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COMMISSIONERS

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IN THE MATTER OF THE APPLICATION OF
CHAPARRAL CITY WATER COMPANY,
INC. 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. W-02113A-07-0551

**STAFF'S REPLY TO COMPANY'S
RESPONSE TO STAFF'S
MOTION TO SUSPEND TIME CLOCK**

Arizona Corporation Commission Staff ("Staff") hereby replies to the Response filed by
Chaparral City Water Company ("Chaparral" or "Company") on January 8, 2008.

**I. THE COMMISSION'S RULES SUPPORT SUSPENSION OF THE TIME-CLOCK IN
THESE CIRCUMSTANCES.**

The Company currently has two simultaneously-pending proceedings to establish rates: 1)
Docket No. W-02113A-04-0616, which is a proceeding that results from a Court of Appeals' remand
("Remand Proceeding"), and 2) Docket No. W-02113A-07-0551, which is the above-captioned rate
case ("Subsequent Rate Case"). Due to the overlapping procedural schedules and inter-related issues
presented by these two cases, Staff requests that the time-clock applicable to the Subsequent Rate
Case be suspended until the Commission issues a final order in the Remand Proceeding. This request
is supported by the Commission's time-clock rule, A.A.C. R14-2-103(B)(11).

R14-2-103(B)(11) sets forth three general circumstances in which a suspension and/or
extension of the time-clock is appropriate: 1) when a Company has two rate applications that are
pending at the same time;¹ 2) when an application is amended such that the underlying facts are
altered;² or 3) when an "extraordinary circumstance" is present.³ Staff submits that all three of these
rationales are present, at least to some degree, in the Subsequent Rate Case.

¹ A.A.C. R14-2-103(B)(11)(g).

² A.A.C. R14-2-103(B)(11)(e)(i).

³ A.A.C. R14-2-103(B)(11)(e)(ii).

1 **A. In These Circumstances, The Remand Proceeding Is The Functional Equivalent**
 2 **Of An Unfinished Rate Case, And R14-2-103(B)(11)(g) Is Intended To Ensure**
 3 **That The Commission Is Not Required To Process Two Rate Proceedings At The**
 4 **Same Time.**

4 In Decision No. 57875, the Commission discussed the importance of finishing one rate case
 5 before beginning a second.⁴ This is the policy underlying R14-2-103(B)(11)(g).

6 In the Remand Proceeding, the Company is seeking a FVROR of 7.6 percent, which would
 7 result in a 1.2 percent increase over the rates established in Decision No. 68176. By contrast, Staff
 8 has proposed two recommendations for the FVROR, 6.34 and 6.54; these proposals would result in a
 9 .02 percent decrease⁵ and a .18 percent increase, respectively. Finally, RUCO has recommended a
 10 FVROR of 5.57 percent, which would result in a .79 percent decrease over the rates established by
 11 Decision No. 68176. Accordingly, the ultimate rate level to be determined for the Company in the
 12 Remand Proceeding is the subject of debate. Under these circumstances, it cannot be the subject of
 13 serious dispute that the Remand Proceeding is the practical equivalent of an unfinished rate case for
 14 purposes of R14-2-103(B)(11)(g).

15 According to the Company, the Commission has stated in an earlier decision that R14-2-
 16 103(B)(11)(g) should never be applied to remand proceedings.⁶ However, it is not clear that the
 17 Commission's earlier statement in that decision is precisely applicable to Staff's position herein.
 18 R14-2-103(B)(11)(g) states that

19 [t]he time periods prescribed by subsection (B)(11)(a) shall not be applicable
 20 to any *filing* submitted by a utility which has more than one *rate application*
 21 before the Commission at the same time.

21 (Emphasis added). The Commission, in Decision No. 57875, addresses the construction of the term
 22 "filing," not the construction of the term "rate application":

23 The definition of a *filing* in A.A.C. R14-2-103(A)(3)(q) clearly does not
 24 encompass . . . the remand of a rate decision by a court.⁷

25 Of course, it is the construction of the term "rate application" that is at issue herein.

27 ⁴ Decision 57875, Attachment B at 34.

28 ⁵ Because the decrease is so small compared to the rates established in Decision 68176, Staff recommends that the rates remain the same, if the Commission is in favor of this alternative.

⁶ Company's Resp. at 8-9, citing Decision 57875.

⁷ Decision No. 57875, Attachment B at 34 (emphasis added).

1 Further, the Company seems to imply that the Commission is somehow *precluded* from
2 considering whether, under the particular facts of this case, some exception to, departure from, or
3 other consideration of that earlier statement is warranted. Clearly, the Commission is not so
4 precluded.

