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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

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AZ CORP COMMISSION
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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-03783A-10-0172

STAFF'S REPLY BRIEF

The Utilities Division Staff ("Staff") of the Arizona Corporation Commission ("Commission") hereby submits this brief in reply to the opening brief filed by William Shirley and Gretchen Shirley (collectively "the Shirley's") on October 31, 2011.

I. RINCON CREEK WATER COMPANY ("RINCON CREEK") MUST CHARGE ITS CUSTOMERS IN ACCORDANCE WITH THE COMMISSION-APPROVED TARIFF.¹

The Shirley's argue that, as a matter of policy, the owner of Rincon Creek is not legally obligated to bill and collect from its customers under the Commission-approved rates because: 1) the owner is financially capable of fully discharging its public service obligation on an ongoing basis; 2) the owner is not charging a different rate than that which has been authorized; and 3) the owner is not engaging in any form of discrimination.² However, the Shirley's policy argument fails because the law requires public service corporations to charge Commission-approved rates and the assumptions upon which that argument is based are flawed.³

The Shirley's position that Rincon Creek is not obligated to charge Commission-approved rates is untenable because it is fundamentally at odds with the Commission's exclusive and plenary

¹ Staff notes that the issue posed by the Administrative Law Judge is whether Rincon Creek is required to charge its customers for water service. Instead of addressing that issue, the Shirley's have elected to address whether the Shirley's are obligated to bill and collect under the Commission-approved rates. The issue of whether Rincon Creek is obligated to collect is a red herring because collecting is part and parcel of billing and Rincon Creek is neither billing nor collecting under the Commission-approved rates.

² Shirley's Opening Brief, p. 3.

³ Staff hereby incorporates by reference the arguments contained in Staff's Opening Brief that address Rincon Creek's legal obligation to charge the Commission-approved rates.

1 power to fix and regulate rates. *See State v. Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. 294, 297,
2 138 P. 781, 782 (1914); *see also* ARIZ. CONST. art. VX, § 3. More specifically, a public service
3 corporation has no authority to decide whether or not to charge the Commission-approved rates
4 because that authority would entirely undermine the Commission's exclusive and plenary power to
5 fix and prescribe rates. As a consequence, Rincon Creek cannot elect to deviate from the rates fixed
6 and prescribed by the Commission and must charge its customers accordingly.

7 The fallacy of the Shirley's position is highlighted by the faulty premise upon which their
8 policy argument proceeds. Specifically, the Shirley's statement that Rincon Creek is not legally
9 obligated to bill its customers under the Commission-approved rates is unequivocally false. *See*
10 A.A.C. R14-2-409(D)(1) ("[e]ach customer shall be billed under the applicable tariff indicated in the
11 customer's application for service") and A.A.C. R14-2-409(A)(1) ("[e]ach utility shall bill monthly
12 for service rendered"). Rincon Creek's failure to bill its customers according to the Commission-
13 approved rates is in violation of law.

14 The Shirley's policy argument should also be rejected because it relies on two critically
15 flawed assumptions. First, the Shirley's are wrong in assuming that Rincon Creek is not charging a
16 different rate than that which has been authorized by the Commission. To the contrary, by charging a
17 rate of \$0.00, Rincon Creek is charging a rate different than the Commission-approved rate in
18 violation of Decision No. 31637.

19 Second, the Shirley's incorrectly assume that Rincon Creek is not engaging in any form of
20 discrimination. Pursuant to Decision No. 31637, Rincon Creek is required to charge its customers
21 \$6.00 for the first 7,000 gallons or less of water consumed with additional incremental charges of
22 \$0.50 for each 1,000 gallons in excess of 7,000 gallons. Therefore, by charging a uniform rate of
23 \$0.00 across all customers regardless of water consumption, Rincon creek is discriminating against
24 customers who use 7,000 gallons or less in favor of those customers who use 8,000 gallons or more
25 in violation of A.R.S. § 40-203.

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1 **II. STAFF DOES NOT BELIEVE THAT ENFORCEMENT ACTION AGAINST**
2 **RINCON CREEK IS NECESSARY AT THIS TIME.**

3 The Shirley's submit that enforcement action against Rincon Creek is not appropriate because
4 the violation in question has not detrimentally impacted Rincon Creek's customers and neither the
5 Schultz's nor the Shirley's knew that Rincon Creek was legally required to charge the Commission-
6 approved rates.⁴

7 Staff notes that "[a] party's ignorance of the law is not an excuse for failing to comply with
8 it." *In re Marriage of Williams*, 219 Ariz. 546, 549, 200 P.3d 1043, 1046 (App. 2008); *see Moore v.*
9 *Meyers*, 31 Ariz. 347, 356, 253 P. 626, 629 (1927) ("ignorance of the law excuses no man from the
10 result of his conduct"). However, notwithstanding Rincon Creek's violation of Decision No. 31637,
11 Staff reiterates its position that it does not intend to pursue any action against Rincon Creek provided
12 that Rincon Creek begins charging its Commission-approved rates immediately.

13 **III. RINCON CREEK DOES NOT MEET THE CRITERIA FOR AN ADJUDICATION**
14 **NOT A PUBLIC SERVICE CORPORATION.**

15 The Shirley's concede that Rincon Creek does not appear to meet the seven criteria necessary
16 for requesting an adjudication not a public service corporation set forth in Decision No. 55568.⁵ The
17 Shirley's nonetheless request that the Commission "extinguish" Rincon Creek's Certificate of
18 Convenience and Necessity ("CC&N") by proposing that the Commission waive the criteria set forth
19 in Decision No. 55568 conditioned upon the Shirley's and Rincon Creek's customers either: 1)
20 executing and recording a Well Sharing and Easement Agreement; or 2) agreeing to remain on an
21 unrelated well.⁶

22 Staff notes that the Shirley's present request to "extinguish" Rincon Creek's CC&N goes well
23 beyond the scope of the relief originally requested this matter.⁷ In this regard, Staff does not believe
24 a post-hearing brief is the appropriate time to propose an entirely new request for relief. If Rincon
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27 ⁴ Shirley's Opening Brief, pp. 3-4.

28 ⁵ *Id.* at 5.

⁶ *Id.* at 6.

⁷ *See* Application of Rincon Creek Water Company for Approval of the Sale of Assets and Transfer of Certificate of Convenience and Necessity (May 3, 2010).

1 Creek chooses to file an application to cancel its CC&N or an application for an adjudication not a
2 public service corporation in the future, Staff would fully evaluate either application at that time.

3 RESPECTFULLY SUBMITTED this 21st day of November, 2011.

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14 of the foregoing were filed this
21st day of November, 2011 with:

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