



0000132019

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

NOV 17 2011

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

DOCKETED BY

nr

IN THE MATTER OF THE APPLICATION OF
ARIZONA-AMERICAN WATER COMPANY FOR
A WAIVER UNDER A.A.C. R14-2-806 OR, IN
THE ALTERNATIVE, NOTICE OF INTENT TO
REORGANIZE UNDER A.A.C. R14-2-803.

DOCKET NO. W-01303A-11-0101

DECISION NO. 72668OPINION AND ORDER

DATES OF HEARING:

March 22, August 3 and 15, 2011 (procedural
conferences); August 23, 2011

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Teena Jibilian¹

APPEARANCES:

Mr. Thomas H. Campbell and Mr. Michael Hallam,
LEWIS AND ROCA, LLP, on behalf of Applicant;

Mr. Jay L. Shapiro, FENNEMORE CRAIG, PC, on
behalf of EPCOR Water (USA), Inc.;

Mr. Robert Rials, President, on behalf of Corte Bella
Country Club Association, Inc.;

Mr. Maher M. Hazine, in propria persona;

Mr. Andrew M. Miller, Town Attorney, on behalf of the
Town of Paradise Valley;

Mr. Jim Gruber, City Attorney's Office, on behalf of the
City of Surprise;

Ms. Michelle Wood, Staff Attorney, on behalf of the
Residential Utility Consumer Office; and

Ms. Bridget Humphrey and Mr. Charles Hains, Staff
Attorneys, Legal Division, on behalf of the Utilities
Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On March 2, 2011, Arizona-American Water Company ("Arizona-American" or "Applicant")

¹ Chief Administrative Law Judge Lyn Farmer presided at the procedural conference held on August 3, 2011.

1 filed with the Arizona Corporation Commission ("Commission") an application for a waiver under
 2 A.A.C. R14-2-806 or, in the alternative, Notice of Intent to Reorganize under A.A.C. R14-2-803
 3 ("Notice").

4 The parties to this proceeding are Arizona-American, EPCOR Water (USA) Inc. ("EPCOR
 5 USA"), the Corte Bella Country Club Association, Inc. ("Corte Bella"), Mr. Maher M. Hazine, the
 6 Town of Paradise Valley, the City of Surprise, the Residential Utility Consumer Office ("RUCO"),
 7 and the Commission's Utilities Division ("Staff").

8 The Notice states that Applicant's parent company, American Water Works Company Inc.
 9 ("American Water"), proposes to sell to EPCOR USA all of the issued and outstanding shares of
 10 Arizona-American's common stock.² As part of the proposed transaction, at closing, EPCOR USA's
 11 parent EPCOR Utilities Inc. ("EPCOR") will replace the existing Arizona-American debt extended
 12 by American Water with debt extended by EPCOR under comparable terms. To the extent the debt
 13 replacement requires Commission approval under A.R.S. § 40-301 and § 40-302, Arizona-American
 14 also requests such approval.

15 * * * * *

16 Having considered the entire record herein and being fully advised in the premises, the
 17 Commission finds, concludes, and orders that:

18 **FINDINGS OF FACT**

19 **Procedural History**

- 20 1. On March 2, 2011, Arizona-American filed the Notice with the Commission.
- 21 2. Applicant's parent company, American Water, proposes to sell to EPCOR USA all of
 22 the issued and outstanding shares of Arizona-American's common stock.
- 23 3. On March 4, 2011, RUCO filed an Application to Intervene.
- 24 4. On March 7, 2011, a Procedural Order was issued setting a procedural conference for
 25 the purpose of discussing the processing of the Notice.

26 _____
 27 ² The January 23, 2011, Stock Purchase Agreement between EPCOR USA and American Water also includes the sale of
 28 all issued and outstanding shares of American Water subsidiary New Mexico-American Water Company, Inc.'s common
 stock.

1 5. On March 22, 2011, the procedural conference convened as scheduled. Counsel for
2 Applicant, RUCO and Staff appeared and discussed procedural issues associated with processing the
3 Notice.

4 6. On March 28, 2011, a Procedural Order was issued granting intervention to RUCO;
5 setting a hearing to commence on August 23, 2011; and setting an associated procedural schedule for
6 public notice, intervention, and prefiling of testimony.

