

INTERVENTION

OPEN MEETING AGENDA ITEM

ORIGINAL



0000021458

1 Peter M. Gerstman
Vice President and General Counsel
2 Robson Communities, Inc.
9532 East Riggs Road
3 Sun Lakes, Arizona 85248
Phone (480) 895-9200
4 Fax (480) 895-5455
On Behalf of Robson-affiliated
5 Cornman Tweedy 560, LLC and
Picacho Water Company

RECEIVED

2005 MAY 19 P 2:53

AZ CORP COMMISSION
DOCUMENT CONTROL

Arizona Corporation Commission
DOCKETED
MAY 19 2005
DOCKETED BY *AK*

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

11 IN THE MATTER OF THE APPLICATION OF)
12 ARIZONA WATER COMPANY TO EXTEND)
ITS CERTIFICATE OF CONVENIENCE AND)
13 NECESSITY IN CASA GRANDE, PINAL)
COUNTY, ARIZONA.)
14)
15)
16)
17)

Docket No. W-01445A-03-0559

MOTION TO INTERVENE
AND REQUEST FOR LEAVE
TO FILE REPLY TO AWC'S
RESPONSE TO STAFF
RECOMMENDATION FOR
ADDITIONAL EVIDENTARY
PROCEEDINGS AND
EXCEPTIONS TO ALJ'S
PROPOSED ORDER

18 Pursuant to A.A.C. R14-3-105, Cornman Tweedy 560, LLC ("Cornman") and Picacho
19 Water Company ("Picacho") hereby move to intervene in the pending matter regarding the
20 Commission's consideration of Arizona Water Company's ("AWC") Request for Additional
21 Time to Comply with the Filing Requirement ("Request"). This motion is being filed in
22 response to allegations on the record in this matter suggesting that because Cornman and Picacho
23
24

1 4. On March 30, 2005, AWC filed a Request for Additional Time to Comply with the Filing
2 Requirement, requesting an additional 365 days within which to comply with the conditions set
3 forth in the Commission's Decision No. 66893.

4 5. On April 6, 2005, 365 days after the Commission's Opinion and Order was issued, AWC
5 had not yet complied with the conditions set forth in the Order and the Commission had not yet
6 granted AWC an extension of time within which to comply with the conditions set forth in the
7 April 6, 2004 Order.

8 6. By letter dated April 7, 2005, Robson Communities Inc. ("Robson"), on behalf of
9 Cornman, objected to the grant of AWC's Request for Additional Time to Comply with the
10 Filing Requirement noting that by operation of law and the terms of the April 6, 2004 Order,
11 AWC's CC&N grant was null and void. *See* Letter dated April 7, 2005 from Peter Gerstman to
12 Commission's Docket Control.

13 7. The April 7, 2005 letter also noted that Cornman, an affiliate of Robson, was the owner
14 of approximately 1138 acres of land within the CC&N area covered by Decision No. 66893, and
15 that Cornman preferred not to be served by AWC, but rather had requested that water service be
16 provided by Picacho Water Company (also a Robson affiliate). *Id.* The letter stated that
17 Cornman preferred to be served by Picacho, for reasons related to "cost, convenience, timing,
18 avoidance of confusion and avoidance of unnecessary duplication of facilities." *Id.* The letter
19 also noted that Picacho intended to extend its CC&N to include the Cornman property.

20 8. On April 11, 2005, Commission Staff filed a Memorandum noting the arguments raised
21 by Cornman and Robson in its April 7, 2005 letter and recommending that additional evidentiary
22 proceedings be held with respect to the merits of AWC's Request and the objections raised by
23 Cornman and Robson.

1 9. On April 20, 2005, AWC filed a Response to Staff's Recommendation for Additional
2 Evidentiary Proceedings ("Response"). The AWC's Response argued that Cornman and Robson
3 lacked standing to present objections, because neither was a party to the proceedings and that the
4 record in this matter was closed with the issuance of Decision No. 66893 on April 6, 2004. *See*
5 AWC's Response to Staff's Recommendation for Additional Evidentiary Proceedings at 3.
6 AWC's Response also argued that because neither Cornman nor Robson were parties to the
7 proceedings the Staff "could not use, or rely upon in any manner, Robson's April 7, 2005 letter,"
8 and that under the rules of procedure the "Commission would have to ignore to follow the Staff's
9 recommendation Robson and Cornman Tweedy are not parties to the proceedings"[sic]. *See id*
10 at 5.

