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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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COMMISSIONERS

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

PROCEDURAL ORDER

BY THE COMMISSION:

On September 26, 2007, Chaparral City Water Company, Inc. ("CCWC," "Company," or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for a rate increase.

On October 26, 2007, the Utilities Division Staff ("Staff") of the Commission filed a letter stating that the application was found sufficient and classifying the Applicant as a Class A utility.

By Procedural Order issued November 30, 2007, a hearing was set on the application to commence on July 8, 2008, and associated procedural deadlines were set, including deadlines for pre-filing testimony and for public notice of the application and the hearing.

The November 30, 2007, Procedural Order also granted intervention to the Residential Utility Consumer Office ("RUCO") as requested in its November 19, 2007, Application to Intervene.

On December 7, 2007, the Company filed a Request to Modify Procedural Schedule in which the Company requested a continuation of the hearing due to a conflict on the part of counsel. A telephonic procedural conference was held on December 13, 2007, for discussion of the need for an extension of the deadline for a Commission Decision in this matter pursuant to A.A.C. R14-3-103(B)(11) (the Commission's "Time Clock Rule") in conjunction with the Company's requested schedule modification.

An Amended Rate Case Procedural Order was issued on December 19, 2007, continuing the

1 hearing on this matter from July 8, 2008, to July 21, 2008, and continuing associated procedural
2 deadlines.

3 On January 3, 2008, the Commission's Utilities Division Staff ("Staff") filed a Motion to
4 Suspend Time Clock ("Motion").

5 On January 8, 2008, CCWC filed its Response in Opposition to the Utilities Division's
6 Motion to Suspend Time Clock.

7 On January 10, 2008, RUCO filed its Response to the Utilities Division's Motion to Suspend
8 Time Clock.

9 On January 14, 2008, Staff filed its Reply to Company's Response to Staff's Motion to
10 Suspend Time Clock.

11 Staff's Motion

12 Staff's Motion requests that the Commission suspend the time clock in this proceeding due to
13 the fact that CCWC has a remand proceeding pending in Docket No. W-02113A-04-0616, in which
14 CCWC's rates are at issue ("Remand Proceeding").¹ Staff stated in the Motion that since beginning
15 its review of the Company's rate application, Staff had begun to foresee potential complications
16 between the two simultaneously pending proceedings, and that suspension is appropriate pursuant to
17 A.A.C. R14-2-103(B)(11)(g)² and A.A.C. R14-2-103(B)(11)(e).³

18 _____
19 ¹ On September 30, 2005, the Commission issued Decision No. 68176, granting a rate increase to CCWC. CCWC
20 thereafter timely submitted an Application for Rehearing of Decision No. 68176, alleging that the Commission's order
21 was contrary to law, arbitrary and unsupported by the evidence. After CCWC's Application for Rehearing was denied by
22 operation of law, the Company filed a Notice of Direct Appeal pursuant to A.R.S. § 40-254.01, appealing Decision No.
23 68176 to the Arizona Court of Appeals. The Arizona Court of Appeals, Division One, considered CCWC's appeal, and
24 on February 13, 2007, issued its Memorandum Decision ("Memorandum Decision"). The Memorandum Decision, per
25 Judge Lawrence F. Winthrop, Affirmed in Part, Vacated, and Remanded Decision No. 68176 to the Commission for
26 further determination. The remand hearing in Commission Docket No. W-02113A-04-0616, originally scheduled to
27 commence on October 16, 2007, is currently set to commence on January 28, 2008.

28 ² A.A.C. R14-2-103(B)(11)(g) provides as follows:

The time periods prescribed by subsection (B)(11)(a) shall not be applicable to any filing submitted by
a utility which has more than one rate application before the Commission at the same time.

³ A.A.C. R14-2-103(B)(11)(e) provides as follows:

Upon motion of any party to the matter or on its own motion, the Commission or the Hearing Officer
may determine that the time periods prescribed by subsection (B)(11)(d) should be extended or begin
again due to:

- (i) any amendment to a filing which changes the amount sought by the utility or substantially
alters the facts used as a basis for the requested change in rates or charges; or
- (ii) an extraordinary event not otherwise provided for by this subsection.

