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2008 JAN 24 A 11:40

AZ CORP COMMISSION
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Arizona Corporation Commission

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JAN 24 2008

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BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO: W-02113A-07-0551

**MOTION FOR RECONSIDERATION
BY THE COMMISSION OF
PROCEDURAL ORDER STAYING
RATE APPLICATION**

(Expedited Action Requested)

13 Applicant Chaparral City Water Company, Inc. ("Company") hereby moves for
 14 reconsideration of the Procedural Order ("Order") issued on January 22, 2008 in this
 15 docket. A copy of the Order is attached as Tab A. The Order indefinitely stays the
 16 Company's application for rate increases, filed on September 26, 2007, and found
 17 sufficient by the Utilities Division ("Staff") on October 26, 2007. The Order concludes
 18 that the Company's 2007 rate application should be suspended until the remand
 19 proceeding is completed. The Company asks that the Commission reconsider and reverse
 20 the Order, which violates both the Arizona Constitution and the Commission's rules, and
 21 allow the Company's application to proceed in accordance with the Commission's rule
 22 governing rate applications, A.A.C. R14-2-103.

23 The Company's 2007 rate application has been suspended through no fault of the
 24 Company, but instead because of the pendency of another proceeding ordered by the
 25 Court of Appeals in *Chaparral City Water Co. v. Ariz. Corp. Comm'n*, No. 1 CA-CC 05-

1 002, decided on February 13, 2007. In that case, the Court ruled that the Commission
2 violated the Arizona Constitution when it determined the Company's operating income
3 using the original cost rate base instead of the fair value rate base in the Company's prior
4 rate case, decided in 2005. See Decision No. 68176 (Sept. 30, 2005). The Court
5 remanded that case to the Commission for further proceedings consistent with its decision.

6 The Company respectfully submits that, in summary, the Order violates the
7 Commission's rules and is unlawful in the following respects:

8 (1) The Order violates the Company's constitutional rights. The Arizona
9 Constitution guarantees the Company the right to seek a determination of the fair value of
10 its property devoted to public service and rates that produce a reasonable rate of return
11 thereon. See *Ariz. Corp. Comm'n v. Ariz. Pub. Serv. Co.*, 113 Ariz. 368, 370, 555 P.2d
12 326, 328 (1976) (a utility "is entitled to a reasonable return upon the fair value of its
13 properties"); *Scates v. Ariz. Corp. Comm'n*, 118 Ariz. 531, 533-34, 578 P.2d 612, 614-15
14 (App. 1978) ("rates cannot be considered just and reasonable if they fail to produce a
15 reasonable rate of return").

16 The Order concludes that indefinitely staying the Company's application does not
17 violate this right because the outcome of the application is uncertain. See Order at 7-8.
18 The right that is violated, however, is not the right to a particular outcome, but *the right to*
19 *seek rate adjustments*. That is the essence of due process. An indefinite stay of the
20 Company's application – which has been found sufficient under the Commission's rule –
21 violates that right. It is equivalent to freezing the Company's rates as a penalty for the
22 Court's remand.

23 (2) The Order violates the Commission's rule addressing the effect of remand
24 proceedings. The current version of the Commission's rule governing rate applications,
25 A.A.C. R14-2-103, was adopted by the Commission in 1992. Decision No. 57875
26 (May 18, 1992). The subpart of the rule relevant here, A.A.C. R14-2-103(B)(11)(g),

1 provides that when a utility has a rate filing pending before the Commission, the "time
2 clock" is suspended if a new application is filed. In Decision No. 57875, the Commission
3 explained that the remand of a rate decision to the Commission by a court is not a rate
4 filing and, therefore, the rule does not apply. Decision No. 57875, Attachment B at 33-34
5 (copy attached at Tab B). The Order concludes that, notwithstanding the Commission's
6 clear statement, the remand proceeding ordered by the Court of Appeals is a rate filing
7 and the rule is triggered. Order at 7. Thus, the Order violates Decision No. 57875.

