

OPEN MEETING ITEM



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COMMISSIONERS
DONG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

Executive Director

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ARIZONA CORPORATION COMMISSION

2016 MAY 31 P 12:50

ORIGINAL

DATE: MAY 31, 2016

Arizona Corporation Commission
DOCKETED

DOCKET NO.: W-03510A-13-0397

MAY 31 2016

TO ALL PARTIES:

DOCKETED BY *JL*

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

CIRCLE CITY WATER COMPANY, L.L.C.
(DELETE PORTIONS OF CC&N AND DELETE REQUIREMENT IN
DECISION NO. 68246)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JUNE 9, 2016

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JUNE 14, 2016 AND JUNE 15, 2016

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Jodi A. Jerich
JODI A. JERICH
EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SBernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 DOUG LITTLE – Chairman
4 BOB STUMP
5 BOB BURNS
6 TOM FORESE
7 ANDY TOBIN

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

DOCKET NO. W-03510A-13-0397

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: March 2, 2015 (Public Comments)
11 October 16, 2015 and November 23, 2015 (Evidentiary
Hearing) March 29, 2016 (Procedural Conference)

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

14 APPEARANCES: Mr. Robert T. Hardcastle, on behalf of Circle City Water
15 Company, L.L.C.;

16 Mr. Garry D. Hays, LAW OFFICES OF GARRY D.
HAYS, P.C., on behalf of Lake Pleasant 5000, L.L.C.;

17 Mr. Darin P. Reber, on behalf of Maughan Revocable
18 Trust of 2007 and Rex G. Maughan and Ruth G.
Maughan; and

19 Mr. Brian E. Smith, Staff Attorney, on behalf of the
20 Utilities Division of the Arizona Corporation
Commission.

21 **BY THE COMMISSION:**

22 On November 19, 2013, Circle City Water Company, L.L.C. (“Circle City” or “Company”)
23 filed with the Arizona Corporation Commission (“Commission”) an application requesting approval to
24 delete portions of its Certificate of Convenience and Necessity (“CC&N”) and to delete the
25 requirement, adopted in Decision No. 68246 (October 25, 2005), for Circle City to demonstrate in its
26 next rate case filing that its existing customers have been positively impacted by the addition of new
27 water facilities necessary to serve the extension area. Circle City’s application requests deletion of
28

1 portions of its CC&N encompassing two developments known as Lake Pleasant 5000 ("LP5K") and
2 Warrick 160 ("Warrick"). Circle City's application states that the developments are not viable and that
3 service in the CC&N area will not be necessary in the foreseeable future.

4 On December 11, 2013, LP5K filed an Application for Leave to Intervene, stating that its
5 development partners own the property Circle City wishes to delete from its CC&N and that LP5K had
6 entered into a Water Facilities Agreement ("WFA") with Circle City under which LP5K has paid
7 \$67,782.61 to Circle City.

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

9 On January 9, 2014, Rex G. Maughan and Ruth G. Maughan, Trustees of the Maughan
10 Revocable Trust of 2007 ("MRT"), filed an Application for Leave to Intervene, stating that MRT is the
11 property owner of Warrick 160 and that MRT's development partners entered into a WFA with Circle
12 City under which \$67,782.61 to was paid to Circle City.

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

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

16 On October 17, 2014, the Commission's Utilities Division ("Staff") filed a Staff Report,
17 recommending denial of the Company's application to delete portions of its CC&N, but recommending
18 approval of the removal of the "positive impact" requirement as set forth in Decision No. 68246.

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

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

23 On November 10, 2014, a procedural conference was held as scheduled. LP5K, MRT, and
24 Staff appeared through counsel. Mr. Robert Hardcastle, President of Circle City, appeared on behalf
25 of the Company. Discussions were held regarding the appropriate procedural schedule for this matter.
26 The parties and Staff agreed to engage in settlement discussion and to file an update with the
27 Commission as to the outcome of those discussions within 30 days of the procedural conference. The
28 parties and Staff also agreed that this matter should be set for a hearing date.

1 On December 10, 2014, by Procedural Order, the hearing in this matter was scheduled to
2 commence on March 2, 2015 and other procedural deadlines were established.

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

4 On December 29, 2014, Circle City filed a Status Update of Settlement Negotiations stating
5 that the parties had engaged in settlement negotiations; that MRT had issued and signed a "good faith"
6 "best and final" settlement proposal letter; that the settlement proposal letter proffered settlement
7 inclusive of LP5K, but was only signed by counsel for MRT; and that further efforts to clarify MRT's
8 settlement proposal remained incomplete and/or unclear. Circle City's filing also stated that settlement
9 of the issues was not precluded in the future.

10 On the same date, LP5K filed a Status Update indicating that there was a potential to settle the
11 issues raised in this proceeding and requesting that the procedural schedule in this matter be suspended
12 to allow for further discussions.

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

14 On January 9, 2015, Staff filed a Response to Status Update stating that Staff had no objection
15 to the parties' request to suspend the procedural schedule in this matter; however, Staff requested that
16 the parties be required to docket further updates at least every two months.

17 On January 13, 2015, Circle City docketed a response to LP5K's request to suspend the
18 procedural schedule stating that the Company agreed with LP5K's request to suspend the procedural
19 schedule, but requested that the procedural schedule only be suspended until January 30, 2015, and not
20 indefinitely.

21 On the same date, by Procedural Order, the procedural schedule in this matter was suspended;
22 the hearing scheduled to begin on March 2, 2015, was to be held for taking public comments only; and
23 the parties were directed to make a joint filing notifying the Commission on the status of the settlement
24 discussions on or before February 17, 2015.

25 On January 14, 2015, Circle City filed a Notice of Filing Brooke Utilities, Inc.'s Response to
26 Intervenor Status Update.

27 On February 16, 2015, Circle City filed a Notice of Filing Second Status Update of Settlement
28 Negotiations stating that, thus far, settlement negotiations had been unsuccessful, but that Circle City

1 did not believe that the current negotiation status would necessarily preclude future settlement of the
2 issues.

3 On February 17, 2015, LP5K filed a Status Update stating that negotiations were ongoing and
4 that LP5K and MRT were ready either to settle or litigate this matter.

5 On February 23, 2015, Circle City filed a Request to Modify Procedural Order to Reschedule
6 Public Comment Session stating that the Company had failed to properly provide notice in accordance
7 with the December 10, 2014, Procedural Order, and that additional time was needed to provide notice.

8 On February 26, 2015, Staff filed a Response to Request to Modify Procedural Order to
9 Reschedule Public Comment Session, stating that Staff had no objection to allowing the Company to
10 properly publish notice of the application. However, Staff requested that the March 2, 2015, date be
11 held as scheduled to allow members of the public who have been following this matter to provide public
12 comment. Staff recommended that a second hearing for public comment be scheduled and properly
13 noticed to accommodate those members of the public who did not receive the benefit of notice as
14 required by the Procedural Order.

