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2010 MAY 24 P 3: 30

AZ CORP COMMISSION  
DOCKET CONTROL

**BEFORE THE ARIZONA CORPORATION COMMISSION**

8 IN THE MATTER OF THE APPLICATION  
 9 OF CHAPARRAL CITY WATER  
 10 COMPANY, INC., AN ARIZONA  
 11 CORPORATION, FOR A  
 12 DETERMINATION OF THE CURRENT  
 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

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 17 **CHAPARRAL CITY WATER COMPANY, INC.**  
 18 **REHEARING CLOSING BRIEF**

May 24, 2010

Arizona Corporation Commission

**DOCKETED**

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**TABLE OF ABBREVIATIONS AND CONVENTIONS**

Chaparral City Water Company uses the following abbreviations in citing to the pre-filed testimony and hearing transcripts in this brief. Other documents that were admitted as exhibits during the hearing are cited by exhibit number. Other citations to testimony and documents are provided in full, including (where applicable) the Corporation Commission's docket number and filing date.

**RESIDENTIAL UTILITY CONSUMER OFFICE  
PRE-FILED TESTIMONY  
(REHEARING)**

<b>Pre-Filed Testimony</b>	<b>Hearing Exhibit</b>	<b>Abbreviation</b>
Direct Rehearing Testimony of William A. Rigsby	R-1	Rigsby RhDt.

**STAFF  
PRE-FILED TESTIMONY  
(REHEARING)**

<b>Pre-Filed Testimony</b>	<b>Hearing Exhibit</b>	<b>Abbreviation</b>
Rehearing Direct Testimony of Elijah O. Abinah	S-1	Abinah RhDt.

**OTHER PORTIONS OF THE RECORD  
(REHEARING)**

	<b>Hearing Exhibit</b>	
Decision No. 66849	R-2	
Chaparral City Water Company's response to Staff data request MEM 7.3, dated February 21, 2008	R-3	
Rehearing Transcript		RhTr.

**CHAPARRAL CITY WATER COMPANY  
PRE-FILED TESTIMONY  
(UNDERLYING PROCEEDING)**

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<b>Pre-Filed Testimony</b>	<b>Hearing Exhibit</b>	<b>Abbreviation</b>
Direct Testimony of Robert N. Hanford	A-1	Hanford Dt.
Rebuttal Testimony of Robert N. Hanford	A-2	Hanford Rb.
Direct Testimony (Rate Base) of Thomas J. Bourassa	A-3	Bourassa Dt.
Supplemental Testimony (Rate Base) of Thomas J. Bourassa	A-4	Bourassa Supp. Dt.
Rebuttal Testimony (Rate Base) of Thomas J. Bourassa	A-5	Bourassa Rb.
Supplemental Rebuttal Testimony (Lower Income Tariff) of Thomas J. Bourassa	A-6	Bourassa Supp. Rb.
Rejoinder Testimony of Thomas J. Bourassa	A-7	Bourassa Rj.
Rebuttal Testimony of Robert J. Sprowls	A-8	Sprowls Rb.

**RESIDENTIAL UTILITY CONSUMER OFFICE  
PRE-FILED TESTIMONY  
(UNDERLYING PROCEEDING)**

<b>Pre-Filed Testimony</b>	<b>Hearing Exhibit</b>	<b>Abbreviation</b>
Direct Testimony of William Rigsby	R-6	Rigsby Dt.
Surrebuttal Testimony of William Rigsby	R-7	Rigsby Sb.
Direct Testimony of Timothy Coley	R-8	Coley Dt.
Surrebuttal Testimony of Timothy Coley	R-9	Coley Sb.

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**STAFF  
PRE-FILED TESTIMONY  
(UNDERLYING PROCEEDING)**

<b>Pre-Filed Testimony</b>	<b>Hearing Exhibit</b>	<b>Abbreviation</b>
Direct Testimony of Marlin Scott, Jr.	S-1	Scott Dt.
Direct Testimony of Marvin Millsap	S-2	Millsap Dt.
Surrebuttal Testimony of Marvin Millsap	S-3	Millsap Sb.

