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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF WOODRUFF WATER COMPANY, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE WATER SERVICE IN PINAL COUNTY, ARIZONA.	DOCKET NO. W-04264A-04-0438 DOCKET NO. SW-04265A-04-0439 DOCKET NO. W-01445A-04-0755
IN THE MATTER OF THE APPLICATION OF WOODRUFF UTILITY COMPANY, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE SEWER SERVICE IN PINAL COUNTY, ARIZONA.	**ARIZONA WATER COMPANY'S APPLICATION FOR REHEARING PURSUANT TO A.R.S. § 40-253**
IN THE MATTER OF THE APPLICATION OF ARIZONA WATER COMPANY, AN ARIZONA CORPORATION, TO EXTEND ITS EXISTING CERTIFICATES OF CONVENIENCE AND NECESSITY AT CASA GRANDE AND COOLIDGE, PINAL COUNTY, ARIZONA.	

Arizona Water Company hereby submits its Application for Rehearing Pursuant to A.R.S. § 40-253 concerning Decision No. 68453 dated February 2, 2006 (as supplemented by subsequent Procedural Order). The Commission should grant Arizona Water Company's

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Application for a Rehearing, approve Arizona Water Company's application for the Certificate of Convenience and Necessity ("CCN") for the disputed Sandia Development area (the "Disputed CCN Area"), and deny Woodruff Water Company's ("WWC") Application for three reasons:

First, Arizona law and public policy support granting a CCN to the existing utility and denying a CCN to a comparatively smaller, untested, start-up utility, so long as the existing utility is ready, willing and able to provide service;

Second, to the extent any balancing test between competing applicants is justified, which Arizona Water Company contends does not apply here, Arizona Water Company prevails on every relevant factor and should be granted the CCN in the Disputed CCN Area; and

Third, the alleged benefits of granting a CCN to WWC, that is, the purported efficiencies resulting from WWC's alleged ties to the wastewater service applicant (Woodruff Utility Company), are either non-existent or can be easily matched or outweighed by Arizona Water Company's economies of scale.

This is an extremely important policy crossroads for the Commission, with far-reaching implications for future CCN applications and the provision of water utility service in this State. By rejecting the well-considered Recommended Opinion and Order of Administrative Law Judge Marc E. Stern, who presided over eight days of testimony, two separate public hearings and reviewed over 100 exhibits, the Commission could be embarking on a course of encouraging the proliferation of a patchwork of start-up, developer-controlled utilities serving comparatively small areas despite the presence of existing, well-established utilities that already have master plans to serve the area in the overall public interest. In its February 2 Decision, the Commission chose this course in the name of the supposed benefits of integrated water and wastewater service. However, those supposed benefits pale in comparison to the detriment inflicted on the actual water customer who will reside in the Disputed CCN Area by denying to the existing utility with a proven track record of providing reliable water service in the area for more than 50 years the right

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to provide service to those residents at far lower rates. The Commission should take this opportunity to rehear this matter and enter the Recommended Opinion and Order prepared by Judge Stern.

I. Arizona Law and Public Policy Support Granting the CCN to the Existing Utility, Arizona Water Company, and Denying a CCN to WWC, an Untested, Start-Up Company Lacking Experience and Any Reliable History of Operations.

A. The "First In The Field" Doctrine Provides That Arizona Water Company Should Be Awarded the CCN.

As a matter of Arizona law and appropriate public policy, the decision in this case should begin and end with a simple inquiry: Is Arizona Water Company, as the longtime existing water utility already providing service west, south and east of the Disputed CCN Area, ready, willing and able to serve that area? Since the undisputed answer to this question in this record is "yes," under Arizona law, Arizona Water Company should be granted the water CCN for the Disputed CCN Area.

The Arizona Supreme Court has recognized and applied this proposition for many decades, and it is dispositive of this case. The proposition was directly applied in *Arizona Corporation Commission v. Fred Harvey Transportation Co.*, 95 Ariz. 185, 388 P.2d 236 (1964), a case involving competing applications for a CCN to provide bus service in northern Arizona. In that case, Nava-Hopi Tours was certificated to provide daily trips to the Grand Canyon from Flagstaff over a western route through Williams via State Highway 64, over a distance of 91 miles. 95 Ariz. at 187, 388 P.2d at 237. Nava-Hopi scheduled at least one trip a day over that route, and some days provided as many three or four buses a day. *Id.* at 188-89, 388 P.2d at 238. Fred Harvey, on the other hand, was certificated to provide trips to the Grand Canyon over an eastern route via Cameron north on U.S. Highway 89, over a longer route of 109 miles. 95 Ariz. at 187, 388 P.2d at 237. Fred Harvey did not maintain any offices or facilities in Flagstaff and provided much more infrequent service, sometimes operating only one bus a year. 95 Ariz. at 188, 388 P.2d at 238. When the new U.S. Highway 180/Snow Bowl route of only 80 miles was opened to

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the Grand Canyon, both carriers sought the CCN to operate on the shorter route. The Commission granted the certificate to the more established provider, Nava-Hopi, but the superior court vacated that decision, effectively allowing both carriers to compete on the same route. 95 Ariz. at 187-88, 388 P.2d at 237.

