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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER- Chairman Arizona Corporation Commission
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

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AZ CORP COMMISSION
DOCUMENT CONTROL

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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-03-0167

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

DOCKET NO. W-03576A-03-0167

STAFF'S REPLY TO APPLICANT'S
RESPONSE TO STAFF REPORT

Utilities Division Staff ("Staff") of the Arizona Corporation Commission ("Commission") hereby provides its Reply to the July 14, 2003 Response to Staff Report filed by Applicants Palo Verde Utilities Company ("Palo Verde") and Santa Cruz Water Company ("Santa Cruz") in the above-captioned dockets.

Considering the Staff Report recommends approval of the Application coupled with the fact that Staff and the Applicants previously agreed to not pursue litigation in the case over their vehement disagreement on either:

- 1) the transfer of assets and CC&Ns to the LLCs issues; or
- 2) the extension of the CC&N requirement to serve outside the current certificated area, it is difficult to conclude that the Applicants' Response serves any other purpose than as an attempt to preserve disagreements with Staff, which are no longer issues in this case, for some future purpose and to create unnecessary conflict with Staff.¹

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¹ For example, footnote four in the Applicants' response begins by stating that its contents are immaterial. However, the note goes on to indicate that they are "at a loss" for the basis of Staff's representation that the Applicants sought Staff's opinion. The Applicants included this statement despite contact between the parties in which Staff clarified that it was Applicants' counsel, Patrick Black, who made the described inquiry to Mr. Steve Olea, Assistant Utility Director for the Arizona Corporation Commission.

1 **I. THE TRANSFER OF ASSETS AND CC&Ns TO THE LLCs' ISSUES**

2 As the Staff Report conveys on page 9, despite the obligation on the part of the Applicants to
3 file an application to transfer assets and CC&Ns when the corporations to which the CC&Ns were
4 granted cease to own the used and useful property and conduct service, in Staff's review of this
5 specific circumstance Staff determined that it was in the public interest to approve the transfers of
6 CC&Ns in this docket without opposition from the Applicants.² Given Staff recommends transfer of
7 the CC&Ns (i.e., an appropriate correction), it does not appear fruitful to respond to Applicants'
8 counsel's inaccurate assessment of Staff's responsibility to provide legal advice to Applicants or his
9 inability to recognize that once a corporate entity is formed it takes on the same status as an
10 individual. Thus, Staff merely states that it reaffirms the recommendations and approval as
11 articulated in the Staff Report filed on June 30, 2003 and that this is an isolated, fact-specific
12 instance and Staff's approval in this matter is not intended as a precedent in any context.

13 **II. THE EXTENSION OF CC&N REQUIREMENT TO SERVE OUTSIDE THE**
14 **CURRENT CERTIFICATED AREA**

15 Staff continues to disagree with the Applicants' interpretation of ARS § 40-281(B) (*See*
16 Applicants' Response to Staff Report at 8, line 15). Again, while Staff could respond to the
17 Applicants' (1) misinterpretations of ARS§ 40-281(B), (2) questionable assertion that they acted in
18 "good faith" when they began constructing facilities prior to applications being filed and (3)
19 continued construction and completion of facilities while these applications remain pending, Staff
20 finds that it would be counterproductive at this point. Moreover, Staff finds it unnecessary to
21 respond to the Applicants' assertions within this Reply. Rather, Staff reaffirms the recommendations
22 made by Staff within the Staff Report and further clarifies that any position taken by Staff on this
23 issue is not intended as a precedent in any way.

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28 ² The record does not reflect any objection by any party to the CC&Ns reflecting that the holders are Palo Verde Utilities Company, LLC and Santa Cruz Water Company, LLC.

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RESPECTFULLY SUBMITTED this 21st day of July 2003.

David Ronald

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AN ORIGINAL and fifteen (15) copies
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