

ORIGINAL



0000093641

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

lele

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 FEB 10 P 4: 25

AZ CORP COMMISSION
DOCKET CONTROL

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

STAFF'S MOTION TO COMPEL

The Utilities Division of the Arizona Corporation Commission (Staff) hereby moves to compel Chaparral City Water Company to respond to Staff's 23rd set of data requests.

I. INTRODUCTION.

Staff issued these data requests as the result of a call it received from the California Public Utilities Commission ("CPUC") in December 2008. The CPUC discovered information regarding Chaparral City Water Company ("Chaparral" or "Company") during the course of its investigation into certain procurement practices of Golden States Water, the sister company of Chaparral. As Staff indicated during the evidentiary hearing in this docket, Staff commenced discovery in order to determine if any of the alleged improprieties affect the pending rate case.

Staff met with the Company and RUCO in January 2009 shortly after the conclusion of the evidentiary hearing. The Company provided Staff and RUCO with its responses to Staff's 22nd data requests at that meeting. Also in attendance at the meeting was the attorney that is representing Golden States Water before the CPUC to give a status update of the CPUC investigation. Upon reviewing these documents, Staff discovered that a number of the documents had been redacted. Staff has issued subsequent data requests, Staff's 23rd Data Requests, but its attempts at discovery have been stymied by the Company.

Arizona Corporation Commission
DOCKETED

FEB 10 2009

DOCKETED BY

1 **II. DISCUSSION.**

2 After a review of the documents presented to Staff and RUCO at the January 2009 meeting,
3 Staff issued a subsequent data request, seeking the unredacted versions of those documents as well as
4 copies of the documents the Company provided to the CPUC.

5 In data request EA 23.1, Staff requested un-redacted copies of all of the documents the
6 Company provided to the CPUC. The Company objected to the request as irrelevant, over broad and
7 burdensome. The Company further accused Staff of conducting a "fishing expedition" and
8 "harassing" the Company.

9 In discussions with the Company's counsel following the receipt of the Company's responses,
10 Staff indicated that it was not expecting hard copies, but would accept documents on CD, as is always
11 the practice of Staff with voluminous documents. Counsel indicated that the documents had been
12 provided to the CPUC on CD. Further, the Company indicated that it would provide the requested
13 documents on the condition that (1) Staff would have to agree never to seek a delay in the pending
14 rate case and (2) Staff execute a "mutually acceptable" confidentiality agreement. Staff informed the
15 Company that the first condition was unacceptable. And for reasons set forth below, the Company's
16 proposed changes to Staff's standard confidentiality agreement are unacceptable as well. Staff also
17 requested that the Company withdraw its inflammatory and untrue allegations of Staff harassment.

18 In data request EA 23.2, Staff requested un-redacted versions of the documents the Company
19 provided at the January 2009 meeting. In its response, the Company, indicated that it would provide
20 those documents upon the execution of a mutually acceptable confidentiality agreement. Staff
21 provided the standard confidentiality agreement that it customarily uses in proceedings before the
22 Commission. The Company has refused to execute the agreement. The Company objects to having to
23 bear the burden of proof of proving that the information being provided pursuant to Staff's
24 confidentiality agreement is confidential or privileged. The Company's position that because it says
25 information is confidential then it is so. Secondly, the Company objects to the time periods within
26 which it must take action if Staff seeks to release any confidential information.

27 In data request EA 23.3, Staff requested copies of specific engineering reports, specifically
28 the Stantec Report, which was mentioned by the Company at the January 2009 meeting with Staff

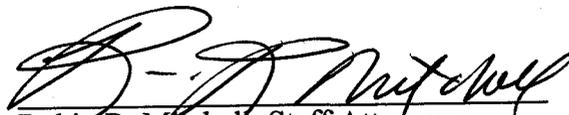
1 and RUCO. The Company refused to provide the requested reports, asserting the requested
2 documents relate only to transactions that occurred in California and thus are not relevant. However,
3 the scope of permissible discovery is broad, allowing for discovery of any matter, not privileged,
4 which is relevant to the subject matter of a pending docket. The information sought need not be
5 admissible at trial; it only need be "reasonably calculated to lead to the discovery of admissible
6 evidence." The Commission is vested with the power to investigate the public service companies it
7 regulates. Staff, as the investigatory arm of the Commission, relies upon A.R.S. Chapter 40's broad
8 grant of investigatory authority to carry out its responsibilities. It is important to emphasize that Staff
9 offered to execute its standard confidentiality agreement, but the Company did not agree.

10 In data request EA 23.4, Staff requested the final unredacted version of the Gordon Report,
11 including all exhibits and attachments thereto. The Company indicated that such a final report did
12 not exist. When Staff contacted the Company's counsel on February 2, 2009, counsel indicated that
13 the Company misunderstood the request. The Company apparently thought Staff was looking for a
14 document that was physically stamped "final", and that no such document existed. In an email Staff
15 received later that same day, counsel for the Company indicated that a "final" report did exist and
16 that it would be provided in response to EA 23.4, again pursuant to a "mutually acceptable"
17 confidentiality agreement. It is important to emphasize that Staff offered to execute its standard
18 confidentiality agreement, but as discussed above, the Company did not agree with certain terms in
19 Staff's standard confidentiality agreement.

20 In response to the Company's continued objections that an investigation by the CPUC of
21 allegations of wrongdoing by Chaparral's parent and affiliate is irrelevant, Staff would respectfully
22 disagree. Acts of alleged malfeasance by a parent company and an affiliate coupled with allegations
23 that these acts could affect Chaparral's ratepayers are most certainly relevant. Staff has attempted to
24 resolve this discovery dispute with the Company. However, despite these efforts, the Company does
25 not appear willing to provide the requested documents, which are relevant to assist Staff in
26 determining if there has been harm to Chaparral's ratepayers.

27 Staff respectfully requests that the Commission grant Staff's motion to compel and order the
28 Company to promptly provide the information Staff requested.

1 RESPECTFULLY SUBMITTED this 10th day of February, 2009.

2
3 

4 Robin R. Mitchell, Staff Attorney
5 Amanda Ho, Staff Attorney
6 Wesley Van Cleve, Staff Attorney
7 Arizona Corporation Commission
8 1200 West Washington Street
9 Phoenix, Arizona 85007

10 Original and thirteen (13) copies of the
11 foregoing filed this 10th day of
12 February, 2009 with:

13 Docket Control
14 Arizona Corporation Commission
15 1200 West Washington
16 Phoenix, AZ 85007

17 Copies of the foregoing mailed this
18 10th day of February, 2009 to:

19 Norman D. James
20 Jay L. Shapiro
21 FENNEMORE CRAIG
22 3003 North Central Ave, Suite 2600
23 Phoenix, AZ 85012
24 Attorneys for Chaparral City Water Company

25 Daniel W. Pozefsky, Chief Counsel
26 RUCO
27 1110 West Washington Street, Suite 220
28 Phoenix, AZ 85007

Craig A. Marks
Craig A. Marks, PLC
10645 N. Tatum Blvd.
Suite 200-676
Phoenix, AZ 85028

Phil Green
OB Sports F.B. Management (EM), LLC
7025 E. Greenway Parkway, Suite 550
Scottsdale, AZ 85254

Dale E. Hawley, Assistant Vice President
Counsel, Law Department
PACIFIC LIFE INSURANCE COMPANY
700 Newport Center Drive
Newport Beach, CA 92660-6397

