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Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION
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SEP 30 2008

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BEFORE THE ARIZONA CORPORATION COMMISSION

7 IN THE MATTER OF THE APPLICATION
 8 OF CHAPARRAL CITY WATER
 9 COMPANY, INC., AN ARIZONA
 10 CORPORATION, FOR A
 11 DETERMINATION OF THE FAIR VALUE
 12 OF ITS UTILITY PLANT AND
 13 PROPERTY AND FOR INCREASES IN
 14 ITS RATES AND CHARGES FOR
 15 UTILITY SERVICE BASED THEREON.

DOCKET NO. W-02113A-07-0551

**COMPANY'S REPLY IN SUPPORT
OF MOTION FOR APPROVAL OF
INTERIM RATES**

(EXPEDITED ACTION REQUESTED)

13 Chaparral City Water Company, Inc. ("the Company") hereby submits its reply in
 14 support of its motion for an order from the Arizona Corporation Commission (the
 15 "Commission") authorizing the immediate implementation of interim rates. As explained
 16 in the Company's Motion, the Company seeks an interim revenue increase of \$1,349,246
 17 (18.12 percent) over its 2006 adjusted test year revenues, which is less than half of the
 18 permanent increase being sought in this case.

19 The Commission's Utility's Division ("Staff") has responded in an ambiguous
 20 fashion, claiming that the Company's Motion and supporting testimony do not support
 21 interim rate relief, but also suggesting that such relief may be appropriate following a
 22 hearing. The Residential Utility Consumer Office ("RUCO") has responded and
 23 recommended that interim rate relief be denied. Unfortunately, neither party appears to
 24 understand the basis for the imposition of interim rates under the unique circumstances of
 25 this case, and, as a result, their arguments are largely irrelevant.

1 **I. INTERIM RATE RELIEF IS AUTHORIZED UNDER ARIZONA LAW**
2 **AND WARRANTED UNDER THE CIRCUMSTANCES PRESENTED.**

3 **A. Interim Rates Are Authorized When Permanent Rate Relief Is Delayed.**

4 While Staff and RUCO generally acknowledge the Company's circumstances, both
5 parties appear to believe that unless an "emergency" is demonstrated, interim rates cannot
6 be authorized by the Commission. This is not the law in Arizona. The Arizona Attorney
7 General has identified two circumstances under which interim rates may be authorized.
8 *See Op. Att'y Gen. 71-17 at 50.*¹ First, interim rates may be authorized "as an emergency
9 measure when sudden change brings hardship to a company, when the company is
10 insolvent, or when the condition of the company is such that its ability to maintain service
11 pending a formal rate determination is in serious doubt." *Id.* Alternatively, interim rates
12 may be authorized when "the Commission [is unable] to grant permanent rate relief within
13 a reasonable time." *Id.* The basis for the second circumstance is the Arizona Supreme
14 Court's decision in *Ariz. Corp. Comm'n v. Mountain States Tel. & Tel. Co.*, 71 Ariz. 404.
15 228 P.2d 749 (1951), holding that when the rates of a public utility have been determined
16 by a court to be confiscatory, the court may authorize the utility to set interim rates to be
17 charged until the Commission establishes reasonable rates.

18 In his opinion, the Attorney General reasoned that if the courts have the authority
19 to authorize utilities to set their own rates on an interim basis after existing rates have
20 been invalidated, the Commission must also have such authority. *Op. Att'y Gen. 71-17 at*
21 *46, 50.* Notably, in this situation, the demonstration of an "emergency" is not required.
22 Instead, the basis for rate relief is delay in authorizing permanent rate increases. As a
23 result, Staff and RUCO's discussion concerning whether Chaparral City faces an

24 ¹ Although Attorney General Opinions are not binding, the Arizona Court of Appeals has cited
25 with approval and followed *Op. Att'y Gen. 71-17*. *See, e.g., RUCO v. Ariz. Corp. Comm'n*, 199
26 *Ariz. 588, 591, 20 P.3d 1169, 1172 (App. 2001); Scates v. Ariz. Corp. Comm'n*, 118 Ariz. 531,
535, 578 P.2d 612, 616 (App. 1978). Moreover, both Staff and RUCO have cited and rely on *Op.*
Att'y Gen. 71-17 as authoritative. *See Staff Resp. at 4; RUCO Resp. at 3, n.7.*

1 emergency is simply irrelevant. The key here is whether permanent rate relief has been
2 unreasonably delayed.

