

ORIGINAL



0000127836

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

2011 JUL 27 P 3: 36

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF
TUSAYAN WATER DEVELOPMENT
ASSOCIATION, INC. FOR ESTABLISHMENT
OF RATES FOR WATER SERVICE.

DOCKET NO. W-02350A-10-0163

IN THE MATTER OF THE APPLICATION OF
ANASAZI WATER CO., LLC FOR
ADJUDICATION "NOT A PUBLIC SERVICE
CORPORATION."

DOCKET NO. W-20765A-10-0432

IN THE MATTER OF THE APPLICATION OF
HYDRO-RESOURCES, INC. FOR
ADJUDICATION "NOT A PUBLIC SERVICE
CORPORATION."

DOCKET NO. W-20770A-10-0473

**STAFF'S NOTICE OF FILING
DIRECT TESTIMONY**

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") hereby files the Direct Testimony of Staff Witnesses Kiana M. Sears and Marlin Scott, Jr. in the above-referenced matter.

RESPECTFULLY SUBMITTED this 27th day of July, 2011.

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

Original and thirteen (13) copies
of the foregoing were filed this
27th day of July, 2011 with:

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

Arizona Corporation Commission
DOCKETED

JUL 27 2011

DOCKETED BY

1 Copies of the foregoing were mailed
2 and/or emailed this 27th day of July, 2011 to:

3 Russell A. Kolsrud
4 Ryan J. Lorenz
5 CLARK HILL PLC
6 14850 North Scottsdale Road, Suite 500
7 Scottsdale, Arizona 85254
8 Attorneys for Tusayan Water Development
9 Association, Inc.
10 RKolsrud@clarkhill.com

11 Garry D. Hays
12 THE LAW OFFICES OF GARRY D. HAYS, P.C.
13 1702 East Highland Avenue, Suite 204
14 Phoenix, Arizona 85016
15 Attorneys for Tusayan Ventures LLC
16 ghays@lawgdh.com

17 Paul L. Brinkmann
18 SHORALL MCGOLDRICK BRINKMANN
19 702 North Beaver
20 Flagstaff, Arizona 86001
21 Attorney for Anasazi Water Co., LLC
22 plb@smbattorneys.com

23 Steven A. Hirsch
24 Rodney W. Ott
25 BRYAN CAVE LLP
26 Two North Central Avenue, Suite 2200
27 Phoenix, Arizona 85004-4406
28 Attorneys for Hydro-Resources, Inc.
sahirsch@bryancave.com

William J. Simms III
LASOTA & PETERS, PLC
722 East Osborn, Suite 100
Phoenix, Arizona 85014
Attorney for the Town of Tusayan
wjsims@lasotapeters.com

Cynthia Seelhammer, Interim Town Manager
TOWN OF TUSAYAN
P.O. Box 709
Tusayan, Arizona 86023



BEFORE THE ARIZONA CORPORATION COMMISSION

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

IN THE MATTER OF THE APPLICATION OF) DOCKET NO. W-02350A-10-0163
TUSAYAN WATER DEVELOPMENT)
ASSOCIATION, INC. FOR ESTABLISHMENT)
FOR RATES FOR SERVICE.)

IN THE MATTER OF THE APPLICATION OF) DOCKET NO. W-20765A-10-0432
ANASAZI WATER CO., LLC FOR)
ADJUDICATION "NOT A PUBLIC SERVICE)
CORPORATION.)

IN THE MATTER OF THE APPLICATION OF) DOCKET NO. W-20770A-10-0473
HYDRO-RESOURCES, INC. FOR)
ADJUDICATION "NOT A PUBLIC SERVICE)
CORPORATION".)

DIRECT

TESTIMONY

OF

KIANA M. SEARS

EXECUTIVE CONSULTANT I

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

JULY 27, 2011

TABLE OF CONTENTS

| | <u>PAGE</u> |
|-----------------------------------------------------|--------------------|
| INTRODUCTION | 1 |
| TUSAYAN WATER DEVELOPMENT ASSOCIATION (“TWDA”)..... | 4 |
| ANASAZI WATER CO., LLC (“ANASAZI”)..... | 9 |
| HYDRO- RESOURCES, INC. (“HYDRO”)..... | 12 |
| SUMMARY OF TESTIMONY AND RECOMMENDATIONS | 16 |

EXECUTIVE SUMMARY
TUSAYAN WATER DEVELOPMENT ASSOCIATION, INC.
DOCKET NOS. W-02350A- 10-0163, W-20765A-10-0432 AND
W-20770A-10-0473

On April 29, 2010, Tusayan Water Development Association ("TWDA") filed a rate application with the Arizona Corporation Commission ("Commission") Tusayan, Arizona is a small community of approximately 500 residents located just south of the Grand Canyon National Park ("Park") south rim entrance. In Decision No. 50492, TWDA received a Certificate of Convenience & Necessity ("CC&N") from the Commission on December 13, 1979, to purchase water from the National Park Service for delivery in Tusayan. TWDA continued service under the agreement with the Park for approximately fifteen years. During the mid-1990's Anasazi Water Co., LLC ("Anasazi") and Hydro- Resources, Inc. ("Hydro") both drilled wells and began production of water for separate areas of Tusayan. TWDA did not submit to the Commission for new tariffs or inform the Commission of its new service providers until the filing of this rate application.