The Arizona Supreme Court reversed and applied the rule that is dispositive here: the existing certificated utility should be awarded the new territory if it is ready, willing and able to serve. Noting that "Arizona is a regulated monopoly state," and that the superior court had clearly erred when it allowed "free wheeling competition between two carriers," 95 Ariz. at 188, 388 P.2d at 237, the Supreme Court affirmed the Commission's decision to grant the CCN to the far more established, existing carrier over a much less established competitor. In fact, after noting that the Arizona rule is that the "existing" utility always has first rights to the new territory, the Supreme Court went on to note that it did not even have to apply that rule to award the route to Nava-Hopi, because Nava-Hopi prevailed (as Arizona Water Company must here) in a balancing test between the two utilities in any event:

> *We need not, however, turn this decision on the obvious fact that Nava-Hopi is in reality the existing carrier between the two termini, Flagstaff and Grand Canyon, and that therefore it had the right to the first opportunity to provide any extended or additional service. . . .* We will treat this case as if both Harvey and Nava-Hopi were existing motor carriers in the field and that neither had an exclusive priority to extend its service as a matter of right.

95 Ariz. at 188-89, 388 P.2d at 238 (citations omitted; emphasis added). The Supreme Court went on to discuss the factors favoring Nava-Hopi over Fred Harvey, and held that based on the evidence before the Commission Nava-Hopi should prevail. "The Commission in selecting Nava-Hopi over Harvey was not unreasonable . . . ." 95 Ariz. at 190, 388 P.2d at 238.

The *Fred Harvey* case is important to the determination of this matter because the Arizona Supreme Court recognized that an existing CCN holder (here, Arizona Water Company) has the priority and "first opportunity to provide any extended or additional service" over the less established company (here, WWC). 95 Ariz. at 189, 388 P.2d at 238.

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In this case, Arizona Water Company has an even greater right and priority to extend service than did Nava-Hopi because WWC has provided no utility service at all (aside from overseeing farmer Wuertz' operation of his own private well), as compared to the infrequent service of Fred Harvey that was still found to be insufficient in *Fred Harvey*.

Nor is the fact that the *Fred Harvey* opinion dealt with bus service a material distinguishing point; the public policy arguments that the Arizona Supreme Court found dispositive there are equally applicable to any regulated utility provider, including water providers. Further, as set forth below, the Supreme Court has subsequently carried forward the *Fred Harvey* principles in the context of regulated water utility service in Arizona.

In another case involving Arizona Water Company, the Arizona Supreme Court reversed a Commission decision denying Arizona Water Company a CCN expansion in favor of a smaller, start-up water company (as WWC is here). In *Arizona Corporation Commission v. Arizona Water Company*, 111 Ariz. 74, 523 P.2d 505 (1974), as in this case, the contested area was surrounded on three sides by Arizona Water Company's established CCN and water utility distribution system facilities. *Id.* at 75, 523 P.2d at 506. Arizona Water Company and R.J. Fernandez filed competing applications for a CCN to deliver water to the area, and following a rehearing, the Commission granted the certificate to Fernandez. *Id.* Arizona Water Company sought judicial review by the superior court pursuant to A.R.S. § 40-254, and the superior court vacated the decision of the Commission, instead granting the CCN to Arizona Water Company. *Id.*

The Arizona Supreme Court then affirmed the decision of the superior court, noting that, in the area of public utilities, "Arizona is a regulated monopoly state." *Id.* at 76, 523 P.2d 507. The Supreme Court summarized three key findings of fact by the superior court that were dispositive of the issue:

- Arizona Water Company proposed to serve the area through a system of "three inter-connected wells," while Fernandez had just one well;
- Arizona Water Company already had a CCN to serve water on three sides of the contested area, as well as water mains nearby; and

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- Arizona Water Company had already made a substantial investment in wells, mains and water facilities in the area, such that Arizona Water Company needed to spend only $47,188 to serve the area; in contrast, Fernandez would need to invest $84,844 to serve the area.

Id. at 76-77, 523 P.2d 507-08. Based on these factual findings, the Supreme Court affirmed the decision by the superior court awarding the contested area to Arizona Water Company: "the evidence that the public interest would best be served by the certification of Fernandez in place of Arizona Water Company is insubstantial as opposed to the evidence offered by Arizona Water Company." *Id.* at 77, 523 P.2d 508.

