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BEFORE THE ARIZONA CORPORATION COMMISSION

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- 2 JEFF HATCH-MILLER  
Chairman
- 3 WILLIAM A. MUNDELL  
Commissioner
- 4 MARC SPITZER  
Commissioner
- 5 MIKE GLEASON  
Commissioner
- 6 KRISTIN K. MAYES  
Commissioner
- 7

Arizona Corporation Commission

DOCKETED

FEB 15 2005

DOCKETED BY	<i>MR</i>
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8 IN THE MATTER OF THE APPLICATION  
9 OF ARIZONA-AMERICAN WATER  
10 COMPANY, INC. FOR A LIMITED  
11 WAIVER OF THE REQUIREMENTS OF  
12 A.A.C. R14-2-801, ET SEQ., AND CERTAIN  
13 RELATED RELIEF.

Docket No. W-01303A-01-0983

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

Docket No. WS-01303A-02-0867

25 IN THE MATTER OF THE APPLICATION  
26 OF ARIZONA-AMERICAN WATER  
27 COMPANY, INC., AN ARIZONA  
28 CORPORATION, FOR A  
29 DETERMINATION OF THE CURRENT  
30 FAIR VALUE OF ITS UTILITY PLANT  
31 AND PROPERTY AND FOR INCREASES  
32 IN ITS RATES AND CHARGES BASED  
33 THEREON FOR UTILITY SERVICE BY ITS  
34 SUN CITY WATER AND WASTEWATER  
35 DISTRICTS.

Docket No. WS-01303A-02-0868

36 IN THE MATTER OF THE APPLICATION  
37 OF ARIZONA-AMERICAN WATER  
38 COMPANY, INC., AN ARIZONA  
39 CORPORATION, FOR A  
40 DETERMINATION OF THE CURRENT  
41 FAIR VALUE OF ITS UTILITY PLANT  
42 AND PROPERTY AND FOR INCREASES  
43 IN ITS RATES AND CHARGES BASED  
44 THEREON FOR UTILITY SERVICE BY ITS  
45 MOHAVE WATER DISTRICT AND ITS  
46 HAVASU WATER DISTRICT.

Docket No. WS-01303A-02-0869

DECISION NO. 67593

OPINION AND ORDER

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

Docket No. WS-01303A-02-0870

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

Docket No. W-01303A-02-0908

DECISION NO. 67593  
OPINION AND ORDER

14 Open Meeting:  
 15 Phoenix, Arizona  
 16 **BY THE COMMISSION:**

16 **I. Procedural History**

17 **A. RWE Case**

18 On December 17, 2001, Arizona-American Water Company (“Arizona-American” or  
 19 “Company”) filed an application<sup>1</sup> with the Commission for an order (1) declaring that the  
 20 Commission’s Affiliated Interests Rules (A.A.C. R14-2-801 et seq.) did not apply to the proposed  
 21 acquisition of its parent company by RWE AG; (2) in the alternative, granting a waiver of the  
 22 Affiliated Interests Rules for the acquisition; or (3) in the alternative, approving the acquisition  
 23 under the Affiliated Interests Rules. After a hearing, the Commission adopted Decision No. 65453  
 24 (“RWE Order”), which approved the proposed acquisition under the Affiliated Interests Rules with  
 25 various conditions. Condition 15 of the RWE Order imposed a three-year rate moratorium on  
 26 Arizona-American. The three-year moratorium began on the closing date of the acquisition, and  
 27 concludes on January 10, 2006.

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<sup>1</sup> Docket No. W-01303A-01-0983 (the “RWE Case”).

1 Arizona-American filed a timely Application for Rehearing, which was denied by operation  
2 of law. Arizona-American appealed the RWE Order to both the Arizona Court of Appeals and the  
3 Superior Court. The Court of Appeals, in a published opinion, found that it did not have jurisdiction  
4 to consider the appeal. *Arizona-American Water Co. v. Arizona Corporation Commission*, 437 Ariz.  
5 Adv. Rep. 3, 98 P.3d 624 (App. 2004). Arizona-American's appeal in Superior Court is currently  
6 set for oral argument on March 7, 2005.

7 **B. Rate Case.**

8 Before the moratorium period began, Arizona-American filed a rate case for most of its  
9 systems in Arizona.<sup>2</sup> The Rate Case did not include Arizona-American's Paradise Valley Water  
10 District. After a hearing, the Commission issued its rate case order as Decision No. 67093 ("Rate  
11 Case Order") on June 30, 2004.

