

ORIGINAL

OPEN MEETING ITEM



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



Executive Director

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ARIZONA CORPORATION COMMISSION AZ CORP COMMISSION
DOCKET CONTROL

DATE: APRIL 23, 2015

DOCKET NOS.: W-02250A-14-0376 AND W-20919A-14-0376

2015 APR 23 AM 9 11

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Scott M. Hesla. The recommendation has been filed in the form of an Opinion and Order on:

ARIZONA WINDSONG REALTY, INC.
(TRANSFER ASSETS AND CC&N)

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 4, 2015

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:

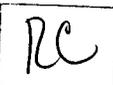
MAY 12, 2015 and MAY 13, 2015

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

APR 23 2015

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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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

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

7 IN THE MATTER OF THE APPLICATION OF
7 ARIZONA WINDSONG REALTY, INC. FOR
8 APPROVAL TO TRANSFER UTILITY ASSETS
8 AND CERTIFICATE OF CONVENIENCE AND
9 NECESSITY.

DOCKET NO. W-02250A-14-0376
DOCKET NO. W-20919A-14-0376

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: March 18, 2015
11 PLACE OF HEARING: Phoenix, Arizona
12 ADMINISTRATIVE LAW JUDGE: Scott M. Hesla
13 APPEARANCES: Mr. Timothy J. Sabo, SNELL & WILMER, L.L.P., on
14 behalf of the Applicant; and
15 Mr. Charles Hains, Staff Attorney, Legal Division on
16 behalf of the Utilities Division of the Arizona
Corporation Commission.

17 **BY THE COMMISSION:**

18 On October 28, 2014, Arizona Windsong Realty, Inc. ("Windsong Realty") and Arizona
19 Windsong Water Company ("Windsong Water") (collectively "Applicants") filed with the Arizona
20 Corporation Commission ("Commission") an application for approval to transfer Windsong Realty's
21 utility assets and Certificate of Convenience and Necessity ("CC&N") to Windsong Water.

22 On November 21, 2014, Applicants filed verification from Lillie Paulsell, president and
23 owner of both Windsong Realty and Windsong Water, attesting that the contents of the application
24 were true and correct to the best of her ability.

25 On November 26, 2014, the Commission's Utilities Division ("Staff") issued a letter of
26 sufficiency stating that the application had met the sufficiency requirements outlined in the Arizona
27 Administrative Code ("A.A.C.").

28

1 On December 2, 2014, Windsong Water filed a Certificate of Good Standing with the
2 Commission's Corporations Division.

3 On January 8, 2015, a Procedural Order was issued establishing various filing dates and
4 scheduling a hearing for March 18, 2015.

5 On February 11, 2015, Applicants filed certification that public notice of the application and
6 hearing had been provided by mailing notice of the proceeding to all customers on February 10,
7 2015, and by publishing notice of the proceeding in a newspaper of general circulation in the service
8 area, the *Tribune-News*, on January 28, 2015.

9 On March 2, 2015, Staff filed a Staff Report recommending approval of the application,
10 subject to certain terms and conditions.

11 On March 18, 2015, a full public hearing was convened as scheduled. Applicants and Staff
12 appeared through counsel. At the conclusion of the hearing, the matter was taken under advisement
13 pending submission of a Recommended Opinion and Order to the Commission.

14 * * * * *

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

17 **FINDINGS OF FACT**

18 **Background**

19 1. Pursuant to authority granted by the Commission in Decision No. 49857 (April 18,
20 1979), Windsong Realty was issued a CC&N to operate a public service corporation to provide water
21 service in the community of Sanders, Apache County, Arizona.

22 2. On November 10, 1979, Windsong Realty's Articles of Incorporation ("Articles")
23 were revoked by the Commission for failing to maintain a statutory agent. After revocation of its
24 Articles, Windsong Realty's former owner and president, Mr. Patton Earl Paulsell, operated the
25 Company as a sole proprietorship without requesting Commission approval for the transfer of
26 Windsong Realty's utility assets and CC&N.

