

**ORIGINAL**  
OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

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JEFF HATCH-MILLER  
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WILLIAM A. MUNDELL  
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COMMISSIONER

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Arizona Corporation Commission  
**DOCKETED**

JUL 12 2006

DOCKETED BY  
*NR*

IN THE MATTER OF THE APPLICATION OF ARIZONA-AMERICAN WATER COMPANY, INC., AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE CURRENT FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN ITS RATES AND CHARGES BASED THEREON FOR UTILITY SERVICE BY ITS PARADISE VALLEY WATER DISTRICT.

Docket No. W-01303A-05-0405

IN THE MATTER OF THE APPLICATION OF ARIZONA-AMERICAN WATER COMPANY FOR APPROVAL OF AN AGREEMENT WITH THE PARADISE VALLEY COUNTRY CLUB.

Docket No. W-01303A-05-0910

**RUCO'S RESPONSE AND CROSS-MOTION TO STRIKE THE TOWN OF PARADISE VALLEY'S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

The Residential Utility Consumer Office ("RUCO") responds to the Town of Paradise Valley's ("Town") Motion for Leave to file Amicus Curiae Brief ("Motion") as follows. Given the short time available to RUCO to respond to a Motion, RUCO is not responding to the arguments in the Town's Brief at this time. However, fairness as well as due process dictates that RUCO should be allowed an opportunity to respond to the Town's Motion. The Town, as will be more fully discussed below, had plenty of opportunities to make its arguments in support of its position, but has chosen this late date to do so. Under the Timeclock Rules, the

1 Commission is required to issue its final Order no later than July 25, 2006. AAC R-2-  
2 103(B)11(d)(i). Granting leave now would require a suspension of the Timeclock Rule to allow  
3 RUCO an opportunity to respond to the Town's Amicus Brief ("Brief"). The Town's delay in  
4 bringing forth its position is not an "extraordinary event" under Rule AAC R-2-103(B)(11)(e) (ii)  
5 justifying an extension of the Timeclock Rule. The Commission should deny the Town's  
6 Motion.

7 The Town has had plenty of opportunity to make its arguments in support of its position  
8 and allow other parties an opportunity to respond. The Town, however, has flip-flopped on the  
9 degree of its involvement, and has only now chosen, at the eleventh hour, to take a stand.  
10 The Town filed a letter with this Commission on March 17, 2006 (See Attachment 1)  
11 requesting intervention and advising the Commission that it wanted to address the  
12 Commission at the hearing on March 27, 2006. On March 24, 2006, the Town filed with the  
13 Commission a letter advising the Commission that it would not be intervening in this matter  
14 (See Attachment 2). On March 27, 2006, the first day of the hearing and the time scheduled  
15 for public comment, the Town failed to appear and address the Commission. At no time did  
16 any party object to the Town intervening or appearing before the Commission.

17 The Town did not participate in any manner at the hearing. At no time during the time  
18 scheduled for the filing of post-hearing briefs did the Town file anything. The parties filed their  
19 Reply Briefs on May 26, 2006. Given the Town's apparent interest in this matter, it is safe to  
20 presume that at all times the Town was well aware of the Commission's hearing process, the  
21 procedural deadlines, the issues that affected the Town, and the party's positions on those  
22 issues. Moreover, the Town is a sophisticated municipality, which clearly has adequate legal  
23 resources.

1           Nonetheless, the Town filed the present Motion on July 5, 2006, almost one and half  
2 months after the party's Reply Briefs were filed. The Amicus Brief ("Brief") that the Town is  
3 attempting to file introduces new evidence, which raises many questions about the fire flow  
4 issue. The Town's Brief fails to cite to the record of the proceedings to support its positions.  
5 Moreover, the statements and arguments in the Town's Brief are not supported by a witness  
6 sponsored by the Town or other party. For example, the Town goes to great length to explain  
7 the interconnection agreement that it had with the City of Scottsdale. Amicus Brief at 7-9. The  
8 Town's explanation is not supported by the record or by a witness. It is not subject to judicial  
9 notice as the information is not generally known, nor has the Town provided a source whose  
10 accuracy cannot be reasonably questioned. Rule 201, Rules of Evidence. In fact, the Town  
11 has failed to provide a source to support its statement. In essence, the Town is asking the  
12 Commission to blindly accept the unsworn statements of the Town's attorney as evidence to  
13 support the Town's explanation of why RUCO's characterization of the transaction is "not  
14 accurate." Amicus Brief at 8. The Town felt compelled to offer this new evidence almost one  
15 and a half months after RUCO cited this point in its post-hearing Brief because, according to  
16 the Town, RUCO focuses so much on this one transaction.

