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Arizona Corporation Commission
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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION)	DOCKET NUMBER
OF MOUNTAIN GLEN WATER SERVICE)	W -- 03875A -- 00 -- 0289
FOR CERTIFICATE OF CONVENIENCE &)	W -- 01894A -- 00 -- 0289
NECESSITY WATER AND/OR SEWER.)	

IN THE MATTER OF THE APPLICATION)	W -- 01894A -- 00 -- 0654	62906
OF GEORGE M. PAPA WATER COMPANY)		
FOR THE COMPLAINT AND ORDER TO)	RESPONDENT PAPA'S	
SHOW CAUSE.)	RESPONSE IN THIS	
_____)	MATTER.	

This matter is to decide whether or not the Certificate of Convenience and Necessity (CC & N) that now pertains to the George M. Papa Water Company (PWC) should be removed from Mr. Papa and awarded to Mountain Glen Water Service (MGWS).

Said CC & N supersedes the ownership of the assets and is the requisite legal authority to operate the system now known as PWC.

This Commission is under no obligation to remove the CC & N from PWC and award the CC & N to MGWS, simply because a tax lien on PWC was purchased at a tax sale by MGWS, and MGWS has hereby applied for the CC & N.

In the event for whatever reason, this Commission refuses to remove the CC & N from Mr. Papa, then MGWS may receive back from the taxing authority the value of its tax lien (about \$65,000) that it purchased from the Arizona State Revenue Department, plus interest at the rate of 8% per annum, and the assets of PWC then remain with Mr. Papa, together with his existing CC & N, and Mr. Papa continues as the owner and operator of PWC as per ACC discretion.

The tax certificate itself at the time of sale states that the successful bidder will also need the approval of the Corporation Commission to operate as a utility.

Under the circumstances, it is not just to remove the CC & N from Mr. Papa. To do so opens a cause for legal action against this Commission for a definitive *de facto* taking and a confiscation of Mr. Papa's property that will result in a civil lawsuit claiming extensive actual and punitive damages against this Commission. Better for the CC & N and the assets of PWC to remain with Mr. Papa, and for ACC to instead correct its own greater and undeniable financial wrongdoing against PWC. The authority to do this is found in the discretionary language of the tax certificate itself plus A.R.S. § 40-282; §40-361 and James P. Paul Water Co. v. ACC, 137, Ariz. 426, 671 P.2d 404 as argued in Exhibit "B" attached to this brief.

The legal basis for this argument is because ACC does not have "Clean Hands" against Mr. Papa. The "Clean Hands" theory requires that as a matter of law, ACC must itself be free from wrongdoing in order to remove the CC & N from Mr. Papa. See: Dawson v. McNaney, 71 Ariz. 79, 223 P.2d 907; Guerin v. American Smelting & Refining Co., No. 2249, Supreme Court of Arizona, May 22, 1925, 236 P.2d 684; and MacRae v. MacRae, No. 4276, April 14, 1941, 112 P.2d 213.

The above case law mandates that all other findings are moot and are of no consequence as a matter of law since this Commission itself is the cause of the financial collapse of PWC, which is now fully exposed as shown in this brief, etc.

In other words, if this Commission had correctly provided full constitutional and financial viability to PWC, then there would be no cause for PWC to be sold for its taxes only, and thus the CC & N for PWC would not now be up to be taken and awarded to another party. Consequently, the CC & N should stay with Mr. Papa.

However, the shocking long term deficiencies in rate structure and financial viability for PWC would have to be corrected by this Commission, in addition to continuing to vest the CC & N with PWC or Mr. Papa wants no part of retaining PWC, and instead will look to a court of law for relief as to his losses suffered.

The time has come for this Commission to actually change its massive dereliction to Small Water Companies which is not limited just to PWC. It simply happens that PWC is the recipient of perhaps the worst of the egregious failings of ACC. See: Letter from Water Law Attorney attached. Either this Hearing Officer must change the paradigm of this Commission or a Civil Court must do so.

Papa has repeatedly applied to ACC for relief. This Commission has either ignored these pleas, or has Ordered net decreases in viability instead of increases. Typically, ACC arbitrarily lowers the tariff requests necessary to survive, plus heaps on other expensive mandates that result in less financial solvency than before.

