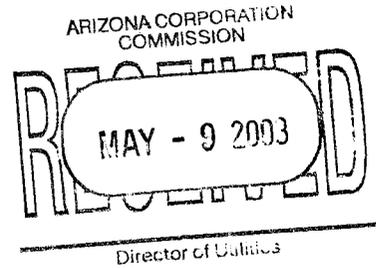




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STATE OF ARIZONA
ARIZONA CORPORATION COMMISSION
UTILITIES DIVISION

DOCKETED

MAY 15 2003

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FRED SHOOK,
Complainant,
vs.
PARK VALLEY WATER COMPANY,
Respondent.

No. W-01653A-03-0243

ANSWER TO COMPLAINT

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Respondent, Park Valley Water Company ("Park Valley"), under Ariz. Adm. Code R14-3-106(H), answers Fred Shook's ("Shook") formal complaint. Because the "formal complaint" does not contain discrete, precise allegations, Park Valley is hampered in providing the required "full and complete" answer and to "admit or deny specifically and in detail each allegation of the complaint." See Ariz. Adm. Code. R14-3-106(H). Park Valley, in a good faith effort to comply with the Rule, admits, denies and alleges:

1. Park Valley is without knowledge or information sufficient to form a belief as to the truth of the allegation that its main line extension agreement ("Agreement") with Shook was not filed with or approved by the Arizona Corporation Commission ("ACC"), and affirmatively alleges that (i) Park Valley's normal business practice and routine is and

1 was at all relevant times, to submit main line extension agreements to the ACC for approval
2 and believes that the Agreement was in fact submitted to the ACC; (ii) the subject
3 Agreement with Shook is based on a standard ACC form of agreement; (iii) Park Valley
4 believes that the ACC may have lost or misplaced the Shook Agreement; and (iv) the ACC
5 now has the Agreement, it has been filed and the ACC should now approve the Agreement.

6 2. Park Valley denies that it violated R-14-2-406(M) for the reasons stated in
7 paragraph 1, *supra*, which is incorporated by reference. Park Valley affirmatively alleges
8 that R14-2-406(M) does not specify *when* a main line extension agreement is to be filed
9 with and approved by the ACC.

10 3. R14-2-406 does not authorize or require the “full refund” demanded by
11 Shook. The Rule provides, in relevant part:

12 Where agreements for main extensions are not filed and approved by the
13 Utilities Division, the *refundable advance* shall immediately become due and
14 payable to the person making the advance.

15 (Emphasis added). Any refund, then, is limited to the “refundable advance,” it does not
16 extend to non-refundable payments.

17 4. The Rule provides that an applicant, such as Shook, “may be required to pay
18 to the Company, as a *refundable advance* in aid of construction . . . the estimated
19 reasonable cost of all mains, including valves and fittings.” R14-2-406(B) (emphasis
20 added).

21 5. The Rule specifies the necessary elements of a main line extension agreement
22 (all of which are contained in the Shook Agreement). R14-2-406(C). The rule authorizes
23 an “explanation of any *refunding provisions, if applicable.*” R14-2-406(C)(1)(g) (emphasis
24 added). Thus, the Rule contemplates that a main line extension agreement may have
25 refunding provisions or may not have refunding provisions because the explanation is
26 required only if a refunding provision is “applicable.”

