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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

2006 JUN 20 P 4: 00

Arizona Corporation Commission

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

AZ CORP COMMISSION DOCUMENT CONTROL

DOCKETED

JUN 20 2006

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

DOCKET NO. W-01445A-06-0199

IN THE MATTER OF THE APPLICATION OF PALO VERDE UTILITIES COMPANY FOR AN EXTENSION OF ITS EXISTING CERTIFICATE OF CONVENIENCE AND NECESSITY.

DOCKET NO. SW-03575A-05-0926

IN THE MATTER OF THE APPLICATION OF SANTA CRUZ WATER COMPANY FOR AN EXTENSION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY.

DOCKET NO. W-03576A-05-0926

Response to CP Water Company's Motion to Exclude Territory From Requested Extension Area

Arizona Water Company, one of the applicants in this consolidated case, responds in opposition to the Motion of CP Water Company ("CP") to exclude CP's certificated area ("CCN") from the extension area the Company has applied for in this case.

CP's argument attempts to rely on the holding of the Arizona Supreme Court in the case of *James P. Paul Water Company v. Arizona Corporation Commission*, 137 Ariz. 426, 671 P.2d 404 (1983) (the "Paul Case"). For the reasons shown below, CP's reliance on the Paul case is misplaced, at this point of this docket, and its Motion should

1 be denied. Further, even if the Commission determines that a Paul Case type of
2 analysis needs to be undertaken, this is the appropriate docket for the Commission to
3 develop a full evidentiary record to decide the issue, as opposed to having the matter
4 decided by preliminary motion.

5
6 **ARGUMENT**

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8 As noted in CP's Motion, since 1985, Arizona Water Company and only Arizona
9 Water Company—not CP—has operated CP's water system that provides water utility
10 service to customers under the terms and conditions of an agreement, a copy of which
11 is attached to CP's Motion as Attachment "C". CP pointed this out in its Motion, but it
12 failed to disclose the all-encompassing nature of the services that Arizona Water
13 Company provides. Under the Agreement, Arizona Water Company:

- 14
15 1. Sells water to CP under the terms and conditions of Arizona Water
16 Company's tariffs.
17
18 2. Reads customer meters, prepares and computes monthly bills according
19 to CP's tariffs, bills CP's customers and makes reasonable efforts to
20 collect payments from CP's customers.
21
22 3. Provides labor and materials required to operate and maintain CP's water
23 system, and repair damages to it.
24
25 4. Allows Arizona Water Company's Casa Grande office to be used by CP's
26 customers to pay bills, or CP's customer's may pay by mail, like Arizona
27 Water Company's other customers.
28

All of these services have been rendered by Arizona Water Company on a
continuous basis since 1985. During this time, CP has made no efforts, of which

1 Arizona Water Company is aware, to drill any new water well, to expand its system, or
2 to provide for the needs of customers in its CCN which Arizona Water Company has
3 done since 1985. Thus, Arizona Water Company submits that, in reality, it is the public
4 service corporation, not CP, which has provided, and is today providing all water service
5 in CP's CCN. Without Arizona Water Company's action, there would be no CP, and CP
6 would as a matter of law not be entitled to its CCN.

7

8 One of the most salient portions of the holding in the Paul Case (which even
9 CP's motion concedes) is:

10

11 Once granted, the certificate confers upon its holder an exclusive
12 right to provide the relevant service *for as long as the grantee can provide*
13 *adequate service at a reasonable rate. Id., at 407 (emphasis supplied).*

14

15 There is really no serious question as to whether CP is providing "adequate
16 service" within the requirements of the Paul Case; it is providing no water service. It is
17 Arizona Water Company, not CP, that is actually providing water service within CP's
18 CCN, and now is the time to recognize that Arizona Water Company is the true water
19 utility service provider to these customers.

20 Furthermore, the Commission has ample authority to revoke or amend a CCN.
21 A.R.S. Sec. 40-252 provides, in pertinent part, that:

22

23 The commission may at any time, upon notice to the corporation
24 affected, and after opportunity to be heard as upon a complaint,
25 rescind, alter or amend any order or decision made by it. When the
26 order making such rescission, alteration or amendment is served

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upon the corporation affected, it is effective as an original order or decision.

The Arizona Supreme Court has stated that "while the Commission may not act arbitrarily, it has the same power to revoke a certificate as it has to issue it, upon due cause being shown." *Davis v. Corp. Comm'n.*, 96 Ariz. 215, 219, 393 P.2d 909, 911 (1964), citing with approval, *Paradise v. Pennsylvania Public Utility Comm'n.*, 132 A.2d 754, 759 (Pa. Super. Ct. 1954). If CP is going to seriously contend that it wants to maintain its CCN under these circumstances, that issue needs to be resolved in this docket, as part of Arizona Water Company's request for extension of its CCN in the CP area, which was designed to formalize who the actual provider of water service to that area is and has been since 1985. Furthermore, the determination as to whether adequate service is being provided is a decision to be determined by the utility's regulator. *Colonial Products Company v. Pennsylvania Public Utilities Commission*, 188 Pa. Super 163, 146 P.2d 657 (1958); see also *Bexar Metropolitan Water District v. Texas Commission of Environmental Quality*, 185 S.W.3d 546 (Tex. 2006).

CONCLUSION

The question of whether CP is providing adequate service at reasonable rates, or whether Arizona Water Company is actually the water service provider within CP's CCN is a question that should be determined within the Commission's consideration of the Company's application, not summarily by granting CP's Motion. For the foregoing reasons, CP's Motion should be denied. Then, CP may well have an opportunity to have its arguments considered during the Commission's determination of the merits of the Company's application.

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RESPECTFULLY SUBMITTED this 20th day of June, 2006.

ARIZONA WATER COMPANY

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