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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

OCT 25 2000

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CARL J. KUNASEK
Chairman
JIM IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner

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AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION)
OF MOUNTAIN GLEN WATER SERVICE, INC.)
FOR A CERTIFICATE OF CONVENIENCE AND)
NECESSITY TO PROVIDE WATER SERVICE.)

DOCKET NO. W-03875A-00-0289
W-01894A-00-0289

IN THE MATTER OF GEORGE M. PAPA)
WATER COMPANY: COMPLAINT AND)
ORDER TO SHOW CAUSE.)

DOCKET NO. W-01894A-00-0654

STAFF'S REPLY TO RESPONDENT PAPA'S RESPONSE

Staff of the Arizona Corporation Commission, through undersigned counsel, hereby replies to Respondent Papa's Response in this consolidated matter.

The George M. Papa Water Company ("Papa Water"), a sole proprietorship, was issued a Certificate of Convenience and Necessity ("CC&N") to provide water service in Linden, Pinedale, and Clay Springs, located in Navajo County, Arizona. The CC&N was issued on July 10, 1963 pursuant to Decision No. 34647.

On February 23, 2000, all of the assets associated with Papa Water were sold at public auction held by the Arizona Department of Revenue ("ADOR") pursuant to Arizona Revised Statute ("A.R.S.") § 42-1201, for delinquent Department of Revenue taxes (sales tax). Mr. and Mrs. William Parker ("Parkers") purchased the assets. Pursuant to A.R.S. § 12-1281, Mr. Papa had until August 23, 2000, to pay all back taxes and applicable fees and interest in order to redeem these assets. Mr. Papa failed to redeem these assets and title to these assets passed to the Parkers. (See, Arizona Department of Revenue Deed executed on August 25, 2000, attached as Exhibit 1).

Pursuant to A.R.S. § 40-361, every public service corporation is required to furnish and maintain service, equipment and facilities to promote safety, health, comfort and convenience of the public. As a result of the auction sale and passing of the redemption period, Papa Water no longer

1 owns the facilities or equipment necessary to provide water service to the certificated area pursuant
2 to A.R.S. § 40-361. Because Papa Water no longer has the ability to provide water service within
3 its certificated area, and there remains a demand for service in that area, rescission of Papa Water's
4 CC&N would be in the public interest.¹ The only relevant question related to whether the
5 Commission should delete the CC&N of Papa Water is whether Papa Water has the ability to
6 provide service to the certificated areas that demands water service. Because Papa Water has no
7 assets to provide such service, deletion of the CC&N is appropriate. All other arguments presented
8 by Mr. Papa are irrelevant to the issues to be decided in this case. However, the arguments made by
9 Mr. Papa are deceptive, inaccurate, and unsubstantiated, Staff is inclined to respond accordingly.

10 **Mr. Papa's "Takings" Argument has been Litigated in Superior Court and is Res Judicata**

11 On September 30, 1998, the Superior Court in Navajo County, CV 97-00039, removed Mr.
12 Papa ("Respondent") as the operator of Papa Water. (See, Judgment and Decree Superior Court
13 Navajo County dated September 30, 1998, attached as Exhibit 2.) As a result, an Interim Manager
14 was appointed to operate Papa Water. (Initially, First National Management, Inc., then H&H Water
15 Management). Throughout the Interim Managers' tenures, Mr. Papa continuously argued that the
16 Commission and the Interim Managers were responsible for all of Papa Water's financial difficulties.
17 Further, Mr. Papa argued that the deprivation of "ownership income" to Mr. Papa, throughout the
18 tenure of the Interim Managers constituted a "governmental taking" which entitled Mr. Papa to
19 compensation. The Superior Court continually rejected this argument.

20 The Court ruled in the August 13, 1998 Minute Entry:

21 In considering the governmental taking argument, the Court must do so in the context
22 of the reason for precluding of governmental taking without compensation, i.e. an
23 individual's property or property rights should not be taken for the benefit of the
24 public as a whole without the public as a whole paying for the property or property
25 right. Applying that principal, the court does not view the removal of Mr. Papa and
26 the installation of an interim manager under these circumstances to constitute a
27 governmental taking in the "taking" sense. The action of the Commission is rather
28 an action taken pursuant to its supervisory and regulatory powers over public service
corporations to prevent **mismanagement** of the public service corporation which the
Commission determined to have occurred and to preserve the assets and functionality

1 See, James P. Paul Water Company v. Arizona Corporation Commission, 137 Ariz. 426, 671P.2d 404 (1983)
2 "The Corporation Commission's authority to delete and reassign a parcel of land under a certificate of convenience and
necessity is controlled by the public interest."

1 of the public service corporation which the Commission found to be **in jeopardy**
2 **because of Mr. Papa's actions.**

3 (Emphasis added). (See, Minute Entry Superior Court, Navajo County dated August 13, 1998
4 attached as Exhibit 3).

5 The Superior Court again revisited the "takings" issue following Respondent's "Motion for
6 Compensation, Costs, and Damages" dated June 10, 1999. Respondent argued that he was entitled
7 to "ownership income," and that the denial of such compensation constitutes a "taking." The Court
8 did not agree. After the Court reviewed Respondent's Motion, the Commission's Responses thereto
9 and the Respondent's Reply to Response, the Court heard oral argument on this matter. As a result,
10 the Court published Minute Entry dated July 27, 1999. In that Minute Entry the Court noted:

11 The Respondent goes to great lengths to attempt to re-litigate the "takings" issue,
12 which has previously been determined against the Respondent. The Court's
13 reasoning rejecting the Respondent's "takings" argument was set forth in the Court's
14 minute entry of August 13, 1998. There being no benefit repeating that reasoning
15 herein, it will not be repeated but is adopted by reference. Additionally, the Court
16 denied the Respondents "takings" argument by virtue of refusing to adopt the form
17 of Judgment and Decree submitted by Respondent and signing on September 28,
18 1998, the form of Judgment and Decree submitted by Petitioner.

19 (See, Minute Entry Superior Court, Navajo County dated July 27, 1999 attached as Exhibit 4).

20 The "takings" issue was again argued by Respondent in his Motion for Reconsideration dated
21 July 31, 1999, which was directed to the Court's July 27, 1999 ruling. Again, Respondent contended
22 that compensation was due him as a result of his ownership interest in Papa Water. Respondent
23 argued that the failure of the Interim Manager to remit compensation to Papa constituted a "taking."
24 The Court again rejected Respondent's "takings" argument. In a Minute Entry dated August 9, 1999,
25 the Court stated:

26 In the motion by Mr. Papa, he again attempts to persuade the Court of the correctness
27 of his position on the "takings" issue. Although stated somewhat differently in this
28 Motion, Mr. Papa makes the same arguments he has previously made and which the
Court has previously rejected regarding the "takings" issue. For the reasons
explained in the Court's August 13, 1998, Order, the enforcement by the Court of the
removal of Mr. Papa as manager of the water company was not a "taking" of the
water company and the use by the Interim Manager of all revenues of the water
company, including base rate revenues, is likewise not a "taking." **The revenues are
being used by the Interim Manager to pay operating expenses, debt and taxes,
and to make needed repairs and improvements.**

(Emphasis added). (See, Minute Entry Superior Court, Navajo County dated August 9, 1999
attached as Exhibit 5).