5 The fact that the agency has from time to time changed its interpretation of the
6 term does not . . . lead us to conclude that no deference should be accorded to
7 the agency's interpretation of the statute. *An initial agency interpretation is
not instantly carved in stone. On the contrary, the agency . . . must consider
varying interpretations and the wisdom of its policy on a continuing basis.*

8 *See Chevron U.S.A. v. Natural Resources Defense Counsel*, 467 U.S. 837, 863-64 (1984) (emphasis
9 added); *see also Redlark v. Commissioner of Internal Revenue*, 141 F.3d 936, 941 (9th Cir. 1998).

10 The Commission's ability to adopt reasonable regulatory interpretations that may differ from its
11 previous interpretations is well-established. *Id.*

12 As was stated in Staff's Motion to Suspend,

13 [a]lthough Staff recognizes that the remand proceeding is not a rate case in
14 the strict sense, Staff suggests that the remand proceeding—which
15 contemplates a potential adjustment to the Company's rates—is in substance
16 very similar to a rate case. Staff suggests that the complicating effects of
undertaking the rate case during the pendency of the remand proceeding is
the very result that R14-2-103(B)(11)(g) is designed to avoid.⁸

17 Staff is not claiming that every remand proceeding would trigger (B)(11)(g), nor is Staff claiming
18 that the Commission's statements in Decision No. 57875 are irrelevant to a consideration of the
19 issues presented herein. Nonetheless, it is important to examine the context of those earlier
20 statements, which were made by the Commission as part of a rulemaking decision. Statements made
21 in such a context are necessarily broad, general, and unrelated to any specific or individual
22 application of the rules to any particular set of facts.

23 In that vein, the comments to Decision No. 57875 should be considered as general
24 interpretations, but they should not be construed as foreclosing all further Commission consideration
25 of these issues. In these circumstances, where the Remand Proceeding serves as the functional
26 equivalent of an unfinished rate case, it is appropriate for the Commission to suspend the Subsequent
27 Rate Case, either pursuant to R14-2-103(B)(11)(g) or as part of its analysis of whether "extraordinary
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⁸ Staff's Motion at 2.

1 circumstances” exist for purposes of R14-2-103(B)(11)(e)(ii).

2 **B. An Amendment To A Rate Application.**

3 A.A.C. R14-2-103(B)(11)(e)(i) provides that the time-clock may be extended due to “[a]ny
4 amendment to a filing which changes the amount sought by the utility or substantially alters the facts
5 used as a basis for the requested change in rates or charges.” The Company argues that this provision
6 is inapplicable because it has not filed an amendment to its rate application and it has not indicated
7 that it intends to do so.⁹ The text of (B)(11)(e)(i), however, does not require the amendment to have
8 been effected by the Company. It is appropriate for the Commission to recognize that the remand
9 decision may very well substantially alter the facts underlying the requested rate relief.¹⁰ In these
10 circumstances, where the issuance of the Commission's final order in the Remand Proceeding may
11 substantially alter the facts underlying the Subsequent Rate Case, it is appropriate for the
12 Commission to suspend it, either pursuant to R14-2-103(B)(11)(e)(i) or as part of its analysis of
13 whether “extraordinary circumstances” exist for purposes of R14-2-103(B)(11)(e)(ii).

14 **C. Extraordinary Circumstances.**

15 In its summary of Staff’s argument, the Company appears to claim that Staff is merely relying
16 upon the existence of the Remand Proceeding in some isolated sense as the justification for its
17 request herein.¹¹ This argument does not fairly summarize Staff’s position. Instead, it is the totality
18 of the circumstances herein that justifies and supports Staff’s request. In other words, it is the nature
19 and timing of this particular Remand Proceeding in conjunction with the nature and timing of the
20 Subsequent Rate Case that support suspension pursuant to R14-2-103(B)(11)(e)(ii).

21 The Memorandum Decision casts considerable doubt upon the “backing in” method, a method
22 that has been used here at the Commission as the basic rate-setting formula for a period of years.¹²
23 Although the Court of Appeals in its Memorandum Decision determined that the “backing-in”
24 method, as applied in Decision No. 68176, failed to satisfy Article XV, Section 14 of the Arizona
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26 ⁹ Company Resp. at 10.

27 ¹⁰ See *id.*

28 ¹¹ See Response at 8 (arguing that Staff is asserting that suspension is necessary because “an Arizona court has held that the Commission acted illegally in the utility’s previous rate case.”).

¹² See *Chaparral City Water Co. v. Arizona Corp. Comm’n*, No. 1 CA-CC 05-0002 (App. 2007)(unpublished memorandum decision). See also *Litchfield Park Co. v. Arizona Corp. Comm’n*, 178 Ariz. 431, 434-35, 874 P.2d 988, 991-92 (App. 1994).

