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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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Arizona Corporation Commission

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AZ CORP COMMISSION DOCUMENT CONTROL

- MARC SPITZER - Chairman
- JIM IRVIN
- WILLIAM A. MUNDELL
- JEFF HATCH-MILLER
- MIKE GLEASON

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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 APPROVAL

DOCKET NO. W-01445A-02-0619

STAFF'S REPLY IN SUPPORT OF MOTION TO CONTINUE ALL PROCEDURAL DEADLINES, CONTINUE HEARING, AND FOR TOLLING OF THE RATE CASE TIME-CLOCK

(REDACTED VERSION)

I. Introduction.

On February 27, 2003, Staff filed a Motion to Continue all Procedural Deadlines, Continue Hearing, and for Tolling of the Rate Case Time-Clock (the "Motion to Continue"). On March 5, 2003, Arizona Water Company ("Arizona Water" or "Company") filed a Response opposing Staff's Motion to Continue. Staff hereby replies in support of its motion. As noted in the motion, the principal areas of concern are:

- (1) final figures for post test year plant through the end of 2002 will not be available until mid-March;
- (2) final figures for 2002 expenses will not be available until mid-March;
- (3) the Company has not filed all of the necessary revised rate case schedules to correct an admitted error in its depreciation rates as contained in its rate application;
- (4) delayed and inadequate responses concerning matters related to the "Pinal Creek Group".

Staff will address each of these items in turn. Staff also notes that the Company, in its Response, attempts to justify its actions by noting that it has provided some type of response to each data request within ten days. But Staff's concern with the "timing and completeness" of data responses is not satisfied by timely provided a piece of paper saying "we'll get back to you later", but rather by the

1 Company providing timely, candid and complete responses.

2 **II. Post Test Year Plant.**

3
4 By the Company's own admission, the information that the Company has provided
5 Staff to-date regarding post-test year plant has been "estimates". (Company Response at p. 4 lines
6 17-18). Staff is not aware of the Commission having ever accepted "estimates" for post-test year
7 plant. (Ludders Aff. at ¶ 3). Staff has, of course, asked for actual numbers. Therefore, the
8 Company's assertion that "Staff has everything it requested concerning PTYP A" is demonstrably
9 incorrect. (Company Response at p. 4 line 18). Staff sent data request REL 5-6 (dated 12/24/2002),
10 as follows:

11 REL 5-6 Please provide a listing of plant placed in service from
12 January 1, 2002 through December 31, 2002. Please show
13 the effect on rate base, revenue and expenses. Also please
14 indicate if the asset is revenue neutral.

15 By the Company's own admission, an updated response to REL 5-6 showing actual (not
16 estimated) figures was not provided at the time Staff made its Motion to Continue. (Kennedy Aff. at
17 ¶¶ 9, 12). Last Friday afternoon (i.e. less than one business day before Staff's Reply is due, and eight
18 days after Staff filed the Motion to Continue), the Company provided Staff with a document
19 purporting to update its response to REL 5-6.¹ Needless to say, Staff has not had a chance to review
20 this document. But assuming, arguendo, that that this supplemental response to REL 5-6 is complete,
21 it would nevertheless be clear that (1) it was provided two months late; and (2) some information will
22 still not be available until mid-March (Kennedy Aff. at ¶ 14; Company Response to RUCO 3.4,
23 attached as Exhibit 1 to the motion).

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26
27 ¹ In addition to providing this supplemental response right before this reply is due, the Company also
28 sent Staff a nine page letter literally hours before Staff filed the Motion to Continue, after having
been advised beforehand that the motion would be filed. Staff is concerned that these incidents
represent a deliberate pattern of attempting to "muddy the waters" immediately before each filing
made by Staff.

1 The Company admits, as it must, that the determination of rate base is of critical importance.
2 (Kennedy Aff. at ¶ 12). The Company's late responses to data requests concerning rate base is,
3 therefore, a matter of considerable gravity.