In its rate application, TWDA has stated that it does not own any plant or equipment used for the pumping and or distribution of water. TWDA has further explained that it serves in an administrative capacity, as a billing agent to Anasazi and Hydro. There are 41 customers (5 residential and 36 commercial) served within the CC&N territory. The customers receive water from Anasazi or Hydro. Staff's review of the operations of Hydro and Anasazi is to determine if the two entities should be classified as public service corporations and be subject to the jurisdiction of the Commission.

The Town of Tusayan ("Town") has intervened in this docket. Currently, the customers within TWDA's CC&N are paying different rates based on which water company provides them water, Hydro or Anasazi. Anasazi bills customers \$54.40 per 1,000 gallons used while Hydro bills customers \$24.90 per 1,000 gallons used. After consultation with Staff, on October 21, 2010, Anasazi filed, an Application for Adjudication "Not a Public Service Corporation". On November 19, 2010, Hydro filed, an Application for a Determination That It Is Not Acting as a Public Service Corporation. The dockets for TWDA, Anasazi and Hydro have been consolidated since these matters are interrelated.

Staff has evaluated all three entities and recommends the following:

The Commission adjudicates TWDA not a public service corporation. TWDA is merely a billing agent for Hydro and Anasazi. Conversely, Hydro and Anasazi both appear to be acting as public service corporations and Staff recommends that the Commission order Hydro and Anasazi to each file an application for a CC&N with the Commission.

1 **INTRODUCTION**

2 **Q. Please state your name, occupation, and business address.**

3 A. My name is Kiana M. Sears. I am an Executive Consultant employed by the Arizona
4 Corporation Commission (“ACC” or “Commission”) in the Utilities Division (“Staff”).
5 My business address is 1200 West Washington Street, Phoenix, Arizona 85007.

6
7 **Q. Briefly describe your responsibilities as an Executive Consultant.**

8 A. In my capacity as an Executive Consultant, I review applications for Certificate of
9 Convenience and Necessity (“CC&N”). The CC&N applications include but are not
10 limited to new CC&Ns, cancellations, extensions, deletions and adjudications. I also work
11 on various other projects as assigned by the Utilities Division.

12
13 **Q. Please describe your educational background and professional experience.**

14 A. In 2000, I graduated cum laude from Arizona State University, receiving a Bachelor of
15 Arts degree in Human Communication with a Minor in Business Administration. In 2002,
16 I graduated with a Master of Public Administration. I worked for the Arizona State Senate
17 for 44th legislative session as bipartisan Staff presenting to Caucus and making
18 presentations on the Senate Floor. In 2008, I became employed by the Commission as an
19 Executive Consultant I. I continue to serve in that capacity today.

20
21 **Q. What was your assignment in this proceeding?**

22 A. I was assigned to evaluate the applications filed by Hydro Resources (“Hydro”), and
23 Anasazi Water Company, LLC (“Anasazi”) in these consolidated dockets. During the
24 procedural conference held February 7, 2011, Tusayan Water Development Association

1 (“TWDA”) agreed that the scope of these proceedings could be expanded to adjudicate
2 whether TWDA is a public service corporation (“PSC”).¹
3

4 **Q. What is the purpose of your testimony in this matter?**

5 A. The purpose of my testimony is to review the applications filed by Hydro and Anasazi,
6 and the current operations of TWDA, and make recommendations regarding whether each
7 entity should be adjudicated not public service corporations.
8

9 **Q. How is your testimony organized?**

10 A. My testimony is organized into three sections. The first section discusses and evaluates
11 the operations of and the prefiled testimony of TWDA and presents Staff’s
12 recommendations regarding TWDA. The second section discusses and evaluates the
13 application filed by Hydro, and presents Staff’s recommendations regarding Hydro. The
14 third section discusses, evaluates and makes recommendations regarding the application
15 filed by Anasazi.
16

17 **Q. What is the scope of your testimony in this case?**

18 A. The scope of this testimony will cover background information regarding TWDA, Hydro
19 and Anasazi. Staff will then, address and make recommendations regarding, the
20 applications of Anasazi and Hydro for adjudication not a PSC. My testimony will also
21 include an evaluation of whether to adjudicate TWDA not a PSC. Staff will also make
22 recommendations regarding future filings that the various companies should make to the
23 Commission.

¹ Tr. at 7-8.

1 **Q. Are there any other Staff witnesses assigned to this matter?**

2 A. Yes. Marlin Scott, Jr., will be addressing engineering issues.

3
4 **Q. Will you briefly describe the term public service corporation?**

5 A. Yes. While I am not a lawyer, pursuant to Arizona Constitution, Article 15, Section 2, a
6 public service corporation is described as follows:

7
8 All corporations other than municipal engaged in- gas, oil, or electricity for light,
9 fuel, or power; or in furnishing water for irrigation, fire protection, or other public
10 purposes; or in furnishing, for profit, hot or cold air or steam for heating or cooling
11 purposes; or engaged in collecting, transporting, treating, purifying and disposing
12 of sewage through a system, for profit; or in transmitting messages or furnishing
13 public telegraph or telephone service, and all corporations other than municipal,
14 operating as common carriers, shall be deemed public service corporations.
15

16 **Q. Has the Commission adjudicated a company not a PSC in the past?**

17 A. Yes.

18
19 **Q. Are there factors that the Commission uses to determine whether an entity is PSC?**

20 A. Yes, the factors that Staff uses as a guideline to determine if an entity is a PSC are known
21 as the “*Serv-Yu*” factors”².