12 Arizona-American filed a timely Application for Rehearing, which was denied by operation  
13 of law. Arizona-American then appealed the Rate Case Order to the Arizona Court of Appeals.

14 **C. Arsenic Motion.**

15 On December 15, 2004, Arizona-American filed a motion in the Commission's dockets for  
16 the RWE Case and the Rate Case concerning Arsenic matters. Arizona-American states that it  
17 estimates that it will have to spend over \$42 million dollars to comply with the Environmental  
18 Protection Agency's ("EPA") new arsenic rules, which lowered the allowed amount of arsenic in  
19 drinking water to 10 parts per billion from 50 parts per billion. Arizona-American estimates that it  
20 will spend \$25 million to comply with the new EPA rules in its Agua Fria Water, Havasu Water,  
21 Tubac Water, and Sun City West Water Districts. Arizona-American also estimates that it will  
22 spend \$17 million to comply with the new EPA rules in its Paradise Valley Water District.

23 Arizona-American's motion makes two requests: (1) that the Commission re-open the  
24 record in the Rate Case so as to consider modifying the Rate Case Order by adding an Arsenic Cost  
25 Recovery Mechanism; and (2) that the Commission waive Condition 15 of the RWE Order solely  
26 for the Paradise Valley Water District. Arizona-American states that it will dismiss its appeals of  
27 the RWE Order and the Rate Case Order if its motion is granted.

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<sup>2</sup> Docket No. WS-01303A-02-0867, et al. (the "Rate Case").

1 **II. Discussion.**

2 As we have noted on many occasions, we are very concerned with the costs and difficulty of  
3 compliance with the EPA's new Arsenic standard. We continue to urge all Arizona water  
4 companies to take appropriate proactive measures to ensure compliance with this standard in a  
5 timely and cost-effective manner. In two recent rate orders for Arizona Water Company, we  
6 approved an "Arsenic Cost Recovery Mechanism" or "ACRM", which we have found to be an  
7 appropriate mechanism to address arsenic compliance. (Decision Nos. 66400 and 66849). Here,  
8 Arizona-American seeks approval to take steps towards granting an ACRM for certain of its  
9 systems. Under the circumstances, we believe that it is appropriate to authorize these preliminary  
10 steps. While we are concerned that Arizona-American did not bring this matter to our attention  
11 sooner, we believe that taking these preliminary steps towards an ACRM for Arizona-American is  
12 the best course of action at this time.

13 In particular, Arizona-American seeks authority to re-open the record in the Rate Case so as  
14 to consider modifying the Rate Case Order by adding an ACRM. We do not lightly take such a  
15 step, because we believe that the finality of our orders is important. Nevertheless, in light of the  
16 urgency and the apparent magnitude of Arizona-American's arsenic problem, we believe that under  
17 these circumstances re-opening the record in the Rate Case solely to consider the arsenic issue is  
18 appropriate. Once an appropriate record is developed concerning the arsenic issues, we will  
19 consider whether to modify the Rate Case Order using our authority under A.R.S. § 40-252.

20 Arizona-American also seeks a limited waiver of the rate case moratorium imposed by the  
21 RWE Order. The rates currently in effect in Arizona-American's Paradise Valley Water District  
22 were approved in Decision No. 61831 (July 20, 1999). We agree with Arizona-American that the  
23 record in that rate case is too stale to be re-opened to address arsenic issues. Accordingly, we will  
24 grant a limited waiver for the Paradise Valley Water District only of the rate case moratorium  
25 imposed by the RWE Order.

26 **III. Findings of Fact.**

27 1. On December 17, 2001, Arizona-American Water Company ("Arizona-American" or  
28

1 “Company”) filed an application<sup>3</sup> with the Commission for an order (1) declaring that the  
2 Commission’s Affiliated Interests Rules (A.A.C. R14-2-801 et seq.) did not apply to the proposed  
3 acquisition of its parent company by RWE AG; (2) in the alternative, granting a waiver of the  
4 Affiliated Interests Rules for the acquisition; or (3) in the alternative, approving the acquisition  
5 under the Affiliated Interests Rules. After a hearing, the Commission adopted Decision No. 65453  
6 (“RWE Order”), which approved the proposed acquisition under the Affiliated Interests Rules with  
7 various conditions.

8 2. Condition 15 of the RWE Order imposed a three-year rate moratorium on Arizona-  
9 American. The three-year moratorium began on the closing date of the acquisition, and concludes  
10 on January 10, 2006.