4 **III. 2002 Actual Expenses.**

5 The Company cites the definition of pro forma adjustments in the Commission's rules as
6 support for its contention that actual 2002 expenses are not needed. This definition provides that pro
7 forma adjustments are adjustments "to actual test year results and balances to obtain a normal or more
8 realistic relationship between revenues, expenses and rate base." A.A.C. R14-2-103(A)(3)(i). The
9 Company's adjustments to expenses should be made on the basis that future expenses will not be like
10 past expenses because of some known and measurable change. Many of these adjustments are
11 related to the addition of post-test year plant. For example, the addition of some types of post-test
12 year plant will result in new chlorination expenses being incurred. The Company made its
13 adjustment to chlorination expense on an estimated basis. But, clearly, the best evidence of what
14 additional chlorination expense will be associated with a particular piece of new equipment is the
15 actual expenses incurred over the course of a year, rather than estimated costs. Therefore, Staff's
16 desire to review actual 2002 expenses is appropriate. It is now more than three months after the end
17 of 2002. It is reasonable to expect the Company to have its books for the preceding year closed at
18 this time. Accordingly, Staff's request for actual 2002 expenses is appropriate.

19 **IV. Depreciation Expense.**

20 On February 12, 2003, Mr. Kennedy called Staff and advised Staff that the Company had
21 used "wrong" depreciation rates. (Ludders Aff. at ¶ 4). Mr. Ludders advised the Company that Staff
22 expected the Company to revise its Application to correct this admitted error and inquired as to when
23 an amended application could be expected. Mr. Kennedy stated that the amended application would
24 be submitted after the Company responded to the pending data requests. (Ludders Aff. at ¶ 4). That
25 same day, Staff sent out a data request which asked the Company to provide revised schedules:

26 REL 15-11 Regarding the Company's February 12, 2003 phone
27 notification informing Staff of their use of an incorrect
28 component depreciation rate schedule when calculating pro
forma expense adjustments while completing its
application; Please submit revised schedules using the
appropriate component rates.

1 It is uncontested that the Company did not submit all affected schedules. The Company suggests that
2 the Commission can just accept the old depreciation rates. But Staff is not aware of the Commission
3 ever accepting an old depreciation study when a newer study that has already been approved by
4 Staff's Engineering Section is available. (Ludders Aff. at ¶ 5). The Company should be required to
5 submit revised rate case schedules showing the effect of the proper depreciation rates on its
6 Application.

7 **V. Pinal Creek Group.**

8 The Company has repeatedly asserted that it is not a party to the PCG-related litigation, and
9 therefore cannot provide information related to it. (Company Response at p. 6 lines 19-22, Kennedy
10 Aff. at ¶ 21). At best, this contention is disingenuous, for the Company prepared and filed a 71 page
11 pleading (with more than a hundred pages of attachments) in the PCG litigation. The Company also
12 suggests that Staff should contact ADEQ concerning PCG matters. But the fact that ADEQ may have
13 relevant information does not relieve the Company of having to respond to data requests with all
14 relevant information that it has. Moreover, Staff did not learn that ADEQ (rather than EPA) was the
15 lead agency for PCG matters until the Company's letter of February 27, 2003, which was sent hours
16 before Staff filed the Motion to Continue.² It is exactly this type of basic information that the
17 Company has repeatedly withheld from Staff.

18 For example, Data Request REL 5-19 (dated 12/24/2002) requested a narrative account of the
19 events that led up to the Settlement Agreement. The Company did not provide an account until
20 February 14, 2003, when it stated that:³ ***[REDACTED]***

21
22
23
24

² February 27, 2003 letter from Norm James to Tim Sabo, page 2, first paragraph. Attached as
25 Exhibit 6 to the Motion to Continue.

26 ³ This response has been designated as CONFIDENTIAL by the Company. In the Confidential
27 version of this Reply, Confidential information will be in bold, and three asterisks will precede and
28 follow each confidential section. The confidential information has been redacted from the docketed
copy of this Reply. This should not be taken as agreement by Staff that such information is properly
confidential. Staff disputes the confidential status of many of the Company's Responses to Staff's
13th and 17th sets of data requests. If agreement cannot be reached with the Company, Staff may
need to file a motion to determine the non-confidential status of such responses.

1 This response clearly discusses the agreement, not the events that led up to it (i.e.
2 the contamination). And the minimal information it does contain about these events does not begin to
3 help Staff determine the proper ratemaking treatment of the funds and water received from PCG or
4 the effect the contamination may have had on the Company's rate base for the Miami system. For
5 this reason, Staff found it necessary to ask detailed follow-up questions in its 13th and 17th sets of
6 data requests. Data Request TJS 13-2 pointed out that the Company had not provided the requested
7 narrative and requested a "comprehensive" statement from the company:

8 TJS 13-2 Data Request REL 5-19 requested a narrative description of
9 the "events that led-up to the agreement". The Company did
10 not provide such a description in its Response to REL 5-19.
11 Provide a comprehensive narrative description of the events
12 that led up to the Agreement. Do not limit your response to
13 negotiations and legal matters, but rather include the incident
14 that precipitated the Agreement and related events. Data
15 Request REL 5-19 also requested that the Company "explain
16 the effect of the agreement on the Company's income
17 statement as well as the plant accounts and rate base." The
18 Company did not provide such an explanation in its response.
19 Provide an explanation of the effect of the Agreement on the
20 Company's income statement as well as the plant account and
21 rate base.

