

ORIGINAL



0000075345

BEFORE THE ARIZONA CORPORATION COMMISSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

COMMISSIONERS

Mike Gleason, Chairman
William A. Mundell
Jeff Hatch-Miller
Kristin K. Mayes
Gary Pierce

RECEIVED

2007 JUL 20 P 4: 36

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JUL 20 2007

DOCKETED BY	
<i>UM</i>	<i>NR</i>

IN THE MATTER OF THE APPLICATION OF ARIZONA WATER COMPANY, AN ARIZONA CORPORATION, TO EXEND ITS EXISTING CERTIFICATE OF CONVENIENCE AND NECESSITY IN THE CITY OF CASA GRANDE AND IN PINAL COUNTY, ARIZONA

Docket No. W-01445A-06-0199

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-05-0926

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-05-0926

**GLOBAL UTILITIES' REPLY IN SUPPORT
OF THEIR CROSS-MOTION TO COMPEL
AND CROSS-MOTION FOR PROTECTIVE ORDER**

Santa Cruz Water Company, LLC; Palo Verde Utilities Company, LLC; Global Water – Santa Cruz Water Company and Global Water – Palo Verde Utilities Company (collectively, “Global Utilities”) reply in support of their cross-motion to compel and their cross-motion for a protective order. The cross-motions relate to Arizona Water Company’s (“AWC”) Motion to Compel. In addition, the Global Utilities respond to the Declaration attached to AWC’s Reply.

28

1 **I. Preliminary Statement.**

2 This docket involves competing applications for a Certificate of Convenience and
3 Necessity. Both the central flaw in AWC's discovery motions is that AWC is constantly taking
4 different positions on the same issues. AWC argues that the Global Utilities should be compelled
5 to provide various documents. Yet AWC refuses to provide the same information about itself,
6 arguing that the information is not relevant. Either the contested information is relevant to
7 evaluating the fitness of a utility to serve, or it is not. AWC cannot have it both ways on these
8 items.

9 AWC is the chief rival and main competitor of the Global Utilities. For this reason, the
10 Global Utilities should not be forced to reveal their competitively sensitive confidential
11 information to their main competitor. But if the Global Utilities are forced to provide this
12 information to AWC, then the Commission should adopt a protective order to safeguard the
13 confidentiality of these materials and to block AWC's executives from reviewing it.

14 **II. Reply in Support of Global Utilities' Cross-Motion to Compel.**

15 AWC objects that Global has not provided various items for months. AWC is like the
16 proverbial pot calling the kettle black. The Global Utilities' first set of data requests to AWC was
17 sent on September 22, 2006. More than nine months has elapsed without a response from AWC
18 on many of these items. AWC now appears to concede that it must provide many of these items.
19 However, several disputes remain. These disputes largely involve AWC taking a position in
20 response to the cross-motion to compel that is directly contrary to the position it takes in its own
21 motion to compel. AWC simply cannot have it both ways on these items.

22 For example, in its motion to compel, AWC claims that financial information about
23 affiliates is vital to evaluating the fitness of a utility. But in the response to the cross-motion to
24 compel, AWC argues that the financial information of its own affiliates is irrelevant. Either
25 affiliate financial information is relevant or it is not. The Global Utilities would be content if
26 neither party has access to affiliate financial information. However, if they are compelled to
27

1 provide such information, then AWC should be compelled to respond to the data requests
2 concerning the financial data of its affiliates.¹

3 Likewise, AWC demands that the Global Utilities create new financial analysis, while
4 refusing to do the same itself. In particular, AWC ask that the Global Utilities be compelled to
5 prepare a financial analysis of the cost savings of integrated utilities. Yet AWC refuses to prepare
6 financial analyses of its own in response to data requests from the Global Utilities. Again, the
7 Global Utilities would be content if neither party is compelled to prepare such studies. But if the
8 Global Utilities are compelled to prepare studies in response to AWC's data requests, AWC
9 should be compelled to do the same.²

10 While offering access to various documents, AWC demands that Global pay the copying
11 charges. AWC's demand is inconsistent with its own conduct in this case. AWC demands that
12 the Global Utilities provide copies of various documents (such as their CAAG 208 plan or the
13 ICFAs) at Global's expense. The Global Utilities agreed to do so. Discovery has proceeded
14 throughout this case on the basis that the producing party bears copying costs. There is no reason
15 to change course now.

16 AWC objects to listing litigation it has been embroiled in.³ Inquires into past litigation are
17 a routine part of civil discovery because prior litigation can often lead to the discovery of
18 admissible evidence. Indeed, AWC concedes that the Global Utilities can receive copies of
19 documents in certain specific litigation involving particular parties. Here, the Global Utilities
20 simply seek a list of prior litigation. AWC should be compelled to provide the list.

21 AWC objects to providing "narrative histories" about its accomplishments, if any,
22 regarding reclaimed water and recharge wells.⁴ While the phrase may be awkward, the question
23
24

25 ¹ Global Data Requests No. 1.53, 1.66, 1.67, 1.70, 1.71, 3.2.