1 Constitution, the Court did not endorse or require any particular method for determining the
2 Company's fair value rate of return.

3 The Commission asserts that it was not bound to use the weighted average
4 cost of capital as the rate of return to be applied to the FVRB. The
5 Commission is correct. If the Commission determines that the cost of capital
6 analysis is not the appropriate methodology to determine the rate of return to
7 be applied to the FVRB, the Commission has the discretion to determine the
8 appropriate methodology. The same is true if the Commission were to
9 determine that applying the weighted average cost of capital to the FVRB
10 resulted in double counting inflation, as argued by RUCO.¹³

11 As a practical matter, then, the Remand Proceeding has become the vehicle to determine what
12 method to use in place of the "backing-in" method, at least for this particular company. Until the
13 Commission decides that issue, we are without the Commission's guidance as to how to address the
14 FVROR issue in the Subsequent Rate Case.

15 The Commission's disposition of the Remand Proceeding will impact Staff's preparation of its
16 testimony in the Subsequent Rate Case, because of the uncertainty regarding how to determine the
17 fair value rate of return. In general, the determination of a Company's revenue requirement is
18 determined by reference to the following formula: Revenue Requirement = (Fair Value Rate Base)
19 (Fair Value Rate of Return) + Expenses. Given the nature of this formula, one cannot determine the
20 revenue requirement in the absence of the fair value rate of return. Furthermore, other revenue-
21 dependent issues, such as taxes, rate design, and percentage comparisons between recommended rates
22 and the rates that will apply as a result of the remand, are also implicated.¹⁴ The Commission's
23 ultimate resolution of the fair value rate of return issue, as well as an analysis of that determination,
24 will therefore impact the preparation of Staff's testimony.

25 In all probability, the Commission will issue its final order in the Remand Proceeding
26 sometime in mid-2008, likely in May.¹⁵ The schedule for prefiled testimony in the rate case covers
27 an approximate nine-week span of time, beginning with a due date of May 7, 2008 for
28 Staff/Intervenor testimony and ending with a due date of July 11, 2008 for Company rejoinder. If the
final order in the Remand Proceeding is not issued sufficiently in advance of Staff's due date for

¹³ *Chaparral City Water Co.*, 05-0002, ¶ 17 at 13.

¹⁴ See Staff's Mot. at 3-6.

¹⁵ See Staff's Mot. at 5-6 (discussing the potential timeframes related to the Remand Proceeding).

1 direct testimony (May 7, 2008), Staff will have to prepare its testimony relying on assumptions
2 regarding the FVROR and developing corresponding treatments for the revenue dependent issues,
3 only to have to redo these recommendations once the Commission issues its final order in the
4 Remand Proceeding. That Staff may well have to undertake these tasks during the time period in
5 which it would simultaneously be preparing its surrebuttal testimony is yet a further complication.

6 In its Response, the Company argues that Staff routinely adopts changes to its positions in
7 rate cases and then files amending testimony accordingly.¹⁶ But the fact that changes in position may
8 occur over the course of a rate case does not address the scheduling overlap that presently exists
9 between the Remand Proceeding and the Subsequent Rate Case. Typically, any changes that Staff
10 undertakes in surrebuttal testimony are in response to the testimony of others, either in the form of
11 updating testimony, agreeing to other parties' positions, or correcting mistakes. It is a predictable
12 schedule, and it ideally serves as a "funnel" to narrow issues. The likelihood, however, that the
13 Commission will issue its final order in the Remand Proceeding in the midst of the time period for
14 prefiling testimony in the Subsequent Rate Case presents an unfortunate and uncommon
15 complication. Furthermore, some changes that may result from the Remand Proceeding go beyond
16 those that are more routinely adopted by Staff. For example, the typical bill under present rates is
17 usually known, and is unaffected by any changes in parties' positions. However, the typical bill
18 under the remand order obviously cannot be determined before that order is issued. With Staff's
19 resource constraints, it is difficult enough to timely complete prefiled testimony without the added
20 complication of having to reassess and/or redo proposals that will have been rendered inapplicable by
21 the results of the Remand Proceeding.

22 Finally, it is worth noting that the Remand Proceeding was originally scheduled for hearing
23 on October 16, 2007.¹⁷ If that procedural schedule had been maintained, we would likely have a final
24 order in the Remand Proceeding sometime in early 2008, and these procedural issues would not be
25 before us. It was the Company's request for a 4-week extension to the procedural schedule that
26 caused the original hearing dates to be vacated.¹⁸ Staff is not in any way suggesting that it was
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28 ¹⁶ See Company's Resp. at 11-12.

