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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission

DOCKETED

DEC 13 2006

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AZ CORP COMMISSION
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In the Matter of the Application of Arizona
American Water Company for Approvals
Associated with a Transaction with the
Maricopa County Municipal Water
Conservation District Number One

DOCKET NO. W-01303A-05-0718

COMMENTS OF TREND HOMES, INC.

Defendants.

Trend Homes, Inc., an Arizona corporation ("Trend"), through counsel undersigned, hereby submits these comments to in the above referenced matter.

Trend is currently developing a residential community within the Certificate of Convenience and Necessity of Arizona-American Water Company, Inc.'s ("Arizona-American") Agua Fria District commonly known as Trend Homes at Cortessa which contains approximately 345 lots. Stardust Development, Inc., an Arizona corporation, entered into that certain Water Facilities Line Extension Agreement on or about July 9, 2004 ("Line Extension Agreement") of which Trend is a third party beneficiary. The Line Extension Agreement concerns the water services being provided to the Cortessa development, including the community being developed by Trend. Additionally, there are other master-planned communities in development where Trend has or will be requesting water service from Arizona-American in the future. Thus, Trend is directly and substantially impacted by Arizona-American's pending application to increase the Water Facilities Hook Up Fee ("WFHUF").

1 Trend has reviewed the Staff Report and Recommended Order and has one concern that
2 they believe should be addressed in the Recommended Order. Although the proposed increase of
3 the WFHUF is substantial, Trend understands the need for expeditious construction of the White
4 Tank Plant in the Agua Fria Water District. However, Trend has already paid to Arizona-
5 American WFHUFs pursuant to the Line Extension Agreement at amounts based on the existing
6 Commission-approved tariffs. Therefore, Trend's sole concern at this time is for any Order
7 issued by the Commission regarding the proposed increase in WFHUF to expressly provide that
8 to the extent Arizona-American has received payment from WFHUFs under the existing tariff, if
9 and when the new tariff becomes effective, Arizona-American may not charge the difference
10 between the existing WFHUF and the new WFHUF as a condition to receiving service, regardless
11 of whether Arizona-American has provided a water meter.¹ Further, Arizona-American should be
12 precluded from unilaterally refunding WFHUFs paid by an applicant for water service under the
13 existing tariff in order to charge the higher WFHUF under the proposed tariff.
14

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16 Trend recognizes that a public utility may only charge its customers based upon the
17 Commission-approved tariff that exists at the time and that a utility may not retroactively charge a
18 tariff when a higher tariff goes into effect. However, Trend believes that clarification is necessary
19 because although the WFHUF has been paid, Arizona-American has not provided meters and this
20 should not form the basis of a claim that the new tariff can be applied. Similarly, Arizona-
21 American shall not be entitled to refund the paid WFHUF in favor of collecting the higher
22 WFHUF at a later time.
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¹ At this time, Trend has paid WFHUFs into an escrow account as required under the Line Extension Agreement, however Arizona-American has yet to install or "set" the water meters.

1 Therefore, Trend is proposing the following amendments to the Recommended Order²:

2 Add Finding of Fact No. 23 as follows: "On December 13, 2006, Trend filed comments
3 requesting that it be made clear that to the extent that an applicant for water service has already
4 paid the WFHUF under the existing tariff, that the Company be precluded from charging the
5 difference between the existing WFHUF and the new WFHUF and that the Company be further
6 precluded from unilaterally refunding WFHUFs paid under the existing tariff.

7
8 Add Conclusion of Law No. 9 as follows: "Trend's recommendations as set forth in
9 Finding of Fact No. 23 are reasonable and should be adopted."

10 Add a new Ordering paragraph as follows: "IT IS THEREFORE ORDERED that the
11 Company shall not charge the new WFHUF to any applicant for water service that has already
12 paid the WFHUF under the previous tariff and that the Company shall not be entitled to
13 unilaterally refund WFHUFs paid under the previous tariff in favor of collecting new WFHUFs
14 approved pursuant to this Decision.

15 DATED this 13th day of December, 2006

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18 GREENBERG TRAUIG, LLP

19
20 By: 

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24 ² Trend hereby acknowledges that its proposed amendments to the Recommended Order are substantially similar to
25 those amendments proposed by Courtland Homes, Inc., CHI Construction Company, and Taylor Woodrow/Arizona,
26 Inc. (collectively, "Developers") which were unopposed by Arizona-American on November 13, 2006 in its
Response to Developers' Joint Comments. Trend is similarly situated to Developers and is requesting amendments
to the Recommended Order which are of like form to those proposed by Developers and which remain unopposed.

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1 ORIGINAL and thirteen (13) copies filed with
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