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BEFORE THE ARIZONA CORPORATION COMMISSION

6 CARL J. KUNASEK
7 CHAIRMAN
8 JAMES M. IRVIN
9 COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

10 IN THE MATTER OF THE JOINT)
11 APPLICATION OF SUN CITY WATER)
12 COMPANY AND SUN CITY WEST)
13 UTILITIES COMPANY FOR)
14 APPROVAL OF CENTRAL ARIZONA)
15 PROJECT WATER UTILIZATION)
16 PLAN AND FOR AN ACCOUNTING)
17 ORDER AUTHORIZING A)
18 GROUNDWATER SAVINGS FEE AND)
19 RECOVER OF DEFERRED CENTRAL)
20 ARIZONA PROJECT EXPENSES.)

DOCKET NO. W-01656A-98-0577
SW-02334A-98-0577

Arizona Corporation Commission
CLOSING BRIEF DOCKETED

NOV 05 1999

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17 **1. Introduction**

18 The opening statement of counsel for the CAP Task Force was designed to
19 focus on the water issues in this case, and to converge them into a simple and direct
20 summary of the essential elements of this case. Those key elements of the water
21 issues are as follows:

22 1. The CAP Task Force had recognized that the groundwater aquifer of the
23 Retirement Communities (Youngtown, Sun City and Sun City West) was being
24 overused through groundwater pumping in excess of natural or incidental recharge.
25 As a result, the water table of the underground aquifer was dropping, and that
26 portended serious future consequences.

27 2. CAP water could be put to use to diminish the Retirement Communities'

1 reliance on groundwater, provided that it were used on the golf courses for turf
2 irrigation. Using CAP water on the golf courses would allow an offsetting reduction in
3 the pumping of groundwater now being used on the golf courses, and thus would
4 directly benefit the aquifer beneath the Retirement Communities. No other method of
5 using CAP water has been shown to achieve such a direct benefit to the Retirement
6 Communities. The use of CAP water on the golf courses was referred to in all the
7 testimony as the "Long-Term" plan, and will be so referenced herein.

8 3. Continued overdraft of the underground aquifer will, in the immediate
9 future, give rise to serious problems in the Retirement Communities from subsidence,
10 degradation of water quality, increased pumping costs, and regulatory sanctions.

11 4. The leadership of the Retirement Communities had conducted an
12 extensive education campaign in their communities and had concluded that there was
13 overwhelming support for making use of CAP water even though a substantial
14 investment cost in infrastructure would be incurred, provided that the ratepayers
15 would get the direct benefit from the costs of the CAP water. That is, only the Long-
16 Term plan would be acceptable to the ratepayers since it was the only plan which put
17 the CAP water to direct use in combatting the four problems (subsidence, water
18 quality degradation, increased pumping costs and regulatory sanctions) which the
19 Retirement Communities were specifically and realistically facing.

20 The various testimony and support materials furnished by the CAP Task Force
21 were designed to establish those four basic points as our argument in this case.

22 We believe that the testimony presented by the utility, especially the
23 enlightening testimony of Mrs. Rossi, substantially supported the position of the CAP
24 Task Force.

25
26 The Commission's staff also supported all the conclusions of the CAP Task
27 Force regarding the water issues at stake in this case.

1 The Sun City Taxpayers Association ("SCTA") agreed with the basic issue of
2 using CAP water on the golf courses, but wanted alternate engineering approaches
3 toward achieving that goal to be considered. We have disagreed with the approach
4 taken by the SCTA engineer who testified on the alternatives, and will discuss the
5 reasons for our disagreement in a later section of this brief. However, we think it
6 important to note that SCTA did not present any testimony in contravention to the
7 basic elements and analysis of the water issues as presented by the CAP Task Force
8 and as summarized above.

9
10 RUCO presented a witness who disagreed with the course of action being
11 recommended by the CAP Task Force, and we will address the reasons for our
12 disagreement with RUCO's position in a later section of this brief.

