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ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

2003 FEB 25 P 12: 50

DOCKETED

AZ CORP COMMISSION
DOCUMENT CONTROL

FEB 25 2003

DATE: February 25, 2003
DOCKET NO: W-01445A-02-0198
TO ALL PARTIES:

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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:

SLV PROPERTIES, L.L.C. 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:

MARCH 6, 2003

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:

MARCH 11 and 12, 2003

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 JIM IRVIN
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
7 MIKE GLEASON

8 IN THE MATTER OF:
9 SLV PROPERTIES, L.L.C.,
10 Complainant,
11 vs.
12 ARIZONA WATER COMPANY,
13 Respondent.

DOCKET NO. W-01445A-02-0198

DECISION NO. _____

OPINION AND ORDER

14 DATE OF HEARING: December 3, 2002
15 PLACE OF HEARING: Phoenix, Arizona
16 ADMINISTRATIVE LAW JUDGE: Marc E. Stern
17 APPEARANCES: Kenneth J. Vegors and Ronald Saxon, principals,
18 on behalf of SLV Properties, LLC; and
19 Robert W. Geake, Vice President and General
20 Counsel, Arizona Water Company.

21 **BY THE COMMISSION:**

22 On March 18, 2002, SLV Properties, L.L.C. ("SLV" or "Complainant") filed with the
23 Arizona Corporation Commission ("Commission") a Complaint against Arizona Water Company
24 ("AWC" or "Respondent") alleging that AWC was negligent in providing service to the
25 Complainant.

26 On March 28, 2002, Respondent filed an Answer to the allegations of the Complaint.

27 On April 3, 2002, by Procedural Order, a pre-hearing conference was scheduled for April 18,
28 2002.

On April 5, 2002, AWC filed a Motion to Continue the pre-hearing. Complainant did not
object to this request.

1 On April 11, 2002, by Procedural Order, the pre-hearing was continued to May 2, 2002.

2 On May 2, 2002, a pre-hearing conference was held with representatives of SLV and the
3 Respondent present. Issues involved in the proceeding were discussed and the parties agreed to
4 attempt to resolve the Complaint. They further agreed to a teleconference on June 4, 2002, to review
5 the Complaint's status.

6 On June 4, 2002, the parties were unable to resolve the Complaint. Prior to a hearing being
7 set, SLV requested time to consult with counsel and agreed to notify the Commission within 30 days
8 as to when it could go forward with its Complaint.

9 On June 5, 2002, by Procedural Order, SLV's request for a 30 day continuance was granted
10 and SLV was to contact the presiding Administrative Law Judge to schedule a hearing.

11 On July 8, 2002, SLV filed a request to schedule a hearing to accommodate the business
12 travel schedule of Mr. Saxon, a principal of SLV. It was subsequently indicated that Mr. Saxon was
13 expected to be in Arizona after November 1, 2002.

14 On July 17, 2002, by Procedural Order, the hearing was scheduled on November 13, 2002.

15 On November 12, 2002, SLV requested a brief continuance telephonically due to a scheduled
16 surgery on a family member of a principal in SLV. Respondent did not object to this request.

17 On November 14, 2002, by Procedural Order, the Commission continued the proceeding from
18 November 13, 2002 until December 3, 2002.

19 On November 18, 2002, SLV filed an amendment to its Complaint.

20 On December 3, 2002, a full public hearing was held before a duly authorized Administrative
21 Law Judge of the Commission at its offices in Phoenix, Arizona. Two principals in SLV appeared on
22 its behalf. AWC was represented by counsel. At the conclusion of the hearing, the matter was taken
23 under advisement pending submission of a Recommended Opinion and Order to the Commission.

24 * * * * *

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

27 **FINDINGS OF FACT**

28 1. Pursuant to authority granted by the Commission, AWC provides public water utility

1 service in the vicinity of Apache Junction, Pinal County, Arizona.

2 2. On March 18, 2002, SLV dba MountainBrook Golf Club, L.L.C. ("MountainBrook"),
3 a wholly owned subsidiary of SLV, filed a Complaint against AWC alleging it was attempting to
4 collect the replacement cost of an electronic water meter used to supply non-potable Central Arizona
5 Project ("CAP") water to MountainBrook because AWC had failed to maintain insurance on utility
6 property, which, when damaged, required Complainants to pay for its maintenance pursuant to
7 AWC's NP-260 Tariff ("Tariff").

8 3. MountainBrook is provided with non-potable CAP water for irrigation purposes
9 pursuant to Respondent's Tariff, which was originally approved by the Commission in Decision No.
10 58593 (April 6, 1994) and subsequently revised by Decision No. 58949 (January 12, 1995) and
11 Decision No. 61579 (March 15, 1999). The Commission, in Decision No. 61579, found that "[t]he
12 Tariff is designed to pass through to the customer all of the costs (emphasis added) involved in
13 providing non-potable Central Arizona Project ("CAP") water service plus amounts for
14 administration. The Tariff places the applicable costs of service on the appropriate customers while
15 encouraging the conservation of ground water."

