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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

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JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

AZ CORP COMMISSION
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DEC 18 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.

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

PROCEDURAL ORDER

BY THE COMMISSION:

On December 28, 2005, Palo Verde Utilities Company ("Palo Verde") and Santa Cruz Water Company ("Santa Cruz") (collectively, "Global") filed an application with the Arizona Corporation Commission ("Commission") for an extension of their Certificates of Convenience and Necessity ("Certificate") in Docket Nos. SW-03575A-05-0926 and W-03576A-05-0926.

On March 29, 2006, Arizona Water Company ("AWC") filed an application with the Commission to extend its Certificate in Docket No. W-01445A-06-0199. On this same day, AWC requested to intervene in Docket Nos. SW-03575A-05-0926 and W-03576A-05-0926. AWC's request for intervention was granted by procedural order on April 12, 2006.

On April 7, 2006, Palo Verde and Santa Cruz filed an application to intervene in Docket No. W-01445A-06-0199.

On April 24, 2006, by Procedural Order, Palo Verde and Santa Cruz were granted intervention and the above-captioned matters were consolidated for purposes of hearing.

On April 27, 2006, Anderson & Miller 694, LLP filed a Motion to Intervene.

1 On April 28, 2006, CHI Construction Company (“CHI”), CP Water Company (“CP”) and
2 Anderson & Barnes 580, LLC (“Anderson & Barnes”) filed Motions to Intervene.

3 On May 2, 2006, KEJE Group, LLC (“KEJE”) filed a Motion to Intervene.

4 On May 3, 2006, Anderson & Val Vista 6, LLC (“Anderson & Val Vista”) filed a Motion to
5 Intervene.

6 On May 11, 2006, by Procedural Order, Anderson & Miller, Anderson & Barnes, CHI and CP
7 were granted intervention.

8 On May 18, 2006, KEJE and Anderson & Val Vista were granted intervention.

9 On May 18, 2006, Ridgeview Utility Company, Picacho Water Company, Lago Del Oro
10 Water Company and Santa Rosa Water Company (collectively “Robson Utilities”) filed a Motion to
11 Intervene.

12 On May 31, 2006, Gallup Financial, LLC filed a Motion to Intervene.

13 On June 1, 2006, Staff filed an insufficiency letter with respect to Global’s application.

14 On June 1, 2006, Palo Verde and Santa Cruz filed a Response in Support of the Motion to
15 Intervene by Robson Utilities.

16 On June 1, 2006, CHI Construction, which was granted intervention in this matter on May 15,
17 2006, filed a Motion to Exclude the Property of CHI from the requested extension area.

18 On June 1, 2006, CP Water filed a Motion to Exclude CP from the requested extension area.

19 On June 7, 2006, Staff filed an Objection to the Motion to Intervene by Robson Utilities.

20 On June 12, 2006, Robson Utilities filed a Reply in Support of its Motion to Intervene.

21 On June 13, 2006, by Procedural Order, Gallup Financial, LLC was granted intervention in
22 this matter.

23 On June 20, 2006, AWC filed a Response to CHI’s and CP’s Motions to Exclude Territory
24 from Requested Extension Area.

25 On June 23, 2006, Staff filed a Sufficiency Letter in this docket indicating that Global’s
26 application had met the sufficiency requirements as outlined in the Arizona Administrative Code.

27 On June 23, 2006, Santa Cruz and Palo Verde filed a Motion to Vacate the Consolidation and
28 a Motion to Dismiss the Application filed by AWC.

1 On July 10, 2006, by Procedural Order, Robson's Motion to Intervene was denied and a
2 procedural conference was scheduled for July 27, 2006.

3 On July 27, 2006, the procedural conference was held as scheduled. The parties agreed to a
4 continuance of the procedural conference and other procedural deadlines were set.

5 On July 28, 2006, Robson Utilities filed a Motion for Reconsideration on Denial of Request
6 for Intervenor Status. Also on this date, Staff filed a Sufficiency Letter in this docket indicating that
7 AWC's application had met the sufficiency requirements as outlined by the Arizona Administrative
8 Code.

9 On July 31, 2006, a Procedural Order was issued setting various dates; however, the
10 Procedural Order inadvertently misstated some of the dates and an Amended Procedural Order was
11 issued on August 7, 2006.

12 On August 7, 2006, by Procedural Order, a procedural conference was scheduled and various
13 deadlines were established.

