

W-02824A-07-0388



ORIGINAL

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

RECEIVED

1700

Investigator: Trish Meeter

Phone: [REDACTED]

JUL 28 1 17 PM '08

Priority: Respond Within Five Days

AZ CORP COMMISSION
DOCKET CONTROL

Opinion No. 2008 70204

Date: 7/28/2008

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

First:

Last:

Complaint By: Jeremy

Reid

Account Name: multiple customers

Home: (000) 000-0000

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:

7/25

From: Jerome Reid [REDACTED]

Sent: Friday, July 25, 2008 5:34 AM

To: Mundell-Web; Mayes-WebEmail; Pierce-Web; Hatch-WebEmail; Gleason-WebEmail

Cc: 'Dayne Taylor'

Subject: Docket No. W-02824A-07-0388; ICR Water Users Association

Arizona Corporation Commission
DOCKETED

JUL 28 2008

DOCKETED BY [Signature]

Chairman Gleason and Commissioners Mayes, Mundell, Hatch-Miller, and Pierce:

The purpose of this communication is twofold: 1) to describe what "progress" has been made toward settling all the open issues in this rate case by the 4 parties, i.e., ICR Water Users Association ("ICRWUA" or "Company"), Talking Rock Golf Course ("TRGC"), Dayne Taylor, and, the Utility Division Staff ("Staff"); and, 2) in consideration of #1, to set forth 3 alternative proposals for resolution of all the outstanding issues in this rate case, including those raised by Order 64360. There are many owner/residents who believe, based on information available and the conduct of the Board of Directors ("Board"), TRGC, and Harvard Investments ("Harvard", developer of TRR), that they have little or no intention of reaching a settlement among all the parties, including Mr. Taylor and Staff. The Board's conduct reflects a clear dedication to the protection and promotion of the interests of Harvard and Talking Rock Ranch ("TRR") over the interests of all the owner/residents of the Company's service area and reasonableness.

1) Status of Settlement Discussions

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At the July 22, 2008 monthly meeting of the Company's Board of Directors, President Hugh Pryor acknowledged clearly that the Board's discussions to reach a settlement of the open issues in this rate case have been conducted exclusively with Harvard attorneys and have excluded Mr. Taylor and Staff. When asked about Judge Stern's admonition that any agreement to settle the open issues be between all four parties to the rate case, not just the Board and Harvard, Mr. Pryor said that once the Board reaches an agreement with Harvard attorneys, they would make it available to Mr. Taylor for his review. However, he further stated that the Board's intent was to proceed with any agreement they reach with Harvard attorneys without regard to any objections Mr. Taylor may have to that agreement. The fundamental element lacking in these "negotiations" is an arm's length relationship between the Board and Harvard Investments.

In the 90+ days that have transpired since the last hearing in this case on April 16, the lawyers for the Board and TRGC have produced something they call a "water service agreement" ("WSA"), the latest iteration of the April 23 Letter of Understanding ("LOU"). The WSA purports to resolve all the open issues in this rate case. The WSA has not been made available to Mr. Taylor or the Staff, so it is unclear whether it would resolve the open issues in this rate case (e.g., the LOU did not address the failure of TRR and TRGC to comply with Order 64360's requirement that Well #1 be transferred to the Company) and creates new issues (creation of a "special contract" to further delay the rate case and, yet again, avoid compliance with the Commission's Order 64360 and public policies).

These two parties, the Board and TRGC, have failed to include the other two parties, Mr. Taylor and the Staff, in any discussions to develop a settlement agreement other than a meeting on May 29. At that meeting the Board committed to providing Mr. Taylor and Staff with the raw data upon which the Board and TRGC rely to claim that the golf course is subsidizing the residents, but they have yet to produce it.

The Board also has:

- Ø consistently refused to meet with owner/residents of the service area to discuss how to bring this case to a close;
- Ø cancelled regularly scheduled monthly meetings, but held an "emergency" meeting to accept the resignation of the Company's President and elect a new one; and,
- Ø notwithstanding its commitment to the contrary, produced and distributed nothing to the owner/residents, approximately 200 of whom attended the June 3 member meeting, including the power point presentations used by Mr. Taylor and Board member William Meyer, answers to the questions submitted at the meeting, and the results of a survey conducted among the attendees, which Mr. Pryor said the Board would now shred.

2) Alternative Proposed Solutions

In summary, the first proposed solution would have the Main Extension Agreement declared null and void pursuant to Order 64360 and the failure of the Company to satisfy the conditions therein; the second

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proposed solution provides for permanent subcommittees of the Board of the Company to manage and operate the two separate water systems (ADEQ I.D.#s 13-303 (ICR) and 13-263 (TRR)), including separate tariff structures and rates; and, the third proposed solution would be identical to #2 with the exception that TRGC would be required to manage, operate, and maintain its own irrigation system for the golf course, including wells, pipes, pumps, and storage. Because the Board has refused to include Mr. Taylor in any of its discussions with TRGC and refused to meet with owner/residents of the Company for discussion, none of these ideas have had the benefit of discussion among all the parties.

