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BEFORE THE ARIZONA CORPORATION COMMISSION

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2011 JAN 14 P 3: 22

ARIZONA CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

JAN 14 2011

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

DOCKET NO. W-01808A-09-0137

REPLY CONCERNING
MOTION TO CONSOLIDATE

1 The Estate of Charles J. Dains ("Dains Estate") hereby replies to the "Response in
2 Opposition to Motion to Consolidate" filed on January 7, 2011, by Rigby Water Company
3 ("Rigby") in the above-captioned docket.

4 Rigby trotted out a parade of horrors concerning why this docket (the "Complaint
5 Case") should not be consolidated with Docket No. W-01808A-10-0390 (the "CC&N Deletion
6 Case"). Despite the hyperbole, there is no reason not to consolidate the dockets.

7 First, both dockets must address the appropriate refund Rigby should provide the Dains
8 Estate under a Main Extension Agreement ("MXA") between the parties. This is the central
9 issue in the Complaint Case and must also be resolved in the CC&N Deletion Case. As
10 discussed in the Dains Estates' Motion to Consolidate, the Staff has already identified MXA
11 refunds as an appropriate issue in the CC&N Deletion Case. Staff's position is consistent with
12 the Commission's rules. A.A.C. R14-2-406(F) requires:

13 The Commission will not approve the transfer of any Certificate of Public
14 Convenience and Necessity where the transferor has entered into a main extension
15 agreement, unless it is demonstrated to the Commission that the transferor has
16 agreed to satisfy the refund agreement, or that the transferee has assumed and has
17 agreed to pay the transferor's obligations under such agreement.

18 Determining the amount of the required refund is a predicate to the Commission's requirements.

19 Consolidation need not delay resolution of either docket. Briefs are being filed today in
20 the Complaint Docket. All that remains is for the Judge to issue a Recommended Opinion and
21 Order for the Commission to consider. Rigby's application in the CC&N Deletion Case was

1 only declared sufficient on December 20, 2010. It would not be delayed if the Commission were
2 to first act on the Complaint Case. This would allow the Commission to first resolve the refund
3 issue. Once that issue is resolved, there would be no need to revisit the issue in the CC&N
4 Deletion Case, so it should proceed quickly.

5 Consolidation would not result in duplication of issues; it would avoid duplication and
6 potential inconsistent results. Like the Commission has done many times before, the
7 consolidated docket could be phased.¹ Phase I would deal with the MXA refund issues. Phase II
8 would then address all remaining issues associated with Rigby's application to transfer all its
9 assets to the City of Avondale and to delete its CC&N.

10 An alternative that would achieve the same result would be to continue the CC&N
11 Deletion Case until the Complaint Case is completed. This approach would also be satisfactory
12 to the Dains Estate.

13 The Dains Estate's major concern is that the Commission could complete the CC&N
14 Deletion Case before the Complaint Case is heard by the Commission. If this were to happen,
15 the Commission arguably would lose jurisdiction to provide relief in the Complaint Case.

16 Rigby is a small utility and there do not appear to be very many issues to be resolved
17 before the Commission acts. By contrast, the Complaint Case is hotly contested. Given the
18 Commission's workload and staffing issues, it is possible that the CC&N Deletion Case could be
19 completed before the Complaint Case.

20 The Dains Estate's concern was only heightened by a position taken by Rigby in its
21 Complaint Case brief. Rigby argues that the Commission does not have jurisdiction in the
22 CC&N Case under A.A.C. R14-2-406(F) to address MXA refund issues.² Rigby's opposition to
23 consolidation may be supported by this position. Rigby's would very much like to gain quick

¹ See Procedural Order issued November 23, 2009, in Docket Nos. SW-01428A-09-0103, W-01427A-09-0104, W-01427A-09-0116, and W-01427A-09-0120.

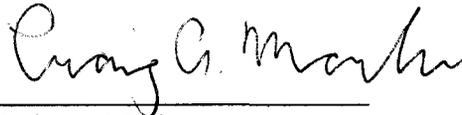
² Rigby's position is that the Rule only applies to transfers from one regulated utility to another regulated utility, not when a regulated utility is transferring its assets to a municipal utility and cancelling its CC&N.

1 approval of its application in the CC&N Case. Then it could thumb its nose at the Commission
2 if it did not like the outcome of the Complaint Case.

3 **REQUESTED RELIEF**

4 The Dains Estate again asks the Commission to consolidate the Complaint Case and the
5 CC&N Deletion Case (Docket Nos. W-01808A-09-0137 and W-01808A-10-0390). In the
6 alternative, the Dains Estate asks the Commission to continue the CC&N Deletion Case (Docket
7 No. W-01808A-10-0390), pending final Commission action in the Complaint Case (Docket No.
8 W-01808A-09-0137).

9 RESPECTFULLY SUBMITTED on January 14, 2011.

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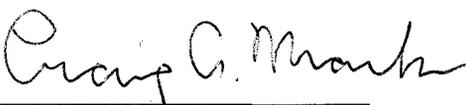
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