**OTHER PORTIONS OF THE RECORD  
(UNDERLYING PROCEEDING)**

<b>Pre-Filed Testimony</b>	<b>Hearing Exhibit</b>	<b>Abbreviation</b>
Hearing Transcript		Tr.

2316696.3/10696.016

1           Chaparral City Water Company, Inc. (“Chaparral City” or “the Company”) hereby  
2 submits its Rehearing Closing Brief with regard to the rehearing of Decision No. 71308  
3 (October 21, 2009), as amended *nunc pro tunc* by Decision No. 71424 (December 8,  
4 2009).<sup>1</sup> The Commission’s decision to rehear Decision No. 71308 was limited to 2  
5 issues: (1) the ratemaking treatment of a \$1.52 million property damage settlement; and  
6 (2) whether the Company should be allowed to recover \$100,000 of additional rate case  
7 expense for its appeal of Decision No. 68176 and subsequent remand that culminated in  
8 Decision No. 70441 (July 28, 2008).<sup>2</sup>

9           **I. BACKGROUND**

10           On October 21, 2009, the Commission issued Decision No. 71308, which decided  
11 all issues relating to Chaparral City’s request for a determination of the fair value of its  
12 assets and for increases to its rates and charges for utility service based thereon, and  
13 authorized new rates. In addition, the Commission decided the issue of rate case expense  
14 for the appeal of Decision No. 68176 and subsequent remand that resulted in Decision  
15 No. 70441. The Commission had previously directed that this issue be decided in the  
16 docket that resulted in Decision No. 71308.<sup>3</sup>

17           On November 10, 2009, Chaparral City filed an application pursuant to A.R.S.  
18 § 40-253 requesting rehearing on five specific issues addressed in Decision No. 71308.  
19 The specific issues raised for rehearing were as follows:  
20

21  
22 <sup>1</sup> The key for abbreviations and citations to a witness’ pre-filed testimony, from both the  
23 rehearing and underlying proceeding, is set forth in the Table of Abbreviations and Conventions  
24 in pages ii to iv following the Table of Contents. The table also lists the exhibit numbers of the  
parties’ pre-filed testimony. Other exhibits are cited by exhibit number and, where applicable, by  
page number, e.g., RhEx. R-1 at 2. The transcript of the rehearing is cited by page number, e.g.,  
RhTr. at 1. The transcript of the underlying proceeding is cited by page number, e.g. Tr. at 1.

25 <sup>2</sup> Procedural Order dated February 9, 2010.

26 <sup>3</sup> Decision No. 70441 at 39:11-18.

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1. The Commission's treatment of the Fountain Hills Sanitary District ("FHSD") settlement proceeds conflicts with Commission precedent and effectively confiscates the Company's property without just compensation.
2. The Commission's denial of recovery of rate case expense associated with appeal and remand of Decision No. 68176, is improper given that the Company prevailed on appeal, and sets a dangerous precedent.
3. The Commission violated the Arizona Constitution's fair value standard in setting rates that marginalize the use of fair value.
4. The authorized return on equity is arbitrary and result-driven, and conflicts with the evidence in the record.
5. As a result of a computational error, the rates do not produce the Commission's authorized revenue requirement.

On November 24, 2009, the Commission granted the Company's rehearing application in part, and ordered the Commission's Hearing Division to prepare a recommended order correcting the computational error in the approved rates and charges. The Commission withheld making any determinations as to any other issues raised in the application until after Commission consideration of an order addressing correction of alleged errors in rates.

On December 8, 2009, the Commission issued Decision No. 71424, which amended Decision No. 71308 *nunc pro tunc* to correct a computational error in rates approved in Decision No. 71308. The Decision made no determination on any other issue raised in the rehearing application. However, Decision No. 71424 also stated that the Commission granted the rehearing application filed by the Company "in order to allow time for further consideration."<sup>4</sup>

The Commission considered the remaining four issues in Chaparral City's rehearing application during the January 19, 2010 staff meeting. Ultimately, the

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<sup>4</sup> Decision No. 71424 at 5 – 6.

