



ORIGINAL

RECEIVED

2003 JUN 18 P 3:05

AZ CORP COMMISSION
DOCUMENT CONTROL

1 FENNEMORE CRAIG
 2 Norman D. James (No. 006901)
 3 Jay L. Shapiro (No. 014650)
 4 3003 N. Central Avenue
 5 Suite 2600
 6 Phoenix, Arizona 85012
 7 Attorneys for Arizona-American
 8 Water Company, Inc.

BEFORE THE ARIZONA CORPORATION COMMISSION

7 IN THE MATTER OF THE
 8 APPLICATION OF ARIZONA-
 9 AMERICAN WATER COMPANY, AN
 10 ARIZONA CORPORATION, FOR A
 11 DETERMINATION OF THE CURRENT
 12 FAIR VALUE OF ITS UTILITY PLANT
 13 AND PROPERTY AND FOR
 14 INCREASES IN ITS RATES AND
 15 CHARGES BASED THEREON FOR
 16 UTILITY SERVICE BY ITS SUN CITY
 17 WEST WATER AND WASTEWATER
 18 DISTRICTS.

DOCKET NO. WS-01303A-02-0867

14 IN THE MATTER OF THE
 15 APPLICATION OF ARIZONA-
 16 AMERICAN WATER COMPANY, INC.,
 17 AN ARIZONA CORPORATION, FOR A
 18 DETERMINATION OF THE CURRENT
 19 FAIR VALUE OF ITS UTILITY PLANT
 20 AND PROPERTY AND FOR
 21 INCREASES IN ITS RATES AND
 22 CHARGES BASED THEREON FOR
 23 UTILITY SERVICE BY ITS SUN CITY
 24 WATER AND WASTEWATER
 25 DISTRICTS.

DOCKET NO. WS-01303A-02-0868

20 IN THE MATTER OF THE
 21 APPLICATION OF ARIZONA-
 22 AMERICAN WATER COMPANY, AN
 23 ARIZONA CORPORATION, FOR A
 24 DETERMINATION OF THE CURRENT
 25 FAIR VALUE OF ITS UTILITY PLANT
 26 AND PROPERTY AND FOR
 INCREASES IN ITS RATES AND
 CHARGES BASED THEREON FOR
 UTILITY SERVICE BY ITS MOHAVE
 WATER AND HAVASU WATER
 DISTRICTS.

DOCKET NO. W-01303A-02-0869

Arizona Corporation Commission

DOCKETED

JUN 18 2003

DOCKETED BY	<i>MS</i>
-------------	-----------

1 IN THE MATTER OF THE
2 APPLICATION OF ARIZONA-
3 AMERICAN WATER COMPANY, AN
4 ARIZONA CORPORATION, FOR A
5 DETERMINATION OF THE CURRENT
6 FAIR VALUE OF ITS UTILITY PLANT
7 AND PROPERTY AND FOR
8 INCREASES IN ITS RATES AND
9 CHARGES BASED THEREON FOR
10 UTILITY SERVICE BY ITS ANTHEM
11 WATER, AGUA FRIA WATER AND
12 ANTHEM/AGUA FRIA WASTEWATER
13 DISTRICTS.

DOCKET NO. WS-01303A-02-0870

8 IN THE MATTER OF THE
9 APPLICATION OF ARIZONA-
10 AMERICAN WATER COMPANY, AN
11 ARIZONA CORPORATION, FOR A
12 DETERMINATION OF THE CURRENT
13 FAIR VALUE OF ITS UTILITY PLANT
14 AND PROPERTY AND FOR
15 INCREASES IN ITS RATES AND
16 CHARGES BASED THEREON FOR
17 UTILITY SERVICE BY ITS TUBAC
18 WATER DISTRICT.

