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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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8 IN THE MATTER OF THE APPLICATION OF
 9 LITCHFIELD PARK SERVICE COMPANY,
 10 AN ARIZONA CORPORATION, FOR A
 11 DETERMINATION OF THE FAIR VALUE OF
 ITS UTILITY PLANTS AND PROPERTY AND
 FOR INCREASES IN ITS WASTEWATER
 RATES AND CHARGES FOR UTILITY
 SERVICE BASED THEREON.

Docket No. SW-01428A-09-0103

12 IN THE MATTER OF THE APPLICATION OF
 13 LITCHFIELD PARK SERVICE COMPANY,
 14 AN ARIZONA CORPORATION, FOR A
 15 DETERMINATION OF THE FAIR VALUE OF
 ITS UTILITY PLANTS AND PROPERTY AND
 16 FOR INCREASES IN ITS WATER RATES
 AND CHARGES FOR UTILITY SERVICE
 BASED THEREON.

Docket No. W-01427A-09-0104

Arizona Corporation Commission

DOCKETED

NOV 18 2009

DOCKETED BY	<i>[Signature]</i>
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RUCO'S MOTION TO QUASH SUBPOENA

17 The Residential Utility Consumer Office ("RUCO") hereby files this motion to quash
 18 the subpoena requiring the appearance of Matt Rowell at the deposition scheduled for
 19 November 20, 2009. In the alternative, RUCO requests an order limiting the scope of the
 20 deposition only to matters that are within the scope of Mr. Rowell's testimony. RUCO has
 21 agreed to accept service of the subpoena of Matt Rowell to avoid the time and expense of
 22 personal service. RUCO has also agreed to make the witness available on November 30,
 23 2009, if the Administrative Law Judge so directs.
 24

1 **FACTUAL BACKGROUND**

2 On or about October 21, 2009, the Company issued data requests 1.1-1.5 a-d to
3 RUCO witness, Matt Rowell. See Responses to DR 1.1-1.5a-d attached as Exhibit A.
4 Data requests 1.5 a-d deal with the issue of excess capacity. Mr. Rowell did not provide
5 testimony on the issue of excess capacity. See Direct Testimony of Matt Rowell. William
6 Rigsby sponsored testimony on excess capacity and recommended the Commission
7 disallow \$36,000 of design costs. See Direct Testimony of William Rigsby. On November
8 1, 2009, RUCO filed its objections to data request 1.5 a-d, but agreed to have Mr. Rigsby,
9 the actual sponsor of the excess capacity testimony, provide answers to DR 1.5 a-d. See
10 email responses attached here as Exhibit C. Thereafter, on November 4, 2009, the
11 Company's counsel reviewed RUCO's recommendation to disallow \$36,000 in rate base
12 and agreed that Mr. Rowell would not have to respond to data response 1.5 a-d because
13 the issue was too minor to argue over. See email dated November 5, 2009 attached here
14 as Exhibit D. On November 5, 2009, after reviewing the direct testimony of RUCO's
15 witnesses, the Company changed positions. In response to RUCO's inquiry about the
16 prior agreement, the Company's counsel acknowledged the same, but stated:

17 *The \$36K adjustment is **pretty funny, and not a big issue from a dollar***
18 ***standpoint.** But you didn't tell me RUCO recommends an 8.01 ROE or a more*
19 *than \$3million confiscation of used and useful plant, or adjustments to expense*
20 *allocations, among other things.*

21
22 *The bottom line is that many of your positions are being very poorly received by*
23 *Liberty Water today. And for them it is an ongoing issue, as serious as there is.*
24 *And as s[sic] long as they perceive RUCO as doing little more than to help*

1 customers by looking for ways to lower their revenue, they feel forced to fight back.

2 (Emphasis Added)

3 *Id.* at page 1. Essentially, because the Company was unhappy with the testimony on cost
4 of equity and income expense adjustments, the Company insisted that Mr. Rowell and not
5 Mr. Rigsby file data responses to DR 1.5 a-d on the issue of excess capacity or threatened
6 to depose the witness. The implication of the Company's new position was that if data
7 requests 1.5 a-d were answered, a deposition would not be noticed. RUCO evaluated the
8 issue and even though the excess capacity issue was the subject of William Rigsby's
9 testimony and the Company had agreed to withdraw the data requests, on November 5,
10 2009, RUCO directed Mr. Rowell respond to the requests. See Rowell's Responses to
11 Data Requests, attached as Exhibit A. Mr. Rowell's responses to the data requests were
12 due on November 6, 2009 and were filed the same date. *Id.* The Company. RUCO
13 responded fully and timely to the data requests to avoid the time and expense associated
14 with prolonged discovery and a deposition. *Id.* On November 10, 2009 the Company
15 issued a notice of deposition for November 20, 2009 and a second set of data requests.
16 See LPSCO's Second Data Requests 2.1-2.46.