1 Mr. Papa again attempted to litigate the "takings" issue by filing "Respondent's Motion for
2 Financial Relief As Per This Court's Minute Entry Dated August 26, 1999." The Court rejected Mr.
3 Papa's argument and in a Minute Entry dated November 23, 1999, the Court concluded:

4 Respondent's Motion for Financial Relief is another attempt by Mr. Papa to persuade
5 this Court that a "taking" has taken place by virtue of Respondent not receiving any
6 payment thus far for his ownership interest in the George Papa Water Company. The
7 Court has previously ruled that no "taking" has occurred. Nothing in Respondent's
8 motion for Financial Relief has persuaded the Court to alter it's (sic) decision
9 regarding the "takings" issue. . . Based on the representations made in the Staff's
Response it would appear that the Interim Manager is now going forward with
applying for a rate increase from the Arizona Corporation Commission. **While there
has certainly been a delay in seeking a rate increase, the delay resulted from the
failure to have historical financial data needed in order to file for a rate
increase.**

10 (Emphasis added). (See, Minute Entry Superior Court, Navajo County dated November 23, 1999
11 attached as Exhibit 6).

12 Finally, Mr. Papa again attempted to re-litigate the takings issue during an Order to Show
13 Cause to remove the Interim Manager on October 4, 2000.² The Court once again rejected Mr.
14 Papa's argument that he was entitled to compensation. The Superior Court noted:

15 IT IS ORDERED the claims made by Mr. Papa have already been ruled upon by and
the Court reiterates its decision regarding this matter.

16 (See, Minute Entry Superior Court, Navajo County dated October 4, 2000 attached as Exhibit 7).

17 Papa's argument that the Commission's failure to provide him ownership income somehow
18 constitutes a governmental taking has been litigated and re-litigated. The Superior Court has
19 determined that his removal as operator of Papa Water was lawful. Further, the Superior Court never
20 found that the absence of ownership income flowing to Mr. Papa was the result of any malfeasance
21 on the part of the Commission or the Interim Manager.

22 **The Commission was Unable to Process a Rate Application for Papa Water Because**
23 **Mr. Papa Was Unable or Unwilling to Provide Financial Information**

24 Mr. Papa complains that the Commission deprived him of reasonable rates. While the
25 Commission agrees that Papa Water was in need of rates, the problem was that Mr. Papa did not
26 provide to the Commission the necessary financial documentation to process a rate case. The
27

28 ² The Superior Court removed the Interim Manager on October 4, 2000 because Mr. Papa no longer owned the
assets of Papa Water.

1 Superior Court visited this very issue and in the July 27, 1999 Minute Entry, the Superior Court
2 stated:

3 It is clear from the materials submitted that the Interim Manager has been working
4 with ADEQ to remedy the problems with the water system. It was also clear to the
5 Court that before capital improvement work under the terms of the Consent Decree
6 can be done; a loan will have to be secured. Such a loan cannot apparently presently
7 be secured because, for whatever reason, **Mr. Papa is apparently unwilling or
8 unable to provide the historical financial data** which would be needed in order to
9 make any application for such a loan. It may, therefore, very well be necessary to
10 wait for **the generation of sufficient historical financial data during the operation
11 of the Water Company by an interim Manager before such a loan application
12 can be made and the necessary loan secured.**

13 (Emphasis added). (See, Exhibit 4).

14 The same financial data necessary to process the loan applications was needed to process a
15 rate case. Without this information the Commission was forced to wait until the Interim Manager
16 established a historical test year before the rate case application could be processed.

17 The Superior Court also recognized that the financial difficulties of Papa Water were not
18 alleviated by the actions of Mr. Papa. The failure of Mr. Papa to receive ownership compensation
19 was the direct result of his neglect of the Water Company. In the same Minute Entry dated July 27
20 1999, the court stated:

21 The Court finds the action of the Interim Manager of not providing any portion of the
22 revenues generated from the water company's operations to Mr. Papa to be in
23 accordance with the Court's Judgment and Decree since it is clear from the
24 documentation submitted by the Interim Manager that the revenues were used by the
25 Interim Manager to pay the operating expenses, which **includes repair expenses**, of
26 the water company, and the outstanding taxes and other indebtedness of the water
27 company. The Court notes that **the financial difficulties of the water company
28 have been exacerbated by Mr. Papa's failure to make any payments whatsoever
on the obligations he was ordered to pay as detailed in paragraph numbered 5
of the Judgment and Decree.**

(Emphasis added). (See, Exhibit 4).

As a result, the refusal or inability of Mr. Papa to supply historical financial data not only
impeded the Interim Manager from securing requisite financing needed for necessary repairs, without
the historical financial data, it was impossible for the Staff at the Commission to process a rate case
until a historical test year could be established. Further, the financial problems related to Papa Water
were caused by Mr. Papa's neglect of the Water Company.

1 Thirteen months after the installment of an Interim Manager, a historical test year was
2 established. The rate application that resulted in Decision No. 62905 dated September 18, 2000 was
3 filed on January 6, 2000 using a test year ending October 31, 1999. As such, a rate case was filed
4 for Papa Water as soon as practicable due to the inability to establish a historic test year as required
5 by Arizona Administrative Code ("A.A.C.") R14-2-103.

6 **Collateral Attacks on Previous Commission Decisions Unlawful**

7 Pursuant to A.R.S. § 40-252, all Orders from the Commission, which have become final shall
8 be conclusive. Collateral attacks on such Orders are prohibited. Mr. Papa accuses the Commission
9 of failing to provide fair and reasonable rates to Papa Water for many years. Mr. Papa blames the
10 Commission for the alleged financial problems of Papa Water, but has continuously failed to make
11 appropriate legal appeal of the Commission Rate Decisions. As a result, Mr. Papa has no legal basis
12 to conclude that the prior rate decisions by the Commission were unlawful or unreasonable.
13 Pursuant to A.R.S. § 40-253, a party may apply for rehearing of a Commission Decision within 20
14 days of entry of that Decision. If the Commission does not grant the application for re-hearing
15 within 20 days, the application is deemed denied. Pursuant to A.R.S. § 40-254.01, a party may then
16 file a notice of appeal in a rate case in the court of appeals. Mr. Papa failure to exercise both
17 administrative and legal remedies to challenge a Commission decision as unlawful or unreasonable
18 as provided by law forecloses any collateral attack on those decisions at this time.

19 Currently, Mr. Papa is arguing that Decision No. 62905 is both unlawful and unreasonable.³
20 As a final Commission decision related to a rate case, appeal of the decision is appropriate only
21 through A.R.S. § 40-253 and if necessary § 40-254.01. As a result, any collateral attack on Decision
22 No. 62905 in this docket is unlawful pursuant to A.R.S. § 40-252.

