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BEFORE THE ARIZONA CORPORATION COMMISSION

RAYMOND R. PUGEL AND JULIE B. PUGEL AS TRUSTEES OF THE RAYMOND R. PUGEL AND JULIE B. PUGEL FAMILY TRUST, and ROBERT RANDALL AND SALLY RANDALL Complainant, v. PINE WATER COMPANY, Respondent.	DOCKET NO: W-03512A-06-0407 Arizona Corporation Commission DOCKETED MAY 11 2007 DOCKETED BY nr
ASSET TRUST MANAGEMENT, CORP., Complainant, v. PINE WATER COMPANY, Respondent.	DOCKET NO: W-03512A-06-0613
JAMES HILL and SIOUX HILL, husband and wife as trustees of THE HILL FAMILY TRUST, Complainant, v. PINE WATER COMPANY, Respondent.	DOCKET NO: W-03512A-07-0100 (Consolidated) **PINE WATER COMPANY'S RESPONSE TO MOTION IN LIMINE**

Pine Water Company ("PWCo") hereby responds to the Motion *in Limine* ("Motion") filed by complainants Raymond and Julie Pugel, Robert and Sally Randall, and Asset Trust Management Corp. (collectively "Complainants"). As a matter of law and fact, the Administrative Law Judge ("ALJ") should deny the Motion for the reasons set forth below.

I. COMPLAINANTS' MOTION *IN LIMINE* SHOULD BE DENIED.

Complainants seek to delete their proposed developments from PWCo's CC&N and now ask the Commission to sweep unspecified evidence concerning the public interest under the rug. The ALJ should deny the Motion for several reasons.

A. Complainants' Motion Is Not a Proper Motion *In Limine.*

In the Motion, Complainants attempt to predetermine the outcome of this proceeding by asking the ALJ and Commission to generically limit the evidence presented at hearing to only two issues (as determined by Complainants): (1) whether PWCo can provide adequate water service to Complainants and (2) whether PWCo can provide such service at reasonable rates. Motion at 6. The Motion is ill-conceived, however, because Complainants have not moved to strike any specific evidence offered by PWCo or any portions of PWCo's pre-filed testimony and exhibits.[1] Instead of objecting to any specific testimony or evidence, Complainants seek some sort of general order that precludes "the use of all evidence which addresses other issues." Motion at 6. Without reference to specific evidence, the ALJ simply can't determine at this time what evidence to exclude at hearing. The ALJ should deny the Motion for that reason alone.

Even further, Complainants' Motion is not a proper motion *in limine*. In a civil case, "a motion *in limine* may serve as a substitute for an evidentiary objection at trial."

[1] PWCo has not yet offered any testimony or documents into evidence. PWCo, however, has prefiled the direct and surrebuttal testimonies of Robert T. Hardcastle and Stephen Noel.

Romero v. Southwest Amb., 211 Ariz. 200, 203, 119 P.2d 467, 470 (App. 2005)(citing *Premium Cigars Int., Ltd. V. Farmer-Butler-Leavitt Ins. Agency*, 208 Ariz. 557, 96 P.3d 555 (App. 2004)). Here, Complainants are not using the Motion "as a substitute for evidentiary objections at trial." *Zimmerman v. Shakman*, 204 Ariz. 231, 235, 62 P.3d 976, 980 (App. 2003). Instead, Complainants are using the Motion to argue the merits of their case-in-chief. Complainants have not stated any valid evidentiary objection to any specific evidence to be offered by PWCo in this case. As such, the ALJ should summarily deny the Motion. If the ALJ were to grant the Motion, then such ruling would violate PWCo's due process rights by preventing PWCo from fully and fairly defending the charges set forth in the complaint.

B. <u>Complainants Already Have Conceded The Relevance of All Issues Concerning Service, Rates and the Public Interest.</u>

Complainants' Motion is premised on the fundamentally flawed notion that the public interest plays no role in determining the merits of this deletion application. Motion at 5-6. That generic legal argument is not a sufficient basis to exclude or limit the evidence at hearing. *James P. Paul Water Co. v. Arizona Corp. Comm'n*, 137 Ariz. 426, 429, 671 P.2d 404, 407 (Ariz. 1983), and the other cases cited by Complainants, do ***not*** preclude the Commission from determining whether the public interest is served by deleting Complainants' property from PWCo's CC&N, including considering evidence pertaining to who will assume the water service obligations for the deleted properties, will such water services be subject to any regulation, and how will such deletion affect

PWCo's remaining customers, and other similar issues.[2]

Those issues all have a significant impact on the Commission's determination of what is in the public interest. They are relevant to determining whether PWCo is willing and able to provide service to Complainants given that PWCo and Staff assert that the remedy for Complainants are main extension agreements and requests for variances to Decision No. 67823. For example, if Complainants contend they are capable of serving their properties through the Milk Ranch Well located within the Pugels' development property, then it stands to reason that PWCo is also capable of serving the properties using that "water supply".