17 **DISCUSSION**

18 **1. The right to depositions in administrative proceedings is limited.**

19 The Company argues that it has an unfettered right to depose Mr. Rowell. RUCO
20 disagrees. Although the Commission's rule, A.A.C.R14-3-109, permits the taking of
21 depositions, Arizona statutes limit application of the rule. A.R.S. § 41-1062 provides:

22 4.On the application of a party or the agency and for use as evidence, the presiding
23 officer at a hearing may permit a deposition to be taken, in the manner and upon the terms
24 designated by him, of a witness **who cannot be subpoenaed or is unable to attend the**

1 **hearing.** *Prehearing depositions and subpoenas for the production of*
2 *documents...(Emphasis added).*

3
4 See A.R.S. §41-1062A (4). Unless a witness is unavailable for hearing or cannot be
5 subpoenaed, under law he cannot be deposed. Because Matt Rowell is able to attend the
6 hearing, and is subject to subpoena, to depose him prior to hearing A.R.S. §41-1062A (4)
7 is limited. Commission should quash the subpoena compelling his appearance for
8 deposition.

9 **2. The subpoena of Matt Rowell should be quashed because it is not proposed**
10 **in good faith.**

11 RUCO has fully and timely complied with all the Company's data requests. RUCO
12 has attempted to procure the Company's agreement to limit the scope of the deposition.
13 See email dated November 10, 2009. The Company asserts that it will not agree to limit
14 its questions of Mr. Rowell, and claimed in the procedural conference on November 9,
15 2009 that it has the right to depose Mr. Rowell on "anything and everything." The
16 Company acknowledges that the amount in dispute is "pretty funny," but asserts that it
17 intends to "fight back," because it is displeased, *inter alia*, with RUCO's testimony on return
18 on equity. There is no information that cannot be obtained through data requests. The
19 Company is on a fishing expedition and is using the rarely used discovery tool to harass
20 RUCO for its position on matters unrelated to excess capacity. Such litigation strategies
21 should not receive tacit approval of the Commission.

22 **3. Deposition of Mr. Rowell is burdensome.**

23 The Company argues that the Rules of Civil Procedure apply and permit the
24 unlimited deposition of RUCO's witness. RUCO believes the controlling statutes is A.R.S.

1 §41-1062. However, even under the Rules of Civil Procedure, the deposition of Mr. Rowell
2 would not be without limitation. Pursuant to Rule 45 of the Arizona Rules of Civil
3 Procedure, a subpoena may be quashed when the deposition is unduly burdensome. The
4 sum total amount in dispute as to Mr. Rigsby's excess capacity adjustment to rate base is
5 \$36,000. The impact on required revenue using a 10% return is approximately \$3,600.00.
6 To waste the time and expense of a deposition of Matt Rowell on the issues of excess
7 capacity when he has not offered testimony on the issue and the amount in dispute in the
8 word's of Company's counsel is "pretty funny," is unduly burdensome.

9 It is also unduly burdensome because the Company has issued two sets of data
10 requests regarding the same issues. See LPSCO's First and Second Data Requests to
11 RUCO, attached as Exhibit A and B. A deposition of Mr. Rowell is duplicative of the data
12 requests. On November 9, 2009, the Company issued its Second Data Request of RUCO
13 containing 46 data requests. Because the Company has sought responses to 46 data
14 requests due on or about November 23, 2009, there is no need to duplicate discovery with
15 a deposition. In this instance, the use of data requests are far less costly, and a far more
16 efficient manner to pursue discovery. If the Company is not happy with an answer from
17 RUCO, the Company may file a motion to compel.

18 **4. If permitted, the deposition should be limited in scope.**

19 The Company asserts that RUCO has "put up every road black[sic]" because it will
20 not appear on November 20, 2009. RUCO has attempted in good faith to resolve all
21 discovery disputes with the Company.

22 However, when it became clear that the Company's motives for a deposition were
23 inappropriate, RUCO objected, but tried to resolve the matter by limiting the scope
24 deposition and finding a mutually convenient date to schedule the deposition. The

1 Company's motives, as relayed by counsel, are improper. If the ALJ determines that the
2 deposition of Mr. Rowell is to proceed, RUCO requests the deposition be limited to the
3 scope of his testimony and scheduled for November 30, 2009.

4 Finally, RUCO requests that the Company be ordered to pay for all the costs of the
5 deposition including payment of the fees and expense associated with the time Mr. Rowell
6 is required to prepare and attend the deposition. Furthermore, all costs and fees
7 associated with the deposition should be excluded from recovery in rates because they are
8 not a prudently incurred rate case expense.

9 WHEREFORE, RUCO requests that the Commission quash the subpoena, or in the
10 alternative, limit the scope of the deposition, schedule the matter for November 30, 2009
11 and require the Company to pay Mr. Rowell's fees and expenses associated with the
12 deposition.