23 **Transfer of Assets from Mr. Papa to the Parkers is not Contingent on the Commission's**
24 **Granting of a CC&N to Mountain Glen Water Service ("Mountain Glen")**

25 Despite Mr. Papa's contention, legal title to the assets of Papa Water has transferred to the
26 Parkers after the redemption period ended on August 23, 2000. Passing of title is not contingent on
27

28 ³ For example, Mr. Papa disputes the Commission's decision related to plant values, rate of return, methodology
for establishing rate base, depreciation rates, etc.

1 the Commission's deletion of Papa Water's CC&N or the granting of a CC&N to Mountain Glen.
2 There is limiting language in the deed that states the successful bidder (Mountain Glen) will need
3 Commission approval to "operate as a utility." Nowhere in the deed is there any language to indicate
4 that the property would revert to Mr. Papa if Commission approval were not given to Mountain
5 Glen. The water company assets would remain the property of Mountain Glen, and Mountain Glen
6 would still be a public service corporation,⁴ obligated to provide service to the public.

7 **CONCLUSION**

8 The deletion of Papa Water's CC&N is in the public interest. Papa Water no longer owns
9 any assets to run a water company. The certificated area has a demand for water and Papa Water no
10 longer has the ability or the capacity to furnish water to that area. Mountain Glen now has the
11 facilities and ability to provide service in the certificated area, therefore, there will be no interruption
12 of service as a result of the deletion of Papa Water's CC&N. All other collateral evidence presented
13 in this case is irrelevant to the issue at hand.

14 RESPECTFULLY SUBMITTED this 25th day of October, 2000.

15
16 
17 Robert J. Metli
18 Attorney, Legal Division
19 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

20 The original and fifteen (15)
21 copies of the foregoing
22 were filed this 25th day of
October, 2000, with:

23 Docket Control
24 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

25

26

27 _____
28 ⁴ Tonto Creek Estates Homeowners Ass'n v. Arizona Corp. Com'n, 177 Ariz. 49, 864 P.2d 1081 (App. 1993).
The definition of a public service corporation contained in Article XV, Section 2 makes no differentiation on the basis
of whether one holds a certificate of convenience and necessity.

1 Copies of the foregoing were
2 mailed this 25th day of
3 October, 2000, to:

3 William James Parker
4 MOUNTAIN GLEN WATER SERVICE
5 P.O. Box 897
6 Clay Springs, Arizona 85923

6 Deborah Hilton
7 9808 North 39th Street
8 Phoenix, Arizona 85028

8 G. Terris Porter
9 Porter Law Offices, P.C.
10 1052 E. Deuce of Clubs
11 Show Low, Arizona 85901

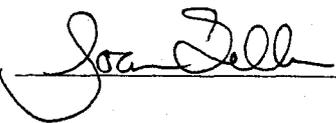
10 Jeff Hammond
11 P.O. Box 870
12 St. Johns, Arizona 85936

12 Mr. George M. Papa
13 George M. Papa Water Company
14 57 North Fraser Drive
15 Mesa, Arizona 85203

15 Additionally, copies of the
16 foregoing were sent by
17 telefacsimile this 25th day of
18 October, 2000, to:

17 Mr. George M. Papa
18 George M. Papa Water Company
19 57 North Fraser Drive
20 Mesa, Arizona 85203

19 G. Terris Porter
20 Porter Law Offices, P.C.
21 1052 E. Deuce of Clubs
22 Show Low, Arizona 85901

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Description of Property

Business inventory of George M. Papa Water Company and any and all improvements to land, including but not limited to: wells, pipes, buildings, filters, tanks (storage, air pressure), casings, meters, furniture, pumps (well, booster), valves, gauges, fittings, and any prescriptive easements relating to transportation of water.

Legal

The following legal descriptions are from a transaction title report

Linden System:

That part of Lot 2, Show Low West, according to Book 5 of plats, page 34, records of Navajo County, Arizona, described as follows:

Beginning at the Northeasterly corner of said lot 2;

Thence South 04°26' West, along the Easterly boundary of said Lot 2, a distance of 90 feet;

Thence South 89°53' 15" West, to a point on the Northwest boundary of said Lot 2;

Thence North 47°06' East, along said Northwest boundary of Lot 2 to the POINT OF BEGINNING;

That part of Section 34, Township 11 North, Range 21 East, of the Gila and Salt River Base and Meridian, Navajo County, Arizona, described as follows:

Commencing at the South quarter corner of said Section;

Thence North 0°5'40" West, 211.98 feet;

Thence North 5°47'52" West, 666.88 feet;

Thence South 89°30' West, 188.84 feet to the POINT OF BEGINNING;

Thence South 0°11'45" West, 100 feet;

Thence North 89°30' West, 23.5 feet;

Thence South 0°11'45" West, 60 feet;

Thence South 89°30' East, 40 feet;

Thence North 0°11'45" East, 160 feet;

Thence North 89°30" West, 16.5 feet to the POINT OF BEGINNING.

Clay Springs System:

That part of the Northwest quarter of section 18, Township 11 North, Range 19 East, of the Gila and Salt River Base and Meridian, Navajo County, Arizona, described as follows:

Commencing at the West quarter corner of said Section 18, point being monumented by a GLO Brass Cap;

Thence north 88°27'58" East, along the mid-section line, a distance of 1354.86 feet to the POINT OF BEGINNING;

Thence North 00°02'54" East, a distance of 84.00 feet;

Thence North 88°27'58" East, a distance of 133.01 feet to a 1/2" rebar;

Thence South 00°05'31" West, a distance of 84.00 feet to a 1/2" rebar;

Thence South 88°27'58" West, a distance of 133.01 feet to the POINT OF BEGINNING.

EXCEPT all existing minerals and/or oil as reserved in Deed recorded in Docket 633, page 65, records of Navajo County, Arizona.

Pinedale System:

That part of Section 29, Township 11 North, Range 20 East, of the Gila and Salt river Base and Meridian, Navajo County, Arizona, described as follows:

Commencing at the Northwest corner of the Southwest quarter of the Northwest quarter of said section;

Thence North 89°10'15" East, a distance of 297.66 feet to the POINT OF BEGINNING;

Thence North 89°10'15" East, 50 feet;

Thence South 00°38'6" East, 50 feet;

Thence South 89°10'15" West, 50 feet;

Thence North 0°38'06" West, 50 feet to the POINT OF BEGINNING.

Unless said amounts are paid before the time fixed for sale, the property will be sold at Public Auction on February 23, 2000, at 10:00 a.m. at the Navajo County Courthouse (steps), Government Complex, Holbrook, AZ, to the

highest bidder. Only the right, title and interest of George M. Papa Water Company, in and to the property, will be offered for sale. Payment must be by cash or certified funds payable to the Arizona Department of Revenue and must be paid upon acceptance of the bid.

The auction will be including the real and personal property of George M. Papa Water Company as a whole to preserve interest. Please be advised the successful bidder will also need the approval of the Arizona Corporation Commission to operate as a utility. The property will be subject to redemption as provided in A.R.S. Section 12-1281 et. seq. The Department reserves the right to reject any and all bids.

