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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 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

**PRE-FILED REBUTTAL TESTIMONY OF JOHN W. RUETER
ON BEHALF OF HYDRO-RESOURCES, INC.**

AUGUST 10, 2011

BRYAN CAVE LLP
TWO NORTH CENTRAL AVENUE, SUITE 2200
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1 **Q. Please give us your name, employer and occupation?**

2 A. My name is John W. Rueter, and I am employed by Hydro-Resources, Inc.
3 (“Hydro”) as President and CEO.

4 **Q. You previously provided direct testimony in this matter, isn’t that correct?**

5 A. Yes, I provided direct testimony on behalf of Hydro on June 20, 2011.

6 **Q. What is this purpose of this rebuttal testimony?**

7 A. I will provide a response on behalf of Hydro to the direct testimony of Kiana M.
8 Sears and Marlin Scott, Jr., offered on behalf of the Commission’s Staff, and to the
9 direct testimony of Ray L. Jones on behalf of Intervenor Town of Tusayan
10 (“Town”).

11 **Q. Initially, do you have any general comments about the testimony offered by the**
12 **Staff and the Town concerning the Tusayan Water Development Association,**
13 **Inc. (“TWDA”)?**

14 A. Yes. I agree with the testimony on behalf of Staff and the Town concerning
15 TWDA. In the direct testimony of Ray L. Jones offered by the Town, Mr. Jones
16 noted TWDA has “no physical assets” and the Town therefore contemplated no
17 payment to TWDA. Jones Direct Testimony at 4, and Exhibit B at 2. Mr. Scott
18 also testified that TWDA does not have any “plant facilities” and, paraphrasing the
19 preliminary Tusayan Municipal Water Study, stated that TWDA has “no physical
20 assets.” Scott Direct Testimony, Exhibit MSJ at 1 and 3. Hydro agrees with this
21 testimony and these findings.

22 Ms. Sears on behalf of Staff testified that TWDA “does not own or operate any
23 water infrastructure utilized for the provision of water service within its certificated
24 area” and primarily provides “billing services.” Sears Direct Testimony at 4; *see*
25 *also id.* at 5 (TWDA “only performs billing functions”); *id.* at 6 (TWDA serves “as
26 a billing agent”). Ms. Sears ultimately recommended that the Commission
27 adjudicate TWDA as not a public service corporation (“PSC”) and cancel TWDA’s
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1 Certificate of Convenience and Necessity (“CCN”). *See* Sears Direct Testimony at
2 8, 16. Again, Hydro agrees with the testimony of Ms. Sears, Mr. Scott, and Mr.
3 Jones concerning TWDA and with the conclusions they reach.

4 **Q. Do you agree with Mr. Jones concerning the desirability of the Town**
5 **establishing a municipal water system?**

6 A. Yes. Mr. Jones testified that the Town should establish a single municipal water
7 system. Jones Direct Testimony at 4, 5; *see id.*, Exhibit B at 3. Mr. Scott repeated
8 this recommendation when he paraphrased Mr. Jones’ preliminary water study.
9 Scott Direct Testimony, Exhibit MSJ at 4.

10 Hydro has long agreed that, for numerous reasons, the Town should establish a
11 single municipal water system. Indeed, as Mr. Jones noted in his water study,
12 Hydro wrote the Town in December 2010 advising just such a course and indicating
13 Hydro’s willingness to consider selling its water system to the Town. *See* Jones
14 Direct Testimony, Ex. B at 1.

15 However, the Town has only offered testimony by Mr. Jones making his
16 recommendation of such a course of action. Hydro agrees that the Town should
17 establish a municipal water system and continues to be willing to consider selling
18 its water system to the Town. Hydro understands that the Town is continuing to
19 study its options in this regard.

20 **Q. Do you agree with the testimony of Mr. Jones and Mr. Scott that Hydro’s**
21 **ability to operates relies to some degree upon the use of assets owned by others,**
22 **including Squire Motor Inns, Inc. (“Squire”)?**

23 A. Yes. As I explained in my Direct Testimony, Hydro purchases water produced by a
24 well (ADWR #55-523284) owned by Squire. Hydro also leases 2 million gallons of
25 storage capacity in a 3 million gallon storage tank owned by Squire. Hydro also
26 uses the water distribution system owned by the Squire to provide water to various
27 customers of TWDA.
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1 Hydro agrees with Mr. Jones' testimony that Hydro relies upon water lines and a
2 tank owned by Squire to provide water service, *see* Jones Direct Testimony at 4,
3 and that "The Hydro distribution system cannot be operated in its present
4 configuration without use of the Squire distribution system and other privately
5 owned lines." *Id.* at 5; *see also id.* at 6 ("The Hydro distribution system cannot
6 function without interconnection with the Squire and private distribution facilities").
7 Mr. Scott and Ms. Sears have also noted that Hydro relies to a large extent on
8 agreements with Squire allowing Hydro to use some of Squire's assets. *See* Sears
9 Direct Testimony at 13; Scott Direct Testimony, Exhibit MSJ at 1-2.

10 For these reasons, Hydro believes Squire is a necessary and essential party to these
11 proceedings. The involvement of Squire is central to any long term solution of
12 water related issues in the Tusayan area. Any decision by the Commission would
13 impact Squire to some degree because Hydro relies on Squire's assets to provide
14 water service. Likewise, any decision by the Town to establish a municipal water
15 service would affect Squire.

