

ORIGINAL

OPEN MEETING ITEM



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COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN



ARIZONA CORPORATION COMMISSION

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DOCKET CONTROL

DATE: MARCH 23, 2016
DOCKET NO.: W-20919A-16-0068
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 WATER COMPANY
(TRANSFER OF ASSETS)

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:

APRIL 1, 2016

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:

APRIL 12, 2016 AND APRIL 13, 2016

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.


JODI A. JERICH
EXECUTIVE DIRECTOR

Arizona Corporation Commission

DOCKETED

MAR 23 2016

DOCKETED BY

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 DOUG LITTLE – Chairman
4 BOB STUMP
5 BOB BURNS
6 TOM FORESE
7 ANDY TOBIN

8 IN THE MATTER OF THE APPLICATION OF
9 ARIZONA WINDSONG WATER COMPANY FOR
10 AUTHORITY TO TRANSFER ITS UTILITY
11 ASSETS TO THE NAVAJO TRIBAL UTILITY
12 AUTHORITY.

DOCKET NO. W-20919A-16-0068

DECISION NO. _____

OPINION AND ORDER

13 DATE OF HEARING: March 21, 2016
14 PLACE OF HEARING: Phoenix, Arizona
15 ADMINISTRATIVE LAW JUDGE: Scott M. Hesla
16 IN ATTENDANCE: Andy Tobin, Commissioner
17 APPEARANCES: Mr. Timothy J. Sabo, SNELL & WILMER, LLC, on
18 behalf of Arizona Windsong Water Company;
19 Mr. Rex P. Kontz, on behalf of the Navajo Tribal Utility
20 Authority; and
21 Mr. Matthew Laudone, Staff Attorney, Legal Division,
22 on behalf of the Utilities Division of the Arizona
23 Corporation Commission.

24 **BY THE COMMISSION:**

25 * * * * *

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

28 FINDINGS OF FACT

Procedural History

1. On February 24, 2016, Arizona Windsong Water Company (“Arizona Windsong” or
“Company”) filed with the Arizona Corporation Commission (“Commission”) an application seeking
authority to transfer its distribution system assets to the Navajo Tribal Utility Authority (“NTUA”).

1 Arizona Windsong requested expedited consideration of its application.

2 2. On March 2, 2016, the Commission’s Utilities Division Staff (“Staff”) filed a Request
3 for a Telephonic Procedural Conference.

4 3. On March 2, 2016, a Procedural Order was issued scheduling a procedural conference
5 to commence on March 4, 2016

6 4. On March 4, 2016, the procedural conference was held, as scheduled, with Staff
7 appearing through counsel, Arizona Windsong appearing telephonically through counsel, and Mr. Rex
8 P. Kontz appearing telephonically on behalf of NTUA.¹ At that time, a discussion occurred regarding
9 the expedited processing of the application and the parties agreed to a schedule that would have a Staff
10 Report issued on March 18, 2016, and a hearing on March 21, 2016.

11 5. On March 4, 2016, a Procedural Order was issued establishing various filing dates and
12 scheduling a hearing for March 21, 2016.

13 6. On March 14, 2016, Staff filed a certification that public notice of the application and
14 hearing had been provided by mailing notice of the proceeding to all interested parties on March 7 and
15 8, 2016.

16 7. On March 18, 2016, Staff filed its Staff report recommending approval of the
17 application.

18 8. On March 21, 2016, a full public hearing was convened, as scheduled, with Arizona
19 Windsong and Staff appearing through counsel, and Mr. Kontz appearing telephonically on behalf of
20 NTUA. The parties presented evidence in support of the application, with Arizona Windsong providing
21 the telephonic testimony of Ms. Lillie Paulsell (owner of Arizona Windsong), NTUA providing the
22 telephonic testimony of Mr. Kontz (Deputy General Manager for NTUA), and Staff providing the
23 testimonies of Mr. Del Smith (Staff Utilities Engineer Manager) and Ms. Vickie Wallace (Staff
24 Executive Consultant). Three Arizona Windsong customers attended the hearing and provided public
25 comments supporting the application.

26 ...

27

28 ¹ Mr. Kontz is the Deputy General Manager for NTUA.

1 **Application**

2 9. Arizona Windsong is a public service corporation providing water utility service to
3 approximately 69 customers in the community of Sanders, Apache County, Arizona.² According to
4 the Arizona Department of Environmental Quality ("ADEQ"), Arizona Windsong's water supply
5 exceeds the Maximum Containment Level ("MCL") for uranium.

6 10. NTUA was formed in 1965 by the Navajo Nation, a federally recognized Indian Tribe.
7 NTUA provides utility services to approximately 39,400 electric customers, 36,600 water customers,
8 13,600 wastewater customers, and 7,900 natural gas customers. Although NTUA is not regulated by
9 the Commission, NTUA is subject to environmental, health, and safety laws and regulations imposed
10 by the local Navajo Nation Environmental Protection Agency and the federal Environmental Protection
11 Agency. NTUA is currently in compliance with those agencies and is delivering water that meets all
12 applicable local and federal drinking water standards.

