

OPEN MEETING ITEM



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

ARIZONA CORPORATION COMMISSION

RECEIVED

2014 MAY 20 P 1: 52

AZ CORP COMMISSION
DOCKET CONTROL

DATE: MAY 20, 2014

DOCKET NO.: W-01303A-09-0097

TO ALL PARTIES:

ORIGINAL

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

FIDENCE DEVELOPMENT, LLC VS. ARIZONA-AMERICAN WATER COMPANY
(COMPLAINT)

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 29, 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 20 2014

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 FIDENCE DEVELOPMENT, LLC

9 Complainant,

10 vs.

11 ARIZONA-AMERICAN WATER COMPANY,

12 Respondent.

DOCKET NO. W-01303A-09-0097

DECISION NO. _____

ORDER

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

16 **BY THE COMMISSION:**

17 This Order comes before the Arizona Corporation Commission (“Commission”) as a Motion
18 to Dismiss the above-captioned Complaint with prejudice. We conclude that it is in the public interest
19 to grant the Motion to Dismiss and to dismiss the Complaint with prejudice.

20 * * * * *

21 Having considered the entire record herein and being fully advised in the premises, the
22 Commission finds, concludes, and orders that:

23 **FINDINGS OF FACT**

24 1. On March 2, 2009, Fidence Development, LLC (“Fidence” or “Complainant”) filed
25 with the Arizona Corporation Commission (“Commission”) a Formal Complaint (“Complaint”)
26 against Arizona-American Water Company (“AZ-American” or “Respondent”).¹ Fidence is a
27 developer for a subdivision known as Northpointe. The Complaint alleges that the parties executed a
28 mainline extension agreement (“MXA”) that required Fidence to construct a Production Well; AZ-

¹ AZ-American is now EPCOR Water Arizona, Inc.

1 American refuses to revise the MXA to eliminate the Production Well; AZ-American has sufficient
2 water capacity without the need for a new Production Well; that AZ-American could upsize its
3 existing well and pump to accommodate the first 80 homes in Fidence's proposed subdivision; and
4 that AZ-American is in violation of Arizona Administrative Code ("A.A.C.") R14-2-406(M) because
5 the MXA has not been filed with the Commission for approval.

6 2. On March 11, 2009, counsel for AZ-American filed a Notice of Appearance.

7 3. On March 25, 2009, the parties filed a joint Notice of Stipulated Extension, stating that
8 the parties agree to extend the time for AZ-American to file its Answer to the Complaint until April
9 8, 2009.

10 4. On April 8, 2009, the parties filed a second joint Notice of Stipulated Extension,
11 stating that the parties agree to extend the time for AZ-American to file its Answer to the Complaint
12 until April 15, 2009.

13 5. On April 17, 2009, AZ-American filed its Answer to the Complaint.

14 6. On May 2, 2009, by Procedural Order, a Procedural Conference was set for June 2,
15 2009.

16 7. On June 2, 2009, a Procedural Conference was held as scheduled. The Commission's
17 Utilities Division ("Staff") and the parties appeared through counsel. During the conference,
18 discussions were held regarding settlement of the issues and the parties were directed to file an
19 update regarding the status of the settlement discussions by July 2, 2009.

20 8. On July 2, 2009, the parties docketed a joint filing requesting an additional forty-five
21 (45) days, or until August 17, 2009, to continue settlement discussions.

22 9. On August 17, 2009, the parties docketed a second joint filing requesting an additional
23 sixty (60) days, or until October 16, 2009, to continue their settlement discussions.

24 10. On October 16, 2009, the parties filed a third joint filing requesting additional time,
25 until December 15, 2009, to continue their settlement discussions.

26 11. On November 4, 2009, by Procedural Order, the parties were directed to make a joint
27 filing, on or before January 30, 2010, updating the Commission on the status of the Complaint.
28

1 12. On January 28, 2010, the parties filed a Joint Status Update. In the filing, the parties
2 requested an additional sixty (60) days to finalize a written settlement agreement.

3 13. On February 4, 2010, by Procedural Order, the parties were granted an extension of
4 time, until April 1, 2010, to update the Commission on the status of the settlement negotiations or to
5 file a finalized settlement agreement.

