



0000073966

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

- MIKE GLEASON
CHAIRMAN
- WILLIAM A. MUNDELL
COMMISSIONER
- JEFF HATCH-MILLER
COMMISSIONER
- KRISTIN K. MAYES
COMMISSIONER
- GARY PIERCE
COMMISSIONER

2007 JUN 15 A 10:12
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED
JUN 15 2007

DOCKETED BY	ne
-------------	----

IN THE MATTER OF THE APPLICATION OF
GOLD CANYON SEWER COMPANY, AN
ARIZONA CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE OF
ITS UTILITY PLANT AND PROPERTY AND
FOR INCREASES IN ITS RATES AND
CHARGES FOR UTILITY SERVICE BASED
THEREON.

Docket No. SW-02519A-06-0015

EXCEPTIONS OF THE RESIDENTIAL UTILITY CONSUMER OFFICE

The Residential Utility Consumer Office ("RUCO") makes the following Exceptions to the Recommended Opinion and Order ("ROO") of Arizona American Water Company's ("Arizona American" or "Company") application for a rate increase.

INTRODUCTION

Throughout this proceeding, the ratepayers of Gold Canyon have expressed their deep concern regarding the Company's 92.07% revenue increase request. The ratepayers do not feel that such an increase is justified for several reasons. The Company has spent significant amounts of monies for plant improvements, yet the ratepayers still complain of odor issues. The former president of the Company assured ratepayers that the improvements would be

12

1 made and that there would be "no" increase in rates. Despite the concerns, the Company is
2 proposing a huge increase.

3 The ROO provides ratepayers with little satisfaction. The ROO recommends a 73%
4 revenue increase and a \$15,000 penalty against the Company for the statements made by the
5 Company's former president. A 73% revenue increase is not reasonable under the facts and
6 circumstances of this case. RUCO's recommends a 41.84% revenue increase. The majority
7 of the difference between RUCO's position and the ROO's recommendation is the excess
8 capacity adjustment that RUCO proposed. As more fully explained below, RUCO's excess
9 capacity adjustment allows the Company rate base inclusion of the projected capacity it will
10 require through 2008, and the opportunity to include capacity beyond that in future rates.
11 RUCO's recommendation is fair under the circumstances of this case and should be adopted
12 by the Commission.

13
14 **EXCESS CAPACITY**

15 The ROO rejects RUCO's excess capacity argument, framing the issue as more of a
16 straightforward prudence question than what it really is – a question of who should pay for
17 growth and when.

18 There is no question that the Company had excess capacity during the test year.
19 During the test year the Company experienced an average flow of 708,000 gallons per day
20 and a peak flow of almost 1,200,000 gallons per day. The average flow was approximately
21 1,192,000 gallons less and the peak flow was approximately 700,000 gallons less than the
22 Company's maximum capacity of 1,900,000 gallons per day. ROO at 6 - 7.

1 entire risk of growth to current ratepayers and is, therefore, unfair and inequitable to current
2 ratepayers¹.

3 Moreover, RUCO is not suggesting that the Company be denied recovery of its
4 prudently incurred costs. RUCO is recommending the Commission grant the Company an
5 Accounting Order that will allow the Company the opportunity to recover all of its interim
6 depreciation expense when its excess capacity becomes used and useful. Further, because
7 the deferred costs will be eligible to earn a return when the excess capacity becomes used and
8 useful, the Company will have the opportunity to earn a return on the full cost of the plant at
9 that time. (See Exhibit 1 – RUCO’s proposed amendment.)

10
11 **RATE CASE EXPENSE**

12 RUCO’s rate case expense recommendation was based primarily on the fact that
13 RUCO was unable to verify many of the expenses the Company sought to recover. The
14 Company, to a large extent, presented RUCO with redacted legal invoices which the Company
15 claimed were protected under the attorney-client privilege. RUCO did not argue, nor does it
16 claim, that such information is not protected under the attorney-client privilege. That is not the

17
18
19
20 ¹ The ROO also states that RUCO’s excess capacity disallowance is inconsistent with the “peak capacity
21 requirements reflected in the record.” RUCO can only assume that the ROO is referencing its previous
22 statement that had the Company expanded its plant to only 1,500,000 gallons per day given that test year
23 peak flow was approximately 1,200,000 gallons per day the Company would have had to plan for
24 incremental amounts of capacity. ROO at 7. However, the ROO’s review of the record is selective. The
record also shows that in terms of peak flow, the improvements were designed for a maximum day flow of
3,300,000 gallons per day and a maximum hourly flow of 5,515,000 gallons per day. R-1 at 2. Even
assuming that during the test year, February 2005 had the highest peak day flow of 1,170,000 gallons, there
still is no question that the Company had excess capacity. S-1, Exhibit MSJ at page 4.

