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Arizona Corporation Commission
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6 Attorneys for Anthem Community Council

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7 **BEFORE THE**

8 **ARIZONA CORPORATION COMMISSION**

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 10 **IN THE MATTER OF THE**
 11 **APPLICATION OF ARIZONA-**
 12 **AMERICAN WATER COMPANY FOR**
 13 **APPROVAL OF A DETERMINATION**
 14 **OF THE CURRENT FAIR VALUE OF**
 15 **ITS UTILITY PLANT AND PROPERTY**
 16 **AND FOR INCREASES IN ITS RATES**
 17 **AND CHARGES BASED THEREON**
 18 **FOR UTILITY SERVICE BY ITS**
 19 **ANTHEM WATER AND ANTHEM**
 20 **/AGUA FRIA WASTEWATER**
 21 **DISTRICTS.**

NO. WS-01303A-06-0403

**INTERVENOR ANTHEM
 COMMUNITY COUNCIL'S REPLY
 IN SUPPORT OF MOTION TO OPEN
 THE RECORD**

19 The Anthem Community Council ("the Council"), by and through undersigned
 20 counsel, hereby replies to the responses of Arizona-American Water Company ("the
 21 Company") and the Utilities Division Staff ("Staff") to the Motion to Open the Record
 22 (the "Motion"), and in support of said Motion states as follows:

23 1. Staff asserts that Council had actual notice of the recommended changes to
 24 the allocation of the NWVTF no later than September 14, 2007 as evidenced by an email
 25 exchange between Staff and Council's legal representative, which is attached as Exhibit
 26 A to the Company's response. Staff's assertion is misleading. The email exchange is

1 nothing more than a notice of intent to change at best rather than any kind of actual notice
2 of the actual proposed changes. The emails themselves only indicate that Staff will be
3 asking for a procedural conference and will be filing revised schedules. While Council
4 does not dispute the existence of the September 14, 2007 emails, the emails clearly
5 demonstrate that they are nothing more than a vague statement that things will be
6 changing. Thus, Council did not receive any kind of actual written notice of the revised
7 recommendations until October 3, 2007 at the earliest. This was very late in the case and
8 long after the record had closed in the Sun City West case.

9 2. Staff asserts that after October 3, 2007, when Staff's engineer filed her
10 amended Engineering Report, RUCO and Council, by way of Judge Wolfe's procedural
11 orders, had sufficient opportunity to respond to any late-filed exhibits, make a request for
12 additional hearings or otherwise litigate the recently proposed changes. This assertion is
13 again misleading. First, the proposed changes were buried within the amended report,
14 making it difficult for the parties to ascertain their impact on the case within a reasonable
15 time. Second, and more importantly, if Staff's assertion regarding Judge Wolfe's
16 Procedural Orders has any merit, then RUCO and Council would be expected to file
17 responses to a very large and significant change in the case prior to any testimony having
18 been taken on that very same issue. As noted in Staff's response, responses to late-filed
19 exhibits were due no later than October 24, 2007. However, this deadline ended one
20 week before the actual hearings in the case. It was at those hearings when, for the first
21 time, any kind of testimony on the proposed changes was taken. It is simply unfair and
22 unreasonable under these circumstances to expect a party to provide a coherent or
23 meaningful response to last minute exhibits and/or last minute major changes to a case
24 prior to the actual hearing on those very same issues. Indeed, as stated herein, the only
25 meaningful or significant disclosure regarding the proposed changes was buried in a
26 report. No testimony had yet been taken. As such, Staff's argument that RUCO and
Council had sufficient due process prior to the October 31, 2008 hearing is incorrect.

1 3. Staff's assertion that RUCO's and Council's objections are not preserved in
2 the trial court record is simply not true. At the hearings on October 31, 2008 and
3 November 1, 2008, both RUCO and Council made numerous strong objections to the late
4 changes and the timing and procedure in which such changes were becoming part of the
5 case. All of their objections were overruled. These same objections were also restated in
6 the parties' final briefs in the case. As such, the objections are indeed a significant part of
7 the record and have been preserved in the trial court.

8 4. Staff's argument that Council could have intervened in the Sun City West
9 case, and that its failure to do so means that Council chose not to preserve its legal
10 remedies, is grossly misleading and does nothing more than confuse the real issues before
11 the Commission. As has been stated, Council did not have notice of the proposed
12 changes until after the record in the Sun City West case was closed. As such, it is clear
13 that Council did not have a fair opportunity to address the re-allocation issue in the Sun
14 City West case. Staff's continued efforts to tie the notice issues in each case together
15 does nothing more that obscure the issues and create confusion.

16 5. Council joins in RUCO's assertions that Staff and the Company failed to
17 meet their burden of proof on the re-allocation issue. A review of the testimony and
18 record of this case does in fact reveal that very little if any meaningful evidence was
19 presented by Staff or the Company establishing the validity of the increase in cost
20 allocation. Staff and Company did not meet their burden of proof and as such simply did
21 not prove their "case." The evidence that was presented was akin to nothing more than
22 conclusory statements. Staff asserts however, that because Staff provided written and
23 oral testimony subject to cross examination, its recommendation does not amount to a
24 "bald conclusion" and therefore Staff implies it has met its burden of proof. Staff's logic
25 is circular. Staff is essentially arguing that because RUCO and Council had the
26 opportunity to review written evidence and examine a witness, it has met its burden of
proof. This reasoning is faulty. Staff is essentially asserting it proved its case because

1 RUCO and Council did not disprove it. To that end, re-opening the record to allow Staff
2 to actually meet its burden of proof is essential.

3 6. Finally, and perhaps most importantly, Council urges that the record be re-
4 opened in the interests of fairness and equity. Staff's arguments that it has limited
5 resources, that re-opening the case will be wasteful and that it will set a bad precedent are
6 not persuasive. This process and the Commission itself rest in equity. Regardless of the
7 parties' positions in this case, the final outcome should be based in equity. If Council and
8 RUCO are not permitted to re-open the record and fully litigate the NWVTF re-allocation
9 issue, the evenhandedness of this entire process will be put into question. Moreover,
10 despite Staff's assertions otherwise, this case is very unique, and as such, re-opening the
11 case is entirely appropriate. The Sun City West case and this case shared the NWVTF re-
12 allocation issue. A decision in one case would have significant impact in the other. The
13 proposed changes came very late in both cases. Re-opening the case makes sense under
14 these unusual circumstances. Re-opening the case also helps preserve limited resources.
15 If this case is not re-opened, this issue will persist in this case, in future cases and within
16 the communities at large. It will not be put to rest in this case. Thus, re-opening the case
17 is favorable to both the Company and Staff.

18 WHEREFORE, for the foregoing reasons, Council respectfully requests that its
19 motion to re-open the record be granted.

20 DATED this 27th day of March, 2008.

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22 & LEWIS, P.L.L.C.

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2 **Original** and 13 copies of the foregoing
3 was delivered this 27th day of March,
4 2008 to:

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