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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

AZ CORP COMMISSION

DOCKETED

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SUSAN BITTER SMITH - Chairman

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BOB STUMP

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DOUG LITTLE

TOM FORESE

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IN THE MATTER OF THE APPLICATION OF
CIRCLE CITY WATER COMPANY, L.L.C. FOR
APPROVAL TO DELETE PORTIONS OF ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY AND TO DELETE A
REQUIREMENT SET FORTH IN DECISION NO.
68246.

DOCKET NO. W-03510A-13-0397

PROCEDURAL ORDER
(Sets Procedural Conference)

BY THE COMMISSION:

On November 19, 2013, Circle City Water Company, L.L.C. ("Circle City" or the "Company") filed with the Arizona Corporation Commission ("Commission") an application requesting approval to delete portions of its Certificate of Convenience and Necessity ("CC&N") and to delete the requirement for Circle City in its next rate case filing to demonstrate that its existing customers have been positively impacted by the addition of new water facilities necessary to serve the extension area, pursuant to Decision No. 68246 (October 25, 2005). Circle City's application requests deletion of portions of its CC&N encompassing two developments known as Lake Pleasant 5000 ("LP5K") and Warrick 160. Circle City's application states that the developments are not viable and that service in the CC&N area will not be necessary in the foreseeable future.

On December 11, 2013, LP5K filed an Application for Leave to Intervene, stating that its development partners own the property Circle City wishes to delete and that LP5K had entered into a Water Facilities Agreement ("WFA") with Circle City under which LP5K has paid \$67,782.61 to Circle City.

On December 31, 2013, by Procedural Order, intervention was granted to LP5K.

On January 9, 2014, Rex G. Maughan and Ruth G. Maughan, Trustees of the Maughan Revocable Trust of 2007 ("MRT"), filed an Application for Leave to Intervene, stating that MRT is an owner of the development master plan known as LP5K and that MRT's development partners

1 entered into a WFA with Circle City under which MRT has paid \$67,782.61 to Circle City.

2 On March 12, 2014, by Procedural Order, intervention was granted to MRT.

3 On September 29, 2014, LP5K filed a Notice of Filing a letter from the principals of LP5K to
4 Circle City.

5 On October 17, 2014, the Commission's Utilities Division ("Staff") filed a Staff Report,
6 recommending denial of the Company's application to delete portions of its CC&N, but
7 recommending approval of deletion of the requirement regarding the new water facilities contained in
8 Decision No. 68246.

9 On October 21, 2014, Staff filed an amended Staff Report, correcting typographical errors
10 contained within the report. Staff's recommendations remained unchanged.

11 On October 23, 2014, Circle City filed a Motion and Request for Procedural Conference,
12 requesting that the matter be set for hearing and that other procedural deadlines be established.

13 On October 28, 2014, by Procedural Order, a procedural conference was scheduled for
14 November 10, 2014, to discuss a procedural schedule for this matter.

15 On November 10, 2014, a Procedural Conference was held. The Company, LP5K, MRT, and
16 Staff ("the parties") appeared through counsel. Discussions were held regarding the appropriate
17 procedural schedule for this matter. The parties and Staff agreed to engage in settlement discussions
18 and to file an update with the Commission as to the outcome of those discussions within 30 days of
19 the procedural conference. The parties also agreed that this matter should be set for hearing.

20 On December 10, 2014, a Procedural Order was issued scheduling an evidentiary hearing to
21 commence on March 2, 2015; requiring the filing of direct testimony and responsive testimony by
22 January 16, 2015, and January 30, 2015, respectively; and establishing other procedural deadlines.

23 On December 19, 2014, Circle City filed a Resolution Approving Representation.

24 On December 29, 2014, Circle City filed a Status Update of Settlement Negotiations. Circle
25 City's Status Update stated that the parties had engaged in settlement negotiations; that MRT had issued
26 and signed a "good faith" "best and final" settlement proposal letter; that the settlement proposal
27 letter proffered settlement inclusive of LP5K, but was only signed by counsel for MRT; and that
28 further efforts to clarify MRT's settlement proposal remained incomplete and/or unclear. Circle

1 City's filing also stated that settlement of the issues was not precluded in the future.

2 On the same date, LP5K filed a Status Update. LP5K's Status Update indicated that
3 settlement was possible and requested that the procedural schedule be suspended to allow for further
4 settlement discussions.