15 On March 2, 2015, the public comment hearing was held as scheduled. LP5K, MRT, and Staff
16 appeared through counsel. Circle City did not appear for the hearing. No members of the public were
17 present to give comments on the application. The parties provided an update on the ongoing settlement
18 negotiations and a deadline was set for March 27, 2015, for the parties to file an additional update with
19 the Commission.

20 On March 27, 2015, LP5K and MRT jointly filed a Status Update stating that settlement
21 negotiations were ongoing and that the parties had agreed to file a status update on April 6, 2015.

22 On April 6, 2015, LP5K filed a Status Update stating that LP5K would be filing a motion to
23 dismiss the application in this matter.

24 On April 17, 2015, Circle City filed a Status Update and Request to Set Procedural Conference.
25 Circle City's filing stated that settlement negotiations with LP5K had ceased on April 6, 2015; that
26 Circle City believed it was reasonable to conclude that LP5K had no interest in further negotiations;
27 and that Circle City had rejected LP5K's February 11, 2015, settlement offer. Circle City requested
28 that a procedural conference be held to discuss a hearing date in this matter.

1 On April 28, 2015, by Procedural Order, a procedural conference was scheduled to be held on
2 May 8, 2015.

3 On May 5, 2015, Circle City filed a Request for Continuance of Procedural Conference, stating
4 that the owner of the Company had "a personal scheduling conflict" and the Company proposed
5 alternative dates for the procedural conference to be held.

6 On May 6, 2015, Staff filed a Response to Motion to Continue Procedural Conference, stating
7 that Staff had no objection to the Company's request and clarifying Staff's available dates to attend a
8 future procedural conference.

9 On May 7, 2015, by Procedural Order, the May 8, 2015, procedural conference was rescheduled
10 to be held on June 8, 2015.

11 On May 27, 2015, LP5K filed a Request to Reschedule Procedural Conference Date, stating
12 that counsel for LP5K had a medically related scheduling conflict for the June 8, 2015, procedural
13 conference date. LP5K requested that the procedural conference be rescheduled for a future date.

14 On June 4, 2015, by Procedural Order, the procedural conference scheduled for June 8, 2015,
15 was continued to August 11, 2015.

16 On June 5, 2015, Staff filed a Request to Reschedule Procedural Conference.

17 On August 10, 2015, LP5K filed a Motion to Dismiss ("MTD"), requesting that the
18 Commission dismiss Circle City's application in this matter.

19 On August 11, 2015, a procedural conference was held as scheduled. LP5K, MRT, and Staff
20 appeared through counsel. Mr. Hardcastle appeared telephonically on behalf of the Company. The
21 parties provided an update on the settlement discussions and the parties agreed that settlement was not
22 possible at this time. The Company was directed to file a response to the MTD, and discussions were
23 held regarding the appropriate procedural schedule for this matter. The parties and Staff agreed that
24 this matter should be set for hearing.

25 On August 17, 2015, by Procedural Order, the matter was scheduled for a hearing to commence
26 on October 16, 2015, and other procedural deadlines were established.

27 On August 26, 2015, Circle City filed its Response to LP5K's MTD.

28 On August 31, 2015, Circle City filed Direct Testimony of Robert T. Hardcastle, MRT filed

1 Direct Testimony of Rjay Lloyd, and LP5K filed Direct Testimony of Craig Krumweide.

2 On September 8, 2015, Circle City filed a Notice of Filing of its First Set of Data Request upon
3 Intervenors.

4 On September 9, 2015, LP5K filed a Reply to Circle City's Response to the MTD.

5 On September 14, 2015, Circle City filed a Notice of Filing Second Supplemental Revised
6 Direct Testimony of Robert T. Hardcastle.

7 On September 15, 2015, Circle City filed a Notice of Filing Supplemental Direct Testimony of
8 Robert T. Hardcastle.

9 On September 25, 2015, LP5K filed a Motion to Quash Circle City's Subpoena and a Notice of
10 Filing its Second Set of Data Request Upon Intervenors.

11 On September 29, 2015, Circle City filed its Response to Intervenors Motion to Quash.

12 On October 13, 2015, Circle City filed a Motion to Relinquish Subpoena Served upon Rex
13 Maughan.

14 On October 14, 2015, Circle City filed a Motion to Compel Intervenors to Withdraw Objections
15 and Respond to Circle City's Data Requests.

16 On October 16, 2015, a full public hearing was convened as scheduled, with Staff, LP5K, and
17 MRT appearing through counsel. Mr. Robert Hardcastle appeared on behalf of the Company. No
18 members of the public appeared to give public comments on the application. During the hearing,
19 various pending motions were discussed and resolved. The parties presented testimony and evidence.
20 At the conclusion of the hearing, it was decided that the matter should be set for an additional day of
21 hearing. A second day of hearing was scheduled to commence on November 23, 2015.

22 On November 23, 2015, the hearing in the matter resumed as scheduled. Staff, LP5K and MRT
23 appeared through counsel. Mr. Robert Hardcastle appeared on behalf of the Company. No members
24 of the public appeared to give comments on the application. The parties and Staff presented testimony
25 and evidence related to the application.

26 On December 3, 2015, Circle City filed its 2014 Annual Report.

27 On March 29, 2016, a telephonic procedural conference was held. Staff, LP5K, and MRT
28 appeared through counsel. Mr. Hardcastle appeared on behalf of Circle City. Discussions were held

1 regarding the Company's compliance with the December 10, 2014, Procedural Order related to notice
 2 and publication of the application. The Company stated that it had failed to provide notice in
 3 accordance with the Procedural Order. Staff was directed to update the Commission on the Company's
 4 compliance with Commission, Arizona Department of Water Resources ("ADWR") and Maricopa
 5 County Environmental Services Department ("MCESD") requirements and, if necessary, to include
 6 any additional or amended recommendations.

7 On April 4, 2016, by Procedural Order, Circle City was directed to provide notice of the
 8 application in this matter, the deadline for intervention was extended, and Staff was directed to provide
 9 an update to the Commission on the Company's compliance with ADWR, MCESD and Commission
 10 requirements.

11 On April 29, 2016, Staff filed a Supplemental Staff Report updating the Commission on the
 12 Circle City's compliance issues.

13 On May 5, 2016, Circle City filed a Notice of Filing Mailing and Publishing Certifications,
 14 stating that the Company had published notice on April 13, 2016, in the *Wickenburg Sun*, a newspaper
 15 of general circulation in Circle City's service area. The filing also included certification that notice of
 16 the application had been sent to each of Circle City's customers via U.S. First Class mail.