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2 OCT 5 1998

3 LEGAL DIV.
4 ARIZ. CORPORATION COMMISSION

ORIGINAL
FILED NAVAJO COUNTY

SEP 30, 1998

SUPERIOR COURT
JUANITA MANN CLERK

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8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
9 IN AND FOR THE COUNTY OF NAVAJO

10
11 ARIZONA CORPORATION COMMISSION,)

12 Petitioner,)

13 vs.)

14 GEORGE M. PAPA d.b.a. GEORGE M. PAPA)
15 WATER COMPANY,)

16 Respondent.)

CV
Case No. 97-00039

JUDGMENT AND DECREE

(Assigned to the Honorable
Peter J. DeNinno)

17
18 The Petitioner's motion for Summary judgment came on for hearing before the court on
19 June 19, 1998 and, following the arguments of the parties, was taken under advisement by the Court.

20 The Court, having had the matter under advisement and having considered the form of the decree,
21 finds that the Petitioner's Motion for Summary Judgment is well-taken and should be granted.

22 Accordingly,

23 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

24 1. The Arizona Corporation Commission's Petition is granted.

25 2. George Papa is removed as an employee or as an operator of the George M. Papa
26 Water Company.

27 3. The Petitioner is directed to select a qualified interim manager to operate the George
28 M. Papa Water Company.

1 4. Petitioner is directed to provide reasonable advance written notice to this court and
2 to the Respondent before changing interim managers for the water company.

3 5. Effective Midnight, October 1, 1998, Respondent George M. Papa is enjoined from
4 billing customers or in otherwise conducting the affairs of the George M. Papa Water Company.
5 Respondent is permitted to send out a bill to the ratepayers for the September billing period.
6 Respondent shall be responsible for the expenses of the company accrued to that point. Respondent
7 is ordered to pay the electric bill and other legitimate expenses accruing for the company through
8 the September billing period, notwithstanding that the interim manager will be installed starting
9 October 1. Respondent is ordered to pay the current property tax bill for the property which will be
10 payable to Navajo County before October 31 and to provide to the Arizona Corporation Commission
11 a receipt from the Navajo County Treasurer showing that such payment has been made. In addition,
12 the property tax bill for the second half of 1998 will be payable the end of April 1999. Respondent
13 will be responsible for his pro-rata share of this bill, which accrues during his tenure as operator,
14 which the court finds to be one half of the second half 1998 property tax bill. Respondent will take
15 reasonable steps to offer payment in a form which satisfies the Navajo County Treasurer. At 8:00
16 a.m. September 30, 1998, the interim manager shall meet with Respondent at a mutually agreed site
17 at the Respondent's plant in Linden, Arizona. The parties shall together conduct the meter reading
18 of the system until it is completed. At the conclusion of the meter reading, or at some mutually
19 convenient time during the meter reading, the Respondent shall provide the interim manager with
20 all books, maps, engineering material and written records, including billing records of the water
21 system to the interim manager.

22 6. George M. Papa, the Respondent in this cause is enjoined to give physical access to
23 the plant to the interim manager and to provide the manager with all books, maps, engineering
24 material and written records, including billing records, of the water systems.

25 7. The interim manager is enjoined to physically secure the plant against the Respondent
26 and others.

27 8. The Respondent may visit and inspect the plant only on reasonable notice and at a
28 mutually agreeable time with the interim manager of the water company.

1 9. It is further ordered, effective October 1, 1998, that the interim manager shall have
2 all authority normally incident with the long-term management of a water company, including the
3 following activities:

4 a. The authority to collect bills, and make refunds.

5 b. The authority to enter into line extension agreements.

6 c. The authority to begin and terminate service to customers in accordance with
7 the tariffs and rules of the Arizona Corporation Commission.

8 d. The authority to pay bills, debts and taxes of the Company. Respondent is
9 ordered to pay any delinquent transaction privilege sales tax liability that he may owe.

10 e. The authority to enter into financing arrangements necessary to meet
11 environmental and Arizona Corporation Commission compliance requirements, including the power
12 to secure such arrangements with the assets of the George Papa Water Company, if such financing
13 is approved by the Arizona Corporation Commission in accordance with its statutes and rules. The
14 interim manager shall not sign any documents creating a security interest on the property without
15 prior court approval.

16 f. To file all necessary or useful regulatory applications, including financing
17 applications and rate applications.

18 10. The Respondent is directed to sign commercially reasonable loan documents
19 including documents securing payment of such loans with company assets, which may be required
20 to meet environmental compliance guidelines. Either the Arizona Corporation Commission or
21 the interim manager may seek relief from the court if the Respondent unreasonably withholds such
22 signature, and the Superior Court retains jurisdiction to consider such applications.

23 11. The interim manager selected by the Arizona Corporation Commission shall be paid
24 out of the revenues of the Papa Water Company in accordance with the letter of agreement of August
25 26, 1998 and shall be required to account for all monies received and shall direct all cash flow in
26 excess of the just obligations, debts and taxes of the Company to George M. Papa. Mr. Papa shall
27 be notified if any extra compensation beyond \$1,950 per month is to be paid to the interim operator.
28 Mr. Papa shall be permitted to file objections and seek relief from the court if he objects to any extra

1 compensation of the interim manager. The interim manager shall provide quarterly reports of his
2 activities with the Arizona Corporation Commission with a copy to the Respondent. The annual
3 report filed by all utilities shall constitute one of the reports. The reports shall generally consist of
4 a profit and loss statement and a billing sheet. The interim manager shall promptly provide proof
5 of necessary insurance to the Arizona Corporation Commission before exercising control of the Papa
6 Water Company.

7 12. The respondent is still the owner and sole proprietor of the George M. Papa Water
8 Company despite his removal as manager. Accordingly, the Court declares that Mr. Papa's actions
9 with regard to the Company and its ratepayers are still under Commission jurisdiction.

10 13. The Respondent, George M. Papa as the owner of the water company is free to sell
11 the company subject to Commission approval as required by statute.

12 14. The appointment of the interim manager is without prejudice to Navajo County to
13 conduct proceedings to execute on the water company for unpaid taxes.

14 15. The Court retains jurisdiction to enforce, modify or vacate this decree as
15 circumstances may warrant, after affording notice and an opportunity for a hearing to the parties.
16 When either of the parties believe the necessity for an interim manager no longer exists, either can
17 petition the court for relief.

18 **VIOLATIONS OF THIS DECREE MAY BE PUNISHABLE AS A CONTEMPT OF**
19 **COURT OR AS INTERFERING WITH A JUDICIAL PROCEEDING PURSUANT TO**
20 **A.R.S. § 13-2810.3.**

21 DONE IN OPEN COURT this 28th day of September, 1998.

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24 _____
25 Judge of the Superior Court
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SUPERIOR COURT
NAVAJO COUNTY, ARIZONA

DATE: August 13, 1998
CASE NO: 97-00039
HON. PETER J. DE NINNO, JUDGE PRO TEM
DIVISION: VISITING

JUANITA MANN, CLERK
By: Gail Widner
Gila County Deputy
Court Rptr: None

ARIZONA CORPORATION COMMISSION,
Petitioner,

vs.

