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Arizona Corporation Commission

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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

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

ARIZONA WATER COMPANY'S BRIEF REGARDING PROPER RESOLUTION OF SUFFICIENCY OF APPLICATION

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Pursuant to the Commission's Procedural Order dated February 11, 2011, Arizona Water Company ("Arizona Water Company" or the "Company") submits the following brief addressing the question of whether the Hearing Division or the full Commission should hear and rule on Arizona Water Company's pending request for an Order (1) addressing the sufficiency of Arizona Water Company's December 29, 2010 Application 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 ("Application") in this docket, (2) confirming the time limitations related to sufficiency determinations as set out in the Rate Case Management Rule, A.A.C. R14-2-103 ("Rule 103"), (3) denying any request to administratively close (or now, to indefinitely suspend) the present proceeding, and (4) directing the Utilities Division ("Staff") of the Arizona Corporation Commission

1 (“Commission”) to complete its review of the sufficiency of Arizona Water Company’s
2 pending Application pursuant to the sufficiency requirements of Rule 103.

3 Given the time-sensitive nature of Arizona Water Company’s request, the duties of
4 Staff in processing a rate application and the role of the Hearing Division in the ratemaking
5 process as established by the Commission’s rules and Arizona statutes discussed below, and
6 the absence of a mechanism for having the full Commission hear and rule on routine
7 procedural motions, Arizona Water Company believes that the assigned Administrative Law
8 Judge should hear and rule on its pending Motion For Procedural Order Regarding
9 Sufficiency of Application dated January 20, 2011 (“Motion”). This procedure would
10 comply with Commission policy and practice and would provide an appropriate record if
11 Commission review is required. Referring this matter now for a full Commission hearing
12 and ruling, as sought by Staff, would result in (i) wasted expenditures of time and resources,
13 (ii) an imposition on the Commission to devote its attention to hearing and ruling on routine
14 procedural issues, which under the Commission’s rules of practice and procedure is the
15 Administrative Law Judge’s role, and (iii) the denial of Arizona Water Company’s
16 constitutional right to the opportunity to earn a fair and reasonable return on its investment
17 in utility plant and property. Accordingly, the Administrative Law Judge should hear and
18 rule on the issues presented in Arizona Water Company’s pending Motion and this docket
19 should proceed forward under the timetables prescribed in Rule 103.

20 **I. Introduction.**

21 Staff has provided no precedent or other authority to support its argument that the full
22 Commission, as opposed to the Administrative Law Judge assigned to this matter, should
23 hear and rule on Arizona Water Company’s pending Motion, which addresses procedural
24 issues routinely within the purview and authority of the Hearing Division. Arizona law
25 requires the Commission to abide by its own rules and regulations. As discussed below in
26 Section III, those rules and regulations provide no procedures calling for the Commission to
27 hear and rule on routine procedural and evidentiary matters like those in the Motion once a
28 matter has been assigned to the Hearing Division to reach a recommendation, as in this case.

1 Instead, the rules provide that the Administrative Law Judge, once assigned as the
2 “presiding officer” overseeing the matter, should do so.

3 In Staff’s February 23, 2011 Response to Arizona Water Company’s Motion
4 (“Response”), Staff retracted its prior demand for administrative closure of the present
5 docket. Having first threatened to seek administrative closure of this docket (*See* Staff’s
6 January 7, 2011 letter to Robert Geake, Exhibit “A” to the Motion (the “January 7 Staff
7 Letter”)), Staff now argues that the docket should remain open, but that Arizona Water
8 Company should be required to submit a new application using “a twelve-month test year
9 with at least six months, preferably twelve months, of actual data using present rates.” *See*
10 Staff Response, page 10, lines 4-7. Staff also requests that in the event that the
11 Administrative Law Judge does not rule that Arizona Water Company be required to submit
12 a new application, “the Commission waive the time clock or suspend the time clock
13 indefinitely.” *See* Staff Response, page 10, lines 11-13. While Staff’s amended positions
14 seek to impose the same hardships on Arizona Water Company and continue to rewrite and
15 graft unsupportable requirements onto Rule 103, they also confirm that an Administrative
16 Law Judge – not the Commission – should hear and rule on the issues set forth in the
17 pending Motion.

18 **II. Procedural History.**

19 Arizona Water Company filed its Application on December 29, 2010 seeking
20 adjustments to the Company’s rates and charges for utility service furnished to
21 approximately 30,400 customers in its Western Group. Arizona Water Company’s
22 Application utilized a test year ending December 31, 2009, with appropriate and routine pro
23 forma adjustments made to the test year data to reflect certain known and measurable
24 changed conditions, including the new rates and charges the Commission adopted in
25 Decision No. 71845, effective July 1, 2010. In submitting its Application, Arizona Water
26 Company carefully followed the requirements of Rule 103, and prepared and docketed
27 thousands of pages of pre-filed testimony (including expert testimony), detailed schedules,
28 exhibits, studies and reports.

1 On January 7, 2011, Staff demanded that the Company withdraw its Application or
2 face administrative closure of the docket. See January 7 Staff Letter. Arizona Water
3 Company declined, (see Exhibit "B" to the Motion), and requested that Staff withdraw its
4 January 7 Staff Letter by January 19, 2011. When Staff refused, and persisted in its refusal
5 to process the Application, the Company filed the Motion. The Administrative Law Judge
6 then issued a procedural order directing Arizona Water Company and Staff to file
7 memoranda addressing whether the Motion should be addressed by the Hearing Division or
8 referred to the full Commission for determination. See February 7, 2011 Procedural Order,
9 page 2, lines 18-22.

