

NEW APPLICATION

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1 FENNEMORE CRAIG, P.C.
2 A Professional Corporation
3 Jay L. Shapiro (No. 014650)
4 Patrick J. Black (No. 017141)
5 3003 North Central Avenue
6 Suite 2600
7 Phoenix, Arizona 85012
8 Telephone (602) 916-5000

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AZ CORP COMMISSION
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Attorneys for Southern Sunrise Water Company

BEFORE THE ARIZONA CORPORATION COMMISSION

8 IN THE MATTER OF THE APPLICATION
9 OF SOUTHERN SUNRISE WATER
10 COMPANY FOR A CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO
12 PROVIDE WATER SERVICE IN COCHISE
13 COUNTY, ARIZONA.

DOCKET NO. W-20454-06-0248

APPLICATION FOR CERTIFICATE OF
CONVENIENCE AND NECESSITY

12 Pursuant to A.R.S. § 40-282 and A.A.C. R14-2-402, Southern Sunrise Water Company
13 (“Applicant” or “Company”), an Arizona corporation, hereby applies to the Arizona Corporation
14 Commission (“Commission”) for an Order granting Applicant a new Certificate of Convenience
15 and Necessity (“CC&N”) to provide water utility service in certain defined portions of Cochise
16 County, Arizona. The requested CC&N includes the areas previously served by the Cochise
17 Water Company, Miracle Valley Water Company and Horseshoe Ranch Water Company
18 (collectively “Southern McLain Systems”).

INTRODUCTION

I. Background.

20 Applicant comes before the Commission after an extraordinary process involving the
21 Southern McLain Systems, and the Commission’s efforts to help these water utility systems find
22 a new owner/operator with the financial resources, managerial structure and technical experience
23 to provide adequate and reliable water utility service to existing customers in Cochise County.
24 The Southern McLain Systems are part of a larger group of affiliated water utility companies that
25 also include the Mustang Water Company, Crystal Water Company, Sierra Sunset Water
26

1 Company and Coronado Estates Water Company (“Northern McLain Systems”) (collectively
2 referred to as the “McLain Water Systems”). Those water systems not included in this
3 proceeding are being addressed in a separate CC&N application concurrently filed by the
4 Applicant’s affiliate, Northern Sunrise Water Company (“NSWC”).¹ *See In the Matter of the*
5 *Application of Northern Sunrise Water Company for a Certificate of Convenience and Necessity*
6 *to Provide Water Utility Service in Cochise County, Arizona.*

7 The troubled history surrounding the McLain Water Systems is well-chronicled in
8 Commission Decision No. 68412 (January 23, 2006). Previous ownership allowed these systems
9 to fall into a state of serious disrepair, and numerous violations cited by the Arizona Department
10 of Environmental Resources (“ADEQ”) brought into question the potential for risk to the health
11 and safety of customers being served by them. Property and sales taxes associated with these
12 systems were not paid for almost 15 years, and water utility service was being extended to
13 customers outside of the CC&N boundaries of these systems in violation of Arizona law.
14 Ultimately, the previous owners filed for Chapter 13 bankruptcy relief under Title 11 of the
15 United States Bankruptcy Code. *See In re Johnny A. McLain, et al.*, Case No. 4-03-bk-04125
16 TUC-EWH.

17 On October 22, 2004, the Bankruptcy Court for the District of Arizona tentatively
18 approved a Purchase and Sale Agreement (the “Agreement”) executed by Algonquin Water
19 Resources, Inc. (“Algonquin”), which provided for the purchase of the water utility assets
20 included in the McLain Bankruptcy Estate. Cochise County is the creditor-in-interest. On March
21 20, 2006, the Bankruptcy Court for the District issued an Order confirming the sale to Algonquin
22 for an aggregate purchase price of \$696,752.14. This amount was equal to the fair value rate
23 bases of the McLain Water Systems as determined by the Commission. *See* Decision No. 68412.
24 A copy of Bankruptcy Court order is attached hereto as **Exhibit 1**.

25 _____
26 ¹ Applicant has concurrently filed a Motion to Consolidate the NSWC CC&N Application with this and other proceedings.

