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**BEFORE THE ARIZONA CORPORATION COMMISSION
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AZ CORP COMMISSION
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7

8 IN THE MATTER OF THE APPLICATION OF
LITCHFIELD PARK SERVICE COMPANY,
9 AN ARIZONA CORPORATION, FOR A
10 DETERMINATION OF THE FAIR VALUE OF
ITS UTILITY PLANTS AND PROPERTY AND
11 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
LITCHFIELD PARK SERVICE COMPANY,
13 AN ARIZONA CORPORATION, FOR A
14 DETERMINATION OF THE FAIR VALUE OF
ITS UTILITY PLANTS AND PROPERTY AND
15 FOR INCREASES IN ITS WATER RATES
AND CHARGES FOR UTILITY SERVICE
16 BASED THEREON.

Docket No. W-01427A-09-0104

17 IN THE MATTER OF THE APPLICATION OF
LITCHFIELD PARK SERVICE COMPANY,
18 AN ARIZONA CORPORATION, FOR
19 AUTHORITY (1) TO ISSUE EVIDENCE OF
INDEBTEDNESS IN AN AMOUNT NOT TO
20 EXCEED \$1,755,000 IN CONNECTION
WITH (A) THE CONSTRUCTION OF TWO
RECHARGE WELL INFRASTRUCTURE
21 IMPROVEMENTS AND (2) TO ENCUMBER
ITS REAL PROPERTY AND PLANT AS
22 SECURITY FOR SUCH INDEBTEDNESS.

Docket No. W-01427A-09-0116

Arizona Corporation Commission

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1 IN THE MATTER OF THE APPLICATION OF
2 LITCHFIELD PARK SERVICE COMPANY,
3 AN ARIZONA CORPORATION, FOR
4 AUTHORITY (1) TO ISSUE EVIDENCE OF
5 INDEBTEDNESS IN AN AMOUNT NOT TO
6 EXCEED \$1,170,000 IN CONNECTION
7 WITH (A) THE CONSTRUCTION OF ONE
8 200 KW ROOF MOUNTED SOLAR
9 GENERATOR INFRASTRUCTURE
10 IMPROVEMENTS AND (2) TO ENCUMBER
11 ITS REAL PROPERTY AND PLANT AS
12 SECURITY FOR SUCH INDEBTEDNESS.

8 **RUCO'S REPLY BRIEF**

9 The Residential Utility Consumer Office ("RUCO") submits this Reply Brief on the
10 matters raised at Litchfield Park Service Company's ("LPSCO" or "Company's") recent
11 rate hearing.

12 **I. Issues upon which the Company and RUCO substantially agree.**

13 RUCO and LPSCO have reached agreement on a number of issues which were
14 initially disputed. Those agreements are as follows:

15 **a. Deferred Tax Liability:**

16 RUCO and the Company concur in the method of calculating the deferred tax
17 liability. The differences remaining result from RUCO's reductions to plant in service.¹

18 **b. Inclusion of Goodyear's Bulk Revenue Sales.**

19 The parties agree to the inclusion of bulk water sales to Goodyear in test year
20 revenues.²

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24 ¹ See Notice of Errata filed February 19, 2010.
² See LPSCO's Closing Brief,

1 **II. Unresolved Issues Related to Rate Base**

2 **a. Palm Valley Water Reclamation Facility**

3 **i. It is unjust and unreasonable to expect ratepayers to pay for the**
4 **original \$14.9 million cost of constructing the PVWRF in 2003 and**
5 **the \$7 million cost of repairs discovered three years later.**

6 **ii.**

7 According to the Company, it completed \$14.9 million in additions in 2002/2003 to
8 the Palm Valley Water Reclamation Facility ("PVWRF") using the engineering and
9 constructions services of Pacific Advanced Civil Engineering ("PACE") and its
10 construction arm and affiliate, Pacific Environmental Resources Corporation ("PERC").³
11 According to the Company's depreciation schedules the improvements had an expected
12 plant life of 30 years.⁴ According to the Company's engineers the award winning
13 treatment process was supposed to "mak[e] it possible to locate the facility essentially in
14 the center of SunCor's Palm Valley master-planned community, which is generally not
15 possible with standard wastewater treatment plants."⁵ However, the opposite is true. In
16 2006, three to four years after completing the original plant, the Company's engineer,
17 Brian McBride, determined that several aspects of the plant did not work as needed.⁶ As
18 a result of the problems identified in 2006, the Company spent \$7.0 million dollars in the
19 test year to repair the PVWRF. *Id.* The Company is requesting that the Commission allow
20 it to recover all of the \$14.9 million dollars for the initial improvements plus the \$7.0 million
21 in repairs from the ratepayers in this case. The Company's request is simply not just or
22 reasonable. Given the magnitude of the repairs necessitated a mere four years after

21 ³ See Exhibit A-8 Direct Testimony of Greg Sorenson at 7.