17 No additional requests for intervention were received in this docket.

18 * * * * *

19 Having considered the entire record herein and being fully advised in the premises, the
 20 Commission finds, concludes, and orders that:

FINDINGS OF FACT

I. Background

23 1. Circle City is a public service corporation providing water utility service in portions of
 24 Maricopa County, Arizona to approximately 179 residential and commercial customers. Circle City's
 25 current CC&N area encompasses approximately 8,300 acres or 13.2 square miles.

26 2. Circle City received its initial CC&N in Commission Decision No. 31121 (August 15,
 27
 28

1 1958) as Circle City Development Company.¹ Circle City Development Company was transferred to
2 Consolidated Water Company in 1964, and by Commission Decision No. 51286 (August 8, 1980),
3 transferred to Consolidated Water Co., LTD.² In Decision No. 59754 (July 18, 1996), Consolidated
4 Water Company Co., LTD was authorized to transfer its assets and CC&N to Brooke Water L.L.C.³
5 Brooke Water L.L.C. operated the company as the Circle City Division and, in Commission Decision
6 No. 60972 (June 16, 1998), the Circle City Division's assets and CC&N were transferred to Circle City
7 Water Company, L.L.C.⁴ Circle City's parent company is Brooke Utilities, and includes Brooke
8 Resources L.L.C. ("Brooke Resources"), a Nevada Corporation, as its subsidiary.⁵ Circle City is the
9 single subsidiary of Brooke Resources.⁶ Mr. Robert Hardcastle currently serves as president and owner
10 of Brooke Utilities and is managing member for Brooke Resources.⁷ Brooke Utilities has owned five
11 subsidiaries in Arizona that have included the following regulated water systems: Pine Water
12 Company; Strawberry Water Company; Payson Water Company; Tonto Basin Water Company; and
13 Navajo Water Company.⁸

14 3. Circle City is currently operating under rates and charges approved in Decision No.
15 55839 (January 1, 1998).

16 4. On March 2, 2005, Circle City filed an application requesting an extension of its CC&N
17 to include two developments known as LP5K and Warrick (collectively "the Project") in its CC&N
18 area. The application stated that the developer for the Project was Harvard Investments, Inc.
19 ("Harvard" or "Developer"). Harvard, through control of various entities, is the managing member of
20 LP5K.⁹

21 5. MRT owns the underlying property to Warrick 160.¹⁰ MRT is one of the largest
22 landowners in Arizona and through a cooperative agreement, Harvard has agreed to develop Warrick
23

24 ¹ Decision No. 68246 at 3.

25 ² *Id.*

26 ³ *Id.*

27 ⁴ *Id.*

28 ⁵ Tr. at 17.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 21.

⁹ Exhibit L-5 at 2 and Tr. at 156.

¹⁰ Tr. at 269

1 due to a common interest in the property.¹¹

2 6. On October 25, 2005, the Commission issued Decision No. 68246 granting approval of
3 an extension of Circle City's CC&N to include the Project and requiring Circle City, among other
4 things, to demonstrate in its next rate case filing that its existing customers have been positively
5 impacted by the addition of new water facilities necessary to serve the extension area.

6 7. On November 19, 2013, Circle City filed the above-captioned application requesting
7 authority to delete from its CC&N the approximate 5,000 acres encompassing the Project. The
8 Company's application also requests authority to delete the requirement in Decision No. 68246 that it
9 demonstrate in its next rate case filing that its existing customers have been positively impacted by the
10 addition of new water facilities necessary to serve the extension area.

11 8. Staff recommends denial of Circle City's application for deletion of the extension area.
12 Staff also recommends that the Commission eliminate the requirement, as set forth in Decision No.
13 68246, that Circle City demonstrate in its next rate case filing that its existing customers have been
14 positively impacted by the addition of new water facilities necessary to serve the extension area. Staff
15 further recommends that the Company file with Docket Control, as a compliance item in this docket
16 by April 30, 2017, documentation from ADWR indicating that the Company is in compliance with
17 ADWR requirements.¹²

18 **II. Circle City's Position**

19 9. According to Circle City's application, on or about February of 2005 the Company and
20 the Developer entered into a WFA, whereby the Company agreed to provide water service to the
21 Project.¹³ The Project was to be developed in two phases. Phase I of the Project includes development
22 of the 160 acres known as the Warrick project, which is expected to include 78 residential lots and/or
23 a well field. It is anticipated that Phase II will include the development of the LP5K project, which
24 will include 10,000 dwelling units that will be connected through a newly developed main extension,
25 7.6 million gallons of water storage, Central Arizona Project ("CAP") treatment plant and related
26

27 ¹¹ Tr. at 265 and 288.

¹² Staff Supplemental Staff Report filed April 29, 2016.

28 ¹³ Exhibit L-2 at 2.

1 infrastructure.¹⁴ The estimated combined cost for the water infrastructure and on-site distribution
2 system for the Project is to exceed \$55 million. According to Circle City, the on-site facilities needed
3 to provide water service are expected to cost approximately \$24 million and the off-site facilities
4 approximately \$31 million.¹⁵

5 10. Under the terms of the WFA, the on-site and off-site facilities for the Project were to be
6 paid for by the Developer in the form of contributions in aid of construction (“CIAC”) and through a
7 Commission approved Hook-Up Fee tariff.¹⁶ No equity was to be supplied by Circle City to fund the
8 Project.¹⁷

9 11. On or about November 2007, Circle City states it entered into an agreement with the
10 Developer and its ownership partners for Phase I of the Projects that included a notice of municipal
11 provider reporting requirement for the Warrick property regarding membership in the Central Arizona
12 Groundwater Replenishment District (“CAGRDR Agreement”).¹⁸ According to Circle City, upon
13 execution of the CAGRDR Agreement, ADWR approved the Developer as a Member Lands in the
14 CAGRDR, and ADWR established that the Developer had met the requirements for a Certificate of
15 Assured Water Supply (“CAWS”) for Phase I.¹⁹

16 12. According to Circle City, the Developer stated that Circle City would be serving new
17 customers water by no later than 2007.²⁰

18 13. In June of 2008, Circle City received an approval to construct (“ATC”) for Phase I of
19 the Project.

20 14. On July 18, 2013, LP5K and MRT paid Circle City \$67,782.61, for legal and
21 engineering expenses incurred for the extension area, in accordance with the WFA.

22 A. **The Project is not viable and there is no present or future need for water utility**
23 **service in the extension area.**²¹

24 _____
25 ¹⁴ Exhibit L-2 at 2.
26 ¹⁵ Exhibit A-1 at 15.
27 ¹⁶ *Id.* at 19.
28 ¹⁷ *Id.* at 19-20.
¹⁸ Exhibit L-2 at 2.
¹⁹ *Id.*
²⁰ Exhibit A-1 at 17.
²¹ Exhibit L-2 at 3.

