



BEFORE THE ARIZONA CORPORATION COMM

RECEIVED

COMMISSIONERS

2005 SEP 23 P 3:16

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF
ARIZONA-AMERICAN WATER COMPANY
FOR AN AFFILIATE AGREEMENT WITH AWR,
INC.

DOCKET NO. WS-1303A-05-0170

CLOSING BRIEF OF
ARIZONA-AMERICAN WATER COMPANY AND
AMERICAN WATER RESOURCES, INC.

Table of Contents

I. INTRODUCTION..... 1
II. PROCEDURAL HISTORY..... 3
III. SERVICE LINE PROTECTION PROGRAMS..... 4
IV. ISSUES..... 6
A. Resolved Issues..... 6
1. Additional Services..... 6
2. Net Income Above the Line..... 7
3. No Arizona-American Endorsement..... 7
4. AWR's Books and Records..... 7
5. Fully Allocated Costs..... 7
6. Payment for Customer List..... 7
7. Promotional Material..... 8
B. Remaining Issues..... 9
1. Customer Release..... 9
2. Compensation for Arizona-American's Services..... 10
3. Agreement Term Limit..... 12
4. Holding Company and Affiliate Interest Rule Waivers..... 13
5. Revenue Sharing..... 13
6. Customer Risk Advisory..... 14
V. CONCLUSION..... 14
A. The Service Line Programs Will Benefit Customers..... 14
B. The Service Line Programs Should Be Authorized..... 16

1 **I. INTRODUCTION**

2 In this case, Arizona-American Water Company (“Arizona-American” or the
3 “Company”) voluntarily filed with the Commission a copy of the *Agreement for Support*
4 *Services Between American Water Resources, Inc. and Arizona-American Water Company*
5 (“Affiliate Agreement”). The Affiliate Agreement did not require filing with the Commission,
6 except as part of the Company’s April 2006 annual filing under R14-2-805.

7 Under the Affiliate Agreement, Arizona-American would provide certain support
8 services to American Water Resources, Inc. (“AWR”) in connection with AWR’s offering to the
9 Company’s customers two optional programs: the Water Line Protection Program and the Sewer
10 Line Protection Program (collectively the “Service Line Programs”).¹ The Service Line
11 Programs provide at a nominal cost a repair service to cover problems associated with customer-
12 owned service lines, which are typically not covered by the customer’s home-owner’s insurance.
13 The Service Line Programs are very popular with customers of Arizona-American’s regulated
14 affiliates in the Eastern United States.

15 The Affiliate Agreement submitted by Arizona-American was consistent with agreements
16 between AWR and other regulated affiliates that have already been approved by other regulatory
17 commissions. The Affiliate Agreement support services called for Arizona-American to assist
18 AWR in the distribution of promotional materials for the Programs, advise AWR if its field
19 service representatives discovered a customer-owned service line problem, and allow AWR to
20 offer customers a water bill pay option.

21 The Affiliate Agreement also provided that Arizona-American would provide customer
22 names and addresses to AWR. The Commission had already authorized this type of information
23 sharing in its order approving the RWE acquisition of American Water Works, Inc., Arizona-
24 American’s corporate parent.² (“RWE Acquisition Order”.) The order included two relevant
25 conditions (Nine and Ten):

¹ Arizona-American and AWR may be referred to jointly as the “Companies.”

² Docket No. W-01303A-01-0983, Decision No. 65453, December 12, 2002.

1 #9 If Arizona-American ever plans to share with affiliates, or other entities, any
2 information made available to Arizona-American solely by virtue of the
3 company/customer relationship, such as billing information and services received by a
4 customer, it shall notify the Commission at least 180 days in advance. Such notice shall,
5 at a minimum, identify the intended use of the information. Arizona-American shall also,
6 at the time of the filing of the 180-day notice, file a tariff setting forth appropriate
7 customer notification procedures to inform customers about the sharing.
8

9 #10 If Arizona-American ever shares any customer information with affiliates, or other
10 entities, it shall maintain accurate records of revenues earned as a result and make those
11 records available to Staff upon request with ten days' notice. For the purposes of this
12 condition and Condition Nine above, customer information that is prohibited from
13 disclosure does not include a customer's name, address or service location, and telephone
14 number. (Emphasis added.)

