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Arizona Corporation Commission  
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Phoenix, AZ 85007-2996

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Enclosed please find one (1) original and thirteen copies of a Complainant originated document captioned:

MEMORANDUM EXCEPTIONS/OBJECTIONS  
TO  
STAFF REPORT DATED 29 MAR 2004

Please enter for the record.

Earl M. Hasbrouck  
P. O. Box 1034  
Ash Fork, AZ 86320-1034  
928/637-0302

cc: TLLP&S

Arizona Corporation Commission

DOCKETED

APR 15 2004

DOCKETED BY	
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# ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION  
(Utilities Division)  
1200 West Washington  
Phoenix, Arizona 85007

In re: THE APPLICATION OF ASH FORK  
DEVELOPMENT ASSOCIATION, INC.  
d/b/a ASH FORK WATER SERVICE  
FOR A RATE INCREASE.

DOCKET NO. W-01004B-03-0722

Arizona Corporation Commission

**DOCKETED**

APR 15 2004

MEMORANDUM EXCEPTIONS/OBJECTIONS  
TO  
STAFF REPORT DATED 29 MARCH, 2004  
including recommendations

DOCKETED BY	
	COMES NOW EARL M. HASBROUCK, pro se, in response to <i>STAFF REPORT FOR ASH FORK DEVELOPMENT ASSOCIATION, INC. DBA ASH FORK WATER SERVICE'S APPLICATION FOR A PERMANENT RATE INCREASE (DOCKET NO. W-01004B-03-0722)</i> (hereinafter "report") dated 29 Mar 2004.

Hasbrouck is an Ash Fork, (Yavapai County) Arizona utility consumer qualified by residence<sup>1</sup>, by law<sup>2</sup> and by corporate charter<sup>3</sup> to intervene in matters concerning Ash Fork Water Service (hereinafter "the utility") who entered this current action on 01 Mar 2004 as a complainant rather than as an intervenor because the lawful right to intervene was corruptly denied or otherwise interfered with via what was perceived as a syndicalistic procedural order<sup>4</sup> which set prejudicial, limiting pre-conditions on intervention. Said procedural order was contested in a Complainant *Motion To Rescind*<sup>5</sup> as being, amongst other infractions, unlawful, unreasonable, vexatious, over-reaching and discriminatorily capricious with intent to impede, delay, postpone, vex or otherwise interfere with lawful third party entry into the case.

Accordingly, Complainant, absent Intervenor status, files the following objections/exceptions to **Staff Report For Ash Fork Development Association d/b/a Ash Fork Water Service's Application For A Permanent Rate Increase. (Docket No. W-01004B-03-0722)** dated 29 Mar 2004 and includes in his review the **Ash Fork Water Rebuttal** letter dated 08 Apr 2004:

1. History.

- a. In the beginning, Ash Fork Water Service and it's parent, Ash Fork Development Association,

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<sup>1</sup> Complainant is the fee simple owner of Yavapai County tax parcel 302-14-028A sited at 46869 8<sup>th</sup> Street, Ash Fork, AZ 86320

<sup>2</sup> Title 14, Arizona Administrative Code.

<sup>3</sup> Any property owner residing in the town of Ash Fork, Arizona whose residence is served by an Ash Fork Water Service metering device is automatically qualified by the by-laws of Ash Fork Development Association, Inc., the parent, to be a member of the co-operative.

<sup>4</sup> ACC Procedural Order dtd 26 Feb 2003 s/Marc E. Stern

<sup>5</sup> Complainant Motion To Rescind dated 01 Mar 2004

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 Ash Fork Water

Inc., wrongfully claiming autonomous local government authority to act on behalf of the residents of the Ash Fork, Arizona area via franchise from Yavapai County, did, in Complainant's opinion, unlawfully abuse the limitations of its corporate powers by entering ultra vires into third-party de facto agreement(s) under claim of municipal sovereignty to incur debt without (1), first noticing the public of its intent; without (2), first seeking permission from the property owners of the community responsible for repayment of the debt; without (3), first seeking permission from the municipal authority (Yavapai County) responsible for governing the affairs of the town; and (4), without first seeking permission from the regulatory authority (Arizona Corporation Commission) responsible for governing the affairs of the corporation on behalf of the consumer public. Not only did the utility act outside the law to do all that, but it also wrongfully used, without permission and consent by the regulatory authority, the pledge of corporate assets as collateral for the loan, an act specifically barred by Arizona administrative law.