13

14 RESPECTFULLY SUBMITTED this 18th day of November 2009

15

16



Michelle L. Wood
Counsel

17

18 AN ORIGINAL AND FIFTEEN COPIES
19 of the foregoing filed this 18th day
of November, 2009 with:

20 Docket Control
21 Arizona Corporation Commission
1200 West Washington
22 Phoenix, Arizona 85007

23

24

1 COPIES of the foregoing hand delivered/
2 faxed this 17th day of November, 2009 to:

3 The Honorable Dwight D. Nodes,
4 Asst. Chief Administrative Law Judge
5 Hearing Division
6 Arizona Corporation Commission
7 1200 West Washington
8 Phoenix, Arizona 85007

9 Janice Alward, Chief Counsel
10 Kevin Torrey, Counsel
11 Legal Division
12 Arizona Corporation Commission
13 1200 West Washington
14 Phoenix, Arizona 85007

15 Steve Olea, Director
16 Utilities Division
17 Arizona Corporation Commission
18 1200 West Washington
19 Phoenix, Arizona 85007

20 Jay L. Shapiro
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23 3003 N. Central Avenue, Suite 2600
24 Phoenix, AZ 85012

16
17
18 By 
19 Ernestine Gamble
20 Secretary to Michelle L. Wood
21
22
23
24

A.

**RESIDENTIAL UTILITY CONSUMER OFFICE'S
RESPONSE TO LITCHFIELD PARK SERVICE COMPANY'S
FIRST SET OF DATA REQUESTS**

Docket Nos. SW-01428A-09-0103 AND W-01427A-09-0104

RUCO has retained Matt Rowell and Desert Mountain Analytical Services ("DMAS") as testifying consultants in this case. These data requests are directed to and responses should be provided by Mr. Rowell and DMAS.

- 1.1. Please provide a copy of the contract between Mr. Rowell/DMAS and RUCO.
- a. How much are Mr. Rowell and DMAS charging RUCO per hour for consulting services in this docket?
 - b. Provide copies of any and all invoices from Mr. Rowell and/or DMAS to RUCO relating to this case.
 - c. Please describe the scope of Mr. Rowell's and/or DMAS's consulting services for RUCO in this case.

RESPONSE:

- 1.1. a. \$115.
- b. See attached.
- c. The scope of DMAS's consulting services for RUCO in this case are to produce testimony (written and oral) and schedules necessary for RUCO's participation in the case.

30th scope

**RESIDENTIAL UTILITY CONSUMER OFFICE'S
RESPONSE TO LITCHFIELD PARK SERVICE COMPANY'S
FIRST SET OF DATA REQUESTS**

Docket Nos. SW-01428A-09-0103 AND W-01427A-09-0104

1.2. Has Mr. Rowell and/or DMAS provided or been retained to provide any consulting, professional, engineering and/or other services to any regulated utilities or public service corporations relating to regulatory matters including, but not limited to, rate cases, complaints, accounting, financing, corporate restructuring and/or expansions of certificated areas?

If yes, provide the following information:

- a. The name of any and all such utilities and/or public service corporations for whom Mr. Rowell and/or DMAS provided consulting, professional, engineering and/or other services.
- b. The dates of such representation and services and the nature of such services provided by Mr. Rowell and/or DMAS.
- c. A description of the type and scope of services provided by Mr. Rowell and/or DMAS.

RESPONSE:

DMAS has done work for multiple public utilities. The following list includes utilities for which DMAS has done work over the last 3 years:

Company Name/Class	Docket Number	Case Description
Global Water Resources	W-20446A-09-0080 et. al.	Rate Case
Global Water Resources	W-20446A-08-0247 et. al.	Notice of Intent to Restructure
Global Water Resources	W-01445A-06-0200 et. al.	AZ Water Complaint
Mt. Tipton Water Co. Inc. – Class C	W-02105A-08-0262	Rate Case/Financing
F. Wayne and Dorothy Thompson dba West Village Water Company – Class D	W-03211A-08-0622	Rate Case/Financing
Sonoita Valley Water Company	W-20435A-09-0296	Rate Case/Financing
Valle Verde Water Company – Class C	W-01431A-09-0360	Rate Case/Financing
Bob B. Watkins dba East Slope Water Company – Class C	W-01906A-09-0283	Emergency Surcharge
Antelope Run Water Company – Class D	W-02327A-09-0284	Emergency Surcharge
Indiada Water Company, Inc. – Class E	W-02031A-09-0285	Emergency Surcharge
Wickenburg Ranch Water, LLC – no customers	W-03994A-07-0657	Rate Adjustment

**RESIDENTIAL UTILITY CONSUMER OFFICE'S
RESPONSE TO LITCHFIELD PARK SERVICE COMPANY'S
FIRST SET OF DATA REQUESTS**

Docket Nos. SW-01428A-09-0103 AND W-01427A-09-0104

Southland Utilities Company, Inc. – Class C	W-02062A-09-0466	Rate Case/Financing
Aubrey Water Company – Class D	W-03476A-06-0425	Rate Case
Picacho Peak Water Company, Inc. – Class D	W-02351A-07-0686	Rate Case/Financing
Empirita Water Company, LLC – Class E	W-03948A-07-0495	Rate Case
Mountain Glen Water Service, Inc		Ongoing accounting
Clearwater Utilities Company, Inc		Ongoing accounting

**RESIDENTIAL UTILITY CONSUMER OFFICE'S
RESPONSE TO LITCHFIELD PARK SERVICE COMPANY'S
FIRST SET OF DATA REQUESTS**

Docket Nos. SW-01428A-09-0103 AND W-01427A-09-0104

- 1.3. Has Mr. Rowell and/or DMAS sponsored, presented, drafted and/or provided testimony on behalf of any regulated utility or public service corporation before any governmental bodies or agencies, including, but not limited to, the Arizona Corporation Commission?

