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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH - Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

Arizona Corporation Commission

DOCKETED

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IN THE MATTER OF THE APPLICATION OF
ORANGE GROVE WATER COMPANY, INC. FOR
APPROVAL OF THE SALE OF ITS ASSETS AND
CANCELLATION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-02237A-15-0008

DECISION NO. 75166

OPINION AND ORDER

DATE OF HEARING: May 20, 2015
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Sarah N. Harpring
APPEARANCES: Mr. Steve Wene, MOYES SELLERS & HENDRICKS, LTD., on behalf of Orange Grove Water Company, Inc.; and
Mr. Brian E. Smith, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

This case concerns Orange Grove Water Company, Inc.'s application for approval to sell all of its assets to the City of Somerton and for cancellation of its Certificate of Convenience and Necessity.

* * * * *

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

FINDINGS OF FACT

Procedural History

1. On January 14, 2015, Orange Grove Water Company, Inc. ("OGWC") filed with the Commission an Application for Approval of the Sale of Its Assets and Cancellation of Its Certificate of Convenience and Necessity ("Application"). OGWC's Application stated that the City of

1 Somerton ("City") had offered to purchase OGWC and that OGWC had accepted the offer. With its
2 Application, OGWC included a copy of an Asset Purchase Agreement and Escrow Instructions
3 executed by OGWC and the City on July 16, 2014 ("Agreement").

4 2. On February 6, 2015, OGWC filed a Notice stating that a copy of an attached notice
5 form had been sent to all of its customers on January 19, 2015, and showing that notice had also been
6 published in the *Yuma Sun* on January 22, 2015.

7 3. On February 13, 2015, the Commission's Utilities Division ("Staff") issued an
8 Insufficiency Letter notifying OGWC that Staff needed additional information to determine
9 sufficiency requirements as outlined in Arizona Administrative Code ("A.A.C.") R14-2-402 and
10 listing the additional information to be submitted.

11 4. On March 13, 2015, OGWC filed a Response to Insufficiency Letter, including several
12 attachments.

13 5. On March 24, 2015, Staff issued a Sufficiency Letter stating that Staff had determined
14 OGWC's Application, with additional data obtained from OGWC and through Staff's own research,
15 to meet the minimum sufficiency requirements of A.A.C. R14-2-402(D).

16 6. On March 25, 2015, by Procedural Order, the matter was set for hearing to begin on
17 May 20, 2015, and other procedural requirements and deadlines were established.

18 7. On April 24, 2015, Staff filed its Staff Report, recommending approval of the
19 application with conditions.

20 8. On May 6, 2015, OGWC filed a Notice of Publication and Mailing of Customer
21 Notice, stating that notice of the application and hearing date had been mailed via First Class U.S.
22 Mail to the customers of OGWC on April 3, 2015, and showing that notice had been published in the
23 *Yuma Sun*, a daily newspaper of general circulation in Yuma, on April 8, 2015.

24 9. On May 8, 2015, OGWC filed Comments to Staff Report, stating that it did not take
25 issue with any positions taken by Staff therein.

26 10. On May 20, 2015, a full evidentiary hearing was held before a duly authorized
27 Administrative Law Judge of the Commission at the Commission's offices in Phoenix, Arizona.
28 OGWC and Staff both appeared through counsel. OGWC presented documentary evidence and the

1 testimony of Kathleen Day, President and owner of OGWC, and Bill Lee, City Manager for the City.
2 Staff presented documentary evidence and the testimony of Frank Smaila, Water and Wastewater
3 Engineer; Brendan Aladi, Public Utilities Analyst; and Vicki Wallace, Executive Consultant. No
4 members of the public provided public comment.

5 **Background**

6 **OGWC**

7 11. OGWC is an Arizona corporation providing water utility service in an area just outside
8 of Somerton, Arizona, approximately seven miles south-southwest of Yuma, in Yuma County. (Ex.
9 S-1 at 1, ex. 2; Tr. at 9, 26.) OGWC provides service to two subdivisions, known as Orange Grove
10 and Rancho Mesa Verde. (Ex. S-1 at ex. 2 at 2.) The City is located north and west of OGWC's
11 service area, approximately 1.5 miles each way. (Tr. at 27.)

