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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

CHAPARRAL CITY WATER COMPANY, INC.

REHEARING REPLY BRIEF

JUNE 22, 2010

Arizona Corporation Commission
DOCKETED

JUN 22 2010

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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)**

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

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

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

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

	Hearing Exhibit	
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.

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

Pre-Filed Testimony	Hearing Exhibit	Abbreviation
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)**

Pre-Filed Testimony	Hearing Exhibit	Abbreviation
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)**

Pre-Filed Testimony	Hearing Exhibit	Abbreviation
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)**

Pre-Filed Testimony	Hearing Exhibit	Abbreviation
Hearing Transcript		Tr.

2318812

1 Chaparral City Water Company, Inc. (“Chaparral City” or “the Company”) hereby
2 replies to the rehearing closing briefs submitted by Staff and RUCO in this rehearing.¹

3 **I. RUCO’S ARGUMENTS REGARDING THE ALLOCATION OF GAIN**
4 **RESULTING FROM THE FHSD SETTLEMENT HAS NO LEGAL OR**
5 **FACTUAL BASIS.**

6 With respect to the first rehearing issue – the ratemaking treatment of \$1.52
7 million utility generated gain due to the FHSD settlement – RUCO’s brief is a jumble of
8 erroneous assertions, both factual and legal. In an effort to clarify the record and aid the
9 Commission, as well as demonstrate that the treatment that Staff and the Company
10 recommend is supported by the record and in the public interest, Chaparral City will
11 respond to those assertions. Specifically, RUCO makes seven claims in support of the
12 relief it seeks. As discussed below, none of these claims has any merit and each should
13 be rejected.

14 **A. RUCO Claim No. 1: Chaparral City Has Already Received All**
15 **Recovery To Which It Is Entitled.**²

16 RUCO’s initial argument reflects RUCO’s confusion over the respective rights of
17 utilities and their customers. The only thing the Company is entitled to receive from
18 ratepayers is payment for utility service at the rates established by the Commission; and
19 the only thing ratepayers are entitled to receive from the Company is safe, adequate and
20 reliable water utility service.³ The rates established by the Commission do not ensure
21 recovery of a set amount equal to the exact cost of every asset purchased and dedicated to
22 public service, nor does the Commission guarantee a certain return on those assets. As

23 _____
24 ¹ In this reply brief, the same citation format, abbreviations and conventions as utilized in the
25 Company’s Rehearing Closing Brief dated May 24, 2010 apply.

26 ² RUCO Rh. Br. at 2:4-5.

³ *Bd. of Pub. Utility Comm’rs v. New York Tele. Co.*, 271 U.S. 23, 32 (1926).

1 RUCO writes in its brief, the rates approved by the Commission are just and reasonable if
2 they give the utility an “opportunity” to earn a return on investment.⁴

3 In setting rates, the Commission includes recovery of depreciation. The recovery of
4 depreciation, however, does not convey any right or interest in a utility’s depreciable
5 property to its customers. Instead, depreciation is simply an operating expense, like
6 salaries and wages, insurance, purchased power and water, and repair and maintenance
7 costs, which must be recovered to accurately reflect the cost of providing service. The
8 Supreme Court has explained:

9 Broadly speaking, depreciation is the loss, not restored by
10 current maintenance, which is due to all the factors causing
11 the ultimate retirement of the property. These factors
12 embrace wear and tear, decay, inadequacy, and obsolescence.
13 Annual depreciation is the loss which takes place in a year. In
14 determining reasonable rates for supplying public service, it is
15 proper to include in operating expenses, that is, in the cost of
16 producing the service, an allowance for consumption of
17 capital in order to maintain the integrity of the investment in
18 the service rendered.⁵

19 A leading treatise on public utility regulation similarly explains:

20 The basic purpose of depreciation accounting is to recover
21 through revenues the costs invested in the physical plant that
22 contribute to the production of those revenues. By matching
23 capital recovery with capital consumption, a more accurate
24 measure of the current costs of operation is possible. Stated
25 another way, depreciation accounting is necessary to
26 reimburse those supplying the capital used to purchase the
related assets and should properly be charged to customers as
a cost of the service they receive. . . .

