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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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2011 JUL - 7 P 3:47

AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF
COMMUNITY WATER OF GREEN VALLEY
FOR APPROVAL OF A SURCHARGE FOR
IMPLEMENTATION OF ITS PROPOSED BEST
MANAGEMENT PRACTICES.

DOCKET NO. W-02304A-10-0220

EXCEPTIONS

Community Water Company of Green Valley ("CWCGV" or "Company") files exceptions to Staff's proposed order submitted June 28, 2011. Specifically, CWCGV consider amending the proposed order to address the following two items:

- Removing the requirement that the Company seek approval from the Arizona Department of Water Resources for BMP 7.3 and BMP 7.6. The Company believes this is not necessary because the Company has agreed to the very specific requirements contained in Staff's tariffs for BMPs 7.3 and 7.6. Further, the Company has complied with Decision No. 71478 (February 10, 2010) by selecting these BMPs. Staff has provided no guidance on how the Company is to obtain approvals from ADWR for tariffs that are not part of ADWR's program. Finally all the BMPs the Company selected, including BMP 7.3 and BMP 7.6 are relevant to its service territory as Staff indicates in its memorandum.
- Replacing the tariff for BMP 5.2 (Water System Tampering dated December 10, 2010) that the Company submitted on June 1, 2011 with the more current version of the tariff for BMP 5.2 dated May 26, 2011 and now available on the Commission's website at <http://www.azcc.gov/divisions/utilities/water/forms.asp>. The Company was not aware of this more current version of the BMP 5.2 tariff until after it had made its amended proposed BMPs filing. The Company believes the more current version should replace

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what the Company submitted on June 1, 2011.

CWCGV supports the remaining findings in Staff's proposed order. The Company's proposed amendments are attached as Exhibits 1 and 2 to these exceptions.

I. Background.

Decision No. 71478 (February 3, 2010) required CWCGV to select five additional BMPs as outlined in ADWR's Modified Non-Per Capita Conservation Program. The only restriction stated in that order was that a maximum of two of these BMPs come from the "Public awareness/PR or Education and Training" categories of the BMPs (these are Categories 1 and 2). There is no Commission requirement that the Company cannot implement a Category 7 BMP or that it must seek approval from ADWR to do so. The Company has complied with Decision No. 71478 by submitting five additional BMPs, of which only two are from Categories 1 and 2.

At the of CWCGV's initial filing on June 2, 2010, Staff had not provided publicly any BMP tariff templates. The Company was unaware that Staff was developing its own BMP tariff templates at that time. Instead, the Company developed its BMP tariffs from ADWR guidelines, but had added significant details indicating exactly what it had in mind and how it was going to implement the BMPs. Still, Staff had concerns with the Company's submission, in particular the request for a \$1.00 per month per customer "conservation surcharge" CWCGV needed to implement the BMPs it had then proposed. The Company engaged Staff in several discussions over many months.

On June 1, 2011, the Company amended its proposed BMPs. It proposed five BMPs using the Staff tariff templates that were then available on the website at <http://www.azcc.gov/divisions/utilities/water/forms.asp>. The Company proposed amended BMPs 2.1, 2.3, 5.2, 7.3 and 7.6. The only changes the Company made to those templates was to add its name and phone number. In that filing, the Company withdrew its request for the conservation surcharge. On June 28, 2011, Staff submitted its memorandum and proposed order. As stated earlier, the Company's exceptions are limited to two items in Staff's proposed order.

1 **II. Argument.**

2 **1. The Commission should not require the Company to seek ADWR approval for**
3 **BMP 7.3 and BMP 7.6.**

4 Requiring the Company to seek additional approval from another agency is unnecessary
5 and redundant. Staff tariff templates for BMP 7.3 and BMP 7.6 have specific requirements that go
6 beyond the ADWR guidelines. These are not vague guidelines. The Company has agreed to those
7 requirements. Further, Staff has provided CWCGV no guidance as to how it is to go about and get
8 such approvals for what is essentially a Commission program in less than three months. In fact, the
9 Company understands from its communications with ADWR that it will not approve Staff tariff
10 templates. Therefore, CWCGV should not have to expend additional resources to seek additional
11 approvals, which are not likely to be obtained, when it has already agreed to Staff's requirements.

