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April 5, 2007

BY HAND DELIVERY

Arizona Corporation Commission
DOCKETED

APR - 5 2007

Ernest Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, Arizona 85053

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Re: RW-00000B-07-0051 - Water Rulemaking
RSW-00000A-07-0051 - Sewer Rulemaking

Dear Mr. Johnson:

I am writing on behalf of Chaparral City Water Company ("CCWC") and Algonquin Water Resources of America ("AWRA")¹ in response to your letter to interested parties dated March 6, 2007, in the above-captioned matters. CCWC and AWRA thank you for the opportunity to provide these written comments on proposed revisions to A.A.C. R14-2-402 *et seq.* and R14-2-602 *et seq.* ("Rules"), which currently govern the processing of applications for new or extended certificates of convenience and necessity ("CC&N") for water and wastewater providers, respectively.

Over the past few years, the Arizona Corporation Commission ("Commission") has become increasingly vigilant in ensuring that public service corporations comply with all the conditions set forth in its orders, especially those involving the granting of new or extended CC&Ns. Staff has supplemented this effort by conducting a thorough analysis and review of CC&N applications at the beginning of the process. The result has been a reduction in the proliferation of small water and wastewater systems, controlled development that incorporates regional solutions to specific problems, and improved protection to the health and safety of private water and wastewater customers. As a result, there does not seem to be much reason to *drastically* change the applicable rules and processes already in place.

¹ AWRA owns and operates the following utilities in Arizona: Litchfield Park Service Company, Bella Vista Water Company, Rio Rico Utilities, Inc., Black Mountain Sewer Corporation, Gold Canyon Sewer Company, Northern Sunrise Water Company and Southern Sunrise Water Company.

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Rather, changes to the Rules should be limited to clarifying for prospective applicants the information and/or documents required in a CC&N application before Staff can begin to process it. Furthermore, once the new Rules are in effect, there should be a streamlined review process that allows an applicant to follow one or more concurrent paths in obtaining the requisite permits, certificates and other regulatory approvals necessary to operate a private water or wastewater treatment system. To the extent that the proposed changes will not accomplish these goals, they should be amended accordingly.

GENERAL OVERVIEW

From a general point of view, CCWC and AWRA recognize that many of the proposed changes are meant to codify the “minimum” amount of information currently required by Staff in order to find an application for a new or extended CC&N administratively sufficient. In codifying these minimum requirements by rule, it is important that there be sufficient detail for an applicant to identify the information and documents necessary for Staff to begin the substantive review process in accordance with the Commission’s time-clock rules. As you are aware, development of water and wastewater systems to serve new subdivisions takes long-range planning, and often financial considerations are linked to the time required to obtain the necessary permits and approvals to move forward with the construction phase of such projects. The steady increase in the number of insufficiency letters issued by Staff for CC&N applications over the past few years is a disturbing trend – one that strongly suggests that there needs to be a bright-line rule establishing what is required to obtain a letter of sufficiency. Establishing sufficiency should not be so difficult, and in the event Staff requires more time to comply with the 150 day substantive review time-frame after an application is deemed sufficient, it may, upon its own motion, request a suspension pursuant to the existing rules.

The proposed rules also make the information filing requirements the same for a new CC&N and a CC&N extension. No consideration is made for existing water or wastewater providers whose company structure, articles of incorporation and/or bylaws have already been reviewed by the Commission in a previous proceeding. See A.A.C. R14-2-402(A)(2)(b), R14-2-602(A)(2)(b). The type of review necessary on an application for a *new* CC&N clearly requires a more thorough analysis of the applicant, as well as the rates that will be established. By contrast, applications for CC&N extensions require more focus on the project to be served, and the long-term financial impact to the utility and its existing customers. At a minimum, the information requested by A.A.C. R14-2-402(A)(2)(a) and (b) or A.A.C. R14-2-602(A)(2)(a) and (b) should not be required for applications to extend a CC&N. However, we believe that the proposed revisions do not go far enough — the application and approval process for CC&N extensions should be streamlined, not overburdened with filing requirements identical to those for a new CC&N.

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One final general observation; the phrase “or extension of Certificate of Convenience and Necessity” incorporated into revised A.A.C. R14-2-402(A) and R14-2-602(A) should end with the clause “to any non-contiguous area” in recognition of a private water or wastewater provider’s right to extend service, upon proper notice to the Commission, pursuant to A.R.S. § 40-281(B).

ANALYSIS

The substantive impact of the proposed Rules to both private water and wastewater providers fall into three major categories: (1) engineering, (2) financing, and (3) notice. In addition, because the proposed Rules seemingly integrate Commission water use policies established through recent orders, it is important to identify and understand those policies so that interested parties can submit appropriate comments. Finally, there needs to be dialogue between interested parties and Staff about the practical realities of requiring the submittal of an approved Section 208 Plan amendment under the Federal Water Pollution Control Act when applying for a new or extended CC&N.

I. Engineering (Water and Wastewater)

As proposed, the new rules would prohibit the submission of preliminary engineering plans for any CC&N application. Instead, the Commission would require that “final” and “complete” engineering specifications be provided for all on-site and off-site facilities. Currently, this information is provided through a combination of preliminary engineering specifications and a master water and/or wastewater design report. Plats cannot be finalized until there is an identified water and/or wastewater provider. Therefore, utility providers find it difficult to finalize approved engineering plans for large water distribution systems, or wastewater collection and treatment systems, until there is some assurance that it will be granted a CC&N to serve the area. This is particularly true with large developments that will be phased over time, where it is likely that certain projects or subdivisions will be purchased by one or more homebuilders at a future date.