22 ⁴ See Exhibit A-16 Amended Rebuttal Testimony of Thomas Bourassa, Schedule B-2 at page 3.11.
23 The Company includes the plant's electrical components in NARUC Account No. 354. According to the
24 Company's Schedule B-2, the depreciation rate of the plant in Account No.354 is 3.33 percent which
reflects an expected plant life of 30 years.

⁵ See Exhibit R-24 Phoenix Business Journal article: "Waste Water Treatment Gets New Look" dated
May 16, 2003.

⁶ See Exhibit R-2 MES evaluation report of LPSCO WRF.

1 construction of the \$14.9 million dollar plant, shareholders should bear an equal portion of
2 the repairs.⁷ As such, RUCO recommends the Commission disallow one-half or \$3.5
3 million of the repairs.

4 The Company claims that RUCO's witness, Mr. Rowell is not an engineer and
5 therefore not qualified to testify on the adjustments to the PVWRF. The Company
6 mistakenly believes that Mr. Rowell's opinion would only be reliable, if his opinion was an
7 "engineering" opinion. First, a non-engineer like Mr. Rowell can testify as to whether it is
8 just and reasonable to expect ratepayers to cover 100 percent of the cost of the original
9 construction and repair costs while shareholders who manage the Company and who
10 made the decisions bear zero percent of the responsibility. It is also appropriate for Mr.
11 Rowell, who is a rate making analyst and financial expert, with more than fifteen years of
12 ratemaking experience with both the Commission and in private practice, to comment on
13 the policy implications of such a decision. Mr. Rowell testified that if the Commission
14 allowed for full recovery of the PVWRF redesign costs based on the fact that the facility
15 changed hands, it would send the wrong signal to the industry. *Id.* at 6. Companies
16 looking to purchase utilities in Arizona would have less incentive to do proper due
17 diligence if they knew that all of the costs of fixing any existing problems could be imposed
18 on the ratepayers. *Id.* Conversely, if utilities building plant believed that any problems
19 with the plant could be dispensed with through a sale to another entity, their incentive to
20 build the plant properly in the first place would be diminished. *Id.* And finally, regardless of
21 a change in ownership, a Company should understand it will be held responsible, at least
22 to some degree, for non-operational plant or plant that requires excessive repairs
23 regardless of fault.

24 ⁷ See Exhibit R-22 Direct Testimony of Matt Rowell at 5.

1 Second, the Company's assertion that Mr. Rowell's opinion is unsupported by
2 evidence is simply wrong. To the contrary, Mr. Rowell's opinion is based on the best
3 evidence: the admissions by the Company's witnesses. In his Direct Testimony, LPSCO
4 witness Greg Sorensen admits:

5 *"...in the summer of 2007, the plant had two spill events that confirmed that*
6 *the plant, as originally designed and constructed by our predecessor owners,*
7 *was lacking certain redundancy capabilities and needed some upgrades to*
8 *achieve an acceptable level of reliability."*⁸

9 While Mr. Sorenson attempted to distance himself from the candid admissions during the
10 course of the hearing, he can not escape the fact that he made these admissions in
11 Direct Testimony. Because Mr. Rowell believed Mr. Sorenson's Direct Testimony to be
12 more candid than Mr. Sorenson's subsequent attempts re-characterize the repairs as
13 upgrades to address "operational challenges," Mr. Rowell's adjustment is fully supported
14 by Mr. Sorenson's admissions.

