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COMMISSIONERS

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Arizona Corporation Commission

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Jeff Hatch-Miller - Chairman  
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AZ CORP COMMISSION  
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**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION )  
OF ARIZONA WATER COMPANY FOR )  
AN EXTENSION OF ITS CERTIFICATE )  
OF CONVENIENCE AND NECESSITY )  
AT CASA GRANDE, PINAL COUNTY, )  
ARIZONA )

**DOCKET NO. W-01445A-03-0559**

RESPONSE TO STAFF'S  
RECOMMENDATION FOR ADDITIONAL  
EVIDENTIARY PROCEEDINGS

On March 30, 2005 Arizona Water Company (the "Company") filed a Request for Additional Time to Comply with the following provisions of Decision No. 66893, which was entered on April 6, 2004, approving the Company's application for an extension of its Certificate of Convenience and Necessity for its Casa Grande system:

"IT IS FURTHER ORDERED that Arizona Water Company shall file a copy of the Developer's Assured Water Supply for each respective development with the Commission within 365 days of this Decision."

"IT IS FURTHER ORDERED that Arizona Water Company shall file a main extension agreement associated with the extension area more fully described in Exhibit A within 365 days of this Decision."

1 "IT IS FURTHER ORDERED that in the event Arizona Water Company  
2 fails to meet the above conditions within the time specified, this Decision  
3 is deemed null and void without further Order of the Arizona  
4 Corporation Commission."

5  
6 That request was a routine filing given the facts in this case and the developers'  
7 own timetable. Harvard Investments and Core Group Consultants, Ltd., the developers for the  
8 expansion areas, informed the Company that development in the areas they propose to develop  
9 would be delayed for another year. For that reason, the Company requested that it be given an  
10 additional 365 days to file a copy of the Developer's certificate of assured water supply and the  
11 main extension agreements. As the Company pointed out, its routine request should not  
12 prejudice any other party, as the Company was the only applicant for a Certificate of  
13 Convenience and Necessity for the areas to be served and there was no objection or opposition.  
14

15 On April 5, 2005-one day before the expiration of the 365 days deadline-the  
16 presiding administrative law judge entered procedural order that directed the Staff to respond to  
17 AWC's request on or before April 11, 2005. Thus, significantly, the procedural order, by its very  
18 terms, permitted Staff to respond to AWC's request beyond the 365 days deadline, beyond, of  
19 course, any control by or input from AWC.  
20

21 On April 13, 2005 the Company received a copy of a Staff Memorandum which  
22 referred to a ". . . change in circumstances in facts . . ." based primarily upon assertions  
23 contained in a letter from Robson Communities ("Robson") on behalf of Cornman Tweedy 560,  
24 LLC ("Cornman Tweedy"), and recommended that the Company's request be scheduled for  
25 additional evidentiary proceedings on the merits of the Company's request and Robson's  
26 objection to that request.  
27  
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1 For the following reasons, Robson's assertions should be disregarded, and the  
2 Staff's recommendation should be rejected.

3 The Staff recommendation must be rejected because Robson and Cornman Tweedy  
4 have no standing to present any objections, or to be heard at all in this matter (In order to have  
5 standing, plaintiff must have been injured in fact by the action plaintiff seeks to have reviewed,  
6 *Bernally v. Hodel*, 940 F.2d 1194 (C.A. 9 (Ariz.) 1990)), because neither Robson nor Cornman  
7 Tweedy is even a party to this matter.  
8

9 Under the Commission's Rules of Practice and Procedure, R14-3-103.A, parties to  
10 any proceeding before the Commission shall consist of and shall be designated "Applicant,"  
11 "Complainant," "Respondent," "Intervenor," or "Protestant" according to the nature of the  
12 proceedings and the relationship of the party thereto. Having failed to participate in any capacity  
13 in this matter before the Commission prior to sending its April 7, 2005 letter to the Commission  
14 over a year after the record in this matter was closed, and Decision No. 66893 was entered-  
15 Robson and Cornman Tweedy fall into none of these party designations.  
16