26 ² Global Data Requests No. 2.4 and 2.5.

27 ³ Global Data Request 1.6.

⁴ Global Data Request 1.19 and 1.25.

1 simply calls for a brief description or summary. Such questions are a routine part of discovery,
2 and AWC should be compelled to respond.

3 AWC also refuses to describe its discussions with ADWR about the extension area in this
4 case.⁵ Such discussions could contain highly relevant material, and AWC should therefore be
5 compelled to disclose this information.

6 AWC's statement regarding data request 1.95, which concerns communications with
7 potential wastewater providers, is somewhat unclear. AWC states that it has "no other
8 communications" – if AWC has had no communications with potential providers, a short
9 statement to that effect would suffice.

10 **III. Reply in support of cross-motion for a protective order.**

11 AWC claims that the proposed protective order would not allow Commission Staff or Staff
12 Counsel access to the confidential information. That is not correct. The central theme of the
13 cross-motion was that AWC is Global's main competitor, and AWC's should therefore not be
14 allowed access to competitively sensitive and confidential information. There is a sharp
15 distinction between providing information to government employees and providing the same
16 information to a major competitor. In other words, the protective order would be limit access by
17 AWC's internal personnel. Such special protections would not be needed for Staff, who would
18 have access to such information under standard confidentiality protections.

19 The Global Utilities will withdraw the request that AWC's counsel be barred from
20 accessing the competitively sensitive material. However, AWC's own executives should not have
21 access to this highly sensitive information about their competitor. Accordingly, to the extent that
22 the Global Utilities are compelled to produce any of the competitively sensitive data, they request
23 that the Commission adopt a protective order requiring that the data be kept confidential and that
24 AWC's employees be barred from accessing this data. The protective order should govern the
25 exchange of all confidential data by the parties in this case.

26
27 ⁵ Gloal Data Request 1.11.

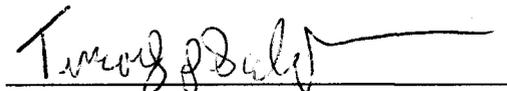
ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 **IV. Response to Declaration of Joseph D. Harris.**

2 The issues raised in the Harris declaration were not raised in AWC's original motion to
3 compel. Accordingly, the Global Utilities provide a brief response. Attached is the declaration of
4 Cindy Liles, who responds to the points raised by Mr. Harris. As Ms. Liles explains, AWC has
5 been given access to the journal entries of Santa Cruz Water Company. AWC never requested
6 access to the journal entries of Palo Verde Utilities Company. AWC did not describe in advance
7 the records they were seeking, so it took some time to retrieve them. The delay was compounded
8 because the requested data concerned time periods when Global switched accounting systems.
9 While AWC complains about how long the inspection took, AWC has essentially conducted an
10 on-site audit, so it should be no surprise that several days were needed. In the end, AWC has been
11 given access to Santa Cruz's journal entries, and Ms. Liles and other Global employees provided
12 explanations of items questioned by AWC.

13 RESPECTFULLY SUBMITTED this 20th day of July 2007.

14 ROSHKA DEWULF & PATTEN, PLC

15
16 By 

17 Michael W. Patten
18 Timothy J. Sabo
19 Jason D. Gellman
20 One Arizona Center
21 400 East Van Buren Street, Suite 800
22 Phoenix, Arizona 85004

23 Original + 17 copies of the foregoing
24 filed this 20th day of July 2007 with:

25 Docket Control
26 ARIZONA CORPORATION COMMISSION
27 1200 West Washington
Phoenix, Arizona 85007

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 Copies of the foregoing hand-delivered/mailed
2 this 20th day of July 2007, to:

3 Yvette B. Kinsey, Esq.
4 Administrative Law Judge
5 Hearing Division
6 Arizona Corporation Commission
7 1200 West Washington
8 Phoenix, Arizona 85007

9 Christopher C. Kempley, Esq.
10 Chief Counsel, Legal Division
11 Arizona Corporation Commission
12 1200 West Washington
13 Phoenix, Arizona 85007

14 Ernest G. Johnson, Esq.
15 Director, Utilities Division
16 Arizona Corporation Commission
17 1200 West Washington
18 Phoenix, Arizona 85007

19 Robert W. Geake, Esq
20 Arizona Water Company
21 3805 North Black Canyon Highway
22 Phoenix, Arizona 85015

23 Steven A. Hirsch, Esq.
24 Rodney W. Ott, Esq.
25 Bryan Cave LLP
26 Two North Central Avenue, Suite 2200
27 Phoenix, Arizona 85004

28 Jeffrey W. Crockett, Esq
29 Marcie Montgomery, Esq.
30 Snell & Wilmer LLP
31 One Arizona Center
32 400 East Van Buren Street
33 Phoenix, Arizona 85004