1 Staff asserted in the Motion that A.A.C. R14-2-103(B)(11)(g) was enacted to allow Staff
2 sufficient time to review each application independently prior to making its recommendation and to
3 prevent premature determinations on cases that may significantly affect one another, and that the
4 complicating effects of undertaking this rate case during the pendency of the Remand Proceeding is
5 the very result that A.A.C. R14-2-103(B)(11)(g) is designed to avoid. Staff also argued in the Motion
6 that simultaneously pending and interrelated proceedings, such as the Remand Proceeding and this
7 rate case, should qualify as an “extraordinary event” for purposes of A.A.C. R14-2-103(B)(11)(e)(ii),
8 and that the likely issuance of an order in the Remand Proceeding in the midst of this rate case is also
9 likely to act as an “amendment to a filing which changes the amount sought by the utility or
10 substantially alters the facts used” as the basis for the requested relief, as described in A.A.C. R14-2-
11 103(B)(11)(e)(i).

12 Staff stated in its Motion that the outcome of the Remand Proceeding will affect Staff’s
13 analysis in this case in the areas of Fair Value Rate of Return (“FVROR”), Revenue Requirement,
14 and Rate Design. Staff explained that certain information typically included in Staff’s testimony in a
15 rate proceeding in regard to the Company’s current rates will not be available before an order is
16 issued in the Remand Proceeding, and further, that pro forma adjustments cannot be calculated
17 without knowing the level of rates ultimately established by such an order. Staff stated that with its
18 direct testimony due in this rate case on May 7, 2008, and the hearing in the Remand Proceeding
19 scheduled to commence on January 28, 2008, the potential for overlapping complications that A.A.C.
20 R14-2-103(B)(11)(g) is designed to avoid is evident.

21 CCWC’s Response in Opposition to Staff’s Motion

22 CCWC argues that Staff’s Motion must be denied. CCWC believes that Decision No. 57875
23 (May 18, 1992), the rulemaking decision that approved changes to A.A.C. R14-3-103, makes clear
24 that A.A.C. R14-2-103(B)(11)(e) and (g) are not applicable to remand proceedings. The Company
25 argues that the Remand Proceeding is not a “filing” within the meaning of the regulation, such that
26 A.A.C. R14-2-103(B)(11)(g) does not apply; that A.A.C. R14-2-103(B)(11)(e) does not apply
27 because the Company has not amended this rate application, and that the Remand Proceeding is not a
28 truly extraordinary event. CCWC argues that Staff faces an especially heavy burden in

1 demonstrating that an event is extraordinary, quoting the Commission's comment in Decision No.
2 57875 that

3 [a] recomputation of the applicable time period will not even be considered unless an
4 amendment to a utility's filing changes the amount of rate relief requested or
5 substantially alters the underlying facts, or unless an extraordinary event has occurred.
6 This is intended to be a higher standard to meet than "good cause."

7 Decision No. 57875 at 29-30.

8 The Company believes that the fact that Staff may have to apply a different rate of return in
9 this rate case once the Remand Proceeding is decided does not support a suspension of the time
10 clock, because Staff routinely changes its recommended rate of return when filing surrebuttal
11 testimony in a rate case, yet is able to make other necessary adjustments, including adjusting revenue
12 requirement and rate proposals. CCWC argues that because the outcome of the Remand Proceeding
13 is unknown, Staff's argument that the outcome may affect Staff's analysis is speculative. CCWC
14 also asserts a constitutional claim, stating that the pre-filed testimony and schedules accompanying
15 the application in this rate case show that the Company earned a rate of return of 2.8 percent during
16 2006, and that suspension of the time clock in this matter would violate the Company's due process
17 rights by causing unreasonable delay, impairing its earnings, and depriving it of the opportunity to
18 earn a fair return on the fair value of its utility plant and property devoted to public service.

19 RUCO's Response to the Motion

20 RUCO states that it agrees with the Motion, and joins in for the reasons set forth by Staff.
21 RUCO believes that it would be an exercise in futility to enforce the time clock in this case, given
22 that CCWC has another proceeding pending in which rates are at issue. RUCO argues that allowing
23 the two matters to proceed concurrently will affect each party's analysis of the revenue requirement
24 and rate design, and further, that should this case proceed prior to the conclusion of the Remand
25 Proceeding proceeding, the parties would be establishing positions without the benefit of knowing
26 how the Commission intends to handle the FVROR issue.

27 Staff's Reply to Company's Response

28 In its Reply, Staff continues to urge that under the current circumstances, the Remand
Proceeding serves as the functional equivalent of an unfinished rate case, and it is therefore

1 appropriate for the Commission to suspend this rate case either pursuant to A.A.C. R14-2-
2 103(B)(11)(g), or as part of its analysis of whether “extraordinary circumstances” exist for purposes
3 of A.A.C. R14-2-103(B)(11)(e)(ii). Staff responds to CCWC’s argument that Decision No. 57875
4 makes clear that A.A.C. R14-2-103(B)(11)(g) is not applicable to remand proceedings, stating that
5 while the Company’s argument centers on that Decision’s construction of the term “filing,” and not
6 the construction of the term “rate application,” it is the construction of the term “rate application” at
7 issue in this procedural dispute. Staff points out that the quoted comments to Decision No. 57875
8 were made in the context of a rulemaking, and that statements made in such a context are necessarily
9 broad, general, and unrelated to any specific or individual application of the rules to any particular set
10 of facts. Staff believes that the Commission is not precluded from considering whether, under the
11 particular facts of this case, some exception to, departure from, or other consideration of the
12 Commission’s statement in Decision No. 57875 regarding remand proceedings is warranted.

