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Arizona Corporation Commission

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE FORMAL  
COMPLAINT OF CHARLES J. DAINS  
AGAINST RIGBY WATER COMPANY

DOCKET NO. W-01808A-09-0137

**RIGBY WATER COMPANY'S  
REPLY IN SUPPORT OF MOTION  
TO STRIKE TESTIMONY OF  
DAVID C. IWANSKI**

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Complainant's Response to Motion to Strike ("Response") is nothing more than a request that the Commission ignore the most basic attributes of competent testimony, personal knowledge and relevance, and admit the testimony of an individual that had no involvement with the planning and development of the subdivision in question, had no involvement with the negotiation of the mainline extension agreement in question and has no qualifications to act as an economic expert. Instead of addressing these glaring deficiencies with Mr. Iwanski's pre-filed testimony, counsel instead notes that in his experience a motion to strike is rarely granted by the Commission. This may be the case, but rarely is testimony of the nature of Mr. Iwanaki's submitted as part of a case. The reply cites little, if any, legal justification for the admission of such testimony.

While the Commission is not bound by the "technical rules of evidence," those rules provide guidance as to the admission and weight to be given to any testimony proffered. Indeed, failure to given credence to those rules could result in the Commission's ruling in a

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1 given matter being found to be unsupported in any subsequent appeal to the Superior Court,  
2 requiring further waste of agency and judicial resources. See Corporation Comm'n v.  
3 Southern Pac. Co., 55 Ariz. 173, 99 P.2d 702 (1940) (Superior Court to hear evidence de  
4 novo and form its own judgment as to proper conclusions to be drawn). Testimony, if it is  
5 to have any value to any proceeding, whether administrative or judicial, must be based upon  
6 personal knowledge and be relevant to the proceeding. Complainant makes no effort to  
7 refute the fact that Mr. Iwanski's allegedly factual testimony fails these most basic tests.  
8 Whatever counsel's personal experience with motions to strike, Mr. Iwanski's testimony  
9 should be stricken because it is irrelevant to the present proceedings, can be afforded no  
10 weight due to its lack of foundation, and lends nothing to the resolution of this matter.

11 Finally, the Response ignores the recently enacted A.R.S. § 12-2203, which sets out  
12 specific requirements that must be met for purportedly expert testimony to be admitted in  
13 Arizona. Rather than address the lack of basis for Mr. Iwanski's assertions, the Response  
14 lists his service on various municipal water boards and planning commissions. While that  
15 experience might qualify Mr. Iwanski to testify as to municipal water or zoning issues,  
16 Complainant makes absolutely no showing how that experience qualifies Mr. Iwanski to  
17 testify on the interpretation of a line extension agreement entered into between two parties  
18 about which he has no personal information. Because Mr. Iwanski is not an expert and  
19 because his purported expert testimony lacks a proper basis, that testimony must be stricken.

20  
21 RESPECTFULLY SUBMITTED this 10th day of September, 2010.

22 BRYAN CAVE LLP

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24  
25 By   
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1 ORIGINAL and 13 copies of the foregoing  
filed this 15<sup>th</sup> day of September, 2010 with:

2 Docket Control Division  
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6 COPIES of the foregoing hand-delivered  
this 10<sup>th</sup> day of September, 2010, to:

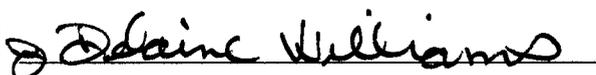
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