11 10. On May 10, 2005, Administrative Law Judge Amanda Pope filed a proposed form of
12 Order in this matter regarding AWC's compliance with Decision No. 66893. The proposed form
13 of order concludes as a matter of law that: (1) neither Robson nor Cornman have standing to
14 object to the AWC's Request, (2) Staff's recommendation of an additional evidentiary hearing in
15 this matter is unreasonable, and (3) AWC's Request was timely, and should be granted. *See*
16 ALJ's Proposed Form of Order at 3.

17 **II. Motion to Intervene.**

18 Cornman and Picacho hereby move to intervene as parties in this matter. As noted
19 above, this motion is being filed in response to allegations on the record in this matter suggesting
20 that because Cornman and Robson have not moved to formally intervene in this matter, its
21
22
23
24

1 objections submitted via letter dated April 7, 2004² cannot be heard or relied upon by either the
2 Commission or its Staff in addressing to AWC's Request. *See* AWC's Response to Staff's
3 Recommendation for Additional Evidentiary Proceedings at 5 and ALJ's Proposed Form of
4 Order at 3. Pursuant to A.A.C. R14-3-105, Cornman and Picacho have standing to intervene in
5 this matter and this motion is timely.

6 **A. Cornman and Picacho have standing to intervene in the pending matter.**

7 A.A.C. R14-3-105(A) addressing intervention in matters before the Commission states:

8 Intervention. Persons, other than the original parties to the
9 proceedings, who are *directly and substantially affected* by the
10 proceedings, shall secure an order from the Commission or
presiding officer granting leave to intervene before being allowed
to participate. (Emphasis added.)

11 Cornman is the owner of approximately 1138 acres of land within the area covered by the
12 CC&N extension granted to AWC pursuant to Decision No. 66893, as such it is directly and
13 substantially impacted by the Commission's determinations regarding AWC's CC&N. Cornman
14 would prefer to obtain water service from Picacho Water Company and has requested such
15 service. Accordingly, Picacho has filed an application to extend its CC&N to include the
16 Cornman property. Both Cornman and Picacho are affiliated with Robson. For reasons related
17 to costs, convenience, timing, and the ability to avoid duplication of facilities and confusion, it is
18 advantageous for Cornman to be served by Picacho rather than AWC. Under the terms of
19 Decision No. 66893, the Order is "null and void" if AWC fails to comply with the Order's
20 conditions. *See* Commission's Decision No. 66983 at 7. As AWC has not provided the
21

22
23 ² In addition to the April 7, 2005 letter, Robson on behalf of Cornman and Picacho will also be submitting a letter
24 contemporaneously with this motion responding to the ALJ's proposed form of order. It is Cornman and Picacho's
position that these letters should be available for the Commission's consideration when acting upon AWC's
Request.

1 Commission with either evidence of Developers' Assured Water Supply determinations, or a
2 main extension agreement associated with the extension area, within the requisite 365 days
3 pursuant to the April 6, 2004 Order, the Commission could find that AWC's CC&N is now null
4 and void. In this event, Cornman would be able to pursue water service from Picacho and
5 Picacho could continue to pursue the extension of its CC&N to include the Cornman property.
6 However, if the Commission grants AWC's Request now after the CC&N has "lapsed" by virtue
7 of the "null and void" provisions, the Commission will be effectively permitting AWC to
8 reinstate the lapsed CC&N. This would directly affect Cornman's ability to seek water service
9 from Picacho, Cornman's preferred provider, and also directly affect Picacho's ability to extend
10 its CC&N. Thus, clearly both Cornman and Picacho are directly and substantially affected by
11 the proceedings on AWC's Request. Further, as the issues concerning AWC's Request are
12 already before the Commission, there will not be any undue broadening of the issues as a result
13 of Cornman and Picacho's participation in this matter. Accordingly, it would be proper to grant
14 Cornman leave to intervene pursuant to A.A.C. R14-3-105(A).

15 **B. The instant motion to intervene is timely pursuant to A.A.C. R14-3-105(B).**

16 A.A.C. R14-3-105(B) states in relevant part:

17 An application for leave to intervene shall be in writing and must
18 state the basis for the application. Such application shall be served
19 and filed by an applicant at least five days before the proceeding is
20 called for hearing.

