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**BEFORE THE ARIZONA CORPORATION COMMISSION****COMMISSIONERS**

Arizona Corporation Commission

**DOCKETED****AUG 25 2023****DOCKETED BY**

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

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.<sup>1</sup> 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 <sup>1</sup> 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).<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

27 <sup>2</sup> Ex. S-1 at 1, Attachment A at 1.

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

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

24. Santa Cruz currently is providing service without a valid CC&N because of its failure to comply with the Commission's annual report filing requirements. Staff requested that the Company file an annual report, and received a 2021 Annual Report on March 13, 2023, which Staff states brought it into compliance with the Commission's annual report filing requirements. Because Santa Cruz became current on its annual report filing, Staff recommends that the Commission reinstate Santa Cruz's CC&N as described in Decision Nos. 41381 and 53955.<sup>5</sup>

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

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

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

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

#### **Application**

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

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

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

<sup>5</sup> Ex. S-1 at 1, Attachment A at 5; Tr. at 103.

<sup>6</sup> Ex. S-1 at 5-6, Attachment A at 4.

<sup>7</sup> Ex. S-1 at 2.

<sup>8</sup> Ex. S-1 at 2.

<sup>9</sup> Tr. at 75.

<sup>10</sup> Ex. CS-1-Santa Cruz at 2; Ex. S-1 at 1-2.

<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup>

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.<sup>14</sup>

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.<sup>15</sup>

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 <sup>12</sup> Ex. CS-1-Santa Cruz at 9; Ex. S-1 at 3.

<sup>13</sup> Ex. CS-1-Santa Cruz at 10.

<sup>14</sup> Ex. S-1 at 7.

28 <sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup>

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.<sup>18</sup>

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.<sup>19</sup>

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.<sup>20</sup>

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 <sup>16</sup> Ex. CS-1-Santa Cruz, Ex. 1 at 12-14.

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

<sup>18</sup> Ex. S-1, Attachment A at 2-3.

<sup>19</sup> Ex. S-1, Attachment A at 3.

28 <sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup>

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.<sup>23</sup>

19 43. The Santa Cruz water system is not regulated by ADWR.<sup>24</sup>

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.<sup>25</sup>

25 ...

26 <sup>21</sup> Ex. S-1, Attachment A at 3.

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

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

28 <sup>24</sup> Ex. S-1, Attachment A at 4.

<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup>

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 <sup>26</sup> 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.

<sup>27</sup> 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.<sup>28</sup>

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.<sup>29</sup>

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 <sup>28</sup> Ex. S-1, Attachment A at 8-9; Tr. at 131.

<sup>29</sup> 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.<sup>30</sup>

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.<sup>31</sup>

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.<sup>32</sup>

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.<sup>33</sup>

26  
27 <sup>30</sup> Ex. S-1 at 10; Tr. at 138.

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

<sup>32</sup> Ex. S-1 at 6; Ex. CS-1-Santa Cruz at 7.

28 <sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup>

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.<sup>36</sup>

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

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.<sup>38</sup>

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

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26 <sup>34</sup> Ex. S-1 at 6.

27 <sup>35</sup> Ex. S-1 at 6.

28 <sup>36</sup> Ex. S-1 at 6; Tr. at 141-142, 163.

<sup>37</sup> Ex. CS-1-Santa Cruz, Ex. 5 at 4.

<sup>38</sup> 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:<sup>39</sup>

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 <sup>39</sup> 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.<sup>40</sup>

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

Cactus State. Cactus State indicates that the recommendation would expose Cactus State to potential liabilities and is inconsistent with the Asset Purchase Agreement, which allocates pre-closing obligations to the seller. Cactus State also indicates that the liability provision in the Asset Purchase Agreement is identical to what was included in the agreements for its other recent acquisitions in Arizona. Cactus State requests a modification to Staff's recommendation to specifically enumerate that any of Santa Cruz's outstanding customer deposits, property tax, income tax, and refunds for AIAC must be paid in full at the time of closing or transfer with the CC&N to Cactus State. Cactus State states that its proposed modification would ensure that it is not subject to any unforeseen liability that may arise after closing and ensure that it is not responsible for historical business liabilities that do not relate to the water system assets. Cactus State will assume liabilities associated with customers, including customer refunds and customer pre-payments. Cactus State further acknowledges that ADEQ and ADWR liabilities, other than any fines incurred by existing owners, will transfer with the assets to Cactus State, and thus it does not object to Staff Recommendation No. 4.<sup>41</sup>

#### **Resolution**

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

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

<sup>42</sup> Tr. at 58-59.

1 overly broad and unnecessary to protect ratepayers. Therefore, we modify Staff's recommendation to  
2 provide that any of Santa Cruz's outstanding customer deposits, property tax, income tax, and refunds  
3 for AIAC must be paid in full at the time of closing or shall transfer with its CC&N to Cactus State.

