

**ORIGINAL**

**REHEARING APR 30 2007**



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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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COMMISSIONERS

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MIKE GLEASON - Chairman  
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AZ CORP COMMISSION  
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Arizona Corporation Commission  
**DOCKETED**  
APR 11 2007

DOCKETED BY *nr*

IN THE MATTER OF THE APPLICATION  
OF ARIZONA WATER COMPANY, AN  
ARIZONA CORPORATION, TO EXTEND  
ITS EXISTING CERTIFICATE OF  
CONVENIENCE AND NECESSITY AT  
COOLIDGE, PINAL COUNTY, ARIZONA

DOCKET NO. W-01445A-06-0317

Arizona Water Company's  
Application for Rehearing

Arizona Water Company (the "Company") submits its Application for Rehearing pursuant to A.R.S. 40-253 concerning Decision No. 69386 dated March 22, 2007 (the "Decision"). The Commission should approve the Company's application for an extension of its Certificate of Convenience and Necessity ("CCN") without the exclusion of Section 19, Township 6 South, Range 9 East; Section 31, Township 5 South, Range 8 East; and Sections 14, 15, 18 and 20, Township 6 South, Range 8 East, all located in Pinal County, Arizona (the "Six Sections").

In this case, Staff recommended, and the Administrative Law Judge ("ALJ") agreed and recommended that the Six Sections be added to the Company's CCN. At the March 14 Open Meeting, the Commission changed the ALJ's recommendation to exclude the Six Sections, solely because there was no specific request for service for the Six Sections. For the reasons presented below, the Company submits that the exclusion is poor public policy, is not supported by law or the evidence in this case, and the Decision should be revised to include the Six Sections in the Company's CCN.

1 **I. THE COMMISSION HAS NO LONG-STANDING POLICY REQUIRING**  
2 **REQUESTS FOR SERVICE FOR ALL CCN APPLICATION AREAS**

3  
4 There is no Commission rule, statute, or Arizona case that stands for the  
5 proposition that CCNs for water companies must or should be extended only in areas  
6 where there are requests for service. In this case, the Company requested an  
7 extension of its CCN to include thirty-two sections of land. Only six did not have  
8 associated requests for service. However, as shown below, the Staff provided sound  
9 public policy reasons for including each of the Six Sections in the Company's CCN, and  
10 there are additional sound public policy reasons for doing so.

11 **A. SOUND PUBLIC POLICY REASONS SUPPORT EXTENSIONS**  
12 **WITHOUT A REQUEST FOR SERVICE**

13  
14 When a water utility develops plans for extending its system to meet the present  
15 and future needs of the growth and development of an area, sound public policy  
16 requires it to have the flexibility to extend its system into areas that are a natural and  
17 logical extension and beneficiary of that growth. Orderly planning and design cannot be  
18 accomplished in the fractured patchwork fashion that results from the Decision. Indeed,  
19 four of the Six Sections are now totally surrounded by the Company's CCN as a result  
20 of the Decision. It makes no sense, and is poor public policy, to force the Company to  
21 file additional CCN applications, to require Staff to process and analyze those  
22 applications, and to require the Commission to hold unnecessary hearings for areas for  
23 which there is no logical provider other than the Company.

24  
25 **B. THE STAFF POSITION SUPPORTS THE COMPANY'S POSITION.**

26 In a recent Company case, the Staff refuted arguments that Commission policy  
27 requires property to be excluded if there is no request for service:  
28

1 Staff reviewed the letters filed by Robson, Global and Ms.  
2 Robertson, along with the response of Arizona Water. First, Staff does not  
3 agree that the Commission has an inflexible, long-standing policy against  
4 approving CC&N extensions into areas in which there are no requests for  
5 service...Second, Staff is concerned that if the Commission were to  
6 establish a firm policy against approving extensions where there is no  
7 request for service (as Global and Robson seem to favor), utilities would  
8 be motivated to shop for requests for service to reserve areas for planning  
9 purposes. At best, this would increase costs to the utilities. At worst,  
10 these costs could be passed on to ratepayers. Also, a request for service  
11 could become a commodity going to the highest bidder rather than to the  
12 company which is best able to further the public interest....Staff believes  
13 there are certain circumstances under which the Commission should  
14 consider approving extensions into areas for which there are no requests  
15 for service.