If yes, please provide the following information.

- a. The name of such utility and/or public service corporation.
- b. The dates of such testimony or services.
- c. The name of the regulatory proceeding, including case or docket number, if applicable.
- d. Provide copies of any and all such testimony and exhibits sponsored, presented, drafted and/or provided by Mr. Rowell and/or DMAS.

RESPONSE:

1.3. Yes.

- a. See response to 1.2.
- b. See response to 1.2.
- c. See response to 1.2.
- d. Objection, request is too voluminous and documents are public documents and readily available to Company. Because testimony and exhibits associated with the cases listed in 1.2 are publicly available on the Commission's e-docket, they will not be reproduced here.

**RESIDENTIAL UTILITY CONSUMER OFFICE'S
RESPONSE TO LITCHFIELD PARK SERVICE COMPANY'S
FIRST SET OF DATA REQUESTS**

Docket Nos. SW-01428A-09-0103 AND W-01427A-09-0104

- 1.4. With respect to all of the utilities identified in response to Data Requests 1.2 and 1.3 above, do any of those regulated utilities represented by Mr. Rowell and/or DMAS utilize a shared services model under which a parent company or affiliate of the regulated utility provides, in whole or in part, operating and support services for the regulated utility, including use of shared services for administration, billing and collection, capital budgeting and planning, resource management, operation and maintenance, construction management, planning and engineering and other related services.
- a. If so, please identify any and all such utilities and their affiliates, and describe the shared services model utilized by such utility and affiliates.
 - b. With respect to the utilities identified in response to Data Requests 1.2 and 1.3 above, are any of those utilities owned by a parent company which owns more than one regulated utility subsidiary? If yes, please list the parent company and the utility subsidiaries.
 - c. For all of the utilities identified in response to Data Request 1.4(b) above, please describe how such utilities allocate costs for shared services among affiliated companies?
 - d. What cost allocation principles, factors or guidelines do such utilities utilize in allocating costs among affiliates for shared services?
 - e. For all of the utilities identified in response to Data Request 1.4 above, how do such utilities address and handle affiliate transactions between regulated utilities and non-regulated entities? Please describe any and all factors, guidelines, principles, policies and/or practices that such utilities use in administering and conducting affiliate transactions with non-regulated affiliates.
 - f. For all of the utilities identified in response to Data Request 1.4 above, how do such utilities classify and/or allocate costs among regulated utilities and non-regulated affiliates?
 - i. What costs are included and allocated to the regulated utilities?
 - ii. How do such utilities allocate employee costs?
 - iii. How do such utilities allocate operating expenses?

**RESIDENTIAL UTILITY CONSUMER OFFICE'S
RESPONSE TO LITCHFIELD PARK SERVICE COMPANY'S
FIRST SET OF DATA REQUESTS**

Docket Nos. SW-01428A-09-0103 AND W-01427A-09-0104

- iv. Please describe the allocation processes, formulas, methodology and/or percentages used by such utilities for costs of shared services, including use of shared services for administration, billing and collection, capital budgeting and planning, resource management, operation and maintenance, construction management, planning and engineering and other related services.
- g. Does Mr. Rowell and/or DMAS agree with the method of allocating costs among affiliates utilized by the utilities identified in response to Data Request 1.4 above?

If no, please describe in detail any such areas of disagreement.

RESPONSE:

1.4.

- a. The utilities associated with Global Water Resources utilize a shared services model. Mr. Rowell and/or DMAS are not intimately aware of the details of this shared services model. A description of Global's shared services model can be found in testimony of other witnesses involved in the current Global rate case.
- b. Yes. Global Water Resources is the parent of several regulated utilities, the names of which are publicly available.
- c. See response to 1.4. a.
- d. See response to 1.4. a.
- e. The nature of Mr. Rowell's and/or DMAS' engagements with the above listed utilities is such that detailed information of this nature is not available to Mr. Rowell and/or DMAS.
- f. See response to 1.4. e.
- g. To the extent that Mr. Rowell and/or DMAS is familiar with the method of allocating costs among affiliates utilized by the utilities identified in response to Data Request 1.4 above, yes. Please see response to 1.4. e.

