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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF ARIZONA-AMERICAN WATER COMPANY – AGUA FRIA DIVISION SEWER HOOK-UP FEE TARIFF REVISIONS

DOCKET NO. SW-01303A-02-0628

IN THE MATTER OF ARIZONA-AMERICAN WATER COMPANY – AGUA FRIA DISTRICT – WATER FACILITIES HOOK-UP FEE TARIFF REVISIONS

DOCKET NO. W-01303A-02-0629

ARIZONA-AMERICAN WATER COMPANY'S RESPONSE TO NOTICE OF FILING OF STAFF REPORT

Pursuant to the July 3, 2003 Procedural Order, Arizona-American Water Company (“Arizona-American” or the “Company”), Applicant in these consolidated dockets, hereby provides its response to the Notice of Filing of Staff Report (“Staff Report”) submitted on August 8, 2003. In short, Staff now recognizes that the Company’s legal position, asserted in response to Staff’s January 2003 Motion to Dismiss, was correct as a matter of law. *See, e.g.,* Staff Report at 1. Accordingly, the only thing left to be determined is whether Arizona-American’s request for approval of hook-up fee tariffs for its Agua Fria district water and wastewater operations should be approved now, or further delayed and approved in connection with Arizona-American’s pending rate case. Put bluntly, this matter has already been pending with the Commission for one year and there is no just reason for further delay.

1 **I. INTRODUCTION AND BACKGROUND**

2 Arizona-American's request for approval of hook-up fees was filed on August 15,
3 2002. Specifically, Arizona-American sought to expand authorization to collect hook-up
4 fees throughout its Agua Fria water and wastewater districts. Initially, the Commission
5 authorized the Company to collect hook-up fees in a portion of its certificated service area,
6 the area where the new Verrado development is located. Decision No. 64307 (December
7 28, 2001). Arizona-American's request for approval in these dockets simply sought to
8 extend the applicability of those hook-up fees throughout the entire Agua Fria water and
9 wastewater CC&Ns. *See* Staff Engineering Memorandum, December 20, 2002.

10 Despite concluding that the proposed revisions to the collection of hook-up fees in
11 the Agua Fria district were reasonable as submitted by Arizona-American, Staff moved to
12 dismiss the Company's request asserting that the 2001 decision of the Court of Appeals in
13 *US West Communications, Inc. v. Arizona Corp. Comm'n*, 201 Ariz. 242 (2001) required
14 the Commission to determine the fair value of Arizona-American's property before
15 approving the expanded collection of hook-up fees. *See, generally*, Staff's Motion to
16 Dismiss. In response, Arizona-American argued that the decision in *US West* did not
17 address the authorization of hook-up fees nor require the Commission to deviate from
18 established Commission policy and precedent holding that hook-up fees do not require a
19 finding of fair value by the Commission. *See, generally*, Arizona-American Water
20 Company's Response to Staff's Motion to Dismiss Application. Ultimately, the
21 Commission, by a 3 to 2 vote, agreed with Staff concluding that it was necessary to make
22 a fair value finding prior to approving collection of hook-up fees. Decision 65800 (April
23 9, 2003) at 4.

24 Arizona-American filed a Motion for Reconsideration again asserting that the
25 Commission's decision constituted a significant departure from established Commission
26 precedent that was not required under Arizona law. Motion for Reconsideration at 1.

1 Although the Company's Motion for Reconsideration was denied by operation of law, the
2 Commission, *sua sponte*, noticed a Special Open Meeting to address the question of
3 whether the Commission should modify Decision 65800 pursuant to A.R.S. § 40-252. The
4 Commission then determined that further consideration was warranted expressing a strong
5 preference to adhere to established Commission precedent under which hook-up fees
6 collected as contributions in aid of construction were approved without findings of fair
7 value and protracted ratemaking proceedings. In connection therewith, the Commission
8 directed Staff to file the Staff Report which Staff has now done. Staff's analysis and
9 conclusions essentially mirror the arguments Arizona-American has asserted throughout
10 this docket, specifically that the decision in *US West* does not require the Commission to
11 deviate from established precedent and find the fair value of Arizona-American's property
12 before approving its request to extend collection of hook-up fees throughout its Agua Fria
13 water and wastewater certificated service areas.

14 **II. THERE IS NO JUST REASON FOR ADDITIONAL DELAY**

15 As the above discussion indicates, Arizona-American has now waited over one year
16 to obtain relief all parties agree is appropriate and which all parties now agree the
17 Commission can lawfully provide without undertaking protracted and costly proceedings
18 to determine the Company's fair value. *See* Staff Report at 6 ("the Staff's position is that
19 the Company's proposed hook-up fee tariffs are acceptable and should be approved.").
20 Nevertheless, Staff suggests that it might be appropriate to authorize the relief sought,
21 expanded collection of the hook-up fee throughout Arizona-American's Agua Fria water
22 and wastewater district, in the Company's pending rate proceeding. *See* Staff Report at 4-
23 5. Or, in the alternative, Staff suggests that the Commission could utilize prior findings of
24 fair value in adjudicating the Company's request for relief. *Id.* at 5. While Staff is correct
25 that these are additional alternative paths to resolution of this matter, the Company
26 respectfully suggests that Staff's two alternative recommendations would serve only to

1 further delay relief all parties deem reasonable and appropriate.

2 As Staff correctly recognizes, hook-up fees are appropriate because they result in
3 "growth paying for growth." *Id.* Given the benefits of hook-up fees to the Company and
4 its existing customers, and the fact that this matter has unnecessarily been delayed for one
5 year, the Company sees no reason for further delay and respectfully requests that the
6 Commission move to approve the requested hook-up fees expeditiously. The Company
7 further suggests that this be done by the preparation of a Recommended Opinion and
8 Order by the Hearing Division which is then placed on a Commission open meeting
9 agenda at the earliest possible date.

10 RESPECTFULLY SUBMITTED this 15th day of August, 2003.

11 FENNEMORE CRAIG, P.C.

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13 By _____

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17 An original and 15 copies
18 of the foregoing was delivered this 15th
day of August, 2003, to:

19 Docket Control
20 Arizona Corporation Commission
1200 West Washington Street
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22 A copy of the foregoing
was delivered this 15th day of
23 August, 2003, to:

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