8 The Order also states that the pendency of the remand proceeding is an
9 "extraordinary event." Order at 8. As explained, however, the Commission made it clear
10 in Decision No. 57875 that the remand of a decision by a court is not a basis to stay a
11 utility's rate application. Moreover, there is nothing "extraordinary" about the
12 circumstances presented here. As the Commission is well aware, rate applications are
13 complicated proceedings. The parties' positions frequently change during the course of a
14 case, requiring adjustments to schedules and other filings. The Commission itself orders
15 amendments to proposed decisions, necessitating further changes. Consequently, if the
16 remand proceeding ultimately results in an order leading the parties to modify their
17 positions, then the parties are free to make such modifications, just as they would if other
18 circumstances arise during the course of the proceeding. This is hardly an "extraordinary"
19 situation.

20 In short, the only thing extraordinary here is the Order's failure to recognize that a
21 utility cannot be deprived of its right to seek rate increases based on a speculation about
22 the possible outcome of a proceeding ordered by the Court of Appeals. The remand
23 proceeding is the result of the Court of Appeals' decision and mandate, and cannot serve
24 as basis to prevent the Company from seeking rate increases, as the Commission stated in
25 Decision No. 57857. For these reasons, the Commissioners should reconsider and reverse
26 the Order staying the 2007 rate case.

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RESPECTFULLY SUBMITTED this 24th day of January, 2008.

FENNEMORE CRAIG, P.C.

By Norm D. James

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**Original and thirteen (13) copies
of the foregoing were delivered
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**Copy of the foregoing was hand delivered
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Tab A

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

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 22nd 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:

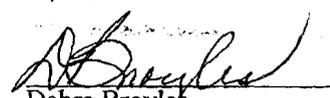
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By: 
Debra Broyles
Secretary to Teena Wolfe

Tab B

BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

MAY 18 1992

RENZ D. JENNINGS
CHAIRMAN
MARCIA WEEKS
COMMISSIONER
DALE H. MORGAN
COMMISSIONER

DOCKETED BY JLP

IN THE MATTER OF THE PROPOSED)
AMENDMENTS TO A.A.C. R14-2-103)
CONCERNING RATE APPLICATION)
MANAGEMENT.)

DOCKET NO. R-0000-91-347

DECISION NO. 57875

OPINION AND ORDER

DATES OF HEARING: January 23 and 30, 1992

PLACES OF HEARING: Phoenix and Tucson, Arizona

PRESIDING OFFICER: Beth Ann Burns

IN ATTENDANCE: Chairman Renz D. Jennings
Commissioner Marcia Weeks
Commissioner Dale H. Morgan

APPEARANCES: Mr. Stephen J. Berg, Attorney, Legal
Division, on behalf of the Staff of the
Arizona Corporation Commission.

BY THE COMMISSION:

By Decision No. 57603, dated November 6, 1991, the Arizona Corporation Commission ("Commission") promulgated proposed amendments to A.A.C. R14-2-103 which would, inter alia, change the gross annual operating revenue amounts for the various utility classifications and establish time limits for the Commission's processing of rate applications.

By Procedural Order dated November 14, 1991, a hearing in this matter was scheduled for January 23, 1992 in Phoenix, Arizona and January 30, 1992 in Tucson, Arizona for the purpose of taking public comments on the proposed amendments. The Procedural Order also set February 14, 1992 as the deadline for filing written public comments on the proposed amendments.

1 On December 23, 1991, notice of the proposed rulemaking was
2 published in the Arizona Administrative Register.

3 The hearing commenced as scheduled. At the hearing, the
4 Commission's Staff ("Staff") explained the proposed amendments and
5 representatives of various public service corporations and interested
6 parties offered comments. Written comments were also received by the
7 Commission.

8 DISCUSSION

9 A.A.C. R14-2-103 sets forth the filing requirements which a
10 public service corporation must meet in submitting an application to
11 the Commission for a change in its authorized rates and charges. The
12 rule, however, does not provide any timelines for processing such an
13 application.

