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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE – Interim Chairman
BOB STUMP
BOB BURNS
TOM FORESE
VACANT

Arizona Corporation Commission
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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

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.

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

conference.

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

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

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

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

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

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

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

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

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

On March 4, 2015, a status conference was held as scheduled. Globe, AWC, and Staff appeared through counsel. Oral argument was heard on AWC's Motion to Dismiss. At the conclusion of oral arguments, the parties were notified that, due to disputed material facts, a ruling on the Motion to Dismiss would be reserved until an evidentiary hearing was held and all the evidence heard. During

the course of oral arguments, counsel for AWC introduced case law that had not been included in AWC's Motion to Dismiss. As a result, Staff and the City were given additional time, until March 27, 2015, to file responses to AWC's Motion to Dismiss. Discussions were also held among the parties regarding a procedural schedule for this proceeding and an agreement for a proposed schedule was reached.

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

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

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

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

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

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

On April 28, 2015, a telephonic status conference was held as scheduled, with the parties appearing through counsel. AWC asserted that the City had not sufficiently responded to AWC's data requests when the City delivered 700-plus pages that were neither Bates stamped nor identified as

responsive to any particular data request. AWC requested an Order requiring the City to identify the document(s) pertaining to each of AWC's specific data request(s).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On October 9, 2015, Staff filed a Request for Suspension of Procedural Schedule indicating

that AWC and Globe stated they are in the midst of settlement discussions. In order to facilitate the settlement process and to avoid unnecessary expense, Staff requested that Globe's filing of Surrebuttal Testimony be suspended, the October 19, 2015 pre-hearing conference be vacated, and the October 26, 2015 hearing be convened for public comment only, allowing the remaining time to be used for the parties to continue settlement discussions. Staff further requested that the parties come to the October 26, 2015 settlement discussions with representatives who have the authority to negotiate a settlement, in addition to providing a proposed procedural schedule to be followed as a result of the settlement discussions.

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

On October 14, 2015, by Procedural Order, Staff's Motion for Suspension of Procedural Schedule was granted and the remaining procedural deadlines were vacated.

On October 26, 2015, the hearing convened for purposes of taking public comment only.

On October 26 and 27, 2015, three consumer comments were docketed.

On October 30, 2015, a Joint Notice Regarding October 26, 2015 Negotiation Meeting and Proposed Procedural Schedule was filed, requesting that the procedural schedule remain suspended to allow for continued settlement discussions and requesting that AWC and Globe (the "Parties") be required to file an updated status regarding settlement efforts on or before December 4, 2015.

On November 3, 2015, by Procedural Order, the Joint Notice Regarding October 26, 2015 Negotiation Meeting and Proposed Procedural Schedule was granted. The Parties were directed to make a joint filing on or before December 4, 2015, to update the Commission on the status of their settlement discussions and to provide a proposed procedural schedule for final resolution of the matter.

On December 4, 2015, the Parties filed an Updated Report Regarding Parties' Settlement Discussions, stating the matter remains on track for settlement but that additional details had yet to be negotiated. The Parties requested that the procedural schedule remain suspended and that the Parties be required to file an updated status report and proposed procedural schedule on or before January 8, 2016. The filing further indicated that Staff had no objection.

On December 8, 2015, by Procedural Order, the Parties' request was granted.

On December 23, 2015, AWC filed a Request for Procedural Conference, stating a procedural conference was needed to apprise the Commission on the status of settlement discussions and to discuss necessary steps for final resolution of the matter.

On December 28, 2015, by Procedural Order, a procedural conference was scheduled to be held on January 7, 2016.

On January 7, 2016 a procedural conference was held as scheduled. Globe, AWC, and Staff appeared through counsel. At the procedural conference, Globe and AWC indicated that a final draft of the settlement agreement was three to four weeks away and subject to approval by City Council, but stated the agreement would be in the best interests of all interested parties by leaving AWC's CC&N intact but allowing Globe to continue to provide service. The Parties agreed to file with Docket Control the completed settlement agreement as soon as possible, in addition to a joint proposed form of notice. Additionally, the Parties indicated a belief that pre-filed testimony would not be necessary and that their schedules would accommodate a hearing date on March 21, 2016.

To ensure the proposed form of notice provides the public adequate information regarding the settlement agreement, the Parties should file a copy of the completed settlement agreement prior to, or contemporaneous with, filing the joint proposed form of notice. Once both a settlement agreement and a joint proposed form of notice are filed with Docket Control, a Procedural Order will be issued setting public notice requirements, an appropriate hearing date, and any other procedural deadlines relating to the hearing, including possible testimony regarding the settlement agreement.

IT IS THEREFORE ORDERED that the settlement agreement and a joint proposed form of notice, or a status report if the settlement agreement is not finalized, shall be filed by the Parties by February 12, 2016.

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

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

DATED this 8th day of January, 2016.

SASHA PATERNOSTER
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 8 day of January, 2016 to:

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