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BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO: W-03512A-03-0279

PINE WATER COMPANY'S MOTION TO STRIKE SURREBUTTAL TESTIMONY OF JOEL M. REIKER

Arizona Corporation Commission
DOCKETED

JAN 27 2004

DOCKETED BY	<i>CAY</i>
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18 Applicant Pine Water Company ("Pine Water" or "Company") hereby files this
 19 Motion to Strike the Surrebuttal Testimony of Joel M. Reiker in the above-referenced
 20 matter. Mr. Reiker's cost of capital testimony represents a major modification in the
 21 Commission Staff's ("Staff") position, originally set forth in the direct testimony of John
 22 S. Thornton, regarding cost of capital, and its introduction during the surrebuttal phase of
 23 these proceedings is not only procedurally inappropriate, it constitutes unfair surprise and
 24 creates an undue burden on Pine Water. The Company will be unable to respond to the
 25 highly complex cost of capital testimony presented therein in the limited time now
 26

1 available. Accordingly, and for the reasons stated below, Pine Water submits that the
2 only appropriate remedy is to strike the entirety of Mr. Reiker's Surrebuttal Testimony.

3 **I. BACKGROUND**

4 On May 1, 2003, in support of its application for rate relief and approval to incur
5 long-term debt, Pine Water submitted a cost of capital analysis and recommendations in
6 the direct testimony of its witness, Thomas J. Bourassa, including the Company's
7 proposed rate of return and the reasons for the proposed conversion of certain inter-
8 company payables to equity and debt. See Direct Testimony of Thomas J. Bourassa at 10-
9 36.

10 On October 15, 2003, Staff filed the Direct Testimony of John S. Thornton
11 ("Thornton Dt."), then Chief of the Utility Division's Financial and Regulatory Analysis
12 section, in response to Pine Water's application and direct testimony. In his direct
13 testimony, Mr. Thornton explains why Staff did not file cost of capital testimony: "The
14 reason why Staff does not provide a rate of return in this case is that the Company reports
15 negative equity. A return on equity analysis is not helpful when a company has negative
16 equity." See Thornton Dt. at 1. In lieu of preparing cost of capital testimony, Staff
17 recommended a ten percent (10%) operating margin on Staff's fair value rate base for
18 Pine Water.

19 On December 1, 2003, Pine Water submitted rebuttal testimony in response to the
20 direct testimony filed by Staff and the interveners. In his rebuttal testimony, Mr.
21 Bourassa states, "it is important to point out from the beginning that Staff has neither
22 presented cost of capital testimony nor refuted my testimony on the appropriate cost of
23 equity." See Rebuttal Testimony of Thomas J. Bourassa at 28. Mr. Bourassa also notes
24 that "the Company disputes Staff's approach primarily because its reasons for not
25 preparing cost of capital testimony are erroneous, particularly given its proposals
26 regarding rate base." *Id.*

1 On January 20, 2004 – over three months after taking the position that no cost of
2 capital testimony is appropriate due to the Company’s negative equity – Staff filed
3 Mr. Reiker’s cost of capital analysis and recommendations. To support his untimely
4 filing, Mr. Reiker reasoned that “should the Commission decide to base Pine’s ROR on
5 the cost of capital, Staff’s estimate of Pine’s cost of capital should be a guide to the
6 Commission in setting the appropriate ROR.” See Surrebuttal Testimony of Joel M.
7 Reiker (“Reiker Sb.”) at 19.

8 In short, Mr. Reiker provides approximately thirty-seven (37) pages of highly
9 complex rate of return and cost of capital testimony, on issues ranging from the
10 Company’s capital structure and cost of debt and equity to customer growth utilizing
11 different modeling analyses, as an “alternative” to Staff’s original position that a return on
12 equity analysis is useless when a utility has negative equity. This “alternative” represents
13 new direct evidence introduced outside the established procedural schedule in this matter.
14 It is responsive to the Company’s cost of capital testimony, which was contained in its
15 direct filing of May 1, 2003, as opposed to its rebuttal filing. In fact, it would appear
16 Staff has used the delay in the deadline for surrebuttal testimony resulting from the
17 resolution of a discovery dispute between the Company and the District, to submit new
18 evidence supporting an entirely different position.