15 Mr. Rowell's opinion is also supported by the testimony and reports of Mr. McBride.
16 Mr. McBride indicated that from his inspection, electrical equipment in the head works and
17 sludge handling rooms was corroded when he inspected them in 2006.⁹ Although Mr.
18 McBride initially denied that this was a design or construction flaw, the fact is indisputable,
19 the electrical equipment in the head works and sludge handling rooms were corroded, four
20 years after installation. *Id.* NFPA Class 1-Division 1 requires that electrical equipment in
21 corrosive environments be protected against corrosion. *Id.* The electrical components in
22 the original plant were located in the head works room which included a grate covered

23 ⁸ *Id.*

24 ⁹ T: 150-152. *See* Exhibit A-16 Amended Rebuttal Testimony of Thomas Bourassa, Schedule B-2 at page 3.11. The Company includes the plant's electrical components in NARUC Account No. 354. According to the Company's Schedule B-2, the depreciation rate of the plant in Account No.354 is 3.33 percent which reflects an expected plant life of 30 years.

1 influent tank measuring 107 ft. by 4 ft. *Id.* Even though Mr. McBride refused to
2 acknowledge that the original electrical components in the head works and sludge
3 handling rooms should have been insulated against corrosion, Mr. McBride admitted that
4 he would have either relocated the electrical components or made them corrosive
5 resistant. T: 152

6 RUCO's position is also supported by industry standards, known as the Ten State
7 Standards¹⁰ Ray Jones, the Company's surprise rebuttal witness, admitted that although
8 Maricopa County did not compel compliance with the Ten State Standards, engineers
9 across the United States utilize the standards in designing wastewater treatment plants. T:
10 1347-48. He also asserted that the standards are taught in engineering schools. *Id.*
11 Under the industry standards, NFPA Class1-Division 1 electrical components shall be
12 utilized in all areas of a plant in which hazardous gasses may accumulate, including
13 screening rooms, grit removal areas, solids handling rooms, near settling tanks and scum
14 tanks.¹¹ The Ten State standards are industry standards and LPSCO's failed to follow the
15 industry standards. Although Mr. Rowell is not an engineer, his position is supported by
16 commonly accepted industry standards, the facts of this case and the admission of Mr.
17 McBride that the original electrical components which corroded within the first four years of
18 their expected 30 year plant life should have been installed in compliance with the NFPA
19 Class 1 Division 1 requirements to avoid the expense of repair or replacement.

20 Finally, there is something inherently wrong with the design and/or construction of
21 plant that cost \$14.9 million dollars to build and has to be repaired or replaced four years
22 later at the cost of seven million dollars. Utilities have an obligation to design and build

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24 ¹⁰ See Exhibit R-32 Ten State Standards, Sections 61.152, 61.23, 63.223 and 74.3.

¹¹ Id.

1 plant that meets acceptable levels of reliability.¹² It is inherently unfair to saddle the
2 ratepayers with the excessive and duplicative costs that result when utilities fail in that
3 obligation. *Id.* Given the magnitude of the cost of the repairs in relation to the total cost of
4 the plant, it is neither fair nor reasonable to require the ratepayers to shoulder the entire
5 burden of the repairs. The Commission should reject the Company's request to have
6 ratepayers bear the entire cost of the plant repairs. In an effort to be fair to both
7 shareholders and ratepayers, RUCO submits that the costs of the PVWRF upgrades
8 necessitated by the PVWRF's design problems should be shared equally by the
9 shareholders and the ratepayers. *Id.* Based on the foregoing, RUCO recommends an
10 equal sharing of the \$7.0 million dollar improvements and therefore requests exclusion of
11 \$3.5 million dollars of the capital improvements to the PVWRF.

12 **ii. The Company's assertion that the "operational challenges" were**
13 **necessitated by changed circumstances is not supported by the**
14 **evidence.**

15 The Company contends that changes in zoning resulted in operational challenges
16 that impacted plant performance and reliability and necessitated the upgrades. The
17 Company's engineering witness claimed that the LPSCO's plant was subject to a 1000-
18 foot set back which was changed to a 150-foot set back and that the zoning change
19 created operational challenges. In fact, as demonstrated on cross-examination of Mr.
20 McBride, the City of Goodyear approved the plant at 4.1mgd with ability to expand to 8.2
21 mgd with a 150-foot set back in its original approval of the plant in January, 2001.¹³

22 The Company contends that the residential in-fill on a previously adjoining golf
23 course constitutes a changed condition. It does not. As indicated by the Company's

24 ¹² See Exhibit R-22 Direct Testimony of Matthew Rowell at 5.

¹³ See Exhibit R-3, City of Goodyear letter referencing a January 1, 2001 approval and COAC No. 01-0937.