1 Commission voted to grant the Company's request for rehearing of two of the remaining  
2 four issues, as noted above: (1) treatment of the FHSD settlement proceeds; and  
3 (2) recovery of additional rate case expense associated with the appeal of Decision  
4 No. 68176 and subsequent proceedings on remand.<sup>5</sup> The Commission later indicated that  
5 the rehearing would proceed under A.R.S. §40-252, in addition to A.R.S. §40-253.  
6 Hearings were then held on April 12, 2010, after which the parties were instructed to file  
7 additional schedules as well as closing briefs.<sup>6</sup>

## 8 **II. ARGUMENT**

### 9 **A. Summary Of The Parties' Positions On The Rehearing Issues.**

10 Chaparral City's management decisions with respect to its property resulted in a  
11 \$1.52 million "utility generated gain." Despite this, the Company has consistently and  
12 voluntarily maintained that sharing the gain with ratepayers was fair and reasonable. The  
13 Company took guidance in this regard from past Commission decisions, including, most  
14 notably, *Arizona Water Company-Eastern Group*, Decision No. 66849 (March 19, 2004).  
15 The Company believes this approach is fair and equitable, and consistent with the public  
16 interest.

17 Likewise, on the recovery of the rate case expenses associated with the appeal of  
18 Decision No. 68176 and subsequent remand, the Company maintains that an award of  
19 only \$100,000 of additional rate case expense is reasonable despite incurring over  
20 \$500,000 (and counting) in fees and other expenses. Simply put, the public interest has  
21 been served because, as a result of the Company's appeal, the Commission had a chance  
22 to (and believes it has) corrected the manner that the Court of Appeal found unlawful for  
23 determining fair value rates of return.

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24 <sup>5</sup> Procedural Order dated February 9, 2010.

25 <sup>6</sup> The parties jointly submitted the requested schedules on May 12, 2010, summarizing the rate  
26 impacts of 4 different scenarios as requested by Judge Wolfe.

1           Chaparral City did not submit any additional evidence in this rehearing on either  
2 issue. The Company asserts that the relief it sought, and still seeks, is supported by  
3 substantial evidence in the record before the Commission.

4           Based on its own independent analysis, Staff also asks the Commission to grant the  
5 relief sought by the Company. Regarding the settlement proceeds, Staff believes that  
6 utilities which are willing to share the proceeds of the sale of an asset that was in rate  
7 base should not be denied a share of the gain resulting from that asset simply because that  
8 asset has not yet been sold.<sup>7</sup> With respect to the additional rate case expense for the  
9 appeal and remand, Staff also advances a simple policy position. The Commission  
10 violated the Arizona Constitution, leading Chaparral City to incur additional expenses to  
11 pursue the appeal. Therefore, it is just and reasonable to allow recovery of a portion of  
12 the Company's rate case expense.<sup>8</sup>

13           RUCO continues to vehemently fight the Company and Staff on both issues.  
14 RUCO's extreme views on the sharing of a \$1.5 million utility generated gain are best  
15 summed up in RUCO's opening comments during the rehearing:

16                     There is no reasonable basis for the shareholders to receive  
17                     anything more than the expenses incurred in resolving the  
18                     dispute with Fountain Hills Sanitation District. To provide  
19                     the shareholders with \$1.52 million or any portion thereof for  
20                     doing the business, which they are legally required to do, is a  
21                     windfall. ... If the Company and its shareholders are unwilling  
22                     to pursue legal rights on behalf of ratepayers, then they need  
23                     to step down and let someone interested in both the  
24                     obligations and the rewards of a water monopoly to come  
25                     forward.<sup>9</sup>

26           It's hard to believe that RUCO is actually speaking about property owned by Chaparral

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24           <sup>7</sup> Abinah RhDt. at 3:1-18; Tr. at 351, 547 – 548.

