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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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2006 AUG 29 P 2: 33

Arizona Corporation Commission

AZ CORP COMMISSION  
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DOCKETED

AUG 29 2006

DOCKETED BY	
<i>JM</i>	<i>NR</i>

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 Staff's Response to CP Water Company's and CHI Construction Company's Motions to Exclude Territory From Requested Extension Area

Arizona Water Company, one of the applicants in this consolidated case, responds to Staff's August 15, 2006 Response to both of the above-captioned Motions.

STAFF'S ANALYSIS OF THE CP WATER COMPANY MOTION IS INCORRECT

Staff's Response concerning the CP Water Company ("CP") Motion argues that, as there is no evidence that CP has failed to provide water service within its certificated area, the case of *James P. Paul Water Company v. Arizona Corporation Commission*, 137 Ariz. 426, 671 P.2d 404 (1983) requires that the CP's certificate cannot be revoked.

1 This is the same argument that CP made in its Motion, and it is still incorrect under the  
2 facts of this case. Rather than there being no evidence of a lack of CP service as Staff  
3 suggests, the evidence in this case directly contradicts this assertion. As noted in  
4 Arizona Water Company's Response to CP's Motion, CP has never provided any  
5 service within its certificated area. Instead, Arizona Water Company, under the terms  
6 and conditions of a 1985 Agreement with CP, has provided water service since 1985  
7 within CP's certificated area. A copy of the Agreement is attached to CP's Motion as  
8 Attachment C, and a description of the details of the service that Arizona Water  
9 Company provides is contained on page 2 of Arizona Water Company's Response.

10 As *James P. Paul* provides:

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 Therefore, Staff's position improperly disregards the fact that since 1985, Arizona  
16 Water Company, not CP, has provided all water service within CP's certificated area.  
17 *James P. Paul* supports, rather than bars, as Staff argues, Commission revocation of a  
18 certificate under these circumstances. The Commission has the same power to revoke  
19 a certificate as it does to issue one. *Davis v. Corp. Comm'n.*, 96 Ariz. 215, 219, 393  
20 P.2d 909, 911 (1964). The determination as to whether CP is unable, unwilling, or has  
21 failed to provide adequate service should be made in this case after a full evidentiary  
22 hearing on Arizona Water Company's application, not summarily, which would be the  
23 result of endorsing Staff's view and granting CP's Motion. The need for such a  
24 Commission determination warrants presentation of evidence and weighing of all of the  
25 facts in the upcoming hearings, not summarily disposed of by motion.  
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1                                    **CHI'S TERRITORY SHOULD NOT BE EXCLUDED FROM THIS CASE**

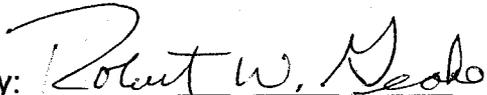
2                                    Arizona Water Company agrees with Staff that CHI Construction Company's  
3 ("CHI") territory should not be excluded from Arizona Water Company's proposed  
4 expansion area. Without repeating every argument contained in its Response to CHI's  
5 Motion, Arizona Water Company agrees with Staff that the most important issue for the  
6 Commission to determine in this consolidated case is what is in the public interest with  
7 respect to the provision of water service to the proposed expansion areas. That issue  
8 can only be determined after a full and complete evidentiary hearing, weighing the  
9 various attributes of both applicants in this case, not, as CHI's Motion suggests, by a  
10 summary determination that various questionable or non-existent "policies" (e.g.,  
11 whether "integrated" water and wastewater service providers can better serve the public  
12 interest) justify exclusion of CHI's territory.  
13

14                                    **CONCLUSION**

15                                    Because both motions would have the effect of prematurely determining  
16 important public policy matters that should be decided as part of the formal evidentiary  
17 hearing process in this consolidated case, the Commission should deny the Motions of  
18 CP and CHI.  
19

20                                    RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of August, 2006.

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Original and seventeen (17) copies of the foregoing filed this 29<sup>th</sup> day of August, 2006

with:

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A copy of the foregoing was hand delivered this 29<sup>th</sup> day of August, 2006 to:

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A copy of the foregoing was mailed this 29<sup>th</sup> day of August, 2006 to:

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