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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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AZ CORP COMMISSION
DOCKET CONTROL

DATE: NOVEMBER 29, 2013

DOCKET NO.: W-02465A-13-0207

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane L. Rodda. The recommendation has been filed in the form of an Opinion and Order on:

LIBERTY UTILITIES (BELLA VISTA WATER) CORP. f/k/a
BELLA VISTA WATER CO., INC.
(CC&N EXTENSION)

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:

DECEMBER 9, 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:

DECEMBER 17, 2013 and DECEMBER 18, 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

NOV 29 2013

DOCKETED BY

JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347
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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
9 BELLA VISTA WATER COMPANY, INC. FOR
10 AN EXTENSION OF AN EXISTING
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE WATER SERVICE IN
13 COCHISE COUNTY, ARIZONA.

DOCKET NO. W-02465A-13-0207

DECISION NO. _____

OPINION AND ORDER

14 DATE OF HEARING: November 6, 2013
15 PLACE OF HEARING: Tucson, Arizona
16 ADMINISTRATIVE LAW JUDGE: Jane L. Rodda
17 APPEARANCES: Patrick Black, FENNEMORE CRAIG, PC, on
18 behalf of Liberty Utilities (Bella Vista Water)
19 Corp. f/k/a Bella Vista Water Co., Inc.; and
20 Matthew Laudone and Bridget Humphrey, Staff
21 Attorneys with the Arizona Corporation
22 Commission Legal Division on behalf of the
23 Utilities Division

24 **BY THE COMMISSION:**

25 * * * * *

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

28 FINDINGS OF FACT

1. On June 26, 2013, Liberty Utilities (Bella Vista Water) Corp. f/k/a Bella Vista Water
Co., Inc. ("BVWC" or "Company")¹ filed an application with the Commission requesting approval

¹ In May 2013, the Board of Directors of Bella Vista Water Co., Inc. resolved to change the corporation's name to Liberty Utilities (Bella Vista Water) Corp. In the Application, the Applicant referred to itself as Bella Vista Water Company, Inc. In subsequent pleadings and at hearing, the Applicant referred to itself as Liberty Utilities (Bella Vista Water) Corp., f/k/a Bella Vista Water Co., Inc. Staff refers to the Applicant as Bella Vista Water Company, Inc. d/b/a Liberty Utilities. The Commission's Corporation Division records indicate that the corporation formerly known as Bella Vista Water Co. Inc. is now Liberty Utilities (Bella Vista Water) Corp.

1 for an extension of an existing Certificate of Convenience and Necessity ("CC&N") to provide water
2 service in Cochise County, Arizona.

3 2. On July 25, 2013, the Commission's Utilities Division ("Staff") filed an Insufficiency
4 Letter indicating that the Company's application did not meet the minimum requirements of the
5 Arizona Administrative Code ("A.A.C.") R14-2-402.

6 3. On August 9, 2013, Staff received the Company's response to the Insufficiency Letter,
7 and on August 28, 2013, Staff filed a Sufficiency Letter indicating that the application had met the
8 sufficiency requirements.

9 4. By Procedural Order dated September 4, 2013, the matter was set for hearing on
10 November 6, 2013, and other procedural guidelines established.

11 5. On October 4, 2013, Staff filed a Staff Report that recommended approval of the
12 application conditioned on the Company charging its current rates and charges in the extension area.

13 6. On October 15, 2013, the Company filed Notice of Filing Certification of Publication
14 and Proof of Mailing indicating that the Company mailed notice of the hearing to the property owner
15 of the proposed expansion area, K Ranch, LLC, on September 12, 2013, and had the notice published
16 in the *Sierra Vista Herald* and the *Bisbee Daily Review* on October 4, 2013.

17 7. On October 28, 2013, BVWC filed a Response to Staff Report, seeking clarification of
18 one of Staff's recommendations.

19 8. The hearing in this matter convened on November 6, 2013, before a duly authorized
20 Administrative Law Judge. Christopher Krygier, manager of utility rates and regulatory for Liberty
21 Utilities, testified for BVWC; and Michael Thompson, a Utilities Division water/wastewater
22 engineer; Mary Rimback, a Utilities Division public utilities analyst; and Vicki Wallace, a Utilities
23 Division executive consultant, testified for Staff.

