

ORIGINAL

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

OPEN MEETING ITEM



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: AUGUST 12, 2008
DOCKET NO: W-01303A-05-0405 AND W-01303A-05-0910

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Teena Wolfe. The recommendation has been filed in the form of an Opinion and Order on:

ARIZONA-AMERICAN WATER COMPANY
(AMEND DECISION NO. 68858)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

AUGUST 21, 2008

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 26, 2008 AND AUGUST 27, 2008

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON - Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF
9 ARIZONA-AMERICAN WATER COMPANY, AN
10 ARIZONA CORPORATION, FOR A
11 DETERMINATION OF THE CURRENT FAIR
12 VALUE OF ITS UTILITY PLANT AND
13 PROPERTY AND FOR INCREASES IN ITS
14 RATES AND CHARGES BASED THEREON FOR
15 UTILITY SERVICE BY ITS PARADISE VALLEY
16 WATER DISTRICT.

DOCKET NO. W-01303A-05-0405

17 IN THE MATTER OF THE APPLICATION OF
18 ARIZONA-AMERICAN WATER COMPANY FOR
19 APPROVAL OF AN AGREEMENT WITH THE
20 PARADISE VALLEY COUNTRY CLUB.

DOCKET NO. W-01303A-05-0910

DECISION NO. _____

OPINION AND ORDER AMENDING
DECISION NO. 68858

21 DATES OF HEARING:

March 10, 2008 (Procedural Conference), May 15 and
16, 2008

22 PLACE OF HEARING:

Phoenix, Arizona

23 ADMINISTRATIVE LAW JUDGE:

Teena Wolfe

24 IN ATTENDANCE:

William A. Mundell, Commissioner
Kristin K. Mayes, Commissioner

25 APPEARANCES:

Mr. Paul M. Li, on behalf of Arizona-American Water
Company;

Mr. Timothy J. Casey, SCHMITT, SCHNECK,
SMYTH & HERROD, P.C., on behalf of the Town of
Paradise Valley;

Mr. Daniel Pozefsky, Chief Counsel, on behalf of the
Residential Utility Consumer Office;

Mr. Robert J. Metli and Mr. Jeffrey Crockett, SNELL &
WILMER, L.L.P., on behalf of The Sanctuary on
Camelback Mountain, Camelback Inn and the Scottsdale
Renaissance Resort; and

Ms. Maureen Scott, Senior Staff Attorney, and Mr.
Charles Hains, Staff Attorney, Legal Division, on behalf
of the Utilities Division of the Arizona Corporation
Commission.

1 **BY THE COMMISSION:**

2 On June 3, 2005, Arizona-American Water Company ("Arizona-American" or "Company")
3 filed with the Arizona Corporation Commission ("Commission") an application for a rate increase for
4 its Paradise Valley Water District ("District" or "Paradise Valley"). The application requested
5 approval of a public safety surcharge for investments by the Company related to improvement of fire
6 flow facilities; approval of an Arsenic Cost Recovery Mechanism ("ACRM") for investments
7 required to comply with federal water arsenic reduction requirements; and approval of a conservation
8 surcharge that would be imposed for usage in the highest consumption block.

9 On July 28, 2006, the Commission issued Decision No. 68858 in these dockets. The parties
10 to Decision No. 68858 were the Company, the Residential Utility Consumer Office ("RUCO") and
11 the Commission's Utilities Division Staff ("Staff").¹ Decision No. 68858 approved the ACRM, and
12 also approved implementation of the two surcharges, the High Block Usage Surcharge ("HBU
13 Surcharge") and the Public Safety Fire Flow Surcharge ("PSFF Surcharge"). Decision No. 68858
14 required both the HBU Surcharge and the PSFF Surcharge to be treated as contributions in aid of
15 construction ("CIAC") for the purpose of providing funding for fire flow improvements desired by
16 the Town of Paradise Valley ("Town"). The HBU Surcharge was set at \$2.15 per thousand gallons,
17 to apply to residential third tier usage (over 80,000 gallons/month), in addition to the normal third tier
18 residential commodity rate charge, and to all commercial second tier usage (over 400,000
19 gallons/month), in addition to the normal second tier commercial commodity rate charge. The PSFF
20 Surcharge was set at \$1.00 per thousand gallons, to apply to residential usage on both the second tier
21 (from 25,001 to 80,000 gallons/month), and third tier residential commodity rate (over 80,000
22 gallons/month) and to commercial usage on the second tier commercial commodity rate (over
23 400,000 gallons/month), in addition to the normal tier charges. Decision No. 68858 required the
24 PSFF Surcharge to be collected from October 1, 2007, until recovery of the District's fire flow
25 projects is complete.

26 Subsequent to implementation of the HBU Surcharge and the PSFF Surcharge, the Town and

27 ¹ The Town of Paradise Valley requested intervention in the rate case on March 20, 2006, but later filed a letter on the
28 date of the hearing, March 27, 2006, withdrawing its intervention request. No other intervention requests were filed in the
rate case.

1 the Resorts expressed concern regarding the resulting increase in some residential and commercial
2 water utility bills. On January 16, 2008, the Town, through its Town Manager, filed in these dockets
3 a letter and an agreement dated January 4, 2008, (“Rate Design Agreement” or “RDA”) signed by the
4 Town, the Sanctuary on Camelback Mountain, the Camelback Inn, and the Scottsdale Renaissance
5 (collectively, “Resorts”), and some homeowners’ association members.

6 On February 27, 2008, the Commission voted to reconsider Decision No. 68858 pursuant to
7 A.R.S. § 40-252 for the limited purpose of reviewing the RDA.