13 RUCO also disagreed with the manner in which the utility had recommended
14 that the costs of the CAP water investment and the infrastructure investment
15 attendant on adoption of the long-term plan be recovered from the ratepayers. The
16 CAP Task Force believes that the testimony of Mrs. Rossi on behalf of the utility
17 effectively answered RUCO's objections, and we will not deal with that issue in this
18 brief except to briefly reiterate, in a later section of this brief, the position which has
19 been taken by the CAP Task Force in favor of an equal sharing of the costs among
20 the ratepayers.

21
22 Lastly, we believe it has been the long-standing position of the Commission
23 that the ratepayers of a utility should not have to bear the cost of utility investments
24 unless it is first shown that the investment will be both "used and useful" to those
25 ratepayers. The CAP Task Force presented the case that only the adoption of the
26 Long-Term plan provided a solution whereby the CAP water could be said to be
27 useful to the ratepayers who would be asked to carry the burden of its costs. There

1 was no testimony presented which rebutted that basic premise.
2

3 **2. The Testimony of SCTA Witness Husted**

4 The key point in the testimony of Mr. Husted, SCTA's engineering witness,
5 was his admission that some 68% of the cost potential savings which he was
6 projecting had to come from a re-apportionment of the water delivered to Sun City
7 versus that delivered to Sun City West. By substantially reducing the water to be
8 received by Sun City, Mr. Husted postulated that savings could be made in the
9 design of the infrastructure needed to bring a minimal amount of water to Sun City.

10 As one would expect, such a proposal was flatly rejected by both communities,
11 and Mrs. Hubbs in her testimony confirmed that such a reapportionment would be
12 completely unacceptable to the Retirement Communities. Both the Sun Cities were
13 originally given CAP water allocations and they both recognize what a precious
14 resource that is. Sun City would certainly not be willing to give up a major portion of
15 its CAP allotment to any other community, and Sun City West would not want to enter
16 into any such arrangement.

17 A quick review of the subsidence maps in the materials prepared by the
18 hydrogeologist, Mr. Herb Schumann, who prepared the "white papers" submitted as
19 part of the testimony submitted by the CAP Task Force, shows that the line of
20 subsidence emanating from the Luke salt dome is spreading most rapidly toward Sun
21 City and, if unchecked, will hit that community the soonest. As a result, Sun City
22 would have no interest in giving up a major part of the CAP water allocation which is
23 so seriously needed to combat the subsidence problem.

24 Further, a re-allocation of the CAP allotments held by the respective utilities
25 serving Sun City and Sun City West has not been a part of this rate hearing and was
26 never a part of the issues as proposed by the Commission to the Retirement
27 Communities in its prior order in this case. As a result, the CAP Task Force would

1 ask that the Commission Hearing Officer would not take up such a novel concept,
2 especially one which so is clearly unacceptable to the communities whose interests
3 are at stake.

4
5 **4. Testimony by RUCO's Witness.**

6 RUCO has taken the position that the Commission should adopt the "interim"
7 plan for the foreseeable future. In their testimony, their witness advocated holding
8 off indefinitely on adoption of the Long-Term plan. RUCO's witness expressed two
9 main concerns as motivating them to adopt that position, as follows:

10 (a) The RUCO witness did not want to be inundated with phone calls from
11 persons who favored the Long-Term plan at this point in time but who might change
12 their minds and complain to RUCO when they got their bills. The CAP Task Force
13 believes that a concern about the level of such phone calls is speculative, and in any
14 event should not be a basis for decision-making by the Commission.

15 (b) The RUCO witness urged postponement of adoption of the Long-Term
16 plan because of a sense of distrust regarding the new owners of the Citizens utility
17 water companies who are the moving parties in this case. Here again, RUCO's
18 concerns are speculative, and the CAP Task Force has to assume that an order of
19 the Commission in this case will be upheld regardless of who is a successor in
20 interest to the present ownership of the water companies which serve the Retirement
21 Communities.

