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**Sunrise Water Co.
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Arizona Corporation Commission
DOCKETED

April 6, 2007

APR 12 2007

~~Ernest Johnson~~

Director, Utilities Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85003

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Director Utilities

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

Dear Mr. Johnson:

This letter is in response to your letter dated March 6, 2007, requesting written comments on the 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. These comments are being provided by Sunrise Water Co. and West End Water Co. ("Companies").

The rule revisions appear intended to require submission of information routinely requested by Arizona Corporation Commission ("Commission") Staff ("Staff") in order to thoroughly evaluate CC&N applications. The rules request additional information related to water resource issues raised by the Commission in recent CC&N cases and establish new noticing provisions for landowners. Generally, the Companies support revision of the CC&N rules to clarify required submittals and believe that clarifying the rules will allow the Commission to provide consistent, thorough and timely evaluation of CC&N applications.

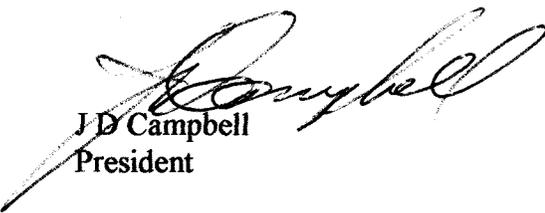
Since draft rules were provided, the Companies are providing specific comments on the proposed rule language. However, we believe that significant additional dialog is needed between water providers, Staff and other interested parties in order to finalize the proposed rules. We look forward to the meeting mentioned in your March 6th letter and believe a series of meetings or workshops may be needed to fully evaluate the proposed rule changes and address the comments expected from water providers.

Ernest Johnson
Director, Utilities Division
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The Companies are concerned by the increased use of the CC&N application process to evaluate and impose water use policies historically under the jurisdiction of the Arizona Department of Water Resources ("ADWR"). As drafted, the rules require submission of substantial materials regarding water usage and conservation efforts, with no guidance as to what is expected by the Commission or how the information is going to be evaluated by the Commission. The Companies encourage substantial dialog in this area and believe the participation of ADWR would be extremely helpful.

The Companies' specific detailed comments on the draft rules are attached. Thank you for the opportunity to participate in this very important process.

Sincerely,



J.D. Campbell
President

JDC:kr
Enc.

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Each comment is prefaced by the reference to the rule paragraph being addressed with "W" referring to water and "S" referring to sewer. In the text of a comment, if the water or sewer rule paragraph being discussed are numbered differently, the water paragraph number is followed by the sewer paragraph number in brackets []. Where appropriate the general comment is followed by suggested alternative rule language provided in redline format as compared to the draft rules provided by Staff.

WS 2.a., WS 2.b

The addition of several new forms of business entities in Arizona and other states has made the language of this paragraph outdated. The language should be modified so that all forms of business are covered.

2.a. ~~The proper name, legal form of business organization and correct address of the proposed utility company and its owner, if a sole proprietorship, or the President and Secretary if a corporation, the names of the principal owners, officers, directors, and managers as applicable.~~

2.b ~~A copy of the Articles of Partnership or Articles of Incorporation for the applicant and/or Bylaws if the utility is a non-profit organization, or association applicable business formation documents, including a copy of documents authorizing the entity to conduct business in Arizona.~~

WS 2.c.

Since detailed engineering plans and specifications are rarely available at the time an application for a CC&N is filed, ACC staff routinely relies on preliminary engineering reports or master plans to evaluate planned utility facilities. The language should be modified to clarify the requirements of this provision.

2.c ~~A complete description of the facilities proposed to be constructed, including an preliminary engineering report or master plan with specifications in sufficient detail to properly describe the principal systems and components, in order to verify support the costs submitted as part of R14-2-402.A.2.d [R14-2-602.A.2.e] and to demonstrate verify that the requirements of the Commission and the Arizona Department of Environmental Quality are met.~~

W 2.d., S 2.e

The development of a financing plan is more closely related to the financial condition of the applicant than to the construction cost estimate. In addition, most new utilities experience negative operating cash flow in the first few years of business, requiring the financing plan to address not only construction costs but also operating cash needs. Lastly, Staff typically reviews detailed financial data for the first five years of operation. Paragraph 2.d.[2.e.] should be split into two paragraphs, combining the financing plan with the following paragraph

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addressing the financial condition of the applicant, and clarifying that five years of data is required.

2.d.[2.e] The estimated total construction cost of the proposed off-site and on-site plant facilities, including documentation to support the estimates, ~~and a detailed explanation of how the construction will be financed, such as, but not limited to debt, equity, advances in aid of construction or contributions in aid of construction.~~

2.e.[2.f] The financial condition of the applicant and a detailed explanation of how the construction and any operating deficit will be financed for the first five years of operation, such as, but not limited to debt, equity, advances in aid of construction or contributions in aid of construction.

W 2.e., S 2.f.

See above comment.