16 Exhibit S-2, page 2, Docket No. W-01445A-06-0059.

17  
18 In addition, at page 3 of its Supplemental Staff Report in Docket 06-0059, a copy  
19 of which is attached hereto as Attachment A, Staff identified the following factors that  
20 the Commission should consider in deciding whether to allow extensions into areas for  
21 which there are no requests for service:

- 22 1. Whether inclusion of the area could reasonably be expected to contribute  
23 to operational efficiencies.
- 24 2. Whether exclusion of the area could reasonably be expected to result in  
25 operational inefficiencies.
- 26 3. Whether there is a competing application for the area.

- 1 4. Whether a customer in the area requests to be excluded and the nature of
- 2 that request.
- 3 5. Whether the area is contiguous to the company's current service territory.
- 4 6. Whether the requested area "squares off" the service territory or fills in
- 5 holes in the service territory.
- 6 7. Whether the company at issue is financially sound.
- 7 8. Whether the company at issue is in compliance with the Commission
- 8 decisions, and ADEQ and ADWR decisions and requirements.
- 9 9. Other showings by the company that it is in the public interest to approve
- 10 the extension.

11 In this case, all of these factors weigh in favor of not excluding the Six Sections.  
12 In addition to the operational efficiencies that would be achieved, there were no  
13 competing CCN applications, and no property owner in any of the Six Sections  
14 requested to be excluded from the CCN area. The Six Sections are either contiguous to  
15 areas in which the Company has a CCN or to areas for which there was a request for  
16 service, and they would square off or fill holes in the CCN area (and, as noted above,  
17 holes would be created if the Decision remains as currently written).

18  
19 The Company is a Class A utility with over 50 years of proven service, is  
20 financially sound, and is in compliance with all Commission, Arizona Department of  
21 Environmental Quality and Department of Water Resource decisions and requirements  
22 (See Decision, Finding of Fact No. 44). In addition, the inclusion of all areas requested  
23 would be in the public interest, as acknowledged by the Decision's Conclusions of Law  
24 (page 13).

25  
26 Finally, in the Staff Report in this case, (as recited in Findings of Fact Nos. 35  
27 and 36, on pages 9-10 of the Decision) Staff reasoned that including areas of land, such  
28

1 as the Six Sections, in a CCN where there are no requests for service, is justified in this  
2 case:

3  
4 35. In its Staff Report, Staff noted that AWC's application covers  
5 32 sections of land and there are six sections where there are no requests  
6 for service. Staff also noted that in the sections where there are no  
7 requests for service, the sections are either contiguous to AWC's current  
8 service territory, or contiguous to a section for which there is a request for  
9 service.

10 36. In its Staff Report, Staff reasoned that in some cases,  
11 granting a CC&N extension for areas where there are no requests for  
12 service is justified, and that this is such a case. As examples of reasons  
13 to grant areas where there are no requests for service, Staff noted:

14 a. The planning and location of mains and distribution  
15 lines for larger, contiguous areas is more operationally efficient than  
16 service territory lines that skip.  
17

18 b. Planning lines to turn corners or be longer than would  
19 be needed if the certificated areas are not contiguous increases the cost  
20 to construct mains, which is ultimately borne by the rate payers.

21 c. Service territory boundaries that are relatively straight  
22 increase the ease of identification and helps potential developers and  
23 potential customers more easily identify the area the company serves than  
24 communicating using precise legal descriptions.

25 d. Approving territory along section lines helps to avoid  
26 neighbors being serviced by different water companies and paying  
27 different rates.  
28



1 Original and thirteen (13) copies of the foregoing filed this 11<sup>th</sup> day of April, 2007 with:

2 Docket Control Division  
3 Arizona Corporation Commission  
4 1200 West Washington Street  
Phoenix, Arizona 85007

5 A copy of the foregoing was mailed this 11<sup>th</sup> day of April 2007 to:

6 Honorable Yvette B. Kinsey  
7 Administrative Law Judge  
8 Hearing Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007

9 Christopher Kempley, Chief Counsel  
10 Legal Division  
Arizona Corporation Commission  
11 1200 West Washington Street  
Phoenix, Arizona 85007

12 Ernest G. Johnson  
13 Director, Utilities Division  
Arizona Corporation Commission  
14 1200 West Washington Street  
Phoenix, Arizona 85007

