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BEFORE THE ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission

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MAR 16 2011

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IN THE MATTER OF THE APPLICATION OF ARIZONA WATER COMPANY, AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR ADJUSTMENTS TO ITS RATES AND CHARGES FOR UTILITY SERVICE FURNISHED BY ITS WESTERN GROUP AND FOR CERTAIN RELATED APPROVALS.

DOCKET NO. W-01445A-10-0517

STAFF'S BRIEF REGARDING SUFFICIENCY DETERMINATION

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") recommends that the Commission, rather than the ALJ, resolve this dispute regarding Staff's sufficiency determination. Specifically, Staff recommends that the Administrative Law Judge ("ALJ") hear oral argument from the parties, and issue a Recommended Opinion and Order ("ROO). The Commission would then consider the ROO at a future Commission Open Meeting.

I. BACKGROUND.

On December 29, 2010, Arizona Water Company ("AWC" or "Company") filed an application with the Commission requesting adjustments to its rates and charges for its Western Group systems. On January 7, 2011, Staff notified AWC that its rate application was deficient, due to the use of a projected or future test year. As a result of this deficiency determination, Staff was unable to analyze the Company's application.¹ On January 20, 2011, the Company filed a motion for procedural order regarding sufficiency of application ("Motion"). In its Motion, the Company asked the Commission to:

1 (1) address the sufficiency of Arizona Water Company's December 29, 2010
2 Application for a Determination of the Fair Value of its Utility Plant and Property, and
3 for Adjustments to its Rates and Charges for Utility Service Furnished by its Western
4 Group ("Application") in this docket,

5 (2) confirm the time limitations related to sufficiency determinations as set out in the
6 Rate Case Management Rule, A.A.C. R14-2-103 ("Rule 103"),

7 (3) deny any request to administratively close the present proceeding, and

8 (4) direct the Utilities Division ("Staff ") of the Arizona Corporation Commission
9 ("Commission") to complete its review of Arizona Water Company's pending
10 Application to ascertain whether it complies with the sufficiency requirements of Rule
11 103.

12 On February 7, 2011, the ALJ issued a procedural order directing Staff to file a response to
13 AWC's motion. The order further directed both AWC and Staff to "file briefs addressing whether the
14 issue of sufficiency of AWC's rate application is properly resolved through a Procedural Order issued
15 by the Commission's Hearing Division or through a Commission Decision, due to the nature of the
16 disagreement between AWC and Staff."² In the procedural order, the ALJ further instructed AWC and
17 Staff to address "both A.A.C. R14-2-103(B)(7) and (B)(11) and A.R.S. § 40-256(B)"³ In
18 response to Staff's request for a time extension, the ALJ issued a second procedural order on February
19 11, 2011, extending the deadline for AWC and Staff to file briefs until March 16, 2011.⁴

20 II. ARGUMENT.

21 A. The Commission, Rather Than The ALJ, Should Resolve This Sufficiency Dispute.

22 As indicated above, Staff reviewed AWC's application, found it deficient, and, on January 11,
23 2011, provided AWC with a reasoned explanation of the deficiency. In Decision No. 57875 (in which
24 the Commission enacted the rate case management rule), the Commission explained that "evaluating a
25 utility's rate filing for compliance with the applicable requirements . . . falls squarely within Staff's
26 expertise."⁵ Therefore, it is within Staff's purview to review AWC's filing to determine compliance
with the Rate Case Management Rules. In this case, Staff appropriately determined that AWC had

27 ¹ Staff Insufficiency Letter, Docket No. W-01445A-10-0517.

28 ² February 7, 2011 Procedural Order, Docket No. W-01445A-10-0517.

³ February 7, 2011 Procedural Order, Docket No. W-01445A-10-0517.

⁴ February 11, 2011 Procedural Order, Docket No. W-01445A-10-0517.

⁵ Decision No. 57875, Attachment B at 11:23-12:2 (emphasis added).

1 utilized an improper test year in its December 2010 application. Whether or not what the Company
2 used is a “future” or “projected” test year, it nonetheless is an improper test year in Staff’s expert
3 opinion. The Company’s pro forma adjustments used in creating the test year violate the matching
4 principle, which requires the matching of revenues and expenses occurring in the same period.

5 It is clear from AWC’s Motion that it disagrees with Staff’s reasons for finding its application
6 deficient. While Staff stands by its deficiency determination in this matter, Staff also understands that
7 there may be instances where a utility disagrees with a finding of deficiency. When that occurs, Staff
8 believes that the utility may ask the Commission for a final determination of sufficiency. Specifically,
9 in the evaluation of R14-2-103(B)(7) the Commission stated the following:

10 In those instances in which Staff finds a deficiency in the filing and a mutually
11 agreeable solution cannot be reached, *the utility can certainly file a motion requesting*
12 *Commission review of the matter.* With the opportunity to file such a motion, we do
not perceive a need to establish a more elaborate appeal process.⁶

13 In this case, AWC filed its Motion seeking resolution of this disagreement. Staff believes that
14 ultimately the Commission should resolve this dispute. Staff believes that the most efficient process
15 would be to have the ALJ hear oral argument from the parties at the March 24, 2011 procedural
16 conference and then draft a recommended opinion and order for the Commission to consider at a
17 future open meeting.

18 **B. A.A.C. R14-2-103(B)(7), (B)(11) and A.R.S. §40-256(B).**

19 Staff was unable to discern how A.A.C. R14-2-103(B)(7) and B(11) provide guidance on
20 whether the “issue of sufficiency of AWC’s rate application is properly resolved though a Procedural
21 Order issued by the Commission’s Hearing Division or whether it must be determined though a
22 Commission Decision.” Staff believes that the Commission’s evaluation of A.A.C. R14-2-103(B)(7)
23 in Decision No. 57875, as discussed above, makes it clear that where the parties cannot reach a
24 mutually agreeable solution, the Commission may act to resolve the dispute.

25 In addition to the two administrative code sections addressed above, the ALJ asked that the
26 parties address the applicability of A.R.S. §40-256 as it relates to the resolution of this sufficiency
27 dispute. A.R.S. §40-256 is an unconstitutional legislative enactment because it implicates the

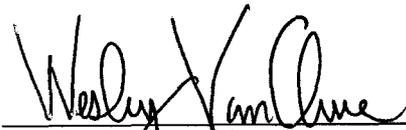
28 _____
⁶ Decision No. 57875, Attachment B at 12:6-11.

1 Commission's exclusive ratemaking authority as set forth in Article XV of the Arizona Constitution.
2 The Legislature cannot interfere with the Commission's ratemaking authority. *State v. Tucson Gas,*
3 *Electric Light and Power Co.*, 15 Ariz. 294, 300, 138 P. 781, 783 (1914). Even so, it does not appear
4 that this statute addresses whether this dispute must ultimately be resolved by the ALJ or the
5 Commission.

6 **III. CONCLUSION.**

7 Staff has correctly determined that the Company's application is deficient. However, the AWC
8 disputes Staff's deficiency determination. Since AWC and Staff have been unable to reach a solution
9 regarding the Company's insufficient application, this matter should be resolved by the Commission.
10 Staff therefore recommends that the ALJ hear oral argument at the March 24, 2011 procedural
11 conference, and issue a ROO some time after the argument. The Commission may then ultimately
12 resolve this matter at a future Open Meeting.

13 RESPECTFULLY SUBMITTED this 16th day of March, 2011.

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