25           <sup>8</sup> RhTr. at 124:9 – 126:6; Abinah RhDt. at 4:17-20.

26           <sup>9</sup> RhTr. at 9:13 – 10:2.

1 City, which cannot be taken without the payment of just compensation under the United  
2 States and Arizona Constitutions. Similarly, RUCO's rehearing witness' opposition to  
3 recovery of any additional rate case expense is so pronounced that he testified that the  
4 Commission did not do anything unlawful in Decision No. 68176 despite the express  
5 language of the Court of Appeals' order.<sup>10</sup>

6 There is no question that these extreme views colored Decision No. 71308, as it  
7 was RUCO's two amendments that led to modification of the ROO at the Open Meeting  
8 where Decision No. 71308 was adopted. Still, the Company appreciates the  
9 Commission's willingness to take another look at these two issues. To further aid that  
10 effort, the Company's arguments on the two issues being reheard are addressed in greater  
11 detail below.<sup>11</sup>

12 **B. The Company Should Be Allowed To Share Its Utility Generated Gain**  
13 **With Its Ratepayers.**

14 FHSD is the sewer utility provider in most of the Company's service territory.  
15 FHSD constructed an aquifer storage and recovery well in the vicinity of the Company's  
16 Well No. 9.<sup>12</sup> Although the Company relies primarily on surface water obtained under its  
17 CAP contracts, water from Well No. 9 was blended with CAP water, and water from two

18 \_\_\_\_\_  
19 <sup>10</sup> *Id.* at 108:14-20.

20 <sup>11</sup> As Judge Wolfe is well aware, the parties have fully briefed both of these issues. The  
21 Company hereby incorporates its prior briefs on these two issues by this reference. *See*  
22 Company's Closing Brief – Rate Base, Income Statement and Rate Design, filed January 28,  
23 2009 (“January 28, 2009 Closing Brief”), at 6 – 10, 22 – 24, and Company's Reply Brief – Rate  
24 Base, Income Statement and Rate Design, filed February 13, 2009 (“February 13, 2009 Reply  
25 Brief”), at 3:8 – 6:16, 7 – 9, 16 – 18. None of the parties have introduced new evidence, nor  
26 modified their arguments in any material way since the issuance of Decision No. 71308. Even  
RUCO who opposes the rehearing and any change in Decision No. 71308 is relying entirely on  
the existing record. RhTr. at 86:8-10. As such, in this brief, Chaparral City will focus primarily  
on the record evidence and its arguments in favor of the relief it seeks with respect to these two  
issues. To the extent necessary, the Company will further address the arguments of the other  
parties in its reply to be filed on June 14, 2010.

<sup>12</sup> Tr. at 118.

1 other wells.<sup>13</sup> When FHSD's actions forced the Company to take Well No. 9 off-line,  
2 FHSD attempted to provide Chaparral City with a replacement well. When that effort  
3 failed, the two parties chose to enter into a settlement agreement to avoid litigation.<sup>14</sup>  
4 FHSD paid Chaparral City \$1.52 million, and the Company agreed to cap Well No. 9, and  
5 another nearby well, Well No. 8.<sup>15</sup> Well No. 8 was historically used as a raw water  
6 source for Fountain Hills park and lake, but was never used to provide potable water  
7 service.<sup>16</sup> The Company disclosed the payment in its rate filing and proposed that it be  
8 allowed to share the proceeds with its customers.<sup>17</sup>

