



BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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IN THE MATTER OF THE APPLICATION OF  
ARIZONA-AMERICAN WATER COMPANY,  
AN ARIZONA CORPORATION, FOR A  
DETERMINATION OF THE CURRENT FAIR  
VALUE OF ITS UTILITY PLANT AND  
PROPERTY AND FOR INCREASES IN ITS  
RATES AND CHARGES BASED THEREON  
FOR UTILITY SERVICE BY ITS SUN CITY  
WATER DISTRICT

DOCKET NO. W-01303A-07-0209

TOWN OF YOUNGTOWN'S  
COMMENTS SUPPORTING  
RECOMMENDED OPINION AND  
ORDER

The Town of Youngtown ("Youngtown"), through its undersigned legal counsel, submits its comments in support of the Recommended Opinion and Order ("ROO") filed in the above entitled matter. Specifically, Youngtown supports the Commission authorizing Arizona-American Water Company ("Company") to meet its statutory obligation to "promote the safety, health, comfort and convenience of its patrons"<sup>1</sup> by constructing certain fire flow improvements in the Sun City Water District and implementing the Fire Flow Cost Recovery Mechanism ("FCRM").

Youngtown commends the Arizona Corporation Commission ("Commission") and the Administrative Law Judge ("ALJ") for creating a comprehensive evidentiary record on the fire flow issue. The Fire Flow Report (Exhibit A-13) prepared by Brown & Caldwell

<sup>1</sup> The Patron Safety Plan will benefit customers in Sun City, Peoria and Youngtown.

Arizona Corporation Commission

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1 exhaustively details the Sun City Water District's fire flow capabilities and evaluates the  
2 Fire Flow Task Force's recommended improvements.

3 The Fire Flow Report, the Fire Flow Task Force recommendation and the  
4 testimony presented in this matter all support the following positions adopted by the ROO at  
5 pages 36 - 37:

6 • [T]he fire flow improvement project, as set forth in the Task  
7 Force's Report and as presented during the hearing, is important  
8 to promote and protect the health and safety of the customers of  
9 Arizona-America's Sun City Water District. . . .

10 • [I]t is in the public interest for Arizona-American to begin  
11 constructing the fire flow facilities . . .

12 • [T]he construction of the fire flow improvement projects in  
13 this case [are] of sufficient importance as affecting public health  
14 and safety that they merit the action we [the Commission] take. . .

15 • Without the surcharge, the community would have to wait an  
16 undetermined period of time until the Company could  
17 contemplate commencing construction, much less complete the  
18 projects. . . . [T]he time has come to bring the system up to  
19 current accepted standards for fire flow. . .

20 • [C]osts will only increase the longer it takes to makes [sic]  
21 these improvements.

22 • The effect of the surcharge on customer bills is minimal.

23 • These projects are not being made for the benefit of the Town  
24 of Youngtown, but for the residents and customers of the Sun  
25 City Water District. . . .

- 1                   • [T]he improvements are needed and it is not equitable that  
2                   some current customers have adequate fire flow, while many do  
3                   not.

4                   Indeed, all Parties agree with those findings, except for the Residential Utility  
5 Consumers Office (“RUCO”).

6                   The evidence presented to the Commission unequivocally demonstrates that: 1)  
7 the provision of water for fire protection is constitutionally recognized as a public service  
8 corporation function;<sup>2</sup> 2) the water system serving the Sun City Water District provides  
9 water for fire protection, but does not uniformly provide the minimum fire flows<sup>3</sup> and fire  
10 hydrant spacing<sup>4</sup> requirements recommended by the International Fire Code (2003) and  
11 adopted by the Fire Flow Task Force; 3) the lack of fire flows and fire hydrants meeting  
12 these *minimums* endangers the life and safety of the patrons and employees of the Company;  
13 4) customers within the Sun City Water District receive disparate levels of service due to the  
14 unequal level of fire flows and fire hydrant spacing within the Sun City Water District;<sup>5</sup> 5)  
15 all customers currently pay for rates that include fire protection facilities regardless of the  
16 level of fire protection received; and 6) good utility practice today would design systems to  
17 meet or exceed these minimum fire flow standards.<sup>6</sup> The Patron Safety Plan addresses all of  
18 the above.

