

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION FIXED UTILITIES

Editor's Note: The following Notice of Final Rulemaking is exempt from the Governor's Regulatory Review Plan memorandum, January 22, 2009 and its continuations on April 30, June 29, and October 16, 2009 per A.R.S. § 41-1005. (See a copy of the memoranda on pages 2107 through 2109.)

[R09-114]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R14-2-402 | Amend |
| R14-2-602 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: Arizona Constitution Article XV § 3; A.R.S. §§ 40-202, 40-203, 40-321, 40-322, 40-281, 40-282
Implementing statute: Arizona Constitution Article XV § 3; A.R.S. §§ 40-202, 40-203, 40-321, 40-322, 40-281, 40-282
- 3. The effective date of the rules:**
January 22, 2010
- 4. A list of all previous notices appearing in the *Register* addressing the final rule:**
Notice of Rulemaking Docket Opening: 14 A.A.R. 460, February 15, 2008
Notice of Proposed Rulemaking: 14 A.A.R. 454, February 15, 2008
Notice of Supplemental Rulemaking: 14 A.A.R. 3557, September 12, 2008
- 5. The name and address of agency personnel with whom persons may communicate regarding the rule:**
- | | |
|------------|--|
| Name: | Robin Mitchell, Esq.
Attorney, Legal Division, Arizona Corporation Commission |
| Address: | 1200 W. Washington St.
Phoenix, AZ 85007 |
| Telephone: | (602) 542-3402 |
| Fax: | (602) 542-4870 |
| E-mail: | rmitchell@azcc.gov |
| or | |
| Name: | Steve Olea
Assistant Director, Utilities Division, Arizona Corporation Commission |
| Address: | 1200 W. Washington St.
Phoenix, AZ 85007 |
| Telephone: | (602) 542-7270 |

Notices of Final Rulemaking

Fax: (602) 542-2129
E-mail: solea@azcc.gov

6. An explanation of the rule, including the agency's reasons for initiating the rule:

These amendments will amend existing rules (R14-2-402 and R14-2-602), both entitled "Certificate of Convenience and Necessity" ("CC&N"). The proposed amendments and changes to these rules are designed to provide the Arizona Corporation Commission and the Commission's Staff more information in the application for a new CC&N or for an extension of a CC&N. This additional information will aid Staff in its analysis and the Commission in its determination of the public interest when granting or denying a CC&N or a CC&N extension for water service and sewer service.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

A study was not necessary.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The Summary of the economic, small business, and consumer impact:

1. BRIEF DESCRIPTION: These amendments will amend existing rules (R14-2-402 and R14-2-602), both entitled "Certificate of Convenience and Necessity." The proposed amendments and changes to the existing R14-2-402 and R14-2-602 ("the Rules") are designed to provide the Arizona Corporation Commission ("the Commission") and the Commission's Staff ("the Staff") more information in the application for a new Certificate of Convenience and Necessity ("CC&N) or for an extension of a CC&N. This additional information will aid Staff in its analysis and the Commission in its determination of the public interest when granting or denying a CC&N or a CC&N extension for water service and sewer service.

2. NEED: Currently the Rules require certain information to be included in an application for a new CC&N or an extension of a CC&N. However, the Rules indicate that the required information is the minimum information to be included in the application. During the processing of the application and the administrative hearing on the application, the Commission and the Staff often request further information either through data requests, during the administrative hearing or late-filed exhibits. This slows the process down. The Rule changes would fulfill the need to reduce delays by requiring all information necessary to review the application at the beginning of the process. This does not mean that additional, case-specific information will not be required by the Staff.

The Rule change also would require information not currently requested during any part of the proceedings. This information is necessary to help the Staff and the Commission determine the need for the new CC&N or the extension of a CC&N and the proximity of potential municipal providers.

The Rule change is also needed to enable the Staff and the Commission to verify that affected landowners have been properly notified of the CC&N proceeding.

3. NAME AND ADDRESS OF AGENCY EMPLOYEE WHO MAY BE CONTACTED TO SUBMIT ADDITIONAL DATA ON THE INFORMATION INCLUDED IN THIS STATEMENT:

Name: Steve Olea
Director, Utilities Division

Address: Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 542-7270

Fax: (602) 542-2129

4. AFFECTED CLASSES OF PERSONS:

- A. Landowners and developers who want to form a water or wastewater utility.
- B. Owners and operators of water and wastewater utilities who want to extend their CC&Ns.
- C. Landowners whose land is within the proposed CC&N area or the proposed CC&N extension area.
- D. Landowners or developers desiring service from a water or sewer utility.
- E. Customers of water and wastewater utilities.
- F. Nearby water and wastewater service providers.

5. RULE IMPACT ON AFFECTED CLASSES OF PERSONS:

Notices of Final Rulemaking

- A. The impact on landowners and developers who want to form a water or wastewater utility should be lower organizational costs. They should experience a reduction in the frequency of interaction with the Commission Staff and a reduction in the time necessary to prepare data responses and responses to letters of insufficiency. This, in turn, should reduce accounting and attorney fees.
Also, adoption of the proposed Rule changes should reduce the time period between the date of the application and the date of a final order in the matter which would allow for faster development of the property.
- B. The impact on owners and operators of water and wastewater utilities who want to extend their CC&Ns should be similar to those impacts listed under A. However, the utilities would be required to provide more information than is currently required by the Rules. The impact on the utilities will be additional research, noticing, and other communication with landowners.
- C. Landowners whose land is included in the potential CC&N service area, will have ample opportunity to comment regarding being included in the service area.
- D. The impact on landowners or developers desiring service from a water or sewer utility should be lower organizational costs.
- E. The impact on current and future customers of the water or wastewater utilities at issue would be lower costs flowing through to rates. The costs of forming or extending a CC&N are generally capitalized and amortized over a long period of time. Those costs may be included in rates. If those costs are lower, rates will be lower than otherwise.
- F. Nearby water and wastewater providers will be provided more adequate notice, thereby allowing them more opportunity to provide comment to the Commission regarding approval of another nearby similar utility.

- 6. COSTS AND BENEFITS TO THE AGENCY: The proposed changes will have a minimal cost effect on the Commission and will have no impact on costs experienced by other state agencies. Although the proposed changes would require additional Staff time to verify that the application is administratively complete because the applications will be more comprehensive, the Commission will benefit by having necessary information at the beginning of the CC&N process rather than by delaying the process while performing extensive discovery after the application is filed.
- 7. COSTS AND BENEFITS TO POLITICAL SUBDIVISIONS: There will be no increases or decreases in costs to political subdivisions because the Commission does not have jurisdiction over political subdivisions and the Rules do not apply to them. Political subdivisions that provide water or sewer service in the vicinity of CC&N applications may benefit by being provided notice of such applications.
- 8. COSTS AND BENEFITS TO PRIVATE PERSONS: The proposed changes may reduce upward pressure on the rates of customers of water and wastewater utilities which are forming or expanding due to reduced regulatory costs.
- 9. COST AND BENEFITS TO CONSUMERS OR USERS OF ANY PRODUCT OR SERVICE IN THE IMPLEMENTATION OF THE NEW RULES. The proposed changes may reduce upward pressure on the rates of customers of water and wastewater utilities which are forming or expanding due to reduced regulatory costs.
- 10. LESS COSTLY OR INTRUSIVE METHODS: The changes to the rules are the least costly method to obtain information necessary for the Commission to decide CC&N and CC&N extension cases.
- 11. ALTERNATIVE METHODS CONSIDERED: There are no alternative methods to obtain the desired information in a timely manner.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The rules published in the supplemental notice set out in more detail a listing of the information to be submitted in the applications for CC&Ns and CC&N extensions as well as the information to be provided in notice to affected landowners, developers, municipalities and other utility providers. There were no changes between the supplemental notice and the final rules.

