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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

JIM O'CONNOR – CHAIRMAN
LEA MÁRQUEZ PETERSON
ANNA TOVAR
KEVIN THOMPSON
NICK MYERS

DOCKETED

AUG 25 2023

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IN THE MATTER OF THE JOINT APPLICATION OF SANTA CRUZ WATER COMPANY, AN ARIZONA CORPORATION, AND CACTUS STATE UTILITY OPERATING COMPANY, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, FOR APPROVAL TO TRANSFER WATER UTILITY SYSTEM ASSETS, AND REINSTATEMENT AND SUBSEQUENT TRANSFER OF CERTIFICATE OF CONVENIENCE AND NECESSITY PURSUANT TO A.R.S. § 40-285 AND A.A.C. R14-2-402(D); AND ESTABLISHMENT OF DEFERRED DEBIT FOR SANTA CRUZ WATER COMPANY'S WATER SYSTEM ASSETS.

DOCKET NO. WS-21155A-22-0309
W-02127A-22-0309

DECISION NO. 79078

OPINION AND ORDER

DATE OF HEARING: May 31, 2023
PUBLIC COMMENT: May 4, 2023
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Julia L. Matter
APPEARANCES: Mr. Patrick J. Black, FENNEMORE CRAIG, P.C.. on behalf of Santa Cruz Water Company and Cactus State Utility Operating Company, LLC; and Ms. Katherine Kane, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

Procedural History

1. On December 15, 2022, Santa Cruz Water Company ("Santa Cruz") and Cactus State Utility Operating Company, LLC ("Cactus State") (collectively "Joint Applicants") filed a joint

1 application with the Commission for approval to transfer the water utility system assets of Santa Cruz
2 to Cactus State, for reinstatement and subsequent transfer of Santa Cruz's Certificate of Convenience
3 and Necessity ("CC&N"), and for the establishment of a deferred debit for Santa Cruz's water system
4 assets.

5 2. On December 20, 2022, a Procedural Order was issued regarding Consent to Email
6 Service.

7 3. On December 30, 2022, Cactus State filed an amended exhibit to the application.

8 4. On January 19, 2023, the Commission's Utilities Division ("Staff") filed a Letter of
9 Sufficiency stating that the Company's application met the sufficiency requirements as outlined in
10 Arizona Administrative Code ("A.A.C.") R14-2-402(D).

11 5. On January 27, 2023, by Procedural Order, a telephonic procedural conference was
12 scheduled for January 30, 2023, to discuss the scheduling of a hearing and other procedural deadlines.

13 6. On January 30, 2023, the telephonic procedural conference was held as scheduled. The
14 parties discussed holding the hearing with other similar matters recently filed by Cactus State and a
15 proposed procedural schedule.

16 7. On February 2, 2023, by Procedural Order, a hearing was scheduled for May 4, 2023,
17 and other procedural deadlines were established.

18 8. On March 9, 2023, Staff filed a Motion to Continue Hearing Date.

19 9. On March 15, 2023, by Procedural Order, Staff's Motion to Continue Hearing Date was
20 granted, and the hearing date was continued until May 17, 2023. The original hearing date of May 4,
21 2023, was retained for public comment. In addition, the timeclock for issuing a final decision in this
22 matter was continued until July 21, 2023.

23 10. On March 21, 2023, the Joint Applicants filed a Notice of Filing Affidavit of Publication
24 and Proof of Mailing, certifying that notice of the hearing had been mailed to Santa Cruz's customers
25 on February 27, 2023, and published in *The Nogales International* on February 21, 2023.

26 11. On April 24, 2023, Staff filed a notice indicating that Staff's witnesses and counsel
27 would appear in person at the hearing.

28 12. On May 1, 2023, Staff and Cactus State filed a Joint Motion to Extend Filing Deadline

1 and Hearing Date.

2 13. On May 3, 2023, by Procedural Order, the Joint Motion to Extend Filing Deadline and
3 Hearing Date was granted. The hearing date was continued until May 31, 2023, and the timeclock for
4 issuing a final decision in this matter was extended until August 18, 2023.

5 14. On May 4, 2023, a public comment proceeding was held as scheduled. One member
6 appeared to provide public comment in another Cactus State acquisition matter being heard
7 concurrently.

8 15. On May 19, 2023, Staff filed its Staff Report, recommending approval of the
9 application.

10 16. On May 25, 2023, Cactus State filed a Notice Regarding Participation at Hearing
11 indicating that counsel would appear in person for the hearing and that its witness would appear via
12 videoconference.

13 17. Also on May 25, 2023, Staff filed its list of exhibits to be presented at the hearing.

14 18. On May 26, 2023, Santa Cruz and Cactus State filed a Joint Applicants' Response to
15 Staff Report and a list of exhibits to be presented at the hearing.