1 issue. RUCO's concern is that RUCO was unable to verify the Company's rate case expense
2 based on the redacted information provided. In the absence of supporting documentation,
3 RUCO, like Staff², does not approve an expense. The Company, not RUCO is requesting the
4 rate increase and has the obligation to present the Commission with documentation supporting
5 its request.

6 The ROO dispatches with RUCO's arguments on this point, noting:

7 With respect to RUCO's arguments regarding redacted legal
8 invoices, a review of those invoices at the hearing showed that
9 the only information redacted from the invoices was the topic of
10 discussions between Gold Canyon representatives and their
11 attorneys. The invoices included substantial unredacted
12 information including the name of the client; the specific duties
13 performed; the name of the individuals who performed those
14 duties; number of hours; and the amounts billed for the tasks
performed (Ex. A-15). Despite the concern expressed by the
RUCO witness at the hearing about the invoices, RUCO did not
raise the issue in its pre-filed testimony; RUCO did not enter into
a protective agreement to obtain access to the redacted
information; and RUCO did not file a Motion to Compel seeking
disclosure of the redacted information prior to the hearing. ROO
at 12.

15 The ROO's interpretation of what information was included in the invoices is narrow at
16 best. After all, if the invoices contained all the information the ROO suggests, there would be
17 no basis for RUCO's objection. A review of the Exhibit referenced in the ROO indicates
18 otherwise. Attached hereto is a copy of Exhibit A-15, which is an excerpt of the invoices
19 RUCO provided to the Company in response to the Company's request of RUCO to provide an
20 explanation as to what RUCO considered were questionable expenses. Turning to the second
21
22

23 ² In this case, Staff did not remove the redacted entries from its recommendation because of time constraints.
24 Transcript at 1176. Had Staff had the time, Staff would have "most likely" removed the redacted expenses. Id.

1 page of the exhibit, for example, under the first entry date of 03/07/06, the entry for services
2 provided is: "Jay Shapiro: E-mails regarding (redacted)" While it is true that the task
3 performed was e-mails, this entry, by anyone's stretch of the imagination, does not provide
4 enough information about the service to justify its inclusion in rate case expense. RUCO's
5 purpose is not to simply be a "rubber stamp" and endorse the Company's requested expenses
6 based on the Company's say-so. There are many redacted entries within Exhibit A-15 which
7 do not provide adequate supporting documentation for the expense and should therefore be
8 rejected.

9 The ROO is critical of RUCO's failure to pursue this issue in the discovery phase of the
10 proceeding. First, the ROO notes that RUCO did not raise this issue in its pre-filed testimony.
11 In fact, RUCO's witness Rodney Moore testified in his surrebuttal testimony that RUCO
12 considered \$72,000 of rate case expense to be questionable. R-10 at 12. The redacted
13 invoices were part of this amount.

14 The next two points the ROO raises concern RUCO's failure to enter into a protective
15 agreement to obtain access to the redacted information and RUCO's failure to file a Motion to
16 Compel disclosure. Both options miss the point. The ROO's attempt to shift the burden to
17 RUCO to obtain information the Company has failed to disclose is misguided. The burden is
18 on the Company to provide documentation of its expenses. *Decision No. 68487* at 21. It is
19 the Company, not RUCO, that is requesting recovery of the Company's rate case expense.
20 The manner and form in which the Company elects to provide the information to support its
21 request is the Company's business. However, if the Company chooses to invoke privilege or
22 take any other legal or non-legal measure that results in non-disclosure of information that
23 supports its rate request, that request should be denied.