8 At a procedural conference held on March 10, 2008, intervention in these dockets was granted
9 to the Town, and the Resorts.

10 On March 14, 2008, a Procedural Order was issued setting a hearing for May 15, 2008, to
11 reconsider Decision No. 68858 for the limited purpose of reviewing the proposed RDA.

12 In accord with the March 14, 2008, Procedural Order, the Town, the Resorts, RUCO, Staff
13 and the Company prefiled direct testimony of their witnesses. The Resorts, RUCO, and the Company
14 prefiled rebuttal testimony of their witnesses.

15 On April 30, 2008, the Company filed Notice of Filing Certification of Mailing and
16 Publication, certifying that it had provided notice of the hearing to reconsider Decision No. 68858.
17 No further intervention requests were received. Ten public comments were filed in favor of the
18 RDA.

19 The hearing on the proposed RDA commenced as scheduled before a duly authorized
20 Administrative Law Judge of the Commission on May 15, 2008, and concluded on May 16, 2008.
21 The Company, the Town, the Resorts, RUCO, and Staff appeared, presented evidence, and cross-
22 examined witnesses. Late-filed exhibits were filed by the Company and the Resorts. On June 13,
23 2008, the Company, the Resorts, RUCO, and Staff filed their closing briefs, and the matter was taken
24 under advisement.

25 DISCUSSION

26 The RDA

27 The RDA, dated January 4, 2008, memorializes the consensus between representatives of
28 homeowners’ associations, the Town, and the Resorts. A copy of the RDA, which was admitted into

1 evidence at the hearing as Hearing Exhibit T-1, is attached to this Decision as Exhibit A. The RDA
 2 requests that the Commission amend Decision No. 68858 to implement the rate design and
 3 accounting changes described in the RDA as a transitional measure pending the effectiveness of a
 4 final order in Arizona-American's next rate application for the District.²

5 The RDA calls for a reduction in the HBU Surcharge from \$2.15 per thousand gallons to
 6 \$1.00 per thousand gallons. The RDA also proposes resetting the PSFF Surcharge, on March 1,
 7 2008, from the current \$1.00 per thousand gallons to \$0, and establishing a new Public Safety
 8 surcharge on that date. The RDA-proposed new Public Safety surcharge would be implemented in
 9 step increases based on the Company's actual investment costs, by means of a mechanism similar to
 10 the Company's existing ACRM, and would recover Company investments made after March 1, 2008.
 11 A key difference between the current PSFF Surcharge and the RDA-proposed Public Safety
 12 surcharge is that the new surcharge would be computed using a revenue requirement formula instead
 13 of treating the surcharges as CIAC. The RDA's proposed new Public Safety surcharge would be
 14 designed to recover 50 percent of the Company's investment for fire flow improvements phases
 15 completed after March 1, 2008, with the remaining 50 percent to be recovered through the reduced
 16 HBU Surcharge. The RDA further provides that the parties to the agreement will seek to complete
 17 the transition of the HBU Surcharge from CIAC treatment to a revenue requirement formula in the
 18 pending rate case.

19 **Positions of the Parties**

20 Of the parties to this case, only the Resorts and the Town are signatories to the RDA, and they
 21 support Commission adoption of the RDA in its entirety. The Company is not a signatory to the
 22 RDA, but participated in the discussion leading to its development. The Company supports adoption
 23 of the RDA with the exception of the second sentence of Section A, the last sentence of Section C,
 24 and the last sentence of Section D. Staff and RUCO do not support adoption of the RDA, but they do
 25 support a reduction in the HBU Surcharge set by Decision No. 68858, from \$2.15 per thousand
 26 gallons to \$1.00 per thousand gallons, and resetting the PSFF Surcharge set by Decision No. 68858

27 ² Arizona-American filed a rate application including its Paradise Valley Water District on May 2, 2008, in Docket No.
 28 W-01303A-08-0227 et al. The application was found sufficient on July 23, 2008, and has been set to be heard
 commencing on March 16, 2009.

1 from the current \$1.00 to \$0, until the surcharges are reviewed in the District's pending rate
2 proceeding. The parties' arguments in support of their positions on the RDA are summarized below.

3 **The Resorts**

4 The Resorts support adoption of the RDA in its entirety, including a reduction in the HBU
5 Surcharge from \$2.15 per thousand gallons to \$1.00 per thousand gallons, and resetting the PSFF
6 Surcharge to \$0. The Resorts assert that because the RDA's proposals would apply to the same tier
7 commodity rates as the current surcharges, no ratepayers will be worse off, and many, including the
8 Resorts, will be better off. They argue that the District's current rate design does not take into
9 consideration the Resorts' unavoidable minimum water needs, which far exceed the commercial
10 second tier breakpoint of 400,000 gallons per month, and assert that, in the case of the Resorts, the
11 current rate design therefore does not achieve any of its intended conservation goals. They further
12 argue that because the breakpoint is unusually low for the Resorts' needs, application of the HBU
13 Surcharge and the PSFF Surcharge to their second tier usage unfairly impacts them. The Resorts
14 point out that the top commercial tier, at 400,000 gallons per month, is only five times the top
15 residential tier, which begins at 80,000 gallons per month, but that the Resorts can host hundreds of
16 families a night and must serve hundreds of employees. The Resorts presented credible evidence that
17 they have instituted many water conservation measures, but that their water consumption
18 requirements still exceed the second tier commercial breakpoint in the current rate design.

