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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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Arizona Corporation Commission

DOCKETED

OCT 24 2011

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IN THE MATTER OF THE APPLICATION OF  
BRADSHAW WATER COMPANY, INC. FOR A  
PERMANENT RATE INCREASE.

DOCKET NO. W-02476A-10-0495

PROCEDURAL ORDER

BY THE COMMISSION:

On December 15, 2010, Bradshaw Water Company, Inc. ("Bradshaw") filed with the Arizona Corporation Commission ("Commission") an application for rate adjustment using a test year ("TY") ending December 31, 2009. The Commission's Utilities Division ("Staff") found Bradshaw's application to be sufficient on January 21, 2011, and issued a Staff Report on April 6, 2011, and a Revised Staff Report on July 20, 2011.

On September 15, 2011, the Commission issued Decision No. 72584, granting Bradshaw a rate increase effective October 1, 2011, and, among other things, requiring a second phase of this matter to address the resolution of Bradshaw's request to have a \$1,650 impact fee authorized in its tariff. The Decision found that Bradshaw had been collecting a \$1,650 impact fee per lot from certain of its new customers and turning the impact fee over to the Town of Prescott Valley ("Town") since approximately March 2002, although Bradshaw had never received Commission permission to collect the impact fee. The Decision further found that Bradshaw is party to a February 2002 Agreement for Recovery of Effluent Storage Credits ("Agreement"), entered into with North Nugget Development, L.L.C., and the Prescott Valley Water District ("District"), which Agreement requires Bradshaw to collect the \$1,650 "system capacity charge" at the time of meter installation for a new customer in Creekside Phase 3, requires Bradshaw to remit the system capacity charge to the District within 10 days, and prohibits Bradshaw from initiating domestic water service to any lot in Creekside Phase 3 until after the system capacity charge has been paid. The Agreement has a term of 100 years.

1 The Decision found that Staff had recommended denial of the impact fee because Staff believed the  
2 impact fee was being collected and passed on to the Town through an unwritten agreement. Because  
3 of concerns related to the impact fee, and the insufficiency of the information available concerning  
4 the impact fee, the Decision required a second phase in this matter to resolve the issue, specifically  
5 requiring the Commission's Hearing Division to schedule and hold a procedural conference to  
6 discuss the process for the second phase, to determine the process to be followed for the second  
7 phase, to oversee the process for the second phase, and to issue a Recommended Order or Opinion  
8 and Order to resolve the second phase after completing the process.

9 On September 27, 2011, a Procedural Order was issued scheduling a procedural conference to  
10 be held on October 24, 2011, at the Commission's offices in Phoenix, Arizona.

11 On October 24, 2011, the procedural conference was held as scheduled before a duly  
12 authorized Administrative Law Judge of the Commission at the Commission's offices in Phoenix,  
13 Arizona. Bradshaw appeared through its owner, Don Bohler, and Staff appeared through counsel.  
14 Bradshaw reported that it had informed a Town employee that the Commission would not allow  
15 Bradshaw to collect the impact fee and had also informed a new potential customer that the customer  
16 needed to wait to have water service established for its property under construction because of the  
17 impact fee issue before the Commission. Mr. Bohler seemed to believe that Bradshaw would be able  
18 to get an amendment to the Agreement to resolve the issue with the Town. Staff was directed to  
19 obtain additional information from Bradshaw and the Town and to prepare a Staff  
20 Report/Memorandum analyzing the legality of the impact fee arrangement and Agreement, analyzing  
21 how Bradshaw's ceasing to collect the impact fee would impact Bradshaw's ability to obtain water  
22 from the Town/District to provide to Bradshaw's customers, and recommending how the situation  
23 should be resolved. Staff estimated that it would be able to prepare a Staff Report analyzing the  
24 situation in approximately one month, although Staff also expressed concern that the Town might not  
25 respond quickly to discovery requests. Bradshaw indicated that it would be able to respond to the  
26 Staff Report very shortly after it was issued. The issue of notice to the Town/District was also briefly  
27 discussed, and the parties were informed that a Procedural Order memorializing the filing  
28 requirements would be issued and sent to the Town/District. No decision was made concerning

1 whether an evidentiary hearing will be needed for the second phase.

2 IT IS THEREFORE ORDERED that **Staff shall, by November 30, 2011, file a Staff Report**  
3 providing a legal analysis of the arrangement and Agreement under which Bradshaw has been  
4 collecting the \$1,650 impact fee/system capacity charge, including, at a minimum, whether the  
5 arrangement and/or Agreement violate A.R.S. §§ 40-361, 40-334, and/or 40-374.

6 IT IS FURTHER ORDERED that **Staff shall also** determine and explain in the Staff Report  
7 whether Bradshaw's ceasing to collect the impact fee/system capacity charge would have any impact  
8 on Bradshaw's ability to obtain its water supply from the Town/District and, if so, what the impact on  
9 Bradshaw's water supply would be.

10 IT IS FURTHER ORDERED that **Staff shall** make recommendations in the Staff Report  
11 concerning whether Staff believes that a hearing is necessary and what action Staff believes the  
12 Commission should take to resolve the second phase of this matter.

13 IT IS FURTHER ORDERED that **Bradshaw shall engage in discussions** with the  
14 Town/District concerning whether the Agreement can be amended to eliminate the requirement for  
15 Bradshaw to collect the impact fee/capacity charge.

16 IT IS FURTHER ORDERED that **Bradshaw shall share with Staff promptly** any progress  
17 that is made toward eliminating the requirement for Bradshaw to collect the impact fee/capacity  
18 charge.

19 IT IS FURTHER ORDERED that **Bradshaw shall share with Staff promptly** any  
20 information Bradshaw acquires concerning how its ceasing to collect the impact fee/capacity charge  
21 would impact its ability to obtain its water supply from the Town/District.

22 IT IS FURTHER ORDERED that **Bradshaw shall, by December 16, 2011, file a response**  
23 **to the Staff Report**, which shall (1) respond to Staff's determinations and recommendations; (2)  
24 describe in detail (and provide a copy, if applicable, of) any new agreement/amendment that  
25 Bradshaw has reached with the Town/District concerning the resolution of the issue; and (3) provide  
26 the information regarding progress and impact on water supply previously required to have been  
27 provided promptly to Staff.

28 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules

1 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

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

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

8 DATED this 24<sup>th</sup> day of October, 2011.

9  
10   
11 SARAH N. HARPRING  
12 ADMINISTRATIVE LAW JUDGE

13 Copies of the foregoing mailed/delivered  
14 this 24<sup>th</sup> day of October, 2011, to:

15 Don Bohler  
16 BRADSHAW WATER COMPANY  
17 P.O. Box 12758  
18 Prescott, AZ 86304

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19 Ivan Legler  
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21 TOWN OF PRESCOTT VALLEY  
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By:   
Debra Broyles  
Secretary to Sarah N. Harpring