It should be noted that the basic purpose of depreciation
accounting is not to finance replacements. Even if facilities
are *not* to be replaced, depreciation must be charged to
operating expenses in order to record the cost of property

25 ⁴ RUCO Rh. Br. at 2:7-9.

26 ⁵ *Lindheimer v. Ill. Bell Te. Co.*, 292 U.S. 151, 167 (1934).

1 consumed in providing service, thereby maintaining the
2 integrity of the investment.

3 If customers' rates must include annual depreciation expense as an elemental cost of
4 providing utility service, customers cannot acquire any right or interest by virtue of
5 paying for such service. And for the same reason, customers have no right to the
6 proceeds resulting from the sale of the utility's property or, as in this case, the settlement
7 of a claim based on the negligence of a third party by virtue of paying for service.

8 The Supreme Court decisions in *Bluefield Waterworks* and *Hope Natural Gas*,
9 which RUCO cites in its brief, do not alter the foregoing. As before, RUCO provides no
10 specific citation to these decisions and fails to explain how these two decisions apply in
11 this case.⁷ In *Bluefield Waterworks*, the Court held, first, that the rate base used to set
12 rates was unlawful because the commission failed to give proper consideration to the
13 reproduction cost study submitted by the utility and instead relied solely on original cost.⁸
14 The Court also held that that a "public utility is entitled to such rates as will permit it to
15 earn a return on the value of the property which it employs for the convenience of the
16 public equal to that generally being made at the same time and in the same general part of
17 the country on investments in other business undertakings which are attended by
18 corresponding risks and uncertainties."⁹ In *Hope Natural Gas*, the Supreme Court
19 adopted what is called the "end result" test, holding that "[i]f the total effect of the rate

20 ⁶ Charles F. Phillips, Jr., *The Regulation of Public Utilities: Theory and Practice* 270 – 271
21 (Public Utility Reports, Inc. 1993) (italics original) (hereinafter "*Phillips*").

22 ⁷ RUCO Rh. Br. at 2, n. 2 and 3, n. 6. See also RUCO's Initial Closing Brief, filed January 28,
23 2009, at 9 – 10. Amazingly, even after the Company's well supported criticism of RUCO's
24 efforts to misstate these cases, including the lack of any supporting reference to the decisions
25 themselves, RUCO has done exactly the same thing in this rehearing. Company Reply Brief,
26 filed February 13, 2009, at 8:4 – 9:4. As a result, its twice-baked assertions are still unsupported.

⁸ *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679, 684 – 692
(1923).

⁹ *Id.*, 262 U.S. at 692 – 693.

1 order cannot be said to be unjust and unreasonable, judicial inquiry . . . is at an end. The
2 fact that the method employed to reach that result may contain infirmities is not then
3 important.”¹⁰ These two seminal cases in the area of utility regulation simply have
4 nothing to do with the treatment of utility generated gains.

5 **B. RUCO Claim No. 2: The Company Would Receive A “700 Percent**
6 **Return” On Its Investment If Allowed To Share In The Settlement**
7 **Proceeds.**¹¹

8 The argument that the Company would receive a “700 percent return” on its
9 “investment” (which RUCO calculated by dividing one-half of the FHSD settlement
10 proceeds by the original cost of the Company’s wells) is, on its face, ludicrous. This
11 argument is based on RUCO’s belief that the Company no longer has any interest in its
12 own property. While RUCO contends that it is not arguing that ratepayers own the
13 Company’s assets,¹² RUCO is clearly asserting that they possess some inchoate right in
14 the Company’s property that gives them the right to any gain that results from the
15 disposition of that property. This follows from the fact that the monies at issue are not
16 ratepayer funds, and instead are, in the words of Mr. Rigsby, “utility generated gains.”¹³
17 As discussed above, however, ratepayers acquire no right or interest in a utility’s property
18 simply by paying for utility service, nor does the recovery of depreciation as a cost of
19 service create some sort of equitable right to share in the gain resulting from a settlement
20 resulting in turn from the negligence of a third party. Thus, there is no justification for
21 labeling settlement proceeds the same as operating income produced by the provision of

22 ¹⁰ *Federal Power Comm’n v. Hope Natural Gas*, 320 U.S. 591, 602 (1944). Notably, the
23 Arizona Supreme Court has rejected the application of *Hope Natural Gas* in Arizona. *See, e.g.,*
24 *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 150 – 151, 294 P.2d 378, 381 – 382
(1956).