19 The Resorts also argue that the current CIAC treatment of surcharge proceeds results in an
20 inequitable intergenerational transfer, because the time period for collecting the funding is not
21 matched to the time period the assets will be providing benefits. In particular, the Resorts are
22 concerned that under the current surcharge treatment, the Resorts will be required to pay for fire flow
23 infrastructure upgrades that will benefit three new planned resorts in the Districts, but that the new
24 resorts, with whom they will be competing, will not pay for the improvements. The Resorts favor
25 the change from CIAC treatment of the HBU Surcharge and the PSFF Surcharge to a revenue
26 requirement treatment because they believe that depreciating the fire flow assets through a revenue
27 requirement surcharge over the life of the assets (30 to 50 years) will spread costs to ratepayers who
28 will benefit from the improvements, and thereby avoid the intergenerational transfer problem.

1 The Resorts disagree with RUCO's assertion that the RDA proposes ratepayer funding of
2 undetermined costs. The Resorts state that instead, under the proposed ACRM-like mechanism for
3 the new Public Safety surcharge, the step increases would recover construction costs only after an
4 opportunity for auditing plant already placed in service. The Resorts also argue that any concerns
5 RUCO has regarding the Company's spending for fire flow infrastructure can be addressed in the
6 pending rate proceeding. The Resorts also take issue with RUCO's assertion that the proposed RDA
7 surcharges would shift recovery of costs from high-end users to low-end users, stating that the RDA
8 proposed surcharges would only affect the second and third usage tiers to which they are currently
9 applied, and would leave the residential first usage tier unaffected, as it is now. In response to
10 RUCO's argument that the District's ratepayers will be no better off under the RDA if it is adopted,
11 the Resorts assert that at a minimum, residential customers will be better off under the RDA proposal
12 when the three new resorts are completed and become customers of the Company, because with a
13 revenue requirement surcharge, the new resorts will help current ratepayers pay the costs of fire flow
14 improvements.

15 **The Town**

16 The Town supports adoption of the RDA in its entirety. The Town's witness testified that the
17 Resorts' and Town residents' reactions to the surcharges warranted input from the Town in this
18 proceeding, in an effort to obtain modest interim rate relief for Town residents and the Resorts. The
19 Town's witness Councilwoman Hamway stated that at the time the Town withdrew its Motion to
20 Intervene in the rate case leading to Decision No. 68858, the Town supported the Company's fire
21 flow related rate increase request, but that soon after Decision No. 68858, the Town realized that
22 implementation of the surcharges authorized by that Decision had resulted in unexpected impacts to
23 the Town's residents, and significant unintended consequences for the Resorts. The witness testified
24 that implementation of the surcharges placed the Resorts at a competitive disadvantage to their
25 competitors located outside the District's service area, and that the disadvantage in turn could have a
26 direct and substantial impact on the Town, because resort bed and sales taxes provide approximately
27 40 percent of the Town's total revenues. Councilwoman Hamway testified that after hearing
28 concerns from the Resorts and Town residents over many months, the Town brought the Resorts and

1 Town residents together and served mainly as a facilitator to help develop a consensus plan, and
2 eventually the RDA.

3 Councilwoman Hamway testified that the RDA proposal provides a mechanism to ensure that
4 future beneficiaries of the fire flow improvements, both residential and commercial, will pay for the
5 improvements. She testified that the Town supports the RDA because it rectifies in part the
6 unexpected and unintended effects of the surcharges on the Town's residential ratepayers and on the
7 Resorts, and balances rate increases equally and equitably between the Resorts and the Town's
8 residents. The Town also submits that interim relief in the form of the RDA proposal will allow the
9 Town further time to review, discuss, and implement meaningful water conservation measures
10 intended to strongly encourage high consumption customers to conserve water.

11 **Arizona-American**

12 Arizona-American does not support adoption of the RDA in its entirety. The Company
13 requests that three sentences be deleted from the RDA proposal. Arizona-American believes that
14 adoption of the RDA with those three sentences would limit the Company's application of proceeds
15 from the new surcharges proposed by the RDA, and therefore opposes their adoption. The Company
16 believes that the second sentence of Section A implies that the HBU Surcharge will terminate once
17 Arizona-American recovers all of its Paradise Valley Fire Flow Improvement Project ("FFIP") costs
18 incurred as of February 29, 2008, and that this would inappropriately limit the amount of the
19 Company's costs that can be recovered via the HBU Surcharge. Arizona-American also disagrees
20 with the last sentence of Section C, which limits the use of the proceeds of the new Public Safety
21 surcharge to offset only the Company's FFIP investment made after March 1, 2008. The Company
22 wishes to apply the proceeds from the new Public Safety surcharge to pay for FFIP-related
23 investment made before March 1, 2008, including deferral costs associated with that investment.
24 Finally, the Company is concerned with an ambiguity presented by the last sentence of Section D,
25 which the Company believes could be read to mean that it can only use the new Public Safety
26 surcharge to recover up to 50 percent of the FFIP-related investment it makes after March 1, 2008.
27 The Company believes this would be inappropriate.

28 ...

1 Arizona-American believes that Commission adoption of the RDA, with three revisions, will
2 benefit the District's customers by providing an immediate rate reduction, and will benefit Arizona-
3 American by creating a mechanism for the Company to recover and finance the ongoing construction
4 cost of its FFIP. The Company echoes the Resorts' and Town's arguments that the existing CIAC
5 treatment of the surcharge proceeds leads to intergenerational transfer. Like the Resorts and the
6 Town, the Company argues in favor of switching to the revenue requirement based surcharges
7 contemplated by the RDA, which would spread cost recovery of the FFIP-related investments over
8 the life of the assets.