22
23 **Q. Please state the Serv-Yu factors used by the Commission to determine whether an
24 entity is a PSC.**

25 A. The Serv-Yu factors are as follows:

- 26
27
 - Dedication to public use,
 - 28 • What the corporation actually does,
 - 29 • Articles of incorporation, authorization, and purposes,
 - 30 • Dealing with the service of a commodity in which the public has been generally held
 - 31 to have an interest,

² Natural Gas Service Co. V. *Serv-Yu* Cooperative, Inc., 70 ARIZ. 235, 219 P.2d 324 (1950).

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

- Monopolizing or intending to monopolize the territory with a public service commodity,
- Acceptance of substantially all requests for service,
- Service under contracts and reserving the right to discriminate is not always controlling, and
- Actual or potential competition with other corporations whose business is clothed with public interest.

TUSAYAN WATER DEVELOPMENT ASSOCIATION (“TWDA”)

Q. Please briefly discuss the history of TWDA.

A. The Commission granted TWDA an order preliminary to the issuance of a CC&N in Decision No. 49808 dated March 28, 1979. Decision No. 49808 required the Company to obtain the necessary franchise from Coconino County for certain areas of its proposed CC&N before issuance of a CC&N. On December 23, 1979, the Commission determined that TWDA had complied with this condition. Accordingly, the Commission granted TWDA a permanent CC&N in Decision No. 50492.

TWDA was originally established to purchase water from the National Park Service for distribution within Tusayan. Tusayan is a small community of approximately 300 to 500 residents, located south of the Grand Canyon National Park. TWDA currently services approximately 32 customers through infrastructures owned and operated by Hydro and Anasazi. Thus, TWDA does not own or operate any water infrastructure utilized for provision of water service within its certificated territory. TWDA only provides billing services to customers served by Hydro and Anasazi.

1 **Q. Did Decision No. 49808 impose any additional requirement on TWDA?**

2 A. Yes. Decision No. 49808 states that “Prior to the commencement of the provision of
3 water service to its customers, TWDA shall comply with each and every requirements of
4 this Commission, including but not limited to the filing of tariff and the securing of
5 appropriate Health Department approvals.”

6
7 **Q. Is TWDA in compliance with the provisions of Decision No. 49808 stated above?**

8 A. No. TWDA has not filed its tariff with the Commission.
9

10 **Q. Please elaborate on your comment that TWDA does not own or control any water
11 system facilities?**

12 A. In the direct testimony of Christopher Brainard, he states that TWDA neither owns nor
13 controls any water infrastructure.³ Also, Mr. Brainard stated that, TWDA does not
14 perform or provide any maintenance, repairs or capital improvements to any of the wells,
15 pumps, tanks or distribution lines.
16

17 **Q. Does TWDA manage or operate the water system?**

18 A. No. Mr. Brainard testifies that TWDA only performs billing functions, which includes
19 compiling consumption data, preparation of invoices, transmittal of invoices, collection of
20 payments and payment of TWDA’s obligations to taxing authorities.⁴
21

22 **Q. Does TWDA provide any commodity to its customers?**

23 A. No. TWDA has no producing well and its customers are served through water systems
24 owned by Hydro and Anasazi. Therefore, the Company does not provide any commodity
25 to the public.

³ Direct Testimony of Christopher Brainard, at 5.

⁴ Id.

1 **Q. Currently, is TWDA dedicated to public use?**

2 A. No. Based on Staff's analysis, review of Mr. Brainard's testimony and the *Serv Yu*
3 factors, TWDA is not dedicated to public use.

4
5 **Q. Are there other entities acting as PSCs within TWDA's certificated territory?**

6 A. Yes. Hydro and Anasazi provide water service directly to customers allegedly served by
7 TWDA. In other words, water systems owned and operated by Hydro and Anasazi are
8 dedicated to public service within TWDA's CC&N.

9
10 **Q. What function does TWDA currently provide?**

11 A. As I mentioned above, since the mid 1990's it appears that TWDA does nothing more
12 than serve as a billing agent for Hydro and Anasazi. In other words, while TWDA
13 initially may have provided water service to customers in the area of Tusayan, it does not
14 appear that it has done so for approximately 20 years.

15
16 **Q. Did you review the Articles of Incorporation for TWDA?**

17 A. Yes.

18
19 **Q. What is the stated purpose of TWDA in the articles of incorporation?**

20 A. TWDA was originally established to purchase water from the National Park Service for
21 distribution within Tusayan.

22
23 **Q. Does TWDA provide a commodity which the public has an interest?**

24 A. No. After having reviewed all of the testimony of TWDA in this matter, it is clear that
25 TWDA does nothing more than provide billing services for Hydro and Anasazi. While
26 this may be an integral part of providing water service to the area of Tusayan, Staff does

1 not believe on its own that this rises to the level of providing a commodity that the public
2 has an interest. In other words, TWDA does not deal with a service of a commodity.
3 TWDA has no capacity to serve a commodity. TWDA does not haul, distribute or have
4 any water related equipment. Ultimately water service is provided by Hydro and Anasazi
5 within the TWDA CC&N.

