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2009 NOV -3 A 11: 12

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

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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  
 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

**MOTION FOR ORDER AMENDING  
 DECISION NO. 71308 NUNC PRO  
 TUNC**

13 Chaparral City Water Company, Inc. (“the Company”) moves for an order  
 14 amending Decision No. 71308 (Oct. 21, 2009) (“the Decision”) *nunc pro tunc* in order to  
 15 correct a computational error in the Decision. Specifically, the rates authorized in the  
 16 Decision fail to produce the required annual revenue increase, \$1,764,371. *See* Decision  
 17 at 49, 66 (finding of fact 96). The revenue shortfall is \$490,041, which is 28 percent of  
 18 the authorized increase. Thus, the rates approved in the Decision fail to produce the  
 19 required rate of return on the Company’s fair value rate base, and are therefore  
 20 unreasonable and unlawful.

21 To address this error, the Company requests that an order be issued as soon as  
 22 possible amending the Decision *nunc pro tunc* pursuant to A.R.S. § 40-252 or as may be  
 23 otherwise be allowed by law. Because the error is simply the result of an erroneous  
 24 computation and does not affect the Company’s authorized rate of return or its revenue  
 25 required to produce such rate of return, the Company believes that this error can be  
 26 corrected by means of a simple procedural order. Moreover, given that the Company and

1 the Commission's Utilities Division ("Staff") are in agreement on the correct rates, as  
2 explained below, no hearing is necessary, and the Company waives its right to a hearing  
3 under A.R.S. § 40-252 for such purpose (and only for such purpose).

4 This motion is supported by the following memorandum of points and authorities  
5 and by the attached materials describing the corrected rates proposed by Staff and  
6 reviewed and approved by the Company, which are described and discussed below.

### 7 **MEMORANDUM OF POINTS AND AUTHORITIES**

#### 8 **A. Procedural Background**

9 On September 26, 2007, the Company filed with the Commission its application  
10 for increases in its rates and charges for water utility service. Decision at 2. The hearing  
11 on the application commenced on December 8, 2008, and concluded on January 9, 2009.  
12 *Id.* at 3-4. Following the filing of post-hearing briefs by the parties, the matter was taken  
13 under advisement. *Id.* at 4, 6. Ultimately, on September 23, 2009, the Administrative  
14 Law Judge submitted a Recommended Opinion and Order ("the ROO") for the  
15 Commission's consideration. The ROO recommended that the Company be granted an  
16 increase in annual revenue of \$1,896,281. ROO at 50-51, 67.

17 The matter was considered by the Commission at its October 8, 2009 Open  
18 Meeting. At the Open Meeting, the Commission adopted two amendments proposed by  
19 Commissioner Pierce that, collectively, reduced the Company's annual revenue increase  
20 to \$1,764,371. The Commission then approved the ROO as amended by a vote of four to  
21 one. *See generally* Decision. Because of the amendments to the ROO, new rates had to  
22 be calculated based on the revised revenue increase, and other changes were needed to  
23 incorporate Commissioner Pierce's amendments. As a result, the Decision was not signed  
24 and filed in the docket until October 21, 2009.

1           **B. The Commission's Computational Error**

2           After the Decision was filed, the Company's regulatory consultant, Thomas  
3 Bourassa, checked the new rates and charges the Commission authorized in the Decision  
4 to ensure that they would produce the authorized revenue increase and required rate of  
5 return, and discovered that they failed to do so. Instead, the rates produced revenues that  
6 are \$490,041 (28 percent) less than the increase authorized in the Decision, \$1,764,371,  
7 which the Commission determined to be just and reasonable. See Decision at 49, 66  
8 (finding of fact 96). This revenue deficiency is calculated as follows:

9           Test year adjusted revenue	\$7,505,010
10          Authorized increase in revenue per Decision	<u>1,764,371</u>
11          Total revenue requirement	\$9,269,381
12          Revenue produced by rates in Decision	<u>8,779,340</u>
13          Revenue deficiency	<u>\$490,041</u>

14           At the request of the Company, Mr. Bourassa contacted Staff regarding the  
15 Commission's error in the computation of the Company's new rates, and began working  
16 with Alexander Ihade Igwe, an Executive Consultant employed by the Utilities Division,  
17 to correct the error. Mr. Igwe discovered that Staff's billing determinants failed to include  
18 the appropriate data for the Company's irrigation customers, and agreed with Mr.  
19 Bourassa that the rates in the Decision were incorrectly calculated and produced a  
20 deficiency of \$490,041. See e-mail communication from Mr. Igwe to the Administrative  
21 Law Judge attached at tab A.