GEORGE M. PAPA, d.b.a. GEORGE M.
PAPA WATER COMPANY,

Respondent.

MINUTE ENTRY

RECEIVED

AUG 14 1998

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

ACTION: ORDER DENYING MOTION FOR RECONSIDERATION AND SETTING ORAL ARGUMENTS ON FORM OF JUDGMENT AND DECREE

The Court has reviewed the Motion for Reconsideration filed by Respondent, the Response filed by the Petitioner and the Reply filed by Respondent. The Court has also reviewed the alternative forms of Judgment presented by the parties and the Objections of the parties to those alternative forms of Judgment.

The Court agrees that the issue of the jurisdiction of the Arizona Corporation Commission to enter the Order which the Commission is seeking by these proceedings to have the Court enforce, can be raised as a defense to the enforcement proceedings notwithstanding the fact that the Respondent is precluded from collaterally attacking the Order of the Commission. While the Respondent can raise lack of jurisdiction of the Arizona Corporation Commission to enter the Order of which enforcement is being sought, the Court finds that the Commission had jurisdiction to order the removal of Mr. Papa and the installation of an interim manager under the circumstances which are present in this case. The constitutional provision (Article XV §3), by which the Arizona Corporation Commission is granted power and authority in the area of regulating public service corporations with the goal being to further the comfort, safety and the preservation of the health of the employees and patrons of public service corporations, as well as the statutes which have been enacted to implement that constitutional power and authority, including A.R.S. §40-321(A), A.R.S. §40-361(B) and A.R.S. §40-202(A), provide sufficient authority to the Arizona Corporation Commission to enable the Commission to enter the Order being sought by these proceedings to

Can

ARIZONA CORPORATION COMMISSION vs. PAPA
RULING ON SUBMITTED MATTER (continued)

be enforced, i.e. the removal of Mr. Papa as manager of the water company and the installation of an interim manager. The Court does not accept the Respondent's argument that since the action is not specifically covered by a statute that the Arizona Corporation Commission does not have the authority. The language of A.R.S. §40-202(A) provides that in supervising and regulating public service corporations, the Commission can do things in addition to things specifically designated which the Commission deems necessary to the exercise of its powers.

In the *Southern Pacific* case cited by Respondent there was no showing that the public good necessitated the action of the Arizona Corporation Commission attempting to force the railroad to restore the train service which the Commission wanted the railroad to restore. In the instant case there were findings, based on evidence presented to the Arizona Corporation Commission at a contested hearing in which Mr. Papa participated, that Mr. Papa was not operating the water company as the public good required.

The Respondent's argument that his removal would constitute an unwarranted interference in the management of the water company by the Commission has no merit. In this case the Respondent's removal was determined by the Commission to be necessary to the furthering of the public good because of the Commission determination that Mr. Papa had refused to follow the Orders of the Commission with respect to the application of water company revenues, including his refusal to abide by the Commission's Order respecting setting up of a joint account so the application of the revenues could be controlled.

The argument raised by Respondent that the removal of Mr. Papa and the installation of an interim manager would constitute a governmental taking requiring just compensation also has no merit. In considering the governmental taking argument, the Court must do so in the context of the reason for the precluding of governmental taking without compensation, i.e. an individual's property or property right should not be taken for the benefit of the public as a whole without the public as a whole paying for that property or property right. Applying that principal, the Court does not view the removal of Mr. Papa and the installation of an interim manager under these circumstances to constitute a governmental taking in the "taking" sense. The action of the Commission is rather an action taken pursuant to its supervisory and regulatory powers over public service corporations to prevent mismanagement of the public service corporation which the Commission determined to have occurred and to preserve the assets and functionality of the public service corporation which the Commission found to be in jeopardy because of Mr. Papa's actions. Mr. Papa does remain the owner of the water company and all the assets thereof. Additionally, Mr. Papa would be free at any time to sell the water company and the

ARIZONA CORPORATION COMMISSION vs. PAPA
RULING ON SUBMITTED MATTER (continued)

assets thereof and will also be entitled to receive any revenues which are generated in excess of those needed for expenses. Even if the removal of Mr. Papa as manager and the installation of an interim manager would be considered a governmental taking, Mr. Papa will be compensated in that all of the revenues of the water company will be accruing to his ultimate benefit as the owner of the water company. The payment of the debts which exist against the water company and the making of improvements to its assets will result in benefit to Mr. Papa whether he resumes the management of the water company at the end of the tenure of the interim manager or sells the water company. While Mr. Papa will be prevented from managing and operating the water company, the Court envisions Mr. Papa having the right to make reasonable inspections of the water company assets and being entitled to be furnished with documentation respecting the operations of the water company and being able to seek relief for any irregularities he deems need to be addressed.

The references to the statements in the Arizona Corporation Commission Decision 59952 that the removal of Mr. Papa would be a drastic measure and not justified were comments made by way of prefacing the making of the Orders which provided Mr. Papa with an opportunity to avoid his removal if he complied with the Arizona Corporation Commission Orders, including the Order to set up a joint account. The requirement of setting up a joint account was made in the context of the Commission finding that Mr. Papa had in the past not properly applied receipts from the water company, including the increases in rates which had been granted.

The Court is not persuaded by the Respondent's argument that the Arizona Corporation Commission Decision 59952 does not order the removal of Mr. Papa. It was clearly the intention of Decision 59952 for Mr. Papa to be removed and for an interim manager to be installed if Mr. Papa did not comply with the Orders. The Commission, through the directive given to its staff, ordered that if Mr. Papa did not comply with the Orders which were being entered, he would thereafter be removed and an interim manager would be installed. In fact, the last paragraph of Decision 59952 specifically directs the Arizona Corporation Commission's Legal Division to bring the instant enforcement actions if Mr. Papa did not comply with the Orders.

The Court declines the request of the Respondent that formal Findings of Fact be included in the Judgment. The Court views the minute entry of June 22, 1998, as a sufficient explanatory minute entry to take the place of formal findings.

The Court having considered the arguments contained in the Motion for Reconsideration and having determined those arguments to be without merit;

ARIZONA CORPORATION COMMISSION vs. PAPA
RULING ON SUBMITTED MATTER (continued)

IT IS HEREBY ORDERED denying the Motion for Reconsideration.

As to the alternative forms of Judgment submitted by the parties, the Court sets oral arguments on the alternative forms of Judgment for August 28, 1998, at 10:00 A.M. with the Court sitting in the Gila County Superior Court in Globe, Arizona. The Court will allow two hours for the arguments. If either party believes that more than two hours will be required, they are to notify the Court Administrator's Office in Globe so additional time can be scheduled.

At the hearing the parties should be prepared to present arguments respecting the appropriate form of Judgment to be entered by the Court. The Court anticipates the parties being prepared to provide the court with specifics as to the exact date on which the interim manager will be installed and the mechanics of the turning over of the management of the water company to the interim manager. The Court encourages the parties to negotiate in an attempt to reach agreement as to those specifics.

cc:

Peter Breen, Esq.