14 On August 15, 2006, the procedural conference was held as scheduled to hear oral argument
15 on Global's Motion to Dismiss AWC's Application and Global's Motion to Vacate Consolidation
16 and/or to Sever. Global, AWC and Staff appeared through counsel. After consideration of the
17 pleadings filed and arguments presented at the Procedural Conference, Global's Motion to Dismiss
18 AWC's Application and Global's Motion to Vacate Consolidation and/or Sever, were denied.

19 On September 12, 2006, by Procedural Order, the evidentiary portion of the hearing was
20 scheduled and filing deadlines were established.

21 On September 27, 2006, a Procedural Conference was held to hear oral argument on CP
22 Water and CHI Construction's Motions to be excluded from AWC's proposed CC&N extension. At
23 the Procedural Conference, the parties agreed to continue the oral argument so that parties could
24 engage in further settlement negotiations. It was further agreed that oral argument on this issue
25 would reconvene on October 27, 2006.

26 On September 29, 2006, Staff filed a Motion for an Extension to file its Staff Report until
27 settlement discussions are concluded.

28 On October 3, 2006, Global filed its Response to Staff's Motion for an Extension.

1 On October 4, 2006, AWC filed its Response to Staff's Motion for an Extension of Time.

2 On October 12, 2006, Staff's request for an Extension of Time was granted by Procedural
3 Order.

4 On October 25, 2006, CHI and CP filed a Notice of Filing Pre-Filed Direct Testimony of
5 Roger Pryor.

6 October 26, 2006, Staff filed its Staff Report in this matter.

7 On October 27, 2006, oral argument was heard on CHI Construction and CP Water's Motions
8 to be excluded from AWC's request for a CC&N extension.

9 On November 3, 2006, the parties filed a Joint Motion to Amend Procedural Schedule.

10 On November 29, 2006, an Amended Procedural was issued amending the procedural
11 schedule in this matter.

12 On December 6, 2006, CMR/Casa Grande LLC filed a Motion to Extend the Intervention
13 Deadline and for Leave to Intervene.

14 In regards to CP's Motion to be excluded from the AWC's proposed extension area, counsel
15 for CP argues that it is inappropriate to include CP in AWC's proposed CC&N extension because CP
16 holds a valid CC&N, which was granted by the Commission in Decision No. 54089 (June 25, 1984)
17 for the same area. Counsel further argued that if AWC is seeking to have the Commission revoke or
18 rescind CP's CC&N, the issue should not be raised as a part of a CC&N extension docket, but that
19 the proper procedure would be for AWC to file a Complaint. To that end, CP argues it has not been
20 afforded the proper notice and opportunity to defend itself against a CC&N revocation. Additionally,
21 counsel argues that under the *Paul* standard for revocation of a CC&N, AWC has presented no
22 evidence that CP is unable or unwilling to provide the needed service for the area at a reasonable rate.

23 AWC argues that it has been providing service to customers in CP's CC&N since 1985 when
24 it entered into an operation agreement to provide water service on behalf of CP Water. AWC further
25 argues that because it sells water to CP's customers, reads customer meters, provides billing for CP's
26 customers, provides labor and material to maintain the CP water system and provides customer
27 service to CP's customers at its offices, it is the actual "true water utility service provider" to CP's
28 customers. Additionally, AWC states that the Commission has the authority to revoke CP's CC&N

1 pursuant to A.R.S. §§40-252.

2 Staff in its Response argued that, because AWC has not shown any evidence that CP has
3 failed to meet the standard outlined in the *Paul* case and CP has a valid CC&N for the area, CP's
4 request to be excluded from AWC's proposed extension area should be granted. Staff further stated
5 that the granting of AWC's request to cancel CP's CC&N and include it in AWC's extension area
6 would set a "precedent whereby any utility operated by a management company" . . . "would be at
7 risk for losing its CC&N even though the rates and service being provided are reasonable." (*Staff*
8 *Report at pg. 5*)