b. Complainant believes the Arizona Corporation Commission had an obligation in the beginning to recognize the potential fraudulent nature of the agreement and take immediate action on behalf of the people to vitiate the de facto contract; i.e., render it null and void. Instead, blinded by the golden glitter of federal \$pork, the Arizona Corporation Commission openly ignored the utility's improper conduct, failed in its sworn duty to protect the public from financial harm and bureaucratically commenced a syndicalistic cover-up which is currently in its third phase.

## 2. Background.

a. During Phase I., Ash Fork Water Financing, Docket #W01004B-02-0768, (the attempted retroactive end run around the regulatory process), this Complainant (then Intervenor) warned that a sizeable rate increase would later have to be sought by the utility in order for Ash Fork Water to be able to amortize the utility's reckless spending. So it has come to pass.

b. During Phase II., Service Area Expansion, Docket W-01004B-03-0510, this Complainant/ Intervenor warned that service on the intended debt obligation as empirically adjusted during the action would require consideration of an additional rate surcharge if construction costs not for the account of residential water consumers were not assessed special interest beneficiaries. So, too, has that come to pass.

c. The Arizona Corporation Commission Utilities Division responded to (then) Intervenor's concerns by corruptly hiding its bureaucratic head in the sand, claiming res judicata & collateral estoppel in an attempt to silence legitimate protest and conceal impropriety.

d. Currently during this Phase III. Rate Increase matter, the Arizona Corporation Commission Utilities Division report dated 29 Mar 2004 discloses that Ash Fork Water wants to be allowed to

implement a sizeable rate increase (by up to 40%) to be supplemented by a planned, future rate surcharge in order to amortize debt the utility assumed during Phase I & Phase II.

3. Analysis.

a. A thorough review of the utility's rate increase solicitation reveals that the true purpose is believed to be job perpetuation and deception - in other words, balance the budget from the wallets of the 243 itinerant consumers least able to pay, keep the rates down by half within the town and try to convince everyone the company is providing a fair and equitable service.

b. The inconsistencies in the dollar amounts of debt involved in the three bifurcated Ash Fork Water cases is legend; the regulatory authority's refusal to require verifiable CPA prepared financial statements inexcusable.

c. Staff's claim that adequate public notice was provided by the utility is known to be patently false, prior notice of error duly provided early-on.

d. Staff's *Executive Summary* computations for Ash Fork Water's debt service appear to be skewed, based only on \$433,000.00.

i. The Phase II. action (Docket W01004B-03-0510) raised the original debt request by Ash Fork Water by \$267,000.00 over \$433 K without adequate explanation. And, if some of the random figures asserted by the utility throughout the three bifurcated actions are correct, the utility's actual debt could exceed \$1.2M. Complainant has no idea in the world whether staff's Phase III. computations regarding the utility's financial condition are anywhere near accurate or verifiable, a professionally prepared financial statement for the utility prepared by a licensed CPA firm to be utilized as a basis having never been introduced into evidence.

e. ACC staff's computations regarding the number of customer's of Ash Fork Water is also skewed, a heavy reliance placed on 243 standpipe customers which is actually a transient population factor which will be significantly diminished when the Town of Williams gets it's new Dogtown Well on line and which conceivably could disappear altogether if and when Kaibab Estates West completes it's intended well drilling project.

f. With due respect to staff's diligence in compiling the report, it is also this same 243 standpipe customer factor that must be fully considered when analyzing which class of customer will suffer the greatest harm from the discriminatory, exploitive price increase percentages proposed by the utility, for it is the residential water haulers in the 200 gal. to 2000 gal. price brackets who are intended to pay the most significant price increases.

g. Staff's *Engineering Report* is also skewed, showing a number of glaring errors, especially

concerning the production capability of well #1 and the size and amount of distribution pipe in use in the ground.

h. Staff's allowance of a 2M/gal(+or-) difference between product pumped at the wellhead and product sold (a 10% loss factor) cannot be allowed to stand unchallenged. In a distribution system as small as the one serving Ash Fork, even a 5% loss factor is unacceptable. What this boils down to in the end analysis is this: Whether through leakage, theft, creative bookkeeping or miscalculation, such a loss of product on an annual basis amounts to almost the retail dollar equivalent of the amount required for interest on debt service. The consumer public is entitled to be protected by sufficient measurement criteria to prevent loss of product wherever it may occur.