16 19. Also on May 26, 2023, Staff filed a notice indicating that Staff's witnesses and counsel
17 would appear in person at the hearing.

18 20. On May 31, 2023, the hearing in this matter was held as scheduled before a duly
19 authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona.¹ Cactus
20 State and Santa Cruz appeared through counsel and presented the testimony of Mr. Josiah Cox,
21 President of Cactus State. The Joint Applicants and Staff stipulated to the admission of the testimony
22 of Mr. Ray Jones on behalf of the Joint Applicants. Staff appeared through counsel and presented the
23 testimony of Mr. Reese Emert and Mr. Abdulqahar Abdulrahim. No members of the public appeared
24 to provide public comment regarding the application in this matter. At the conclusion of the hearing,
25 the matter was taken under advisement pending the submission of a Recommended Opinion and Order
26 for the Commission's consideration.

27 ¹ The hearing was held in conjunction with the hearings for the following additional Cactus State acquisition matters: WS-
28 21155A-22-0314/W-03912A-22-0314, WS-21155A-22-0319/W-02271A-22-0319, WS-21155A-22-0324/W-02502A-22-
0324, WS-21155A-22-0327/W-03211A-22-0327, and WS-21155A-23-0013/W-04081A-23-0013.

1 **Background**

2 21. Santa Cruz is a public service corporation and a Class E water utility providing service
3 to approximately 18 customers in the City of Elgin, Santa Cruz County, Arizona. Santa Cruz's CC&N
4 was granted in Decision No. 41381 (June 28, 1971), and was revoked in Decision No. 65649 (February
5 18, 2003) for failure to file its Annual Reports. The Company's CC&N was transferred to the current
6 owner, a sole proprietorship, by Decision No. 53955 (March 28, 1984).²

7 22. Cactus State is a utility operating company and a wholly owned subsidiary of CSWR,
8 LLC ("CSWR"), which owns and operates several water and wastewater utilities in ten states, including
9 Arizona, and serves approximately 201,000 wastewater customers and 127,000 water customers.
10 According to Mr. Cox, Cactus State's "mission is to bring safe, reliable, and environmentally
11 sustainable water resources to every community in the U.S." He further stated that Cactus State
12 specializes in purchasing troubled water and wastewater utilities and investing in the facilities so that
13 they provide safe and reliable service.³

14 23. Santa Cruz's current rates were approved in 1971 in conjunction with the grant of its
15 CC&N in Decision No. 41381. Santa Cruz is authorized to charge a residential customer with a 5/8 x
16 3/4-inch meter a monthly minimum charge of \$6.50, which includes the first 5,000 gallons, and \$0.75
17 per 1,000 gallons above the minimum. However, Santa Cruz has been charging customers a flat rate
18 of \$30.00 per month without Commission authorization. Meters were not installed for customers
19 following the Commission's grant of a CC&N to Santa Cruz, and thus it is unable to charge the
20 Commission-approved rates. Cactus State will install customer meters after closing and will begin
21 charging the Commission-authorized rates, likely resulting in a rate decrease for most customers.
22 While the meters are being installed, Cactus State will continue charging the flat rate of \$30.00, and
23 once it obtains data regarding customer usage, it will average each customer's monthly usage and issue
24 a bill credit for the difference between the \$30 rate paid and what the customer would have paid based
25 on its average usage and the Commission-authorized rates. Cactus State anticipates filing a rate case
26 and requesting consolidation with its other systems at the end of 2024.⁴

27 ² Ex. S-1 at 1, Attachment A at 1.

28 ³ Ex. S-1 at 1; Ex. CS-1-Santa Cruz, Ex. 1 at 7-8; Tr. at 20-21.

⁴ Ex. S-1 at 3; Ex. CS-1-Santa Cruz at 10-11; Tr. at 55-56, 79-83.

1 24. Santa Cruz currently is providing service without a valid CC&N because of its failure
2 to comply with the Commission's annual report filing requirements. Staff requested that the Company
3 file an annual report, and received a 2021 Annual Report on March 13, 2023, which Staff states brought
4 it into compliance with the Commission's annual report filing requirements. Because Santa Cruz
5 became current on its annual report filing, Staff recommends that the Commission reinstate Santa
6 Cruz's CC&N as described in Decision Nos. 41381 and 53955.⁵

7 25. Santa Cruz does not have a Curtailment Tariff or Cross-Connection/Backflow
8 Prevention Tariff on file with the Commission.⁶

9 26. Staff's review of the Commission's Consumer Services records from January 1, 2020,
10 to May 12, 2023, did not find any complaints against Santa Cruz.⁷

11 27. Cactus State is in good standing with the Commission's Corporations Division, is in
12 compliance with the Commission's annual report filing requirements, and the eleven complaints filed
13 against it between February 1, 2022, and May 9, 2023, have been resolved and closed.⁸

