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BEFORE THE ARIZONA CORPORATION COMMISSION

A.Z. CORP. COMMISSION

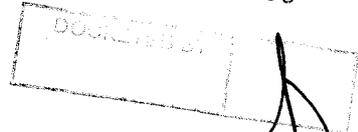
Arizona Corporation Commission
DOCKETED

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

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IN THE MATTER OF THE GENERIC
INVESTIGATION OF THE EX PARTE
COMMUNICATION RULES

DOCKET NO. ACC-00000A-00-0030

PROCEDURAL ORDER

BY THE COMMISSION:

On January 14, 2000, the Utilities Division Staff ("Staff") of the Arizona Corporation Commission ("Commission") opened a generic docket "In the Matter of Ex Parte Communication Rules". The current Ex Parte Rule is set forth in A.A.C. R14-3-113 as follows:

R-14-3-113 Unauthorized communications

- A. Purpose. It is the purpose of this rule to assist the members of the Arizona Corporation Commission and its employees in avoiding the possibility of prejudice, real or apparent, to the public interest in proceedings before the Commission.
- B. Application. The provision of this rule apply from the time a contested matter is set for public hearing. The provisions of this rule do not apply to rule making proceedings.
- C. Prohibitions.
 - 1. No person shall make or cause to be made an oral or written communication, not on the public record, concerning the substantive merits of a contested proceeding to a commissioner or commission employee involved in the decision-making process for that proceeding.
 - 2. No commissioner or commission employee involved in the decision-making process of a contested proceeding shall request, entertain, or consider an unauthorized communication concerning the merits of the proceeding.
 - 3. The provisions of this rule shall not prohibit:
 - a. Communications regarding procedural matters;
 - b. Communications regarding any other proceedings;
 - c. Intra-agency or non-party communications regarding purely technical and legal matters;
 - d. Comments from the general public;
 - e. Communications among hearing officers, non-party staff and commissioners.
- D. Remedy.
 - 1. A commissioner or commission employee who receives an oral or written offer of any communication prohibited by this rule must decline to receive such communication and will explain that the matter is pending for determination

1 and that all communication regarding it must be made on the public record. If
 2 unsuccessful in preventing such communications, the recipient will advise the
 3 communicator that the communication will not be considered, a brief signed
 4 statement setting forth the substance of the communication and the
 5 circumstances under which it was made, will be prepared, and the statement
 6 will be filed in the public record of the case or proceeding.

7 2. Any person affected by an unauthorized communication will have an
 8 opportunity to rebut on the record any facts or contentions contained in the
 9 communication.

10 3. If a party to a contested proceeding makes an unauthorized communication, the
 11 party may be required to show cause why its claim or interest in the proceeding
 12 should not be dismissed, denied, disregarded, or otherwise adversely affected
 13 on account of such violation.

14 At recent Commissioner/Staff Open Meetings, there have been various concerns and
 15 objectives set forth regarding the ex parte rules in general. Some of those proposed
 16 concerns/objectives are set forth as follows:

- 17 • To protect and maintain the integrity of the decision-making process of the Commission;
- 18 • To assure the preservation of the due process rights of all parties to Commission
 19 proceedings;
- 20 • To maintain Commission Staff's status as an independent party to Commission
 21 proceedings;
- 22 • Provide for an opportunity to gather and discuss information in order to make an informed
 23 decision;
- 24 • The Hearing Officer should establish whether or not the rule applies at the time the matter
 25 is set for hearing so that all parties are aware of their obligations pursuant to Commission
 26 rule;
- 27 • Establish clear time frames so that the parties know when the ex parte rule applies;
- 28 • Allow ex parte communications on the record (by the filing of a letter outlining matters
 discussed that would be docketed and sent to all parties) until sometime shortly before the
 matter is taken up by the full Commission;
- Provide for a period of time in which any other party to a proceeding would have an
 opportunity to discuss items that have been taken up in an ex parte discussion that was
 held just prior to the close of the permissible ex parte window; and
- The ex parte rule should not mandate meetings; instead, it should be solely within the

1 province of a Commissioner as to whether or not to meet. This would include requests to
2 come in and discuss matters that were discussed between a particular Commissioner and
3 another party.

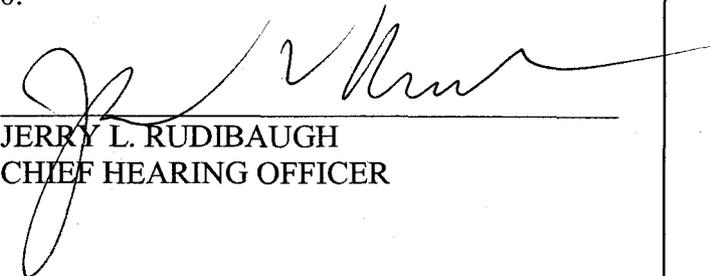
4 As a result of the various concerns and objectives, the Commission is considering possible
5 changes to A.A.C. R14-3-113. Prior to any formal rule-making docket, the Commission desires to
6 have maximum public input. Based on the above, we hereby establish the following procedural
7 schedule:

8 IT IS THEREFORE ORDERED that all interested parties shall file their comments, including
9 any proposed changes to the current A.A.C. R14-3-113 on or before 4:00 p.m. on March 20, 2000.

10 IT IS FURTHER ORDERED that the Utilities Division Staff and Securities Division Staff
11 shall file a coordinated response to the comments; including any proposed changes to A.A.C. R14-3-
12 113 on or before 4:00 p.m. on April 20, 2000.

13 IT IS FURTHER ORDERED that a public comment hearing shall be held on this matter at
14 10:00 a.m. on May 4, 2000 at the Commission's offices, 1200 W. Washington Street, Phoenix,
15 Arizona.

16 DATED this 9th day of February, 2000.

17 
18 JERRY L. RUDIBAUGH
19 CHIEF HEARING OFFICER

20 Copies of the foregoing mailed/delivered
21 this 9th day of February, 2000 to:

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24 Law Department, Station 9909
25 P.O. Box 53999
26 Phoenix, Arizona 85072-3999

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6 Green Valley, Arizona 85622-1078

7 Cottonwood Water Works, Inc.
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8 Cottonwood, Arizona 86326

9 Avra Water Co-op, Inc.
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10 Tucson, Arizona 85743

11 Bermuda Water Co., Inc.
4725 N. Scottsdale Rd., Suite 243
12 Scottsdale, Arizona 85251-7623

13 Cave Creek Water Co.
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14 Scottsdale, Arizona 85267
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15 Cordes Lake Water Co.
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Tempe, Arizona 85280

17 Doney Park Water
18 7161 N. Highway 89
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19 Far West Water & Sewer, Inc.
20 12486 Foothill Blvd.
Yuma, Arizona 85367

21 Paradise Valley Water Co.
22 P.O. Box 158
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23 Pueblo Del Sol Water Co.
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24 Sierra Vista, Arizona 85635

25 Green Valley Water Co.
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26 P.O. Box 587
Green Valley, Arizona 85622-0623

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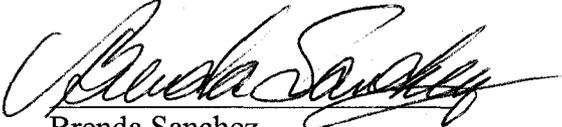
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By: 
Brenda Sanchez
Secretary to Jerry L. Rudibaugh