6
7 **Q. Does TWDA accept all requests for service?**

8 A. According to the testimony of Mr. Brainard, new customers send a letter to TWDA
9 requesting water service from either Hydro or Anasazi. TWDA then makes a formal
10 request to either Hydro or Anasazi. After TWDA receives confirmation that they have the
11 capacity to service the new customer, the customer connects to the water system.⁵ Mr.
12 Brainard states that TWDA accepts substantially all requests for service provided the
13 customer arranges to connect to Hydro's or Anasazi's distribution lines.⁶

14
15 **Q. Does TWDA have the ability to discriminate or limit who will be provided service in
16 the Tusayan area?**

17 A. No, but this factor is generally applicable in the context of mobile home park or an Home
18 Owners Association ("HOA") where service would be limited to those individuals either
19 residing at the mobile home park or who own homes served by that HOA. In this case,
20 this factor does not apply, since customers requests for service are not typically effected
21 by TWDA, as TWDA does nothing more than provide billing services. However, TWDA
22 does bill at disparate rates to customers based on the customer's connection to either
23 Anasazi or Hydro. TWDA disparate rates, result from difference in the cost of service
24 charged by Hydro and Anasazi.

25

⁵ Direct Testimony of Christopher Brainard at 6.

⁶ Direct Testimony of Christopher Brainard at 8.

1 **Q. Is there actual or potential competition with other corporations whose business is**
2 **clothed with public interest?**

3 A. Yes. Both Hydro and Anasazi provide water to customers in the Tusayan area. As
4 mentioned earlier, both Hydro and Anasazi filed applications seeking to be adjudicated not
5 public service corporations and those dockets have been consolidated with the TWDA rate
6 case docket. I will be addressing the Staff analysis of Hydro and Anasazi in subsequent
7 sections of this testimony.

8

9 **Q. Using the *Serv-Yu* factors should TWDA be adjudicated not a PSC?**

10 A. Yes. Staff believes that TWDA is not a PSC and does not have the capacity to act as a
11 PSC.

12

13 **Q. What is Staff's recommendation regarding TWDA?**

14 A. Based on Staff's analysis of TWDA using the *Serv Yu* factors and the current role that
15 TWDA acknowledges it is currently providing, TWDA is not a public service corporation.
16 Accordingly it should be adjudicated not a public service corporation.

17

18 **Q. Do you have any additional recommendations regarding TWDA?**

19 A. Yes. As I noted earlier, the Commission granted a CC&N to TWDA in 1979. However,
20 since TWDA is not acting in the capacity of a PSC, Staff recommends that the
21 Commission cancel TWDA's CC&N effective with the Decision in this case. In addition,
22 Staff recommends that the rate case application filed by TWDA be dismissed without
23 prejudice.

1 **ANASAZI WATER CO., LLC (“ANASAZI”)**

2 **Q. Briefly describe the customers and operation of the Anasazi water system.**

3 A. The water system currently referred to as Anasazi was constructed in 1964. The system
4 was originally design to be a self serving system. Over the years, the system was
5 expanded and owners for the associated properties changed. Once the ownership of the
6 properties changed, the system was no longer self serving. According to its application,
7 the present Anasazi system was created in 1996, and has 9 customers with 10 or more
8 connections. However, the testimony of Anasazi’s witness Pamela Fain states that
9 Anasazi services 6 connections with 3 being served by Hydro.⁷ Anasazi serves customers
10 through lines of their system but also serves 3 customers that are physically connected to
11 the Hydro water distribution system. For those customers, Anasazi purchases the water
12 from Hydro.

13
14 **Q. Did Staff have the opportunity to review the testimony filed on the behalf of**
15 **Anasazi?**

16 A. Yes.

17
18 **Q. Can Staff briefly describe Anasazi’s justification for adjudication not a PSC?**

19 A. Anasazi contends that it is not a PSC because TWDA holds the CC&N for Tusayan.
20 Further, the Company argues that it merely services customers that are related entities and
21 those entities are connected to its water system on behalf of TWDA, and that TWDA bills
22 and collects revenue from customers served through its water system..

⁷ Direct Testimony of Pamela Fain at 5.

1 **Q. Is Staff in agreement with the Anasazi's position?**

2 A. No. Staff does not agree with this position. Staff will demonstrate that Anasazi is acting
3 in the capacity of a PSC within portions of TWDA's CC&N based on the *Serv-Yu* factors.

4
5 **Q. Using the *Serv-Yu* factors does Staff believe that Anasazi acting in the capacity of a
6 PSC?**

7 A. Yes. Anasazi is acting in the capacity of a PSC.

8
9 **Q. What is Staff's rationale for the determination Anasazi is acting as a PSC.**

10 A. Anasazi has 9 customers with over 10 connections including some connections to the
11 public. Therefore, Anasazi is no longer self serving but acts as a PSC. Anasazi also has
12 an interconnection with Hydro. Anasazi owns and operates the majority of its water
13 facilities with the exception of the customers connected to Hydro. Anasazi is also the
14 entity that is responsible for working with Arizona Department of Environmental Quality
15 ("ADEQ") for all compliance and regulation.