15 In October 2004, the Companies briefed Staff concerning the Service Line Programs
16 before filing the Affiliate Agreement in an attempt to get guidance concerning any issues that
17 Staff might have. Staff asked many questions, which were answered, and requested a significant
18 number of documents, which were provided. Ultimately, Staff expressed no significant concerns
19 with the Service Line Programs. At that time, the Companies also briefed the Residential Utility
20 Consumer Office ("RUCO") about the Service Line Programs, including Arizona-American's
21 intent to provide customer lists to AWR, the intended co-promotion, and the utility-billing
22 option. There were no issues or concerns raised by RUCO regarding the Programs or Arizona-
23 American's plans to provide AWR with such support services.

24 For these reasons, the Companies were quite surprised by Staff's reaction to the
25 Company's voluntary filing in March 2005. Staff submitted an additional 75 data requests, each
26 of which was answered by either Arizona-American or AWR, or both. Staff requested a hearing
27 on the filing, to which the Company did not object. Staff filed direct testimony with ten
28 recommendations to alter the Service Line Programs.³ To attempt to resolve Staff's concerns,
29 Arizona-American and AWR offered to accept almost all of them to try to gain Staff's support.
30 However, Staff has not budged from any of its positions or its initial dismissal of the Service
31 Line Programs.

³ Nine explicit and one in the text.

1 Arizona-American believes that the Service Line Programs provide a valuable customer
2 benefit, that they should be offered to as many of its customers as possible, and that each
3 customer should decide whether to participate. Because the parties were unable to reach
4 agreement concerning the parameters of the Service Line Programs, in this brief Arizona-
5 American presents its final position concerning how best to offer the Service Line Programs.
6 Because Staff raised several useful points, Arizona-American and AWR will still incorporate
7 many of the features requested by Staff.

8 Finally, it is important to keep in mind that AWR does not need the Commission's
9 approval to offer the Service Line Programs if Arizona-American does not participate. The
10 Commission would then have no jurisdiction to influence its marketing, billing, or customer
11 service. Arizona-American would lose the revenue it would otherwise receive for supporting the
12 program. An Arizona-American customer would lose the popular, low-cost, utility-bill pay
13 option and, in the event of a service line problem, would have to remember they were enrolled in
14 the Programs, find the contact information, and directly contact AWR. Also, a large percentage
15 of Arizona-American customers would never receive AWR Program mailings because AWR
16 would not have access to customer names and addresses from Arizona-American. AWR would
17 have to purchase names and addresses from vendors who sell public lists, which tend to be
18 outdated, incomplete and, when used, often create customer confusion and complaints. The end
19 result would be many Arizona-American customers losing the opportunity to learn about their
20 service line ownership responsibility and the option to enroll in the Service Line Programs,
21 which would likely lead to customer confusion and complaints. Staff has offered no explanation
22 why this outcome would be preferable to Arizona-American providing modest assistance so that
23 AWR could better market the Service Line Programs to the Company's customers

24 **II. PROCEDURAL HISTORY**

25 On March 9, 2005, Arizona-American filed the Affiliate Agreement with the
26 Commission. The Commission's Utility Division ("Staff") filed the testimony of Linda A. Jaress
27 on June 24, 2005, which recommended against approval of the Service Line Programs, but did

1 include several recommended changes. Arizona-American filed responsive testimony on July
2 22, 2005, from Mr. Brian K. Biesemeyer on behalf of the Company, and Mr. Clifford C. Groh on
3 behalf of AWR. (“Companies Direct”). Staff filed Ms. Jaress’ rebuttal testimony on August 5,
4 2005. On August 10, 2005, a hearing was held before Assistant Chief Administrative Law Judge
5 Dwight D. Nodes. This brief is submitted in accordance with the briefing schedule set forth at
6 the hearing.

7 **III. SERVICE LINE PROTECTION PROGRAMS**⁴

8 Arizona-American is an Arizona corporation engaged in the business of providing water
9 and wastewater utility service to customers in its various water and wastewater districts located
10 in portions of Maricopa, Mohave, and Santa Cruz counties in Arizona under authority granted by
11 the Commission. Arizona-American is a wholly-owned subsidiary of American Water Works,
12 Inc. Arizona-American’s ultimate parent is RWE AG.

13 AWR is also a subsidiary of American Water Works Company, Inc. The Arizona
14 Department of Insurance has issued a permit to AWR, which states that AWR is qualified under
15 A.R.S. § 20-1095-3 and authorized to transact business in the State of Arizona as a Service
16 Company, as that term is defined in A.R.S. § 20-1095.