10 In the Response, after dropping its demand for administrative closure of this docket,
11 Staff now seeks instead to compel Arizona Water Company to submit a new application in
12 this docket including at least six months of actual data using present rates (instead of twelve
13 months, as Staff had previously demanded). See Response at page 1. However, there is no
14 substantive difference between administrative closure of this docket as previously demanded
15 by Staff and Staff's new position; neither is justified under Rule 103. Arizona Water
16 Company, therefore, requests a ruling by the Administrative Law Judge directing Staff to
17 proceed with timely processing of the Application as filed.

18 **III. Arizona Law and the Commission's Rules Require That the Hearing Division**
19 **Hear and Rule on the Company's Motion.**

20 As an initial matter, the "rules and regulations prescribing methods of procedure of
21 an administrative board or commission,-and specifically the Corporation Commission,-have
22 the effect of law, are binding on the board or commission, and must be followed by it so
23 long as they are in force and effect." *George v. Arizona Corp. Comm'n*, 83 Ariz. 387, 390,
24 322 P.2d 369, 371 (1958); see also *Tucson Warehouse & Transfer Co. v. Al's Transfer, Inc.*,
25 77 Ariz. 323, 327-328, 271 P.2d 477, 479-80 (1954) (Commission's "methods of procedure
26 have the effect of law and ... must be followed by it so long as they are in force and
27 effect"); *LaWall v. Pima County Merit Sys. Comm'n*, 212 Ariz. 489, 494, 134 P.3d 394, 399
28 (App. 2006) ("an administrative rule has the same effect and force as a statute"); *Cochise*

1 *County v. Arizona Health Care Cost Containment Sys.*, 170 Ariz. 443, 445, 825 P.2d 968,
2 970 (App. 1991) (“administrative agency must follow the rules it promulgates”). Here, the
3 Commission’s own rules of practice and procedure provide that the Administrative Law
4 Judge—as the designated “presiding officer” in this rate proceeding—hear and rule on the
5 pending Motion.

6 A.A.C. R14-3-101, *et seq.* set forth the rules of practice and procedure before the
7 Commission. Those rules govern “in all cases before the Corporation Commission
8 including but not limited to those arising out of Article XV of the Arizona Constitution, or
9 Titles 10, 40, or 44 of the Arizona Revised Statutes.” A.A.C. R14-3-101(A). Under A.A.C.
10 R14-3-106(K), “[m]otions shall conform insofar as practicable with the Rules of Civil
11 Procedure” There is no procedural mechanism within these rules of practice and
12 procedure (or the Rules of Civil Procedure) for procedural motions to be heard by the full
13 Commission after an Administrative Law Judge, as has occurred here, is assigned as the
14 “presiding officer” over a matter. A.A.C. R14-3-110 does not provide for the full
15 Commission to become involved in hearing and ruling on matters in a docket such as the
16 present rate case until after the hearing on the matter has been completed. *See* A.A.C. R14-
17 3-110(A)(“A proceeding is submitted for decision by the Commission *after* taking of
18 evidence, the filing of briefs or the presentation of oral argument as may have been
19 prescribed *by the presiding officer* (here, Administrative Law Judge Sarah Harpring)”) and
20 (B) (“In a proceeding heard by a Hearing Officer, *the Hearing Officer shall prepare his*
21 *recommendation ...*”)(emphasis supplied). Thus, once a matter is set before an
22 Administrative Law Judge as the “presiding officer”, as here, the Commission’s rules
23 provide that the Administrative Law Judge hear and rule on all procedural and evidentiary
24 motions in a pending proceeding. *See also* A.A.C. R14-3-109(D) (prior to hearing, the
25 presiding officer (here, the Administrative Law Judge) shall “act upon any pending
26 motions...”). As a result, a ruling by the Administrative Law Judge in this docket is both
27 appropriate and required.
28

1 **IV. An Examination of the Pending Issues Demonstrates that the Hearing Division,**
2 **not the Commission, Should Hear and Rule on the Motion.**

3 **A. Ruling on the Motion Does Not Require the Administrative Law Judge to**
4 **Alter the Commission's Use of an Historical Test Period.**

5 Contrary to Staff's repeated mischaracterizations, neither the Application nor the
6 Motion require the Administrative Law Judge to alter the Commission's practice of utilizing
7 historical test years. The pro forma adjustments Arizona Water Company made to its
8 historical test year to address the known and quantifiable effects of Commission-approved
9 rate changes and other known and measurable post-test year data do not transform the
10 historical test year into a "future test year."¹ Rather, as acknowledged in both the January 7
11 Staff Letter and Response, such pro forma adjustments are routinely utilized by the
12 Commission. As the Commission itself has recognized:

13 While this commission utilizes ... an historical test period, we
14 also recognize that carefully made adjustments to and
15 normalizations in an historical test-year framework improve the
16 commission's ability fairly to evaluate. This commission
17 increasingly recognizes that the functions of these adjustments
18 tend to the creation of a model test year which, though based
19 upon an historical test period and data established therein, may
20 vary substantially in some aspects from the unadjusted historical
21 test period. This commission, conscious that its test period
22 approach tends increasingly to approach a model test period
23 based analysis, finds that the potential for improving analysis
24 technique far outweighs the limitations of a strict historical test
25 period.

26 Decision No. 51009 (May 29, 1980) at 6-7. Subsequently, the Commission has
27 acknowledged that use of an historical test period combined with pro forma adjustments for
28 known and measurable changes "is a very good combination of both historic and future test
years." Decision No. 65350 (*Bella Vista Water Company*; Nov. 1, 2002) at 9 (quoting
Staff's position on the issue); *see also Arizona Corp. Comm'n v. Arizona Pub. Svc. Co.*, 113

¹ Indeed, using future data is required, *see* Rule 103, Schedule F (requiring projected data for years subsequent to test year).

