

ORIGINAL



0000130198

1 Curtis S. Ekmark, #014773
2 Lynn M. Krupnik, #017311
3 Jason F. Wood, #027153
4 Ekmark & Ekmark, L.L.C.
5 6720 N. Scottsdale Road, Suite 261
6 Scottsdale, Arizona 85253
7 (480) 922-9292
8 Fax (480) 922-9422
9 jwood@ekmarklaw.com

RECEIVED

2011 SEP 30 P 4: 35

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

SEP 30 2011

DOCKETED BY

Attorneys for Sun City Grand
Community Association

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

**IN THE MATTER OF THE
APPLICATION OF ARIZONA-
AMERICAN WATER COMPANY, AN
ARIZONA CORPORATION, FOR A
DETERMINATION OF THE CURRENT
FAIR VALUE OF ITS UTILITY PLAN
AND PROPERTY AND FOR INCREASES
IN ITS RATES AND CHARGES BASED
THEREON FOR UTILITY SERVICE BY
ITS AGUA FRIA WATER DISTRICT,
HAVASU WATER DISTRICT, AND
MOHAVE WATER DISTRICT**

DOCKET NO. W-01303A-10-0448

**SUN CITY GRAND'S MOTION
FOR RECONSIDERATION OF
PROCEDURAL ORDER**

(Expedited Ruling Requested)

I. Introduction.

It would be a waste of time for the Court, the Commission and the parties to all participate in a lengthy hearing, only to have the result discarded on appeal for lack of due process. On one hand, the 15 new associations that were recently organized into a Class have a right to present a full defense to a significant rate increase. On the other hand, 100% of the fault for the delay lies with the Company seeking the increase. The Company should

1 not be able to benefit from their wrongful actions or omissions. Yet, that is exactly what will
2 happen if the Court does not allow the Class to present a full defense.

3 **II. Factual Background.**

4 The Company failed to notice thousands of owners. After finally providing notice,
5 the Company threatened and then did file a motion to have all associations formed into a
6 Class. This issue was not decided until the last conference on September 19. The
7 associations could not retain counsel, retain experts or organize before that date. For
8 example, how could they spend significant funds on experts if they did not know if there
9 would be a Class, who would be in the Class or most importantly, who the Class
10 representative would be?

11 It was not until the September 19 conference that the Court created the Class and
12 named Sun City Grand the representative. The 16 associations now in the Class are all
13 governed by volunteer board members, many of whom are still gone for the summer. It was
14 not until yesterday, September 29, that we could organize the first meeting of the Class.

15 While counsel for the Class is also counsel for Sun City Grand, that does not alter the
16 fact that there are now 15 new associations, representing thousands of new people, that are
17 now participating in this matter for the first time. These people have new and different ideas.
18 The impact is not identical for all of them.

19 The Class now wants to retain two new experts to address issues important to these
20 new intervenors. To that end, these new intervenors, not including Sun City Grand, have put
21 up over \$60,000 to retain two new experts. We have to *finalize their retention agreements*,
22 schedule an inspection of the White Tanks plant, meet with them, have them review the
23 application and all testimony to date, issue new data requests and prepare direct testimony.
24 Under the present schedule, this must all take place within the next 40 days.

1 **III. It is an Error to Use the August 24 Date as a Starting Point to Calculate 78 Days**
2 **for Testimony.**

3 As noted above, the Company filed a motion to force the associations into a Class.
4 Until that issue was decided, the associations could not take action. For example, how could
5 they organize and make decisions when they did not know whether there would be a Class?
6 Who was supposed to make the final decisions when they did not know who would be the
7 representative? How could they possibly commit \$60,000 to experts without knowing the
8 status of the motion filed by the Company?

9 It is crucial to point out that the Company created this situation. First, they failed to
10 notice 11,000 rate payers. Next, they filed the motion that caused the delay. Now, they want
11 to pretend that these situations did not exist so as to benefit from them.

12 The reality is that the associations could not possibly act until September 19. Thus, at
13 a minimum, the Court must start the 78-day calculation from that date. That would put direct
14 testimony due on December 6, 2011.