1 15. Circle City contends that for nearly eight years it had no contact, status update, or other
2 communication with the Developer, except for a single letter docketed with the Commission on
3 November 1, 2007.²² Circle City's testimony states that on or about April 2013, the Company initiated
4 discussions with the Developer to get a status update on the Project.²³ During the discussions, the
5 Company states the Developer told Circle City that the Project was no longer viable and that the
6 Developer could not determine whether the Project would ever be developed.²⁴

7 16. According to Circle City, Harvard stated that due to the severe economic conditions in
8 the general Phoenix area, and across the United States, Harvard had several developments that were
9 "property rich and cash poor."²⁵ Circle City stated that Harvard said they didn't have the "available
10 funds to develop any of the projects under the risk conditions that existed in the market at the time."²⁶
11 According to the Company, when Harvard's Vice President was asked his opinion regarding the
12 disposition of the Project, he replied, that "it was not likely the Project would ever get developed
13 because it was unviable."²⁷ Circle City states that Harvard's Vice President advised that the Company
14 and Harvard "should cooperate with one another toward unwinding and termination of the Project."²⁸
15 Circle City states that Harvard also agreed to pay half of the legal, engineering, and other expenses
16 related to unwinding the Project.²⁹

17 17. Circle City states that after the April 2013 meeting with the Developer, the Company
18 begin to unwind the Project, but that in May of 2013, the Developer stated that it needed to consult
19 with its "non-controlling" partners to determine if the Project was viable.³⁰ Subsequently, Circle City
20 stated that it received an email from Harvard stating "further consideration by the Project partners
21 resulted in a decision to 'hold' all further work related to unwinding or terminating the Project."³¹
22 Circle City argues that it believes Harvard is the controlling owner of the Project and that Harvard had

23 _____
24 ²² Exhibit A-1 at 4 and Tr. at 68. The letter was related to a request for an extension of time to meet a compliance deadline
required in Decision No. 68246.

25 ²³ Exhibit A-1 at 4.

26 ²⁴ *Id.*

27 ²⁵ *Id.* at 7-8.

28 ²⁶ *Id.* at 8.

29 ²⁷ *Id.*

30 ²⁸ *Id.*

31 ²⁹ *Id.* at 5.

³⁰ *Id.*

³¹ *Id.* at 9.

1 not previously disclosed to Circle City that it had “non-controlling” partners.³²

2 18. Circle City states that although Harvard requested that the Company place on “hold” all
3 further work related to unwinding or terminating the Project, the Company informed Harvard that it
4 would be proceeding with the unwinding process.³³

5 19. Circle City stated that on July 10, 2013, it received an email from the Developer
6 reiterating its position not to terminate the WFA with Circle City and stating that the Developer was
7 seeking payment from its partners to reimburse the Company for legal and engineering expenses related
8 to the Project.³⁴

9 20. According to Circle City, on August 6, 2013, the Developer informed Circle City that it
10 had been determined by its “non-controlling partners” that the Project was viable.³⁵ Circle City stated
11 that during its April meeting with the Developer, it was stated that the Project may not be viable for at
12 least ten years and that no construction schedule had been developed and there was no plan to develop
13 one.³⁶

14 21. In support of its argument that the Project is not viable, Circle City asserts that there are
15 inconsistencies between how the property in Phase I will be used. Circle City states that in a 2005 Staff
16 Report related to the CC&N extension application, Staff stated that the property in Phase I was to be
17 used as a well field. Subsequently, Staff stated in the Staff Report filed in this docket that the property
18 in Phase I was to contain 78-residential lots.

19 22. Circle City asserts that it was not aware who the Developer’s partners were until MRT
20 filed for intervention in this matter.

21 23. Circle City states that it is only responsible for providing water service to the Project
22 and that the Company does not know what entity will provide wastewater.

23 **B. Harvard’s failure to develop the Project and the “positive impact” requirement**
24 **in Decision No. 68246 has financially impacted Circle City.**³⁷

25
26 ³² Exhibit A-1 at 5.

27 ³³ *Id.* at 9.

28 ³⁴ *Id.* at 12.

³⁵ *Id.* at 10.

³⁶ *Id.* at 11.

³⁷ *Id.* at 5.

1 24. Circle City states that it had approximately 170 customers at the time the Commission
 2 issued Decision No. 68246, which approved the Company's request to extend its CC&N to provide
 3 water service for the Project.³⁸ The Company states that based on Harvard's assurance that it planned
 4 to immediately develop the Project, the Commission approved Circle City's CC&N extension request,
 5 but that Circle City argued "forcefully against" the additional Commission condition that Circle City
 6 demonstrate that the extension of its CC&N would have a "positive impact" on its existing customers
 7 in its next rate case proceeding.³⁹ Circle City argues that the "positive impact" condition, as well as
 8 the failure of Harvard to develop the Project, has financially impacted the Company.⁴⁰

9 25. Mr. Hardcastle testified that based on annual revenues of approximately \$63,000 for
 10 water sales and customer accounts, it has lost approximately \$1,026,000, which includes approximately
 11 \$864,697 related to the Project expenses incurred for CAP water from the CAWCD.⁴¹

12 26. Circle City states that it would not have been able to pay the utilities expenses without
 13 funds from its parent companies and advances from its equity partner.⁴² At the time of the extension
 14 application, Circle City stated that it had agreed to convert a payable into equity in the amount of
 15 approximately \$500,000 to \$600,000.⁴³ The Company stated that it is unlikely that it will be able to
 16 continue to rely on its parent company and equity partners to advance funds for the Project because
 17 Harvard is unclear whether the Project is going to be built.⁴⁴ Circle City stated that prior to Decision
 18 No. 68246, the Company had incurred debt in the amount of \$2.1 million to its parent companies and
 19 equity partners to cover operating losses and, since the Decision, it has incurred operating losses in the
 20 amount of \$1,026,000.⁴⁵ Circle City conceded that when the utility was purchased in 1995 out of
 21 bankruptcy, CAWCD was a creditor in the bankruptcy proceeding and that any remaining balance
 22 owed to the CAWCD would have had to be paid by the Company.⁴⁶ Circle City's witness testified

23
 24 _____
³⁸ Exhibit A-1 at 4.

25 ³⁹ *Id.*

26 ⁴⁰ *Id.* at 5.

27 ⁴¹ Exhibit A-1 at 6 and Exhibit A-2 at Exhibit 10.

28 ⁴² Exhibit A-1 at 6.

⁴³ Tr. at 57.

⁴⁴ Exhibit A-1 at 6.

⁴⁵ Tr. at 61-62.