12 Further, the Company has complied with Decision No. 71478 by choosing BMPs 7.3 and
13 7.6. The Commission should not now force CWCGV to go back and repeat this process again.
14 Both BMPs 7.3 and 7.6 are relevant to its service territory, as Staff admits in its memorandum and
15 proposed order. In addition, the Company cannot simply select two other BMPs that will work
16 within its service territory. Out of the remaining BMPs potentially available, the following
17 problems are present:

- 18 • Staff had not developed tariff templates for several BMPs. The Company has already
19 attempted to develop its own detailed BMP tariffs when it made its initial filing, but
20 those were not acceptable to Staff.
- 21 • The Company is already implementing five BMPs under ADWR's program. These are
22 BMPs 1.2, 3.4, 3.6, 3.7 and 4.2.
- 23 • Most of the Category 5 BMPs apply to municipalities and not to a non-profit member-
24 owned cooperative that provides water service like CWCGV.
- 25 • Several of the remaining BMPs either do not make sense for CWCGV's service
26 territory (because most of its customer base is residential and most of the residences are
27 new homes that already have low-flow devices) or are cost prohibitive to implement

1 without a surcharge. Based on Staff concerns with the Company's surcharge proposal,
2 the Company withdrew it. But the Company cannot implement certain BMPs without a
3 surcharge.

4 Staff's recommended requirement regarding BMP 7.3 and 7.6 puts the Company in a near-
5 impossible situation. It will not be able to get ADWR approval, but there simply are no other
6 BMPs the Company believes are applicable to its service territory that are not cost prohibitive or
7 that are not already being implemented under ADWR's program. But given that the Company
8 agrees with Staff's requirements for BMP 7.3 and BMP 7.6, the Company does not understand why
9 it needs to then go seek approval for Staff's tariffs under what is a Commission program.

10 The Company believes the public goal of water conservation is advanced by approving
11 BMP 7.3 and BMP 7.6 without any additional approval from ADWR. Even if ADWR were
12 willing to approve Staff tariffs, it is an agency that has serious resource constraints and likely lacks
13 the manpower to review and approve by the October deadline. Having the Company face the
14 potential of trying to find two other BMPs to propose that are relevant to its service area
15 characteristics is not productive, is costly and is not required by Decision No. 71478. The
16 Company requests that the Commission remove the requirement that the Company seek approval
17 from ADWR for the BMP tariffs 7.3 and 7.6. It has proposed language to amend the order and
18 remove this requirement in Exhibit 1.

19 **2. The Commission should adopt the most current version of the template tariff**
20 **for BMP 5.2 for CWCGV.**

21 At the time the Company submitted its amended BMPs on June 1, the most current version
22 of the tariff for BMP 5.2 (dated May 26, 2011) was not available on the website. CWCGV was not
23 even aware of its existence until Staff notified counsel of an updated BMP 5.2 on or around June 8,
24 2011. At that time, it appeared that the most current version available publicly at that time was the
25 version dated December 10, 2010. The Company also understood that Staff may be recommending
26 the newer version of BMP 5.2.

27 The Company has since retrieved a copy of and reviewed the most current BMP 5.2 (dated

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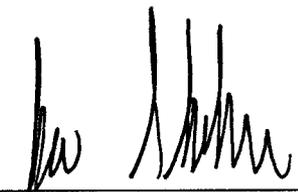
1 May 26, 2011 and available on the Commission's website at
2 <http://www.azcc.gov/divisions/utilities/water/forms.asp>). CWCGV believes it is an improvement
3 over the version dated December 10, 2010. Since it appears that Staff endorses use of the newer
4 tariff for BMP 5.2, the Company requests that it replace the version it submitted June 1, 2011. It
5 has proposed language to amend the order to replace the older BMP 5.2 with the newer version in
6 Exhibit 2.

7 **III. Conclusion.**

8 CWCGV believes it has worked diligently and in good faith to propose BMPs that are
9 acceptable to Staff and the Commission, while also supporting water conservation. The Company
10 has agreed to most of Staff's recommendations and requirements. But it simply cannot agree to a
11 recommendation that requires it to expend more time and resources to obtain approval from
12 ADWR for Staff's tariff. And it is unfair to the Company to then have to find and propose two
13 additional BMPs (and spend more time and money to do so) when it has agreed to all of Staff's
14 specific requirements for the BMPs it has proposed. In short, the Company should be allowed to
15 implement BMP tariffs 7.3 and 7.6, without further approval. The Company should also be allowed
16 to implement the most current version of the BMP tariff 5.2 that Staff developed in May 2011.

17 The Company requests that the Commission adopt its proposed amendments, attached as
18 Exhibits 1 and 2, and approve the proposed order as amended.

