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BEFORE THE ARIZONA CORPORATION COMMISSION

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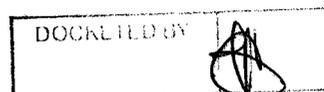
Arizona Corporation Commission

DOCKETED

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OCT 18 2006

BARRY WONG
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Docket No. WS-03478A-05-0801

IN THE MATTER OF THE APPLICATION OF
FAR WEST WATER & SEWER COMPANY,
AN ARIZONA CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE OF
ITS SEWER UTILITY PLANT AND
PROPERTY AND FOR INCREASES IN ITS
RATES AND CHARGES FOR SEWER
UTILITY SERVICE BASED THEREON.

RUCO'S REPLY BRIEF

The Residential Utility Consumer Office ("RUCO") replies to Far West Water & Sewer Company's ("Far West" or "Company") and the Arizona Corporation Commission Staff's ("Staff") Post Hearing Briefs as follows.

RATE CASE EXPENSE

The Company complains that there are a certain amount of "embedded costs" inherent in any rate case, and that most of these costs are outside of the Company's control. Company Closing Brief ("Brief") at 13 -15. The Company's complaint lacks merit for two reasons. First, while the Company, like the rest of the parties, must comply with the Commission's process, contrary to what the Company claims, the costs of the rate case are within its control. The Company chooses the experts and consultants it hires to

1 represent them. The Company chooses how they are going to comply with discovery and
2 what efforts, if any, they will make to facilitate and economize the process. The Company
3 dictates what measures it will make to mitigate its rate case expense. It is incumbent on
4 the Company to mitigate its rate case expense. Not only has the Company not attempted
5 to mitigate its rate case expense, its actions have exacerbated its rate case expense.

6 The Company admits as much in its Brief. For example, the Company
7 acknowledges that RUCO's discovery instruction regarding voluminous responses to
8 discovery is to contact RUCO to discuss limiting the Company's response. Brief at 15.
9 The purpose of RUCO's discovery instruction is obvious – to reduce the amount of
10 paperwork and mitigate unnecessary costs. Yet the Company misinterprets the obvious
11 purpose of RUCO's request, and somehow concludes that RUCO is shifting the burden
12 back to the Company to make "subjective determinations" of what RUCO is requesting. Id.
13 Based on its misguided and illogical interpretation, the Company objects to RUCO's
14 discovery instructions and will not comply with it. Id. The Company has chosen to take
15 issue, and at the same time, unduly burden the Commission's process with what is one of
16 the most basic and sensible discovery instructions.

17 The Company points out that RUCO has done nothing to modify its request or seek
18 the intervention of the ALJ. Id. The Company is correct. The purpose of RUCO's
19 instruction is so obvious and basic that RUCO will not modify its instruction to appease the
20 Company's distorted and non-sensical interpretation. Moreover, if the Company decides
21 to engage in conduct that increases its rate case expense, RUCO will not facilitate it by
22 taking action that also has the same effect (i.e. discovery motions to the ALJ). From
23 RUCO's standpoint, the Company's suggestion is counter-productive. It also ignores the
24 fact that it is the Company, and not RUCO, that has the burden of establishing its rate case

1 expense and showing that it is reasonable. The Company has chosen how to approach
2 the costs inherent in the process, which explains why the Company's "hard costs" are over
3 \$11,000¹, which is clearly excessive for this case. The Commission should deny the
4 Company's request for \$160,000 of rate case expense.