7 7. On May 17, 2011, Arizona-American filed a Notice of Filing Affidavit of Publication,
8 stating that public notice as required by the March 28, 2011, Procedural Order was provided as a bill
9 insert to all Arizona-American customers beginning on April 8, 2011, and running for a complete bill
10 cycle. The filing included proof that notice as required by the March 28, 2011 Procedural Order was
11 published in newspapers of general circulation in all Arizona-American's service areas.

12 8. On May 20, 2011, Arizona-American filed a Notice of Withdrawal of Waiver Request.

13 9. On June 6, 2011, a Motion to Intervene was filed signed by Robert Rials, President of
14 Corte Bella.

15 10. On June 13, 2011, Corte Bella filed a copy of the minutes of its May 24, 2011, Board
16 of Directors meeting, which indicate that Corte Bella's Board of Directors passed a motion
17 specifically authorizing Mr. Rials to represent Corte Bella in this docket.

18 11. On June 15, 2011, a Procedural Order was issued granting intervention to Corte Bella
19 and authorizing Mr. Rials to represent it as a lay person pursuant to Arizona Supreme Court Rule
20 31(d)(28).

21 12. On June 29, 2011, EPCOR USA filed an Application for Leave to Intervene.

22 13. On June 30, 2011, the Town of Paradise Valley filed a Motion to Intervene.

23 14. On July 1, 2011, Mr. Maher M. Hazine filed a Motion to Intervene.

24 15. On July 8, 2011, a Procedural Order was issued granting intervention to EPCOR USA,
25 the Town of Paradise Valley, and Mr. Maher M. Hazine.

26 16. On July 14, 2011, Staff filed a Motion for Extension of Filing Dates.

27 17. On July 15, 2011, a Procedural Order was issued granting the Motion for Extension of
28 Filing Dates.

1 18. On July 22, 2011, Corte Bella, RUCO, and Staff filed direct testimony.

2 19. On August 3, 2011, a telephonic procedural conference was held at the request of
3 Applicant, with all existing parties participating except for the Town of Paradise Valley.³ During the
4 procedural teleconference, counsel for Arizona-American stated that it had become aware that several
5 thousand customers had not been mailed notice of the application and hearing as directed by the
6 March 28, 2011 Procedural Order.⁴ Arizona-American requested that an opportunity for intervention
7 in the case be reopened until August 22, 2011, and that it be authorized to provide notice to all Agua
8 Fria Water district customers of the application, hearing and the right to intervene.

9 20. On August 3, 2011, a Procedural Order was issued directing that the timeframe for
10 requesting intervention in this matter be extended to August 22, 2011; ordering Arizona-American to
11 mail notice of the application and the hearing, including the extended intervention timeframe, to all
12 Agua Fria Water district customers, no later than August 8, 2011; and setting a procedural conference
13 to be held on August 15, 2011, for the purpose of discussing the hearing schedule, how to
14 accommodate any new intervenors' participation in the hearing, and any other unresolved issues.

15 21. On August 5, 2011, Arizona-American and EPCOR USA filed a Joint Response to
16 Staff and Intervenor Direct Testimony.

17 22. On August 15, 2011, a procedural conference was convened as scheduled. Applicant,
18 EPCOR USA, RUCO and Staff appeared through counsel. Mr. Rials appeared for Corte Bella, and
19 Mr. Hazine appeared on his own behalf. The Town of Paradise Valley did not enter an appearance.
20 Arizona-American indicated that notice of the extended timeframe for intervention had been mailed
21 to all customers in the Agua Fria district on August 5, 2011. The parties were informed that the
22 hearing would convene as scheduled on August 23, 2011, and that a determination of whether the
23 hearing could go forward as scheduled would be made at that time, depending on intervention
24 requests received and the nature of participation requested by any new intervenors.

25 23. On August 18, 2011, the City of Surprise filed a Motion to Intervene.

26 _____
27 ³ The Town Attorney for Paradise Valley indicated that he was aware of the conference call but would not attend.
28 Counsel for Arizona-American stated that he had discussed the subject matter of the conference call with the Town Attorney.

