

ORIGINAL



0000080136

BEFORE THE ARIZONA CORPORATION C

19E

2 COMMISSIONERS

RECEIVED

Arizona Corporation Commission

DOCKETED

3 MIKE GLEASON, Chairman
WILLIAM A. MUNDELL

2008 JAN -3 P 3:17

JAN 03 2008

4 JEFF HATCH-MILLER
5 KRISTIN K. MAYES
6 GARY PIERCE

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

7 IN THE MATTER OF THE APPLICATION OF
8 CHAPARRAL CITY WATER COMPANY,
9 INC. FOR A DETERMINATION OF THE FAIR
10 VALUE OF ITS UTILITY PLANT AND
PROPERTY AND FOR INCREASES IN ITS
RATES AND CHARGES FOR UTILITY
SERVICE BASED THEREON.

DOCKET NO. W-02113A-07-0551

MOTION TO SUSPEND TIME CLOCK

11 Arizona Corporation Commission Staff ("Staff") hereby requests that the Commission
12 suspend the time-clock in the above-captioned proceeding. This suspension is appropriate because
13 Chaparral City Water Company ("Company") has another proceeding pending (Docket No. W-
14 02113A-04-0616) in which its rates are at issue. The fact that the schedules for these two
15 proceedings overlap supports Staff's request.

16 **I. BACKGROUND.**

17 On August 24, 2004, the Company filed an application for an increase in rates.¹ In that
18 proceeding, the Company asked for an increase in revenues of \$1,773,091, a 28.59 percent increase.²
19 By contrast, Staff recommended a revenue increase of \$809,692, a 13.05 percent increase.³ On
20 September 30, 2005, the Commission issued Decision No. 68176, which granted the Company an
21 increase in revenues of \$1,107,620 for an increase of 17.86 percent.⁴

22 Thereafter, the Company appealed the Commission's decision to the Arizona Court of
23 Appeals, asserting primarily that the Commission had not used the Company's fair value rate base to

24 ...

25 ...

26 ...

27 _____
28 ¹ Decision No. 68176 at 1.

² *Id.* at 3.

³ *Id.*

⁴ *Id.*

1 determine its rates.⁵ The Court of Appeals agreed with the Company, in part, and remanded the case
2 to the Commission.⁶ A hearing on the remand is scheduled to commence on January 28, 2008.⁷

3 On or about September 26, 2007, the Company filed a new application for an increase in rates
4 in Docket No. W-02113A-07-0551. Staff issued a sufficiency letter on October 26, 2007. Since
5 beginning its review of the Company's rate application, Staff has begun to foresee potential
6 complications between these two simultaneously pending proceedings. As a result, Staff respectfully
7 requests that the time-clock for the pending rate case be suspended for the reasons set forth below.

8 **II. A.A.C. R14-2-103.**

9 A.A.C. R14-2-103(B)(11)(g) states that the "time periods prescribed by subsection (B)(11)(a)
10 shall not be applicable to any filing submitted by a utility which has more than one rate application
11 before the Commission at the same time."⁸ Presumably, this rule was enacted by the Commission to
12 allow Staff sufficient time to review each application independently prior to making its
13 recommendation and to prevent premature determinations on cases that may significantly affect one
14 another. Although Staff recognizes that the remand proceeding is not a rate case in the strict sense,
15 Staff suggests that the remand proceeding—which contemplates a potential adjustment to the
16 Company's rates—is in substance very similar to a rate case. Staff suggests that the complicating
17 effects of undertaking the rate case during the pendency of the remand proceeding is the very result
18 that R14-2-103(B)(11)(g) is designed to avoid.

19 Even if R14-2-103(B)(11)(g) were found to be inapplicable in these circumstances, other
20 provisions of the time-clock rules similarly support a suspension. Simultaneously pending and inter-
21 related proceedings, such as the remand proceeding and the pending rate case, should certainly
22 qualify as an "extraordinary event" for purposes of R14-2-103(B)(11)(e)(ii). In addition, the likely
23 issuance of the remand order in the midst of the pending rate case is likely to act as an "amendment
24 to a filing which changes the amount sought by the utility or substantially alters the facts used" as the
25 ...

26 _____
27 ⁵ *Chaparral City Water Co. v. Arizona Corp. Comm'n*, No. 1 CA-CC 05-0002, ¶ 49 at 28 (App. 2007)(unpublished memorandum decision).

28 ⁶ *Id.*

⁷ *Chaparral City Water Co., Remand Case, W-02113A-04-0616, Fifth Procedural Order @ 2* (October 3, 2007).

⁸ Subsection (B)(11)(a) sets forth the time in which a procedural schedule must be issued. The effect of R14-1-103(B)(11)(g) is to indefinitely suspend that requirement.