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1 Ariz. 368, 370, 555 P.2d 326, 328 (1976) (recognizing that the Commission has the
2 authority to consider evidence of post-test year factors in setting rates).

3 Commission practice has been consistent with the foregoing precedents. Staff
4 routinely recommends, and the Commission authorizes, rates and charges using test years
5 adjusted to reflect known and measurable changes to variables such as labor, purchased
6 power, and property tax expense occurring both during and after the test year. Applying
7 wage, electric, and tax rates that go into effect after the end of the historical test year to
8 actual test year volumes (i.e. hours worked, kilowatt hours consumed, or taxable income
9 earned) is standard ratemaking practice, and does not make the relationship between test
10 year revenues and expenses “speculative”, as Staff argues. *See* Response at page 4, lines
11 13-23. In fact, the pro forma adjustments in the Application apply current known and
12 measurable rates (in this case, Commission-approved rates) to actual test year volumes that
13 are necessary to “obtain a normal or more realistic relationship between revenues, expenses
14 and rate base” (A.A.C. R14-2-103(A)(3)(i)), and are entirely consistent with, and within the
15 parameters of, the “matching” principle cited by Staff.

16 The “matching” principle is an accounting term used to describe the concept of
17 matching revenues to expenses at the time in which a transaction occurs rather than when
18 payment is made (or received)². In setting rates for utilities, it is standard practice to remove
19 these accruals from the historical test year via pro forma adjustments to revenues and
20 expenses (for example, removing revenues accrued but not yet billed). In the Response,
21 Staff misapplies this accounting term in its argument against the merits of the pro forma
22 adjustments in the Application. Staff’s request that Arizona Water Company be required to
23 file a new application in this docket using six months of actual data (i.e. new rates) in this
24 test year (*see* Response at page 10, lines 4-7) would itself require the use of pro forma
25 adjustments to normalize revenues in the test year over the second six-month period in such
26

27 ² Kimmel, Paul D., Jerry J. Weygandt, Donald E. Kieso. Financial Accounting (2^d
28 ed. 2000 New York), at pages 151-153.

1 a year. Staff's argument that applying the same type of adjustments to revenues that are
2 made to expenses is no more a violation of the matching principle than Staff's own request,
3 which itself would require such adjustments. Again, adjustments such as this are entirely
4 within the parameters of the matching principle, including its use in a "ratemaking context,"
5 as cited by Staff in its Response at page 4, lines 20-21.

6 Arizona Water Company's Application has pro forma adjustments to the historical
7 test year for known and/or measurable changes, including adjustments to reflect the rates the
8 Commission approved in Decision No. 71845. The nearly six months' worth of recorded
9 operations under the new rates when the Application was filed is evidence of the
10 appropriateness of those pro forma adjustments, not that a new test year must be adopted, as
11 Staff argues. Arizona Water Company's Application does not seek to replace the
12 Commission's use of an historical test period with a future test year methodology, or rely on
13 a future test year. To the contrary, it is incontrovertible that the Company's historical test
14 year ends on December 31, 2009. As with most, if not all procedural and evidentiary issues
15 that Administrative Law Judges routinely rule on, resolution of this aspect of Arizona Water
16 Company's Motion should be heard and ruled on by an Administrative Law Judge, not by
17 the full Commission.

18 **B. Rule 103 Does Not Provide for the Full Commission to Ascertain Whether**
19 **the Application Satisfies the Requirements of Rule 103.**

20 Staff further attempts to deny – and delay – the sufficiency of the Application based
21 on its unsupported assertion that Rule 103 includes the unwritten requirement that rate
22 applications contain at least twelve months of data under currently approved rates before an
23 application for new rates can be filed.³ Staff uses this unsupported requirement to buttress
24 another unsupported assertion, which is that sufficiency of the Application should be

25 _____
26 ³ Indeed, Staff now concedes that six months of recorded data under the new rates
27 may be adequate (*see* Response at page 2, lines 7-9); next week the Staff's arbitrary and
28 self-imposed timeframe might change again. The point is that the rule imposes no such
requirement.

1 determined by the Commission as opposed to the Administrative Law Judge. An
2 examination of the issue actually presented, however, demonstrates that Rule 103 does not
3 provide for the full Commission to determine the sufficiency of an application.

4 Rule 103 specifically establishes the information required to be submitted with an
5 application. *See* A.A.C. R14-2-103(A)(3)(g) (defining a “filing” as an “application and
6 required schedules, exhibits or other documents filed by a public service corporation to
7 initiate any proceeding enumerated in subsection (A)(1)...”) and (B) (setting out the specific
8 “Filing Requirements” and the form for such filings). In the January 7 Staff Letter and
9 Response, Staff has never argued that the Application does not contain the requisite
10 schedules, testimony and information under Rule 103. Rather, Staff argues that Rule 103
11 requires Arizona Water Company to provide at least twelve months (a position that Staff
12 changed in its Response to now require six months) of recorded data under its approved
13 rates before the Application can be considered. Not only is Staff wrong about the
14 requirements of Rule 103, but more to the point, Staff seeks to arbitrarily disqualify the
15 Company’s Application because Staff disagrees with the factual evidence the Company
16 submitted in support of its pro forma adjustments for known and measurable rate changes
17 that occurred after the end of the historical 2009 test period. Moreover, Staff attempts to
18 make its own substantive judgments by arguing that even if the Commission were to find
19 that the Company’s test year evidence was sufficient, that the Application is still “not
20 suitable”—an undefined term in the Commission’s rules. *See* Response at page 1, line 18
21 and page 10, line 4. The place to resolve these substantive disagreements is in the
22 evidentiary hearings before the Administrative Law Judge, where Staff may present its own
23 evidence and arguments about the adjustments, not at the initial procedural sufficiency
24 stage.

