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BEFORE THE ARIZONA CORPORATION COMMISSION
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IN THE MATTER OF THE APPLICATION OF
PALO VERDE UTILITIES COMPANY FOR AN
EXTENSION OF ITS EXISTING CERTIFICATE
OF CONVENIENCE AND NECESSITY.

Docket No. SW-03575A-07-0300

IN THE MATTER OF THE APPLICATION OF
SANTA CRUZ WATER COMPANY FOR AN
EXTENSION OF ITS EXISTING CERTIFICATE
OF CONVENIENCE AND NECESSITY.

Docket No. W-03576A-07-0300

GLOBAL UTILITIES'

RESPONSE TO APPLICATION TO INTERVENE

Santa Cruz Water Company, L.L.C. ("Santa Cruz") and Palo Verde Utilities Company, L.L.C. ("Palo Verde")(collectively "Global Utilities") respond in opposition to the application to intervene filed by Arizona Water Company ("AWC"). AWC has often asserted – and the Commission has often ruled – that competitors lack standing to intervene in CC&N cases. AWC is not directly and substantially affected by these proceedings, and its participation likely will cause undue broadening of the issues and unwarranted delay. Accordingly, AWC's application should be denied.

I. AWC lacks a direct and substantial interest in this case.

AWC notes that it desires to raise the issues pending in Docket No. W-01445A-06-0199 et al. However, as AWC has previously noted, "industry-wide policy issues" should not be litigated

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1 in isolated CC&N cases.¹ Moreover, AWC's attempt to introduce issues from another case, to use
2 AWC's words, is "a textbook example of intervention that will unduly broaden the issues in a
3 matter."² In addition, AWC has made "no showing whatsoever that Staff cannot capably perform
4 its role in this proceeding" regarding such policy issues.³

5 The quoted language from AWC comes from its opposition to a motion to intervene by the
6 Robson Utilities in another case. The Commission's Procedural Order agreed with AWC and
7 found that Robson's intervention would "unduly broaden the scope of this proceeding" and that
8 Robson "does not have standing" because it "does not have any requests for service, an application
9 for a CC&N or an application for extension of its CC&N for the proposed extension area."⁴

10 Staff has also cautioned against granting intervention requests by competitors. For
11 example, in the case noted above, Staff stated that "Robson Utilities do not have any requests for
12 service in the extension area.... Arizona Water is the only water provider with a request for an
13 extension. Therefore, Staff respectfully requests that the Motion for Intervention be denied."⁵
14 Likewise, in another case, Staff opposed another Robson Motion to Intervene, noting that "Robson
15 Utilities do not have any requests for service in the extension area. Robson Utilities is attempting
16 to unduly broaden this proceeding into a comparison between itself and competing providers."⁶

17 The Commission agreed with Staff in that case, ruling that "the Robson Utilities... do not
18 have standing to address the issues raised in the Motion because they do not have any requests for
19 service or an application for a CC&N for the proposed extension area."⁷ The Commission also
20 found that granting intervention to Robson would "unduly broaden the scope of this proceeding."⁸

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23 ¹ AWC's Opposition to Motion to Intervene filed on May 30, 2006 in Docket No. W-01445A-06-
0059 at page 3.

24 ² Id. at 4.

25 ³ Id. at 2.

26 ⁴ Procedural Order dated July 7, 2006 in Docket No. W-01445A-06-0059 at page 3.

27 ⁵ Staff's Objection to Motion to Intervene dated June 7, 2006 in Docket No. W-01445A-06-0059.

⁶ Staff's Objection to Motion to Intervene dated June 7, 2006 in Docket W-01445A-06-0199.

⁷ Procedural Order dated July 10, 2006 in Docket No. W-01445A-06-0199 et al at page 3.

⁸ Id.

1 These principles should govern here. AWC does not have a request for service for even a
2 single acre of the extension area. The extension area in this case constitutes a small portion of a
3 massive, unsupported CC&N extension application filed by AWC in another case.⁹ The Staff
4 Report in that case specifically recommended that “only areas for which requests for service were
5 received should be included in the CC&N extensions awarded in this docket.”¹⁰ No requests
6 submitted in that case related to the extension area in this case, so Staff has clearly recommended
7 that AWC’s application regarding the areas at issue in this case be denied. Given Staff’s
8 opposition, it is extremely unlikely that AWC will be granted an extension regarding the areas at
9 issue in this case. Thus, AWC lacks a substantial interest in this case, and it therefore cannot be
10 “directly and substantially affected by the proceedings” as required by A.A.C. R14-3-105(A).