**RESIDENTIAL UTILITY CONSUMER OFFICE'S
RESPONSE TO LITCHFIELD PARK SERVICE COMPANY'S
FIRST SET OF DATA REQUESTS**

Docket Nos. SW-01428A-09-0103 AND W-01427A-09-0104

- 1.5. Does Mr. Rowell agree that water and wastewater infrastructure planning and construction should occur on a regional or service area wide scale?
- a. If so, when a utility plans for construction of water and wastewater infrastructure on a regional or service area-wide scale, what factors should a utility consider and evaluate in determining necessary capacity or size of such facilities?
 - b. With respect to all of the utilities identified in response to Data Requests 1.2 and 1.3 above, do those utilities make service area growth projections in designing, engineering and planning the necessary capacity or size of utility infrastructure?
 - i. If yes, please describe how such utilities make such service area growth projections.
 - ii. Does Mr. Rowell agree with the methods of projecting and estimating future service area growth used by such utilities? If not, please explain the basis of such disagreement.
 - c. Does Mr. Rowell agree that utilities must deploy and plan water and wastewater infrastructure that is designed for future use? Please explain.
 - d. If water or wastewater infrastructure is designed, planned, constructed and/or deployed on a regional or area-wide scale for future use, does Mr. Rowell agree that in some cases infrastructure constructed by a utility may exceed current operational demand for utility services?
 - i. Does Mr. Rowell believe that such infrastructure, or a portion of that infrastructure, should be disallowed from a utility's rate base, and not considered used or useful? Please explain your answer.
 - ii. Does Mr. Rowell agree that the conditions that existed at the time of the utility's decision to design, plan, construct and/or implement the infrastructure are the parameters under which a decision to install infrastructure should be evaluated? Please explain.
 - iii. In determining whether construction of infrastructure is a prudent investment for ratemaking purposes, does Mr. Rowell agree that whether the investment was prudent should be determined based on the information available at the time of the investment decision, including expectations and projections about the future?

**RESIDENTIAL UTILITY CONSUMER OFFICE'S
RESPONSE TO LITCHFIELD PARK SERVICE COMPANY'S
FIRST SET OF DATA REQUESTS**

Docket Nos. SW-01428A-09-0103 AND W-01427A-09-0104

- iv. Does Mr. Rowell agree that a utility's investment in capacity that exceeds current demands for service is a capital investment that is not only currently used by the utility, but also is currently useful to customers, including protection from surges in demand and unexpected reductions in supply? Please explain.
- v. Does Mr. Rowell agree that in order for a utility to design, implement and construct water and wastewater infrastructure on a regional or service area wide basis, such utility would need to build such plant and infrastructure before customers are hooked up and ready for service?
- vi. Does Mr. Rowell agree that such utility would incur financial carrying costs associated with such regional or area-wide infrastructure if such plant is not included in rate base?
- vii. If such regional or area-wide infrastructure exceeds current demand for utility service, such infrastructure is excluded from rate base as not used and useful and such utility does not have a method of off-setting the carrying costs associated with such plant, does Mr. Rowell agree that such regional or area-wide plant or infrastructure would not be financially feasible for the utility? Please explain your answer.
- viii. If such regional or area-wide infrastructure exceeds current demand for utility service, such infrastructure is excluded from rate base as not used and useful and such utility does not have a method of off-setting the carrying costs associated with such plant, does Mr. Rowell agree that a utility will be deterred from constructing such regional or area-wide plant or infrastructure?

RESPONSE:

1.5.-1.5d: Objection, Relevance. Data requests 1.5 through 1.5d seeks responses from Mr. Rowell about testimony he has not offered. The pertinent witness is Mr. Rigsby. Notwithstanding the objection, Mr. Rowell provides the following responses to 1.5 a-d vii:

- 1-5 With respect to planning yes. As to construction: such determinations are fact intensive and should be determined on a case-by-case basis
 - a. The utility should consider all relevant factors including regulatory, financial and engineering considerations.

**RESIDENTIAL UTILITY CONSUMER OFFICE'S
RESPONSE TO LITCHFIELD PARK SERVICE COMPANY'S
FIRST SET OF DATA REQUESTS**

Docket Nos. SW-01428A-09-0103 AND W-01427A-09-0104

- b. No. Not all of the utilities identified in response to Data Requests 1.2 and 1.3 above make service area growth projections in designing, engineering and planning the necessary capacity or size of utility infrastructure.
- c. Before service is provided a system has to be constructed, whether by a utility or a developer.
- d. Yes.
 - i. Determinations regarding rate base inclusion are fact intensive and should be determined on a case-by-case basis.
 - ii. I am unable to answer because the question does not indentify the type of evaluation.
 - iii. Yes, but the determination of rate base treatment and whether and to what extent ratepayers will bear the risk of future development is a separate issue determined on a case-by-case basis. As I have not analyzed the issue for this case, I have no opinion. I defer to Mr. Rigsby who is testifying on those issues.
 - iv. Such determinations are fact intensive and should be determined on a case-by-case basis. As I have not analyzed the issue for this case, I have no opinion. I defer to Mr. Rigsby who is testifying on those issues.
 - v. Irrespective of whether a utility designs, implements and constructs water and wastewater infrastructure on a regional or service area wide basis or not, it would need to build plant and infrastructure before customers are hooked up and ready for service.
 - vi. Yes
 - vii. Determinations regarding financial feasibility are fact intensive and should be determined on a case-by-case basis.
 - viii. In order for plant to be excluded from rate base as not used and useful that plant must already have been constructed. It is unclear how a utility can be deterred from constructing plant that it has already constructed.

