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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

- JEFF HATCH-MILLER - Chairman
- WILLIAM A. MUNDELL
- MIKE GLEASON
- KRISTIN K. MAYES
- BARRY WONG

IN THE MATTER OF THE APPLICATION OF
 BLACK MOUNTAIN SEWER CORPORATION,
 AN ARIZONA CORPORATION, FOR A
 DETERMINATION OF THE FAIR VALUE OF
 ITS UTILITY PLANT AND PROPERTY AND
 FOR INCREASES IN ITS RATES AND
 CHARGES FOR UTILITY SERVICE BASED
 THEREON.

DOCKET NO. SW-02361A-05-0657

**CLOSING BRIEF OF
COMMISSION STAFF**

Black Mountain Sewer Corporation ("Black Mountain Sewer" or the "Company") filed an application for a rate increase in the above captioned docket on September 16, 2005. The Company's current rates were authorized in Decision No. 59944, dated December 26, 1996.¹ In the test year ending December 31, 2004, the Company provided wastewater service to 1,923 customers in the Town of Carefree, in unincorporated portions of Maricopa County and in portions of the City of Scottsdale. Most of the Company's customers reside in the Town of Carefree.² On October 23, 2001, the Company changed its name from Boulders Carefree Sewer Corporation to Black Mountain Sewer Corporation.

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Arizona Corporation Commission
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¹ Exhibit S-9 at 3.
² *Id.* at 2.

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1 **I. INTRODUCTION**

2 The Company became a wholly owned subsidiary of Algonquin Water Resources of America,
3 Inc. ("AWRA") in March 2001. AWRA is a wholly owned subsidiary of Algonquin Power Income
4 Fund ("APIF") (collectively referred to as "Algonquin").³ AWRA also owns and operates Litchfield
5 Park Service Company ("LPSCO"), Gold Canyon Sewer Company, Rio Rico Utilities, Inc., and Bella
6 Vista Water Company, which are all located in Arizona.⁴ In Decision No. 68826, dated June 29,
7 2006, AWRA purchased the water systems collectively known as the McLain Systems. AWRA
8 transferred portions of the McLain Systems to two newly formed companies, Northern Sunrise Water
9 Company, Inc. ("Northern Sunrise") and Southern Sunrise Water Company, Inc. ("Southern
10 Sunrise"). AWRA received conditional Certificates of Convenience and Necessity ("CC&N") for
11 these new companies in Decision No. 68826.

12 AWRA also owns and/or operates 4 utilities in Texas,⁵ 1 utility in Illinois, and 3 utilities in
13 Missouri.⁶ In each of these states, there is an added organizational layer with a state specific holding
14 company. The state specific holding companies appear to be subsidiaries of AWRA, and parents of
15 the utilities or owners of utility facilities. So far, AWRA has not created an Arizona specific holding
16 company.⁷

17 Black Mountain Sewer uses a unique organizational model and operates unlike any other
18 utility in Arizona. The Company's organizational model and affiliate transactions present issues that
19 may be the first of their kind in Arizona. AWRA used its organizational model for unregulated hydro
20 assets⁸ as the template for its organizational model for all of its regulated utilities in the United
21 States.⁹ AWRA's organizational model appears to deviate substantially from traditional utility
22 models that use shared service centers.

23 ...
24 ...

25 ³ *Id.* at. 3.
26 ⁴ Tr. 458, ll. 14-17.
27 ⁵ *Cf. Id.* 530, ll. 14-17 (Company witness Mr. Dodds testified that Algonquin has 6 utilities in Texas.
28 However, Chart F2 only shows 4 utilities.).
⁶ Exhibit S-13, Chart F2.
⁷ *Id.*, see also Chart F.
⁸ See also Tr. 472, ll. 9-23 (Algonquin's hydro systems only sell to wholesale customers.).
⁹ *Id.* 465, ll. 1-10; see also Tr. 464, ll. 17-21 (Company witness Mr. Dodds testified that it would be a good
idea for all utilities in Arizona to adopt Algonquin's organizational model.).

1 Typically, holding companies for regulated utilities create shared service centers to take
2 advantage of economies of scale. Economies of scale allow utility services to be provided at a lower
3 cost. Shared service centers provide only a portion of the services necessary for the provision of
4 utility service. The subsidiary utilities provide the remaining portion directly through their own
5 employees. Holding companies then allocate costs to each of their subsidiary utilities on a pro-rata
6 basis. In regulated industries, holding companies provide shared services at cost.¹⁰

7 AWRAs organizational model for its regulated utilities assumes a profit motive similar to
8 unregulated industries.¹¹ Rather than operating within the boundaries of regulated return on equity
9 (“ROE”), Algonquin seeks guaranteed profits through the cost-of-service and rate base.¹² In addition
10 to allocating costs from shared services, Algonquin seeks profit margins for each affiliate transaction
11 included in cost-of-service, i.e., rate base or operating expenses. Algonquin affiliates might refuse to
12 provide services to Black Mountain Sewer without guaranteed profits.¹³

13 AWRAs extreme organizational structure can be illustrated with a few facts. Algonquin’s
14 unregulated affiliates provide almost all of the services required by each of its utilities, including
15 Black Mountain Sewer.¹⁴ Black Mountain Sewer has zero employees.¹⁵ Black Mountain Sewer’s
16 sole shareholder, AWRAs, has zero employees.¹⁶ The Algonquin affiliate that actually has employees
17 is also the affiliate that performs most of Black Mountain Sewer’s utility operations. Algonquin
18 Water Services (“AWS”) has between 70 and 90 employees.¹⁷ Finally, the written contract between
19 AWS and Black Mountain Sewer was not negotiated. Instead, Algonquin used a template contract
20 previously used by Algonquin Power for managing hydro plants as an unregulated operator.¹⁸

21 ...

22 ¹⁰ See e.g. Exhibit S-9 at 7, ll. 20-26, and Exhibit S-11.

23 ¹¹ Staff understands that all private utilities require profits; however, Staff believes that all profits should be
24 limited to the allowed ROE. See footnote 12 *infra*.

25 ¹² Exhibit S-5 at 3, ll. 2-5, and at 5, ll. 1-5.

26 ¹³ Tr. 517, ll. 15-21.

27 ¹⁴ Black Mountain Sewer receives most of its services from Algonquin Water Services (“AWS”). It also
28 receives services from Algonquin Power Systems (“Algonquin Power”) and Algonquin Power Trust (“APT”). See Tr.
508-09 and Exhibit S-17. Finally, a small portion of services are provided by independent Arizona vendors. *Id.* at 513-
14.

¹⁵ Tr. 529, ll. 10-16. Note also that LPSCO has zero employees (*Id.*, ll. 17-18) and Algonquin intends to
operate Northern and Southern Sunrise with zero employees (*Id.*, 532, ll. 4-8). It is also Staff’s understanding that Gold
Canyon Sewer Company has zero employees.

¹⁶ *Id.* 530, ll. 1-3.

¹⁷ *Id.* 529, ll. 23-25.

¹⁸ *Id.* 510, ll. 1-14.

1 Staff urges the Arizona Corporation Commission (the "Commission") to regulate Black
2 Mountain Sewer in the same manner that it regulates all utilities in Arizona. In other words, Staff
3 believes that the Commission should not allow the Company to evade rate of return regulation by
4 creating an organizational structure that guarantees profit in addition to allowed ROE.¹⁹ As discussed
5 below, Staff recommends that the Commission disallow capitalized affiliate profit and affiliate profit
6 embedded in operating expenses.

7 Other disputes between Staff and the Company are also unresolved in this case. The parties
8 disagree on the appropriate ROE, capitalized legal expenses, the method of gross-up for income taxes
9 related to the lease for the Scottsdale Treatment Facility, and rate case expense. Staff will not brief
10 all differences in its schedules compared to the Company's schedules. Staff notes that there are
11 additional differences based on the underlying issues included in this brief. For example, even
12 though Staff agrees with the Company on the methodology for calculating property taxes, the amount
13 of property taxes is different because of differences in revenue requirement.²⁰

14 II. AFFILIATE TRANSACTIONS

15 A. Capitalized Affiliate Profit And Affiliate Profit In Operating Expenses Should Be 16 Disallowed.

17 Staff recommends that the Commission disallow capitalized affiliate profit in the amount of
18 \$20,871.01.²¹ The capitalized affiliate profit was incurred in the years 2001, 2002, 2003, and 2004.²²
19 The Company accepted Staff's adjustment to remove \$142,232 for the costs of computers and
20 computer software that should have been allocated to other Algonquin owned utilities.²³ Staff also
21 recommends that the Commission disallow affiliate profit in the amount of \$21,761, which was
22

23 ¹⁹ See Exhibit S-9 at 13, ll. 1-7 (Algonquin's organizational structure circumvents ROE regulation by
24 including profit in affiliate billings to the Company in addition to allowed ROE.).

25 ²⁰ There are no disputes regarding engineering between the Company and Staff. Staff witness Mr. Marlin
26 Scott, Jr. withdrew one recommendation in his Surrebuttal Testimony (See Exhibit S-2 at 2, ll. 18-23). However, he
27 continues to recommend that the Company use individual depreciation rates for different categories of assets on a going
28 forward basis. See Exhibit S-1, executive summary.

²¹ See Staff Brief Schedule CSB-6 (Rate Base Adjustment No. 2), page 2 of 4.

