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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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COMMISSIONERS

DOCKETED

2004 APR 14 A 11: 52

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

APR 14 2004

DOCKETED BY [Signature]

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF
ASH FORK DEVELOPMENT ASSOCIATION,
INC. dba ASH FORK WATER SERVICE FOR A
RATE INCREASE.

DOCKET NO. W-01004B-03-0722

PROCEDURAL ORDER

BY THE COMMISSION:

On September 30, 2003, Ash Fork Development Association, Inc. dba Ash Fork Water Service ("Company" or "Applicant") filed the above-captioned rate application with the Arizona Corporation Commission ("Commission").

On December 11, 2003, Mr. Earl M. Hasbrouck, a customer of the Company, filed a request to intervene in the proceeding.

On December 22, 2003, the Company filed a response to Mr. Hasbrouck's request for intervention. The Company pointed out that in recent proceedings with respect to a financing application (Docket No. W-01004B-02-0768) and an application for an extension of its Certificate of Convenience and Necessity ("Certificate") (Docket No. W-01004B-03-0510), Mr. Hasbrouck had intervened. In response to a request by Mr. Hasbrouck in the extension proceeding, the Company stated that it had provided its plans and specifications to him with respect to its application and Mr. Hasbrouck had failed to return the documents to the Company's office as he agreed within 30 days of the date they were first provided for his review. The Company also objected to his intervention in this proceeding based upon the fact that in the two previous proceedings Mr. Hasbrouck had attempted to unduly broaden the proceedings and requested that, if intervention is granted in this proceeding, he be advised that the proceeding would be limited to matters dealing with the rate application.

On January 2, 2004, Mr. Hasbrouck filed a reply to the Company's response.

1 By Procedural Order issued February 26, 2004, Pursuant to A.A.C. R14-3-105, Mr.
2 Hasbrouck was granted intervention in this proceeding, however, Mr. Hasbrouck's intervention was
3 not to become effective until 1.) Mr. Hasbrouck returned the specifications and plans related to the
4 Company's extension of its Certificate and 2.) the Company filed certification that the plans and
5 specifications have been returned.

6 On March 3, 2004, Mr. Hasbrouck filed a document titled "Complaint and Motion for
7 Removal" ("Motion"). The Motion asserted that the conditions imposed by the February 26, 2004
8 Procedural Order "constitute a continuation of regulatory authority corruption previously complained
9 about" Mr. Hasbrouck alleged that the:

10 Commission's imposition of inappropriate restrictions and/or conditions in
11 a formal procedural order based upon a piece of paper never introduced
12 into evidence is so obvious in its prejudice, so extreme in its abusive over-
13 reaching exercise of authority and so clear in its intent to deliberately
14 interfere with the rights of Arizona utility consumers whoever or wherever
15 they may reside that the act(s) constitute incontrovertible proof of the on-
16 going rampant tyranny and wrongful partiality, bias and discrimination by
17 Commission staff bent on discriminatorily advocating for the Applicant to
18 the detriment of other parties, conditions which have been obviously
19 present in each of the three Ash Fork water actions throughout, conditions
20 which warrant unconditional removal of the presiding jurist under whose
21 authority the order was issued.

22 Mr. Hasbrouck moved pursuant to A.R.S. §41-1092.07 to disqualify the presiding
23 Administrative Law Judge for cause based on "extreme personal prejudice, bias and discrimination."

24 On March 24, 2004, Ash Fork filed notice that Mr. Hasbrouck returned the specifications and
25 plans related to the Company's extension of its Certificate.

26 On March 24, 2004, Mr. Hasbrouck also filed notice that he had returned the documents.

27 The Commission takes seriously assertions of prejudice, bias, or discrimination in its decision
28 making processes. Although the statute cited by Mr. Hasbrouck, A.R.S. § 41-1092.07, does not apply
to contested cases before the Arizona Corporation Commission,¹ A.R.S. §§41-1061 and -1062 do
apply. Arizona case law interpreting these statutes provides that "Administrative hearing officers in
Arizona are also assumed to be fair and 'can only be disqualified upon a showing of actual bias . . .'

¹ A.R.S. § 41-1092.02(A)(4).

1 *Jenners. V. Industrial Commission*, 16 Ariz.App. 81, 83, 491 P.2d 31, 33 (1972).” *Martin v.*
2 *Superior Court In and For Maricopa County*, 135 Ariz. 258, 260, 660 P2d 859.

3 Mr. Hasbrouck asserted that the February 26, 2004 Procedural Order which granted him
4 intervention conditioned upon him returning documents he received pursuant to a discovery request
5 in a previous docket is “incontrovertible proof” of partiality, bias and discrimination. A presiding
6 officer has authority to conduct proceedings in such a manner as to maintain the orderly discovery
7 and presentation of evidence.² As a party to an administrative hearing, an intervenor has the
8 obligation to follow the Commission’s Rules of Practice and Procedure, the Rules of Civil Procedure
9 and Rules of Evidence when applicable, and to follow the requirements contained in Procedural
10 Orders issued by the Commission. This includes the return of documents received during the
11 discovery process. Conditioning intervention and participation as a party in a contested case on
12 compliance with procedural requirements that are fundamental to a fair, full hearing is not evidence
13 of bias or discrimination. Further, the record in these matters has been examined, and there is no
14 evidence that the presiding officer has any personal bias against Mr. Hasbrouck. That the presiding
15 officer or Commission may have disagreed with Mr. Hasbrouck’s interpretation of the evidence in
16 prior cases is not “proof” of discrimination, bias, or prejudice. Accordingly, Mr. Hasbrouck’s
17 Motion is without merit and should be denied. Mr. Hasbrouck is an intervenor in this proceeding and
18 will be afforded all the rights, duties, and responsibilities of a party.

19 IT IS THEREFORE ORDERED that the Motion filed by Mr. Earl M. Hasbrouck is denied.

20 DATED this 14 day of April, 2004.

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22
23 
24 LYN FARMER
25 CHIEF ADMINISTRATIVE LAW JUDGE
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27

25 ...
26 ...
27 ...

28 ² A.A.C. R14-3-101; -104; 105; -109; Arizona Rules of Civil Procedure Rule 26(f); Rule 16(f); Rule37(c)

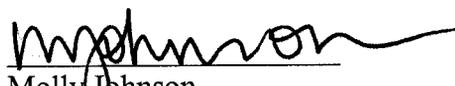
1 Copies of the foregoing mailed
2 this 14 day of April, 2004 to:

3 Lewis Hume, Manager
4 Ash Fork Development Association, Inc.
5 518 Lewis Avenue
6 P.O. Box 436
7 Ash Fork, AZ 86320-0436

8 Earl M. Hasbrouck
9 P.O. Box 1034
10 Ash Fork, Arizona 86320-1034
11 **Via Certified Mail**
12 **Return Receipt Requested**

13 Christopher Kempsey, Chief Counsel
14 Legal Division
15 ARIZONA CORPORATION COMMISSION
16 1200 W. Washington Street
17 Phoenix, Arizona 85007

18 Ernest Johnson, Director
19 Utilities Division
20 ARIZONA CORPORATION COMMISSION
21 1200 W. Washington Street
22 Phoenix, Arizona 85007

23
24 By: 
25 Molly Johnson
26 Secretary to Lyn Farmer
27
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