1 engineers, "the plant was always anticipated to be located in the center of SunCor's
 2 master planned community."¹⁴ As such, the 150-foot set back and residential in-fill on the
 3 land formerly used as a golf course are not *unanticipated* zoning changes. To the extent
 4 these issues were factors to be addressed in the plant's design, they should have been
 5 addressed at inception.

6 The Company asserts *unanticipated* changes in population and rapid growth
 7 created operational challenges to plant operation. T: 1355. Although the Company
 8 encountered rapid growth, it was anticipated. In its 2001 Phase I design report the
 9 Company projected the following population increases in its service areas: RAZ 265, RAZ
 10 266, Stardust and Wigwam:

	<u>2000</u>	<u>2005</u>	<u>2010</u>
12 RAZ 265	8,671	11,336	14,410
13 RAZ 266	4,876	6,517	8,452
14 Stardust	3,011	6,500	8,600
15 Wigwam	<u>3,746</u>	<u>7,200</u>	<u>10,700</u>
	16, 352	31,553	42,161 ¹⁵

16 In fact, in the 2001 Phase I Design Report, the Company assumed: "Unit Flow of 100
 17 gpcpd and a 50 percent population increase every five years." *Id.* Although the original
 18 design anticipated rapid growth, the Company did not experience the level of rapid
 19 growth anticipated in 2001. According to the Company, on August 14, 2007, before the
 20 test year and the commencement of the upgrades, the total population served was
 21 30,000. *Id.* The Company's 2007 population served was 1,553 less than its projections

23 ¹⁴ See Exhibit R-24 Phoenix Business Journal article: "Waste Water Treatment Gets New Look"
 dated May 16, 2003

24 ¹⁵ See Exhibit A-34, 2001 Phase 1 Design Report, Population Expected for 2000-2010 at 15.

1 for 2005 and 12,161 less than its projections for 2010.¹⁶ Given that the Company had
 2 not reached its population projections for 2005 by 2007, it's difficult to ascertain how
 3 lesser than expected population growth necessitated the \$7 million dollar upgrades.

4 The Company also asserts that unanticipated increases in flows created
 5 operational challenges necessitating \$7.0 million dollars in upgrades to its 4.1mgd plant.
 6 Again, the Company's records belie the assertion. In 2001, the Company designed its
 7 plant to handle an average flow of 4.1 mgd and a peak flow of 8.2 mgd based on the
 8 following projections of annual average and peak flows:

	<u>2000</u>	<u>2005</u>	<u>2010</u>
10 Annual Peak 11 Flow	4.47 mgd	5.85 mgd	7.55 mgd ¹⁷

12 The Company's maximum daily influent rates did not exceed the 2001 projections or
 13 design flows by September, 2007. In fact, in September, 2007, the Company filed an
 14 AZPDES Permit Application with the Arizona Department of Environmental Quality
 15 reporting the following flows:

	<u>2005</u>	<u>2006</u>	<u>2007</u>
16 Annual Avg. 17 Flow/day	2.5 mgd	2.8 mgd	3.4 mgd
18 Max Daily 19 Influent Rate	3.5 mgd	3.2 mgd	3.8 mgd ¹⁸

22
 23 ¹⁶ See Exhibit R-3, AZPDES Permit Application dated September, 2007 at 179.

¹⁷ See Exhibit A-34, 2001 Phase I Design Report, Annual and Peak Flows Projections based on
 Maricopa Area Government's interim projections at 15.

24 ¹⁸ See Exhibit R-3, AZPDES Permit Application dated September, 2007 at 180.

1 Based on the 2007 data, which predates the commencement of the "upgrades," LPSCO's
2 annual average flow was .7 mgd less than the original design capacity of the plant. *Id.*
3 Likewise, in 2007 before commencing the "upgrades," LPSCO's maximum daily influent
4 rate was 3.75 mgd less than the 7.55 mgd peak flows projected in 2001. Moreover, the
5 Company's maximum daily influent rate was 4.4 mgd less than the 8.2 mgd peak flows it
6 was purportedly designed to handle in 2001.¹⁹ Given that the Company had not reached
7 the average or peak flows of the current design, it is difficult to ascertain how lesser than
8 projected flow rates necessitated \$7 million dollars in upgrades to operate a 4.1 mgd
9 plant.