9 The Company felt, and still feels, that its proposed treatment of the FHSD  
10 settlement proceeds is extremely fair and equitable.<sup>18</sup> Indeed, Chaparral City had hoped  
11 to avoid controversy on this issue by adhering to the Commission's similar treatment of  
12 proceeds from a similar settlement in Decision No. 66849 (March 19, 2004) for Arizona  
13 Water Company's Eastern Group. In that case, the Commission agreed with RUCO's  
14 arguments and ordered that settlement proceeds be shared equally between Arizona Water  
15 and its ratepayers, explaining that an equal sharing of the settlement proceeds "provides a  
16 reasonable balance between the rights and obligations of shareholders and ratepayers and  
17 will provide the Company with a sufficient incentive to pursue future litigation or  
18 settlement of claims that the Company and its customers may be entitled to receive."<sup>19</sup>  
19 Obviously, Decision No. 66849 sent a loud message to regulated utilities about what the

20 <sup>13</sup> Hanford Dt. at 3; Tr. at 101.

21 <sup>14</sup> Hanford Dt. at 10.

22 <sup>15</sup> RhEx. R-3.

23 <sup>16</sup> Tr. at 101.

24 <sup>17</sup> Bourassa Dt. at 10 – 11; Bourassa Rb. at 13 – 15; Hanford Rb. at 1 – 4.

25 <sup>18</sup> *E.g.*, Hanford Rb. at 4 – 5.

26 <sup>19</sup> Decision No. 66849 (RhEx. R-2) at 35.

1 Commission expects utilities to do when its assets are compromised and what it views as  
2 a fair sharing of the resultant gain, if any. Chaparral City heard that message and  
3 followed it to the benefit of its customers. Again, the Company never expected to have to  
4 fight for a share of the very gain it generated and offered to voluntarily share.

5 The dispute started when Staff's rate analyst asserted in his pre-filed direct  
6 testimony that the Company was not entitled to keep any of the gain because the two  
7 wells are fully depreciated.<sup>20</sup> No Commission rule or precedent, no accounting rule and,  
8 indeed, no other authority was or has been offered to support this result, which was  
9 nothing more than Mr. Millsap's personal opinion that recovery of depreciation through  
10 rates vests ratepayers an interest in the utility's property. Despite RUCO's agreement  
11 with Mr. Millsap's opinion,<sup>21</sup> the law says otherwise. The United States Supreme Court  
12 has explained:

13 Customers pay for service, not for the property used to render  
14 it. Their payments are not contributions to depreciation or  
15 other operating expenses or to the capital of the company. By  
16 paying bills for service they do not acquire any interest, legal  
17 or equitable, in the property used for their convenience or in  
the funds of the company. Property purchased out of moneys  
received for service belongs to the company just as does that  
purchased out of proceeds of its bonds and stock.<sup>22</sup>

18 It follows that recovery of depreciation through rates is an inadequate basis to distinguish  
19 this case from Decision No. 66849 and to allocate all of the settlement proceeds to  
20 customers by reducing Chaparral City's rate base.

21 \_\_\_\_\_  
<sup>20</sup> Millsap Dt. at 15.

22 <sup>21</sup> *E.g.*, RhTr. at 52:25 – 53:4.

23 <sup>22</sup> *Bd. of Pub. Utility Comm'rs v. New York Tele. Co.*, 271 U.S. 23, 32 (1926). Mr. Rigsby also  
24 expressly disagreed with the US Supreme Court claiming that payments of rates does provide the  
25 customer an interest in the utility's property. RhTr. at 58:13-16. Ironically, Mr. Rigsby's basis  
26 for disagreeing with the law of the United States was past Commission decisions where the  
proceeds of utility generated gains were shared. *Id.* at 60:4 – 61:21. Apparently, the  
contradiction with respect to the instant case escaped RUCO's notice.