25 As noted in the Motion, Rule 103 does not contain any substantive requirements as to
26 the actual data presented in the application. Indeed, such a requirement would run afoul of
27 Arizona law. As the Commission and Arizona courts have recognized, a utility has the
28 unqualified right to seek the establishment of a rate that will allow it the opportunity to earn

1 a fair return on the fair value of its utility property. *See Simms v. Round Valley Light &*
2 *Power Co.*, 80 Ariz. 145, 294 P.2d 378 (1956); *see also* Decision No. 69663 (APS; June 29,
3 2007) (“It is the Company’s responsibility to monitor its financial condition and seek
4 approval for new rates when the relationship established in the prior rate case no longer
5 allows it to provide the appropriate level of service or earn a reasonable rate of return ...”).
6 So long as Arizona Water Company’s application substantially complies with the
7 requirements of Rule 103, Staff must consider that application sufficient, and the
8 Commission must then provide Arizona Water Company and the other parties to the
9 proceeding the opportunity to present evidence and testimony on the merits of the issues in
10 the case. *See* A.R.S. §§ 40-251, 40-256(B) (“a rate filing shall be deemed sufficient if it
11 substantially complies with the commission’s rules governing the filing requirements ...”).
12 Imposing the additional timing restriction demanded by Staff on a utility’s rate application
13 would impermissibly infringe upon the utility’s right to seek just and reasonable rates from
14 the Commission when it no longer is able to earn a reasonable rate of return.

15 In the ratemaking process, Staff has two independent roles. First, Staff acts as a
16 ministerial gatekeeper to make certain that an application substantially complies with the
17 Commission’s rules governing filing requirements. *See* A.A.C. R14-2-103(B)(7); A.R.S.
18 § 40-256(B). Once that ministerial role has been fulfilled, Staff addresses the merits of the
19 substantive issues raised by the application during evidentiary proceedings and briefing.
20 *See, e.g.*, A.R.S. § 40-251 (once application meets requirements of Rule 103, “[a]ll
21 corporations affected shall be heard and may introduce evidence at the hearing”). Staff’s
22 attempt to conflate these two separate and distinct roles by denying the sufficiency of the
23 Application because Staff disagrees with its substantive content is insupportable, as Staff’s
24 role at this point in time is limited to review of the Application for compliance with Rule
25 103’s technical requirements. Determining whether Staff has fulfilled that ministerial role is
26 appropriately the role of the Hearing Division, not the full Commission.

27 Moreover, as detailed in the Motion, section (B)(11)(g) of Rule 103 further defeats
28 Staff’s argument that Arizona Water Company must submit at least twelve months (or now

1 six months) of recorded data under its approved rates before the Application can be
2 considered. Although Arizona Water Company is not doing so in this case, Rule 103
3 recognizes that a utility can file a second rate application prior to the conclusion of a
4 pending rate case. This is instructive on the issue presented here because the Commission
5 would not have allowed for such filings if Staff's position that there needed to be either six
6 or twelve months of data under new rates as a condition of sufficiency were correct. While
7 Staff argues that the Commission's interpretation of Rule 103 in Decision No. 57875 (May
8 18, 1992) only applies to emergency rate relief, a reading of that Decision demonstrates just
9 the opposite. In Attachment B to Decision 57875, the Commission discussed the impact an
10 emergency rate application would have on the timing of pending rate applications under the
11 newly-proposed subdivision (g). Prior to adoption of (B)(11)(g), it is undisputed that
12 overlapping filings occurred. *See* Motion at pages 5-6. In adopting subsection (g), the
13 Commission did not limit such filings to emergency rate situations. Instead, the
14 Commission recognized that the rationale underlying the timing provision was "equally
15 applicable to multiple filings which are pending due to the failure to process the first case
16 within the prescribed timeframe." Decision No. 57875, Attach. B at page 34. Contrary to
17 Staff's argument, section (B)(11)(g) expressly contemplates the filing of a new rate
18 application while a previous application is still pending—by definition a scenario where
19 there is no data provided under "current" rates from the pending application, let alone six or
20 twelve months' worth of data, and that procedure is not limited to emergency rate relief.⁴

21 **C. The Administrative Law Judge, not the Full Commission, Should Hear**
22 **and Rule on The Question of Whether the Historical Test Year Utilized**
23 **by Arizona Water Company Meets Rule 103 Sufficiency Requirements.**

24 As with other issues raised by the Motion, the Administrative Law Judge has the

25
26 ⁴ Since Rule 103 on its face does not contain the additional, unwritten requirements
27 suggested by Staff, and since Staff in its Response has not cited to any such provisions in
28 the Commission's rules, a determination as to Staff's non-compliance with the
Administrative Procedures Act for improperly adopting new rules is unnecessary.

1 authority to hear and rule on whether Arizona Water Company's use of a 2009 calendar year
2 test year was the most recent recorded calendar year available when the Application was
3 filed. Staff argues that the Application is deficient because it uses a test year ending
4 December 31, 2009. Rule 103 only requires that a utility utilize "the most recent *practical*
5 date available prior to filing" for its historical data. A.A.C. R14-2-103(B)(1) (emphasis
6 supplied). Staff's Response ignores the fact that it has repeatedly allowed the use of similar
7 test years by other utilities. Staff also failed to demonstrate that the calendar year ended
8 December 31, 2009 test year utilized by Arizona Water Company is not the most recent
9 "practical" date available to the Company. As detailed in the Motion, Arizona Water
10 Company's use of that test year is fully supported by the evidence and testimony submitted
11 with the Application. If Staff questions the appropriateness of the evidence supporting that
12 test year or, in particular, the Company's pro forma adjustments, that essentially factual
13 determination is best resolved by the Administrative Law Judge, who routinely resolves
14 such technical and procedural matters and evidentiary issues under normal Commission
15 practice, rather than by the full Commission.