1 6. In other words, there are circumstances in which refunding provisions are not
2 applicable, otherwise the words “if applicable” in the Rule are meaningless. The ACC must
3 interpret its rules to give effect to each word, phrase and clause in the rule. See, e.g.,
4 Williams v. Thude, 188 Ariz. 257, 259, 934 P.2d 1349, 1351 (1997) (“Each word, phrase,
5 clause, and sentence [of a statute] must be given meaning so that no part will be void, inert,
6 redundant, or trivial.”) (citation and emphasis omitted); Kimble v. City of Page, 199 Ariz.
7 562, 565, ¶ 19, 20 P.3d 605, 608 (Ct. App.2001) (principles of statutory construction also
8 apply to administrative rules and regulations). Courts have recognized that not all
9 payments by a consumer are refundable. E.g., Cogent Public Service, Inc. v. Arizona Corp.
10 Com'n,142 Ariz. 52, 55, 688 P.2d 698, 701 (Ct. App. 1984) (“Contributions in aid of
11 construction are funds provided to a utility by the consumer under the terms of a collection
12 main extension agreement or service connection tariff *which are not refundable to the*
13 *consumer.*”) (emphasis added). The regulations are in accord. E.g., R14-2-601(9)
14 (“‘Contributions in aid of construction’. Funds provided to the utility by the applicant
15 which *are not refundable.*”) (emphasis added). Even advances in aid of construction may
16 or may not be refundable. See R14-2-601(1) (“‘Advance in aid of construction’. Funds
17 provided to the utility by the applicant under the terms of a collection main extension
18 agreement the value of which *may be* refundable.”). (emphasis added). The word “may” is
19 permissive, not mandatory. E.g., Bunker's Glass Co. v. Pilkington PLC, 202 Ariz. 481, 47
20 P.3d 1119 (Ct. App. 2002) (“The legislature's use of the word ‘may suggests that the statute
21 is permissive, not mandatory.”). The same rules of construction apply to the ACC’s rules.
22 E.g., Kimble, 199 Ariz. at 565, ¶ 19, 20 P.3d at 608 (principles of statutory construction also
23 apply to administrative rules and regulations). Even refundable amounts paid by an
24 applicant such as Shook are only partially or potentially refundable, for any amount
25 remaining after giving the required credits over ten (10) years “shall become
26

1 nonrefundable,” unless otherwise provided in a main line extension agreement. R14-2-406(D)

2 7. In the Shook agreement, as contemplated by the Rules, only a portion of
3 Shook’s payments to Park Valley were subject to a refund provision (refundable), the other
4 portion was non-refundable. Shook’s Agreement specifies that of the \$5,175.00 total,
5 **\$4,647.00 “is non-refundable”** contributions for construction.” (Agreement ¶ 2.) (Emphasis
6 added.)

7 8. The refunding terms of the Shook Agreement portion contemplate that the
8 refundable portion of Shook’s payment would be credited for 10 years in “an amount equal
9 to 10 per cent of the total gross annual revenue” applicable to the Shook contract.
10 (Agreement ¶ 3.) At the end of 10 years, as allowed by R14-2-406(D), the Agreement
11 provides: “any balance remaining subject to refund at the end of the 10 year period **shall**
12 **become non-refundable.**” (Id.) (Emphasis added.)

13 9. The Agreement, then, provides that of the \$5,175.00, \$4,647.00 is non-
14 refundable, leaving a maximum of \$528.00 potentially refundable. Park Valley
15 affirmatively alleges, however, that the actual cost of the construction was \$5,043.94 and
16 that Shook paid only \$5,043.94, not the \$5,175.00 set out in the agreement (which by
17 necessity is an estimate).

18 10. Park Valley affirmatively alleges that, of the maximum \$528 potentially
19 refundable, \$91.66 has already been refunded for 10% of the water sales to Shook and
20 \$80.00 was refunded toward the meter, for total refunds to date of \$171.66, leaving a
21 balance of \$356.34.

22 11. Assuming without admitting (and while denying), that the Agreement was not
23 filed with the ACC due to some clerical oversight, Park Valley agrees that, under R14-2-
24 406(M), Mr. Shook may be entitled to an immediate refund of the remaining “refundable
25 advance” of \$259.40 (based on the actual amount he paid of \$5,043.94), but as a gesture of
26 goodwill to its customer, Park Valley will refund \$356.34 to Shook, representing the

1 balance described in paragraph 10, *supra*. Park Valley denies that Shook is entitled to any
2 greater sum.