9 The Company objects to Staff's recommendation, joined by RUCO, that the surcharges be
10 reduced at this time, with further consideration of funding mechanisms for the FFIP deferred to the
11 pending rate case. The Company expresses concern with what it views as decreasing Commission
12 support for the use of revenue-based surcharge mechanisms to fund discretionary projects such as the
13 FFIP. The Company has suspended the construction of Phase 3B, and planning of Phase 4, of the
14 FFIP, stating that it took this step in order to minimize the financial risk of being unable to timely
15 recover its FFIP-related costs in the event the RDA is not approved in this proceeding. Arizona-
16 American states that due to the Company's negative net income, it cannot absorb the regulatory lag
17 on a discretionary project such as the FFIP without assurance of recovery. The Company states that
18 if the surcharges are reduced as Staff and RUCO recommend, without being converted to revenue
19 requirement based surcharges, the surcharge proceeds will not generate sufficient CIAC funding to
20 offset the costs of funding Phase 3B construction and Phase 4 planning of the FFIP.

21 RUCO

22 RUCO recommends rejection of the RDA, and approval of Staff's recommendation to reduce
23 the HBU Surcharge from \$2.15 per thousand gallons to \$1.00 per thousand gallons, and to eliminate
24 the PSFF Surcharge until the fire flow issue can be examined in the Company's pending rate
25 proceeding. RUCO cites several reasons for its opposition to the RDA's ACRM-like surcharge
26 proposal. RUCO believes that the RDA proposal would only consider cost increases in one category
27 of expenses while ignoring changes in other expense categories, revenues, cost of capital, and rate
28 base. RUCO is also concerned that the RDA proposal would fund an unspecified number of future

1 rate hikes for projects with as-yet undetermined costs, and would unfairly allow the Company to earn
2 a rate of return on plant funded by ratepayer-supplied funds; and therefore opposes it. RUCO asserts
3 that the RDA's proposed surcharge mechanism constitutes single-issue ratemaking, and should not be
4 considered absent extreme circumstances, which do not exist in the case of discretionary fire flow
5 improvements. RUCO is also critical of the RDA's failure to specify how the proposed ACRM-like
6 mechanism would be allocated to end-users, and argues that Paragraph III (E) is ambiguous and
7 subject to interpretation on this point.

8 **Staff**

9 Staff recommends that the Commission approve those portions of the RDA that would reduce
10 the HBU Surcharge and eliminate the PSFF Surcharge at this time, in order to ameliorate the impact
11 of the surcharges, until they can be further examined in the Company's pending rate proceeding.
12 Staff recommends that the HBU Surcharge be reduced to \$1.00 per thousand gallons, and that the
13 PSFF Surcharge be reset to \$0. Staff believes that it would be inappropriate to alter the CIAC
14 treatment of the surcharges authorized in Decision No. 68858 in this narrow and limited proceeding,
15 and argues that a determination on the RDA proposals, including the ACRM-like mechanism that
16 would fund future fire flow improvements, as well as the reclassification of funds collected pursuant
17 to the surcharges, should be deferred to the pending rate case.

18 Staff asserts that there is a likelihood of broader based input on the RDA issues in the context
19 of the pending rate case, and that the rate proceeding will allow a comprehensive and full
20 consideration of all options. Staff is in agreement with RUCO that the RDA contains some
21 ambiguities and is subject to interpretation, and believes the pending rate proceeding is the proper
22 venue for clarification.

23 Staff states that it sees no reason why immediate rate relief cannot be given by reducing the
24 HBU Surcharge to \$1.00 per thousand gallons and resetting the PSFF Surcharge to \$0 at this time,
25 while awaiting more comprehensive consideration of the proposed change from CIAC treatment to
26 revenue-requirement treatment in the pending rate case. Staff believes that the Company would not
27 be harmed by adoption of Staff's recommendation, as the Company has already suspended some
28 phases of the FFIP where construction costs have exceeded the funding received to date. Staff further

1 recommends that if the provisions of the RDA are found to be non-severable, the Commission should
2 reject the entire RDA.

3 **Analysis and Conclusion**

4 While the Company argues that its three areas of disagreement with the RDA are “technical in
5 nature and have no substantive impact on the RDA,” it simultaneously argues that the Commission
6 should not adopt the three sentences in the RDA with which it disagrees. Arizona-American argues
7 that the Town and the Resorts oppose Staff’s recommendation to reduce the HBU Surcharge and
8 reset the PSFF Surcharge to \$0, while deferring consideration of the proposed change to ACRM-like
9 revenue requirements-based surcharges to the pending rate case. A review of the record reveals that
10 while the Resorts support adoption of the RDA in its entirety, the Resorts’ witness was not
11 completely satisfied with the RDA. The witness testified that while he supports the RDA, and does
12 not support other proposals in this proceeding, he believes that the RDA is “not an optimal solution.”³
13 The record is also clear that while the Town’s position is supportive of the RDA in its entirety, the
14 issue of choosing between the Staff’s proposal or maintaining the status quo with existing surcharges
15 had not been put to a Town Council vote. The Town’s witness testified that without going back to
16 the Town Council, she could not give an opinion for the Town other than full support of the RDA,
17 because the Town Council had voted to support the RDA.⁴

18 No parties to this proceeding oppose the proposed reductions in the HBU Surcharge and the
19 PSFF Surcharge. The Town and the Resorts, like RUCO and Staff, clearly support those portions of
20 the RDA which call for reducing the surcharges pending the rate proceeding. The Town’s witness
21 testified that it was the Resorts’ and Town residents’ reactions to implementation of the surcharges
22 that led the Town to attempt to obtain modest interim rate relief for Town residents and the Resorts.
23 The Resorts presented credible evidence that despite their institution of water conservation measures,
24 their water consumption needs exceed the second tier commercial breakpoint of 400,000 gallons per
25 month in the current rate design, and they believe this unfairly impacts them. While we do not make
26 a finding in this proceeding regarding the commodity break points or the rate design in general, it is

27 _____
28 ³ Tr. at 244.