5 On January 6, 2015, Staff filed a Notice of Filing Direct Testimony.

6 On January 9, 2015, Staff filed a Response to Status Update, stating that based on the
7 representations made by the other parties regarding on-going settlement negotiations, Staff had no
8 objection to suspending the procedural schedule.

9 On January 13, 2015, Circle City docketed a response to LP5K's request to suspend the
10 procedural schedule. Circle City's stated that the Company agrees with the LP5K's request to
11 suspend the procedural schedule, but requested that the procedural schedule only be suspended until
12 January 30, 2015, and not indefinitely.

13 On January 13, 2015, by Procedural Order, the evidentiary portion of the hearing was vacated,
14 the March 2, 2015, hearing date was set for the purpose of taking only public comments, and the
15 timeclock remained suspended.

16 On January 14, 2015, Circle City filed a Notice of Filing Brooke Utilities, Inc.'s Response to
17 Intervener Status Update.¹

18 On February 23, 2015, Circle City filed a Request to Modify Procedural Order to Reschedule
19 Public Comment Session.

20 On February 26, 2015, Staff filed its Response to Request to Modify Procedural Order to
21 Reschedule Public Comment Session.

22 On March 2, 2015, a public comment hearing was held as scheduled. LP5K, MRT, and Staff
23 appeared through counsel. Circle City failed to appear. No members of the public were present to
24 give comments on the application. It was determined during the hearing that LP5K would update the
25 Commission on the status of the settlement negotiations by March 27, 2015.

26 On March 27, 2015, LP5K filed a Status Update, stating that on February 17, 2015, LP5K and
27

28 ¹ Robert Hardcastle is the owner of both Brooke Utilities, Inc. and Circle City. Although the caption included Brooke Utilities, the issues discussed in the pleading related to the issues raised in Circle City's application.

1 MRT submitted a settlement offer to Circle City, that the parties discussed the proposed settlement
2 offer on March 24, 2015, and that the parties agreed to submit another update to the Commission by
3 April 6, 2015.

4 On April 6, 2015, LP5K filed a Status Update, stating that LP5K had not had any further
5 discussions with Circle City and that LP5K anticipated filing a motion to dismiss in this docket.

6 On April 17, 2015, Circle City filed a Status Update and Request to Set Procedural
7 Conference. Circle City's filing stated that negotiations ceased on April 6, 2015; Circle City believes
8 it is reasonable to conclude that LP5K has no interest in further negotiations; and that Circle City had
9 rejected LP5K's February 11, 2015 settlement offer. Therefore, Circle City concludes that settlement
10 negotiations have failed and requests that a procedural conference be held to discuss a hearing date in
11 this matter.

12 No objections have been filed.

13 Accordingly, a Procedural Conference should be scheduled to allow the parties to update the
14 Commission on the status of the settlement negotiations and to discuss an appropriate procedural
15 schedule for this matter.

16 **IT IS THEREFORE ORDERED that a procedural conference shall be held on May 8,**
17 **2015, at 10:00 a.m.,** or as soon thereafter as is practical at the Commission's offices, 1200 West
18 Washington Street, Hearing Room No. 1, Phoenix, AZ 85007.

19 **IT IS FURTHER ORDERED that the timeclock in this matter remains suspended.**

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

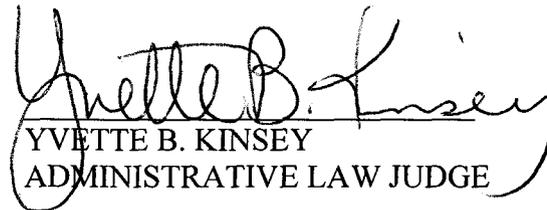
1 complete upon the sending of an e-mail containing the document to the e-mail address provided by a
2 party, regardless of whether the party receives or reads the e-mail containing the document.

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

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, and Open Meetings for which the matter is scheduled for
10 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
11 Law Judge or Commission.

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

14 DATED this 28th day of April, 2015.


YVETTE B. KINSEY
ADMINISTRATIVE LAW JUDGE

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18 Copies of the foregoing mailed/delivered
this 28 day of April, 2015 to:

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By: 
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