13 11. According to the application, the proposed transfer is in the public interest because
14 Arizona Windsong's water supply is contaminated with uranium and NTUA has access to
15 uncontaminated water. Although NTUA intends to procure local and federal grant money to build a
16 new distribution system in the near future, NTUA is proposing to immediately interconnect with
17 Arizona Windsong's existing distribution system so that it can provide safe drinking water to Arizona
18 Windsong's customers. NTUA states that it will provide water service under its existing tariffs, except
19 that it will request from Arizona Windsong's customers a one-time capital investment contribution of
20 \$500.00 per customer, which can be paid in installments over a two-year period.³

21 12. Arizona Windsong and NTUA have negotiated an Agreement and Bill of Sale
22 ("Agreement") which will be executed upon Commission approval of the transfer.⁴ Under the
23 Agreement, NTUA will pay \$10,000 for Arizona Windsong's distribution system, including all pipes,
24 service lines, and meters. The Agreement further provides that Arizona Windsong will cease operating

25 ² The Commission cancelled Arizona Windsong's Certificate of Convenience and Necessity ("CC&N") on January 19,
26 2016, in order to remove any impediment to NTUA extending service to Arizona Windsong's customers (Decision No.
75407).

27 ³ Five Arizona Windsong customers provided public comments supporting the one-time capital investment contribution of
\$500.00 per customer, payable over a period of two years. No public comments were filed opposing the application or the
proposed \$500.00 fee.

28 ⁴⁴ The Agreement is attached as Exhibit 4 to the Staff Report filed in this docket.

1 as a water utility upon NTUA's acquisition of the distribution system.

2 13. According to Staff, the rates charged to NTUA customers are far less than the current
3 rates charged to Arizona Windsong customers. Staff determined that NTUA's rates would decrease
4 the typical Arizona Windsong residential customer bill, with a 5/8 x 3/4-inch meter and average usage
5 of 10,100 gallons, from \$84.00 to \$49.50, for a decrease of \$34.62, or 41.16 percent.

6 14. Staff concludes that the proposed transfer of assets is in the public interest because
7 NTUA has access to uncontaminated water and is willing to immediately interconnect with Arizona
8 Windsong's distribution system to provide uncontaminated water to those customers. Staff notes that
9 it has not received any public comments opposing the proposed transfer of assets.

10 15. Based on Staff's analysis, NTUA has the financial, technical, and managerial
11 capabilities to provide safe, adequate, and reliable water service to Arizona Windsong's customers.
12 Staff recommends that Arizona Windsong's utility assets be transferred to NTUA as soon as possible.
13 Staff further recommends that once NTUA begins providing service to Arizona Windsong customers,
14 Arizona Windsong should file notification with the Commission within thirty (30) days. According to
15 Staff, Arizona Windsong's status as a public service corporation in Arizona should terminate upon the
16 filing of that notification.

17 **Resolution**

18 16. Arizona Windsong is a small, troubled water utility that has been plagued with
19 numerous infrastructure and water supply challenges for a number of years. Despite the considerable
20 efforts of those entities and individuals providing regulatory and operational assistance to Arizona
21 Windsong and its predecessors over the years,⁵ it appears in hindsight that those challenges were
22 insurmountable.

23 17. We believe that the proposed transfer of assets to NTUA represents the best possible
24 outcome for Arizona Windsong customers. NTUA has the capability to immediately interconnect with
25 Arizona Windsong's distribution system and provide safe drinking water to customers. In addition,
26 NTUA has the capability to procure local and federal grant money to fund the replacement of Arizona
27

28 ⁵ See Decision No. 75083 at 4-6 (May 19, 2015).

1 Windsong’s aging distribution system in the near future. Under the circumstances, we find that the
2 proposed transfer of assets is in the public interest and should be approved, as recommended by Staff.

3 **CONCLUSIONS OF LAW**

4 1. Arizona Windsong Water Company is a public service corporation within the meaning
5 of Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282, and 40-285.

6 2. The Commission has jurisdiction over Arizona Windsong Water Company and of the
7 subject matter of the application.

8 3. Notice of the application and hearing was given in the manner prescribed by law.

9 4. There is a continuing need for the provision of water utility service to the public in the
10 area served by Arizona Windsong Water Company.

11 5. The Navajo Tribal Utility Authority is a fit and proper entity to receive the utility assets
12 of Arizona Windsong Water Company.

13 6. The transfer of Arizona Windsong Water Company’s utility assets to the Navajo Tribal
14 Utility Authority is in the public interest and the application should be approved, as recommended by
15 Staff.

16 **ORDER**

17 IT IS THEREFORE ORDERED that the application of Arizona Windsong Water Company is
18 hereby approved.

19 IT IS FURTHER ORDERED that Arizona Windsong Water Company is hereby authorized to
20 transfer its water utility assets to the Navajo Tribal Utility Authority.

21 IT IS FURTHER ORDERED that Arizona Windsong Water Company shall file with Docket
22 Control, as a compliance item in this docket, notification that the Navajo Tribal Utility Authority is
23 providing water service to the area previously served by Arizona Windsong Water Company no later
24 than thirty (30) days from the date that service began.

25 ...
26 ...
27 ...
28 ...

1 IT IS FURTHER ORDERED that upon filing notification that the Navajo Tribal Utility
2 Authority is providing water utility service, Arizona Windsong Water Company's status as a public
3 service corporation in Arizona shall terminate without further order of the Commission.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN _____ COMMISSIONER

9
10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

11
12 IN WITNESS WHEREOF, I, JODI JERICH, Executive Director
13 of the Arizona Corporation Commission, have hereunto set my
14 hand and caused the official seal of the Commission to be affixed
15 at the Capitol, in the City of Phoenix, this _____ day
16 of _____ 2016.

17 _____
18 JODI JERICH
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____
22 SMH:ru

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1 SERVICE LIST FOR:

ARIZONA WINDSONG WATER COMPANY

2 DOCKET NO.:

W-20919A-16-0068

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