

ORIGINAL



0000129954

BEFORE THE ARIZONA CORPORATION RECEIVED

Arizona Corporation Commission DOCKETED

2011 SEP 23 1 A 9: 06

SEP 23 2011

COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

AZ CORP COMMISSION DOCKET CONTROL

DOCKETED BY [Signature]

IN THE MATTER OF THE APPLICATION OF ARIZONA WATER COMPANY TO EXTEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY IN CASA GRANDE, PINAL COUNTY, ARIZONA

DOCKET NO. W-01445A-03-0559

CORNMAN TWEEDY 560'S MOTION TO COMPEL RESPONSES TO DATA REQUESTS AND REQUEST FOR PROCEDURAL CONFERENCE

BROWNSTEIN HYATT FARBER SCHRECK, LLP, A LAW CORPORATION
BROWNSTEIN HYATT FARBER SCHRECK, LLP
40 North Central Avenue, 14th Floor
Phoenix, AZ 85004
602.382.4040

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
28

On July 28, 2011, Cornman Tweedy 560 LLC ("Cornman Tweedy") served its Fifth Set of Data Requests comprised of 29 questions on Arizona Water Company ("AWC"). After seeking a one-week extension of the deadline for submitting responses, AWC provided its responses and objections to the data requests on August 15, 2011. AWC raised objections to (and did not answer) data requests 5-1, 5-2, 5-3, 5-4, 5-5, 5-6, 5-15, 5-16, 5-17 and 5-18. A copy of Cornman Tweedy's data requests and AWC's responses and objections are attached hereto as Attachment A.

AWC served its Third and Fourth Sets of Data Requests (collectively, the "AWC Data Requests") on Cornman Tweedy on August 15, 2001 and August 29, 2011, respectively. Cornman Tweedy objected to substantially all of the AWC Data Requests on the grounds that they are not relevant to the issues on remand as framed by the Arizona Corporation Commission ("Commission"), are not calculated to lead to the discovery of evidence that would be relevant or admissible in this proceeding, are overly broad, unduly burdensome, vague, ambiguous and, in some instances, are directed at entities which are not parties to this proceeding.

Cornman Tweedy and AWC met on September 13, 2011, to discuss their respective objections in an effort to reach a compromise, but despite the parties' good faith efforts, no compromise was reached. It has become clear that the parties have a significant difference of opinion regarding the scope of this proceeding on remand, and the parties need direction from the

1 administrative law judge ("ALJ") regarding the scope of the proceeding in order to complete
2 discovery and finish preparing for hearing. At the meeting, the parties agreed to file simultaneous
3 motions to compel stating their respective positions regarding the objections of the other party.
4 On September 21, 2011, AWC filed its Motion to Compel Responses to Data Requests and
5 Request for Procedural Conference. Cornman Tweedy now files its Motion to Compel Responses
6 to Data Requests and Request for Procedural Conference. Both parties request that the ALJ set a
7 procedural conference to address the motions to compel and the questions regarding the proper
8 scope of this proceeding.

9 **I. SCOPE OF PROCEEDING ON REMAND.**

10 In a Procedural Order dated February 10, 2011, the ALJ described the scope of the
11 proceeding as follows:

12 At the February 1, 2011 Open Meeting, the Commission voted to send the matter
13 back to the Hearing Division for further proceedings to determine "whether a
14 public service corporation, like Arizona Water, in this water challenged area and
15 under the circumstances presented in this case, is providing reasonable service if it
16 is not able or not willing to provide integrated water and wastewater services."

17 In construing the meaning of "the circumstances presented in this case," those words must
18 be read in the context of Decision 69722 (the "Remand Order"), the decision which remanded this
19 case for additional proceedings. In that decision, the Commission ruled:

20 After considering the evidence in this matter, we are concerned that there may not
21 be a current need or necessity for water service in the portions of the extension
22 area that are owned by Cornman. We also recognize that Cornman does not wish
23 to have its property included in Arizona Water's CC&N at this time. We believe
24 that these issues bear further examination and that they may have some relevance
25 to the best interests of the area ultimately to be served.

26 * * *

27 [R]egarding the property that is owned by Cornman, we would like an opportunity
28 to consider the overall best interests of the Cornman area and of the public. We
will therefore reopen the record in this matter pursuant to A.R.S. §40-252 and
remand this case to the Hearing Division for further proceedings regarding
whether Arizona Water should continue to hold a CC&N for the Cornman
extension area at this time.

* * *

1 The proceeding on remand should be broad in scope so that the Commission may
2 develop a record to consider the overall public interest underlying service to the
3 Cornman property that is included in the extension area granted by Decision No.
4 66893.¹

5 **II. ARGUMENT.**

6 **A. Cornman Tweedy Data Requests 5-1 through 5-6.** Cornman Tweedy Data
7 Requests 5-1 through 5-6 are as follows:

8 5-1. *Please provide a copy of any and all requests for water service that have
9 been received by Arizona Water Company for the Cornman Tweedy
10 property (legally described in Attachment 1 to these data requests).*

11 5-2. *Please provide a copy of any and all "will serve" letters that have been
12 provided by Arizona Water Company to any person or entity that has
13 requested water service for the Cornman Tweedy property (legally
14 described in Attachment 1 to these data requests).*

