

OPEN MEETING ITEM



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COMMISSIONERS
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WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

ORIGINAL



ARIZONA CORPORATION COMMISSION

DATE: January 25, 2005

DOCKET NO: W-01445A-04-0622

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

RICHARD N. CORROW v. ARIZONA WATER COMPANY
(COMPLAINT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

FEBRUARY 3, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

FEBRUARY 8 AND 9, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

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JAN 25 2005

1 On October 14, 2004, Complainant appeared on his own behalf and AWC appeared with
2 counsel. The Commission's Utilities Division ("Staff") was present for purposes of observation and
3 to encourage settlement of the Complaint.

4 On October 25, 2004, by Procedural Order, a hearing was scheduled on November 22, 2004.

5 On October 29, 2004, AWC filed a Motion to Continue ("Motion") the proceeding stating that
6 the Company's principal witness would be on vacation.

7 On November 1, 2004, the Complainant filed a Response strongly objecting to AWC's
8 Motion.

9 On November 1, 2004, by Procedural Order, AWC's Motion was denied.

10 On November 4, 2004, AWC telephonically requested that the hearing be rescheduled. AWC
11 indicated that the parties were in agreement that the hearing be moved from November 22, 2004 to
12 November 16, 2004. By Procedural Order, AWC's telephonic request was granted and the hearing
13 date changed.

14 On November 16, 2004, a full public hearing was convened before a duly authorized
15 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Complainant
16 appeared on his own behalf. AWC and Staff appeared with counsel. At the conclusion of the
17 hearing, the matter was taken under advisement pending submission of a Recommended Opinion and
18 Order to the Commission.

19 * * * * *

20 Having considered the entire record herein and being fully advised in the premises, the
21 Commission finds, concludes, and orders that:

22 **FINDINGS OF FACT**

23 1. Pursuant to authority granted by the Commission, AWC is an Arizona corporation
24 which is engaged in the business of providing water service to approximately 67,000 customers in
25 portions of Gila, Navajo, Cochise, Maricopa, Pima, Yavapai, Coconino and Pinal Counties, Arizona.

26 2. On August 26, 2004, Mr. Corrow filed a Complaint against the Respondent alleging
27 that Respondent's requirements for a main extension agreement ("Agreement") to serve two adjacent
28 undeveloped parcels of land in Apache Junction was placing an "undo burden on a property owner."

1 Mr. Corrow essentially stated that AWC's requiring him to pay \$16,000 for a main extension in order
 2 to provide water service to his property was unfair to him when he could, for approximately \$1,500,
 3 serve his property from a "remote" meter.¹

4 3. Mr. Corrow's property, which is the subject of this Complaint, is located in a
 5 somewhat rural area of Pinal County zoned for one-acre lots. His property consists of two separate
 6 one-acre parcels. The first, Lot 5C, is where he is building his own private residence, and the second,
 7 Lot 5D, is where he plans to build a "spec" home for sale to a third party.

8 4. Complainant's parcels were part of a larger, five-acre parcel formerly known as Lot 5,
 9 which was split by the original owner into five separate one-acre lots, Lots 5A, 5B, 5C, 5D and 5E.
 10 The original owner retained Lots 5A and 5B for his own use and built a home on them.

11 5. The fifth parcel, Lot 5E, was purchased by another individual, Mr. Darrell Ness, who
 12 testified in the proceeding.

13 6. The five parcels in question are located on what Mr. Corrow termed a "private road", a
 14 dirt road extension north of Prospectors Road which is a paved roadway which runs through a platted
 15 subdivision to the south of the five parcels. Presently, the dirt road goes by Mr. Ness' and Mr.
 16 Corrow's parcels and ends at Lot 5B and provides a means of ingress and egress for the owner of
 17 Lots 5A and 5B. A map of the property, which was introduced at the hearing as Exhibit R-1, is
 18 attached hereto as Attachment A.

19 7. AWC is the certificated water provider for Mr. Corrow's property and for substantial
 20 portions of the Apache Junction area surrounding his property, some of which consists of planned
 21 subdivisions and other portions that reflect either lot splits or larger individual properties.

22 8. In the area to the south of Mr. Corrow's parcels and Lot 5E, along the east side of the
 23 paved portion of Prospectors Road, AWC has a six inch water main that is interconnected with other
 24 water mains which extend through the planned subdivision.

25 9. The original property owner who owns Lots 5A and 5B and who split his parcel into
 26 five lots receives his water services by means of what is now a "remote" meter set at what appears to

27 _____
 28 ¹ A "remote" meter is one not located at a customer's property line or on his property. It is usually located at the
 end of a long service line on another person's property.

1 be the property line of Mr. Ness' parcel, 5E, located at the northeast corner of the intersection of
2 Peralta Estates Road (the northern boundary of the planned subdivision) and Prospectors Road where
3 the pavement ends. However, when the original property owner's service for Lot 5 was connected
4 where it is presently situated, he owned Lot 5 in its entirety.