The public policy behind the proposition that the existing utility should be awarded the neighboring CCN is well established in Arizona. The Arizona Supreme Court has recognized that "Arizona's public policy respecting public service corporations, such as water companies, is one of regulated monopoly over free-wheeling competition." *James P. Paul Water Company v. Arizona Corporation Commission*, 137 Ariz. 426, 429, 671 P.2d 404, 407 (1983); *see also Arizona Corporation Commission v. Tucson Insurance & Bonding Co.*, 3 Ariz. App. 458, 462, 415 P.2d 472, 476 (App. 1966)("regulated monopoly rather than free-wheeling competition"); *Fred Harvey*, 95 Ariz. 185, 188, 388 P.2d 236, 237 (1964)("Arizona is a regulated monopoly state"). "Under this system, the Commission is statutorily required to investigate all applicants for a certificate of convenience and necessity for a given area . . . and to issue a certificate only upon a showing that the issuance to a particular applicant would serve the public interest." *James P. Paul*, 137 Ariz. at 429, 671 P.2d at 407.

Arizona Water Company is mindful that at least one Commissioner felt the fact that the underlying property owner had requested service from WWC as opposed to Arizona Water Company was an important factor in this analysis. However, that property owner was the seller of the development property to WWC's parent, the Pivotal Group ("Pivotal"), and as such was not exercising an objective and disinterested choice as to which provider to select. More importantly, the Arizona Supreme Court has noted that "[a] property owner's

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interests and desires must yield to the public convenience." *Arizona Corporation Commission v. Tucson Insurance & Bonding Co.*, 3 Ariz. App. 458, 463, 415 P.2d 472, 477 (App. 1966)(denying petition by property owners who sought to set up their own water company rather than receive water service from the certificated water company in the area). The Arizona Supreme Court has also noted the benefit of granting certificates to a single water company in a large area, rather than carving the area up among numerous smaller companies: "Allowing the area to remain gerrymandered in small non-integrated tracts served by different companies must inevitably injure both the consumer and the companies." *Davis v. Corporation Commission*, 96 Ariz. 215, 217, 393 P.2d 909, 910 (1964)(quoting the Commission).

Applying these principles to the record facts in this case, the result is clear. WWC is a start-up operation with questionable capitalization and no track record whatsoever of providing actual water utility service. Tr. 55-58, 60-61, 70-72, 1386. In contrast, Arizona Water Company established in this proceeding that it has served the area for over 50 years and that it is ready, willing and able to provide service to the contested area from a well-coordinated and engineered water utility system that includes a grid of water production facilities and reservoirs, transmission and distribution mains that are part of a master plan to serve the entire region. Arizona Water Company will also do so with water rates much lower than WWC's proposed rates. "Free wheeling competition" that serves the interests of only a comparatively small development is neither in the public interest nor consistent with the greater good of the citizens of Coolidge and Casa Grande, and it is that interest, as opposed to the varied development interests of the principals of WWC, that should control here. The Commission should reconsider its Decision in light of the "first in the field" doctrine and how that doctrine has been applied by the Arizona courts to similar facts.

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B. The "First In The Field" Doctrine Is Recognized In Other Jurisdictions As Well.

Case law from other jurisdictions also supports the proposition that, when two competing utilities seek to serve in the same area, the more established utility should be granted the right to serve, assuming that it is ready, willing and able to serve, a fact that is not contested here. A decision by the Illinois Supreme Court, *Citizens Valley View Co. v. Illinois Commerce Commission*, 192 N.E.2d 392 (Ill. 1963), involved facts nearly identical to those presented here. In that case, an existing water company and developer-owned start-up company both sought to serve the same subdivision southeast of an intersection. The existing water company, Citizens Valley, possessed a certificate to serve subdivisions on the other three corners of the intersection and operated an existing water utility system with 12 employees, besides other operations throughout the state. *Id.* at 394-95. Citizens Valley estimated that it could serve the area at a cost of $455,000. *Id.* at 395. In contrast, the developer-owned start-up company, Sunny Acres, had minimal resources and no operating history:

> Sunny Acres at the time of the hearing was a new utility and had not yet commenced business. It was not serving any area nor was it authorized to serve any. It had no substantial assets, no utility management personnel, no engineers and no equipment. One existing water well located on the property . . . was, according to the an engineer, adequate to form part of the initial water system. All other facilities, including water and sewer lines, would have to be newly constructed at a cost of approximately $1,210,000.

Id. at 394. However, the developer requested that his newly-organized water company provide service, disputed the water main extension policy of Citizens Valley, and even asserted that he would not develop the property if Citizens Valley were certified as the provider. *Id.* at 395.

