

ORIGINAL



0000042683

LAW OFFICES

**FENNEMORE CRAIG**

A PROFESSIONAL CORPORATION

**JAY L. SHAPIRO**

Direct Phone: (602) 916-5366

Direct Fax: (602) 916-5566

*jshapiro@fclaw.com*

OFFICES IN:

PHOENIX, TUCSON,

NOGALES, AZ; LINCOLN, NE

3003 NORTH CENTRAL AVENUE

SUITE 2600

PHOENIX, ARIZONA 85012-2913

PHONE: (602) 916-5000

FAX: (602) 916-5999

February 14, 2006

**VIA HAND DELIVERY**

David Ronald, Esq.

Legal Division

Arizona Corporation Commission

1200 W. Washington St.

Phoenix, Arizona 85007

AZ CORP COMMISSION  
DOCUMENT CONTROL

2006 FEB 14 P 4: 26

RECEIVED

**Re: Gold Canyon Sewer Company, Docket No. SW-025191A-06-0015**

Dear David:

We are in receipt of Staff's Letter of Deficiency dated February 10, 2006 in the above-referenced Rate Filing. In short, only one of the items Staff identifies as deficient is valid, and that item involves an error in a filed schedule. A corrected schedule is provided herewith. As explained in more detail below, the other five alleged deficiencies are: (1) two mistakes made by the Staff analyst, Crystal Brown, in reading the filed schedules; (2) one request for information that, while not required, we have also provided herein; and (3) two items where Staff is rejecting schedules for reasons that are in direct contravention of the Commission's explicit filing requirements.

More specifically, Gold Canyon Sewer Company ("Gold Canyon" or the "Company") responds to Staff's Letter of Deficiency as follows:

Item No. 1--Bill Count and Other H Schedules: The H schedules were complete as filed. Mr. Bourassa spoke with Ms. Brown yesterday and determined that Ms. Brown was unaware that the actual revenue amounts she sought were already shown on the H-1 Schedule. Gold Canyon views this item as resolved.

Item No. 2--Income Tax Calculation: There is no requirement in the Commission's rules governing rate filings that a utility file an income tax calculation, nor, in our significant experience, has Staff ever attempted to impose such a requirement. Nevertheless, in an effort to cooperate with Staff where it is reasonable to do so, a copy of the Company's income tax calculation is attached. Gold Canyon views this item as resolved.

# FENNEMORE CRAIG

David Ronald, Esq.

February 14, 2006

Page 2

Item No. 3--Common Equity D-1 and E-1 Schedules: Mr Bourassa also spoke with Ms Brown about these schedules yesterday and explained that the D-1 equity is adjusted, as shown in Notes 1 and 2 on the D-1. The Company views this item as resolved.

Item No. 4--Comparative Date-E Schedules: Staff's finding that the filing is deficient because the E schedules do not use the same 12 month period as the test year is directly contradicted by the Commission rules. Those rules require that all utilities file E Schedules setting forth comparative data for the "end of the test year and the 2 *fiscal* years ended prior to the end of the test year". R14-2-103.B (emphasis supplied). Gold Canyon's "*fiscal*" year is based on a calendar year and the Company complied exactly with the established filing requirement. Moreover, Staff agreed in June 2005 to the filing of this rate case by December 31, 2005 (later amended to January 13, 2006) and that requirement was ordered by the Commission. See Procedural Order dated July 18, 2005. Staff knew at that time that the test year would not end December 31, 2005, yet Staff never asserted that the Company's filing should include comparative data based on something other than the "fiscal" year requirement set forth in the Commission's rules. By waiting and asserting such a requirement now, after the case has been prepared and filed as ordered by the Commission, Staff's actions are prejudicial.

Preparing the information Staff wants would substantially delay the rate proceeding and significantly increase rate case expense. Such delay and added expense is totally unnecessary. The purpose of the E schedules is to provide recent information to compare with the test year information in order to ascertain whether any of the test year expenses are unusual or non-recurring. Staff already has two such 12-month periods in its possession and we expect it will also seek a third, the 2005 fiscal year numbers, during the discovery period. In short, Staff has all the information it needs to compare the test year information with other recent 12-month periods. It is entirely immaterial that such 12-month periods are January 1 through December 31 and the test year is November 1 through October 31, as the Commission recognized when it adopted its rules requiring that E schedules contain data on two prior "*fiscal*" years. It is Gold Canyon's position that Staff should withdraw this finding.

Item No. 5--Year End Customers and Annual Revenue, Schedule E-7: There was a #REF error on the filed copy. A revised E-7 schedule is attached and the Company views this item as resolved.

Item No. 6--Payables to Associated Companies, Schedules E-1 and E-2: As explained above in response to Item No. 4, the comparative data in the E Schedules are based on the two prior fiscal years as required by the Commission's rules. It is Gold Canyon's position that Staff should withdraw this finding.

