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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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2010 MAY 10 P 4: 14

AZ CORP COMMISSION  
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IN THE MATTER OF THE APPLICATION OF ) DOCKET NO. WS-02676A-09-0257  
RIO RICO UTILITIES, INC, AN ARIZONA )  
CORPORATION, FOR A DETERMINATION OF )  
THE FAIR VALUE OF ITS UTILITY PLANT AND )  
PROPERTY AND FOR INCREASES IN ITS )  
WATER AND WASTEWATER RATES AND )  
CHARGES FOR UTILITY SERVICE BASED )  
THEREON. )

**Rio Rico Properties, Inc.'s  
Reply Brief**

**May 10, 2010**

Arizona Corporation Commission

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1 **I. Introduction.**

2 Rio Rico Utilities, Inc. (“Utility”) does little to address Rio Rico Properties, Inc. (“RR  
3 Properties”) position in this case. Rather than address RR Properties’ arguments head on, Utility  
4 attacks a strawman – a hypothetical developer who opposes hook-up fees (“HUF”), who does not  
5 want growth to pay for growth, who wants to shirk paying its fair share, and who believes the  
6 Utility is on the verge of financial crisis. Utility’s imagined “developer” position is wholly  
7 unrelated to the actual position taken by RR Properties in this case. RR Properties does not  
8 oppose a HUF, and throughout this case, it has consistently supported appropriate “growth paying  
9 for growth.” RR Properties has not attempted to evade paying its fair share – it agrees that it  
10 should have to pay a fair amount for off-sites. Nor has RR Properties suggested that Utility is on  
11 the verge of financial collapse. Rather, RR Properties has demonstrated that Utility has a  
12 relatively high amount of CIAC, thus disproving the Utility’s claim that more CIAC is somehow  
13 needed to “balance” its capital structure.

14 In short, RR Properties has no objection to a HUF. It simply wants a fair HUF that  
15 provides for certainty about the amount to be paid, that prohibits Utility from charging a HUF  
16 where off-sites have already been provided for, and that prohibits Utility from “double-dipping”  
17 for off-site costs (extra CIAC or AIAC on top of the HUF).

18 **II. Response to Utility’s brief.**

19 **A. Utility misstates RR Properties’ position.**

20 Utility claims that RR Properties “opposes” a HUF.<sup>1</sup> Utility provides no citation for its  
21 claim. In fact, RR Properties does not oppose a HUF. RR Properties witness Mr. Rowell testified  
22 that “[a]s to the issue of whether there should be a HUF or should there not be a HUF we are  
23 neutral.”<sup>2</sup> Mr. Rowell also testified about the benefits of a HUF.<sup>3</sup> Utility also argues that RR  
24 Properties wants “someone else to pay for growth.”<sup>4</sup> To the contrary, Mr. Rowell testified that  
25

26 <sup>1</sup> Utility Br. at 74:14-15.

27 <sup>2</sup> Tr. at 569:14-17.

<sup>3</sup> Tr. at 563; Ex. I-3 (Rowell Direct) at 3:1-14.

<sup>4</sup> Utility Br. at 74:15.

1 “some level of contribution is appropriate to fund plant necessary to serve new growth.”<sup>5</sup> RR  
2 Properties agrees that it should pay its fair share for off-site facilities. What RR Properties  
3 opposes is Utility’s proposal that Utility pay nothing for off-site facilities, placing 100% of the cost  
4 on the landowners.<sup>6</sup> That is not fair, because the Utility benefits from growth.<sup>7</sup> And it is not wise,  
5 because utilities should make some investment in new facilities to give them an ownership stake,  
6 an incentive to protect their investment, and a rate base to earn a return on.

7 Utility also argues that RR Properties somehow claims that Utility “will join the ranks of  
8 over-CIACed, under-equitized water and sewer utilities.”<sup>8</sup> Again, Utility provides no citation for  
9 this claim. Indeed, Mr. Rowell expressly rejected that idea, stating that Utility would be able to  
10 attract capital from its parent even with a HUF.<sup>9</sup> Mr. Rowell did provide testimony concerning  
11 Utility’s relatively high amount of CIAC. The purpose of this testimony was to rebut Utility’s  
12 claim that a HUF was necessary to balance its capital structure.<sup>10</sup> Utility has not disputed that,  
13 factually, it has more CIAC than peer companies, and more CIAC than Staff’s standard  
14 recommendation. Thus, Utility’s argument that it somehow needs more CIAC to “balance” its  
15 capital structure is unsupported by the evidence.

16 **B. Utility may try to force landowners to pay twice.**

17 Utility states that “it does not intend to make a developer pay twice for the same  
18 facilities.”<sup>11</sup> But Mr. Sorensen implied the developer may pay twice. For example, he discussed a  
19 hypothetical where a developer contributes plant at one point, and then needs to use the plant some  
20 time later. Mr. Sorensen did not rule out making the developer pay twice – once as an advance,  
21 and a second time as a HUF.<sup>12</sup>

22 **C. Double-dipping should be prohibited.**

23  
24 <sup>5</sup> Ex. I-4 (Rowell Surrebuttal) at 11:4-9.

25 <sup>6</sup> Tr. (Sorensen) at 640:15-19.

26 <sup>7</sup> Tr. (Sorensen) at 636:2-6.

27 <sup>8</sup> Utility Br. at 78:21 to 79:2.

<sup>9</sup> Tr. at 601:23 to 602:2.