The commerce commission granted the certificate to the developer-funded start-up concern, but the Illinois Supreme Court reversed based on the "first in the field" doctrine:

> It is the policy of this State, established by legislation for the regulation of all public utilities, to provide the public with efficient service at a reasonable rate, by compelling an established public utility occupying a given field to provide adequate

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> service and at the same time protect it from ruinous competition, . . . and, *where additional or extended service is required in the interest of the public and a utility in the field makes known its willingness and ability to furnish the required service, the Commerce Commission is not justified in granting a certificate of convenience and necessity to a competing utility until the utility in the field has had an opportunity to demonstrate its ability to give the required service.*

Id. at 396 (emphasis added). The fact that the contested area lay outside the existing utility's certificated area "did not prevent the existing utility from making application for a certificate to serve other territory adjacent to one of its lines and that the principle of favoring the prior utility in the field was equally applicable to such other territory." *Id.*

The Supreme Court further held -- in language that is particularly applicable to this case -- that the personal business desires of the developer should be disregarded in favor of the public interest:

> *The personal business desires of the subdivider and major shareholder of one applicant, his stated refusal to subdivide unless his company is certified, and his unwillingness to pay the cost of obtaining service from the existing company in accordance with its rules previously approved by the Commission, are in no way controlling as to the public interest and should not have been taken into consideration by the Commission.* Instead, even if it should be properly determined that Citizens Valley is not entitled to any preference, the Commission's order must be based exclusively upon those considerations affecting the public interest, such as the relative financial and technical capabilities of the two applicants and the nature of the facilities proposed to be constructed by each.

Id. at 397-98 (emphasis added). The Illinois Supreme Court also held that the developer-funded start-up company failed to present adequate evidence of its financial capability: "The only evidence submitted in this regard was [the developer's] testimony that he and his brother were financially able to build these facilities and if necessary would furnish the money to Sunny Acres. There was no disclosure as to the method the [developer] proposed to utilize in supplying this money, whether it would be by way of loan or otherwise." Id. at 398. This evidence is almost a mirror image of the WWC evidence concerning its alleged "financial capabilities" in this case. Importantly, these capabilities often have a direct bearing on rates to the consumers, a compelling factor in weighing the public interest, and a factor on which Arizona Water Company convincingly prevails over WWC. (*See* Argument

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II(B) below, discussing the amount of time and money a utility must spend to provide service as a "primary determinant" of the public interest under controlling Arizona Supreme Court law).

Other courts and jurisdictions have followed a similar "first in the field" rule. *See, e.g., Illini State Telephone Company v. Illinois Commerce Commission*, 234 N.E.2d 769, 771 (Ill. 1968)(telephone company which was first in the field and contiguous to disputed area had right to serve); *Public Service Company v. Public Utilities Commission*, 350 P.2d 543, 550-51 (Colo. 1960)(electrical utility which was first in the field had right to serve); *Burton v. Matanuska Valley Lines, Inc.*, 244 F.2d 647,652 (9th Cir. [Alaska] 1957)(bus company which was first in the field had the right to serve); *Chicago & West Towns Railways v. Illinois Commerce Commission*, 48 N.E.2d 320, 323-24 (Ill. 1943)(in contest between competing utilities, public policy favors the established company over newcomers; "If the company now occupying the field is incapable of providing adequate service, then, and not until then, will a situation arise when the convenience and necessity may require the establishment of another utility"). *Chicago & West Towns Railways* should be particularly instructive to the Commission because this case was cited by the Arizona Supreme Court as the basis for its comment in *Fred Harvey* that the existing utility in the field has the first priority (see discussion *infra*). Arizona has thereby established its willingness to follow the Illinois rule applied in *Citizens Valley View Co.*

C. The Commission's Task Force and Decision Acknowledges and Carries Forward These Principles of Law.

Although the final Decision in this case did not address directly the point, the record is clear that the public benefits from consolidating water service CCNs in a small number of stable, established public utilities, rather than gerrymandering an area among numerous smaller and separate utilities. Thus, in Decision No. 62993, dated November 3, 2000, the Commission approved recommendations of its Water Task Force intended to "Reduce the number of small, non-viable water systems." AWC Exhibit 13 at ¶ 4. The Commission

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further approved a specific proposal by the Commission's Staff ("Staff") concerning the establishment of new water companies:

> *The application for a new CC&N must show that an existing water company cannot or will not serve the area being applied for.* This showing must be made by submitting service rejection letters from all of the "A" size water companies in the state (there are 3) and at least five of the "B" size companies (there are 20). The five B size companies contacted should include the B size companies that are geographically closest to the applicant. The application must also be accompanied by service rejection letters from all existing water companies within five miles of the area being requested. In addition, the rejection letters must be accompanied by the corresponding request for service that was made to each of the existing water companies by the applicant.