11. A summary of the comments made regarding the rule and the agency response to them:

The written and oral comments received by the Commission after the Notice of Proposed Rulemaking was published, after the Recommended Opinion and Order recommending a Notice of Supplemental Proposed Rulemaking was issued, and after the Notice of Supplemental Proposed Rulemaking was published are included in the following table, along with the Commission response to them.

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

Section	Public Comment	Commission Response
Comments on Notice of Proposed Rulemaking		
Rulemaking Generally	In a March 17, 2008, letter, Arizona Water Company thanked the Commission for allowing it the opportunity to amplify its previous comments and expressed support for the Commission's decision to have additional public comment sessions concerning the rulemaking and to provide the opportunity to comment on other utilities' comments.	The Commission acknowledges the supporting comment. No change is needed in response to this comment.
Rulemaking Process	At the oral proceeding on April 15, 2008, Arizona Water Company asked whether there would be another public comment session after the economic impact statement and Staff's responses to comments had been filed.	The ALJ responded to the question at the oral proceeding and explained that another oral proceeding would be scheduled if a Notice of Supplemental Proposed Rulemaking were necessary, which had not yet been determined, and that there would in any event be an opportunity to comment through the Open Meeting process. The ALJ also requested that Staff docket the economic impact statement that had been prepared by Staff so that it would be available for review before a Recommended Opinion and Order was issued.
402 Generally	In its March 17, 2008, letter, Arizona Water Company stated that applicants for CC&N extensions should not be required to provide the same information as should applicants for new CC&Ns. Arizona Water Company stated that it and other water utilities had previously commented that for Class A utilities, which often file applications for CC&N extensions, it is not necessary that identical and redundant information be filed with every extension application.	The Commission Staff believes that this information is necessary to evaluate CC&N extension applications. The Commission believes that it is appropriate to treat applicants evenhandedly and to include in the application rules the baseline information requirements that all applicants must submit, in keeping with the Administrative Procedure Act. In addition, it should be noted that information submitted in one application docket is not made a part of the evidentiary record in another application docket unless done expressly. No change is needed in response to this comment.
402(A)	In its March 17, 2008, letter, Arizona Water Company stated that inserting the definition of "contiguous" at the beginning of Article 4 is out of place and not germane to the Sections that follow. Arizona Water Company stated that the definition should remain at the end of Article 4.	It is standard practice in rulemaking to provide definitions at the beginning of the rule provisions to which they pertain. No change is needed in response to this comment.
402(B)(2)(i)	In its March 17, 2008, letter, Arizona Water Company stated that requiring a request for service identify the water service provider implies that someone other than the Commission selects which water service provider should serve in a particular case, which conflicts with the Commission's lawful role. Arizona Water Company stated that it is the Commission, not a landowner or developer, that must determine what is in the public interest and who is a fit and proper water service provider.	The Commission agrees that it is the Commission, not a landowner or developer, that must determine what is in the public interest. The Commission does not believe that having a landowner express a preference for a particular water service provider implies that the landowner is making the determination of which water service provider will provide service or that the Commission is in any way failing to fulfill its lawful role. No change is needed in response to this comment.

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

Section	Public Comment	Commission Response
402(B)(2)(j)	<p>In its March 17, 2008, letter, Arizona Water Company stated that the requirement for submission of detailed maps with CC&N extension applications is unduly burdensome, unnecessary, and practically impossible to comply with. Arizona Water Company particularly took issue with a requirement to include land ownership boundaries indicating the acreage of each parcel within the requested extension area. Arizona Water Company stated that the better practice is the current practice, where Staff requests, on a case-by-case basis, that additional information be added to the detailed maps that most applicants already provide. Arizona Water Company also stated that showing the boundaries of cities and towns that are within five miles of the requested extension area will substantially increase the burden on applicants without a showing that the information is relevant, needed, or useful.</p>	<p>The Commission believes that it is not unduly burdensome to require an applicant to provide ownership boundaries and acreage information on the maps submitted with an application. This type of information is now often gathered through Staff data requests or late-filed exhibit requirements, and it is far more efficient for all parties to have it provided up front. The Commission believes that it is important to have this information if there are multiple owners, particularly when large areas are involved, because it allows the Commission to better evaluate whether granting an application as to the entire area requested or only a portion of the area requested is in the public interest. As to the requirement to provide the boundaries of municipalities located within five miles, the Commission believes that it is important to have this information so that the Commission is aware of the municipalities that may be interested in the application and of the potential for an area to be annexed.</p> <p>No change is needed in response to this comment.</p>
402(B)(2)(j)	<p>In a March 28, 2008, filing, the City of Surprise stated that numerous municipalities had requested that the maps submitted with an application identify municipal limits within a greater distance from the requested service area, five miles instead of one mile, to address the rapid pace of municipal annexation now occurring in Arizona. The City of Surprise also stated that applicants will still be pulling the information from the same publicly available sources as for the smaller range and that the five-mile range should not materially impact applicants' costs or the time necessary to prepare the maps. The City of Surprise stated that the map requirements make sense and should not be removed, as they are designed solely to help ensure that the Commission will receive all relevant information before making decisions on pending application.</p>	<p>The Commission acknowledges the supporting comment.</p> <p>No change is needed in response to this comment.</p>

Notices of Final Rulemaking

Section	Public Comment	Commission Response
402(B)(2)(k) and (l)	<p>In its March 17, 2008, letter, Arizona Water Company stated that the current procedures for providing public notice of initial filing of an application for a CC&N or a CC&N extension are adequate and that there is no evidence that landowners or other interested persons, including municipalities, are not already receiving adequate notice under the Commission's current procedures. Arizona Water Company stated that the notice provisions would significantly burden the application process and are not necessary.</p>	<p>The Commission believes that the requirement to provide notice to municipalities is necessary, as demonstrated by those municipalities who have expressed support for it. While the Commission's e-docket service is valuable, it can be difficult to locate dockets thereon unless one is aware of their existence beforehand. Thus, as the municipalities have indicated, it is difficult for a municipality to determine that it has an interest in an ongoing application without having first received notice of the application. The Commission believes that the burden of the notice requirement is minor in comparison to the benefit of having potentially interested municipalities become aware of applications and participate in the proceedings if they are interested.</p> <p>The Commission already requires notice to all landowners for both CC&N and CC&N extension applications, through publication and/or mailing. Because the Commission specifically desires to receive information about which landowners have requested service and which have not, the Commission believes that it is appropriate to revise the rules so that written notice will always be provided to each landowner. This requirement is not unduly burdensome, as there are generally not many owners for a given area. Any added burden is outweighed by the benefit, as the information to be derived from interested landowners will assist the Commission in determining whether granting an application is in the public interest.</p> <p>No change is needed in response to this comment.</p>
402(B)(2)(k)	<p>In a filing dated March 28, 2008, the City of Surprise stated that, contrary to Arizona Water Company's assertions, substantial evidence exists supporting the requirement for an applicant to provide notice to all municipalities located within five miles of the area under application. The City of Surprise stated that the notice provision had been expressly requested in writing by the City of Surprise, the City of Peoria, the City of Litchfield Park, the Town of Buckeye, the Town of Queen Creek, the City of Avondale, and the City of Goodyear. The City of Surprise further stated that the notice provision had been specifically added through unanimous agreement of the Commissioners. The City of Surprise also stated that the notice requirement ensures that interested municipalities learn promptly of applications and are well positioned to provide the Commission with any relevant information concerning the area to be served and that the modest additional time required to send out the notice is insignificant in comparison to having municipalities implement time-consuming and costly monitoring programs for applications filed with the Commission or, if such programs fail, having the Commission make decisions on applications without the benefit of all relevant information regarding the area to be served.</p>	<p>The Commission acknowledges the supporting comment.</p> <p>No change is needed in response to this comment.</p>