1 basis for the requested rate relief, as described in R14-2-103(B)(11)(e)(i). Suspension is therefore
2 appropriate under these provisions as well.

3 **III. THE IMPACT OF THE REMAND PROCEEDING ON STAFF'S PREPARATION OF**
4 **ITS TESTIMONY IN THE PENDING RATE CASE.**

5 Conducting these two matters concurrently will bring about a number of complications. In
6 particular, the outcome of the remand proceeding will significantly affect Staff's analysis in the
7 following areas of the rate case: (1) Fair Value Rate of Return, (2) Revenue Requirement, and (3)
8 Rate Design. These areas are discussed in the following paragraphs.

9 **A. The Impact Of The Remand Order On The Determination Of The Fair Value**
10 **Rate Of Return.**

11 The primary—perhaps even exclusive—issue in the remand proceeding is the determination
12 of the appropriate fair value rate of return. Naturally, it is difficult to predict the outcome of the
13 remand proceeding with any degree of certainty. There are three parties to that proceeding (the
14 Company, RUCO, and Staff), and there are four different recommendations regarding an appropriate
15 fair value rate of return (7.6 percent from the Company, 5.6 percent from RUCO, and 6.34 percent
16 and 6.54 percent as alternative recommendations from Staff).⁹ To varying degrees, each of these
17 recommendations is based upon a different evaluation and/or rationale.

18 To determine the revenue requirement, one generally considers the following formula: (Fair
19 Value Rate Base) (Fair Value Rate of Return) + Expenses. Obviously, given the nature of this
20 formula, one cannot determine the revenue requirement in the absence of the fair value rate of return.
21 The Company may argue that the FVROR analysis eventually adopted in the remand proceeding
22 should be automatically applied in the pending rate case. However, the method eventually adopted
23 by the Commission in the remand proceeding may not necessarily lend itself to automatic application,
24 without further discovery or evaluation, in the present rate case.

25 The Commission's ultimate disposition of the fair value rate of return issue, as well as any
26 associated choice of methodology, will impact Staff's analysis. At this point, the outcome of the
27 remand proceeding is unknown, and this uncertainty thus makes it difficult for Staff to completely
28

⁹ Chaparral City Water Co., Remand Case, W-02113A-04-0616: Rebuttal, Thomas Bourassa @ 6; Direct, Ben Johnson @ 40; Direct, David Parcell @ 5-6, 9.

1 process the pending rate case. For these reasons, Staff is concerned that the uncertainty associated
2 with the remand proceeding will have an unfair impact upon Staff's ability to process the pending
3 rate case in an orderly fashion.

4 **B. The Potential Impact Of The Remand Order On The Development Of The**
5 **Revenue Requirement.**

6 There are other potential impacts that the remand order may have on the development of the
7 revenue requirement. Certain elements of the revenue requirement are revenue dependent and will
8 vary if there is any change in the revenue requirement. Any changes to the revenue requirement will
9 necessitate adjustments to property tax, state income tax, and federal income tax. Although these
10 adjustments may appear on the surface to be simple reconciliations, this is not the case, because the
11 applicable levels of each of these taxes are inter-related.

12 For example, property taxes, which are based on revenue, will change in relation to any
13 change in the revenue requirement. Likewise, every time the property tax determination is modified,
14 there must be a corresponding change to both the state and federal income tax determinations.
15 Calculation of a proper revenue requirement thus entails performing time consuming iterations to
16 determine the appropriate levels of the interdependent property tax, state income tax, and federal
17 income tax.

18 **C. Rate Design.**

19 Rate design is also revenue dependent. Although computers have reduced the intensive
20 manual labor traditionally associated with rate design, the complexity of the multi-tier rate design
21 typically proposed by Staff still requires extensive manual input and modifications when revenue
22 requirements change. Similarly, depending upon the circumstances, a change in the revenue
23 requirement may cause a change in the basic rate structure. Even relatively small changes in the
24 revenue requirement will require modifications to the rates and, potentially, a more extensive
25 alteration of the rate structure.

26 ...

27 ...

28 ...

1 **D. Certain Information That Is Typically Included In Staff's Testimony Will Not Be**
2 **Available Before The Remand Order Is Issued.**

3 Typically, Staff's testimony sets forth the test year revenue, the required increase in revenue,
4 and the increase in the typical median and average monthly bills. Although this information is not
5 strictly necessary to a determination of the revenue requirement, Staff believes that the Commission,
6 customers, and other parties may find it useful when considering the effects of any proposed increase
7 in rates. This information, however, will not be available before the remand order is issued, because
8 we do not know what the Company's rates will be as a result of the Commission's order on remand.

