

OPEN MEETING ITEM



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COMMISSIONERS
BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH



ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

ORIGINAL

DATE: SEPTEMBER 27, 2013
DOCKET NOS.: W-02259A-13-0138 and W-01303A-13-0138

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc A. Stern. The recommendation has been filed in the form of an Opinion and Order on:

NORTH MOHAVE VALLEY CORPORATION
EPCOR WATER ARIZONA, INC.
(RATES)

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:

OCTOBER 7, 2013

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:

OCTOBER 16 AND 17, 2013

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

SEP 27 2013

DOCKETED BY

JODI JERICHI
EXECUTIVE DIRECTOR

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 BOB STUMP – Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION OF
9 NORTH MOHAVE VALLEY CORPORATION
10 FOR APPROVAL OF THE SALE OF ITS ASSETS
11 AND TRANSFER OF ITS CERTIFICATE OF
12 CONVENIENCE AND NECESSITY TO EPCOR
13 WATER ARIZONA, INC.

DOCKET NO. W-02259A-13-0138
DOCKET NO. W-01303A-13-0138

DECISION NO. _____

OPINION AND ORDER

14 DATE OF HEARING: August 21, 2013

15 PLACE OF HEARING: Phoenix, Arizona

16 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

17 APPEARANCES: Ms. Jamie Kelley, Kelley Moss, PLLC, on behalf of
18 North Mohave Valley Corporation;

19 Mr. Michael Hallam and Mr. Matthew Bingham, Lewis
20 Roca Rothgerber, on behalf of Epcor Water Arizona,
21 Inc.; and

22 Mr. Charles Hains and Mr. Matthew Laudone, Staff
23 Attorneys, Legal Division, on behalf of the Utilities
24 Division of the Arizona Corporation Commission.

25 **BY THE COMMISSION:**

26 On May 17, 2013, North Mohave Valley Corporation (“NMVC”) and EPCOR Water Arizona,
27 Inc. (“EPCOR”)¹ filed with the Arizona Corporation Commission (“Commission”) a joint application
28 for approval of the sale of NMVC’s assets and transfer of NMVC’s Certificate of Convenience and
Necessity (“Certificate”) to EPCOR (“Application”).

On June 12, 2013, the Commission’s Utilities Division (“Staff”) issued a letter of sufficiency
which stated that the Application had met the sufficiency requirements of A.A.C. R14-2-411(C).

On June 19, 2013, by Procedural Order, the Commission scheduled a hearing on August 21,
2013.

¹ EPCOR in Arizona is a subsidiary of EPCOR USA which was providing water and wastewater utility service to approximately 193,000 customers at the end of December 2012.

1 On July 16, 2013, NMVC and EPCOR filed certification that they had provided public notice
2 of the Application and hearing thereon pursuant to the terms of the Commission's Procedural Order.

3 On August 6, 2013, Staff filed a memorandum which recommends approval of the
4 Application subject to EPCOR complying with several conditions set forth by Staff.

5 On August 16, 2013, NMVC and EPCOR filed a response to the Staff Report in further
6 support of its request that the Commission approve a provision of a purchase agreement with respect
7 to the payment made for NMVC.

8 On August 21, 2013, a full public hearing was convened before a duly authorized
9 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. NMVC, EPCOR
10 and Staff appeared with counsel. At the conclusion of the hearing, the matter was taken under
11 advisement pending submission of a recommended Opinion and Order to the Commission.

12 * * * * *

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

15 **FINDINGS OF FACT**

16 1. Pursuant to the authority granted by the Commission in Decision No. 46690 (January
17 20, 1976) NMVC is a for profit Class C corporation that provides public water utility service to
18 approximately 2,000 customers spread over a six square mile area in Bullhead City, Mohave County,
19 Arizona.²

20 2. Pursuant to authority granted by the Commission, EPCOR is an Arizona public
21 service corporation which is authorized to provide public water utility service in eight separate
22 districts within Arizona. One of these districts is EPCOR's Mohave Water District ("EPCOR
23 Mohave") which is located slightly to the south of NMVC's certificated service area and serves
24 approximately 17,000 customers in this district alone.³

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27 ² NMVC's Certificate was extended on two occasions by Decision Nos. 54285 (December 20, 1984), 57989 and 57992
(August 26, 1992).