25 ¹¹ RUCO Rh. Br. at 3:5-7.

26 ¹² RUCO Rh. Br. at 2:2-3.

¹³ RhTr. at 62:23 – 63:17.

1 utility service to customers and calculating a phantom return.

2 C. RUCO Claim No. 3: Well No. 8 Generated Revenues For The Company
3 So The Cost Of Water Service Is Now Higher.¹⁴

4 RUCO accuses the Company of making “disingenuous” arguments more than a
5 year ago in an earlier post-hearing brief.¹⁵ According to RUCO, the Company’s lack of
6 candor surrounds the past sale of non-potable water from Well No. 8. RUCO asserts that
7 the loss of these revenues resulted in higher overall rates to ratepayers.¹⁶ However, there
8 is no evidence, including RUCO’s citation, establishing that Well No. 8 generated
9 revenues.¹⁷ First on direct examination, RUCO’s witness merely testified that Well No. 8
10 “probably” generated revenues before it was capped and taken out of service.¹⁸ RUCO
11 conveniently ignored this important qualification in citing this testimony in its brief.
12 Even worse, RUCO ignored Mr. Rigsby’s subsequent admission that he did not know
13 when Well No. 8 was taken out of service, and did not know whether the Company ever
14 charged for non-potable water from Well No. 8.¹⁹ RUCO’s lack of candor before this
15 tribunal actually meets the definition of “disingenuous.”²⁰ RUCO’s failure to provide any
16 evidence to support its claim renders its argument that capping Well No. 8 increased the
17 cost of water service unsupported.

18 Moreover, it is irrelevant whether this well “produced revenue.” When plant is not

19 ¹⁴ RUCO Rh. Br. 4:3-5.

20 ¹⁵ RUCO Rh. Br. at 3:16.

21 ¹⁶ RUCO Rh. Br. at 4:3-7.

22 ¹⁷ RUCO Rh. Br. at 3, n. 8 and n. 9 *citing* RhTr. at 8 – 9; 28 – 29. Notably, pages 8 – 9 of the
23 Rehearing Transcript refer to opening statements by counsel. This is not evidence.

24 ¹⁸ RhTr. at 27:25 (the term “probably” was at the beginning of the testimony relied upon by
RUCO, which left page 27 out of its citations to pages 28 – 29).

25 ¹⁹ RhTr. at 71:19-24.

26 ²⁰ *See Webster’s New Collegiate Dictionary.*

1 used for the provision of utility service, it is removed from rate base, which is what
2 happened to both Well No. 8 and Well No. 9. That does not, however, alter the fact that
3 the Company is the owner of both wells, and is entitled to compensation when they are
4 damaged by a third party's negligence, or sold. In contrast, customers had no legal right
5 in the wells when they were used to provide service, no right in the wells after they were
6 taken out of service, and no right to participate in any gain resulting from the settlement
7 of a claim against a third party. Instead, customers have the right to receive utility service
8 from the Company on satisfaction of the Company's terms and conditions of service and
9 tender of rates. If RUCO believes that the Company's cost of service is unreasonable
10 because a well was taken out of service, then RUCO should assert that argument and
11 support it by credible evidence, rather than attempting to deprive the Company of its right
12 to compensation when its property is damaged.

13 **D. RUCO Claim No. 4: Settlement Proceeds Were To Pay The Cost Of**
14 **Replacement Water From Well No. 9 Over The Remainder Of Its**
15 **Useful Life.**²¹

16 Throughout this case, an essential premise of RUCO's argument is that the
17 Company's wells were fully depreciated.²² According to RUCO, the settlement proceeds
18 were therefore intended to replace the wells. This argument is wrong, and again
19 underscores RUCO's misunderstanding of basic ratemaking and accounting principles.

20 As previously explained, "the basic purpose of depreciating accounting is *not* to
21 finance replacements."²³ Thus, regardless of whether the wells were fully or partially
22 depreciated, the annual depreciation expense was recovered as a cost of providing
23 service, not as a fund to finance replacement plant. The amount of accumulated

24 ²¹ RUCO Rh. Br. at 4:9.