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

Section	Public Comment	Commission Response
402(B)(2)(j) and (k)	In a letter dated April 1, 2008, the City of Avondale expressed support for the comments provided by the City of Surprise. The City of Avondale stated that providing notice of applications to nearby municipalities and identifying the municipalities in maps is in the public's best interest. The City of Avondale stated that these requirements will ensure that municipalities learn of applications promptly and are in a position to provide the Commission with any relevant information concerning the area to be served, such as whether the city expects to annex the area in the near future and/or is capable of serving the area itself. The City of Avondale stated that facilitating such communication can only improve the Commission's decision making process.	The Commission acknowledges the supporting comment. No change is needed in response to this comment.
402(B)(2)(j) and (k)	In a letter dated April 3, 2008, the City of Goodyear echoed the statements made by the City of Avondale.	The Commission acknowledges the supporting comment. No change is needed in response to this comment.
402(B)(2)(j) and (k)	In a letter dated April 2, 2008, the Town of Gilbert echoed the statements made by the City of Avondale.	The Commission acknowledges the supporting comment. No change is needed in response to this comment.
402(B)(2)(j) and (k)	In a letter dated April 10, 2008, the Town of Queen Creek echoed the statements made by the City of Avondale. The Town of Queen Creek also included a copy of a January 2008 letter to the Commission in which it had requested that applicants be required to provide proof of notification, that all notifications be made to the municipal manager or administrator, and that notification requirements be for areas within five miles from corporate limits. The January 2008 letter further stated that if the notice requirements had existed previously, unincorporated master planned communities near the Town of Queen Creek would have had better opportunities to coordinate regional planning with neighboring jurisdictions in a much more proactive manner. Finally, the letter stated that adequate coordination and planning for utilities would improve the quality of life for everyone.	The Commission acknowledges the supporting comment. No change is needed in response to this comment.
402(B)(2)(j) and (k)	In a letter dated April 11, 2008, the Town of Buckeye echoed the statements made by the City of Avondale.	The Commission acknowledges the supporting comment. No change is needed in response to this comment.
402(B)(2)(j) and (k)	In a letter dated April 15, 2008, Arizona Water Company provided comments in response to the comments of the Cities of Surprise, Goodyear, and Avondale. Arizona Water Company again stated that the requirements are not necessary and are burdensome. Arizona Water Company also stated that the Commission's e-docket service makes it possible for applications to be "easily monitored by anyone with even rudimentary computer skills."	While it is true that the Commission's e-docket service is valuable and allows persons with computers to access dockets at any time from a remote location, it is equally true that it is not possible to search on e-docket by geographic location. Thus, it is only easy to monitor an ongoing docket once one knows that the docket exists and has the docket number, information that will be provided to the municipalities through the notice required by the rules. As stated previously, the Commission believes that these notice requirements will provide the Commission with valuable information and are not overly burdensome. No change is needed in response to this comment.

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

Section	Public Comment	Commission Response
402(B)(2)(j) and (k)	At the oral proceeding on April 15, 2008, the City of Surprise repeated its support for the requirement that applicants provide direct notice to municipalities located within five miles of the area at issue. The City of Surprise stated that, in the absence of a direct notice requirement, the cities are periodically having people search the dockets to determine whether any applications concern areas that are in their vicinity and on which they may have valuable input to provide the Commission.	The Commission acknowledges the supporting comment. No change is needed in response to this comment.
402(B)(2)(n)	In its March 17, 2008, letter, Arizona Water Company stated that requiring the applicant to contact landowners who did not respond to the company's notice and ask them to respond in writing is extraordinary, not required in the sewer rule, not warranted, and would significantly burden the application process without any evidence that it is necessary.	The Commission believes that it is appropriate to require an applicant to describe the actions taken to obtain a written response from a landowner who has not requested service because the Commission believes it is important for an applicant to ensure that notice was actually provided and to determine the landowner's actual position. It is possible for notice not to have been received, in spite of the applicant's having sent it, and the Commission believes that it is not overly burdensome for an applicant to contact a landowner who has not responded to determine that notice was received, what the landowner's position is, and whether the landowner will provide a written response. This requirement is not overly burdensome because there are generally not very many landowners for a requested area. No changes are needed in Rule 402 as a result of this comment. However, at Staff's suggestion, Rule 602 was revised to be consistent with Rule 402, because as Arizona Water Company stated, Rule 602 as proposed had simply required a written response from each landowner not requesting service and had not allowed for the possibility that a landowner would not have provided a written response.
402(B)(2)(r) and (s)	In its March 17, 2008, letter, Arizona Water Company stated that the requirements in these two subsections are burdensome, that the Arizona Department of Water Resources ("ADWR") already adequately addresses these issues, and that there are better ways of addressing these issues, such as allowing applicants to submit this sort of information on a voluntary basis or requiring submission of additional information on a case-by-case basis. Arizona Water Company also stated that one alternative would be for an applicant to file, where available and applicable, copies of plans or information about water conservation filed with ADWR.	In its March 17, 2008, letter, Arizona Water Company stated that the requirements in these two subsections are burdensome, that the Arizona Department of Water Resources ("ADWR") already adequately addresses these issues, and that there are better ways of addressing these issues, such as allowing applicants to submit this sort of information on a voluntary basis or requiring submission of additional information on a case-by-case basis. Arizona Water Company also stated that one alternative would be for an applicant to file, where available and applicable, copies of plans or information about water conservation filed with ADWR.

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

Section	Public Comment	Commission Response
402(B)(2)(r) and (s)	In a letter dated March 12, 2008, Pulte Home Corporation (“Pulte”) expressed concern about an applicant’s being required to provide substantially more information about the landowner’s or developer’s land use, water use, and conservation plans and that the Commission may intend to use the CC&N approval and extension processes to attempt to influence or restrict a landowner’s water or land uses in a manner inconsistent with existing rights or other laws already in place. Pulte also stated that the language is not clear that if the required information is not available at the time of application, or not applicable to a particular parcel of land, the application can be determined complete and processed through a decision and hearing without it. Pulte stated that the requested information may not be available at the time of application, or plans may change. Pulte stated that the rule should be changed to reflect the possibility that the listed information may not be available, such as by adding “if available” within the subsections.	The Commission believes that responsible water use is essential in Arizona and that, to meet its duty to evaluate whether granting a CC&N or CC&N extension is in the public interest, it is necessary to obtain from applicants information about their plans for water use, reuse, and conservation. In the Notice of Supplemental Proposed Rulemaking, the language (now consolidated in R14-2-402(B)(5)(cc)) continues to mandate submission of either plans or a description of water conservation measures, but includes in subsections (B)(5)(cc)(iv) through (vi), the word “any” to allow for the possibility that an applicant may not have plans for one or more of these specific items. No additional changes are needed in response to this comment.
402(D)	In its letter dated March 17, 2008, Arizona Water Company stated that R14-2-402(D) is inconsistent with A.R.S. § 40-281(B), which provides for extensions into non-contiguous territory within a city, county, or town within which a utility has lawfully commenced operations and asked whether the Commission’s intention was not to require prior notification for such extensions.	The Commission is aware of the provisions of A.R.S. § 40-281(B) and is simply clarifying the notice requirement that has existed in the Commission’s rules since the current provision (402(C)) was adopted in 1982. The current provision requires notice of an extension of service to an area contiguous to an existing service area and, consistent with A.R.S. § 40-281(B), does not require that a CC&N extension be obtained for such an extension. No change is needed in response to this comment.
Comments on Recommended Opinion and Order Recommending Notice of Supplemental Proposed Rulemaking		
Rulemaking Generally	In written exceptions filed on July 21, 2008, and at the Open Meeting on July 30, 2008, the Global Utilities generally expressed support for the changes in the rulemaking, particularly the requirement for applicants to provide information about water conservation plans and facilities and the greater transparency concerning items to be submitted with an application.	The Commission acknowledges the supporting comment. No change is needed in response to this comment.
402(B)(5)(p) and 602(B)(5)(q)	In written exceptions filed on July 21, 2008, and at the Open Meeting on July 30, 2008, the Global Utilities stated that these two subsections should be revised so that applicants for CC&N extensions are not required to submit estimated revenue and expenses and the estimated value of the applicant’s utility plant in service for the first five years following approval of the application. The Global Utilities stated that this information is typically used to set rates for new utilities, is not needed for CC&N extension applications, and will not be used by the Commission for those applications. The Global Utilities stated that preparing the information can be time consuming and expensive and that, as the projections are based on speculation, would be of relatively little value. Global Utilities stated that the burden of preparing the information outweighs any benefits that it affords the Commission.	At the Open Meeting on July 30, 2008, an amendment that would have made the changes requested by the Global Utilities was not adopted by the Commission. Commission Staff stated that companies should be making these projections already so that they are aware how a CC&N extension is going to affect them. Staff stated that it desires to have this information so that it can determine, among other things, whether Staff should recommend that a company file a rate increase because the pro forma information, along with the company’s annual reports, shows that the company will have difficulty remaining viable without a rate increase. Staff stated that this is especially important when a company is requesting a large extension area. Staff acknowledged that it could ask for the information on a case-by-case basis through data requests. The Commission determined that the application rules should set out the baseline information that all applicants are to provide up front and that all applicants should be treated consistently, in keeping with the Administrative Procedure Act. In addition, the Commission does not believe that this requirement is overly burdensome. No change is needed in response to this comment.