Of course, the Complainants have refused to pursue main extension agreements pursuant to A.A.C. R14-2-406 and have refused to advance required infrastructure, including mains and water supply facilities. To make matters worse, Complainants are now twisting their own unwillingness to follow the Commission's rules and regulations into an argument that PWCo is unwilling and unable to provide service. Because the Pine area is subject to limited water resources, however, the Commission will best serve the

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[2] On page 3 of the Motion, Complainants list four examples of evidence that the Supreme Court "clearly" excluded from the deletion analysis. In making that argument, however, Complainants do not provide any specific citation to *James Paul Water Co*. Complainants fail to do so because they misread this decision. There, the Supreme Court did not limit the Commission from considering and addressing the public interest or proscribe the type of evidence that the Commission may consider at hearing. To the contrary, our Supreme Court upheld the "public interest" as the "controlling factor" in decisions regarding water service. *James P. Paul Water*, 137 Ariz. at 429, 671 P.2d at 407. The examples cited by Complaints in the Motion were discussed in *James Paul* relating to the fact that those examples are addressed in the initial granting of CC&N proceeding in relation to the public interest. *Id.* at 430, 671 P.2d at 408. Because those issues already were decided in favor of the utility in *James Paul*, the Supreme Court then held that "the public interest requires that [the public service] corporation be allowed to retain its certificate until it is unable or unwilling to provide need serve at a reasonable rate." *Id.* Complainants also fail to mention that the competing utilities in *James Paul* both held certificates issued by the Commission and were subject to the Commission's regulatory jurisdiction. Here, by contract, upon deletion from PWCo's CC&N, Complainants intend to form a water district outside the Commission's jurisdiction.

public interest by allowing PWCo to follow the express language of A.A.C. R14-2-406 by requiring developers like the Complainants to provide their own sources of water as a condition for an extension of service to new development. That is the best way to manage limited water resources and avoid the regulatory chaos that would result from allowing Complainants and other developers to carve up portions of PWCo's CC&N.

Here, however, Complainants seek to avoid regulatory oversight by the Commission through deletion of their lands from PWCo's CC&N. Complainants go so far as to argue that "the viability of the aquifer or aquifers" and other similar issues "have no place in this legal proceeding." Motion at 6. That argument is absurd and internally inconsistent given that Complainants point to the Milk Ranch Well as evidence of PWCo's failure to provide adequate service. Also, if the aquifer underlying Mr. Pugel's well is not sufficient to support water service to the properties, then granting Complainants' application for deletion would allow an unregulated developer to draw down the aquifer without any regulation by the Commission, and such decision would make it virtually impossible to manage the limited water resources in the Pine area. Those issues clearly are relevant and critical in ascertaining where public interest lies.

What's more, Complainants already have acknowledged the relevance of "all issues concerning [water] service, rates and the public interest." Complainants' attempt to limit the scope of issues in the Motion is contrary to the prior positions taken by *them* in *this* case. During the discovery phase, Complainants propounded broad discovery requests on PWCo. In response, PWCo asserted objections to the scope of such discovery, and Complainants responded that "*the scope of discovery in this matter, is* ***extremely broad and inclusive,*** *covering all issues concerning service, rates and the public interest itself. All of these issues are grist for the mill of the Corporation Commission decision making process.*" Letter from J. Gliege to J. Shapiro, dated February 7, 2007, copy attached hereto as **Exhibit A**. Complainants now take the exact

opposite position. Apparently the "grist for the mill" has gone into a cocoon and returned as a "butterfly waiving its wings in the Andes of South America." Motion at 2. Given Complainants' prior position on the scope of the issues during discovery, the Motion is disingenuous and should be denied by the ALJ.

