

ORIGINAL



0000011503

RECEIVED

1 FENNEMORE CRAIG
 2 Jay L. Shapiro (No. 014630) 2004 MAR -3 P 12:34
 3 Patrick Black (No. 017141)
 3003 N. Central Ave. AZ CORP COMMISSION
 Suite 2600 DOCUMENT CONTROL
 4 Phoenix, Arizona 85012
 5 Attorneys for Pine Water Company, Inc.

BEFORE THE ARIZONA CORPORATION COMMISSION

9 IN THE MATTER OF THE
 10 APPLICATION OF PINE WATER
 11 COMPANY FOR A
 12 DETERMINATION OF THE
 CURRENT FAIR VALUE OF ITS
 13 UTILITY PLANT AND PROPERTY
 AND FOR INCREASES IN ITS RATES
 14 AND CHARGES BASED THEREON
 FOR UTILITY SERVICE AND FOR
 15 APPROVAL TO INCUR LONG-TERM
 16 DEBT

DOCKET NO: W-03512A-03-0279

**PINE WATER COMPANY'S MOTION TO
 STRIKE TESTIMONY OF ROBERT M.
 CASSARO**

Arizona Corporation Commission

DOCKETED

MAR - 3 2004

DOCKETED BY	<i>CR</i>
-------------	-----------

17 Applicant Pine Water Company ("Pine Water" or "Company") hereby files this
 18 Motion to Strike the Testimony of Intervenor Robert M. Cassaro in the above-referenced
 19 matter. Mr. Cassaro's testimony is procedurally improper because it was filed well after
 20 the deadlines for intervenor testimony in this docket.

ARGUMENT

21
 22 This matter commenced with the filing of the Company's application on May 1,
 23 2003. Mr. Cassaro moved to intervene as a party in the proceeding initiated by the filing
 24 of the Company's application on September 30, 2003 and was granted intervention on
 25 October 24, 2003. According to the procedural orders governing this case, the deadline

1 for Mr. Cassaro's direct testimony was October 31, 2003. No direct testimony was filed
2 by Mr. Cassaro at that time.

3 Thereafter, on December 1, 2003, Pine Water submitted rebuttal testimony in
4 response to the direct testimony filed by Staff and the other intervenors. Pursuant to
5 subsequent procedural schedules issued by the presiding Administrative Law Judge, the
6 deadline for surrebuttal testimony by Staff and the intervenors, including Mr. Cassaro,
7 was January 20, 2004. No surrebuttal testimony was filed by Mr. Cassaro, and the
8 Company's rejoinder testimony, in response to the surrebuttal testimony by Staff and the
9 other intervenors, was filed on February 17, 2004. Subsequently, on or after February 27,
10 2004, Mr. Cassaro filed information he intends to "present" at the hearing scheduled in
11 this docket, i.e., testimony, which filing was received by counsel for the Company on
12 March 1, 2004. See Cassaro Filing, dated February 27, 2004 at Cover Sheet. In short,
13 this information is being presented as evidence.

14 Pine Water is cognizant of the fact that Mr. Cassaro is an unrepresented intervenor
15 in this docket. Nevertheless, Mr. Cassaro has been copied on all procedural orders as
16 well as all filings by the other parties, including the direct, rebuttal and rejoinder
17 testimony filed by the Company. Although some latitude is appropriately afforded
18 intervenors like Mr. Cassaro, in this case such latitude would have to extend to allowing a
19 filing that is, at best, six weeks late or, more accurately, filed four months after the
20 applicable deadline. By delaying providing the testimony he intends to "present" at the
21 hearing, Mr. Cassaro has precluded the Company from responding to evidence and
22 argument in its rebuttal and/or rejoinder filings. The purpose of establishing deadlines for
23 the filing of testimony in rate proceedings is to ensure that all parties, including the
24 Company, are afforded adequate opportunity to respond through pre-filed testimony. By
25 seeking intervention as a party, Mr. Cassaro agreed to be bound by the same requirements

26

1 as all parties and where the failure to do so prejudices another party, as is the case here,
2 such requirements need to be enforced.

3 **RELIEF REQUESTED**

4 There are essentially two remedies available to address Mr. Cassaro's failure to
5 adhere to the procedural deadlines governing this docket: either strike Mr. Cassaro's
6 testimony altogether, or delay these proceedings further to provide the Company
7 additional time to properly address Mr. Cassaro's testimony. Given the delays that have
8 already occurred in this proceeding, further delay is unwarranted. Accordingly, Mr.
9 Cassaro's belated pre-filed testimony should be stricken and Mr. Cassaro should not be
10 allowed to take the stand as a witness during the hearings in this docket.

11 RESPECTFULLY SUBMITTED this 3rd day of March 2004.

12 FENNEMORE CRAIG

13
14 By  _____

15 Jay L. Shapiro
16 Patrick J. Black
17 3003 North Central Avenue
18 Suite 2600
19 Phoenix, Arizona 85012
20 Attorneys for Pine Water Company

21 Original and 13 copies were filed
22 this 3rd day of March, 2004, to:

23 Docket Control
24 Arizona Corporation Commission
25 1200 West Washington
26 Phoenix, Arizona 85007

27 A copy of the foregoing
28 was hand-delivered this
29 3rd day of March, 2004, to:

30 Dwight D. Nodes, Assistant Chief ALJ
31 Hearing Division
32 Arizona Corporation Commission
33 1200 W. Washington St.
34 Phoenix, AZ 85007

35 ...

1 Gary H. Horton
2 Legal Division
3 Arizona Corporation Commission
4 1200 W. Washington St.
5 Phoenix, AZ 85007

6 A copy of the foregoing was sent
7 by regular mail this 3rd day of
8 March, 2004, to:

9 John O. Breninger
10 P.O. Box 2096
11 3475 Whispering Pines Road
12 Pine, AZ 85544-2096

13 John G. Gliege, Esq.
14 Law Office of John G. Gliege
15 P.O. Box 1388
16 Flagstaff, Arizona 86002-1388
17 Attorney for Pine-Strawberry
18 Water Improvement District

19 Robert M. Cassaro
20 P.O. Box 1522
21 Pine, Arizona 85544

22
23
24
25
26
By: Mary L House

1504052.1/75206.006