

ORIGINAL

OPEN MEETING ITEM



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



Executive Director

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ARIZONA CORPORATION COMMISSION

2016 JUN -7 A 10:55

AZ CORP COMMISSION
DOCKET CONTROL

DATE: JUNE 7, 2016
DOCKET NO.: W-03443A-15-0272
TO ALL PARTIES:

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

APPALOOSA WATER COMPANY
(FINANCING)

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:

JUNE 16, 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:

TO BE DETERMINED

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

JUN 7 2016

DOCKETED BY 

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE – Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

IN THE MATTER OF THE APPLICATION OF
APPALOOSA WATER COMPANY FOR
AUTHORITY TO INCUR LONG-TERM DEBT.

DOCKET NO. W-03443A-15-0272

DECISION NO. _____

ORDER

Open Meeting
TBD
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

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 July 28, 2015, Appaloosa Water Company (“Appaloosa” or “Company”) filed with the Arizona Corporation Commission (“Commission”) an application requesting authorization to incur long-term debt in the amount of \$1,300,000, to retire existing long-term debt.

2. Between August 12 and September 9, 2015, five consumer comments were filed in this docket in opposition to the Company’s finance application.

3. On September 8, 2015, Appaloosa docketed a Filing of Public Notice of Application certifying that notice of the application had been mailed to each of Appaloosa’s customers via a bill insert on September 1, 2015.

4. On November 20, 2015, Appaloosa docketed additional information in support of its application.

5. On March 28, 2016, the Commission’s Utilities Division (“Staff”) filed a Staff Report

1 recommending denial of the application.

2 6. On April 11, 2016, Appaloosa filed its response to the Staff Report.

3 **Background**

4 7. Appaloosa is a for-profit, Arizona "C" corporation engaged in the business of providing
5 water utility service to a community known as Appaloosa Meadows, located in the Town of Chino
6 Valley ("Town") in Yavapai County, Arizona.

7 8. Appaloosa is a Class D utility and has a Certificate of Convenience and Necessity
8 ("CC&N") service area that encompasses approximately two-thirds of a square mile. Appaloosa was
9 granted a CC&N to provide water utility service in Commission Decision No. 60733 (March 23, 1998).

10 9. Appaloosa currently serves approximately 228 metered customers and also serves two
11 contiguous parcels covering approximately 60 acres north of its CC&N.¹

12 10. Appaloosa is currently providing services under rates and charges established in
13 Commission Decision No. 73270 (July 30, 2012).²

14 11. Appaloosa is owned by Artesian Holdings, LLC.

15 **Water System/Compliance**

16 12. Appaloosa's water system consists of two wells, a single storage tank, a booster pump
17 station equipped with two booster pumps, a pressure tank and fire pump, and a distribution system
18 serving 228 metered customers.

19 13. Staff states the Appaloosa's water system has adequate production capacity and storage
20 capacity to serve its existing customer base as well as anticipated growth.

21 14. As of June 3, 2015, Appaloosa was in compliance with the Arizona Department of
22 Environmental Quality ("ADEQ") and ADEQ had determined that the Company's drinking water
23 system is currently delivering water that meets water quality standards as required by 40 C.F.R. 141
24 and A.A.C. Title 18, Chapter 4.

25 15. Appaloosa's service area is located with the Arizona Department of Water Resources
26 ("ADWR") Prescott Active Management Area ("AMA"). ADWR has reported that Appaloosa is

27 ¹ Staff Report at Attachment A.

28 ² Appaloosa's pending rate case application was filed in Docket No. W-03443A-15-0271. A Recommended Order was filed
in this case on April 19, 2016.

1 currently in compliance with departmental requirements governing water providers and/or community
2 water systems.

3 16. Appaloosa has no delinquent Commission compliance issues.

4 17. The Company has approved Curtailment and Backflow Prevention Tariffs on file with
5 the Commission.

6 18. Appaloosa has an approved Best Management Practices Tariff on file with the
7 Commission.

8 **Finance Application**

9 19. Appaloosa's finance application requests authorization to incur an amortizing loan in
10 the amount of \$1,300,000. The Company's application states that the loan amount will be used to retire
11 an existing long-term loan which the Company states is coming due. The Company's application states
12 it will pledge its assets and revenue as security for the requested loan amount.

13 20. Appaloosa's application states that Appaloosa's owner, Joseph Cordovana, executed a
14 loan with Three States Investment Group Inc., ("Three States") on March 9, 2006, in the amount of
15 \$1,300,000 and that the loan was to be paid in full contingent upon an "expected expansion of the water
16 company."³ The application also states that the loan was executed between the parties with the
17 expectation that there would be an increase in Appaloosa's customer base.⁴ Appaloosa's application
18 states that its current request for financing would be "to pay off the \$1,300,000 loan and replace it with
19 an interest bearing note that will be in line with income generated by the water company."⁵ Appaloosa
20 states that the loan is now due.