14 A.A.C. R14-2-103 is being amended to include rate application
15 management measures. The amendments will: increase to a more
16 realistic level the amounts used to identify utility classifications
17 according to gross annual operating income; impose internal timelines
18 for the Commission's processing of rate applications; and establish,
19 for each utility classification, a deadline for issuing a final
20 Commission Order in rate cases of 12 months for Class A and B
21 companies, 9 months for Class C companies, 6 months for Class D
22 companies and 4 months for Class E companies. In the event the
23 Commission fails to meet the deadline, the amendments allow the
24 utility to pursue interim rate relief, subject to bond and later
25 refund, pending issuance of the final Order.

26 The Commission finds that the proposed amendments set forth in
27 Attachment A, attached hereto and incorporated herein by reference,
28 will establish reasonable rate application management measures to

1 improve the efficiency of, and provide greater predictability in, the
2 rate review process. The amendments being adopted take into
3 consideration the comments submitted in this docket, as discussed in
4 the Concise Explanatory Statement, Attachment B, attached hereto and
5 incorporated herein by reference.

6 * * * * *

7 Having considered the entire record herein and being fully
8 advised in the premises, the Commission finds, concludes, and orders
9 that:

10 FINDINGS OF FACT

11 1. The proposed amendments to A.A.C. R14-2-103 are set forth in
12 Attachment A.

13 2. The purpose of the proposed amendments is to establish
14 reasonable rate application management measures to improve the
15 efficiency of, and provide greater predictability in, the rate review
16 process.

17 3. The Concise Explanatory Statement for the proposed
18 amendments is set forth in Attachment B.

19 4. The notice of rulemaking has been filed with the Secretary
20 of State and was published in the Arizona Administrative Register on
21 December 23, 1991.

22 5. A public hearing in this matter was held on January 23, 1992
23 in Phoenix, Arizona and January 30, 1992 in Tucson, Arizona.

24 CONCLUSIONS OF LAW

25 1. Pursuant to Article XV, Section 3, of the Arizona
26 Constitution and A.R.S. §§40-202, 40-203, 40-243, and 40-250, the
27 Commission has jurisdiction to adopt the proposed amendments.

28

1 2. Notice of the hearing has been given in the manner
2 prescribed by law.

3 3. Adoption of the proposed amendments is in the public
4 interest.

5 4. The Concise Explanatory Statement set forth in Attachment B
6 should be adopted.

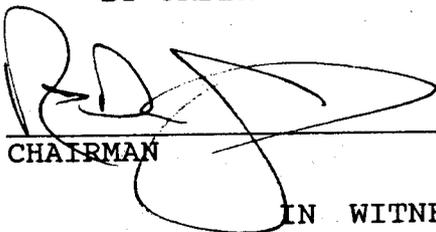
7 ORDER

8 IT IS THEREFORE ORDERED that the proposed amendments to A.A.C.
9 R14-2-103, as set forth in Attachment A, and the Concise Explanatory
10 Statement, as set forth in Attachment B, are hereby adopted.

11 IT IS FURTHER ORDERED that the enforcement of this Order is
12 hereby stayed until either the Attorney General certifies the rule or
13 the Commission receives a favorable determination in State of Arizona
14 v. Arizona Corporation Commission, 1 CA-CV 90-665, whichever occurs
15 first.

16 IT IS FURTHER ORDERED that this Decision shall become effective
17 immediately.

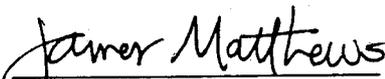
18 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

19 
20 CHAIRMAN

21 
22 COMMISSIONER

23 
24 COMMISSIONER

25 IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive
26 Secretary of the Arizona Corporation Commission, have
27 hereunto set my hand and caused the official seal of
28 the Commission to be affixed at the Capitol, in the
City of Phoenix, this 18 day of May, 1992.


JAMES MATTHEWS
EXECUTIVE SECRETARY

DISSENT _____
babs

CONCISE EXPLANATORY STATEMENT

The proposed amendments to A.A.C. R14-2-103 were adopted by the Commission in Decision No. 57603 (November 6, 1991). This explanatory statement is provided to comply with the provisions of A.R.S. §41-1027.