Staff’s proposed revisions to the rules would require filing detailed information with the Application of each phase in a development whenever phasing is to occur. *See* proposed A.A.C. R14-2-402(A)(2)(h), R14-2-402(A)(2)(h). First, the phrase “in detail” is insufficient to identify the information required. While the off-site infrastructure may be identified in preliminary reports for a multi-phase project, detailed on-site engineering plans are usually completed only for the first or second phases, while the remaining phases are merely identified as sections in a master plan. As currently proposed, detailed phasing requirements for each on-site system would likely require several CC&N extension applications. This is an inefficient and expensive means for utilities to extend service to multi-phased master planned communities.

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Water or wastewater treatment services cannot be extended without approved plans from ADEQ or the Maricopa County Environmental Services Department. Therefore, the rule should continue to allow any applicant to utilize preliminary engineering specifications to the extent that construction and installation costs can be reasonably estimated, and to supplement the record with final and complete engineering specifications once they become available.

II. Financing (Water and Wastewater)

CCWC and AWRA do not object to the general requirement that an applicant provide financing information for off-site and on-site facilities needed to serve a new or extended CC&N area. However, the types of documentation required to support the cost estimates for construction, annual operating revenues and expenses for the utility are not identified in the proposed rule revisions - other than engineering specifications describing principal systems and components in sufficient detail to verify such costs. It is therefore unclear whether each principal individual component of a proposed system must be separately priced out and supported by a bid or vendor price sheet. The rule should specify the type of documentation that will satisfy this requirement.

III. Notice Requirements (Water and Wastewater)

Currently, Staff requires an applicant to submit evidence of a written request for utility service from landowners whose properties are the subject of a new or extended CC&N application. In the vast majority of cases, the requested service area will include only those landowners that have requested service in writing. Only in isolated instances will landowners not requesting service be included in an application. Even then, the Commission's Hearing Division regularly issues procedural orders governing public notice requirements for new or extended CC&N applications. Thus, landowners are adequately protected by the current rules as well as the Commission's open and transparent hearing procedures.

Requiring utilities to provide written notice of an *intent* to file a CC&N application to landowners - and to also file a copy of that written notice, the property owner's written response, and a description of efforts to obtain a written response from non-responding landowners - is overly burdensome and somewhat redundant. This "one-size fits all" approach represents an economic burden to private water and wastewater providers that result in little to no benefit in the large majority of CC&N filings.

IV. Water Use Policies

CCWC and AWRA are both concerned by the increased use of the CC&N application process as a means to impose water use policies generally reserved for determination by the Arizona Department of Water Resources ("ADWR"). Requiring a detailed description of how water will be used on golf courses, ornamental lakes and other aesthetic water features, as well as

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plans for water conservation measures, suggests a limitation on water use that might otherwise be valid pursuant to water rights granted by ADWR. Generally, the Commission establishes public policy and determines the public interest through its orders.

However, the Commission analyzes each application on a case-by-case basis. While it may ultimately condition approval of a new or extended CC&N contingent on the adoption of certain water use or conservation plans, applicants should not be required to submit such studies in order for its application to be sufficient. Requiring a detailed water conservation plan be submitted with every application suggests it will be implemented in the absence of a showing that it will not serve the public interest. If the goal is to codify Commission policies in rule, they should be readily identified in these proceedings (before any rule change is made) so that interested parties can provide more specific comment.

V. Clean Water Act – Section 208 Plans

Currently, county authorities will not approve a Certified Areawide Water Quality Management Plan, or plan amendment, for an area under Section 208 of the Federal Water Pollution Control Act, without first identifying an authorized provider to serve the area. Over the past several months, ADEQ has required that each Section 208 plan amendment identify, in a letter to the EPA, an entity that can perform the functions of a Designated Management Agency (“DMA”) to satisfy the U.S. Environmental Protection Agency, which grants final approval on Section 208 plan amendments.

As such, a private wastewater provider must first obtain a CC&N authorizing it to serve within the Section 208 Plan area before the plan amendment can be approved. The practical reality is that no applicant will be able to comply with the requirement to file a Section 208 plan amendment approved by ADEQ with an application for a new or extended CC&N. Granted, the proposed Rules would allow an applicant to merely file a status report of its Section 208 Plan or plan amendment application that correlates with the CC&N application. However, the Rules should not contain a requirement that, from a practical standpoint, water and wastewater providers cannot provide.

CONCLUSION

CCWC and AWRA hope that these written comments assist Staff in constructing a framework to further discuss the issues raised by proposed changes to A.A.C. R14-2-402 *et seq.* and R14-2-602 *et seq.* This process should result in a set of administrative rules governing new and extended CC&Ns that provide clear guidance on the information required by Staff to begin processing an application within the time-frames set by rule. More importantly, there should be a full airing of public policy considerations (i.e. water use) related to new information requirements targeted at codifying current Commission policies that beforehand were addressed on a case-by-case basis.

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Thank you for your time and consideration in this very important process. We anticipate that we may submit a detailed rule revision proposal on behalf of CCWC and AWRA once Staff has compiled and summarized various written comments, and further discussion ensues. Should you have any questions or concerns, please do not hesitate to call.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jay D. Shapiro', written over the typed name.

Jay D. Shapiro

cc: Docket Control
Robert Dodds, Algonquin Water Resources of America
Robert Hanford, Chaparral City Water Company

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