4 65. Staff's Engineering Report included the recommendation that the owner of the Santa  
5 Cruz water system come into compliance with the Commission within one year of the filing of the  
6 consummation of the transaction, or within 18 months of this Decision, whichever comes first. The  
7 only Commission compliance issue noted by Staff relates to Santa Cruz's provision of service without  
8 a CC&N and failure to file Utilities Division Annual Reports.<sup>43</sup> Santa Cruz's operation without a  
9 CC&N is resolved by this Decision and the reinstatement of its CC&N. Staff indicated that the filing  
10 of the 2021 Annual Report with the Commission brought it current with the annual report filing  
11 requirements. Moreover, it is unlikely that Cactus State would be able to obtain the records to submit  
12 historical reports.<sup>44</sup> Therefore, there are no delinquent Commission compliance issues that need to be  
13 addressed by Cactus State after the consummation of the transaction or issuance of this Decision.

14 66. We find that it is in the public interest to approve the joint application, as recommended  
15 by Staff with the modifications discussed herein. In addition, we find that Cactus State is a fit and  
16 proper entity to acquire the service territory and assets of Santa Cruz. Therefore, we find that it is  
17 reasonable and appropriate to reinstate Santa Cruz's CC&N and authorize the transfer of Santa Cruz's  
18 water system assets and CC&N to Cactus State. We further find that Staff's recommendations and  
19 conditions, with the modifications discussed above, are reasonable and appropriate, and we adopt them.

20 67. We also find that it is reasonable and appropriate to require Cactus State to notify the  
21 customers acquired from Santa Cruz of the acquisition and Cactus State's contact information for  
22 customer service and emergencies, by means of an insert in its first billing to customers, and to file a  
23 copy of the notice with Docket Control within 10 days of the notice being sent.

#### 24 CONCLUSIONS OF LAW

25 1. Santa Cruz and Cactus State are public service corporations within the meaning of  
26 Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282, 40-285.

27 <sup>43</sup> See Ex. S-1 at 5, Attachment A at 5.

28 <sup>44</sup> See testimony of Mr. Cox describing the record keeping practices of the acquired companies and difficulties obtaining historical information. Tr. at 29-30.

2. The Commission has jurisdiction over Santa Cruz, Cactus State, and the subject matter of the joint application.

3. Notice of the joint application was provided in accordance with Arizona Law.

4. Reinstatement of Santa Cruz's CC&N is reasonable and in the public interest.

5. Cactus State is a fit and proper entity to receive the assets and certificated area of Santa Cruz, and it is in the public interest to approve the sale of assets and transfer of Santa Cruz's CC&N to Cactus State.

6. Staff's recommendations, as modified herein, are just and reasonable and in the public interest, and should be adopted.

## ORDER

IT IS THEREFORE ORDERED that the joint application for approval of the sale and transfer of the assets of Santa Cruz Water Company to Cactus State Utility Operating Company, LLC, and the reinstatement and transfer of the Certificate of Convenience and Necessity of Santa Cruz Water Company to Cactus State Utility Operating Company, LLC is granted.

IT IS FURTHER ORDERED reinstating the Certificate of Convenience and Necessity of Santa Cruz Water Company as described in Decision No. 41381 (June 28, 1971).

IT IS FURTHER ORDERED that Santa Cruz Water Company is authorized to transfer its water utility assets and Certificate of Convenience and Necessity to Cactus State Utility Operating Company, LLC.

IT IS FURTHER ORDERED that Santa Cruz Water Company and Cactus State Utility Operating Company, LLC are authorized to engage in any transactions and to execute, or cause to be executed, any documents necessary to effectuate the authorizations requested with the application.

IT IS FURTHER ORDERED that Cactus State Utility Operating Company, LLC shall file with Docket Control, as a compliance item in this docket, within 90 days of the effective date of this Decision, all pertinent documents evidencing consummation of the transaction.

IT IS FURTHER ORDERED that Cactus State Utility Operating Company, LLC may record a deferred debit for the Santa Cruz water system of not greater than \$50,000, recoverable over 30 years, subject to audit, verification, and true-up in its next rate case.

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

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

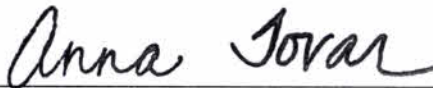
BY ORDER OF THE ARIZONA CORPORATION COMMISSION.