⁴⁶ Tr. at 30.

1 that, from an economic perspective, the Company “was never profitable.”⁴⁷

2 27. Circle City testified that after Harvard and its partners determined the Project was
3 viable, and before the Company filed the application in this docket, Harvard offered to purchase Circle
4 City for \$3.2 million.⁴⁸

5 28. Circle City argues that the imposed “positive impact” condition required in Decision
6 No. 68246 has “practically rendered Circle City unable to function and the equity partners of Circle
7 City have been severely impacted.”⁴⁹ Circle asserts that the “positive impact” condition “has been a
8 murderous blow to the Company because, despite its good faith efforts to maintain a CAP water supply
9 for the Project, it had no ability to prove a ‘positive impact’ in a rate case due to a Project that didn’t
10 exist.”⁵⁰ Circle City argues that its CAP water charges are not recoverable due to the
11 “positive impact” condition, and that the Company to a large extent has been unable since 2005 to
12 mitigate the CAP costs.⁵¹

13 29. Circle City presented evidence showing that it has paid approximately \$864,697 in CAP
14 water payments from 2005-2015.⁵² Circle City stated that Harvard has not offered to pay for or
15 reimburse the Company for its CAP water expenses.⁵³

16 30. Circle City states that the Developer did not “capitulate its position on the ‘positive
17 impact’ condition until LP5K filed its Motion to Dismiss” in this docket.⁵⁴ Circle City asserts that
18 Harvard’s “opposition to the ‘positive impact’ requirement has caused Circle City significant losses,
19 damage and financial operational suffering.”⁵⁵

20 31. Circle City states that it has not had a rate increase since 1988 and that its average
21 customer rate is \$26.51 for service.⁵⁶ Further, the Company asserts that the “positive impact” condition
22 has barred the Company from seeking modified rates because doing so is connected to a project that
23

24 ⁴⁷ Tr. at 56.

⁴⁸ Tr. at 48.

25 ⁴⁹ Exhibit A-1 at 13.

⁵⁰ *Id.* at 13-14.

26 ⁵¹ *Id.* at 7.

⁵² Exhibit A-2 at Exhibit 10.

27 ⁵³ Exhibit A-1 at 6.

⁵⁴ *Id.* at 14.

⁵⁵ *Id.*

28 ⁵⁶ *Id.* at 19.

1 has not been developed.⁵⁷

2 32. Circle City argues that based on the language contained in Decision No. 68246, the
3 CC&N extension order is considered null and void because Circle City failed to file: 1) a copy of the
4 ATC for Phase I; and 2) a copy of the developer's CAWS for Phase I.

5 33. Circle City disagrees with Staff's recommendation that the extension area should not be
6 deleted.⁵⁸ Circle City quoted Staff as stating "the issues in a deletion proceeding relate to whether the
7 applicant continues to be fit and proper with the financial, managerial, and technical capabilities to
8 serve the public."⁵⁹ Due to the "positive impact" condition and Harvard's failure to develop the Project,
9 Circle City argues that its financial resources are "limited or non-existent;" its managerial capability to
10 operate the Company is low; and its technical capabilities are limited because it can no longer afford
11 to invest in time saving processes and procedures that would bring cost savings to the Company.⁶⁰
12 Circle City states that it believes it is fit and proper to manage and own and operate its existing 182
13 customers, but it would be unable to maintain service for the estimated additional 10,000 customers
14 for the Project.⁶¹ Circle City asserts that the Commission and Harvard have "gutted" Circle City's
15 ability to be a fit and proper entity to serve the public represented by the Project.⁶²

16 34. Circle City asserts that the only alternative to the Company's current position is for the
17 Commission to approve the deletion of the CC&N extension area and to eliminate the "positive impact"
18 condition, so that it can seek new rates.⁶³

19 **III. LP5K and MRT's Position**

20 35. LP5K and MRT request that the Commission adopt Staff's recommendation to deny
21 Circle City's request to delete the CC&N extension area because they believe the Project is viable.⁶⁴

22 36. According to testimony, Harvard has been developing real estate projects since 1982
23 and it has developed and planned almost 50,000 residential lots in master planned residential
24

25 ⁵⁷ Exhibit A-1 at 20.

26 ⁵⁸ *Id.*

27 ⁵⁹ Circle City quoting from Exhibit S-1 at 4.

28 ⁶⁰ Exhibit A-1 at 21.

⁶¹ Tr. at 111.

⁶² Exhibit A-1 at 21.

⁶³ *Id.* at 27.

⁶⁴ Exhibit L-5 and Exhibit M-1.

1 communities.⁶⁵ Harvard also owns and develops office and industrial buildings.⁶⁶ LP5K's witness
 2 described the LP5K project as a large master planned development with a focus on single family homes
 3 located in Northwest Phoenix.⁶⁷ The witness stated that at buildout the LP5K project is expected to
 4 encompass 8,500 home sites and it will have approximately 21,000 residents.⁶⁸

5 37. MRT's witness stated the Warrick 160 property is contiguous to Circle City's CC&N
 6 and is located across from Highway US 60.⁶⁹ According to the witness, MRT purchased the property
 7 from Harvard in approximately 2008 and the proposed use for the property is a well field and/or 78-lot
 8 subdivision.⁷⁰ MRT's witness stated that the property owner for Warrick 160 is a real estate investor,
 9 but not a developer.⁷¹ MRT stated it is working in cooperation with Harvard to develop the property.⁷²
 10 MRT's witness stated that Harvard's work on the development of the Project has been professional and
 11 MRT has been satisfied with Harvard's development strategy.⁷³

12 38. LP5K stated that when it began working with Circle City on the CC&N extension, the
 13 Phoenix housing market had housing starts of 60,000 single-family homes per year.⁷⁴ According to
 14 LP5K's witness, by the year 2010 or 2011, home starts in Phoenix had dropped to approximately 6,000
 15 per year and there were tens of thousands of finished lots with no builders for them.⁷⁵ The witness
 16 stated that although the market has recovered, he anticipates there will be over 15,000 housing starts in
 17 2015 and that by the year 2020 housing starts will be up to approximately 25,000 per year.⁷⁶ The
 18 witness stated that the largest master planned community nearest to the Project is called Vistancia and
 19 that housing starts in Vistancia increased by 60 percent in 2015.⁷⁷

20 39. LP5K's witness stated that from 2005 through 2007, Harvard invested \$18 million in
 21

22 ⁶⁵ Exhibit L-5 at 1.

23 ⁶⁶ *Id.*

24 ⁶⁷ *Id.* at 2.

25 ⁶⁸ *Id.*

26 ⁶⁹ Exhibit M-1 at 3.

27 ⁷⁰ Tr. at 269.

28 ⁷¹ Tr. at 288-289 and 293.