16 **V. Commission Practice Supports Determination of the Motion by the**
17 **Administrative Law Judge.**

18 Finally, longstanding Commission practice demonstrates that Arizona Water
19 Company's Motion is properly considered by the Administrative Law Judge. In Arizona
20 Water Company's last Western Group rate filing, Docket No. W-01445A-04-0650 ("Docket
21 No. 04-0650"), the Company faced an analogous situation. There, Staff attempted to treat
22 the application as insufficient under Rule 103 because Arizona Water Company did not
23 submit an inverted tiered rate design. In that case, Staff filed a motion (to be heard and
24 ruled on by the Administrative Law Judge, not the Commission) seeking to require Arizona
25 Water Company to amend its application to include an inverted tiered rate design. *See*
26 *Motion to Require Supplemental Sufficiency Information* in Docket No. 04-0650 dated
27 September 24, 2004 (attached for the Commission's convenience as Exhibit "A" to this
28 Memorandum). Administrative Law Judge Teena Wolfe summarily denied Staff's motion

1 after analyzing many of the same issues presented in this docket. *See* Rate Case Procedural
2 Order in Docket No. 04-0650 dated November 15, 2004 (attached as Exhibit “B”).
3 Specifically, Staff argued that its disagreement with the Company over a substantive factual
4 issue was a condition of sufficiency. Administrative Law Judge Wolfe disagreed and ruled
5 it was actually an issue of fact to be decided after evidentiary hearings. The same result
6 should occur here, and the same means of determining the issue – via the Hearing Division
7 – should be employed.

8 **VI. Staff’s Request For An Indefinite Waiver of the Time Clock for Commission**
9 **Action Should be Rejected.**

10 In Section IV of its Response, Staff argues in the alternative that the Administrative
11 Law Judge should “indefinitely waive or suspend the time clock in this matter pursuant to
12 A.A.C. R14-2-103(B)(11)(3)(ii)”[sic] if it is determined that the Application is sufficient or
13 suitable for processing.⁵ Staff’s request for an *indefinite* suspension is breathtakingly broad
14 and unprecedented in Arizona Water Company’s experience before the Commission; the use
15 of the word “extension” in the rule certainly does not contemplate that such a time
16 suspension would be without a beginning and an end point. Second, the rule specifically
17 provides that the party seeking such relief do so by way of motion (“Upon motion of any
18 party to the matter...”); although Staff raises this point in a responsive brief, the provision
19 for a motion requires that there be grounds stated with points and authorities presented for
20 the relief sought, and none were presented here. Third, no “extraordinary” grounds have
21 been stated, and none could exist, for such a sweeping and open-ended request, and one that
22 so dramatically prejudices Arizona Water Company’s rights to prompt processing of its
23 Application. Finally, Subsection 11(g) addresses the possibility of an extension in the
24 narrow situation where a utility has more than one rate application for the same system

25
26 ⁵ There is no such Rule 103 subpart; the likely intended reference was to Rule
27 103(11)(e)(ii), which provides for a motion to extend the time clock due to “[a]n
28 extraordinary event, not otherwise provided for by this subsection.” In any event, Staff has
filed no such motion.

1 pending at the same time, a circumstance that does not exist here. For these reasons as well
2 as the other reasons set forth in this Motion, Staff's alternative request for a waiver or
3 suspension of the time clock in this matter should be denied.

4 **VII. Conclusion.**

5 A review of the points and authorities in the Motion and this brief, specifically
6 including the Commission's own rules of practice, demonstrate that the Administrative Law
7 Judge should hear and rule on the Motion. Neither Rule 103 nor any of the Commission's
8 rules of practice and procedure contemplate or provide a mechanism for the full
9 Commission to hear and rule on procedural issues like those in the Company's Motion.
10 Accordingly, Arizona Water Company requests that the Administrative Law Judge hear and
11 rule on its Motion, and that an Order be entered requiring Staff to proceed with processing
12 the Application in accordance with the time frames established by Rule 103.

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

14 BRYAN CAVE LLP

15 By 
16 _____

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22 **ORIGINAL** and 13 copies of the foregoing
23 filed this 16th day of March, 2011 with:

24 Docket Control Division
25 Arizona Corporation Commission
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28 ...

1 **COPIES** of the foregoing hand-delivered
2 this 16th day of March, 2011, to:

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4 Chief Administrative Law Judge
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6 Arizona Corporation Commission
7 1200 W. Washington Street
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Exhibit A

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

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2004 SEP 24 P 3: 22

COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

AZ CORP COMMISSION
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Arizona Corporation Commission

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SEP 24 2004

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

DOCKET NO. W-01445A-04-0650

**Motion to Require Supplemental
Sufficiency Information, or in the
Alternative, to Suspend the Rate
Case Time Clock**

(Expedited Consideration Requested)

(Oral Argument Requested)

I. Introduction.

This proceeding is a rate case filed by Arizona Water Company for its Western Group of systems. Arizona Water's Application does not contain, even as an alternative, a proposal for inverted block rates (also called tiered rates). In each recent water rate order, the Commission has required inverted block rates. Staff contacted Arizona Water to advise them of this problem, but Arizona Water refused to prepare an inverted block rate design of its own.

The Utilities Division ("Staff") of the Arizona Corporation Commission ("ACC" or "Commission") moves that the Commission require Arizona Water to submit an inverted tiered rate design as a condition of sufficiency under the Commission's rate case time-clock rule. In the alternative, Staff moves that the rate case time-clock be extended until such time as Arizona Water files an inverted block rate design. If both of these requests are denied, Staff moves that Arizona Water be ordered to file an inverted block rate design within 45 days after a sufficiency letter is filed in this docket.