1 RESPECTFULLY SUBMITTED this 15th day of June 2007

2
3 
4 Daniel Pozefsky
Attorney

5 AN ORIGINAL AND THIRTEEN COPIES
6 of the foregoing filed this 15th day
7 of June 2007 with:

8 Docket Control
9 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

10 COPIES of the foregoing hand delivered/
11 mailed this 15th day of June 2007 to:

12 Dwight Nodes
13 Administrative Law Judge
14 Hearing Division
15 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Greg Sorenson
Gold Canyon Sewer Company
12725 W. Indian School Road
Suite D-101
Avondale, AZ 85323

16 Christopher Kempley, Chief Counsel
17 Legal Division
18 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Andy Kurtz
Mountainbrook Village at Gold Canyon
Ranch Association
5674 S. Marble Drive
Gold Canyon, AZ 85218

19 Ernest Johnson, Director
20 Utilities Division
21 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Mark A. Tucker, Attorney At Law
Mark A. Tucker, P.C.
2650 E. Southern Avenue
Mesa, AZ 85204

22 Jay L. Shapiro
23 Fennemore Craig, P.C.
3003 N. Central Avenue, Suite 2600
Phoenix, Arizona 85012

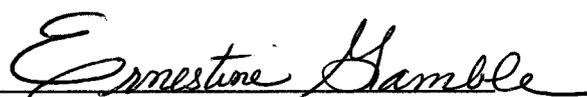
By 
Ernestine Gamble

EXHIBIT 1

EXHIBIT 1
RUCO's Amendment No. 1
(EXCESS CAPACITY)

Page 6 Line 27 through page 7, line 23.

DELETE Page 6 Line 27 through page 7, line 23.

INSERT We agree with RUCO that the Company had excess capacity during the test year. During the test year the Company experienced an average flow of 708,000 gallons per day and a peak flow of almost 1,200,000 gallons per day. The average flow was approximately 1,192,000 gallons less and the peak flow was approximately 700,000 gallons less than the Company's maximum capacity of 1,900,000 gallons per day. Current ratepayers should not bear the entire risk of future growth or pay the cost of capacity that will be utilized by future ratepayers. Current ratepayers should only pay for their fair share of their wastewater service costs.

Placing the entire risk of growth on future ratepayers would require the Company to constantly have to plan on adding incremental capacity to meet ongoing demand increases. This planning strategy would result in higher costs to ratepayers and financial inconvenience for the Company. RUCO's adjustment provides an appropriate and fair balance of the concerns for both the ratepayers and the Company by including in ratebase all the necessary capacity through 2008. Accordingly, we adopt RUCO's proposal.

Make all conforming changes as necessary.

EXHIBIT 2

EXHIBIT 2
RUCO'S Amendment No. 2
(RATE CASE EXPENSE)

Page 11 line 21 through page 12, line 17.

DELETE Page 11 line 21 through page 12, line 17.

INSERT RUCO's rate case expense recommendation is fair and reasonable under the facts and circumstances of this case and is consistent with the rate case expense allowances in other proceedings. See, e.g., *Arizona-American Water Company, Inc. Sun City/Sun City West et. al Water and Wastewater Districts* – Decision No. 67093, (average of \$41,894 per district), *Arizona Water Company, Northern Group* – Decision No. 64282 (\$43,400 per district), *Arizona Water Company, Eastern Group* – Decision No. 66849 (\$31,250 per district), *Arizona Water Company, Western Group* – Decision No. 68302 (\$50,710 per district).

With respect to the redacted information contained in the Company's legal invoices, it was proper for RUCO to exclude the redacted information from rate case expense. When a Company files a rate application, it is the Company's burden to provide the Staff and/or intervenors with documentation and responses to discovery requests to support the Company's adjustments. If those responses involve confidential information, it is the Company's burden to arrange for confidentiality agreements or take other measures it deems necessary to provide the information to Staff and/or the intervenors. The Company acts at its own peril if it does not provide the information. It is not the burden of intervenors to seek protective agreements or make motions seeking disclosure of information that the Company is obligated to provide. We will therefore approve RUCO's recommended rate case expense of \$70,000, amortized over four years.

Make all conforming changes as necessary.