22           Mr. Igwe went on to calculate rates that would produce the revenue needed to  
23 comply with the Decision's findings and authorized rate of return. He did so by  
24 modifying the commodity rates applicable to each of the Company's inverted  
25 consumption tiers, which results in the following corrections:

26

1 **Commodity Rates Per 1,000 Gallons**

2 Decision Corrected

3 **3/4-inch Meter Residential**

4 Initial "Lifeline" Tier \$2.19 \$2.25

5 Second Tier \$2.65 \$2.90

6 Third Tier \$3.15 \$3.55

7 **Other Residential/Commercial and Industrial**

8 First Tier \$2.65 \$2.90

9 Second Tier \$3.15 \$3.55

10 **Irrigation and Construction/Bulk**

11 All usage \$2.65 \$2.90

12 **Fire Hydrant Irrigation/Construction**

13 All usage \$2.65 \$2.90

14 **Standpipe (Fire Hydrants)**

15 All usage \$2.65 \$2.90

16 **Fire Sprinklers**

17 All usage \$2.65 \$2.90

18 Mr. Bourassa has verified that Staff's corrected rates produce the revenue requirement  
19 that was authorized by the Commission in the Decision, within a margin of error of 0.03  
20 percent – well within the tolerance for designing rates.

21 **C. Relief Requested and Grounds for Such Relief**

22 It is axiomatic that the rates authorized by the Commission must be sufficient to  
23 produce the authorized rate of return on the utility's fair value rate base. For example, in  
24 *Consolidated Water Utilities, Ltd. v. Ariz. Corp. Comm'n*, 178 Ariz. 478, 484-85, 875  
25 P.2d 137, 143-44 (App. 1994), the Commission authorized rates that produced annual  
26 revenue that was 28 percent less than the revenue necessary to produce the required

1 operating income and authorized rate of return on the utility's fair value rate base. The  
2 court explained that "[a] shortfall in revenue mean a corresponding shortfall in income,"  
3 which "goes directly to the Company's bottom line" and results in rates that are  
4 "unreasonable and unlawful." *Id.* at 485, 875 P.2d at 144 (quotation marks omitted). The  
5 rates authorized by the Commission in the Decision produce a 28 percent shortfall in  
6 revenue, and, for the same reason, are unreasonable and unlawful.

7 The rates proposed by Staff correct the Commission's failure to authorize just and  
8 reasonable rates for the Company. However, Staff's proposal is problematic in several  
9 respects. First, the \$490,041 revenue shortfall would be corrected by increasing only the  
10 commodity rates. This is contrary to Staff's normal policy of allocating the revenue  
11 requirement between the monthly minimum charge and the commodity rates by using a  
12 ratio of approximately 40 percent/60 percent.<sup>1</sup> Thus, in case, approximately \$200,000 of  
13 the revenue shortfall should be allocated to the monthly minimum charge. The impact of  
14 allocating 100 percent of the shortfall to the commodity rate is significant. The  
15 Company's rate design consists of inverted commodity rate tiers in order to encourage  
16 reductions in water usage. This rate design results in more revenue volatility because a  
17 greater percentage of the revenue requirement is recovered at higher levels of  
18 consumption. If customers reduce their usage, the utility will not earn its authorized rate  
19 of return. American Water Works Association, *Principles of Water Rates, Fees, and*  
20 *Charges* 100 (5th ed. 2000).

21 Even more critically, the Company is suffering a revenue shortfall of  
22 approximately \$40,000 per month. This shortfall further exacerbates the Company's  
23 serious earnings deficiency, which has resulted from the Commission's delay in issuing

24 \_\_\_\_\_  
25 <sup>1</sup> For example, in Arizona Water Company's pending rate case, Docket No. W-01445A-08-0440,  
26 Staff indicated that its rate design was intended to generate approximately 43 percent of the  
revenue requirement from the monthly minimum charges and 57 percent from the commodity  
rates. Transcript, vol. IX (Sept. 11, 2009) at 1755.