1 **II. Arizona Water should be ordered to submit an inverted block rate design as a condition**
2 **of sufficiency.**

3 As Arizona Water is well aware, the Commission has ordered inverted block rates in all recent
4 water rate orders. Moreover, the Commission adopted inverted block rates for Arizona Water's
5 Eastern Group only a few months ago. Decision No. 66849 at 26 (March 19, 2004). Arizona Water is
6 therefore well aware of the Commission's strong policy in favor of inverted block rates.

7 As Commissioner Mundell stated when he strongly urged another large water company to
8 submit an inverted block rate design:

9 It's been the historical perspective of this Commission to encourage
10 conservation, and we do that by having the tiered rate system.... [T]hen if
11 the tiered structure that the Staff has recommended you don't think is
12 appropriate, have you come forth with a tiered rating structure that would,
13 in fact, encourage conservation? I mean, ever since I've been on this
14 Commission, we've been encouraging conservation by our rate
15 structure.... Well, then, I suggest that you propose one that does work that
16 encourages conservation and meets the goals that this Commission has
17 established over the last four years.

18 Hearing Tr. at 28-33 in Docket WS-01303A-02-0867. Chairman Spitzer agreed, stating
19 "Commission orders generally are going to provide for conservation and are going to provide for the
20 price signals that you allude to.... [I]f that is the way the Commission order is going to end up
21 ultimately, he would suggest your participation in finding the solution rather than simple opposition to
22 what has been proposed by the Staff." *Id.* at 33-34. The Commissioner comments quoted above only
23 underscore the importance the Commission places on inverted block rates. This state has a desert
24 climate and is in the midst of a prolonged drought. The Commission has properly placed great
25 emphasis on conservation measures, including conservation oriented rate designs. Such designs
26 should be fully integrated into the rate case process, rather than being bolted on at the end as an
27 afterthought.

28 Creating a successful inverted block rate proposal takes a great deal of time and attention.
Arizona Water is the appropriate party to initiate such a proposal. Due to Arizona Water's experience
with its systems and access to its data, an inverted block rate proposal from Arizona Water would be
beneficial. Since the sufficiency process is designed to allow Staff to identify whether the applicant
has provided adequate information for Staff to conduct its review and analysis of the application,

1 requiring an inverted block rate proposal from the Applicant is appropriate. In this era, an analysis of
2 at least the possibility of inverted block rates is simply essential towards determining a rate design that
3 incorporates all of the appropriate factors into a conservation-based framework.

4 Arizona Water will likely argue that requiring it to submit an inverted block rate design is
5 equivalent to forcing it to abandon its argument for a single tier rate design. But Arizona Water will
6 be free to argue for a single tier rate design. Staff simply wants Arizona Water to provide an inverted
7 block rate design for Staff to analyze. Arizona Water can still argue that its single tier rate design is
8 the superior alternative.

9 Arizona Water will undoubtedly argue that the Commission's rate case filing requirements do
10 not contain a specific provision requiring that a water utility file inverted block rates. But these
11 requirements provide that the "Commission may request that supplementary information in addition to
12 that specifically required... be submitted by a utility either prior to or after a filing." A.A.C. R14-2-
13 103(B) (5). The Commission's strong recent policy of requiring inverted block rates and the drought
14 situation in this state make this is one of the rare cases where it is appropriate to add a sufficiency
15 requirement after a rate application is filed. Accordingly, Staff requests that Arizona Water be ordered
16 to submit an inverted block rate design as a condition of sufficiency.

17 **III. In the alternative, the rate case time clock should be extended until Arizona Water**
18 **submits an inverted block rate design.**

19 In the event that the Commission elects not to require Arizona Water to file an inverted block
20 rate design as a condition of sufficiency, then Staff requests that the rate case time clock be extended
21 until such time as Arizona Water files such a proposal. For the reasons described above, Arizona
22 Water should file an inverted block rate design. The Commission may extend the rate case time clock
23 in extraordinary situations. A.A.C. R14-2-103(B) (11) (e) (ii). It should do so here. Arizona Water's
24 action in completely ignoring recent Commission policy concerning inverted block rates is an
25 extraordinary situation which warrants extending the rate case time clock. Further, events during the
26 recent Arizona-American rate hearing also support extending the rate case time clock. During that
27 hearing, Arizona-American agreed to provide its own inverted block rate design after the
28 Commissioner comments quoted above. Arizona-American submitted its new rate design with its

1 closing brief. Staff then responded by presenting a counter-proposal in its reply brief. Submitting
2 various rate designs after the close of the hearing posed numerous problems for the parties, the
3 Administrative Law Judge and the Commission. These problems can be prevented in this case by
4 extending the time clock until Arizona Water presents an inverted block rate design. In this way, no
5 hearing will occur until Arizona Water's proposal is submitted and analyzed.

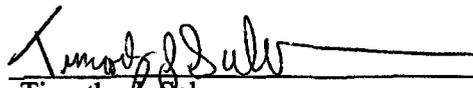
6 **IV. In the alternative, the Commission should order Arizona Water to submit an inverted**
7 **block rate design within 45 days of sufficiency.**

8 If the Commission does not adopt either of the alternatives described above, then it should
9 order Arizona Water to submit an inverted block rate design within 45 days of the filing of a letter of
10 sufficiency. This alternative will allow Staff some time to review and analyze Arizona Water's
11 proposal.

12 **V. Conclusion.**

13 Staff requests that the Commission order the relief or alternative relief described above. Staff
14 also request that this matter be set for a procedural conference for oral argument at the earliest
15 opportunity. The deadline for a sufficiency finding is October 10, 2004.

16 **RESPECTFULLY SUBMITTED** this 24th day of September 2004.

