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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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2015 MAR -6 P 2: 08

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE PETITION OF
ARIZONA WATER COMPANY FOR AN
INCREASE OF AREA TO BE SERVED AT
CENTRAL HEIGHTS, ARIZONA.

DOCKET NO. W-01445A-14-0305

PROCEDURAL ORDER
(Sets a Procedural Schedule)

BY THE COMMISSION:

On September 20, 1961, the Arizona Corporation Commission ("Commission") issued Decision No. 33424, granting Arizona Water Company ("AWC" or "Company") a Certificate of Convenience and Necessity ("CC&N") to serve various areas in Gila County, Arizona.

On August 18, 2014, the City of Globe ("Globe" or "City") filed a Petition to Amend Decision No. 33424 pursuant to A.R.S. § 40-252, requesting that the Commission remove portions of AWC's CC&N that the City states it has provided water service to since the early 1900s.

At the Commission's Staff Meeting on October 16, 2014, the Commissioners voted to reopen Decision No. 33424 pursuant to A.R.S. § 40-252, and instructed the Commission's Hearing Division to conduct further proceedings on the matter. As a party to Decision No. 33424 and pursuant to A.A.C. R14-3-106(J), AWC is a party to this proceeding.

On October 30, 2014, by Procedural Order, a procedural conference was set for November 10, 2014 to discuss the procedural schedule to be followed in this matter.

On November 5, 2014, the parties filed a Joint Motion to Continue the Procedural Conference scheduled for November 10, 2014.

On November 6, 2014, by Procedural Order, the parties' Motion to Continue was granted and the procedural conference scheduled for November 10, 2014, was continued until January 6, 2015.

On January 2, 2015, AWC filed a Request to Appear Telephonically for the procedural conference.

Arizona Corporation Commission
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1 On January 6, 2015, the procedural conference was convened as scheduled. Globe and the
2 Commission's Utilities Division ("Staff") appeared through counsel. AWC appeared telephonically
3 through counsel. During the procedural conference, proposed procedural deadlines, the possibility of
4 settlement, the need for a proposed form of notice, and the need for maps of the disputed areas were
5 discussed.

6 On January 9, 2015, by Procedural Order, a status conference was scheduled to commence on
7 March 9, 2015, and other deadlines were established.

8 On January 16, 2015, AWC filed a Motion to Dismiss Petition to Amend Decision No. 33424
9 Pursuant to A.R.S. § 40-252, asserting, among other things, that the City failed to plead the requisite
10 elements of law for the relief sought, citing to *James P. Paul Water Co. v. Arizona Corp. Comm'n*,
11 137 Ariz. 426, 671 P.2d 404 (1983). AWC requested that the Commission dismiss the City's petition
12 with prejudice for failure to state a claim under Arizona Rules of Civil Procedure Rule 12(b)(6) and
13 the Commission's Rules of Practice.

14 On January 16, 2015, Globe filed a Joint Request to Change Procedural Conference Date due
15 to scheduling conflicts among the parties.

16 On January 26, 2015, by Procedural Order, the status conference was rescheduled to March 4,
17 2015.

18 On February 9, 2015, the City filed its Response to AWC's Motion to Dismiss.

19 On February 23, 2015, Staff filed its Staff Report in which it discussed the evolution of
20 AWC's CC&N and included maps of the disputed areas.

21 On February 23, 2015, AWC filed its Reply in Support of Motion to Dismiss Petition to
22 Amend Decision No. 33424 Pursuant to A.R.S. § 40-252.

23 On February 25, 2015, Globe filed a Notice of Filing a Joint Proposed Form of Notice.

24 On March 4, 2015, a status conference was held as scheduled. Globe, AWC, and Staff
25 appeared through counsel. Oral argument was heard on AWC's Motion to Dismiss. At the
26 conclusion of oral arguments, the parties were notified that, due to disputed material facts, a ruling on
27 the Motion to Dismiss would be reserved until an evidentiary hearing was held and all the evidence
28 heard. During the course of oral arguments, counsel for AWC introduced case law that was not in

1 AWC's Motion to Dismiss. As a result, Staff and the City were given additional time, until March
2 27, 2015, to file a response to AWC's Motion to Dismiss. Discussions were also held among the
3 parties regarding a procedural schedule for this proceeding and an agreement was reached.
4 Accordingly, the following procedural schedule shall govern the rehearing proceeding.

