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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2006 JUN 20 P 4: 00

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

AZ CORP COMMISSION
DOCUMENT CONTROL

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
ITS EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-03576A-05-0926

**Response to CHI Construction
Company's Motion to Exclude
Territory From Requested
Extension Area**

Arizona Water Company, one of the applicants in this docket, responds in
opposition to CHI Construction Company's ("CHI") motion to exclude its property
(described in Attachments A through K to its Motion) from Arizona Water Company's
application for an extension of its CCN. For the reasons presented below, CHI's Motion
is premature and should be denied.

1 ARGUMENT

2 The first reason CHI provides in support of its argument for exclusion is that CHI
3 has not requested service from Arizona Water Company. Next, CHI argues that
4 Arizona Water Company's application does not comply with a "well-established" policy
5 of requiring requests for service from all property owners in an extension area before a
6 CCN may be extended. CHI cannot prevail on either argument. It would be premature
7 to strike CHI's (or any other developer's) territory from the areas at issue because the
8 Commission has not yet begun in earnest its process of determining, on an overall
9 basis, which provider should in the public interest be the certificated water provider in
10 this area. Early gerrymandering of the areas in dispute by selective, piecemeal motions
11 based on apparent deals that have been made with the competing applicants are not in
12 the public interest and serve to deprive the Commission of the opportunity to choose the
13 appropriate water provider based on the overall public interest.
14

15 The Commission's decision as to whether a CCN area should be extended is
16 controlled by the public interest, which must be the Commission's first consideration.
17 *Davis v. Corporation Comm'n.*, 96 Ariz. 215, 217, 393 P.2d 909, 910 (1964). While the
18 Commission may consider the interests of an individual property owner's interests and
19 desires concerning the extension of a CCN, those interests and desires must yield to
20 the public interest, the Commission's prime concern. *Arizona Corp. Comm'n. v. Tucson*
21 *Ins. & Bonding Agency*, 3 Ariz.App. 458, 464, 415 P.2d 472, 476 (Ariz. App. 1966). CHI
22 argues that, since it has not requested service from Arizona Water Company, and "does
23 not want" to be served by Arizona Water Company, it is entitled immediately to a
24 Commission determination that its property should be excluded from Arizona Water
25 Company's application. But to do so now before the overall analysis has started as to
26 what is in the public interest would be improper because the Commission would be
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1 deprived of its role of receiving and reviewing evidence and exercising its discretion and
2 making decisions under the guise of a motion as to what a developer (not the ultimate
3 customers) currently “prefers” as opposed to what is in the overall public interest.
4 Whether Arizona Water Company’s application satisfies the requirements of the public
5 interest so that its CCN should be extended is nowhere near being determined at this
6 time. Granting CHI’s Motion would short-circuit the Commission’s entire decision
7 making process, simply on the self-serving desires of CHI. Clearly that is not the law in
8 Arizona, as it is the public interest, not CHI’s individual desires, which must be the
9 primary consideration as to whether AWC’s CCN should be extended.

10
11 In addition, other jurisdictions have reached the same conclusion. *Citizens*
12 *Valley View Company v. Illinois Commerce Comm’n*, 192 N.E.2d 392 (Ill. 1963),
13 involved the existing utility’s appeal of a Commerce Commission’s order granting a CCN
14 to a newly formed utility. One factor considered by the Commission was the fact that the
15 property owner had not requested service from the existing utility and would not develop
16 its property if the existing utility was certificated. The Illinois Supreme Court reversed
17 the Commission’s order, finding that the desires of the property owner and his
18 unwillingness to obtain service from the existing utility under Commission rules were in
19 no way controlling as to the public interest, and the Commission’s order must be based
20 exclusively upon considerations affecting the public interest, such as the financial and
21 technical capabilities of the applicants and the nature of the facilities each proposed to
22 construct. *Id.* 192 N.E.2d at 397-398; *See also Re City of Crawfordsville*, 107 P.U.R.
23 4th 224, 1989 WL 418726 (Ind. U.R.C. 1989).