3 12. To award Shook the “full refund” he demands would be unfair and
4 inequitable. Park Valley has incurred thousands of dollars in costs to benefit Shook and to
5 make his property more valuable (by having water service). Shook has waited several years
6 to complain. Shook wants to pay nothing toward the costs of his own service; that would
7 necessarily place the burden on Park Valley and/or other users. No statute, Rule or common
8 law justifies permitting Shook retain all the benefits of the Agreement (water service and the
9 attendant construction), while bearing none of the burdens. Park Valley installed the
10 necessary elements to provide service to Shook with the expectation of being paid for that
11 effort. Likewise, Shook paid \$5,043.94 to Park Valley in exchange for the delivery of water
12 service to Shook. Assuming there were no express contract between the parties (there is),
13 these circumstances would entitle Park Valley to restitution to prevent Shook’s unjust
14 enrichment. *E.g., Renner v. Kehl*, 150 Ariz. 94, 722 P.2d 262 (1985) (“Restitutionary
15 recoveries are not designed to be compensatory; their justification lies in the avoidance of
16 unjust enrichment on the part of the defendant. *D. Dobbs, Remedies* § 4.1 p. 224 (1973).
17 Thus the [party] is generally liable for restitution of a benefit that would be unjust for him to
18 keep, even though he gained it honestly.”). Shook was in no way harmed

19 13. Regarding Shook’s reference to “compensation of \$400 for the additional
20 piping, valve trenching and labor to install these materials all of which would have been
21 unnecessary had Park Valley . . . installed the water meter in the proper location originally,”
22 Park Valley is uncertain to what Shook refers and presently lacks knowledge or information
23 sufficient to form a belief as to the truth of the allegation and therefore denies them. Park
24 Valley affirmatively alleges that Shook’s meter was relocated as required by the City of
25 Show Low when the developer of Shook’s subdivision was required to pave some streets
26

1 and that such relocation was done without charge to Shook. Park Valley denies any
2 obligation to pay compensation to Shook based on these allegations.

3 14. Shook's "formal complaint," references attachments; however, no attachments
4 were included with the one page form sent to Park Valley. Consequently, Park Valley is
5 unable to admit, deny or allege anything concerning the supposed attachments. Park Valley
6 reserves the right to amend or supplement its answer.

7 15. Park Valley denies any allegations in Shook's complaint not specifically
8 admitted above.

9 16. For affirmative defenses, Park Valley alleges:

10 A. Shook's complaint fails to state a claim on which relief may be granted;

11 B. Laches;

12 C. Shook would be unjustly enriched if he paid nothing for the services and
13 related construction;

14 D. Shook is liable to Park Valley for restitution for the fair value of the work to
15 deliver services to Park Valley; and

16 E. Any other affirmative defense or matter of avoidance that Park Valley
17 determines is applicable as this matter proceeds and Park Valley reserves the right to amend
18 this Answer.

19 RESPECTFULLY SUBMITTED this 9th day of May, 2003.

20 GRANT WILLIAMS P.C.

21
22 By 
23 Merwin D. Grant
24 Kenneth B. Vaughn
25 3200 North Central Avenue, Suite 2400
26 Phoenix, Arizona 85012
Attorneys for Park Valley Water Company

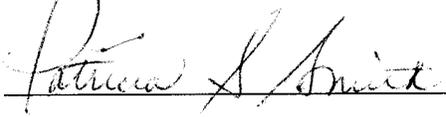
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ORIGINAL AND THREE COPIES
of the foregoing HAND-DELIVERED
this 7th day of May, 2003, to:

The Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing
MAILED this 7th day
of May, 2003, to:

Fred Shook
2001 West McNeil
Show Low, Arizona 85901



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PROOF OF SERVICE

I hereby certify that I have this day served the foregoing document on all parties of record in this proceeding by delivering three copies in person to the Arizona Corporation Commission, Utilities Division; and by mailing a copy thereof, properly addressed with first class postage prepaid to Fred Shook at 2001 West McNeil, Show Low, Arizona 85901.

Dated at Phoenix, Arizona this 9th day of May, 2003.

Patricia S. Smith