17 Water and sewer customers own their service lines, although many customers may not be
18 aware of this fact, or where the service lines are located. In the case of a water line, this is the
19 line that runs from the water meter to the shut-off valve outside the house. In the case of the
20 sewer line, this is the line that runs from the property line to the house and, in some
21 municipalities, from the main in the street to the house. Problems can develop with these service
22 lines through tree-root incursions, seasonal soil subsidence, aging, or other normal wear-and-tear
23 causes. Locating a qualified contractor to repair these problems can be a frustrating process, and
24 the cost, which can be very expensive, is not typically covered by homeowner’s insurance.

⁴ This section, see generally Companies Direct, pp. 6-9.

1 Currently, when a problem develops in the customer's service line, the customer is
2 responsible for making all necessary arrangements to have the line repaired and to pay all of the
3 repair costs. AWR has developed the Water Line Protection Program and the Sewer Line
4 Protection Program for residential customers that provide a convenient and cost-effective means
5 for making repairs to customer-owned water service lines that leak or break or sewer service
6 lines that become clogged or blocked due to normal wear and tear. Customers enrolling in one
7 of the Service Line Programs pay a modest annual fee,⁵ and in the event of a covered problem in
8 the customer-owned portion of the line, AWR obtains the proper permits and makes
9 arrangements to pay for necessary repairs, including basic site restoration, up to a stated program
10 limit.

11 Repair services will be provided by AWR through the use of local independent, licensed,
12 contractors who operate in or near an Arizona-American district. The relationship between these
13 contractors and AWR will be similar to the relationships contractors have with home-repair and
14 installation services being offered by Home Depot and Sears. No Arizona-American or AWR
15 employees will be used to make any actual service line repairs.

16 As discussed above, the RWE Acquisition Order does not prohibit Arizona-American
17 from sharing the names and addresses of its customers with an affiliate.

18 Arizona-American will provide additional limited services for AWR. For billing and
19 remittance services, the Company would be paid \$.10/customer/month (\$1.20 annually).⁶ The
20 Company's additional cost of providing these services should be negligible.⁷ The Company
21 currently pays its affiliate, American Waterworks Service Company, approximately \$1 per year
22 per customer for billing services.⁸ Therefore, the money received from AWR per customer
23 would exceed the Company's total per customer cost of billing services.⁹ Essentially, the funds

⁵ Water Line Protection Program - \$60/year covers up to \$4,000; Sewer Line Protection Program - \$108/year covers up to 8,000. Late-Filed Exhibits A-3 and A-4.

⁶ Companies Direct at 8.

⁷ *Id.* at 11. There would be no additional costs for mailing or postage. Tr. at 53-54.

⁸ Companies Direct at 8.

⁹ *Id.* at 11-12.

1 received for billing and remittance services would be pure gravy, which would simply reduce the
2 overall revenue requirement to all customers.¹⁰

3 AWR operates a dedicated call center facility and is fully responsible for handling
4 customer inquiries, processing customer enrollments and resolving customer claims.¹¹ Arizona-
5 American's remaining costs would be minimal and be compensated at 115% of fully allocated
6 costs.¹² The only examples of such costs that anyone could think of were an occasional local
7 inquiry and the time spent by a service technician associated with a call after discovering that the
8 customer was covered by one of the Service Line Programs.¹³ In either case the covered
9 customer would be referred to one of AWR's service representatives,¹⁴ and the employee's time
10 and associated overhead would be compensated at 115%.¹⁵

11 **IV. ISSUES**

12 **A. Resolved Issues**

13 The following issues raised by Staff appear to have been resolved.

14 **1. Additional Services**

15 Staff recommended "[T]hat the Agreement be modified to omit Section 6.1.4 and any
16 other section that might allow Arizona American and AWR to contract for additional services
17 other than those specifically related to the water and sewer line Programs."¹⁶ The Companies
18 accept this recommendation. A modified draft agreement that reflected this acceptance was
19 submitted as Exhibit A-2.

¹⁰ Tr. at 54.

¹¹ Companies Direct at 11, 6.

¹² *Id.* at 8.

¹³ *Id.* at 11, 8. Arizona-American originally contracted to provide additional services such as distributing promotional material and providing customer-contact information, which are no longer part of the joint proposal.

¹⁴ *Id.*

¹⁵ *Id.* at 8.