Id. at ¶ 8 (emphasis added).

Following the Commission's directive that Staff develop a detailed statement of policy is this area, *id.* at ¶ 9, Staff filed a proposed policy on June 29, 2001. *See* WWC Exhibit 45. Staff noted that the "Commission has established a policy goal of ensuring Arizona's water consumers are served by viable utilities." *Id.*, Attachment A at 1. Staff further recommended that, "to assist the Commission in its goal to eliminate the proliferation of non-viable water systems," the Commission require that any new water company seeking a CCN demonstrate that existing water companies refused to extend service to the area:

> *Unless the Applicant is an existing public water utility in Arizona or is an affiliate of an Arizona public water utility, an Applicant for a new CC&N (i.e., not an extension to an existing CC&N) must demonstrate that existing water utilities have refused to extend their territories to include the requested area.* This demonstration shall be made by the Applicant providing all the following:
>
> a. A copy of the Applicant's request for service from all Class A water utilities in the State as well as the refusal to serve from all those Class A water utilities; and
>
> b. A copy of the Applicant's request for service from all or at least five (5), whichever is less, of the Class B water utilities serving within fifty (50) miles of the Applicant's requested area as well as the refusal to serve from all those Class B water utilities, and

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c. A copy of the Applicant's request for service from all water utilities serving within five (5) miles of the Applicant's requested area as well as the refusal to serve from all those water utilities.

Id., Attachment A at 2 (emphasis added; notes removed).

Irrespective of whether the Commission has taken final action to formally adopt these standards, the relevant point for rehearing of the final Decision in this case is that the standards are good public policy promulgated by Staff based on recommendations of a blue-ribbon task force of experts in the area. WWC presented no evidence that the public policy behind these principles was unsound, but instead made only technical arguments that the principles had not yet been officially adopted by the Commission. But WWC's position is a smokescreen to obscure the fact that WWC cannot prevail when these sound regulatory principles are applied to the facts of this case.

II. To the Extent Any Balancing Test Is Appropriate, Arizona Water Company Prevails.

Under Arizona law and existing Commission policies, no need exists to engage in a balancing test between a nearby existing established utility that is ready, willing and able to serve the contested area, like Arizona Water Company, and an untested developer-controlled start-up utility that plans to serve only its owner's own isolated development, such as WWC. However, if the Commission were to engage in a balancing test, Arizona Water Company would prevail on every factor save for one. This "checklist" was discussed in the Open Meeting on this matter held on January 27, 2006, and is set forth here to assist the Commission in considering a rehearing of its Decision:

BALANCING TEST FACTORS

Arizona Water Company (AWC) vs. Woodruff Water Company (WWC)

Factor	AWC	WWC
Overall Size and Resources--Economies of Scale	✓	
Lower Rates	✓	
Water Quality	✓	
Operational History and	✓	

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Factor	AWC	WWC
Reliability		
Corporate Focus	✓	
Depth of Managerial Expertise	✓	
Number and Expertise of Employees	✓	
Investment in Utility Plant and Facilities	✓	
Depth of Financial Resources	✓	
Number of Customers	✓	
Resources Available to Serve Contested Area	✓	
Provision of Wastewater Service Through Separate, but Affiliated Start-up Entity		✓

Each of these factors is explored in more detail below, with citations to the record.

A. Overall Size and Resources – Economies of Scale.

Arizona Water Company is a long-established Class A water utility, Tr. 581, which operates 22 different water systems in eight Arizona counties. Tr. 539. The Company operates 115 wells across the state, producing 55,000 gallons of water per minute, or 80 million gallons per day. Tr. 541. Statewide, Arizona Water Company operates 115 water storage tanks, representing about 55 million gallons of storage. Tr. 541-42. Arizona Water Company currently produces and delivers 14 billion gallons of water per year. Tr. 546. In contrast, WWC plans to provide water service to a relatively small area (3,200 acres), consisting of one development, Sandia. Ex. WWC-1, Attachment B-1; Tr. 44. WWC has no resources to draw on outside of that area, Tr. 339-40, 349-50, and no plans to serve any customers outside of that area. Tr. 160-61, 1387. While Arizona Water Company can deliver 14 billion gallons of water per year, WWC has a current production capacity of zero. Tr. 1390-91. In short, Arizona Water Company has a much larger area with which to

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engage in regional interconnection and regional planning. Tr. 1385. WWC's area of service, though larger than many smaller start-up companies, still does not provide the economies of scale, rate savings and efficiencies of operation that Arizona Water Company's provision of water service offers to future water customers in the Disputed CCN Area. The relevant comparison is the relative size and experience of Arizona Water Company versus WWC, not the fact that the developer predicts that WWC will eventually serve approximately 9,500 customers.