3 **B. The Deadline for the Completion of a General Rate Case Establishing**
4 **Permanent Rates Is 270 Days.**

5 Both the Legislature and Commission have established presumptive deadlines for
6 the completion of general rate cases, both of which will be substantially exceeded in this
7 case. The Legislature, exercising the power granted by Article 15, Section 6 of the
8 Arizona Constitution, has enacted A.R.S. § 40-256, which provides that for a Class 1
9 utilities (i.e., utilities with annual operating revenues of \$1,000,000 or more), a general
10 rate case must be completed within 270 days from the date the utility's rate filing is
11 determined to be sufficient. A.R.S. § 40-256(A), (F)(2). The Commission's "time clock"
12 rule requires the general rate cases for Class A utilities be completed within 360 days
13 (plus 3 days for each day of hearing) from the date that a utility's rate filing is determined
14 to be sufficient. A.A.C. R14-2-103(B)(11)(d).² Therefore, as a matter of statewide public
15 policy, a reasonable time for the completion of a general rate case and the issuance of a
16 decision authorizing permanent rate relief is 270 days or, at most, approximately 1 year.

17 **C. The Deadline for Completing Chaparral City's Rate Case Has Passed.**

18 There can be no legitimate dispute that the presumptive deadlines for completing
19 the Company's pending rate case will be exceeded by many months. The Company's rate
20 application was filed on September 26, 2007 – more than one year ago. Staff determined
21 that the Company's rate filing was sufficient on October 26, 2007 – more than 11 months
22 ago. The hearing in this case will begin on December 8, 2008, and a decision authorizing
23 permanent rate relief is likely to be issued some time next spring – approximately 9
24

25 ² Notably, if interim rates could be authorized only when an "emergency" is required, the
26 Commission's "time clock" rule would be unlawful. Instead, the Commission's adoption of this
rule is further evidence that when permanent rate relief is delayed, utilities are allowed to
implement interim rates, subject to true-up and refund when permanent rates are set.

1 months after the presumptive deadline established in A.R.S. § 40-256 and approximately
2 6 months after the presumptive deadline established in A.A.C. R14-2-103(B)(11)(d).
3 Under these circumstances, the Attorney General's Opinion, A.R.S. § 40-256 and A.A.C.
4 R14-2-103(B)(11)(h) authorize the imposition of interim rates. Such relief is not based on
5 the existence of an "emergency," but instead on the inability of the Commission to grant
6 permanent rate relief within a reasonable time.³

7 Both Staff and RUCO quarrel about the calculation of the time period prescribed
8 by A.R.S. § 40-256. Again, the parties miss the point: The Legislature has established, as
9 a matter of public policy, that 270 days is a reasonable amount of time to complete a
10 general rate case for a Class 1 utility. And there is no dispute that this deadline has
11 already been exceeded by many months.

12 Staff and RUCO contend, however, that the Procedural Order issued on
13 January 22, 2008, somehow alters the Legislature's 270-day presumptive deadline for
14 permanent rate relief. The statute, on its face, permits the Commission to reset the
15 deadline only where "an extraordinary event that would substantially alter the relief
16 requested in the utility's rate filing has occurred." A.R.S. § 40-256(c). Here, there has
17 been no event that has substantially altered the relief sought by the Company. Instead, the
18 Company's rate case was stayed solely for the convenience of Staff and over the
19 Company's objection. Moreover, the 270-day time period for the completing the rate case
20 begins to run upon the Commission's determination. *Id.* Here, assuming for the sake of
21 argument that Chaparral City had amended its rate filing, the 270-day deadline expired on
22 September 19. Thus, under any interpretation, this case will be decided well beyond the
23 applicable deadline.

24 In short, Arizona law authorizes interim rates to be implemented when the

25 ³ This situation is, obviously, significantly different from cases like *Scates* and *RUCO*, where the
26 utility was allowed to implement interim rate increases without having even filed a general rate case.

1 Commission has failed to grant rate relief within a reasonable period of time. The
2 Legislature has declared that, as matter of public policy, a reasonable period of time is 270
3 days. The Commission has recognized that a reasonable period of time is approximately
4 360 days. The Company's rate application has already been pending for 360 days, and in
5 all likelihood will be pending for another 6 months (or more). Consequently, interim rate
6 relief is clearly appropriate.