16
17 **Q. Is Anasazi dedicated to public use?**

18 A. Anasazi witness Pamela Fain states that because all the properties except for one, are
19 owned by related parties to the founder of Anasazi, Robert Thurston and/or to Red Feather
20 Properties LP ("RFP") (who owns a membership interest in Anasazi), Anasazi is not
21 dedicated to public use.⁸ However, Anasazi services entities that do not have common
22 ownership with Anasazi, South Rim Mobile Home Park and the McDonalds Dormitory.⁹
23 Further, another customer, Wendy's, while it sits on land owned by RFP, does not have a
24 common ownership with Anasazi. Anasazi is serving the public and its water system is
25 dedicated to public use.

⁸ Direct Testimony of Pamela Fain at 2-5.

⁹ ID. At 8.

1 **Q. What function does Anasazi currently provide?**

2 A. Anasazi serves water to customers through its distribution lines, and facilities. The only
3 function of the business not provided by Anasazi is billing. As a result Staff concludes
4 that Anasazi is acting in the capacity of a PSC.

5
6 **Q. Did you review the Articles of Organizations for Anasazi?**

7 A. Yes.

8
9 **Q. What is the stated purpose of Anasazi in the Articles of Organizations?**

10 A. Staff's review of Anasazi's Articles of Organizations, reveals that its purpose was set forth
11 in the Articles. However, according to the Anasazi's Operating Agreement, its purpose is
12 to engage in running water distribution, production company, hauling water and
13 construction.¹⁰ When a company engages in these functions to serve others, it is operating
14 as a public serve corporation, hence Anasazi is acting in the capacity of a PSC.

15

16 **Q. Does Anasazi provide a commodity in which the public has an interest?**

17 A. Yes. Anasazi is dealing with a commodity in which the public holds an interest. Anasazi
18 has the water and all the necessary infrastructure to serve the water. Anasazi serves
19 entities other than itself. Hence the entity providing the water is Anasazi.

20

21 **Q. Does Anasazi accept all requests for service?**

22 A. Anasazi does accept all service request through TWDA.

23

¹⁰ Direct Testimony of Pamela Fain at 2-3

1 **Q. Is there actual or potential competition with other corporations whose business is**
2 **clothed with public interest?**

3 A. Yes. Anasazi and Hydro provide water to customers within TWDA's CC&N. However,
4 both Hydro and Anasazi filed applications seeking to be adjudicated not public service
5 corporations.

6
7 **Q. Based on the above discussion, what is Staff's recommendation regarding Anasazi?**

8 A. Staff recommends the following:

- 9 • Staff recommends denial of Anasazi's application for adjudication not a public service
10 corporation.
11 • Staff further recommends that Anasazi file an application with the Commission, for a
12 CC&N within 120 days of the Commission decision in this matter.
13 • Staff further recommends that the Commission order Anasazi to continue providing
14 water service until the outcome of its recommended CC&N application.
15

16 **HYDRO- RESOURCES, INC. ("HYDRO")**

17 **Q. Briefly describe the customers and operation of the Hydro water system.**

18 A. Hydro is an Arizona corporation created in April 7, 1994 for the sole purpose of securing
19 water and water resources for businesses owned and operated by Hydro's ownership in
20 Tusayan. The Company's witness, John Rueter, testifies that Hydro currently serves 32
21 customers, including businesses not owned by it. Mr. Rueter further states that that Hydro
22 is no longer self serving because it provides water to the public and interconnects with
23 Anasazi. Mr. Rueter states that, Hydro owns and operates all of the infrastructure (one
24 well, one storage tank, meters, fire hydrants, and pumps, etc.) and equipment used to bring

1 water service to customers. Also, Hydro is responsible for all ADEQ reporting and
2 compliance.¹¹

3
4 **Q. Did Staff have the opportunity to review the testimony filed on the behalf of Hydro?**

5 A. Yes.

6
7 **Q. Can you briefly describe the Hydro's position as it relates to the adjudication not a
8 PSC?**

9 A. Yes. Hydro asserts it is not a PSC based on the fact that TWDA is the certificated entity
10 and that TWDA is responsible for billing the customers on its water system. Further,
11 Hydro asserts that TWDA is the PSC because the customers belong to TWDA.

12
13 **Q. Is Staff in agreement with Hydro's position?**

14 A. No. Staff does not agree with this position and will provide information in the proceeding
15 questions that will demonstrate that Hydro is acting in the capacity of a PSC.

16
17 **Q. Does Hydro rely on any infrastructure owned by any other entity?**

18 A. Yes. Hydro has a relationship with Squire, a separate company that has common
19 ownership with Hydro, to purchase excess water from it.

20
21 **Q. Using the *Serv-Yu* factors, is Hydro a PSC?**

22 A. Yes. Hydro is acting in the capacity of a PSC.
23

1 **Q. Currently, is Hydro dedicated to public use?**

2 A. Yes. Hydro is not serving itself. Hydro states in its direct testimony, "it does not directly
3 sell water to the public".¹² Hydro delivers water to 32 entities which receives a bill from
4 TWDA. Staff finds that the water service provided in this manner, whether it is termed
5 indirect or direct, results in Hydro acting as a PSC. There is obviously the issue of public
6 interest in Hydro's acknowledged provision of water service to members of the public
7 within TWDA's CC&N. The water is being provided to customers through Hydro's
8 distribution lines, using Hydro's water equipment and in some cases using Hydro's
9 meters. Hydro provides every aspect of service to its customers except the billing.

