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BEFORE THE ARIZONA CORPORATION

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COMMISSIONERS

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TOM FORESE

2015 AUG 10 A 10:42

AZ CORP COMMISSION
DOCKET CONTROL

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 THE REQUIREMENT TO FILE A
RATE CASE PURSUANT TO DECISION
NO. 68246.

DOCKET NO. W-03510A-13-0397

MOTION TO DISMISS

Arizona Corporation Commission

DOCKETED

AUG 10 2015

DOCKETED BY

In accordance with A.A.C. R14-3-109 (C), Lake Pleasant 5000, L.L.C. ("LP5K") hereby moves to dismiss the Application of Circle City Water Company for Approval to Delete Portions of its Certificate of Convenience and Necessity ("CC&N") filed November 19, 2013 by Circle City Water Company ("CCWC").

I. INTRODUCTION

On March 3, 2005, CCWC filed for an extension of its CC&N that would expand its territory by approximately 5,000 acres to include the Lake Pleasant 5000 Development (the "Development") owned by LP5K and controlled by Harvard Investments ("Harvard" or the "Developer") as well as the property known as Warrick 160¹. This extension was based upon a request for service from the Developer to CCWC. The Commission in Decision # 68246 on October 25, 2005 granted the request and added a condition that CCWC must show how the Development benefited current ratepayers in CCWC's next rate case. During this time, CCWC

¹ Warrick 160 is owned by the Maughan Revocable Trust of 2007 who is an intervenor in this case.

1 and Harvard entered into a Water Facilities Agreement (“WFA”), which governed how water
2 service would be provided to the Development. Additionally, CCWC and the Developer, among
3 others, entered into an agreement with the Central Arizona Groundwater Replenishment District
4 (“CAGRDR”) for Phase I of the Development to receive an assured water supply.

5 During the subsequent years, there was intermittent contact between the Developer and
6 CCWC. Due to well documented economic issues, the development community was put on hold
7 for several years across the country. During this time, the Developer still continued with entitling
8 the property and ensuring already approved entitlements were kept current. In 2013, the
9 Developer had some discussions with CCWC as to whether the project would be developed.
10 After further review, it was determined that the project was indeed viable. In accordance with the
11 WFA, on July 18, 2013 LP5K paid CCWC \$67,782.61 for expenses incurred by CCWC in the
12 creation of the extension area. CCWC filed the instant case on November 19, 2013. The
13 Developer reiterated its request for service on December 11, 2013.²

14 Since the filing of the application, the parties have met numerous times and have
15 exchanged various settlement proposals. Unfortunately, the attempts at settlement have not been
16 successful. Also during this time, Staff has filed direct testimony, in the form of a Staff Report,
17 recommending denial of the application by CCWC.
18

19 **II. NEED FOR SERVICE**

20 As seen by the original request for service as well as the renewed request for service in 2013,
21 the Developer needs water service to be provided by CCWC. Since the time of the original
22 decision, the Developer has relied upon the CC&N extension in filings with various government
23 entities including Maricopa County. Deletion of the Development from the CC&N will destroy
24 the economic viability of the Development and cause irreparable harm to LP5K and Harvard.
25
26

27 ² The request for service is attached as Exhibit 1.
28

1 It is important to remember that this Development is an extremely large master planned
2 community. At approximately 5000 acres, it is one of the largest in the State. These types of
3 developments take time. A smaller master planned community in the Southeast Valley took over
4 30 years to reach build out. A well laid out plan for development, which includes water service,
5 is necessary for sustainable development and requires certainty in the entitlements of the project.
6 LP5K, and the County, view water service as a necessary entitlement for development. LP5K
7 and Harvard have a vested right to receive service from CCWC. Allowing CCWC to remove the
8 Development after the Developer has relied upon the CC&N causes irreparable harm to the
9 property owner.
10

11 In its Direct Testimony, Staff discusses the need for water service.³ After reviewing all of the
12 information and sending out Data Requests, the determination was made by Staff that water
13 service was needed and recommended that the application be denied.⁴ Additionally, as noted
14 above and in the Staff Report, CCWC received money from LP5K for expenses CCWC incurred
15 for expanding its CC&N. As noted by Staff, "Circle City in cashing the Developer's check took
16 action inconsistent with its current application to delete the Project service area from its CC&N."⁵
17 Allowing CCWC's application to move forward after CCWC received money from LP5K only
18 rewards the utility while harming the Developer.
19

20 III. PUBLIC INTEREST

21 There are several issues of public interest at issue in this case. As discussed above, certainty
22 in Commission orders is paramount to the public interest. Allowing a utility to unilaterally and
23 without any basis in fact to move forward to delete a portion of its CC&N is not in the public
24 interest. If this application were to proceed to a hearing, LP5K and others would be required to
25

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³ Staff Direct page 5.