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By: Robert W. Maska

**ORIGINAL**

**ATTACHMENT A**

**MEMORANDUM**

305 M

TO: Docket Control  
Arizona Corporation Commission

FROM: Ernest G. Johnson  
Director  
Utilities Division

Date: June 30, 2006

RE: SUPPLEMENT TO STAFF REPORT FOR ARIZONA WATER  
COMPANY TO EXTEND ITS EXISTING CERTIFICATE OF  
CONVENIENCE AND NECESSITY AT CASA GRADE, PINAL  
COUNTY, ARIZONA. (DOCKET NO. W-01445A-06-0059)

A Procedural Order issued on May 11, 2006 directed Staff to address public comment letters submitted by potential intervenors. The letters concerned the extension of Arizona Water Company's Certificate of Convenience and Necessity ("CC&N") into areas for which Arizona Water Company did not have requests for service. Staff has modified its recommendations made in its Staff Report filed April 3, 2006. Other than the exclusion of Section 35 discussed below, Staff continues to recommend approval of Arizona Water's application with the same conditions included in its Staff Report filed on April 3, 2006.

EGJ:LAJ:mfm

Originator: Linda A. Jaress

Attachment: Original and 13 Copies

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STAFF REPORT  
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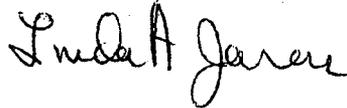
ARIZONA WATER COMPANY  
DOCKET NO. W-01445A-06-0059

APPLICATION FOR EXTENSION  
OF CERTIFICATE OF ITS  
CONVENIENCE AND NECESSITY

June 30, 2006

**STAFF ACKNOWLEDGMENT**

The Supplemental Staff Report for Arizona Water Company (Docket No. W-01445A-06-0059) was prepared by the Staff member listed below.

A handwritten signature in cursive script that reads "Linda A. Jaress".

Linda A. Jaress  
Executive Consultant III

### **Procedural Order**

This Supplemental Staff Report is being filed pursuant to a Procedural Order Issued by the Administrative Law Judge on May 11, 2006. The Procedural Order directed Staff to file a Supplemental Staff Report addressing the issues raised in written public comments submitted by Picacho Water Company, Lago Del Oro Water Company, Santa Rosa Water Company and Ridgeview Utility Company (collectively, "Robson"), Global Water Resources, LLC ("Global") and Ms. Patricia J. Robertson and addressing Arizona Water's response to the public comments.

### **The Public Comment Letters**

Robson's Public Comment was filed on May 5, 2006, stating that Robson opposes the initial grant or extension of a Certificate of Convenience and Necessity ("CC&N") to a water provider who does not have a request for service covering the area, or "substantially all" the area requested. The reason given was that such applications "violate the Arizona Corporation Commission's ("ACC") long-followed policy of requiring a request for service before a CC&N is extended" and that "Arizona Water Company's ("AWC") obvious plan to lock-up for itself the balance of the un-certificated territory in Pinal County directly harms the interests of the Robson Utilities and other providers." Robson urges the Administrative Law Judge "to require a request for service for each portion of the requested extension area before recommending the extension of AWC's CC&N to include the area."

On May 8, 2006, Global filed a similar letter in the docket. Global expressed concern that "AWC's practice of requesting areas with no requests for service is directly contrary to ACC practice and precedent." Global was also concerned about the amount of time and effort it takes to discern the "discrepancies" between the requests for service and the extension areas requested. Global also accuses Arizona Water of engaging in a pattern of land grabs. Finally Global requests that the Commission direct Arizona Water, "to stop its practice of filing for extensions without legitimate requests for service from all affected landowners."

### **Letter from Ms. Robertson**

Ms. Patricia J. Robertson's property is located in Section 35, Range 7 East, Township 6 South and is included in Arizona Water's proposed extension area. Section 35 is surrounded on three sides by Arizona Water's current CC&N area. The fourth side of Section 35 borders on the current service territory of Robson's Picacho Sewer and Picacho Water Companies. On May 4, 2006, Ms. Robertson filed a letter in this docket wherein she indicated that it was "inappropriate" to include her property in Arizona Water Company's CC&N extension "at this time." She mentioned that she had not requested water service from Arizona Water and was "concerned that Arizona Water Company does not provide sewer service, and that it will be difficult to find a sewer

provider who is willing to provide sewer service without being able to also provide water service." Staff interpreted these comments to mean that Ms. Robertson desires to have her property excluded from Arizona Water's CC&N extension area.

