

W. 02824A-07-0388

ORIGINAL



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ARIZONA CORPORATION COMMISS
UTILITY COMPLAINT FORM

4700

Investigator: Trish Meeter

Phone: [REDACTED]

Fax: [REDACTED]

Priority: Respond Within Five Days

Opinion No. 2008 68678

Date: 5/21/2008

Complaint Description: 08A Rate Case Items - Opposed
N/A Not Applicable

RECEIVED
MAY 23 2008
AZ CORP COMMISSION
DOCKET CONTROL

Complaint By: First: Jerome

Last: Reid

Account Name: ICRWUA Group

Home: [REDACTED]

Street: n/a

Work:

City: n/a

CBR:

State: AZ Zip: n/a

is:

Utility Company: ICR Water Users Association

Division: Water

Contact Name: [REDACTED]

Contact Phone: [REDACTED]

Nature of Complaint:

5/20***** Received through Chariman Gleason's Office ***** Docket No. W-02824A-07-0388
CC"D TO ALL COMMISSIONERS

Arizona Corporation Commission
DOCKETED

MAY 23 2008

From: Jerome Reid [REDACTED]
Sent: Monday, May 19, 2008 4:53 PM
To: Gleason-WebEmail; Hatch-WebEmail; Mundell-Web; Mayes-WebEmail; Pierce-Web
Cc: 'Larry & Tina BLIGH'; 'Craig Brown'; 'Gene Leasure'; 'Dan & Hillary'; Jerome Reid; [REDACTED];
'Jimmy Stoner'; 'Chris Stoner'
Subject: ICR Water Users Assn.; Docket No. W-02824A-07-0388

DOCKETED BY [REDACTED] NR

N.B. The names of Jimmy & Chris Stoner have been added as "signers".

Chairman Gleason & Commissioners Hatch-Miller, Mundell, Mayes, and Pierce.

The purpose of this email is to address several issues that remain outstanding in the referenced Rate Case. Notwithstanding the May 14 Notice of Filing Status Report from Snell & Wilmer and the representation therein. As expected, the parties [ICR Water Users Association and Talking Rock Golf Club L.L.C.] reached an agreement which is set forth in a non-binding Letter of Understanding ("LOU") dated April 23, 2008, there is no agreement on how to resolve the open issues in this case, including the fundamental issue of compliance with Commission Decision 64360 by ICR Water Users Association ("ICRWUA" or "the Company"), Talking Rock Ranch ("TRR"), and Talking Rock Golf Club L.L.C. ("TRGC"). The alleged "agreement" between ICRWUA and TRGC is nothing more than a non-binding proposal to guide further discussion, which fails to satisfy Judge Stern's admonition that an agreement resolving the open issues be reached before the Hearing will proceed.

ARIZONA CORPORATION COMMISSION

UTILITY COMPLAINT FORM

We would like to address several issues that remain outstanding, as well as a preliminary issue that, until resolved, will preclude settlement of the outstanding issues in this case. The preliminary issue that stands in the way of reaching settlement in this matter is the composition and conduct of the ICRWUA Board of Directors ("Board" or "Directors"), which will be addressed first. The current service area for ICRWUA includes 4 developments: one, Talking Rock Ranch ("TRR"), on the east side of Williamson Valley Road, and the other three, Inscription Canyon Ranch ("ICR"), The Preserve ("P"), and Whispering Canyon ("WC"), on the west side of Williamson Valley Road. The number of residential water accounts is as follows: TRR 50; ICR+P+WC 251. The total number of residential water accounts in the ICRWUA service area is 301, with 17% of those accounts in TRR and the remaining 83% located in ICR, P, and WC. An explanation for the difference between the total of 334 5/8" (residential) water lines and 301 such lines, i.e., 33 5/8" lines, has been sought from the Company to no avail.