1           Moreover, there is no evidence that the wells at issue in Arizona Water's situation  
2 were fully depreciated.<sup>23</sup> Nor did the Commission address this factor in its decision in  
3 that case. Rather, as illustrated in the specific holding quoted above, the Commission's  
4 decision was founded in its desire to encourage utilities to protect their assets by allowing  
5 any gain to be shared equally.<sup>24</sup> Obviously Staff agreed, as it rejected Mr. Millsap's  
6 personal view in favor of the bigger picture when it directed him to adopt the Company's  
7 position for policy reasons.<sup>25</sup> Indeed, even RUCO agrees this is good public policy.<sup>26</sup>

8           The reasons to apply the same policy here are compelling. For starters, RUCO's  
9 adoption of Mr. Millsap's view is undermined by the policy reasons its rehearing witness  
10 himself advocated in the Arizona Water Case.<sup>27</sup> Of course, Mr. Rigsby now argues that  
11 such reasons don't apply here because in that case there was also replacement water,  
12 whereas here, the customers had to buy more expensive water to replace the water from  
13 Well No. 9.<sup>28</sup> This reasoning is strained. What if Well No. 9 had simply worn out? After  
14 all, if, as RUCO asserts, the well was fully depreciated; thus, its useful life could have  
15 ended at any time. Would Chaparral City have to "contribute" a new replacement well  
16 because ratepayers had already paid it for the one that was kaput? Of course not, and  
17 there is no reason to treat this situation any differently. This is especially true given that  
18 Mr. Rigsby's assertions were based entirely on his blind adoption of the unsupported

19 \_\_\_\_\_  
20 <sup>23</sup> *Id.* at 74:20 – 75:20; RhExs. CCWC-1 and CCWC-2.

21 <sup>24</sup> Decision No. 66849 (RhEx. R-2) at 34 – 35.

22 <sup>25</sup> Tr. at 351 – 352.

23 <sup>26</sup> RhTr. at 51:19 – 52:5, 81:8-22.

24 <sup>27</sup> RhExs. CCWC 1 at 31:22-23 ("Commission has historically recognized propriety of sharing  
25 utility generated gains on a 50/50 basis") and CCWC 2 at 7:19-21 (sharing creates an incentive  
for utility to obtain the best possible resolution since it will know it needs to share with  
customers).

26 <sup>28</sup> *E.g.*, Rigsby RhDt. at 15; RhTr. at 18 - 19.

1 testimony of Mr. Millsap that water from the wells was replaced with more expensive  
2 CAP water.<sup>29</sup> This testimony, which Mr. Millsap never had to defend on the stand due to  
3 Staff's change of position, is wrong. First, very little water from Wells No. 8 and No. 9  
4 was actually being used to the benefit of the Company's ratepayers.<sup>30</sup> Second, water from  
5 Well No. 9 was more costly to the Company than the CAP water that allegedly replaced  
6 it.<sup>31</sup>

7 Thus, the factual basis for the assertions of Mr. Rigsby and Mr. Millsap was  
8 incorrect. Moreover, they have not given the Commission a good reason to reject its  
9 policy that promotes sharing of utility generated gains. Therefore, the Commission  
10 should follow its past practice of allowing utility generated gains to be shared between the  
11 utility and its ratepayers. This was and remains good public policy.

12 **C. Rate Case Expense.**

13 The Company incurred over \$500,000 of rate case expense in the appeal of  
14 Decision No. 68176 and the subsequent proceedings on remand, but requested recovery  
15 of only \$100,000 in the remand proceeding.<sup>32</sup> In the remand decision, Decision  
16 No. 70441, the Commission deferred the issue of rate case expense for the appeal and  
17 remand to this rate case so that Staff and RUCO could analyze the Company's request.<sup>33</sup>  
18 In this docket, Chaparral City initially requested recovery of \$258,511, which amounted  
19 roughly to one-half of the cost of the appeal, the Company's expert witness fees, hard  
20 costs (copying costs, mailing and publication costs), and less than 40 percent of the legal

21 \_\_\_\_\_  
22 <sup>29</sup> Rigsby RhDt. at 15; RhTr. at 74:4-12.

23 <sup>30</sup> Hanford Dt. at 3; Tr. at 101.

24 <sup>31</sup> Tr. at 101 – 102.

25 <sup>32</sup> Chaparral City Water Company's Remand Closing Brief, filed March 5, 2008 in Docket No.  
W-02311A-04-0616, at 44 – 46.