10 Mr. McBride, the Company's witness, also testified that changes in the biological
11 loading due to an *unanticipated* increase in the volume of fats, oils and greases also
12 necessitated the need for the \$7 million dollar upgrade. T: 155. He testified that the plant
13 had a higher than normal level of fats, oils and grease which as designed and constructed
14 resulted in clogging of influent screen and foaming of sequential batch reactors and
15 tertiary filters. T: 156. He further testified that the system as originally designed did not
16 include any means of back-flushing to clear buildups. *Id.* He claimed that the absence of a
17 means to filter out fats, oils and greases and back flush was not unusual. *Id.*

18 RUCO asserts that the Company failed to properly address the potential for fats,
19 oils and greases in its original design and that the failure to address the possibility is not
20 typical as suggested by Mr. McBride. RUCO's position is supported by the testimony of
21 Ray Jones, the Company's second engineering witness, whose testimony was introduced
22 by the Company for the first time on the last days of the hearing. Mr. Jones acknowledged

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24 ¹⁹ See Exhibit A-34, 2001 Phase I Design Report at 13.

1 that it would be typical to address fats, oils and grease in the design of a facility. T: 1305.
2 He indicated that the design may or may not include installation of specific facilities to
3 remove fats, oils and grease, but that county and municipalities required the installation
4 and use of fat, oil and grease interceptors in all facilities in which food preparation is
5 expected to generate fats, oils and greases. T: 1306. At first, he contended that zoning
6 changes which allowed for a greater amount of commercial uses resulted in the change in
7 the bio-solid volume of fats, oils and grease. T: 1341. Thereafter, he acknowledged that
8 there were no zoning changes that resulted in an increase in commercial uses. T: 1342.

9 The Company's Phase I Design Report contained no process, procedure or design
10 element to ensure a reduction of fats, oils and greases.²⁰ Even though it appears to have
11 been a recognized problem as early as 2004, the Company took no steps to resolve the
12 issue until performing "upgrades" in 2007-2008.²¹ Because the Company and its
13 shareholders were in the best position to ensure that commercial and industrial users who
14 generated fats, oils and grease installed, at their own expense before allowing connection
15 to the system. And because the Company should have had a policy to ensure commercial
16 and industrial users properly used grease interceptors in compliance with the county and
17 municipal requirements, the Company should not be allowed to recover from residential
18 ratepayers \$7 million dollars to rebuild plant due to the impact of uncontrolled bio-solids.

19 Mr. McBride also asserted that the Company's peak hourly flows have increased
20 necessitating an increase in the hydraulic capacity of the plant to 9.0 million gallons per
21 peak hour. In Phase I the Company designed its original plant with a peak hour flow of
22

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24 ²⁰ See Exhibit A-34, 2001 Phase I Design Report at 13.

²¹ See Exhibit R-2 MES Draft Report and Exhibit R-3, Phase II Expansion Report at 53.

1 11.1 mgd or (2.7 x maximum monthly flow of 4.1).²² Mr. McBride claims that as a result of
2 the upgrades the plant now has a peak hourly flow of 9.0 mgd. T: 223. Mr. McBride's
3 disclosure demonstrates that either the plant was not constructed according to the original
4 design plans specified in Phase I or the design failed to meet the expectation that the
5 Company recognized was necessary in 2001. In either case, the Company has the
6 obligation to design and build plant that meets acceptable levels of reliability.²³ If the
7 Company knew in 2001 that it would need a peak flow capacity of 11.1 mgd, then it should
8 have designed and constructed the plant to meet that peak flow capacity. Accordingly,
9 RUCO recommends that the shareholders bear an equal portion of the cost of
10 reconstructing the plant to meet its original peak hourly requirement and requests that the
11 Commission disallow \$3.5 million dollars of the cost of reconstruction from rate base.

12 **iii. "Operational challenges" necessitating a wholesale**
13 **reconstruction of four year old plant is not common**

14 Both of the Company's witnesses, Mr. McBride and Mr. Jones, claim that upgrades
15 to address operational challenges are not uncommon in newly constructed plant. When
16 questioned further, Mr. McBride could not identify a single specific situation in which
17 ratepayers were asked to pay 50 percent of the original cost of four year old plant to
18 address "operational challenges"²⁴ Mr. Jones, an engineer with two decades of
19 experience could only specifically identify one example in which ratepayers were
20 requested to pay for the rebuilding of new plant, but admitted that the rebuild was part of a
21 large expansion project increasing plant capacity from 1.5 mgd to 3.2 mgd. T: 1334-1336.

