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Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION OF ARIZONA WATER COMPANY, AN ARIZONA CORPORATION, TO EXTEND ITS EXISTING CERTIFICATE OF CONVENIENCE AND NECESSITY IN THE CITY OF CASA GRANDE AND IN 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 EXISTING CERTIFICATE OF CONVENIENCE AND NECESSITY.

DOCKET NO. W-03576A-05-0926

MOTION FOR RECONSIDERATION ON DENIAL OF REQUEST FOR INTERVENOR STATUS

(REQUEST FOR CONSIDERATION BY THE COMMISSIONERS AT A FUTURE OPEN MEETING)

Pursuant to A.A.C. R14-3-111, Ridgeview Utility Company, Picacho Water Company, Lago Del Oro Water Company and Santa Rosa Water Company (collectively, the “Robson Utilities”) move the Arizona Corporation Commission (“Commission”) for reconsideration of the denial of their Motion to Intervene filed May 18, 2006, and request that the Commission grant leave to intervene. Intervention should be granted because (i) the Robson Utilities will be directly and substantially affected by the outcome of this case; and (ii) the Robson Utilities will not raise any issues which have not already been raised in this proceeding, and therefore, their participation cannot unduly broaden the scope of this proceeding. The Robson Utilities respectfully request

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1 that their Motion for Reconsideration be addressed by the Commissioners at a future open
2 meeting.

3 INTRODUCTION

4 On May 18, 2006, the Robson Utilities filed a Motion to Intervene. In a Procedural Order
5 dated July 10, 2006, the Administrative Law Judge ("ALJ") denied the Motion to Intervene on the
6 grounds that (i) the Robson Utilities did not demonstrate they are directly and substantially
7 affected by the application of Arizona Water Company ("AWC") in this proceeding; and
8 (ii) participation by the Robson Utilities would unduly broaden the scope of this proceeding. The
9 Robson Utilities respectfully disagree with the ALJ's conclusions for the reasons set forth herein
10 and request that the Commission reconsider the denial and grant intervention.

11 ARGUMENT

12 1. AWC's Application Directly and Substantially Affects the Robson Utilities.

13 The Robson Utilities are directly and substantially affected by this proceeding for several
14 reasons. First, AWC seeks to extend its certificate of convenience and necessity ("CC&N") to
15 include sweeping areas where there are virtually no requests for service directed to AWC. In the
16 92 days from February 1, 2006, through May 4, 2006, AWC filed three applications for
17 extensions of its CC&N covering 97,117 acres, or a staggering 152 square miles.¹ To give some
18 perspective regarding the sheer size of AWC's requests, the combined extension area is larger
19 than the incorporated land area of 16 of the 20 largest cities by population in Arizona: **Peoria**
20 (138 square miles), **Mesa** (125 square miles), **Yuma** (107 square miles), **Surprise** (69 square
21 miles), **Flagstaff** (64 square miles), **Chandler** (58 square miles), **Glendale** (58 square miles),
22 **Casa Grande** (48 square miles), **Bullhead City** (45 square miles), **Gilbert** (45 square miles),
23 **Lake Havasu City** (43 square miles), **Avondale** (43 square miles), **Tempe** (40 square miles),
24 **Prescott** (37 square miles), **Apache Junction** (34 square miles), and **Oro Valley** (32 square
25 miles).² Only Phoenix, the nation's fifth largest city by population (475 square miles), Tucson
26 (195 square miles), Scottsdale (184 square miles) and Sierra Vista (153 square miles) have larger
27

28 ¹ See Docket Nos. W-01445A-06-0059, W-01445A-06-0199 and W-01445A-06-0317.

² This data comes from the United States Census Bureau website at <http://www.census.gov>.

1 incorporated land areas than AWC's combined extension areas. Applying the 2000 U.S. Census
2 Bureau population density figure for nearby Chandler of 3,050.5 persons per square mile,³ AWC's
3 152 square mile CC&N extension (if granted) would likely encompass more than 463,000
4 residents.

5 AWC's 110 square mile CC&N extension request in this case is no ordinary request; in
6 fact, it is quite extraordinary and unprecedented in Arizona. In addition to the sheer size of the
7 request, it is remarkable for its paucity of service requests directed to AWC. Although AWC is
8 seeking an extension to serve 70,494 acres,⁴ the company has received requests for service for
9 only 0.3% of the proposed extension area. In this docket, the Commission must decide whether
10 and under what circumstances the Commission will approve an enormous CC&N extension
11 where relatively few requests for service exist. This is not a routine CC&N extension where a
12 landowner or two have requested water service for a discreetly-defined area. Rather, this is the
13 largest CC&N extension request in modern Arizona history. The resolution of this case will
14 certainly produce policy decisions that directly and substantially affect all regulated water utilities
15 in Arizona, including the Robson Utilities. More to the point, a resolution of this case in favor of
16 AWC would set a course of establishing AWC as the water provider for the remaining
17 uncertificated portions of Pinal County. In order to protect its legitimate business interests,
18 Robson Utilities must have a place at the table where these critical policy issues will be debated
19 and resolved.