DOCKET NO. W-01303A-02-0908

**ARIZONA-AMERICAN WATER
COMPANY'S BRIEF ON THE
APPLICABILITY OF THE
TIMECLOCK RULES AS SET
FORTH IN A.A.C. R14-2-103(B)(11)**

14 Pursuant to the June 6, 2003 Amended Rate Case Procedural Order in the above-
15 captioned dockets, Arizona-American Water Company ("Arizona-American" or the
16 "Company") hereby submits its brief on the applicability of the timeclock rules set forth in
17 A.A.C. R14-2-103(B)(11). Put simply, it is clear from the Commission's rulemaking
18 decision, Decision 57875 (May 18, 1992), that the timeclock rules are applicable to these
19 consolidated rate dockets. Indeed, the Commission specifically rejected an interpretation
20 of the timeclock rules that would make them inapplicable to this consolidated proceeding,
21 finding that "tariff filings and rate applications of a company's separate rate jurisdictions
22 are not covered by R14-2-103(B)(11)(g)." Decision No. 57875 at 34.

23 **I. PROCEDURAL BACKGROUND.**

24 On November 22 and December 13, 2002, Arizona-American filed five separate
25 applications for rate increases covering ten separate water and wastewater operating
26 systems or districts. The Company's five applications were deemed sufficient by the

1 Commission's Utilities Division's Staff ("Staff") on January 30, 2003. Thereafter, on
2 March 14, 2003, Assistant Chief Administrative Law Judge Nodes (the "ALJ") issued a
3 Rate Case Procedural Order setting forth the applicable deadlines to be adhered to by the
4 parties. In addition, the March 14, 2003 procedural order consolidated Arizona-
5 American's five separate rate relief applications into a single consolidated proceeding.

6 Subsequently, on June 6, 2003, the ALJ issued the Amended Rate Case Procedural
7 Order modifying a number of the applicable deadlines as well as the hearing date pursuant
8 to an agreement reached between the Company and Staff. In the amended order, the ALJ
9 further directed the parties to submit briefs addressing the "issue of the applicability of the
10 timeclock rules set forth in A.A.C. R14-2-103(B)(11), in circumstances where a utility has
11 more than one rate application concurrently pending before the Commission." Amended
12 Rate Case Procedural Order at 3.

13 **II. THE TIMECLOCK RULES ARE APPLICABLE TO THIS**
14 **CONSOLIDATED RATE PROCEEDING.**

15 As referenced above, the current version of the Commission's timeclock rules was
16 adopted in 1992 in Decision No. 57875. At that time, the Commission addressed the same
17 issue raised by the ALJ in the Amended Rate Case Procedural Order. Specifically,
18 A.A.C. R14-2-103(B)(11)(g) provides that the timeclock "shall not be applicable to any
19 filing submitted by a utility which has more than one rate application before the
20 Commission at the same time." Although several utilities sought to eliminate this
21 exception to the timeclock rules, the Commission, adopting the position of Staff, agreed
22 that this provision was "an essential element of the timeclock rule and should be
23 retained." Decision No. 57875 at 34. The Commission reasoned that retention of this
24 provision of the timeclock rules would allow it to ensure proper processing of applications
25 by completing one case within the prescribed time table before turning its attention to
26 "subsequent" rate filings. *See id.* Thus, the Company respectfully asserts that the

1 Commission intended the exception to the timeclock rules carved out by R14-2-
2 103(B)(11)(g) to cover situations where a utility with a pending rate application files a
3 subsequent application concerning the same rates and charges for service already at issue
4 in the prior filing. This appears to logically follow the Commission's specific adoption of
5 Staff's interpretation that "rate applications of a company's separate rate jurisdictions are
6 not covered by this provision." *Id.*

7 In the instant dockets, there is no question that the five applications cover ten
8 separate rate jurisdictions of Arizona-American. Each of the ten districts has different
9 rates, and the rates of one district do not substantially affect or change the rates of another
10 district. In fact, Arizona-American respectfully suggests that applying the timeclock
11 exception in this instance would be contrary to the efficient regulatory process the
12 Commission sought to foster by adoption of the timeclock rules. Decision 57875 at 2-3.
13 This is true because application of R14-2-103(B)(11)(g) would force the Company to file
14 rate case after rate case in a twelve year cycle in order to obtain rate relief for each of its
15 twelve operating water and wastewater districts in Arizona. To make matters worse,
16 under such a scenario, there would be a substantial likelihood that the twelve year delay
17 between rate cases for a particular district would result in multiple emergency filings.
18 This certainly does not appear to be what the Commission envisioned when it adopted the
19 timeclock rules, nor conducive to efficient regulations.

