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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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Arizona Corporation Commission
DOCKETED

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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

REPLY TO RESPONSE TO MOTION TO CONSOLIDATE PROCEEDINGS

Arizona Water Company, an Arizona corporation (the "Company"), files the following Reply to the Response of Santa Cruz Water Company, L.L.C. ("Santa Cruz") and Palo Verde Utilities Company ("Palo Verde") to the Company's Motion to Consolidate the above-captioned dockets with Docket Nos. W-01445A-06-0199, SW-03575A-05-0926, and W-03576A-05-0926 (the "Consolidated Dockets").

As a preliminary observation, it bears repeating here that the most compelling reason for consolidating these dockets is that the Company *already* has pending in the Consolidated Dockets an application for a Certificate of Convenience and Necessity ("CC&N") for authority to provide water service to the *same area* in which Santa Cruz and Palo Verde are now requesting a CC&N in Docket No. W-03576A-07-0300 and Docket No. SW-03575A-07-0300 (the "New Dockets"). Thus, on its face, it would be difficult to conceive of a more appropriate case for consolidation, in terms of basic questions of law (CCN applications for an identical area) and fact (the facts relating to

1 each application in terms of how each utility would provide water service, location of
2 facilities in the area, rates to be applied, fitness to serve, etc.).

3
4 Instead of addressing this dispositive issue head on, Santa Cruz and Palo Verde
5 present academic arguments concerning consolidation in the abstract, raise several
6 “red herring” arguments, and make incorrect assertions.

7 **I. THE NEW DOCKETS AND THE CONSOLIDATED DOCKETS HAVE COMMON**
8 **ISSUES OF LAW AND FACT AND SHOULD BE CONSOLIDATED**

9
10 On page 2 of their Response, Santa Cruz and Palo Verde cite authority that
11 actually supports consolidation. They attempt to distinguish the findings and holdings of
12 these authorities, but these arguments support, not diminish, the Company’s arguments
13 for consolidation. Santa Cruz and Palo Verde fail to point out that one of the cases they
14 cited, *Hancock v. McCarroll*, 188 Ariz. 492, 495, 937 P.2d 682, 685 (App. 1996), held
15 that consolidation of cases is permitted as a matter of convenience and economy of
16 administration for which the trial court is given broad discretion, which is not disturbed
17 on appeal unless there is abuse of discretion. In addition to *Hancock*, where
18 consolidation was affirmed even though the issues were different, Arizona courts have
19 permitted consolidation to avoid confusion. Examples include consolidation of suits for
20 divorce by husband and wife in the same court, Rule of Civil Procedure Rule 42(a)
21 (incorporated in the Commission’s Rules of Procedure by A.A.C. R14-3-101(A)) *Allen v.*
22 *Superior Court*, 86 Ariz. 205, 209, 344 P.2d 163, 166 (1959), and in two separate
23 personal injury actions filed by different occupants of the same vehicle that collided with
24 a parked truck, *S.A. Gerrard Co. v. Couch*, 43 Ariz. 57, 29 P.2d 151 (1934).

25
26 The same standards apply to the Commission as its procedural rules permit
27 consolidation when the issues are substantially the same. See A.A.C. R14-3-109(H). In
28 this case, the issues are identical, i.e., which utility should receive a certificate of
convenience and necessity for exactly the same area, and which utility’s application is
most favored by the public interest.

1 Most significant, however, is the Commission's own treatment of the
2 consolidation question in other Company cases. In Docket No. W-01445A-98-0667, the
3 Company filed an application for a CCN expansion area that included part of a CCN
4 expansion area contained in another utility's pending application. The Company filed a
5 Motion to Consolidate that was opposed by the other applicant and the Staff. The
6 Commission granted the Company's Motion to Consolidate, while finding as follows:

7
8 Big Park and Staff both asserted in their Responses that
9 consideration of the entire AWC Application with the Big Park hearing on
10 the Fisher Property will complicate the issues to be considered regarding
11 the Fisher Property. However, the existing territories of the Applicants are
12 both contiguous to the contested Fisher Property territory. Therefore, any
13 decision to determine which company should be granted the exclusive
14 right to serve the Fisher Property territory requires consideration of both
15 Applications in their entirety.

16
17 IT IS THEREFORE ORDERED that the entirety of the Arizona
18 Water Company Application is hereby consolidated with that portion of the
19 Big Park Application which has not yet been heard.

20
21 Docket No. W-01445A-98-0667, Procedural Order, page 3, lines 3-10
22 (January 11, 1999).

23
24 The Commission's treatment of this issue has continued to be consistent through
25 the years. In addition to the consolidation of the Consolidated Dockets which, as noted,
26 was on the Commission's own motion, the Company filed a competing application in
27 another docket, W-01445A-04-0755, et al., that included all of the CCN expansion area
28 contained in a pending application, and some additional area. The Company filed a
Motion to Consolidate its application with the competing, pending application, which
contained all of the Company's CCN expansion area. In that case, the Commission
ruled as follows:

1 IT IS FURTHER ORDERED that the above-captioned proceedings
2 shall be consolidated for purposes of hearing with respect to the
3 applications to provide water service.