The list of predatory insufficiencies by this Commission over PWC is so long and overwhelming, that Mr. Papa will not incorporate all of them into this brief. Instead, at this time, Mr. Papa will only do a summary, and will attach a few exhibits in the form of previous briefs that more fully disclose the wrongdoing of the Arizona Corporation Commission. See: Exhibits "A", "B", "C" and "D" attached.

Exhibit "A" is: RESPONSE TO QUARTERLY REPORT AND COMMENT FOR PERIOD ENDING DECEMBER 31, 1998 BY FIRST NATIONAL MANAGEMENT, INC. FOR THE GEORGE PAPA WATER COMPANY, DATED 1/15/99. ALSO, A FORMAL REQUEST FOR AN ORDER FROM THE CORPORATION COMMISSION TO INITIATE A CORRECTION OF ITS ABUSES OF THE GEORGE PAPA WATER CO.

This document was prepared and filed by Mr. Papa with docket control at ACC and it was ignored. It exposes how confiscatory ACC is over PWC.

Exhibit "B" is: RESPONSE TO COMPLAINT AND ORDER TO SHOW CAUSE. This document was prepared and filed by Mr. Papa with docket control at ACC on September 8, 2000. This document was prepared specifically for this present Hearing to determine whether or not the CC & N should be removed from Mr. Papa. This document states both Arizona Statutory Law and precedent case law which forbids the removal of a CC & N from its holder when it can be shown that the Corporation Commission has wrongfully failed to provide adequate rates for business viability relative to the utility company in question.

Exhibit "C" is an appendage to a separate but relevant brief that was filled in Navajo County Superior Court. It further shows the wrongdoing of ACC Staff.

Exhibit "D", COMPLAINT AGAINST ARIZONA CORPORATION COMMISSION, dated October 10, 2000. This document has not been filed with docket control at ACC, however, it is included as an exhibit to this brief, and, it will be filed separately with docket control at ACC.

Exhibits "A", "B" and "C" will not be filed separately with docket control at ACC simply because they have already been filed. However, Exhibit "D" as stated, will be separately filed with docket control.

CONCLUSION

In short, Papa Water Company is simply not viable. It has been strangled by this Arizona Corporation Commission and it actually died for lack of sustenance.

A critical rate case Application was filed with ACC by PWC on January 4, 2000. ACC issued its sufficiency letter to PWC on February 3, 2000.

On April 18, 2000 ACC Staff issued its Staff Report and MEMORANDUM which disclosed that for the test year ended October 31, 1999, PWC actually lost \$8,249 in operational hard dollars, and that nothing flowed to Mr. Papa for any ownership income whatsoever for the value of his Plant in Service to the public.

Clearly it is shocking that a utility with over 9 miles of mainline transmission pipe, 257 metered services, four water wells with land, buildings, pressure devices, storage and electrical controls should be worthless as to any ownership income, and that instead, Mr. Papa as owner must not only forego any ownership income from these valuable utility assets, (over \$700,000 RCNLD) but must also subsidize the ongoing day-to-day operational expenses at the rate of \$8,249 per year.

On September 18, 2000 after violating the time-clock rules which state that a Class "D" water utility such as PWC is entitled to relief within 180 days as per the Arizona Administrative Code R14-2-103, then this Commission executed and filed its formal rate case Order for Papa Water Company.

This ACC Order only raised the income level to be \$16,120 per year above the day-to-day operational expenses of \$85,716.

In conjunction with receiving this new "net income" amount of \$16,120 per year, PWC was also Ordered by ACC to do massive modernization and engineering upgrades in the form of more storage and well interconnects for emergency usage, that have been determined to cost \$269,090 and to have a 20 year amortization of at least \$27,756 per year, provided the improvement funds can be arranged through a WIFA loan, as opposed to a regular bank commercial loan, which commercial loan will carry a higher rate of interest.

Obviously, after subtracting even the minimum of \$27,756 per year from the "net income" newly Ordered by this Commission on September 18, 2000, then PWC will now lose \$11,536 per year in hard dollars, which is even worse than losing the whopping \$8,249 during the previous year of operation. Moreover, Mr. Papa (or whoever the new owner is) will continue to receive absolutely nothing for the existing value of the Plant in Service.