34 Kenneth H. Lowman
35 Manager
36 KEJE Group, LLC
37 7854 West Sahara
38 Las Vegas, Nevada 89117

39 Craig Emmerson, Manager
40 Anderson & Val Vista 6, LLC
41 8501 North Scottsdale Road, Suite 260
42 Scottsdale, Arizona 85253

43

ROSKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 Brad Clough
2 Anderson & Barnes 580, LLP
3 Anderson & Miller 694, LLP
4 8501 North Scottsdale Road, Suite 260
5 Scottsdale, Arizona 85253

6 Phillip J. Polich
7 Gallup Financial, LLC
8 8501 North Scottsdale, #125
9 Scottsdale, Arizona 85253

10 Ken Franks, Esq.
11 Rose Law Group, PC
12 6613 N. Scottsdale Rd, Ste 200
13 Scottsdale, Arizona 85250

14
15
16
17
18
19
20
21
22
23
24
25
26
27
By Debbie Arnold

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Mike Gleason, Chairman
William A. Mundell
Jeff Hatch-Miller
Kristin K. Mayes
Gary Pierce

IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY, AN ARIZONA
CORPORATION, TO EXEND ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY IN THE CITY OF CASA GRANDE
AND IN PINAL COUNTY, ARIZONA

Docket No. W-01445A-06-0199

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-05-0926

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-05-0926

AFFIDAVIT OF CINDY LILES

CINDY LILES having been duly sworn upon her oath, deposes and says:

1. My name is Cindy Liles. I am over 18 years old. The statements made in this affidavit are based on my own personal knowledge.
2. I am Senior Vice President and Chief Financial Officer of Global Water Management, LLC ("GWM"). I am also the Secretary of Santa Cruz Water Company ("Santa Cruz").

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

3. I met with Joseph D. Harris of Arizona Water Company ("AWC") on June 14, 2007 to accommodate the unusual request by AWC to review the journal entries that comprised the equity of Santa Cruz. AWC did not provide advance notice of the entries it wished to inspect, other than that they concerned equity.
4. Upon meeting Mr. Harris and AWC's counsel, we requested a description of the entries they wished to inspect as the resulting value of equity for any company is very detailed. Basically the equity includes all of the earnings (revenues less expenses) for each year since inception along with the equity contributions made by the parent for capital expenditures and operating shortfalls. They made a very wide ranging request, asking for all entries involving equity for 2004, 2005, and 2006. We agreed that the first approach would be for us to provide the detailed general ledger where they could review each transaction and note which ones required additional information.
5. I was quite disconcerted by the fact a business competitor, is given the authority to view our internal accounting records. Nevertheless, I left the meeting to begin the process of obtaining these records. I directed several of GWM's accountants to assist me. The process of obtaining the requested records was complicated by the fact that GWM switched accounting computer programs during the time frame requested by AWC. Accordingly, data had to be pulled from two computer systems and then integrated together.
6. The general ledgers for the accounts comprising equity for 2006 were ready by 11:40. However, by that time, Mr. Harris had left to go to lunch. When he returned, I showed him the information pulled and the AWC counsel asked to take the records with him. Because I considered these records confidential and proprietary, I was not comfortable with that proposal and declined because the offer they accepted was for only an on-site inspection. I offered for them to stay as long as necessary to review the records or to come back another day. Mr. Harris stated

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

that he did not have time to review all of these materials. Mr. Harris agreed to come back another day to review the materials.

7. Mr. Harris returned with his associate Mr. Joel Reiker on June 21, 2007. At that time I provided them with the detailed general ledger accounts comprising equity for 2004, 2005, and 2006. I also answered various questions from Mr. Harris and Mr. Reiker.

8. Mr. Harris and Mr. Reiker reviewed the reports and noted which items required more information. I agreed to provide these materials and said that we would call them when they were ready.

9. I was not available to meet Mr. Harris on the day that worked better for him. To speed things along, I directed GWM's Vice President of Accounting, Ms. Patty Greco, to provide the records to Mr. Harris. I also directed her to answer Mr. Harris' questions. I received feedback from Ms. Greco that Mr. Harris was satisfied with everything reviewed with the exception of Mr. Harris inquiring about the variances for the years 2004 and 2005 between the ACC annual report and general ledgers printed in 2007.

10. Since the visit of Mr. Harris, we have exchanged emails regarding his request to view the differences between our ACC annual report and the financial records we showed him. (Note that the ACC reports are due before Santa Cruz's audit is complete, so some differences are too be expected). I have advised Mr. Harris by email that we are preparing a variance report to explain the differences and will have available next week.

Further affiant sayeth not.

...
...
...
...

ROSHKA DeWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE: NO 602-256-6100
FACSIMILE 602-256-6800

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Cindy Liles

CINDY LILES

SUBSCRIBED AND SWORN BEFORE ME THIS 20TH DAY OF JULY 2007

Jennie L. Critchfield

NOTARY PUBLIC

(seal)

My commission expires 4/18/2009.