Arizona Corporation Commission, Legal Division
1200 W. Washington Street, Phoenix, Arizona 85007

William P. Sullivan

Martinez & Curtis, P.C.

2717 N. 7th Street, Phoenix, Arizona 85006-1090

The Honorable Thomas L. Wing

P. O. Box 668, Holbrook, Arizona 86025

The Honorable Peter J. De Ninno

Court Administrator - Gila County

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SUPERIOR COURT
NAVAJO COUNTY, ARIZONA

DATE: July 27, 1999
CASE NO: 97-00039
HON. PETER J. DE NINNO, JUDGE PRO
TEM
DIVISION: VISITING

JUANITA MANN, CLERK
BY: Patricia Taylor, Deputy
Ct. Rptr: None

ARIZONA CORPORATION COMMISSION,
Plaintiff,
vs.
GEORGE M. PAPA, d.b.a. GEORGE M.
PAPA WATER COMPANY,
Defendant.

MINUTE ENTRY
(886)

RECEIVED

JUL 29 1999

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

ACTION: RULING ON SUBMITTED MATTER

The Court has reviewed the Respondent's Motion for Compensation, Costs and Damages, the Commission's Response thereto and the Respondent's Reply to Response. On July 8, 1999, the Court heard oral arguments on the Respondent's Motion for Compensation, Costs and Damages and has now reviewed the memorandums filed by the parties subsequent to the July 8, 1999, hearing which consist of the Commission's Response to the Respondent's Reply, the Commission's Notice of Change of Interim Manager, the Respondent's Opposition to Commission's Notice of Change of Interim Manager and the Respondent's Reply to Special Response on Failure to Implement ADEQ's Consent Judgment. The Court has also reviewed the financial data provided as attachments to memorandums and has also reviewed its previous rulings as well as the authorities cited by both parties. Upon reviewing all of the referenced memoranda and attachments, the Court's previous rulings and the authorities cited, the Court denies the Respondent's Motion for Compensation, Costs and Damages, declines to award any damages to Respondent and disallows Respondent's Opposition to Commission's Notice of Change of Interim Manager.

The Respondent goes to great lengths to attempt to relitigate the "takings" issue, which has previously been determined against the Respondent. The Court's reasoning rejecting the Respondent's "takings" argument was set forth in the Court's minute entry of August 13, 1998. There being no benefit to repeating that reasoning herein, it will not be repeated but is adopted by reference. Additionally, the Court denied the Respondent's "takings" argument by virtue of refusing to adopt the form of Judgment and Decree submitted by Respondent and signing on September 28, 1998, the form of Judgment and Decree submitted by Petitioner. To the extent that the Respondent's Motion is based on Rule 60(c) of the Arizona Rules of Civil Procedure, the motion is denied. None of the arguments made by the Respondent raise any different or new issues than those which were previously considered by the Court in its earlier ruling. When, at the oral arguments which took place on July 8, 1999, the Court questioned the Respondent as to the inconsistency between his "takings" arguments and the language of paragraph 11 of the September 28, 1998, Judgment and Decree, the Respondent conceded that he was not 97-

AZ. CORP. COMMISSION VS GEORGE M. PAPA
RULING ON SUBMITTED MATTER (CONTINUED)

contending that the Court's Judgment and Decree had been disobeyed by his not being provided with a portion of the revenues received from the customers of the water company since the Interim Manager took over operation of the water company, but rather was asking the Court to modify its previous Order to provide for the compensation he is requesting. The Court finds the action of the Interim Manager of not providing any portion of the revenues generated from the water company's operations to Mr. Papa to be in accordance with the Court's Judgment and Decree since it is clear from the documentation submitted by the Interim Manager that the revenues were used by the Interim Manager to pay the operating expenses, which includes repair expenses, of the water company, and the outstanding taxes and other indebtednesses of the water company. The Court notes that the financial difficulties of the water company have been exacerbated by Mr. Papa's failure to make any payments whatsoever on the obligations he was ordered to pay as detailed in paragraph numbered 5 of the Judgment and Decree.

Mr. Papa conceded at oral argument that he has no complaints about the manner in which the water company has been operated by the Interim Manager. The Court did, in its Judgment and Decree, provide Mr. Papa the right to raise objections to the manner in which the water company has been operated, however, by his own admission he is not complaining about the manner in which the water company has been operated. His complaints are directed to the failure of the Interim Manager to pay him the sums he contends he is entitled to receive as the owner of the water company and the failure of the Interim Manager to attempt to secure a rate increase from the Arizona Corporation Commission which he contends is necessary in order for the Arizona Department of Environmental Quality Consent Decree to be complied with. Per paragraph 11 of the Judgment and Decree Mr. Papa is entitled to receive revenues generated by the water company only if those revenues are not needed for expenses of operating the water company, which include making necessary repairs and improvements and paying taxes and other debts. It is quite apparent that there have been no such excess revenues so Mr. Papa has no legitimate complaint in this regard.

Respondent has asked this Court to compel compliance with the ADEQ Consent Decree and specifically to require the Arizona Corporation Commission to have the Interim Manager seek a rate increase reasoning that only by such a rate increase can funds be made available to perform the work which needs to be done in order to comply with the ADEQ Consent Decree. This argument by Mr. Papa is in reality a continuation of his ongoing complaint regarding the failure of the Arizona Corporation Commission to grant what he believes is a necessary rate increase. It is clear from the materials submitted that the Interim Manager has been working with the ADEQ to remedy the problems with the water system. It is also clear that before the capital improvement work required under the terms of the Consent Decree can be done, a loan will have to be secured. Such a loan cannot apparently presently be secured

because, for whatever reason, Mr. Papa is apparently unwilling or unable to provide the historical financial data which would be needed in order to make any application for such a loan. It may, therefore, very well be necessary to await the generation of sufficient historical financial data during the operation of the water company by an Interim Manager before such a loan application can be made and the necessary loan secured. This Court does not have jurisdiction to require ADEQ to take any action to enforce compliance nor would the Court in this proceeding have jurisdiction to enforce such compliance. While this Court would have authority to order the Arizona Corporation Commission, through its Interim Manager, to comply with the Consent Decree in the context of the Court's authority to oversee the operation of the water company by the Arizona Corporation Commission through the Interim Manager, it was apparent from the Court's review of the financial materials that the Interim Manager has been doing all that can reasonably be done to comply with the Consent Decree given the financial limitations faced by the Interim Manager resulting from the other demands on the revenues being generated, particularly given the inability, for the reasons above explained, to secure a loan to do the work necessary to comply with the Consent Decree. The Court, therefore, rejects Respondent's arguments regarding the failure of the Arizona Corporation Commission to comply with the Consent Decree.