27 3. On November 21, 2002, Mr. Paulsell incorporated Windsong Water to operate the
28

1 water utility, but again failed to seek Commission approval to transfer the utility's assets and CC&N.¹

2 4. On July 30, 2014, as part of Windsong Realty's most recent rate case proceeding, the
3 Commission ordered Windsong Realty to file an application to transfer its utility assets and CC&N to
4 Windsong Water within 90 days (Decision No. 74597).²

5 **Water System**

6 5. Windsong Realty provides water service to approximately 68 residential customers
7 and one commercial customer. Windsong Realty's current rates and charges were approved by the
8 Commission in Decision No. 74597 (July 30, 2014).

9 6. Windsong Realty's water system consists of one well capable of producing 45 gallons
10 per minute, one 40,000 gallon storage tank, one 1,000 gallon pressure tank, one booster pump, and a
11 distribution system. According to Staff, the current water system has adequate production and
12 storage capacity to serve the present customer base and reasonable growth.

13 7. In its Staff Report, Staff states that the well, pump, and electrical system have recently
14 been repaired with assistance from a number of entities, including Arizonans for Responsible Water
15 Policy ("ARWP"),³ Arizona Public Service Company ("APS"), and the Navajo Tribal Utility
16 Authority ("NTUA").

17 8. According to an Arizona Department of Environmental Quality ("ADEQ")
18 compliance status report dated March 21, 2014, Windsong Realty has unresolved monitoring,
19 reporting, operation, and maintenance deficiencies. Based upon these deficiencies, ADEQ cannot
20 determine if the Windsong Realty is currently delivering water that meets water quality standards
21 required by 40 C.F.R. §§ 141.1, *et seq.* (National Primary Drinking Water Regulations) and Arizona
22 Administrative Code, Title 18, Chapter 4.

23 9. Windsong Realty is not located in an Arizona Department of Water Resources
24 ("ADWR") designated Active Management Area ("AMA"). According to an ADWR Compliance

25 ¹ Mr. Paulsell is survived by his wife, Lillie Paulsell, who is the current president and owner of both Windsong Realty and
26 Windsong Water.

27 ² As part of a complaint proceeding initiated by Staff, the Commission previously ordered Windsong Realty to file an
28 application to transfer its assets and CC&N to Windsong Water in Decision No. 65918 (May 16, 2002).

³ ARWP is a trade group comprised of Arizona Water Company, Global Water Resources, and Liberty Utilities. (Tr. at
7:18-8:9). ARWP provides, among other things, assistance to small water companies experiencing regulatory or
operational problems at no cost to the water company. (*Id.*)

1 Status Report dated February 12, 2014, Windsong Realty failed to file its System Water Plan. As a
2 result, the Company's water system is not in compliance with ADWR requirements.

3 10. The Commission's Consumer Services Section reports that there are 13 open
4 complaints pending against Windsong Realty, most of which deal with metering and billing concerns.

5 11. The Utilities Division Compliance Section reports that there are five outstanding
6 compliance items associated with Decision Nos. 74597 (July 30, 2014) and 65918 (May 16, 2003).⁴

7 As required by Decision No 74597, Staff states that Windsong Realty has failed to timely file: (1)
8 documentation showing that it is in compliance with ADWR requirements; (2) documentation
9 showing that it is in compliance with ADEQ and delivering water that meets water quality standards
10 or has entered into a consent agreement with ADEQ; and (3) documentation that a well head meter
11 has been installed. As required by Decision No. 65918, Staff further states that Windsong Realty
12 failed to timely: (1) cure certain ADEQ deficiencies; and (2) file with the Director of the Utilities
13 Division certification that the ADEQ deficiencies have been cured. According to Staff, ARWP has
14 been assisting Windsong Realty in addressing its ADEQ, ADWR, and Commission compliance
15 issues.

16 12. Windsong Realty has an approved Curtailment Tariff and Back Flow Prevention
17 Tariff.