⁷² Tr. at 288.

⁷³ *Id.* at 290.

⁷⁴ *Id.* at 143.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

1 the development of the Project and that to date the total investment is \$28 million.⁷⁸ In addition to its
 2 monetary investment, the witness stated that Harvard has obtained an approved Maricopa County
 3 Development Master Plan for 8,500 housing units, completed the environmental impact studies,
 4 obtained the Army Corp of Engineering 404s, renewed the Project entitlements for 30 years through
 5 the year 2043, and completed zoning for the Project.⁷⁹ Further, the witness testified that Harvard has
 6 an agreement with the Morristown Fire Department for fire service, and the Project area has been
 7 annexed by a school district in order to provide a school in the area.⁸⁰ The witness stated that Harvard
 8 has completed all of its entitlements and the only remaining item is the need for a market to start
 9 construction.⁸¹

10 40. LP5K's witness testified that Harvard is highly motivated to bring builders to the Project
 11 as fast as possible, but that building a project today before there is any interest would be unsustainable
 12 and reckless.⁸²

13 41. LP5K's witness stated that the City of Surprise will provide wastewater to the Project.⁸³

14 42. LP5K's witness also stated that Harvard operates on the principle that it keeps its
 15 "projects moving forward so that when the market is ready we're ready to develop them."⁸⁴ LP5K's
 16 witness further testified that it estimates Circle City will be selling water within the CC&N area in
 17 approximately 5-7 years.⁸⁵

18 43. LP5K disputes Circle City's recollection of the March 2013 meeting between the
 19 parties. Harvard's Vice President testified that Circle City's owner came to the meeting with three
 20 proposals requesting: 1) payment of legal and engineering costs in the amount of approximately
 21 \$60,000 associated with the CC&N extension; 2) reimbursement of maintenance expenses on a going
 22 forward basis in the amount of \$50,000 to \$75,000 per year; and 3) reimbursement for expenses related
 23 to the termination of the CC&N extension area in the amount of \$20,000.⁸⁶ The witness stated that he

24 ⁷⁸ Tr. at 144, 152 and 154.

25 ⁷⁹ Exhibit L-5 at 4. Tr. at 146, 167-168.

26 ⁸⁰ Tr. at 170.

27 ⁸¹ *Id.*

28 ⁸² *Id.* at 170-171.

⁸³ *Id.* at 142.

⁸⁴ *Id.* at 145.

⁸⁵ *Id.* at 212.

⁸⁶ *Id.* at 214.

1 heard the Company's requests on behalf of the partners, and informed the Company that the partners
2 would take the requests under advisement and then respond to the Company.⁸⁷ The witness stated that
3 he expressed his opinion that the real estate market in Phoenix was poor; the real estate market was
4 coming out of a recession; and that currently the Project was not viable.⁸⁸ The witness further stated
5 that, on his own, he does not have the authority to determine whether a project is viable or not viable,
6 but that it is a decision to be made by all of the partners in the Project.⁸⁹ According to the witness, after
7 meeting with the Project partners, it was decided that the Project was viable because the real estate
8 market was starting to improve.⁹⁰ Subsequently, Harvard renewed its request for service with Circle
9 City in December 2013.⁹¹

10 44. LP5K's witness stated that it would not have been responsible for Harvard to start
11 building five or six years ago or to spend a lot of money when there wouldn't have been any buyers.⁹²

12 45. LP5K disputes the Company's claim that there was no contact between them for nearly
13 eight years. LP5K states the evidence shows that there were ongoing conversations regarding the
14 Project between Circle City and Harvard.⁹³ LP5K asserts that it continued to pay for ongoing work
15 related to the Project. In support of its claim, LP5K submitted evidence that included invoices sent by
16 Circle City to LP5K in March of 2013 in the amount of \$20,411.50, for engineering work that took
17 place between 2008 and 2009 related to the development.⁹⁴ Again in July of 2013, LP5K received an
18 invoice from Circle City requesting payment of \$67,782.61 related to legal and engineering work that
19 had occurred prior to 2013.⁹⁵ LP5K asserts that Circle City would not have continued to incur costs for
20 the Project if it did not believe the Project was moving forward or if there had been no contact with the
21 LP5K. In support of its argument, LP5K points out that Circle City's witness conceded under cross
22 examination that it knew the partners considered the Project viable when Circle City cashed the July
23

24 ⁸⁷ Tr. at 219 and 222.

25 ⁸⁸ *Id.* at 215.

26 ⁸⁹ *Id.* at 217 and 231-232.

27 ⁹⁰ *Id.* at 144-145 and 225.

28 ⁹¹ *Id.*

⁹² *Id.* at 146.

⁹³ Tr. at 83 and Exhibit L-5 at Exhibit 2.

⁹⁴ Tr. at 96-97.

⁹⁵ Tr. at 101 and Exhibit L-5 at Exhibit 3.

1 2013 check.⁹⁶

2 46. LP5K submitted a letter (dated December 11, 2013) sent to Circle City, wherein LP5K,
3 through Harvard, expressed disappointment that Circle City had filed the deletion application in this
4 docket.⁹⁷ The letter stated that LP5K had advised Circle City on July 10, 2013, that LP5K intended to
5 move forward with the Project and that it did not want the CC&N deleted.⁹⁸ Further, LP5K's letter
6 states that it has met its contractual obligations under the WFA; LP5K paid Circle City \$67,782.61 on
7 July 18, 2013; the July 2013 payment was made and received and Circle City was aware of LP5K's
8 intentions; and although Circle City had attempted to get LP5K to sign a termination agreement,
9 Harvard had advised the Company numerous times that LP5K and its development partners intended
10 to move forward with the Project.⁹⁹

11 47. LP5K states that during its 2013 discussions with the Company, Harvard offered to buy
12 Circle City for \$3.2 million.¹⁰⁰ LP5K's witness testified that Harvard hired a consultant, Ray Jones, to
13 do a valuation of Circle City's assets and that Mr. Jones estimated Circle City assets were worth
14 between \$200,000 to \$350,000.¹⁰¹ The witness stated that Circle City counteroffered requesting that
15 Harvard purchase the utility for \$12 million.¹⁰² LP5K asserts that Harvard would not offer to buy Circle
16 City if it did not believe the Project was viable and that the partners for the Project understand that
17 having water service is key to developing the Project.¹⁰³

18 48. LP5K also disputes the Company's claim that Harvard had "never" previously disclosed
19 its partners prior to 2013. LP5K submitted evidence showing that the CAGR Notice and Agreement
20 executed with the Company on January 7, 2008, had been signed by Harvard and named all of its
21 partners.¹⁰⁴

22 49. LP5K asserts that Circle City is in no different position financially than it was prior to
23 the extension of its CC&N in 2005. LP5K states that although Circle City alleges that it had incurred

24 ⁹⁶ Tr. at 102.