22
23 ²² See Exhibit A-34, 2001 Phase I Design Report at 13.

24 ²³ See Exhibit R-22 Direct Testimony of Matthew Rowell at 5.

²⁴ See Exhibit R-4 Response to RUCO DR 8.1.

iv. Some of the changes made by the Company under the auspices of upgrades are in fact expansions of the existing system.

The Company claims that it did not expand the size of the existing plant in performing upgrades. Mr. McBride asserts that the improvements simply provide greater reliability and redundancy, but fails to acknowledge increases in the capacity of the individual components of the plant. Through the course of the upgrades the plant, the Company has made the following changes:

Component "Upgrade"	Pre Upgrade Capacity and Configuration	Change	Capacity/Configuration Post
SBR Treatment capacity ²⁵	Average peak = 4.1 mgd	Convert anoxic tank to equalization tank Conversion of Digester to Jet Tech 5BR Add .95 mgd	5.0 mgd ¹ average 10.0 mgd peak
Grit Screening Replacement ²⁶	two existing influent screens	Retire one screen Add two new Reciprocating screen systems	15.8 mgd
Vertical turbine Filler Feeder Pumps	2 x 8.2 mgd ²⁷	Retain 2 x 8.2 mgd pumps Add 2.0 mgd pump	18.4 mgd Firm capacity 10.2
Vertical turbine Effluent Pumps	3 x 4.1 mgd ²⁸	Retain 3 x 4.1 mgd pumps Add 2.0 mgd pump	14.3 mgd Firm capacity 10.2
UV Disinfection Units ²⁹	7 x 1.44 mgd UV Disinfection units ("UVU")	Add 2x 5.0 mgd Aquionics, uvu's. Demolish 3 x 1.44 mgd uvu's. Retain 4 x 1.44 mgd	15.76 mgd Firm capacity 10.76

According to Marlin Scott, plant redundancy is less than or equal to the 4.1 mgd permitted plant capacity or up to 8.2 mgd. T: 1118-1119. As clearly demonstrated by the evidence and set forth above, the capacities of the grit screening, vertical turbine filler

²⁵ See Exhibit R-3 at 207.

²⁶ *Id.* at 211, 219.

²⁷ *Id.* at 205.

²⁸ *Id.* at 205.

²⁹ *Id.* at 170 and 205.

1 feeder and effluent pumps and UV disinfection exceed 10.0 mgd. *Id.* As of September
2 2009, the Company's average flow per month was 3.3 mgd and its average peak flows
3 were 3.85 mgd.³⁰ Based on the foregoing, the plant components as currently configured
4 include more than what is necessary for redundancy.

5 The Company asserts that the 2008 "upgrades" did not cost any more to ratepayers
6 than if the "upgrades" had been installed in 2002. The Company asserts that Mr. Rowell
7 testified to the same. The Company has taken Mr. Rowell's testimony out of context.³¹
8 Although Mr. Rowell agreed that as of the date of his deposition, on November 30, 2009,
9 ratepayers had not incurred additional costs, he did not testify that they would not incur
10 additional unnecessary costs. His testimony on the issue is as follows:

11 Q: But you didn't perform any analysis of whether ratepayers incurred \$3.5
12 million in additional costs because the rate--- because the upgrades were put in place in
13 2008 instead of 2002; agreed?

14 A: Well, **as of today**, ratepayers have not incurred any additional cost.

15 Q: Agreed. I agree with that.

16 A: What we are talking about here are the costs the ratepayers will incur
17 pending the conclusion of the rate case.

18 Q: But you said earlier that the ratepayers would have been paying those costs
19 if the upgrades would have been included in rate base in the original plant.

20 A: **Oh no, I did not.** If I said that I was mis--. I was not speaking correctly.³²
21 Mr. Rowell definitively did not agree that the 2008 upgrades would not have cost the
22 ratepayers any more if they had been installed in the initial plant. The record supports Mr.

23 ³⁰ See Exhibit A-36 Company's response to Staff DR 5.4.

24 ³¹ See Exhibit A-28 Deposition of Matt Rowell at 43-44.

³² *Id.*

1 Rowell's statements. In the course of making upgrades, the Company demolished and
2 installed additional systems for grit removal, screening, electric and ultra-violet
3 disinfection.³³ As a result the ratepayers are paying twice for the plant.