17 Since neither Robson nor Cornman Tweedy is a party to this proceeding, neither  
18 has any of the rights that a party is entitled to under the Commission's Rules of Practice and  
19 Procedure. Under R14-3-104.A, at a hearing a party shall be entitled to enter an appearance,  
20 introduce evidence, examine and cross-examine witnesses, make arguments, and generally  
21 participate in the conduct of the proceeding. As non-parties, Robson and Cornman Tweedy were  
22 not entitled to any of these rights, and, therefore, Robson and Cornman Tweedy have no standing  
23 in this case and Robson's post-hearing, and post-final order letter can be given no weight  
24 whatsoever by the Commission. The Staff completely overlooked these compelling factors in  
25 making its recommendation, which was clearly triggered by Robson's letter.  
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1           There is another, equally compelling reason that Staff's recommendation must be  
2 rejected. That is, Robson's action clearly constitutes an unlawful collateral attack upon the  
3 Commission's final decision in this matter, which is unlawful pursuant to A.R.S. 40-252 and 40-  
4 253. ("In all collateral actions or proceedings, the orders and decisions of the commission which  
5 have become final shall be conclusive." A.R.S. 40-252). A collateral attack upon a judgment is  
6 an effort to obtain another and independent judgment that will destroy the effect of another  
7 judgment, *Cox v. MacKenzie*, 70 Ariz. 308, 219 P.2d 1048 (1950). Where, after the Commission  
8 issues a Certificate of Convenience and Necessity to a gas company authorizing it to operate a  
9 utility business in a municipality, and another gas company which objected to the issuance of the  
10 certificate failed to pursue its statutory remedy of applying for a rehearing, instead bringing an  
11 action in the Superior Court, the Commission's decision was conclusive, and not subject to  
12 collateral attack. *Winslow Gas Co. v. Southern Union Gas Co.*, 76 Ariz. 383, 265 P.2d 442  
13 (1954). In this case, Robson, a non-party, is attempting to have Decision No. 66893 invalidated  
14 in order to obtain a new order in its favor. This, clearly, is an unlawful collateral attack.  
15  
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17           The routine nature of the Company's request is also confirmed by the fact that  
18 Robson - controlled companies, themselves, request and receive delays from the Commission for  
19 filing requirements similar to those involved in this matter. In a Picacho Water Company  
20 ("Picacho") application for a certificate of convenience and necessity filed in 1998, Decision No.  
21 61266, entered on November 25, 1999 ordered that a developer's certificate of assured water  
22 supply be filed within one year of the entry of the Decision, i.e., no later than November 25,  
23 2000. In a procedural order entered on September 11, 2000 Picacho's routine request for an  
24 extension of the filing deadline, until November 25, 2001 was granted. Apparently this was not  
25 sufficient because Picacho then requested an additional extension to December 31, 2002 because  
26 the developer's timetable had now changed to 2003. In a procedural order entered on July 11,  
27  
28

1 2001 the Commission granted Picacho's second request for additional time-pointing out,  
2 significantly, that the Utilities Division did not object to this second request for additional time.

3           In Docket No. W-04137A-02-0691, Santa Rosa Water Company's ("Santa Rosa")  
4 CC&N granted by the Commission was conditioned upon, among other things, the submission of  
5 an approval to construct ("ATC") facilities being filed within 24 months of the entry of Decision  
6 No. 65753 on March 20, 2003. On September 30, 2004 Santa Rosa requested an extension of  
7 time, until September 30, 2006 to comply with the ATC requirement. Santa Rosa claimed that  
8 considerable progress had been made toward obtaining the ATC but a dispute over ownership of  
9 the property covered by the CC&N had delayed Santa Rosa's efforts, so additional time was  
10 needed. The Utilities Division verified the reason for the request, and recommended approval,  
11 and a December 20, 2004 procedural order, a copy of which is attached hereto as Attachment  
12 "A", approved the request. The foregoing factual recitations confirm the Company's position -  
13 i.e., requests for extensions of time are routinely requested, and routinely approved.  
14

15           In conclusion, Robson and Cornman Tweedy cannot be heard in this matter, and the  
16 Staff cannot use, or rely upon in any manner, Robson's April 7, 2005 letter in considering the  
17 Company's request. Under the Commission's own Rules of Practice and Procedure-which the  
18 Commission would have to ignore to follow the Staff's recommendation Robson and Cornman  
19 Tweedy are not parties to this proceeding. In addition, applicable and binding statutory and case  
20 law, cited above, clearly provides that Robson's collateral attack upon Decision No. 66893 is  
21 unlawful. Robson's arguments, and the Staff's recommendation of an additional evidentiary  
22 proceeding, which has no other foundation, must be rejected. The Company's Request for  
23 Additional Time was filed before the 365 days deadline, (that request, in fact, is a routine filing  
24 given the facts in this case and the developers' own timetable) and the directive by the  
25 Administrative Law Judge in the procedural order, over which the Company had no control,  
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1 cannot be used to penalize the Company. The Staff has presented no reason why the Company's  
2 request should not be approved; therefore, it should be approved.