C. <u>The Commission and ALJ Have Broad Discretion and Authority to Consider Evidence and Testimony At Hearing.</u>

In the Motion, Complainants seek a generic order limiting the evidence presented at trial on *issues clearly relevant to the public interest*, such as (i) whether the Milk Ranch Well is an adequate and assured water source, (ii) how will the future customers in the deleted properties be provided with water service, by whom and under what terms and conditions, (iii) how will the remaining customers of PWCo be impacted by the requested deletion and groundwater pumping in the deleted territory; and (iv) whether is it good public policy to allow a private developer that refuses to follow A.A.C. R14-2-406 to carve up a public utility's CC&N for commercial gain. These are just a few of many issues that have significant bearing on the public interest relating to Complainants' deletion request.

In that light, Complainants' Motion is nothing more than an attempt to prevent the Commission from undertaking the necessary public interest analysis. As the Supreme Court noted in *James P. Paul*, 137 Ariz. at 429, 671 P.2d at 407, however, "the public interest is the controlling factor in decisions concerning service of water by water companies" (citing *Arizona Corp. Comm'n v. Tucson Ins. & Bond Agency*, 3 Ariz. App. 458, 415 P.2d 472 (1966)). The Commission should consider all evidence bearing on those issues. Further, Complainants have ignored the Commission's own procedural rules. A.A.C. R14-3-109(K) gives the ALJ and Commission broad latitude and discretion in considering evidence during administrative hearings:

> In conducting any investigation, inquiry or hearing, ***neither the Commission nor any officer or employee thereof shall be bound by the technical rules of evidence***, and no informality in any proceeding or in the manner of taking of testimony shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Commission. ***Rules of evidence before the Superior Court of the state of Arizona will be generally followed but may be relaxed in the discretion of the Commission or presiding officer when deviation from the technical rules of evidence will aid in ascertaining the facts***. (emphasis added)

A.A.C. R14-3-109(K). Here, the ALJ and the Commission should exercise that discretion and consider the "public interest" issues in the interest of due process and to fairly decide the merits of this case, as well as the impacts of Complainants' deletion request. Specifically, the ALJ and Commission should apply the *James P. Paul Water* factors in the broader context of determining whether the requested deletion serves the public interest in the Pine area.

D. <u>Complaints Misinterpret the *James P. Paul Water* Line of Cases.</u>

In the Motion, Complainants have drastically misconstrued governing Arizona law, including *James P. Paul Water*. The gist of Complainants' complaint is that PWCo is precluded from providing water service to their properties under the moratorium for new development imposed by the Commission in Decision No. 67823. Complainants portray that Decision as a finding that PWCo is unable and unwilling to provide them adequate water service at reasonable rates. In reality, however, that Decision resulted from a determination by the Commission that "the territory served by Pine Water is subject to water shortages, where ground water is the primary source of water." Decision No. 67823, p. 3, ¶ 2. That moratorium is a reflection of limited water resources and not PWCo's unwillingness or inability to provide utility service.

According to Complainants, the Milk Ranch Well is sufficient to serve the proposed developments of at least one of the Complainants. Rebuttal Testimony of Ray

Pugel at 3. Complainants then suggest that PWCo has not shown that it is willing and able to provide service to Complainants at reasonable rates. *E.g.*, *id.* at 6. In making that argument, however, Complainants fail to mention that PWCo has repeatedly sought to work with the Complainants, sent and/or offered will serve letters and extension agreements, and expresses its willingness to take the other steps necessary to extend service in accordance with A.A.C. R14-2-406, including seeking a variance to Decision No. 67823 if Complainants can provide the necessary water supply and other infrastructure in accordance with A.A.C. R14-2-406. *E.g.*, Direct Testimony of Robert T. Hardcastle at 16-18, Surrebuttal Testimony of Robert T. Hardcastle at 18-23. The Company's willingness and ability to provide water service to Complainants' properties in accordance with the Commission's rules, regulations and orders clearly benefits and furthers the public interest.

Boiled down, Complainants seek to avoid regulation by the Commission. Complainants are attempting to end-run Arizona's regulated monopoly scheme. If the Commission grants the deletion from the CC&N, Complainants could get water service to their developments in three ways. One, they could use the Milk Ranch Well to serve their developments themselves which would result in the Commission sanctioning some sort of uncertificated utility service provider. Two, Complainants could form a certificated public service company to take over the deleted territory. But that entity would be in the same position as PWCo if Complainants advanced water supply infrastructure, with one major difference being that PWCo is an experienced and qualified public service corporation with an existing water system in place. Presumably, that certificated utility would also be subject to the same moratorium concerns raised by the Commission in Decision No. 67823. Finally, Complainants could form a water district which would not be subject to regulation by the Commission. Under that option, Complainants could develop their properties without regard to the Commission's moratorium or any other

regulatory concerns that the Commission has determined over the years are critical to the public interest in the Pine area.