5 The second reason the Company's complaint is misguided is that even though there
6 are certain costs inherent in the Commission's process, the costs must still be reasonable.
7 The Company is under the mistaken impression that just because it expended the time
8 and the costs, its rate case expense must be reasonable. In fact, the Company's rate
9 case expense is not reasonable. The Company is asking for \$8,448.65 for
10 "Miscellaneous" costs. Itemization of Rate Case Expense filed August 23, 2006. The
11 Company has not described or itemized the costs and apparently expects the Commission
12 to take its word that these costs are necessary. This is not reasonable. Next, the
13 Company is requesting \$9,034.03 for "Copying, printing, and CD duplication." Id. This
14 does not include the transcript. On its face, this large amount for copying is not a
15 reasonable request for a case of this size. Moreover, the Company's failure to mitigate its
16 copying costs by cooperating with RUCO's simple discovery instructions as explained
17 above is another reason this cost is not reasonable. The Company's rate case expense
18 summary also lists \$26,444.00 for its attorney's preparation²/review of rebuttal testimony
19 and schedules, and \$20,842.65 for its attorney's preparation/review of the Company's
20 responses to data requests of opposing parties. RUCO does not question the attorney's

21 _____
22 ¹ In RUCO's opening Brief, RUCO referred to the Company's statement that copying and mailing costs were
23 likely to exceed \$15,000 in cases like this. RUCO's Closing Brief at 3-5. RUCO acknowledges that the
24 Company is asking for \$9,034.03 for Copying, Printing and CD duplication in this case. Itemization of Rate
Case filed August 23, 2006.

² The Company's expert is also charging combined over \$18,000.00 for his services regarding the
preparation/review of rebuttal testimony and schedules and data requests of opposing parties. See Rate
Case Expense Summary filed August 23, 2006.

1 time or rate. However, from RUCO's standpoint it is not reasonable for the Company to
2 seek recovery from ratepayers of over \$46,000.00 in rate case expense for the review of
3 rebuttal testimony and data request responses in a relatively straight forward case with
4 only one active intervenor – RUCO. The Company is further requesting \$1,882.38 for
5 "Meals, Travel and Parking." Ratepayers should not have to reimburse the Company's
6 expert and its lawyers for their meals, travel or parking. The Commission should adopt
7 RUCO's rate case expense recommendation which is fair and reasonable in this case.

8 **THE MESA DEL SOL GOLF COURSE LOST REVENUES**

9
10 The Company continues to argue that RUCO's recommendation to impute lost
11 revenues from the effluent provided to the Mesa Del Sol golf course is inappropriate
12 because ratepayers realize "substantial economic and operational benefit" by not being
13 burdened with the costs associated with disposing the effluent from the plant. Brief at 11.
14 The Company's argument misses its mark and is not relevant. The Commission should
15 reject the Company's argument.

16 The Commission should consider only what is known and relevant now, not what
17 could be if and when a hypothetical situation was to exist. Now, the Company has a
18 contract to provide Mesa Del Sol Golf Course effluent at no charge. What could be if that
19 contract did not exist is irrelevant and conjecture and should not be considered by the
20 Commission.

21 Since we do not know what the costs would be, or even if there would be costs, in
22 the situation where there was no contract we can only guess, as the Company does, as to
23 what would happen to the effluent. The Company's guess assumes facts not in evidence,
24 and reaches a conclusion which is contrary to what is in evidence. The Company's

1 assumption, of course, is that the Company would be unable to sell the effluent elsewhere
2 and would therefore have to pay to dispose of it. Since we are only guessing, contrary to
3 what the Company assumes, it seems likely that the Company would be able to sell its
4 effluent elsewhere. The effluent has financial value - even the Company admits that.
5 Transcript at 283. Moreover, the Company will receive revenues from effluent sales from
6 two other golf courses in its service territory under its tariffs. Transcript at 285. Therefore,
7 the effluent is marketable, has value and in all likelihood would not have to be disposed of
8 at a "substantial" cost to ratepayers. Further, ratemaking principles prohibit the
9 discretionary treatment of customers served under the same tariff. The Company's
10 argument is far-reaching, speculative, and not consistent with the evidence. The
11 Commission should impute revenues to compensate ratepayers for the lost revenues
12 resulting from the delivery of effluent to the Mesa Del Sol Golf Course at no charge.

