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BEFORE THE ARIZONA CORPORATION COMMISSION

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- 2 JEFF HATCH-MILLER
CHAIRMAN
- 3 WILLIAM A. MUNDELL
COMMISSIONER
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- 6 BARRY WONG
COMMISSIONER
- 7

2006 NOV 22 P 1: 18

AZ CORP COMMISSION
DOCUMENT CONTROL

8 IN THE MATTER OF THE APPLICATION OF
9 GOLD CANYON SEWER COMPANY, AN
10 ARIZONA CORPORATION, FOR A
11 DETERMINATION OF THE FAIR VALUE OF
12 ITS UTILITY PLANT AND PROPERTY AND
13 FOR INCREASES IN ITS RATES AND
14 CHARGES FOR UTILITY SERVICE BASED
15 THEREON.

Docket No. SW-02519A-06-0015

Arizona Corporation Commission
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RUCO'S RESPONSE TO THE TESTIMONY OF TREVOR HILL

14 The Residential Utility Consumer Office ("RUCO") hereby responds to pre-filed
15 testimony of Trevor Hill. Mr. Hill was formerly the president of Gold Canyon Sewer Company's
16 ("Gold Canyon" or "Company"). The issue raised by Mr. Hill's testimony, a utility's bad-faith
17 misrepresentation to its customers, is not one of first impression. The Commission has seen
18 misrepresentations made by utilities through their representatives in one form or another on
19 several occasions. Perhaps the most noteworthy example was the case of Qwest
20 Corporation's compliance with Section 252(e) of the Telecommunications Act of 1996 (Docket
21 No. RT-00000F-02-0271). The Commission has always taken these matters seriously and
22 should continue to do so in this case. First and foremost the Commission needs to protect the
23 public, and impose remedies which, at the very least, will deter this type of behavior in the
24 future.

1 Mr. Hill is scheduled to testify in this matter on December 4, 2006. RUCO's response at
2 this point is based on the evidence in the record at this time. RUCO reserves the right to
3 change or modify its position or any other part of this response after the record is complete.
4

5 **THE COMPANY MISREPRESENTED ITS INTENTIONS REGARDING THE RATEMAKING**
6 **TREATMENT OF THE PLANT IMPROVEMENTS**

7 The Company misrepresented its intentions regarding the ratemaking treatment of its
8 plant improvements. The Company, through its President at the time, Trevor Hill, provided a
9 handout to its customers in or about 2002 or 2003, which in question and answer format
10 addressed the issues regarding then-planned plant upgrades. One specific question and
11 answer in the Company's handout read as follows:

12 Will the upgrade mean an increase in Rates?

13 No. GCSC is committed to providing the upgrade
14 through a combination of paid-in-capital and new
15 development hook-ups.

16 The Company's answer - no - means no. While the reference to "paid-in-capital" might
17 suggest to a reader familiar with the ratemaking process that an increase in rates could result
18 in the future, the average residential customer would not be expected to be familiar with the
19 technical details of how the Company's rates are set, and thus would not likely understand that
20 the second sentence of the response directly contradicts the first sentence. The structure of
21 the Company's response – a definite and conclusory "no", followed by a statement whose
22 implication most readers would not understand – can itself be seen as an indicator of the
23 Company's attempt to hide the truth.
24

25 Further, the Company's misrepresentation is not immaterial. RUCO understands that
26 customers who were intervenors in Gold Canyon's last rate case agreed to the settlement of
27

1 that case at least in part on reliance on the Company's statement that the plant would not
2 impact the Company's rates.

3
4 **THE COMMISSION HAS JURISDICTION TO CONSIDER AND ACT ON THE COMPANY'S MISCONDUCT**

5
6 The Company has gone to great lengths to frame this issue as a legal issue governed
7 by the law of contract and outside the jurisdiction and authority of the Commission. See
8 Company's Legal Brief. However, the Commission does not have to address the Company's
9 contract claim to establish jurisdiction since Arizona's Constitution empowers the Commission
10 with exclusive and broad ratemaking authority. The Commission's authority over utility rate
11 making derives directly from the Arizona Constitution. Article 15, section 3 states:

12 The Corporation Commission shall have full power to, and
13 shall, prescribe just and reasonable classifications to be used and
14 just and reasonable rates and charges to be made and collected,
15 by public service corporations within the State for service rendered
16 therein, and make such reasonable rules, regulations, and orders,
17 by which such corporations shall be governed in the transaction of
18 business within the State, and may prescribe the forms of contracts
19 and the systems of keeping accounts to be used by such
20 corporations; ... Provided ... that classifications, rates, charges,
21 rules, regulations, orders, and forms or systems prescribed or
22 made by said Corporation Commission may from time to time be
23 amended or repealed by such Commission.

