

OPEN MEETING ITEM



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



ARIZONA CORPORATION COMMISSION

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DATE: MAY 15, 2014  
DOCKET NO.: W-20589A-08-0173

AZ CORP COMMISSION  
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TO ALL PARTIES: ORIGINAL

Enclosed please find the recommendation of Administrative Law Judge Belinda Martin. The recommendation has been filed in the form of an Order on:

RIDGELINE WATER COMPANY, LLC  
(ORDER EXTENDING TIME DEADLINE CONTAINED IN DECISION NO. 73225)

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:

MAY 27, 2014

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:

JUNE 10, 2014 and JUNE 11, 2014

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

MAY 15 2014

DOCKETED BY

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](mailto: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 RIDGELINE WATER COMPANY, L.L.C. FOR A  
10 CERTIFICATE OF CONVENIENCE AND  
11 NECESSITY FOR WATER SERVICE.

DOCKET NO. W-20589A-08-0173

DECISION NO. \_\_\_\_\_

**ORDER EXTENDING TIME**  
**DEADLINE CONTAINED IN**  
**DECISION NO. 73225**

12 Open Meeting  
13 June 10 and 11, 2014  
14 Phoenix, Arizona

15 **BY THE COMMISSION:**

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

18 **FINDINGS OF FACT**

19 1. In Decision No. 70748 (February 12, 2009) the Commission granted an Order  
20 Preliminary to the issuance of a Certificate of Convenience and Necessity ("CC&N") to Ridgeline  
21 Water Company, L.L.C. ("Ridgeline" or "Company") for authorization to provide water service to  
22 Ridgeline Estates. This development will consist of 136 single family homes on four-to-five acre  
23 lots, located near Madera Canyon in Pima County. The developer of the project is Pollux Properties,  
24 L.L.C. ("Pollux"), which formed the Company to provide water to Ridgeline Estates.

25 2. Pursuant to the Order Preliminary, Ridgeline was required to comply with five  
26 conditions within three years of the effective date of the Decision before the Company could request  
27 that the Commission issue a CC&N. Specifically, the Company had to file: 1) a public utility license  
28 agreement from Pima County; 2) documents related to Pollux's financial structure; 3) a curtailment  
tariff; 4) a backflow tariff; and 5) a copy of the Pima County Department of Environmental Quality

1 Approval to Construct ("ATC") for water system facilities needed to serve Ridgeline Estates.<sup>1</sup> Based  
2 on the effective date of the Decision, these five compliance items were due to be filed with the  
3 Commission no later than February 12, 2012. The Decision also stated that if Ridgeline failed to  
4 comply with these terms, the Order Preliminary would be deemed null and void.

5 3. On December 2, 2011, Ridgeline filed with the Commission a Motion for Extension of  
6 Compliance Filing Deadline requesting an extension of time to file the ATC. According to the  
7 Company, the 2008 downturn of the real estate market had negatively affected the timing of  
8 Ridgeline Estates' development; nevertheless, Pollux continued to move forward with the project as  
9 best as it could given the economic environment. Ridgeline also observed it had complied with four  
10 of the five compliance conditions, leaving only the ATC filing outstanding. The Company stated that  
11 Pollux had obtained the necessary easements for the placement of underground utility facilities and  
12 had been working with the Arizona State Land Department to obtain ingress and egress easements.

13 4. On April 10, 2012, the Commission's Utilities Division ("Staff") filed a Memorandum  
14 confirming that the Company had met the conditions of the Order Preliminary except for the ATC  
15 filing requirement. Based on the information provided by the Company, Staff recommended  
16 approval of Ridgeline's Motion to extend the ATC filing deadline from February 12, 2012, to  
17 February 12, 2014, but also recommended that no further compliance extensions should be granted.

18 5. Decision No. 73225 (June 5, 2012) granted an extension of the Order Preliminary,  
19 noting that the circumstances impeding Pollux's ability to move forward with the development, and  
20 therefore Ridgeline's ability to file the ATC, were out of the entities' control. Further, the Company  
21 had timely complied with four of the five conditions to the Order Preliminary and the information  
22 provided by Ridgeline demonstrated that Pollux was continuing to move forward with Ridgeline  
23 Estates as best it could under the negative economic climate. The Commission noted there were no  
24 other water companies in Ridgeline Estates' vicinity that might provide water service to the  
25 development, so there was no detriment to extending the Order Preliminary. The Decision extended  
26 the filing deadline for the ATC to February 12, 2014; however, it also stated that, *absent*

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28 <sup>1</sup> Decision No 70748, pages 25-26.