15 **IV. It is an Error to Equate a Single Counsel with 15 New Parties for the Purpose of**
16 **Due Process.**

17 The fact that the Company forced the 15 associations into a Class through their
18 motion does not extinguish the Class's rights to present a full defense to a shocking rate
19 increase. These are 15 new associations, all with their own boards. They represent
20 thousands of people. They have new resources, both financially and otherwise, to bring to
21 the table. The fact that the Company forced them into a Class with an existing party (Sun
22 City Grand) does not change any of this.

23 The issue is not whether undersigned counsel is up to speed on the previous issues
24 discussed in the case. The issue is whether the 15 new associations can meet, reach
25 agreement on a plan, hire experts and have those new out-of-town experts get completely
26 prepared in 40 days. This is simply not possible.

1 **V. Conclusion.**

2 The 15 new associations in this Class are so upset about this issue they raised \$60,000
3 to retain two new experts. You don't raise this type of money, especially in this economy,
4 just to delay proceedings. You only do this when you are facing a draconian threat.

5 Obviously, the Class will do the best it can regardless of what deadlines the Court
6 sets. However, doing its best under unfair deadlines is not due process. In order to prepare a
7 full defense, the associations need the direct testimony deadline pushed back to mid-
8 December.

9
10 DATED this 30th day of September, 2011.

11 EKMARK & EKMARK, L.L.C.

12 
13 _____
14 Curtis S. Ekmark
15 Lynn M. Krupnik
16 Jason F. Wood
17 6720 N. Scottsdale Rd., Suite 261
18 Scottsdale, AZ 85253
19
20
21
22
23
24
25
26

1 **Certificate of Service**

2 **ORIGINAL** and thirteen (13) copies
3 of the foregoing filed this 30th day of
September, 2011 with:

4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington Street
Phoenix, AZ 85007

7 **COPY** of the foregoing hand-delivered
8 this 30th day of September 2011 to:

9 Dwight Nodes, Administrative Law Judge
10 Legal Division
11 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

12 **COPIES** of the foregoing mailed
13 this 30th day of September 2011 to:

14 Janice Alward, Chief Counsel
15 Charles Hains, Attorney
16 Legal Division
17 Arizona Corporation Commission
18 1200 West Washington
19 Phoenix, AZ 85007

20 Steve Olea, Director
21 Utilities Division
22 Arizona Corporation Commission
23 1200 West Washington
Phoenix, AZ 85007

24 Thomas H. Campbell
25 Michael T. Hallam
26 Lewis and Roca LLP
40 North Central Avenue
Phoenix, AZ 85004
Attorneys for Arizona-American Water Co.

Greg Patterson, Director
Water Utility Association of Arizona
916 West Adams, Suite 3
Phoenix, AZ 85007

Joan S. Burke, Esq.
Law Office of Joan S. Burke

- 1 1650 N. First Avenue
Phoenix, AZ 85003
Attorney for Corte Bella
- 2
- 3 Kenneth Hewitt
18729 N. Palermo Court
Surprise, AZ 85387
- 4
- 5 Michele L. Van Quathem
Ryley Carlock & Applewhite, P.A.
One North Central Avenue, Suite 1200
Phoenix, AZ 85004
Attorneys for Verrado and DMB White Tank, LLC
- 6
- 7
- 8 Michelle Wood, Counsel
Residential Utility Consumer Office
1110 West Washington Street, Suite 220
Phoenix, AZ 85007
- 9
- 10 Lyn Farmer
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007-2927
- 11
- 12
- 13 Jay Shapiro, Esq.
Fennemore Craig
3003 N. Central Ave., Suite 2600
Phoenix, AZ 85012
Attorneys for EPCOR
- 14
- 15
- 16 Peggy H. Rakhola, President
Arizona Traditions HOA
17221 N. Citrus
Surprise, AZ 85374
- 17
- 18 Paul Briningstool
Ashton Ranch HOA
PO Box 9151
Surprise, AZ 85374
- 19
- 20
- 21 Tony DeSanti, President
Clearwater Farms Unit II POA
7710 N. 175th Ave.
Waddell, AZ 85355
- 22
- 23 Owen Dejanovich, President
Clearwater Farms III HOA
PO Box 72
Waddell, AZ 85355
- 24
- 25
- 26 Jerome M. Ellison II, President
Cortessa Community Association
PO Box 25466
Tempe, AZ 85285-5466