17           The Town's attempt to present and argue its position on the eve of the Administrative  
18 Law Judge's recommended Order is unfair to the parties in this matter and prejudicial to RUCO  
19 in particular. The Commission should deny the Town's motion. At the very least, should the  
20 Commission decide to consider it, the Commission should permit RUCO to file a Response to  
21 the Brief.

1 RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of July, 2006.

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4   
5 Daniel Pozefsky  
6 Attorney

7 AN ORIGINAL AND FIFTEEN COPIES  
8 of the foregoing filed this 12<sup>th</sup> day  
9 of July, 2006 with:

10 Docket Control  
11 Arizona Corporation Commission  
12 1200 West Washington  
13 Phoenix, Arizona 85007

14 COPIES of the foregoing hand delivered/  
15 mailed this 12<sup>th</sup> day of July, 2006 to:

16 Lyn Farmer  
17 Chief Administrative Law Judge  
18 Hearing Division  
19 Arizona Corporation Commission  
20 1200 West Washington  
21 Phoenix, Arizona 85007

22 Teena Wolfe, Administrative Law Judge  
23 Hearing Division  
24 Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Christopher Kempley, Chief Counsel  
Legal Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Andrew M. Miller, Town Attorney  
Town of Paradise Valley  
6401 E. Lincoln Drive  
Town of Paradise Valley, AZ 85253-4399

Ernest Johnson, Director  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Craig A. Marks  
Corporate Counsel, Western Region  
American Water  
19820 N. 7<sup>th</sup> Street, Suite 201  
Phoenix, Arizona 85024

Robert J. Metli  
Snell & Wilmer L.L.P.  
One Arizona Center  
400 E. Van Buren  
Phoenix, AZ 85004-2202

1 By Ernestine Gamble  
Ernestine Gamble

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# Attachment 1

# INTERVENTION



## TOWN OF PARADISE VALLEY

OFFICE OF:

6401 EAST LINCOLN DRIVE  
TOWN OF PARADISE VALLEY, ARIZONA 85253-4399

PHONE: (480) 948-7411

FAX: (480) 951-3715

TDD: (480) 483-1811

March 17, 2006

Via Facsimile - 602-542-3669

Office of the Arizona Corporation Commission

Attn: ~~Dean~~ Miller

1200 W. Washington

Phoenix, AZ 85007

Re: Arizona-American Water Company Rate Case - #W-01303A-050405

Dear Commissioners:

W-01303A-05-09.10

The Town of Paradise Valley is requesting to intervene in rate case #W-01303A-050405. The Town would like the opportunity to address the Commission at the hearing scheduled for March 27, 2006 at 10:00 a.m. Please confirm with Jim Davis, Assistant Town Attorney at (480) 348-3609 any details regarding the protocol necessary for our intervention.

Sincerely,

Lenore Lancaster  
Town Clerk

LL/dlw

Arizona Corporation Commission

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MAR 20 2006

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## Attachment 2

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TOWN OF  
PARADISE VALLEY

6401 EAST LINCOLN DRIVE  
TOWN OF PARADISE VALLEY, ARIZONA 85253-4399

OFFICE OF: TOWN ATTORNEY

PHONE: (480) 348-3691 06  
FAX: (480) 596-3790  
TDD: (480) 483-1811

March 24, 2006

Via Facsimile - 602-542-3669

Office of the Arizona Corporation Commission  
Attn: Dean Miller  
1200 W. Washington  
Phoenix, AZ 85007

Re: Arizona-American Water Company Rate Case - #W-01303A-05-0405  
W-01303A 05-0910

Dear Commissioners:

This letter is to inform the Commission that the Town of Paradise Valley ("Town") will not be intervening in rate case #W-01303A-05-0405. As such, please let this letter serve as a withdrawal of the Town's March 17, 2006 letter requesting to intervene in this matter. Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Jim Davis  
Deputy Town Attorney

JD/dlw

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