12 12. OGWC's owner, Ms. Day, is the President and performs all of the work related to
13 OGWC's operations except for the maintenance work. (Tr. at 9.) Ms. Day would like to retire, and
14 she believes that the sale of OGWC's assets to the City would benefit both the City and OGWC's
15 customers. (Tr. at 10.) Per the Application, some of those benefits are economies of scale and
16 opportunities available to a municipal water provider, such as grants and subsidized loans, tax
17 benefits, and lower market costs for professional services. (Ex. A-1 at 3.) Ms. Day does not foresee
18 any adverse effects on OGWC's customers, although they will need to adjust from dealing with a
19 small company to dealing with the City. (Tr. at 12.)

20 13. OGWC's water system consists of two wells, one pressure tank, 10 fire hydrants, and
21 a distribution system serving approximately 312 metered service connections, and a population of
22 approximately 800, in a service area of approximately 90 acres. (Ex. S-1 at 2, ex. 2.) While
23 OGWC's water system has adequate well production, it does not have adequate storage capacity to
24 serve its existing customers and reasonable growth and does not provide adequate fire flow. (Ex. S-1
25 at ex. 2 at 1-2.) Staff calculated that OGWC needs approximately 15,000 gallons of additional
26 storage capacity. (Ex. S-1 at ex. 2 at 2.)

27

28

Commodity Charge (Per 1,000 gallons):	
0 to 3,000 gallons	\$ 2.00
3,001 to 8,000 gallons	2.75
All gallons in excess of 8,000	3.31

The City

23. The City, which has a population of approximately 15,500, has been providing water utility service since 1920 and currently provides water utility service to approximately 14,500 customers through approximately 3,263 service connections. (Ex. S-1 at 2; Tr. at 17.) The City's water system is located approximately 1.5 miles northwest of OGWC's service area. (*Id.*)

24. The City intends to assume all existing OGWC customer accounts and to provide water utility service in OGWC's entire service area. (Ex. S-1 at 2.) The City intends to continue charging OGWC customers the rates that they are currently paying to OGWC, which are somewhat higher than the City's rates.² (Tr. at 20-22.)

25. The City does not provide wastewater utility service in OGWC's service area, in which septic tanks are used, but does provide wastewater utility service in other areas and is conducting a feasibility study to determine whether it would be reasonable to provide wastewater utility service in OGWC's service area. (Ex. A-2 at 3.) The City is considering annexation of the Orange Grove and Rancho Mesa Verde subdivisions, which Mr. Lee described as the one area within the community to which the City does not provide water and wastewater. (Tr. at 19.) According to Mr. Lee, extending service to the Orange Grove and Rancho Mesa Verde subdivisions will allow the City better to serve the remainder of the eastern end of the City. (Tr. at 19-20.)

26. The City has already secured a \$1.8 million Colonia grant³ and the loan funding necessary to purchase OGWC's assets. (Ex. A-2 at 3-4; Ex. S-1 at 2; Tr. at 18, 20, 22.)

27. The City intends to make upgrades to the water system upon acquisition. (Ex. A-2 at 3-4; Ex. S-1 at 2.) Those upgrades would include distribution waterlines extending City facilities up to interconnect with those serving the Orange Grove and Rancho Mesa Verde subdivisions, a

² For residential water connections, the City's current rates and charges are:

Base Fee (includes 5,000 gallons):	\$11.50
Volumetric Rate (Per 1,000 gallons):	
All gallons in excess of 5,000	\$2.39. (Ex. S-1 at ex. 3 at att. 1.)

³ The Colonia grant is a federal community development block grant administered through the Arizona Department of Housing. (Tr. at 22.)