19                   Many of the residents within the Sun City Water District (including  
20 Youngtown, which was Arizona’s first age restricted community) are elderly and live on  
21

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22 <sup>2</sup> Article 15, Section 2, Arizona Constitution

23 <sup>3</sup> 1,000 gpm for residential; 1,500 gpm for commercial

24 <sup>4</sup> 660 feet

25 <sup>5</sup> A public utility has a legal obligation to render fire prevention service impartially and without discrimination. *Veach v. City of Phoenix*, 102 Ariz. 195, 427 P.2d 335 (1967); A.R.S. §40-334.

<sup>6</sup> In fact, the Company utilizes a higher design standard today for new construction (1,500 gpm for residential and 3,000 for commercial).

1 limited or fixed incomes, and therefore may be concerned about rising prices, generally. But  
2 the vulnerable elderly population living on fixed incomes strengthens the need and  
3 justification for approving the Patron Safety Plan and FCRM proposed for the Sun City  
4 Water District.

5 First, the age and physical infirmity of a large segment of the District's  
6 population makes adequate fire flow protection an even greater imperative to their health and  
7 safety.<sup>7</sup> Second, the limited incomes of those served by the Sun City Water District,  
8 including Youngtown, makes it impossible for such customers to individually resolve the  
9 present public health and safety issues. By spreading the costs over the entire customer base  
10 and phasing the rate impact over at least a four year period, the cost of providing equal fire  
11 flow and fire hydrant protection throughout the District is distributed equitably and the  
12 potential for rate shock to individual customers is eliminated. Economy of scale is a key  
13 benefit intended to be achieved through a regulated monopoly approach.

14 The Sun City Taxpayers Association ("SCTA") and RUCO are actively  
15 encouraging Sun City residents "to make a stink"<sup>8</sup> and oppose the Patron Safety Plan and the  
16 FCRM at Open Meeting. The ROO and extensive evidentiary record developed in this case  
17 demonstrate that the Patron Safety Plan "is important to promote and protect the health and  
18 safety of the customers of Arizona-American's Sun City Water District."<sup>9</sup> Even in the face  
19 of that evidence, RUCO and SCTA oppose the Patron Safety Plan and the FCRM on the  
20 (unfounded) basis that the fire flow improvements are unnecessary and/or discretionary.

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21  
22 <sup>7</sup> See May 24, 2007 article "Sun City fire claims home," the Deaf News Network (attached as Exhibit A) reporting on a  
23 fire last May involving impaired residents (one deaf and the other suffering respiratory problems and on oxygen) whose  
24 home was lost in a fire. The fire also spread to the adjacent vacant condo. Both residences were reported as likely total  
losses.

25 <sup>8</sup> See April 23, 2008 article "SCTA remains steadfast as fire flow rate hike foe," Daily News attached as Exhibit B. The  
Fire District has taken SCTA to task for opposing the fire flow improvements. April 16, 2008 article "Sun City fire  
officials blast fire flow foes" Daily News attached as Exhibit C.

<sup>9</sup> ROO at 36 and Finding of Fact 6. Fire flows fall below 500 gpm in some areas.

1 But, again, the record also demonstrates the need for and the reasonableness of both the  
2 Patron Safety Plan and the proposed FCRM. ROO at 36 and Finding of Fact 7.

3 SCTA and RUCO are perpetuating a myth. They contend that the Patron Safety  
4 Plan is a Youngtown project. That allegation finds no support in the record before the  
5 Commission. Rather, the record evidences that Representatives of all the major  
6 organizations within the District approved the Plan. The Plan is designed to provide fire  
7 flows and fire hydrants meeting universally recognized *minimum* standards, nothing more.  
8 The Plan, as proposed, will benefit customers in Sun City, Peoria and Youngtown. In fact,  
9 *significantly more* Sun City customers will directly benefit from the improvements than will  
10 Youngtown customers.<sup>10</sup> ROO at 34. Payment for the fire flow improvements would not  
11 result in a “subsidy” by Sun City customers for Youngtown improvements. ROO at 34.