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

Section	Public Comment	Commission Response
Comments on the Notice of Supplemental Proposed Rulemaking		
Rulemaking Process	In its written comments dated October 14, 2008, Arizona Water Company thanked the Commission for the opportunity to comment on the water rule and to amplify its previous comments. Arizona Water Company also stated that it supported the Commission's decision to have additional public comment sessions concerning the changes to the rules.	The Commission acknowledges the supporting comment. No change is needed in response to this comment.
402 Generally	In its written comments dated October 14, 2008, and at the oral proceeding on October 14, 2008, Arizona Water Company expressed displeasure that additional changes had not been made in the Notice of Supplemental Proposed Rulemaking in response to its prior comments.	The Commission believes that the prior comments of Arizona Water Company have been addressed to the extent appropriate, in keeping with the Commission's desire to ensure that the Commission and its Staff have the full information necessary to determine whether approving an application for a water CC&N or CC&N extension is in the public interest. No change is needed in response to this comment.
402(B)(3) and (4)	In its written comments dated October 14, 2008, Arizona Water Company stated that there is no evidence that property owners or other interested persons are not already receiving adequate notice under the Commission's current procedures. Arizona Water Company also stated that the specific notice requirements included in the supplemental proposed rulemaking are complex and overly complicated, would require the application to be prepared before the notice is completed, and would overburden the application process without producing any discernable benefit to the Commission or the public.	As stated previously, the Commission believes that written notice should always be provided to landowners and certain municipalities and that the benefits of such notice outweigh any additional burden to applicants. The elements of the notice to landowners were derived from the notice requirements in the Commission's current application forms. The Commission does not believe that the notice requirement is any more complex, complicated, or burdensome than the notice that is already being provided to landowners. The provision does expressly require that the notice to landowners be provided before the application is filed, because the Commission had previously determined, as reflected in the Notice of Proposed Rulemaking, that proof of notice to landowners should be provided with the application rather than afterwards. The application forms currently require that notice be mailed within 15 days after the application is filed, so the requirement to provide notice beforehand does not substantially change an applicant's timeline. No change is needed in response to this comment.

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

Section	Public Comment	Commission Response
402(B)(5)	In its written comments dated October 14, 2008, Arizona Water Company stated that the supplemental proposed rulemaking “ladled on” additional application requirements, thereby “mak[ing] matters worse,” rather than reducing the requirements as Arizona Water Company had previously requested. Arizona Water Company stated that Commission Staff already has the authority to require on a case-by-case basis such information as it finds to be necessary and stated that Class A utilities, which file applications frequently, should not be required to file the same information for CC&N extensions as for new CC&Ns. Arizona Water Company specifically cited as new requirements provisions requiring information for management contact, attorney contact, ADEQ operator, onsite manager, classification of legal entity, information about the legal entity, construction costs and supporting information, estimated revenue and expenses for five years following approval, estimated value of plant in service for five years following approval, estimated annual revenue and expenses for five years following approval (by type of service), and estimated number of customers for five years following approval (by customer type). Arizona Water Company stated that these requirements are burdensome and costly and that little is to be gained by requiring a utility like Arizona Water Company to submit the information for each new application, when it is already on file with the Commission or known to Staff through prior applications. Arizona Water Company urged the Commission either to reject the requirements or make them applicable only on a case-by-case basis.	The requirements at issue are derived almost entirely from the CC&N application form that the Commission Staff currently requires to be submitted by applicants, and most of the information is also required by the CC&N extension application form that Commission Staff currently requires to be submitted. Commission Staff believes that this information is necessary to evaluate CC&N and CC&N extension applications. The Commission believes that it is appropriate to treat applicants evenhandedly and to include in the application rules requirements for the baseline information that all applicants must submit, in keeping with the Administrative Procedure Act. In addition, it should be noted that information submitted in one application docket is not made a part of the evidentiary record in another application docket unless done expressly. No change is needed in response to this comment.
402(B)(5)(cc)	In its October 14, 2008, letter, Arizona Water Company stated that it agrees with other commenters that the subject of water conservation is already adequately regulated by ADWR. Arizona Water Company also stated that the rule should be changed to allow applicants to submit their water conservation plans or similar information that they have already filed with ADWR and that the requirements for such filings be limited to water systems located within active management areas.	As stated previously, the Commission believes that responsible water use is essential in Arizona and that, to meet its duty to evaluate whether granting a CC&N or CC&N extension is in the public interest, it is necessary to obtain from applicants information about their plans for water use, reuse, and conservation. Furthermore, as stated elsewhere, the Commission believes that all applicants should be required to submit baseline information up front, in keeping with the Administrative Procedure Act. No change is needed in response to this comment.
402(E)	In its written comments dated October 14, 2008, Arizona Water Company expressed disappointment that the rule provision had not been changed in response to its prior comments and that it now also requires a legal description of the contiguous parcel and the location of structures thereon and a statement that service will be extended only to a non-certificated parcel that is contiguous. Arizona Water Company stated that an unduly burdensome rule has been made more burdensome. Arizona Water Company also repeated that the rule is inconsistent with A.R.S. § 40-281(B).	As stated previously, the Commission is aware of the provisions of A.R.S. § 40-281(B) and in 402(E) simply clarifies the notice requirement that has existed in the Commission’s rules since the current provision (402(C)) was adopted in 1982. The current provision requires notice of an extension of service to an area contiguous to an existing service area and, consistent with A.R.S. § 40-281(B), does not require that a CC&N extension be obtained for such an extension. The Commission does not believe that requiring provision of a legal description or the location of structures is overly burdensome, as the Commission is charged with enforcing A.R.S. § 40-281(A), which requires a CC&N extension if A.R.S. § 40-281(B) does not actually apply. No change is needed in response to this comment.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

Notices of Final Rulemaking

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follows:

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

**CHAPTER 2. CORPORATION COMMISSION
FIXED UTILITIES**

ARTICLE 4. WATER UTILITIES

Section

R14-2-402. ~~Certificate~~ Certificates of Convenience and Necessity for water utilities; abandonments Water Utilities; Extensions of Certificates of Convenience and Necessity for Water Utilities; Abandonment, Sale, Lease, Transfer, or Disposal of a Water Utility; Discontinuance or Abandonment of Water Utility Service

ARTICLE 6. SEWER UTILITIES

Section

R14-2-602. ~~Certificate~~ Certificates of Convenience and Necessity for sewer utilities; additions/extensions; abandonments Sewer Utilities; Extensions of Certificates of Convenience and Necessity for Sewer Utilities; Abandonment, Sale, Lease, Transfer, or Disposal of a Sewer Utility; Discontinuance or Abandonment of Sewer Utility Service

ARTICLE 4. WATER UTILITIES

R14-2-402. ~~Certificate~~ Certificates of Convenience and Necessity for water utilities; abandonments Water Utilities; Extensions of Certificates of Convenience and Necessity for Water Utilities; Abandonment, Sale, Lease, Transfer, or Disposal of a Water Utility; Discontinuance or Abandonment of Water Utility Service

A. In this Section, unless otherwise specified:

1. “Applicant” means a person who submits an application to obtain a Certificate of Convenience and Necessity to construct water utility facilities or operate as a water utility or to extend the service area under an existing Certificate of Convenience and Necessity held by the person.
2. “CC&N” means Certificate of Convenience and Necessity.
3. “Commission” means the Arizona Corporation Commission.
4. “Contiguous” means in actual contact, touching, such as by sharing a common border.
5. “Extension area” means the geographic area that an applicant is requesting to have added to the applicant’s existing CC&N service area.