1 180,000-gallon storage tank, a 1,500-gallon-per-minute booster pump station, 20 new fire hydrants,
 2 improved fire flow pressure, an emergency generator, three-phase electrical service, and
 3 abandonment of OGWC's two active wells.⁴ (Ex. S-1 at ex. 2 at 2; Tr. at 18, 20.) The City intends to
 4 improve service and water quality in OGWC's service area and does not anticipate any problems in
 5 taking over the service area. (Ex. S-1 at ex. 2 at 2; Tr. at 18-21.) The interconnection is expected to
 6 interrupt service for only a few hours. (Tr. at 23.)

7 28. The City water department personnel who would be responsible for the OGWC
 8 service area possess advanced ADEQ operator certifications. (Ex. S-1 at ex. 2 at 2.)

9 29. ADEQ reports that the City's system currently has no major deficiencies and is
 10 delivering water that meets water quality standards. (Ex. S-1 at ex. 2 at 3.)

11 30. The City is not located within an ADWR Active Management Area, and ADWR
 12 reports that the City's system is compliant with ADWR requirements governing water providers
 13 and/or community water systems. (Ex. S-1 at ex. 2 at 3.)

14 31. The City Council has approved the Agreement. (Tr. at 22.)

15 **The Agreement**

16 32. The Agreement, executed on July 16, 2014, provides, in pertinent part that:

17 (a) The City is to purchase from OGWC all of OGWC's right, title, and interest in
 18 and to all of OGWC's assets⁵ solely related to the operation of the water utility within the certificated
 19 area, free and clear of all liens and encumbrances;

20 (b) The City will pay OGWC a purchase price of \$550,000;

21 (c) The City will not assume any liabilities of OGWC;

22 (d) The parties will read and agree on meter readings prior to the closing date and
 23 will divide customer payments received thereafter accordingly;

24 (e) Close of escrow will occur within 30 days of receiving a Commission Order,

25

26 ⁴ In 2014, the City commissioned a report to obtain recommendations regarding OGWC. (Tr. at 27.) The report
 recommended the upgrades planned and, further, that the two existing OGWC wells be abandoned. (Tr. at 27-28.)

27 ⁵ This includes the well site real property, all installed water utility infrastructure, spare parts, water rights, customer
 deposits, and customer records and excludes a residence, specified items of personal property, cash and cash equivalents,
 28 bank accounts and lock boxes, rights accruing to OGWC as of the effective date of the Agreement, trademarks, trade
 names, and logos. Ex. A-1 at attach. 1.

1 within 30 days of the City's receiving financing, or on another date agreed upon by the parties,
2 whichever is later, and within one year of the effective date, but may be extended by agreement;

3 (f) The City's performance under the Agreement is contingent upon the City's
4 obtaining grant funding and City Council approval of the Agreement;

5 (g) OGWC's performance under the Agreement is subject to OGWC receiving a
6 Commission Order approving OGWC's Application for permanent cancellation and extinguishment
7 of OGWC's CC&N and transfer of OGWC's assets to the City, subject to consummation of the
8 purchase transaction;

9 (h) Upon Commission approval of OGWC's Application and close of escrow, the
10 City will assume the sole right, duty, and obligation to provide water service within the certificated
11 area and will take all necessary and appropriate actions relating to such water utility service; and

12 (i) The Agreement and purchase transaction are entered into in lieu of the City's
13 potential condemnation of OGWC's water system using the City's eminent domain authority.

14 **Staff Conclusions and Recommendations**

15 33. Staff determined that the City has adequate financial, technical, and managerial skills
16 to effectively integrate OGWC's service area into the City's existing utility and that the proposed sale
17 of assets and CC&N cancellation would have no adverse effect on OGWC's customers or their water
18 service. (Ex. S-1 at ex. 2 at 3.) Staff determined that the City has adequate well production and
19 storage capacity to serve OGWC's service area in addition to the City's current service area and
20 reasonable growth. (Tr. at 28-29.)

21 34. Mr. Smaila indicated that while both OGWC and the City can provide water quality
22 and water to their customers, the City offers the additional benefit of fire protection. (Tr. at 30.)

23 35. Staff asserts that the sale of assets and CC&N cancellation is in the public interest and
24 can provide benefits to OGWC's customers. (Tr. at 34, 37.)