20 Second, the Robson Utilities each provide water service in Pinal County, and are
21 competitors of AWC.⁵ If AWC's requested extension is granted, the Robson Utilities will be
22 forever precluded from serving a large area of Pinal County. The ALJ noted in her July 10
23 Procedural Order that Staff opposed the intervention on the grounds that the Robson Utilities
24 have not applied for an extension in the area that is the subject of this docket, and that the Robson
25

26 ³ *Id.*

27 ⁴ See AWC Response to Staff's Insufficiency Letter dated July 7, 2006, at Attachment B.

28 ⁵ The Robson Utilities do not compete with AWC in the sense that they provide water service within the same geographic area, but rather the Robson Utilities compete with AWC (as do other providers) to serve new developments in Pinal County.

1 Utilities do not have any requests for service in the extension area.⁶ However, if a request for
2 service is the key to admission, it must be noted that AWC does not have requests for service for
3 99.7% of the requested extension area in this case! The Robson Utilities could have filed
4 applications like AWC to extend their respective CC&Ns without requests for service, but they
5 believe that such action would be inappropriate and contrary to public interest. The denial of
6 their Motion to Intervene would force the Robson Utilities to play the same game as AWC in
7 order to protect their future opportunities for growth. AWC is attempting to lock-up a large area
8 of Pinal County for itself so that AWC can serve that area at some unknown date in the future
9 when there is actually a need for service. Such tactics, if permitted, will directly and substantially
10 affect the Robson Utilities by foreclosing their opportunity to compete to serve new development
11 when there is a demonstrated need for service.

12 Third, there is no other proceeding in which the Robson Utilities can raise their concerns.
13 As stated above, this case is unlike any prior CC&N extension case. No one doubts that the
14 unusual breadth of this case will likely lead to policy decisions by the Commission regarding the
15 circumstances under which the Commission should consider approving extensions into areas for
16 which there are no requests for service. This case should not be viewed as a routine CC&N
17 extension, but as a watershed case which will establish Commission policy for Arizona. The
18 Robson Utilities' participation in this case—like the other intervenors—will assist the ALJ and
19 the Commission in developing a complete record upon which to make informed decisions.

20 **2. Participation by Robson Utilities Will Not Unduly Broaden the Scope of this**
21 **Proceeding.**

22 Allowing the Robson Utilities to intervene in this case cannot unduly broaden the issues
23 because the very issues they seek to raise have already been raised by parties and intervenors in
24 this case. For example, intervenor CHI Construction Company ("CHI") asserted in its Motion to
25 Exclude Property from Arizona Water Company's Requested Extension Area filed June 1, 2006,
26 that "CHI has not requested water service from AWC, does not want water service from AWC,
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28 ⁶ See Procedural Order at page 3, lines 3-6 (July 10, 2006).

1 and objects to the inclusion of any portion of the CHI Property in the Extension Area."⁷ In its
2 Response to CHI Construction Company's Motion to Exclude Territory from the Requested
3 Extension Area dated June 20, 2006, AWC responded as follows:

4 CHI argues that, since it has not requested service from Arizona Water Company,
5 and "does not want" to be served by Arizona Water Company, it is entitled
6 immediately to a Commission determination that its property should be excluded
7 from Arizona Water Company's application. But to do so now before the overall
8 analysis has started as to what is in the public interest would be improper because
9 the Commission would be deprived of its role of receiving and reviewing
10 evidence and exercising its discretion and making decisions under the guise of a
11 motion as to what a developer (not the ultimate customers) currently "prefers" as
12 opposed to what is in the overall public interest. Whether Arizona Water
13 Company's application satisfies the requirements of the public interest so that its
14 CCN should be extended is nowhere near being determined at this time.⁸

15 The significance of a lack of requests for water service—or outright opposition—in a case
16 to extend a CC&N must and will be addressed in this case. This is the core issue that the Robson
17 Utilities seek to raise: whether and under what circumstances the Commission should grant an
18 expansive extension of a CC&N where the landowners have not requested service.