1 the Decision in the first place. The Company's application was filed on September 26,  
2 2007, based on a test period ending December 31, 2006. Thus, it took more than two  
3 years to complete this rate case, notwithstanding the deadline of 270 days imposed by  
4 A.R.S. § 40-256, and the deadline of 360 days plus three days for each day of hearing  
5 required by A.A.C. R14-2-103. The revenue requirement approved in the decision is thus  
6 based on the Company's utility plant and operating expenses in 2006. It is well  
7 established that "[r]ates which are not sufficient to yield a reasonable return on the value  
8 of the property used *at the time it is being used to render the service* are unjust,  
9 unreasonable and confiscatory, and their enforcement deprives the public utility company  
10 of its property in violation of the Fourteenth Amendment." *Bluefield Waterworks &*  
11 *Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679, 690 (1923) (emphasis added).

12         Consequently, it is imperative that the Commission's error be addressed  
13 immediately or, alternatively, that an appropriate surcharge be approved that will allow  
14 the Company to recover the revenue shortfall produced by the Decision's erroneous rates,  
15 together with interest. Without such a mechanism, any delay in rectifying the erroneous  
16 rates authorized in the Decision will cause additional financial hardship to the Company,  
17 in a case that has already taken far too long to complete and has resulted in rates that, even  
18 if corrected, fail to account for the Company's recent investment in plant and increases in  
19 its operating expenses, such as purchased power.

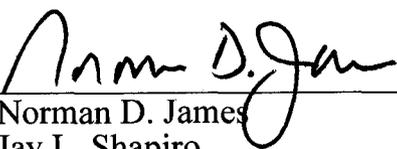
20         Therefore, if corrected rates can be implemented for all service provided on and  
21 after November 20, 2009, the Company will waive its claim to the revenue shortfall  
22 produced by the erroneous rates. If the erroneous rates remain in effect beyond such date,  
23 then the Company requests approval of a surcharge designed to recover the resulting  
24 revenue deficiency together with interest at the rate of 10 percent per annum over a period  
25 of six months.

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Respectfully submitted this 3rd day of November, 2009.

FENNEMORE CRAIG, P.C.

By   
Norman D. James  
Jay L. Shapiro  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012  
Attorneys for Chaparral City Water Company

**ORIGINAL** and thirteen (13) copies  
of the foregoing were filed  
this 3rd day of November, 2009 with:

Docket Control  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

**Copy of the foregoing was hand delivered**  
this 3rd day of November, 2009 to:

Teena Wolfe, Administrative Law Judge  
Hearing Division  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

Robin Mitchell, Esq.  
Legal Division  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007

Daniel W. Pozefsky, Chief Counsel  
Residential Utility Consumer Office  
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Phoenix, AZ 85007

1 **COPY** of the foregoing e-mailed and mailed  
2 this 3rd day of November, 2009 to:

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8 Attorney for Pacific Life

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By Mary House  
2252434

**A**

**JAMES, NORM**

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**From:** Thomas J. Bourassa [tjb114@cox.net]  
**Sent:** Friday, October 30, 2009 3:10 PM  
**To:** JAMES, NORM  
**Subject:** [Fwd: Chaparral Rate Design]

**Attachments:** Final ROO - Rate Design.pdf



Final ROO - Rate  
Design.pdf (1...

----- Original Message -----

**Subject:** Chaparral Rate Design  
**Date:** Thu, 29 Oct 2009 09:57:09 -0700  
**From:** Alexander Igwe <AIgwe@azcc.gov>  
**To:** Teena Wolfe <TWolfe@azcc.gov>  
**CC:** Deborah Person <DPerson@azcc.gov>, Thomas J. Bourassa <tjb114@cox.net>

Teena: <<Final ROO - Rate Design.pdf>>

Please find attached herewith schedules showing the authorized Revenue Requirement and the related Rate Designs. Per your instruction, I only modified the Commodity rate for each tier, and Mr. Bourassa has confirmed that it yields the approved Revenue Requirement.

1st Tier Commodity Rate - \$2.25  
2nd Tier Commodity Rate - \$2.90  
3rd Tier Commodity Rate - \$3.55

Just for your information, my hunch was correct in that Staff's billing determinant did not incorporate the appropriate data for the irrigation customers. Mr. Bourassa confirms that the billing determinant was modified subsequent to the original filing.