B. Rates and Cost to Customers.

In the hearing of this matter, Arizona Water Company proposed to charge customers in the Disputed CCN Area the same rates that it charges customers in its Coolidge system, which could be as low as $26 a month for the average bill. Tr. 1221-28. Because of its size, expertise and efficiency, Arizona Water Company is in a better position to provide lower cost service to customers in the contested area. Tr. 589-92. A small, start-up, stand-alone developer-owned company, like WWC, cannot offer such lower rates or rate stability to its customers. Tr. 593-94. In fact, WWC's proposed rates constitute nothing more than mere projections for a company without an operating history. Tr. 502. Even so, WWC's proposed rates (approximately $47 per month for the average bill) were, in fact, approximately 80% higher than Arizona Water Company's then-existing Coolidge system rates. Tr. 1228-30. The average customer at Sandia would pay WWC at least $20 per month <u>more</u> than the $26 per month Arizona Water Company proposed to charge to provide water service at the time of the hearing, and still some $18 per month more than the recently authorized rates in Arizona Water Company's Western Group rate case (Decision No. 68302, 11/14/05). Tr. 1230, 1243-44, 1386-87; Recommended Opinion and Order at ¶¶ 51, 52 and footnote 4. The customers in the Disputed CCN Area will be suffering tremendous rate shock should WWC become the water provider, especially when added to the new sewer rates.

As noted by the Supreme Court in *James P. Paul*, when two competing utilities both seek to serve in the same area, "the public interest is determined by comparing the

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capabilities and qualifications of competitors vying for the exclusive right to provide the relevant service. *The amounts of time and money competitors must spend (at the consumers' ultimate expense) to provide service become primary determinants of the public interest.*" 137 Ariz. at 430, 671 P.2d at 408 (emphasis added). Again, Arizona Water Company contends that this balancing test applies only where there is not an existing utility like Arizona Water Company that is ready, willing and able to provide service. Nonetheless, considering every factor in a balancing test, Arizona Water Company overwhelmingly prevails over WWC and should be awarded the water CCN for the Disputed CCN Area. The significant difference in water rates has been a consistent focus of this Commission, was a primary determinant in Judge Stern's weighing of the evidence, and is a predominant reason why Arizona Water Company should prevail on rehearing.

C. Water Quality.

Arizona Water Company has made substantial investments to comply with the new arsenic standards. Tr. 545. Arizona Water Company is the only water company in Arizona to have been awarded two EPA demonstration plants for arsenic treatment. Tr. 565. Even so, Arizona Water Company does not anticipate any need to treat for arsenic in the Coolidge system that will serve the Sandia development. Tr. 923-25, 931. In contrast, the existing agricultural wells on the Sandia property have high levels of arsenic, fluoride, nitrates and total dissolved solids. Tr. 164, 374-75, 943-49, 952-59. Because of its confined area to drill wells, WWC has a very difficult (and costly) tightrope to walk to comply with water quality standards. Tr. 832-33. Although WWC says it plans to drill new wells, there is no certainty about the water quality in those wells until after they are drilled. Tr. 329, 348, 378-80, 454, 473. WWC guesses that it will need to invest $1 million to treat arsenic and fluoride in the first five years, rising to $2 million in capital costs at full build out. Tr. 325-27, 363, 455-57, 1277-78. WWC's plans for water treatment methodology have changed since it filed its CCN application, and WWC cannot finally decide exactly what treatment methodology it will use until new wells are drilled. Tr. 328-29. Moreover, WWC's testifying expert on design of its water treatment facilities, Troy Bontrager (who received his civil engineering

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license the day before the date of the Wood Patel report) testified that neither he nor anyone else at his firm, Wood Patel, had ever before designed a fluoride or arsenic treatment plant. Tr. 329-334.

D. Operational History and Reliability.

Arizona Water Company has been in existence for 50 years, and expects to be around for at least another 50 years. Tr. 545, 1221. During its 50 years of corporate existence, Arizona Water Company has frequently been called upon to take over failing or defunct water systems around the state, including a number of small, start-up companies begun by developers, as is the situation with WWC. Tr. 568-71. Numerous other water systems also receive their primary or backup water supplies from Arizona Water Company. Tr. 571-73. In contrast, WWC was incorporated on March 31, 2004. WWC Ex. 1, Attachment G. WWC's ultimate parent company (Pivotal, which is also the developer) never engaged in the water utility business before, but instead engages in real estate development and a myriad of other businesses. Tr. 60-61. Although Pivotal's CEO, Mr. Francis Najafi, contended that Pivotal was committed to WWC, he also conceded that Pivotal might seek to sell off the water company in the future. Tr. 70-72. While Arizona Water Company has a very favorable track record on numerous points, WWC has no track record at all. Tr. 1386. The public interest is served by avoiding the scenario of a developer-controlled water utility winding down its affairs once the profit has been skimmed from the sale of lots.

