



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**

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**CITY OF SURPRISE v. ARIZONA CORPORATION COMMISSION; LAKE  
PLEASANT 5000, LLC  
CV-18-0137-SA**

**PARTIES:**

*Petitioner:* City of Surprise, an Arizona Municipal Corporation

*Respondent:* Arizona Corporation Commission; Tom Forese, Bob Burns, Andy Tobin, Boyd Dunn and Justin Olson, as members of the Corporation Commission.

*Real Parties in Interest:* Circle City Water Company, LLC, an Arizona Limited Liability Company; Lake Pleasant (“LP”) 5000, L.L.C., an Arizona Limited Liability Company; and Harvard Investments, Inc., a Nevada Corporation.

**FACTS:**

The City of Surprise plans to acquire the assets of Circle City through condemnation. Circle City is a small water company serving less than 200 customers. LP 5000 is a developer that intends to build an 8,500-home master planned community on approximately 5,000 acres of land within Surprise’s municipal planning area and within Circle City’s current Certificate of Convenience and Necessity (“CC&N”) territory. LP 5000 has not yet begun its development, and therefore Circle City does not now have any existing customers within the development area.

In 2005, Circle City and LP 5000 entered into a “Water Facilities Agreement” (“WFA”). Circle City and LP 5000 agreed that in future Circle City would provide water for the development, and LP 5000 would construct on-site facilities to distribute the water to the residents of LP 5000’s proposed development.

Upon learning of the proposed condemnation of Circle City, LP 5000 contacted the Corporation Commission and asked the Commission to prevent the condemnation from going forward. The Commission immediately opened proceedings to investigate the proposed condemnation and set a meeting agenda for the next day, including “Commission Consideration, Discussion, and Possible Vote Regarding Commission’s Obligations Under A.R.S. § 40-285 Arising from Potential Sale of Circle City Water Company to City of Surprise.” After that the Commission held several more hearings and issued an order that Circle City file an application with the Commission to consider the transfer of its assets pursuant to A.R.S. § 40-285.

In June 2018 the City of Surprise filed this Special Action and moved for a Stay of the Commission proceedings. This Court granted the stay and later accepted review.

On August 29, 2018, the City of Surprise filed a condemnation action against Circle City.

**ISSUES:**

I. The scope of the Commission's authority is a particularly appropriate subject for this Court's review by special action.

II. The validity of the Commission's newly-claimed power to regulate the condemnation of water utilities is an issue of statewide importance.

III. The City lacks any remedy by appeal.

**RELEVANT STATUTE:**

A.R.S. § 40-285(A) provides:

A public service corporation shall not sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, line, plant or system necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor shall such corporation merge such system or any part thereof with any other public service corporation without first having secured from the commission an order authorizing it so to do. Every such disposition, encumbrance or merger made other than in accordance with the order of the commission authorizing it is void.

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