18 13. Mr. Paul Walker, chairman of ARWP, testified on behalf of the Applicants. Mr.
19 Walker testified that ARWP has been working with Windsong Realty's certified operator, Mr. Terry
20 Oldham, to address Windsong Realty's regulatory compliance deficiencies.⁵ As a result, Mr. Walker
21 stated that nine or ten pages worth of ADEQ violations have recently been narrowed down to one and
22 a half pages.⁶ According to Mr. Walker, the most difficult ADEQ compliance challenge will be to
23 decrease the uranium levels below the Maximum Containment Level ("MCL").⁷ Mr. Walker stated

24 ⁴ The Staff Report originally listed an additional outstanding compliance filing associated with Decision No. 74597: that
25 Windsong Realty file a capital improvement plan with Docket Control. However, this compliance item is no longer
26 outstanding because Windsong Realty presented evidence at the hearing that the plan was filed on February 17, 2015.
(See Exhibit A-2).

27 ⁵ Tr. at 10:4-24.

28 ⁶ Tr. at 15:15-24.

⁷ Tr. at 15:25-16:10; Tr. 34:17-23. Mr. Walker testified that the existence of uranium was caused by federal mining
activities in the 1950's and the federal government has created special fund to address such contamination issues. (Tr. at
16:1-4).

1 that ARWP is working with the United States Environmental Protection Agency ("EPA") to secure
2 grant money to address the uranium issue because the costs are too large for Arizona Realty to absorb
3 on its own.⁸

4 14. Mr. Walker testified that when ARWP began working with Windsong Realty, the EPA
5 was seeking over \$20,000 in fines from Windsong Realty for various violations.⁹ Mr. Walker
6 reported that counsel for the Applicants successfully negotiated a reduced fine in the amount of
7 \$1,000, as well as a consent order to resolve all violations cited in that matter.¹⁰

8 15. Mr. Walker further testified that ARWP has also coordinated a number of significant
9 infrastructure improvements to the water system, including: repairing a collapsed well; installing a
10 new booster pump; reconfiguring the pipe connection between the new booster pump and the storage
11 tank; repairing leaks at the base of the storage tank due to rust; rebuilding the entire electrical system
12 at both the wellhead and the booster pump; and repairing various other leaks occurring throughout the
13 system.¹¹

14 16. To address the relatively high number of pending customer complaints at the
15 Commission, Mr. Walker stated that Windsong Realty contracted with Ms. Nancy Miller of Sunstate
16 Environmental Services to handle meter reading, billing, and customer service calls.¹² Mr. Walker
17 testified that Ms. Miller is familiar with the National Association of Regulatory Utility
18 Commissioners ("NARUC") accounting standards and the Commission's billing requirements.¹³ Mr.
19 Walker noted that the Commission has appointed Ms. Miller as an interim manager for another water
20 utility in the past.¹⁴ In its Staff Report, Staff states that hiring Ms. Miller to perform these services
21 may reduce or eliminate future complaints relating to metering and billing and help the current open
22 complaints reach a resolution.

23
24 _____
⁸ Tr. at 16:4-10.

25 ⁹ Tr. at 16:11-23.

26 ¹⁰ *Id.*

27 ¹¹ Tr. at 11:17-12:9; Tr. at 20:19-22:9. Mr. Walker stated that the infrastructure improvements were funded through
contributions from AWRP and APS, as well as personal contributions from Mr. Walker and counsel for Applicants. (Tr.
at 12:10-15).

28 ¹² Tr. at 19:10-25.

¹³ Tr. at 19:18-19; Tr. at 20:4-5.

¹⁴ Tr. at 19:10-25.

1 17. Testifying further, Mr. Walker indicated that Mr. Oldham and Ms. Miller would
 2 continue working in their current capacities for Windsong Water if the application is approved by the
 3 Commission.¹⁵

4 18. Mr. Robert Gray, Staff Executive Consultant III, testified that Staff believes the
 5 personnel currently operating the system are qualified to ultimately bring the system into regulatory
 6 compliance.¹⁶ Mr. Gray further testified that approval of the application would serve the public
 7 interest.¹⁷

8 19. Mr. Del Smith, Staff Supervising Engineer, indicated that Staff is encouraged and
 9 pleased by the progress made towards bringing the system into compliance with ADEQ.¹⁸ According
 10 to Mr. Smith, the system is operating better than it had been before and that approval of the
 11 application will further improvements to the quality of service.¹⁹

