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BEFORE THE ARIZONA CORPORATION C

COMMISSIONERS

GARY PIERCE, Chairman
BOB STUMP
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PAUL NEWMAN
BRENDA BURNS

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2011 FEB -4 P 2: 28

ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission

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DOCKET NO. W-02304A-09-0575

IN THE MATTER OF THE APPLICATION OF
COMMUNITY WATER COMPANY OF GREEN
VALLEY FOR A DETERMINATION THAT THE
"AGREEMENT FOR PAST CAP M&I WATER
SERVICE CAPITAL CHARGES (INSTALLMENT)"
WITH CENTRAL ARIZONA WATER
CONSERVATION DISTRICT IS NOT AN
EVIDENCE OF INDEBTEDNESS REQUIRING
COMMISSION APPROVAL UNDER A.R.S. §§ 40-
301 AND 40-302; OR, IN THE ALTERNATIVE,
APPROVAL OF THE AGREEMENT.

**STAFF'S SUPPLEMENTAL
RESPONSE**

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") responds as follows to the procedural order issued on January 5, 2010 by Administrative Law Judge ("ALJ") Belinda Martin regarding the financing application for Community Water of Green Valley ("CWCGV" or "Company"). ALJ Martin asked Staff to address the following:

1. CWCGV notes that in Commission Decision No. 69681 (June 28, 2007), the Commission did not require Avra Valley (*sic*) Water Co-op to obtain Commission approval for an agreement similar to the one in question here. Why is Staff requiring approval of this of agreement when it did not do so in the Avra Valley Water Co-op case? Is there a difference between the Avra Valley Water Co-op case and this matter?
2. Is Staff now adopting a policy that *all* agreements of this nature must now be approved by the Commission?

I. BACKGROUND.

The Company, a Class B water utility is a non profit, member owned cooperative providing service in the Green Valley, Arizona area. On September 5, 2008, CWCGV filed an application for authority to issue a long term debt of \$2,810,000.¹ The purpose of the \$2,810,000 was to pay off a balance of a non-revolving line of credit authorized by Decision No. 67515, and to fund \$310,000 of capital improvements. During the course of the review of the Company's financials, Staff learned

¹ In the Matter of the Application of Community Water Company of Green Valley, Docket No. W-020304A-09-0153.

1 that the Company had entered into a 5-year agreement with the Central Arizona Water Conservation
2 District ("CAWCD") for an additional Central Arizona Project ("CAP") allocation.

3 On November 21, 2007, the Company entered into a long-term agreement with the CAWCD
4 for an additional Central Arizona Project allocation ("Agreement"). To pay for this additional CAP
5 allocation, the Company elected a five year payment plan with annual installments of \$222,995 as
6 opposed to a single lump-sum payment of \$1,015,665.² The payment of installments includes an
7 interest component of 5.2%. At that time, Staff recommended that the Company file an application,
8 so that the Commission could determine if the Agreement with the CAWCD falls under A.R.S. §§
9 40-301 and 40-302. Decision No. 71259 ordered the Company to file an application regarding the
10 necessity of Commission approval of the Company's long-term Agreement with CAWCD.

11 In compliance with Decision No. 71259, the Company filed an application for a determination
12 that the Agreement with the CAWCD is not an evidence of indebtedness under A.R.S. §§ 40-301 and
13 40-302 or, in the alternative, requesting approval of the Agreement. In its Staff Report dated August
14 17, 2010, Staff concluded that the installment payment plan is a note evidencing indebtedness,
15 requiring Commission approval pursuant to A.R.S. § 40-301 *et seq.* Staff also recommended
16 approval of the financing.

17 **II. AVRA WATER COOPERATIVE.**

18 Avra Water Cooperative ("Avra"), a Class B utility, is a member owned non-profit
19 cooperative that provides water utility service to approximately 2,529 member/customers in an area
20 northwest of Tucson, on the west side of the Tucson Mountains, adjacent to the Saguaro National
21 Park. Avra filed an application for a rate increase in 2006.³ Prior to its application in 2006, Avra
22 filed an application for financing in 2000 to receive approvals for loans from the Water Infrastructure
23 Financing Authority ("WIFA") and Rural Development ("RD"), in part to fund acquisition of an 808
24 acre-foot Central Arizona Project ("CAP") allocation. The financing was approved by Decision No.
25 64008.⁴

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28 ² CWCGV Annual Report 2008 at 14.
³ Docket No. W-02126A-06-0234.
⁴ Docket No. W-02126A- 00-0973.

1 An examination of the record in the Avra case reveals that there was some confusion as to the
2 nature of the CAP charges. In Avra's pre-filed testimony, Avra witness Chris Ward testified, in
3 support of the Avra request for an operating margin of 19%, that "the operating margin requested will
4 also provide sufficient funds for on-going operating expenses purchase of a Central Arizona ("CAP")
5 allocation and other expected capital requirements."⁵ Further in Mr. Ward's pre-filed testimony he
6 states: "Further, the Company expects its purchase of CAP allocation sometime in 2007 to cost
7 \$575,000. These costs are also not included in operating expenses in the instant case."⁶

8 At the hearing, Avra witness Chris Ward testified that it was a "capital cost".⁷ The Avra
9 witness further testified that the payments were \$115,000 a year payable over 5 years, there was no
10 mention of an interest component.⁸

11 It should also be noted that the Avra proceeding was a rate case that did not include a request
12 for approval of its installment payments to CAP. It appears that there was confusion on the part of
13 Avra as to the nature of the transaction. In contrast, the application filed by CWCGV was solely for
14 financing. Because of the additional information Staff received as a result of the CWCGV financing
15 application, Staff examined the structure of the CAP M&I arrangement and concluded that the
16 installment payment plan is a note evidencing indebtedness, requiring Commission approval pursuant
17 to A.R.S. § 40-301 *et seq.*

18 **III. STAFF POLICY.**

19 In response to question 2, Staff would state that in its evaluations of financing and other debt
20 arrangements, that while mindful of prior Commission decisions, Staff conducts an independent
21 review of each application and makes its recommendations accordingly.

22 **IV. CONCLUSION.**

23 Staff reiterates its position as set forth in its filing of September 10, 2010. The Commission is
24 not pre-empted from its review of this transaction. Staff's determination that the transaction is a debt
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27 ⁵ Avra Direct Testimony of Chris Ward at 3; also *see* at 5.

28 ⁶ *Id.* at 15.

⁷ Avra Tr. at 32:11-23.

⁸ Avra Tr. at 53:6-12.

1 requiring Commission approval is appropriate and its recommendation that the Commission approve
2 the transaction is appropriate. Staff would urge the Commission to reject the Company's arguments.

3 RESPECTFULLY SUBMITTED this 4th day of February, 2011.

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