22 The Company's response to this request was to refer Staff to the statement quoted above, which had
23 been sent to Staff in the interim.⁴

24 Another example concerns the relationships between the PCG members. Staff sent Data
25 Request TJS 13-3:

26 TJS 13-3 The parties to the Agreement, other than Arizona Water,
27 are Cyprus Miami Mining Corporation, BHP Copper, Inc.,
28 and Inspiration Consolidated Copper Company
(collectively, "PCG"). Describe the relationships between
the PCG parties and their individual involvement in the
events that led up to the Agreement. Describe how
responsibilities are allocated among the PCG parties.

The Company's response was that "Arizona Water Company has no information concerning
the relationships between the PCG members or their individual involvement in any events that led up

⁴ This response was designated as confidential by the Company. However, the Company later set forth its responses to a number of disputed items in the 13th set *in hac verbia* in its February 27th letter, which was not designated as confidential. Accordingly, the Company has waived the confidential status of these responses, and they are not redacted from this Reply. A copy of the February 27th letter was attached to the Motion to Continue.

1 to the Agreement." While the Company might not know what agreements the PCG members have
2 among themselves, undoubtedly the Company must know some basic information about PCG, such
3 as whether the PCG parties were acting jointly when the contamination was caused, or whether the
4 PCG members owned separate mines in the area. Again, this demonstrates that the Company is not
5 providing Staff with even the most basic information concerning PCG-related matters.

6 By the Company's own admission in its February 27th letter, the Company's response to TJS
7 13-5 was inadequate, and the Company provided a late-filed supplement with its February 27th letter.

8 Another example is the Company's response to TJS 13-15, which asked :

9
10 TJS 13-15 Provide a description of the "private party cost recovery
11 litigation", "pending toxic tort class action" and "insurance
recovery action" described in Section 10 of the Agreement,
and indicate the current status of such actions.

12 The Company's response was that "Arizona Water Company is not a party to these actions
13 and has no knowledge of them." While the Company may not have been a party to the indicated
14 actions, it is extremely unlikely that the Company has absolutely no knowledge of them. Simple due
15 diligence would demand that the Company acquire some knowledge of these matters before agreeing
16 to ***[REDACTED]***

17
18 as required by Section 10 of the Settlement
19 Agreement. It is highly likely that the Company has at least some limited information about these
20 pending actions, such as the nature of the claims asserted, the main parties, and the docket numbers
21 of the cases. The Company has repeatedly suggested that the Staff should "help itself" - but Staff
22 cannot investigate such matters if the Company does not provide even the most basic information.

23 Another example is the Company's Response to TJS 13-19, which asked:

24
25 TJS 13-19 Provide a list of the five (5) PCG personnel (or the
26 personnel of PCG members) that are likely to have the most
27 knowledge of the events that led up to the Agreement, and
describe the likely extent of each person's knowledge. The
term "personnel" for the purposes of this data request
includes consultants and other independent contractors.

1 The Company's Response was that: "Arizona Water does not have this information." Again, this is
2 unlikely, because those likely to have the most information would include those with whom the
3 Company negotiated the Settlement Agreement. Instead of attempting to provide a good faith
4 response, the Company simply stone-walled. Indeed, the Company finally (in its first supplement to
5 its responses to the 17th set, provided two days before Staff filed the Motion to Continue) provided a
6 list of PCG personnel who attended these meetings, showing that the Company had this information
7 all along. Again, the Company repeatedly suggests that Staff must "help itself", but does not provide
8 even the most basic information -- such as who at PCG to contact -- so that Staff could do so.

9 Another example is the Company's response to Data Request TJS 17-5, which asked:

- 10 TJS 17-5 (a) Quantify and describe the "past damages" described
11 in the Company's Second Supplement to its
12 Response to REL 5-19.
13 (b) Provide a specific description of the damages to
14 particular wells, water rights, other properties or
15 interests of the Company.
16 (c) Include all expenses incurred by the Company.
17 (d) Justify the Company's description of the damages
18 as "past".