I. REASONS FOR ADOPTING THE PROPOSED AMENDMENTS

A.A.C. R14-2-103 sets forth the filing requirements which a public service corporation must meet in submitting an application to the Commission for a change in its authorized rates and charges. The rule, however, does not provide any timelines for processing such an application.

A.A.C. R14-2-103 is being amended to establish reasonable rate application management measures to improve the efficiency of, and provide greater predictability in, the rate review process. The amendments will: increase to a more realistic level the amounts used to identify utility classifications according to gross annual operating income; impose internal timelines for the Commission's processing of rate applications; and establish, for each utility classification, a deadline for issuing a final Commission Order in rate cases of 12 months for Class A and B companies, 9 months for Class C companies, and 6 months for Class D and E companies. In the event the Commission fails to meet the deadline, the amendments allow the utility to pursue interim rate relief, subject to bond and later refund, pending issuance of the final Order.

1 Q. A.A.C. R14-2-103(B)(11)(g) Inapplicability Of The Time
2 Clock To Multiple Filings

3 Issue: A.A.C. R14-2-103(B)(11)(g) provides that the time
4 clock "shall not be applicable to any filing submitted by a utility
5 which has more than one rate application before the Commission at
6 the same time."¹⁰ Once again, the comments submitted by the
7 industry seek to eliminate or limit the scope of the provision.

8 The AAEC, APS, and U S West urge the elimination or limitation
9 of this subparagraph because it would allow the filing of an
10 emergency rate case to toll the time clock on a utility's pending
11 application for permanent rate relief. U S West argues that the
12 utilities have a right to seek rate relief and that rendering the
13 deadlines inapplicable to multiple filings would be punitive.

14 U S West and Arizona Water are concerned that the phrase "more
15 than one rate application" could be interpreted to include tariff
16 filings. The AAEC, Citizens, and Southwest Gas fear that the phrase
17 will be interpreted to prohibit more than one regulated subsidiary,
18 department, or division of a utility from having simultaneous rate
19 applications pending under the time clock. They seek the addition
20 of language limiting the provision in accordance with their
21 concerns.

22 Citizens, APS, and Southwest Gas have suggested exemptions to
23 this subparagraph which would not permit the time clock to be tolled
24 for multiple applications if the initial filing had not been
25 completed within the applicable time period or if an application had
26

27 ¹⁰ In the initially proposed amendments, this provision was
28 included as A.A.C. R14-2-103(B)(11)(d). The changes to the rule
adopted by the Commission herein have caused the subparagraph to be
renumbered as A.A.C. R14-2-103(B)(11)(g).

1 been remanded to the Commission by a court of competent
2 jurisdiction.

3 Staff opposes the elimination of this provision. Staff
4 believes that the time clock should be tolled on a permanent rate
5 case if an emergency case is filed because processing multiple
6 applications drains the Commission's resources and because the
7 latest filing changes the relevant facts and circumstances or will
8 be substantially effected by the outcome of the previous filing.
9 Staff does not interpret this provision as applying to tariff
10 filings or the rate applications of separate subsidiaries,
11 departments, or divisions.

12 Evaluation: The Commission agrees with the Staff that A.A.C.
13 R14-2-103(B)(11)(g) is an essential element of the time clock rule
14 and should be retained. This is not a punitive provision. Rather,
15 it will allow the Commission to focus its efforts on the speedy
16 completion of the emergency filing to get needed rate relief in
17 place and then process the permanent application. This rationale is
18 equally applicable to multiple filings which are pending due to the
19 failure to process the first case within the prescribed timetable.
20 It is important to complete that first case and implement new rates
21 before turning attention to the subsequent filing.

22 The Commission also shares Staff's interpretation that tariff
23 filings and rate applications of a company's separate rate
24 jurisdictions are not covered by this provision. We do not believe
25 that an amendment is necessary, however. The definition of a filing
26 in A.A.C. R14-2-103(A)(3)(q) clearly does not encompass these
27 matters nor the remand of a rate decision by a court.

28 Resolution: No amendment to the proposed rule is necessary.