- 1 Jared Evenson, President
Cross River HOA
2 1600 W. Broadway Rd., Suite 200
Tempe, AZ 85282
3
- 4 Mike Orose
Crystal Springs Estates HOA
8407 N. 178th Ave.
5 Waddell, AZ 85355
- 6 Kevin Chiarello
Greer Ranch South HOA
7 16074 W. Christy
Surprise, AZ 85379
8
- 9 Jim Weihman, Vice President
Happy Trails Community Association
17200 W. Bell Road
10 Surprise, AZ 85374
- 11 Ken Peterson, President
Jackrabbit Estates HOA
12 dba Arroyo Mountain Estates HOA
1600 W. Broadway Rd., Suite 200
13 Tempe, AZ 85282
- 14 William P. Lipscomb, President
Kingswood Parke Community Association
15 14976 W. Bottletree Ave.
Surprise, AZ 85374
16
- 17 Jim Oravetz, President
Legacy Parc South HOA
1600 W. Broadway Rd., Suite 200
18 Tempe, AZ 85282
- 19 Jeanne Stockard, Sr. Property Mgr.
R&R Property Mangement LLC
20 Northwest Ranch HOA
4742 N. 24th St., Suite 325
21 Phoenix, AZ 85016
- 22 Pauline A. Harris Henry
The Russell Ranch HOA
23 17936 W. Solano Drive
Litchfield Park, AZ 85340
24
- 25 Mike Smith, President
Sierra Montana HOA
c/o Rossmar & Graham
26 15396 N. 83rd Ave., Bldg. B – Suite 101
Peoria, AZ 85381

- 1 Susan Harr, President
Summerfield at Litchfields Subdivision HOA
c/o Northwest Valley Realty
2 13201 N. 35th Ave., Suite B-3
Phoenix, AZ 85029
3
- 4 Stan Mucha, President
Sun Village Community Association
17300 N. Sun Village Parkway
5 Surprise, AZ 85374
6
- 6 Dana Rosenbaum, Secretary
Surprise Farms Comm. Assoc., Phase 1A
7 PO Box 25466
Tempe, AZ 85285-5466
8
- 9 Raul Muniz, President
Surprise Farms II Community Association
17191 W. Tara Lane
10 Surprise, AZ 85388
11
- 11 Nicholas Mascia, President
Surprise Farms III Community Association
12 1600 W. Broadway Rd., Suite 200
Tempe, AZ 85282
13
- 14 G. Thomas Hennessy, President
Surprise Farms 5 Community Association
1600 W. Broadway Rd., Suite 200
15 Tempe, AZ 85282
16
- 16 Jan Garcia, President
Sycamore Estates Parcel 13 Community Association
1600 W. Broadway Rd., Suite 200
17 Tempe, AZ 85282
18
- 19 Frederick G. and Mary L. Botha
23024 N. Giovota Drive
Sun City West, AZ 85375
20
- 21 Peter and Rochanne Corpus
8425 N. 181st Drive
Waddell, AZ 85355
22
- 23 Thomas and Laurie Decatur
8426 N. 181st Drive
Waddell, AZ 85355
24
- 25 Timothy L. and Cindy J. Duffy
19997 N. Half Moon Drive
26 Surprise, AZ 85374-4747

1 William and Erin Parr
18044 W. Georgia Court
Litchfield Park, AZ 85034
2
3 Craig and Nancy Plummer
17174 W. Saguaro Lane
Surprise, AZ 85388
4
5 Sharon Wolcott
20117 N. Painted Cove Lane
Surprise, AZ 85387
6
7 Brian O'Neal
21373 W. Brittle Brush Lane
Buckeye, AZ 85396
8

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

By: *Uma Cooper*