Proposed Solution #1 - "two separate companies"

- two separate and distinct water infrastructure systems (pipes, pumps, etc.) exist on either side of Williamson Valley Road ("WVR"), one on the east side to serve Talking Rock Ranch ("TRR") and the other on the west side to serve Inscription Canyon Ranch ("ICR"), Whispering Canyon ("WC"), and the Preserve ("P");
- these separate infrastructure systems for the pumping, storage, and delivery of water are not and cannot be physically connected pursuant to TRR's agreement with the landowner from whom they acquired well property;
- on the east side of WVR is TRR, a gated, residential development featuring an 18-hole golf course (90 acres), which is not open to the public, including residents of ICR and WC. TRR is planned for 1627 residences at full build out; ICR, WC, and the P are planned for a total of 896 residences at full build out;
- TRR has a substantially larger proposed investment in infrastructure (\$15,160,578 per Order 64360) than the actual investment on the west side of WVR (approximately \$3 million), which reflects a capital investment ratio in the two separate and distinct water infrastructure systems of more than 5:1. The undepreciated value of the infrastructure capital cost is an element of the Company's rate base, which results in residents on the west side of WVR (ICR, WC, P) subsidizing the TRR residents through higher tariffs than would otherwise be required if there were two separate companies managing two separate water systems and calculating two separate tariffs. If the two systems were operated independently, the tariff on the east side of the road (TRR) would be higher than the tariff on the west side of the road. Combining the two systems into a single water company with a single tariff requires the residents on the west side of the road to subsidize the TRR residents and golf course on the east side of the road by virtue of the tariff formula and the fact that all residents pay for all infrastructure, even if they are prohibited from using it;
- TRGC has historically used in excess of 130 million gallons of ground water each year to irrigate the 90 acres of its private golf course and refuses to pay tariff rates for the water it uses in defiance of Order 64360; and,
- Order 64360 provides very clearly: "IT IS FURTHER ORDERED that the approval granted herein to ICR Water users Association, Inc. [to include Talking Rock Ranch in ICRWUA's service area by way of the Main Extension Agreement ("MXA")] shall be conditioned upon ICR Water Users Association complying with the conditions . . . hereinabove or the approval granted herein shall be rendered null and void without further Order of the Commission." (Emphasis added.) Not only have those conditions not been complied with for over 5 years since January 15, 2002, the ICRWUA Board, TRR, TRGC, and their lawyers purposefully attempted to deceive the Commission into believing that they were complying as required when they submitted the "Well Agreement" and the "First Amendment to the Main Extension Agreement". The Utility Division Staff has issued a finding of noncompliance on this very point. The MXA should be declared null and void due to failure of the Company to satisfy the conditions subsequent, reverting ICRWUA to a service area that includes only the west side of Williamson Valley Rd. and the communities of ICR, WC, and the P.

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Proposed Solution #2 - "one company, 2 water systems/tariffs"

- ICRWUA would continue to serve customers in its current service area, but, for the same reasons described in Alternative Solution #1, there would be two "permanent" subcommittees of the Board, each with responsibility for managing and operating one of the separate and distinct water systems, collecting data, establishing tariffs, managing quality, etc.;
- compliance with Order 64360, i.e., transfer of Well #1 to the Company and use of a single tariff for all customers in the Company's service area);
- action by the parties to void, without liability, the "Well Agreement", the 1st Amendment to the MXA, and all other agreements made superfluous by this change;
- create separate operating agreements for each system to complement the existing Company practices of keeping separate records for each community in the service area, reporting financial data by system, etc.;
- revise Articles of Incorporation to provide for 7 Directors;
- revise bylaws to provide for proportionate representation on the Board for the several communities served, with consideration given in this exercise to grouping TRR and the Preserve due to ability to enjoy the golf course and other amenities at TRR (e.g., ICR - 3, (TRR+P) - 3, and WC - 1); and,
- review corporate documents on a regular schedule (e.g., biannually) to make changes to reflect the changing circumstances and environment in which the Company operates.

Proposed Solution #3 - "one company, 2 water systems/tariffs, no golf course"

- same as Proposed Solution #2 except TRGC manages, operates, and maintains its own water source and related infrastructure.

The undersigned owner/residents of the Company plead with you to put a stop to the dilatory tactics being utilized by the Board, TRGC, and Harvard to avoid compliance with Commission orders and which demonstrate obliquely their contempt for the Commission and its authority. The Board and TRGC, contrary to Judge Stern's very clear direction in the April 16 Hearing, have alone been discussing terms of a settlement that requires the endorsement of two additional parties to this rate case, i.e., Mr. Taylor and the Staff. We believe it corrupts the rate case process to permit a party or parties to purposefully and repeatedly show contempt for the process and the public officials charged with responsibility for implementing it. In this case, the Board and TRGC should not be allowed to benefit from their intransigence and deception, as a result of which the Company is now technically insolvent. In light of the foregoing we would encourage the Commission to hold a public comment session in our area to explore all the issues and possible solutions to the rate case, to tour the service area, and get a sense of the owner/residents' level of satisfaction with the conduct of the current Board.

We have reviewed these proposals with Intervener Dayne Taylor, who believes they provide an acceptable framework for an agreement among the parties to settle all the outstanding issues related to

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Commission Order 64360 and this rate case.

Respectfully submitted,

Jerome Reid

Chris Stoner

Jim Stoner

Cc: Dayne Taylor
End of Complaint

Utilities' Response:

Investigator's Comments and Disposition:

7/28
Opinion filed with Docket Control.
End of Comments

Date Completed: 7/28/2008

Opinion No. 2008 - 70204