9 Assuming that the appropriate revenue requirement could be determined before the remand
10 order is issued,¹⁰ one would nonetheless be unable to calculate the revenue deficiency, the percentage
11 level of increase attributable to that revenue deficiency, or the percentage increase in the typical
12 median and average monthly bills. This is because, until the remand proceeding concludes, we do
13 not know the level of rates that will be granted by the Commission in its remand order. To state the
14 matter differently, even if one were able to determine the appropriate rate level on a prospective
15 basis, one would be unable to compare this recommended prospective rate level to the rates that will
16 result from the remand proceeding, because those rates remain undetermined.

17 The Company may argue that these sorts of percentage comparisons are not necessary.
18 Nonetheless, Staff believes that the Commission and the public may wish to be able to compare any
19 proposed rate increase resulting from the pending rate case to the level of rates ultimately established
20 by the Commission in the remand proceeding. Furthermore, these sorts of comparisons, while not
21 necessarily complex, will likely require adjustments to test year revenues and a potentially time-
22 consuming consideration of the Company's bill count, rate design, and usage patterns in order to
23 calculate appropriate pro forma adjustments.

24 **IV. THE CURRENT SCHEDULES OF THESE TWO CASES—THE REMAND**
25 **PROCEEDING AND THE PENDING RATE CASE—PRESENT THE POTENTIAL**
26 **FOR OVERLAPPING COMPLICATIONS.**

27 Staff's testimony in the rate case is currently due on May 7, 2008. Staff assumes that the
28 current procedural order anticipates that Staff will file complete testimony (i.e., including fair value

¹⁰ Because of the uncertainties surrounding the fair value rate of return, Staff does not concede that this is necessarily achievable. See *supra* Section III.A.

1 rate of return; appropriate revenue requirement levels of property tax, state income tax, and federal
2 income tax; rate design; and percentage comparisons between recommended rates and then-
3 applicable rates). The current procedural schedules for these two proceedings lead to the probability
4 that Staff will have to redo much of its testimony once the Commission issues its final order in the
5 remand proceeding.

6 The remand hearing is presently scheduled for January 28 and 29, 2008. The remand
7 proceeding is likely to involve legal issues, and Staff therefore anticipates that post-hearing briefs
8 will be both necessary and desirable. Assuming that the hearing is completed in two days, Staff
9 anticipates that briefing would likely be completed by approximately the middle of March. Staff
10 recognizes that, due to work load constraints and competing priorities, it is difficult to predict exactly
11 when the final order in the remand matter might be issued. However, if the ALJ were to issue a
12 recommended order within four to six weeks after the conclusion of briefing, and if the Commission
13 were to issue a final order approximately three to four weeks thereafter, the parties could potentially
14 receive a final order for the remand matter in May. Considering that Staff's testimony in the rate case
15 is currently due on May 7, 2008, the potential for complications is clear.

16 Furthermore, the above paragraph assumes a fairly optimistic time-table. Any additional time
17 added to the above assumptions would only exacerbate the difficulties. Staff believes that it is
18 exactly these kinds of circumstances that A.A.C. R14-2-103(B)(11)(g) is designed to avoid.

19 **V. CONCLUSION.**

20 Staff is currently analyzing this rate case under a set of assumptions that may or may not be in
21 conflict with the ultimate outcome of the remand hearing. If Staff were to continue to process this
22 rate case under current conditions, Staff's evaluation would, in all probability, be subject to revision

23 ...

24 ...

25 ...

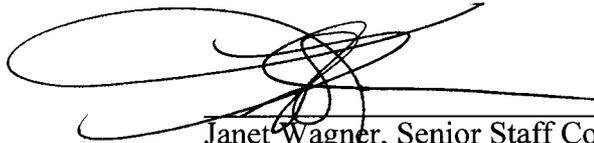
26 ...

27 ...

28 ...

1 once the remand order is issued. Staff therefore respectfully requests that the time-clock on this
2 matter be suspended until the Commission has issued a final order in the remand proceeding.

3 RESPECTFULLY SUBMITTED this 3rd day of January, 2008.

4
5 

6 Janet Wagner, Senior Staff Counsel
7 Kenya S. Collins, Attorney
8 Legal Division
9 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

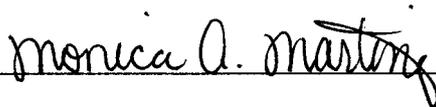
10 Original and thirteen (13) copies
11 of the foregoing were filed this
3rd day of January, 2008 with:

12 Docket Control
13 Arizona Corporation Commission
14 1200 West Washington Street
Phoenix, Arizona 85007

15 Copy of the foregoing mailed this
16 3rd day of January, 2008 to:

17 Norman D. James
18 Jay L. Shapiro
19 Fennemore Craig
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012

20 Scott S. Wakefield, Chief Counsel
21 Residential Utility Consumer Office
1110 West Washington, Suite 220
Phoenix, Arizona 85007

22
23 
24