²² *Id.* 3 of 4. Note also that Staff is unsure of whether it has been able to identify all profits that Algonquin
affiliates may have included in their invoices to the Company. See Exhibit S-10 at 5, footnote 1. See also Tr. 517, ll. 3-
14 (Mr. Dodd's answers make it unclear whether the affiliate profit identified by the Company in discovery include profit
margins already embedded in hourly rates for employees of the affiliates.).

²³ Exhibit A-2 at 28, ll. 21-25. See also Staff Brief Schedule CSB-6 at 4 of 4, and Tr. 788, ll. 7-9 (Some of the
overhead allocated to Black Mountain Sewer may be subsidizing affiliate operations.).

1 included in the Company's requested operating expenses.²⁴ Company witness Mr. Bourassa testified
2 that capitalized affiliate profit represented 8% of project costs.²⁵ Affiliate profit allocated to Black
3 Mountain Sewer for operating expenses was 6.5% of the total allocated costs.²⁶

4 State commissions have historically reviewed affiliate costs and profits with greater scrutiny
5 than other utility costs. Some example cases illustrate the review standard. In *U.S. West*
6 *Communications v. the Arizona Corporation Commission*, 185 Ariz. 277, 915 P.2d 1232 (App. 1996),
7 the Arizona Court of Appeals held that the "Commission has broad powers to scrutinize transactions
8 between a regulated company and its unregulated affiliates" and disallow excessive costs.²⁷ In
9 *General Telephone Co. of Upstate New York v. the Public Service Commission of New York*, 17
10 N.Y.2d 373 (N.Y. 1966), the Court of Appeals of New York held that:

11 When such materials and services are obtained through contracts which
12 are the result of arm's length bargaining in the open market, the contract
13 price is usually accepted as the proper cost. However, when a utility and
14 its suppliers are both owned and controlled by the same holding company,
15 the safeguards provided by arm's length bargaining are absent, and ever
present is the danger that the utility will be charged exorbitant prices
which will, by inclusion in its operating costs, become the predicate for
excessive rates.²⁸

16 Finally, in *Turpen v. Oklahoma Corporation Commission*, 769 P.2d 1309 (Okla. 1989), the Supreme
17 Court of Oklahoma held that:

18 The utility's burden of proving that payments to affiliates are reasonable
19 includes both a burden of production and of persuasion. The utility has
20 the initial burden of producing evidence to show *prima facie* the
21 reasonableness of its payments to affiliates—a mere showing of the
22 expenses' incurrence will not suffice. The utility must produce evidence,
23 for example, that it charged affiliates the same amount as it did arms-
24 length buyers. Unless the utility meets this affirmative duty of showing
25 the reasonableness of payments to affiliates, no such expenses may be
26 allowed.²⁹

23 ...

26 ²⁴ See Brief Schedule CSB-15.
27 ²⁵ See Exhibit A-2 at 17, ll. 19-21.
28 ²⁶ See Staff Brief Schedule CSB-15. *Cf.* Tr. 776, ll. 5-13 (Ms. Brown testified that she had not made a
calculation on the percentage of profit, but could make such a calculation). *Cf.* Exhibit A-2 at 33, ll. 14-16.
²⁷ *Id.*, 185 Ariz. at 282, 915 P.2d at 1237 (citations omitted).
²⁸ *Id.* 17 N.Y.2d at 378. See also Exhibit S-9 at 13, ll. 14-18.
²⁹ *Id.*, 769 P.2d at 1323 (citations omitted).

1 Company witness Mr. Dodds testified that the Commission should use a reasonableness
2 standard for determining whether affiliate costs and profits are prudent.³⁰ Mr. Dodds explained that,
3 under the reasonableness test, the Commission should compare affiliate costs and profits to the costs
4 required to run a stand-alone entity.³¹ He described a stand-alone entity as one that hires full-time
5 employees, even if it only needs part-time employees.³² Mr. Dodds further testified that “we review
6 our hourly rates every year and we do know they are market competitive.”³³

7 Company witness Mr. Bourassa provided limited evidence that the Company argues is
8 sufficient to show that affiliate costs and profits are market competitive. Mr. Bourassa provided (1)
9 comparable rates for services Algonquin Power provided to LPSCO; (2) a quote from Corollo to
10 provide services to LPSCO; and (3) “rates its parent³⁴ charges for engineering and project
11 management services.” Mr. Bourassa also stated that the three items were included in his Rebuttal
12 Testimony as Exhibit No. 2.³⁵ However, Exhibit 2 included a quote from Western Environmental
13 Technologies, Inc. (“WET”) to Boulders Carefree Sewer Corporation.³⁶ It did not include a quote
14 from Corollo to LPSCO. It is also noteworthy that the WET quote was dated September 9, 1998.³⁷

15 Staff believes that affiliate *profits* should not be included in the utility’s rate base or operating
16 expenses.³⁸ In addition, Staff has serious concerns about whether the Company met its burden of
17 production for affiliate costs.³⁹ Staff also disagrees with the Company’s characterization of the
18 reasonableness standard.

19 ...

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21 ³⁰ Tr. 477, ll. 2-14.

22 ³¹ *Id.* See also Exhibit A-2, Bourassa Rebuttal Exhibit No. 2 (The Company estimated that stand-alone costs
23 for Black Mountain Sewer would be \$222,881.51 higher than the proposed costs. The calculation assumed that Black
24 Mountain would hire full time employees to replace services provided by Algonquin affiliates.). Note that Mr. Dodds did
25 not answer Judge Nodes’ question about another possible method. See Tr. 475, ll. 19-22 (“But for the smaller systems,
26 isn’t the best way to compare the reasonableness of the claimed costs to compare to other similar systems that have a
27 similar No. of customers?”).

28 ³² *Id.* 523, ll. 14-18. Mr. Dodds further testified that Black Mountain Sewer would have a difficult time hiring
part-time employees. *Id.*, ll. 19-25.

³³ *Id.* 475, ll. 5-7.

³⁴ Tr. 515, ll. 5-15 (ALGONQUIN POWER is the only Algonquin affiliate that provides services to
unaffiliated entities. The schedule is for Algonquin Power Systems. AWRA is the parent of Black Mountain Sewer.
APIF is the parent of AWRA.).

³⁵ Exhibit A-2 at 17, l. 25 - 18, l. 5.

³⁶ *Id.*, Exhibit A-2.

³⁷ *Id.*

³⁸ See footnote 36, *infra*.

³⁹ See Tr. 13, l. 20 - 14, l. 3.

1 Each of the latter two issues related to affiliate *costs* is addressed next. Following that
2 discussion, Staff addresses the appropriate legal standard for evaluating affiliate *profits*. It then
3 applies that standard to the evidence provided by the Company.

4 **1. The reasonableness standard for affiliate costs.**

5 Assuming *arguendo* that the Company properly stated the reasonableness standard, it has not
6 produced sufficient, competent and reliable evidence to meet the standard. Black Mountain Sewer
7 merely calculated the full-time cost of Algonquin employees working part-time for the Company.⁴⁰
8 The Company did not produce sufficient, competent and reliable evidence for the market value of the
9 labor costs or any other costs.⁴¹ Mr. Dodds simply testified that the Company reviews hourly rates
10 annually and “knows” that they are market competitive. The Company did not provide comparable
11 hourly rates for potential competitors sufficient to establish market prices.

12 Instead, the Company provided one quote that is approximately 8 years old, and for only a
13 portion of the services provided by affiliates. The Company argues that, because the monthly rate is
14 below the monthly rate charged by Algonquin affiliates, the Commission should accept the costs as
15 reasonable.⁴² Neither the Company’s argument nor its evidence addresses market prices for each and
16 every year in which affiliate transactions occurred. The Company should be required to provide
17 evidence of market prices for the time periods in which it received affiliate services.

18 The other evidence provided by the Company was simply hourly rates charged by Algonquin
19 affiliates. The Company also concedes that it has not provided sufficient evidence to establish market
20 prices.⁴³ The Company claims that it is impossible to establish market prices because there are no
21 local competitors that provide the range of services provided by Algonquin affiliates.⁴⁴

22 Impossibility should not be used as an excuse to not provide sufficient, competent and reliable
23 evidence on the reasonableness of costs.⁴⁵ As the *Turpen* court noted, “a mere showing of the
24

25 ⁴⁰ Exhibit A-2, Bourassa Rebuttal Exhibit No. 2.

26 ⁴¹ See footnotes 21 and 37, *supra* (It is unclear to Staff what costs are included in hourly rates; however, Staff
believes that overhead and profit are included.).

27 ⁴² Exhibit A-3 at 11, ll. 13-19.

28 ⁴³ Tr. 474, ll. 6-19 (The Company has not identified any competitors from whom to solicit competitive bids.).

⁴⁴ *Id.*; see also Exhibit A-3 at 11, l. 20 - 12, l. 3. Note that the Company’s argument is disingenuous.
Algonquin affiliates don’t simply provide contract services. They run the entire operations of the utilities, and should be
considered the alter egos of the utility. See Staff’s arguments *infra*.

⁴⁵ *Cf. Turpen*, 769 P.2d at 1324, fn. 43 (The court recognized when “there may not be a readily ascertainable
market price,” the preferred method for billing affiliates is on an incremental cost basis.).

1 expenses' incurrence will not suffice. The utility *must* produce evidence."⁴⁶ Staff believes that the
2 Company has not met its burden of production or burden of persuasion. The comparable rates for
3 services Algonquin Power provides to LPSCO are irrelevant for third-party pricing. Algonquin
4 Power and LPSCO are both affiliates of Black Mountain Sewer. The schedule of rates for Algonquin
5 Power is insufficient because the services only cover a portion of the services provided by Algonquin
6 affiliates to Black Mountain Sewer.

