

**ORIGINAL**

**REHEARING** MAY 26 2007



0000072152

BEFORE THE ARIZONA CORPORATION COMMISSION

27

- 1
- 2 MIKE GLEASON  
CHAIRMAN
- 3 WILLIAM A. MUNDELL  
COMMISSIONER
- 4 JEFF HATCH-MILLER  
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- 7

2007 MAY -7 P 2:58

AZ CORP COMMISSION  
DOCUMENT CONTROL

8 IN THE MATTER OF THE APPLICATION OF  
 9 ARIZONA-AMERICAN WATER COMPANY,  
 10 AN ARIZONA CORPORATION, FOR A  
 11 DETERMINATION OF THE CURRENT FAIR  
 12 VALUE OF ITS UTILITY PLANT AND  
 13 PROPERTY AND FOR INCREASES IN ITS  
 14 RATES AND CHARGES BASED THEREON  
 15 FOR UTILITY SERVICE BY ITS MOHAVE  
 16 WATER AND WASTEWATER DISTRICTS.

Docket No. WS-01303A-06-0014

Arizona Corporation Commission  
**DOCKETED**

**MAY -7 2007**

DOCKETED BY	<i>nr</i>
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**RUCO'S APPLICATION FOR  
REHEARING OF DECISION NO. 69440**

17 Pursuant to A.R.S. § 40-253, the Residential Utility Consumer Office ("RUCO") requests  
 18 that the Arizona Corporation Commission ("Commission") rehear one specific matter decided  
 19 in Decision No. 69440, docketed May 1, 2007. Decision No. 69440 approved the  
 20 Recommended Opinion and Order ("ROO") on Arizona American Water Company's ("Arizona  
 21 American" or "Company") application for a rate increase. Among the many contested issues  
 22 decided in this matter, the Commission approved the ROO's recommendation regarding  
 23 property tax expense. RUCO opposed the ROO's recommended treatment of property tax  
 24 expense and timely filed Exceptions. While RUCO disagrees with the Commission's Decision  
 on the issue of property tax expense, RUCO is not requesting that the Commission reconsider

1 its decision of the property tax issue. RUCO, however, is requesting the Commission  
2 reconsider its decision to include the following highlighted language in Decision No. 69440:

3 RUCO's "study" is flawed because it arbitrarily excludes water  
4 systems **that do not fit its predetermined result** and also reflects  
5 retroactive effective dates for rates, in several instances years  
6 before the rates were actually in effect. Decision No. 69440 at 10.

7 The Commission should strike the highlighted language from its Decision as it is  
8 inaccurate, unfair and misrepresents RUCO's study.

### 9 **RUCO'S STUDY DID NOT HAVE A PREDETERMINED RESULT**

10 The Commission's conclusion that RUCO performed a study that had a predetermined  
11 result is unsupported by the record. The Commission reached this conclusion without an  
12 explanation and/or support from the record. On appeal, the court will examine the decision of  
13 the Commission and determine if it is supported by substantial evidence. *Simms v. Round*  
14 *Valley Light & Power Company, 80 Ariz. at 154-55, 294 P.2d 378.* Mere speculation and  
15 arbitrary conclusions are not substantial evidence and cannot be determinative.  
16 *City of Tucson v. Citizens Utilities Water Co. 17 Ariz. App. 477, 481 498 P.2d 551, 555 (Ariz.*  
17 *App. 1972).* The Commission's conclusion that RUCO's study had a predetermined result has  
18 no factual basis in the record, is speculative and should be stricken from Decision No. 69440.

19 The Commission concludes that RUCO's study is flawed because it excluded water  
20 systems that do not fit in its predetermined result. Decision No. 69440 at 10. The record,  
21 however, in no way shows how RUCO's study had a predetermined result. The Decision notes  
22 that the Company's property tax witness, Joel Reiker, claimed that RUCO "...excluded data  
23 from seven of the ten former Citizens systems, apparently because inclusion of those systems  
24 would show that Arizona-American actually under-collected for property taxes under existing

1 rates." Id. Mr. Reiker, however, never alleged or claimed that RUCO excluded companies to  
2 arrive at a predetermined result. In fact, as the following portion of the hearing transcript  
3 illustrates, Mr. Reiker never claimed that RUCO selectively chose the Companies in its study.