¹⁶ Staff Recommendation No. 3. Staff Direct at 23.

1 **2. Net Income Above the Line**

2 Staff recommended “[T]hat any net income derived by Arizona American from the
3 services it provides AWR for the Programs be considered above-the-line for ratemaking
4 purposes.”¹⁷ Arizona-American accepts this recommendation.

5 **3. No Arizona-American Endorsement**

6 Staff recommended “[T]hat Arizona American not endorse or promote the Programs and
7 that the Agreement be modified to so reflect.”¹⁸ Arizona-American accepts this
8 recommendation. A modified draft agreement that reflected this acceptance was submitted as
9 Exhibit A-2 and the revised promotional material (Exhibits A-3 and A-4) also reflects this
10 acceptance.

11 **4. AWR’s Books and Records**

12 Staff recommended that: “The Commission reserves the right to examine the books and
13 records of AWR in connection with the Programs.”¹⁹ AWR accepts this recommendation.²⁰

14 **5. Fully Allocated Costs**

15 Staff recommended that: “The Agreement should be modified to include a definition of
16 fully allocated or fully distributed costs as including direct costs, a contribution to common costs,
17 and overhead.”²¹ The Companies accept this recommendation. A modified draft agreement that
18 reflected this acceptance was submitted as Exhibit A-2.

19 **6. Payment for Customer List**

20 Staff recommended that “The Agreement be modified to include payment by AWR to
21 Arizona-American for the use of its customer list.”²² This would be at the rate of \$0.04875 per
22 customer initially, and \$0.03247 per customer for updates.²³ Even though this is not required by
23 the RWE Acquisition Order, AWR accepts this recommendation.

¹⁷ Staff Recommendation No. 4. *Id.*

¹⁸ Staff Recommendation No. 5. *Id.*

¹⁹ Staff Recommendation No. 7. *Id.* at 24.

²⁰ The Commission already has this right under the Affiliate Interest Rules. R14-2-804.

²¹ Staff Recommendation No. 8. Staff Direct at 24.

²² Staff Direct at 8-9; Staff Rebuttal at 6-7.

²³ Staff Direct at 9.

1 **7. Promotional Material**

2 As part of the discovery process, AWR provided sample promotional material to Staff
3 that was used in New Jersey to promote the Service Line Programs. Based on Staff’s informal
4 comments, AWR submitted revised promotional material as Exhibits B and C to the Companies’
5 Direct Testimony. Consistent with Staff Recommendation No. 5, to avoid giving the
6 impressions that Arizona-American was promoting the Service Line Programs, AWR removed
7 all references to Arizona-American, except “in the form of references to payment of Program
8 fees via customer water bill and specific Program terms and conditions.”²⁴

9 At the hearing there were several other issues raised concerning the promotional material.
10 To address these issues, AWR revised the promotional material to include certain requested
11 disclaimers. Arizona-American submitted the revised promotional material for Staff’s review as
12 Exhibits A-3 and A-4.

13 Based on a conversation with Staff Deputy Chief Counsel Janice Alward, counsel
14 understands that Staff did review Exhibits A-3 and A-4 and that the disclaimers were acceptable,
15 if they could be in red and use a larger font size. However, counsel was also informed by AWR
16 that the additional red type would significantly increase the cost of the promotional materials.
17 Therefore, AWR agrees to modify Exhibits A-3 and A-4 as follows:

18 • **Water Line Protection Program (Exhibit A-3)**

19 The following existing disclaimer will be the same size as the font used below in the text:

20 “Yes, I want protection and *peace of mind.*”

21
22 The Program is not being offered by Arizona American and your participation in
23 it is optional. Check your existing homeowner insurance policy to determine if it
24 will cover water line leaks or breaks caused by normal wear and tear before
25 enrolling. If you live in a dwelling such as a condo, duplex or townhome please
26 contact your homeowner’s association to determine if you are responsible for
27 your water line.

28 • **Sewer Line Protection Program (Exhibit A-4)**

²⁴ Companies Direct at 15-16.

1 The following existing disclaimer will be the same size as the font used below in the text:

2 “P.S. Protect your sewer line today! Enroll now.”

3
4 The Program is not being offered by Arizona American and your participation in
5 it is optional. Check your existing homeowner insurance policy to determine if it
6 will cover sewer line blockages caused by normal wear and usage before
7 enrolling. If you live in a dwelling such as a condo, duplex or townhome please
8 contact your homeowner’s association to determine if you are responsible for
9 your water line. A \$50 service fee applies when a contractor is dispatched to your
10 home.

