

JIM IRVIN
COMMISSIONER-CHAIRMAN
TONY WEST
COMMISSIONER
CARI J. KUNASEK
COMMISSIONER



STUART R. BRACKNEY
ACTING EXECUTIVE SECRETARY

ON COMMISSION

DATE: March 19, 1999

DOCKET NO.: W-03263A-99-0019

TO ALL PARTIES:

Enclosed please find the recommendation of Hearing Officer Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

CALVIN AND TONYA KNOCK vs. DIAMOND VALLEY WATER USERS CORP.
(COMPLAINT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Hearing Officer by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MARCH 29, 1999

The enclosed is NOT an order of the Commission, but a recommendation of the Hearing Officer to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MARCH 30, 1999 AND MARCH 31, 1999

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250.


STUART R. BRACKNEY
ACTING EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 JIM IRVIN
COMMISSIONER-CHAIRMAN
3 TONY WEST
COMMISSIONER
4 CARL J. KUNASEK
COMMISSIONER

5 IN THE MATTER OF:
6 CALVIN AND TONYA KNOCK,
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COMPLAINANTS,
VS.
DIAMOND VALLEY WATER USERS
CORPORATION,
RESPONDENT.

DOCKET NO. W-03263A-99-0019

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: March 4, 1999
PLACE OF HEARING: Phoenix, Arizona
PRESIDING OFFICER: Marc E. Stern
APPEARANCES: Calvin and Tonya Knock, in propria personae; and
Diamond Valley Water Users Corporation, by its Chairman, Mr. Guy Emminger.

BY THE COMMISSION:

On January 15, 1999, Calvin and Tonya Knock ("Complainants") filed with the Arizona Corporation Commission ("Commission") a Complaint against Diamond Valley Water Users Corporation ("D VWUC" or "Respondents").

On February 12, 1999, DVWUC filed a response to the Complaint requesting more time to file its Answer.

Pursuant to our February 19, 1999, Procedural Order, a hearing was scheduled on the above-captioned Complaint.

On March 3, 1999, DVWUC filed its Answer.

On March 4, 1999, the hearing was convened before a duly authorized Hearing Officer of the Commission at its offices in Phoenix, Arizona. DVWUC appeared and was represented by its chairman, Mr. Guy Emminger. The Complainants entered an appearance on their own behalf.

1 Following the presentation of evidence, the matter was taken under advisement pending submission
2 of a Recommended Opinion and Order to the Commission.

3 * * * * *

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

6 **FINDINGS OF FACT**

7 1. Pursuant to authority granted by the Commission in Decision No. 49462 (November
8 13, 1978), DVWUC, an Arizona non-profit corporation, provides water utility service to
9 approximately 380 customers in the Diamond Valley area four miles east of Prescott, Yavapai
10 County, Arizona.¹

11 2. On January 15, 1999, the Complainants filed a Complaint against DVWUC wherein it
12 was alleged that they are the owners of a new home being built² for Tonya Knock's mother at 1720
13 North Pearl Lane which is located within the certificated service area of DVWUC and that DVWUC
14 is unreasonably delaying a service connection to the property.

15 3. The Complainants stated that they had been attempting to contact Respondent's
16 Chairman, Mr. Guy Emminger, since construction began in September 1998 with respect to having a
17 service line and meter connected to DVWUC's main on North Pearl Lane adjacent to the new home.

18 4. Even though the Complainants are residents of Diamond Valley and are presently
19 DVWUC customers, they were unable to receive a response from Mr. Emminger until approximately
20 mid November when they requested service to the house on North Pearl Lane.

21 5. After finally reaching Mr. Emminger, the Complainants were advised that they would
22 not be able to receive service until sometime on or about March 1, 1999. The reason given for the
23 delay is because DVWUC's water main for North Pearl Lane has been turned off since 1991 due to
24 contamination and DVWUC purportedly would require time to decontaminate the main and place it
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26 ¹ See Decision No. 60125 (March 19, 1997) wherein the Commission authorized a transfer of the
27 Certificate of Convenience and Necessity ("Certificate") then held by Triangle Development Corporation ("Triangle") to
28 DVWUC. That Decision also describes many of the utility's ongoing operational problems.

² The house is 95 percent completed, and as of the date of the hearing still does not have water service
although electrical and telephone service are available.

1 into service.

2 6. On December 2, 1998, after no further response from Mr. Emminger, the
3 Complainants mailed DVWUC a formal written request for service by certified mail return receipt
4 requested and enclosed a check for \$1,685.00 in order to cover the cost of establishing service
5 (\$35.00) and for the service line and meter installation fee (\$1,650.00) pursuant to DVWUC's tariff
6 on file with the Commission.

7 7. The record established that DVWUC received the written request for service together
8 with the Complainants' check on December 5, 1998.

9 8. Thereafter, DVWUC took no action on the Complainants' request, but instead initiated
10 a number of complaints against the Complainants. DVWUC attempted to have the Complainants
11 cited for Blue Stake violations and also for alleged violations of Arizona law by Mr. Knock involving
12 criminal damage to DVWUC's property.

13 9. The allegations raised by DVWUC involved actions taken by Mr. Knock prior to the
14 request for service and during construction when he operated a backhoe without a county permit and
15 caused fill dirt to be placed in the Yavapai County right of way on North Pearl Lane on top of
16 DVWUC's water main.