13 Staff argues that in Decision No. 57875, the Commission discussed the importance of
14 finishing one rate case before beginning a second, and Staff asserts that this issue is the policy
15 underlying A.A.C. R14-2-103(B)(11)(g). Staff states that while it does not claim that every remand
16 proceeding would trigger A.A.C. R14-2-103(B)(11)(g), the pending Remand Proceeding in Docket
17 No. W-02113A-04-0616 is functionally equivalent to an unfinished rate case, because due to the
18 differing recommendations of the parties regarding the FVROR in the Remand Proceeding, the
19 ultimate rate level to be determined therein is the subject of debate. Staff asserts that the outcome of
20 the Remand Proceeding may substantially alter the facts underlying this rate case, and that this fact
21 triggers A.A.C. R14-2-103(B)(11)(e)(i), which does not require that the Company have amended the
22 rate case. Staff believes that this same fact also allows the Commission to properly determine that
23 extraordinary circumstances exist, pursuant to A.A.C. R14-2-103(B)(11)(e)(ii), and that it is the
24 nature and timing of this particular pending remand proceeding, in conjunction with the nature and
25 timing of this rate case, that supports a suspension of the time clock pursuant to that subsection of the
26 Time Clock Rule. Staff points out that if the hearing in the Remand Proceeding had commenced as
27 was originally scheduled in October 2007, the procedural issues related to the now-concurrent
28 proceedings would likely not exist at this time. Staff does not criticize the Company for requesting a

1 four week continuance of the hearing, however, but states that parties should have the opportunity to
2 seek procedural schedules that allow them to adequately and appropriately prepare their testimony.

3 In response to CCWC's argument that the Motion should be denied because Staff routinely
4 changes its recommended rate of return when filing surrebuttal testimony in a rate case, Staff
5 reiterates that the likely issuance of a final order in the Remand Proceeding in the midst of the time
6 period for prefiling testimony in this case presents an unfortunate and uncommon complication, and
7 that some changes that may result from the Remand Proceeding, such as the typical bill analysis, go
8 beyond the types of changes that are more routinely adopted by Staff.

9 Finally, Staff responds to CCWC's due process arguments, stating that because the
10 Company's claims regarding the adequacy of its rates in this rate case have not yet been adjudicated,
11 the Company's due process assertions amount to a claim that it has a protected constitutional right in
12 the existing rate case procedural schedule, and that the Company cited no authority supporting such
13 an argument.

14 Analysis

15 As Staff states in its Reply, the Memorandum Decision calls into question the
16 constitutionality of the methodology upon which the Commission has relied for a period of years to
17 determine FVROR in the course of ratemaking regulation of public service corporations. CCWC
18 correctly states that the outcome of the Remand Proceeding, in which the hearing is scheduled to
19 commence on January 28, 2008, is unknown. CCWC argues that this fact renders speculative Staff's
20 argument that the Remand Proceeding outcome may affect Staff's analysis. It appears, however, that
21 speculation regarding FVROR and its implications in their preparation for this rate case is exactly
22 what Staff and RUCO wish to avoid, by their request to suspend the time clock in this rate case until
23 the parties have the benefit of knowing, from the outcome of the Remand Proceeding, how the
24 Commission intends to handle the FVROR issue.

25 The Commission issued Decision No. 68176 on September 30, 2005, in Docket No. W-
26 02113A-04-0616, ruling on the Company's rate request. The Memorandum Decision affirmed in
27 part, vacated, and remanded Commission Decision No. 68176 to the Commission for further
28 determination. Commission Docket No. W-02113A-04-0616, which is a rate application filed by the

