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BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

DOUG LITTLE, Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN

Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION  
OF ARIZONA WATER COMPANY TO  
EXTEND ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY IN CASA  
GRANDE, PINAL COUNTY, ARIZONA.

**DOCKET NO. W-01445A-03-0559**  
**CORNMAN TWEEDY 560, LLC'S**  
**NOTICE OF OBJECTION TO**  
**PORTIONS OF THE PRE-FILED**  
**DIRECT TESTIMONY OF ARIZONA**  
**WATER COMPANY WITNESS PAUL**  
**WALKER**

CROCKETT LAW GROUP PLLC  
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Phoenix, Arizona 85016-4747  
602.441.2775

Pursuant to the Procedural Order dated December 9, 2015, Cornman Tweedy 560, LLC, hereby objects to the following statements contained in the pre-filed Direct Testimony of Paul Walker (Hearing on Remand – Phase 2) on the grounds that they are inadmissible pursuant to Rule 702 and/or Rule 704 of the Arizona Rules of Evidence:

- *“The Commission is aware that granting a CCN conveys significant, lasting, and material economic benefits, as well as responsibilities, on a utility company.”<sup>1</sup>*

Cornman Tweedy objects to this statement on the grounds that it lacks proper foundation. Mr. Walker should not be permitted to testify regarding what may or may not exist within the “awareness” of an individual commissioner or, collectively, the Arizona Corporation Commission (“Commission”). In the December 9, 2015, Procedural Order in this docket, the administrative law judge (“ALJ”) ruled that certain testimony by Cornman Tweedy witness Ernest Johnson was not admissible where it purported to explain the Commission’s “interest” (characterized by the ALJ as the Commission’s “thinking”) in the Cornman Tweedy property.<sup>2</sup> Likewise, Mr. Walker’s testimony should be ruled inadmissible.

<sup>1</sup> Direct Testimony of Paul Walker (Hearing on Remand – Phase 2) at 3, lines 6-7.  
<sup>2</sup> Procedural Order (December 9, 2015) at 14, lines 12-16.

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- 1           •       ***“As explained by Mr. Garfield in his pre-filed testimony, the Commission has***  
2                   ***unconditionally granted Arizona Water Company the CCN to provide water***  
3                   ***utility service to the Cornman Tweedy property.”***<sup>3</sup>

4           Cornman Tweedy objects to this statement on the grounds that it includes impermissible  
5           legal opinion, legal argument and/or legal conclusions. In his Rebuttal Testimony, Cornman  
6           Tweedy witness Ernest Johnson refuted this very statement by Mr. Walker.<sup>4</sup> In the December 9,  
7           2015, Procedural Order, the ALJ ruled that the testimony by Mr. Johnson was inadmissible  
8           because it included legal argument and legal conclusions “regarding the conditional or otherwise  
9           uncertain nature of AWC’s CC&N....”<sup>5</sup> Likewise, Mr. Walker should not be permitted to testify  
10           regarding the nature of AWC’s CC&N.

- 11           •       ***“... and my understanding is that before deleting a utility’s CCN, the***  
12                   ***Commission must find that the certificate holder is either unable or unwilling to***  
13                   ***provide adequate service at reasonable rates.”***<sup>6</sup>

14           Cornman Tweedy objects to this statement on the grounds that it includes impermissible  
15           legal opinion, legal argument and/or legal conclusions. Mr. Walker’s testimony purports to  
16           instruct the Commission regarding its authority to act and the standard to be applied in this case.  
17           Thus, this is not proper expert witness testimony pursuant to Rule 702.<sup>7</sup>

- 18           •       ***“Given the Commission’s standard for deletion of a CCN, there are no grounds***  
19                   ***to delete Arizona Water Company’s CCN in this proceeding.”***<sup>8</sup>

20           Cornman Tweedy objects to this statement on the grounds that it includes impermissible  
21           legal opinion, legal argument and/or legal conclusions. Mr. Walker’s testimony purports to  
22           instruct the Commission regarding the standard to be applied in this case and how it should decide.