EXHIBIT A-15

EXHIBIT A-15

RUCO'S RESPONSE TO
GOLD CANYON SEWER COMPANY'S
THIRD SET OF DATA REQUESTS
DOCKET NO. SW-02519A-06-0015

- 3.13 On page 12 of Mr. Moore's surrebuttal testimony, RUCO claims it has determined that \$40,000 of rate case expenses are "questionable." Please identify each item of rate case expense deemed questionable by RUCO and state the reasons for such determination.

Response: Rodney Moore

Please see attached sheets extracted from the Company's supplemental response to RUCO 1.13. Questionable expenses are denoted by an asterisks.

OLD CANYON SEWER COMPANY
4/13/06
page 2

Client: 41452
Matter: 015
Invoice: 528798

DATE	PROFESSIONAL SERVICES	HOURS	AMOUNT	
	items; forward to J. Shapiro for review; print and organize attachments; finalize for delivery to Arizona Corporation Commission.			
3/03/06	Jay Shapiro: Numerous e-mails regarding [REDACTED] review Hill 2003 letter and consider [REDACTED]	0.70	227.50	*
3/06/06	Jay Shapiro: Several e-mails regarding [REDACTED]; evaluate customer growth information and consider strategy [REDACTED]; [REDACTED]; call with D. Kerr regarding [REDACTED]; draft letter to the editor.	1.80	585.00	*
3/07/06	Jay Shapiro: E-mails regarding [REDACTED] [REDACTED]	0.20	65.00	*
3/07/06	Whitney Birk: (Paralegal) Email to and from G. Sorensen regarding [REDACTED] [REDACTED]	0.10	12.00	*
3/08/06	Whitney Birk: (Paralegal) Several e-mails regarding responses to Staff's first set of data requests; revisions to response document.	0.40	48.00	
3/09/06	Sandra Baker: (Document Clerk) Prepare Data Requests for delivery- hand deliver to the Arizona Corporation Commission.	1.20	66.00	
3/09/06	Whitney Birk: (Paralegal) Update responses to Staff's first set of data requests; organize corresponding attachments; identify documents to be redacted; prepare cover letter; finalize for delivery to Arizona Corporation Commission.	3.00	360.00	

continued on next page

FENNEMORE CRAIG

8

OLD CANYON SEWER COMPANY
5/10/06
page 2

Client: 41452
Matter: 015
Invoice: 531926

DATE	PROFESSIONAL SERVICES	HOURS	AMOUNT	
	[REDACTED]; several e-mails regarding [REDACTED]; finalize objection to same and forward to RUCO counsel; receipt and review of Staff's 1st set of data request, prepare objections and e-mail to clients and T. Bourassa regarding [REDACTED]; several e-mails regarding [REDACTED]			
4/13/06	Whitney Birk: (Paralegal) Review Staff's second set of data requests; review objections to RUCO's first set of data requests.	0.30	36.00	*
4/13/06	Jay Shapiro: Call with G. Sorensen regarding [REDACTED]; prepare additional objections and e-mail document to Staff with explanation; review Staff third set of data requests and e-mail [REDACTED] to client and T. Bourassa.	0.60	195.00	*
4/17/06	Jay Shapiro: E-mails regarding [REDACTED] with G. Sorensen and then T. Bourassa; review most recent article on rate increases request.	0.30	97.50	*
4/18/06	Jay Shapiro: Several emails regarding [REDACTED]	0.20	65.00	*
4/18/06	Whitney Birk: (Paralegal) Work on compiling responses to Residential Utility Consumer Office's first set of data requests; prepare response to RUCO 1.07 for submission; prepare cover letters to D. Ronald and D. Pozefsky.	1.20	144.00	
4/19/06	Whitney Birk: (Paralegal) Continue work on compiling responses to Residential Utility Consumer Office's first set of data requests;	1.70	204.00	