5 10. The original owner of Lot 5 and approximately six other property owners in the area
6 are served by "remote" meters, which were once an acceptable means used by AWC to provide water
7 service in the area due to the excessive number of lot splits. However, in recent years, as
8 development has taken place, AWC has interpreted its approved Tariff No. TC-243 ("Tariff") to
9 comply with the Commission's rule in order to insure the orderly and most efficient growth of its
10 system to serve its customers by primarily requiring a customer's meter to be placed on their property
11 or on the property line.

12 11. The Commission's rule, A.A.C. R14-2-405(B)(4), establishes a guideline for the
13 location of a customer's meter by stating as follows:

14
15 The Company may install its meter at the property line or, at the
16 Company's option, on the customer's property in a location
mutually agreed upon.

17 12. Respondent's Tariff essentially mirrors Commission rule A.A.C. R14-2-405(B)(4), but
18 is somewhat more flexible with respect to the location of a customer's meter stating as follows:

19 The Company, at its option, may install its meter at the property
20 line, on the customer's property or in another location mutually
agreed upon.

21 13. Pursuant to AWC's approved Tariff, Respondent retains the option to determine the
22 ultimate location of a customer's meter and as a result, a customer may be required to enter into a
23 more costly main extension for service at his meter on his property rather than a less costly method
24 with Respondent providing water service by means of a "remote" meter.

25 14. Ms. Joyce Dickson, a land-locked lot owner who owns a lot to the north of
26 Complainant's parcel, testified she had attempted to secure water service by means of a "remote"
27 meter from AWC. AWC denied her request for a "remote" meter and advised her that she would
28 have to secure lawful easements and enter into a similar form of Agreement costing approximately

1 \$16,000 to secure water service from AWC.

2 15. Mr. Darrell Ness, the owner of Lot 5E at the northeast corner of Peralta Estates Road
3 and Prospectors Road, to the south of Mr. Corrow's parcels, testified that in 2003 he funded a 130-
4 foot main extension from where AWC's main ended on the paved portion of Prospectors Road across
5 Peralta Estates Road to his parcel for slightly less than \$8,000.

6 16. Mr. Ness indicated that when he built his house, he had tried to secure service from
7 AWC by having a "remote" meter placed adjacent to AWC's existing main on someone else's
8 property. AWC did not agree to this location and Respondent informed him that it would not provide
9 service in that manner. He was also required to grant a wider easement to AWC along the western
10 boundary of his property northward along the dirt portion of Prospectors Road to allow for the
11 extension of AWC's main to Mr. Corrow's lot and to other property owners' lots in the future.

12 17. Mr. Ness acknowledged that prior to purchasing his lot, he had contacted AWC and
13 learned that he would be required to enter into an Agreement to extend Respondent's main to his
14 property.

15 18. Ms. Sandy Smith, a Pinal County Supervisor, testified that since her involvement in
16 government for approximately 10 years, she has been trying to develop an equitable means to
17 distribute the costs of main extension agreements which are often required for water service to lots
18 that result from lot splitting, a frequent problem in Pinal County. Ms. Smith took no position on the
19 merits of this Complaint.

20 19. Mr. Corrow indicated that in order for service to be extended to his two parcels from
21 AWC's main where it ends at Mr. Ness' property, he would have to extend the six-inch main
22 approximately 260 feet at a cost of approximately \$16,179. The Agreement provides for Mr. Corrow
23 to recover 10 percent of the total gross annual revenues received by AWC for 10 years from any
24 customer whose service line is connected to Mr. Corrow's main which is subject to the Agreement.
25 This refund is the minimum prescribed pursuant to A.A.C. R14-2-406.²

26 20. Mr. Corrow testified that although he was aware that he was purchasing land in a rural
27

28 ² In all probability, the only foreseeable customer at the time of the hearing would be the purchaser of the "spec"
home to be built by Mr. Corrow on Lot 5D.

1 area, he assumed that his parcels, Lot 5C and the "spec" home parcel, Lot 5D, could be provided with
2 water service by utilizing "remote" meters because he believed that the dirt portion of Prospectors
3 Road is a private road. Mr. Corrow claims that the dirt road is not subject to any county claims for
4 easements or a public roadway development in the future running northward from Peralta Estates
5 Road to where it would intersect with Junction Drive.

6 21. To further support his Complaint that AWC's cost for a main extension was unduly
7 burdensome and that he would never recover the cost of his investment, Mr. Corrow pointed out that
8 he was able to secure his electric, telephone and cable service for a total cost of \$3,500.