14 28. No customer comments were received by the Commission regarding the joint
15 application. In addition, Cactus State did not receive any communications from customers regarding
16 the proposed acquisition of Santa Cruz.⁹

17 **Application**

18 29. Santa Cruz and Cactus State's joint application seeks approval of the reinstatement and
19 transfer of Santa Cruz's CC&N and sale of its water utility assets to Cactus State. In addition, Cactus
20 State seeks the establishment of a deferred debit related to the acquisition of Santa Cruz's assets to be
21 considered by the Commission for recovery in a future rate proceeding.¹⁰

22 30. The Arizona Department of Environmental Quality ("ADEQ") requested that Cactus
23 State acquire the Santa Cruz water system because of its compliance issues.¹¹

24 31. On June 8, 2022, Joint Applicants entered into an Asset Purchase Agreement for Cactus

25 ⁵ Ex. S-1 at 1, Attachment A at 5; Tr. at 103.

26 ⁶ Ex. S-1 at 5-6, Attachment A at 4.

27 ⁷ Ex. S-1 at 2.

28 ⁸ Ex. S-1 at 2.

⁹ Tr. at 75.

¹⁰ Ex. CS-1-Santa Cruz at 2; Ex. S-1 at 1-2.

¹¹ Tr. at 101.

1 State to acquire Santa Cruz's water utility assets, water rights, real estate, and other related property.
2 Under the terms of the Asset Purchase Agreement, Santa Cruz's assets will be sold and its CC&N
3 transferred for the purchase price of \$25,000, upon Commission approval and reinstatement of its
4 CC&N.¹²

5 32. The Asset Purchase Agreement provides that all outstanding customer security deposits,
6 refunds due on main extension agreements, and refunds due on service line installations are obligations
7 that will remain with Santa Cruz, in addition to any outstanding Commission-related compliance
8 matters not specifically transferred to Cactus State.¹³

9 33. Staff states that a utility's liabilities such as customer deposits, property tax, income tax,
10 and Advances in Aid of Construction ("AIAC") are obligations of the utility and should be paid in full
11 at the time of closing or transfer to Cactus State. In addition, Staff states that outstanding compliance
12 requirements at the Commission, ADEQ, and the Arizona Department of Water Resources ("ADWR")
13 associated with the operation of Santa Cruz as a utility also should transfer to Cactus State.¹⁴

14 34. Cactus State indicates that it employs staff engineers and other qualified personnel with
15 experience in the design and operation of water and wastewater systems, and that it has the ability to
16 supplement its resources with qualified and licensed contract operators for daily plant operations. In
17 addition, it has access to investment capital necessary to acquire small, distressed water and wastewater
18 systems, and it can make the capital investments necessary to upgrade, improve, and maintain the
19 acquired systems to ensure that safe and reliable service is provided to customers.¹⁵

20 35. Cactus State will hire a local non-affiliated firm to manage the day-to-day utility
21 operations and emergency calls, and a third-party billing and customer service firm used by all CSWR's
22 affiliates will provide customer service. CSWR will provide management, financial reporting,
23 underground utility safety and location services, Commission regulatory reporting, environmental
24 regulatory reporting and management, operations oversight, utility asset planning, engineering
25 planning, ongoing utility maintenance, utility record keeping, and final customer dispute management

26 _____
27 ¹² Ex. CS-1-Santa Cruz at 9; Ex. S-1 at 3.

¹³ Ex. CS-1-Santa Cruz at 10.

¹⁴ Ex. S-1 at 7.

¹⁵ Ex. S-1 at 3; Ex. CS-1-Santa Cruz at 5-6; Tr. at 21-22.

1 services. CSWR also will monitor the activities of non-employee contractors.¹⁶

2 36. Staff notes that Cactus State currently operates multiple water and wastewater systems
3 in Arizona and has proven expertise in owning and operating small water utilities, with a business
4 model focused on acquiring utilities like Santa Cruz. Staff states that Cactus State has access to capital
5 and resources that will enable it to make improvements that are necessary to enhance the quality and
6 reliability of service to Santa Cruz's current customers. In addition, Staff concludes that Cactus State
7 has the managerial, technical, and financial ability to operate the Santa Cruz water system. Staff
8 determined that Cactus State is a fit and proper entity to acquire Santa Cruz's water system and that
9 the proposed sale of Santa Cruz's assets and transfer of its CC&N is in the public interest.¹⁷

10 Water System

11 37. Santa Cruz's water system consists of one active groundwater well and two pressure
12 tanks. Staff typically relies on a company's Utilities Division Annual Report for a detailed description
13 of the system but was unable to do so in this case because of Santa Cruz's failure to file Annual Reports.
14 In the past 20 years, Santa Cruz only submitted its 2021 Annual Report, which was submitted 2023.
15 Staff relied on an engineering report prepared for Cactus State, which did not include information on
16 the power output of the well pump, casing diameter, water use, mains, and customer meters.¹⁸