4 Docket W-01445A-04-0755, et al., Procedural Order, page 2, lines 8-9
5 (November 4, 2004).

6 The Commission's practice, as documented by these rulings, is to routinely
7 consolidate CCN applications for hearing where the same area is included in two
8 competing applications. Santa Cruz and Palo Verde were not able to cite a single CCN
9 case in which the Commission ruled otherwise in the same situation.

10 In Section II.C of the Response, Santa Cruz and Palo Verde refer to the
11 Consolidated Dockets and the New Dockets as an "unwieldy mass," and present an
12 incomplete and misleading table to support their argument. However, their argument is
13 flawed and incorrect.

14
15 First, the Santa Cruz and Palo Verde geographic "location" of the Consolidated
16 Dockets' CCN area is incorrect. The Commission, on its own, ordered the dockets
17 consolidated, thus, any attempt to distinguish the Company's CCN area as "much of
18 Western Pinal County" and Santa Cruz's as "South of Maricopa" was already rejected
19 by the Commission in the Consolidated Dockets. The Consolidated Dockets and the
20 new Dockets thus include the same geographic area, and the Santa Cruz and Palo
21 Verde attempt to geographically distinguish them is groundless.

22 Second, labeling the New Dockets as "Part of Legends Development", in an
23 attempt to contrast it to the Company's CCN area in the Consolidated Dockets, is
24 equally specious. The critical, undeniable fact that is identical to the New Dockets and
25 the Consolidated Dockets is that the CCN expansion area included in the New Dockets
26 is exactly the same as part of the Company's CCN area in the Consolidated Dockets.
27 This falls squarely within the "common question of law and or fact" required for
28 consolidation by the Commission's procedural rules, A.A.C. R14-3-109(H).

1 Third, the “numerous differences” Santa Cruz and Palo Verde cite between the
2 New Dockets and the Consolidated Dockets are neither numerous nor different. The
3 CCN expansion area in the New Dockets is contained entirely within the area
4 addressed in the Consolidated Dockets. That is a common fact, not a difference. In
5 addition, there are requests for service for this area, as Santa Cruz has pointed out, and
6 that is a common fact, not a difference. The issue of landowner “support”, that Santa
7 Cruz and Palo Verde cite as a difference, is in reality landowner “preference”, which is a
8 common issue concerning what is in the public interest. This issue is for the
9 Commission, not the landowner, to decide.

10 Finally, the alleged “benefits” of common providers and integrated service are
11 allegations, not facts, and the Company has challenged Santa Cruz and Palo Verde to
12 prove them in the Consolidated Dockets. They are issues common to, not differences
13 between, the New Dockets and the Consolidated Dockets.

14 **II. CONSOLIDATION WILL NOT CAUSE UNDUE PREJUDICE,** 15 **INCONVENIENCE AND DELAY**

16 The timing and content of the New Dockets were chosen by Santa Cruz and Palo
17 Verde, not the Company or the Commission. Santa Cruz and Palo Verde cannot
18 seriously complain that the timing of their filings (more than a year after the
19 consolidation order in the Consolidated Dockets) is now prejudicial or inconvenient for
20 them. They freely and knowingly chose the timing of their filing, and the CCN expansion
21 area, realizing full well that it is part of the same area contained in the Consolidated
22 Dockets. This is a “red herring” because, not only is there no undue prejudice or delay,
23 it is a situation created exclusively by Santa Cruz and Palo Verde.

24 Moreover, the stay in effect in the Consolidated Dockets concerns only the
25 hearing portion of the case. As the Commission knows, the contested discovery portion
26 of these cases continues, and the Company has argued to the Commission in pending
27

1 motions that it is largely the Global parties' deficient responses to the Company's
2 discovery requests that resulted in the stay in the first place.

3
4 **III. THE STAFF HAS FOUND THE COMPANY'S APPLICATION**
5 **TO BE INDEPENDENTLY VIABLE**

6 Santa Cruz and Palo Verde argue that the Company's application is not
7 independently viable. However, it is the Staff, on behalf of the Commission, that
8 determines when a CCN application is independently viable, i.e., that it is
9 administratively sufficient for the Commission to consider. The Staff determined this
10 question in the Company's favor in the Consolidated Docket when it found the
11 Company's application to be sufficient on July 28, 2006. Whether the Company or
12 Santa Cruz or Palo Verde can prevail on their applications remains to be seen, but the
13 question of independent viability was decided long ago.

14 **IV. CONCLUSION**

15 The New Dockets and the Consolidated Dockets contain basically identical
16 issues of law and fact. Santa Cruz and Palo Verde have presented no viable basis for
17 considering and hearing separately a CCN application for the same territory by the
18 same applicants; to do so would be a tremendous waste of Commission time and
19 resources. The Company's Motion to Consolidate the New Dockets and the
20 Consolidated Dockets should be granted.

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RESPECTFULLY SUBMITTED this 20th day of August, 2007.

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