⁴ Tr. at 147-148.

1 clear that the commercial and residential commodity rate design should be analyzed in the pending
2 rate proceeding. While we make no determination on the issue of the RDA's proposed switch from
3 CIAC treatment to revenue requirement treatment of the surcharges, it is clear that it is an issue that
4 also merits a fuller consideration than was afforded in this proceeding.

5 As recognized by all the parties, regardless of our findings in this proceeding, the issues in
6 this case will be reviewed in the full context of the rate case filed by the Company on May 2, 2008,
7 and set to be heard on March 16, 2009. Even if we were to adopt the RDA in this proceeding, either
8 as proposed by the Company or by the Town and the Resorts, the issues would be open for
9 reevaluation in the pending rate case. Clearly, the pending rate proceeding provides a more
10 reasonable and appropriate venue for a full examination and analysis of all aspects of the rate design,
11 surcharge levels, and other FFIP funding issues. However, based on the evidence presented in this
12 proceeding, we find that it is in the public interest to provide, in this proceeding, the interim relief
13 sought by the Resorts and the Town and supported by RUCO and Staff, pending a more complete
14 review in the rate case. We will therefore require the Company to implement the HBU Surcharge
15 reduction from \$2.15 per thousand gallons to \$1.00 per thousand gallons, and to reset the PSFF
16 Surcharge from \$1.00 per thousand gallons to \$0. We will revisit the entirety of the rate design and
17 FFIP funding issues in the pending rate proceeding.

18 * * * * *

19 Having considered the entire record herein and being fully advised in the premises, the
20 Commission finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. Arizona-American is an Arizona public service corporation engaged in the business of
23 providing water and wastewater utility service to customers in its various water and wastewater
24 districts located in portions of Maricopa, Mohave and Santa Cruz counties in Arizona pursuant to
25 authority granted by the Commission. Arizona-American currently provides service to
26 approximately 131,000 customers throughout its districts.

27 2. On June 3, 2005, Arizona-American filed with the Commission an application for a
28 rate increase for its Paradise Valley Water District. The application requested approval for the

1 District of a public safety surcharge for investments by the Company related to improvement of fire
2 flow facilities; an Arsenic Cost Recovery Mechanism for investments required by the Company to
3 comply with federal water arsenic reduction requirements; and approval of a conservation surcharge
4 that would be imposed for usage in the highest consumption block.

5 3. On July 28, 2006, the Commission issued Decision No. 68858 in these dockets,
6 addressing the relief requested in the Company's June 3, 2005 application.

7 4. The parties to Decision No. 68858 were the Company, RUCO and Staff.

8 5. The Town of Paradise Valley requested intervention in the rate case, on March 20,
9 2006, but later filed a letter on the date of the hearing, March 27, 2006, withdrawing its intervention
10 request. No other intervention requests were filed in the rate case.

11 6. Decision No. 68858 set the HBU Surcharge at \$2.15 per thousand gallons for all third-
12 tier usage (over 80,000 gallons/month), in addition to the normal third-tier charge.

13 7. Decision No. 68858 set the PSFF Surcharge at \$1.00 per thousand gallons, to apply to
14 residential usage on both the second tier (from 25,001 to 80,000 gallons/month) and third tier
15 commodity rate (over 80,000 gallons/month), and to commercial usage on the second tier commercial
16 commodity rate (over 400,000 gallons/month), in addition to the normal tier charges, to be collected
17 from October 1, 2007, until recovery of fire flow projects is complete.

18 8. On January 16, 2008, the Town of Paradise Valley, through its Town Manager, filed
19 in these dockets a letter and a proposed Rate Design Agreement dated January 4, 2008.

20 9. At a Commission Staff Meeting noticed for and held on February 27, 2008, the
21 Commission voted to reconsider Decision No. 68858 pursuant to A.R.S. § 40-252 for the limited
22 purpose of reviewing the Rate Design Agreement.

23 10. On February 28, 2008, a Procedural Order was issued setting a procedural conference
24 for March 10, 2008, for the purpose of allowing the parties to Decision No. 68858 to discuss an
25 appropriate procedural schedule for reconsideration of the Decision.

26 11. The procedural conference convened as scheduled on March 10, 2008. At the
27 procedural conference, intervention was granted to the Town, Sanctuary on Camelback Mountain, the
28 Camelback Inn, and the Scottsdale Renaissance, and the parties discussed procedural issues related to

1 the reconsideration of Decision No. 68858 for the limited purpose of reviewing the proposed Rate
2 Design Agreement.

3 12. On March 14, 2008, a Procedural Order was issued to govern the preparation and
4 conduct of the hearing on the proposed Rate Design Agreement.

5 13. On March 28, 2008, the Resorts filed direct testimony of its witnesses.

6 14. On March 31, 2008, the Town filed direct testimony of its witness.

7 15. On April 24, 2008, RUCO filed direct testimony of its witness.

8 16. On April 25, 2008, Staff filed direct testimony of its witness.

9 17. Also on April 25, 2008, the Company filed direct testimony of its witness.

10 18. On April 30, 2008, the Company filed Notice of Filing Certification of Mailing and
11 Publication.

12 19. On May 6, 2008, the Company filed rebuttal testimony of its witness.

13 20. On May 9, 2008, RUCO filed rebuttal testimony of its witness.

14 21. On May 9, 2008, the Resorts filed rebuttal testimony of its witness.