The ICRWUA Board of Directors is made up of five members: Shirley Lillien and Hugh Pryor, residents of TRR; Hal Lobaugh, a non-resident property owner/developer in TRR; William Meyer, a resident of ICR; and, Earl Cummings, a resident of ICR and TRGC Member, who has a consistent history (5+ years) as Chairman of the Board of favoring TRR in his decision making, failing to make needed changes to the Company's by-laws to reflect changing circumstances (proportionate representation on the Board and term limits for Board members, for example), and failure to conduct the business of ICRWUA in a transparent and accountable manner. TRR enjoys a 60%+ majority (3+ members out of 5) on a Board that is supposed to represent the interests of all owners, approximately 87% of whom have no interest in or benefit from the TRGC or the golf course. While one might observe that the election of Board members is open to all resident/owners of ICRWUA, I have previously written to you about the manner in which the Board jealously guards access to Board membership and decision making. Furthermore, TRR residents are motivated to vote for Board member candidates from TRR because they have a clear interest in maintaining what they see as the status quo. To the contrary, ICR, P, and WC residents are hard pressed to understand the very convoluted and obtuse arrangement that currently exists, which does not comply with Decision 64360.

This Board has overseen the failure to timely collect Accounts Receivable from TRR and, when finally collected, imposed no penalties or late charges, unlike the case of a resident who is subject to clear rules (penalty and disconnection) to encourage timely payment of monthly water bills. In addition, some Receivables from TRR are negotiated by ICRWUA's Business Manager, Robert Busch, when he travels to Scottsdale to meet with TRR representatives about their bill!

This Board has been deficient in its responsibility to keep the Owners informed about the issues facing ICRWUA. In November of 2005, Mr. Cummings called a meeting of the Company's Owners to discuss the possible split of the Company into two separate water companies, one serving TRR and the other serving ICR, P, and WC. At that meeting I informed Mr. Cummings that the Owners would need additional information in order to make an informed decision about splitting the Company. I pointed out that any registered public company proposing such a transaction would be required to file 5 year financial forecasts for the existing company and comparable forecasts for the companies proposed to be created. I requested similar (3 year forecast) information from Mr. Cummings and then never heard from him about my information request or the proposed split of the Company. On the occasion of the Company's Annual Shareholders' Meeting in January of this year, the members of the Board demonstrated an amazing lack of engagement on the facts and issues and unable to answer many questions from the shareholders present because the Company's Business Manager, Robert Busch, was on vacation at the time of the meeting. This is unacceptable to the shareholders of the Company, who are left to wonder what the point is of going to these meetings when their questions cannot be answered by the Board. This Board is failing to represent the interests of all the Owners.

ARIZONA CORPORATION COMMISSION

UTILITY COMPLAINT FORM

Most recently, the Board of Directors have refused to meet with us to discuss our objections to the LOU dated April 18 that we were provided on May 2. It is interesting to note that the Board's undated signature page for this LOU included the name of William Meyer, who was out of town beginning on April 19 and returned on May 12. We were advised on April 18 by William Meyer, as a representative of the Board of Directors, that a non-binding LOU had been reached with TRR and were provided with an LOU dated April 18 (with an undated Board signature page attached, with all Board Members' signatures, and no clear indication by header or page numbering that this signature page was a part of the attached LOU). Notwithstanding the foregoing, Mr. Cummings sent out email to Mr. Taylor on April 21 saying the "... LOU is yet to be finalized".

Now Counsel for the Board has filed a "Notice of Filing Status" indicating that "... the parties reached an agreement which is set forth in a non-binding Letter of Understanding ("LOU") dated April 23. We have not seen that LOU. And that LOU, according to Counsel's filing, is an agreement "... to work in good faith towards the prompt negotiation and execution of a special contract ... that would govern the parties' prospective relationship and amend other existing agreements between the parties." There is nothing said about complying with Decision 64360 which Judge Stern set as a predicate for this Hearing to proceed. This "LOU" " does not constitute an "agreement" and has all the appearances of yet another effort by TRR, TRGC, and the Board to circumvent the authority of the Corporation Commission as it did with the "Well Agreement" in claiming to comply with Decision 64360. The new strategy for TRR and TRGC is to claim that the golf course and TRR Development are not customers of ICRWUA. However, when the "extension area" was defined in Decision 64360, it was defined as TRR (Main Extension Agreement) and "common areas, a club house, swimming pool, fitness center and an 18-hole golf course with storage lakes." (Decision 64360, Finding of Fact #7). There is no evidence in the record that TRR or TRGC took exception to defining the extension area that way nor is there any evidence that either TRR or TRGC later objected to including the golf course in the definition of TRR, which was defined to be the extension area. The novel position being urged on this proceeding by TRR and TRGC that TRR Development and the golf course are not now nor have they ever been customers of the Company is completely without merit.

