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BEFORE THE ARIZONA CORPORATION C

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

SEP 23 2013

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

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

DOCKET NO. W-20460A-13-0004

DECISION NO. 74090

ORDER

Open Meeting
September 10 and 11, 2013
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

Procedural History

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

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

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

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
23 longer dedicated to a public use.
- 24 3. (Articles of Incorporation): St. David was formed by Enclave to operate
25 the water system assets that Enclave acquired as part of a real estate purchase;
26 however, the Company no longer provides water service to the public.
- 27 4. (Service of a Commodity in Which Public is Generally Held to Have an
28 Interest): The Company no longer provides, nor wishes to provide, a commodity
or service in which the public might have an interest.
5. (Monopolizing or Intending to Monopolize): The Company has no intent
to provide water service and St. David seeks to have its current exclusive right to
provide water service canceled.

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.

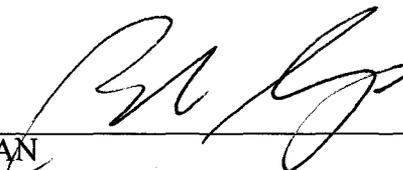
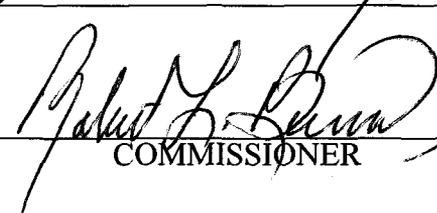
5 7. Staff's recommendation is reasonable and should be adopted.

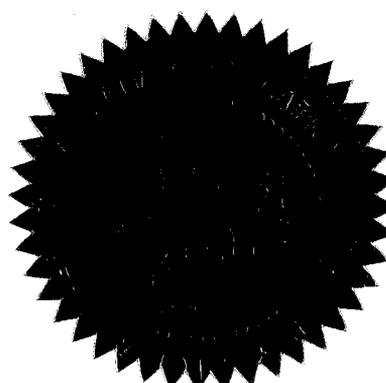
6 **ORDER**

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.

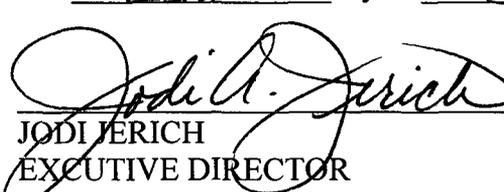
9 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

11 
 12 
 13 CHAIRMAN _____ COMMISSIONER _____
 14   
 15 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____



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 23rd day of September 2013.

22 
 23 JODI JERICH
 24 EXECUTIVE DIRECTOR

25 DISSENT _____

26 DISSENT _____
 27 BAM:tv

1 SERVICE LIST FOR: ST. DAVID SPRINGS, LLC

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