In evaluating these impacts from Complainants' deletion request, it bears emphasis that Complainants are not the ultimate customers and users of the water service. Rather, they are developers intending to develop the properties for commercial profit. The Commission has a duty and obligation to consider the interests of the ultimate water customers especially if they would be at the mercy of a water district not subject to the Commission's regulatory jurisdiction.

Under these circumstances, Complainants' attempt to prevent PWCo and the Commission from considering and exploring those issues is contrary to law. *James P. Paul Water* isn't a sword to be used by developers for the purpose of severing regulation by the Commission. To the contrary, *James P. Paul Water* is a shield designed to protect CC&N territories and the policies behind Arizona's regulated monopoly system. The cases relied upon by Complainants all involved competing applications for service by utilities regulated by the Commission. *See, e.g., James P. Paul*, 137 Ariz. at 428, 671 P.2d at 406 (deletion application filed by Pinnacle Paradise Water Company as a "holder of a [CC&N] to supply domestic water" service); *Davis v. Corp. Comm'n*, 96 Ariz. 215, 393 P.2d 909 (1964)(territory dispute between Davis Water Company and Superstition Water Company, both CC&N holders); *Application of Trico Electric Coop., Inc.*, 92 Ariz. 373, 377 P.2d 309 (1962)(dispute between certificated cooperative and Tucson Electric Power). In each of those cases, the Commission maintained regulatory jurisdiction over the CC&N areas irrespective of the deletion request. Here, however, Complainants are attempting to use the *James P. Paul Water* line of cases to avoid the Commission's regulatory authority. The result of granting this deletion request would be relinquishment of regulatory control over the properties to the detriment of the public interest.

Further, Complainants flatly misread the *James P. Paul Water* decision. That case

does not stand for the principle that the only issue to be considered in a deletion request is whether the certificate holder can provide service at reasonable rates. To the contrary, *James P. Paul Water* upholds the public policies behind Arizona's regulated monopoly scheme and expressly holds that the "public interest" is the "controlling factor" in decisions regarding water service. *James P. Paul Water*, 137 Ariz. at 429, 671 P.2d at 407.

For that reason, a certificate holder is entitled to maintain its CC&N unless it is expressly determined that such utility is unable or unwilling to provide adequate service. Under those facts, the Supreme Court found that "where a public service corporation holds a certificate for a given area, the public interest requires that that corporation be allowed to retain its certificate until it is unable or unwilling to provide needed service at a reasonable rate." *Id.* at 430, 671 P.2d at 408. Such ruling is akin to a "right of first refusal" giving the certificate holder the opportunity to provide service in its CC&N territory. Practically speaking, *James P. Paul Water* stands for the proposition that it is very difficult to delete property from a utility's certificate. For purposes of the pending Motion, the Supreme Court did not preclude the Commission from considering and addressing the public interest or limit the type of evidence that the Commission may consider at hearing. Complainants do not cite any Arizona case which supports the arguments put forth in the Motion.

E. <u>The ALJ and Commission Should Deny the Motion As a Matter of Policy.</u>

Finally, the Commission should consider the precedential and policy effects of granting the Motion. Such ruling would preclude the Commission from considering and protecting the public interest in a deletion proceeding. Such ruling also would have a major precedential impact. If the Commission determined that the broader public interest issues are not relevant in this deletion proceeding, then such ruling would apply equally in

an initial CC&N proceeding where the focal issues are whether there is a public need for the service and whether the applicant is fit and capable of providing such service. Ariz. Rev. Stat. § 40-282. The Commission routinely considers and addresses broader public interest issues in CC&N proceedings which would be contrary to a ruling granting Complainants' Motion in this case. For these reasons, the ALJ should deny the Motion.

II. CONCLUSION.

Complainants' Motion is contrary to Arizona law, applicable Commission regulations and established hearing practices before the Commission. For the reasons set forth above, the ALJ should deny the Motion.

RESPECTFULLY SUBMITTED this 11th day of May, 2007.

FENNEMORE CRAIG, P.C.