16 4. The Tariff identifies a number of components which comprise the respective
17 customer's monthly bill and includes a power, maintenance and depreciation charge based on the
18 specific requirements of each customer.

19 5. With respect to the maintenance component, the Tariff states as follows:

20
21 B. The maintenance component will be the actual costs of
22 maintaining the facilities required to serve the customer,
23 plus a ten percent (10%) charge to provide for overhead
24 and margin. If multiple customers are being served by
25 common facilities, the maintenance component will be
26 prorated based on each customer's CAP demand.

27 6. Under the terms of the Tariff, the customer is required to contribute the funds required
28 to install all of the facilities needed to provide CAP water and said facilities are then owned by
Respondent.

29 7. SLV was not an original party to the agreement between Respondent and
MountainBrook to provide the golf course with water. The original agreement had been between

1 UDC Homes ("UDC") and AWC, but after UDC went into bankruptcy, its assets were purchased by
2 a third party which then sold the golf course to SLV.

3 8. Due to the circumstances of the bankruptcy proceeding, at the time SLV acquired
4 MountainBrook, its principals were unaware of the Tariff requirement to transfer ownership of the
5 CAP facilities from MountainBrook to AWC and the requirement for Complainant to pay
6 maintenance charges for the transferred facilities.

7 9. SLV's initial Complaint grew out of an incident involving a lightning strike during an
8 electrical storm, which created a power surge in mid-July, 2001. The power surge rendered
9 inoperable AWC's electronic meter which measures the flow of CAP water through a six inch main
10 that brings irrigation water to MountainBrook.

11 10. On or about July 18, 2001, AWC hired Pump, Valve & Control Service, Inc. ("PVC")
12 to repair MountainBrook's electronic water meter.

13 11. PVC charged Respondent \$3,631.98 to repair MountainBrook's electronic water
14 meter. PVC's bill to AWC stated that MountainBrook's power supply and front panel display had
15 been burned out by the electrical storm. PVC's invoice also stated that the power supply and front
16 panel display were replaced "as Required."

17 12. AWC deducted \$1,250 from what it had been charged by PVC because it salvaged a
18 number of parts for use in the future, billing MountainBrook the remaining \$2,381.98 plus 10%
19 overhead (\$238.20) pursuant to the terms of its Tariff for a total of \$2,620.18 for the maintenance
20 performed on AWC's meter.

21 13. A principal in SLV, Mr. Kenneth Vegors, testified that since Complainant has been
22 required to transfer ownership of the electronic water meter to AWC after SLV acquired
23 MountainBrook, it was assumed that AWC would be responsible for the equipment since SLV no
24 longer had an insurable interest in the property.

25 14. Until the damage claim arising from the electrical surge in July 2001, SLV's
26 principals remained unaware of their obligation under the Tariff to maintain Respondent's property
27 utilized in the provision of CAP water to MountainBrook.

28 15. In addition to the electronic flow meter utilized for CAP water used for irrigating

1 MountainBrook, AWC also provides potable water to the facility for drinking and other purposes
2 through a separate meter.

3 16. Since the initial damage and repairs to AWC's meter in July 2001, the bill to SLV for
4 maintenance has gone unpaid and as of November 9, 2002, the balance owed for this service
5 including late charges and taxes has increased to \$3,378.93.

6 17. Subsequent to the initial incident complained of herein, on or about September 3,
7 2002, a second electrical storm took place and further damage was done to Respondent's electronic
8 water meter which provides CAP water to MountainBrook, resulting in an additional bill being issued
9 to Complainant for maintenance performed on AWC's property.

10 18. As a result of the second incident, Respondent billed the Complainant \$1,046.47 for
11 maintenance after repairs were again made by PVC for what appears to be similar damage. This
12 maintenance fee was somewhat lessened by AWC providing PVC with some of the salvaged parts
13 from the earlier incident to repair its meter following the second electrical storm.

14 19. On November 18, 2002, SVC amended its Complaint to include the charges for the
15 maintenance on AWC's meter arising from the second electrical storm contending that it goes beyond
16 maintenance and is more related to the replacement of AWC's meter¹.

17 20. SLV's principal argued that "replacement" of AWC's facilities is not within the scope
18 of maintenance as stated in the Tariff.

19 21. Subsequent to the second electrical damage incident, SLV's principals investigated
20 whether the installation of a surge suppression system could prevent incidents such as described
21 hereinabove to Respondent's electronic water meter.

22 22. According to SLV's principal, Mr. Vegors, PVC indicated that a surge suppression
23 system could be installed for \$518 to protect the meter, but PVC would first have to secure AWC's
24 authorization to perform the work to insure payment.

25 23. There is no evidence that, prior to SLV's investigation of this matter with respect to
26 the surge suppression system, AWC investigated whether it could better insulate its customer from

27 ¹ It is interesting to note that, under the Tariff, SLV is also paying a monthly depreciation charge based on the
28 original cost of the meter which, according to SLV's bills, is \$2,446, which sum is substantially less than the total of the
two maintenance charges.

1 unexpected maintenance charges due to electrical surges damaging the water meter.