B

**SECOND SET OF DATA REQUESTS
FROM LITCHFIELD PARK SERVICE COMPANY
TO THE RESIDENTIAL UTILITY CONSUMER OFFICE**

Docket Nos. SW-01428A-09-0103 AND W-01427A-09-0104

November 9, 2009

Nov. 17 —

- 2.1. Admit that RUCO has never seen the 2004 PACE report identified in Mr. Rigsby's direct testimony [at 4].
- 2.2. Admit that a utility cannot produce something that it does not have in its possession.
- 2.3. Admit that RUCO has not opposed or otherwise responded to the Company's objections to RUCO's 6th set of data requests.
- 2.4. Admit that there is no such thing as an 8.2 MGD Palm Valley Reclamation Facility.
- 2.5. Admit that the "design" costs referred to in RUCO's excess capacity finding would have been the same had the PVWRF not been permitted to a maximum capacity of 8.2 MGD.
- 2.6. Admit that there will be design costs incurred by LPSCO to expand the PVWRF beyond its current physical capacity of 4.1 MGD.
- 2.7. Please identify with specificity the design costs RUCO believes do not benefit customers and distinguish such costs from those design costs that RUCO believes provides benefit to customers.
- 2.8. Admit that since the Gold Canyon Sewer rate case decision, RUCO looks for excess capacity as a means to reduce rate base and thereby reduce the revenue requirement.
- 2.9. Please identify each water and sewer rate case RUCO participated in between 2001 and 2005 in which RUCO recommended an adjustment for excess capacity.
- 2.10. Please identify each water and sewer rate case RUCO participated in between 2006 and the present in which RUCO recommended an adjustment for excess capacity.
- 2.11. Did RUCO consider the amount of rate case expense and expenditure of ACC and RUCO resources that would be expended in this case addressing RUCO's slightly more than \$36,000 adjustment to rate base? If not, why not?

- 2.12. Is it RUCO's position [Rigsby Dt. at 6] that the Company bears the burden of providing documentation that it does not have in order for RUCO to meet its burden of proof on an adjustment to rate base?
- 2.13. Has Mr. Rowell ever designed, constructed or permitted a wastewater treatment facility?
- 2.14. Has Mr. Rowell ever operated a wastewater treatment facility?
- 2.15. Has Mr. Rowell visited the PVWRF? If so, when?
- 2.16. What qualifications, education or experiences does Mr. Rowell possess that support his opinions on the design and construction of a wastewater treatment facility?
- 2.17. Admit that Mr. Rowell is not qualified to design, engineer, or operate a wastewater treatment facility.
- 2.18. What qualifications, education or experiences does Mr. Rowell possess that support his opinions on the operation of a wastewater treatment facility?
- 2.19. Please explain what RUCO witness Matt Rowell means when he uses the term "average" capacity of 4.1 MGD for the PVWRF in his direct testimony [e.g., DT at 3:15]?
- 2.20. Why is the cost of plant that is necessary for reliable service "excessive" and "duplicative"? [Rowell Dt. at 5-6].
- 2.21. How much would the plant upgrades installed during the test year have cost had they been installed when the PVWRF was first constructed?
- 2.22. How are customers harmed by the installation of facilities designed to reduce odors and noise and/or to improve system reliability?
- 2.23. Please identify and provide evidence of each and every violation of ordinance, rule, regulation, law or other order or requirement of an applicable governmental agency that LPSCO has been found to be in since the PVWRF was brought on line.
- 2.24. Admit that PVWRF met any and all applicable design and construction standards as reviewed and enforced by ADEQ and MCESD when the PVWRF was originally constructed.
- 2.25. Admit that PVWRF, as originally designed and constructed, was approved by ADEQ and MCESD.
- 2.26. Admit that it is possible to discover the need for improvements to a wastewater reclamation facility that were not known to be necessary until the facility has gone into operation.

- 2.27. Admit that changed conditions after a facility goes into operation can lead to the necessity of further improvement to that facility.
- 2.28. Admit that if the Commission adopts RUCO's recommended \$3.5 million dollar plant disallowance, LPSCO would be free to remove one half of the test-year improvements made to the facility as those items would no longer be in the Company's rate base.
- 2.29. Does Mr. Rowell's other client, Global Water, seek to include in rate base plant the improvements made to any of the water or sewer systems it has acquired? If so, please identify all such plant improvements and the reason they were made.
- 2.30. Is it RUCO or Mr. Rowell's position that an acquiring utility can only recover 50% of the cost of plant improvements made to improve a system that it has acquired?
- 2.31. Mr. Rowell worked as an "economist" at the ACC for a number of years. As an economist, does Mr. Rowell believe investors are likely to acquire water and sewer systems that need improvements because of previously inadequate design, construction or operation if they can only obtain a return on 50% of their investment to improve the system?
- 2.32. Is RUCO opposed to the use of a shared service model to operate several utilities owned by the same holding company?
- 2.33. Admit that costs allocated to LPSCO affiliates, Black Mountain Sewer and Gold Canyon Sewer, by affiliates, including AWS, APT and APIF were included in operating expenses approved by the Commission in the most recent rates for those two entities.
- 2.34. Admit that RUCO did not assert in the most recent rate cases for LPSCO affiliates, Black Mountain Sewer and Gold Canyon Sewer, that costs charged by affiliates, including AWS, APT and APIF, were unreasonable or otherwise subject to adjustment.
- 2.35. What specifically was "inappropriate" [S. Rowell Dt. at 7, 11-14] about the inclusion of fuel for power production cost in the test year?
- 2.36. Regarding RUCO's Operating Income Adjustment No. 4.c (water), what specifically led RUCO to conclude the adjusted expenses were "unnecessary and inappropriate" [S. Rowell Dt. at 8:10-11]?
- 2.37. Regarding RUCO's Operating Income Adjustment No.4.c (water), what specifically led RUCO to conclude the adjusted expenses were "unnecessary" [S. Rowell Dt. at 8:21-22]?
- 2.38. Admit that the typical ratemaking treatment for retired plant is to remove the original cost of the plant from plant in service and from accumulated depreciation.