7 The Company's comparison of employing full-time employees in place of part-time
8 employees at AWS is also irrelevant. The issue is whether the costs actually billed to Black
9 Mountain Sewer are reasonable. The issue is not whether the Company's affiliates should receive
10 additional profit because they achieved economies of scale for the Company.⁴⁷ Moreover, the
11 Company's evidentiary problem should not be viewed as Staff's evidentiary problem. Mr. Bourassa
12 testified that:

13 Staff has not provided any analysis of its own and has not identified any
14 problems or deficiencies in the Company's analysis. Nor has Staff used
15 its own experience and judgment to determine the reasonableness of the
16 components employed in the Company's analysis.⁴⁸

16 The Company is obviously attempting to shift its burden of production to Staff.

17 Staff also believes that the Company could have done much more to gather sufficient,
18 competent and reliable evidence to meet its burden of production. Some independent standard must
19 be used to determine the reasonableness of affiliate costs. In an open, competitive market, it is
20 reasonable to assume that contract prices reflect market prices. The reasonableness of affiliate costs
21 should not rely primarily on company assertions.⁴⁹

22 The Commission should require Black Mountain Sewer to, at the very least, issue a request
23 for proposals ("RFP") and attempt to obtain competitive bids.⁵⁰ An RFP also does not need to be
24

25 ⁴⁶ *Turpen.*, 769 P.2d at 1323 (citations omitted; emphasis added).

26 ⁴⁷ See Tr. 789, ll. 8-18. (Mr. Shapiro's question is really goes to the issue of performance based ratemaking
27 ("PBR"). PBR has not been requested in this case. Furthermore, PBR is more appropriately addressed in a generic
28 docket.).

⁴⁸ Exhibit A-3, ll. 4-8.

⁴⁹ Tr. 785, ll. 5-9.

⁵⁰ Exhibit S-9 at 13, ll. 5-12. Staff also recognizes that Judge Nodes identified another methodology that may
be appropriate. He asked a question about comparing the Company's costs to costs for other small systems that have a
similar No. of customers. Tr. 475, ll. 19-22; see also Tr. 787, ll. 7-14; Tr. 787, l. 23 - 788, l. 9.

1 limited to the local area as suggested by the Company. For example, AWS⁵¹ also provides services in
2 Texas, Missouri and Illinois. Additionally, even though Staff believes that the method Judge Nodes
3 identified in his questions⁵² has merit, the burden of production should remain with the Company.
4 Staff also testified that it did not audit the books of any of Black Mountain Sewer's affiliates.⁵³ Staff
5 pointed out that auditing affiliate books could result in additional recommendations for
6 disallowances.⁵⁴

7 The Company may argue that Staff was not prevented from auditing the books of Algonquin
8 affiliates.⁵⁵ However, Staff did not believe it had authority to audit the books of affiliates for a Class
9 B utility.⁵⁶ Ms. Brown testified that Staff would have audited the books of Algonquin affiliates if
10 Black Mountain Sewer was a Class A utility.⁵⁷ Furthermore, on cross-examination, Mr. Dodds would
11 not commit to allowing Staff to audit affiliate books.⁵⁸ On re-direct, he testified that the affiliates
12 would allow their books to be audited only by Commission order.⁵⁹

13 Finally, Staff does not agree with the Company's simplified version of the reasonableness
14 standard. Ms. Brown offered a nonexclusive list of considerations for determining the reasonableness
15 of affiliate costs and profits. Ms. Brown testified that the following factors should be considered:

- 16 (1) whether or not the cost was needed in the provision of service;
- 17 (2) the used and usefulness;
- 18 (3) the prudence of the expense; and
- 19 (4) whether the affiliate had to forgo other profitable opportunities in
20 order to provide service to the utility should be considered in
21 determining whether an expense should be allowed for ratemaking
22 purposes. Only in certain circumstances when the affiliate has to
23 forgo other profitable opportunities and the utility does not have a
24 better alternative for the services provided should an affiliate profit
25 be allowed in the cost of service.⁶⁰

23 ⁵¹ It is noteworthy that AWS is a local company with its headquarters in Avondale, Arizona. Tr. 531, ll. 16-22.

24 ⁵² *Id.*

24 ⁵³ Exhibit S-10 at 8, ll. 1-7.

25 ⁵⁴ *Id.*; see also Tr. 803, l. 25 - 804, l. 3; Tr. 787, ll. 7-14; Tr. 787, l. 23 - 788, l. 9 (Affiliate overhead billed to
26 Black Mountain Sewer may be overstated.).

26 ⁵⁵ Tr. 532, ll. 19-22.

26 ⁵⁶ *Id.* 803, ll. 3-15.

27 ⁵⁷ *Id.* 803, ll. 17-24.

27 ⁵⁸ *Id.* 518, ll. 7-16.

28 ⁵⁹ *Id.* 532, ll. 13-18. (It is unclear whether Mr. Dodds meant that an ALJ could issue an order or whether the
order had to be a final Commission order.). See also *Id.* 802, l. 8 - 803, l. 15 (Staff did not seek a motion to compel audits
of affiliate books because it did not believe that the ALJ had authority to provide the remedy.).

⁶⁰ Exhibit S-10 at 6, ll. 13-21.

1 Case law and state commission decisions have been in accord with Ms. Brown's factors. For
2 example, in *Washington Utilities & Transportation Commission v. Washington Water Power*
3 *Company*, 24 P.U.R. 4th 427 (1978), the Washington Utilities and Transportation Commission held
4 that "the only method of determining the fairness and reasonableness of [affiliate costs] is to
5 determine the reasonableness of the return to the [utility] on their property used and useful in the
6 business."⁶¹ In rejecting related companies' ability to earn a "double profit,"⁶² the Washington
7 Commission concluded that:

8 [A] company enjoying the immunities of a public utility has no right to
9 impose upon the consumers a heavier burden than that which would be
10 justly borne, and that will produce a proper rate of return, considering the
value of the property devoted to this public service and to the risks
involved.⁶³

11 The factors above, however, were not Staff's primary basis for recommending disallowance
12 of affiliate profits.

13 Ms. Brown testified that:

14 Staff is looking at the Company [and its affiliates] from a consolidated
15 perspective. The money is going in from one pocket to another pocket.
16 From a consolidated perspective, the Company [and its affiliates are]
one company. A company cannot make a profit by buying and selling
to itself.⁶⁴

17 In other words, Staff recommends that the Commission pierce the corporate veil, and ignore the shell
18 corporate structures created for Black Mountain Sewer and its parent, AWRA.

19 **2. The Commission should treat Black Mountain Sewer and its Algonquin**
20 **affiliates as a single entity and exclude all affiliate profits.**

21 AWRA, AWS, Algonquin Power and APT should be considered the alter egos of Black
22 Mountain Sewer. The facts of this case are so extreme that the Company should have anticipated that
23 the Commission could pierce the corporate veil. The standard for piercing the corporate veil makes it
24 irrelevant whether Algonquin's organizational structure results in lower costs to ratepayers.

25 ...

26
27 ⁶¹ *Id.* at 10 (publication pages not available, page reference is to Westlaw printout) (citing *Wichita Gas Co. v.*
Kansas Pub. Service Commission, 2 F Supp 792 (DC Kan 1933).

28 ⁶² *Id.*

⁶³ *Id.* at 14.

⁶⁴ Tr. 777, ll. 20-24.

1 Furthermore, use of an independent method for determining market prices cannot justify
2 affiliate profit if the Commission pierces the corporate veil for Algonquin.⁶⁵

3 Although the Commission has not expressly invoked the standard for piercing the corporate
4 veil and disallowing affiliate profit,⁶⁶ it has used the standard in two cases. In Decision No. 57666,
5 the Commission held:

6 The Company portrayed outrage that the Commission would attempt to
7 regulate its non-regulated entity, CUC. In response to the Company's
8 last argument, we will simply state that the Commission only has to
9 approve reasonable expenses for ratemaking purposes, whether those
10 expenses originate from a regulated or non-regulated entity is not
11 controlling. Staff has raised the issue of reasonableness of the expenses
12 allocated from an entity related to the Company and we agree that those
13 expenses should be carefully scrutinized. *We do not believe it is
appropriate for ratepayers to pay a profit margin for each layer of
related companies. Hence, we totally agree with Staff that all of the
profit margin of CUC should be disallowed as part of the allocation.
However, it is unclear from this case as to the actual amount of such
profit.* For that reason we will approve of the CUC allocation, but shall
direct the Company in its next rate case to provide the amount of profit
to CUC under its contractual arrangement.⁶⁷

14 Staff believes that the facts of this case satisfy Arizona's standard for piercing the corporate veil.

15 As early as 1925, the Supreme Court of Arizona held that "courts will disregard corporate
16 form when justice requires it to look to the substance and not to the shadow,"⁶⁸ More recently, the
17 United States District Court of Arizona explained that "Under Arizona law...[t]hose seeking to
18 pierce the corporate veil must show that 'the financial setup of the corporation is only a sham and
19
20

21 ⁶⁵ Use of an independent method for determining market prices is necessary for determining whether costs are
prudent.

22 ⁶⁶ But see *Arizona Public Service Co. v. Arizona Corporation Commission*, 155 Ariz. 263, 746 P.2d 4 (App.
23 1987) (The Commission attempted to pierce the corporate veil to gain access to an affiliates records. The Court did
24 acknowledge that the Commission may prohibit a utility and its affiliates from evading regulation by means of the
affiliate relationship.) (Publication pages were not available, but see page 5 in Westlaw printout.), *Arizona Public Service
Co. v. Arizona Corporation Commission*, 157 Ariz. 532, 760 P.2d 532 (1988) (reversed in part on other grounds).