6 14. On March 25, 2010, the parties filed a Joint Status Update requesting additional time,
7 until June 1, 2010, to finalize a written settlement agreement.

8 15. On April 13, 2010, by Procedural Order, the parties were granted an extension of time
9 until July 2, 2010, to file a finalized settlement agreement.

10 16. On June 25, 2010, the parties filed a Joint Status Update, requesting an extension of
11 time until September 3, 2010, to file a written settlement agreement. The filing stated the parties have
12 continued to work on finalizing the settlement agreement, but that additional time was needed.

13 17. On June 29, 2010, by Procedural Order, the parties were granted an extension of time
14 until December 31, 2010, to file a finalized settlement agreement.

15 18. On January 3, 2011, AZ-American filed a Status Update regarding the status of
16 settlement discussions. AZ-American stated that some or all of the real property that is the subject of
17 the MXA in this matter had been transferred to a new owner; that AZ-American has begun
18 discussions with the new owner; and that AZ-American needed additional time, until March 4, 2011,
19 to finalize a written settlement agreement.

20 19. On February 15, 2011, by Procedural Order, the parties were granted an extension of
21 time until March 4, 2011, to file a finalized settlement agreement.

22 20. On March 8, 2011, AZ-American filed a Status Update regarding the status of
23 settlement discussions. AZ-American stated that discussions with the new owner were on-going and
24 that AZ-American needed an additional 90 days to file an agreement resolving this matter.

25 21. No other filings were made in this docket until March 24, 2014.

26 22. On March 24, 2014, EPCOR Water Arizona f/k/a/ Arizona-American Water Company
27 ("EPCOR") filed a Motion to Dismiss ("MTD") the Complaint with prejudice. The MTD states that
28

1 Fidence has failed to prosecute its Complaint for more than three years and that under Arizona Rules
2 of Civil Procedure Rule 41(b) the Complaint should be dismissed with prejudice.

3 23. On April 9, 2014, by Procedural Order, EPCOR was ordered to file a pleading
4 identifying the new property owner for Northpointe and an affidavit attesting that a copy of the
5 Motion to Dismiss was mailed to the new owner for Northpointe.

6 24. On April 21, 2014, EPCOR filed a Response to Procedural Order. EPCOR attached to
7 its response a declaration attesting that a copy of the MTD had been mailed to the new owner of
8 Northpointe. EPCOR identified the new owner as VRE North Pointe, LLC ("VRE"). EPCOR's
9 response also stated VRE is not a Complainant; VRE did not assume (and Fidence did not assign) the
10 MXA between EPCOR and Fidence to VRE or any other party; and that any assignment of the MXA
11 would have required prior written approval by EPCOR.

12 25. The MTD, the April 9, 2014 Procedural Order, and the April 21, 2014, EPCOR
13 Response were all sent to Fidence's counsel of record. Fidence has not filed a response to the MTD.
14 In accordance with the April 9, 2014 Procedural Order, EPCOR mailed a copy of the MTD to the
15 VRE, the new property owner of Northpointe. Counsel for EPCOR avows that the MXA at issue in
16 this Complaint was not assigned to VRE and VRE has not filed a response to the MTD. Therefore,
17 we find it appropriate and in the public interest to dismiss the above-captioned Complaint with
18 prejudice.

19 **CONCLUSIONS OF LAW**

20 1. Arizona-American Water Company is a public service corporation pursuant to Article
21 XV of the Arizona Constitution and A.R.S. § 40-246.

22 2. The Commission has jurisdiction over EPCOR and the subject matter of the
23 Complaint filed in this docket.

24 3. It is in the public interest to grant EPCOR's Motion to Dismiss the Complaint with
25 prejudice.

26 ...
27 ...
28 ...

ORDER

IT IS THEREFORE ORDERED that the above-captioned Complaint is hereby dismissed with prejudice.

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 _____ 2014.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

YK:tv

1 SERVICE LIST FOR: FIDENCE DEVELOPMENT, LLC VS. ARIZONA-
2 AMERICAN WATER COMPANY

3 DOCKET NO.: W-01303A-09-0097

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