

ORIGINAL

OPEN MEETING AGENDA ITEM



0000184878

COMMISSIONERS
TOM FORESE – Chairman
BOB BURNS
ANDY TOBIN
BOYD DUNN
JUSTIN OLSON



BOB BURNS
Commissioner

ARIZONA CORPORATION COMMISSION

January 5, 2018
Arizona Corporation Commission

DOCKETED

JAN 5 2018

DOCKETED BY

2018 JAN -5 A 8:15
RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

RE: ARIZONA WATER COMPANY (DOCKET NO. W-01445A-03-0559)

Dear Commissioners and Interested Parties:

I read with interest Commissioner Tobin’s letter of January 3, 2018, and I would like to thank him for docketing it. I agree with what I believe Commissioner Tobin is suggesting be accomplished here. However, I also believe the Commission has already completed Commissioner Tobin’s alternative suggestion (third complete paragraph on page 2 of Commissioner Tobin’s letter), therefore, his proposed amendment is unnecessary.

It is my belief that Commission Decision No. 69722 granted the Certificate of Convenience and Necessity (“CC&N”) in this case to Arizona Water Company (“AWC”) unconditionally. That same Decision also required the Commission to reevaluate whether “AWC should continue to hold” the CC&N for the area in question. The Commission did just that – it held a proceeding that resulted in the Hearing Division issuing a 96 page (over 100 pages with attachments) Recommended Opinion and Order (“ROO”) that concluded among other things that:

- a. AWC is a fit and proper entity to hold a CC&N and to provide water utility service to the extension area, including the property owned by Cornman Tweedy 560, L.L.C.
- b. AWC’s CC&N extensions conditionally granted in Decision No. 66893 became unconditional through Decision No. 69722.
- c. The Commission reopened the record in this matter pursuant to A.R.S. § 40-252 to consider whether AWC’s CC&N as to the property owned by Cornman Tweedy 560, L.L.C. should be deleted.
- d. Arizona case law precludes deletion of the property owned by Cornman Tweedy 560, L.L.C. from AWC’s CC&N because AWC has not failed to supply adequate service to the property, at a reasonable cost to customers, after having being presented with a demand for service that was reasonable in light of projected need.

January 5, 2018
Docket Control
Arizona Corporation Commission
Page 2

- e. The public interest will best be served by denying Cornman Tweedy 560, L.L.C.'s request for deletion of its property from AWC's CC&N.

In other words, what the above shows is that after several years of investigation, three days of hearings, and a detailed and thorough discussion in the ROO by the Administrative Law Judge, the CC&N that was conditionally granted to AWC by Commission Decision No. 66893 and then unconditionally granted to AWC by Commission Decision No. 69722 was recommended by the Hearing Division to be finalized as being granted, unconditionally, to AWC.

The above referenced ROO appeared on the agenda for the Commission's February 7, 2017 Open Meeting. At this Open Meeting, the Commission discussed the ROO and ultimately voted to approve it, thereby granting the CC&N in question to AWC finally and unconditionally. The reason that we are even here today is that the final order was not signed by all Commissioners. Even though not all the signatures were obtained, I believe the act of signing the approved decision is strictly a ministerial act. Therefore, unless the Commission's Legal Division and/or Hearing Division can convince me otherwise, the February 7, 2017 approved decision is the final decision in this case and there is nothing further that needs to be done.

The alternate suggestion contained in Commissioner Tobin's letter could possibly be interpreted somewhat differently than how I assumed in my above discussion. Commissioner Tobin may be suggesting that the Commission adopt an overall policy and/or procedure that would prevent the situation that resulted in this case from occurring again in the future. If that is what Commissioner Tobin is trying to accomplish, I totally and wholeheartedly agree. However, I do not believe that such a policy and/or procedure should be developed within the context of a specific case. Such a policy and/or procedure should be developed in a generic docket. Such a docket already exists – Docket No. WS-00000A-17-0094.

Based on the above, I believe the Commission's Executive Director should complete the ministerial action of signing and docketing the final decision that was approved for this case at the Commission's February 7, 2017 Open Meeting.

Sincerely,



Robert L. Burns
Commissioner

On this 5th day of January, 2018, the foregoing document was filed with Docket Control as a Correspondence From Commissioner, and copies of the foregoing were mailed on behalf of Bob Burns, Commissioner - A.C.C. to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

Peter M. Gerstman
ROBSON COMMUNITIES, INC.
9532 E. Riggs Rd.
Sun Lakes AZ 85248


Meghan H. Grabel
OSBORN MALEDON, PA
2929 N. Central Avenue Suite 2100
Phoenix AZ 85012

Jeffrey Crockett
CROCKETT LAW GROUP, PLLC
2198 E. Camelback Rd., Suite 305
Phoenix AZ 85016

Elijah O. Abinah
ARIZONA CORPORATION COMMISSION
Director - Utilities Division
1200 West Washington Street
Phoenix AZ 85007

Andy Kvesic
ARIZONA CORPORATION COMMISSION
Director- Legal Division
1200 West Washington
Phoenix AZ 85007

By:



Lynn Jahnke
Executive Aide