25 ⁶⁷ *In the Matter of the Application of Consolidated Water Utilities, LTD., Apache Junction Division for an
26 Increase in its Water Rates and Charges for Water Service in its Certificated Area in Pinal County, Arizona, et. al.*,
Docket Nos. E-1009-90-115 and E-1005-90-116, Decision No. 57666 at 18, l. 17 - 19, l. 5 (December 19, 1991),
27 *Consolidated Water Utilities v. ACC*, 178 Ariz. 478, 875 P.2d 137 (App. 1994) (reversed in part on other grounds); see
also (which is in accord with Decision No. 57666) *In the Matter of the Application of Consolidated Water Utilities, LTD.,
Apache Junction Division for an Increase in its Water Rates and Charges for Water Service in its Certificated Area in
Pinal County, Arizona, et. al.*, Docket Nos. E-1009-92-135 and E-1009-92-252, Decision No. 58260 at 19, ll. 24-25
28 (April 09, 1993). Also note that Ms. Brown recommended accounting separately for costs and profits for Black Mountain
Sewer. Exhibit S-9 at 14. ll. 5-12.

⁶⁸ *Gonzalez & Co. Brokers, Inc. v. Thomas*, 42 Ariz. 308, 312, 25 P.2d 552, 554 (1933), quoting *Phoenix
Safety Investment Co. v. James*, 28 Ariz. 514, 237 P. 958, 959 (1925).

1 causes an injustice.”⁶⁹ Under the alter ego theory, a plaintiff “must prove both (1) unity of control
2 and (2) that observance of the corporate form would sanction a fraud or promote injustice.”⁷⁰

3 Although piercing the corporate veil is often used to reach individuals who own a corporation,
4 it also applies when a corporation is the owner. As early as 1938, the Supreme Court of Arizona
5 explained the unity of control prong for two corporations. In *Walker v. Southwest Mines*
6 *Development Company*, 52 Ariz. 403, 81 P.2d 90 (1938), the court held:

7 [W]hen one corporation so dominates and controls another to make that
8 other a simple instrumentality or adjunct to it, the courts will look
9 beyond the legal fiction of distinct corporate existence, as the interests
10 of justice require; and where stock ownership is resorted to not for the
11 purpose of participating in the affairs of the corporation in the
12 customary and usual manner, but for the purpose of controlling the
13 subsidiary company so that it may be used as a mere agency or
14 instrumentality of the owning company, the court will not permit itself
15 to be blinded by mere corporate form, but will, in a proper case,
16 disregard corporate entity, and treat the two entities as one.⁷¹

17 The second prong has been discussed in a number of utility cases. In *State of North Carolina*
18 *v. Morgan*, 177 S.E.2d 405 (N.C. 1970), the Supreme Court of North Carolina held that “the doctrine
19 of the corporate entity may not be used as a means for defeating the public interest and circumventing
20 public policy.” The Supreme Court of Louisiana was more specific and held, “Manipulation by a
21 parent utility of a subsidiary for the purpose of creating excessive profits at the expense of the rate
22 payer would provide a reason for the regulatory agency to disregard [the] corporate entity...”⁷²
23 Finally, state commission in Washington expressed the injustice as follows:

24 [T]he clearly stated concern appears to be not the level of price at which
25 the transaction is accomplished in comparison with prices in nonaffiliated
26 transactions, but instead a level of earnings by the unregulated arm of the
27 utility at a rate higher than the utility is authorized and would be allowed
28 to achieve if no corporate device were utilized. In effect, the courts
approve for rate-making purposes the placement of a 100 percent affiliate
in the same position as an integrated [part] of a utility.⁷³

⁶⁹ *Keams v. Tempe Technical Institute, Inc.*, 993 F.Supp. 714, 724 (D.Ariz. 1997), quoting *Ize Nantan Bagowa, Ltd. v. Scalia*, 118 Ariz. 439, 577 P.2d 725, 729 (App. 1978).

⁷⁰ *Gatecliff v. Great Republic Life Insurance Co.*, 170 Ariz. 34, 37, 821 P.2d 725, 728 (1991).

⁷¹ *Id.*, 52 Ariz. at 414-415, 81 P.2d at 95, quoting *Platt v. Bradner Co.*, 131 Wash. 573, 230 P. 633 (Wash. 1924). See also *Deutsche Credit Corp. v. Case Power & Equip. Co.*, 179 Ariz. 155, 876 P.2d 1190 (App. 1994) (“Two corporations can be regarded as the same if ‘[e]ither the dominant corporation...so control[s] and use[s] the other as a mere tool or instrument in carrying out its own plans and purposes that justice requires it to be held liable for the results...’”), quoting *Jabczenksi v. Southern Pacific Memorial Hospital, Inc.*, 119 Ariz. 15, 21, 579 P.2d 53, 59 (App. 1978).

⁷² *Central Louisiana Electric Co. v. Louisiana Pub. Serv. Comm.*, 373 So.2d 123, 126 (La. 1979) (citations omitted).

⁷³ *Washington Water Power Co.*, 24 P.U.R. 4th at p. 11.

1 Staff believes that the record in this case easily satisfies both prongs of the standard for
2 piercing the corporate veil. For the unity of control prong, the most significant fact is that Black
3 Mountain Sewer and AWRA have zero employees. The only employees that provide utility service
4 work for AWS, Algonquin Power and APT. Company witness Mr. Dodds conceded that
5 “conceptually it’s possible” to consider employees at the affiliates as part-time employees of Black
6 Mountain Sewer.⁷⁴ The Algonquin affiliates provide virtually all of the services necessary for utility
7 service.⁷⁵ AWS even contracts on behalf of the Company.⁷⁶ Contracts between the Company and its
8 affiliates are not negotiated. Instead, the affiliates simply provide the Company with a template
9 contract.⁷⁷

10 Company witness Michael D. Weber testified that AWS was “specifically created” to provide
11 the “majority of the operation and maintenance, engineering and construction, financial and
12 accounting, administration and management and customer relations services provided to BMSC...”⁷⁸
13 He explained that his responsibilities as Vice President and General Manager of AWS “include
14 directing the day-to-day management and operation of the water and wastewater systems owned by
15 [AWRA].”⁷⁹ AWS also does not provide any services to non-affiliated entities.⁸⁰ Mr. Dodds even
16 testified that it was an advantage to AWS to not have to “seek clients as a normal business would
17 do.”⁸¹

18 In *Gatecliff, supra*, the Arizona Supreme Court relied on a record that suggested an affiliate
19 “exercised ‘substantially total control over the management and activities of [its sister
20 corporation].”⁸² For example, the contract “established that [the affiliate] performed virtually every
21
22
23

24 ⁷⁴ Tr. 514, ll. 9-14. See also Exhibit A-4 at 1, ll. 9-10 (“AWS employs the staff that operates all the facilities
owned by AWRA.”).

25 ⁷⁵ AWS provides most of Black Mountain Sewer’s employees and services.

26 ⁷⁶ Tr. 513, l. 24 - 514, l. 8.

27 ⁷⁷ *Id.* 509, l. 21 - 510, l. 12.

28 ⁷⁸ Exhibit A-5, ll. 7-15. See also Tr. 514, l. 25 - 515, l. 4.

⁷⁹ Exhibit A-4, ll. 4-10.

⁸⁰ Tr. 515, ll. 5-15. (Of the three Algonquin affiliates that provide services to Black Mountain Sewer, only
ALGONQUIN POWER provides services to non-affiliated entities.).

⁸¹ *Id.* 475, ll. 12-13.

⁸² *Gatecliff*, 170 Ariz. at 37, 821 P.2d at 728 (quotation omitted).

1 service necessary for [its sister corporation's] operation.”⁸³ The court also noted that the contract was
2 not negotiated at arms length.⁸⁴

3 The record easily supports the conclusion that Black Mountain Sewer is a mere agency or
4 instrumentality of the Algonquin affiliates. Black Mountain Sewer can only operate through
5 Algonquin affiliates. The record also easily supports the conclusion that observing the corporate
6 legal fictions would result in an injustice to rate payers.

7 In its pre-filed testimony and at the hearing, Staff testified that the injustice is layering on
8 profit that evades ROE regulation. In this case, allocated capital includes 8% for affiliate profit, and
9 allocated operating expenses include 6.5% for affiliate profit. Algonquin’s corporate structure creates
10 a very slippery slope for the Commission’s Constitutional mandate to set just and reasonable rates.
11 The mandate has always included setting an allowable return on equity.

12 Algonquin now seeks to set its own return by layering affiliate profit on top of Black
13 Mountain Sewer’s allowed ROE. Mr. Dodds testified that all Arizona utilities should operate using
14 Algonquin’s corporate model.⁸⁵ Even more disturbing, Mr. Dodds testified that Algonquin may
15 disband its shared services centers if the Commission disallows affiliate profits in Black Mountain
16 Sewer’s rate base and operating expenses.⁸⁶ In his pre-filed testimony, Mr. Weber went one step
17 farther. He testified that “[t]here is really no other possible outcome because AWS is not going to
18 stay in business if it cannot realize a return on its investment.”⁸⁷

19 The Company would like the Commission to simply focus on savings to ratepayers.⁸⁸ The
20 state commission of Washington rejected this argument because the consolidated companies would
21 earn a higher return than the utility’s allowed ROE. This Commission has also previously rejected
22 attempts to layer on profits through the use of affiliates. It would be unjust if ratepayers have to
23 choose between paying a premium over a utility’s allowed ROE, or receiving less efficient, more
24 costly service.