5 IT IS THEREFORE ORDERED that a hearing shall be held on **October 26, 2015, at 10:00**
6 **a.m.**, or as soon thereafter as is practical, at the Commission's offices, Hearing Room No. 1, 1200
7 West Washington Street, Phoenix, Arizona 85007, and shall continue at **9:00 a.m. on October 27,**
8 **2015 through October 30, 2015, as necessary.**

9 IT IS FURTHER ORDERED that a **pre-hearing conference shall be held on October 19,**
10 **2015, at 10:00 a.m.**, or as soon thereafter as is practical, at the Commission's offices, Hearing Room
11 No. 1, 1200 West Washington Street, Phoenix, Arizona 85007, for the purpose of scheduling
12 witnesses and the conduct of the hearing.

13 IT IS FURTHER ORDERED that **Staff and Globe shall each file** a response to AWC's
14 Motion to Dismiss by **March 27, 2015.**

15 IT IS FURTHER ORDERED that **AWC may file** a reply in support of its Motion to Dismiss
16 by **April 10, 2015.**

17 IT IS FURTHER ORDERED that **direct testimony and associated exhibits to be presented**
18 **at hearing on behalf of the City of Globe** shall be reduced to writing and filed on or before **June**
19 **26, 2015.**

20 IT IS FURTHER ORDERED that **direct testimony and associated exhibits to be presented**
21 **at hearing on behalf of intervenors** shall be reduced to writing and filed on or before **June 26,**
22 **2015.**

23 IT IS FURTHER ORDERED that the **rebuttal testimony and associated exhibits** to be
24 presented at hearing **on behalf of Arizona Water Company** shall be reduced to writing and filed on
25 or before **July 27, 2015.**

26 IT IS FURTHER ORDERED that the **Staff Report/direct testimony and associated**
27 **exhibits** to be presented at hearing on behalf of **Staff** shall be reduced to writing and filed on or
28 before **September 4, 2015.**

1 IT IS FURTHER ORDERED that the **surrebuttal testimony and associated exhibits** to be
2 presented at hearing by **Globe or intervenors** shall be reduced to writing and filed on or before
3 **September 25, 2015**.

4 IT IS FURTHER ORDERED that **any substantive corrections, revisions, or supplements**
5 **to the pre-filed testimony** shall be reduced to writing and filed no later than **September 25, 2015**.

6 IT IS FURTHER ORDERED that **all testimony** filed shall include a **table of contents** listing
7 the issues discussed.

8 IT IS FURTHER ORDERED that **all filings shall be made by 4:00 p.m.** on the date the
9 filing is due, unless otherwise indicated.

10 IT IS FURTHER ORDERED that **the parties shall prepare, jointly or individually, and**
11 **bring to the pre-hearing conference, copies of an issues matrix/matrices** setting forth all disputed
12 issues in the case, the position of each party on each disputed issue, whether the disputed issue
13 remains in dispute or has been resolved, and the manner in which it was resolved.

14 IT IS FURTHER ORDERED that **any objections to prefiled testimony or exhibits shall be**
15 **made before or at the October 19, 2015**, pre-hearing conference.

16 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
17 105, except that all motions to intervene must be filed on or before **June 26, 2015**.

18 IT IS FURTHER ORDERED that any **objections to intervention** shall be filed on or before
19 **July 6, 2015**.

20 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and
21 regulations of the Commission, except that until **October 1, 2015**, any objection to discovery
22 requests shall be made within 7 calendar days of receipt¹ and responses to discovery requests shall be
23 made within 10 calendar days of receipt. Thereafter, objections to discovery requests shall be made
24 within 5 calendar days and responses shall be made within 7 calendar days. The response time may
25 be extended by mutual agreement of the parties involved if the request requires an extensive
26 compilation effort.