17 The Company's Response to parts (a) and (b) were as follows:

18 ***[REDACTED]***
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1 The Company's Response indicating that the damages have not been ***[REDACTED]***
2 indicates that some quantification has been done, as does the Company's statement that it
3 ***[REDACTED]*** Staff has not been provided with any documents, data,
4 estimates, or any similar data showing what harm the Company may have suffered. Moreover, the
5 Company claims to be unable to identify specific wells that were damaged. But, in the Company's
6 Comments filed with the District Court, the Company specifically stated ***[REDACTED]***⁵
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12 Clearly, information concerning these wells and expenses would be responsive
13 to TJS 17-5 and has not been provided. Obviously, taking high value items out of production, and
14 spending millions of dollars on replacement items will have substantial impact on the Company's rate
15 base for the Miami system, which has not been audited (as part of a rate case) for more than 10 years.
16 Staff also asked:

17 TJS 17-12 Provide copies of all work orders and invoices related to
18 events that led up to the Agreement provided in response to
REL 5-19.

19 The Company's Response was ***[REDACTED]***
20

21 This reference back to the
22 already-inadequate response to TJS 17-5 is further evidence of the Company's incompleteness in
23 responding to Staff's data requests.

24 Likewise, the Company's Response to Data Request TJS 17-6 was inadequate. Data Request
25 TJS 17-6 requested:

26 _____
27 ⁵ ***[REDACTED]***
28

1 TJS 17-6 Provide copies of all documents that describe or quantify
2 the damages or effects on the Company of the events that
led up to the Agreement provided in response to REL 5-19.

3 The Company's Response was ***[REDACTED]***

4 The Company did not provide copies of internal
5 estimates of damages. Nor did the Company provide a copy of its Motion to Intervene in the district
6 court case, which would have had to include a statement of the damages suffered by the Company
7 under F.R.Civ.P. 24(C). (The existence of such a Motion to Intervene was disclosed in response to
8 TJS 17-1, so the Company can't claim to have forgotten about it.) Moreover, the negotiation of a
9 settlement agreement of the type that was entered into by the Company and PCG almost certainly
10 involves the exchange of correspondence (e.g. demand letters), and such correspondence has not been
11 provided to Staff.

12 The inadequate and evasive data responses described above have substantially affected Staff's
13 ability to prepare testimony regarding the Miami system. The Company also seems to imply that
14 Staff has been less than diligent, and that Staff has been unwilling to meet with the Company. A
15 review of the time-line of PCG related events, as set forth in the Ludders Affidavit attached hereto,
16 will show that this is clearly not the case:

- 17 1) On December 12, 2002 Staff learned of the existence of PCG from reviewing
Company board minutes. (Ludders Aff. at ¶ 6).
- 18 2) On December 20, 2002, Staff met with John Bradshaw of the Company, who
19 explained that the PCG matters related to a dam that burst. This appears to not be the
case. (Ludders Aff. at ¶ 8).
- 20 3) On December 23, 2002, Staff met with Ralph Kennedy and Sheryl Hubbard of the
Company and inquired about PCG matters. No information concerning PCG was
21 disclosed by the Company. (Ludders Aff. at ¶ 9).
- 22 4) On December 24, 2002, Staff sent Data Request REL 5-19, requesting documents and
a narrative concerning PCG.
- 23 5) On January 7 and 8, 2003, Staff met with Ralph Kennedy and Sheryl Hubbard of the
Company. No information concerning PCG was disclosed by the Company. (Ludders
24 Aff. at ¶ 10).
- 25 6) On January 15, 2003, Staff had a telephonic conversation with Sheryl Hubbard. Staff
asked about PCG, but no information concerning PCG was disclosed by the Company.
(Ludders Aff. at ¶ 11).
- 26 7) On January 22, 2003, Staff Engineer Hammon conducted a site inspection in Miami.
27 During this visit, Mr. Hammon spoke with various Company personnel and inquired
about the Company's facilities. At no time did the Company personnel disclose the
28 existence of the interconnection with PCG, the PCG-owned wells, or free water
received by the Company from PCG, or any other PCG-related matters. (Hammon

1 Aff. at ¶ 3). Additionally, Staff understands that no PCG-related information was
disclosed to RUCO during RUCO's site visit.