By pledging to work together in good faith on a "special contract" the Board, TRR, and TRGC are simply avoiding the primary issue in this case, i.e., compliance with Decision 64360. There is no need for a "special contract" (is there a "special" body of law for "special contracts" versus routine contract law?) and the fact that the Board is participating in these antics provides a prima facie case for the Board's failure to fulfill its fiduciary duty to all of the customers/shareholders of the Company. There is a need for TRR to transfer wells #1 and #2 to ICRWUA and for TRGC to pay tariff rates. If they are unwilling to do this, i.e., comply with Decision 64360, we would prefer that, and the interests of the resident/owners in ICR, P, and WC would be better served if, the two water systems were separated into two water companies, with ICRWUA "owning" the system serving ICR, P, and WC and TRR "owning" the system that serves TRR and the TRGC.

Unless and until TRR and TRGC are prepared to comply with the Commission's Decision 64360, there is nothing to be gained by proffering non-binding agreements to continue talking about this situation, other than running up the legal expenses of the ICRWUA. The fundamental problem with this whole arrangement, i.e., including TRR and TRGC in the same water company as ICR, P, and WC, is the substantially greater infrastructure required by TRR and TRGC and the fact that this infrastructure is enjoyed only by TRR residents and a select few residents of ICR (Mr. Cummings, for example). The residents of ICR, P, and WC are largely paying for the TRR/TRGC infrastructure by inclusion of the TRR/TRGC infrastructure depreciation in the cost of service rate base, which determines tariff rates. The two water systems are simply not a good match for inclusion in the same water company, especially considering that such a combination requires the residents of ICR, P, and WC to pay for TRR and TRGC infrastructure without the benefit of enjoying that infrastructure.

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Recommendations to the Arizona Corporation Commission -

1. Declare the Main Extension Agreement, the 1st Amendment to the Main Extension Agreement, the Well Agreement, and all related agreements null and void pursuant to Decision 64360 (i.e., as a result of the Company's failure to comply with Decision 64360, the Main Extension Agreement becomes null and void without further order of the Commission);
2. Order TRR and TRGC to pay amounts owing to the Company from the beginning of their use of water on the golf course from Well #1 (which was ordered transferred to the Company by Decision 64360) consistent with the Utility Division Staff Recommendations with respect to Well #3 based on their 2006 Audit of the Company;
3. Order Harvard Investments to pay all Company legal and accounting fees for this rate case based on their intentional frustration of the Commission's intentions and the waste of the Commission and Resident/Owners' time; and,
4. Utilize whatever authority you have to replace the current Board with a caretaker Board from among the ICRWUA Group and instruct the Board to hold new elections as soon as the Company by-laws have been changed to produce a more representative Board.

Thank you for taking the time to consider our input in this case. We believe the current arrangement is an unjust economic burden on the residents of ICR, P, and WC and the continued failure of TRR and TRGC to comply with Commission Decision 64360 provides a clear basis for declaring the Main Extension Agreement null and void.

Respectfully submitted,

The ICRWUA Group

Larry & Tina Bligh



Craig & Sandi Brown

Gene & Shirley Leasure

Dan & Hillary Peterson

Jerome & Anne-Marie Reid



ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Jimmy & Chris Stoner
End of Complaint

Utilities' Response:

Investigator's Comments and Disposition:

5/21
May 21, 2008

Dear Mr. Reid,

Your email regarding the ICR Water Users Association ("ICR") rate case has been received through the office of Chairman Gleason and the Commissioners. It will be placed on file with the Docket Control Section of the Arizona Corporation Commission ("Commission") and made a part of the record. Your comments will be considered by the Commission before rendering a decision on the ICR rate case.

Staff appreciates your comments and the interest taken on the proposed rate increase. Updates to this proposed increase can be found on our website at www.azcc.gov in eDocket. If you should have any questions relating to this issue, please call me toll free at (800) 222-7000.

Sincerely,

Trish Meeter
Public Utilities Consumer Analyst
Utilities Division
Arizona Corporation Commission
End of Comments

Date Completed: 5/22/2008

Opinion No. 2008 - 68678