<sup>10</sup> See e.g. Ex. A-3 (Sorensen Rejoinder) at 2-3.

<sup>11</sup> Utility Br. at 78:10-11.

<sup>12</sup> Tr. at 702-703.

1 Utility appears to seek to “double-dip”, forcing developers to pay a HUF for off-sites, and  
2 then pay additional contributions or advances for the same off-sites. Thus, the developer would  
3 make two payments, totaling the full cost of the plant. If that is the case, why have a HUF? And  
4 why bother to set a specific HUF rate? One of the main benefits of a HUF is the certainty and  
5 clarity it provides all parties – everyone knows what the developer will have to pay. This makes it  
6 easier for the developer to plan, and it also makes the HUF easier to administer. If Utility is  
7 allowed to extract additional funds for off-sites on top of the HUF, those benefits will be lost. In  
8 addition, the risk of disputes and litigation would increase. Further, the Commission will have  
9 essentially no control or oversight over the amount of off-site plant that is ultimately funded  
10 through CIAC and AIAC. Lastly, Utility should put in some investment in new off-site facilities –  
11 although it should not bear all the burden, it also should not pay nothing. Utility should not reap  
12 the benefits of growth without making some investment.

13 Likewise, if the Commission denies a HUF because it finds Utility has adequate capacity  
14 for future growth, then Utility should not be able to collect additional advances or contributions for  
15 off-site facilities. Quite simply, Utility should not get something for nothing – it should not be  
16 paid to build off-site facilities that already exist.

17 Utility also seeks to collect the HUF, even where it is already serving a subdivision, or  
18 where it has accepted on-sites. In those cases, provisions for off-site facilities already should have  
19 been made, and may have been made. Utility should not get a second chance to collect funds from  
20 the developer – if there was a need for off-site funds, Utility would have already asked for them.  
21 This is especially the case when the necessary off-site facilities have been provided by another  
22 developer, or where additional off-site facilities are not needed at all.

23 **D. Utility has not discredited Mr. Rowell’s testimony.**

24 In an attempt to discredit Mr. Rowell, Utility points to various details about RR Properties  
25 that Mr. Rowell didn’t know.<sup>13</sup> So what? Undoubtedly, there are countless things that Mr. Rowell  
26 does not know. It is not reasonable to expect an expert witness to be able to answer a “pop quiz”

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<sup>13</sup> Utility Br. at 77:17 to 78:2.

1 on details of their client, when the details have not previously been at issue in the case.  
2 Presumably, there are many details about Utility that its witness, Mr. Bourassa, does not know, e.g.  
3 the horsepower of a specific pump, the size of a certain main, or how many main extension  
4 agreements the Utility entered in 2006. It would be wasteful of their clients' funds for Mr. Rowell  
5 or Mr. Bourassa to memorize such details.

6 Utility goes on to claim that RR Properties itself does not know those details.<sup>14</sup> There is no  
7 support in the record for this claim. Mr. Rowell carefully distinguished his knowledge from that  
8 of RR Properties, testifying that RR Properties may know those details, even though he does not.<sup>15</sup>  
9 If Utility wanted to know those details, it could have sent a data request, or requested RR  
10 Properties to submit testimony on those details, or even subpoenaed a witness from RR Properties  
11 to testify regarding them. Utility did none of those things. Instead, without warning, it demanded  
12 Mr. Rowell provide these details on the stand, without access to RR Properties employees or  
13 records. Mr. Rowell is an expert witness on regulatory policy and economics, not a fact witness on  
14 details about RR Properties. Mr. Rowell's qualifications as a long-standing expert witness before  
15 the Commission, and as the Commission's former Chief Economist, are impressive and not  
16 subject to attack.

17 **III. Response to Staff brief.**

18 Staff states that Utility's proposed form of tariff should be rejected.<sup>16</sup> RR Properties agrees  
19 and has provided an alternative form of tariff that resolves ambiguities.<sup>17</sup> RR Properties takes no  
20 position on the capacity dispute between Utility and Staff.

21 **IV. Response to RUCO brief.**

22 RR Properties takes no position on the hook-up fee issue raised in RUCO's brief.  
23  
24  
25

26 <sup>14</sup> Utility Br. at 78:2-5.

<sup>15</sup> Tr. at 574:13-15.

<sup>16</sup> Staff Br. at 20:15-18.

27 <sup>17</sup> See RR Properties Br. at 6-7. The proposed forms of tariff are Attachments 1 and 2 to Ex. I-4 (Rowell Surrebuttal).

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**V. Conclusion.**

If the Commission approves a HUF, it should approve a simple, fair HUF that clearly states the total amount a developer must pay Utility for off-site facilities. RR Properties is willing to pay its fair share, but it should not have to pay for all the costs of off-sites when Utility also benefits from off-sites and growth. The Commission should not allow Utility to collect funds for off-sites where additional off-sites are not needed, where the off-sites should already have been provided for, or where the developer has already paid an advance or a HUF. The HUF should not apply to properties where:

- An existing main extension agreement is in place;
- Utility is already providing service; or
- Utility has accepted on-sites.

In sum, the Commission should not approve Utility's proposed version of the HUF tariff. If the Commission believes that a HUF is appropriate, the HUF tariff proposed by RR Properties should be adopted. If the Commission believes a HUF is not appropriate, Utility should be precluded from collecting funds for off-site facilities from sources other than the HUF.

RESPECTFULLY SUBMITTED this 10th day of May 2010.

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