- 2.39. Admit that the typical treatment of retired plant is rate base neutral.
- 2.40. What amounts of accumulated depreciation did RUCO remove from Accumulated Depreciation in connection with each of the three plant retirements subject to RUCO's Plant Adjustments No. 3 and 4 for the wastewater division?
- 2.41. With respect to RUCO's Operating Income Adjustment No. 4 (wastewater), please identify all amounts adjusted by RUCO and state, with specificity, the basis for the adjustment including, without limitation, explaining why certain expenses were deemed non recurring, outside the test year or "unnecessary/inappropriate"?
- 2.42. Why does RUCO deem \$17,702 of transportation expense (sewer) as "unnecessary or inappropriate" [S. Rowell DT. at 15:6-7]?
- 2.43. With respect to RUCO's Operating Income Adjustment Nos. 7-9 (wastewater), please identify with specificity, the basis for the adjustments including, without limitation, explaining why certain expenses were deemed non recurring, outside the test year or "unnecessary/inappropriate"?
- 2.44. Admit that treated effluent is a by-product of the treatment of wastewater and that LPSCO must safely and properly dispose of its effluent.
- 2.45. Admit that the reasonable costs of effluent disposal should be recovered through operating expenses.
- 2.46. Admit that if the ACC excludes plant from rate base the utility is not obligated to use that plant to provide service.

2253943.1/60199.009

C

Tina Gamble

From: Tina Gamble
Sent: Friday, October 30, 2009 2:41 PM
To: 'twiley@fclaw.com'; 'greg.sorensen@algonquinwater.com'; 'tjb114@cox.net'
Cc: 'BIRK, WHITNEY'; Michelle Wood; 'Matt Rowell'
Subject: Objections to LPSCO's First Set of Data Requests to RUCO
Attachments: RUCOs Objections to LPSCOs 1st set of DRs .pdf

Attached are RUCO's objections to **1.3. d.** and **1.5.** of LPSCO's First Set of Data Requests.

Tina Gamble
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Residential Utility Consumer Office
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Phoenix, AZ 85007
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C

11/17/2009

**RESIDENTIAL UTILITY CONSUMER OFFICE'S
RESPONSE TO LITCHFIELD PARK SERVICE COMPANY'S
FIRST SET OF DATA REQUESTS**

Docket Nos. SW-01428A-09-0103 AND W-01427A-09-0104

- 1.3. d. Provide copies of any and all such testimony and exhibits sponsored, presented, drafted and/or provided by Mr. Rowell and/or DMAS.

RESPONSE:

- 1.3. d. **Objection, request is overburdensome. Copies of testimony and exhibits associated with the cases listed in 1.2 are publicly available and, therefore, will not be provided here.**

**RESIDENTIAL UTILITY CONSUMER OFFICE'S
RESPONSE TO LITCHFIELD PARK SERVICE COMPANY'S
FIRST SET OF DATA REQUESTS**

Docket Nos. SW-01428A-09-0103 AND W-01427A-09-0104

- 1.5. Does Mr. Rowell agree that water and wastewater infrastructure planning and construction should occur on a regional or service area wide scale?
- a. If so, when a utility plans for construction of water and wastewater infrastructure on a regional or service area-wide scale, what factors should a utility consider and evaluate in determining necessary capacity or size of such facilities?
 - b. With respect to all of the utilities identified in response to Data Requests 1.2 and 1.3 above, do those utilities make service area growth projections in designing, engineering and planning the necessary capacity or size of utility infrastructure?
 - i. If yes, please describe how such utilities make such service area growth projections.
 - ii. Does Mr. Rowell agree with the methods of projecting and estimating future service area growth used by such utilities? If not, please explain the basis of such disagreement.
 - c. Does Mr. Rowell agree that utilities must deploy and plan water and wastewater infrastructure that is designed for future use? Please explain.
 - d. If water or wastewater infrastructure is designed, planned, constructed and/or deployed on a regional or area-wide scale for future use, does Mr. Rowell agree that in some cases infrastructure constructed by a utility may exceed current operational demand for utility services?
 - i. Does Mr. Rowell believe that such infrastructure, or a portion of that infrastructure, should be disallowed from a utility's rate base, and not considered used or useful? Please explain your answer.
 - ii. Does Mr. Rowell agree that the conditions that existed at the time of the utility's decision to design, plan, construct and/or implement the infrastructure are the parameters under which a decision to install infrastructure should be evaluated? Please explain.
 - iii. In determining whether construction of infrastructure is a prudent investment for ratemaking purposes, does Mr. Rowell agree that whether the investment was prudent should be determined based on the information available at the time of