11 Moreover, the Global Utilities’ application in this case clearly is for integrated water,
12 wastewater, and reclaimed water service. AWC’s application involves only water service.
13 Because AWC’s application does not involve the same services, it is simply not relevant to this
14 case.

15 **II. AWC’s “first in the field” argument has been rejected by the Commission.**

16 AWC also raises its often-rejected “first in the field” doctrine. Under this alleged doctrine,
17 AWC asserts a right to the area because its CC&N in the vicinity is older than the Global Utilities’
18 CC&N in the vicinity. AWC did not cite any case law in supported of this alleged doctrine.
19 Moreover, the Commission rejected AWC’s arguments in the well-known “Woodruff” case.¹¹ On
20 appeal, the Superior Court agreed, expressly stating that “the first in the field doctrine does not
21 exist in Arizona.”¹² Because this doctrine does not exist in Arizona, it cannot grant any rights to
22 AWC, and AWC therefore lacks any “direct and substantial” interest under it.

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25 ⁹ See Docket No. W-01445A-06-0199 et al.

26 ¹⁰ See Staff Report dated October 25, 2006 at page 4 in Docket No. W-01445A-06-0199 et al.

27 ¹¹ See Decision No. 68453 (Feb. 2, 2006).

¹² See Ruling Minute Entry dated November 17, 2006 in LC2006-000283-001 DT; see also
Minute Entry dated January 4, 2007 in the same case at Conclusion of Law No. 8.

1 **III. AWC's intervention will unduly broaden the issues and cause unwarranted delay.**

2 AWC's intervention should also be denied because it would unduly broaden the issues and
3 cause unwarranted delay. By AWC's own admission, AWC seeks to raise in this case issues that
4 are currently pending before the Commission in another case. AWC will have a full opportunity to
5 litigate its issues in that case. Absent AWC's participation, there is no indication that those issues
6 would be raised in this case. Thus, AWC's intervention would unduly broaden the issues in this
7 case, and its intervention should therefore be denied. See A.A.C. R14-3-105(B).

8 Moreover, AWC's intervention will likely cause unwarranted delay. For example, in
9 another case involving the Global Utilities, AWC's participation brought the case to a standstill.
10 In that case, the Global Utilities' obtained a sufficiency letter more than a year ago, yet no hearing
11 is even in sight. AWC is surely aware of the Commission's many decisions in support of
12 integrated utilities and requests for services. AWC can have no reasonable hope of success in this
13 case, and its application to intervene is therefore solely for the purpose of delay and harassment.

14 AWC's attempted intervention will also unreasonably interfere with the contractual
15 relationships between the parent of the Global Utilities and developers, and with reasonable
16 business expectations for similar future contracts. AWC has repeatedly attacked the Global
17 Utilities, even though the Global Utilities' CC&N extensions always have 100% landowner
18 support. In contrast, the Global Utilities have only objected to AWC's extensions when AWC
19 lacks landowner support.

20 The land in this case will be developed by CHI, a subsidiary of D.R. Horton, one of the
21 largest developers in the United States. AWC is no doubt upset that it was spurned by CHI. CHI
22 is a highly sophisticated and informed developer, and there are no grounds for AWC to attack its
23 choice. While AWC may be mystified by that choice, the factors behind it are clear, including the
24 need for integrated water, wastewater and reclaimed water service, and the Global Utilities'
25 demonstrated track record in delivering conservation-focused infrastructure on a regional scale in
26 rapidly growing areas.

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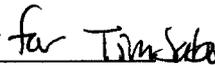
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1 **IV. Conclusion.**

2 AWC is not directly and substantially affected by the proceedings because it has no
3 requests for service for the extension area, and because its CC&N application is (with respect to
4 the extension area in this case) merely pretextual and is opposed by Staff. AWC can have no
5 rights under the "first in the field" doctrine because that doctrine does not exist under Arizona law.
6 Moreover, AWC's participation would unduly broaden the issues and would cause needless delay.
7 Accordingly, the Global Utilities request that AWC's application to intervene be denied.

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9 RESPECTFULLY SUBMITTED this 27th day of June, 2007.

10 ROSKA DEWULF & PATTEN, PLC

11
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