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EXCEPTION

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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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AUG 07 2002

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IN THE MATTER OF THE APPLICATION
OF NEW RIVER UTILITY COMPANY FOR
A RATE INCREASE

DOCKET NO. W-01737A-01-0662

**EXCEPTIONS TO RECOMMENDED
OPINION AND ORDER**

New River Utility Company ("New River"), a public service corporation providing water utility service in portions of the City of Peoria, hereby submits its exceptions to the Recommended Opinion and Order in the above-captioned rate proceeding. New River's exceptions focus solely on one anomalous issue that has arisen subsequent to the June 6, 2002 hearing. Under the order, New River's new rates and charges for service would not be allowed to go into effect until such time as the company demonstrates compliance with Maricopa County Environmental Services Department ("MCESD") regulations. Recommended Opinion and Order at 7 and 9. As explained below, however, to the extent that New River is not currently in compliance with MCESD regulations, such non-compliance is the result of the failure of the Arizona Department of Environmental Quality ("ADEQ") to perform its statutory obligations under the Monitoring Assistance Program ("MAP"), in which New River is required by law to participate. In other words, as presently written, the Recommended Opinion and Order would effectively deny New River rate relief, to which it is indisputably entitled, based on the conduct of a state agency over which New River has no control. This would be both unreasonable and confiscatory.

A. Background on the Monitoring Assistance Program.

The MAP is a program established by state law, A.R.S. § 49-360, and is administered by ADEQ. In summary, ADEQ and its contractors monitor the water quality of smaller public water

1 systems and assist those water systems in complying with the Safe Drinking Water Act. See
2 A.R.S. § 49-360(A) and (B); A.A.C. R18-4-224. This state program is mandatory. All public
3 water systems serving 10,000 or fewer persons are required by law to participate in the MAP.
4 New River, which is a Class C water utility that served approximately 1,150 customers as of
5 December 31, 2000, is therefore required to participate in the MAP. Further, New River is
6 required by law to make annual payments to the ADEQ in order to fund the cost of the MAP.
7 The payment is established by ADEQ regulation, and is based on a formula under which a base
8 amount per service connection is multiplied by the number of service connections. The base
9 amount is increased or "weighted" in the case of larger meters. See A.A.C. R18-4-225. In 2001,
10 for example, New River paid more than \$3,000 to ADEQ. Unfortunately, as discussed below,
11 ADEQ has not properly monitored New River's system.

12 **B. ADEQ's Failure to Monitor.**

13 Despite the fact that New River has timely paid ADEQ pursuant to the relevant statute and
14 agency regulations governing the MAP, ADEQ inexplicably failed to sample and test one of the
15 water system's points of entry, referred to as "POE 003." See ADEQ Letter dated June 28, 2002,
16 attached hereto. At the time of the June 6 hearing, none of the parties were aware that ADEQ had
17 failed to conduct this monitoring. At that time, Staff simply testified that another regulatory
18 body, MCESD, had informed Staff that there were certain "minor deficiencies." It was
19 subsequently discovered that this deficiency was, in fact, ADEQ's failure to sample water from
20 POE 003 – a regulatory activity over which New River had no involvement in or control over.

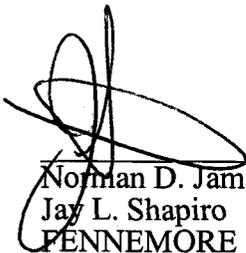
21 Attempts to rectify this difficulty have proven to be unsuccessful. Although advised of its
22 mistake, ADEQ has refused to conduct the sampling it should have conducted under the MAP.
23 Instead, the agency has advised New River that it will be unable to conduct any sampling and
24 testing for POE 003 until sometime in calendar year 2003. Id. Thus, it may be a year or more
25 before ADEQ corrects this problem. At the same time, however, the other relevant regulatory
26 body, MCESD, will not certify that New River is delivering water that does not exceed any

1 maximum contaminant levels and otherwise complies with Safe Drinking Water Act standards.

2 In short, New River is stuck in a bureaucratic quagmire. The agency required by law to
3 conduct sampling and testing (and whom New River has paid for sampling and testing) has failed
4 to perform its obligations. Another regulatory body, MCESD, refuses to certify that New River is
5 currently in compliance with Safe Drinking Water Act standards as a result. At the same time,
6 the Recommended Opinion and Order, although recognizing the need for rate relief, would not
7 allow rate increases to become effective based on circumstances over which New River has no
8 control. New River is caught in the middle, with no ability to control the situation.