15 22. Public comments on the proposed Rate Design Agreement were filed on May 6, May
16 12, May 15 (seven comments), and June 12, 2008.

17 23. The hearing on the proposed Rate Design Agreement commenced as scheduled on
18 May 15, 2008 and concluded on May 16, 2008. The Company, the Town, the Resorts, RUCO and
19 Staff appeared, presented evidence, and cross-examined witnesses.

20 24. On May 21, 2008, the Company filed its late-filed exhibits.

21 25. On May 27, 2008, the Resorts filed their late-filed exhibits.

22 26. On June 13, 2008, the Company, the Resorts, RUCO, and Staff filed their closing
23 briefs, and the matter was taken under advisement.

24 27. There is a likelihood of broader based input on the RDA issues in the context of the
25 pending rate case for the District.

26 28. The pending rate case for the District provides an appropriate venue for a
27 comprehensive consideration of all the RDA issues raised in this proceeding.

28 ...

1 29. No parties to this proceeding oppose the proposed reductions in the HBU Surcharge
2 and the PSFF Surcharge.

3 30. As an interim measure pending full review of the issues associated with the RDA in
4 the pending rate case for the District, the Company should be required to implement the HBU
5 Surcharge reduction from \$2.15 per thousand gallons to \$1.00 per thousand gallons, and to reset the
6 PSFF Surcharge from \$1.00 per thousand gallons to \$0.

7 31. Other than the interim reduction of the surcharges, a determination on all aspects of
8 the RDA, including but not limited to the ACRM-like mechanism that would fund future fire flow
9 improvements, and the reclassification of funds collected pursuant to the surcharges, should be
10 deferred to the pending rate case for the District.

11 **CONCLUSIONS OF LAW**

12 1. Arizona-American Water Company is a public service corporation within the meaning
13 of Article XV of the Arizona Constitution and A.R.S. Sections 40-250 and 40-241.

14 2. The Commission has jurisdiction over the Company and the subject matter of the
15 applications.

16 3. The Commission voted on February 27, 2008, to reconsider Decision No. 68858
17 pursuant to A.R.S. § 40-252 for the limited purpose of reviewing the proposed RDA.

18 4. Notice of the applications was provided in the manner prescribed by law.

19 5. The rates and charges for the Paradise Valley Water District approved herein, are just
20 and reasonable and shall be approved.

21 **ORDER**

22 IT IS THEREFORE ORDERED that pursuant to the authority granted by A.R.S. § 40-252,
23 Decision No. 68858 is hereby amended to reduce the amount of the High Block Usage Surcharge
24 from \$2.15 per thousand gallons to \$1.00 per thousand gallons and to reset the Public Safety Fire
25 Flow Surcharge from \$1.00 to \$0, effective September 1, 2008.

26 ...

27 ...

28 ...

1 IT IS FURTHER ORDERED that High Block Usage Surcharge, the Public Safety Fire Flow
2 Surcharge, and all other issues related to the Rate Design Agreement filed in this docket on January
3 16, 2008, shall be fully examined and analyzed in the pending rate case proceeding in Docket No.
4 W-01303A-08-0227.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
7
8

9 CHAIRMAN _____ COMMISSIONER

10
11 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

12
13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Director of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this _____ day of _____, 2008.

18 _____
19 BRIAN C. McNEIL
20 EXECUTIVE DIRECTOR

21 DISSENT _____

22
23 DISSENT _____
24
25
26
27
28

1 SERVICE LIST FOR: ARIZONA-AMERICAN WATER COMPANY

2 DOCKET NOS.: W-01303A-05-0405 AND W-01303A-05-0910

3

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5 Phoenix, Arizona 85028
Attorney for Arizona-American Water Company

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8 Phoenix, Arizona 85024

9

9 Robert J. Metli
Jeffrey Crockett
10 SNELL & WILMER, LLP
One Arizona Center
11 400 East Van Buren Street
Phoenix, Arizona 85004
12 Attorneys for Paradise Valley Country Club,
Sanctuary on Camelback Mountain, the
Camelback Inn, and the Scottsdale Renaissance

13

14 Timothy J. Casey
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15 Phoenix, Arizona 85014
Attorney for the Town of Paradise Valley

16

17 Daniel W. Pozefsky, Attorney
RESIDENTIAL UTILITY
CONSUMER OFFICE
18 1110 West Washington Street, Suite 220
Phoenix, Arizona 85007

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20 Janice Alward, Chief Counsel
Charles Hains
Maureen Scott
21 Legal Division
ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
Phoenix, Arizona 85007

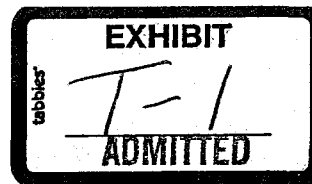
23

24 Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
25 1200 West Washington Street
Phoenix, Arizona 85007

26

27

28



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 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 PARADISE VALLEY DISTRICT

DOCKET NO. W-01303A-05-0405

IN THE MATTER OF THE APPLICATION OF ARIZONA-AMERICAN WATER COMPANY, INC., AN ARIZONA CORPORATION, FOR APPROVAL OF AN AGREEMENT WITH THE PARADISE VALLEY COUNTRY CLUB

DOCKET NO. W-01303A-05-0910

RATE DESIGN AGREEMENT

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I. INTRODUCTION

On July 28, 2006, the Arizona Corporation Commission ("Commission") issued Decision No. 68858 concerning the Paradise Valley Water District of Arizona-American Water Company ("Arizona-American"). Among other things, the Decision authorized Arizona-American to collect a "High Block" surcharge, as well as a "Public Safety" surcharge, to fund projects needed to satisfy fire-flow requirements sought by the Town of Paradise Valley, to encourage water conservation, to alleviate future rate increases for customers in the District and to slightly modify Decision No. 68303 which approved an accounting order applicable to the fire-flow project. On November 14, 2005, the Commission issued Decision No. 68303 which approved a deferral of associated depreciation expense and post-in-service AFUDC.