19 **II. MR. REIKER’S COST OF CAPITAL TESTIMONY MUST BE STRICKEN**

20 As stated, Mr. Reiker argues *in the alternative* that any decision to base the
21 Company’s rate of return on cost of capital, rather than operating margin, should be made
22 using Staff’s late-filed cost of capital analysis. See Reiker Sb. at 2. Again, this
23 “alternative” approach clearly represents testimony that could and should have been
24 included in Staff’s direct testimony, allowing the Company and other parties sufficient
25 time in which to respond to the highly complex modeling analyses and calculations
26

1 performed by Mr. Reiker. Indeed, many of the questions Mr. Reiker answers refer
2 specifically to Mr. Bourassa's *direct* testimony, and therefore should have been included
3 in Staff's own direct testimony.

4 Pine Water's position in this regard is consistent with Staff's own views on the
5 inappropriateness of submitting direct testimony in later phases of a rate case. On March
6 16, 1992, Staff filed a First Motion to Strike in Docket No. U-2621-91-203, *et al.*,
7 attached hereto as Exhibit 1. In its motion, Staff states:

8 The argument is very simple. Submitting direct testimony
9 along with the Rebuttal testimony is in direct violation of the
10 Procedural Order guiding these cases. Staff should not now
11 be placed in the position of having to rebut an initial position
12 at the same time as we surrebut the Rebuttal testimony. These
13 Applicants had a least two *prior opportunities to provide a
direct case on cost of capital* and should be foreclosed from a
third, which was attempted only six days before hearing.
[Emphasis added].

14 Likewise, submitting direct testimony at this surrebuttal stage is in direct violation of the
15 procedural schedule governing this case. Staff had ample opportunity to provide a direct
16 case on cost of capital issues, yet chose not to provide any direct testimony on the subject,
17 recommending an operating margin instead. Allowing Mr. Reiker's cost of capital
18 testimony into the record at this juncture would be inconsistent with Staff's position on
19 the inappropriateness of such filings.

20 It will also have a prejudicial impact on Pine Water's ability to effectively present
21 its rate case. Pine Water has approximately three weeks to formulate rejoinder testimony
22 in response to *all* of Staff's surrebuttal testimony, as well as surrebuttal testimony filed by
23 interveners Pine-Strawberry Water Improvement District and John O. Breninger.
24 Requiring the Company to now address the entirely new position and approach in Mr.
25 Reiker's testimony would increase an already heavy burden for Pine Water. Mr. Reiker's
26

1 cost of capital testimony, describes several different financial modules, and includes
2 Discounted Cash Flow Estimates and the Capital Asset Pricing Model, which will require
3 expert review and analysis. Further, Mr. Reiker refers to several publications in support
4 of his recommendation, which in turn is supported by nine (9) separate schedules. Three
5 weeks is simply not adequate time to conduct discovery and prepare rejoinder. Nor, in
6 fact, would the Company have sufficient time to prepare for the hearing given this new
7 evidence. By contrast, Staff has had since May 1, 2003, to prepare a direct cost of capital
8 case. Certainly, had the Company offered an entirely new position on cost on capital in
9 its rebuttal testimony, Staff would have argued that the Company had amended its
10 application and sought additional time to respond.

11 **III. CONCLUSION AND RELIEF REQUESTED**

12 These are two remedies available to cure Staff's violation: either strike
13 Mr. Reiker's surrebuttal testimony altogether, or delay these proceeding to provide the
14 Company the necessary time to properly address Staff's cost of capital "alternative."
15 Certainly, Pine Water does not advocate further delay. Due to the Company's precarious
16 financial condition and its need for rate relief, any further delay will have negative
17 ramifications on Pine Water and its customers. Staff must be held to the same standard it
18 seeks to impose on applicants during rate case proceedings. Accordingly, Mr. Reiker's
19 Surrebuttal Testimony must be stricken.

20 RESPECTFULLY SUBMITTED this 26th day of January, 2004.

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2 this 26th day of January, 2004, to:

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7 A copy of the foregoing
8 was hand-delivered this
9 26th day of January, 2004, to:

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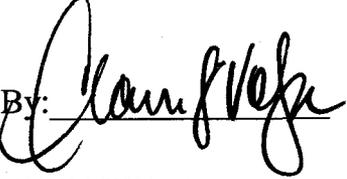
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