

ORIGINAL



0000124022

BEFORE THE ARIZONA CORPORATION COMMISSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COMMISSIONERS

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

2011 MAR 25 P 1:18

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

MAR 25 2011

DOCKETED BY [Signature]

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

PROCEDURAL ORDER

BY THE COMMISSION:

On December 29, 2010, Arizona Water Company ("AWC") filed with the Arizona Corporation Commission ("Commission") an application requesting adjustments to its rates and charges for utility service provided by its Western Group water systems, including its Pinal Valley (Casa Grande, Coolidge, and Stanfield); Ajo; and White Tank water systems. AWC's rate application used a test year ending December 31, 2009. AWC's current rates were established in Decision No. 71845 (August 25, 2010), based on a test year ending December 31, 2007.

On January 7, 2011, the Commission's Utilities Division ("Staff") filed a Letter of Deficiency stating that AWC's rate application was "deficient such that it renders all associated schedules invalid," and further stating that "Staff [was] unable to progress any further with regard to sufficiency of [the] rate application." Staff stated that AWC's test year constituted a projected or future test year because it does not include a time period after the imposition of AWC's current rates. Staff stated that AWC should withdraw its current application and resubmit a new application using a test year including at least 12 months of actual data under AWC's current rates and, further, that Staff would request that the docket be administratively closed if AWC failed to withdraw its rate application by January 28, 2011.

On January 14, 2011, AWC filed a Response to Staff's Letter of Deficiency, stating that the

26

1 position taken by Staff was not supported by the Commission's rules, by the Commission's historical
2 practices and procedures, or by case law. AWC further asserted that Staff's position constituted the
3 adoption of a rule without following the rulemaking process of the Arizona Administrative Procedure
4 Act. AWC stated that it would seek relief from the Administrative Law Judge unless Staff withdrew
5 its January 7, 2011, letter and provided Staff a deadline of January 19, 2011, for such withdrawal.

6 On January 20, 2011, AWC filed a Motion for Procedural Order Regarding Sufficiency of
7 Application ("Motion"), requesting that a Procedural Order be issued addressing the sufficiency of
8 AWC's rate application, confirming the time limitations for sufficiency determination set forth in
9 A.A.C. R14-2-103, denying a request for administrative closure of this docket, and directing Staff to
10 complete its review of AWC's rate application to determine whether it complies with A.A.C. R14-2-
11 103. AWC requested that a procedural conference be set at the earliest opportunity to address its
12 issues and asserted that a telephonic conference should be scheduled as soon as practicable to set the
13 procedural conference.

14 On January 21, 2011, AWC filed a Notice of Errata replacing an attachment to its January 20,
15 2011, Motion.

16 On February 7, 2011, a Procedural Order was issued requiring Staff to file, by February 14,
17 2011, a response to AWC's Motion and requiring both AWC and Staff to file, by March 7, 2011,
18 briefs addressing whether the issue of sufficiency of AWC's rate application would be properly
19 resolved through a Procedural Order issued by the Commission's Hearing Division or through a
20 Commission Decision, due to the nature of the disagreement between AWC and Staff. The
21 Procedural Order also scheduled a procedural conference to be held on March 14, 2011, to allow
22 AWC and Staff to provide oral argument on the issue.

23 On February 9, 2011, Staff filed a Motion for Extension of Time, requesting that the deadline
24 for its response to AWC's Motion be extended to February 23, 2011, as Staff believed that the
25 ultimate decision on the test year issue had the potential to impact every rate application filed with
26 the Commission, and Staff needed additional time to review Commission Decisions that were
27 unavailable electronically and to evaluate and respond to technical arguments raised by AWC in its
28 Motion.

1 On February 10, 2011, AWC filed its Response to Staff's Motion for Extension of Time,
2 asserting that AWC did not object to an extension of time until February 18, 2011, but that every day
3 of extension beyond February 14, 2011, would unjustifiably reduce AWC's time to review Staff's
4 responses in preparation of AWC's brief.

5 On February 11, 2011, a Procedural Order was issued extending to February 23, 2011, Staff's
6 deadline to respond to AWC's Motion; extending to March 16, 2011, the deadline for briefs; and
7 rescheduling the procedural conference/oral argument from March 14, 2011, to March 24, 2011.
8 Also on February 11, 2011, Staff filed a Reply to AWC's Response to Staff's Motion for Extension
9 of Time.

10 On February 23, 2011, Staff filed its Response to AWC's Motion, requesting that AWC's
11 Motion be denied or, in the alternative, if AWC's application were determined to be sufficient, that
12 the application be deemed unsuitable for ratemaking purposes. Staff additionally requested, under
13 either of those alternatives, that AWC be required to file in this docket an application using a test year
14 including at least six months of actual data with current rates. If AWC's application were determined
15 to be both sufficient and suitable for ratemaking, Staff requested that the timeframe in A.A.C. R14-2-
16 103(B)(11) be waived or indefinitely suspended due to AWC's use of an unconventional test year.