1 Since the issuance of Decision No. 68858, many customers have objected to the large
 2 magnitude of the rate increase imposed on high-usage accounts and timely rate relief is sought.
 3 Similarly, several resorts within the Paradise Valley Water District have stated that the
 4 surcharges have increased water bills to levels significantly higher than bills for resorts receiving
 5 municipal water from the Cities of Phoenix and Scottsdale, thereby putting the Paradise Valley
 6 resorts at a competitive disadvantage.

7 Over the last several months, representatives from Paradise Valley Homeowners'
 8 Associations, the Town of Paradise Valley, Paradise Valley resorts, and Arizona-American have
 9 been discussing the possible substance of an agreement that would address the various parties'
 10 concerns, while preserving the Commission's three goals of funding fire-flow projects,
 11 encouraging water conservation, and alleviating future rate increases. The Town of Paradise
 12 Valley's preferences were expressed in its Resolution No. 1156 dated September 27, 2007.

13 This Rate Design Agreement has been reached as a result.

14 **II. PARTIES**

15 The parties to this Rate Design Agreement are described in the following table:

<u>Party</u>	<u>Description</u>	<u>Authorized Signer</u>
Town of Paradise Valley	Municipal Corporation	James C. Bacon, Jr., Town Manager
Arizona-American Water Company	Water Utility	Paul Townsley, President
Sanctuary on Camelback Mountain	Resort	Robert J. Metli, Attorney
Camelback Inn	Resort	Robert J. Metli, Attorney
Scottsdale Renaissance	Resort	Robert J. Metli, Attorney
Camelhead Estates II HOA	Homeowners' Association	Janice D. Stoney, Resident
Clearwater Hills Improvement Association	Homeowners' Association	Mary Lou Reid, Resident and Executive Director
Finisterre HOA	Homeowners' Association	David Pulatie, Resident

16 These parties may be referred to jointly as the "Parties" or individually as a "Party."

1 **III. AGREEMENT**

2 The Parties ask the Commission, pursuant to A.R.S. § 40-252, to amend Decision No.
3 68858 to implement the rate design and accounting changes described below on March 1, 2008,
4 as a transitional measure until a final order is effective in Arizona-American's next rate case for
5 the Paradise Valley Water District.¹

6 A. On March 1, 2008, reduce the High Block surcharge from \$2.15 to \$1.00
7 per 1000 gallons, but continue to account for the proceeds from this surcharge as
8 Contributions in Aid of Construction ("CIAC"). The High Block surcharge would
9 recover all un-recovered fire-flow costs incurred as of February 29, 2008, if any,
10 including the previous Commission authorized accounting cost deferrals.

11 B. On March 1, 2008, reset the existing \$1.00 per 1,000 gallons Public Safety
12 surcharge to \$0.00. The proposed Public Safety surcharge would subsequently be re-
13 established in "ACRM" like step increase filings based on actual investment costs which
14 would occur upon completion of each fire-flow construction phase, with step increases
15 subject to an earnings test of 10.4% return on equity. Therefore, the Commission can use
16 the finding of Fair Value in Decision No. 68858 to determine the Fair Value with a
17 subsequent Public Safety step increase – just as presently occurs with ACRM filings.

18 C. The Public Safety surcharge would continue to apply only to the
19 commodity portion of the rate and would very likely remain well below the existing
20 amount of \$1.00 per 1,000 gallons as a result of its conversion to a revenue requirement
21 surcharge. The first step increase filing is anticipated in late 2008 upon completion of
22 Phase 3 of Paradise Valley's fire flow project (already under construction). An
23 approximate estimate of the first step increase in the Public Safety surcharge is \$0.125
24 per 1,000 gallons. The proposed Public Safety surcharge would recover investments

¹ Arizona-American presently plans to file this rate case not later than May 2008.

1 made after March 1, 2008, under a cost recovery mechanism using a revenue
2 requirements formula instead of CIAC.²

3 D. For fire flow phases completed after March 1, 2008, the Public Safety
4 surcharge would be designed to recover 50% of the investment. The revised High Block
5 surcharge, therefore, would be allocated the remaining 50% to recover, at least until a
6 final order is effective in Arizona-American's next rate case for the Paradise Valley
7 Water District.

8 E. All other rate design features of these two surcharges and accounting
9 deferrals would remain as they presently exist until modified by a final order in Arizona-
10 American's next rate case for the Paradise Valley Water District.

11 F. The Parties will seek to complete the transition of the High Block
12 surcharge from a CIAC to a revenue-requirement formula in proposals to the
13 Commission in the next rate case. The parties will also provide the Commission with
14 proposed enhancements to the existing conservation-oriented rate design.

15 G. The current construction schedule for the fire-flow projects in the Paradise
16 Valley Water District is set forth in the following table:

<u>Phase</u>	<u>Start</u>	<u>Completion</u>	<u>Cost Estimate</u>
Phase 3	1/1/08	12/31/08	\$3.626 M
Phase 4	1/1/09	12/31/09	\$4.346 M
Phase 5	1/1/10	12/31/10	TBD
Phase 6	1/1/11	12/31/11	TBD
Phase 7	1/1/12	12/31/12	TBD

² As of November 30, 2007, the total un-recovered fire-flow costs remaining (including deferrals) were \$795,622. Presently, \$3,018,867 of the fire-flow costs are also in rate base and are considered recovered for purposes of determining costs to be recovered in a re-designed High Block surcharge.