19 Numerous other issues have been raised in this docket by the parties. In their Motion to
20 Dismiss, Santa Cruz Water Company, LLC, Palo Verde Utilities Company, LLC, Global Water
21 Santa Cruz Water Company, and Global Water-Palo Verde Utilities Company (collectively,
22 "Global") raised the following issues, among others:

- 23 • AWC's application raises serious questions concerning water conservation
24 and other environmental issues.
- 25 • AWC has presented requests for service for only 0.3% of its vast proposed
26 extension area. The Commission has a long-standing practice of
27 respectfully considering the desires of landowners in selecting a utility
28 company.
- If AWC's application is granted, other utilities will be forever banned from
serving the area, which prejudices utilities that "play by the rules" and
support their applications with planning and requests for service.

⁷ Motion to Exclude Property of CHI Construction Company from Arizona Water Company's Requested Extension Area (June 1, 2006) at page 2, lines 17-20.

⁸ AWC's Response to CHI Construction Company's Motion to Exclude Territory From Requested Extension Area (June 20, 2006) at pages 2-3.

- 1 • Water, wastewater and reclaimed water services are best provided on an
2 integrated basis by affiliated companies.
- 3 • AWC does not have a designation of assured water supply in Pinal
4 County, and has never applied for one.⁹

5 Clearly the issues identified above are broad in scope, and the unprecedented breadth of
6 AWC's extension request necessarily prohibits a limited scope in this case. There is no issue that
7 would be raised by the Robson Utilities which falls outside the scope of the issues already raised
8 by Global above. Thus, there is no possibility that the Robson Utilities' participation in this case
9 will unduly broaden the issues.

10 The ALJ states in her Procedural Order that:

11 Robson Utilities also raises the issue that because AWC is not an integrated utility
12 it would not be in the public interest for it to receive an extension of its CC&N.
13 On this issue, allowing Robson Utilities to intervene would unduly broaden the
14 scope of this proceeding because it would require Staff to conduct a comparison
15 between competing water providers when one of them has no pending application
16 or request for service in the area.¹⁰

17 The Robson Utilities are not seeking CC&Ns in this case, and therefore, they are not
18 seeking a comparison with AWC. Rather, they have raised the legitimate position that water and
19 wastewater services should be planned in concert, a point which AWC failed to address in its
20 extension application. This issue was raised by Global, as set forth above, and by intervenor CHI
21 in its Motion to Exclude, which stated as follows:

22 AWC's Application is contrary to the public interest because it forecloses the
23 benefits that accrue to customers when multiple service providers compete for the
24 CC&N to serve an area. Such benefits include the potential efficiencies of water
25 and sewer service provided by integrated utilities (which AWC cannot offer) and
26 innovation in technology which naturally results from multiple providers
27 competing for a CC&N to serve an area. Perhaps more importantly, the grant of
28 AWC's request would establish a water provider for the Legends development
 without addressing sewer service. CHI may find it difficult or even impossible to
 find a stand-alone sewer provider to serve the CHI Property if AWC is
 certificated as a stand-alone water provider. The Commission should consider
 water and sewer service in concert when addressing requests to extend water
 company CC&Ns. The AWC Application fails to address sewer service at all.¹¹

⁹ Global's Motion to Dismiss (June 23, 2006) at page 2.

¹⁰ Procedural Order (July 10, 2006) at page 3, lines 9-13.

¹¹ Motion to Exclude Property of CHI Construction Company from Arizona Water Company's Requested Extension Area (June 1, 2006) at page 3, lines 13-23.

1 Robson Utilities' identification of the integrated water-wastewater provider issue should
2 not be used as a basis for denying intervention on the grounds that it unduly broadens the scope of
3 this proceeding because that very issue has been raised by other parties and intervenors in the
4 case, and will necessarily be addressed in the course of the proceeding. The Robson Utilities
5 respectfully submit that they have demonstrated that their participation in this proceeding will not
6 unduly broaden the scope of the proceeding, and there has been no credible showing otherwise.

7 It is also relevant that the ALJ has so far granted intervenor status to seven parties: CHI
8 Construction Company (May 11, 2006), CP Water Company (May 11, 2006), Anderson & Miller
9 694, LLP (May 11, 2006), Anderson & Barnes 580, LLP (May 11, 2006), KEJE Group, LLC
10 (May 18, 2006), Anderson & Val Vista 6, LLC (May 18, 2006), and Gallup Financial, LLC (June
11 13, 2006).¹² This Commission has always granted intervention liberally. It is difficult to imagine
12 how the grant of intervenor status to Robson Utilities—in light of the number of intervenors
13 already admitted, the breadth of the issues already raised, and the certainly that new policy will be
14 made—would prejudice any party to this proceeding. Fundamental fairness and due process
15 support the grant of intervenor status to the Robson Utilities.

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¹² An eighth Motion to Intervene was filed July 24, 2006, by Bevnorm Olive, LLC, and Hampden & Chambers, LLC.

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