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BEFORE THE ARIZONA CORPORATION COMMISSION

2003 JAN 15 P 4: 33

AZ CORP COMMISSION
DOCUMENT CONTROL

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COMMISSIONER
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COMMISSIONER
JEFF HATCH-MILLER
COMMISSIONER
MIKE GLEASON
COMMISSIONER

IN THE MATTER OF THE APPLICATION FOR)
APPROVAL OF ACQUISITION PLAN AND,)
IF APPROPRIATE, WAIVER OF SELECTED)
PROVISIONS OF THE AFFILIATE RULES.)

DOCKET NO.)
Arizona Corporation Commission)
G-015517-02-0425)

DOCKETED

JAN 15 2003

AUIA'S REPLY TO STAFF'S MOTION TO STRIKE

DOCKETED BY *CAI*

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Introduction

Pursuant to the Procedural Order dated September 11, 2002, the ARIZONA UTILITY INVESTORS ASSOCIATION, INC. (AUIA) filed the direct testimony of Walter W. Meek in the above-captioned proceeding on December 20, 2002. On January 6, 2003, Commission Staff filed a motion to strike or clarify a portion of AUIA's testimony.

Staff complained that Mr. Meek's testimony relied, in part, on a Staff memorandum dated November 26, 2002. Staff asserted that the memorandum related only to settlement discussions that were scheduled for November 27, 2002, and that any references to its provisions would "confuse" the proceedings and misstate Staff's position as reflected in its direct testimony, also filed on December 20.

AUIA hereby files its response opposing Staff's motion and offers a compromise position.

1 **The Facts**

2 AUIA concedes that Mr. Meek's direct testimony refers to six Staff
3 conditions proposed in the Nov. 26 memo. Due to the requirements of
4 contemporaneous filing, the memo represented the best information AUIA had
5 on Staff's position. Staff's proposed conditions were the principal impediments
6 to a settlement and AUIA had no expectation that Staff would alter its position.

7 In fact, Staff has not changed its position in any significant respect and
8 AUIA asserts that its pre-filed testimony is completely appropriate on the
9 following grounds:

10 1) AUIA has a right to rely on documents published by the Staff or any
11 other party, regardless of their purpose, as long as they are not subject to
12 protective orders. At hearing, AUIA would be within its rights to introduce the
13 memo in question and to query Staff as to the differences between its contents
14 and Staff's current position.

15 2) Of the six proposed conditions cited in AUIA's direct testimony arising
16 from the Staff memorandum, all but one are replicated in Staff's direct
17 testimony. The only issue that has been eliminated is the "squeezing pipelines"
18 limitation labeled as Condition No. 10 in the Nov. 26 memorandum and in Mr.
19 Meek's direct testimony.

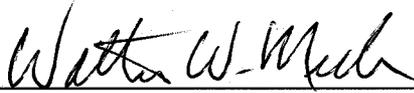
20 Although well within its rights in this matter, AUIA does not want to
21 confuse the Staff or misrepresent its position. In fact, one of AUIA's corporate
22 objectives is to assist the Staff in viewing things more clearly. Therefore, AUIA
23 offers the following compromise.

24 **Compromise**

25 As to its filed testimony, AUIA is willing to stipulate that all references to
26 the Nov. 26, 2002, settlement memorandum are stricken and specifically, that the
27 issue relating to "squeezing pipelines" is moot, provided that Staff does not
28 resurrect this issue at a later time in this proceeding. Otherwise, AUIA's pre-filed
29 testimony stands until such time as the Administrative Law Judge rules on its
30 admissibility.

1 In the alternative, AUJA could refile its testimony on Feb. 6, 2003, when
2 Southwest Gas is required to file rebuttal, or at some other time determined by
3 the ALJ.

4
5 Respectfully submitted, this 15th day of January, 2003

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7 

8 Walter W. Meek, President
9

10 **CERTIFICATE OF SERVICE**

11
12 An original and 13 copies
13 of the foregoing Reply
14 were filed this 15th day of
15 January, 2003, with:

16
17 Docket Control
18 Arizona Corporation Commission
19 1200 W. Washington Street
20 Phoenix, AZ 85007

21
22 Copies of the foregoing Reply
23 were delivered this 15th day
24 of January, 2003, to:

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26 Ernest Johnson, Esq., Utilities Division
27 Jane L. Rodda, Esq., Hearing Division
28 Lisa VandenBerg, Esq., Legal Division
29 Arizona Corporation Commission
30 1200 W. Washington Street
31 Phoenix, AZ 85007

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33 A copy of the foregoing Reply
34 was mailed or faxed this 15th day
35 of January, 2003, to:

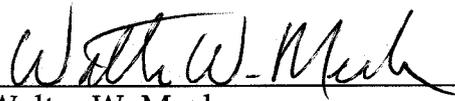
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18 Walter W. Meek