25 ²² *E.g.*, Coley Sb. at 19:5; RhTr. at 19:18-23.

26 ²³ *Phillips, supra*, at 271 (*italics original*).

1 depreciation may affect the calculation of gain for income tax purposes, but has nothing
2 to do with the legal issue of whether ratepayers have the right to any portion of a
3 settlement that compensates a utility for damage to its property.

4 To the extent that the value of the damaged wells and the associated right to
5 withdraw groundwater at those locations exceeded their original cost, the Company is
6 legally entitled to that difference. Again, the Company is owner of the wells and
7 associated rights, not ratepayers, and the Company is legally entitled to benefit from the
8 increase in value. If Mr. Rigsby's home were condemned by a government body for a
9 legitimate public purpose, Mr. Rigsby would be entitled to receive as just compensation
10 the current market value of his home, not simply his original investment. Likewise, if
11 Mr. Rigsby's home were destroyed by the negligence of a third party, he would be
12 entitled to recover the current market value of his home; the amount he paid to purchase
13 the home 25 years ago would be irrelevant. This situation is no different.

14 The foregoing notwithstanding, throughout this case the Company has offered to
15 share the gain from the settlement equally with ratepayers by deducting one-half of the
16 total settlement proceeds – not simply the original cost of the wells or their accumulated
17 depreciation – from the Company's rate base. The Company continues to believe that this
18 is fair and reasonable. RUCO, unfortunately, wants to confiscate the Company's wells by
19 effectively treating them as being owned by customers because they paid for utility
20 service. Such a result is an unconstitutional taking of the Company's wells.

21 E. **RUCO Claim No. 5: Replacement Water Is More Expensive Than Well**
22 **Water.**²⁴

23 RUCO also asserts that "replacement" water is more expensive than pumping
24 groundwater from the wells, but offers no support in its brief for this claim. It is true that

25 _____
26 ²⁴ RUCO Rh. Br. at 4:12-13 (*no citation supplied*).

1 Mr. Millsap made this claim in his direct testimony filed in October 2008.²⁵
2 Unfortunately, like RUCO here, Mr. Millsap (who is not an engineer or water system
3 operator) provided no evidence supporting the relative cost of pumping groundwater and
4 alternative water sources. During the rehearing, both Mr. Abinah and Mr. Rigsby
5 testified that they lacked knowledge of whether Mr. Millsap was correct.²⁶ More
6 importantly, the Company's then senior manager testified that it actually cost more to
7 pump water from Well No. 9 than to buy CAP water.²⁷ No party challenged this
8 testimony, and with all due respect to Mr. Millsap, Mr. Hanford's testimony is the only
9 competent evidence before the Commission regarding the relative cost of water.

10 **F. RUCO Claim No. 6: This Case Is "Easily Distinguishable" From**
11 **Decision No. 66849.**²⁸

12 In contrast to RUCO's assertion that the Commission's determination in allocating
13 settlement proceeds equally between Arizona Water Company and that utility's Miami
14 ratepayers in Decision No. 66849 is inapplicable, Staff finds Decision No. 66849 to be
15 "persuasive."²⁹ Chaparral City obviously agrees with Staff since the Company relied on
16 this decision as authority to share the FHSD settlement equally with its ratepayers, rather
17 than arguing that the settlement is irrelevant from a ratemaking perspective.³⁰ In that
18 decision, the Commission stated that "an equal sharing of the settlement proceeds
19 provides a reasonable balance between the rights of shareholders and ratepayers and will
20 provide the Company with a sufficient incentive to pursue future settlement or litigation

21 ²⁵ Millsap Dt. at 14:1-2.

22 ²⁶ RhTr. at 73:8-10, 123:12-15, 134:2-9.

23 ²⁷ Tr. at 101 – 102.

24 ²⁸ RUCO Rh. Br. at 5:15.

25 ²⁹ Staff Rh. Br. at 3:13.

26 ³⁰ Bourassa Dt. at 11:2-9; Bourassa Rb. at 14:1-12; Hanford Dt. at 11:1-5.