17 38. Staff also uses a company's Utilities Division Annual Reports to project customer base
18 growth. Without the Annual Reports, Staff was unable to perform a regression analysis and to project
19 growth for the Santa Cruz water system. Santa Cruz served 20 customers in 1983 and 17 customers in
20 2023. Therefore, Staff concluded that growth in Santa Cruz's customer base is unlikely.¹⁹

21 39. Staff was unable to determine Santa Cruz's annual water loss or annual water demand,
22 but estimates an annual water demand of 905,930 gallons.²⁰

23 40. Staff was unable to determine whether the water system has sufficient production
24 capacity to meet current demand due to lack of data on customer water use. Based on the pumping
25 capacity of the Santa Cruz well, Staff estimates that it can produce 100,800 gallons per day. The Santa

26 ¹⁶ Ex. CS-1-Santa Cruz, Ex. 1 at 12-14.

27 ¹⁷ Ex. S-1 at 4-5, Attachment A at 10; Tr. at 131-132, 141.

¹⁸ Ex. S-1, Attachment A at 2-3.

28 ¹⁹ Ex. S-1, Attachment A at 3.

²⁰ Ex. S-1, Attachment A at 3.

1 Cruz system currently serves 17 connections and the average daily water use per resident in Arizona is
 2 estimated at 146 gallons. Therefore, Staff concluded that the water system likely has sufficient
 3 production capacity to meet the needs of current customers.²¹

4 41. The water system does not have a storage tank in violation of A.A.C. R18-5-503(A),
 5 which requires Santa Cruz to maintain storage capacity equivalent to at least the average daily demand
 6 during the peak month of the year. Therefore, Staff concluded that the water system does not have
 7 adequate storage capacity to serve current customers or growth. Cactus State indicates that it has plans
 8 to address the storage issues but needs additional information regarding production and customer
 9 usage.²²

10 42. According to an ADEQ Compliance Status Report (“CSR”) from February 8, 2023,
 11 ADEQ is unable to determine whether Santa Cruz is delivering water that meets the water quality
 12 standards required by Title 40 Code of Federal Regulations Part 141, the National Primary Drinking
 13 Water Regulations, and A.A.C. Title 18, Chapter 4. The CSR notes major unresolved and ongoing
 14 deficiencies related to the distribution system, finished water storage, and source water. The CSR
 15 further notes that the current owner is working with ADEQ to correct the deficiencies. In addition,
 16 Santa Cruz did not have an operator certified by ADEQ until recently when it obtained one due to the
 17 pending sale to Cactus State. Cactus State indicated that it is in the process of agreeing to a consent
 18 order with ADEQ to address the ongoing violations.²³

19 43. The Santa Cruz water system is not regulated by ADWR.²⁴

20 44. As noted by Staff, some of Cactus State’s water and wastewater systems have ADEQ
 21 or ADWR compliance issues. Cactus State is in the process of resolving or already has resolved the
 22 compliance issues with ADEQ and ADWR, all of which are related to water and wastewater systems
 23 that have been acquired recently by Cactus State and the compliance issues began with the prior
 24 owners.²⁵

25 . . .

26 ²¹ Ex. S-1, Attachment A at 3.

27 ²² Ex. S-1, Attachment A at 3; Tr. at 83-84.

²³ Ex. S-1, Attachment A at 4; Ex. CS-1-Santa Cruz at 9, Ex. 1 at 23; Tr. at 83.

28 ²⁴ Ex. S-1, Attachment A at 4.

²⁵ Ex. S-1, Attachment A at 5-6; Ex. CS-2-Santa Cruz at 3-4; Tr. at 25-28, 61.

1 **Non-Viability**

2 45. Decision No. 75743 (September 19, 2016) defines a non-viable water or wastewater
3 utility as one that: (1) lacks and is unable to acquire the managerial, technical, or financial capabilities
4 to safely and adequately operate; (2) currently is not in compliance or is unable to achieve compliance
5 with ADEQ, ADWR, or Commission rules or orders, or is unable to achieve such compliance without
6 managerial, technical, or financial assistance; or (3) will not be able to meet other regulatory
7 requirements on a short or long-term basis.