10

11 **Q. What function does Hydro currently provide?**

12 A. Hydro provides water service to customers in Tusayan within TWDA's CC&N. The
13 water is being provided to customers through Hydro's distribution lines, using Hydro's
14 water equipment.

15

16 **Q. Did you review Hydro's Articles of Incorporation?**

17 A. Yes.

18

19 **Q. What is the stated purpose of Hydro in the Articles of Incorporation?**

20 A. Hydro's Articles of Incorporation only address the drilling of a well. However, based on
21 the information provided by Hydro in data requests as well as its prefiled direct testimony,
22 Staff determined that Hydro serves water to customers in Tusayan through its distribution
23 lines. When a company engages in the function to serve others, it is operating in a public
24 serve capacity, Therefore, Hydro is acting in the capacity of a PSC.

25

¹² Id. At 5.

1 **Q. Does Hydro provide a commodity in which the public has an interest?**

2 A. Yes. Hydro is dealing with a commodity in which the public holds an interest. Hydro has
3 the water and all the necessary infrastructure to serve the water. As result, Hydro is
4 providing water to the public in Tusayan.

5
6 **Q. Does Hydro accept all requests for service?**

7 A. Yes. Hydro does accept all service request through TWDA.

8
9 **Q. Is there actual or potential competition with other corporations whose business is
10 clothed with public interest?**

11 A. Yes. Both Hydro and Anasazi provide water service within TWDA's CC&N. Also,
12 TWDA confirmed that a customer could elect to transfer service to either company.
13 Based on these facts, there is potential competition within TWDA's CC&N.

14
15 **Q. Based on the above discussion, what is Staff's recommendation regarding Hydro?**

16 A. Staff recommends the following:

- 17 • Staff recommends denial of Hydro's application for adjudication not a public service
18 corporation.
- 19 • Staff further recommends that Hydro file an application with the Commission for a
20 CC&N within 120 days of the Commission decision in this matter.
- 21 • Staff further recommends that the Commission order Hydro to continue providing
22 water service until the outcome of its recommended CC&N application.

23

1 **SUMMARY OF TESTIMONY AND RECOMMENDATIONS**

2 **Q. Please summarize Staff's recommendation regarding the applications and filings of**
3 **TWDA, Anasazi and Hydro.**

4 A. Staff has the following recommendations:

- 5 • Staff recommends that the Commission adjudicate Tusayan Water Development
6 Association not a public service corporation.
- 7 • Staff further recommends that the Commission cancel TWDA's CC&N effective with
8 the Decision in this docket.
- 9 • Staff recommends that the Commission deny Anasazi's application for adjudication
10 not a public service corporation.
- 11 • Staff recommends that the Commission find that Anasazi is a public service
12 corporation
- 13 • Staff recommends that the Commission order Anasazi to file for a CC&N within 120
14 days from the date of Commission order in this proceeding.
- 15 • Staff recommends that the Commission deny Hydro's application for adjudication not
16 a public service corporation.
- 17 • Staff recommends that the Commission find that Hydro is a public service corporation
- 18 • Staff recommends that the Commission order Hydro to file for a CC&N within 120
19 days from the date of the Commission order in this proceeding.

20
21 **Q. Does this conclude your direct testimony?**

22 A. Yes, it does.

BEFORE THE ARIZONA CORPORATION COMMISSION

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

| | |
|---------------------------------------|-----------------------------|
| IN THE MATTER OF THE APPLICATION OF) | DOCKET NO. W-02350A-10-0163 |
| TUSAYAN WATER DEVELOPMENT) | |
| ASSOCIATION, INC. FOR ESTABLISHMENT) | |
| <u>OF RATES FOR WATER SERVICE.</u>) | |
| IN THE MATTER OF THE APPLICATION OF) | DOCKET NO. W-20765A-10-0432 |
| ANASAZI WATER CO., LLC FOR) | |
| ADJUDICATION "NOT A PUBLIC SERVICE) | |
| <u>CORPORATION."</u>) | |
| IN THE MATTER OF THE APPLICATION OF) | DOCKET NO. W-20770A-10-0473 |
| DYDRO-RESOURCES, INC. FOR) | |
| ADJUDICATION "NOT A PUBLIC SERVICE) | |
| <u>CORPORATION."</u>) | |

DIRECT TESTIMONY

OF

MARLIN SCOTT, JR.

UTILITIES ENGINEER

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

JULY 27, 2011

TABLE OF CONTENTS

| | <u>Page</u> |
|----------------------------|-------------|
| INTRODUCTION | 1 |
| PURPOSE OF TESTIMONY | 2 |

EXHIBIT

| | |
|------------------------------------------------------------------------------------------------------------------------------|-----|
| Engineering Report for Tusayan Water Development Association, Inc., Anasazi Water Co., Inc. and Hydro-Resources, Inc..... | MSJ |
|------------------------------------------------------------------------------------------------------------------------------|-----|

1 **INTRODUCTION**

2 **Q. Please state your name, place of employment and job title.**

3 A. My name is Marlin Scott, Jr. My place of employment is the Arizona Corporation
4 Commission ("Commission"), Utilities Division, 1200 West Washington Street, Phoenix,
5 Arizona 85007. My job title is Utilities Engineer.