CHAIRMAN O'CONNOR



COMMISSIONER MARQUEZ PETERSON



COMMISSIONER TOVAR



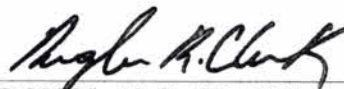
COMMISSIONER THOMPSON



COMMISSIONER MYERS



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



DOUGLAS R. CLARK  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_  
JLM/(gb)

SERVICE LIST FOR:

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

DOCKET NO.:

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

Patrick J. Black  
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BEFORE THE ARIZONA CORPORATION COMMISSION

RUSSELL WILLIAMS  
Chairman  
CHARLES H. GARTLAND  
Commissioner  
AL FARON  
Commissioner

JUN 23 1971

IN THE MATTER OF THE APPLICATION OF SANTA CRUZ WATER COMPANY, INC., AN ARIZONA CORPORATION, FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO OPERATE A PUBLIC SERVICE CORPORATION FOR THE SALE AND DISTRIBUTION OF WATER FOR DOMESTIC USE IN THE AREA DESIGNATED AS WESTGATE SUBDIVISION, LOCATED IN SANTA CRUZ COUNTY, AND MORE PARTICULARLY DESCRIBED HEREINAFTER.

DOCKET NO. U-2127

DECISION NO. 41381

OPINION AND ORDER

BY THE COMMISSION:

The above entitled matter came on for hearing before Eyo De Concini, Assistant Executive Secretary of the Arizona Corporation Commission sitting as Hearing Examiner, in Tucson, Arizona on May 13, 1971.

Applicants were represented by their attorney, E. F. Rucker, and there was no appearance in opposition to the granting of the application.

The Commissioners have read the transcript to the hearing, and have examined the records and files as well as the exhibits in the matter, and are of the opinion that the granting of said application would be in the public interest.

WHEREFORE, IT IS ORDERED that this order shall constitute and be a certificate of convenience and necessity authorizing the applicant to construct and operate a water system within the area described as the Southeast Quarter (SE $\frac{1}{4}$ ) of the Southeast Quarter (SE $\frac{1}{4}$ ) of the Northeast Quarter (NE $\frac{1}{4}$ ) of Section 35; the South Half (S $\frac{1}{2}$ ) of the Northwest Quarter (NW $\frac{1}{4}$ ) of the Southeast Quarter (SE $\frac{1}{4}$ ); the Northeast Quarter (NE $\frac{1}{4}$ ) of the Northwest Quarter (NW $\frac{1}{4}$ ) of the Southeast Quarter (SE $\frac{1}{4}$ ); the North Half (N $\frac{1}{2}$ ) of the Southwest Quarter (SW $\frac{1}{4}$ ) of the Southeast Quarter (SE $\frac{1}{4}$ ); the North Half (N $\frac{1}{2}$ ) of the Southeast Quarter (SE $\frac{1}{4}$ ) of the Southwest Quarter (SW $\frac{1}{4}$ ) of the Southeast Quarter (SE $\frac{1}{4}$ ); the Northeast Quarter (NE $\frac{1}{4}$ ) of the Southeast Quarter (SE $\frac{1}{4}$ ); the North Half (N $\frac{1}{2}$ ) of the South-



DOCKET NO. U-2127

DECISION NO. 41381


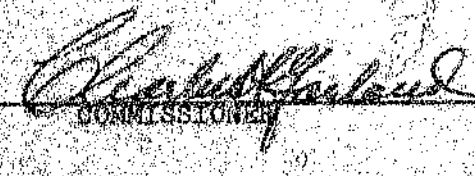
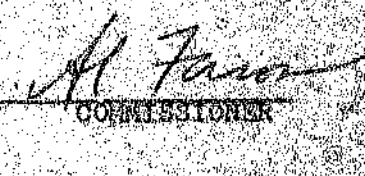
east quarter (SE $\frac{1}{4}$ ) of the southeast quarter (SE $\frac{1}{4}$ ); the North Half (N $\frac{1}{2}$ ) of the South Half (S $\frac{1}{2}$ ) of the Southeast Quarter (SE $\frac{1}{4}$ ) of the Southeast Quarter (SE $\frac{1}{4}$ ); and the East Half (E $\frac{1}{2}$ ) of the Southwest Quarter (SW $\frac{1}{4}$ ) of the Southeast Quarter (SE $\frac{1}{4}$ ) of the Northeast Quarter (NE $\frac{1}{4}$ ); all in Section 35; the Southwest Quarter (SW $\frac{1}{4}$ ) of the Southwest Quarter (SW $\frac{1}{4}$ ) of the Northwest Quarter (NW $\frac{1}{4}$ ); the Northwest Quarter (NW $\frac{1}{4}$ ) of the Northwest Quarter (NW $\frac{1}{4}$ ) of the Southwest Quarter (SW $\frac{1}{4}$ ), all in Section 36, all in Township 21 South, Range 18 East, of the G&SRM, Santa Cruz County, Arizona.

IT IS FURTHER ORDERED that the rates approved and which shall apply are as follows:

\$6.50 for each 5,000 gallons as a minimum rate, and  
\$ .75 for each 1,000 gallons thereafter.

IT IS FURTHER ORDERED that all services shall be metered at the time of the initial connection.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

    
CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, WILLIAM R. JOHNSON, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of this Commission to be affixed, at the Capitol in the City of Phoenix, this 25th day of June, 1971.

  
WILLIAM R. JOHNSON  
EXECUTIVE SECRETARY