approved the request and extended the rate application deadline to July 19, 2017.

6 14. St. David's system consists of one well, a 3,000 gallon storage tank, a pressure tank
7 and the distribution system. According to Staff, the closest water provider is St. David Water
8 Improvement District, approximately two miles north of the Company's certificated area.

9 15. With fewer than 15 customers, St. David is not subject to the Arizona Department of
10 Environmental Quality's monitoring and reporting requirements. The Company is not located in an
11 Active Management Area and is not regulated by the Arizona Department of Water Resources.

12 16. Staff reported that St. David is in good standing with the Commission's Corporations
13 Division and that there are no delinquent Commission compliance items.

14 APPLICATION

15 17. In the Application, St. David noted it had only two customers, both with other sources
16 of water, and there are no customer deposits or refunds due on main extension agreements, meters or
17 line extensions. St. David stated that its expenses exceed its revenue and it wishes to discontinue
18 service and cancel its CC&N.

19 18. One of the Company's customers provided a letter to the Commission stating he had
20 no objection to cessation of service and explaining that he had completed construction of his own
21 well and disconnected from St. David's service line on February 1, 2013.

22 19. St. David and Staff noted that the second customer used St. David's water service only
23 to fill a horse trough near the customer's home, but she has not received service since February 1,
24 2013. The Company believes the home is served by a private well and provided well registration
25 records to support its claim. According to Staff, this customer contacted the Commission's Consumer
26 Services Section on December 31, 2012, about termination of service. Staff attempted to contact the
27 customer by telephone, certified mail and regular mail, but Staff did not receive a response. The
28 certified letter was returned to the Commission as unclaimed on June 27, 2013, but the letters sent by

1 regular first class mail have not been returned. On April 17, 2013, the customer answered a
2 telephone call from Staff, but when Staff identified itself, the customer ended the call.

3 20. On July 11, 2013, St. David docketed its certification of mailing and attached a list of
4 all customers and property owners within its certificated area to which the Company mailed notice of
5 the cancellation. Of the seven notices mailed, three of the notices went to this customer as the owner
6 of three parcels with three separate addresses. Additionally, the Company published notice on July
7 17, 2014, in the *San Pedro Valley News-Sun Arizona Range News*. The Commission did not receive
8 any objections to the cancellation from the other property owners in the certificated area.

9 21. Based on the information provided by the Company and the results of its own
10 investigation, Staff concluded that the second customer has an alternative source of water.

11 22. Staff asserts cancellation of the CC&N is in the public interest because it would
12 unencumber the certificated area and allow for future development from other potential water
13 providers. Based on the circumstances, Staff recommends Commission approval of the Application
14 without a hearing.

15 DISCUSSION AND CONCLUSION

16 23. St. David holds a CC&N as a public service corporation within the meaning of Article
17 XV of the Arizona Constitution. In *Natural Gas Service Co. et al. v. Serv-Yu Cooperative, Inc.*, 70
18 Ariz. 235, 219 P.2d 324 (1950) ("*Serv-Yu*"), the court enumerated the factors used to determine
19 whether a utility is a public service corporation:

20 1. (What the Entity Actually Does): St. David has no customers and it no
21 longer provides water service to the public.

22 2. (Dedication of Property to a Public Use): The Company's property is no
longer dedicated to a public use.

23 3. (Articles of Incorporation): St. David was formed by Enclave to operate
24 the water system assets that Enclave acquired as part of a real estate purchase;
however, the Company no longer provides water service to the public.

25 4. (Service of a Commodity in Which Public is Generally Held to Have an
26 Interest): The Company no longer provides, nor wishes to provide, a commodity
or service in which the public might have an interest.

27 5. (Monopolizing or Intending to Monopolize): The Company has no intent
28 to provide water service and St. David seeks to have its current exclusive right to
provide water service canceled.

1 6. (Acceptance of Substantially All Requests for Service): The Company has
2 not received any new requests for service and St. David is not accepting any
3 requests for water service.

4 7. (Service Under Contract): St. David has no contracts for water service.

5 8. (Competition with Other Public Service Corporations): The Company has
6 not been in competition with other public service corporations and, if this
7 Application is granted, it will not be in competition with any public service
8 corporations in the future.

9 24. The Commission granted the original CC&N in 1964, but there were only a few
10 customers at any point, and as of February 1, 2013, St. David no longer provides service. Analysis of
11 the *Serv-Yu* factors indicate that only its possession of a CC&N identifies St. David as a public
12 service corporation, and upon approval of the Application, the designation will end. One of the
13 former customers does not object to cancellation and has another source of water. The Company and
14 Staff attempted to contact the second customer about the Application many times without success,
15 but both believe this customer also has an alternate source of water. St. David does not wish to
16 provide water service in the area. We believe cancellation of the CC&N will unencumber the
17 property and allow another water company to provide water service in the area in the future, if
18 needed.

19 25. We find that cancellation of St. David's CC&N is in the public interest. Staff's
20 recommendation that the Commission approve the Application is reasonable and should be adopted.

21 26. Further, because: 1) St. David provided notice of the Application; 2) no former
22 customers or property owners objected to cancellation of St. David's CC&N or requested a hearing
23 on the matter; 3) St. David no longer has any customers; and 4) we have found that cancellation of St.
24 David's CC&N is in the public interest, we find that a hearing in this matter is not necessary.

CONCLUSIONS OF LAW

25 1. St. David has been a public service corporation within the meaning of Article XV of
26 the Arizona Constitution and A.R.S. §§ 40-281 and 40-285.

27 2. The Commission has jurisdiction over St. David and the subject matter of the
28 Application.

 3. St. David provided notice of the Application as required by Arizona law.

1 4. Based upon the record, St. David is no longer a public service corporation within the
2 meaning of Article XV of the Arizona Constitution.

3 5. Cancellation of St. David's CC&N is in the public interest.

4 6. A hearing is not necessary in this matter.

5 7. Staff's recommendation is reasonable and should be adopted.

6 **ORDER**

7 IT IS THEREFORE ORDERED that St. David Springs, LLC's Certificate of Convenience
8 and Necessity granted in Decision No. 69257 (January 19, 2007) is canceled.

9 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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13 CHAIRMAN

COMMISSIONER

14
15 COMMISSIONER

COMMISSIONER

COMMISSIONER

16
17 IN WITNESS WHEREOF, I, JODI JERICH, Executive
18 Director of the Arizona Corporation Commission, have
19 hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this _____ day of _____ 2013.

22 JODI JERICH
EXECUTIVE DIRECTOR

23 DISSENT _____

24
25 DISSENT _____
26 BAM:tv

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SERVICE LIST FOR: ST. DAVID SPRINGS, LLC

DOCKET NO.: W-20460A-13-0004

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