4 ACALJ NODES: So is another of your criticisms that there  
5 was a selective use of companies over this period?

6 THE WITNESS: I am not making that claim, but the  
7 possibility cannot be excluded, because we know about data for our  
8 own company for seven other districts which would indicate that  
9 they were under collecting. Transcript at 248.

10 RUCO explained on the record how it did its study and why it chose to exclude certain  
11 companies from its study. RUCO witness Timothy Coley testified that he tried to pick a  
12 representative sample of stable and growth-oriented water companies in his study. Transcript  
13 at 259. Mr. Coley included in his sample two Arizona-American districts – Agua Fria and  
14 Tubac. Id. at 258. Mr. Coley excluded from his sample companies that appeared to have  
15 unstable growth or had other strange phenomenon associated with them. Id. For example,  
16 Mr. Coley excluded the Company's Sun City Water District, which had a wide range of tax  
17 rates associated with it over the five-year period since the ADOR memorandum was issued.  
18 Id. While the Company may have disagreed with RUCO's study, the Company has not alleged  
19 or proven that RUCO selectively chose companies to arrive at a predetermined result.

20 The Commission's conclusion that RUCO's study had a predetermined result suggests  
21 RUCO acted dishonestly in performing its study. Nothing could be further from the truth. The  
22 Administrative Law Judge, who was given an opportunity to explain his recommendation at the  
23 Open Meeting held on April 26, 2007, presented no basis in the record which supports the  
24 conclusion that RUCO's study had a predetermined result. The Judge believed RUCO's  
25 witness did not provide a sufficient basis to support RUCO's recommendation. The record,  
26 however, shows that two of RUCO's witnesses, Timothy Coley, a rate analyst and Mary Lee

1 Diaz Cortez, Chief of Accounting and Rates, explained in great detail how RUCO's study was  
2 performed. See RUCO - 4, RUCO-5 at 3 - 51, RUCO-6 at 18 - 26 and Transcript at 256 -  
3 277, 287 - 307. None of RUCO's evidence describing the study supports a conclusion that it  
4 had a predetermined result. Furthermore, as shown above, while the Company disagreed with  
5 the conclusions of RUCO's study, it offered no evidence that proved RUCO's result was  
6 predetermined; nor did Staff present any evidence that RUCO's study had a predetermined  
7 result.

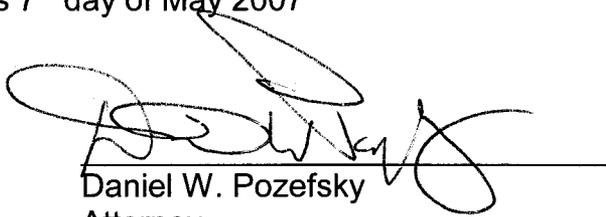
8 The Decision's language impugns RUCO's integrity. If there is no basis for the  
9 statement in the record, making the statement undermines the integrity of the Commission.  
10 The Commission may reach the conclusion that RUCO's study is flawed, but it should not  
11 reach beyond the record to speculate on RUCO's motivation in developing the study.

12  
13 **CONCLUSION**

14 For the foregoing reasons, RUCO requests that that Commission strike the following  
15 highlighted language from Decision No. 69440.

16 RUCO's "study" is flawed because it arbitrarily excludes water systems **that do not fit**  
17 **its predetermined result and** also reflects retroactive effective dates for rates, in several  
18 instances years before the rates were actually in effect.

19  
20 RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of May 2007

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22  
23   
Daniel W. Pozefsky  
Attorney

1 AN ORIGINAL AND THIRTEEN COPIES  
2 of the foregoing filed this 7<sup>th</sup> day  
3 of May 2007 with:

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By   
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Secretary to Daniel W. Pozefsky