E. Corporate Focus.

Arizona Water Company only operates public water utility systems and has no other business. Tr. 543, 862. Arizona Water Company takes a regional view towards water service and is not focused on a particular stand-alone development. Tr. 601-02. As Arizona Water Company President William M. Garfield testified, "Our sole purpose is a public utility water service corporation." Tr. 601. In contrast, WWC's parent company never engaged in the water utility business before filing WWC's application for a CCN. Tr. 60-61. Instead, WWC's parent company has been primarily engaged in land development, Tr.

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41, but also invests in hotels, spas, internet domain name services, entertainment services for hotels, vitamins and health supplements – not water utilities. Tr. 58-66.

F. Depth of Managerial Experience.

Arizona Water Company has a seven-member board of directors with a cumulative 210 years experience in operating water utilities. The average experience of each board member is approximately 30 years. Tr. 541. Staff has worked with Arizona Water Company's management for over 20 years. Tr. 1388-89. In contrast, WWC's President, Frances Najafi, and its shareholder, Pivotal Sandia LLC, have never engaged in the water utility business. Tr. 60-61. Three years ago, Pivotal hired Karl Polen, who worked on utility issues for Robson Communities. Tr. 90. Pivotal plans for Mr. Polen to run WWC, with numerous outside consultants brought in to plug the gaps. Tr. 49-50, 105, 130-32. None of WWC's management level employees have water utility experience comparable to those at Arizona Water Company. Tr. 1389.

G. Number and Expertise of Employees.

Arizona Water Company has approximately 175 employees, with each employee having an average of ten years experience with Arizona Water Company. Tr. 540, 1216-17. Approximately 100 of these employees are ADEQ certified operators, Tr. 543, and two are certified backflow prevention specialists. Tr. 556. Arizona Water Company has its own engineering department, operations staff, drafting department, meter repair and maintenance facilities, accounting department (with C.P.A.s), billing department, in-house legal department and ADEQ compliance specialists. Tr. 557-63, 867-68, 1214-1216. In contrast, WWC has no current employees. Tr. 156, 447-48. Even after it begins operations, WWC will have no certified operators on staff. Instead, WWC plans, in the future, to hire two of "the best and the brightest" (at $25,000 per year) as meter readers, and to conduct most of its operations through outside contractors, including contracting with an outside consultant to act as certified operator. Tr. 170, 446-47, 461-67, 486-87, 1275-76.

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H. Investment in Utility Plant and Facilities.

Arizona Water Company has approximately $225 million worth of utility plant in service, with another $10 million of construction work in progress. Tr. 544. This includes wells, water storage tanks, booster pump stations, water transmission and distribution mains and other utility plant facilities. Tr. 546. WWC currently has invested zero dollars in utility plant, Tr. 157, and instead leases a Type 1 water right from Mr. Wuertz. Tr. 157. If WWC receives a CCN, it says it plans to have approximately $5.3 million of utility plant in service by the end of the first year, and approximately $8 million in service by the end of the fifth year -- or an amount equal to about only 3 per cent of the total utility plant investment of Arizona Water Company. WWC Ex. 1-B.

I. Depth of Financial Resources.

There is no doubt as to the financial viability of Arizona Water Company. Tr. 1369-70. Arizona Water Company currently has a $15 million line of credit. Tr. 547. To fund its projects, Arizona Water Company is able to draw upon shareholder investment, short-term lines of credit and long-term bonds. Tr. 599-600, 1217-19. In contrast, WWC's current assets consist of a start-up infusion of paid-in capital of only a nominal $25,000. Tr. 55, 497-98. Although Mr. Francis Najafi, Pivotal's CEO, made promises that Pivotal will provide further equity capital "as needed," no promissory note or other written commitment exists between WWC and Pivotal. Tr. 55-58, 448-49.

J. Number of Customers.

Arizona Water Company currently serves approximately 75,000 customers, and adds approximately 4,000 customers per year. Tr. 539, 542, 1387-88. Arizona Water Company is also experiencing rapid growth of its customer base in the Coolidge and Casa Grande areas, and thus Arizona Water Company's costs of service are shared by a much larger group of customers. Tr. 550-51. WWC is currently serving only Howard Wuertz, who turns on and maintains his own pump. Tr. 115, 153-54, 162, 1387-88. Even at full build out of the Sandia project, WWC would have only 9,500 customers. Ex. WWC-1, Cover Letter dated June 15, 2004.