14 **PROPERTY TAX**

15 The Company notes in its brief that the Commission, in determining an appropriate
16 level of property tax, is attempting to set a level of property tax expense "that as closely as
17 possible matches the level of taxes the Company will incur throughout the life of the new
18 rates." Brief at 10. The Company's point is incorrect. The Commission typically sets
19 operating expenses at historical adjusted test-year level that adheres to the matching
20 principle. RUCO is unaware of any instances where the Commission has looked three to
21 four years in the future to determine expense levels to include in rates.

22 RUCO has shown in its Closing Brief, in detail, using the actual property tax
23 expense for 2005 (keeping in mind the test year in this case is 2004), why using the ADOR
24 methodology with historical impacts is once again the most accurate and best measure for

1 estimating property tax expense. Brief at 8-9. RUCO has further explained how the same
2 formula accounts for additional revenues. Id. at 9-10. Neither Staff nor the Company has
3 shown in this case, using numerical data, how their methodology is accurate. The
4 Company can only do what has been done time and time again – make unsupported
5 conclusions without any numerical or other data as its basis, and rely on the same old
6 “refrain” that the Commission has rejected ADOR’s methodology using historical inputs in
7 the past.

8 The Company admits that the Commission is not engaged in the business of
9 property tax assessment. Brief at 10. It seems odd that the Company is now asking the
10 Commission to second guess the ADOR in its recommended methodology for estimating
11 property taxes. What make it even odder is that ADOR came up with its recommendation
12 as the result of a joint effort with the Water Utilities Association of Arizona. The
13 Commission should reject the Company’s and Staff’s recommended property tax expense.

14
15 **COST OF CAPITAL**

16 The Company believes that only the “cost of capital” testimony of its witness can
17 survive an “economic reality” check. Brief at 20. The Company’s assessment is
18 inaccurate. In a nutshell the Company believes that because of its size, and the
19 environment in which it operates, it is subject to extraordinary risk and therefore is entitled
20 to a higher rate of return. The evidence shows otherwise.

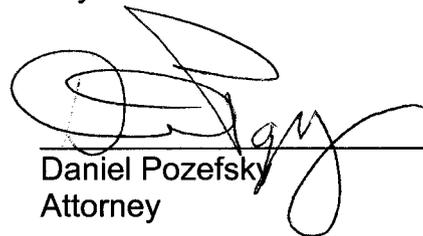
21 In Mr. Rigsby’s DCF analysis, Mr. Rigsby used a set of companies similar in size
22 and risk to the Company. To the extent the Company faced unique or other risk, Mr.
23 Rigsby accounted for it. Transcript at 446-447. Mr. Rigsby’s unadjusted 9.04 percent
24 cost of common equity recommendation was derived from a sample of water utilities that,

1 as a whole, had capital structures comprised of approximately 50 percent equity as
2 opposed to the 60 percent level of common equity that RUCO is recommending for the
3 Company's capital structure. R-7 at 4. Mr. Rigsby's 8.45 percent recommended cost of
4 debt is 200 basis points higher than the 6.45 percent average cost of debt of the water
5 utilities included in his sample. RUCO's recommended 8.81% cost of capital³ should be
6 adopted by the Commission.

7
8 **CONCLUSION**

9 RUCO recommends that the Commission adopt its rate case expense, property tax
10 and cost of capital recommendations. Finally, RUCO recommends the Commission
11 impute a level of revenue to the Company to compensate ratepayers for the lost revenues
12 as the result of the agreement the Company has with the Mesa Del Sol Golf Course to
13 provide effluent water at no charge.

14
15 RESPECTFULLY SUBMITTED this 18th day of October 2006.

16
17 
18 Daniel Pozefsky
19 Attorney

20
21
22
23 _____

24 ³ On page 2 of RUCO's Closing Brief, RUCO referenced 9.11 as its recommended cost of capital. The correct updated recommendation is 8.81%.

1 AN ORIGINAL AND THIRTEEN COPIES
2 of the foregoing filed this 18th day
3 of October 2006 with:

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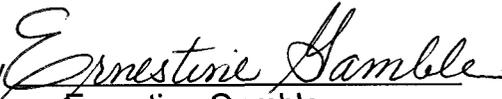
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