27 _____
28 ¹ The date of receipt of discovery requests is not counted as a calendar day, and requests received after 4:00 p.m. Arizona time will be considered as received the next business day.

1 IT IS FURTHER ORDERED that for discovery requests, objections, and answers, if a
2 receiving party requests service to be made electronically, and the sending party has the technical
3 capability to provide service electronically, service to that party shall be made electronically.

4 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
5 discovery, any party seeking resolution of a discovery dispute may telephonically contact the
6 Commission's Hearing Division to request a date for a procedural hearing to resolve the discovery
7 dispute; that upon such a request, a procedural hearing will be convened as soon as practicable; and
8 that the party making such a request shall forthwith contact all other parties to advise them of the
9 hearing date and shall at the hearing provide a statement confirming that the other parties were
10 contacted.²

11 IT IS FURTHER ORDERED that any motion filed in this matter, other than a motion to
12 intervene, that is not ruled upon by the Commission within 20 calendar days of the filing date of the
13 motion shall be deemed denied.

14 IT IS FURTHER ORDERED that any response to a motion, other than a motion to intervene,
15 shall be filed within five calendar days of the filing date of the motion.

16 IT IS FURTHER ORDERED that any reply related to a motion shall be filed within five
17 calendar days of the filing date of the response to the motion.

18 IT IS FURTHER ORDERED that **Globe shall, by May 1, 2015, send** a copy of the following
19 notice to each current customer and landowner in the affected area by first class U.S. mail and have
20 the following notice **published** in a newspaper of general circulation in the disputed territories.

21 IT IS FURTHER ORDERED that **Globe shall provide public notice** of the hearing in this
22 matter, in the following form and style, with the heading in no less than 12-point bold type and the
23 body in no less than 10-point regular type:

24 ...
25 ...
26 ...

27 _____
28 ² The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before seeking Commission resolution of the controversy.

**PUBLIC NOTICE OF THE HEARING ON THE
PETITION OF THE CITY OF GLOBE TO AMEND
DECISION NO. 33424 PURSUANT TO A.R.S. § 40-252
(DOCKET NO. W-01445A-14-0305)**

On August 18, 2014, the City of Globe (“Globe”) filed with the Arizona Corporation Commission (“Commission”) a petition to amend Commission Decision No. 33424 pursuant to A.R.S. § 40-252. In Decision No. 33424 (September 20, 1961), the Commission granted Arizona Water Company (“AWC”) an extension of its Certificate of Convenience and Necessity (“CC&N”) to serve various areas in Gila County, Arizona. Globe’s petition requests that the Commission reopen the Decision and delete portions of AWC’s CC&N extension area that Globe states it has served since the 1900s. On October 16, 2014, the Commissioners voted to reopen Decision No. 33424 pursuant to A.R.S. § 40-252. The Commission’s Utilities Division (“Staff”) is in the process of reviewing Globe’s petition and has not made recommendations on the petition. The Commission is not bound by the proposals made by Globe, AWC, Staff, or any intervenors. The Commission will issue a Decision in this matter following consideration of testimony and evidence to be presented at an evidentiary hearing. A copy of the application is available at Globe City Hall, 150 North Pine Street, Globe, Arizona 85501 and at the Commission’s office at 1200 West Washington Street, Phoenix, Arizona for public inspection during regular business hours, and on the internet via the Commission website (www.azcc.gov) using the e-Docket function.

The Commission will hold a hearing on this matter beginning **October 26, 2015, at 10:00 a.m.**, at the Commission’s offices at 1200 West Washington Street, Hearing Room No. 1, Phoenix, Arizona 85007. Public comments will be taken on the first day of hearing. Written public comments may be submitted by mailing a letter referencing Docket No. W-01445A-14-0305 to Arizona Corporation Commission, Consumer Services Section, 1200 West Washington, Phoenix, AZ 85007, or by submitting comments on the Commission’s website (www.azcc.gov) using the “Submit a Public Comment” function. If you require assistance, you may contact the Consumer Services Section at 602-542-4251 or 1-800-222-7000.