A.B. Application for a new Certificate of Convenience and Necessity CC&N or extension of a CC&N

1. Any person or entity who desires to construct water utility facilities and/or or to operate as a water utility will shall, prior to commencement of commencing construction of utility facilities or operations, file with the Commission an application for a Certificate of Convenience and Necessity with the Arizona Corporation Commission CC&N and obtain Commission approval.
2. Any utility that desires to extend its CC&N service area shall file with the Commission an application for a CC&N extension.
3. Before filing an application for a CC&N or a CC&N extension, a person shall provide written notice of the person’s intention to file the application to each person who owns land within the proposed service area or extension area and who has not requested service. Each written notice to a landowner shall include, at a minimum:
 - a. The legal name, physical address, mailing address (if different), and telephone number of the intended applicant;
 - b. The approximate date by which the application will be filed;
 - c. The type of services to be provided if the application is approved;
 - d. The physical addresses and toll-free telephone numbers, in Phoenix and Tucson, for the Consumer Services Section of the Commission; and
 - e. The following information:
 - i. That the recipient is a property owner within the proposed service area or extension area;
 - ii. That if the application is granted, the intended applicant will be the exclusive provider of the specific services to the proposed service area or extension area and will be required by the Commission to provide those services under rates and charges and terms and conditions established by the Commission;
 - iii. That a CC&N does not prohibit persons from providing services only to themselves using their own facili-

Notices of Final Rulemaking

- ties on their own property, although other applicable laws may restrict such activity;
- iv. That the application is available for inspection during regular business hours at the offices of the Commission and at the offices of the intended applicant;
 - v. That the Commission will hold a hearing on the application;
 - vi. That the landowner may have the right to intervene in the proceeding and may appear at the hearing and make a statement on the landowner's own behalf even if the landowner does not intervene;
 - vii. That the landowner may contact the Commission for the date and time of the hearing and for information on intervention;
 - viii. That the landowner may not receive any further notice of the application proceeding unless requested; and
 - ix. That the landowner may contact the intended applicant or the Consumer Services Section of the Commission if the landowner has any questions or concerns about the application, has any objections to approval of the application, or wishes to make a statement in support of the application.
4. Within 10 days after filing an application for a CC&N or a CC&N extension, an applicant shall provide written notice of the application to the municipal manager or administrator of each municipality with corporate limits that overlap with or are within five miles of the proposed service area or extension area. Each written notice shall include, at a minimum:
- a. The applicant's legal name, mailing address, and telephone number;
 - b. The date the application was filed;
 - c. The type of services to be provided if the application is approved;
 - d. A description of the requested service area or extension area, expressed in terms of cadastral (quarter section) or metes and bound survey;
 - e. The Commission docket number assigned to the application; and
 - f. Instructions on how to obtain a copy of the application.
- 2-5. Six copies of each Each application for a new ~~Certificate of Convenience and Necessity~~ CC&N or CC&N extension shall be submitted in a form and number prescribed by the Commission and shall include, at a minimum, the following information:
- a. The ~~proper~~ applicant's legal name, ~~and correct~~ mailing address, and telephone number of the proposed utility company and its owner, if a sole proprietorship, each partner if a partnership, or the President and Secretary if a corporation;
 - b. If the applicant will or does operate the utility under a different business name, the name under which the applicant will be doing business;
 - c. The full name, mailing address, and telephone number of a management contact for the applicant;
 - d. The full name, mailing address, and telephone number of the attorney for the applicant, if any;
 - e. The full name, mailing address, and telephone number of the operator certified by the Arizona Department of Environmental Quality who is or will be working for the applicant;
 - f. The full name, mailing address, and telephone number of the onsite manager for the applicant;
 - g. Whether the applicant is a corporation, a partnership, a limited liability company, a sole proprietor, or another specified type of legal entity;
 - h. If the applicant is a corporation, the following:
 - i. Whether the applicant is a "C" corporation, an "S" corporation, or a non-profit corporation and whether the corporation is domestic or foreign;
 - ii. A list of the full names, titles, and mailing addresses of each of the applicant's officers and directors;
 - iii. A copy of the applicant's certificate of good standing issued by the Commission's Corporations Division;
 - iv. Unless the applicant is applying for a CC&N extension, a certified copy of the applicant's articles of incorporation and by-laws; and
 - v. If the applicant is a for-profit corporation, the number of shares of stock authorized for issue and, if any stock has been issued, the number of shares issued and date of issuance;
 - i. If the applicant is a partnership, the following:
 - i. Whether the applicant is a limited partnership or a general partnership and whether the partnership is domestic or foreign;
 - ii. The full names and mailing addresses of the applicant's general partners;
 - iii. The full names, mailing addresses, and telephone numbers of the applicant's managing partners;
 - iv. Unless the applicant is applying for a CC&N extension, a copy of the applicant's articles of partnership; and
 - v. If the applicant is a foreign limited partnership, a copy of the applicant's certificate of registration filed with the Arizona Secretary of State;
 - j. If the applicant is a limited liability company, the following:
 - i. The full names and mailing addresses of the applicant's managers or, if management is reserved to the members, the applicant's members;
 - ii. Unless the applicant is applying for a CC&N extension, a copy of the applicant's articles of organization;

