

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION CC

COMMISSIONERS

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Arizona Corporation Commission

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GARY PIERCE, Chairman
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PAUL NEWMAN
BRENDA BURNS

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
CHAPARRAL CITY WATER COMPANY, INC.,
AN ARIZONA CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE OF
ITS UTILITY PLANT AND PROPERTY AND
FOR INCREASES IN ITS RATES AND
CHARGES FOR UTILITY SERVICE BASED
THEREON.

DOCKET NO. W-02113A-07-0551

**STAFF RESPONSE TO
COMMISSIONER BURNS**

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") responds to the March 8, 2011 letter from Commissioner Burns requesting further information regarding the rehearing in the Matter of Chaparral City Water Company.¹ This Staff response is limited to whether notice of rehearings is contemplated by Arizona Administrative Code ("A.A.C") R14-2-105. For the reasons stated below, no further notice is required for rehearing.

I. BACKGROUND.

Chaparral City Water Company ("Chaparral" or the "Company") filed an application for a rate increase in September, 2007. On October 21, 2009, the Commission issued Decision No. 71308. This Decision authorized new rates and charges for Chaparral. On November 3, 2009, the Company filed a Motion for Order Amending Decision No. 71308, *nunc pro tunc*, to correct a computational error in the rates set forth in Decision No. 71308, which was granted in Decision No. 71424. Chaparral also filed an application for rehearing, pursuant to A.R.S. § 40-253, in November 2009, seeking rehearing on five issues in Decision No. 71308. The Commission voted to grant rehearing in order to allow time for further consideration of the Company's request. The Commission withheld making any determinations as to the issues raised in the Company's application until after consideration of the Motion for Order amending Decision No. 71308. In January 2010, the Commission granted rehearing on two issues: rate case expense associated with the appeal and

¹ Docket No. W-02113A-07-0551.

1 remand of Decision No. 68716, and treatment of the Fountain Hills Sanitary District (“FHSD”)
2 settlement proceeds. The rehearing was held on April 19, 2010. Staff and the Residential Utility
3 Consumer Office (“RUCO”) presented testimony, while the Company did not, stating that its position
4 was unchanged from the case below.

5 Staff maintains its position that the proceeds of the FHSD should be split equally with the
6 ratepayers so long as the Company agrees to split the proceeds of the sale of wells 8 and 9. As it did
7 in the rate case below, Staff recommends that the Company be allowed to recover \$100,000 in rate
8 case expense associated with the appeal and remand. Staff found it reasonable that successful
9 litigants on constitutional issues should be allowed reasonable recovery of expenses.

10 **II. NO FURTHER CUSTOMER NOTICE IS REQUIRED FOR REHEARING.**

11 The Commission’s authority to set rates and to enact rules governing process and procedure
12 for the setting of rates is derived from article 15, section 3 of the Arizona Constitution. The
13 Commission established rules for rate case management² as well as for the conduct of proceedings
14 including rate cases, complaints and rehearings.³

15 A.A.C. R14-2-105 is entitled “Notice of rate hearings” and is placed near the rate case
16 management rules. While headings are not law,⁴ the title is indicative of the type of proceeding that
17 is subject to the notice requirement. At the initiation of a rate application, notice is to be provided to
18 customers so that those customers may be aware of an impending rate increase or decrease and may
19 elect to participate, should they so choose, either by intervention or public comment. Once a utility
20 issues notice in accordance with A.A.C. R14-2-105, it has fulfilled its obligation with respect to
21 customer notification, unless there is a further order of the Commission. The Commission has
22 promulgated a separate rule, A.A.C. R14-3-111, for rehearings.

23 Once notice of a rate proceeding is given, no further notice is required under Commission
24 practice. For example, after notice has been given, if a hearing date is vacated and reset, the hearing
25 is commonly convened for public comment on the date noticed, and then recessed until the new
26 hearing date. For example, *In the Matter of Litchfield Park Service Company*: RUCO filed a request

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28 ² A.A.C. R14-2-103.

³ A.A.C. R-14-3-301 *et seq.*

⁴ See A.R.S. 1-212.

