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BEFORE THE ARIZONA CORPORATION COMMISSION

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**COMMISSIONERS**

GARY PIERCE - Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

IN THE MATTER OF THE APPLICATION OF RIGBY WATER COMPANY FOR APPROVAL OF A TRANSFER OF ASSETS AND CONDITIONAL CANCELLATION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY.

DOCKET NO. W-01808A-10-0390

**STAFF'S RESPONSE TO MOTION TO INTERVENE AND MOTION TO CONSOLIDATE**

As directed by the Procedural Order dated January 12, 2011, the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") responds to the motion to intervene in Docket No. W-01808A-10-0390 ("Transfer Docket") and the motion to consolidate Docket No. W-01808A-09-0137 ("Complaint Docket") with the Transfer Docket, filed by the Estate of Charles Dains ("Dains").

Staff has no objection to the Dains' motion to intervene in the Transfer Docket. Staff notes that the applicant, Rigby Water Company has indicated that it has no objection.

However, Staff opposes Dains' request for consolidation. Consolidation is not warranted because there are substantially different legal and factual issues presented by these dockets. Further consolidation would cause undue delay in the Complaint Docket.

Commission rules allow for consolidation when the cases rely upon the same law, facts and witnesses. See A.A.C. R14-3-109(A). The Commission has ordered consolidation when the cases rely upon the same law, facts and witnesses. However, even when cases have common issues, consolidation is discretionary, not mandatory. In considering whether consolidation is appropriate, A.A.C. R14-3-109(H) is instructive. It provides that cases should be consolidated only when "the rights of parties will not be prejudiced by such procedure."

While there are common parties in the two dockets, the issues are not substantially the same. In the Complaint Docket, it involves a dispute over the terms of a main extension agreement. The

1 Transfer Docket relates to the City of Avondale, Arizona's condemnation of Rigby and the transfer of  
2 assets relative to the condemnation.

3 The Complaint Docket is nearly complete. Post-hearing briefs and the reply briefs have been  
4 filed by the parties and Staff. A Decision is pending. Consolidating the two matters would result in a  
5 delay in the resolution of the Complaint Docket. Further the consolidation of the matters would tax  
6 the resources of Staff, who have already used its resources to participate in the Complaint Docket.

7 Dains has intervened in the Transfer Docket. Dains has the ability to protect whatever interest  
8 it may have by being a party in the Transfer Docket.

9 Staff would respectfully request that the motion to consolidate be denied.

10 RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of January, 2011.

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18 Original and thirteen (13) copies  
19 of the foregoing were filed this  
20 28<sup>th</sup> day of January, 2011 with:

21 Docket Control  
22 Arizona Corporation Commission  
23 1200 West Washington Street  
24 Phoenix, Arizona 85007

25 Copies of the foregoing were mailed  
26 this 28<sup>th</sup> day of January, 2011 to:

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