6
7 **Q. How long have you been employed by the Commission?**

8 A. I have been employed by the Commission since November 1987.

9
10 **Q. Please list your duties and responsibilities.**

11 A. As a Utilities Engineer, specializing in water and wastewater engineering, my
12 responsibilities include: the inspection, investigation, and evaluation of water and
13 wastewater systems; preparing reconstruction cost new and/or original cost studies,
14 reviewing cost of service studies and preparing investigative reports; providing technical
15 recommendations and suggesting corrective action for water and wastewater systems; and
16 providing written and oral testimony on rate applications and other cases before the
17 Commission.

18
19 **Q. How many cases have you analyzed for the Utilities Division?**

20 A. I have analyzed approximately 560 cases covering various responsibilities for the Utilities
21 Division.

22
23 **Q. Have you previously testified before this Commission?**

24 A. Yes, I have testified in 86 proceedings before this Commission.

1 **Q. What is your educational background?**

2 A. I graduated from Northern Arizona University in 1984 with a Bachelor of Science degree
3 in Civil Engineering Technology.

4

5 **Q. Briefly describe your pertinent work experience.**

6 A. Prior to my employment with the Commission, I was Assistant Engineer for the City of
7 Winslow, Arizona, for about two years. Prior to that, I was a Civil Engineering
8 Technician with the U.S. Public Health Service in Winslow for approximately six years.

9

10 **Q. Please state your professional membership, registrations, and licenses.**

11 A. I am a member of the National Association of Regulatory Utility Commissioners
12 (“NARUC”) Staff Subcommittee on Water.

13

14 **PURPOSE OF TESTIMONY**

15 **Q. What was your assignment in this proceeding?**

16 A. My assignment was to provide Staff’s engineering evaluation for Anasazi Water Co. LLC
17 (“Anasazi”) and Hydro-Resources, Inc. (“HR”) in this consolidated proceeding.

18

19 **Q. What is the purpose of your testimony in this proceeding?**

20 A. To present the findings of Staff’s engineering evaluation of the operation of Anasazi and
21 HR. The findings are contained in the Engineering Report that I have prepared for this
22 proceeding and is included as Exhibit MSJ attached to this Direct Testimony.

23

24 **Q. Does this conclude your Direct Testimony?**

25 A. Yes, it does.

EXHIBIT MSJ

**ENGINEERING REPORT
FOR
TUSAYAN WATER DEVELOPMENT ASSOCIATION, INC.,
ANASAZI WATER CO., INC., AND
HYDRO-RESOURCES, INC.**

INTRODUCTION

Tusayan Water Development Association ("TWDA") was granted its Certificate of Convenience and Necessity ("CC&N") in 1979. Prior to the Commission granting the CC&N, the community of Tusayan's water service was by individual or the shared cost of hauling water.

TWDA holds the CC&N but does not have any plant facilities. Hydro-Resources ("HR") and Anasazi Water Company ("Anasazi") are TWDA's water providers. Since TWDA did not have any capital, certain property owners like HR and Anasazi have constructed water systems within TWDA's CC&N. HR and Anasazi operate and maintain their own water systems and provide monthly meter readings to TWDA for customer billing.

DESCRIPTION OF WATER SYSTEMS

HR Water System

The current operation of the HR System consists of two deep wells, two storage tanks and a distribution system serving approximately 32 customers. Tusayan Well No. 2 has a 12-inch casing with a depth of 3,000 feet and is equipped with a 75-Horsepower ("Hp") submersible pump that registers 63 gallons per minute ("GPM") through a 3-inch meter. Tusayan Well No. 2, drilled in 1994, is located on land owned by Halvorson-Seibold (Squire Inn) and the well is owned by HR. Squire Well No. 1 has a 12-inch casing with a depth of 3,108 feet and is equipped with a 75-Hp submersible pump that registers 60 GPM through a 3-inch meter. Squire Well No. 1, drilled in 1989, is owned by Squire Inn.

The two wells pump into the distribution system and up hill to a tank site. This tank site consists of 525,000 gallon and 3.0 million gallon ("MG") storage tanks with a diesel-powered fire pump. These storage tanks feed the distribution system by gravity. HR owns the 525,000 gallon tank and uses 2.0 MG of the storage capacity in the 3.0 MG tank owned by Squire Inn. The remaining entire tank site facility is owned by Squire Inn. The tank site land is leased from the Forest Service.

The entire distribution system consists of approximately 23,000 feet of mains and fire hydrants serving 32 service connections. HR owns approximately 12,000 feet of water mains while the remaining 11,000 feet of water mains are owned by Squire Inn and many individual property owners within their property perimeters.

According to HR's water sales data for 2010, July was the peak month with 3,852,470 gallons used by 29 connections, equating to 4,285 gallons per day ("GPD") per connection. This high GPD per connection is reflected by commercial usages like apartments, hotels, restaurants, stores, etc. Based on this 4,285 GPD per connection usage, HR System's total well capacity of 123 GPM and storage tank capacity of 3,525,000 gallons (combined ownership of HR and Squire Inn) is adequate to service its present customer base.

Anasazi Water System

The current operation of the Anasazi System consists of water hauling, a 400,000 gallon storage tank and a distribution system serving nine customers. The Anasazi Well was taken out of service sometime in 2009 due to electrical storm damage. When water is hauled, a booster station is used to unload the water tankers and pump water into the distribution system and into a 400,000 gallon storage tank. This storage tank is located on a hill that feeds the distribution system by gravity.