22 Even more disturbing was the assumption by the RUCO witness that since the
23 interim plan would relieve groundwater pumping elsewhere in Maricopa County (e.g.,
24 Goodyear) it was thereby serving an over-arching goal of state water policy and
25 hence was acceptable.

26 This perspective is unacceptable to the CAP Task Force since it ignores two
27 basic fact situations which have been developed in the testimony, as follows:

1 (a) The Arizona Department of Water Resources (ADWR) does recognize
2 that specific geographic areas of the County are "Critical Water Management Areas"
3 (including the area of the Retirement Communities) and is demanding that the
4 residents of those local areas take steps to correct groundwater overdraft or face
5 regulatory sanctions. ADWR has adopted both an overall state water policy interest
6 and a local interest in preserving groundwater. And one can't simply ignore the latter.
7 It is the view of the CAP Task Force that the failure of RUCO to recognize that there
8 is a legitimate state policy which is being served by addressing a local water issue
9 seriously undermined their analysis.

10 (b) RUCO simply didn't deal with the combined and imminent threats of
11 subsidence, water quality degradation, increased pumping costs and regulatory
12 demands which are facing the Retirement Communities.

13
14 **5. RUCO's Position Regarding a Use-based Rate.**

15 The CAP Task Force believes that the final testimony of Mrs. Rossi, the
16 Citizens' witness, effectively answered RUCO's concern relative to tying the rates to
17 be paid by the residents of the Retirement Community to the amount of water used or
18 to a conservation strategy.

19 We would, however, like to refer the Hearing Officer to the public statement
20 which was made in the record at the commencement of the hearing by Mr. James
21 Regan, immediate past president of the Sun City Condominium Owners Association.
22 Mr. Regan very effectively pointed out that a CAP water rate based on the amount of
23 water used would place an unfair burden on those least able to pay. The CAP Task
24 Force had considered this issue of how the rates would affect the various groups of
25 residents in the Retirement Communities and has strongly supported the concept of
26 an equal sharing of the costs of CAP water by all residents.

27

1 **6. Essential Elements of a Commission Order in This Case.**

2 In his testimony at the hearing, Citizens' witness Ray Jones' responses to
3 questions from counsel for the CAP Task Force focused attention on three key issues
4 which the Task Force believes should be an essential part of any order framed by the
5 Commission in this case, as follows:

6 (a) The utility must be required to provide the public with its final cost
7 estimates, including all the engineering details and reports which support those
8 estimates, for the infrastructure which will be required for the Long-Term plan.

9 (b) Citizens must be required to provide the public with a detailed
10 engineering and construction schedule for the completion of the Long-Term plan, and
11 then issue quarterly reports on their progress in meeting plan milestones.

12 (c) Lastly, as discussed on the Statement placed in the record by the CAP
13 Task Force, the Commission should consider a very express sanction against the
14 utility to the effect that if it failed to complete the implementation of the Long-Term
15 plan within some time certain (e.g. 42 months), then the utility must return to the
16 ratepayers all the money which it has collected for its CAP costs.

17 The CAP Task Force feels very strongly about these requirements since, as
18 was repeatedly mentioned in the testimony, the interim plan really offers no direct
19 benefit to the ratepayers of the Retirement Communities. Getting stuck with the
20 interim plan would, for the Retirement Communities, be the worst of all worlds since
21 they would be paying for water that was of no real benefit to them.

22
23 **6. Conclusion**

24 The CAP Task Force respectfully requests that the Hearing Officer find that the
25 Long-Term plan must be implemented for the Retirement Communities by the utility,
26 and that an order be drafted which provides the necessary safeguards to assure that
27 the Long-Term plan will indeed be completed in a timely manner.

1 **Respectfully submitted this November 5, 1999.**

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3 **BEYER, McMAHON & LaRUE**

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6 William G. Beyer, Esq.

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