25
26 ⁸³ *Id.*

27 ⁸⁴ *Id.* The record showed that a vice-president of both affiliates signed four amendments to the contract on
behalf of both entities. In the instant case, the affiliates simply provide a template contract to Black Mountain Sewer.

28 ⁸⁵ Tr. 464, ll. 17-21.

⁸⁶ Tr. 517, ll. 15-21. See also

⁸⁷ Exhibit A-5 at 5, ll. 16-17.

⁸⁸ *Id.* 515, l. 25 - 516, l. 10.

1 **B. The Commission Should Provide Notice To AWRA To Operate As Efficiently As**
2 **Possibly, Including But Not Limited To, Use Of A Shared Services Center If**
3 **Costs May Be Reduced For Subsidiary Utilities.**

4 Staff recognizes that the Commission may have limited or no authority over an unregulated
5 holding company of Arizona utilities. However, Staff has serious concerns about some of the
6 testimony in this case. As stated in the section above, if the Commission disallows affiliate profit, the
7 consolidated companies of Algonquin may change they way they operate.

8 Staff witness Ms. Brown testified that, if Algonquin eliminates shared services, any increase
9 in costs for Black Mountain Sewer could be imprudent.⁸⁹ Staff also presented evidence that other
10 Arizona parent corporations or holding companies use shared services centers. These corporations
11 and holding companies only allocate costs to individual districts or utilities.⁹⁰ Ms. Brown testified
12 that it is an industry practice to use shared services centers. Finally, she testified that it is an industry
13 practice to allocate costs, but not profits, to individual operating companies.⁹¹

14 Ms. Brown even praised the Company and its parent AWRA for achieving economies of scale
15 and minimizing costs to ratepayers.⁹² However, the Company's testimony in this case regarding
16 potential reorganization raises concerns for Staff. Staff requests the Commission to provide notice to
17 AWRA that it expects AWRA to continue to operate its subsidiary utilities as efficiently as possible.
18 If use of shared services is the most efficient way to operate, AWRA should be encouraged to
19 continue this practice.

20 **II. RATE BASE**

21 Many of the disagreements between Staff and the Company related to rate base have been
22 resolved during the case.⁹³ The Company appears to propose that its adjusted test-year rate base, i.e.

23 ⁸⁹ Exhibit S-10 at 9, l. 20 - 10, l. 4. See also Tr. 791, l. 16 - 792, l. 1.

24 ⁹⁰ Exhibit S-10 at 7, ll. 20-26. See also Exhibit S-11.

25 ⁹¹ Tr. 812, l. 14 - 813, l. 4.

26 ⁹² *Id.* 779, ll. 2-5.

27 ⁹³ As a result of the meeting on July 31, 2006 described *infra*, Staff anticipates that the Company agrees with
28 Staff's final CIAC and AIAC balances, and plant-in-service. Other resolved issues are: (1) The Company requested
\$140,020 for cash working capital. The Company agreed with Staff's recommendation for no cash working capital and
removal of prepaid expenses. See Staff Brief Schedule CSB-11 (Rate Base Adjustment No. 7); see also Exhibit A-2 at
11, ll. 13-18; (2) The Company agreed with Staff's removal of \$3,000 from customer deposits because it was for a non-
customer refund. See Staff Schedule CSB-9 (Rate Base Adjustment No. 5); see also Exhibit A-2 at 9, ll. 20-23; (3) The
Company agreed with Staff's adjustment for expensed plant. See Staff Brief Schedule CSB-7 (Rate Base Adjustment No.
4a) and Staff Brief Schedule CSB-13, column B; see also Exhibit S-10 at 13, ll. 12-22; and (4) The Company agreed to
increase rate base for net deferred income tax. See Staff Brief Schedule CSB-10 (Rate Base Adjustment No. 6); see also
Exhibit A-2 at 9. l. 20- 10, l. 4.

1 its original cost rate base ("OCRB"), be used as its fair value rate base ("FVRB").⁹⁴ In its Rejoinder
2 Testimony, the Company requested a rate base of \$1,642,271.⁹⁵ Staff's final recommendation is an
3 OCRB of \$1,550,710.⁹⁶

4 Staff made two adjustments related to affiliate transactions. The Company accepted Staff's
5 disallowance of \$142,232 for plant that should have been allocated to other Algonquin affiliates.⁹⁷
6 The Company still disputes Staff's disallowance of \$20,871 of capitalized affiliate profit. The
7 remaining disagreements between Staff and the Company are described below.⁹⁸ Staff's post-hearing
8 adjustments and recommendation on refunding hook-up fees are also described.

9 **A. Staff Made Changes In Its Recommendations And Schedules Based On Source**
10 **Documentation Provided After The Hearing.**

11 Several of Staff's recommendations at the hearing were based on a lack of source
12 documentation. Ms. Brown testified that Staff would reconsider these recommendations if the
13 Company provided documentation. The Company agreed to provide it.⁹⁹ Judge Nodes ordered Staff
14 and the Company to meet and confer with the Residential Utility Consumers Office ("RUCO") if any
15 changes could affect the parties' positions in the case. On July 26, 2006, Staff filed five changes to
16 its recommendations and provided all parties electronic copies of its final schedules.

17 Subsequently, Staff discovered some errors and held a meeting with all of the parties on July
18 31, 2006. Staff provided updated schedules and explanations to the parties. Staff's late-filed
19 surrebuttal schedules recommended a rate base of \$1,347,271. Staff's updated recommendations
20 increased rate base by \$203,440 with the following changes:¹⁰⁰

- 21 (1) An increase of \$339,833 in plant-in-service to reflect unrecorded plant
22 purchased with Contributions in Aid of Construction ("CIAC");¹⁰¹
23 (2) An increase of \$150,096 in CIAC to reclassify expired Advances in Aid of
24 Construction ("AIAC");¹⁰² and a corresponding decrease in AIAC;¹⁰³

25 ⁹⁴ Exhibit A-1 at 2, ll. 17-19. See also Exhibit S-9 at 7, ll. 14-18.

26 ⁹⁵ *Id.* at Company Rejoinder Schedule A-1, line 1.

27 ⁹⁶ Staff Brief Schedule CSB-0a, line 1.

28 ⁹⁷ Exhibit A-2 at 28, ll. 21-25.

⁹⁸ But see Tr. 736, ll. 3-12 (Ms. Brown recommended that the Company modify its service charges to include interest for customer deposits.).

⁹⁹ Tr. 772, ll. 21-25.

¹⁰⁰ Staff Brief Schedule CSB-0b.

¹⁰¹ See Staff Brief Schedule CSB-8b (Rate Base Adjustment No. 4B).

¹⁰² See Staff Brief Schedule CSB-8a, page 1 (Rate Base Adjustment No. 4A).

¹⁰³ See Staff Brief Schedule CSB-8a, page 4 (Rate Base Adjustment No. 4A).

- 1 (3) A decrease of \$19,539 in accumulated depreciation to retire plant which was replaced
2 by post-test year plant; and a corresponding correction of an error in Staff's late-filed
3 surrebuttal schedules;¹⁰⁴
4 (4) A decrease of \$15,711 in accumulated depreciation on affiliate plant disallowed by
5 Staff;¹⁰⁵
6 (5) A decrease of \$45,639 in accumulated amortization of CIAC;¹⁰⁶ and
7 (6) An increase of \$145,545 in AIAC for unrecorded AIAC.¹⁰⁷

8 **B. The Company Should Replace Funds From Its Hook-Up Fee Account That Were
9 Improperly Used; Its Hook-Up Fee Should Be Terminated; And Remaining
10 Funds Should Be Refunded To Customers.**

11 In her Direct Testimony, Ms. Brown identified three uses of hook-up fees that Staff deemed
12 misuse of the funds.¹⁰⁸ Staff recommended that approximately \$613,232 be returned to the hook-up
13 fee fund.¹⁰⁹ Staff also recommended that the hook-up fee be rescinded pursuant to Decision No.
14 59944.¹¹⁰ Because of prior problems with the Company's use of hook-up fees, the Commission
15 identified specific reasons the hook-up fee tariff could be rescinded, including misuse of funds.¹¹¹

16 Next, Staff recommended that the entire remaining balance of approximately \$833,367 be
17 refunded to customers. In its Surrebuttal Testimony, Staff recommended that the Company make the
18 refunds according to contributions by customer class.¹¹² The Company agreed with Staff's
19 recommendations related to the hook-up fee fund, except for the method to make refunds.¹¹³

20 In his Rejoinder Testimony, Mr. Bourassa stated that the Company does not track
21 contributions by customer class. He also testified that there are only two classes of customers and
22 residential customers represent approximately 92% of all customers.¹¹⁴ Staff does not oppose the
23 Company's proposal to calculate the refund on a per customer basis. Finally, "Staff recommends that
24 the rates not go into effect until the first day of the month after (1) the Company refunds the CIAC in
25 accordance with a signed Commission order and (2) provides documentation to Staff that the total
26 refund has been made."¹¹⁵

27 ¹⁰⁴ See Staff Brief Schedule CSB-5 (Rate Base Adjustment No. 1).

28 ¹⁰⁵ See Staff Brief Schedule CSB4, column C.

¹⁰⁶ See Staff Brief Schedule CSB-0b.

¹⁰⁷ See Staff Brief Schedule CSB-8a, page 4 (Rate Base Adjustment No. 4A).

