

Snell & Wilmer
L.L.P.
LAW OFFICES

One Arizona Center
Phoenix, AZ 85004-2202
602.382.6000
602.382.6070 (Fax)
www.swlaw.com

Jeffrey W. Crockett
602.382.6234
jcrockett@swlaw.com

Ernest G. Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Re: Docket No. RW-00000B-07-0051 Water Rulemaking
Docket No. RSW-00000A-07-0051 Sewer Rulemaking

Dear Mr. Johnson:

In a letter dated March 6, 2007, the Utilities Division Staff ("Staff") distributed to interested parties a set of draft changes to the Arizona Administrative Code related to applications for new Certificates of Convenience and Necessity ("CC&N") and extensions of CC&N for water and wastewater utilities ("Proposed Rules"). Staff requested written comments to be filed by April 6, 2007. Snell & Wilmer LLP represents several water and sewer utilities before the Arizona Corporation Commission ("Commission"). The following are a few general comments that are not being submitted on behalf of a particular client, but rather as an interested party who practices before the Commission and whose clients are impacted by the Proposed Rules.¹

Existing CC&Ns

The Proposed Rules contain many substantive changes to the current rules and require that more detailed and specific information be filed. Staff's Proposed Rules require that the same extensive detailed information be provided for applications for a new CC&N *as well as* for an extension of an existing CC&N. This approach assumes that the Commission must evaluate the same level of information before approving both types of applications. An application for a CC&N extension should not require the same level of information that is required for a new CC&N as the Commission has already made various determinations regarding the applicants'

¹ As these comments are not intended to be exhaustive, we reserve the right to submit additional comments as necessary and appropriate.

ORIGINAL
RECEIVED

2007 APR -6 P 1:36

AZ CORP COMMISSION
DOCUMENT CONTROL



ORANGE COUNTY
PHOENIX
SALT LAKE CITY
TUCSON

06

April 6, 2007

Arizona Corporation Commission
DOCKETED

APR -6 2007

DOCKETED BY	nr
-------------	----

Ernest G. Johnson, Director
Utilities Division
Arizona Corporation Commission
April 6, 2007
Page 2

fitness to hold a CC&N, including technical expertise and financial ability to operate a water or wastewater system. Additionally such an applicant has an existing history of operating the utility pursuant to its existing CC&N and has made compliance (and most likely other) filings with the Commission. To require the same level of information for both types of applications will impose an unnecessary burden on existing utilities and require Staff to spend additional time and resources evaluating and re-evaluating such information.

Moreover, it will most likely extend the time necessary to process a CC&N extension. If, however, the Commission ultimately determines that this level of information is necessary for a CC&N extension application, R14-2-402.A and R14-2-602.A should be limited to non-contiguous CC&N extensions.

Notice Provisions

The Proposed Rules contain requirements for notice to landowners. The way the Proposed Rules are currently drafted, it assumes that the applicant has already provided some form of notice to landowners of its intent to file an application for a CC&N (or extension) and has received some kind of written response to the notice. Additionally, if the landowner has not responded, it appears that the applicant has an affirmative obligation to obtain a written response. This appears to be a requirement that must be fulfilled before the application is filed. Although we agree that there should be some form of notice to landowners, we believe it should be after the application is filed with the Commission so the notice can reference the application itself (as it is currently done), that the application is available for inspection, that landowner has the right to intervene in the proceeding and the date of the hearing. Additionally, the form of notice should be proscribed. Finally, the applicants should not be held responsible for actively pursuing the landowner for a response if that landowner fails to respond.

Need for Further Clarification

Some of the Proposed Rules appear ambiguous and vague in the information requested. For example when requesting cost estimates, the Proposed Rule requires documentation to support the estimate.² What documentation would be considered sufficient? Would an engineer's estimate or a spreadsheet prepared by the utility suffice? We believe the Proposed Rules should contain as much clarity as possible so an applicant can submit as complete an application as necessary to avoid processing delays.

² Proposed Rules R14-2-602A.2.e and R14-2-402A.2.d.

Ernest G. Johnson, Director
Utilities Division
Arizona Corporation Commission
April 6, 2007
Page 3

Stakeholder Process

The March 6, 2007 letter indicates that after comments are received and reviewed by Staff, that a meeting will be scheduled for further discussion and comments of interested parties. We support this and believe that meetings will be of great benefit to all parties. Moreover, we believe that Staff should conduct as many meetings and/or workshops as necessary to ensure that before the Proposed Rules are submitted pursuant to the formal adoption process, that all interested parties have opportunities to present their various concerns and perspectives, as well as be able to understand the Commission and Staff's regulatory and policy perspectives in proposing the various changes to the existing rules. Finally, the Proposed Rules contain various provisions relating to public policy considerations. Such considerations should be evaluated and discussed in the context of their respective legal, financial, business and compliance implications for both existing and new applicants for CC&Ns at such meetings and workshops.

We appreciate the opportunity to provide these preliminary comments and look forward to working with the Commission on this matter.

Very truly yours,

Snell & Wilmer

Jeffrey W. Crockett (GB)
Jeffrey W. Crockett

15
ORIGINAL and ~~thirteen (13)~~ copies filed with
Docket Control this 6th day of April, 2007.

CF Vas