21 The pending matter for consideration by the Commission is AWC's Request for
22 Additional Time to Comply with the Filing Requirement, and the open meeting on this matter
23 has been tentatively scheduled before the Commission for May 24 and May 25, 2005. The
24 instant Motion to Intervene has been filed five days before the scheduled hearing on this matter
as required by A.A.C. R14-3-105(B), and accordingly this motion is timely. AWC's contention

1 that the record on this matter has been “closed” over a year ago, with the issuance of Decision
2 No. 66893, clearly disregards the fact that AWC is currently before the Commission with a
3 pending request. *See* AWC’s Response to Staff’s Recommendation for Additional Evidentiary
4 Proceedings at 3. In so much as AWC is before the Commission with a request, the record must
5 be open at least with respect to AWC’s Request, particularly when AWC’s failure of to comply
6 with the condition of the April 6, 2004 Decision could have a direct and substantial affect on
7 other parties, such as Cornman and Picacho.

8 Additionally, Cornman and Picacho’s position that AWC’s CC&N has lapsed because of
9 AWC’s failure to comply with the conditions of Decision No. 66893, could not logically have
10 been raised during the original proceeding. It was not until the triggering event occurred that
11 rendered AWC’s CC&N null and void, i.e., the failure to comply with the Commission’s Order,
12 that Cornman and Picacho had a direct and substantial interest in the pending determination by
13 the Commission on AWC’s Request. Accordingly, Robson on behalf of Cornman and Picacho
14 took immediate action to bring this circumstance to the Commission’s attention by submitting
15 the April 7, 2005 Letter and objecting to the pending AWC’s Request. Thus, the instant motion
16 is timely and could not have been made during the original proceeding as has been suggested by
17 AWC.

18 **III. Request for Leave to File Reply to AWC’s Response to Staff’s Recommendation for**
19 **Additional Evidentiary Proceedings and Exceptions to ALJ’s Proposed Order.**

20 To the extent it is procedurally necessary for Cornman and Picacho to be formal parties
21 for their objections to be heard in this matter concerning AWC’s Request and if Cornman and
22 Picacho are granted leave to intervene, Cornman and Picacho hereby request leave to formally
23 reply to AWC’s Response to Staff’s Recommendation for Additional Evidentiary Proceedings
24 and to file formal exceptions to the ALJ’s proposed form of Order.

1 **IV. Conclusion.**

2 For the above reasons, Cornman and Picacho request leave to intervene in the current
3 proceedings before the Commission regarding the consideration of AWC's Request for
4 Additional Time to Comply with the Filing Requirement. Cornman, as the owner of land within
5 the area covered by the grant of a CC&N to AWC's pursuant to Decision No. 66893, is directly
6 and substantially affected by the Commission's determination regarding the pending AWC
7 Request for Additional Time to Comply with Filing Requirement. Picacho as an applicant for a
8 CC&N extension to include the Cornman property is also directly and substantially affected by
9 the Commission's determination regarding AWC's Request. This is particularly true now that
10 the AWC's CC&N could be found to have "lapsed" by operation of law due to AWC's failure to
11 comply with the conditions and terms of Decision No. 66893. The instant motion has been filed
12 within the five day requirement set forth under the Commission's rules, and thus is timely.
13 Therefore, Cornman and Picacho should be granted leave to intervene in this matter.

14 Procedurally, to the extent Cornman and Picacho must be parties to have their objections
15 heard by the Commission and its Staff, and if leave to intervene is granted, Cornman and Picacho
16 request leave to formally file, as parties, a reply to AWC's Response to Staff's Recommendation
17 for Additional Evidentiary Proceedings and formal exceptions to the ALJ's proposed form of
18 order.

19 Respectfully submitted this 17th day of May, 2005.

20 ROBSON COMMUNITIES, INC.

21 By 
22 Peter M. Gerstman
23 Vice President and General Counsel
24 On Behalf of Robson-affiliated
Cornman Tweedy 560, LLC and
Picacho Water Company

1 Original and 13 copies of the foregoing
filed this 19th day of May, 2005, with:

2 Docket Control Division
3 Arizona Corporation Commission
1200 West Washington Street
4 Phoenix, Arizona 85007

5 A copy of the forgoing was hand-delivered
this 19th day of May, 2005 to:

6
7 Honorable Amanda Pope
Administrative Law Judge
8 Hearing Division
Arizona Corporation Commission
9 1200 West Washington
Phoenix, AZ 85007

10 A copy of the forgoing was mailed
11 this 19th day of May, 2005 to:

12 Christopher Kempley, Chief Counsel
Legal Division
13 Arizona Corporation Commission
1200 West Washington Street
14 Phoenix, AZ 85007
Ernest G. Johnson, Director
15 Utilities Division
Arizona Corporation Commission
16 1200 West Washington Street
Phoenix, Arizona 85007

17 Robert W. Geake
18 Vice President and General Counsel
Arizona Water Company
19 Post Office Box 29006
Phoenix, Arizona 85038-9006

20
21 _____

22

23

24