28 ³ According to the Staff Report, EPCOR currently serves over 123,000 water customers throughout Arizona.

1 3. On April 19, 2013, NMVC and EPCOR entered into a purchase agreement for the sale
2 of NMVC's assets, including its Certificate, to EPCOR. They expect to close the transaction within
3 30 days after the Commission's approval of the Application.

4 4. On May 17, 2013, NMVC and EPCOR filed an Application requesting the
5 Commission's approval for the sale of NMVC's assets and transfer of its Certificate to EPCOR.

6 5. EPCOR is a subsidiary of a Canadian company which is privately owned. EPCOR
7 will pay the purchase price of \$2,137,020, along with an acquisition adjustment of 10 percent in cash
8 for the more than 30-year old public utility.

9 6. EPCOR will continue to charge NMVC's customers their current rates and charges
10 following the transfer of ownership once the sale is approved by the Commission.

11 7. Pursuant to the Commission's Procedural Order in this matter, public notice was given
12 by NMVC and EPCOR of the Application and hearing thereon by mailing notice of the proceeding to
13 all customers on June 28, 2013, and by publishing notice of the proceeding in a newspaper of general
14 circulation in the service area, the *Mohave Valley Daily News*, on June 30, 2013.

15 8. NMVC's current water system consisting of eight wells, seven storage tanks and three
16 booster pump stations, along with its distribution system, will be transferred to EPCOR Mohave.

17 9. Although the original purchase agreement provided that all customer security deposits,
18 developer deposits and prepayments under line extensions held by NMVC would be transferred to
19 EPCOR, the vice-president of corporate services for EPCOR Water USA, Mr. Jim McKee, testified
20 that the parties had amended their agreement because NMVC is to continue to retain the accounts
21 receivable and the deposits could easily be applied against the outstanding accounts at the end of
22 NMVC's collection period. Any remaining balances will then be refunded by NMVC to the parties
23 to whom the monies are owed because EPCOR does not retain customer deposits.

24 10. Upon the conclusion of the transaction and transfer of assets, EPCOR's certified
25 operator will assume the operational responsibilities for NMVC's water system.

26 11. According to the Staff Report, both NMVC and EPCOR believe that the utility will
27 achieve a synergy of operations because of the proximity of the two systems and NMVC's customers
28 will also enjoy the following: EPCOR's best management practices; maintenance management;

1 environmental and water quality compliance management; hydraulic modeling; and Geographic
2 Information System. Additionally, NMVC's customers will be integrated into the customer service
3 and billing systems of EPCOR and also benefit from the financial strength of the corporation.
4 Further, both systems will benefit from the deferral or avoidance of water production capital
5 improvement costs to provide a redundant water supply due to the interconnection of the two systems
6 in two locations.

7 12. In their application, NMVC and EPCOR are requesting that the Commission not only
8 approve the sale and transfer of assets to EPCOR, but to confirm that NMVC's rate base as of
9 December 31, 2012, was \$2,137,020. The purchase price for the system will be increased by an
10 additional 10 percent premium over what the parties believe the rate base is as stated in the purchase
11 agreement. NMVC and EPCOR are requesting that the Commission find this rate base and additional
12 premium payment to be in the public interest and to approve, in principal, rate recovery of this
13 payment to occur in EPCOR Mohave's next rate case.

14 13. In the Staff Report, Staff indicates that both NMVC and EPCOR Mohave have no
15 major deficiencies and are delivering water which meets the water quality standards of the Safe
16 Drinking Water Act ("SDWA").

17 14. Staff further indicates that both NMVC's and EPCOR Mohave's systems have
18 adequate production and storage capacity to serve their existing customers and to provide for
19 reasonable growth.

20 15. Staff further states that both NMVC and EPCOR are in good standing with the
21 Commission and there are no delinquencies for either Company.

