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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF CHAPARRAL CITY WATER COMPANY, INC., AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN ITS RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.	DOCKET NO. W-02113A-07-0551 **CHAPARRAL CITY WATER COMPANY'S RESPONSE TO STAFF'S NOTICE AND REQUEST FOR A PROCEDURAL ORDER**

Chaparral City Water Company, Inc. ("Company") hereby responds to the Notice of Witness Substitution and Request for Procedural Order filed by the Utilities Division ("Staff") on November 21, 2008. For the reasons set forth below, such request is improper, highly prejudicial to the Company, and must be rejected.

In its request, Staff states that it has hired an outside consultant to testify regarding the cost of capital and that this consultant "will be providing Staff's surrebuttal testimony on cost of capital and adopting portions of Staff witness Pedro Chaves' direct testimony."[1] The deadline for Staff's surrebuttal testimony was November 20. Staff indicates, however, that the consultant's surrebuttal testimony will be filed on December 3 – one day before the Company's rejoinder testimony is due and three business days prior to the hearing. Finally, Staff wishes to have the consultant testify on December 15, after the

[1] The precise portions that would be adopted are not disclosed. Presumably, Mr. Chaves will testify on the remaining portions of his direct testimony.

hearing has been completed.

Staff provides no basis for this extraordinary request. It notes that the United States' financial markets have been volatile. This fact, however, has been known for a number of months, and is discussed in the cost of capital testimony submitted by William Rigsby on behalf of the Residential Utility Consumer Office. *See, e.g.,* Rigsby DT, Attachment F. It is unclear how this volatility affects the methodology that has been used by Staff (and approved by the Commission) in numerous water and wastewater utility rate cases, including the Company's prior rate case. Indeed, the inputs into the DCF and CAPM models, as customarily used by Staff and approved by the Commission, are largely unaffected by the volatility of the financial markets.

Likewise, the issues relating to cost of capital and, more broadly, the relief sought by the Company are not unusual or unique. The Company's principal witness, Thomas Bourassa, has testified before the Commission on numerous occasions, and Mr. Bourassa is not proposing any unusual adjustments in this case. Nor did the Company change its position or raise new issues in its rebuttal filing, which was made on October 31. In fact, there are a relatively small number of issues in this case. Consequently, there is no justification for this extraordinary request.

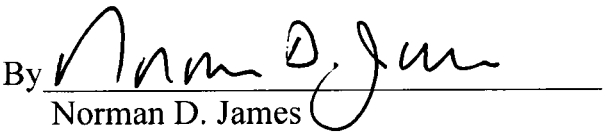
Finally, Staff's request, if granted, will result in extreme prejudice to the Company. Apparently, Staff will be raising new issues and arguments in testimony filed one day before the Company's rejoinder testimony is due. The Company, obviously, will be unable to prepare for and address those issues and arguments *unless* the hearing on this matter is again postponed. As the Judge is well aware, this rate case has already been delayed six months. Moreover, in response to the Company's September 8 Motion for Approval of Interim Rates, the Company was given the choice of either postponing the December 8 hearing to allow the Motion to be decided instead or withdrawing the motion and proceeding with the hearing. The Company elected the latter course. Staff's request

appears designed to cause another postponement of the hearing or force the Company to proceed to hearing unprepared and without the opportunity to conduct discovery or to submit rejoinder. Obviously, either result would be highly prejudicial to the Company and raise serious due process problems.

In short, this sort of eleventh hour maneuvering by Staff is clearly improper and should not be countenanced. There are no unusual or unique issues that would require an outside consultant to be brought in several days before the start of the hearing. The financial markets have been "volatile" for at least the last six months, as discussed in Mr. Rigsby's testimony, and in any event, it is unclear how this volatility affects any of the issues pending in the instant case. Therefore, Staff's request must be denied.

RESPECTFULLY SUBMITTED this 24th day of November, 2008.

FENNEMORE CRAIG, P.C.

By 

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Copy of the foregoing was hand delivered
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