1 of claims that the Company and its customers may be entitled to receive.”³¹ Even
2 Mr. Rigsby admitted that this reasoning is still important today.³²

3 Mr. Rigsby also coined the phrase “utility generated gains” in his testimony in that
4 docket – a phrase he testified applies equally in this case.³³ He also agreed that Decision
5 No. 66849 was based on policy, not on the assets’ remaining useful lives or the amount of
6 depreciation expense recovered.³⁴ Given Mr. Rigsby’s testimony, including his
7 acknowledgement of the similarities between this case and the Arizona Water rate case,
8 RUCO’s claim that Decision No. 66849 is “easily distinguishable” could be described as
9 lacking candor or sincerity, i.e., “disingenuous.” Perhaps, however, the claim is simply
10 highly exaggerated. In any case, Decision No. 66849 is, by its express holding, directly
11 on point.³⁵

12 **G. RUCO Claim No. 7: The Idea That Denying Chaparral City Any Share**
13 **Of The Proceeds Would Be A Disincentive Is “Without Merit.”**³⁶

14 While RUCO is certainly free to disagree, the Commission has already found that
15 the Company’s argument has merit. Again, the ruling in Decision No. 66849, which was
16 based on RUCO’s testimony and argument, was that an equal sharing of the proceeds of a
17 settlement provides an “incentive” for utilities to take action to the benefit of the utility
18 and customers.³⁷ In reaching this conclusion, the Commission ignored the status of the

19 ³¹ Staff Rh. Br. at 3:19 – 4:1 *citing* Decision No. 66849 at 35.

20 ³² RhTr. at 82:17-21. In fact, Mr. Rigsby opined that cases like Decision No. 66849 reflect the
21 Commission’s historical treatment of utility generated gains. *Id.* at 60:15 – 61:21. It was based
22 on this practice that Mr. Rigsby also essentially opined that the Commission can ignore the
23 United States Supreme Court. *Id.*

24 ³³ RhTr. at 62:23 – 63:17.

25 ³⁴ RhTr. at 75:3-8.

26 ³⁵ Decision No. 66849 at 35.

³⁶ RUCO Rh. Br. at 5:17-19.

³⁷ Decision No. 66849 at 35.

1 assets themselves and focused on policy concerns, one of which is the need to create an
2 appropriate incentive for utilities to pursue claims against third parties, which may well
3 be difficult and expensive, and take many years to complete. Staff in this case has
4 similarly recognized the risk and expense associated with pursuing damage claims against
5 third parties, and believes that an equal sharing of gain is appropriate. Frankly, it should
6 be obvious that a utility will not pursue claims against third parties if the damages
7 recovered are going to be deducted from rate base in the utility's next rate case.

8 **H. Final Thoughts Regarding The Sharing of Chaparral City's Utility**
9 **Generated Gains.**

10 In closing this section of its brief, RUCO refers to a well established rule in
11 Arizona that a utility is entitled to a fair return on fair value and nothing more or less.³⁸
12 The Company agrees that it is entitled to rates that provide a fair return on the current
13 market value of its property in exchange for providing utility service. Under the fair
14 value standard, rates must be based on the current value of the utility's plant, not the
15 amount of the utility's investment in that plant.³⁹

16 But this issue is not about the rates for utility service. Instead, it is about the
17 utility's property and gain that resulted from a settlement which resolved the Company's
18 claim against a third party. Therefore, RUCO's reference, while true, is misplaced.
19 Meanwhile, as the Commission has held before, it is fair and in the public interest to
20 allow utilities to share utility generated gains with ratepayers and the same should be
21 allowed in this case.

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25 ³⁸ RUCO Rh. Br. at 8:3-5.

26 ³⁹ *E.g., Ariz. Corp. Comm'n v. Ariz. Water Co.*, 85 Ariz. 198, 203, 335 P.2d 412, 415 (1959).