¹⁰⁸ Staff identified approximately \$613,232 of misused funds for the following items: (1) \$142,232 to purchase
computer equipment; (2) \$20,000 to purchase vehicles; and (3) \$451,000 to purchase land. Staff Exhibit S-9 at p. 38,
lines 6-11.

¹⁰⁹ *Id.* at 38, ll. 13-18.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 36, ll. 15-20.

¹¹² Exhibit S-10 at 18, ll. 14-22.

¹¹³ Exhibit A-2, ll. 1-11.

¹¹⁴ Exhibit A-3 at 9, ll. 1-11.

¹¹⁵ Exhibit S-10 at 19, ll. 1-4.

1 **C. Staff Recommends That \$3,228 Of Legal Costs Be Removed From Operating**
2 **Expenses And Capitalized.**

3 Staff recommends that \$3,228 in legal costs be removed from operating expenses, capitalized
4 and amortized over the life of the operating agreement with the Town of Carefree.¹¹⁶ The costs were
5 incurred in negotiating the agreement. Ms. Brown testified that “costs that result in multi-year
6 benefits should be distributed over the benefit period in accordance with the matching principle.”¹¹⁷

7 **III. REVENUE REQUIREMENT**

8 Staff’s final recommendation for annual revenue requirement is \$1,455,647 based on an
9 adjusted rate base of \$1,550,710 and a rate of return (“ROR”) of 9.6%.¹¹⁸ Staff proposes operating
10 expenses in the amount of \$1,306,779.¹¹⁹ Staff calculates the Company’s current ROR at 0.31%.
11 Staff’s proposed revenue requirement and operating expenses would result in a 20.76% increase in
12 revenue over test year revenues of \$1,205,452.¹²⁰

13 Staff has not seen the Company’s final brief schedules. However, it assumes that differences
14 in revenue requirement are due to differences in recommended ROR, differences in recommended
15 rate base, and the disputes described next. Note that the Company agreed to Staff’s disallowance of
16 \$3,644 in miscellaneous affiliate expenses. These expenses should have been allocated to other
17 Algonquin affiliates.¹²¹ The only remaining disputes between the Company and Staff are for (1)
18 affiliate expenses, (2) removal of the gross-up for income taxes from the operating lease for the
19 Scottsdale Treatment Facility; and (3) rate case expense.

20 **A. The Commission Should Disallow \$21,761 In Operating Expenses For Affiliate**
21 **Profits.**

22 Staff’s positions on excluding affiliate profits, and analyzing affiliate costs, have been fully
23 briefed above. However, Staff does not know whether the \$21,761 is the entire affiliate profit
24 included in affiliate invoices. Mr. Dodd’s answers make it unclear whether the affiliate profit
25 identified in discovery include profit margins already embedded in hourly rates for employees of the

26 _____
27 ¹¹⁶ Exhibit S-9 at 31, ll. 7-12.

¹¹⁷ *Id.*

¹¹⁸ Staff Brief Schedule CSB-1.

¹¹⁹ Staff Brief Schedule CSB-12.

¹²⁰ Staff Brief Schedule CSB-1.

¹²¹ See Exhibit A-2 at 33, ll. 10-11.

1 affiliates.¹²² Staff is concerned that the amounts previously identified may not include the profit
2 portion embedded in hourly rates. Additionally, the Company has not provided any documentation
3 that establishes the profit portion of hourly rates, or the amount of any other profit. Ms. Brown also
4 testified that some of the overhead allocated to Black Mountain Sewer could be subsidizing other
5 Algonquin affiliates.¹²³

6 The confusion can be demonstrated by conflicting evidence in the record. In his Rebuttal
7 Testimony, Mr. Bourassa testified that the affiliate profit in operating expenses represents 4.5% of the
8 total costs paid to affiliates.¹²⁴ Mr. Bourassa calculated the percentage based on total costs of
9 \$480,192.¹²⁵

10 However, in response to a Staff data request, the Controller for AWS, Mr. Sorensen, stated
11 that the "actual test year AWS pre-tax operating margin for services to BMSC was only 6.5%."¹²⁶ In
12 her Direct Testimony, Ms. Brown recognized the 6.5% profit margin identified by Mr. Sorensen.
13 The difference may be explained by reviewing Staff Brief Schedule CSB-15.

14 The \$480,192 used by Mr. Bourassa includes miscellaneous expenses in the amount of
15 \$30,420. Staff assumed that miscellaneous expenses were costs passed through without including
16 any profit. Ms. Brown excluded that amount in Staff Brief Schedule CSB-15 and calculated a profit
17 margin of 6.5% using total costs of \$334,789.

18 Mr. Sorensen also stated that the budgeted pre-tax profit margin was actually 10.4%. This
19 profit margin was identified in response to a different data request. In that response, the Controller
20 for Algonquin Power, Mr. Gerald Tremblay, provided a budget of costs to be allocated to Black
21 Mountain Sewer.¹²⁷ The budget included 10% for overhead and the 10.4% operating margin.

22 The record does not include any evidence to determine whether a profit margin of 10.4% was
23 billed to Black Mountain Sewer, or whether 6.5% was billed. The record also does not include any
24

25 ¹²² Tr. 517, ll. 3-14.

26 ¹²³ *Id.* 788, ll. 7-9. See also *In the Matter of the Application of Consolidated Water Utilities, LTD., Apache*
27 *Junction Division for an Increase in its Water Rates and Charges for Water Service in its Certificated Area in Pinal*
County, Arizona, et. al., Docket Nos. E-1009-90-115 and E-1005-90-116, Decision No. 57666 at 18, l. 17 - 19, l. 5
(December 19, 1991), *Consolidated Water Utilities v. ACC*, 178 Ariz. 478, 875 P.2d 137 (App. 1994) (reversed in part on
other grounds).

28 ¹²⁴ Exhibit A-2 at 33, ll. 14-16.

¹²⁵ *Id.*

¹²⁶ Exhibit S-18.

¹²⁷ Exhibit S-19.

1 evidence supporting any amount of affiliate profit other than Company representations. And those
2 representations are inconsistent. This case is reminiscent of *Consolidated Water Utilities, supra*.

3 The Company further distinguishes between pre-tax profit margin and post-tax profit
4 margin.¹²⁸ The Company never explained why profit margin billed by the affiliates should be
5 characterized or accepted on a post-tax basis. It is irrelevant what profit margin is actually realized
6 by the affiliates. The only relevant issue in this case is the profit margin included in Black Mountain
7 Sewer's rate base and operating expenses.

8 Moreover, the Company asked questions in the hearing that belie the above evidence. For
9 example, Mr. Shapiro asked Ms. Brown the following question:

10 Q. But, again, why should the shareholders, the affiliates, place their
11 resources *at risk* without any promise of a potential, at least, for
some return?¹²⁹

12 Staff fails to see how any resources of Algonquin affiliates are at risk. Mr. Sorensen stated that,
13 "Costs not specifically identifiable to a particular customer of AWS were allocated to each customer
14 based upon that customer's percentage of billings for AWS."¹³⁰

15 All of AWS' customers are regulated utilities that can recover all prudent expenses. In other
16 words, AWS' risk is synonymous with its customers' risk. Ms. Brown also testified that Algonquin
17 affiliate profits should be eliminated because the consolidated companies' profits should be limited to
18 ROE regulation.¹³¹ Because affiliate risk is no different than utility risk, the difference between
19 affiliates' budgeted profit margins and actual profit margins has not been adequately explained.
20 Finally, the Company has not met its burden of production to justify affiliate profit using its corporate
21 structure and transaction processes.

22 ...
23 ...
24 ...
25 ...

26
27
28 ¹²⁸ See Exhibits. S-18 and S-19.
¹²⁹ Tr. 792, ll. 2-4 (emphasis added).
¹³⁰ Exhibit S-18.
¹³¹ Tr. 790, l. 23 - 791, l. 7.

1 **B. The Commission Should Decrease Operating Expenses By \$27,801 To Remove**
2 **The Gross-Up Factor Related To Income Taxes For The Scottsdale Operating**
3 **Lease.**

4 The Company proposed to include \$27,801 in operating expenses as a gross-up for income
5 taxes. The Company's method includes income taxes on the principle amount of loan payments for
6 its lease on the Scottsdale Treatment Facility.¹³² Staff proposed a different and cleaner method that
7 does not require a gross-up factor. Staff proposes to continue to include the loan payments in
8 operating expenses. However, Staff proposes to not include the loan payments in the ratemaking
9 calculation of taxable income. Staff's method results in a higher taxable income and an offsetting,
10 higher income tax expense to be included in rates.¹³³

11 The Company believes that Staff's method overstates income tax expense to be included in
12 rates.¹³⁴ On the other hand, Staff believes that the Company's method understates income tax
13 expense.¹³⁵ Staff also believes that its method results in a more realistic level of income tax expense
14 for rate-making purposes.

15 The Company argues that Staff's method is somehow inconsistent with Decision Nos. 59944
16 and 60240. Mr. Bourassa claims that:

17 The purpose of interest synchronization is to synchronize the portion of
18 the rate base supported by debt with the interest expense deduction that
19 determines income tax expense for ratemaking purposes. There is no
20 debt supporting rate base in the instant case. Under the operating lease
21 methodology, the Scottsdale Capacity acquisition costs funded by debt
22 are excluded from rate base and there is no other debt in the Company's
23 capital structure.¹³⁶

24 The issue is not whether the acquisition costs funded by the debt are included in rate base. The issue
25 is what the appropriate amount of income tax expense should be to include in the cost of service.¹³⁷

26 Staff believes that its method is consistent with actual federal and state income tax formulas.
27 Ms. Brown also testified that "the ratemaking treatment of debt payments as an expense in the
28

26 ¹³² Exhibit S-9 at 32, ll. 2-7. See also Staff Brief Schedule CSB-19 (Operating Income Adjustment No. 6).