11 **B. Remaining Issues**

12 **1. Customer Release**

13 Staff asks that—before AWR could receive the customer list from Arizona-
14 American—Arizona-American would have to write to each customer, inform the customer that
15 Arizona-American would like to have AWR contact the customer concerning the Service Line
16 Program, and obtain the customer’s permission to release the name and address.²⁵ This would go
17 well beyond the conditions in the RWE Acquisition Order and would conflict with another Staff
18 recommendation.

19 First, as stated above, Staff already recommended to the Commission, and the
20 Commission authorized in the RWE Acquisition Order, that Arizona-American could share the
21 names and addresses of its customers with an affiliate. Arizona-American asks to do no more
22 than that. Further, as discussed above, AWR is willing to pay for the information at the rate
23 suggested by Staff.

24 Second, the Staff recommended and the Companies agreed that Arizona-American would
25 not participate in the promotion of the Service Line Programs. However, for a customer to make
26 an informed decision as to whether he or she wanted to be contacted by AWR, Arizona-
27 American would have to provide the same information contained in the promotional material that
28 AWR would send. This would include the benefits of the Service Line Programs, how the
29 customer could participate, the stipulated disclaimers, and the program details. Then the

²⁵ Staff Direct at 23.

1 customer could affirmatively check a box: "Please have AWR contact me." If Arizona-
2 American were required to provide this kind of promotional introduction, then the customer list
3 would be of little value to AWR, because Arizona-American would have already done the
4 promotional work. Either AWR should make the initial contact, based on the purchased
5 customer list, or Arizona-American should do the same. It makes no sense for Arizona-
6 American to send the promotional materials to its customers and then ask them if its OK for
7 AWR to send the same information. This recommendation should be rejected.

8 **2. Compensation for Arizona-American's Services**

9 Staff continues to argue that all services should be compensated at 115% of fully
10 allocated costs or prevailing market prices, whichever is highest.²⁶ To determine the market
11 price, Staff recommends that Arizona-American conduct undefined "studies."

12 As discussed above concerning the billing and collection services, the \$.10/enrolled
13 customer/month payment by AWR would be a windfall for Arizona-American, which would
14 directly reduce the Company's revenue requirement. The actual incremental cost to Arizona-
15 American of providing this service to AWR would be negligible. If Ms. Jaress' recommendation
16 were adopted, Arizona-American would have to conduct a study to determine just how negligible
17 those costs were and then would receive only 115% of this negligible cost. Alternatively, the
18 Company would have to conduct a study to determine a market price for the service, although
19 Ms. Jaress could not provide any guidance on how to conduct such a study or how much the
20 study would cost (which should be a recoverable expense). However, it is important to
21 remember that Arizona-American's total billing and collection charge from its billing-company
22 affiliate is less than what AWR proposes to pay to Arizona-American for only a small fraction of
23 that service.

24 The ten-cent charge is more that reasonable on its face and the income would benefit
25 ratepayers. Additional costly studies to prove the obvious would only reduce these benefits.

²⁶ Staff Rebuttal at 2-3.

1 For the only remaining services that Arizona-American might provide—brief assistance
2 from a customer service representative or a service technician—Arizona American is willing to
3 track the time and charge 115% of the fully allocated costs, including overheads, associated with
4 the time. However, Arizona-American again can see no purpose for conducting some kind of
5 study to determine the market price for these incidental services. Ms. Jaress could provide no
6 guidance whatsoever concerning how to do such a study or what it might cost.

7 Q. Now, for the market price for these services, let's put aside the 115
8 percent of the actual time recorded performing services for AWR plus the
9 overhead plus the common costs. Let's look at the other piece because
10 you wanted a higher market price, correct?

11 A. Yes.

12 Q. How would the company go about determining what the market price
13 is for a service tech to offer the services that AWR would be receiving
14 there?

15 A. I don't know exactly how that would be done.

16 Q. Would it require some sort of outside services most likely?

17 A. It could.

18 Q. Would there be a cost to that?

19 A. Yes.²⁷

20 Compensating the Company at 115% of its fully allocated cost for providing incidental support
21 to AWR is wholly fair. It is unlikely that any markets exist where one could find market prices
22 for brief referrals to another company's service representatives. Even if we assume that such
23 markets exist, the cost of performing a study and submitting it to the Commission as part of a
24 rate case would:

- 25 • almost certainly exceed any value that could come from the study;
- 26 • burden the Company, Staff, possible intervenors, and the Commission with the time
27 and effort to prepare, evaluate, and argue the validity of the study; and
- 28 • reduce the benefit to ratepayers by the cost of the valueless study.