8 46. The joint application states that Santa Cruz is a non-viable water utility under the criteria
9 set forth in Decision No. 75743. In particular, regarding the first factor, the current owners have failed
10 to make capital improvements and maintain or improve essential equipment, maintain adequate
11 staffing, and consistently or correctly perform maintenance. In addition, Cactus State asserts that Santa
12 Cruz does not have the necessary managerial, technical, and financial capabilities to operate safely and
13 adequately. Regarding the second factor, Cactus State asserts that Santa Cruz has a lengthy history of
14 ADEQ compliance violations, including the failure to take required water samples. And regarding the
15 third factor, Cactus State argues that Santa Cruz, as a Class E utility, will be unable to comply with
16 new national water quality standards. Cactus State believes that Santa Cruz would be unable to address
17 the significant ADEQ issues and storage capacity requirements without acquisition by Cactus State.²⁶

18 47. Cactus State and Santa Cruz included a letter from the current manager of Santa Cruz
19 with the joint application. In it, Ms. Lynnea Palomino, Manager and Chief Financial Officer, indicated
20 that Santa Cruz does not have the expertise or funds necessary to maintain the system and that the
21 owner has been trying to sell it for several years.²⁷

22 48. Staff conducted a virtual site visit of the Santa Cruz water system and expressed concern
23 with Santa Cruz's managerial, technical, and financial capabilities. Staff noted several issues,
24 including a lack of storage at the well site, a corroded 85-gallon bladder tank, the lack of an air vent at
25 the well, no posted well number, an absence of well meters, and that customers at higher elevations
26 receive unreliable and inconsistent service. Because the water system does not maintain proper

27 _____
28 ²⁶ Ex. CS-1-Santa Cruz at 7, Ex. 1 at 19-20; Ex. S-1 at 2, Attachment A at 7, 9; Tr. at 30, 84.

²⁷ Ex. CS-1-Santa Cruz at 11, Ex. 14.

1 pressure, customers living at higher elevations do not receive water at certain times of the day. ADEQ
2 identified that the distribution system is interconnected with private wells, also potentially contributing
3 to the pressure issues. In addition, Staff noted that bladder tanks at the well site are held together using
4 surge restraints and are not properly supported, which can pose a safety and service reliability risk
5 because of the risk of the tanks tipping. Also, the water system does not have storage capacity, so in
6 the event of a pump failure, customers would be without water until the repairs could be made. The
7 well does not have a master meter and thus Santa Cruz is unable to track water loss or use, and it can
8 result in increased wear and tear on system components, diminished water availability, and negative
9 environmental impacts. Staff believes that these are examples of the failure to make necessary capital
10 improvements, which impacts the overall performance and sustainability of the water system. Staff
11 also noted that Santa Cruz lacks adequate staffing and has not filed a rate case application since its
12 CC&N was granted and the current rates are insufficient to support maintenance and improvements for
13 the water system, which is reflective of poor management.²⁸

14 49. Staff also acknowledged that a history of compliance violations may indicate that a
15 utility is not viable. Staff noted that the ADEQ CSR for the Santa Cruz water system indicated
16 significant deficiencies related to major operations and maintenance deficiencies, including the need
17 to perform a new source water analysis, lack of finished storage, and distribution system deficiencies.
18 In addition, Santa Cruz is not participating in the Monitoring Assistance Program (“MAP”), which
19 would ensure that proper water quality monitoring is conducted by adhering to the Safe Drinking Water
20 Information System Database schedule. The ADEQ inspection report provided with the joint
21 application indicates that the deficiencies noted by ADEQ are a risk to any person, public health, safety,
22 and the welfare of the environment.²⁹

23 50. Staff further acknowledged that it can be difficult for a Class E utility to meet all
24 Maximum Contaminant Level (“MCL”) requirements, and that the requirements are becoming more
25 stringent, including potential MCL standards for per- and polyfluoroalkyl substances. According to
26 Staff, because Santa Cruz is unable to meet existing regulatory requirements, including filing annual
27

28 ²⁸ Ex. S-1, Attachment A at 8-9; Tr. at 131.

²⁹ Ex. S-1, Attachment A at 9.

1 reports with the Commission, having adequate storage capacity, and participating in MAP, it is unlikely
2 to meet other regulatory requirements on a short and long-term basis.³⁰

3 51. Based on its review of the joint application and a virtual site visit, Staff determined that
4 Santa Cruz lacks the managerial, technical, and financial capabilities required to provide safe and
5 reliable service. In addition, a history of ADEQ violations and current non-compliance also indicates
6 a lack of viability, and Santa Cruz is unlikely to meet all regulatory requirements in the future. Staff
7 believes that Santa Cruz is unlikely to be able to address the issues with its water system without
8 acquisition by Cactus State. Therefore, Staff agrees that Santa Cruz is non-viable under the criteria set
9 forth in Decision No. 75743.³¹

10 52. Based on the record in this matter, we find that Santa Cruz is a non-viable water utility
11 under the criteria set forth in Decision No. 75743. Santa Cruz lacks the managerial, technical, and
12 financial capability to operate safely and adequately, and is unable to acquire such capabilities. Santa
13 Cruz has a history of regulatory non-compliance and currently has significant ADEQ non-compliance
14 issues. In addition, Santa Cruz likely will not be able to meet all regulatory requirements in the future
15 without additional managerial, technical, or financial assistance, which it is unable to acquire.