1 to extend the hearing by one week, after public notice had been given. The request was limited to a
2 one day extension of the hearing; the Company was not required to re-notice its customers of the new
3 hearing date. The date was instead used as public comment.⁵

4 A rehearing is not a separate rate hearing, but a different phase of the same rate proceeding.
5 As noted by the Arizona Court of Appeals, “the purpose of [the A.R.S. § 40-253] rehearing
6 requirement is to give the Commission the opportunity to correct its own errors before a party seeks
7 judicial relief. It is an expression of the doctrine of the exhaustion of administrative remedies.”⁶
8 Under A.R.S. § 40-253, a rate proceeding has not concluded until the decision of the Commission has
9 become final. A Commission rate order is not final until the time for rehearing has passed. There is
10 no requirement for further notice, beyond the initial notice given by a utility.

11 The reading of A.A.C. R14-2-105 suggested by RUCO would place a burden on a small
12 utility’s resources. A small utility may need to file for rehearing to allow the Commission to correct
13 a defect and may find it burdensome, if to correct a problem in a Commission Decision it would need
14 to also provide additional notice simply to ask the Commission to correct an error.

15 In its exceptions to the Recommended Opinion and Order (“ROO”), RUCO stated that the
16 Company “should have noticed the specific customers who existed at the time.” If taken to its logical
17 conclusion, this would require utilities to issue notices of hearing every day as its customer could
18 change daily. This requirement is unworkable, impractical, and not required by rule or Commission
19 practice.

20 **III. THE OBJECTION IS UNTIMELY.**

21 RUCO raised the issue of notice in its exceptions to the ROO. If RUCO believed that notice
22 was required in this case, RUCO should have raised the issue prior to the actual rehearing. It is not
23 reasonable to allow the rehearing to be held with the associated expenditure of the Commission’s and
24 the parties’ resources---and then pose objections that should have already been raised.

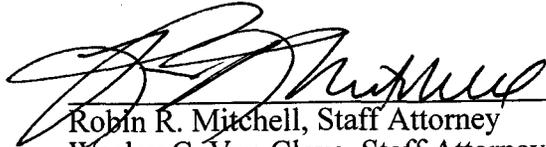
27 ⁵ See *In the Matter of Litchfield Park Service Company*, Decision No. 72026 at 3. See also, *In the Matter of Gold Canyon*
Sewer Company, Decision No. 70624 at 2. (RUCO as the applicant for rehearing, did not request additional notice.)

28 ⁶ *Save Our Valley Ass'n v. Arizona Corp. Comm'n*, 216 Ariz. 216, 220, 165 P.3d 194, 198 (App. 2007) (internal
quotations omitted).

1 **IV. CONCLUSION.**

2 The Commission, in its discretion, could require additional notice, but neither Commission
3 practice nor the rules requires notice upon the grant of a rehearing.

4 RESPECTFULLY SUBMITTED this 23rd day of March, 2011.

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8 Robin R. Mitchell, Staff Attorney
9 Wesley C. Van Cleve, Staff Attorney
10 Legal Division
11 Arizona Corporation Commission
12 1200 West Washington Street
13 Phoenix, Arizona 85007
14 (602) 542-3402

15 Original and thirteen (13) copies
16 of the foregoing were filed this
17 23rd day of March, 2011 with:

18 Docket Control
19 Arizona Corporation Commission
20 1200 West Washington Street
21 Phoenix, Arizona 85007

22 Copies of the foregoing were mailed
23 this 23rd day of March, 2011 to:

24 Norman D. James
25 Jay L. Shapiro
26 FENNEMORE CRAIG
27 3003 North Central Avenue, Suite 2600
28 Phoenix, Arizona 85012-2913

Daniel w. Pozefsky, Chief Counsel
RESIDENTIAL UTILITY CONSUMER
OFFICE
1110 West Washington Street, Suite 220
Phoenix, Arizona 85007-2958

Phil Green
OB SPORTS F/B MANAGEMENT
(EM), LLC
Pacific Life Insurance Company
dba Eagle Mountain Golf Club
7025 East Greenway Parkway, Suite 550
Scottsdale, Arizona 85254-2159

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27
28

Craig A. Marks
CRAIG A. MARKS, PLC
10645 North Tatum Boulevard
Suite 200-676
Phoenix, Arizona 85028

Dale E. Hawley, Assistant Vice President
Counsel, Law Department
PACIFIC LIFE INSURANCE COMPANY
700 Newport Center Drive
Newport Beach, California 92660-6397

