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MEMORANDUM

TO: Docket Control Center

FROM: Ernest G. Johnson *EJ*  
 Director  
 Utilities Division

DATE: September 17, 2007

RE: KACY J. PARKER DBA JAKE'S CORNER WATER SYSTEM - ORDER TO SHOW CAUSE (DOCKET NOS. W-04249A-04-0249 AND W-03745A-04-0249)

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Introduction

On May 21, 2007, the Arizona Corporation Commission ("Commission") issued Decision No. 69583 which granted Staff's motion for Complaint and Order to Show Cause ("OSC") against Kacy J. Parker dba Jake's Corner Water System ("Jake's Corner" or "Company"). The OSC was a result of the Company's repeated failure to comply with Commission Decision No. 67231 and its requirement that Jake's Corner install a storage tank. Based on the language in Decision No. 67231, the original due date for the installation of the storage tank was June 2005.

On August 27, 2007, a procedural order was issued by the Administrative Law Judge ("ALJ") setting forth a procedural schedule for conducting the above mentioned OSC proceedings. Specifically, the ALJ ordered that a Staff Report be filed in this matter by September 17, 2007.

The following is a summary of the Decisions relating to this docket, an engineering review of the Jake's Corner system and an update of filings that have been docketed since Staff filed the OSC.

Decision No. 67231

In Decision No. 67231, dated September 8, 2004, the Commission approved the transfer of assets and Certificate of Convenience and Necessity ("CC&N") from Edwin L. Wetzler dba Jakes Corner Water System to Kacy J. Parker dba Jake's Corner Water System. As part of the decision, Jake's Corner was ordered to comply with the following Commission requirements:

- a) "It is further ordered that Kacy J. Parker dba Jake's Corner Water System shall file a Backflow Prevention Tariff within 60 days of this Decision"
- b) "It is further ordered that Kacy J. Parker dba Jake's Corner Water System shall install a Storage Tank by June 2005."
- c) "It is further ordered that Kacy J. Parker dba Jake's Corner Water System shall file a Curtailment Tariff within 365 days of the installation of such storage tank."

The Company originally had difficulty complying with each of the above requirements. The Backflow Prevention Tariff was due in November 2004 and filed on April 25, 2007. The Curtailment Tariff was due in June 2006 (365 days after the June 2005 due date of the storage tank) and was filed on April 25, 2007. Therefore, the above tariffs have been filed but the requirement to install the storage tank remains.

### **Decision No. 69583 – OSC**

In Decision No. 69583, dated May 21, 2007, the Commission approved the OSC proceeding and ordered the Company to appear before the Commission to discuss why the storage tank was not completed. The Decision outlined Staff's efforts to contact the Company and bring them into compliance. It also noted that the Company had not requested a waiver, extension of time or a modification of the Commission requirement. Staff continued to pursue the Compliance of the storage tank because the Company had not complied with the Commission order.

### **Request for Amendment - 40-252 Filing**

The Company has made several filings suggesting that the installation of a storage tank is not the most efficient action to be taken for this particular system at this time. A letter docketed on March 26, 2007, stated that after considering the time, effort and expense, Jake's Corner believes that the Company "does not warrant the financial investment" of the storage tank. A July 26, 2007 letter, faxed to the Compliance section, stated that the need for the storage tank was eliminated by inspection report "documentation" from the Arizona Department of Environmental Quality ("ADEQ"), a separate state agency. Although the Company had also previously stated in writing, phone conversations and meetings that they *did* intend to install the storage tank, the Company ultimately filed a request for amendment of Decision No. 67231.

The Company's August 10, 2007, request for amendment is attached and requested that the Commission "re-consider" the portion of Decision No. 67231 that required the installation of the storage tank. In the filing, the Company provided historical information and an outline detailing the water system that is in place at Jake's Corner. The system includes plant facilities in two separate sites as discussed in the Engineering section below. The Company argument is that the system has provided domestic water to the same 20 lots unchanged for 40 years and, based on the specific characteristics of this case, the system will become much more complex (and expensive) if a storage tank is required. The Company also stated that the existing 5,000 gallon tank is "more than adequate per current regulations from ADEQ". In fact, the Company refers to the existing tank as a "storage pressure tank" to indicate that it serves both storage and pressure purposes.

### **Engineering**

According to the Company, the operation of the water system has two plant sites. Plant #1 is the well site that consists of a well (27 GPM) and a small bladder tank (estimated at 40 gallons) that is used as a surge arrestor. The well pumps into the distribution system and up a hill to Plant #2, which is approximately 1,600 feet from Plant #1. Plant #2 consists of a 5,000 gallon pressure tank used to serve approximately 19 service connections.

Using the 2006 Annual Report's peak month data of 99,106 gallons of water sold to the 19 service connections, the well capacity of 27 GPM could serve up to 90 service connections and a 5,000 gallon pressure/storage tank capacity could service up to approximately 28 service connections. Although pressure tanks are not considered storage tanks, in this case, the 5,000 gallon pressure tank could be considered somewhat a storage tank because of the location of the tank; approximately 1,600 feet from the well site and located at the highest point on the water system. This pressure tank is supplied with air using a portable air compressor to increase the water pressure before entering the distribution system. In addition, the Company informed Staff that in the past the well and pump were repaired in a matter of hours anytime there was a failure.

Based on the current operation of the water system, it appears that the Commission ordered storage tank is not a critical requirement at this time.

### **Staff Review**

Prior to August 2007, the Company had not previously filed any request for waiver, amendment or modification of Decision No. 67231. Therefore, Staff's interaction with Jake's Corner has been based on its Compliance status alone. Mr. Kyle Parker finally admitted in conversation that he should have sought reconsideration of the storage tank requirement several years ago but was not aware of that option.

Based on all of the above, it is Staff's opinion that the storage tank is not a critical requirement at this time. However, the need for a storage tank should be reconsidered in a future rate case and/or financing case when the revenue needed to cover any additional plant costs to install a storage tank can be considered.

Therefore, Staff considers the current use and operation of the 5,000 gallon tank to be an interim solution to the storage tank situation. Staff recommends the storage tank issue be revisited in the Company's next rate and/or financing application. The Company should be required to file a rate case by no later than March 31, 2011.

### **Recommendation**

Based on the above, Staff recommends that the Commission dismiss the Order to Show Cause; however, Staff makes no recommendation regarding the compliance status of Decision No. 67231. Staff further recommends that the Company be ordered to file a rate case no later than March 31, 2011.

EGJ:BKB:MSJ:lhM

Originators: Brian K. Bozzo and Marlin Scott, Jr.

SERVICE LIST FOR: KACY J. PARKER DBA JAKE'S CORNER WATER SYSTEM  
DOCKET NOS. W-04249A-04-0249, et al.

Mr. Kacy J. Parker  
Jake's Corner Water System  
HC 6, Box 1048-H  
Payson, Arizona 85541  
**(VIA CERTIFIED AND REGULAR MAIL)**

Mr. Kyle Parker  
Jake's Corner Water System  
HC 6, Box 1048-H  
Payson, Arizona 85541  
**(VIA CERTIFIED AND REGULAR MAIL)**

Mr. Christopher K. Kempley  
Chief Counsel, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Mr. Ernest G. Johnson  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ms. Lyn Farmer, Chief  
Administrative Law Judge, Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007