17
18 
19 Timothy J. Sabo
20 Lisa Vandenberg
21 Attorney, Legal Division
22 Arizona Corporation Commission
23 1200 West Washington Street
24 Phoenix, Arizona 85007
25 (602) 542-3402

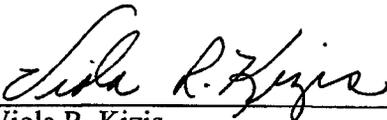
26 The original and thirteen (13) copies
27 of the foregoing were filed this
28 24th day of September 2004 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

1 Copies of the foregoing were mailed
2 and faxed this 24th day of
September 2004 to:

3 Norman D. James
4 Jay L. Shapiro
5 Fennemore Craig
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913

6 Robert W. Geake
7 Vice President and General Counsel
8 Arizona Water Company
P.O. Box 29006
Phoenix, Arizona 85038-9006

9
10 

11

Viola R. Kizis
12 Secretary to Timothy J. Sabo

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Exhibit B

ORIGINAL

0000013207

BEFORE THE ARIZONA CORPORATION COMMISSION

254

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

Arizona Corporation Commission

DOCKETED

NOV 15 2004

2004 NOV 15 P 1:20

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY [Signature]

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

DOCKET NO. W-01445A-04-0650

RATE CASE
PROCEDURAL ORDER

BY THE COMMISSION:

On September 8, 2004, Arizona Water Company ("AWC" or "Applicant") filed an application with the Arizona Corporation Commission ("Commission") to adjust its rates and charges for utility service provided by the Applicant's Western Group.

On September 15, 2004, AWC filed a page omitted from its bill count and the corrected direct testimony of one of its witnesses.

On September 24, 2004, the Commission's Utilities Division Staff ("Staff") filed a Motion to Require Supplemental Sufficiency Information, or in the Alternative, to Suspend the Rate Case Time Clock ("Motion"). Staff requested oral argument on its Motion, and expedited consideration.

On October 1, 2004, AWC filed a Response to the Motion.

On October 6, 2004, the Residential Utility Consumer Office ("RUCO") filed an Application to Intervene.

On October 8, 2004, Staff filed a Reply in Support of its Motion. Staff also filed a Letter of Deficiency on that date.

A procedural teleconference was held on October 8, 2004, for discussion of the requested oral argument. AWC, RUCO and Staff attended.

On October 12, 2004, RUCO filed a Notice of Lodging RUCO's Response to Staff's Motion.

1 A Procedural Order was issued On October 12, 2004, setting the date of October 15, 2004 for
2 oral argument on the issues raised in the Motion and subsequent pleadings, and on any other pertinent
3 procedural matters.

4 On October 15, 2004, AWC, Staff and RUCO appeared through counsel at the time set for
5 oral argument and presented their respective arguments in favor of and against granting the Motion.
6 The arguments were considered, and the Motion was denied.

7
8 On October 18, 2004, Staff filed a Letter of Sufficiency indicating that AWC's application
9 met the sufficiency requirements outlined in A.A.C. R14-2-103, and classifying AWC as a Class A
10 utility.

11 A Procedural Order was issued on October 18, 2004 granting RUCO's Application to
12 Intervene.

13 Pursuant to A.A.C. R14-3-101, the Commission now issues this Procedural Order to govern
14 the preparation and conduct of this proceeding.

15
16 IT IS THEREFORE ORDERED that the hearing in the above-captioned matter shall
17 commence on **June 16, 2005, at 10:00 a.m.**, or as soon thereafter as is practical, at the Commission's
18 offices, 1200 West Washington Street, Arizona 85007.

19 IT IS FURTHER ORDERED that a pre-hearing conference shall be held on June 13, 2005, at
20 1:30 p.m., at the Commission's offices, for the purpose of scheduling witnesses and the conduct of
21 the hearing.

22
23 IT IS FURTHER ORDERED that the Staff Report and/or any direct testimony and associated
24 exhibits to be presented at hearing on behalf of Staff shall be reduced to writing and filed on or before
25 April 18, 2005.

26 IT IS FURTHER ORDERED that any direct testimony and associated exhibits to be presented
27 at hearing on behalf of intervenors shall be reduced to writing and filed on or before April 18, 2005.
28

1 IT IS FURTHER ORDERED that any rebuttal testimony and associated exhibits to be
2 presented at hearing by the Company shall be reduced to writing and filed on or before May 11,
3 2005.

4 IT IS FURTHER ORDERED that any surrebuttal testimony and associated exhibits to be
5 presented by the Staff or intervenors shall be reduced to writing and filed on or before May 25, 2005.

6 IT IS FURTHER ORDERED that any rejoinder testimony and associated exhibits to be
7 presented at the hearing on behalf of the Company shall be reduced to writing and filed on or before
8 June 9, 2005.

9
10 IT IS FURTHER ORDERED that any objections to any testimony or exhibits which have
11 been prefiled as of June 9, 2005, shall be made before or at the June 13, 2005 pre-hearing conference.

12 IT IS FURTHER ORDERED that all testimony filed shall include a table of contents that lists
13 the issues discussed.

14 IT IS FURTHER ORDERED that any substantive corrections, revisions, or supplements to
15 pre-filed testimony shall be reduced to writing and filed no later than five days before the witness is
16 scheduled to testify.

17
18 IT IS FURTHER ORDERED that the parties shall prepare a brief, written summary of the
19 pre-filed testimony of each of their witnesses and shall file each summary at least two working days
20 before the witness is scheduled to testify.

21 IT IS FURTHER ORDERED that copies of summaries should be served upon the Presiding
22 Officer, the Commissioners, and the Commissioners' aides as well as the parties of record.

23
24 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105,
25 except that all motions to intervene must be filed on or before April 8, 2005.