Notices of Final Rulemaking

- ~~k.~~ The legal name and mailing address of each other utility in which the applicant has an ownership interest;
- ~~l.~~ A description of the requested service area or extension area, expressed in terms of cadastral (quarter section) or metes and bound survey;
- ~~m.~~ The name of each county in which the requested service area or extension area is located and a description of the area's location in relation to the closest municipality, which shall be named;
- ~~b.~~ A copy of the Articles of Partnership or Articles of Incorporation for the applicant and/or Bylaws if the utility is a non-profit organization, or association.
- ~~e.~~ The type of plant, property, or facility proposed to be constructed.
- ~~d.~~~~n.~~ A complete description of the facilities proposed to be constructed, including a preliminary engineering report with specifications in sufficient detail to properly describe the each water system and the principal systems and components which meet the requirements of the health department. Final and complete engineering specifications shall be supplied when they become available, of each water system (e.g., source, storage, transmission lines, distribution lines, etc.) to allow verification of the estimated costs provided under subsection (B)(5)(o) and verification that the requirements of the Commission and the Arizona Department of Environmental Quality can be met;
- ~~o.~~ The estimated total construction cost of the proposed offsite and onsite facilities, including documentation to support the estimates, and an explanation of how the construction will be financed, such as through debt, equity, advances in aid of construction, contributions in aid of construction, or a combination thereof;
- ~~e.~~ The rates proposed to be charged for the service that will be rendered.
- ~~p.~~ Documentation establishing the applicant's financial condition, including at least the applicant's current assets and liabilities, an income statement, the applicant's estimated revenue and expenses for the first five years following approval of the application, and the estimated value of the applicant's utility plant in service for the first five years following approval of the application;
- ~~f.~~ The estimated total cost of the proposed construction.
- ~~q.~~ The rates proposed to be charged for services rendered, shown in the form of a proposed tariff that complies with Commission standards;
- ~~g.~~ The manner of capitalization and method of financing for the project.
- ~~h.~~ The financial condition of the applicant.
- ~~i.~~~~r.~~ The estimated annual operating revenues and expenses that are expected to accrue from the proposed construction, for the first five years of operation for the requested service area or extension area, expressed separately for residential, commercial, industrial, and irrigation services, and including a description of each assumption made to derive the estimates;
- ~~j.~~~~s.~~ The A detailed description of the proposed construction timeline for facilities, with estimated starting and completion date of the proposed construction; dates and, if construction is to be phased, a description of each separate phase of construction;
- ~~t.~~ A copy of any requests for service from persons who own land within the proposed service area or extension area, which shall identify the applicant by name;
- ~~k.~~~~u.~~ Maps of the proposed service area- or extension area identifying:
 - ~~i.~~ The boundaries of the area, with the total acreage noted;
 - ~~ii.~~ The land ownership boundaries within the area, with the acreage of each separately owned parcel within the area noted;
 - ~~iii.~~ The owner of each parcel within the area;
 - ~~iv.~~ Any municipality corporate limits that overlap with or are within five miles of the area;
 - ~~v.~~ The service area of any public service corporation, municipality, or district currently providing water or wastewater service within one mile of the area, with identification of the entity providing service and each type of service being provided;
 - ~~vi.~~ The location within the area of any known water service connections that are already being provided service by the applicant;
 - ~~vii.~~ The location of all proposed developments within the area;
 - ~~viii.~~ The proposed location of each water system and the principal components described in subsection (B)(5)(n); and
 - ~~ix.~~ The location of all parcels for which a copy of a request for service has been submitted per subsection (B)(5)(t);
- ~~v.~~ A copy of each notice to be sent, as required under subsection (B)(4), to a municipal manager or administrator;
- ~~w.~~ A copy of each notice sent, as required under subsection (B)(3), to a landowner not requesting service;
- ~~x.~~ For each landowner not requesting service, either the written response received from the landowner or, if no written response was received, a description of the actions taken by the applicant to obtain a written response;
- ~~t.~~~~y.~~ Appropriate A copy of each city, county, and/or or state agency approvals- approval required by law to construct the proposed facilities or operate the utility within the proposed service area or extension area or, for any

Notices of Final Rulemaking

approval not yet obtained, the status of the applicant's application for the approval:

- ~~m-z.~~ The estimated number of customers to be served for each of the first five years of operation, expressed separately for residential, commercial, industrial, and irrigation customers and including documentation to support the estimates;
- aa. A description of how wastewater service is to be provided in the proposed service area or extension area and the name of each wastewater service provider for the area, if any;
- bb. A letter from each wastewater service provider identified under subsection (B)(5)(aa), confirming the provision of wastewater service for the proposed service area or extension area;
- cc. Plans for or a description of water conservation measures to be implemented in the proposed service area or extension area, including, at a minimum:
 - i. A description of the information about water conservation or water saving measures that the utility will provide to the public and its customers;
 - ii. A description of how the applicant will work with each wastewater service provider identified under subsection (B)(5)(aa) to encourage water conservation;
 - iii. A description of the sources of water that will be used to supply parks, recreation areas, golf courses, greenbelts, ornamental lakes, and other aesthetic water features;
 - iv. A description of any plans for the use of reclaimed water;
 - v. A description of any plans for the use of recharge facilities;
 - vi. A description of any plans for the use of surface water; and
 - vii. A description of any other plans or programs to promote water conservation;
- dd. A backflow prevention tariff that complies with Commission standards, if not already on file;
- ee. A curtailment tariff that complies with Commission standards, if not already on file;
- ff. A copy of a Physical Availability Determination, Analysis of Adequate Water Supply, or Analysis of Assured Water Supply issued by the Arizona Department of Water Resources for the proposed service area or extension area or, if not yet obtained, the status of the application for such approval;
- gg. If the applicant is requesting a CC&N extension:
 - i. A current compliance status report from the Arizona Department of Environmental Quality, dated no more than 30 days before the date the CC&N extension application is filed, for each water system operated by the applicant, as identified by a separate Arizona Department of Environmental Quality Public Water System Identification Number; and
 - ii. A water use data sheet for the water system being extended by the applicant; and
- hh. The notarized signature of the applicant.

~~3-6.~~ Upon the receipt of such receiving an application under subsection (B)(5), the Commission staff of the Utilities Division shall review and process the application for compliance with the information requirements of this regulation; additional information, amendments and/or corrections to the application to bring the application into compliance with this regulation shall be governed by the Commission's rules of administrative and hearing requirements concerning incomplete applications in accordance with the requirements of R14-2-411.

~~4-7.~~ Once the applicant has satisfied the information requirements of this regulation, as well as any additional information required by the staff of the Commission's Utilities Division staff determines that an application submitted under subsection (B)(5) is administratively complete, the Commission shall, as expeditiously as reasonably practicable, schedule hearings a hearing to consider such the application.

~~B-C.~~ Application for discontinuance or abandonment of utility service

- ~~1.~~ Any A utility proposing to shall not discontinue or abandon any utility service currently in use by the public shall prior to such action without first obtain obtaining authority therefor from the Commission.
- ~~2.~~ The A utility desiring to discontinue or abandon a service shall include in the application, file with the Commission an application identifying the utility; including studies of data regarding past, present and prospective estimated future customer use of the subject service; describing any plant or facility that would no longer be in use if the application were approved as is necessary to support the application; and explaining why the utility desires to discontinue or abandon the service.
- ~~3.~~ An application shall not be required A utility is not required to apply for Commission approval to remove individual facilities where a customer has requested service discontinuance.

~~D.~~ Application for authority to abandon, sell, lease, transfer, or otherwise dispose of a utility

1. A utility shall not abandon, sell, lease, transfer, or otherwise dispose of its facilities or operation without first obtaining authority therefor from the Commission.
2. A utility desiring to abandon, sell, lease, transfer, or otherwise dispose of its facilities or operation shall file with the Commission an application that includes, at a minimum:
 - a. The legal name, physical address, mailing address (if different), and telephone number of the utility;
 - b. A description of the utility property proposed to be abandoned, sold, leased, transferred, or otherwise disposed of;

Notices of Final Rulemaking

- c. Documentation establishing the utility's financial condition, including at least the utility's current assets and liabilities, an income statement, the utility's revenue and expenses for the most recently completed 12-month accounting period, and the value of the utility's utility plant in service;
 - d. The legal name, physical address, mailing address (if different), and telephone number of any proposed purchaser, lessee, transferee, or assignee;
 - e. The terms and conditions of the proposed abandonment, sale, lease, transfer, or assignment and copies of any agreement that has been or will be executed concerning the transaction;
 - f. A description of the effect that the proposed transaction will have upon the utility's services;
 - g. The method by which the proposed transaction is to be financed;
 - h. A description of the effect that the proposed transaction will have upon any other utility;
 - i. The number of customers to be affected by the proposed transaction; and
 - j. A description of the effect that the proposed transaction will have upon customers.
- ~~E.~~ Additions/ or extensions of service contiguous to outside existing Certificates of Convenience and Necessity CC&N service areas
- 1. ~~Each~~ Except in the case of an emergency, a utility which that proposes to extend utility service to a location parcel not within its certificated service area, but located in a non-certificated area contiguous to its certificated CC&N service area; shall prior to the extension of service, notify the Commission of such before the service extension occurs.
 - 2. ~~Such notifications~~ Each notification required under subsection (E)(1) shall be in writing, and shall be verified, and shall set forth, at a minimum;:
 - a. The legal name, mailing address, and telephone number of the utility;
 - b. ~~the~~ The number of persons or entities proposed to be served by such service extension, in the contiguous parcel;
 - c. ~~their location~~ The legal description of the contiguous parcel and the location of the structures to be served therein, in relation to the utility's CC&N service certificated area of the utility; and
 - d. ~~a~~ A statement of the utility that the service extension is will be extended only to a non-certificated area parcel which is contiguous to its certificated the utility's CC&N service area.
 - 3. ~~Where~~ When emergency service is required to be provided to a ~~customer person~~ in a non-certificated area contiguous to the utility-certificated a utility's CC&N service area, the utility shall ~~advise~~ notify the Commission ~~simultaneously of such the service extension as soon as possible after the service extension occurs by providing written notice that includes the information required under subsection (E)(2) and the written notification shall set forth~~ describes the nature and extent of the emergency.
 - 2. ~~For purpose of this rule the following definition of "contiguous" is: Contiguous—Common, ordinary and approved meaning. In actual close contact; touching; bounded or traversed by.~~