18 In addition, the Commission has authority under A.R.S. § 40-203 to proscribe utilities
19 from engaging in practices that are unjust, illegal or insufficient.

20
21 **THE REDUCTION OF THE COMPANY'S RATES BASED ON THE COMPANY'S BAD FAITH MISREPRESENTATIONS IS NOT AN APPROPRIATE REMEDY**

22
23 Some customers have suggested that the appropriate remedy for the Company's
24 misrepresentation is to disallow the new treatment plant in rate base. While it could be within

1 the Commission's discretion to reduce the Company's rates based on its bad-faith
2 misrepresentations, such a remedy is not appropriate in this case. The objective of imposing
3 any remedy should be to deter future bad acts not only by this Company, but by all the utilities
4 regulated by the Commission. The denial of recovery of over \$16 million of plant upgrades
5 based on the Company's misrepresentations would place the Company in financial distress,
6 which in turn could affect service to the Company's customers. Moreover, such action would
7 likely act as a disincentive to this Company and others from making necessary upgrades and
8 improvements in the future. The Commission should encourage utilities to make plant
9 improvements when necessary. Utilities should also feel secure knowing that they will be
10 allowed recovery provided the improvements are appropriate and meet proper regulatory
11 accounting standards. Moreover, denial of recovery here could encourage utilities to seek
12 Commission approval of rate case treatment before they make any improvements. Such
13 requests, though usually denied, impede the regulatory process by utilizing the Commission's
14 resources that could be directed to other matters before the Commission.

15 Finally, regardless of what the Company promised, it is undisputed that the Company's
16 customers had been complaining for a long time about odor problems that necessitated the
17 improvements and the customers wanted the odor problem fixed. The Company did respond
18 to the customers' complaints and, it appears, has solved the problem. It would be unfairly
19 punitive to deny the Company recovery of its expenses associated with the improvements.

20 **THE APPROPRIATE PENALTY FOR THE COMPANY'S BAD ACTS WOULD BE TO**
21 **ESTABLISH A FINE**

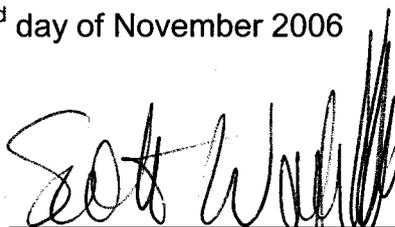
22 A utility should be held accountable for its misconduct, and the most appropriate and
23 fair way is generally for the Commission to impose a fine on the utility. The Commission is
24 authorized to impose a fine on a public service corporation

1 which violates or fails to comply with any provision of the
2 constitution or of [Chapter 2 of Title 40], or which fails or neglects to
3 obey or comply with any order, rule or requirement of the
4 commission...

5 A.R.S. § 40-425. A fine would be an appropriate penalty for a utility's material
6 misrepresentation to its customers because it sends a message to all regulated utilities in
7 Arizona that they will be held responsible for misconduct regarding business before the
8 Commission. It is a message that is long overdue in Arizona given the pervasiveness of this
9 type of activity in the past.

10 Unfortunately, RUCO is not aware of any provision in the Arizona Constitution, Chapter
11 2 of Title 40 of the Arizona Revised Statutes, or the Commission's Rules which prohibit a
12 utility's misrepresentations to its customers. Stated another way, the Company did not violate
13 a Commission Rule, Order or law which would allow the Commission to establish a penalty
14 and impose a fine. RUCO recommends that the Commission use this case as an opportunity
15 to initiate a rulemaking process to consider rules which govern some basic corporate conduct
16 principles that regulated utilities shall be required to adhere to in their dealings with the public,
17 including prohibiting misrepresentations to customers. Regulated utilities should not be
18 allowed to operate with impunity for bad acts when dealing with the public in matters before
19 this Commission.

20 RESPECTFULLY SUBMITTED this 22nd day of November 2006

21 
22 _____
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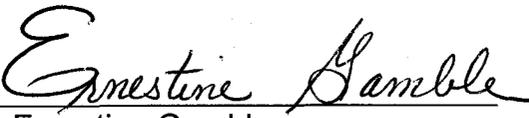
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