27 ⁴ Id. 5-6.

28 ⁵ Id. at 5.

1 spend time and money to defend its need for water service when Staff has already determined the
2 need exists. Additionally, it is not in the public interest for a utility to enrich itself by accepting
3 money for expenses incurred in expanding its CC&N and then less than five months later, file an
4 application to delete that same area.

5 As noted in the Staff Report, a deletion of this CC&N “could result in the creation of at least
6 one other small, possibly non-financially viable, water company [which] is not consistent with the
7 public interest.”⁶ Staff is correct in their assessment. A need for water service exists and if
8 CCWC’s application were granted, LP5K would be required to find an entity who would fill that
9 need. There are several factors as it relates to public interest that necessitates a granting of the
10 Motion to Dismiss.

12 IV. CONDITIONS ON CCWC FOR THEIR NEXT RATE CASE

13 As mentioned above, CCWC, as a condition in Decision # 68246, is required to show how the
14 existing ratepayers benefited from the installation of new water facilities that were necessary for
15 the extension area in its next rate case. Since there has been no installation of new water
16 facilities, CCWC has asked that the requirement be deleted. Staff, in its testimony, agreed with
17 CCWC regarding the removal of this requirement. LP5K agrees with Staff and CCWC about the
18 removal of the requirement.

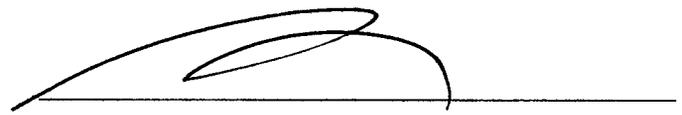
20 V. CONCLUSION

21 Based upon the findings of Staff contained in their Direct Testimony and the reasons
22 discussed above, LP5K respectfully request the Commission dismiss the application as it relates
23 to the deletion of the CC&N and eliminate the requirement that CCWC show a positive impact on
24 existing customers from the installation of new water facilities.

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28 ⁶ Id. at 6.

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RESPECTFULLY SUBMITTED this 10th day of August 2015



Garry D. Hays
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Phoenix, Arizona 85016
Counsel for Lake Pleasant 5000, LLC.

Original and thirteen (13)
Copies filed on August 10, 2015 with:

Docket Control
Arizona Corporation Commission
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Phoenix, AZ 85007

COPIES of the foregoing mailed/emailed
Delivered on August 10, 2015 to:

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18 And Rex G. Maughan and Ruth G. Maughan

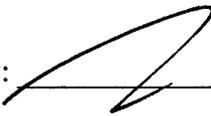
19 By: 
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EXHIBIT 1

Lake Pleasant 500, L.L.C.
17700 N. Pacesetter Way, Suite 100
Scottsdale, AZ 85255
480.348.1118

December 11, 2013

VIA EMAIL TO RTH@BROOKEUTILITIES.COM AND REGULAR MAIL

Mr. Robert T. Hardcastle
Brooke Utilities, Inc.
P.O. Box 82218
Bakersfield, California 93380-2218

Re: Circle City Water Co. CC&N

Dear Bob:

I am writing in response to the application Circle City Water Company ("CCWC") filed at the Arizona Corporation Commission ("Commission") that requested a deletion of the Certificate of Convenience and Necessity ("CC&N") covering the Warrick 160 and Lake Pleasant 5000 LLC ("LP5K") property. I was extremely disappointed by your filing. As you are aware, LP5K intends to move forward with the development and is adamantly opposed to the deletion of the CC&N.

This letter will formally serve as a reiteration of the Request for Service letter received by CCWC on September 30, 2004 from LP5K. I advised you, in an email dated July 10, 2013 that LP5K intended to move forward and did not want the CC&N deleted. As you are aware, LP5K has a Water Facilities Agreement ("WFA") with CCWC and has met its contractual obligations under the WFA. In fact, in accordance with Section II, paragraph 5 of the WFA, LP5K paid CCWC \$67,782.61 on July 18, 2013. This payment was made and received when you were fully aware of LP5K's intentions. While you have attempted to get LP5K to sign a termination agreement, I have advised you numerous times that LP5K and its development partners are moving forward with this project.

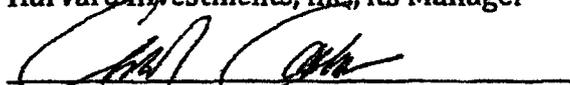
LP5K will be filing an application for leave to intervene and will explain to the Commission the need for service and the desire to keep the CC&N in place. LP5K is ready and willing to present its case in front of the Commission. If there is any way we can resolve this matter without wasting the Commission's resources, please feel free to call me.

LAKE PLEASANT 5000 L.L.C.,

By: Harvard 5K, L.L.C., its Manager

By: Harvard Investments, Inc., its Manager

By:


Christopher J. Cacheris, Vice President