27 ¹³³ *Id.* at 32, l. 17 - 33, l. 3.

28 ¹³⁴ Exhibit A-2 at 38, ll. 18-20.

¹³⁵ Exhibit S-9 at 33, ll. 2-3.

¹³⁶ Exhibit A-2 at 39, ll. 3-9.

¹³⁷ See Decision No. 59944 at 6, ll. 10-12 ("Staff's income statement methodology provides...an income
neutral approach (i.e., annual revenues and expenses increase by the same amount.").

1 income statement does not alter the statutory tax treatment of the interest expense nor preclude an
2 alternate ratemaking treatment for calculating income taxes for inclusion in cost of service.”¹³⁸

3 **C. The Commission Should Allow Rate Case Expenses In The Amount Of \$124,800.**

4 In its Direct Testimony, Staff did not dispute the Company request for \$120,000 in rate case
5 expense. Mr. Bourassa testified that “if the utility does something improper, or advances positions in
6 bad faith, it should shoulder the burden of such actions.”¹³⁹ The Company proposed to increase its
7 rate case expense to \$150,000 in its Rebuttal Testimony.¹⁴⁰ Mr. Bourassa testified that rate case
8 expense needed to be increased in part because “discovery by Staff and to a lesser extent RUCO has
9 been more burdensome on the Company than I ever would have anticipated.”¹⁴¹

10 Staff believes that the Company used delay tactics during discovery. Staff’s amount of
11 discovery was necessary only because of the delay tactics. The Company’s tactics required Staff to
12 send numerous data requests related to affiliate transactions.¹⁴² Staff believed that a complete
13 understanding of these transactions was critical to its analysis of the case.

14 Staff sent its initial data requests on November 21, 2005, and did not receive complete
15 responses until February 14, 2006.¹⁴³ Staff continues to doubt that all information has been fully
16 disclosed. More importantly, the information should have been provided as part of the Company’s
17 initial burden of production to justify affiliate costs and profits. Staff recommends that the Company
18 receive no additional rate case expense for discovery. Staff believes that the initial \$120,000 is
19 sufficient to cover the costs of discovery.¹⁴⁴

20 However, Mr. Bourassa also used the intervention by the Town of Carefree as justification for
21 the additional \$30,000. Staff allotted 24 additional hours because of the Town’s intervention. It then
22 used an hourly composite rate of \$400 for costs related to the Company’s rate consultant, legal
23 counsel, and other costs. Staff believes that the costs should be shared equally between ratepayers
24
25

26 ¹³⁸ Exhibit S-10 at 15, ll. 8-12.

27 ¹³⁹ Exhibit A-1 at 12, ll. 14-16.

28 ¹⁴⁰ Exhibit A-2 at 31, ll. 14-16.

¹⁴¹ *Id.*, ll. 20-21.

¹⁴² See Exhibits S-12 - S-23.

¹⁴³ Exhibit S-10 at 17, ll. 6-18; see also footnote 2.

¹⁴⁴ *Id.* at 18, ll. 2-6.

1 and shareholders. As a result, Staff recommends an increase of \$4,800 over the Company's initial
2 request. Accordingly, Staff recommends \$124,800 in total for rate case expenses.

3 **IV. COST OF CAPITAL**

4 Staff recommends a capital structure of 100% equity and 0% debt.¹⁴⁵ The Company and Staff
5 agree on capital structure. Staff's final recommended ROE is 9.6%. The Company's recommended
6 ROE is 11%.¹⁴⁶

7 Staff's recommendations use market-based financial models that have been accepted by this
8 Commission for many years. Staff uses both historical and forecasted inputs. All of Staff's inputs
9 are factors which investors can reasonably be expected to consider in determining their expected rate
10 of return. The models are also widely accepted in the financial industry and by most state
11 commissions in setting just and reasonable rates of return.

12 The Company's recommendations are based on two different constant growth DCF models
13 and one multi-stage DCF model.¹⁴⁷ The Company then selects its recommended ROE with the range
14 of results by comparing them to two different "approaches."

15 These "approaches" rely heavily on non-market based data and forecasts. The approaches are
16 the "risk premium approach" and the "comparable earnings approach." The Company requests an
17 increase in ROE to compensate for the Company's small firm size and individual business risk. The
18 Commission has repeatedly rejected these approaches, and risk premiums for small firm size and
19 individual business risk.

20 **A. The Commission Should Adopt Staff's Recommended ROE Of 9.6% Because It** 21 **Is Based On Proven Financial Models And On Balanced And Reasonable Inputs.**

22 To determine the required rate of return, Staff used the following financial models: (1) the
23 constant growth discounted cash flow ("DCF") model (9.4%); (2) the multi-stage DCF model (9.8%);

24
25 ¹⁴⁵ But see Staff Brief Schedule PMC-2. Staff calculated a downward adjustment of 50 basis points for
26 financial risk. Staff used the Hamada equation to quantify financial risk due to the Company's capital structure. Staff did
27 not recommend the downward adjustment because the Company's capital structure is reasonable. Exhibit S-5 at 2, ll. 11-
28 17. The Company has two inter-company loans that are not included in the capital structure pursuant to Decision Nos.
59944 and 60240. Staff recognizes that investors would view the loans as debt in determining capital structure. Exhibit
S-4 at 6, l. 21 - 7, l. 7. See also Staff Brief Schedule PMC-3 comparing the Company's actual capital structure with the
average for Staff's proxy water companies.

¹⁴⁶ Staff Brief Schedule PMC-1. Note that the overall rate of return ("ROR") is the same as the ROE for Staff
and the Company because of the capital structure.

¹⁴⁷ Exhibit A-1 at 40, l. 8-18.

1 and (3) the capital asset pricing model (“CAPM”). Staff used two CAPM estimates, one using an
2 historical market risk premium (10.1%), and one using a current market risk premium (8.9%). Staff
3 first calculated an average for the DCF results (9.6%); then calculated an average for the CAPM
4 results (9.5%); and finally calculated the average for both models (9.6%).¹⁴⁸ Staff’s recommended
5 ROE is the average for both models.

6 For the constant growth DCF, Staff calculated the growth factor by averaging the results of
7 six different methods for calculating it.¹⁴⁹ The growth factor is the most frequently disputed input in
8 the model. Staff chose a balanced methodology that “gives equal weight to historical and projected
9 earnings per share (“EPS”), dividends per share (“DPS”), and sustainable growth.”¹⁵⁰ Staff witness
10 Mr. Pedro Chaves testified that his choice of inputs “avoids the skewing that can occur by a less
11 balanced analysis such as that prepared by the Company’s witness.”¹⁵¹

12 Mr. Bourassa criticized Staff’s choice of inputs because “individual DCF results using these
13 growth rates...produce indicated equity costs below the cost of debt.”¹⁵² Apparently, Mr. Bourassa
14 expects Staff to calculate six different costs of equity using each method for calculating growth.¹⁵³
15 Then, if any result is below the cost of debt, Mr. Bourassa expects Staff to not use that particular
16 input.¹⁵⁴ Mr. Chaves testified that if the Commission adopted Mr. Bourassa’s approach, it should
17 also exclude “the highest growth components to maintain a balanced outcome.”¹⁵⁵ More importantly,
18 Mr. Chaves testified that it is unreasonable to assume investors ignore low outcomes and accept high
19 outcomes.¹⁵⁶

20 Mr. Bourassa also criticizes Staff’s growth factor in its multi-stage DCF model. Although
21 Mr. Bourassa uses the same long term growth rate (6.8%), he criticized Staff’s short term growth rate
22 because it was lower than its constant growth DCF growth factor.¹⁵⁷ Staff calculated its short term
23 growth rate using projections of dividends for each of its sample companies.¹⁵⁸ Mr. Bourassa’s

24 ¹⁴⁸ See Staff Brief Schedule PMC-2.

25 ¹⁴⁹ Exhibit S-4 at 16, ll. 10-15.

26 ¹⁵⁰ Exhibit S-5 at 4, ll. 14-17.

27 ¹⁵¹ *Id.*

28 ¹⁵² Exhibit A-2 at 57, ll. 1-2.

¹⁵³ Exhibit S-5 at 5, ll. 4-12.

¹⁵⁴ Exhibit A-2 at 57, ll. 3-4.

¹⁵⁵ Exhibit S-5 at 5, ll. 12-17.

¹⁵⁶ *Id.*, ll. 10-12.

¹⁵⁷ Exhibit A-2 at 67, ll. 7-13.

¹⁵⁸ Exhibit S-4 at 25, ll. 13-17.

1 criticism is obviously result driven. Mr. Bourassa explains that “while financial models are useful,
2 they cannot be used [mechanically or] blindly.”¹⁵⁹

3 However, it is Mr. Bourassa, and not Mr. Chaves, that uses professional judgment
4 inappropriately. Mr. Bourassa uses a shot gun approach. He analyzes inputs by looking at the results
5 they produce when used in financial models. He then selectively rejects and accepts inputs based on
6 his initial iteration.

7 Staff chooses its inputs by first identifying available market data. It then analyzes whether
8 investors can be expected to rely on the available data. Staff inputs are pre-selected as specified from
9 a balanced methodology. Staff does not use results to determine inputs. If inputs are selected
10 appropriately, the results speak for themselves.