1 Company, is currently open, with the remand hearing, originally scheduled to commence on October
2 16, 2007, currently set to commence on January 28, 2008, due to a request for a four-week
3 continuance filed by the Company. The parties have filed testimony in that docket indicating their
4 positions, and the outcome of the case may very well be a change in the rates established by Decision
5 No. 68176. On September 26, 2007, CCWC filed the instant application in this docket, requesting
6 rate relief. The Company clearly has two dockets pending at the Commission in which the
7 Company's rates are to be determined. A.A.C. R14-2-103(B)(11)(g) provides that the "[t]ime periods
8 prescribed by subsection (B)(11)(a) shall not be applicable to any filing submitted by a utility which
9 has more than one rate application before the Commission at the same time." The Company argues
10 that the Commission Rules' definition of a "filing" does not encompass the remand of a rate decision
11 by a court, but the Company does not address the essential fact at issue in the Motion, which is that
12 the Company has more than one rate application pending Commission consideration at this time.
13 Under A.A.C. R14-2-103(B)(11)(g), until the final disposition of Docket No. W-02113A-04-0616,
14 the time periods in the Time Clock Rule apply neither to the Remand Proceeding nor to this rate
15 application.

16 We do not take this matter lightly. Were the issue a simple matter of the pending Remand
17 Proceeding being pursued concurrently with this pending rate proceeding, there might not be a need
18 to suspend the time clock in this rate case, even though suspension would be proper under the Time
19 Clock Rule. However, the Remand Proceeding is being conducted to in order to address a core rate
20 issue in a rate application that will affect the outcome of this rate proceeding. It is therefore highly
21 likely that the outcome of the Remand Proceeding will have an effect on positions taken by the
22 parties to this case, including the Company.

23 The Company has made an allegation regarding constitutional rights. As Staff argues, the
24 Company's due process arguments against a time clock suspension are based on as-yet unadjudicated
25 factual claims in this case. It is impossible to know at this time whether a time clock suspension may
26 result in any impairment of earnings or deprivation of the opportunity to earn a fair return on the fair
27 value of the Company's utility plant and property devoted to public service. In addition, it is unclear
28 whether a suspension will result in any delay of a final order in this proceeding. If the time clock

1 were not suspended, the timing of the implementation of new rates pursuant to the Company's
2 request in this docket might very well be delayed to the same extent, or possibly even further than
3 with a time clock suspension, in the circumstance that the parties might be required to file additional
4 testimony, or that the record of this proceeding might require re-opening following the hearing, or
5 both. A short continuance of this rate case is reasonable. It will avoid any necessity of wasted and
6 duplicative efforts for all parties, and will quite possibly allow the Company to avoid additional rate
7 case expense for its ratepayers. We will require that the parties continue to conduct discovery and
8 case preparation to the greatest extent possible during the duration of the continuance, such that any
9 delay in implementation of rates will be minimal.

10 The timing of this rate case, in conjunction with the uncommon nature, and the timing, of the
11 pending Remand Proceeding constitutes an extraordinary circumstance, pursuant to A.A.C. R14-2-
12 103(B)(11)(e)(ii). Staff has shown, by its arguments summarized above, that sufficient justification
13 exists for suspension of the time clock pursuant to that subsection of the Time Clock Rule.

14 IT IS THEREFORE ORDERED that the Utility Division Staff's Motion to Suspend Time
15 Clock is hereby granted pursuant to A.A.C. R14-2-103(B)(11)(g), or in the alternative, pursuant to
16 A.A.C. R14-2-103(B)(11)(e)(ii).

17 IT IS FURTHER ORDERED that the **hearing** and filing deadlines in the above-captioned
18 matter currently set to commence on July 21, 2008, are hereby **continued** pursuant to A.A.C. R14-2-
19 103(B)(11)(g) and A.A.C. R14-2-103(B)(11)(e)(ii), and **shall be reset to continue as soon as**
20 **practicable following the Commission's final order in Docket No. W-02113A-04-0616**, a pending
21 matter in which the rates of Chaparral City Water Company, Inc. are also being considered.

22 IT IS FURTHER ORDERED that in order to minimize any delay in implementation of new
23 rates pursuant to this application, all parties shall continue to conduct discovery and case preparation
24 to the greatest extent possible during the duration of the continuance.

25 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
26 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission *pro*
27 *hac vice*.

28 ...

1 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
2 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
3 Rules of Arizona Supreme Court). Representation before the Commission includes appearances at all
4 hearings and procedural conferences, as well as all Open Meetings for which the matter is scheduled
5 for discussion, unless counsel has previously been granted permission to withdraw by the
6 Administrative Law Judge or the Commission.

7 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
8 Communications) applies to this proceeding and shall remain in effect until the Commission's
9 Decision in this matter is final and non-appealable.

10 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
11 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
12 hearing.

13 Dated this 22^d day of January, 2008.

14
15 
16 TEENA WOLFE
ADMINISTRATIVE LAW JUDGE

17 Copies of the foregoing mailed/delivered
18 this 22nd day of January, 2008, to:

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