2 24. In closing, Complainant further complained that AWC had been holding a \$10,400
3 deposit since 1997 when it took over the operations of MountainBrook and believes that the deposit
4 should be refunded. However, this issue had not been raised previously in this proceeding and AWC
5 was not prepared to respond to these new allegations.

6 25. While SLV has not paid for the repairs following the first electrical strike, which sum
7 with late charges and sales tax added to it now totals \$3,378.93, SLV mistakenly included a payment
8 for \$994.42² for the maintenance charge due to the second electrical storm in its November, 2002
9 payment to AWC for water service and is requesting a refund of the sum paid for this maintenance.

10 26. Based on the record, at least in the first instance, Complainant did not meet its burden
11 of proof that it should not be held accountable for the maintenance of its electronic water meter under
12 the terms of the Tariff.

13 27. SLV argues that the obligation for installing a surge suppression system to protect
14 AWC's electronic water meter should be AWC's since the Complainant does not own the meter and
15 does not have any control over how it is maintained by AWC.

16 28. According to AWC's vice-president of operations, Mr. William Garfield, AWC's
17 electronic water meter, which measures CAP water distribution to MountainBrook, is one of five
18 electronic meters which measure CAP water provided by AWC's Apache Junction system to three
19 customers that purchase CAP water from AWC. These meters are part of a distribution system which
20 was constructed and owned by Mr. Lyle Anderson for five golf courses in the area, MountainBrook,
21 the Gold Canyon Resort Golf Course and the Superstition Mountain Courses which are owned by Mr.
22 Anderson.

23 29. The six-inch electronic water meter used to measure CAP water delivered to
24 MountainBrook was installed by either UDC or its contractor, and was to be treated as a contribution
25 by AWC. After SLV acquired MountainBrook, AWC required SLV to convey the meter facilities to
26 AWC as required by the Tariff.

27 _____
28 ² This sum was apparently due to a revision by AWC of the original bill for maintenance sent to SLV in
September 2002 for \$1,046.47

1 30. Referring to photographic exhibits, Mr. Garfield testified that MountainBrook's
2 electronic water meter is composed of multiple components consisting of cables, enclosures, power
3 sources, a ductile spool and sensors attached to the six-inch water main which provides CAP water to
4 MountainBrook. The sensors send a signal into the water flowing through the main to determine its
5 velocity and thus the volume of water being used. The sensors are connected by conduits which are
6 connected to a junction box from which another cable exits the meter vault and goes to the actual
7 meter display which is located above ground.

8 31. Mr. Garfield further testified that the purpose of the NP-260 Tariff was to provide
9 AWC with a method to recover the costs that it incurred for CAP water together with a small
10 administrative fee and did not constitute income as such to the Company.

11 32. Mr. Garfield acknowledged that one way to mitigate the effects of power surges due to
12 electrical storms is by means of "a surge protector, not unlike what one would have on a personal
13 computer, a PC that most people have plugged into their homes."

14 33. Mr. Garfield pointed out that although the customer provides the power to operate
15 AWC's electronic water meter used to measure CAP water, AWC hires a contractor, PVC, to
16 perform maintenance on AWC's electronic meters.

17 34. AWC's representative further pointed out that the electronic water meter at Gold
18 Canyon was also damaged similarly at the time of the first electrical storm, but Gold Canyon did not
19 dispute the same maintenance charge as disputed by SLV.

20 35. AWC argues that if AWC approves a request for surge protection, it is the customer's
21 responsibility to pay for the installation of a surge protection system to protect AWC's electronic
22 water meter.

23 36. Mr. Garfield indicated that one reason AWC did not have surge suppression
24 equipment to protect its electronic water meter serving MountainBrook was because AWC had not
25 been involved in the original installation by UDC. However, he indicated that AWC installs surge
26 protection equipment on other sensitive equipment that it has in the field.

27 37. Unlike the CAP water Tariff, under AWC's general service tariff, the expense of
28 repair and/or replacement of a water meter owned by AWC is AWC's responsibility unless there is

1 IT IS FURTHER ORDERED that the Commission's Utilities Division should examine
2 whether the issue raised with respect to SLV Properties, L.L.C.'s deposit is proper under the
3 circumstances and, if appropriate, insure that Arizona Water Company refunds SLV Properties,
4 L.L.C.'s deposit when appropriate.

5 IT IS FURTHER ORDERED that the Commission's Utilities Division shall review the NP-
6 260 Tariff of Arizona Water Company during the pending general rate application for its Apache
7 Junction system and recommend changes or revisions as required.

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

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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11
12 CHAIRMAN COMMISSIONER COMMISSIONER

13
14 COMMISSIONER COMMISSIONER

15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
16 Secretary of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this ____ day of _____, 2003.

20
21 _____
22 BRIAN C. McNEIL
23 EXECUTIVE SECRETARY

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28
21 DISSENT _____

22 DISSENT _____

23 MES:mlj

1 SERVICE LIST FOR:

SLV PROPERTIES, L.L.C. v. ARIZONA WATER
COMPANY

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3 DOCKET NO.

W-01445A-02-0198

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