16 **Deferred Debit**

17 53. The joint application seeks Commission approval of a deferred debit for Santa Cruz's
18 water system consistent with the incentives for acquiring small, non-viable water utilities provided in
19 Decision No. 75626 (July 25, 2016). Cactus State asserts that a deferred debit is necessary to make the
20 acquisition economically viable and to facilitate the consolidation of small water and wastewater
21 systems in Arizona.³²

22 54. Cactus State proposes a deferred debit of \$50,000 for Santa Cruz for consideration in
23 its next rate case, subject to audit and true up, which it calculated based on the purchase price plus
24 engineering costs, less the net book value of the utility plant being acquired, as established in the next
25 rate case.³³

26 _____
27 ³⁰ Ex. S-1 at 10; Tr. at 138.

³¹ Ex. S-1 at 4, Attachment A at 8-10; Tr. at 135-136.

³² Ex. S-1 at 6; Ex. CS-1-Santa Cruz at 7.

28 ³³ Ex. S-1 at 6; Ex. CS-1 Santa Cruz at 7-8, Ex. 5 at 8; Tr. at 141.

1 55. Staff reviewed Cactus State's requested deferred debt and recommends approval,
2 determining that the proposed mechanism is consistent with the Commission's policy outlined in
3 Decision No. 75626 to promote the consolidation of small, troubled water and wastewater systems.³⁴

4 56. Staff notes that significant components of the proposed deferred debit, such as Net
5 Utility Plant and Contributions in Aid of Construction ("CIAC"), only can be reviewed properly in a
6 full rate case proceeding. In addition, the calculated deferred debit is based on financial data reported
7 in Santa Cruz's unaudited Annual Report, which lacks necessary details. Therefore, Staff is unable to
8 properly evaluate Net Utility Plant and CIAC, and thus it cannot comment on the accuracy of the
9 reported amounts.³⁵

10 57. Staff recommends that the Commission authorize Cactus State to establish a deferred
11 debit for the Santa Cruz system in an amount not to exceed \$50,000. Staff recommends calculating the
12 deferred debit as the purchase price plus engineering costs, less the net book value of the plant, which
13 results in a total deferred debit of \$50,000, subject to verification and support in a future rate case.
14 Staff's methodology is consistent with that approved by the Commission in other acquisition cases.
15 Staff also agrees that a 30-year amortization period for the proposed deferred debit is appropriate. At
16 the full amount of \$50,000, Cactus State would recover \$1,667 annually over 30 years, with an
17 estimated monthly bill impact of approximately \$8.17 per customer.³⁶

18 58. The methodology used by Cactus State and Staff is consistent with the methodology
19 used in previous Cactus State asset acquisitions.³⁷

20 59. Staff states that it is not recommending an acquisition premium in this proceeding but
21 believes that it is appropriate to use the criteria outlined in Decision No. 75626 as the basis for
22 determining an acquisition premium in a future proceeding.³⁸

23 60. Cactus State and Staff's methodology to calculate the deferred debit is reasonable and
24 consistent with prior Commission practice in other acquisitions. We find that it is reasonable and
25 appropriate to approve the deferred debit agreed to by Cactus State and Staff in the total maximum

26 ³⁴ Ex. S-1 at 6.

27 ³⁵ Ex. S-1 at 6.

28 ³⁶ Ex. S-1 at 6; Tr. at 141-142, 163.

³⁷ Ex. CS-1-Santa Cruz, Ex. 5 at 4.

³⁸ Ex. S-1 at 6-7; Tr. at 142.

1 amount of \$50,000, subject to audit, verification, and true-up. We acknowledge that the establishment
2 of a deferred debit incentivizes utilities with the financial, technical, and managerial capabilities to
3 purchase distressed utilities that are unable or unwilling to provide safe, reliable, and adequate service.
4 Approval of the deferred debit in this proceeding is not a guarantee of recovery, as the amount proposed
5 for recovery in a future rate case will be considered in the context of whether such recovery produces
6 rates that are just and reasonable.

7 **Staff Recommendations**

8 61. Staff recommends that:³⁹

9 1. The Commission approve the sale of Santa Cruz's assets and the transfer of its
10 CC&N to Cactus State.

11 2. The Commission approve Santa Cruz's requested reinstatement of its CC&N and
12 subsequent transfer to Cactus State.

13 3. The Commission authorize Cactus State to establish a deferred debit for the Santa
14 Cruz water system in an amount not to exceed \$50,000, recoverable over 30 years, for Commission
15 consideration in the next rate case.

16 4. All outstanding compliance requirements at the Commission, ADEQ, and ADWR
17 associated with the operation of Santa Cruz as a utility transfer with Santa Cruz's CC&N to Cactus
18 State by this Decision.