15 5-3. *Please provide a copy of any and all water main extension agreements
16 that have been executed between Arizona Water Company and any person
17 or entity for the Cornman Tweedy property (legally described in
18 Attachment 1 to these data requests).*

19 5-4. *Please provide a copy of any design plans, diagrams, drawings and
20 master water studies in Arizona Water Company's possession (whether
21 prepared by Arizona Water Company or some other person or entity)
22 which depict or describe water infrastructure (including but not limited to
23 wells, water storage tanks, booster stations, water transmission mains,
24 service lines, fire hydrants and water treatment facilities) located within
25 the Cornman Tweedy property (legally described in Attachment 1 to these
26 data requests).*

27 5-5. *Has Arizona Water Company (or any other person or entity under the
28 direction of Arizona Water Company) commenced construction of any
water infrastructure (including but not limited to wells, water storage
tanks, booster stations, water transmission mains, service lines, fire
hydrants and water treatment facilities) within the Cornman Tweedy
property (legally described in Attachment 1 to these data requests)?*

(a) *If the answer to this question is yes, please identify with specificity
the water infrastructure that is being constructed, the date that
construction commenced, and the entity doing the construction.*

5-6. *Please provide a copy of a map or design plan which shows the location
of all existing water lines within the area legally described in Exhibit A in*

¹ Decision 69722 at p. 4, lines 1-5 and lines 12-16, and p. 20, lines 4-6.

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
28

C. Cornman Tweedy Data Requests 5-16 through 5-18. Cornman Tweedy Data

Requests 5-16 through 5-18 are as follows:

5-16. *Please provide the total number of customers, broken down by customer class (i.e., residential, commercial, industrial, etc.), located within the area described in Exhibit A to Decision 66893 that receive water service from Arizona Water Company.*

5-17. *Attachment 3 to these data requests identifies planned developments by the names Hacienda Highlands, Hacienda Estates, Springwater Pointe, Post Ranch, Rose Law Group, Overfield Farms, Storey Farms and JBC Development. For each of these planned developments, please provide the number of new customers added by Arizona Water Company for each of the years 2004 through 2010 and for the year 2011 through June 30, 2011.*

5-18. *Does Arizona Water Company have any customer growth projections (whether prepared by Arizona Water Company or some other entity) for the next five years for the property identified in Exhibit A to Decision 66893? If yes, please provide a copy of each customer growth projection.*

Again, AWC refused to answer these data requests and raised the same general objection regarding relevance described above. However, information related to the status of development and growth (or the complete lack thereof) in the area immediately surrounding the Cornman Tweedy property is directly relevant to a determination of "the circumstances presented in this case," and specifically, is expected to support Cornman Tweedy's position that there is no need for water service within the Cornman Tweedy property. Further, the data requests are narrowly tailored to elicit evidence that is directly relevant to the issues in this proceeding, or that will lead to the discovery of evidence that is directly relevant to the issues in this proceeding.

C. CONCLUSION.

For the foregoing reasons, Cornman Tweedy requests that the Commission enter its order compelling AWC to respond to Cornman Tweedy Data Requests 5-1, 5-2, 5-3, 5-4, 5-5, 5-6, 5-15, 5-16, 5-17 and 5-18, as well as any follow-up data requests that may be appropriate. In addition, Cornman Tweedy joins in AWC's request as set forth in its September 21, 2011, filing that the ALJ set a procedural conference to discuss the scope of this proceeding.

RESPECTFULLY submitted this 23rd day of September, 2011.

BROWNSTEIN HYATT FARBER SCHRECK, LLP, A LAW CORPORATION
BROWNSTEIN HYATT FARBER SCHRECK, LLP
40 North Central Avenue, 14th Floor
Phoenix, AZ 85004
602.382.4040

1 BROWNSTEIN HYATT FARBER SCHRECK LLP

2 

3 Jeffrey W. Crockett, Esq.
4 One East Washington Street, Suite 2400
5 Phoenix, Arizona 85004
6 Attorneys for Cornman Tweedy 560, LLC

7 ORIGINAL and thirteen (13) copies filed
8 this 23rd day of September, 2011, with:

9 Docket Control
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 COPY of the foregoing hand-delivered
14 this 23rd day of September, 2011, to:

15 Dwight D. Nodes, Assistant Chief Administrative Law Judge
16 Hearing Division
17 ARIZONA CORPORATION COMMISSION
18 1200 West Washington Street
19 Phoenix, Arizona 85007

20 Janice Alward, Chief Counsel
21 Legal Division
22 ARIZONA CORPORATION COMMISSION
23 1200 West Washington Street
24 Phoenix, Arizona 85007

25 Steve Olea, Director
26 Utilities Division
27 ARIZONA CORPORATION COMMISSION
28 1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing sent via e-mail and first
class mail this 23rd day of September, 2011, to:

Robert W. Geake
Vice President and General Counsel
ARIZONA WATER COMPANY
3805 N. Black Canyon Highway
Phoenix, Arizona 85015-9006

Steven A. Hirsch, Esq.
BRYAN CAVE LLP
One Renaissance Square
Two North Central Ave., Suite 2200
Phoenix, Arizona 85004-4406


14776111588674.1