- 2 8) On January 28, 2003, Staff met with Sheryl Hubbard and requested information
concerning PCG, but no information concerning PCG was disclosed by the Company.
3 (Ludders Aff. at ¶ 12).
- 4 9) On February 4, 2003, Staff met with Sheryl Hubbard and brought copies of a signed
Protective Agreement agreed to by the Company. The Company refused to accept the
5 agreement (demanding an original) and refused to provide any information concerning
PCG. (Ludders Aff. at ¶ 13). Ms. Hubbard promised to call the next day.
- 6 10) On February 5, 2003, no call was received from Ms. Hubbard. (Ludders Aff. at ¶ 14)
- 7 11) On February 6, 2003, Ms. Hubbard called but provided no information regarding
PCG. (Ludders Aff. at ¶ 15).
- 8 12) On February 7, 2003, Mr. Ludders of Staff drove to the Company's headquarters to
obtain a copy of the Settlement Agreement. No other information concerning PCG
9 was disclosed by the Company. Ms. Hubbard promised to call with additional
information regarding PCG. (Ludders Aff. at ¶ 12).
- 10 13) On February 10, 2003 (only 3 days after receiving a copy of the Settlement
Agreement), Staff sent its 13th Set of Data Requests to the Company.
- 11 14) On February 14, 2003, Staff still had not received the promised call from Ms.
Hubbard. (Ludders Aff. at ¶ 17).
- 12 15) Also on February 14, 2003, Staff received the Company's 2nd Supplemental Response
13 to data request REL 5-19.
- 14 16) Also on February 14, 2003, after reviewing the Company's 2nd Supplemental
Response to data request REL 5-19, Staff (the very same day!) sent out its 17th set of
15 data requests.
- 16 17) On February 18, 2003, Staff received a letter from the Company's attorneys
concerning discovery disputes.
- 17 18) On February 19, 2003, Staff met with the Company's attorneys to discuss discovery
disputes.
- 18 19) On February 20, 2003, Ms. Hubbard calls.
- 19 20) On February 18, 19, 20, Staff's attorney and the Company's attorneys exchange emails
concerning discovery disputes.
- 20 21) On February 24, 2003, Staff receives the Company's response to the 17th set of data
21 requests.
- 22 22) On February 25, 2003, Staff receives the Company's first supplement to its responses
to the 17th set of data requests.
- 23 23) On February 26, 2003, Staff advises Company that a discovery motion will be filed.
- 24 24) On February 27, 2003, Staff receives a letter from the Company regarding discovery
disputes.
- 25 25) On February 27, 2003, Staff files a Motion to Continue.

26 Staff's practice is, of course, to meet with the Company informally, and to only resort to
27 formal data requests when necessary. As disclosed above, Staff has repeatedly met with the
28 Company without receiving information. What is needed now is not more meetings, but rather

1 prompt, complete and candid responses to data requests from the Company.

2 **VI. The Company's suggestions of economic harm are overstated and speculative.**

3 The Company suggests that granting the Motion to Continue will cost the Company
4 \$1,000,000. While this is an attention-getting number, it is not supported by the evidence. First, it is
5 highly unlikely that the Company will get all of its requested rate relief. Therefore, the base figure
6 used to calculate this amount is inflated. Moreover, the relevant number is not revenue, but rather
7 profit - which will only be a small percentage of revenue. Thus the actual economic harm that the
8 Company will suffer is proportionate to its misconduct. In fact, it is not clear the Company will
9 suffer any economic harm. Since the Company bears the burden of proof on all elements of its rate
10 application, it has no entitlement to any increase until it has met that burden. Staff has foregone a
11 request for dismissal of this rate application in part because of the length of time since a full audit of
12 this Company's Eastern Division has been undertaken. Whether the Company has been (or is
13 currently) under-earning or, rather, over-earning, is not answerable until the evidence is developed.