**RESIDENTIAL UTILITY CONSUMER OFFICE'S
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Docket Nos. SW-01428A-09-0103 AND W-01427A-09-0104

the investment decision, including expectations and projections about the future?

- iv. Does Mr. Rowell agree that a utility's investment in capacity that exceeds current demands for service is a capital investment that is not only currently used by the utility, but also is currently useful to customers, including protection from surges in demand and unexpected reductions in supply? Please explain.
- v. Does Mr. Rowell agree that in order for a utility to design, implement and construct water and wastewater infrastructure on a regional or service area wide basis, such utility would need to build such plant and infrastructure before customers are hooked up and ready for service?
- vi. Does Mr. Rowell agree that such utility would incur financial carrying costs associated with such regional or area-wide infrastructure if such plant is not included in rate base?
- vii. If such regional or area-wide infrastructure exceeds current demand for utility service, such infrastructure is excluded from rate base as not used and useful and such utility does not have a method of off-setting the carrying costs associated with such plant, does Mr. Rowell agree that such regional or area-wide plant or infrastructure would not be financially feasible for the utility? Please explain your answer.
- viii. If such regional or area-wide infrastructure exceeds current demand for utility service, such infrastructure is excluded from rate base as not used and useful and such utility does not have a method of off-setting the carrying costs associated with such plant, does Mr. Rowell agree that a utility will be deterred from constructing such regional or area-wide plant or infrastructure?

RESPONSE:

Objection. Relevance. Mr. Rowell will not be providing testimony on these issues; therefore, data responses are irrelevant as to Mr. Rowell. Notwithstanding objection, Mr. Rigsby, who is going to provide testimony, will respond.

D

Michelle Wood

From: SHAPIRO, JAY [JSHAPIRO@FCLAW.COM]
Sent: Thursday, November 05, 2009 11:03 AM
To: Michelle Wood
Subject: RE: LPSCO Rate Case - Data Requests to RUCO Witness Matt Rowell

The \$36K adjustment is pretty funny, and not a big issue from a dollar standpoint. But you didn't tell me RUCO recommends an 8.01 ROE or a more than \$3 million confiscation of used and useful plant, or adjustments to expense allocations, among other things.

The bottom line is that many of your positions are being very poorly received by Liberty Water today. And for them it is an ongoing issue, as serious as there is. And as long as they perceive RUCO as doing little more than to help customers by looking for ways to lower their revenue, they feel forced to fight back.

So let us know after you talk to Dan.

Jay

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

From: Michelle Wood [mailto:MWood@azruco.gov]
Sent: Thursday, November 05, 2009 10:57 AM
To: SHAPIRO, JAY
Subject: RE: LPSCO Rate Case - Data Requests to RUCO Witness Matt Rowell

We'll see. I'll talk to Dan, again. I thought when we spoke yesterday you said that given that Bill's adjustment was 36K you were going to drop it, but I'll take it back to Dan again. M

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

From: SHAPIRO, JAY [mailto:JSHAPIRO@FCLAW.COM]
Sent: Thursday, November 05, 2009 10:43 AM
To: Michelle Wood
Cc: WILEY, TODD
Subject: RE: LPSCO Rate Case - Data Requests to RUCO Witness Matt Rowell

Michelle-we understand that there are a number of issues RUCO takes positions on that are not the subject of Mr. Rowell's testimony on behalf of RUCO. Nevertheless, as Todd has explained, we are entitled to ask Mr. Rowell his opinion on any or all of RUCO's positions, and on the positions of other utilities he has consulted with and testified for, especially where those positions might conflict with RUCO's. Because you have chosen to both hire him and call him as a witness, we intend to do so. And my client's initial view of RUCO's positions in this case has only solidified the need for this discovery in this case. In short, our discovery is not going away.

So, it seems to me the first question is - Is RUCO going to fight us on this? If not, then we can talk about how best to let us conduct this discovery if you still have concerns.

If RUCO is going to fight us on this discovery (and similar requests on other positions taken in the direct), then we are back to - will you produce Mr. Rowell for deposition, and if so, will you then instruct him not to answer our questions? If you will produce him and allow the deposition to meaningfully take place, let's talk dates.

If RUCO is not going to provide Mr. Rowell's responses to the disputed data request (and subparts), and not going to produce Mr. Rowell for deposition, or going to produce him for deposition but instruct him not to answer, then just let us know and we will move to compel.

In other words, I think we have the issue teed up and ready to be dealt with through one of several paths. We just await RUCO telling us how to proceed based on its final