

NEW APPLICATION



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ORIGINAL

Memorandum
From the office of
Commissioner Andy Tobin
Arizona Corporation Commission
1200 W. WASHINGTON
PHOENIX, ARIZONA
(602) 542-3625

TO: Docket Control

DATE: April 3rd, 2017

FROM: Commissioner Andy Tobin's Office

WS-00000A-17-0094

SUBJECT: Request for New Docket

Please open a new generic docket. The title of this docket should be:

Commission Investigation into the Setting and Subsequent Extension of Compliance Deadlines
Associated with Certificates of Convenience and Necessity

Arizona Corporation Commission

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BOYD W. DUNN



ANDY TOBIN
COMMISSIONER

BOYD W. DUNN
COMMISSIONER

ARIZONA CORPORATION COMMISSION

April 3, 2017

Docket Control
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

RE: Commission Investigation into the Setting and Subsequent Extension of Compliance Deadlines Associated with Certificates of Convenience and Necessity

Dear Commissioners and Other Interested Parties:

In preparing for the Commission's March Open Meeting, we were very concerned by a number of applications from water and wastewater companies seeking to extend compliance deadlines contained in original Commission Orders.¹ In those Orders, the Commission added service territory to companies' Certificates of Convenience and Necessity upon satisfying certain conditions. Once those conditions are met, then the Commission automatically grants the Certificate of Convenience and Necessity (CC&N) to the utility.

Historically, the Commission would issue "Orders Preliminary to the Issuance of the Certificate" (Orders Preliminary), meaning that the company would need to meet certain conditions prior to applying for a CC&N. This method required a company to return to the Commission twice, chewing up both the company and staff's time, and creating unnecessary redundancy. In the early 2000s, the Commission debated the costs and benefits of both Conditional CC&Ns and Orders Preliminary, ultimately coming down on the side of the former.

Unclear to us is whether the Commission has ever comprehensively discussed the timeframe for a company to satisfy the conditions upon which a CC&N is based. The Arizona Revised Statutes §§ 40-281 *et seq.*, the source of our authority to issue CC&Ns, are silent, too.

The courts have not addressed this issue either. The Arizona Supreme Court has held, "*Once granted*, the certificate confers upon its holder an exclusive right to provide the relevant service

¹ See Commission Decision Nos. 68307 (Nov. 14, 2005), 69414 (Apr. 16, 2007), 70037 (Dec. 4, 2007), 70379 (June 13, 2008), 70620 (Nov. 19, 2008), 70663 (Dec. 24, 2008), and 73780 (Mar. 21, 2013).

for as long as the grantee can provide adequate service at a reasonable rate.”² No other utility that provides the same kind of service is allowed to compete against the CC&N holder, thereby giving that holder monopoly status subject to the jurisdiction of the Commission. The regulatory netherworld between the submittal of the CC&N application and its unencumbered and final grant from the Commission should and must be addressed especially in light of a flurry of deadline extension requests.

For the March Open Meeting, we pulled seven water and wastewater applications that sought deadline extensions for the utilities to fulfill conditions prior to receiving their CC&Ns.³ Collectively, these seven applications have received 16 extensions over the past eight years. Of those extensions, 12 were placed on the Commission’s Consent Agenda. When it comes to CC&Ns, the “vigilant and continuous regulation” of the state’s monopolies has seemingly been put on autopilot.⁴ This is unacceptable, and we will seek Commission support to fully review our CC&N policies.

We applied two criteria in reviewing all applications for deadline extensions:⁵

1. The age of the original order approving a conditional CC&N; and
2. The additional investment in physical plant to serve the new CC&N area.

As to the first, we are sympathetic to unanticipated delays caused by the Great Recession, which dashed many thoughtful plans of land developers. Previous Commissions saw this as well. All but one of the applications were initially approved between 2005 and 2008, and extensions were granted thereafter to reflect the reality of the economic downturn. But the year is now 2017. How much longer must the Commission protect CC&N turf for a utility that has been unable to move forward with plans to provide service? We will investigate this question in greater detail.

As to the second, we do not wish to jeopardize the capital that utilities put in place to develop a conditional CC&N area. We fully supported the extension by Double Diamond Utilities in part because the company drilled a well to serve a development that never materialized.⁶ Our view does not mean that CC&N holders without plant in the ground must run to their local well driller today to preserve their conditional CC&Ns. Prudent investment that reflects the *current need* of customers is paramount. Should conditional CC&Ns do the same?

² *James P. Paul Water Co. v. Ariz. Corp. Comm’n*, 137 Ariz. 426, 429, 671 P.2d 404, 407 (1983) (emphasis added).

³ See dockets W-02450A-04-0837, W-02450A-06-0253, W-01445A-07-0291, W-03718A-07-0687, W-01445A-12-0424, WS-02987A-06-0663

⁴ *Davis v. Ariz. Corp. Comm’n*, 96 Ariz. 215, 218, 393 P.2d 909, 911 (1962).

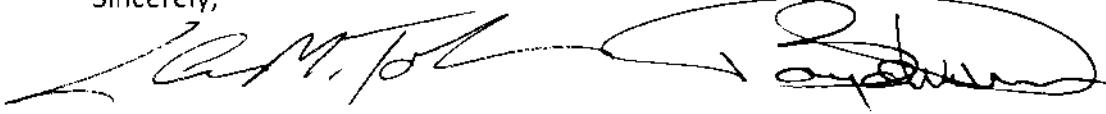
⁵ It should be noted that we did not object to all of the deadline extensions associated with conditional CC&Ns. See WS-20543A-07-0435 and W-03476A-15-0286.

⁶ See ACC Staff Memo. *re: Double Diamond Utility, Inc. - Request for Extension of Compliance Deadlines*, Docket No. WS-20543A-07-0435, 2 (Jan. 27, 2017).

We hope to elicit feedback from our fellow commissioners and other interested stakeholders as we proceed with our examination of this issue.

Please open a new docket entitled: "Commission Investigation into the Extension of Compliance Deadlines Associated with Certificates of Convenience and Necessity."

Sincerely,

Handwritten signatures of Andy Tobin and Boyd W. Dunn. The signature on the left is for Andy Tobin and the signature on the right is for Boyd W. Dunn.

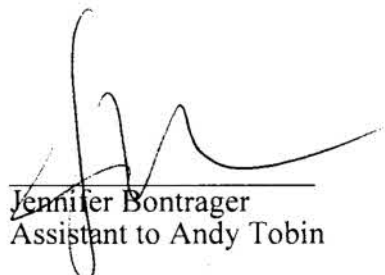
Andy Tobin
Commissioner

Boyd W. Dunn
Commissioner

CERTIFICATION OF SERVICE

On this 3rd day of April, 2017, the foregoing document was filed with Docket Control as a correspondence from Commissioner Andy Tobin, and copies of the foregoing were mailed on behalf of Commissioner Andy Tobin to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

By:



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