24
25 Moreover, as Arizona Water Company has explained in other pending dockets
26 (See AWC Response to Public Comments, Docket W-01445A-06-0059) on this same
27 issue, there simply is no Commission policy, whether “long-standing”, “well established”,

1 or however else it has been or may be described, that there must be a request from
2 each property owner in a CCN extension area. CHI's purported authority (three
3 Commission decisions, one entered eleven years ago) does not support its argument,
4 and it does not cite any rule, statute, or case that establishes such a policy. Arizona
5 Water Company has received requests for service, as has Santa Cruz Water Company,
6 facts that CHI concedes in its Motion. Furthermore, as noted by the Court in *Arizona*
7 *Corp. Comm'n. v. Tucson Ins. & Bonding Agency, supra*, in addressing a similar
8 argument that the Commission was following a "policy", in a case, involving a CCN
9 deletion:

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11 Furthermore, a practice or policy of granting deletion cannot be
12 relied on as requiring deletion in every instance when a requested (sic) by
13 a property owner, absent a formally adopted rule or statute making
14 deletion mandatory upon request. 3 Ariz.App. 458, 463, 415 P.2d 472,
15 477.

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17 CHI cannot rely on a non-existent policy to advance its argument.

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19 CHI's next reason for exclusion is that approval of Arizona Water Company's
20 application would deprive customers of benefits that accrue from multiple service
21 providers in competing for a CCN to serve an area. However, CHI refers to only one
22 such benefit, but has not yet provided any evidence whatsoever about the supposed
23 benefits that a so-called integrated water and wastewater provider might offer.
24 However, Santa Cruz Water Company and Palo Verde Utilities Company ("Palo Verde")
25 are not "integrated", they are separate utilities. As Arizona Water Company has argued
26 before, Arizona Water Company's relationships forged with private and municipal
27 wastewater providers over a fifty year period has enabled Arizona Water Company to

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1 successfully provide service to over 70,000 customers in eight Arizona counties. There
2 is no evidence, and nothing more than unsupported speculation in CHI's motion, that
3 such a provider would not be available to provide wastewater service to CHI's property.
4 In fact, Palo Verde has applied for a wastewater CCN to serve the area. Arizona Water
5 Company also has a Cooperative Service Agreement with a nationally recognized
6 wastewater treatment partner and can provide wastewater service through that entity, if
7 necessary, (just as the competing applicants also propose to provide water and
8 wastewater system through separate entities). All of these factors demonstrate that this
9 issue should be decided by the Commission in its determination as to whether the
10 Arizona Water Company's application should be approved, once a full evidentiary
11 record is developed, not by granting a Motion as premature as CHI's.

12

13 CHI's final argument is that granting of Arizona Water Company's application
14 would establish multiple water providers and upset CHI's "global planning strategy" for
15 its master planned development. Leaving aside whether the referenced strategy is
16 really CHI's (as opposed to being a Global Water Resources revenue generating
17 scheme), as noted above it is the public interest that the Commission is constitutionally
18 empowered to determine in this case, not the parochial interests of a developer like
19 CHI. Whether or not there will be, or should be, multiple service providers for CHI's
20 master planned community (contradicting CHI's own argument in the previous
21 paragraph of its Motion that there should be multiple service providers to compete for a
22 CCN area) are the very matters that should be decided by the Commission based on
23 the evidentiary record to be developed in this case.

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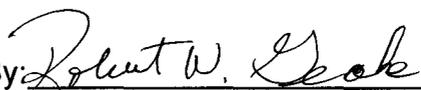
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CONCLUSION

CHI's Motion would prematurely determine important public policy issues, is not supported by authority, and should be denied.

RESPECTFULLY SUBMITTED this 20th day of June, 2006.

ARIZONA WATER COMPANY

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