ARTICLE 6. SEWER UTILITIES

R14-2-602. ~~Certificate~~ Certificates of Convenience and Necessity for sewer utilities; additions/extensions; abandonments Sewer Utilities; Extensions of Certificates of Convenience and Necessity for Sewer Utilities; Abandonment, Sale, Lease, Transfer, or Disposal of a Sewer Utility; Discontinuance or Abandonment of Sewer Utility Service

- A.** In this Section, unless otherwise specified:
- 1. "Applicant" means a person who submits an application to obtain a Certificate of Convenience and Necessity to construct sewer utility facilities or operate as a sewer utility or to extend the service area under an existing Certificate of Convenience and Necessity held by the person.
 - 2. "CC&N" means Certificate of Convenience and Necessity.
 - 3. "Commission" means the Arizona Corporation Commission.
 - 4. "Contiguous" means in actual contact, touching, such as by sharing a common border.
 - 5. "Extension area" means the geographic area that an applicant is requesting to have added to the applicant's existing CC&N service area.
- A.B.** Application for a new Certificate of Convenience and Necessity CC&N or extension of a CC&N
- 1. ~~Any person or entity who desires to construct sewer utility facilities and/or or to operate as a sewer utility will shall, prior to commencement of commencing construction of utility facilities or operations, file with the Commission an application for a Certificate of Convenience and Necessity with the Arizona Corporation Commission CC&N and obtain Commission approval.~~
 - 2. Any utility that desires to extend its CC&N service area shall file with the Commission an application for a CC&N extension.
 - 3. Before filing an application for a CC&N or a CC&N extension, a person shall provide written notice of the person's intention to file the application to each person who owns land within the proposed service area or extension area and who has not requested service. Each written notice to a landowner shall include, at a minimum:
 - a. The legal name, physical address, mailing address (if different), and telephone number of the intended applicant;
 - b. The approximate date by which the application will be filed;

Notices of Final Rulemaking

- c. The type of services to be provided if the application is approved;
- d. The physical addresses and toll-free telephone numbers, in Phoenix and Tucson, for the Consumer Services Section of the Commission; and
- e. The following information:
 - i. That the recipient is a property owner within the proposed service area or extension area;
 - ii. That if the application is granted, the intended applicant will be the exclusive provider of the specific services to the proposed service area or extension area and will be required by the Commission to provide those services under rates and charges and terms and conditions established by the Commission;
 - iii. That a CC&N does not prohibit persons from providing services only to themselves using their own facilities on their own property although other applicable laws may restrict such activity;
 - iv. That the application is available for inspection during regular business hours at the offices of the Commission and at the offices of the intended applicant;
 - v. That the Commission will hold a hearing on the application;
 - vi. That the landowner may have the right to intervene in the proceeding and may appear at the hearing and make a statement on the landowner's own behalf even if the landowner does not intervene;
 - vii. That the landowner may contact the Commission for the date and time of the hearing and for information on intervention;
 - viii. That the landowner may not receive any further notice of the application proceeding unless requested; and
 - ix. That the landowner may contact the intended applicant or the Consumer Services Section of the Commission if the landowner has any questions or concerns about the application, has any objections to approval of the application, or wishes to make a statement in support of the application.
- 4. Within 10 days after filing an application for a CC&N or a CC&N extension, an applicant shall provide written notice of the application to the municipal manager or administrator of each municipality with corporate limits that overlap with or are within five miles of the proposed service area or extension area. Each written notice shall include, at a minimum:
 - a. The applicant's legal name, mailing address, and telephone number;
 - b. The date the application was filed;
 - c. The type of services to be provided if the application is approved;
 - d. A description of the requested service area or extension area, expressed in terms of cadastral (quarter section) or metes and bound survey;
 - e. The Commission docket number assigned to the application; and
 - f. Instructions on how to obtain a copy of the application.
- ~~2-5. Six copies of each~~ Each application for a new Certificate of Convenience and Necessity CC&N or CC&N extension shall be submitted in a form and number prescribed by the Commission and shall include, at a minimum, the following information:
 - a. ~~The proper applicant's legal name, and correct mailing address, and telephone number of the proposed utility company and its owner, if a sole proprietorship, each partner if a partnership, or the President and Secretary if a corporation;~~
 - b. If the applicant will or does operate the utility under a different business name, the name under which the applicant will be doing business;
 - c. The full name, mailing address, and telephone number of a management contact for the applicant;
 - d. The full name, mailing address, and telephone number of the attorney for the applicant, if any;
 - e. The full name, mailing address, and telephone number of the operator certified by the Arizona Department of Environmental Quality who is or will be working for the applicant;
 - f. The full name, mailing address, and telephone number of the onsite manager for the applicant;
 - g. Whether the applicant is a corporation, a partnership, a limited liability company, a sole proprietor, or another specified type of legal entity;
 - h. If the applicant is a corporation, the following:
 - i. Whether the applicant is a "C" corporation, an "S" corporation, or a non-profit corporation and whether the corporation is domestic or foreign;
 - ii. A list of the full names, titles, and mailing addresses of each of the applicant's officers and directors;
 - iii. A copy of the applicant's certificate of good standing issued by the Commission's Corporations Division;
 - iv. Unless the applicant is applying for a CC&N extension, a certified copy of the applicant's articles of incorporation and by-laws; and
 - v. If the applicant is a for-profit corporation, the number of shares of stock authorized for issue and, if any stock has been issued, the number of shares issued and date of issuance;
 - i. If the applicant is a partnership, the following:
 - i. Whether the applicant is a limited partnership or a general partnership and whether the partnership is domestic or foreign;