By_____

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Pine Water Company's Response To Motion In Limine

EXHIBIT A

Gliege Law Offices, PLLC

John G. Gliege ••• Stephanie J. Gliege

February 7, 2007

Jay L. Shapiro
Fennemore Craig
3003 North Central Ave. Ste 2600
Phoenix, AZ 85012-2913

Re: Objections to Interrogatories and Requests for Production of Documents

Dear Mr. Shapiro:

I have had the opportunity to read and digest your objections to the discovery propounded by my clients and your responses to the Requests for Admission and have found that the position which is being asserted on behalf of the Company is both unpalatable and legally incorrect.

In general, the test to be applied in this case is whether or not Pine Water Company can and will provide satisfactory and adequate water service to the complainants at reasonable rates. ***Cf James P. Paul Water Company v. Arizona Corporation Commission, 137 Ariz. 426, 671 P.2d 404 (1983).*** Because Pine Water Company has refused service, the Arizona Corporation Commission can make a determination as to whether or not it is in the public interest to amend the Certificate of Convenience and Necessity held by Pine Water Company. To make that determination, the Corporation Commission must review all available evidence related to the issues of service, rates and public interest. In fact, the Corporation Commission has a State Constitutional mandate to consider the interests of all who are involved in determining what are reasonable rates, and further in determining the extent of the service area of each Public Service Corporation.

Therefore, we assert the position that the scope of discovery in this matter, is extremely broad and inclusive, covering all issues concerning service, rates and the public interest itself. All of these issues are grist for the mill of the Corporation Commission decision making process.

Therefore, to that end ***Rule 26(b), Arizona Rules of Civil Procedure,*** allows for very expansive discovery of "any matter, not privileged, which is relevant to the subject matter involved in the pending action . . ." In looking at your specific objections we note:

OBJECTIONS TO INTERROGATORIES:

1. Page 6 Company's Objections – clearly Mindi Brogdon of Brooke Utilities was speaking for its wholly owned subsidiary, Pine Water Company when these comments were made.

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Since the Commission can take "judicial notice" of a previous proceeding where Brooke Utilities was identified as the sole owner of Pine Water Company, the attempt to avoid responding to this question on such grounds is not only obstreperous, but disingenuous on the part of the Company. We will demand that this question be answered.

2. Page 7, line 1 Company's Objections – Since a portion of this action is concerned with the "public interest" and the ability of Pine Water Company to provide service, this request is not beyond a reasonable scope. If there is so much litigation affecting the company then perhaps the public interest is not being served by this company. Therefore, we will demand that this question be fully answered.
3. Page 7 line 13 – Again you are choosing to "play with words" rather than showing any concerted good faith effort to provide appropriate responses. This information is relevant to the determination of whether or not satisfactory and adequate service can be provided. "Capital Improvements" is an accounting terms, clearly capable of definition in the ordinary conduct of the business. Therefore, we will demand that these questions be answered.
4. Page 8 line 3Company's Objection – the question is addressed to a publicity flyer sent by Pine Water Company, or its owners, to all the customers of Pine Water Company. This falls clearly into the realm or scope of the public interest which the Commission must examine as a part of this proceeding. Therefore, we will demand that these questions be answered
5. Page 8 line 18 Company's Objection – This objection is not well taken. The orders of the Commission are quite clear as to what Pine Water Company is to be doing in this area and the response should be directed to its actions regarding such orders. Engaging in literary critique is not complying with the ***Arizona Rules of Civil Procedure*** applicable in this instance, and if anything, is indicative of how Pine Water Company is not serving the public interest in Pine, Arizona, or in the properties in question. Therefore, we will demand that these questions be answered
6. Page 9 line one Company's Objections – Pine Water, or its predecessors has known the proposal of Pugel and Randall, and in fact refused to provide service to them. There were no further steps for Pugel and Randall to take, service was refused. The objection is without merit. Therefore, we will demand that these questions be answered
7. Page 9 line 11 Company's Objections – Pine Water or its predecessors has known of the plans for the ATM property for over twenty years and in fact had previously agreed to provide the service being requested before Pine Water Company refused to provide service. The forty three meters necessary to complete the project were approved in 1985. Therefore, Pine Water Company has had this information for more than 20 years. Therefore, we will demand that these questions be answered.
8. Page 9 line 21 Company's Objection – The information sought is to show the total supply of water available to and used by Pine Water Company, regardless of source. This is clearly within the realm of determining whether or not Pine Water Company is serving the public interest. Therefore, we will demand that these questions be answered.
9. Page 10 line one Company's Objection – Again, due to the relationship between the various entities, in an effort to determine if Pine Water Company can provide adequate satisfactory service at reasonable rates, and that the public interest is being served, this question is within the scope of allowable discovery, therefore, we will demand that these questions be answered.
10. Page 10 line 16 Company's Objection – This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