continued on next page

FENNEMORE CRAIG

DATE	PROFESSIONAL SERVICES	HOURS	AMOUNT
	Sorensen regarding [REDACTED] [REDACTED]		
05/09/06	Jay Shapiro: Several e-mails regarding [REDACTED] [REDACTED]	0.20	65.00
05/10/06	Jay Shapiro: Emails from and to clients regarding [REDACTED] [REDACTED]	0.20	65.00
05/12/06	Whitney Birk: (Paralegal) Compile responses to Residential Utility Consumer Office's second set of data requests; organize attachments.	0.80	96.00
05/13/06	Jay Shapiro: Work on responses to RUCO 2nd set of data requests and e-mails regarding same; review attachments.	0.40	130.00
05/15/06	Jay Shapiro: Email from and to D. Kerr regarding [REDACTED]; numerous e-mails with clients regarding [REDACTED] [REDACTED]	0.70	227.50
5/15/06	Whitney Birk: (Paralegal) Revisions to responses to RUCO's second set of data requests; finalize attachments for same; prepare cover letter; prepare for delivery to RUCO and Arizona Corporation Commission; several e-mails regarding affidavit of mailing.	1.30	156.00
5/16/06	Jay Shapiro: Work on response to Staff data request 2.17 [REDACTED] [REDACTED]	0.40	130.00
5/16/06	Whitney Birk: (Paralegal) Review and organize	1.50	180.00

continued on next page

FENNEMORE CRAIG

DATE	PROFESSIONAL SERVICES	HOURS	AMOUNT
	[REDACTED]; begin detailed review and analysis of other parties' direct testimonies and preparation of data requests.		
06/22/06	Whitney Birk: (Paralegal) Finalize supplemental documentation responsive to CSB 2.17; several follow-up emails with A. Sears regarding [REDACTED]; prepare letter to D. Ronald enclosing same and explaining outstanding documents; forward letter to J. Shapiro for review; prepare same for delivery to Arizona Corporation Commission and Residential Utility Consumer Office.	1.20	144.00
06/23/06	Jay Shapiro: Numerous e-mails with clients regarding [REDACTED]; preliminary review of Brown testimony and discuss [REDACTED] with G. Sorensen and T. Bourassa; begin detailed review of RUCO and Staff direct filings, preparation of data requests and preparation of summary analysis for [REDACTED] and T. Bourassa.	3.00	975.00
06/23/06	Sandra Baker: (Document Clerk) Go to the Legal Division at the Arizona Corporation Commission to pick up C. Brown testimony.	0.80	44.00
06/23/06	Whitney Birk: (Paralegal) Check status of docket; make arrangements to pick-up C. Brown direct testimony; distribute same.	0.80	96.00
06/26/06	Jay Shapiro: Call with D. Ronald regarding Staff direct and responses to DR 2.17; review e-mails from/to G. Sorensen regarding [REDACTED]	0.30	97.50
06/26/06	Whitney Birk: (Paralegal) E-mail to D. Ronald requesting C. Brown workpapers.	0.10	12.00

continued on next page

FENNEMORE CRAIG

DATE	PROFESSIONAL SERVICES	HOURS	AMOUNT
06/27/06	Jay Shapiro: Finish review and analysis of Staff and RUCO filings, data requests and e-mail regarding [REDACTED] to G. Sorensen and T. Bourassa.	1.50	487.50
06/27/06	Whitney Birk: (Paralegal) Review draft of first set of data requests to Staff; edit same; prepare letter to D. Ronald regarding same; distribute.	1.50	180.00
06/28/06	Sandra Baker: (Document Clerk) Download [REDACTED]	0.30	16.50
06/28/06	Whitney Birk: (Paralegal) Review first set of data requests to RUCO; edit same; review second set of data requests to Staff; edit same; several e-mails regarding [REDACTED]; prepare cover letters; distribute.	2.80	336.00
06/29/06	Whitney Birk: (Paralegal) Several e-mails regarding [REDACTED] prepare cover letter to D. Ronald enclosing documentation; prepare for delivery to Arizona Corporation Commission and Residential Utility Consumer Office.	0.50	60.00
06/30/06	Jay Shapiro: E-mail from RUCO counsel regarding data request objection; direction to W. Birk regarding same; conference call with G. Sorensen and T. Bourassa regarding [REDACTED]	1.50	487.50
06/30/06	Whitney Birk: (Paralegal) Several e-mails regarding data request 1.45 to RUCO; follow-up with D. Pozefsky regarding amended data request 1.45.	0.30	36.00

continued on next page

FENNEMORE CRAIG