12 A.R.S. § 40-361(B) places an affirmative obligation on every public service  
13 corporation to “furnish and maintain such service, equipment and facilities as will promote  
14 the safety, health, comfort and convenience of its patrons, employees and the public, and as  
15 will be in all respects adequate, efficient and reasonable.” ROO at 34.<sup>11</sup> At present, the  
16 Company is not meeting this statutory obligation, but has voluntarily agreed to rectify the  
17 situation, provided it receives the funding necessary to do so. Based upon the record  
18 developed in this case, the FCRM is a reasonable method for the Company to secure such  
19 funding.

20 The unanimous Task Force Report and the later customer survey reflect  
21 substantial community support for both the Patron Safety Plan and the recovery of its cost  
22 through rates. The evidence before the Commission demonstrates that the health and safety  
23 of the employees and customers of the Sun City Water District and equality of service are at  
24

25 <sup>10</sup> In fact almost 3 times as many customers are benefitted in Sun City, 6,203 vs. 2,333 in Youngtown. Tr. Vol. 3, pp. 563.

<sup>11</sup> See also, Art 15, Sec 3, Arizona Constitution, A.R.S. §§40-321(a), 334(a), 336, 203, 202(a).

1 stake. This matter must be decided on the evidence presented to the Commission as applied  
2 against A.R.S. § 40-361(B). Youngtown respectfully suggests that matters of public safety  
3 must not be left to the results of a popularity contest.

4 Youngtown also supports the ROO's limitation of the precedential impact of  
5 the decision in this case. It remains appropriate to separately evaluate each system  
6 confronting fire flow and fire hydrant issues to determine the correct balance between safety  
7 and cost. The Fire Flow Task Force and the ROO reach the appropriate balance for the Sun  
8 City Water District.

9 WHEREFORE, Youngtown respectfully requests the Commission adopt the  
10 ROO's discussion, findings of fact and ordering paragraphs regarding authorizing the fire  
11 flow improvements and the FCRM without amendment.

12 DATED this 28<sup>th</sup> day of April, 2008.

13 CURTIS, GOODWIN, SULLIVAN,  
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**PROOF OF AND CERTIFICATE OF MAILING**

I hereby certify that on this 29<sup>th</sup> day of April, 2008, I caused the foregoing document to be served on the Arizona Corporation Commission by delivering the original and thirteen (13) copies of the above to:

Docket Control  
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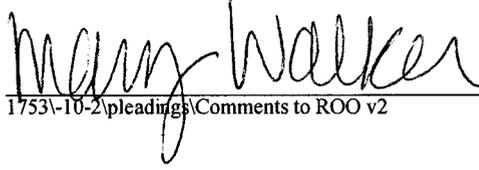
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1753-10-2 pleadings Comments to ROO v2

# EXHIBIT A



*firefighter sprays water on a home engulfed in flames in Sun City Wednesday. Homeowner Sam Wheelen was transported to Boswell Hospital for smoke inhalation. His wife, Darlene also escaped the blaze. (PHOTO COURTESY OF HELENANN TKINSON)*

## Deaf News Network

Daily News for the Deaf and Hard of Hearing people

### Sun City fire claims home - Daily News-Sun

May 24, 2007 in Deaf, Health, News

### Sun City fire claims home

Annie Boon/Daily News-Sun

May 24, 2007

A lifetime of memories went up in smoke Wednesday as Darlene and Sam Wheelen watched their Sun City condominium destroyed in minutes by a fire.

Sam, who suffers from chronic respiratory problems and is on oxygen, was transported to Sun Health Boswell Hospital in Sun City for smoke inhalation reportedly caused by his attempt to rescue a new motor scooter from the garage instead of immediately exiting the home, said Deputy Fire Marshal Ken Rice of the Sun City Fire Department.

Sam was admitted to Boswell for observation, hospital officials said. But his condition is unknown.

At about 3:45 p.m., fire crews from several West Valley cities responded to the fire, which had quickly spread from the Wheelens' duplex home at 9642 N. 110th Ave. to the adjoining unit, which is vacant and for sale. The fire was contained by about 4:15 p.m. Rice said the Wheelens' condo is a total loss, and the vacant unit may be as well. No cause has been determined, and an investigation is under way.