²⁷ Tr. at 113.

1 **3. Agreement Term Limit**

2 Ms. Jaress recommended that the initial term of the Affiliate Agreement be limited to
3 three years, with Commission approval required to extend the Affiliate Agreement past the initial
4 term.²⁸ As discussed above, the Companies objected to a three-year term for two reasons. First,
5 to be sure that authorization was timely obtained, Arizona-American would have to file for
6 authorization to extend the Affiliate Agreement at least six months before the three-year term
7 expired.²⁹ At that time, the Companies would have only two-years actual data for the
8 Commission to consider concerning the Service Line Programs.³⁰ However, AWR's experience
9 in other jurisdictions is that it takes approximately three years to set up, market, and roll out the
10 Service Line Programs before they achieve significant market shares.³¹ Therefore, two-years'
11 actual data would not give the Commission enough information to make an informed decision.

12 So that the Commission could consider program years three and four, when the programs
13 are up and running, the Companies proposed a five-year term. However, Staff rejected this
14 concession, as it did every modification that was not an outright capitulation.

15 On the stand, Ms. Jaress was presented with another proposal for her consideration:
16 There would be no explicit term for the Affiliate Agreement. Instead, Arizona-American would
17 file for Commission authority to continue the Service Line Programs after the Companies had
18 three-years of data.³² During the pendency of the proceeding the Affiliate Agreement would
19 continue in effect. Following its review, the Commission could continue the Affiliate
20 Agreement, either with or without modifications, or order that the Service Line Programs be
21 orderly wound down.³³ Ms. Jaress agreed that this proposal would be in "a range of
22 reasonableness," and that she "would not have any strong objection to the way you have
23 described to do it."³⁴

²⁸ Staff Direct at 23.

²⁹ Tr. at 117.

³⁰ *Id.* at 117-18.

³¹ Companies Direct at 14.

³² Tr. at 118-119.

³³ *Id.*

³⁴ *Id.* at 119.

1 Because of the strong reasons for not requiring an early expiration and because Staff
2 believes that the Companies' proposal is in the range of reasonableness, the Companies propose
3 that Arizona-American be required to file for Commission authority to continue the Service Line
4 Programs after the Companies have three-years of data. While the Commission was conducting
5 its review, the Service Line Programs would continue to be offered and administered, with
6 claims being processed as usual. Following its review, the Commission could continue the
7 Affiliate Agreement, with or without modifications, or order that the Service Line Programs be
8 orderly wound down.

9 **4. Holding Company and Affiliate Interest Rule Waivers**

10 Staff has consistently recommended that Arizona-American and RWE should be ordered
11 to file for appropriate waivers of the Holding Company and Affiliate Interest Rules.³⁵ And just
12 as consistently, Staff has been unable to tell Arizona-American for what waivers it would be
13 appropriate to file. Further, Staff is not recommending that a filing need be made as part of this
14 docket.³⁶ Therefore, it would not appropriate for the Commission in this proceeding to impose
15 any sort of waiver requirement, when Staff has failed to identify what activities of what affiliates
16 involve some regulatory requirement for which a waiver would be necessary or appropriate, or
17 what the nature of the waiver would be.

18 **5. Revenue Sharing**

19 The Administrative Law Judge asked a series of questions concerning the appropriateness
20 of AWR sharing with Arizona-American some portion of Service Line Program revenues.³⁷ Mr.
21 Groh explained that this would be unfair unless Arizona-American shared an equivalent amount
22 of the Service Line Program costs and risks.³⁸ As a return-regulated entity, Arizona-American is
23 not willing to accept this risk.³⁹ Finally, requiring some kind of revenue sharing would make
24 AWR's participation with Arizona-American unlikely.

³⁵ Staff Direct at 24; Staff Rebuttal at 6.

³⁶ Tr. at 120.

³⁷ Tr. at 44-49.

³⁸ Tr. at 44-45.

³⁹ Which is why Arizona-American would not be able to offer this type of program on its own.