1 **IV. GENERAL PROVISIONS**

2 A. The Parties have entered into this Rate Design Agreement to resolve the
3 disputed matters between them and to avoid the time, expense, inconvenience, and
4 uncertainty attendant to litigation of these matters.

5 B. This Rate Design Agreement represents a compromise in the positions of
6 the parties hereto. By entering into this Rate Design Agreement, no Party acknowledges
7 the validity or invalidity of any particular method, theory or principle of regulation, or
8 agrees that any method, theory or principle of regulation employed in reaching a
9 settlement is appropriate for resolving any issue in any other proceeding, including
10 (without limitation) any issues that are deferred to a subsequent rate proceeding. Except
11 as specifically agreed upon in this Rate Design Agreement, nothing contained herein will
12 constitute a settled regulatory practice or other precedent.

13 C. All negotiations and other communications relating to this Rate Design
14 Agreement are privileged and confidential, and no party is bound by any position asserted
15 during the negotiations, except to the extent expressly stated in this Rate Design
16 Agreement.

17 D. The Parties authorize Arizona-American to file this Rate Design
18 Agreement in Docket No. W-01303A-05-0405, *et. al.*, together with a supporting motion
19 and explanatory schedules.

20 E. This Rate Design Agreement may be executed in counterparts.

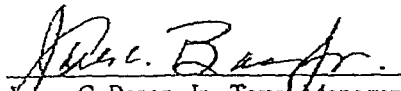
21 F. This Rate Design Agreement is effective as of January 4, 2008.

22 [Document continues on next page].

V. SIGNATURES

Town of Paradise Valley

Arizona-American Water Company



James C. Bacon, Jr., Town Manager
Dated January __, 2008

Paul Townsley, President
Dated January __, 2008

Camelhead Estates II HOA

Clearwater Hills Improvement Association

Janice D. Storey, Resident
Dated January __, 2008

Mary Lou Reid, Executive Director & Resident
Dated January __, 2008

Finisterre HOA

Sanctuary on Camelback Mountain
Camelback Inn
Scottsdale Renaissance

David Pulatie, Resident
Dated January __, 2008

Robert J. Metli, Attorney in Fact
Dated January __, 2008

V. SIGNATURES

Town of Paradise Valley

Arizona-American Water Company

James C. Bacon, Jr., Town Manager
Dated January __, 2008

Paul Townsley, President
Dated January __, 2008

Camelhead Estates II HOA

Clearwater Hills Improvement Association

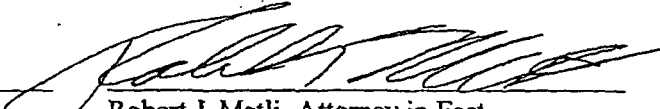
Janice D. Storey, Resident
Dated January __, 2008

Mary Lou Reid, Executive Director & Resident
Dated January __, 2008

Finisterre HOA

Sanctuary on Camelback Mountain
Camelback Inn
Scottsdale Renaissance

David Pulatie, Resident
Dated January __, 2008


Robert J. Metli, Attorney in Fact
Dated January 8, 2008

V. SIGNATURES

Town of Paradise Valley

Arizona-American Water Company

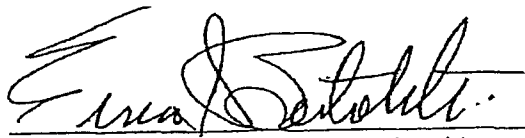
James C. Bacon, Jr., Town Manager
Dated January __, 2008

Paul Townsley, President
Dated January __, 2008

Camelhead Estates II HOA

Clearwater Hills Improvement Association

Janice D. Storey, Resident
Dated January __, 2008


Ermo S. Bartoletti, Resident and President
Dated January 3, 2008

Finisterre HOA

**Sanctuary on Camelback Mountain
Camelback Inn
Scottsdale Renaissance**

David Pulatie, Resident
Dated January __, 2008

Robert J. Metli, Attorney in Fact
Dated January __, 2008

FROM :

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V. SIGNATURES

Town of Paradise Valley

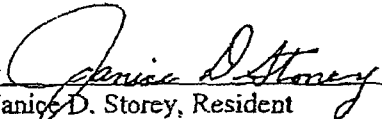
Arizona-American Water Company

James C. Bacon, Jr., Town Manager
Dated January __, 2008

Paul Townsley, President
Dated January __, 2008

Camelhead Estates II HOA

Clearwater Hills Improvement Association


Janice D. Storey, Resident
Dated January 3, 2008

Mary Lou Reid, Executive Director & Resident
Dated January __, 2008

Finisterre HOA

Sanctuary on Camelback Mountain
Camelback Inn
Scottsdale Renaissance

David Pulatie, Resident
Dated January __, 2008

Robert J. Metli, Attorney in Fact
Dated January __, 2008

V. SIGNATURES

Town of Paradise Valley

Arizona-American Water Company

James C. Bacon, Jr., Town Manager
Dated January __, 2008

Paul Townsley, President
Dated January __, 2008

Camelhead Estates II HOA


Clearwater Hills Improvement Association

Janice D. Storey, Resident
Dated January __, 2008

Mary Lou Reid, Executive Director & Resident
Dated January __, 2008

Finisterre HOA

**Sanctuary on Camelback Mountain
Camelback Inn
Scottsdale Renaissance**


David Pulatic, Resident
Dated January 3, 2008

Robert J. Metli, Attorney in Fact
Dated January __, 2008