1 **II. Issuance of New CC&N to Two Separate Entities.**

2 Before the closing of the transaction already approved by the Bankruptcy Court can take
3 place, certain other matters required to legally facilitate the transfer of assets must be finalized.
4 Algonquin is required, among other things, to obtain Commission approval for: 1) the issuance of
5 all CC&Ns necessary to provide water utility service to customers of the McLain Water Systems;
6 and 2) the sale and transfer of a public service corporation's assets as required by A.R.S. § 40-
7 285. This Application addresses the first issue. Applicant is jointly filing a separate application
8 with NSWC for Commission approval to transfer the McLain Water Systems assets, based on
9 geographic location, to two separate entities with distinct CC&Ns ("Joint Application"). *See In*
10 *the Matter of the Joint Application of Northern Sunrise Water Company and Southern Sunrise*
11 *Water Company for the Approval of Sale and Transfer of Water Utility Assets, and Cancellation*
12 *of Certificates of Convenience and Necessity.*

13 Algonquin chose to consolidate the three water utility systems that make up the Southern
14 McLain Systems into one CC&N based on their geographical location and system configuration.
15 Applicant must, among other things, construct new water storage facilities, add pressure tanks
16 and booster stations, increase current well capacity, replace existing mains and valves, and map
17 the existing water systems so that the Company can add operational automation to ensure safe and
18 reliable operation. Applicant will need to invest a significant amount of capital in order to bring
19 the McLain Water Systems into compliance with state and federal regulations. *See Summary*
20 *record (prepared by the ADEQ) of the compliance history of the McLain Water Systems, attached*
21 *hereto as Exhibit 2; See also Decision No. 68412 at ¶ 19.* Algonquin has determined that the
22 most efficient and equitable way to begin the monumental task of improving the McLain Water
23 Systems is to consolidate them into two new public service corporations. This issue is addressed
24 in more detail in the Joint Application. *See Joint Application at p 6.*

1 **III. New Water Utility Service Rates and Charges.**

2 Because of the reorganization and subsequent investment in capital improvements, a new
3 rate structure is required and the Commission must make findings as are typical in any application
4 for a new CC&N. In this case, that means new rates must be calculated to take into account the
5 fair value of the Southern McLain Systems assets as established in Decision No. 68412
6 (\$604,725)², the cost of new infrastructure and other capital improvements that must be added
7 almost immediately (\$321,900), and costs associated with the participation in the process that
8 lead to the acquisition of the McLain Water Systems assets (“Acquisition Costs”) (\$235,281).
9 Applicant’s proposed fair value rate base is approximately \$1,162,006 as shown in **Exhibit 7**,
10 attached hereto and further discussed below. Applicant’s proposed rates are shown in **Exhibit 8**,
11 attached hereto and further discussed below.

12 On January 6, 2006, the Arizona Small Utilities Association of Arizona (“ASUA”) filed
13 an emergency application for interim rates as the interim manager of the McLain Water Systems.³
14 On March 28, 2006, Administrative Law Judge Rodda issued a recommended opinion and order
15 (“ROO”) that, among other things:

16 1) grants interim rate relief subject to the filing of an application for a permanent rate
17 increase no later than March 15, 2007, using a 2006 test year;

18 2) approves a System Improvement Surcharge (SIS) as a means to collect revenue in
19 order to pay debts and make relevant improvements;

20 3) requires any future owner of the Southern McLain Systems to maintain a separate bank
21 account in which all revenue derived from the SIS must be deposited; and

22 _____
23 ² This is not the exact figure established in Decision No. 68412 due to the allocation of land value
and land rights for each separate water system.

24 ³ *In the Matter of the Application for Emergency Interim Rate Relief for Miracle Valley Water*
25 *Company, Inc., Cochise Water Company, Horseshoe Ranch Water Company, Crystal Water*
26 *Company, Mustang Water Company, Sierra Sunset Water Company and Coronado Estates Water*
Company, Owned by Johnny A. McLain; Docket No. W-01646A-06-0010 et al.

1 4) requires any future owner to apply the SIS funds on a pro-rata basis to each of the
2 systems to correct water outages as they occur, pay debts to local vendors and make system
3 improvements.