11 Finally, Mr. Bourassa criticizes Staff’s CAPM results because (1) its risk-free rate uses spot
12 prices for five-, seven- and ten-year intermediate U.S. Treasury securities;¹⁶⁰ (2) its results don’t
13 increase in lock step with increases in interest rates;¹⁶¹ and (3) its current market risk premium
14 (“MRP”) is unstable.¹⁶² The Commission has repeatedly affirmed Staff’s choice of inputs for both its
15 DCF and CAPM models.¹⁶³

16 Staff also believes that the record in this case does not support a conclusion that its current
17 MRP is unstable. The MRP moves with the market which can be volatile. Market volatility does not
18 make the CAPM model unstable or subject to manipulation. The evidence in this case also shows
19 that Staff’s overall results for its current MRP CAPM model did not change from its direct testimony
20 to its surrebuttal testimony.

21 In Staff’s direct testimony, its risk premium was 5.7%,¹⁶⁴ and in its surrebuttal testimony, it
22 was 5.4%.¹⁶⁵ However, its overall results were 8.9% in both its direct and surrebuttal testimony

23
24 ¹⁵⁹ *Id.* at 54, ll. 20-21.

¹⁶⁰ Exhibit A-2 at 73, l. 12 - 74, l. 2.

¹⁶¹ Exhibit A-3 at 26, ll. 14-22.

¹⁶² Exhibit A-2 at 75, ll. 11-15.

26 ¹⁶³ See e.g. *In the Matter of the Application of Southwest Gas*, Docket No. G-01551A-04-0876, Decision No.
27 68487 (Feb. 23, 2006); *In the Matter of the Application of Chaparral City Water Company*, Docket W-02113A-04-0616,
28 Decision No. 68176 (Sep. 30, 2005); *In the Matter of the Application of Arizona Water Company*, Docket No. W-
01445A-02-0619, Decision No. 66849 (Mar. 19, 2004); *In the Matter of the Application of Rio Rico Utilities, Inc.*, Docket
No. WS-02676A-03-0434, Decision No. 67279 (Oct. 5, 2004); *In the Matter of the Application of Bella Vista Water Co.,
Inc.*, Docket No. W-02465A-01-0776, Decision No. 65350 (Nov. 1, 2002).

¹⁶⁴ See Exhibit S-6 (Revised Direct Testimony Schedule PMC-2).

¹⁶⁵ See Staff Brief Schedule PMC-2.

1 because the risk-free rate changed during the time interval.¹⁶⁶ Mr. Chaves also testified that the MRP
2 varies with the market which varies over time.¹⁶⁷ He explained that variability is expected because
3 the CAPM model is a market-based model.¹⁶⁸ Mr. Chaves testified that Staff uses both an historical
4 MRP and a current MRP to mitigate the market's volatility.¹⁶⁹

5 The Company introduced evidence which it implies demonstrates that the CAPM model is
6 subject to manipulation.¹⁷⁰ In Company Exhibit A-20, the Company selected a handful of dates
7 looking backward in time.¹⁷¹ The Company then calculated the current MRP that would have
8 resulted on those days.¹⁷²

9 Mr. Chaves testified that it is possible to select dates looking backward in time to support a
10 variety of positions.¹⁷³ Mr. Chaves further testified that Staff selects the dates for its inputs before the
11 date occurs. Staff's process is to select the most recent date it can before finalizing its testimony.¹⁷⁴
12 Therefore, Staff's process does not manipulate the CAPM model to achieve a specific result.

13 Next, Mr. Bourassa claims that rising interest rates do not affect Staff's cost of capital
14 analysis.¹⁷⁵ Mr. Bourassa ignores the fact that the CAPM model has three inputs which do not
15 necessarily move in the same direction at the same time. Mr. Chaves specifically testified that "there
16 is a relationship between interest rates and the cost of equity capital."¹⁷⁶ He also explained that the
17 cost of equity capital will move in the same direction as interest rates if all other variables remain the
18 same.¹⁷⁷

19 He explained that, even though interest rates increased between the time of his Direct
20 Testimony and his Surrebuttal Testimony, Staff's current MRP declined. The decline in current MRP
21 offset the increase in interest rates.¹⁷⁸ Mr. Chaves made the same comparison between his testimony
22

23 ¹⁶⁶ See footnotes 166 and 167 above.

24 ¹⁶⁷ Tr. 716, ll. 7-23.

25 ¹⁶⁸ *Id.*

26 ¹⁶⁹ *Id.* 703, l. 23 - 704, l. 1; see also *Id.* 707, ll. 9-15.

27 ¹⁷⁰ *Id.* 705, l. 12 - 707, l. 20.

28 ¹⁷¹ *Id.* 717, ll. 14-19.

¹⁷² Exhibit A-20.

¹⁷³ Tr. 717, ll. 16-19.

¹⁷⁴ *Id.* 717, ll. 3-10; and at 717, l. 22 - 719, l. 1.

¹⁷⁵ Exhibit A-3 at 26, ll. 21-22.

¹⁷⁶ Tr. 684, ll. 10-16.

¹⁷⁷ *Id.* at ll. 17-19.

¹⁷⁸ *Id.* at 719, ll. 5 to 722, ll. 18.

1 in this case and Staff's testimony in Company Exhibit A-21.¹⁷⁹ Although interest rates increased
2 from 3.3% to 4.7%, the current MRP declined from 13.1% to 5.7%.¹⁸⁰

3 **B. The Commission Should Reject The Company's Recommended ROE Of 11%**
4 **Because It Is Based On "Approaches" And Choices Of Inputs That Artificially**
5 **Inflate Required Return, And Include Premiums For Which Investors May**
6 **Eliminate Through Diversification.**

7 Mr. Bourassa testified that his recommended ROE "is based on cost of equity estimates using
8 constant growth and multi-stage growth discounted cash flow ("DCF") and is confirmed by a risk
9 premium analysis, [a comparable earnings analysis], and my review of the economic conditions
10 expected to prevail during the period in which new rates will be in effect."¹⁸¹ Mr. Bourassa testifies
11 that his DCF results must be confirmed to comply with the *Bluefield Water Works*¹⁸² and *Hope*
12 *Natural Gas*¹⁸³ decisions.¹⁸⁴ The Company also argues that Black Mountain Sewer's small size and
13 individual business risk should increase its ROE.¹⁸⁵

14 The Company's DCF results are identical to Staff's DCF results. Mr. Bourassa corrected the
15 results in his Rebuttal Testimony at the hearing. With the corrections, the average midpoint of his
16 three DCF models is 9.6%.¹⁸⁶ The Company's results could be even lower. Mr. Bourassa's DCF
17 model using EPS excluded one of his sample companies.

18 He excluded Middlesex because the "indicated cost of equity [is] only 40 basis points above
19 [the] projected cost of Baa investment grade bonds."¹⁸⁷ Mr. Chaves testified that Mr. Bourassa's
20 reason to exclude Middlesex was insufficient.¹⁸⁸ He calculated the average indicated cost of equity
21 ("COE") including Middlesex.¹⁸⁹ Without Middlesex the average was 9.7%, but with Middlesex, it is
22 9.3%. With Middlesex, the Company's overall DCF results drop from 9.6% to 9.5%.

23 In addition to the exclusion of Middlesex, the Company's results could have been lower if it
24 chose more balanced inputs. The Company only used forecasted EPS growth estimates. It excluded

24 ¹⁷⁹ *Id.* at 722, ll. 2-11.

25 ¹⁸⁰ Compare Exhibit A-21, Schedule JMR-7 to Exhibit No. S-6.

26 ¹⁸¹ Exhibit A-1 at 13, ll. 18-23.

27 ¹⁸² *Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679
(1923).

28 ¹⁸³ *Federal Power Commission v. Hope Natural Gas*, 320 U.S. 591 (1944).

¹⁸⁴ Exhibit No. A-1 at 31, ll. 1-20 (emphasis added).

¹⁸⁵ *Id.* at 28, ll. 3-22.

¹⁸⁶ See Tr. 230, ll. 22-25; Tr. 231, ll. 106; Tr. 157, ll. 7-21; Tr. 144, ll. 16 - 145, l. 2; and Tr. 144, ll. 1-15.

¹⁸⁷ Exhibit A-3, Schedule D-4.9, footnote (b) (emphasis added).

¹⁸⁸ Tr. 712, ll. 19 to 713, ll. 17.

¹⁸⁹ Exhibit S-8.

1 historical DPS, historical EPS, and forecasted DPS. The Commission has specifically rejected the
2 Company's choice of inputs and accepted Staff's choices.¹⁹⁰

3 Mr. Bourassa uses his risk premium approach, comparable earnings approach, and the
4 Company's small size to select his final recommended ROE. His DCF results ranged from 8.5% to
5 11.0%.¹⁹¹ He selected the highest ROE in that range. The Commission has consistently rejected all
6 three approaches to inflate ROE.¹⁹² In rejecting the risk premium and comparable earnings
7 approaches, the Commission recently held that Staff's methodology of determining ROE does not
8 violate the *Bluefield Water Works* or the *Hope Natural Gas* decisions.¹⁹³

9 RESPECTFULLY Submitted this 21st day of August 2006,

10
11
12 

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27 ¹⁹⁰ See footnote 165, *supra*.

28 ¹⁹¹ Exhibit No. A-3 at 22, ll. 11 to 23, ll. 2.

¹⁹² See footnote 165, *supra*.

¹⁹³ *In the Matter of the Application of Southwest Gas*, Docket No. G-01551A-04-0876, Decision No. 68487 (Feb. 23, 2006).

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