9 Generally, "the Commission may at any time, upon notice to the corporation affected and
10 after opportunity to be heard as upon a complaint, rescind, alter or amend any order or decision made
11 by it." A.R.S. §§ 40-252 Once a CC&N has been granted by the Commission, the *James P. Paul*
12 *Water Co. v. Arizona Corp. Comm'n*, 137, Ariz. 426, 429, 671 P.2d 404, 407 (1983) case states,
13 "[w]here a public service corporation holds a certificate for a given area, the public interest requires
14 that the corporation be allowed to retain its certificate until it is unable or unwilling to provide needed
15 service at a reasonable rate." *Paul* goes on to state that "once granted, the Certificate confers upon its
16 holder an exclusive right to provide the relevant service for as long as the grantee can provide
17 adequate service at a reasonable rate." Further, in regards to applications for initial CC&Ns and
18 CC&N extensions, Staff articulated in Commission Decision No. 69163 (December 5, 2006) nine
19 factors that it considers in deciding whether to recommend approval of CC&N extensions into areas
20 for which there are no requests for service. However, Staff stated that a request for service is one
21 factor; it is not the controlling factor in analyzing a CC&N application.

22 In the instant case, CP has not been afforded the notice or opportunity to defend itself against
23 a revocation of its CC&N by AWC. AWC filed its application including CP's Certificated area and
24 did not state that it was requesting the Commission revoke CP's CC&N. Additionally, the *Paul* case
25 states, "once granted, the Certificate confers upon its holder an exclusive right to provide the relevant
26 service for as long as the grantee can provide adequate service at a reasonable rate." Here, AWC has
27 failed to present evidence that CP is not providing adequate service at a reasonable rate. Therefore,
28 CP's request to be excluded from AWC's proposed extension area should be granted.

1 CHI Construction Company also filed a Motion to Exclude its uncertificated areas from
2 AWC's CC&N extension in this matter. CHI argues that it has not requested water service from
3 AWC, does not want water service from AWC and therefore CHI's property should not be included
4 in the extension area. CHI reasons that inclusion in AWC's extension area will preclude it from
5 seeking water and sewer utility service from an integrated provider, it will force CHI to deal with
6 multiple providers in its master-planned development ("Legends"), and since Legends is in the early
7 stages of development, it is premature for CHI to have to choose a water provider.

8 AWC argues that it is premature at this time for the Commission to decide if the CHI property
9 should or should not be excluded because the case is in the early stages of litigation. Further, AWC
10 argues that the matter would be more appropriately decided during the regular course of the case.

11 In Staff's Response to CHI's Motion to be Excluded, Staff argued that although a request for
12 service is a relevant factor for Staff to consider when analyzing CC&N extensions, it is not a
13 controlling factor. However, in its Staff Report in this docket, Staff recommends that "regardless of
14 which company receives approval to extend its service territory in which area," . . . "that only areas
15 for which requests for service were received should be included in the CC&N extensions awarded in
16 this case."

17 Although the Commission may ultimately agree that the CHI property should not be included
18 as a part of AWC's extension request, it is premature to exclude that property until all relevant
19 evidence is considered in this proceeding.

20 IT IS THEREFORE ORDERED that CP Water Company's Motion to be Excluded is hereby
21 granted.

22 IT IS FURTHER ORDERED that CHI Construction's Motion to be Excluded from AWC's
23 extension area as proposed by AWC in this docket, is hereby denied. The appropriateness of
24 inclusion of the CHI property will be determined by the Decision issued in this proceeding.

25 IT IS FURTHER ORDERED that **Responses to CMR/Casa Grande LLC's Motion to**
26 **Extend the Intervention Deadline and for Leave to Intervene shall be filed on or before**
27 **December 29, 2006.**

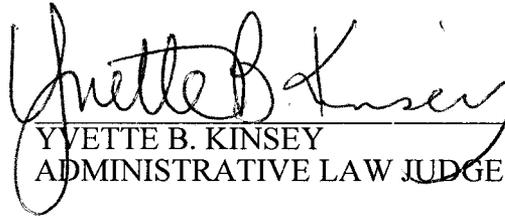
28 IT IS FURTHER ORDERED that **Staff shall file its Response and/or Supplemental Staff**

1 **Report including, but not limited to, discussing the relationship of the requesting intervenor**
2 **CMR/Casa Grande LLC to the Copper Mountain Ranch development described in the Staff**
3 **Report filed on October 26, 2006 on or before December 29, 2006.**

4 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
5 Communications) applies to this proceeding and shall remain in effect until the Commission's
6 Decision in this matter is final and non-appealable.

7 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
8 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

9 Dated this 18th day of December, 2006.

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11 
12 YVETTE B. KINSEY
13 ADMINISTRATIVE LAW JUDGE

14 Copies of the foregoing mailed/delivered
this 15th day of December, 2006 to:

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