7 **II. REPLY TO ARGUMENTS BY STAFF AND RUCO.**

8 The remaining arguments made by Staff and RUCO are either frivolous or
9 irrelevant, and will only be briefly addressed. First, Staff argues that without discovery
10 and a hearing, Staff is unable to determine whether the Company's circumstances entitle it
11 to interim rate relief. In fact, based on the unusual circumstances in this case, Staff has
12 had 11 months to conduct discovery, which is nearly twice the amount of time normally
13 allotted for such purpose, and will be filing its direct testimony this week. As to Staff's
14 suggestion that a hearing be conducted, the Company anticipated that a hearing would
15 take place within the next several weeks, thereby allowing interim rates to be put into
16 effect by December 1, 2008. The Company submitted its request for a procedural
17 schedule on September 12, 2008. However, no action has been taken on that request.

18 Staff and RUCO also argue that interim rates should be based on a finding of fair
19 value. While such finding is normally required, interim rates are not predicated on such a
20 finding, as Arizona courts have stated. *See, e.g., RUCO*, 199 Ariz. at 591, 20 P.3d at 1172
21 ("In limited circumstances, the Commission may engage in rate making without
22 ascertaining a utility's rate base. The Commission can exercise its authority when rates
23 are predicated on an interim basis ... "). Permanent rates will be set sometime in mid-
24 2009, based on the fair value of the Company's utility plant and property devoted to
25 public service, at which time appropriate refunds can be ordered, if necessary.

26 RUCO argues that the Company's request should be denied because the Company

1 knew, or should have known, "that an appeal would likely have consequences which
2 could affect the outcome of its pending case." RUCO Resp. at 5. However, in its
3 decision adopting the "time clock" rule, the Commission specifically explained that the
4 remand of a rate decision by a court is not a legitimate basis on which to delay a pending
5 rate application. Decision No. 57875 (May 18, 1992), Attachment B at 34. The
6 Company, obviously, had no way of knowing that Staff (as well as RUCO) would be
7 granted an open-ended extension of time to file its direct testimony based on the remand
8 proceeding, in light of the Commission's discussion in Decision No. 57857. Nor could
9 the Company know that the remand proceeding would take 14 months to conclude, given
10 that the deadline for completing an entire rate case is 9 months!

11 Finally, RUCO argues that interim rate relief is inappropriate because the
12 Company's credit rating will not be down-graded and that the Company's parent is
13 financially healthy and in a position to infuse equity to prevent the Company's insolvency
14 due to regulatory lag. RUCO Resp. at 6-7. That argument is frivolous. The fact that the
15 shareholders of a utility are financially healthy is no basis on which to deprive the utility
16 of timely rate relief and an opportunity to earn a reasonable rate of return.

17 In reality, the Company's parent is doing well because, with the sole exception of
18 Chaparral City, its utility operations are in California, a jurisdiction that uses more
19 progressive regulatory methods (e.g., future test years and adjustment mechanisms) and
20 authorizes higher returns on equity. Thus, RUCO is effectively arguing that utility
21 systems in another jurisdiction, and the customers that are served by those systems, should
22 subsidize Chaparral City. Such a result would be unjust and unreasonable, just as it would
23 be unjust and reasonable to force the customers of an Arizona utility to pay higher rates to
24 subsidize utility operations in California. Each system should be able stand on its own
25 and not need to be subsidized by other activities. As the Court of Appeals has explained:

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1 [T]he rates established by the Commission should meet the
2 overall costs of the utility and produce a reasonable rate of
3 return. It is equally clear that the rates cannot be considered
4 just and reasonable if they fail to produce a reasonable rate of
return or if they produce revenue which exceeds a reasonable
rate of return.

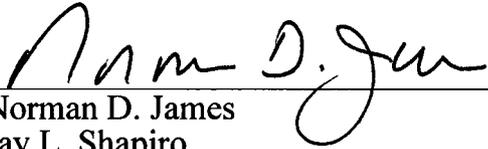
5 *Scates*, 118 Ariz. at 534, 578 P.2d at 615. Using income from utility operations in another
6 jurisdiction to avoid authorizing rates that will produce a reasonable rate of return would
7 plainly violate Arizona law.

8 **III. CONCLUSION.**

9 The Company's motion should be granted. Arizona law authorizes the relief
10 sought, and Staff and RUCO have failed to offer any basis for denying interim rate relief.
11 If the Commission wishes to first hold a hearing, the Company has no opposition, but
12 such hearing should be held on an expedited basis so that interim rate relief can be
13 implemented as soon as possible, and in no event later than the next 60 days.

14 RESPECTFULLY SUBMITTED this 30th day of September, 2008.

15 FENNEMORE CRAIG, P.C.

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22 **ORIGINAL** and thirteen (13) copies
23 of the foregoing were filed
24 this 30th day of September, 2008 with:

25 Docket Control
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Phoenix, AZ 85007

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2 this 30th day of September, 2008 to:

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