"They've lost everything. They had their life in that house," said daughter Sharon Wheelen of Phoenix, who said her parents came to her aid in 1986 when her home burned down. "It's like we flip-flopped — now they're the victims."

"Everything in their house had meaning. It wasn't just furniture and things," said cousin Diana Cooper of Sun City. "They'll never be OK after this. This will be with them forever."

Neighbors said they heard several resounding "booms" coming from the home before running out and seeing the flames. The Wheelens, married 57 years, escaped with the help of Duane Steckler of Sun City who saw the flames while passing by the Wheelens' home.

Family is making arrangements to help the couple cope with their losses.

After the flames were extinguished, onlookers could see through the gutted condo and what was left of a car, smoldering in the garage.

Darlene, who is deaf, described her scare to fire crews. She was in a back room paying bills when in an instant, everything went dark.

"It looked like the lights went out," Rice said. "The smoke curtain dropped so fast, all of a sudden it was pitch black."

She hollered at her husband to get out of the house, but Sam made a stop to grab the motor scooter instead, Rice said.

"In the garage, he took in a lot of smoke," Rice said. "Never go back in for anything." Neighbors Judy Johnson and Marie Smith said the booms could be heard nearly a quarter mile down the street.

"It was like a huge explosion. My husband thought a car had hit our house," said Johnson, who lives about 10 homes down the block. "It's so, so sad, those poor people. At this age, you can't tell how they'll get through something like this."

"They've lived through World War II, the Depression and other hard stuff, I'm sure they are strong people," Smith said.

# EXHIBIT B

## SCTA remains steadfast as fire flow rate hike foe

Jeff Dempsey

April 23, 2008 - 9:37AM

The president of the Sun City Taxpayers Association defended the organization Tuesday from criticism leveled against it by fire officials who said the SCTA and other organizations are standing in the way of necessary safety improvements in the Sun City fire district.

"They seem to think we are operating outside our scope," Marv Worthen said at the SCTA's regular meeting.

Last week, several officials from the Sun City Fire District said the SCTA, Recreation Centers of Sun City and the Sun City Home Owners Association were taking "pot shots" at the district for trying to add more hydrants and improved pipelines to the water system that includes Youngtown, part of Sun City and a small portion of Peoria.

The Arizona Corporation Commission is considering the fire flow rate case, which revolves primarily around the necessity of the project and how it should be financed.

Fire board chairman Irvin Mitchell indicated last week that all of the organizations involved have their own areas of expertise and that's what each organization should focus upon.

Worthen rejected that argument.

"The RCSC is only supposed to worry about whether we are having fun, SCHOA and the condo association are only supposed to worry about if our yards look nice and we (the SCTA) are only supposed to worry about keeping taxes down. I don't agree with that," he said. "I think these organizations are working together, as they should, to make life for Sun City residents as enjoyable and affordable as possible. And opposing the fire flow case is part of that."

Guest speakers from the Residential Utility Consumer Office were at Tuesday's meeting and encouraged the SCTA and its members to keep the pressure on.

Dan Pozefsky, an attorney for RUCO who is representing the residents in the fire flow case, said he was happy to see how many residents showed up to the initial ACC hearing in January.

"It's a very good thing when individuals come to make their voices heard in cases like this," Pozefsky said. "So often, you hear people getting really upset, but only after the hearing is over and they read about the results. Essentially, by the time they are interested and ready to get angry about it, the horse is already out of the barn. Obviously, this makes it much less likely that they will achieve the result they are looking for."

The SCTA will be busing residents to the ACC next hearing on May 6, a plan Pozefsky said will likely pay dividends.

"I can tell you that residents, especially a lot of them, will have much more of an impression

on the commissioners than lawyers who are there as mouthpieces for the company they represent," Pozefsky said. "That's nothing against the lawyers, because we serve an important role, but having a room full of residents speak is very valuable."

With all the criticism that has been traded between those who oppose the fire flow improvements and those who support it, Pozefsky felt the need to clarify RUCO's position.