The Court having not found the Arizona Corporation Commission to be in violation of the Court's Order and the Court having, for the reasons above stated, denied the Respondent's Motion, the Court denies the Respondent's various claims for damages as set forth in Respondent's Motion. The Court also disallows the Objections filed by Respondent to the Notice of Appointment of Interim Manager. Those objections do not contain objections to the appointment of the particular managing entity which is to take the place of the initial Interim Manager but rather are used by Mr. Papa as an additional format to reiterate his "takings" arguments and his arguments regarding compliance with the ADEQ Consent Decree. Those arguments having previously been rejected, the Court disallows the Objections filed by Respondent to the Notice of Appointment of Interim Manager.

cc:

Peter Breen

Arizona Corporation Commission Legal Division
1200 W. Washington Street
Phoenix, AZ 85007

George Papa

57 N. Fraser Drive
Mesa, AZ 85203

Hon. Peter J. De Ninno
Judge Pro Tempore

Ramona Godinez - Visiting Judge Clerk

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RECEIVED

SUPERIOR COURT
NAVAJO COUNTY, ARIZONA

AUG 11 1999

LEGAL DIV
ARIZ. CORPORATION COMMISSION

DATE: August 9, 1999
CASE NO: CV 97-00039
HON. PETER J. DE NINNO, JUDGE PRO TEM
DIVISION: VISITING

JUANITA MANN, CLERK
BY: clc
Ct. Rptr: None

ARIZONA CORPORATION COMMISSION,

Plaintiffs,

vs.

GEORGE M. PAPA, dba GEORGE M. PAPA WATER
COMPANY,

Defendants.

MINUTE ENTRY

ACTION: ORDER DENYING MOTION FOR RECONSIDERATION

The Court has reviewed the Motion for Reconsideration filed by Respondent dated July 31, 1999, directed to the Court's July 27, 1999, ruling. In the motion by Mr. Papa he again attempts to persuade the court of the correctness of his position on the "takings" issue. Although stated somewhat differently in this Motion, Mr. Papa makes the same arguments he has previously made and which the court has previously rejected regarding the "takings" issue. For the reasons explained in the Court's August 13, 1998, Order, the enforcement by the Court of the removal of Mr. Papa as manager of the water company was not a "taking" of the water company and the use by the Interim Manager of all revenues of the water company, including the base rate revenues, is likewise not a "taking." The revenues are being used by the Interim Manager to pay operating expenses, debts and taxes, and make needed repairs and improvements. All the expenditures will ultimately benefit Mr. Papa when he sells the water company or gets it back when the Interim Manager is no longer needed. The Court finds no merit in Mr. Papa's contention that the "rate base" revenues should be handled differently than the "commodity" revenues. It was the Court's intention in the Judgment and Decree of September 28, 1998, to provide that all of the revenues were to be used for the benefit of the water company and that the only revenues which would be payable to Mr. Papa would be revenues which were not needed by the water company to pay operating expenses, make repairs and improvements, and pay debts and taxes.

Mr. Papa takes issue with the Court's recollection that he conceded, during the course of the July 8, 1999 argument when responding to an inquiry made of him by the Court, that the September 28, 1998, Judgment and Decree did not differentiate between "rate base" and "commodity" revenues and that he was in

ORDER DENYING MOTION FOR RECONSIDERATION (continued)

fact requesting in his Motion for Reconsideration that the Court modify its September 28, 1998, Judgment and Decree to provide that the "rate base" revenues be forwarded to him by the Interim Manager. Although Mr. Papa makes reference to a transcript of the hearing, no transcript was provided. Irrespective of Mr. Papa's response to the Court's inquiry, it remains the Court's position, for the reasons set forth in the Court's August 13, 1998, Order, that the enforcement by the Court of the Arizona Corporation Commission's removal of Mr. Papa as manager of the water company and the installation of an Interim Manager is not a "taking" of the water company. It is likewise the Court's position that the application by the Interim Manager of not only the "commodity" revenues generated by the water company but also the "rate base" revenues generated by the water company to the expenses of operating the water company, the payment of debts and taxes and the making of repairs and improvements is not a "taking."

The Court has reviewed the two cases reported at the citations set forth in Mr. Papa's Motion but does not find those cases to support Mr. Papa's contentions. The case cited at 864 P.2d 1081 is not correctly identified. The case reported at 864 P.2d 1081 is *Tonto Creek Estates Home Owner's Association v. Arizona Corporation Commission*. Also *Scates v. Arizona Corporation Commission* is incorrectly cited by Mr. Papa, the correct cite being 578 P.2d 612. While *Scates* does stand for the proposition that rates which do not produce a fair rate of return are not just and reasonable, the case does not contain the statements referenced by Mr. Papa in his Motion.

The Court having found no legal or factual basis upon which to base a change in the Court's previous rulings, the Motion for Reconsideration is denied.

cc:

Peter Breen

Legal Division

Arizona Corporation Commission

1200 W. Washington

Phoenix, AZ 85007

George Papa

57 N. Fraser Drive

Mesa, AZ 85203

Honorable Peter J. De Ninno

Court Administration (Navajo)

Court Administration (Globe)

RECEIVED

SUPERIOR COURT
NAVAJO COUNTY, ARIZONA

AUG 11 1999

LEGAL DIV
ARIZ. CORPORATION COMMISSION

DATE: August 9, 1999

CASE NO: CV 97-00039

HON. PETER J. DE NINNO, JUDGE PRO TEM

DIVISION: VISITING

JUANITA MANN, CLERK

BY: clc

Ct. Rptr: None

ARIZONA CORPORATION COMMISSION,

Plaintiffs,

vs.

GEORGE M. PAPA, dba GEORGE M. PAPA WATER
COMPANY,

Defendants.

MINUTE ENTRY

ACTION: ORDER DENYING MOTION FOR RECONSIDERATION

The Court has reviewed the Motion for Reconsideration filed by Respondent dated July 31, 1999, directed to the Court's July 27, 1999, ruling. In the motion by Mr. Papa he again attempts to persuade the court of the correctness of his position on the "takings" issue. Although stated somewhat differently in this Motion, Mr. Papa makes the same arguments he has previously made and which the court has previously rejected regarding the "takings" issue. For the reasons explained in the Court's August 13, 1998, Order, the enforcement by the Court of the removal of Mr. Papa as manager of the water company was not a "taking" of the water company and the use by the Interim Manager of all revenues of the water company, including the base rate revenues, is likewise not a "taking." The revenues are being used by the Interim Manager to pay operating expenses, debts and taxes, and make needed repairs and improvements. All the expenditures will ultimately benefit Mr. Papa when he sells the water company or gets it back when the Interim Manager is no longer needed. The Court finds no merit in Mr. Papa's contention that the "rate base" revenues should be handled differently than the "commodity" revenues. It was the Court's intention in the Judgment and Decree of September 28, 1998, to provide that all of the revenues were to be used for the benefit of the water company and that the only revenues which would be payable to Mr. Papa would be revenues which were not needed by the water company to pay operating expenses, make repairs and improvements, and pay debts and taxes.

