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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

6 APR -7 P 1:38

CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF
TACNA WATER MANAGEMENT COMPANY
FOR AN EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
WATER SERVICE TO VARIOUS PARTS OF
YUMA COUNTY, ARIZONA.

DOCKET NO. W-01344A-04-0815

PROCEDURAL ORDER

BY THE COMMISSION:

On November 10, 2004, Tacna Water Management Company ("Tacna"), filed with the Arizona Corporation Commission ("Commission") an application for an extension of the territory under its existing Certificate of Convenience and Necessity ("CC&N").

Tacna published notice of its application in *The Sun*, a newspaper of general circulation in the requested CC&N extension territory, on November 23, 2004.

On October 31, 2005, the Commission's Utilities Division Staff ("Staff") filed a letter in this docket informing Tacna that its application had met the Commission's sufficiency requirements as outlined in the Arizona Administrative Code.

On November 2, 2005, a Procedural Order was issued setting a hearing on Tacna's application and requiring publication and mailing of notice of the hearing.

On December 1, 2005, Staff filed its Staff Report on Tacna's application, recommending approval with conditions.

On December 16, 2005, a Procedural Order was issued ordering Tacna to provide notice of the hearing as required in the November 2, 2005 Procedural Order, and continuing the hearing in order to allow sufficient time for the notice and for any intervention requests.

On December 21, 2005, Mohawk Utility Company ("Mohawk") filed a Motion to Intervene, which was granted by Procedural Order issued January 5, 2006. Mohawk has filed an application for extension of its CC&N in Docket No. W-02341A-06-0040 on January 24, 2006, requesting that its

1 service territory be extended to include an area overlapping Tacna's requested area.¹

2 On January 10, 2006, Tacna filed proof of publication and mailing of notice of the hearing on
3 its application as required.

4 The hearing convened as scheduled on March 9, 2006. Tacna's Manager, Steve Kelland and
5 its President, Don Kelland, appeared; Mohawk's Owner/President, Robert Chris Rockwell, appeared;
6 and Staff appeared through counsel. Tacna, Mohawk, and Staff presented evidence. At the hearing,
7 Mohawk requested that its CC&N extension request be "considered in the hearing on Tacna Water's
8 CC&N too." Hearing Transcript at 35-36. At the hearing, Mr. Rockwell testified that "Mohawk is
9 not against Tacna Water Management's growth. They have applied in their CC&N, though, some of
10 the area which is of great interest to Mohawk. It is adjacent to the water that Mohawk owns, and they
11 are talking about pumping water for over three miles to service this area that I am already servicing
12 and have lines in at the moment. That's all I have to say." Hearing Transcript at 14. Mr. Rockwell
13 also indicated that while Mohawk is currently serving "most of the area that has been filed in our
14 application, it currently has 11 hookups on the south side of the freeway, but "we are issued not to
15 hook up anymore. That would be a problem to service that area." Hearing Transcript at 43.

16 At the hearing, Staff stated that after Mohawk filed its competing CC&N application, Staff
17 had evaluated its position, and continued to recommend that Tacna be granted the service territory
18 extension requested in its application.

19 At the close of the hearing, the parties were directed to file legal briefs on the issue of the
20 proper procedural treatment of two existing CC&N extension applications that request overlapping
21 service territory.

22 On March 3, 2006, Tacna filed a letter in this docket stating that it believes Mohawk's due
23 process requirements have been met. Tacna noted that Mohawk is not in compliance with Arizona
24 Department of Environmental Quality ("ADEQ") requirements.² Tacna requested that its application
25 be approved.

26 On March 21, 2006, Staff filed its Legal Memorandum on the Issue of Two Potentially

27 ¹ According to Staff, Mohawk's application has not yet met the Commission's sufficiency requirements.

28 ² Staff Exhibit S-2 admitted into the record at the hearing, indicates that Mohawk had ADEQ compliance deficiencies. Mr. Rockwell testified that he "would be clearing up these deficiencies as soon as possible" Hearing Transcript at 43.

1 Competing Applications to Service the Same Area. Staff noted that Tacna initially placed Mohawk
2 on notice of its application by its publication on November 23, 2004, and that Mohawk could have
3 filed its own application in response at any time after that date, but that Mohawk waited until January
4 24, 2006, to file its competing application. Staff noted that Mohawk was an intervenor in Tacna's
5 case and actively participated in the hearing, in which there was a give and take by the contesting
6 parties, including cross examination, testimony, introduction of documents into the record, and an
7 opportunity to present witnesses.³ Staff asserted that because Mohawk's application remains
8 insufficient, there is no compelling reason to deny Tacna's CC&N extension request, and that "the
9 turtle should not be allowed to control the race." Staff stated that if the Hearing Division believes it
10 is appropriate to provide Mohawk further opportunity to perfect its application, that a date certain for
11 compliance could be set in a procedural order.

12 On March 29, 2006, Mohawk filed its Letter of Summation. Mohawk reiterated in its March
13 29, 2006 filing that it is currently serving customers in the extension area requested in its pending
14 application in Docket No. W-02341A-06-0040. Mohawk's March 29, 2006 filing further states that
15 "Mohawk's water plant is currently out of its current CC&N, being 1 mile west. If Tacna Water were
16 to secure the area it wants, Mohawk's plant would be right in the middle of their CC&N." Mohawk
17 argued that it would be impractical to have two water utilities using the same right-of-way; that
18 Mohawk needs additional service territory to insure its growth and future viability; that its extension
19 request is contiguous to its service territory; and that Mohawk filed a CC&N extension application "a
20 few years ago."

21 It is necessary that a procedural conference be held in order to allow the parties to discuss an
22 appropriate means of clarifying the record regarding the location of Mohawk's facilities and
23 customers in relation to the service territory extension requested by Tacna. All the parties should be
24 fully prepared to discuss the nature of the evidence that might be presented if further evidentiary
25 proceedings are required. The parties are encouraged to meet and communicate prior to the
26 procedural conference to attempt to resolve disputed issues.

27 _____
28 ³ Mr. Rockwell declined the opportunity to cross-examine witnesses for Tacna and Staff. Tacna did not cross-examine Mr. Rockwell.

1 IT IS THEREFORE ORDERED that a **procedural conference** shall be held in this matter on
2 **April 19, 2006, at 1:30 p.m.**, or as soon thereafter as is practical, at the Commission's offices, 1200
3 West Washington Street, Arizona 85007.⁴

4 Dated this 7th day of April, 2006

6
7 
8 TEENA WOLFE
ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered
10 this 7 day of April, 2006 to:

11 Don Kelland
12 Tacna Water Management Company
13 2993 South Arizona Avenue
14 Yuma, AZ 85364

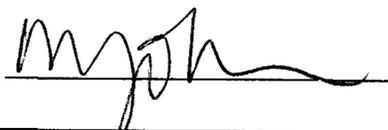
15 Lawrence Deason
16 242 W. 28th Street, Ste. A
17 Yuma, AZ 85364

18 Robert Chris Rockwell
19 Mohawk Utility Company
20 36140 Antelope Drive
21 P.O. Box 1194
22 Wellton, AZ 85356

23 Christopher Kempley, Chief Counsel
24 Legal Division
25 ARIZONA CORPORATION COMMISSION
26 1200 West Washington Street
27 Phoenix, AZ 85007

28 Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, AZ 85007

ARIZONA REPORTING SERVICE, INC.
2627 N. Third Street, Suite Three
Phoenix, Arizona 85004-1104

26 By: 
27

⁴ The parties may participate in the Procedural Conference telephonically by calling 602 542-9006.