16 **Q. Do you agree with the testimony offered by the Staff and the Town concerning**
17 **Anasazi Water Company ("Anasazi")?**

18 A. Generally, yes, as to the current status of Anasazi's operations. Both the Staff and
19 the Town offered testimony that Anasazi's well is not operational, that Anasazi
20 relies upon water hauling, and that Anasazi's current resources are inadequate to
21 provide water to its existing customers. *See* Scott Direct Testimony, Exhibit MSJ at
22 2, 3; Jones Direct Testimony at 4-5, 7. This testimony comports with my
23 understanding of the Anasazi's operations.

24 **Q. Do you agree with the testimony of Ms. Sears that Hydro is a PSC?**

25 A. No. As Ms. Sears acknowledged, Hydro is not the certified water provider in the
26 Tusayan area and has never sought to become the certified water provider. Rather,
27 the certified water provider in the Tusayan area is TWDA, an unrelated entity
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1 created in 1978, long before Hydro existed. TWDA received a CCN from the
2 Commission in 1979, *see* Decision No. 50492 (Dec. 13, 1979), and Hydro has
3 always recognized TWDA's role as the CCN-holder and certified water provider in
4 the Tusayan area.

5 Hydro provides water, generally through facilities owned by Hydro or its owners,
6 on a bulk or wholesale basis to TWDA, which in turn directly sells the water to
7 TWDA's customers. Hydro generally does not deal directly with the public, has not
8 dedicated its assets to public use, has never sought to monopolize territory or
9 maintain a monopoly over a commodity, and has no contracts with the public. Until
10 this proceeding, the Commission has overseen TWDA, the party billing the
11 customers, not Hydro, and has protected the interests of the public in that manner.
12 Ms. Sears' assertion that Hydro is a PSC because it "delivers water to 32 entities,"
13 Sears Direct Testimony at 14, ignores Hydro's specific operations and, if accepted
14 at the test for PSC, would result in all bottled water delivery companies being
15 declared PSCs.

16 However, as noted above, Hydro agrees with Staff's position that the Commission
17 should revisit TWDA's status, declare that TWDA is not PSC, and cancel TWDA's
18 CCN. If the Commission were to take those steps, the changed conditions in the
19 area could lead to the establishment of a new or different public service corporation
20 holding a CCN for the area, if the Town does not ultimately take over the operation
21 of the water system.

22 **Q. Do you agree with Ms. Sears' proposed solution to the water service questions**
23 **in the Town?**

24 **A.** No. While Hydro agrees with Staff's recommendation that the Commission find
25 TWDA is not PSC and cancel TWDA's CCN, Hydro disagrees with the remainder
26 of Staff's recommendation, which could lead to a situation in which the Town (a
27 small community with approximately 500 residents, *see* Sears Direct Testimony at
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1 4) is divided between two PSCs and two CCN holders. Such a solution is
2 impractical and perhaps even physically impossible at this point.

3 Hydro agrees with the recommendation of Mr. Jones, that is, that there should be a
4 *single* water system in the Tusayan area, preferably operated by the Town. *See*
5 Jones Direct Testimony at 4. At this point, Hydro is waiting to hear if the Town
6 itself agrees with Mr. Jones' recommendation.

7 **Q. Do you disagree with the testimony of Mr. Jones and Mr. Scott in any**
8 **particulars?**

9 A. Yes. On Hydro's behalf, I worked with Mr. Jones when he sought information for
10 his Municipal Water Study, and Hydro fully cooperated with him and the Town in
11 his research and investigations, as it did with Mr. Scott and Commission Staff.
12 However, I disagree with Mr. Jones on some of the details of his particular
13 assertions concerning the age, condition, location and operational characteristics of
14 some of Hydro's assets. I believe the inventory and description of Hydro's assets as
15 set forth in my Direct Testimony and exhibits is the most accurate source of
16 information concerning Hydro's assets. In addition, I disagree with Mr. Jones
17 concerning his opinion of the Reconstruction Cost New Less Depreciation value of
18 Hydro's and Anasazi's assets. I also disagree with Mr. Scott to the extent he
19 repeats these assertions in his paraphrasing of Mr. Jones' Preliminary Water Study
20 (Mr. Scott appears to have based his testimony on Mr. Jones' earlier April 27, 2011
21 Preliminary Study as opposed to his final July 26, 2011 Study). However, this is
22 not a valuation proceeding, and the value of these assets and companies are not
23 relevant to the issues under determination in these proceedings at this time. Beyond
24 confirming that Hydro does not waive its position that the RCNLD figures as to
25 Hydro and Anasazi's assets as proposed by Mr. Jones are inaccurate and do not
26 reflect fair market value, I will not discuss my disagreements in detail.

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Q. Does this complete your prepared rebuttal testimony?

A. Yes.

1 **ORIGINAL and 13 COPIES** of the
2 foregoing filed this 10th day of August,
3 2011, with:

4 Docket Control Division
5 Arizona Corporation Commission
6 1200 W. Washington
7 Phoenix, AZ 85007

8 **COPY** of the foregoing hand-delivered
9 this 10th day of August, 2011, to:

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