1 *extraordinary circumstances*, no further extensions would be granted.<sup>2</sup>

2         6. On January 7, 2014, Ridgeline filed a Motion for Further Extension of Compliance  
3 Filing Deadline Date, requesting another extension for the ATC's filing deadline to February 12,  
4 2017. The Company contended that although the real estate market had somewhat improved in  
5 metropolitan areas, it had not improved for the more rural areas, such as that where Ridgeline is  
6 located. Ridgeline asserted that Pollux still intends to proceed with the project and provided a letter  
7 from Pollux stating its desire for the Company to be the water service provider for Ridgeline Estates.  
8 Nevertheless, Ridgeline asserted that due to circumstances beyond its and Pollux's control, it is not  
9 yet economically feasible to begin construction of the water system. As evidence of the entities'  
10 commitment to completing the project, Ridgeline noted that Pollux had successfully negotiated with  
11 the Arizona State Land Department for a second right-of-way into the subdivision. Additionally,  
12 Pollux has drilled and equipped two wells for the project at a cost of \$240,000.

13         7. On April 25, 2014, Staff filed its Memorandum on the Company's Motion. Staff did  
14 not dispute any of Ridgeline's assertions, but concluded: "Staff does not believe granting an  
15 additional extension of time for this Order Preliminary would be consistent with Decision No. 73225.  
16 Therefore, Staff recommends denial of the Company's request."<sup>3</sup> Staff did not address whether  
17 extraordinary circumstances existed that might justify the extension of the Order Preliminary and the  
18 deadline to file the ATC.

19         8. Ridgeline docketed its Comments on April 25, 2014 Commission Staff Memorandum  
20 on May 2, 2014, reiterating that the economic conditions prevalent at the time the Commission  
21 granted the previous extension are still present today. Ridgeline contended that these conditions  
22 constitute "extraordinary circumstances" that are out of the Company's control. Ridgeline also  
23 asserted that in light of Pollux's commitment to moving forward with the project and the amount of  
24 money Pollux has already expended on the project, it would be unfair to cancel the Order  
25 Preliminary. Further, Decision No. 73225 noted that there were no other water companies in the  
26 vicinity of the development that might provide service to the project, and concluded there was no

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28 <sup>2</sup> Decision No. 73225, page 5. (Emphasis added.)

<sup>3</sup> Staff Memorandum dated April 25, 2014, page 2.

1 detriment to extending the Order Preliminary. For these reasons, Ridgeline argued, the extension of  
2 the ATC filing deadline was reasonable.

3 9. Based on the information provided by the Company, we conclude that: 1) Economic  
4 conditions that existed at the time of the first filing deadline extension are still impacting the real  
5 estate market in the development's area; 2) the Company and Pollux have continued to make  
6 reasonable efforts to move forward with the project; 3) Pollux has expended significant funds by  
7 installing two wells; and 4) there are no other water companies in the area seeking to provide water  
8 service to the development. Accordingly, we find that extraordinary circumstances exist and that no  
9 one would be prejudiced by extending the Order Preliminary.

10 10. Given the circumstances, we find it is reasonable to grant Ridgeline's Motion.

11 **CONCLUSIONS OF LAW**

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

14 2. The Commission has jurisdiction over Ridgeline and the subject matter of the Motion  
15 for extension for time to comply with Commission Decision No. 73225.

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**ORDER**

IT IS THEREFORE ORDERED that Ridgeline Water Company, L.L.C.'s Motion for Further Extension of Compliance Filing Deadline Date is granted.

IT IS FURTHER ORDERED that the Order Preliminary to the issuance of a Certificate of Convenience and Necessity compliance deadline for filing the Pima County Department of Environmental Quality Approval to Construct is extended to February 13, 2017.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

\_\_\_\_\_  
CHAIRMAN

\_\_\_\_\_  
COMMISSIONER

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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 \_\_\_\_\_ 2014.

\_\_\_\_\_  
JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

BM:ru

1 SERVICE LIST FOR:

RIDGELINE WATER COMPANY, L.L.C.

2 DOCKET NO.:

W-20589A-08-0173

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