14 **VII. Staff's requested relief is appropriate.**

15 Staff's has requested that the due date for Staff's direct testimony be extended for 105 days
16 and that all other deadlines set forth in the procedural order and the hearing date be extended
17 accordingly and that the rate case time clock be tolled during this 105 day period. The Company
18 asserts that a tolling would be improper. The rate case time clock may be tolled if there is "Any
19 amendment to a filing which changes the amount sought by the utility or substantially alters the facts
20 used as the basis for the requested change in rates" or an "extraordinary event, otherwise provided for
21 by this subsection." A.A.C. R14-2-103(B)(11)(e). Here, the Company's disclosure that its
22 depreciation rates are incorrect amounts to an amendment that "substantially alters the facts".
23 Moreover, relief is also justified under the "extraordinary event" test. In Decision No. 59951
24 (1997)(copy of relevant page attached), the Commission approved an extension of the rate case time
25 clock in a Citizens rate case. The Commission found three extraordinary events:

26 Those extraordinary events are each of the following:

- 27 (1) Citizens knowingly failed to respond to discovery requests in a timely
28 manner....
(2) N/A

1 (3) The third extraordinary event results from Citizens filing three rate cases
2 within several weeks of each other.

3 While we find each of the above is an extraordinary event in itself, cumulatively we find it
4 even more compelling. We find that the Company's clear violation... has harmed Staff's and
5 RUCO's opportunity to analyze data and fully present their case(s)....

6 (Decision 59951 at p. 1) Here, the Company has also knowingly failed to respond to discovery
7 requests. Under the standard developed in Decision 59951, this alone qualifies as an extraordinary
8 event that justifies tolling the time clock. Moreover, the third factor refers to filing three rate cases at
9 nearly the same time. This rate case is, in essence, eight rate cases because it involves eight systems
10 that each has its own rates, rate base, expenses, etc. Therefore, the effects of delays and inadequate
11 responses are magnified. Accordingly, the extraordinary complexity of this case also qualifies as an
12 extraordinary event which justifies a tolling of the time clock. And combined, these factors show that
13 Staff's "opportunity to analyze data and fully present [its] case" has been compromised.

14 Lastly, the Company objected to Staff's mention of its internal deadline for a first draft. This
15 mention was not made to impose an additional legal requirement on the Company, but to explain the
16 practical effect of the Company's inadequate and delayed responses on Staff. Staff's testimony
17 (including schedules) will likely be 400-500 pages. (Ludders Aff. at ¶ 18). Such a large and
18 complex filing cannot be written quickly. And, especially in a case of this importance, it is prudent
19 that Staff's management-level personnel carefully evaluate a draft once it is prepared. Contrary to the
20 Company's assertions, the Motion to Continue was not made because Staff is not prepared to file
21 testimony. Staff has been diligently working on this matter for months. It can file detailed testimony
22 on the due date. But that testimony would not reflect information that the Company has not provided.
23 Therefore, Staff's ability to fulfill its mission of assisting the Commission in determining just and
24 reasonable rates for the citizens of this State would be compromised.

25 ...

26 ...

27 ...

28 ...

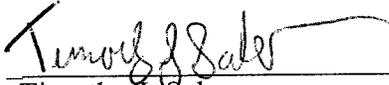
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1 **VIII. Conclusion.**

2 For the reasons described above, Staff's ability to "analyze data and fully present [its] case"
3 has been compromised, and the Hearing Division should grant the relief requested in Staff's Motion
4 to Continue.

5 **RESPECTFULLY SUBMITTED** this 10th day of March 2003.

6
7
8 
9 Timothy J. Sabo
10 Attorney, Legal Division
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13 The original and thirteen (13) copies
14 of the foregoing were filed this
15 10th day of March 2003 with:

15 Docket Control
16 Arizona Corporation Commission
17 1200 West Washington Street
18 Phoenix, Arizona 85007

18 Copies of the foregoing were mailed (and where indicated emailed and faxed) this
19 10th day of March 2003 to:

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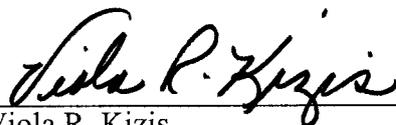
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER - Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

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 APPROVAL

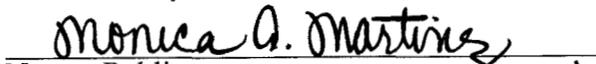
DOCKET NO. W-01445A-02-0619
Affidavit of Lyndon R. Hammon

LYNDON R. HAMMON, having been duly sworn, deposes and says:

- 1. I am a resident of Maricopa County, Arizona, over 18 years of age, and make this affidavit based on my own personal knowledge.
- 2. I am an engineer employed by the Utilities Division of the Arizona Corporation Commission. I have held this position since 1993. Over the years, I have conducted numerous site inspections of water company facilities as part of water company rate cases.
- 3. On January 22, 2003, I conducted a site inspection in Miami. During this visit, I spoke with various Company personnel and inquired about the Company's facilities. At no time did Arizona Water Company personnel disclose the existence of the interconnection with PCG, the PCG-owned wells, or free water received by the Company from PCG, or any other PCG-related matters.