#### **Arizona Water Company's Response**

On June 16, 2006, Arizona Water filed its response to Ms. Robertson's letter by arguing that her concerns about sewer service are unfounded. The Company's response to Global and Robson is there is no Commission policy requiring that requests for service exactly match the CC&N area requested. The Company also supports its request for inclusion of those areas for which it does not have a request for service by arguing that it is sound public policy to give utilities the flexibility to extend into areas that are "a natural and logical extension" to meet present and future needs of growth and development. The Company also contends that system design and extensions should not be accomplished in a "fractured, disorganized fashion." It also believes administrative efficiency can be accomplished by such extensions.

#### **Staff's Response**

Staff reviewed the letters filed by Robson, Global and Ms. Robertson along with the response of Arizona Water. First, Staff does not agree that the Commission has an inflexible, long-standing policy against approving CC&N extensions into areas in which there are no requests for service. A recent Water Utility of Greater Tonopah ("WUGT") case is such an example. Although not precisely on point, Decision No. 68451, issued on February 2, 2006, approved WUGT's request for a retroactive order correcting a 1985 decision which, in error, omitted a portion of the legal description of service territory being transferred to WUGT. There were neither customers nor requests for service in the area in question. However, it was surrounded on three sides by WUGT. The Decision contained the following language: "We also agree with Staff that the inclusion of the 1 ½ sections of land in WUGT's CC&N is in the public interest given its land-locked position."

Second, Staff is concerned that if the Commission were to establish a firm policy against approving extensions where there is no request for service (as Global and Robson seem to favor), utilities would be motivated to shop for requests for service to reserve areas for planning purposes. At best, this would increase costs to the utilities. At worst, these costs could be passed on to ratepayers. Also, a request for service could become a commodity going to the highest bidder rather than to the company which is best able to further the public interest.

Staff believes there are certain circumstances under which the Commission should consider approving extensions into areas for which there are no requests for service. In a recent case, Docket W-01445A-06-0317, Staff recommended approval of extensions into

small, contiguous areas for which there were no requests for service. Staff believes the Commission should consider those factors along with others in deciding whether to allow extensions into areas for which there is no request for service. These factors are:

1. Whether inclusion of the area could reasonably be expected to contribute to operational efficiencies.
2. Whether exclusion of the area could reasonably be expected to result in operational inefficiencies.
3. Whether there is a competing application for the area.
4. Whether a customer in the area requests to be excluded and the nature of that request.
5. Whether the area is contiguous to the company's current service territory.
6. Whether the requested area "squares off" the service territory or fills in holes in the service territory.
7. Whether the company at issue is financially sound.
8. Whether the company at issue is in compliance with Commission decisions, ADEQ and ADWR.
9. Other showings by the company at issue that it is in the public interest to approve the extension.

The factors listed above would apply equally to all requests for initial CC&Ns and extensions of CC&Ns including those of Robson and Global as well as those of Arizona Water.

Both Robson and Global believe Arizona Water is "land-grabbing" and "locking-up" service territory. Any CC&N or CC&N extension application approved by the Commission results in locking up service territory to the exclusion of other providers. Furthermore, Staff is uncertain as to the precise meaning of land-grabbing and locking-up service territory, how they would be proven and what law, rule or decision such actions violate. In this case, after comparing the requests for service to the requested CC&N extension area, Staff perceives no land-grabbing taking place.

Regarding Ms. Robertson's letter, clearly, it is not in the best interest of Robson for Arizona Water to extend to Section 35 because it reduces Picacho Water Company's potential for expansion. Staff has not performed an analysis as to which company is most appropriate to serve section 35 because there is no request for service, no competing application to serve and no showing by Arizona Water that the public interest would not be served by the exclusion of Section 35 in its CC&N. Whether or not Ms. Robertson's concerns about sewer service are valid, absent a showing that there is a specific need to include Section 35 in the extension area, Ms. Robertson's concerns should be honored. Therefore, Staff recommends that the Commission deny Arizona Water's extension to Section 35.

Arizona Water Company  
Docket No. W-01445A-06-0059  
Page 4

Other than the exclusion of Section 35 mentioned above, Staff continues to recommend approval of Arizona Water's application. Staff continues to recommend approval of the CC&N extension with the same conditions included in its Staff Report filed on April 3, 2006.