20 **III. R14-2-103(B)(11)(f) AND (g) APPEAR TO CONTAIN INADVERTENT**
21 **TYPOGRAPHICAL OR CLERICAL ERRORS BY REFERRING TO**
22 **SUBSECTION (a) INSTEAD OF SUBSECTION (d).**

23 Based on the foregoing, the assertion of whether subsection (g) of the timeclock
24 rules contains "numbering" errors is moot as the exception to the timeclock rule is not
25 applicable. However, it does appear that subsections (f) and (g) both contain inadvertent
26 references to subsection (a) rather than to subsection (d).

When read *in pari material* with the remainder of the section, subsections (f) and

1 (g) cannot be given any logical meaning if they reference subsection (a). By adopting
2 subsection (f), the Commission intended to extend the 360-day deadline for a final
3 Commission order to account for time spent in hearings on rate filings, mainly because
4 such a hearing postpones the Hearing Division's deliberations and preparation of a
5 decision. Decision No. 57875 at 32. In contrast, subsection (a) addresses the deadline for
6 the issuance of the initial procedural order, an activity occurring well before and
7 unaffected by the amount of hearing days. A similar reasoning would apply to subsection
8 (g), which, while not applicable in the instant proceeding, is unrelated to the timing for
9 issuing procedural orders. Any other conclusion would appear illogical. Therefore, it is
10 impossible not to conclude that subsections (f) and (g) both contain "typographical" errors
11 with respect to the references to subsection (c).

12 **IV. CONCLUSION**

13 Based on the foregoing, Arizona-American respectfully requests that the ALJ
14 conclude that the Commission's timeclock rules, A.A.C. R14-2-103(B)(11), apply to these
15 consolidated rate proceedings. Arizona-American has filed five separate rate applications
16 covering ten separate water and wastewater rate jurisdictions, and the Commission's
17 rulemaking history demonstrates that the exception to the timeclock rule for multiple
18 filings does not apply under such circumstances.

19 DATED this 18th day of June 2003.

20
21
22
23
24
25
26

By 
Norman D. James
Jay L. Shapiro
Attorneys for Arizona-American Water
Company

...

1 ORIGINAL plus 21 copies hand-delivered for
2 filing this 18th day of June, 2003:

3 Docket Control
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington
6 Phoenix, AZ

7 COPY hand-delivered this 18th day of June, 2003 to:

8 Dwight D. Nodes
9 Administrative Law Judge
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington
12 Phoenix, AZ

13 Tim Sabo, Staff Attorney
14 Legal Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington
17 Phoenix, AZ

18 COPY mailed this 18th day of June, 2003 to:

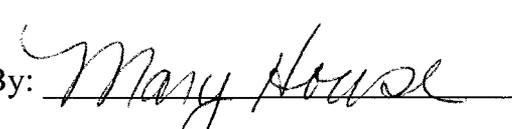
19 Daniel Pozefsky
20 Residential Utilities Consumer Office
21 1110 W. Washington, Suite 220
22 Phoenix, AZ 85007

23 Carlton G. Young
24 3203 W. Steinbeck Dr.
25 Anthem, AZ 85086

26 Frank J. Grimmelmann
42441 N. Cross Timbers Court
Anthem, AZ 85086

Raymond E. Dare
Sun City Taxpayers' Association
12611 N. 103rd Ave., Suite D
Sun City, AZ 85351-3467

Paul R. Michaud
Martinez & Curtis
2712 N. 7th St.
Phoenix, AZ 85006
Attorneys for the Town of Youngtown

25
26 By: 

1431656.1