⁴ The Company estimated that twenty-eight thousand Agua Fria Water District customers did not receive the notice.

1 24. No further intervention requests were filed.

2 25. On August 19, 2011, Applicant filed a Notice of Filing Certification of Mailing, which
3 included proof of postage indicating the mailing of 34,785 pieces of mail.

4 26. A hearing on the Notice was convened as scheduled on August 23, 2011, before a duly
5 authorized Administrative Law Judge of the Commission. No members of the public appeared to
6 make public comment. Applicant, EPCOR USA, the Town of Paradise Valley, the City of Surprise,⁵
7 RUCO, and Staff appeared through counsel. Mr. Rials appeared on behalf of Corte Bella. Mr.
8 Hazine appeared on his own behalf.

9 27. Applicant, EPCOR USA, Corte Bella, RUCO and Staff presented evidence in the form
10 of witness testimony. The President of Arizona-American, Mr. Paul Townsley, provided testimony
11 on behalf of Arizona-American. Mr. James Wilson McKee, Director of Business Process
12 Management for EPCOR Water Services, Inc. ("EPCOR Water"), testified on behalf of EPCOR
13 USA. Mr. Robert Rials testified on behalf of Corte Bella. Mr. William A. Rigsby testified on behalf
14 of RUCO. Ms. Dorothy Hains and Mr. Gerald Becker testified on behalf of Staff.

15 28. At the close of the hearing, the parties made closing statements, and the matter was
16 taken under advisement.

17 **Parties to the Proposed Transaction**

18 29. Arizona-American is a public service corporation engaged in providing water and
19 wastewater utility service in portions of Maricopa, Mohave and Santa Cruz Counties pursuant to
20 Certificates of Convenience and Necessity ("CC&Ns") granted by the Commission. Arizona-
21 American currently provides water and wastewater service to approximately 158,000 customers
22 (107,000 water customers and 51,000 wastewater customers). The Commission authorized Arizona-
23 American's current rates and charges in Decision Nos. 72047 and 71410.

24 30. Arizona-American is a wholly owned subsidiary of American Water, which owns all
25 of the issued and outstanding shares of common stock in Arizona-American. American Water is a
26 Delaware corporation headquartered in Voorhees, New Jersey. American Water's stock is traded on

27 ⁵ The City of Surprise appeared through counsel and was granted intervention at the commencement of the hearing.
28 Counsel for Surprise indicated that while Surprise wished to participate in the hearing, it did not wish to present any
testimony, and that Surprise did not object to the hearing going forward as scheduled.

1 the New York Stock Exchange.

2 31. EPCOR USA is an indirect wholly owned subsidiary of EPCOR. EPCOR is a
3 municipally owned Canadian corporation and holding company headquartered in Edmonton, Alberta
4 that builds, owns and operates water and wastewater treatment facilities and infrastructure and
5 electrical transmission and distribution networks in Canada. EPCOR is governed by an independent
6 Board of Directors, and its sole shareholder is the City of Edmonton, Alberta, Canada. A corporate
7 organizational chart of EPCOR is attached hereto as Exhibit A.

8 32. EPCOR has been recognized as one of Canada's Top 100 Employers, and in 2008,
9 was chosen as one of Canada's Top 10 Earth Friendly employers. EPCOR received the 2010 Alberta
10 Venture Best Workplace for the Environmentally Conscious (recognizing companies with best
11 practices and regular contributions in the design and implementation of green initiatives in water,
12 wastewater and power usage in North America), and the 2009 and 2010 Government of Alberta
13 EnviroVista Leadership award (recognizing Alberta industrial and manufacturing facilities and
14 municipal water operations for their environmental excellence). EPCOR has been recognized by the
15 Canadian Council for Public Private Partnerships for its excellence in service delivery and fiscal
16 management in constructing and operating water and wastewater facilities.

17 33. EPCOR USA is a Delaware corporation and holding company, headquartered in
18 Phoenix, Arizona. EPCOR USA was formed to own water and wastewater treatment facilities in the
19 United States, and is governed by an independent Board of Directors that differs from the EPCOR
20 Board of Directors.