24 9. BVWC currently serves approximately 8,680 residential and commercial/industrial
25 customers in an area around Sierra Vista, Arizona. BVWC started as Newman Water Company and
26 received a CC&N in 1955 in Decision No. 28866 (April 18, 1955). The Company acquired the
27 operations of Nicksville Water Company in 1999. The utility changed its name to Bella Vista Water
28 Co., Inc., in 1981. Algonquin Water Resources of America, Inc., the predecessor to Liberty Utilities,

1 acquired BVWC in 2002.

2 10. BVWC's current rates were established in Decision No. 72251 (April 7, 2011). In that
3 Decision, the Commission also approved the transfer of assets and CC&Ns of Northern Sunrise
4 Water Company and Southern Sunrise Water Company to BVWC and consolidated the rates of these
5 entities.

6 11. BVWC is currently in good standing with the Commission's Corporations Division
7 and Staff reports that there are no delinquent compliance issues.

8 12. By this application, BVWC seeks to extend the CC&N of its South System to provide
9 water service to approximately 236 acres comprising the eastern portion of a subdivision known as
10 Kings Ranch at Coronado Subdivision (the "Development"). Phase one of the Development,
11 comprised of approximately 604 acres, is already within BVWC's South System's CC&N boundaries

12 13. The extension area is located approximately 10 miles south of Sierra Vista on SR92
13 and is contiguous to the BVWC's existing CC&N territory. Exhibit A, attached hereto, is the legal
14 description of the proposed extension area.

15 14. BVWC's South System covers approximately 5,300 acres and currently includes 693
16 service connections. The water system includes 13 wells (ranging from 3 to 95 gallons per minute
17 ("gpm")), 15 storage tanks (ranging from 5,000 to 150,000 gallons), and 12 booster stations. Water
18 loss for this system was reported to be 8.25 percent, which is within acceptable limits. The historic
19 growth rate has been less than ½ percent. Staff concludes that the existing South System has
20 adequate production and storage capacity to serve the existing base of customers within its CC&N
21 boundaries.²

22 15. The Development consists of 303 lots on a gross area of approximately 840 acres.
23 Three of the 303 lots were deeded back to the Cochise County Flood District to be utilized for flood
24 control purposes. Of the remaining 300 lots, 298 are planned for residential purposes, and 2 are
25 planned for commercial use. Two hundred thirteen of the lots are already located within BVWC's
26 existing CC&N. The remaining 87 lots (236 acres) comprise the requested extension area.

27
28 ² Engineering Report at 2.

1 16. K Ranch, LLC, the owner/developer of the Development (“Developer”), requested
2 service from BVWC for the entire 303-lot subdivision.

3 17. BVWC has proposed to extend service to the extension property at its currently
4 approved tariffed rates and charges.

5 18. To serve the Development, the Company installed new plant including, but not limited
6 to: (1) one new 197 gpm well; (2) two storage tanks at 100,000 and 500,000 gallons each; (3) two
7 300 gpm booster stations; (4) one 5,000 gallon hydro-pneumatic pressure tank; (5) 45,021 linear feet
8 of 8-inch pipe; (6) 15,416 linear feet of 6-inch pipe; and (7) 817 linear feet of 8-inch ductile iron
9 pipe.³

10 19. Staff believes these plant items will provide the Company with sufficient capacity to
11 serve the Development within the existing CC&N and the requested extension area at full build-out.⁴

12 20. Staff concludes that the Development’s water system infrastructure cost totaling
13 \$2,975,030 appears to be reasonable.⁵ However, Staff made no “used and useful” determination of
14 the proposed plant items, and no particular treatment for rate making or rate base purposes should be
15 inferred.⁶

16 21. BVWC financed the required infrastructure for the Development by means of a Main
17 Line Extension Agreement(s) (“MXA”) between the Company and the Developer. Plant provided to
18 the utility pursuant to an MXA is treated as Advances in Aid of Construction (“AIAC”).⁷

19 22. Construction and installation of the water system infrastructure has been completed,
20 and an Approval of Construction (“AOC”) has been issued by the Arizona Department of
21 Environmental Quality (“ADEQ”).⁸

22 23. Wastewater service will be provided by individual septic systems designed for each
23 residence and permitted at the time of the construction of the individual residence.