1 **6. Customer Risk Advisory**

2 The Administrative Law Judge also asked about providing some kind of advisory to
3 customers about the likelihood that they might make a claim under one of the Service Line
4 Programs.⁴⁰ Mr. Groh explained why this would be very difficult: “I can't tell you how often
5 your line may leak or break, again back to my example of my line which is a completely
6 different maybe age, composition, installation and other factors that might be involved.”⁴¹
7 Further, insurance companies, such as homeowners and automobile insurance companies do not
8 disclose the risk to loss to customers before selling insurance, yet informed consumers make
9 their purchase decisions without access to this information.⁴² This would apply to life insurance
10 marketing as well.

11 As a practical matter, Mr. Groh explained that AWR could not provide this information
12 even if it wanted to. Every service line is different. Given that this will be the first state in the
13 Desert Southwest where AWR seeks to offer the Service Line Programs, AWR could hardly be
14 expected to know how likely it might be that an oleander shrub would invade a Sun City
15 resident’s sewer line or the cost to repair the damage. It would be impossible for AWR to
16 determine how other factors (e.g., service-line age, type of pipe, pressures, maintenance, soils,
17 and vegetation) would affect the likelihood that a service line might fail and how much repairs
18 might run.

19 **V. CONCLUSION**

20 **A. The Service Line Programs Will Benefit Customers**

21 The benefits of the Service Line Programs are many:

- 22 ● Educates consumers that they are responsible for the water line and sewer line that
23 runs through their property between the street and their home.

⁴⁰ Tr at 39-43.

⁴¹ *Id.* at 41.

⁴² *Id.* at 56-60.

- 1 • Provides peace-of-mind protection from the most experienced water resource
2 manager in the country.
- 3 • Covers up to \$4,000 in repair costs that could result from leaks or breaks in the
4 customer owned portion of water line, and up to \$8,000 in repairs to clogged and
5 blocked sewer lines.
- 6 • Program enrollment fees are modest, only \$ 5.00 per month, (\$ 60 per year) for Water
7 Line Protection, and \$9.00 per month, (\$108 per year) for Sewer Line Protection.
- 8 • Eliminates the hassles of searching for a qualified repair contractor – AWR provides
9 expert, professional contractors, whose work is guaranteed.
- 10 • Contractor network is accessible 24/7 to respond to water and sewer line repairs.
- 11 • Offers an affordable solution for a potentially high cost repair of a problem that is
12 unpredictable, unpreventable, and is typically not covered by homeowners insurance.
- 13 • Customers only need to make one phone call, and AWR handles the rest.
- 14 • Program enrollment is optional.
- 15 • Payment terms are easy and affordable with convenient monthly billing on a
16 customer's utility water bill.

17 Arizona-American would like to provide modest assistance to help its customers have
18 access to the Service Line Programs. Where customers have the option to use the utility-bill-pay
19 option, as in most states, it is almost always selected. The utility-bill-pay option is convenient,
20 would cost Arizona American virtually nothing to provide, and would generate some revenue to
21 offset the Company's revenue requirement. If an Arizona-American service technician discovers
22 a customer service line problem, the Company would like to know if the customer has enrolled
23 in one of the Service Line Programs and be able to immediately notify AWR's service
24 representatives of the covered event. The alternative is that the service technician must say that
25 this is the customer's problem and that he or she must call a plumber to get it fixed.

26 Q. What's presently done when a technician goes to a home on a service
27 call and discovers that the line break is on the customer's line?

1 A. (MR. BIESEMEYER) The service person will tell the customer that
2 it's not the company's responsibility and that he needs to find a plumber or
3 contractor to do the repair. We can turn it off at the meter and turn his
4 water off and turn that water back on but we will not make the repair and
5 it's up to the customer to make that repair.

6 Q. Do you provide names of plumbers to the customers?

7 A. (MR. BIESEMEYER) We do not⁴³

8 **B. The Service Line Programs Should Be Authorized**

9 The Companies have thoroughly responded to each of Staff's informal and formal data
10 requests. They have carefully considered each of Staff's ten concerns and attempted to resolve
11 each one. Staff concedes that "[T]he Company's proposed modifications to the Agreement
12 greatly reduce Staff's concerns about Arizona-American's participation in the provision of the
13 programs"⁴⁴ Yet Staff has not budged an inch.

14 Ultimately, Staff can only say that the Agreement should be denied because: "the
15 Company has still not established a need for the service or that Arizona-American's participation
16 is necessary or in the public interest."⁴⁵ Let us take these in order.