17 10. Mr. Knock was unaware of the requirement to contact Blue Stake and has been
18 warned by the Blue Stake authorities. He has agreed to contact Blue Stake and to secure a county
19 permit if similar work is to be done in the future. There is no evidence that any damage was done or
20 that Mr. Knock will be prosecuted.

21 11. On March 3, 1999, DVWUC filed its Answer to the Complaint herein and outlined its
22 reasons for delaying a service connection at the Complainant's house on North Pearl Lane.

23 12. Mr. Emminger indicated that his primary concern with respect to providing service
24 relates to the fact that the North Pearl Lane area is the only remaining section of DVWUC's
25 distribution system which contains unsafe contaminated water which has not been flushed from its
26 mains following DVWUC's acquisition of the system in March 1997.

27 13. This is because the North Pearl Lane area is located in a lower portion of DVWUC's
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1 service area and is across a wash which, because of the road's poor condition, had resulted in the
2 Complainants' and other lots not previously being developed so that water service was not required.

3 14. After Mr. Emminger raised DVWUC's concerns to the Yavapai County Public Works
4 Department ("Department") concerning Mr. Knock's roadwork, a number of letters and meetings
5 between Mr. Knock, representatives of the Department and Mr. Emminger followed until a solution
6 was agreed to between the parties on March 2, 1999, with respect to the grading of material on North
7 Pearl Lane and its effect on the Respondent's water main.

8 15. Under the terms of the agreement, repairs to the road are to be completed within a
9 reasonable period of time and provide for Mr. Emminger to "pot hole" DVWUC's water main in
10 order to determine its depth in the public right of way on North Pearl Lane.

11 16. The Department is to be notified so that it can be sure that there is at least 36" of
12 coverage over DVWUC's water main and Mr. Knock is to obtain a permit from the Department to
13 place any approved material in the public right of way utilizing methods approved by the Department
14 to ensure the structural integrity of the roadway.

15 17. At or about the time that the work on North Pearl Lane is being completed to the
16 Department's satisfaction, DVWUC will be implementing steps to meet the requirements of Bulletin
17 No. 8 of the Arizona Department of Environmental Quality ("ADEQ") which specifies the
18 procedures which must be followed in order to flush contamination from a long dormant water main
19 prior to its being restored to use so that customers can be connected to the utility's distribution
20 system.

21 18. Mr. Emminger estimates that this task could take DVWUC from six to eight weeks,
22 since Mr. Emminger will have to personally locate the entire length of DVWUC's main to do the
23 work required because the utility does not have a set of "as built" plans.

24 19. Upon completion of the decontamination procedures and approval by ADEQ that the
25 main is fit for use, Mr. Emminger indicated that DVWUC would connect a service line and meter in
26 order to meet the Complainants' request for service.

27 20. Following our review of the record herein, we can see no reason for unreasonably
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1 delaying service to the Complainants' house on North Pearl Lane. DVWUC has a lawful obligation
2 to provide that service and while it is understandable that some delay might result from
3 decontaminating a water main, an additional six to eight weeks is unacceptable, especially in light of
4 the fact that DVWUC has been operating this system since March 19, 1997, and should have already
5 resolved these problems. Accordingly, we shall order DVWUC hereinafter to complete the work for
6 which they have previously been paid within 10 business days of the effective date of this Decision.³

7 **CONCLUSIONS OF LAW**

8 1. DVWUC is a public service corporation within the meaning of Article XV of the
9 Arizona Constitution and A.R.S. § 40-246.

10 2. The Commission has jurisdiction over the DVWUC and the subject matter of the
11 Complaint.

12 3. The evidence establishes that DVWUC has unduly delayed the installation of a service
13 line and meter for the Complainants herein.

14 4. The Commission should order DVWUC to complete the installation of the service line
15 and meter installation for the Complainants' property located at 1720 North Pearl Lane in Diamond
16 Valley, Yavapai County, Arizona not later than ten business days from the effective date of this
17 Decision.

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27 ³ On March 18, 1999, DVWUC filed notice which indicated that, although a service line and meter had
28 been installed for the Complainant's home on North Pearl Lane after the hearing took place, water is not yet available
because the Respondent's main is broken. DVWUC indicates that the repair project should be completed by April 2,
1999.

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ORDER

IT IS THEREFORE ORDERED that Diamond Valley Water Users Corporation shall, within ten business days of the effective date of this Decision, complete the installation of a service line and meter for Calvin and Tonya Knock at 1720 North Pearl Lane, Diamond Valley, Yavapai County, Arizona.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

COMMISSIONER-CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, STUART R. BRACKNEY, Acting Executive Secretary 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 _____, 1999.

STUART R. BRACKNEY
ACTING EXECUTIVE SECRETARY

DISSENT _____
MES:dap

1 SERVICE LIST FOR:

CALVIN & TONYA KNOCK vs. DIAMOND
VALLEY WATER USERS CORPORATION

2 DOCKET NO.
3

W-03263A-99-0019

4 Calvin & Tonya Knock
1582 Douglas Drive
5 Prescott, Arizona 86301

6 Guy E. Emminger
DIAMOND VALLEY WATER
7 USERS CORPORATION
4754 E. Donna Drive
8 Prescott, Arizona 86301

9 Paul Bullis, Chief Counsel
ARIZONA CORPORATION COMMISSION
10 1200 W. Washington Street
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11 Director, Utilities Division
12 ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
13 Phoenix, Arizona 85007

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