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K. Resources Immediately Available to Serve the Disputed CCN Area.

Arizona Water Company would serve the Disputed CCN Area from its Coolidge system, which produces 6 to 7 million gallons of water per day, and has a storage capacity of 2 million gallons. Tr. 550. The Coolidge system has 13,510 acre feet of groundwater available per year, plus 2,000 acre feet of CAP water. Tr. 553. Because of its size, Arizona Water Company has a broad range of groundwater and other water supplies to draw upon and a great amount of flexibility to meet the service needs of its customers. Tr. 602-06. In addition, Arizona Water Company plans to begin construction soon on a plant to treat CAP water for use in the Casa Grande and Coolidge systems, and expects the plant to be operational by 2012. Tr. 608-09, 885-86. Arizona Water Company also plans to interconnect its Casa Grande system (south and west of Sandia) and Coolidge system (east of Sandia) in the future. Tr. 878-85. In contrast, WWC would have to meet all of its water needs solely within its 3,200-acre area. Tr. 339-40, 349-50. During the hearings, WWC's witnesses testified variously that WWC intends to drill two, four, five, six or eleven new wells to serve its customers' needs. Tr. 117, 275, 335, 451-53, 808-10, 831. WWC currently "operates" (through Mr. Wuertz) only one well, which serves untreated water to Mr. Wuertz, WWC's only customer, but WWC's engineering witness was uncertain as to which well was actually being used. Tr. 153-54, 353.

III. The Alleged Benefits of "Integrated" Water and Sewer Utilities in This Situation Are Non-Existent or Easily Provided by Arizona Water Company.

The sole balancing factor arguably tipping in WWC's favor is its claim (despite the overwhelming advantages of Arizona Water Company service in the Disputed CCN Area and its economies of scale) that somehow the public will benefit from the alleged "integrated" water and sewer services from WWC and a sewer company controlled by the same developer. Staff recommended that WWC receive the CCN solely because of Staff's belief that it would be better for the sewer company to be associated with WWC rather than standing alone. Tr. 1365-68. However, Staff could not name a single factor other than the alleged corporate tie to a sewer company on which Staff based its opinion that WWC should

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prevail over Arizona Water Company. Tr. 1392. In fact, the only arguable benefits from the supposed "integrated" arrangement flow to the developer-owner of the integrated utilities – not to the actual water customers who will be forced to pay significantly higher water rates to WWC than they would pay to Arizona Water Company. In addition, Staff has little or no support for its assumption that financial and other ties actually exist between WWC and the sewer company. Tr. 1393-96.

In essence, the Commission's Decision defers to perceived "benefits" of an integrated utility at the expense of the ultimate customers and ratepayers who will pay far higher rates to those utilities, when on closer analysis the main "benefits" accrue solely to the developer-owner's bottom line. In contrast to WWC's claims, Arizona Water Company already operates with the Commission's knowledge and approval, numerous water systems in areas where other entities (municipal or private) provide sewer service. Tr. 610. Arizona Water Company has entered into operating agreements in these areas to achieve efficiencies in billing and other areas, such as providing information on new customers receiving water service. Tr. 610-12. Arizona Water Company also works with sewer service entities to provide an integrated solution for meeting an area's water needs, such as the use of effluent or reclaimed water for turf and recharge recovery wells. Tr. 611-12. The goal of using renewable water sources to meet demands can be effectively achieved with two separate entities providing water and sewer service. Tr. 616-17. The alleged benefits of the "integrated" services of WWC and the sewer company are, in this situation, insubstantial, and do not justify granting a CCN to WWC to the detriment of the water customers who would be forced to pay WWC's much higher rates.

Woodruff Utility Company and WWC are in fact two separate companies with no connection other than their common ownership by the developer, Pivotal. Neither company has any independent resources or financial strength other than what Pivotal decides to provide, and the very fact that the two companies are incorporated separately suggests that Pivotal desires convenience in selling them off separately. Moreover, the claim of alleged efficiencies from "integrated" water and sewer services collapses before the fact of the

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higher bills for *both* water and sewer service that Pivotal's customers will pay over what they would pay if Arizona Water Company and the City of Coolidge provided those services. Tr. 1230, 1243-44, 1386-87. The record supports the conclusion that the public interest and convenience, as opposed to the developer-owner's profit-seeking interests, favors the award of the Disputed CCN Area to Arizona Water Company.

CONCLUSION

For the foregoing reasons and those stated in the findings and conclusions in the Recommended Opinion and Order, the Commission should grant a rehearing and should award Arizona Water Company the water service CCN for the Disputed CCN Area.

DATED this 22nd day of February, 2006.

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