¹⁷ W-02113A-04-0616, Procedural Order at 3 (June 7, 2007).

¹⁸ Request to Change Procedural Schedule, Sept. 11, 2007.

1 inappropriate for the Company to seek that extension. To the contrary, parties should have the
2 opportunity to seek procedural schedules that allow them to adequately and appropriately prepare
3 their testimony. Those considerations should apply not only to the Company, but to Staff and
4 Intervenors as well.

5 **II. THE COMMISSION SHOULD RECOGNIZE THAT THESE CIRCUMSTANCES**
6 **WARRANT A SUSPENSION OF THE TIME-CLOCK.**

7 Staff simply requests that it not be required to file its direct testimony before the Commission
8 issues its final order in the Remand Proceeding, and to that end, it has requested that the time-clock in
9 the subsequent Rate Case be suspended until the Commission has issued its final order in the Remand
10 Proceeding. In the absence of the final order in the Remand Proceeding, Staff will not have the
11 benefit of the Commission’s guidance as to how to deal with the fair value rate of return issues.
12 Without such guidance, Staff will be unable to develop its final proposal for fair value rate of return
13 in this case. Without the development of a fair value rate of return, Staff cannot determine its final
14 proposals regarding the revenue requirement and, correspondingly, all of the other revenue dependent
15 issues, such as taxes, rate design, or percentage increases. The issuance of the final order in the
16 Remand Proceeding will therefore affect Staff’s preparation of its case.

17 In its Response, the Company suggests that granting Staff’s Motion will delay its rate case by
18 as much as six months.¹⁹ Staff has deliberately chosen not to suggest a specific period of time for
19 suspension, because it is difficult to predict exactly when the final order in the Remand Proceeding
20 will issue. However, Staff notes that whatever delay ensues will be shortened if Staff were to
21 continue to process--to the extent that it can--the Subsequent Rate Case during the suspension period.
22 Staff had anticipated--perhaps mistakenly--that the Company would prefer for all discovery and other
23 processing to cease during the suspension period. However, if the Company is amenable to
24 continuing discovery while the case is suspended, Staff would be willing to continue to process the
25 case to the extent possible, thereby potentially shortening any delay related to the suspension.

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¹⁹ Company’s Resp. at 6.

1 **III. THE COMPANY'S CONSTITUTIONAL ARGUMENTS RELY ON FACTS THAT**
2 **HAVE NOT BEEN ADJUDICATED.**

3 Throughout its Response, the Company asserts that its current rates are inadequate and that
4 any suspension of the rate case procedural schedule will somehow serve as an infringement of its
5 constitutional rights. Of course, the Company is entitled to just and reasonable rates; nonetheless,
6 determining exactly what rate level constitutes just and reasonable rates is often the subject of
7 considerable dispute. Currently, the Company's rates are the subject of the Remand Proceeding that
8 is also pending before the Commission. In that proceeding, the Company seeks a 1.24 percent
9 increase over the rates established in Decision No. 68176, while RUCO has suggested that the
10 Commission order a rate *decrease*, presumably because it believes that the Company may be earning
11 an *excessive* rate of return.²⁰ As for the Company's claims about the adequacy of its rates in the
12 pending rate case, those claims thus far are unadjudicated. It will be for the rate case to determine the
13 appropriate rate level for the Company, and there is no reason to assume that the Commission will
14 agree entirely with every Company assertion made therein.

15 Through its constitutional claims, the Company is really asserting that it has some sort of
16 protected constitutional right in the existing procedural schedule. The Company does not cite any
17 specific authority to support this argument, and it should therefore be disregarded.

18 **IV. CONCLUSION.**

19 Staff requests that it not be required to file its direct testimony before the Commission issues
20 its final order in the Remand Proceeding. To that end, Staff requests that the time-clock in the
21 Subsequent Rate Case be suspended until the Commission has issued its final order in the Remand

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²⁰ Surrebuttal, Ben Johnson at 11-12.

1 Proceeding. In addition, Staff requests that it be permitted to continue discovery while the case is
2 suspended, thereby potentially avoiding any delay related to the suspension.

3 RESPECTFULLY SUBMITTED this 14th day of January, 2008.

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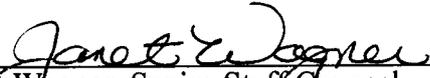
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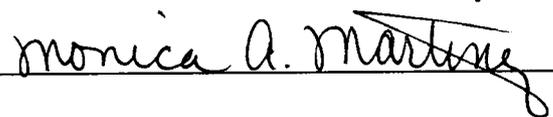
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