25 ⁹⁷ Exhibit L-5 at Exhibit 4.

26 ⁹⁸ *Id.*

27 ⁹⁹ *Id.*

28 ¹⁰⁰ Tr. at 113.

¹⁰¹ *Id.* at 208.

¹⁰² *Id.* at 209.

¹⁰³ *Id.* at 113.

¹⁰⁴ Exhibit L-2 at Exhibit 3.

1 debt up to approximately \$600,000 from 1995 to 2005, Circle City's debt exceeded \$600,000. LP5K
 2 presented evidence showing that in May 2005 Circle City informed Staff that it had incurred debt,
 3 without Commission approval, in the amount of \$2.1 million by borrowing monies from its parent
 4 company to pay for CAP water allocation expenses.¹⁰⁵ Circle City acknowledged that it was aware
 5 that regulated entities are required to request Commission approval prior to incurring debt if the
 6 repayment of the debt is for longer than one year.¹⁰⁶ Circle City also acknowledged that it has incurred
 7 \$1 million in operating losses since 2005.¹⁰⁷ LP5K asserts that Circle City has lost approximately half
 8 of what the Company had lost prior to the CC&N extension being granted in 2005.¹⁰⁸

9 50. LP5K states that under the WFA, Section 2, paragraph 3, "the developer shall determine
 10 the financing and timing for construction of the offsite and on-site facilities."¹⁰⁹ LP5K's witness stated
 11 that Circle City would not have had any more revenues than it currently has if Harvard had begun
 12 construction on the Project.¹¹⁰ LP5K points out that under cross examination, Circle City's witness
 13 acknowledged that even if the infrastructure for the development had been built, Circle City would not
 14 have been able to place the facilities in its rate base until such time as they were "used and useful" and
 15 then the value would have been transferred from Contributions in Aid of Construction ("CIAC") to
 16 Advances in Aid of Construction ("AIAC").¹¹¹

17 51. LP5K disputes the Company's assertion that Harvard and the Commission have
 18 "gutted" Circle City's ability to be a fit and proper entity. LP5K asserts that based on the Company's
 19 own admission in 2005, and prior to the extension being granted, it had 167 customers and \$2.1 million
 20 in debt and that Circle City is in no different position today as it was in 2005.¹¹²

21 52. LP5K asserts that although the Company said that Harvard had "inflicted unnecessary
 22 additional pain, suffering, and financial burden on to Circle City because of its opposition to
 23 relinquishment of the positive impact condition," LP5K claims that it has never filed anything with the
 24

25 ¹⁰⁵ Exhibit L-3 at 2.

26 ¹⁰⁶ Tr. at 60.

27 ¹⁰⁷ *Id.* at 110.

28 ¹⁰⁸ *Id.* at 62-63.

¹⁰⁹ Tr. at 106 and Exhibit L-5 at Exhibit 1.

¹¹⁰ Tr. at 146.

¹¹¹ *Id.* at 104.

¹¹² *Id.* at 112.

1 Commission opposing the relinquishment of the condition.¹¹³ LP5K asserts that the only thing it has
 2 filed with Commission has been in support of the Company's request to eliminate the condition.¹¹⁴

3 53. LP5K asserts that although Circle City acknowledged that it is "generally familiar" with
 4 the process to amend a Commission order under Arizona Revised Statutes ("A.R.S.") §40-252, the
 5 Company never asked the Commission to remove the "positive impact" condition so that Circle City
 6 could file a rate case.¹¹⁵

7 **IV. Staff's Position**

8 54. Staff states that it analyzed the Company's application and considered whether the
 9 applicant continues to be fit and proper within the context of the Company's financial, managerial, and
 10 technical capabilities to service the public. Staff states that it also considered the circumstances
 11 surrounding the Project's viability and Circle City's continued responsibility to serve the area as a
 12 CC&N holder.

13 55. Staff states that LP5K and its development partners have established that there is a need
 14 for water for the development of the Project and that LP5K and MRT have renewed their request for
 15 service.¹¹⁶ Staff states that when Circle City cashed the Developer's check, the Company's actions
 16 were inconsistent with it filing the application in this docket, given the Developer's reiteration at the
 17 August 2013 meeting that the partners wanted to proceed with the Project, and the subsequent renewed
 18 request for service.¹¹⁷

19 56. Staff states that there are no other water providers serving areas contiguous to, or in
 20 close proximity to, the proposed deleted area.¹¹⁸ Staff believes that, in general, it is more economical
 21 for an area to be served by one water provider rather than several small contiguous water providers.¹¹⁹

22 57. Staff opposes the Company's reliance on the language found in Decision No. 68246,
 23 which provides that if Circle City did not meet certain compliance deadlines within two years of the
 24 Decision the Decision would be deemed null and void without further Order of the Commission. Staff

25 ¹¹³ Tr. at 90.

26 ¹¹⁴ *Id.*

27 ¹¹⁵ *Id.* at 94.

28 ¹¹⁶ Exhibit S-1 at 5.

¹¹⁷ *Id.* at 6.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

1 states that the two documents that were to be filed by the Company were: 1) a copy of the ATC for
 2 Phase I; and 2) a copy of the Developer's CAWS for Phase I. Staff states that although the Company
 3 did not file the documents with Docket Control as required by Decision No. 68246, the Company
 4 acknowledged that it obtained both documents. Given this, Staff believes the Company should not be
 5 allowed to benefit at the expense of the Developers from its own failure to file the documents with
 6 Docket Control as set forth in Decision No. 68246.

7 58. Staff asserts that if there are inconsistencies in how the property in Phase I will be used,
 8 the inconsistencies are the result of the information the Company provided to Staff.¹²⁰ Staff pointed to
 9 the language in Decision No. 68246 where the Company's witness testified that the Project was to be
 10 developed in stages. Staff stated that, in that proceeding, Staff modified its recommendation to have
 11 the Company provide, as a compliance item, the developer's CAWS for Phase I of the Project. Staff
 12 explained that if there were not going to be residential buildings in Phase I, there would not have been
 13 a need to have the Company file a CAWS.¹²¹ Staff also explained that the master plan provided by the
 14 Company showed that there was going to be a well field on the property.¹²² Therefore, Staff stated that
 15 it based its information in the Staff Report on information provided by the Company.¹²³

16 59. Staff disputes the Company's claim that it is no longer fit and proper to serve the
 17 extension area. Staff asserts that in 2005 it was the Company's opinion that it was a fit and proper entity
 18 to provide service to the extension area.¹²⁴ Based on the amount of debt owed by the Company, and
 19 the number of customers it was serving, Staff stated that nothing has changed in the Company's status
 20 since the CC&N extension was granted.¹²⁵ Staff points out that the Company's witness stated that his
 21 managerial, technical and financial abilities have remained the same.¹²⁶ Further, Staff stated that the
 22 Company testified that it is fit and proper to operate and to manage its current customers, and because
 23 nothing has happened as far as providing service in the extension area, Staff believes the Company is
 24

25 ¹²⁰ Tr. at 318.

