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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

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2003 DEC 17 P 2:04

- MARC SPITZER, Chairman
- WILLIAM A. MUNDELL
- JEFF HATCH-MILLER
- MIKE GLEASON
- KRISTIN K. MAYES

DEC 17 2003

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ARIZONA CORPORATION COMMISSION DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF ARIZONA WATER COMPANY, AN ARIZONA CORPORATION, FOR ADJUSTMENTS TO ITS RATES AND CHARGES FOR UTILITY SERVICE FURNISHED BY ITS EASTERN GROUP AND FOR CERTAIN RELATED APPROVALS.

DOCKET NO. W-01445A-02-0619

PROCEDURAL ORDER

BY THE COMMISSION:

On August 14, 2002, Arizona Water Company ("Arizona Water" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for an increase in its rates.

The evidentiary hearing was conducted in September 2003, and briefs were filed by the parties on October 31, 2003 and November 10, 2003.

An oral argument was conducted on December 8, 2003 regarding, among other things, continued confidentiality of the "PCG Settlement."

The PCG Settlement contains a confidentiality provision that prohibits Arizona Water from disclosing the terms of the agreement (Ex. S-10). Those terms include costs that are used to set rates in this matter. The allegedly confidential information was provided to the Administrative Law Judge and Commissioners. The information was also provided to most of the other parties pursuant to protective agreements. Portions of the hearing were conducted on a closed record and transcripts, exhibits, testimony, and briefs addressing the confidential PCG Settlement issues have been up to this point in time, maintained under seal.

Pursuant to the terms of the agreement between Arizona Water and the PCG Group, the Company may disclose "Information legally required to be disclosed pursuant to a subpoena or a formal request or order of the Arizona Corporation Commission, the ADEQ, a court of law or other governmental entity having jurisdiction to request such information." (Ex. S-10, at ¶13(B)). Although the Administrative Law Judge maintained the PCG Settlement issues under seal during the

1 hearing, the Commission is not a party to the PCG Settlement and has no obligation to keep the terms
2 of the agreement confidential. Moreover, there is no legitimate reason for keeping the terms of the
3 PCG Settlement confidential.

4 A.R.S. §39-121 provides that "Public records and other matters in the custody of any officer
5 shall be open to inspection by any person at all times during office hours." Although there is a strong
6 presumption in favor of disclosure, the right to inspection of public documents is not unlimited.
7 Access to public records may be denied or restricted where "the interests of privacy, confidentiality,
8 or the best interest of the state in carrying out its legitimate activities outweigh the general policy of
9 open access." *Carlson v. Pima County*, 141 Ariz. 487, at 491, 687 P.2d 1242 (1984). The purpose of
10 public records laws is to allow citizens 'to be informed about what their government is up to.'
11 *Scottsdale Unified School District v. KPNX Broadcasting Co.*, 191 Ariz. 297, 302-303, 955 P.2d 534,
12 539-540 (1998) (quoting *United States Dep't. of Justice v. Reporters Comm. For Freedom of the*
13 *Press*, 489 U.S. 749,773, 109 S.Ct. 1468 (1989). See, also, *A.H. Belo Corp. v. Mesa Police Dept.*,
14 202 Ariz. 184, 42 P.2d 615 (Ariz. Ct. of Appeals 2002).

15 Arizona Water and BHP Copper¹ contend that disclosure of the terms of the PCG Settlement
16 could have a chilling effect on future settlements between utility companies and third-party litigants.
17 However, the public interest in disclosure outweighs the potential effect on future settlements. This
18 public interest exists in the form of the public's right to know the underlying basis for how the rates
19 set by the Commission were established.

20 In addition, it is not good public policy to retain confidentiality of the terms of a settlement
21 agreement simply because disclosure may expose an entity to some future liability for its actions.
22 Although most of the cases on public records address disclosure requirements for records and
23 information maintained by government agencies, the same principles apply equally in situations
24 where, as in this case, the Commission is reviewing the terms of the PCG Settlement as part of its
25 ratemaking authority under Article XV of the Arizona Constitution. Thus, the presumption in favor
26

27
28 ¹ BHP Copper is one of the members of the PCG Group. Counsel for BHP Copper appeared at the December 8, 2003 oral argument in support of maintaining confidentiality of the terms of the settlement agreement.

1 of access to public records outweighs the privacy interests expressed by Arizona Water and the PCG
2 Group.

3 It is anticipated that a Recommended Opinion and Order will be issued on December 24,
4 2003. The Recommended Opinion and Order will include terms of the PCG Settlement that have
5 heretofore been maintained under seal.

6 IT IS THEREFORE ORDERED that the claim of confidentiality for purposes of this
7 proceeding is denied and, with the issuance of the Recommended Opinion and Order, the confidential
8 transcripts, exhibits, testimony, and briefs submitted in this proceeding will no longer be maintained
9 under seal and will become part of the public record in this docket.

10 DATED this 17th day of December, 2003.

11
12 

13 DWIGHT D. NODES
14 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

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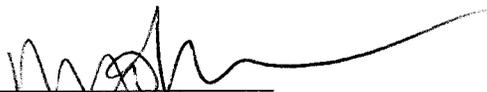
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