Notices of Final Rulemaking

- ii. The full names and mailing addresses of the applicant's general partners;
- iii. The full names, mailing addresses, and telephone numbers of the applicant's managing partners;
- iv. Unless the applicant is applying for a CC&N extension, a copy of the applicant's articles of partnership; and
- v. If the applicant is a foreign limited partnership, a copy of the applicant's certificate of registration filed with the Arizona Secretary of State;
- j. If the applicant is a limited liability company, the following:
 - i. The full names and mailing addresses of the applicant's managers or, if management is reserved to the members, the applicant's members;
 - ii. Unless the applicant is applying for a CC&N extension, a copy of the applicant's articles of organization;
- k. The legal name and mailing address of each other utility in which the applicant has an ownership interest;
- l. A description of the requested service area or extension area, expressed in terms of cadastral (quarter section) or metes and bound survey;
- b. ~~A copy of the Articles of Co-Partnership or Articles of Incorporation for the applicant and/or Bylaws if the utility is a non-profit organization or association.~~
- e. ~~The type of plant, property, or facility proposed to be constructed.~~
- m. The name of each county in which the requested service area or extension area is located and a description of the area's location in relation to the closest municipality, which shall be named;
- d-n. ~~A complete description of the facilities proposed to be constructed, including a preliminary engineering report with specifications in sufficient detail to properly describe the each sewer system and the principal systems and components, and final and complete engineering specifications when they become available, of each sewer system (e.g., collection mains, trunk lines, lift stations, treatment plants, effluent disposal areas, etc.) to allow verification of the estimated costs provided under subsection (B)(5)(p) and verification that the requirements of the Commission and the Arizona Department of Environmental Quality can be met;~~
- o. A copy of the Aquifer Protection Permit issued by the Arizona Department of Environmental Quality for the proposed service area or extension area or, if not yet obtained, the status of the application for the Aquifer Protection Permit;
- e-p. ~~The rates proposed to be charged for the service that will be rendered because of the proposed construction. The estimated total construction cost of the proposed offsite and onsite facilities, including documentation to support the estimates, and an explanation of how the construction will be financed, such as through debt, equity, advances in aid of construction, contributions in aid of construction, or a combination thereof;~~
- f. ~~The estimated total cost of the proposed construction.~~
- g. ~~The manner of capitalization and method of financing for the project.~~
- h-q. The Documentation establishing the applicant's financial condition of the applicant, including at least the applicant's current assets and liabilities, an income statement, the applicant's estimated revenue and expenses for the first five years following approval of the application, and the estimated value of the applicant's utility plant in service for the first five years following approval of the application;
- r. The rates proposed to be charged for services rendered, shown in the form of a proposed tariff that complies with Commission standards;
- i-s. ~~The estimated annual operating revenues and expenses that are expected to accrue from the proposed construction, for the first five years of operation for the requested service area or extension area, expressed separately for residential, commercial, industrial, and irrigation services, and including a description of each assumption made to derive the estimates;~~
- j-t. The A detailed description of the proposed construction timeline for facilities, with estimated starting and completion date of the proposed construction, dates and, if construction is to be phased, a description of each separate phase of construction;
- u. A copy of any requests for service from persons who own land within the proposed service area or extension area, which shall identify the applicant by name;
- k-v. Maps of the proposed service area- or extension area identifying:
 - i. The boundaries of the area, with the total acreage noted;
 - ii. The land ownership boundaries within the area, with the acreage of each separately owned parcel within the area noted;
 - iii. The owner of each parcel within the area;
 - iv. Any municipality corporate limits that overlap with or are within five miles of the area;
 - v. The service area of any public service corporation, municipality, or district currently providing water or wastewater service within one mile of the area, with identification of the entity providing service and each type of service being provided;
 - vi. The location within the area of any known sewer service connections that are already being provided service by the applicant;
 - vii. The location of all proposed developments within the area;

Notices of Final Rulemaking

viii. The proposed location of each sewer system and the principal components described in subsection (B)(5)(n); and

ix. The location of all parcels for which a copy of a request for service has been submitted per subsection (B)(5)(u);

f. Appropriate city, county and/or state agency approvals;

w. A copy of each notice to be sent, as required under subsection (B)(4), to a municipal manager or administrator;

m. Estimated number of customers to be served for the first five years of operation, including documentation to support the estimates;

x. A copy of each notice sent, as required under subsection (B)(3), to a landowner not requesting service;

y. For each landowner not requesting service, either the written response received from the landowner or, if no written response was received, a description of the actions taken by the applicant to obtain a written response;

z. A copy of each city, county, or state agency approval required by law to construct the proposed facilities or operate the utility within the proposed service area or extension area or, for any approval not yet obtained, the status of the applicant's application for the approval;

aa. The estimated number of customers to be served for each of the first five years of operation, expressed separately for residential, commercial, industrial, and irrigation customers and including documentation to support the estimates;

bb. A description of how water service is to be provided in the proposed service area or extension area and the name of each water service provider for the area, if any;

cc. A description of how effluent from the area will be reused or, if not reused, disposed of;

dd. If the applicant is requesting a CC&N extension:

i. A current compliance status report from the Arizona Department of Environmental Quality, dated no more than 30 days before the date the CC&N extension application is filed, for each wastewater system operated by the applicant, as identified by a separate Arizona Department of Environmental Quality Identification Number; and

ii. A wastewater flow data sheet for the wastewater system being extended by the applicant; and

ee. The notarized signature of the applicant.

3-6. ~~Upon the receipt of such receiving an application under subsection (B)(5), the Commission Utilities Division staff shall review and process the application for compliance with the information requirements of this regulation; additional information, amendments and/or corrections to the application to bring the application into compliance with this regulation shall be governed by the Commission's rules of administrative and hearing requirements concerning incomplete applications in accordance with the requirements of R14-2-610.~~

4-7. ~~Once the applicant has satisfied the information requirements of this regulation Utilities Division staff determines that an application submitted under subsection (B)(5) is administratively complete, the Commission shall, as expeditiously as reasonably practicable, schedule hearings a hearing to consider such the application.~~

~~**B-C.** Additions/ or extensions of service contiguous to existing Certificates of Convenience and Necessity. CC&N service areas~~

1. ~~Each Except in the case of an emergency, a utility which that proposes to extend utility service to a person parcel not located within its certificated service area, but located in a noncertificated non-certificated area contiguous to its certificated CC&N service area; shall, prior to the extension of service, notify the Commission of such before the service extension occurs.~~

2. ~~Such Each notification required under subsection (C)(1) shall be in writing, and shall be verified, and shall set forth, at a minimum;:~~

a. ~~The legal name, mailing address, and telephone number of the utility;~~

b. ~~the The number of persons or entities proposed to be served by such service extension, in the contiguous parcel;~~

c. ~~their location The legal description of the contiguous parcel and the location of the structures to be served therein, in relation to the certificated utility's CC&N service area; of the utility and~~

d. ~~a A statement of the utility that the service extension is will be extended only to a non-certificated area parcel which is contiguous to its certificated the utility's CC&N service area.~~

3. ~~Where When emergency service is required to be provided to a customer person in a non-certificated area contiguous to the utility-certificated a utility's CC&N service area, the utility shall advise notify the Commission simultaneously of such the service extension as soon as possible after the service extension occurs by providing written notice that includes the information required under subsection (C)(2) and the written notification shall set forth describes the nature and extent of the emergency.~~

~~**C-D.** Application for authority to abandon, sell, lease, transfer, or otherwise dispose of a utility:~~

1. ~~A utility shall not abandon, sell, lease, transfer, or otherwise dispose of its facilities or operation without first obtaining authority therefor from the Commission.~~

2. ~~Any A utility proposing desiring to abandon, sell, lease, transfer, or otherwise dispose of the utility its facilities or operation shall, prior to such sale, lease, transfer, or other disposal, file with the Commission an application for~~

Notices of Final Rulemaking

authority to do so including the following information that includes, at a minimum:

- ~~1-a.~~ The legal name, physical address, mailing address (if different), and telephone number of the applicant utility;
- ~~2-b.~~ A description of the utility property proposed to be abandoned, sold, leased, transferred or otherwise disposed of;
- ~~3-c.~~ The Documentation establishing the utility's financial condition, including at least the utility's current assets and liabilities, an income statement, the utility's revenue and expenses for the most recently completed 12-month accounting period, and the value of the utility's utility plant in service of the applicant;
- ~~4-d.~~ The legal name, physical address, mailing address (if different), and telephone number of any proposed purchaser, lessee, transferee, or assignee;
- ~~5-e.~~ The terms and conditions of the proposed abandonment, sale, lease, transfer, or assignment and copies of any agreement which that has been or will be executed concerning the same transaction;
- ~~6-f.~~ The A description of the effect of that the proposed transaction will have upon the service of the applicant utility's services;
- ~~7-g.~~ The method by which the proposed transaction is to be financed;
- ~~8-h.~~ The A description of the effect that the proposed transaction will have on upon any other utility and, if so, in what respect;
 - i. The number of customers to be affected by the proposed transaction; and
 - j. A description of the effect that the proposed transaction will have upon customers.

~~D.E.~~ Application for discontinuance or abandonment of utility service

1. Any A utility proposing to shall not discontinue or abandon any type of utility service currently in use by the public shall prior to such action without first obtain obtaining authority therefor from the Commission.
2. The A utility desiring to discontinue or abandon a service shall include in the application, file with the Commission an application identifying the utility; including studies of data regarding past, present and prospective estimated future customer use of the subject service; describing any plant or facility that would no longer be in use if the application were approved as is necessary to support the application; and explaining why the utility desires to discontinue or abandon the service.
3. An application shall not be required A utility is not required to apply for Commission approval to remove individual facilities where a customer has requested service discontinuance.