25 36. Staff recommends that the Commission approve OGWC's Application for the sale and
26 transfer of its utility assets to the City and cancellation of OGWC's CC&N, conditioned upon
27 OGWC's filing documentation of the sale's finalization within 30 days after it takes place and
28 OGWC's applying funds from the sale to retire its outstanding WIFA loan. (Ex. S-1 at 3, ex. 3 at 1.)

1 **Discussion and Resolution**

2 37. Allowing OGWC to transfer its water utility assets to the City so that the City may
3 take over water utility service to the certificated area should result in benefits to OGWC's customers,
4 as OGWC no longer desires to operate as a water utility, the City can offer OGWC's customers fire
5 protection capabilities, and the City plans to make other improvements to the system that should
6 enhance service. Additionally, the City's size should bring economies of scale; its municipal
7 organization should ensure stability; and it has the financial, technical, and managerial skills needed
8 to integrate OGWC's certificated area into its existing water utility. As a result, we find that Staff's
9 recommendations set forth in Findings of Fact No. 36 are reasonable and should be adopted.

10 **CONCLUSIONS OF LAW**

11 1. OGWC is a public service corporation within the meaning of Article XV of the
12 Arizona Constitution and A.R.S. §§ 40-281, 40-282, and 40-285.

13 2. The Commission has jurisdiction over OGWC and the subject matter of the
14 Application.

15 3. Notice of the Application and hearing were provided as required by law.

16 4. The proposed sale and transfer of assets to the City will not adversely affect the
17 quality of service provided to OGWC's customers.

18 5. It is in the public interest for OGWC to sell and transfer its assets to the City.

19 6. It is in the public interest for the Commission to cancel OGWC's CC&N upon
20 OGWC's filing with the Commission's Docket Control, within 30 days after the close of escrow,
21 documentation showing that the sale has been finalized and that funds from the sale have been used
22 to retire OGWC's outstanding WIFA loan.

23 **ORDER**

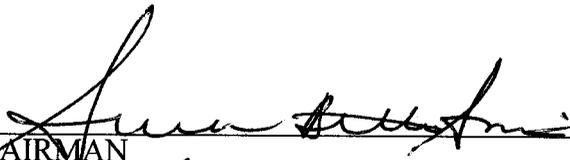
24 IT IS THEREFORE ORDERED that the Application of Orange Grove Water Company, Inc.,
25 for approval of the sale and transfer of its assets to the City of Somerton and for cancellation of its
26 Certificate of Convenience and Necessity, is hereby approved, with the cancellation of the Certificate
27 of Convenience and Necessity to become effective upon Orange Grove Water Company, Inc.'s
28 compliance with the following ordering paragraph.

1 IT IS FURTHER ORDERED that with Orange Grove Water Company, Inc. shall, within 30
2 days after the close of escrow for the sale and transfer of its assets to the City of Somerton, file with
3 the Commission's Docket Control, as a compliance item in this docket, documentation showing that
4 the sale and transfer of assets has been finalized and that funds from the sale have been used to retire
5 the outstanding balance of Orange Grove Water Company, Inc.'s loan from the Water Infrastructure
6 Finance Authority of Arizona.

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

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

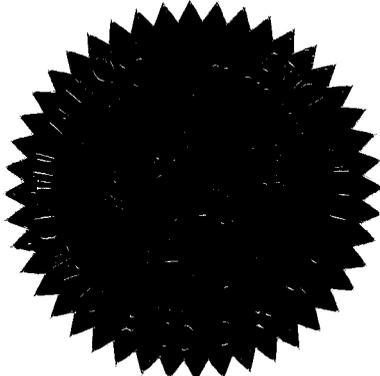
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11 CHAIRMAN COMMISSIONER

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13 COMMISSIONER COMMISSIONER COMMISSIONER



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15 IN WITNESS WHEREOF, I, JODI JERICH, Executive
16 Director of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this 15th day of July 2015.

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JODI JERICH
EXECUTIVE DIRECTOR

21 DISSENT _____

22

23 DISSENT _____

24 SH:ru/tv

1 SERVICE LIST FOR: ORANGE GROVE WATER COMPANY, INC.

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