11 3. Before the moratorium period began, Arizona-American filed a rate case for most of  
12 its systems in Arizona.<sup>4</sup> The Rate Case did not include Arizona-American’s Paradise Valley Water  
13 District. After a hearing, the Commission issued its rate case order as Decision No. 67093 (“Rate  
14 Case Order”).

15 4. On December 15, 2004, Arizona-American filed a motion in the RWE Case and the  
16 Rate Case concerning Arsenic matters.

17 5. Arizona-American states that it estimates that it will have to spend over \$42 million  
18 dollars to comply with the Environmental Protection Agency’s (“EPA”) new arsenic rules, which  
19 lowered the allowed amount of arsenic in drinking water to 10 parts per billion from 50 parts per  
20 billion. Arizona-American estimates that it will spend \$25 million to comply with the new EPA  
21 rules in its Agua Fria Water, Havasu Water, Tubac Water, and Sun City West Water Districts.  
22 Arizona-American also estimates that it will spend \$17 million to comply with the new EPA rules in  
23 its Paradise Valley Water District.

24 6. Arizona-American’s motion makes two requests: (1) that the Commission re-open  
25 the record in the Rate Case so as to consider modifying the Rate Case Order by adding an Arsenic  
26 Cost Recovery Mechanism; and (2) that the Commission waive Condition 15 of the RWE Order  
27

28 <sup>3</sup> Docket No. W-01303A-01-0983 (the “RWE Case”).

<sup>4</sup> Docket No. WS-01303A-02-0867, et al. (the “Rate Case”).

1 solely for the Paradise Valley Water District.

2 7. Arizona-American states that it will dismiss its appeals of the RWE Order and the  
3 Rate Case Order if its motion is granted.

4 8. Staff recommends that Arizona-American's motion be granted, conditioned on the  
5 dismissal of its appeals of the RWE Order and the Rate Case Order.

6 **IV. Conclusions of Law.**

7 1. Arizona-American is a public service corporation, as defined in Article XV, § 2 of  
8 the Arizona Constitution.

9 2. The Commission has jurisdiction over the subject matter of the RWE Case and the  
10 Rate Case and Arizona-American's motion dated December 17, 2004.

11 3. It is in the public interest, subject to the dismissal of Arizona-American's appeals of  
12 the Rate Case Order and the RWE Order, to (1) re-open the record in the Rate Case so as to consider  
13 modifying the Rate Case Order solely for adding an Arsenic Cost Recovery Mechanism; and (2)  
14 waive Condition 15 of the RWE Order solely for the Paradise Valley Water District.

15 4. Under A.R.S. § 40-252, the Commission has authority to (1) re-open the record in the  
16 Rate Case so as to consider modifying the Rate Case Order solely for adding an Arsenic Cost  
17 Recovery Mechanism; and (2) waive Condition 15 of the RWE Order solely for the Paradise Valley  
18 Water District.

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1 **V. Order**

2 IT IS THEREFORE ORDERED that Arizona-American's request to (1) re-open the record  
3 in the Rate Case so as to consider modifying the Rate Case Order solely for adding an Arsenic Cost  
4 Recovery Mechanism; and (2) waive Condition 15 of the RWE Order solely for the Paradise Valley  
5 Water District is hereby granted.

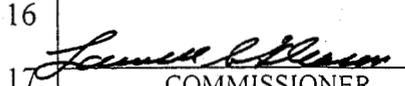
6 IT IS FURTHER ORDERED that the approvals granted herein are expressly conditioned on  
7 dismissal of Arizona-American's appeals of the Rate Case Order and the RWE Order.

8 IT IS FURTHER ORDERED that the approvals granted herein shall be automatically null  
9 and void without further order of the Commission unless Arizona-American dismisses its appeals of  
10 the Rate Case Order and the RWE Order within thirty days of the date of this order.

11 IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

12 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

13   
14 CHAIRMAN   
15 COMMISSIONER   
COMMISSIONER

16   
17 COMMISSIONER   
COMMISSIONER

18  
19 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,  
20 Executive Secretary of the Arizona Corporation  
21 Commission, have hereunto, set my hand and caused the  
22 official seal of this Commission to be affixed at the Capitol,  
23 in the City of Phoenix, this 15<sup>th</sup> day of  
24 Feb. 2005.

25   
26 BRIAN C. McNEIL  
27 Executive Secretary

28 DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

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