12 **Staff's Recommendations**

13 20. Staff recommends approval of the application to transfer Arizona Windsong Realty
 14 Inc.'s utility assets and CC&N to Arizona Windsong Water Company. Staff further recommends that
 15 the Commission's approval of the transfer of Arizona Windsong Realty, Inc.'s utility assets and
 16 CC&N be conditioned upon the following:²⁰

- 17 a) that Arizona Windsong Water Company file with Docket Control, within 60
 18 days of this Decision, a new set of tariffs under the name of Arizona Windsong
 19 Water Company;
- 20 b) that Arizona Windsong Water Company assume responsibility for meeting all
 21 past compliance requirements placed on Arizona Windsong Realty, Inc. These
 22 compliance items should be met by December 31, 2015; and
- 23 c) that if Arizona Windsong Water Company does not satisfy the outstanding

24 ¹⁵ Tr. at 26:24-27:2.

25 ¹⁶ Tr. at 31:1-5.

26 ¹⁷ Tr. at 31:6-9.

27 ¹⁸ Tr. at 34:5-35:1.

28 ¹⁹ Tr. at 35:5-8.

²⁰ The Staff Report originally recommended that the Windsong Water file its 2014 Annual Report with the Commission's Corporations Division within 60 days of this Decision. However, this recommendation is no longer necessary because Windsong Realty presented evidence at the hearing that the report was filed on February 26, 2015. (Tr. at 29:22-30:8; see Exhibit A-3).

1 compliance items, Arizona Windsong Water Company's CC&N should be
2 revoked by the Commission.

3 21. Mr. Walker testified that the Applicants are in agreement with the recommendations
4 made by Staff.²¹

5 **Resolution**

6 22. Under the circumstances, we believe that the application should be approved subject to
7 Staff's recommended conditions set forth in Findings of Fact No. 21.

8 23. We commend the considerable efforts of those entities and individuals providing
9 regulatory and operational assistance to Windsong Realty, and encourage them to continue providing
10 assistance to Windsong Water following the transfer of the utility assets and CC&N approved herein.

11 24. Windsong Water shall continue to charge Windsong Realty's customers their current
12 rates and charges following the transfer of the utility assets and CC&N approved herein.

13 25. Because an allowance for the property tax expenses of the utility company is included
14 in its rates and will be collected from its customers, the Commission seeks assurances from
15 Windsong Water that any taxes collected from ratepayers have been remitted to the appropriate
16 taxing authority. It has come to the Commission's attention that a number of water companies have
17 been unwilling or unable to fulfill their obligation to pay the taxes that have been collected from
18 ratepayers, some for as many as 20 years. It is reasonable, therefore, that as a preventive measure,
19 Windsong Water shall file annually, as part of its Annual Report, an affidavit with the Commission's
20 Utilities Division attesting that it is current on paying its property taxes in Arizona.

21 **CONCLUSIONS OF LAW**

22 1. Arizona Windsong Realty, Inc. and Arizona Windsong Water Company are public
23 service corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-
24 281, 40-282, and 40-285.

25 2. The Commission has jurisdiction over Arizona Windsong Realty, Inc. and Arizona
26 Windsong Water Company and of the subject matter of the application.

27
28 ²¹ Tr. at 13:16-14:5.

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IT IS FURTHER ORDERED that Arizona Windsong Water Company shall file, as part of its Annual Report, an affidavit with the Commission's Utilities Division attesting that it is current on paying its property taxes in Arizona.

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 _____ 2015.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
SMH:ru

1 SERVICE LIST FOR: ARIZONA WINDSONG REALTY, INC.
2 DOCKET NOS.: W-02250A-14-0376 AND W-20919A-14-0376

3
4 Timothy Sabo
5 SNELL & WILMER, L.L.P.
6 One Arizona Center
7 400 East Van Buren Street, Suite 1900
8 Phoenix, AZ 85004
9 Attorney for Arizona Windsong Water Co.

7 Janice Alward, Chief Counsel
8 ARIZONA CORPORATION COMMISSION
9 1200 West Washington Street
10 Phoenix, AZ 85007

10 Steven M. Olea, Director
11 Utilities Division
12 ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
14 Phoenix, AZ 85007

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