"We are not completely opposed to the improvements themselves, just how they are planning to pay for them," Pozefsky said. "It is our opinion that the recovery mechanism proposed by the water company will set a bad precedent for future similar cases. Our argument is primarily about how they want to pay for this, not about the necessity of the project, though at this time we do feel it is a discretionary project."

After Pozefsky was finished with his presentation, Tracy Spoon, executive director for the SCTA, encouraged residents to sign up and be a part of the hearing on May 6.

"We can go down there and we can make a stink," Spoon said. "We can make a stink, and hopefully we can have an impact."

# EXHIBIT C

## Sun City fire officials blast fire flow foes

Jeff Dempsey

April 16, 2008 - 10:03AM

Irvin Mitchell, chairman of the Sun City Fire Board, criticized three local organizations for their actions relating to the Arizona American Water fire flow case, under consideration by the Arizona Corporation Commission.

Mitchell said he was not pleased with the Recreation Centers of Sun City, the Sun City Home Owners Association or the Sun City Taxpayers Association, citing what he saw as unfair criticism directed at the fire department.

"I think it is wrong that these organizations are taking pot shots at us," Mitchell said at Tuesday's fire board meeting. "One group, their job is to provide recreation for us, one is to help save on taxes, another group is a home owner's association. Our main purpose is to save lives first, save property second, and without the water we can't do either one of those."

Board member Jack Leonard said he, too, was disappointed with the other Sun City organizations.

"They are looking at this from a purely 'dollars and cents' perspective," Leonard said. "Our job is to consider safety. This is not only something that is going to help potentially save the lives of building occupants, but perhaps save the lives of firefighters, too. If they are in the middle of a large building and they run out of water, there is nothing they can do. We need to do what is best for the safety of occupants and firefighters alike."

The fire flow case seen by the ACC has been a heated issue in the Sun City area for months.

The plan calls for an improvement project that would add 195 new hydrants and 44,000 linear feet of 6- to 10-inch pipes to upgrade the system, covering an area that includes Youngtown, part of Sun City and a small portion of Peoria. If approved, customers would see an increase on their water bills over a four-year period beginning in 2010 and running through 2013. In 2010, the increase would be 3.5 cents; in 2011, it would be 7.4 cents; in 2012, 11.4 cents; and in 2013, the increase would be 17.4 cents.

The criticism of the fire flow project revolves primarily around the necessity of the project as well as what it will cost homeowners.

Fire Chief Jim Sebert said he could not speak to the cost of the project, but he was adamant about the necessity of it.

"We hear from many people who say we do not have any fires in Sun City, but that is not true," Sebert said. "There have been over 300 fires in Sun City over the past 30 years which sustained more than 50 percent damage. Many of them were 100 percent destroyed."

Sebert added the southern part of Sun City, which will benefit from the fire flow improvements, is the area of the city most affected by fires.

"The majority of those fires are in the southern parts of Sun City," Sebert said. "We've had about eight or nine very serious commercial fires in Sun City and seven of those were south of Grand Avenue."

Sebert said he was disappointed in the RCSC, SCHOA and SCTA for not coming to the fire department to talk about the issue.

"We have been barred in the past from speaking at RCSC meetings because we are not residents," Sebert said. "In the past, SCHOA and the taxpayers association have welcomed us to come to their meetings and speak. On this issue, they have not."

Warren Hoffman, treasurer for the RCSC board of directors, was in attendance at the meeting, and he urged the fire department to send someone to the RCSC's next meeting April 24.

"As long as you send someone who is a resident of Sun City, then they can not stop you from speaking," Hoffmann said. "I think it might be very helpful if you speak to them and give them some of the information you have given today."

Youngtown Mayor Mike LeVault was in attendance, as well. LeVault has been an enthusiastic supporter of the fire flow project, and he said he expects a decision from the ACC soon.

"We should hear something in the next 30 to 60 days," LeVault said. "I'm pretty confident that they are going to give the go ahead, but if they don't, we're done. I imagine this project would be resurrected at some point maybe a few years down the line, but for now it would be over, and I don't think we can afford that."