Somehow, on top of all this nonsense and inadequate rate structuring by ACC for PWC, Staff claims that PWC will now receive a positive 11.38% rate of return per year. To the contrary, PWC is receiving a negative rate of return, and now you know why ACC is so malicious and why PWC is not able to pay its taxes.

Clearly ACC sucked every drop of blood out of PWC and made it impossible for PWC to survive. Mr. Papa only makes these remarks to set the foundation for his future Court action against ACC in terms of a damage and punitive lawsuit against ACC, after ACC should finally remove the CC & N from Mr. Papa, which is the object of this Hearing, subject to the recommendation(s) of this Hearing Officer.

As stated previously in this brief, Mr. Papa does not welcome the retention of his CC & N and the assets of PWC, UNLESS ACC should somehow come to its senses and grant to PWC enough of a substantive rate increase to even exist and to receive a fair rate of return on the true value of the assets of PWC. Otherwise, Mr. Papa is thrilled to be relieved of the horrible mess.

To establish correct Plant Value for PWC, the depreciation rate must be adjusted to be only 2% from day one instead of 5%. This loss alone has cost PWC hundreds of thousands of dollars over the past 27 years. Also, ACC must grant full Reconstruction Cost New Less Depreciation (RCNLD) values instead of Original Cost Less Depreciation (OCLD) values. OCLD does not allow for inflation contrary to several mandates from the Arizona Supreme Court which state that fair value for a utility company must allow for inflation, which ACC refuses to grant. There is a huge difference between \$5.48 per original lineal foot of mainline pipe as opposed to over \$16.00 per foot today for the same pipe. Also, ACC must include the land, building and organizational costs for the other three systems that were left out of the ACC Staff Report. When PWC reported this shortage, it was ignored.

It is not a crime for PWC to be delinquent on any taxes. If that should happen for whatever reason, any utility company is entitled to the benefit of ACC being fair enough such that sufficient equity should exist to pay back any back taxes out of ownership income, above and beyond operational expenses.

This did not happen in the case of PWC. Instead, ACC did everything in its power to destroy PWC. It deliberately violated the time-clock rules for the express purpose of withholding any rate relief until after the tax lien redemption period should expire. When it did grant relief, ACC was pitifully inadequate as shown.

RESPECTFULLY SUBMITTED this 19th day of October, 2000.

By: George M. Papa

George M. Papa

Copy hand delivered this same 19th day of October, 2000 to:

Mr. Robert J. Metli, Attorney for ACC
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By: George M. Papa

George M. Papa

BROWN & BAIN, P.A.
Attorneys at Law

September 28, 2000

Cause of Action vs. Arizona Corporation Commission

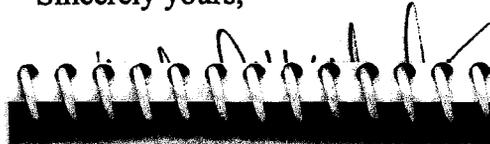
Dear George:

Thank you for coming to Tucson to share with me your astonishing story about having your water company snatched out from beneath you. I'm certain, having practiced water law for more than twenty years in Arizona, that this is the only case of its kind.

I am highly pessimistic that the economics of obtaining redress for your grievances make sense any longer. I have reviewed your file and the lengthy history of this case, and believe that there might have been a number of occasions where significant (read: expensive") legal intervention might have made a difference. But the posture of the case at this point, especially following the tax sale, is simply beyond repair. The number of impediments to seeking legal redress at this stage are daunting, to say the least. It would take emergency action, on a number of fronts, to keep this case alive. I think most sophisticated law firms would ask for a One Hundred Thousand Dollar (\$100,000.00) retainer. Predicting whether those fees could be recouped is questionable, at best, and my advice is to draw the curtains on this entire episode. (It would make a riveting screen play, by the way.) I have enclosed the documents you left for my review and have not retained any copies.

I wish you every success in your future endeavors.

Sincerely yours,



George Papa, Broker
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CERTIFIED MAIL NO. P 833 566 333
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Enclosures