4 These particular recommended conditions raise concerns for the Applicant as each bears
5 upon this request to establish new CC&Ns for the Southern McLain Systems. For one thing,
6 under Section 9.2 of the Agreement, all regulatory approvals and transfers shall be approved
7 without the imposition of any restrictions, conditions, or obligations that are unacceptable to
8 Algonquin in its sole discretion. 2006 also represents too early a test year upon which to establish
9 permanent rates. Applicant asserts that, under its proposal to immediately upgrade the water
10 systems within the first year of operation, at least twelve months of data is needed to establish
11 proper operating revenues and expenses that are more reflective of normal operating conditions.
12 Therefore, Applicant is willing to stipulate in this proceeding to file a rate application with the
13 Commission by June 30, 2008, using a 2007 test year.

14 In addition, several of the proposed conditions related to the SIS appear designed to “run
15 with the plant” and bind future owners irrespective of the basis upon which the transfer of the
16 McLain Water System occurs. Such conditions are impractical given the new CC&N and rate
17 structure proposed herein. Furthermore, the SIS has been proposed because the McLain Water
18 Systems do not have an ability to raise additional capital to make necessary improvements. *See*
19 ROO at ¶ 17. By approving this CC&N application, Northern Sunrise Water Company’s CC&N
20 application and the Joint Application, the Commission will forego the need for the SIS.
21 Therefore, Applicant asserts that in moving forward and approving this Application, the
22 Commission specifically exempt Applicant from any condition imposed in the ASUA emergency
23 rate application that run with the plant and bind future owners.

24 Applicant is a fit and proper entity to provide water service to customers in Cochise
25 County. Algonquin is a utility holding company that owns and operates several water and
26

1 wastewater companies in Arizona.⁴ Applicant maintains that by granting the CC&N and rate
2 structure requested herein, the Commission will: 1) address immediate health and safety concerns
3 by providing some of the approvals and assurances necessary in Applicant's efforts to bring the
4 water utility systems into regulatory compliance; 2) allow for the Applicant to begin the
5 immediate repair and improvement of these systems to ensure reliable operation for present and
6 future customers; and 3) ensure proper regulation of water utility service in the subject portions of
7 Cochise County, in the public interest, through continued Commission oversight.

8 APPLICATION

9 In support of this Application, Applicant states as follows:

10 1. Applicant is a public service corporation formed for the purpose of providing
11 water utility service in Cochise County, Arizona. The proper name, address and corporate
12 structure for Applicant are attached hereto as **Exhibit 3**.

13 2. Applicant's Articles of Incorporation and Bylaws are attached hereto as **Exhibit 4**.

14 3. The area covered by this Application will contain approximately 845 existing
15 connections.

16 4. The list and approximate cost of individual water infrastructure equipment
17 upgrades and new facilities required immediately to bring this operations up to some minimum
18 standard are attached hereto as **Exhibit 5**.

19 5. Applicant's management contact is Greg Sorensen, Algonquin Water Resources of
20 America, Inc., whose business address is 12725 West Indian School Road, Suite D101, Avondale,
21 Arizona 85323. The telephone number is (623) 935-9429.

22 6. Applicant's operator certified by the ADEQ is Larry Diaz. His business address is
23 4055 Campus Drive, Sierra Vista, AZ 85635. His telephone number is 520-548-5470.

24 7. Applicant's attorneys are Fennemore Craig, whose address is 3003 North Central
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26 ⁴ Bella Vista Water Company, Litchfield Park Service Company; Gold Canyon Sewer Company, Black Mountain Sewer Corporation and Rio Rico Utilities.

1 Avenue, Suite 2600, Phoenix, Arizona 85012-2913. The individual attorney responsible for this
2 application is Jay L. Shapiro. Mr. Shapiro's telephone number is (602) 916-5366. **All Data**
3 **Requests or other Requests for Information should be directed to Greg Sorensen, with a**
4 **copy to Mr. Shapiro's attention, on behalf of Southern Sunrise Water Company.**

5 8. A description of existing water infrastructure in the Southern McLain Systems
6 known to Applicant at this time, as documented by the Commission Staff in its Reconstruction
7 Cost New Less Depreciation ("RCND") Study, is attached hereto as **Exhibit 6**.

8 9. The total estimated cost of: 1) existing Southern McLain Systems assets; 2)
9 immediate capital improvements to repair existing water utility infrastructure; and 3) Acquisition
10 Costs as a regulatory asset, is attached hereto as **Exhibit 7** (Ratebase Schedule).