21 21. In support of its application, Appaloosa docketed a letter written to the Commission
22 which appears to describe a series of attempts by Appaloosa's owner, to obtain zoning approval from
23 the Town for development of a 160-acre parcel of land.⁶ The letter states the land will be used for a
24 park with recreational facilities, an adult retirement community known as JC Estates, apartments, a
25 skilled nursing facility, and offices for doctors.⁷ In Appaloosa's response to the Staff Report,

26 ³ Appaloosa's Application at 1.

27 ⁴ *Id.*

28 ⁵ *Id.*

⁶ Appaloosa Response docketed April 11, 2016.

⁷ Appaloosa filing docketed November 20, 2015.

1 Appaloosa's owner states that the Town has recently approved zoning for development of the proposed
 2 apartment building to be located within the 160-acre parcel, and that Mr. Cordovana plans to seek
 3 zoning for an additional 50 acres to develop a manufactured home community.⁸ Mr. Cordovana alleges
 4 that the Commission is partial to the Town and has given the Town grants and low interest loans while
 5 he is "unable to do the same thing."⁹ Further, Mr. Cordovana alleges that "there is bias by the
 6 Commission for small water companies to be able to expand and receive low interest loans and
 7 grants."¹⁰ Appaloosa's response did not request a hearing on the finance application.

8 22. Staff states the \$1,300,000 loan referred to in the Company's application is a previous
 9 loan obligation which Appaloosa's owner now wants to transfer to the regulated utility and its
 10 customers.¹¹ Staff states that the loan with Three States involved other parties (F & F Investments, Inc.,
 11 the Mitchel C. Laid Family Trust, Artesian Holdings, LLC) and did not involve Appaloosa Water
 12 Company.¹² Staff believes the previous loan is related to funding obtained by Appaloosa's owner when
 13 he purchased Appaloosa and other properties.¹³

14 23. The Company's application provided scant details related to the proposed financing.
 15 Staff stated that the Company's application did not include information regarding: who will fund the
 16 new loan; any specific loan details such as the length of the loan, or the interest rate; how monthly loan
 17 servicing obligations would be billed to customers; or an estimated monthly impact to customers.¹⁴
 18 Using the limited information provided by the Company, Staff estimated that a \$1.3 million loan,
 19 amortized over 20 years, at an interest rate of five percent, would result in monthly payments of \$36.98
 20 per month, per customer.¹⁵ The same loan amount amortized over 30 years, at an interest rate of five
 21 percent, would result in payments of an estimated \$30.08 per month, per customer.¹⁶

22 24. Staff's review of the application, shows that Appaloosa currently has an existing loan
 23 with the Water Infrastructure Financing Authority ("WIFA"), for purchase of its arsenic treatment

24 ⁸ Appaloosa Response docketed April 11, 2016.

25 ⁹ *Id.*

26 ¹⁰ *Id.*

27 ¹¹ Staff Report at 1-2.

28 ¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *Id.* at 1.

¹⁵ *Id.*

¹⁶ Staff Report at 1.

1 facility.¹⁷ According to Staff, the WIFA loan was established in 2007 and Staff states that the new loan
 2 requested in this docket does not appear to involve retirement of the current WIFA loan.¹⁸

3 25. Staff expressed concern that the amount of financing requested by Appaloosa “bears no
 4 discernable link to the level of Appaloosa’s rate base, which Staff determined is negative \$73,103”¹⁹
 5 and that the Company’s financial statements in this docket show that it would be unable to fund the
 6 estimated debt service on the new loan without a rate increase or without the approval of a loan
 7 surcharge.²⁰

8 26. Staff also noted that the Company’s financial documents filed in this and other dockets
 9 contained numerous discrepancies. Staff explained that the amount of depreciation expense filed in
 10 Appaloosa’s income statement in this docket differs from the income statement filed in Appaloosa’s
 11 pending rate case (Docket No. W-03443A-15-0271). In this docket, Appaloosa’s income statement for
 12 the year ending December 31, 2014, does not show any depreciation expense, while the income
 13 statement filed in the pending rate case showed a depreciation expense of \$42,819 for the same time
 14 period.²¹ Staff also noted that Appaloosa appears to have paid \$16,008.36 in interest expense to its
 15 affiliate, Three States, and that Appaloosa reported different amounts related to contributions in aid of
 16 construction and advances in aid of construction, in its 2014 Annual Report, finance application, and
 17 rate application.²² Staff stated that the interest payments to Appaloosa’s affiliate, Three States, are
 18 “inappropriate and should be discontinued.”²³ Staff states that since it has determined that the
 19 \$1,300,000 loan request should be denied, “it is not taking further issue with these accounting
 20 discrepancies as a part of this filing.”²⁴ However, Staff recommends that the Commission should direct
 21 Appaloosa to refrain from keeping and reporting multiple sets of financial statements for the
 22 Company.²⁵

23 27. For the above reasons, Staff recommends that the Commission deny Appaloosa’s

24 ¹⁷ Staff Report at 2.

