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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF)
MICHAEL W. SCHULTZ AND PAMELA J.)
SCHULTZ DBA RINCON CREEK WATER)
COMPANY, FOR APPROVAL OF SALE OF)
ASSETS AND TRANSFER CERTIFICATE OF)
CONVENIENCE AND NECESSITY.)

DOCKET NO. ^W~~E~~-03783A-10-0172

TRANSFEREES/CO-APPLICANT
SHIRLEY'S REPLY BRIEF

I.

INTRODUCTION

Pursuant to the Commission's August 11, 2011 Procedural Order, Transferees/Co-Applicant William Shirley and Gretchen Shirley (collectively "Shirley") submit this Reply Brief in the above-captioned and above-docketed proceeding. In Section II below, Shirley discusses each of the three (3) issues identified at page 2, lines 14.5-23.5 of the aforesaid Procedural Order. In that regard, Shirley incorporates herein by reference as well the contents of its Opening Brief.

II.

DISCUSSION

Issue No. 1: Is Rincon Creek Water Company Legally Obligated to Bill and Collect Those Rates for Water Service Which Have Previously Been Authorized by the Commission?

The statutory, regulatory and case law citations set forth in the Commission Staff's Opening Brief are not dispositive of the "heart" of this issue, namely, whether there is a legal obligation to collect the rates for water service previously authorized by the Commission for Rincon Creek Water Company.

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1 The Van Dyke and Cortaro Water decisions stand for the proposition that a public service
2 corporation cannot use private contracts to insulate itself from rate regulation by the
3 Commission.

4 A.R.S. § 40-203 stands for the proposition that a public service corporation may not
5 charge rates which are “unjust, discriminatory or preferential, illegal or insufficient.” Nor, may
6 it charge rates which have not been approved by the Commission.

7 A.R.S. § 40-367(A) stands for the proposition that a public service corporation may not
8 change rates previously authorized by the Commission without prior approval from the
9 Commission.

10 A.A.C. R14-2-409(A)(1) provides that “each utility shall bill monthly for services
11 rendered”; and, A.A.C. R14-2-409(D)(1) requires that each customer be billed under the tariff
12 applicable to that customer’s type or class of service.

13 However, none of these “authorities” address the issue of what is the legal liability, if
14 any, of a public service corporation which (i) does not charge its customers anything for the
15 service it provides, and (ii) there is no diminishment in either the reliability or quality of service
16 it provides as a consequence of not having charged for such service. That is precisely the fact
17 situation in the Instant Proceeding; and, it is against that background that Shirley incorporates the
18 discussion set forth and the conclusion reached on Issue No. 1 in Shirley’s Opening Brief.

19
20 **Issue No. 2: Assuming (for Discussion Purposes) That the Current and Previous**
21 **Owner(s) of Rincon Creek Water Company Should Have Been Charging and**
22 **Collecting Rates Authorized by the Commission for Water Services, What**
23 **Action, If Any, Should Be Taken by the Commission Against Such**
24 **Individual(s)?**

25 Although Shirley and the Commission’s Staff do not agree on the issue of whether or not
26 Rincon Creek Water Company is currently in violation of the Commission’s Decision No.
27 31637, they appear to be in agreement that Messrs. Acosta (or his estate) and Schultz and Rincon
28

1 Creek Water Company should be sanctioned by reason of their failure to charge and collect the
2 Commission-authorized rate for water services in the past.

3
4 **Issue No. 3: Should Rincon Creek Water Company be Adjudicated to Not Be a Public**
5 **Service Corporation, Based Upon the Record in The Instant Proceeding?**

6 The Merriam-Webster Dictionary includes the following language in its definition of the
7 word "formula":

8 ". . . a set form of words for ceremonial use. . ."

9 With all due respect, the Commission Staff's approach to and discussion of this issue in Staff's
10 Opening Brief is formalistic in nature. Somewhere in this process, reality and practicality have
11 been overlooked.

12 More specifically, Rincon Creek Water Company had four (4) customers (other than
13 Shirley) at the time of the December 10, 2010 evidentiary hearing. Given such a small customer
14 base, it should never have received a certificate of convenience and necessity ("CC&N") in
15 1956; and, surely, it would not be granted a CC&N under today's certificating standards.
16 Furthermore, and as indicated in Shirley's Opening Brief, two (2) of those four (4) customers
17 have since disconnected from the Rincon Creek Water Company system, and the remaining two
18 (2) customers have indicated in writing a willingness to exit the system and enter into a well-
19 sharing agreement.

20 Under these circumstances, there is no plausible reason why Rincon Creek Water
21 Company should continue to be regulated as a public service corporation, nor why the
22 Commission should have the related ongoing burden of regulatory oversight. Furthermore, given
23 these specific factual circumstances, it makes no sense to subject Shirley to the time and expense
24 of doing all that would be necessary to prepare and process a formal application requesting
25 adjudication of Rincon Creek Water Company not a public service corporation. That is
26 particularly so, given (i) the specific circumstances surrounding Rincon Creek Water Company,
27 and (ii) the Commission's discretion to waive one (1) or more of the criteria set forth in its
28 Decision No. 55568.