23           <sup>3</sup> Direct Testimony of Paul Walker (Hearing on Remand – Phase 2) at 3, lines 13-15.

24           <sup>4</sup> Rebuttal Testimony of Ernest G. Johnson (Remand Proceeding II) at pp. 6-8.

25           <sup>5</sup> Procedural Order (December 9, 2015) at pp. 14-15.

26           <sup>6</sup> Direct Testimony of Paul Walker (Hearing on Remand – Phase 2) at 3, lines 23-25.

27           <sup>7</sup> In his Rebuttal Testimony, Cornman Tweedy witness Ernest Johnson provides testimony including the  
28           statement that “the Commission has the authority to determine what is in the public interest in this case and  
to act accordingly, including excluding the Cornman Tweedy property from AWC’s CC&N.” (Rebuttal  
Testimony of Ernest G. Johnson (Remand Proceeding II) at 12, lines 19-21). In ruling this statement  
inadmissible, the ALJ found that Mr. Johnson was impermissibly instructing the Commission on its  
authority to act, the standard to apply in this matter, and how it should decide. (Procedural Order  
(December 9, 2015) at 15, lines 22-24. Mr. Walker’s statement is inadmissible under the same rationale.

<sup>8</sup> Direct Testimony of Paul Walker (Hearing on Remand – Phase 2) at 6, lines 23-24.

1 Thus, this is not proper expert witness testimony pursuant to Rule 702.<sup>9</sup>

- 2
- 3 • ***“Such a decision will alarm every water and wastewater utility in the state, the vast majority of which provide only one type of utility service.”***<sup>10</sup>

4 Cornman Tweedy objects to this statement on the grounds that it lacks proper foundation.  
5 Mr. Walker should not be permitted to testify regarding the state of mind of “every water and  
6 wastewater utility in the state....” This statement should be ruled inadmissible.

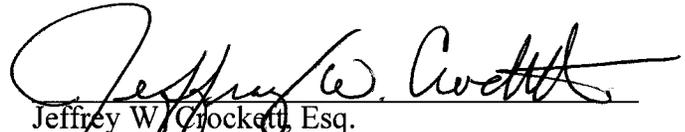
- 7
- 8 • ***“Additionally, a new standard for deletion would discourage investment in Arizona’s utility infrastructure and increase the risk of such an investment because a utility’s CCN would perpetually be at risk of deletion, despite the fact that the utility is providing safe, adequate and reliable service.”***<sup>11</sup>

9  
10 Cornman Tweedy objects to this statement on the grounds that it includes impermissible  
11 legal opinion, legal argument and/or legal conclusions. By asserting that Cornman Tweedy is  
12 seeking a “new standard for deletion,” Mr. Walker’s testimony purports to instruct the  
13 Commission on the existing legal standard that applies in this case and how this case should be  
14 decided. Thus, this is not proper expert witness testimony pursuant to Rule 702.<sup>12</sup>

15 For the reasons set forth above, Cornman Tweedy requests that the portions of the Walker  
16 testimony identified herein be deemed inadmissible pursuant to Rule 702 and Rule 704 of the  
17 Arizona Rules of Evidence.

18 RESPECTFULLY submitted this 12<sup>th</sup> day of February, 2016.

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27 <sup>9</sup> See *supra* footnote 7.

28 <sup>10</sup> Direct Testimony of Paul Walker (Hearing on Remand – Phase 2) at 7, lines 13-14.

<sup>11</sup> Direct Testimony of Paul Walker (Hearing on Remand – Phase 2) at 7-8.

<sup>12</sup> See *supra* footnote 7.

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1 ORIGINAL plus thirteen (13) copies filed  
this 12<sup>th</sup> day of February, 2016, with:

2 Docket Control  
3 ARIZONA CORPORATION COMMISSION  
4 1200 West Washington Street  
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5 COPY of the foregoing hand-delivered  
6 this 12<sup>th</sup> day of February, 2016, to:

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16 COPY of the foregoing sent via e-mail and First  
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