3 RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of April, 2005.  
4

5 ARIZONA WATER COMPANY  
6

7 By: Robert W. Geake

8 Robert W. Geake  
9 Vice President and General Counsel  
10 ARIZONA WATER COMPANY  
11 Post Office Box 29006  
12 Phoenix, Arizona 85038-9006

13 Original and thirteen (13) copies of the foregoing filed this 19<sup>th</sup> day of April, 2005 with:

14 Docket Control Division  
15 Arizona Corporation Commission  
16 1200 West Washington Street  
17 Phoenix, Arizona 85007

18 A copy of the foregoing was hand delivered this 19<sup>th</sup> day of April, 2005 to:

19 Honorable Amanda Pope  
20 Administrative Law Judge  
21 Hearing Division  
22 Arizona Corporation Commission  
23 1200 West Washington  
24 Phoenix, AZ 85007

25 A copy of the foregoing was mailed this 19<sup>th</sup> day of April, 2005 to:

26 Christopher Kempley, Chief Counsel  
27 Legal Division  
28 Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ernest G. Johnson, Director  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

By: Robert W. Geake

BEFORE THE ARIZONA CORPORATION CO.

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COMMISSIONERS

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

AZ CORP COMMISSION  
DOCUMENT CONTROL

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IN THE MATTER OF THE APPLICATION OF  
SANTA ROSA UTILITY COMPANY FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE WASTEWATER  
SERVICE IN PIMA COUNTY, ARIZONA.

DOCKET NO. SW-04136A-02-0691

IN THE MATTER OF THE APPLICATION OF  
SANTA ROSA WATER COMPANY FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE WATER SERVICE IN  
PIMA COUNTY, ARIZONA.

DOCKET NO. W-04137A-02-0692

PROCEDURAL ORDER

**BY THE COMMISSION:**

In Decision No. 65753 (March 20, 2003), the Arizona Corporation Commission ("Commission") approved applications for Certificates of Convenience and Necessity ("CC&Ns") filed by Santa Rosa Utility Company ("SRUC") and Santa Rosa Water Company ("SRWC") (collectively "Companies") to provide wastewater and water utility service, respectively, in Pinal County, Arizona.

SRUC's CC&N was conditioned on, among other things, submission of an Aquifer Protection Permit ("APP") and an Approval to Construct ("ATC") within 24 months from the date of Decision No. 65753 (i.e., March 20, 2005). SRWC's CC&N was conditioned on, among other things, submission of an ATC within the same 24-month timeframe.

On September 30, 2004, the Companies filed letters in the above-captioned dockets requesting extensions of time, until September 20, 2006, to comply with the APP and ATC requirements. SRUC and SRWC claim that although considerable progress has been made towards obtaining the necessary approvals from the Arizona Department of Environmental Quality ("ADEQ"), a dispute over ownership of the property covered by the CC&Ns surfaced and was subsequently litigated and resolved. The Companies state that they intend to resume efforts to obtain

1 the APP and ATCs, but will need additional time to obtain the regulatory approvals from ADEQ.

2 On November 23, 2004, the Commission's Utilities Division Staff ("Staff") filed a  
3 Memorandum recommending approval of the Companies' request for an 18-month extension of time.  
4 Staff claims that it verified the reason for the requested extension of time and is satisfied with the  
5 Companies' explanation.

6 IT IS THEREFORE ORDERED that Santa Rosa Utility Company shall file, by no later than  
7 September 20, 2006, copies of its Aquifer Protection Permit and Approval to Construct from ADEQ.

8 IT IS FURTHER ORDERED that Santa Rosa Water Company shall file, by no later than  
9 September 20, 2006, a copy of its Approval to Construct from ADEQ.

10 IT IS FURTHER ORDERED that in all other respects, the findings and requirements set forth  
11 in Decision No. 65753 shall remain in full force and effect.

12 Dated this 20<sup>th</sup> day of December, 2004

13  
14  
15 

16 DWIGHT D. NODES  
17 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

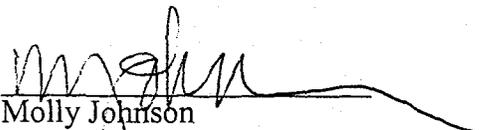
18 The foregoing was mailed/delivered  
19 this 20 day of December, 2004 to:

20 Jim Poulos  
21 SANTA ROSA UTILITY COMPANY  
22 SANTA ROSA WATER COMPANY  
23 9532 E. Riggs Road  
24 Sun Lakes, AZ 85248

20 Christopher Kempley, Chief Counsel  
21 Legal Division  
22 ARIZONA CORPORATION COMMISSION  
23 1200 West Washington Street  
24 Phoenix, AZ 85007

22 Norman James  
23 FENNEMORE CRAIG  
24 3003 N. Central Avenue, Ste. 2600  
25 Phoenix, AZ 85012

22 Ernest G. Johnson, Director  
23 Utilities Division  
24 ARIZONA CORPORATION COMMISSION  
25 1200 West Washington Street  
26 Phoenix, AZ 85007

26 By:   
27 Molly Johnson  
28 Secretary to Dwight D. Nodes