Mr. Papa takes issue with the Court's recollection that he conceded, during the course of the July 8, 1999 argument when responding to an inquiry made of him by the Court, that the September 28, 1998, Judgment and Decree did not differentiate between "rate base" and "commodity" revenues and that he was in

ORDER DENYING MOTION FOR RECONSIDERATION (continued)

fact requesting in his Motion for Reconsideration that the Court modify its September 28, 1998, Judgment and Decree to provide that the "rate base" revenues be forwarded to him by the Interim Manager. Although Mr. Papa makes reference to a transcript of the hearing, no transcript was provided. Irrespective of Mr. Papa's response to the Court's inquiry, it remains the Court's position, for the reasons set forth in the Court's August 13, 1998, Order, that the enforcement by the Court of the Arizona Corporation Commission's removal of Mr. Papa as manager of the water company and the installation of an Interim Manager is not a "taking" of the water company. It is likewise the Court's position that the application by the Interim Manager of not only the "commodity" revenues generated by the water company but also the "rate base" revenues generated by the water company to the expenses of operating the water company, the payment of debts and taxes and the making of repairs and improvements is not a "taking."

The Court has reviewed the two cases reported at the citations set forth in Mr. Papa's Motion but does not find those cases to support Mr. Papa's contentions. The case cited at 864 P.2d 1081 is not correctly identified. The case reported at 864 P.2d 1081 is *Tonto Creek Estates Home Owner's Association v. Arizona Corporation Commission*. Also *Scates v. Arizona Corporation Commission* is incorrectly cited by Mr. Papa, the correct cite being 578 P.2d 612. While *Scates* does stand for the proposition that rates which do not produce a fair rate of return are not just and reasonable, the case does not contain the statements referenced by Mr. Papa in his Motion.

The Court having found no legal or factual basis upon which to base a change in the Court's previous rulings, the Motion for Reconsideration is denied.

cc:

Peter Breen

Legal Division

Arizona Corporation Commission

1200 W. Washington

Phoenix, AZ 85007

George Papa

57 N. Fraser Drive

Mesa, AZ 85203

Honorable Peter J. De Ninno

Court Administration (Navajo)

Court Administration (Globe)

6

SUPERIOR COURT
NAVAJO COUNTY, ARIZONA

DATE: November 23, 1999
CASE NO: CV97-00039
HON. PETER J. DE NINNO, JUDGE
DIVISION: VISITING

JUANITA MANN, CLERK
BY: clc
Ct. Rptr: None

ARIZONA CORPORATION COMMISSION,

Plaintiffs,

vs.

GEORGE M. PAPA d.b.a. GEORGE M. PAPA
WATER COMPANY,
Defendants.

MINUTE ENTRY

RECEIVED

NOV 26 1999

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

ACTION: ORDER DENYING MOTION FOR FINANCIAL RELIEF

The Court has reviewed the Respondent's Motion for Financial Relief As Per This Court's Minute Entry Dated August 26, 1999 as well as the Staff's Response To Papa's Motion For Financial Relief and Respondent Papa's Reply to Staff's Response For Financial Relief.

Respondent's Motion for Financial Relief is another attempt by Mr. Papa to persuade this Court that a "taking" has taken place by virtue of Respondent not receiving any payment thus far for his ownership interest in the George M. Papa Water Company. The Court has previously ruled that no "taking" has occurred. Nothing in Respondent's Motion for Financial Relief has persuaded the Court to alter its decision regarding the "taking" issue. Mr. Papa also reiterates his position that under *Arizona Corporation Commission v. Mountain States Telephone and Telegraph* that this Court should allow Mr. Papa to set new rates pending the setting of new rates by the Arizona Corporation Commission as a result of the application for rate increase soon to be filed by the Interim Manager. The Court has previously rejected Mr. Papa's position in this regard. Nothing in the Motion for Financial Relief has persuaded the Court to alter its previous rulings.

Based on the representations made in the Staff's Response it would appear that the Interim Manager is now going forward with applying for a rate increase from the Arizona Corporation Commission. While there has certainly been a delay in seeking a rate increase, the delay resulted from the failure to have the historical financial data needed in order to file for a rate increase. It does appear, at this point at least, that there is no need for this Court to compel the Interim Manager to secure a rate increase since an application for a rate increase is presently in the process of being prepared for submission to the Arizona Corporation Commission. If any unwarranted delay in the filing of the rate increase application is experienced the issue can at

ORDER DENYING MOTION FOR FINANCIAL RELIEF (cont)

that time be brought to the Court's attention.

The Court denies the Arizona Corporation Commission's Request for Rule 11 relief for the reason that the Court does not find the action of Mr. Papa in filing the Motion For Financial Relief to be motivated by a desire of Mr. Papa to harass, cause unnecessary delay or increase costs. The Court is persuaded that Mr. Papa's Motion represents an effort by Mr. Papa to have the Court accept his argument on the "taking" issue and his argument on the applicability to this case of the *Arizona Corporation Commission v. Mountain States Telephone and Telegraph* concept of allowing a utility to set its own rates pending a rate increase from the Arizona Corporation Commission and was prompted by the Court's August 26, 1999 Minute Entry in which the Court's authority to compel the Interim Manager to seek a rate increase was reiterated. Although the Court disagrees with Mr. Papa's reasoning and believes Mr. Papa's reliance upon the *Arizona Corporation Commission's v. Mountain States Telephone and Telegraph* case to be misplaced, the Court does not find, at least at this point, that Mr. Papa has acted in bad faith. As a consequence, Rule 11 sanctions would not be appropriate.

For all of the above reasons the Court denies the Respondent's Motion for Financial Relief and declines to sign the form of Judgment and Order submitted by Mr. Papa along with the Motion. The Court also denies the Petitioner's Request for Rule 11 sanctions.

As to the issue of the expenses relating to Mr. Papa's efforts to secure compliance with insurance requirements the fact that the Court has not received the documentation from the parties as directed at the October 28, 1999 hearing compels the Court to conclude that the parties have reached an agreement regarding those expenses. If the parties have not reached an agreement they are directed to comply with the Court's order as contained in the Court's Minute Entry of October 28, 1999. If the parties have reached an agreement the Arizona Corporation Commission is directed to pay any agreed amount to Mr. Papa forthwith.

cc:

Robert J. Metli
Legal Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007
George Papa
57 N. Fraser Drive
Mesa, AZ 85203
Honorable Peter J. De Ninno
Court Administration (Navajo)
Court Administration (Globe)

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November 10, 2000 is the date due for any briefs to be filed in this matter with copies to the Court in Gila County. Accountings are to be provided to the Court by the interim manager by November 10, 2000 and are to be mailed to the Court in Gila County:

Peter J. DeNino
Gila County Superior Court
1400 E. Ash
Globe, Arizona 85501

Record may show at this point of the hearing the Court excused the Parkers and their attorney Mr. Porter, however, they chose to stay. Mr. Metli and Mr. Papa argued the contentions between Mr. Papa and the ACC.

IT IS ORDERED the claims made by Mr. Papa have already been ruled upon and the Court reiterates it's decision regarding that matter. This order shall not be deemed to be prejudicial against any claims against the ACC. The Court instructed Mr. Papa he would have to file a lawsuit against the ACC and would not be able to proceed with that matter in this case.

Copies to: Robert Metli, George Papa, Jeff Hammond, Terris Porter
Celia Kenyon, Court Administration (Globe), Judge DeNinno
Olivia Thermen, Dorothy Fish