26 <sup>33</sup> Decision No. 70441 at 39:11-18.

1 fees associated with the remand.<sup>34</sup> Then, in an effort to further reduce controversy and  
2 issues in dispute, the Company returned to the position it took in the remand by accepting  
3 Staff's recommended rate case expense of \$100,000.<sup>35</sup> Nothing has changed today.  
4 Chaparral City still feels that recovery of \$100,000 is a reasonable, given the nature and  
5 complexity of the appeal and remand proceeding, and the costs that the Company actually  
6 incurred. Again, Staff agrees.<sup>36</sup>

7 Despite the Company's concession and Staff's agreement, RUCO has steadfastly  
8 asserted that no rate case expense should be awarded for the appeal and remand because it  
9 was a "business decision" by the Company intended to increase operating income, a  
10 decision that did not benefit ratepayers.<sup>37</sup> RUCO ignores the fact that only the  
11 Commission can determine the Company's operating income, and that the Commission  
12 must do so in accordance with the applicable law. Regardless of the differing positions  
13 on the merits, it cannot be disputed that the Commission set the Company's rates in a  
14 manner that the Court of Appeals found unlawful. It also cannot be disputed that it is in  
15 the public interest to ensure that the Commission's decisions comport with the Arizona  
16 Constitution. In this instance, that only occurred due to Chaparral City's willingness to  
17 incur the cost to pursue its legal rights. The Company should not be left to bear the  
18 burden of the Commission's unlawful decision entirely on its own. Not only does such a  
19 decision look punitive, but also, by tying recovery directly to the final amount recovered  
20 by the appellant, a dangerous precedent will be established. A more reasonable recovery  
21 that strikes a fair balance, such as Chaparral City and Staff's recommendation, should be  
22 adopted.

23 <sup>34</sup> Bourassa Supp. Dt. at 2:8-10.

24 <sup>35</sup> February 13, 2009 Reply Brief at 3:10-12.

25 <sup>36</sup> Abinah RhDt. at 4:17-20.

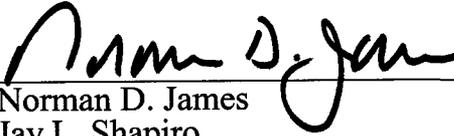
26 <sup>37</sup> *E.g.*, Rigsby RhDt. 9:16-21.

1 **III. CONCLUSION**

2 Chaparral City welcomed the Commission's decision to rehear Decision  
3 No. 71308 on the two issues addressed above. While Chaparral City recognizes that the  
4 Commission also felt its initial decision was appropriate, it continues to assert that, not  
5 only does the evidence support the relief recommended by the Company and Staff, but  
6 broader policy reasons overwhelmingly justify such relief. Consequently, the Company  
7 asks that Decision No. 71308 be modified in two respects: first, to allow for the sharing  
8 of \$1.52 million of utility generated gain; and second, to allow recovery of \$100,000 in  
9 rate case expense for the successful appeal of Decision No. 68176 and subsequent  
10 remand.

11 RESPECTFULLY SUBMITTED this 24th day of May, 2010.

12 FENNEMORE CRAIG, P.C.

13  
14 By   
15 Norman D. James  
16 Jay L. Shapiro  
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20 **ORIGINAL** and thirteen (13) copies  
21 of the foregoing were filed  
22 this 24th day of May, 2010, with:

23 Docket Control  
24 Arizona Corporation Commission  
25 1200 W. Washington St.  
26 Phoenix, AZ 85007

1 **Copy of the foregoing was hand delivered**  
2 this 24th day of May, 2010, to:

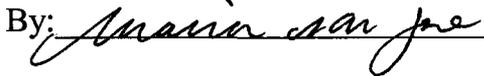
3 Teena Wolfe, Administrative Law Judge  
4 Hearing Division  
5 Arizona Corporation Commission  
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17 **Copy of the foregoing mailed**  
18 this 24th day of May, 2010, to:

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By:  \_\_\_\_\_