11. Page 11 line 3 Company's Objection – This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.
12. Page 11 line 15 Company's Objections -- This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.
13. Page 11 line 22 Company's Objections – The question relates to the public interest as it applies to this company. This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.
14. Page 12 line 17 Company's Objections – The question of reasonable rates for service is clearly a question in this proceeding. This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.
15. Page 12 line 27 – Company's Objections – First you tell us that the information is substantial and too costly to provide, and then you tell us it is available information; if it is available it should not be too costly to provide. This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.
16. Page 13, line 16 Company's Objections -- This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.
17. Page 13, line 24 Company's Objections – Whether service can be provided at "reasonable rates" to the property seeking deletion is a proper issue in this case. The information sought is related to the development of the "reasonable rates" to be charged. This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.
18. Page 14, line 4 Company's Objections – The first portion of the question asks whether or not the reports have been filed, not too onerous a request. If they were filed, then copies should be available from the Company. Therefore, we will demand that these questions be answered.
19. Page 14 Line 10 Company's Objection -- This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.
20. Page 14 line 18 Company's Objection – The information sought relates to whether or not the Complainants could reasonably expect to receive water service on the same basis and at the same cost as all other customers of the Pien Water Company. This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

Next, regarding the Requests for Production of Documents, it is noted that your general objection is that the requests are onerous. Such an unsubstantiated statement alone will not support a Motion for a Protective Order to preclude discovery. Further, according to the information in my client's possession, the property transaction with Mr. Richey took place less than five years ago, thus the information should be readily available.

The objection to the discovery request regarding negotiations or agreements with the Pine Strawberry Water Improvement District is ill founded. This question goes to the issue of the public interest and whether or not Pine Water can provide adequate satisfactory service to the Complainant's property. Therefore I would request that you reconsider your position on this matter.

The objection to providing information concerning legal proceedings effecting the Pine Water Company is also one which is indicative of issues of public interest and the ability to service.

This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

Regarding reports filed with the government at all levels, the objectionable material can be redacted and the reports provided. This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

Your objection to Request to Produce number 9 is evasive and not directed to the question which requests information in your possession. This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

In order for the Commission to determine if Pine Water Company can provide adequate and satisfactory water service it will need to know the extent of the system. Question 10 seeks information about that. It is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered. We will assert the same position as to Question 19.

Regarding Request to Produce number 23, the response of the company clearly indicates that the Commission should look into whether or not the public interest is being served by oral hauling contracts with undisclosed trucking companies. This question is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

In order to determine if the public interest is being served within the Certificated Area affecting my client's property it is necessary to know about the financial viability of the entities serving the commodity or supplying it to the serving entity. The information is relevant to the question of satisfactory and adequate service and the public interest. Therefore, we will demand that this request to produce be answered.

Last, regarding the Requests to Admit:

Request number 1: The objection is not well taken or grounded because the issue of adequate and satisfactory service and the public interest are presented in this proceeding and thus this Request is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

Request number 5: This objection is not well taken because Pine Water Company had initially refused to provide water service to the Complainant's property. This Request goes to the issues of adequate and satisfactory service at a reasonable cost, in an equitable manner as all other customers are served, and as to whether or not the public interest is being served. |Thus this Request is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

Regarding Request to Admit number 6, Decision 67823 certainly requires Pine Water Company to take affirmative steps regarding the development of additional water resources. Further, that issue is relevant to the issues of adequacy of supply and the public interest, thus this Request is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

In response to the Company's Objection to Request Number 15, the Complainants assert that this is a question which affects the public interest in the provision of water service, thus this Request is clearly relevant to the issues defined in this proceeding. Therefore, we will demand that these questions be answered.

Therefore, I respectfully request that you reevaluate your position and work cooperatively to achieve the appropriate discovery in this matter. Should you be unwilling to attempt to reach any reasonable compromise on these issues I would suggest a Procedural Conference with the hearing officer since there are more issues in dispute than can reasonably be handled in a telephone call. I will be available by telephone and email, but not in person for the next 13 days, so I would like to have such a conference scheduled for after February 22, 2007. Please contact me concerning available dates and times after that date.

Sincerely,
GLIEGE LAW OFFICES PLLC

_____
John G. Gliege