In, summary, two of Staff's deficiency items were easily corrected by reference to the existing filing, two more have been resolved herein and the remaining two are contradicted by the Commission's rules setting forth the filing requirements. Regarding the latter, Staff has

# FENNEMORE CRAIG

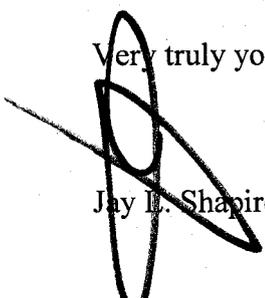
David Ronald, Esq.  
February 14, 2006  
Page 3

offered no explanation concerning its reasons for ignoring the rules and I respectfully suggest that Staff's position is the very behavior the industry feared Staff would engage in when the rules were adopted. *See* Decision No. 57875 (May 18, 1992).

In that decision, the Commission directed that the purpose of the "sufficiency review" was for Staff to conduct a "technical" review of the filing to make sure it complied with the Commission's rules. *Id.* at Attachment A, p. 2-3 and Attachment B, p. 11-12. Where Staff found otherwise, it is required to explain the reason for finding that the rules were not followed. *Id.* When utilities complained that Staff should not be allowed to make such determinations given its status as a party to rate cases, Staff avowed that it would not "abuse or misuse its discretion in determining the sufficiency of a filing." *Id.* at Attachment B, p. 11. Yet, that is exactly what Staff is doing here by attempting to impose unwritten requirements that contradict the explicit filing requirements Staff is to use to evaluate sufficiency. Moreover, since Staff already has the information it needs to evaluate the test year, Staff's attempt to enforce additional requirements does not benefit ratepayers. In fact, it does the opposite as ratepayers would bear the burden of substantial additional rate case expense while the Company suffers the prejudice of unwarranted delay.

In closing, we had hoped Staff would agree to our informal request to withdraw the two improper and unwarranted deficiency findings without our having to involve the Hearing Division or the Commissioners. We are very disappointed that Staff has instead dug in its heels on this issue and, as a consequence of Staff's intransigence, have asked the Hearing Division to schedule a Procedural Conference to address the matter. That conference is scheduled for Friday, February 17 at 1:00 pm with Assistant Chief Administrative Law Judge Nodes. During that conference, we intend to ask Judge Nodes to compel Staff to issue a sufficiency determination.

Very truly yours,

  
Jay L. Shapiro

cc: Docket Control  
Assistant Chief Administrative  
Law Judge Dwight Nodes  
James Dorf, Utilities Division  
Gold Canyon Sewer Company

# **INCOME TAX CALCULATION**

DOCKET SW-2519A-06-0015

Gold Canyon Sewer Company  
Income Tax Calculation (Adjustment 10)

	Test Year Book Results	Test Year Adjusted Results	Adjusted with Rate Increase
Income Before Taxes	<u>1,032,175</u>	<u>279,926 (1)</u>	<u>2,754,693 (2)</u>
Arizona Income Before Taxes	1,032,175	279,926	2,754,693
Less Arizona Income Tax Rate = 6.97%	71,922	19,505	191,947
Arizona Taxable Income	<u>960,253</u>	<u>260,421</u>	<u>2,562,746</u>
Arizona Income Taxes	<u>71,922</u>	19,505	191,947
Federal Income Before Taxes	1,032,175	279,926	2,754,693
Less Arizona Income Taxes	<u>71,922</u>	<u>19,505</u>	<u>191,947</u>
Federal Taxable Income	<u>960,253</u>	<u>260,421</u>	<u>2,562,746</u>
<b>FEDERAL INCOME TAXES:</b>			
15% BRACKET	7,500	7,500	7,500
25% BRACKET	6,250	6,250	6,250
34% BRACKET	8,500 Federal	8,500 Federal	8,500 Federal
39% BRACKET	91,650 Effective	62,564 Effective	91,650 Effective
34% BRACKET	212,586 Tax Rate	0 Tax Rate	757,434 Tax Rate
Federal Income Taxes	<u>326,486</u> 31.63%	<u>84,814</u> 30.30%	<u>871,334</u> 31.63%
Total Income Tax	<u>398,408</u>	<u>104,319</u>	<u>1,063,281</u>
Overall Tax Rate	<u>38.60%</u>	<u>37.27%</u>	<u>38.60% (3)</u>
Calculated Income Tax at proposed effective tax rate		(1) times (3) -> \$ 108,048	(2) times (3) -> \$ 1,063,281

**REVISED SCHEDULE E-7**

Gold Canyon Sewer Company  
Test Year Ended October 31, 2005  
Operating Statistics

Exhibit  
Schedule E-7  
Page 1  
Witness: Bourassa  
**REVISED**  
SW-02519A-06-0015

Line No.		Test Year Ended <u>10/31/2005</u>	Prior Year Ended <u>12/31/2004</u>	Prior Year Ended <u>12/31/2003</u>
1	<u>SEWER STATISTICS</u>			
2				
3				
4				
5	Sewer Revenues from Customer:	\$ 2,440,694	\$ 2,251,095	\$ 2,034,111
6				
7				
8				
9				
10	Year End Number of Customers	5,299	4,915	4,463
11				
12				
13				
14	Annual Revenue per Year End Customer	\$ 460.60	\$ 458.01	\$ 455.77
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				