#### 4. Conclusions.

a. If a tier rate schedule is to be allowed, it should simply segregate the residential user, the water hauler and the commercial customer with the permanent resident residential rate set at a reasonable minimum (est. \$20 - \$25±) based on an average median family usage factor of 250 gallons per day; the standpipe rate (taking into consideration the extra expense of metering, coin mechanisms, changers, card readers, extra maintenance, etc.) slightly higher calculated on a per gallon basis broken down into 25¢ increments; and, the commercial rate the highest with slight diminution breaks as gallonage used increases significantly. The gallonage breakdown by percentage proposed by the utility is totally unnecessary and if allowed to be implemented with a forty percent increase (even with the changes proposed by ACC staff) will only cause hard feelings and speed up the construction of competitive new wells in the surrounding subdivisions.

b. If the utility was compelled to recapture the cost of recent Phase II. construction projects benefitting special interest entities from those specific special interest beneficiaries instead of assessing the entire cost of expansion to all consumers in all categories, little rate adjustment would be necessary.

c. Arsenic contamination played a big part in the staff report. Inasmuch as the new Ash Fork Well #2 is not yet on line nor will it be if the problem persists, the issue staff raised making arsenic contamination a significant question requiring additional surcharge is speculative and may not exist. Once Ash Fork Well #2 starts pumping on a steady basis and the aquifer is cleared of contaminants, the problem (if it is real) may significantly diminish. The utility should be required to clear contamination in controlled pumpdowns and retest µg/l arsenic on a regularly scheduled trial basis. Staff's recommended limitations must remain without reduction.

d. Staff's *point of use* argument regarding arsenic removal is ambiguous because the utility will

still be required to meet EPA standards within the distribution system by 2006.

e. Staff's assertion (*Engineering Report at Pg. 6*) without qualification that the old well (Ash Fork Well #1) will not support increased use is a totally false presumption. Even without rehabilitation, with a new pump recently installed the old well has apparently done quite well keeping up with production for quite some time now. In Complainant's experience, the old well could easily be rehabilitated by belling and/or rescouring, a simple process.

f. The second staff assertion (*Engineering Report at Pg. 6*) regarding the addition of Ash Fork Well #2 and the fact that it would provide additional fire suppression support is not in dispute. However, Complainant refers the reviewer to the pleadings in the Phase II. Docket #W-01004B-03-0510 in which the lack of fire suppression devices in the infrastructure upgrade was discussed.

5. Closing recommendations.

a. Complainant recommends a thorough ten-year audit of the past performance of the utility to determine why no money was set aside for improvements and upgrade.

b. Complainant recommends a simplified, more equitable rate design per 4.a. above.

c. Complainant recommends that any future rate surcharge addressing debt service be barred except in cases of extreme emergency, and then and only then on a one-time-only limited basis with the full knowledge, approval and permission of the community property owners required before application to the regulatory authority.

d. Complainant recommends a method and means which will allow the public to recapture construction costs expended for special interest entities which should not be for the account of residential rate payers.

e. Complainant recommends that the issue of arsenic contamination be removed to a separate action at a future date and time subject to the limiting conditions set forth in the staff report and that Ash Fork Well #2 not be permitted go on line until adequate financing at reasonable cost is 100% available for arsenic treatment.

f. Complainant recommends that future annual reports and operating statements submitted on behalf of the utility be required to be verified by a Certified Public Accountant.

g. Complainant recommends that a ten year financial history of the utility (1992-2002) be critically audited by staff CPA's with particular attention paid to the specific period during which

Lamont Hansen, a convicted felon, was the statutory agent for Ash Fork Water.

h. Complainant recommends that the Arizona Corporation Commission set sanctions in writing which will automatically be imposed on Ash Fork Water when or if the utility fails in any way, form or manner to comply with any disclosure law of any nature whatsoever.

i. Complainant recommends that Ash Fork Water be allowed to recalculate its distribution system new installation charge from main corporation cock to curb stop to realistically reflect the actual cost of providing the initial service which, at a minimum, will consist of the recommended size meter complete with pipe and backflow prevention device as well as including excavation and backfill, street opening and closing complete with repaving which should result in a one-time charge of (est.) \$800 to \$1100.00(±).

j. Complainant recommends that the remainder of the staff report be reviewed for error and updated accordingly.