Lyndon R. Hammon

Subscribed and sworn this 10th day of March, 2003.


Notary Public
My Commission Expires: 08/12/2004

 Notary Public State of Arizona
Maricopa County
Monica A Martinez
Expires August 12, 2004

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER - Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

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 APPROVAL

DOCKET NO. W-01445A-02-0619
Affidavit of Ronald E. Ludders

RONALD E. LUDDERS, having been duly sworn, deposes and says:

1. I am a resident of Maricopa County, Arizona, over 18 years of age, and make this affidavit based on my own personal knowledge.

2. I am a Public Utilities Analyst V with the Utilities Division of the Arizona Corporation Commission ("Commission"). I have been employed by the Utilities Division since December 1989. Among other responsibilities, I review and analyze the accounting books and records of regulated utilities for accuracy, completeness, and reasonableness; interpret rules and regulations, prepare work-papers, schedules, revenue requirements, rate design, staff reports and testimony for rate-making purposes regarding utility applications for rate adjustments, financing and other matters that come before the Commission.

3. I know of no cases accepted by the Commission in which "estimated" post-test year plant was used in determining rate base. In fact, the concept of "estimation" is contrary to Commission's standard of known and measurable.

4. On February 12, 2003, Mr. Kennedy called me and, among other things, informed Staff that the Company had inadvertently used the "wrong" depreciation rates while completing its application for presentation to the Commission. Toward the end of the conversation, I asked Mr. Kennedy when we could expect an amended application and Mr. Kennedy responded "not until we complete all pending data requests".

1 5. I am not aware of the Commission accepting an older depreciation study when a more
2 recent study is available that has been accepted by the Engineering Section of the Utilities Division.
3 The Engineering Staff Report for the Northern Group (Docket Number W-01445A-00-0962, dated
4 December 28, 2001) included the following statement: "Staff recommends adoption of AWC's 1991
5 depreciation study and its rates".

6 6. On December 12, 2002, Staff member Elena Zestrijan and I visited the Company main
7 office in Phoenix and prepared some Company "internal data requests" and reviewed the Company's
8 Board of Director's minutes. During that review, Staff noticed mention of the Pinal Creek Group
9 ("PCG").

10 7. On December 16, 2002, Staff prepared a series of questions to ask Company personnel
11 on our next visit. Among those questions was the following:

12 Please provide an explanation of the Pinal Creek Group agreement and the events that
13 led-up to the agreement. Please explain the effect of the agreement on the Company's
14 income statement as well as the plant accounts and rate base. If available, please
15 provide a copy of the agreement.

16 8. On December 20, 2002, Staff again visited the Company's Phoenix office and asked
17 John Bradshaw to discuss Staff question regarding the PCG. Mr. Bradshaw indicated that he
18 believed that "a dam burst" which polluted the Company's Miami well field. On December 24, 2002,
19 Staff sent Data Request REL 5-19, which asked about PCG matters.

20 9. On December 23, 2002, I meet with Mr. Kennedy and Ms. Hubbard in the Phoenix
21 office and asked about the PCG agreement but received no information.

22 10. On January 7 and 8, 2003, Staff personnel again visited the Phoenix office but no
23 information concerning PCG was disclosed even though asked about.

24 11. On January 15, 2003, I spoke with Ms. Hubbard by phone and again asked about the
25 PVG issue, but no information was forthcoming.

26 12. On January 28, 2003, Staff visited the Phoenix office and among other things, Ms.
27 Hubbard was asked about the PCG matter and again no information was given.

1 13. Again on February 4, 2003, and not February 7, as stated by Mr. Kennedy, Staff
2 visited the Phoenix Office and presented Ms. Hubbard with copies of signed Protective Agreement
3 agreed to by the Company. The Company refused to provide any information concerning the PCG
4 stating that they would not accept photocopies of the agreement (per Ms. Hubbard). Mr. Kennedy, in
5 his affidavit, suggested that the reason the copies of the agreement were not accepted by the
6 Company was that the fully executed copies of "Exhibit A" for each Staff member was not received
7 by the Company. However, the Agreement does not require that all Exhibit As be provided at once,
8 rather, upon executing the Agreement, Staff is obligated to limit disclosure of confidential
9 information to those Staff members that have signed the Exhibit A.

