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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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CHAPARRAL CITY WATER COMPANY, INC., AN ARIZONA CORPORATION FOR A DETERMINATION OF THE CURRENT FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN ITS RATES AND CHARGES FOR UTILITY BASED THEREON.

DOCKET NO. W-02113A-07-0551

**STAFF'S REPLY BRIEF (REHEARING)**

The Utilities Division of the Arizona Corporation Commission ("Staff") hereby responds to the closing briefs of Chaparral City Water Company ("Chaparral City" or "Company") and the Residential Utility Consumer Office ("RUCO"). Staff responded in its Post-hearing brief to many of the issues raised by Chaparral's application for rehearing. The purpose of this Reply Brief is not to repeat every point made in Staff's Initial Closing Brief, nor will it attempt to refute every single issue raised by the Company or RUCO; instead Staff relies upon its testimony on those issues not specifically addressed in this Reply Brief. The recommendations of Staff and its positions have been outlined in its Closing Brief as well as its testimony.

**I. STAFF RECOMMENDS THE EQUAL SHARING OF THE PROCEEDS FROM THE FOUNTAIN HILLS SANITARY DISTRICT SETTLEMENT.**

RUCO has argued that the settlement with the Fountain Hills Sanitary District relating to the contamination of Wells No. 8 and 9 results in a 700% return on investment.<sup>1</sup> While RUCO's argument is unique, Staff would caution against viewing items of plant that comprise a company's plant in service in isolation. The Commission is required to determine the rate of return on the fair value of the Company's entire property committed to providing service and not each singular component of plant.<sup>2</sup> Accordingly, neither the return on nor the degree of depreciation recovery on

<sup>1</sup> RUCO's Rehearing Closing Brief at 3.

<sup>2</sup> *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 151, 294 P.2d 378, 381 (1956).

1 individual assets such as Wells No. 8 and 9 provides a persuasive basis for not allowing the sharing  
2 the settlement proceeds.

3 **II. STAFF RECOMMENDS THE RECOVERY OF \$100,000 IN RATE CASE EXPENSE**  
4 **ASSOCIATED WITH THE APPEAL AND REMAND.**

5 RUCO stated that “The Court of Appeals denied relief on all grounds and did not issue a final  
6 judgment based on a full adjudication on the merits.”<sup>3</sup> This is an incorrect statement of the holding in  
7 that decision.<sup>4</sup> The Court of Appeals held:

8 “...we find that the Commission did not comply with Article 15, Section 14, of the  
9 Arizona Constitution when it set Chaparral City’s rates based on original cost instead  
10 of the fair value of Chaparral City’s property. Thus we vacate the Commission’s  
11 decision and remand for further determination of Chaparral City’s rates consistent  
12 with our constitution. However, we also find that Chaparral City has not made a clear  
and convincing showing that the Commission’s decisions regarding the methodologies  
used to determine the cost of equity were unlawful or unreasonable.”<sup>5</sup>

13 The court could not make a determination regarding Chaparral’s fair value rate base nor its rates. The  
14 Arizona Constitution gives the Commission exclusive and plenary authority to prescribe just and  
15 reasonable rates to be charged by public service corporations in this state.<sup>6</sup> Further, in reviewing a  
16 Commission decision, the court does not reweigh the evidence and will affirm a Commission  
17 decision unless it is unsupported by substantial evidence, is arbitrary or is unlawful.<sup>7</sup>

18 Further the Court of Appeals expressly recognized that the Commission is not required to  
19 adopt any particular methodology:

20 If the Commission determines that the cost of capital analysis is not the  
21 appropriate methodology to determine the rate of return to be applied to  
22 the FVRB, the Commission has the discretion to determine the appropriate  
methodology.<sup>8</sup>

25 <sup>3</sup> RUCO’s Rehearing Closing Brief at 9.

26 <sup>4</sup> *Chaparral City Water Co. v. Arizona Corp. Comm’n*, 1 CA-CC 05-0002 (Ariz. App. 2007) (Unpublished).

27 <sup>5</sup> *Id.* at 2, ¶ 1.

28 <sup>6</sup> Ariz. Constit. Article 3, §15; *See Arizona Corp. Comm’n v. State ex rel. Woods*, 171 Ariz. 286, 292, 830 P.2d 807,813 (1992).

<sup>7</sup> *Tucson Elec. Power Co. v. Ariz. Corp. Comm’n*, 132 Ariz. 240, 243, 645 P.2d 231, 234 (1982).

<sup>8</sup> *Chaparral City* at 13, ¶ 17 (Ariz. App. 2007).

1 More recently, the court affirmed the authority of the Commission to determine the appropriate  
2 methodology.<sup>9</sup>

3 The cost/benefit analysis recommended by RUCO may be an appropriate consideration by the  
4 Commission. But Staff maintains that under this specific fact scenario, it is appropriate to allow the  
5 Company to recover \$100,000 in rate case expense associated with the appeal and remand. The  
6 Company incurred over \$500,000 of rate case expense in the appeal of Decision No. 68176, but  
7 agreed with the Staff recommendation.<sup>10</sup> As stated in Staff's rehearing closing brief, the Commission  
8 should closely examine any subsequent requests for recovery of rate case expense associated with an  
9 appeal and remand to avoid creating a perceived incentive for utilities to take unnecessary appeals.

10 **III. CONCLUSION.**

11 Staff continues to recommend the positions that it advanced in the initial rate proceeding.

12 RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of June, 2010.

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15 

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<sup>9</sup> *Chaparral City Water Co. v. Arizona Corp. Comm'n*, 1 CA-CC 08-0002 (Ariz. App. 2010) (Unpublished).

<sup>10</sup> Company Rehearing Closing Brief at 9.

1 Copies of the foregoing were mailed this  
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