17 Need. Need determination is simply not the Commission's role. Staff has not and cannot
18 show where the Holding Company and Affiliate Interest Rules require a company to establish
19 that there must be a need for an affiliate's service before the affiliate can offer that service.
20 RUCO, whose charter is to represent residential customers, did not wish to be the arbiter of
21 customer needs. Yet, Staff seeks to substitute its judgment for the customer's concerning
22 whether a program is needed.

23 In this country, it is the marketplace that determines whether a product is needed. No one
24 likely needs Lil' Kim's latest CD or \$200 Nikes. However, each customer is free to decide if a
25 product is right for him or her. A risk-averse customer may well decide that \$60 a year is a small
26 price to pay for peace of mind. That should be the customer's informed decision, not Staff's. As

⁴³ Tr. at 55-56.

⁴⁴ Staff Rebuttal at 7.

⁴⁵ *Id.*

1 long as the product is being fairly marketed and won't cause harm, the Commission should not
2 be involved in preempting customer choice.

3 AWR and its state utility affiliates offer the Service Line Programs in many other states.⁴⁶
4 In those states the utility customers make the informed decision of whether to say yes or no to
5 the program. Staff has not suggested that Arizona-American's customers are more naïve or less
6 bright than customers in other states. Arizona-American's customers should be offered the same
7 opportunity as customers in other states.

8 Arizona-American's Participation. If Arizona-American does not participate in the
9 program, the popular utility-bill-pay option will not be available to its customers. If Arizona-
10 American does not participate, it will not know if a customer has enrolled in one of the Service
11 Line Programs. Finally, as discussed above, AWR will have to use publicly available mailing
12 lists if Arizona-American does not participate, so fewer of its customers will even learn about the
13 availability of the Service Line Programs.

14 Public Interest. In Section V(A) above, the Companies demonstrated the many benefits
15 of the Service Line Programs, which, after all, is a low-cost, optional program. For these
16 reasons, the Service Line Programs are in the public interest.

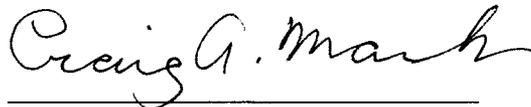
17 Arizona-American's participation is also in the public interest. As discussed above, the
18 Company's participation will ensure that more customers are exposed to the Service Line
19 Programs and will benefit participants by providing the customer bill-pay option and additional
20 local support.

21 Finally, Staff only had the opportunity to review and comment on the Service Line
22 Programs because of the arguable jurisdiction provided by the Holding Company and Affiliate
23 Interest Rules. However, if Arizona-American does not participate in the Service Line
24 Programs, these rules would not apply to AWR. AWR could directly market the Service Line
25 Programs, without any Commission involvement, if it decided that the burden of satisfying

⁴⁶ Staff Direct at 19. In two states, AWR offers the programs without its affiliate's assistance.

1 Staff's non-negotiable positions was too great. Further, Arizona-American could likewise
2 partner with a non-affiliate vendor to offer a similar program without any pre-review by the
3 Commission. It is more in the public interest for Arizona-American to support its affiliate's
4 Service Line Programs—with the aid of Staff, and the Commission's oversight—than either of
5 these alternatives.

6 RESPECTFULLY SUBMITTED on September 23, 2005.

7 

8
9
10 Craig A. Marks
11 Corporate Counsel
12 Arizona-American Water Company
13 19820 N. 7th Street
14 Suite 201
15 Phoenix, Arizona 85024
16 (623) 445-2442
17 Craig.Marks@amwater.com
18 Attorney for Arizona-American Water Company
19 and American Water Resources, Inc.
20

21 Original and 13 copies filed
22 on September 23, 2005, with:

23
24 Docket Control
25 Arizona Corporation Commission
26 1200 West Washington
27 Phoenix, Arizona 85007
28

29 Copies of the foregoing
30 delivered on September 23, 2005, to:

31
32 Dwight Nodes
33 Assistant Chief Administrative Law Judge
34 Arizona Corporation Commission
35 1200 West Washington St.
36 Phoenix, Arizona 85007
37

38 Janice Alward
39 Deputy Chief Counsel
40 Arizona Corporation Commission
41 1200 West Washington St.
42 Phoenix, Arizona 85007

1
2
3
4
5
6

By: Melissa Bronson
Melissa Bronson