Thanks.

Alexander Ibhade Igwe, CPA  
Executive Consultant III  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007  
aigwe@azcc.gov  
Phone: (602) 542-0857  
Fax: (602) 542-2129

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postmaster@azcc.gov  
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Chaparral City Water Company Revenue Proof Final Decision  
 Test Year Ended December 31, 2006  
 Revenue Summary  
 With Annualized Revenues to Year End Number of Customers

Exhibit  
 Rejoinder Schedule H-1  
 Page 3  
 Witness: Bourassa

Line No.	Present Revenues	Proposed Revenues	Dollar Change	Percent Change	Percent of Present Water Revenues	Percent of Proposed Water Revenues
1						
2						
3	\$ 7,665,568	\$ 9,708,204	\$ 2,042,636	26.65%	100.00%	100.00%
4	(250,897)	(518,229)	(267,332)	106.55%	-3.27%	-5.34%
5	\$ 7,414,671	\$ 9,189,975	\$ 1,775,304	23.94%		
6						
7	\$ 82,289	\$ 82,289	-	0.00%	1.07%	0.85%
8	-	-	-	0.00%	0.00%	0.00%
9	\$ 7,496,960	\$ 9,272,264	\$ 1,775,304	23.68%	0.00%	0.00%
10		9,269,381				
11		2,883				
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Chaparral City Water Company Revenue Proof Final Decision  
 Test Year Ended December 31, 2006  
 Present and Proposed Rates

Exhibit  
 Schedule H-3  
 Page 1

Line No.	Monthly Usage Charge for:	Present Rates	Proposed Rates	Percent Change	
1	<u>All Zones and Classes</u>				
1	3/4 Inch	\$ 13.60	\$ 16.50	21.32%	
2	1 Inch	22.70	27.50	21.15%	
3	1 1/2 Inch	45.40	55.00	21.15%	
4	2 Inch	73.00	88.00	20.55%	
5	3 Inch	146.00	176.00	20.55%	
6	4 Inch	227.00	275.00	21.15%	
7	6 Inch	454.00	550.00	21.15%	
8	8 Inch	730.00	880.00	20.55%	
9	10 Inch	1,043.00	1,265.00	21.28%	
10	12 Inch	1,980.00	2,365.00	19.44%	
11					
12	Fire Hydrants Basic Service	\$ -	\$ -		
13					
14	Fire Hydrants Used for Irrigation	By Meter Size	By Meter Size		
15					
16	Irrigation and Construction	By Meter Size	By Meter Size		
17					
18	<u>Monthly Service Charge for Fire Sprinkler</u>				
19	4 Inch or smaller	\$ 10.00	\$ 10.00	0.00%	
20	6 Inch	10.00	10.00	0.00%	
21	8 Inch	10.00	10.00	0.00%	
22	10 Inch	10.00	10.00	0.00%	
23	Larger than 10 Inch	10.00	10.00	0.00%	
24					
25	<u>Gallons In Minimum (All Zones and Classes)</u>	-	-		
26					
27					
28					
29	<u>Commodity Rates</u>				
30	<u>Residential, Commercial, Industrial</u>				
31	<u>Gallons Per Tiers</u>				
32	Tier 1: (Gallon upper limit.)				
33	3/4 Inch (Residential)		3,000	3,000	0.00%
34	3/4 Inch (Commercial and Industrial)		9,000	9,000	0.00%
35	1 Inch (Residential, Commercial, Industrial)		24,000	24,000	0.00%
36	1 1/2 Inch (Residential, Commercial, Industrial)		60,000	60,000	0.00%
37	2 Inch (Residential, Commercial, Industrial)		100,000	100,000	0.00%
38	3 Inch (Residential, Commercial, Industrial)		225,000	225,000	0.00%
39	4 Inch (Residential, Commercial, Industrial)		350,000	350,000	0.00%
40	6 Inch (Residential, Commercial, Industrial)		725,000	725,000	0.00%
41	8 Inch (Residential, Commercial, Industrial)		1,125,000	1,125,000	0.00%
42	10 Inch (Residential, Commercial, Industrial)		1,500,000	1,500,000	0.00%
43	12 Inch (Residential, Commercial, Industrial)		2,250,000	2,250,000	0.00%
44					
45					
46	Tier 2: (Gallons upper limit)				
47	3/4 Inch (Residential)		9,000	9,000	0.00%
48	3/4 Inch (Commercial and Industrial)		99,999,999	99,999,999	0.00%
49	1 Inch (Residential, Commercial, Industrial)		99,999,999	99,999,999	0.00%
50	1 1/2 Inch (Residential, Commercial, Industrial)		99,999,999	99,999,999	0.00%
51	2 Inch (Residential, Commercial, Industrial)		99,999,999	99,999,999	0.00%
52	3 Inch (Residential, Commercial, Industrial)		99,999,999	99,999,999	0.00%
53	4 Inch (Residential, Commercial, Industrial)		99,999,999	99,999,999	0.00%
54	6 Inch (Residential, Commercial, Industrial)		99,999,999	99,999,999	0.00%
55	8 Inch (Residential, Commercial, Industrial)		99,999,999	99,999,999	0.00%
56	10 Inch (Residential, Commercial, Industrial)		99,999,999	99,999,999	0.00%
57	12 Inch (Residential, Commercial, Industrial)		99,999,999	99,999,999	0.00%