The distribution system consists of approximately 3,000 feet of mains serving nine customers. Fire protection service is provided by the Anasazi and HR Systems.

Since the Anasazi System does not have a permanent well source of its own, the system relies on water hauling. Therefore, Anasazi's water source is not adequate to service its customer base.

ARIZONA DEPARTMENT OF ENVIRONMENT QUALITY ("ADEQ") COMPLIANCE

HR System

According to an ADEQ Compliance Status Report, dated June 24, 2011, ADEQ reported no deficiencies and has determined that the HR System, PWS #03-312, is currently delivering water that meets the water quality standards required by 40 CFR 141/Arizona Administrative Code, Title 18, Chapter 4.

Anasazi System

According to an ADEQ Compliance Status Report, dated June 24, 2011, ADEQ reported no deficiencies and has determined that the Anasazi System, PWS #03-048, is currently delivering water that meets the water quality standards required by 40 CFR 141/Arizona Administrative Code, Title 18, Chapter 4.

ARIZONA DEPARTMENT OF WATER RESOURCES (“ADWR”) COMPLIANCE*HR System*

The HR System is not located in any Active Management Area. According to ADWR’s Water Provider Compliance Status Report, dated June 27, 2011, the HR System is in compliance with ADWR’s requirements governing water providers and/or community water systems.

Anasazi System

ADEQ classifies the Anasazi System as a non-transient non-community water system, therefore, ADWR does not regulate this system at this time.

TUSAYAN MUNICIPAL WATER STUDY

A Tusayan Municipal Water Study (“Study”), dated April 27, 2011, was prepared for the Town of Tusayan (“Town”) to serve as the research and basis for Tusayan Town Council in making an informed decision to purchase the assets of the HR and Anasazi Systems and form a municipal water system. This Study was prepared by Willdan Engineering, Interim Public Management, LLC and Aricor Water Solutions LC to provide descriptions, operations, ownerships and cost estimates for the HR and Anasazi Systems. Although a copy of this Study labeled as “Preliminary – For Review Only” was provided to Staff, Staff believes the following Study’s Conclusions and Recommendations should be noted:

Study Conclusions

1. TWDA holds the CC&N to provide water service to Tusayan, but TWDA has no physical assets. Therefore, no payment to TWDA is contemplated.
2. HR reported 32 customers. HR reported ownership of one well and one 525,000 gallon reservoir. HR relies upon water lines owned by Squire Motor Inns, Incorporated (“Squire”) and others to supply and move water through the system. HR advises the costs to use these assets and system elements are \$17.72 per 1,000 gallons.
3. Based upon the technical information supplied by HR, a Reconstruction Cost New Less Depreciation (“RCNLD”) value of \$919,906 is established for the HR assets.
4. Anasazi reported nine customers with two customers actually served by HR’s distribution system. Anasazi did not provide detailed information regarding its physical facilities. Anasazi owns one well and a 400,000 gallon storage tank. The system is supplied by hauled water from Valle Canyon Water, and some purchases from HR. The well pump and motor have been removed from underground and are lying on the ground at the well site.
5. Financial information from Anasazi indicates the cost of hauling water is presently \$45.00 per 1,000 gallons or 82% of the billing rate of \$54.40 per 1,000 gallons.
6. The RCNLD value of the Anasazi assets is \$542,263.

7. The RCNLD valuation provides an indicator of the value of the HR and Anasazi water systems. However, when establishing value of a water system, RCNLD is not the only consideration.
8. The physical age and condition of several of the major assets make it likely that they will require extensive reconstruction in the near future.
9. The lack of financial information from HR makes it difficult to determine the cost of providing municipal water service to Tusayan. It is unknown if municipal water service can be provided below current rates.
10. The HR distribution system cannot be operated in its present configuration without use of the Squire distribution system and other privately owned water lines.
11. Common ownership of the distribution system facilities is desirable and would allow for improved planning, maintenance and operation of the system without danger of conflict or misunderstanding between the various system owners.
12. The Town should consider acquiring the Anasazi and HR distribution systems as part of a purchase of all distribution facilities used to provide water service to Tusayan.
13. If the Town does not purchase the distribution facilities used, but not owned by HR, the Town will need to obtain operating agreements with Squire and other private entities to use the well capacity, reservoir storage and water mains in order to be able to operate the system in its present configuration.
14. ARS §§ 9-511 through 9-514 authorizes municipalities to acquire, construct, purchase or lease facilities necessary to provide municipal water services. The statute further requires an affirmative vote of the majority of the electors voting in an election prior to the municipality providing utility service. Voter approval must be received prior to final negotiations, acquisition and financing of a municipal water utility.
15. Any recommendation and approval by the voters must include authorization to borrow in excess of the acquisition costs to pay for this reconstruction and possible new construction to development a municipal water system.

Study Recommendations

1. As a matter of public policy, and given the current actions at the Commission, it is in the best long-term interests of the Town for the Mayor and Council to establish a single municipal water system for the community. This allows for public discussion and direction in the management of this natural resources which is essential for the long term viability of the community.
2. However, such an effort is not without significant risks, since the assets of HR and Anasazi alone are not sufficient to operate the present municipal system. The assets owned by others as identified in this report are essential to the operations, and need to be addressed and resolved in the long-term for the entire community.