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Memorandum
From the office of
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Arizona Corporation Commission

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TO: Docket Control

DATE: June 12th, 2017

FROM: Commissioner Andy Tobin's Office

SUBJECT: Doc. No. WS-00000A-17-0094

Presentation from Snell & Wilmer, LLP on behalf of Global Water Resources, Inc. regarding CC&Ns for the ACC CC&N workshop June 12th, 2017.

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Historical Background on CC&Ns

ACC CC&N Workshop

June 12, 2017

Docket No. WS-000000A-17-0094

Timothy J. Sabo
Snell & Wilmer, LLP

On behalf of Global Water Resources, Inc.

In the beginning

- Public Service Corporation Act of 1912 (Laws 1912, ch. 50) creates CC&N in Sections 50 & 51
- “without first having obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction...”
- ARS § 40-281 now refers to “certificate of public convenience and necessity”



Statute's Regulated Monopoly Policy

- Law follows “regulated monopoly” theory *Corp. Comm’n of Arizona v. People’s Freight Line*, 41 Ariz. 158, 167 (1932)
- “policy of the law is controlled and regulated monopoly rather than free competition” *Arizona Corp. Comm’n v. Hopkins*, 52 Ariz. 174, 180 (1938)
- “Public service corporations in Arizona provide services under a regulated monopoly system rather than one borne of free-wheeling competition” *Arizona Water Co. v. Arizona Corp. Comm’n*, 217 Ariz. 652, 656, ¶ 11 (App. 2008)

No competition once CC&N issued

- New certificate may not be issued without giving existing holder “an opportunity to improve their service.” *Arizona Corp. Comm’n v. Hopkins*, 52 Ariz. 174, 180, 79 P.2d 946, 948 (1938)
- “Once granted, the certificate confers upon its holder an exclusive right to provide the relevant service for as long as the grantee can provide adequate service at a reasonable rate.” *James P. Paul v. Arizona Corp. Comm’n*, 137 Ariz. 426, 430 (1983)



Evolution of CC&N orders

- Early - One page (legal size), no conditions
 - Decision No. 17778 (Dec. 8, 1947)(Valencia)
 - Decision No. 35060 (Feb. 26, 1964)
- Middle – 4-5 pages, findings of fact, no conditions
 - Decision No. 47111 (March 3, 1977)
 - Decision No. 54420 (April 1, 1985)
- 2000's – 20 plus pages, numerous conditions
 - Decision 70381 (June 13, 2008)
- Recent – 9 pages, only condition is to charge existing rates
 - Decision No. 75230 (Aug. 26, 2015)



Historical CC&N Policy Disputes



160 acre policy

- Example “in the future anyone owning 160 acres or more and who desires to have his property deleted from the certificated area herein may by written application to the commission in which good cause is shown have his property deleted from this certificate of convenience and necessity” Decision No. 33434 (Oct. 6, 1961)
- ACC policy allowing large landowners to delete their property from CC&N “is repugnant to the underlying philosophy of our public utility law” *Arizona Corp. Comm’n v. Tucson Ins. & Bonding Agency*, 3 Ariz. App. 458, 463 (1966)

Economies of Scale

- “A water company's ability, from an economical standpoint, to serve many small property owners may hinge upon the inclusion of a larger parcel of land in its certificate.”
- “A property owner's interests and desires must yield to the public convenience, a public service commission's prime concern.”

Arizona Corp. Comm'n v. Tucson Ins. & Bonding Agency, 3 Ariz. App. 458, 463 (1966)



5 year vs. entire development dispute

- Staff recommended granting only areas to be developed in first 5-10 years
 - Impacted Global
- Pulte objected, noted need to cover entire development
- Commission grants CC&N that covers Pulte's entire development
 - Decision No. 74786 (Oct. 24, 2014)
- Staff revises its recommendation
 - Decision No. 75691 (Aug. 5, 2016)(Zanjero Trails)

Integrated provider debate

- “benefits of developing and operating integrated water and wastewater utilities”
 - Decision No. 68453 (Feb. 2, 2006) FOF ¶ 129(4)
- “For these reasons, we decide that reasonable evidence supported the Commission’s conclusion that Woodruff Water’s ability to coordinate efforts with Woodruff Utility would benefit the public.” *Arizona Water Co. v. Arizona Corp. Comm’n*, 217 Ariz. 652, 661, ¶ 31 (App. 2008)

Swiss cheese v. fill in debate

- Should certificates be limited to specific parcels with requests for service (possibly creating weird shapes) or should be by squared off / filled in (e.g. full, half or quarter sections)
- “fill in.. to create a more logical boundary”
Decision No. 73146 (May 1, 2012)
- CC&N will not be granted w/o request for service
 - Decision No. 68453 (Feb. 2, 2006)(Woodruff/AWC)
 - Decision No. 59396 (Nov. 28, 1995)(Beardsley)

CC&N Rules Revision

- 2008 Major overhaul of CC&N rules for water and wastewater
 - Requires notice to landowners if no request for service
 - Regional Planning
 - Requires notice to nearby city
 - Requires map showing nearby utilities
 - Requires description of how water provider will work with wastewater provider “to encourage water conservation”
- Decision 70625 (Nov. 19, 2008)



Conclusions

- Arizona law follows regulated monopoly theory – no competition once certificate issued
- Historically, landowner's views and economies of scale are considerations in issuing new CC&N
- Integrated service and water conservation are newer, but important, considerations



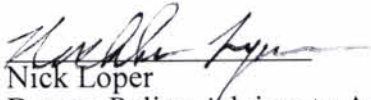
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CERTIFICATION OF SERVICE

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