Chaparral City Water Company Revenue Proof Final Decision  
 Test Year Ended December 31, 2006  
 Present and Proposed Rates

Exhibit  
 Schedule H-3  
 Page 2

Line No.				
1	<b>Tier 3: (Gallons upper limit)</b>			
2	3/4 Inch (Residential)	99,999,999	99,999,999	0.00%
3	3/4 Inch (Commercial and Industrial)	99,999,999	99,999,999	0.00%
4	1 Inch (Residential, Commerical, Industrial)	99,999,999	99,999,999	0.00%
5	1 1/2 Inch (Residential, Commerical, Industrial)	99,999,999	99,999,999	0.00%
6	2 Inch (Residential, Commerical, Industrial)	99,999,999	99,999,999	0.00%
7	3 Inch (Residential, Commerical, Industrial)	99,999,999	99,999,999	0.00%
8	4 Inch (Residential, Commerical, Industrial)	99,999,999	99,999,999	0.00%
9	6 Inch (Residential, Commerical, Industrial)	99,999,999	99,999,999	0.00%
10	8 Inch (Residential, Commerical, Industrial)	99,999,999	99,999,999	0.00%
11	10 Inch (Residential, Commerical, Industrial)	99,999,999	99,999,999	0.00%
12	12 Inch (Residential, Commerical, Industrial)	99,999,999	99,999,999	0.00%
13				
14	<b><u>Residential, Commercial, Industrial</u></b>			
15	<b><u>Commodity Rates</u></b>	<b>Present</b>	<b>Proposed</b>	<b>Percent</b>
16	<b><u>First Tier</u></b>	<b>Rates</b>	<b>Rates</b>	<b>Change</b>
17	3/4 Inch (Residential)	\$ 1.68	\$ 2.250	33.93%
18	3/4 Inch (Commercial and Industrial)	2.52	2.900	15.08%
19	1 Inch and Larger Meters	2.52	2.900	15.08%
20				
21	<b><u>Second Tier</u></b>			
22	3/4 Inch (Residential)	\$ 2.52	\$ 2.900	15.08%
23	3/4 Inch (Commercial and Industrial)	3.03	3.550	17.16%
24	1 Inch and Larger Meters	3.03	3.550	17.16%
25				
26	<b><u>Third Tier</u></b>			
27	3/4 Inch (Residential)	\$ 3.03	\$ 3.550	17.16%
28				
29				
30	<b><u>Irrigation/Construction/Bulk</u></b>			
31	All Gallons	\$ 1.56	\$ 2.900	85.90%
32				
33	<b><u>Fire Hydrant Irrigation</u></b>			
34	All Gallons	\$ 1.56	\$ 2.900	85.90%
35				
36	<b><u>Standpipe (Fire Hydrants)</u></b>			
37	All Gallons	\$ 2.52	\$ 2.900	15.08%
38				
39	<b><u>Fire Sprinklers</u></b>			
40	All Gallons	\$ 2.52	\$ 2.900	15.08%
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