4 The Company replaced the odor system from the original construction, not once,
5 but twice, on a plant which was touted to have a state of the art design which would allow
6 it to be placed in the center of a master planned community without the usual odor
7 issues.³⁴ While the ratepayers are undoubtedly happy to have the odor issues resolved,
8 the utility had a burden to ensure that its original design was sufficiently reliable to avoid
9 odor emissions and charging ratepayers for three odor control systems before arriving at a
10 resolution is simply unfair and unreasonable.

11 The Company asserts that 100 percent of the "upgrades" are used and useful and
12 that RUCO's witness, Matt Rowell agreed to the same. The Company misquotes the
13 record. In his testimony, Mr. Rowell stated:

14 Q. Mr. Rowell, you agree that the Palm Valley water reclamation facility as
15 originally constructed was and is used and useful in providing utility service,
16 correct?

17 A. It is providing utility service.

18 Q. So it is used and useful, correct?

19 A. Well, I haven't undertaken a review to determine 100 percent of the plant
20 is used and useful.

21
22 ³³ See Exhibit R-3 ADEQ Documents, Correspondence from Company and Engineer re: Upgrades at
23 205-243.

24 ³⁴ See Exhibit A-1 Direct Testimony of Greg Sorenson at 8 and R-24 Phoenix Business Journal article:
"Waste Water Treatment Gets New Look" dated May 16, 2003

1 T: 909. Contrary to the Company's assertion, Mr. Rowell did not testify that 100
2 percent of the "upgrades" were used and useful.

3 In fact, RUCO has concerns that 100 percent of the plant improvements are not
4 used and useful. In part, because in large measure, some of the improvements outlined
5 on the above chart are far in excess of the capacity necessary to meet current demand
6 and redundancy requirements. RUCO, however, has not requested a separate
7 adjustment for excess capacity of the individual plant components because the
8 information compiled herein was not provided by the Company in response to RUCO's
9 multiple data requests.³⁵ RUCO obtained the information from ADEQ well after the time
10 for filing its Surrebuttal Testimony.

11 RUCO does not believe that the Company's deleterious conduct in failing to
12 respond to RUCO's data requests should be rewarded and defers to the Commission
13 whether additional adjustments for excess capacity are warranted. However, RUCO
14 believes that the level of plant component expansion beyond what is needed for redundant
15 capacity demonstrates the importance of RUCO's \$3.5 million dollar adjustment to plant in
16 service. If the Company failed to design and construct its original plant in 2002,
17 ratepayers should not have to bear the full burden of paying for entire cost of rebuilding it
18 in 2007. Moreover, if the Company decided to expand the size of the individual
19 components during rebuild beyond what is needed to serve the needs of current
20 ratepayers, then the shareholders should bear some portion of the risk associated with the
21 delay in growth.

22

23

24 ³⁵ See Exhibit R-6 Company's responses to RUCO 9th Data Requests and Exhibit R-34 the Company's
responses to RUCO's 6th Data Request.

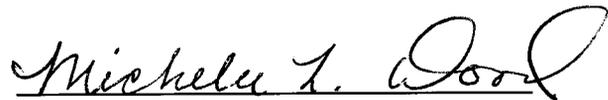
1 **III. CONCLUSION**

2 For the reasons discussed above, RUCO recommends the Commission adopt its
3 position in this case, and reject the positions of Staff and the Company, to the extent they
4 conflict with RUCO's recommendations.

5 RESPECTFULLY SUBMITTED this 24th day of February, 2010.

6

7



8

Michelle L. Wood
Counsel

9 AN ORIGINAL AND THIRTEEN COPIES
10 of the foregoing filed this 24th day
of February, 2010 with:

11 Docket Control
12 Arizona Corporation Commission
1200 West Washington
13 Phoenix, Arizona 85007

14 COPIES of the foregoing hand delivered/
mailed this 24th day of February, 2010 to:

15 The Honorable Dwight D. Nodes,
16 Asst. Chief Administrative Law Judge
Arizona Corporation Commission
1200 West Washington
17 Phoenix, Arizona 85007

18 Janice Alward, Chief Counsel
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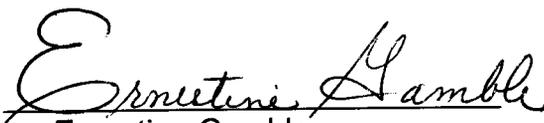
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