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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH - Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

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Arizona Corporation Commission

DOCKETED

OCT 14 2015

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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
(Suspends 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 Arizona Revised Statutes ("A.R.S.") § 40-252, requesting that the Commission "correct Decision No. 33424" and 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 Arizona Administrative Code ("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.

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

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

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

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

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

18 On January 26, 2015, by Procedural Order, the status conference was rescheduled to March 4,
19 2015.

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

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

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

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

26 On March 4, 2015, a status conference was held as scheduled. Globe, AWC, and Staff
27 appeared through counsel. Oral argument was heard on AWC's Motion to Dismiss. At the
28 conclusion of oral arguments, the parties were notified that, due to disputed material facts, a ruling on

1 the Motion to Dismiss would be reserved until an evidentiary hearing was held and all the evidence
2 heard. During the course of oral arguments, counsel for AWC introduced case law that had not been
3 included in AWC's Motion to Dismiss. As a result, Staff and the City were given additional time,
4 until March 27, 2015, to file responses to AWC's Motion to Dismiss. Discussions were also held
5 among the parties regarding a procedural schedule for this proceeding and an agreement for a
6 proposed schedule was reached.

7 On March 6, 2015, a Procedural Order was issued scheduling an evidentiary hearing to
8 commence on October 26, 2015, and establishing other procedural deadlines.

9 On March 27, 2015, Staff filed its Response to Motion to Dismiss, arguing that dismissal at
10 this early stage would prevent the development of necessary facts to make a proper determination.
11 The City also filed a supplemental response to the Motion to Dismiss to address the new case law that
12 had been introduced at oral argument.

13 On April 10, 2015, AWC filed its Supplemental Reply Memorandum, in which it continued to
14 assert that dismissal of the City's Petition was appropriate at this time.

15 On April 23, 2015, consistent with the March 6, 2015 Procedural Order, counsel for AWC
16 contacted the Hearing Division and requested a telephonic conference to address ongoing discovery
17 issues. Thereafter, a telephonic status conference was scheduled for April 28, 2015.

18 On April 27, 2015, AWC filed a Motion For An Order Regarding City's Election of A.R.S. §
19 40-252 Theory, requesting an Order be issued finding the City's Petition and requested relief is based
20 on a theory that the Commission made a mistake at the time of granting the CC&N extension because
21 the City was already providing service as opposed to a deletion case which would require satisfaction
22 of *James P. Paul* factors, i.e., a demand for service was made and the utility was unable or unwilling
23 to supply such service. Attached to the Motion were excerpts from the March 4, 2015 oral argument
24 transcript, as well as the City's responses to AWC's second set of data requests.

25 On April 27, 2015, Globe docketed AWC's responses to Globe's first set of data requests for
26 discussion at the telephonic status conference.

27 On April 28, 2015, a telephonic status conference was held as scheduled, with the parties
28 appearing through counsel. AWC asserted that the City had not sufficiently responded to AWC's

1 data requests when the City delivered 700-plus pages that were neither Bates stamped nor identified
2 as responsive to any particular data request. AWC requested an Order requiring the City to identify
3 the document(s) pertaining to each of AWC's specific data request(s).

4 On May 7, 2015, AWC docketed a Status Update, attesting that the parties were working
5 together to resolve their discovery disputes.

6 On June 5, 2015, a telephonic status conference was held in which the parties each appeared
7 through counsel and the status of the certification of mailing and publication was discussed.

8 On June 9, 2015, Globe filed its Notice of Filing Affidavit of Mailing Public Notice and
9 Affidavit of Publication.

10 On June 23, 2015, Globe and AWC filed a Request for Extension of Time for Filing
11 Testimony, requesting that all testimony due dates be extended two weeks to allow for ongoing
12 settlement negotiations and stating that Staff did not object to this request.

13 On June 24, 2015, by Procedural Order, Globe and AWC's request for extension was granted.

14 On July 10, 2015, Globe filed its direct testimony of Robert Pate and Ernest Johnson.

15 On July 17, 2015, AWC filed Notices of Deposition for Brent Billingsley, Christopher J.
16 Collopy, Robert Pate, and a representative for Globe.

17 On July 31, 2015, AWC and Globe filed a Stipulated Request for Extension of Time for
18 Filing Testimony, requesting that each of the due dates for the remaining testimony be extended by
19 four days. The filing stated that Staff does not object to the extension.

20 On August 4, 2015, by Procedural Order, the Request for Extension of Time was granted.

21 On August 14, 2015, AWC filed its direct testimony of Fredrick K. Schneider.

22 Also on August 14, 2015, an Agreed Request for Extension of Time for Filing Testimony was
23 filed requesting an additional business day to file William Garfield's testimony and stating the parties
24 did not object to the extension of time.

25 On August 17, 2015, AWC filed its direct testimony of William M. Garfield.

26 On September 24, 2015, Staff filed its Staff Report in the matter.

27 Also on September 24, 2015, Globe filed Notices of Deposition for Fredrick K. Schneider,
28 William M. Garfield, and Fred Rios.

1 On October 9, 2015, Staff filed a Request for Suspension of Procedural Schedule indicating
2 that AWC and Globe stated they are in the midst of settlement discussions. In order to facilitate the
3 settlement process and to avoid unnecessary expense, Staff requested that Globe's filing of
4 Surrebuttal Testimony be suspended, the October 19, 2015 pre-hearing conference be vacated, and
5 the October 26, 2015 hearing be convened for public comment only and to allow the remaining time
6 to be used for the parties to continue settlement discussions. Staff further requests that the parties
7 come to the October 26, 2015 settlement discussions with representatives who have the authority to
8 negotiate a settlement, in addition to providing a proposed procedural schedule to be followed as a
9 result of the settlement discussions.

10 On October 13, 2015, AWC filed its Response to Staff's Motion for Suspension of Procedural
11 Schedule stating AWC agreed with Staff's request to suspend the procedural schedule.

12 IT IS THEREFORE ORDERED that **Staff's request to suspend the procedural schedule in**
13 **this matter is hereby granted.**

14 IT IS FURTHER ORDERED that the **remaining procedural deadlines in this matter are**
15 **hereby vacated.**

16 IT IS FURTHER ORDERED that the **evidentiary hearing** scheduled to commence on
17 **October 26, 2015, at 10:00 a.m.** in this matter shall be convened for purposes of taking public
18 comment only.

19 IT IS FURTHER ORDERED that the parties shall appear personally for the evidentiary
20 hearing with representatives with the authority to negotiate a settlement to further facilitate settlement
21 discussions.

22 IT IS FURTHER ORDERED that the parties come to the evidentiary hearing with a proposed
23 procedural schedule to be followed for disposition of this matter.

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

27 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
28 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona

1 Supreme Court Rule 42). Representation before the Commission includes the obligation to appear at
2 all hearings, procedural conferences, Open Meetings for which the matter is scheduled for discussion,
3 unless counsel has previously been granted permission to withdraw by the Administrative Law Judge
4 or Commission.

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

8 DATED this 14th day of October, 2015.

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11 _____
SASHA PATERNOSTER
ADMINISTRATIVE LAW JUDGE

12 Copies of the foregoing mailed/delivered
13 this 14th day of October, 2015 to:

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