9 Under these circumstances, New River respectfully submits that the conditions set forth in
10 Finding of Fact No. 26 and the second ordering paragraph found on page 9 of the Recommended
11 Opinion and Order should be deleted. For the reasons explained above, New River's inability to
12 comply with Staff's recommendations as well as its earlier "stipulation" concerning this issue is
13 not the result of New River's own acts or omissions, but rather ADEQ's failure to perform its
14 obligations under the MAP, a program in which it is forced to participate by statute and over
15 which it has no control. New River is clearly entitled to rate relief, as the balance of the
16 Recommended Opinion and Order plainly shows. New River should not be deprived of rate relief
17 when it has fully complied with the MAP and has no ability to compel ADEQ to act.

18 RESPECTFULLY SUBMITTED this 7th day of August, 2002.

19
20
21 

22 Norman D. James
23 Jay L. Shapiro
24 FENNEMORE CRAIG
25 3003 N. Central Avenue, Suite 2600
26 Phoenix, Arizona 85012
Attorney for New River Utility

1 AN ORIGINAL AND TEN COPIES of
2 the foregoing were filed this 7th day of
3 August, 2002 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

5 COPIES of the foregoing were hand-
6 delivered*/mailed this 7th day of
7 August, 2002, to:

7 Teena Wolfe*
8 Administrative Law Judge
9 Hearing Division
10 Arizona Corporation Commission
11 1200 West Washington
12 Phoenix, Arizona 85007

11 Lisa A. Vandenberg*
12 Legal Division
13 Arizona Corporation Commission
14 1200 West Washington
15 Phoenix, Arizona 85007

14 Steve Olea, Deputy Director*
15 Utilities Division
16 Arizona Corporation Commission
17 1200 West Washington
18 Phoenix, Arizona 85007

17 Daniel Pozefsky
18 Residential Utility Consumer Office
19 2828 North Central Avenue, Suite 1200
20 Phoenix, Arizona 85012

19 Robert Fletcher
20 New River Utility Company
21 7839 West Deer Valley Road
22 Peoria, Arizona 85007

22 By Mary Louise
23

24 1328135.1/69300.018
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26

06/29/2002
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NEW RIVER UTILITY → 6029165546
ADEQ DRINKING WATER SEC → 96235615831

NO. 357
NO. 819

P03
P02



Jane Dee Hull
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
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Jacqueline E. Schafer
Director

June 28, 2002

DISTRIBUTE TO ALL BY FAX

Mr. Jack Muir, Operator
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P.O. Box 629
Cascade, ID 83611.
FAX 208 382-4945

Mr. Robert L. Fletcher
New River Utility Co. Inc. # 07051
7839 W. Deer Valley Road
Peoria, AZ 85382.
FAX 623 561-5831

Re: PWS # 07051 New River Utility Co. Inc. POE 003 MAP 2001

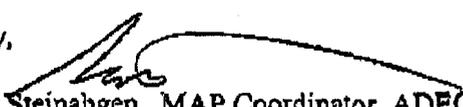
Dear Mr. Muir,

The original monitoring schedules for the year 2001, which were created in October 2000, did not include any requirements for POE 003. However, as of January 2001 POE 003 should have been added for monitoring under MAP 2001. My review of records here at the Arizona Department of Environmental Quality (ADEQ, Department) indicates that the computer program that generates the Add & Delete Report, for changes to MAP schedules, failed to include POE 003. This error, made by the Department, resulted in no samples being taken at POE 003 in 2001.

In order to bring this system back within its monitoring requirements, MAP will find a method to add this system to the 2003 schedules. This is the earliest opportunity to complete the required four-consecutive quarterly sampling correctly. The 2001 schedule will be used in its entirety to complete the sampling for this system. After 2003 the system will return to following its original monitoring periods / cycles based on the system's Initial Monitoring Year (IMY) and the water quality results.

If we may be of any further assistance to you, please contact me directly at 602 207-4445. As the Department is moving, that number will be changing in the first week of July 2002 to: 602 771-4445.

Sincerely,


W. Scott Steinhagen, MAP Coordinator, ADEQ

cc: Tony Bode, Manager, PDOU
John Calkins, Compliance & Enforcement, ADEQ
Tom Waldbillig, Maricopa County FAX: 602 506-6925
John Kolman, Maricopa County SAME
Doug Taylor, Maricopa County SAME

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EXCEPTIONS Routing Sheet

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