24
25 ³ Engineering Report at 2.

26 ⁴ Staff Report at 2.

27 ⁵ Engineering Report at 6.

28 ⁶ Staff Report at 2.

⁷ The original MXA for the Development, dated August 17, 2006, was between BVWC and Dunafon Development, LLC. On May 14, 2013, an amended MXA, with updated lot counts and cost information, was executed between Liberty Utilities and K Ranch LLC. See Staff Report at 2; Ex A-1 Application at Exhibit 11.

⁸ Engineering Report at 2.

1 24. ADEQ reports that BVWC's South System is currently delivering water that meets the
2 water quality standards required by 40 CFR 141 (National Primary Drinking Water Regulations) and
3 A.A.C., Title 18, Chapter 4.⁹

4 25. The BVWC South System is not located in an Active Management Area ("AMA").
5 The Arizona Department of Water Resources ("ADWR") has determined that BVWC South is
6 currently in compliance with ADWR requirements governing water providers and/or community
7 water systems.¹⁰

8 26. ADWR issued a Water Adequacy Report for the Development, which indicated that
9 the water supply is adequate to meet the Subdivision's projected needs.¹¹

10 27. BVWC has approved Curtailment, Backflow Prevention and Best Management
11 Practices tariffs on file with the Commission.¹²

12 28. Staff's analysis indicates that as of December 31, 2012, BVWC's capital structure
13 contained total capital of \$17,656,196, with a combined AIAC (\$9,433,945) and net Contributions in
14 Aid of Construction ("CIAC") (\$607,241) balance of \$10,041,186, which represented 56.9 percent of
15 total capital.¹³

16 29. Staff's pro forma analysis indicates that adding the AIAC associated with the MXA in
17 this case produces a combined AIAC and CIAC balance of \$13,090,072, or approximately 63 percent
18 of total capital of \$20,705,182.¹⁴

19 30. Staff is concerned about a continuing over-reliance on AIAC and CIAC. Staff states
20 that the Company's long-term goal should be to have a combined net AIAC and CIAC funding ratio
21 significantly lower than the current pro forma AIAC and CIAC ratios.¹⁵

22
23 ⁹ Engineering Report at 6.

24 ¹⁰ Engineering Report at 6.

25 ¹¹ Staff Report at 4. ADWR indicated to Staff that the Water Adequacy Report issued for Kinjockity Ranch, the
26 predecessor to the current Development, remains applicable to all subsequent owners of the Subdivision. ADWR advised
27 that should the number of lots increase by more than 10 percent, a new water report would be required. Staff states that
28 the number of lots in the Subdivision has increased by 7 percent (from 281 to 300 lots), and thus, the Water Adequacy
Report remains applicable.

¹² Staff Report at 4.

¹³ Exhibit 3 to Staff Report at Schedule A. The Company also had short-term debt of \$131,366 (0.7%), long-term debt of
\$916,052 (5.2%) and equity of \$6,567,592 (37.2%).

¹⁴ Exhibit 3 to Staff Report at Schedule A.

¹⁵ Exhibit 3 to Staff Report.

1 31. Staff concludes, however, that it is in the public interest to approve the requested
2 extension of BVWC's CC&N.¹⁶

3 32. Staff recommends that the Commission approve BVWC's application for an extension
4 of its existing CC&N in Cochise County to provide water service, subject to compliance with the
5 following:

6 (a) That BVWC charge its existing rates and charges in the proposed extension area;
7 and

8 (b) Since Staff is concerned about a continued over-reliance on AIAC and CIAC, the
9 Company is placed on notice that, to the extent possible, it should plan to fund future infrastructure
10 needs with equity and long-term debt in order to bring more balance to its capital structure.