25 ¹⁸ *Id.*

¹⁹ Staff Report docketed in W-03443A-15-0271 related to Appaloosa’s pending request for a rate increase.

26 ²⁰ Staff Report at 2.

²¹ *Id.* at 3.

27 ²² *Id.*

²³ *Id.*

28 ²⁴ *Id.*

²⁵ *Id.*

1 application.

2 **Conclusion**

3 28. Staff has stated that the \$1,300,000 loan referred to in the Company's application is a
4 previous loan obligation which Appaloosa's owner now wants to transfer to the regulated utility, and
5 its customers. While Appaloosa's filings in support of its application focused on issues related to the
6 Town's zoning stipulations and regulations, as well as development of a 160-acre parcel of land, those
7 issues are only tangentially related to Appaloosa's finance application. As Staff points out, it is entirely
8 inappropriate for the owner of the Company to seek retirement of debt that was apparently incurred for
9 obligations related to the purchase of the Company, and which debt was never authorized by the
10 Commission.

11 29. Although Staff indicates that it is not taking further issue with the accounting
12 discrepancies raised by Appaloosa's various filings, we believe the Company should be required to
13 reconcile these inconsistencies as soon as possible in order to avoid further potential problems in the
14 future. Therefore, we will direct Appaloosa to file in this docket, as a compliance filing, within 30
15 days of the effective date of this Decision, an affidavit signed by Mr. Cordovana explaining the
16 accounting discrepancies identified by Staff including, but not limited to: how and why the Company
17 believes it is appropriate for Appaloosa, and ultimately its ratepayers, to incur unauthorized debt
18 associated with the purchase of the Company; why the Company paid approximately \$16,008 in
19 interest to an affiliate company; and why it has made filings with multiple accounting discrepancies.
20 Staff shall, within 60 days thereafter, file with the Commission recommendations addressing the
21 Company's filing.

22 30. We find that Appaloosa has failed to show that its request to incur long term debt in the
23 amount of \$1.3 million, and to pledge its assets and revenue as security for the debt, is in the best
24 interest of the utility or its current ratepayers. Therefore, Appaloosa's application is not in the public
25 interest and is denied.

26 31. Further, Appaloosa is prohibited from keeping and reporting multiple sets of financial
27 statements for the utility.

28 ...

CONCLUSIONS OF LAW

1
2 1. Appaloosa is a public service corporation within the meaning of Article XV of the
3 Arizona Constitution and A.R.S. §§ 40-285, 40-301, and 40-303.

4 2. The Commission has jurisdiction over Appaloosa and the subject matter of the
5 application.

6 3. Notice of the application was given in accordance with the law.

7 4. It is not in the public interest to approve Appaloosa's application to incur debt in the
8 amount of \$1,300,000.

9 5. Appaloosa shall refrain from keeping and reporting multiple sets of financial statements
10 for the utility.

ORDER

11
12 IT IS THEREFORE ORDERED that Appaloosa Water Company's application for
13 authorization to obtain financing in the amount of \$1,300,000, is hereby denied.

14 IT IS FURTHER ORDERED that Appaloosa Water Company shall file in this docket, as a
15 compliance filing, within 30 days of the effective date of this Decision, an affidavit signed by Mr.
16 Cordovana explaining the accounting discrepancies identified by Staff herein including, but not limited
17 to: how and why the Company believes it is appropriate for Appaloosa, and ultimately its ratepayers,
18 to incur unauthorized debt associated with the purchase of the Company; why the Company paid
19 approximately \$16,008 in interest to an affiliate company; and why it has made filings with multiple
20 accounting discrepancies.

21 IT IS FURTHER ORDERED that Staff shall, within 60 days following the Company's filing,
22 docket with the Commission any recommendations addressing the Company's filing.

23 ...
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1 IT IS FURTHER ORDERED that Appaloosa Water Company is hereby prohibited from
2 keeping and reporting multiple sets of financial statements for the utility.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5
6
7 CHAIRMAN _____ COMMISSIONER

8
9 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

10
11 IN WITNESS WHEREOF, I, JODI JERICH, Executive Director
12 of the Arizona Corporation Commission, have hereunto set my
13 hand and caused the official seal of the Commission to be affixed
14 at the Capitol, in the City of Phoenix, this _____ day
15 of _____ 2016.

16 _____
17 JODI JERICH
18 EXECUTIVE DIRECTOR

19 DISSENT _____

20 DISSENT _____
21 YBK:rt

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SERVICE LIST FOR:

APPALOOSA WATER COMPANY

DOCKET NO.:

W-03443A-15-0272

Joseph Cordovana
APPALOOSA WATER COMPANY
P.O. Box 3150
Chino Valley, AZ 86323

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Thomas Broderick, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007