11 10. A copy and description of the new tariff rate schedule and statement of charges is
12 attached hereto as **Exhibit 8**.

13 11. A map indicating the area requested by this Application ("Service Area"), and
14 legal descriptions for all relevant properties, are attached hereto as **Exhibit 9**. However, as stated,
15 the previous owners of the McLain Water Systems have connected new customers without
16 seeking amendment of the CC&Ns. Accordingly, the area covered by this CC&N requests will
17 not likely include every customer served by the existing systems. Applicant will continue to
18 ascertain the location of customers and provide subsequent legal descriptions to Staff so the
19 CC&N maps can be updated.

20 12. The manner of capitalization and methods of financing employed by Applicant
21 will include a combination of paid-in shareholder capital contributions, and advances and/or
22 contributions through line extension agreements, as appropriate. Should the Applicant require
23 debt to finance system improvements, a financing application will be filed with the Commission.

24 13. A general Statement of Financial Condition for Algonquin Power Income Fund,
25 the parent of Algonquin Water Resources of America, Inc., Applicant's parent, is attached hereto
26 as **Exhibit 10**.

1 19. ADEQ Approvals to Construct issued for facilities to be constructed in the Service
2 Area will be provided to the Commission as soon as Applicant receives them. Getting these
3 approvals on terms and conditions acceptable to the Applicant is an essential precondition. As an
4 example; given that the systems are currently out of compliance with prevailing ADEQ
5 regulations and are hence liable to enforcement action at any time an understanding respecting a
6 program and a schedule to bring them to compliance concurrent with the transfer of the request
7 permits and authorizations is imperative.

8 20. Notice of this Application will be given as required by the Commission.

9 21. For the reasons stated herein, Applicant maintains that this Application is in the
10 public interest and should be granted. There is a present need for regulated water utility service
11 in Cochise County to ensure the public health, and foster orderly growth.

12 WHEREFORE, Applicant respectfully requests the following:

13 A. That the Commission proceeds to consider and act upon this Application as timely
14 as possible and to schedule a hearing, if necessary, on this matter;

15 B. That upon completion of said hearing that the Commission enter an Order
16 approving application for a new Certificate of Convenience and Necessity, which shall include
17 the Service Area requested by this Application as shown in **Exhibit 9**; and further include
18 direction to Commission Staff to accept and include in the CC&N authorized herein, post-
19 decision requests by Applicant to amend the CC&N boundaries to include legal description for
20 any customers currently being served by the McLain Water System who are not specifically
21 included in this CC&N order.

22 C. That the Commission make a fair value finding as shown in **Exhibit 7** and approve
23 the new tariff schedule and rate design as shown in **Exhibit 8**;

24 D. That in approving this Application, the Commission specifically exempt Applicant
25 from any conditions imposed on any future owner of the McLain Water Systems that are
26 established in the emergency rate application filed by ASUA, Docket No. W-01646A-06-0010 *et*

1 *al.*; and

2 E. That the Commission grant such other and further relief as may be appropriate
3 under the circumstances herein.

4 DATED this 13th day of April, 2006.

5 FENNEMORE CRAIG, P.C.

6
7 By: 

8 Jay Shapiro
9 Patrick J. Black
Attorneys for Southern Sunrise Water
10 Company

11 ORIGINAL and 13 copies delivered this
12 13th day of April, 2006, to:

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

15 Copies hand delivered this 13th day
16 of April, 2006 to:

17 Chairman Jeff Hatch-Miller
18 Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

19 Commissioner Marc Spitzer
20 Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

21
22 Commissioner William A. Mundell
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

23
24 Commissioner Mike Gleason
25 Arizona Corporation Commission
1200 W. Washington St.
26 Phoenix, AZ 85007

1 Commissioner Kristin Mayes
2 Arizona Corporation Commission
3 1200 W. Washington St.
4 Phoenix, AZ 85007

5 Hearing Division
6 Arizona Corporation Commission
7 1200 W. Washington St.
8 Phoenix, AZ 85007

9 Jason Gellman, Esq.
10 Legal Division
11 Arizona Corporation Commission
12 1200 W. Washington St.
13 Phoenix, AZ 85007

14 By: Whitney Birk
15 1777379.1/10577.002

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