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Arizona Corporation Commission
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April 6, 2007

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Re: Water and Wastewater CC&N Rules
Docket Nos. RW-00000B-07-0051 and RSW-00000A-07-0051

Dear Mr. Johnson:

The Global Water Utilities¹ have the following comments on Staff's draft of the proposed revisions to the Commission's water and wastewater CC&N rules.

I. Conservation.

The proposed rules represent a step forward by requiring several new types of information regarding water conservation. However, to further this goal, the Global Water Utilities suggest that Staff consider adding or modifying the following:

- R14-2-402.A.2.p: This proposed subsection currently reads: "The name of the wastewater service provider in the area under application." The Global Water Utilities recommend adding "and a description of how the applicant will work with the wastewater service provider to encourage water conservation, including promoting the use of reclaimed water."
- R14-2-402.A.2.r: The proposed subsection does not provide guidance to applicants as to what types of water conservation plans are contemplated. The Global Water Utilities suggest that the following language be added. "Such plans shall include, at a minimum, the following: (1) a description of the information about water

¹ Santa Cruz Water Company, Palo Verde Utilities Company, Global Water – Santa Cruz Water Company, Global Water – Palo Verde Utilities Company, Hassayampa Utility Company, Global Water-Picacho Cove Water Company, Global Water – Picacho Cove Utilities Company, Francisco Grande Utility Company, CP Water Company, Water Utility of Northern Scottsdale, Inc., Water Utility of Greater Buckeye, Inc., Water Utility of Greater Tonopah, Inc., Valencia Water Company, and Willow Valley Water Company.

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conservation that the utility provides to its customers or the public; (2) a description of the sources of water that will be used to supply parks, recreational areas, golf courses, greenbelts, ornamental lakes, and other aesthetic water features; (3) a description of plans for the use of reclaimed or recycled water; (4) a description of the plans for the use of recharge wells; (5) a description of the plans for the use of surface water; (6) a description of any other plans or programs in place to promote water conservation.”

- R14-2-402.A.2.u. This proposed subsection currently reads: “Physical Availability Determination, Analysis of Adequate Water Supply, or Analysis of Assured Water Supply from the Arizona Department of Water Resources, or in the alternative, the status of the application.” This provision does not go far enough because a PAD or analysis does not represent a finding by ADWR that water of sufficient quality will be legally and continuously available for 100 years. For example, in some cases, the water could be used by another entity (i.e. it is not reserved) or the water may not have sufficient quality for the proposed uses. The Commission should require a Certificate of Assured Water Supply or Designation of Assured Water Supply. The Global Water Utilities recommend that this proposed section be replaced with the following: “Designation of Assured Water Supply, Designation of Adequate Water Supply, Certificate of Assured Water Supply, or Certificate of Adequate Water Supply from the Arizona Department of Water Resources, or in the alternative, the status of the application before the Arizona Department of Water Resources.”
- R14-2-402.A.2.w (new section): The estimated average use of water per customer in gallons per day, and the basis for the estimate.
- R14-2-602.A.2.q. This proposed subsection currently reads: “The name of the water service provider in the area under application.” The Global Water Utilities recommend adding “and a description of how the applicant will work with the water service provider to encourage water conservation, including promoting the use of reclaimed water.”
- R14-2-602.A.2.r. The word “effluent” should be changed to “reclaimed water” or “recycled water” because “effluent” can refer to any wastewater discharges regardless of the level of treatment. Moreover, using “reclaimed” or “recycled” emphasizes the purpose of this requirement – to promote conservation.

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II. Consolidation.

The proposed revisions to the rules do not contain any provisions promoting consolidation. This rulemaking provides a unique opportunity to promote consolidation. There are more than 400 water companies in this state. Many of them are small, undercapitalized, poorly managed, and without technical expertise. These problems can be solved through the acquisition of these companies by larger, better capitalized companies with managerial and technical expertise. Moreover, larger companies can benefit from economies of scale and scope, thus reducing the cost of service, and ultimately, rates.

The Commission's Water Task Force concluded that "[m]any of Arizona's water companies are quite small.... [and] many of these small companies are quite problematic."² Further, the Task Force stated that "because of economies of scale, larger companies are likely to be more efficient."³ Thus, the Task Force concluded that "reducing the number of small non-viable water systems is a desirable goal."⁴

Accordingly, the Global Water Utilities recommend three new provisions:

- A.A.C. R14-2-402.D and R14-2-602.D (new subsections): "Notwithstanding the foregoing, a Class A or Class B utility, or any utility affiliate thereof, ("Buying Utility") that has reached an agreement to merge with, or acquire the stock, ownership interests, or assets of a Class C, D, or E utility ("Selling Utility"), may file a notice with the Commission to request approval to merge or consolidate the Selling Utility's territory into the territory of the Buying Utility. The notice shall include the names of the Buying Utility and the Selling Utility. The notice shall not be subject to sufficiency or deficiency review. The Commission shall conduct a hearing on the notice within 60 days of the filing of the notice. The Commission shall issue a final decision regarding the notice within 120 days of the filing of the notice."
- A.A.C. R14-2-402.A.2.x. and R14-2-602.A.2.t. (add new subsections to the end of the list): "If the applicant is a new utility, a letter from each Class A or Class B Utility located in the county in which the area under application is located, stating that the Class A or Class B Utility will not serve the area under application. If the applicant is not able to obtain these letters, then the applicant shall include a description of what compelling circumstances justifies the creation of a new utility. For the purposes of

² Interim Report of the Arizona Corporation Commission's Water Task Force at 4, dated October 28, 1999, and filed January 5, 2000 in docket no. W-00000C-98-0153.

³ Id.

⁴ Id.

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this section, "new utility" means an entity which does not currently have a Certificate of Convenience and Necessity, and which is not the affiliate of an entity which has a Certificate of Convenience and Necessity."

- A.A.C. R14-2-402.A.2.y. and R14-2-602.A.2.u. (add new subsections to the end of the list). The proposed rules do not include information regarding regional planning. The Global Water Utilities suggest that the following language be added: "a description of the applicant's regional plans, and how the application fits into those regional plans."

III. Technical Comments.

In addition, the Global Water Utilities would like to propose the following technical changes.

- R14-2-602.A.2.a and R14-2-402.A.2.a.: This subsection should be updated to reflect the fact that limited liability companies now exist. Accordingly, the following phrase should be added to the end, "or the managers or officers of a manager-managed limited liability company, or the members of a member-managed limited liability company."
- R14-2-602.A.2.b and R14-2-402.A.2.b.: Likewise, these sections should be updated by adding "or Articles of Organization."
- R14-2-602.A.2.c and R14-2-402.A.2.c.: The proposed draft deletes the word "preliminary" from the phrase "preliminary engineering report." Any engineering report at the time of a CC&N application would have to be a preliminary report. And in any event, it would be very helpful to provide greater detail of what is required in the report.
- R14-2-602.A.2.d. The citation to Section 208 is not in the proper format to be published in the Administrative Code or Administrative Register because citation to "Public Law" numbers are only allowed when the statute has not yet been codified. *See* A.A.C. R1-1-409.D.1. (specifying format for citations to federal laws); *see also Arizona Rulemaking Manual* (September 2003) at p. 18, under "citation." Accordingly, "(Section 208 of the Federal Water Pollution Control Act, P.L. 92-500)" should be deleted and replaced with "33 U.S.C. 1288."

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- R14-2-602.A.2.e and R14-2-402.A.2.d.: The phrase “detailed explanation” is vague and does not provide adequate guidance to applicants. It should be defined or deleted.
- R14-2-602.A.2.i. and R14-2-402.A.2.h.: The phrase “described in detail” is vague and does not provide adequate guidance to applicants. It should be defined or deleted.

In addition, the Global Water Utilities are concerned about the requirement to provide phasing information. Information about phasing is highly dependent on the specific, and ever-changing, plans of developers. In an application based on regional planning (which the Commission is increasingly receiving) it is not possible to develop precise or detailed phasing plans. This requirement will only serve to promote small, parcel-by-parcel extensions – the very opposite of what the Commission should encourage. Regional planning allows the utility to plan for and realize economies of scale. This should be encouraged not discouraged. As long as the property owners support the application, it is desirable that applications not be small. In addition, multiple small applications are inefficient and ultimately impose higher costs on utilities, developers, and the Commission’s staff. These higher costs will likely be borne, one way or another, by customers.

Moreover, providing phasing information at the time of the filing of an application is generally not practical. Any information that could be provided would be estimates of likely very little value. Development plans shift rapidly. The best course of action is for the utility, once the application is granted, to carefully monitor development activity, and to tailor construction plans to stay ahead of growth, and to take advantage of opportunities to realize economies of scale in their infrastructure deployment.

- R14-2-602.A.2.m and R14-2-402.A.2.l.: If the landowner has requested service, this requirement is redundant. There is no reason to require landowners to provide a second written confirmation of their request for service. This section should be changed to read: “For each parcel not covered by a request for service, the landowner’s written response to the notice of the application.”
- R14-2-602.A.2.s.i. and R14-2-402.A.2.v.i.: The phrase “or from the relevant agency or entity that administers powers delegated from the Arizona Department of Environmental Quality” should be added after “Arizona Department of Environmental Quality” to reflect the fact that the compliance status reports are often not directly issued by ADEQ. For example, in Maricopa County, the compliance

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status reports are issued by the Maricopa County Environmental Services Department under authority delegated by ADEQ.

Thank you for the opportunity to provide these comments.

Very truly yours,



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