19 5. Any liability incurred for the operation of Santa Cruz as a utility be paid in full at
20 the time of closing or transfer with the CC&N to Cactus State.

21 6. Cactus State file with Docket Control, as a compliance item in this Docket and
22 within two years of the effective date of this Decision, a copy of an amended county franchise
23 agreement including Santa Cruz's water service transfer area.

24 7. The Commission authorize Joint Applicants to engage in any transactions and to
25 execute, or cause to be executed, any documents necessary to effectuate the authorizations requested
26 as part of the application.

27
28 ³⁹ Ex. S-1 at 5, 7-9, Attachment A at 4-5; Tr. at 130.

1 8. The Commission require Joint Applicants to file all pertinent documents evidencing
2 the consummation of this transaction within 90 days of the effective date of this Decision.

3 9. The owner of the Santa Cruz water system submit an Annual Report with accurate
4 descriptions of the plant in service, as a compliance item in this Docket, within 30 days of the filing of
5 the consummation of the transaction, or within six months of this Decision, whichever comes first.

6 10. The owner of the Santa Cruz water system file documentation in this Docket as a
7 compliance item demonstrating that the Santa Cruz water system is in compliance with the storage
8 requirements in A.A.C. R18-5-503(A) within two years of this Decision.

9 11. The owner of the Santa Cruz water system be required, as a compliance item in this
10 docket, to file an updated Curtailment Tariff for the Santa Cruz system within 30 days of the filing of
11 the consummation of the transaction, or within 120 days of this Decision, whichever comes first.

12 12. The owner of the Santa Cruz water system be required, as a compliance item in this
13 docket, to file an updated Cross-Connection/Backflow Prevention Tariff for the Santa Cruz system
14 within 30 days of the filing of the consummation of the transaction, or within 120 days of this Decision,
15 whichever comes first.

16 13. The owner of the water system be required, as a compliance item in this docket, to
17 file documentation verifying that all open ADEQ violations have been closed and that the water system
18 is in compliance with ADEQ within 120 days of the filing of the consummation of the transaction, or
19 within 180 days of this Decision, whichever comes first.

20 14. The owner of the Santa Cruz water system come into compliance with the
21 Commission within one year of the filing of the consummation of the transaction, or within 18 months
22 of this Decision, whichever comes first.

23 62. Cactus State agrees with Staff's recommended conditions and future compliance
24 requirements related to the operation, maintenance, and improvement of Santa Cruz's water system.⁴⁰

25 63. Cactus State objects to Staff's Recommendation No. 5 that any liability incurred for the
26 operation of Santa Cruz as a utility be paid in full at the time of closing or transfer with the CC&N to
27

28 ⁴⁰ Ex. CS-2-Santa Cruz at 5-6; Ex. CS-3-Santa Cruz; Tr. at 24-25, 28-30, 165.

1 Cactus State. Cactus State indicates that the recommendation would expose Cactus State to potential
2 liabilities and is inconsistent with the Asset Purchase Agreement, which allocates pre-closing
3 obligations to the seller. Cactus State also indicates that the liability provision in the Asset Purchase
4 Agreement is identical to what was included in the agreements for its other recent acquisitions in
5 Arizona. Cactus State requests a modification to Staff's recommendation to specifically enumerate
6 that any of Santa Cruz's outstanding customer deposits, property tax, income tax, and refunds for AIAC
7 must be paid in full at the time of closing or transfer with the CC&N to Cactus State. Cactus State
8 states that its proposed modification would ensure that it is not subject to any unforeseen liability that
9 may arise after closing and ensure that it is not responsible for historical business liabilities that do not
10 relate to the water system assets. Cactus State will assume liabilities associated with customers,
11 including customer refunds and customer pre-payments. Cactus State further acknowledges that
12 ADEQ and ADWR liabilities, other than any fines incurred by existing owners, will transfer with the
13 assets to Cactus State, and thus it does not object to Staff Recommendation No. 4.⁴¹

14 **Resolution**

15 64. Staff's Recommendation No. 5 has the potential to expose Cactus State to broad
16 preacquisition liabilities, which could discourage the acquisition of small, troubled utilities. In its Staff
17 Report, Staff enumerated the following examples of liabilities that are obligations of the utility—
18 customer deposits, property tax, income tax, and AIAC. At the hearing, Staff was unable to provide
19 additional specific examples of preacquisition liabilities that it believes Cactus State should bear
20 responsibility for after closing. Cactus State agrees to liability retention language enumerating the
21 examples provided by Staff. Further, Cactus State did not object to Staff Recommendation No. 4,
22 which affirms that all outstanding compliance requirements at the Commission, ADEQ, and ADWR
23 associated with the operation of Santa Cruz shall transfer with its CC&N to Cactus State,⁴² although
24 we note that Santa Cruz is not regulated by ADWR and there do not appear to be any outstanding
25 Commission compliance requirements. Staff's recommendation that any liability incurred for
26 operation of Santa Cruz as a utility be paid in full at the time of closing or transfer to Cactus State is

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28 ⁴¹ Ex. CS-2-Santa Cruz at 5-6; Ex. CS-3-Santa Cruz; Tr. at 24-25, 28-30, 56-61.