11 33. The Company acknowledges Staff's concern about the AIAC and CIAC funding
12 ratios.¹⁷ The Company notes, however, that it is a small subsidiary of a larger corporation with access
13 to the capital markets and that a large percentage of CIAC or AIAC might not be as problematic for
14 BVWC as it might be for a small utility without access to capital.¹⁸ Mr. Krygier testified that Liberty
15 Utilities has made capital investments when needed.¹⁹ Mr. Krygier claims that much of the existing
16 AIAC and CIAC is the result of decisions made by the previous owners of BVWC prior to Liberty
17 Utilities' ownership.²⁰ After talking with Staff, the Company understands that Staff's
18 recommendation about the capital structure is not intended for the Commission to take action, but to
19 place the Company on notice in order to avoid future problems with an unbalanced capital structure.²¹

20 34. Staff testified that it includes its observation about the level of AIAC/CIAC only to
21 alert the Company to the problems inherent with an over-reliance on financing new plant in this
22 manner.²² Staff does not believe or recommend that the Commission should take action on Staff's
23 observation at this point in time.²³

24 _____
25 ¹⁶ Transcript of Hearing ("Tr.") at 44.

26 ¹⁷ Tr. at 10.

27 ¹⁸ Tr. at 14.

28 ¹⁹ Tr. at 14, 18.

²⁰ Tr. at 14.

²¹ Tr. at 9.

²² Tr. 35-38.

²³ Tr. at 38.

1 35. We conclude that BVWC's CC&N extension request is in the public interest because
2 there is a need for water utility service in the extension area; BVWC is currently serving phase one of
3 the Development; and BVWC is a financially sound public service corporation and able to provide
4 service in the extension area. We agree with Staff that BVWC should be monitoring its capital
5 structure in order to obtain a greater balance for the benefit of both ratepayers and shareholders.
6 There is no evidence that BVWC or its ratepayers will be adversely affected by the MXA proposed in
7 this case, and the benefits of having the entire Development served by a single utility outweigh any
8 potential downside of the projected incremental increase in AIAC.

9 **CONCLUSIONS OF LAW**

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

12 2. The Commission has jurisdiction over BVWC and the subject matter of the
13 application.

14 3. Notice of the application was provided in accordance with law.

15 4. There is a public need and necessity for water service in the proposed extension area
16 as set forth in Exhibit A.

17 5. BVWC is a fit and proper entity to receive a CC&N to provide water service in the
18 proposed extension areas.

19 6. Staff's recommendations are reasonable and should be adopted.

20 **ORDER**

21 IT IS THEREFORE ORDERED that the application of Liberty Utilities (Bella Vista Water)
22 Corp. f/k/a Bella Vista Water Co., Inc. for an extension of its Certificate of Convenience and
23 Necessity to provide water service in Cochise County for that property described in Exhibit A hereto,
24 is approved as conditioned herein.

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IT IS FURTHER ORDERED that Liberty Utilities (Bella Vista Water) Corp. f/k/a Bella Vista Water Co., Inc. shall charge its authorized rates and charges in the extension area.

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 _____

JR:ru

1 SERVICE LIST FOR: BELLA VISTA WATER COMPANY, INC.

2 DOCKET NO.: W-02465A-13-0207

3

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EXHIBIT A

GTS/Gilbert Technical Services, Inc.

1801 Paseo San Luis ~ Suite 203 ~ Sierra Vista, Arizona 85635
Phone (520) 458-5730 ~ Fax (520) 458-5739 ~ Email: gts@theriver.com

Land Description

That portion of the West 1/2 of Section 34, Township 23 South, Range 21 East of the Gila and Salt River Meridian, Cochise County, Arizona, more particularly described as follows;

Beginning at the Northwest corner of Section 34;

Thence South 89° 11' 31" East coincident with the North line of Section 34 a distance of 2648.29 feet to the North 1/4 corner of Section 34;

Thence South 00° 48' 03" West coincident with the North-South mid-section line of Section 34 a distance of 2617.06 feet to the Center 1/4 corner of Section 34;

Thence South 00° 48' 01" West coincident with the North-South mid-section line of Section 34 a distance of 1256.07 feet to the Northeast corner of the Valley View Elementary School as recorded in Fee # 980205232;

Thence North 89° 55' 13" West a distance of 2628.13 feet to the Northwest corner of said Valley View Elementary School;

Thence North 00° 30' 07" East coincident with the West line of Section 34 a distance of 3906.59 feet to the Point of Beginning.

Subject to any and all prior easements, rights-of-way, covenants, restrictions and encumbrances of record or not of record that may otherwise legally exist.



King's Ranch at Coronado
The Eastern portion in Section 34
Containing 235.58 acres more or less
05/11/2012