19 RESPECTFULLY SUBMITTED this 7th day of July, 2011.

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- 1 Original and thirteen copies of the foregoing
filed this 7th day of July, 2011, with:
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3 Docket Control
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5 Copy of the foregoing hand-delivered
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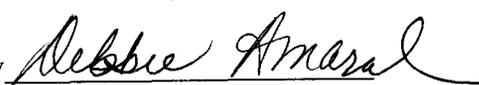
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Exhibit 1

Removing the requirement of ADWR approval for BMP 7.3 and BMP 7.6.

(1) Page 4, line 10.5 INSERT the following new Finding of Fact No. 12:

“12. While Staff recommends that the tariffs for BMP 7.3 and 7.6 not become effective until after ADWR approval, we do not find this requirement necessary. Staff’s requirements in the tariffs for BMP 7.3 and 7.6 are very specific and not vague. The Company has agreed to those requirements. The Company has complied with Decision No. 71478 by selecting these BMPs. All of the BMPs the Company selected, including BMP 7.3 and BMP 7.6 are relevant to its service territory as Staff indicates in its memorandum. We see no reason to require the Company to seek additional approval from ADWR for what is essentially a Commission program. For these reasons, we will not require CWCGV to seek ADWR approval for the tariffs for BMP 7.3 and BMP 7.6.”

(2) DELETE Page 4, line 25 through Page 5, line 9.

(3) INSERT the following at Page 4, line 25:

IT IS FURTHER ORDERED that approval of these BMP tariffs is in the form agreed to by Staff and the Company as follows:

- that CWCGV be considered to have met its compliance obligations under Decision No. 71478 in Docket No. W-02304A-08-0590 to submit at least five BMPs for Commission consideration.
- that the tariffs labeled as Attachment A to the proposed order be approved without a surcharge.
- that CWCGV’s withdrawal of its “conservation surcharge” be approved.
- that the Company may request cost recovery of actual costs associated with the BMPs implemented in a future rate proceeding.

(4) MAKE ALL CONFORMING CHANGES

Exhibit 2

Replacing the tariff for BMP 5.2.

(1) At Page 4, line 10.5, INSERT the following new Finding of Fact No. 13:

“In its exceptions dated July 8, 2011, CWCGV requested to replace the tariff for BMP 5.2 it had submitted June 1, 2011, with the updated version of Staff’s tariff for BMP 5.2 dated May 26, 2011 and available on the Commission’s website at <http://www.azcc.gov/divisions/utilities/water/forms.asp>. The Company explained that it was not aware of a newer version of BMP 5.2 until after it had submitted its amended BMPs on June 1, 2011. Since it appears Staff endorses the more current version of BMP 5.2 (dated May 26, 2011), we find the Company’s request reasonable.”

(2) At Page 5, Line 9, INSERT new ordering paragraph:

“IT IS FURTHER ORDERED replacing the tariff for BMP 5.2 the Company submitted on June 1, 2011 with the more current version of the tariff for BMP 5.2 dated May 26, 2011 and attached as part of Attachment A hereto.”

(3) MAKE ALL CONFORMING CHANGES.

Company: _____

Decision No.: _____

Phone: _____

Effective Date: _____

WATER SYSTEM TAMPERING TARIFF – BMP 5.2

PURPOSE

The purpose of this tariff is to promote the conservation of groundwater by enabling the Company to bring an action for damages or to enjoin any activity against a person who tampers with the water system.

REQUIREMENTS:

The requirements of this tariff are governed by Rules of the Arizona Corporation Commission, specifically Arizona Administrative Code ("AAC") R14-2-410 and the Arizona Department of Water Resources' Required Public Education Program and Best Management Practices in the Modified Non-Per Capita Conservation Program.

1. In support of the Company's water conservation goals, the Company may bring an action for damages or to enjoin any activity against a person who: (1) makes a connection or reconnection with property owned or used by the Company to provide utility service without the Company's authorization or consent; (2) prevents a Company meter or other device used to determine the charge for utility services from accurately performing its measuring function; (3) tampers with property owned or used by the Company; or (4) uses or receives the Company's services without the authorization or consent of the Company and knows or has reason to know of the unlawful diversion, tampering or connection. If the Company's action is successful, the Company may recover as damages three times the amount of actual damages.
2. Compliance with the provisions of this tariff will be a condition of service.
3. The Company shall provide to all its customers, upon request, a complete copy of this tariff and AAC R14-2-410. The customers shall follow and abide by this tariff.
4. If a customer is connected to the Company water system and the Company discovers that the customer has taken any of the actions listed in No. 1 above, the Company may terminate service per AAC R14-2-410.
5. If a customer believes he/she has been disconnected in error, the customer may contact the Commission's Consumer Services Section at 1-800-222-7000 to initiate an investigation.