9 22. However, Mr. Corrow, in response to a question whether he contacted AWC before he
10 purchased the lots as to the cost of getting water service, testified, "No, I didn't. I didn't feel that that
11 information was pertinent at the time, and it was - - no, I did not." (Tr. p. 91)

12 23. Mr. Corrow insists AWC is conducting a "subterfuge" by requiring lot owners to fund
13 main extensions based on management's theories of how development will take place in rural areas
14 of Pinal County in the future.³ He further insists that the refunding requirements under his
15 Agreement are unfair to him because the Commission's rule A.A.C. R14-2-406(D) will not permit a
16 refund to him unless other customers' service lines are directly connected to the main funded by his
17 Agreement. Under this scenario, there is little chance of any refund from customer revenues
18 available other than from the customer who purchases his "spec" home on Lot 5D.

19 24. In rebuttal, AWC called Mr. Michael Whitehead, its Vice-President of Engineering
20 who has been employed by the Respondent for 25 years.

21 25. Mr. Whitehead testified that AWC's Agreement with Mr. Corrow for \$16,179 with the
22 notation "paid under protest" was submitted for approval by the Commission's Staff, but it is being
23 held pending the outcome of this proceeding.

24 26. Mr. Whitehead termed the quarter section where Mr. Corrow's parcels are located a
25 "wildcat subdivision" because it is developing by lot splitting rather than as a platted subdivision.

26 27. Mr. Whitehead believes that Prospectors Road will become the main arterial road in

27 ³ To buttress this argument, Mr. Corrow presented unsworn statements and hearsay evidence to illustrate that
28 growth and road development will not take place as AWC expects because the present lot owners won't sell their lots or
grant easements to AWC.

1 the quarter section and described AWC's future planned main expansion from a map submitted in
2 evidence. The map shows a planned main running northward on Prospectors Road from Mr. Ness'
3 parcel to Mr. Corrow's parcels and beyond where it intersects with a planned main running east and
4 west on Junction Drive to the north. It is AWC's option to either serve the Corrow parcels at meters
5 on the property lines or on the actual parcels. Pursuant to the Commission's rule A.A.C. R14-2-
6 406(H), the main extension will be constructed with a six-inch main.

7 28. Mr. Whitehead testified that AWC will extend the Prospectors Road main northward
8 over time as parcels are split and sold and new lot owners need water service.

9 29. Mr. Whitehead based his opinion on his professional experience concerning the
10 extension of AWC's main northward along Prospectors Road as he described how land is ultimately
11 subdivided, particularly by later property owners, especially in flat areas like the valley around
12 Phoenix where subdivisions generally follow section and midsection lines forming a grid like pattern.

13 30. According to Mr. Whitehead, in isolated situations, AWC may agree, at its option, to
14 the installation of a "remote" meter when it is unreasonable to extend a six-inch main 50 to 100 feet
15 where the main will dead end.

16 31. Mr. Whitehead indicated that one reason AWC does not believe that sharing the cost
17 of the main is appropriate is because Mr. Corrow is acting as a developer by building a "spec" home
18 to earn a profit. AWC believes that under these circumstances, it would be unfair for AWC's Apache
19 Junction customers to subsidize the cost of the main extension for Mr. Corrow's parcels.

20 32. Presently, in order to avoid lot split problems with large lot owners who may plan to
21 split their lots in the future, when they request water service, AWC requires them to sign a
22 conditional service agreement that requires the original property owner who may be left with a
23 "remote" meter after a lot split, to acknowledge that he will pay for a main extension, if necessary, to
24 move his water meter line to his new property line.

25 33. Staff's witness, Ms. Connie Walczak, testified that Staff has developed some language
26 to be used on service applications which involve main extension agreements to avoid future lot-split
27 problems, and has recommended its usage to AWC. She indicated that in this situation, although
28 there are compromises that could be utilized if Respondent is willing, AWC is following its approved

1 tariff which is in compliance with the Commission's rules for water utilities.⁴

2 34. In a Complaint proceeding, the burden of proof is upon the Complainant to establish,
3 by a preponderance of the evidence, that the Respondent is in violation of its Tariff, Arizona law, the
4 Commission's rules or prior Orders. Under the circumstances herein, the Complainant has failed to
5 meet his burden of proof to establish that AWC is in violation of its Tariff, Arizona law, the
6 Commission's rules or prior Orders under the terms of the Agreement which has been submitted for
7 Commission approval. Therefore, Mr. Corrow's Complaint should be dismissed.

8 **CONCLUSIONS OF LAW**

9 1. AWC is a public service corporation within the meaning of Article XV of the Arizona
10 Constitution and A.R.S. § 40-246.

11 2. The Commission has jurisdiction over AWC and the Complaint herein.

12 3. There is no evidence that AWC violated its Tariff on file with the Commission or that
13 there have been any other violations of any Commission Orders, the Commission's rules or Arizona
14 law.

15 4. The Complaint of Mr. Corrow should be dismissed.

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28 ⁴ Compromises such as extending the duration of the Agreement and refunding a higher percentage of the gross revenues.

1 SERVICE LIST FOR: ARIZONA WATER COMPANY

2 DOCKET NO.: W-01445A-04-0622

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