W 2.h., S 2.i.

For larger CC&N applications, detailed plans for the later phases of a proposed development are usually not available. ACC Staff routinely evaluates CC&N applications without detailed information on the later phases of a development. Paragraph 2.h.[2.i.] should be modified to delete the vague requirement to describe the phases "in detail."

2.h.[2.i.] The estimated starting and completion date of the proposed construction. If construction is to be phased, ~~the a description of the phases shall be provided~~described in detail.

W 2.i., S 2.j.

In most cases, an application for a CC&N or extension is based upon a request for service from the landowner or landowners within the requested CC&N area. In some cases, however, it may be appropriate to request a CC&N area without a request for service from all landowners, or in some cases, any landowner within the CC&N area. Consistent with mapping provisions in Paragraph 2.j.ix.[2.k.ix], Paragraph 2.i.[2.j] should be modified to reflect that a request for service is not a requirement for considering an application for a CC&N area.

2.i.[2.j.] A copy of each ~~any~~ requests for service for the area under application.

W 2.k., W 2.l., W 2.m., S 2.l., S 2.m., S 2.n.

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The Hearing Division routinely issues procedural orders specifying notice requirements for landowners within a CC&N application area. Paragraph 2.k.[2.l.] and 2.l.[2.m.] appears to require the applicant to fashion its own notice prior to filing the application and procure a written response from each landowner. Paragraph 2.m [2.n.] requires the applicant to describe the actions taken to get a response from those landowners that fail to respond. These provisions are duplicative of current Commission practice and place an unreasonable burden on the applicant. In instances where an application includes land where there is not a request for service, it is more appropriate that notice be given after the filing of the application so that the Commission is aware of the proposal and can appropriately respond to any questions generated by the notice. The Commission is best able to evaluate the level of public concern over the filing and fashion appropriate actions, such as additional notices or public meetings. Paragraphs 2.k.[2.l.], 2.l.[2.m.] and 2.m.[2.n.] should be deleted.

W 2.u.

Paragraph 2.u is intended to require the applicant to provide pertinent information regarding the available water supply for the proposed CC&N area. However, the Paragraph does not fully address the differences in ADWR requirements for areas inside and outside of an AMA or recognize that in the case of a small to medium size CC&N area, a developer may choose to forego the PAD and Analysis options and move directly to a Certificate of Assured Water Supply (in an AMA) or a Water Report (Outside of an AMA). Additionally, the Paragraph does not recognize that an adequate water supply may be provided through the designation of the applicant or the underlying City/Town as having an adequate water supply. Lastly, the Paragraph does not recognize that an assured water supply or adequate water supply determination may not be required in certain circumstances such as development of unsubdivided land. The existing Paragraph 2.u. should be deleted and replaced with the following.

2.u. ~~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.~~ If the area under application is located within an Active Management Area, the applicant shall:

- i. Identify the Active Management Area.
- ii. If the area under application is not required to have an assured water supply as determined by the Arizona Department of Water Resources, provide the basis for not needing an assured water supply.

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- iii. If the area under application is required to have an assured water supply as determined by the Arizona Department of Water Resources, indicate if the assured water supply is to be provided through a Designation of Assured Water Supply or Certificate of Assured Water Supply.
- iv. If a Designation of Assured Water Supply is being used, indicate if the utility is currently designated and whether or not a modification to a current designation is required and provide the anticipated timing of obtaining any proposed designation or modification and the status of the applicable application.
- v. If a Certificate of Assured Water Supply is being used, indicate whether a Physical Availability Determination or Analysis of Assured Water Supply will be obtained prior to obtaining a Certificate of Assured Water Supply and provide the anticipated timing and status of applicable applications and any issued Physical Availability Determination, Analysis of Assured Water Supply or Certificate of Assured Water Supply.

If the area under application is located outside of an Active Management Area, the applicant shall:

- i. If the area under application is not required to obtain a water adequacy determination from the Arizona Department of Water Resources, provide the basis for not needing a water adequacy determination.
- ii. If the area under application is required to obtain a water adequacy determination from the Arizona Department of Water Resources, but it is anticipated that the determination will find the water supply inadequate, provide justification for issuance of the requested Certificate of Convenience and Necessity without an adequate water supply.
- iii. Indicate if a determination of adequate water supply is to be provided by a Designation of Adequate Water Supply or by obtaining a Water Report with a finding of adequate water supply.
- iv. If a Designation of Adequate Water Supply is being used, indicate the designated entity, and if the entity is not yet designated or a modification of the designation is required, provide the anticipated timing of obtaining the designation or modification and the status of the applicable application.
- v. If a Water Report with a finding of adequate water supply is being used, indicate whether a Physical Availability Determination or Analysis of Adequate Water Supply will be obtained prior to obtaining a Water Report and provide the

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anticipated timing and status of applicable applications and any issued Physical Availability Determination, Analysis of Adequate Water Supply or Water Report.