22 16. Staff states that its consumer services section has only one outstanding consumer
23 complaint open pending investigation for either utility.

24 17. According to Staff, the Arizona Department of Water Resources ("ADWR") has
25 determined that both NMVC and EPCOR Mohave are currently in compliance with ADWR
26 requirements governing water providers and/or community water systems.

27 18. Staff is recommending approval of the joint Application for the transfer of NMVC's
28 assets and Certificate to EPCOR, but is recommending the denial of the request that NMVC's rate

1 base as of December 31, 2012, be determined to be \$2,137,020, and that any determination for the
 2 recovery of an additional 10 percent of rate base payment or any other payment is premature and is
 3 better determined in the context of a general rate case.

4 19. Staff further recommends that the Commission's approval of the sale of NMVC's
 5 assets and transfer of its Certificate to EPCOR be conditioned upon the following:⁴

- 6 • that EPCOR file, within 60 days of the effective date of this Decision, with the
 7 Commission's Docket Control, as a compliance item in this docket, the cross-
 8 connection and back-flow tariff for NMVC's certificated area; and
- 9 • that EPCOR file, within 60 days of the effective date of this Decision, with the
 10 Commission's Docket Control, as a compliance item in this docket, EPCOR
 11 Mohave's BMP Tariffs for the NMVC certificated area.

12 20. Under the circumstances, we believe that the Application should be approved subject
 13 to Staff's recommendations hereinabove. We agree with Staff that it would be inappropriate to make
 14 a rate base determination during this proceeding.

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

CONCLUSIONS OF LAW

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

25 2. The Commission has jurisdiction over NMVC and of the subject matter of the
 26 application.

27 ⁴ Although Staff, in its report, had originally recommended that the above-referenced compliance items be filed within 30
 28 days of the effective date of this Decision, during the hearing, to address the concerns of the parties, Staff's witness
 indicated that Staff had no objections to the documents being filed 60 days after the effective date of this Decision.

1 3. There is a continuing need for the provision of water utility service to the public in the
2 certificated service area of NMVC.

3 4. EPCOR is a fit and proper entity to receive the assets and Certificate of NMVC.

4 5. Notice of NMVC's Application as described herein was given in the manner
5 prescribed by law.

6 6. The Application should be approved and the conditions as set forth in Findings of Fact
7 No. 19 are reasonable and should be adopted.

8 **ORDER**

9 IT IS THEREFORE ORDERED that the Application of North Mohave Valley Corporation
10 for approval for the sale of its utility assets and transfer of its Certificate of Convenience and
11 Necessity to EPCOR Water Arizona, Inc. is hereby approved as set forth herein.

12 IT IS FURTHER ORDERED that EPCOR Water Arizona, Inc. shall continue to charge water
13 customers in the certificated service area of North Mohave Valley Corporation their existing rates
14 and charges until further order by the Commission.

15 IT IS FURTHER ORDERED that EPCOR Water Arizona, Inc. shall comply in all respects
16 with Findings of Fact No. 19 and Conclusion of Law No. 6.

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1 IT IS FURTHER ORDERED that EPCOR Water Arizona, Inc., shall file, as part of its
2 Annual Report, an affidavit with the Utilities Division attesting that the Company is current on
3 paying its property taxes in Arizona.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6
7 CHAIRMAN

COMMISSIONER

8
9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11 IN WITNESS WHEREOF, I, JODI JERICH, Executive
12 Director of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this _____ day of _____ 2013.

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17 _____
18 JODI JERICH
19 EXECUTIVE DIRECTOR

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SERVICE LIST FOR:

NORTH MOHAVE VALLEY CORPORATION
AND EPCOR WATER ARIZONA, INC.

DOCKET NOS.:

W-02259A-13-0138 and W-01303A-13-0138

Jamie Kelley
William D. Condray
2031 Highway 95
Bullhead City, AZ 86442
Attorneys for North Mohave Valley Corporation

Thomas H. Campbell
Matthew Bingham
40 North Central Avenue
Phoenix, AZ 85004
Attorneys for EPCOR Water Arizona, Inc.

Charles Hains, Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

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

Steven M. Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007