⁴² Tr. at 58-59.

1 IT IS FURTHER ORDERED that Cactus State Utility Operating Company, LLC shall notify
2 the customers acquired from Santa Cruz Water Company of the acquisition and its contact information
3 for customer service and emergencies, by means of an insert in its first billing to customers, and should
4 file a copy of the notice with Docket Control, as a compliance item in this Docket, within 10 days of
5 the notice being sent to customers.

6 IT IS FURTHER ORDERED that Cactus State Utility Operating Company, LLC shall charge
7 the existing authorized rates and charges of Santa Cruz Water Company upon installation of customer
8 meters. Cactus State Utility Operating Company, LLC shall install customer meters as soon as possible
9 after closing. Prior to the installation of customer meters, Cactus State Utility Operating Company,
10 LLC is authorized to continue charging customers a flat rate of \$30 per month. Once Cactus State
11 obtains sufficient data regarding customer usage, and in consultation with Staff as to timing and
12 methodology, it shall average each customer's monthly usage and issue a bill credit for the difference
13 between the \$30 rate paid and what the customer would have paid based on its average usage and the
14 Commission-authorized rates.

15 IT IS FURTHER ORDERED that Cactus State Utility Operating Company, LLC shall file with
16 Docket Control, as a compliance item in this docket, within two years of the effective date of this
17 Decision, a copy of the amended county franchise agreement for the acquired service area.

18 IT IS FURTHER ORDERED that the owner of the Santa Cruz Water Company water system
19 shall file, as a compliance item in this Docket, Curtailment and Cross-Connection/Backflow Prevention
20 Tariffs for the Santa Cruz water system within 30 days of the filing of the consummation of the
21 transaction, or within 120 days of this Decision, whichever comes first.

22 IT IS FURTHER ORDERED that any outstanding compliance requirements at the Commission
23 and the Arizona Department of Environmental Quality associated with the operation of Santa Cruz
24 Water Company as a utility shall transfer with Santa Cruz Water Company's Certificate of
25 Convenience and Necessity to Cactus State Utility Operating Company, LLC.

26 IT IS FURTHER ORDERED that any of Santa Cruz Water Company's outstanding customer
27 deposits, property tax, income tax, and refunds for Advances in Aid of Construction must be paid in
28 full at the time of closing or shall transfer with its Certificate of Convenience and Necessity to Cactus

1 State Utility Operating Company, LLC.

2 IT IS FURTHER ORDERED that the owner of the Santa Cruz Water Company water system
3 shall submit an Annual Report with accurate descriptions of the system plant in service, as a compliance
4 item in this Docket, within 30 days of the filing of the consummation of the transaction, or within six
5 months of this Decision, whichever comes first.

6 IT IS FURTHER ORDERED that the owner of the Santa Cruz Water Company water system
7 shall file documentation demonstrating that the system complies with the storage requirements in
8 A.A.C. R18-5-503(A), as a compliance item in this Docket, within two years of this Decision.

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1 IT IS FURTHER ORDERED that the owner of the Santa Cruz Water Company water system
2 shall file documentation verifying that all open Arizona Department of Environmental Quality
3 violations have been closed and that the Santa Cruz water system is in compliance with Arizona
4 Department of Environmental Quality, as a compliance item in this Docket, within 120 days of the
5 filing of the consummation of the transaction, or within 180 days of this Decision, whichever comes
6 first.

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

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9
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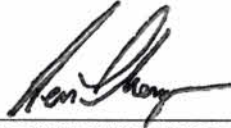
11 CHAIRMAN O'CONNOR

10 

11 COMMISSIONER MARQUEZ PETERSON

12 

13 COMMISSIONER TOVAR

12 

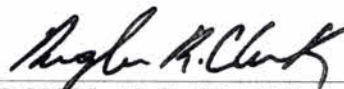
13 COMMISSIONER THOMPSON

12 

13 COMMISSIONER MYERS



15 IN WITNESS WHEREOF, I, DOUGLAS R. CLARK,
16 Executive Director of the Arizona Corporation Commission,
17 have hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this 25th day of August 2023.

19 

20 DOUGLAS R. CLARK
21 EXECUTIVE DIRECTOR

22 DISSENT _____

23
24 DISSENT _____
25 JLM/(gb)

1 SERVICE LIST FOR:

SANTA CRUZ WATER COMPANY AND CACTUS
STATE UTILITY OPERATING COMPANY, LLC

2 DOCKET NO.:

WS-21155A-22-0309. ET AL.

3
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