17 On March 16, 2011, AWC and Staff each filed a brief addressing resolution of the sufficiency
18 dispute, with AWC asserting that the issue should be resolved through a Procedural Order issued by
19 the Administrative Law Judge and Staff asserting that the issue should be resolved through a
20 Commission Decision, after issuance of a Recommended Opinion and Order by the Administrative
21 Law Judge.

22 On March 24, 2011, the procedural conference was held as scheduled at the Commission's
23 offices in Phoenix, with AWC and Staff appearing through counsel. Rather than immediately
24 proceeding to oral argument, the parties were provided an opportunity to engage in discussions in an
25 attempt to resolve their dispute. As a result of their discussions, the parties were able to reach
26 agreement as to the resolution of their dispute. The particular points of agreement were read into the
27
28

1 record and, as pertaining specifically to this docket,¹ are as follows: (1) AWC will file in this docket
 2 a fully amended new application packet for its Western Group that uses a test year ending December
 3 31, 2010 (“new application”);² (2) Staff will conduct its sufficiency review of the new application as
 4 efficiently as possible, will not challenge its sufficiency on test year grounds, will address proactively
 5 with AWC any other sufficiency issues that arise, and will not during its sufficiency review of the
 6 new application file motions requesting suspension of the time clock or time extensions; (3) Staff will
 7 make its best reasonable good faith effort to process the new application so that it is concluded within
 8 the 360 days provided for in A.A.C. R14-2-103; (4) The parties desire for the schedule for this
 9 proceeding to include a specified settlement discussion period and settlement agreement filing
 10 deadline, as included in the Rate Case Procedural Order issued on January 7, 2011, in Docket No. G-
 11 01551A-10-0458 (“10-0458”), which includes a date to commence settlement discussions after Staff
 12 and Intervenor direct testimony is filed and requires the filing of any settlement agreement within
 13 approximately 2 weeks thereafter;³ (5) The parties desire for either of them to be able to seek
 14 appointment of an unassigned Administrative Law Judge or outside mediator (acceptable to both
 15 parties) to assist in their settlement discussions if necessary;⁴ and (6) The parties desire to have
 16 surrebuttal and rejoinder testimony eliminated and handled at hearing, although they would like to
 17 have the option to have those prefiled testimonies included in the schedule if needed.⁵

18 As a result of the parties’ agreement resolving their dispute, AWC’s Motion and Staff’s
 19 associated requests for relief are rendered moot.

20 **IT IS THEREFORE ORDERED that no action will be taken on AWC’s Motion or on**
 21 **Staff’s associated requests for relief, as both are now moot.**

22 **IT IS FURTHER ORDERED that this docket shall remain open for the filing of AWC’s**
 23 **new application.**

24

25 ¹ Additional items of agreement were reached pertaining to a rate application for AWC’s Eastern Group anticipated to
 be filed in mid-to-late 2011.

26 ² AWC anticipated filing the new application within 30 to 45 days after the procedural conference.

27 ³ Staff desires to propose procedural dates at a procedural conference to be requested later.

28 ⁴ Staff expressed concern about the cost of using any outside mediator.

⁵ The Procedural Order in 10-0458 creates two alternate scheduling tracks—one to be used in the event settlement is
 reached, and one to be used in the event settlement is not reached. The scheduling track to be used if settlement is not
 reached requires the filing of both surrebuttal and rejoinder testimony.

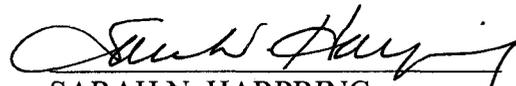
1 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
2 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

3 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
4 Communications) applies to this proceeding and shall remain in effect until the Commission's
5 Decision in this matter is final and non-appealable.

6 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
7 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
8 Supreme Court Rule 42). Representation before the Commission includes appearing at all hearings,
9 procedural conferences, and Open Meetings at which the matter is scheduled for discussion, unless
10 counsel has previously been granted permission to withdraw by the Administrative Law Judge or the
11 Commission.

12 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
13 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
14 hearing.

15 DATED this 25th day of March, 2011.

17 
18 SARAH N. HARPRING
19 ADMINISTRATIVE LAW JUDGE

20 Copies of the foregoing mailed/delivered
this 25th day of March, 2011, to:

21 Steven A. Hirsch
22 Stanley B. Lutz
23 BRYAN CAVE LLP
Two North Central Avenue, Suite 2200
Phoenix, AZ 85004-4406
Attorneys for Arizona Water Company

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

24 Robert Geake
25 ARIZONA WATER COMPANY
26 P.O. Box 29006
Phoenix, AZ 85038

Steven M. Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

27 By: 
28 Debra Broyles
Secretary to Sarah N. Harpring