6. Closing comments.

a. Permitted a final, personal observation, Complainant would advise all concerned that just because Ash Fork Water Service is a non-profit corporation does not mean that the utility cannot earn a profit. If as much effort was expended in seeing that the utility earns a decent return on investment on a day to day basis with the intent of accumulating savings to be used for future infrastructure improvements as was spent trying to circumvent the law in an attempt to hide Ash Fork Water's exploitive buddy-buddy activities from discovery in this bifurcated three-part action, little of the litigation which occurred would have been necessary. As things stand, few people Complainant is aware of residing in Ash Fork even realize that the end result of this regulatory process will result in a consumer debt that will not be paid off for forty years. Most people think, as they have been led to believe by so-called "community leaders," that all the recent construction which took place in Ash Fork was paid for by a federal grant — *all* of it!. Few have any idea what is going on behind the scenes and neither the utility nor Yavapai County is going to let them in on the secret.

WHEREFORE, based on the predetermined nature of what has transpired so far in the three bifurcated Ash Fork Water actions up to this point, Complainant recognizes that some sort of rate increase will be necessary in order for Ash Fork Water to service debt without considering bankruptcy. However, taking into consideration that what has transpired so far is not the fault of the Ash Fork Water Service utility consumer who is wandering around thinking that a federal grant is paying for all that has happened, the following alternatives are proposed:

Alternative One. That the utility and the regulatory authority admit the deceptive nature of the entire bifurcated transaction and those two entities share the cost of construction fifty-fifty.

Alternative Two. That the utility and the unit of municipal government responsible for the town of Ash Fork admit that considerable hanky-panky has occurred in trying to conceal what actual construction occurred for the benefit of whom, and those two entities share the cost of construction proportionately.

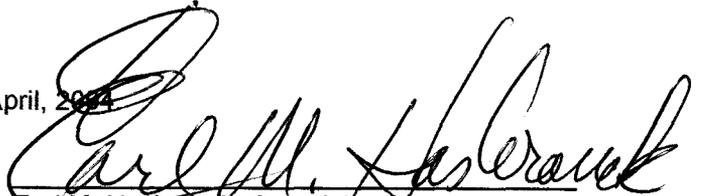
Alternative Three. That the utility and the regulatory authority and the unit of municipal government responsible for Ash Fork admit their errors and omissions and each entity simply turn in a claim for the cost of construction to their individual insurers.

Alternative Four. That the utility and the regulatory authority and the unit of municipal government responsible for Ash Fork get together with the commercial entities which benefitted from the main extensions and enlargements and whatever else occurred whether clandestine or not and share the cost of construction proportionately.

Alternative Five. That the utility and the regulatory authority and the unit of municipal government responsible for Ash Fork and the federal government and the commercial entities and the consumer public involved all submit to an audit to determine each entity's fair share of the cost involved in the Ash Fork Water improvement project.

Accordingly, Complainant recommends that a fair, empirical rate increase adjustment be allowed **without surcharge** in accordance with one of the simplified, more equitable rate design alternatives set forth above.

Respectfully submitted on this, the 12<sup>th</sup> day of April, 2004

  
Earl M. Hasbrouck, Complainant  
P. O. Box 1034  
Ash Fork, AZ 86320-1034  
928/637-0302

\* \* \*  
CERTIFICATE OF SERVICE

Pursuant to R-14-3-107 A.C.C.)

I, Earl M. Hasbrouck, by my signature above, do hereby certify that on the date herein recited, I have served the foregoing document on the parties of record by placing the required number of copies into the United States mail, First Class Postage prepaid, addressed to:

Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007-2996  
(Original and thirteen)

Lewis Hume, Manager  
Ash Fork Development Ass'n d/b/a Ash Fork Water  
P. O. Box 436  
Ash Fork, AZ 86320-0436  
(Conformed copy)