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Any person or entity entitled by law to intervene and having a direct and substantial interest in the matter will be permitted to intervene. Anyone who wishes to intervene must file an original and 13 copies of a written motion to intervene with the Commission no later than **June 26, 2015**, and send a copy of the motion to all parties of record. Your motion to intervene must contain the following:

1. Your name, address, and telephone number and the name, address, and telephone number of any person upon whom service of documents is to be made, if different from that of the intervenor;
2. A short statement of your interest in the proceeding (e.g., a customer of Globe);
3. A statement certifying that a copy of the motion to intervene has been mailed to Globe or its counsel and to all parties of record in the case; and

- 1 4. If the proposed intervenor is not represented by an attorney who is an active
2 member of the Arizona State Bar, and is not an individual representing himself
or herself, information and any appropriate documentation demonstrating
compliance with Arizona Supreme Court Rules 31, 38, and 42, as applicable.

3 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
4 that all motions to intervene must be filed on or before June 26, 2015. If
5 representation by counsel is required by Arizona Supreme Court Rule 31, intervention
6 will be conditioned upon the intervenors obtaining counsel to represent the intervenor.
7 For information about requesting intervention, visit the Commission's website at
8 <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>. The granting of
intervention, among other things, entitles a party to present sworn evidence at hearing
and to cross-examine other witnesses. However, failure to intervene will not preclude
any interested person or entity from appearing at the hearing and providing public
comment on the application or from filing written comments in the record of the case.

9 The Commission does not discriminate on the basis of disability in admission to its
10 public meetings. Persons with a disability may request a reasonable accommodation
11 such as a sign language interpreter, as well as request this document in an alternative
12 format, by contacting the ADA Coordinator, Shaylin Bernal, E-mail
13 SAbernal@azcc.gov, voice phone number 602-542-3931. Requests should be made as
early as possible to allow time to arrange the accommodation.

14 IT IS FURTHER ORDERED that **Globe shall, by May 22, 2015, file certification of
15 mailing and publication** of the above notice.

16 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing and
17 publication, notwithstanding the failure of an individual to read or receive the notice.

18 IT IS FURTHER ORDERED that each party to this matter may opt to receive service of all
19 Procedural and Recommended Orders issued by the Commission's Hearing Division in this matter
20 via e-mail rather than U.S. Mail, as permitted under A.A.C. R14-3-107(B). To exercise this option, a
21 party shall send to hearingsdivision@azcc.gov, from the e-mail address at which the party desires to
22 receive service, an e-mail request including the name of the party on whom service is to be made and
23 the docket number for this matter. After a party receives an e-mail confirmation of its request from
24 hearingsdivision@azcc.gov, the party will receive all future Procedural and Recommended Orders
25 issued by the Hearing Division in this matter via e-mails to the address provided by the party, unless
26 and until the party withdraws its request. Service of a document via e-mail shall be considered
27 complete upon the sending of an e-mail containing the document to the e-mail address provided by a
28 party, regardless of whether the party receives or reads the e-mail containing the document.

1 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
2 Communications) applies to this proceeding, as the matter is now set for public hearing, and shall
3 remain in effect until the Commission's Decision in this matter is final and non-appealable.

4 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
5 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

6 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
7 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
8 Supreme Court Rule 42). Representation before the Commission includes the obligation to appear at
9 all hearings, procedural conferences, Open Meetings for which the matter is scheduled for discussion,
10 unless counsel has previously been granted permission to withdraw by the Administrative Law Judge
11 or Commission.

12 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
13 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
14 hearing.

15 DATED this 6th day of March, 2015.

16
17
18 
19 _____
SASHA PATERNOSTER
ADMINISTRATIVE LAW JUDGE

20 Copies of the foregoing mailed/delivered
21 this 6th day of March, 2015 to:

22 Garry D. Hays
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