10 14. On February 5, 2003, no call was received from Ms. Hubbard.

11 15. On February 6, 2003, Ms Hubbard called and stated that the PCG information was still
12 not available.

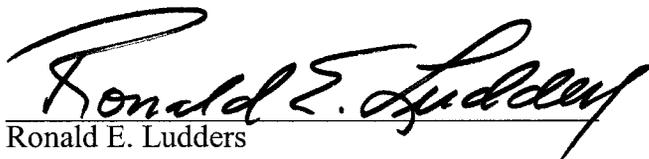
13 16. On February 7, 2003, Ms. Hubbard called saying she had a copy of the Settlement
14 Agreement available. I drove to the Company's office and picked up the Agreement, but no further
15 information previously requested available at that time. Ms. Hubbard said she would call me when
16 more information was available. As a result of reviewing the Settlement Agreement, Staff sent its
17 13th set of data requests.

18 17. By February 14, 2003, Staff still had not received Ms. Hubbard's call saying
19 additional information regarding the PCG was available.

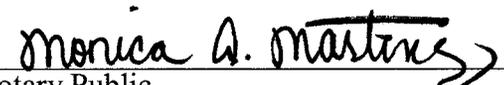
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1 18. Staff estimates the final Staff Report will be 400 to 500 pages in length including all
2 testimony and supporting schedules.

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4 Further affiant sayeth not.

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7 _____
8 Ronald E. Ludders

9 Subscribed and sworn this 10th day of March, 2003.

10
11 
12 _____
13 Notary Public
14 My Commission Expires: 8/12/2004



Notary Public, State of Arizona
Maricopa County
Monica A Martinez
Expires August 12, 2004

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1 BY THE COMMISSION:

2 On September 13, and as amended on October 11, 1995, Citizens Utilities Company ("Citizens"
3 or "Company") filed with the Arizona Corporation Commission ("Commission") an application for a
4 permanent increase in electric rates. On October 13, 1995, the Commission's Utilities Division Staff
5 ("Staff") filed a notice that the rate application has met the sufficiency requirements of A.A.C. R14-2-103
6 and that the Company has been classified as a Class A utility. Our October 30, 1995 Procedural Order
7 set the matter for hearing on June 12, 1996. In addition, public comment meetings were scheduled for
8 Lake Havasu City and Kingman, Arizona on June 6, 1996 and Nogales, Arizona on June 7, 1996.

9 Subsequently, there were numerous discovery disputes between primarily the Residential Utility
10 Consumer Office ("RUCO") and Staff on the one hand and the Company on the other hand. Oral
11 arguments on the discovery disputes occurred on March 15, March 29, April 15, and May 10, 1996. The
12 Presiding Officer issued the following decision at the March 15, 1996 oral argument:

13 We find that pursuant to A.A.C. R14-2-103(B)(11)(e)(ii) there are clearly
14 extraordinary events in this case.

15 Those extraordinary events are each of the following:

- 16 (1) Citizens has knowingly failed to respond to discovery requests on
17 a timely matter. Our October 30, 1995 Procedural Order clearly
18 specified a time frame of ten days in which to respond to
19 discovery requests. Citizens filed an objection to such time frame
20 and requested it be set instead at 15 business days. Pursuant to our
21 October 30, 1995 Procedural Order, Citizens' objection was
22 denied within ten days of their request. Citizens has never
23 appealed that Procedural Order and has taken no steps to change
24 their internal process to insure compliance with the Procedural
25 Order. In fact, Citizens readily admits they have been late an
26 average of 14 days in responding to RUCO and Staff data
27 requests. We note that even under Citizens' proposed discovery
28 schedule, Citizens' responses would have been late:
- (2) The second extraordinary event is the multi-step process that
Citizens has in gathering information and developing their
responses; and
- (3) The third extraordinary event results from Citizens filing three rate
cases within several weeks of each other.

24 While we find each of the above is an extraordinary event by itself, cumulatively
25 we find it even more compelling.

26 We find that the Company's clear violation of the October 30, 1995 Procedural
27 Order has harmed Staff's and RUCO's opportunity to analyze data and fully
28 present their case(s). As a result, we are going to immediately stay the time-clock
rules in this case.

27 Our May 7, 1996 Procedural Order determined that the time-clock rules were extended by 62 days
28 as a result of the extraordinary events. Further, the hearing was rescheduled to commence on August-13,