26 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and
27 regulations of the Commission, except that: until June 2, 2005, any objection to discovery requests
28

1 shall be made within 7 days¹ of receipt and responses to discovery requests shall be made within 10
2 days of receipt; thereafter, objections to discovery requests shall be made within 5 days and responses
3 shall be made within 7 days of receipt. The response time may be extended by mutual agreement of
4 the parties involved if the request requires an extensive compilation effort. No discovery requests
5 shall be served after June 10, 2005.

6 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
7 discovery, any party seeking discovery may telephonically contact the Commission's Hearing
8 Division to request a date for a procedural hearing to resolve the discovery dispute; that upon such a
9 request, a procedural hearing will be convened as soon as practicable; and that the party making such
10 a request shall contact all other parties to advise them of the hearing date and shall at the procedural
11 hearing provide a statement confirming that the other parties were contacted.²

12 IT IS FURTHER ORDERED that any motions filed in this matter that are not ruled upon by
13 the Commission within 10 days of the filing date of the motion shall be deemed denied.

14 IT IS FURTHER ORDERED that any responses to motions shall be filed within five days of
15 the filing date of the motion.

16 IT IS FURTHER ORDERED that any replies shall be filed within five days of the filing date
17 of the response.

18 IT IS FURTHER ORDERED that the Company shall provide public notice of the hearing in
19 this matter, in the following form and style, with the heading in no less than 18 point bold type and
20 the body in no less than 10 point regular type:

21 **PUBLIC NOTICE OF HEARING ON THE**
22 **RATE APPLICATION OF ARIZONA WATER COMPANY**
23 **(DOCKET NO. W-01445A-04-0650)**

24 On September 8, 2004, Arizona Water Company ("Company") filed an

25
26
27 ¹ "Days" means calendar days.

28 ² The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before seeking Commission resolution of the controversy.

1 application with the Arizona Corporation Commission ("Commission") for an overall
2 increase in revenues of approximately 25.3 percent for its Western Group systems,
3 which include the Company's Casa Grande, Stanfield, White Tank, Ajo Heights,
4 and Coolidge systems. The actual percentage revenue increase requested for each
5 system varies. Copies of the application and proposed tariffs are available at the
6 Company's offices [insert address] and the Commission's offices for public
7 inspection during regular business hours.

8 The Commission will hold a hearing on this matter beginning **June 16, 2005,**
9 **at 10:00 a.m.,** at the Commission's offices, 1200 West Washington, Phoenix,
10 Arizona. Public comments will be taken on the first day of the hearing.

11 The law provides for an open public hearing at which, under appropriate
12 circumstances, interested parties may intervene. Intervention shall be permitted to any
13 person entitled by law to intervene and having a direct and substantial interest in the
14 matter. Persons desiring to intervene must file a written motion to intervene with the
15 Commission no later than **April 8, 2005.** The motion to intervene must be sent to the
16 Company or its counsel and to all parties of record, and must contain the following:

- 17 1. The name, address, and telephone number of the proposed intervenor
18 and of any party upon whom service of documents is to be made if
19 different from the intervenor.
- 20 2. A short statement of the proposed intervenor's interest in the
21 proceeding (e.g., a customer of the Company, a shareholder of the
22 Company, etc.).
- 23 3. A statement certifying that a copy of the motion to intervene has been
24 mailed to the Company or its counsel and to all parties of record in the
25 case.

26 The granting of intervention, among other things, entitles a party to present
27 sworn evidence at the hearing and to cross-examine other witnesses. However, failure
28 to intervene will not preclude any interested person or entity from appearing at the
hearing and providing public comment on the application or from filing written
comments in the record of the case. You will not receive any further notice of this
proceeding unless you request it.

1 If you have any questions about this application, wish to file written comments
2 on the application, or want further information on intervention, you may contact the
3 Consumer Services Section of the Commission at 1200 West Washington Street,
4 Phoenix, Arizona 85007, or call 1-800-222-7000.

5 The Commission does not discriminate on the basis of disability in admission
6 to its public meetings. Persons with a disability may request a reasonable
7 accommodation such as a sign language interpreter, as well as request this document
8 in an alternative format, by contacting the ADA Coordinator, Linda Hogan, at
9 LHogan@admin.cc.state.az.us, voice phone number 602/542-3931. Requests should
10 be made as early as possible to allow time to arrange the accommodation.

11 **IT IS FURTHER ORDERED** that the Company shall mail to each of its customers a copy of
12 the above notice as a bill insert beginning with the first billing cycle in February, 2005, and shall
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1 cause the above notice to be published at least once in a newspaper of general circulation in its
2 service territory, with publication to be completed no later than February 28, 2005.

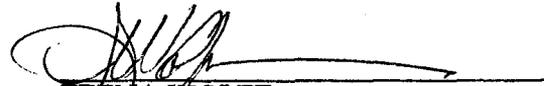
3 IT IS FURTHER ORDERED that Company shall file certification of mailing/publication as
4 soon as practicable after the mailing/publication has been completed.

5 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing/publication
6 of same, notwithstanding the failure of an individual customer to read or receive the notice.

7 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
8 Communications) applies to this proceeding as the matter is now set for public hearing.

9 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
10 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

11 Dated this 15th day of November, 2004

12
13 
14 TEENA WOLFE
15 ADMINISTRATIVE LAW JUDGE

16 The foregoing was mailed/delivered
17 this 15th day of November, 2004 to:

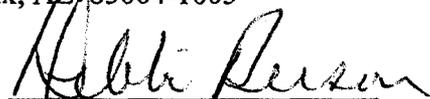
18 Norman D. James
19 Jay L. Shapiro
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23 Attorneys for Arizona Water Company

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ARIZONA REPORTING SERVICE
2627 N. Third Street, Ste. Three
Phoenix, AZ 85004-1003

By: 
Debi Person
Secretary to Teena Wolfe