1 **II. RATE CASE EXPENSE FOR THE APPEAL AND REMAND.**

2 According to RUCO, allowing the Company to recover any additional rate case
3 expense for an appeal and resulting remand from the Commission's violation of the
4 Arizona Constitution would "undermine good public policy and is patently unfair to
5 ratepayers."⁴⁰ RUCO never identifies the endangered "good public policy," but Chaparral
6 City doubts it is referring to the public policy behind the Commission following the law
7 when it sets rates intended to balance the interests of the two groups it is constitutionally
8 charged with the duty to protect. That is the policy that the Commission has had a chance
9 to fulfill here, and indeed, the Commission believes it has done so. No one can dispute
10 that had the Company not exercised its right to appeal, the Commission would not have
11 had this opportunity. Thus, the exercise of a utility's right to appeal can, and in this case
12 did, serve the public policy of setting rates in a lawful fashion. That's fair to both
13 shareholders and ratepayers alike, as the case cited by Staff from the Florida PUC further
14 illustrates.⁴¹ The fact that other states also allow rate case expense for successful
15 appellants shows that such recovery is not, as RUCO asserts, inherently bad policy.

16 RUCO's remaining arguments are easily dismissed. There is simply no evidence
17 that Chaparral City acted imprudently.⁴² The Company appealed two issues, prevailed on
18 one, sought to settle, sought to complete the remand in an expedited and low-cost fashion
19 and then was forced to incur substantial additional rate case expense, largely due to the
20 positions taken by the other parties.⁴³ Despite this, Chaparral City asks for only \$100,000
21 of additional rate case expense, an amount less than 20 percent of the total it incurred
22 (and is still incurring). In short, that the Company acted prudently is satisfactorily

23 ⁴⁰ RUCO Rh. Br. at 8:17-18.

24 ⁴¹ Staff Rh. Br. at 4:15 – 5:5.

25 ⁴² RUCO Rh. Br. at 9:15 – 10:5.

26 ⁴³ Staff concurs. *See* Staff Rh. Br. at 5:6-14.

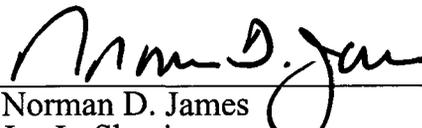
1 illustrated by the simple facts that it won one issue on appeal and now seeks only
2 \$100,000 of the much larger amount that it was forced to incur in the appeal and
3 subsequent remand.

4 RUCO's so-called sharing argument is also non-sense.⁴⁴ Chaparral City incurred
5 over \$400,000 in this rate case, and counting.⁴⁵ It was authorized to recover only
6 \$280,000 in the rate case. It is utterly disingenuous for RUCO to now suggest that
7 Chaparral City has failed to share in the rate case expense for this rate case. This is
8 particularly galling given RUCO's view (shared by Staff) that Chaparral City would
9 forfeit any unrecovered rate case expense should it come back in for new rates before the
10 "normalization" period has run.⁴⁶

11 In sum, RUCO is doing everything it can to discourage utilities from appealing
12 Commission decisions by urging the Commission to act in a punitive manner. The
13 Commission should reject RUCO's simple-minded view of the public interest and allow a
14 reasonable amount of additional rate case expense for the successful appeal and
15 subsequent remand.

16 RESPECTFULLY SUBMITTED this 22nd day of June, 2010.

17 FENNEMORE CRAIG, P.C.

18
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24 ⁴⁴ RUCO Rh. Br. 10:6-18.

25 ⁴⁵ See Company's Notice of Filing Late-Filed Exhibit, filed March 4, 2009.

26 ⁴⁶ See RUCO's response to Company Data Request 1.52 (attached as Reply Brief Exhibit 1).

1 **ORIGINAL** and thirteen (13) copies
2 of the foregoing were filed
3 this 22nd day of June, 2010, with:

4 Docket Control
5 Arizona Corporation Commission
6 1200 W. Washington St.
7 Phoenix, AZ 85007

8 **COPY** of the foregoing was hand delivered
9 this 22nd day of June, 2010, to:

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REPLY BRIEF EXHIBIT 1

**RUCO'S RESPONSE TO
CHAPARRAL CITY WATER COMPANY, INC.'S
FIRST SET OF DATA REQUESTS**

Docket No. W-02113A-07-0551

1.52 If the ACC authorizes recovery of a certain level of rate case expense, shouldn't the Company be allowed to recover that expense?

Response

No. The ratemaking process attempts to set rates at a normal recurring level of expense. Simultaneous amortization of the expense of two separate rate cases is not a normal recurring expense. Further, allowing a utility to recover expenses associated with prior rates that are no longer in effect is retroactive ratemaking and would defy ratemaking principles.