26 ¹²¹ *Id.* at 319.

¹²² *Id.*

¹²³ During the hearing the parties stipulated that Phase I of the Project may contain a combination of residential lots and a well field. Tr. at 322.

¹²⁴ *Id.* at 121.

¹²⁵ *Id.* at 331.

¹²⁶ *Id.* at 121-123.

1 still fit and proper.¹²⁷ Staff explained that the Company could have by now filed a rate case, requested
 2 a waiver of the “positive impact” provision, or filed to amend Decision No. 68246 under A.R.S. 40-
 3 252, so that it can earn a fair rate of return on its investment.¹²⁸ However, Staff reiterated that the
 4 Company’s managerial, technical and financial ability have remained the same.¹²⁹

5 60. According to Staff, Circle City’s current water system consists of one well, producing
 6 75 gallons per minute, one 50,000 gallon storage tank, three 25,000 gallon storage tanks, a booster
 7 system and a distribution system.

8 61. Staff states that Circle City is currently not in compliance with ADWR requirements,
 9 based on an ADWR compliance status report dated April 18, 2016.¹³⁰ Staff indicated that Circle City’s
 10 non-compliance with ADWR standards is due to the Company’s failure to file a System Water Plan, to
 11 timely file its Annual Report, and to maintain approved/accurate measuring devices.¹³¹

12 62. Circle City has approved Curtailment and Backflow Prevention Tariffs on file with the
 13 Commission.

14 63. Staff recommends denial of the Company’s request to delete the CC&N extension area.
 15 Staff also recommends that the Commission eliminate the requirement that Circle City demonstrate in
 16 its next rate filing that its existing customers have been positively impacted by the addition of new
 17 water facilities necessary to serve the extension area.¹³²

18 64. Staff further recommends that the Company file with Docket Control, as a compliance
 19 item in this docket by April 30, 2017, documentation from ADWR indicating that the water system is
 20 in compliance.

21 **V. Conclusion**

22 65. Contrary to the Company’s allegation that years passed without it having contact with
 23 the Developers, the evidence shows that there was ongoing communication between the Developer and
 24 the Company.

25 _____
 26 ¹²⁷ Tr. at 332.

¹²⁸ *Id.*

¹²⁹ *Id.* at 331.

¹³⁰ Staff Supplemental Staff Report filed April 29, 2016.

¹³¹ *Id.* at Attachment A.

¹³² The parties and Staff stipulated to the removal of the “positive impact” condition. Tr.at 28.

1 66. LP5K and MRT have established that there is a continuing need for service in the
2 extension area. The testimony shows that there has been a significant monetary investment to get the
3 Project in a position to attract builders once the housing market picks up. Further, the developers have
4 demonstrated that the necessary entitlements, zoning, and perquisite provisions to begin construction
5 have been completed. LP5K and MRT presented invoices for expenses related to the CC&N extension
6 area and the evidence shows that, pursuant to the WFA executed between the Intervenors and Circle
7 City, payment for the expenses have been timely made.

8 67. Although Circle City presented information purporting to show its incurrence of
9 maintenance expenses related to the Project, a determination of what those expenses are, and how they
10 should be allocated, is best reviewed in the context of a full rate case. Because the Company has not
11 had new rates since 1995, we will require the Company to file, no later than December 31, 2016, a full
12 rate case, as a compliance item in this docket, using a test year ending December 31, 2015. Further,
13 we find that it is in the public interest to amend Decision No. 68246 to remove the “positive impact”
14 requirement.

15 68. Circle City has acknowledged that its financial, managerial, and technical capabilities
16 have not diminished since the Commission approved extension of Circle City’s CC&N to include the
17 Project. According to the WFA, all expenses related to the construction of the on-site and off-site
18 facilities for the Project will be paid through CIAC provided from the Developer. Circle City will not
19 have to expend any funds for the water infrastructure related to the Project. At the time of the CC&N
20 extension application, Circle City’s owner had previously owned, managed and/or operated six other
21 Commission regulated water utilities.¹³³ The Commission found that Circle City was fit and proper at
22 that time, and we find persuasive Staff’s argument that Circle City’s status as a fit and proper entity
23 has not changed because of the lack of development. Therefore, we will adopt Staff’s recommendation
24 to deny the Company’s request to delete the CC&N extension area. We will also adopt Staff’s
25 recommendations to require the Company to demonstrate that it is in compliance with ADWR
26 requirements.

27
28 _____
¹³³ Tr. at 21.

CONCLUSIONS OF LAW

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1. Circle City is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

2. The Commission has jurisdiction over Circle City and the subject of its application.

3. Notice of the application was given in accordance with the law.

4. It is in the public interest to eliminate the "positive impact" requirement as set forth in Decision No. 68246.

5. It is in the public interest to require Circle City to file a full rate case by December 31, 2016, using a 2015 test year.

6. Staff's recommendations, as amended herein, are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that Circle City Water Company L.L.C.'s request for deletion of the portions of its Certificate of Convenience and Necessity approved in Decision No. 68246 is hereby denied.

IT IS FURTHER ORDERED that Commission Decision No. 68246 is hereby amended to remove the requirement that Circle City Water Company, L.L.C. demonstrate in its next rate case filing that its existing customers have been positively impacted by the addition of new water facilities necessary to serve the extension area.

IT IS FURTHER ORDERED Circle City Water Company, L.L.C. shall file, as a compliance item in this docket, a full rate case no later than December 31, 2016, using a December 31, 2015 test year.

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1 IT IS FURTHER ORDERED that Circle City Water Company, L.L.C. shall file with Docket
2 Control, as a compliance item in this docket, by April 30, 2017, documentation demonstrating that it is
3 in compliance Arizona Department of Water Resources requirements.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6
7

8 CHAIRMAN _____ COMMISSIONER

9
10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

11
12 IN WITNESS WHEREOF, I, JODI JERICH, Executive Director
13 of the Arizona Corporation Commission, have hereunto set my
14 hand and caused the official seal of the Commission to be affixed
15 at the Capitol, in the City of Phoenix, this _____ day
16 of _____ 2016.

17 _____
18 JODI JERICH
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____
22 YK:rt
23
24
25
26
27
28

1 SERVICE LIST FOR:

CIRCLE CITY WATER COMPANY, L.L.C.

2 DOCKET NO.:

W-03510A-13-0397

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