21 34. As shown on Exhibit A, EPCOR is the parent company of a number of subsidiary
22 companies. Its primary operating utility subsidiaries are EPCOR Water, EPCOR Distribution &
23 Transmission, Inc., and EPCOR Energy Alberta, Inc. ("EPCOR Energy").

24 35. EPCOR Water provides water and wastewater services to over one million people in
25 more than 70 communities and counties across western Canada. EPCOR Water and its predecessors
26 have been providing water to the residents of the City of Edmonton for more than 100 years. EPCOR
27 Water owns and operates seven water treatment facilities in Alberta and British Columbia; operates
28 17 other water treatment and distribution facilities in Alberta and British Columbia; owns and

operates five wastewater treatment facilities in Alberta and British Columbia; and operates 20 other wastewater treatment collection facilities in Alberta and British Columbia. EPCOR Water has business and working relationships with established American companies such as Stantec Consulting, Inc. and PCL Construction, Inc. spanning nearly 50 years, including projects where EPCOR Water and Stantec/PCL have jointly built and refurbished numerous water and wastewater facilities.

36. EPCOR Water has experience in all aspects of operation and management of regulated water and wastewater utilities, including the provision of full customer support services and operator training. EPCOR Water's facilities in Edmonton encompass two state-of-the-art water treatment plants, a distribution network with approximately 2,200 miles of distribution and transmission mains, and approximately 17,000 hydrants and 54,000 valves. EPCOR Water's 12 storage reservoir sites have an aggregate capacity of approximately 213 million gallons.

37. EPCOR Water has experience treating and distributing both ground and surface water. The seven water treatment facilities and 17 other water treatment and distribution facilities in Canada that EPCOR Water owns and operates obtain water supplies from both groundwater and surface water. EPCOR Water has experience with surface water systems in the City of Edmonton, which is supplied with water from the North Saskatchewan River. EPCOR Water thus has experience with volume and water quality variances, municipal discharges, high turbidity events and a variety of other circumstances relating to use of surface water. EPCOR Water's technical expertise includes using advanced and highly automated water treatment systems, ultraviolet disinfection, and remote systems capable of monitoring all sizes of facilities.

38. EPCOR Water's water and wastewater operations meet or exceed Canadian federal, provincial, and municipal water quality requirements. In 2008, its Quality Assurance Laboratory scored the highest among 68 labs across Canada and the United States in tests administered by the U.S. Environmental Protection Agency.

39. EPCOR provides call center and billing services for EPCOR Water's 250,000 customers through its affiliate EPCOR Energy.

40. In Decision No. 72259 (April 7, 2011), the Commission approved a transaction involving EPCOR USA's purchase of the stock of Chaparral City Water Company, and EPCOR USA

1 subsequently acquired Chaparral City Water Company.

2 **The Proposed Transaction**

3 41. American Water wishes to divest itself of its ownership and stock interests in Arizona-
4 American Water.

5 42. On January 23, 2011, EPCOR USA entered into a Stock Purchase Agreement with
6 American Water for the purchase of all outstanding shares of Arizona-American's common stock and
7 of New Mexico-American Water Company, Inc.'s common stock (the "Stock Purchase Agreement").

8 43. EPCOR USA's planned purchase of the stock of Arizona-American is part of
9 EPCOR's business plan to enter into the water utility market in Arizona and its strategy to invest in
10 and become a long-term owner of water and wastewater utilities in the southwestern United States,
11 and to contract to provide various utility-related services to municipalities and other governmental
12 entities in Arizona and other states.

13 44. Under the Stock Purchase Agreement, EPCOR USA agrees to purchase the stock of
14 both Arizona-American and New Mexico-American Water Company, Inc. for approximately \$470
15 million, which, subject to adjustments, will be paid to American Water at closing.

16 45. For purposes of the proposed transaction, valuation was based on a 60/40 debt-to-
17 equity capital structure. EPCOR does not have any intention to capitalize the operating companies
18 using a debt to capitalization ratio that is materially different.

19 46. The purchase price for the proposed transaction will be funded by cash and debt.
20 EPCOR has substantial assets and business operations in Canada. In 2009, EPCOR had
21 approximately \$2.4 billion (\$Cdn) in revenue from various operations, and net income of
22 approximately \$125 million (\$Cdn). No material changes to EPCOR's capital structure are expected
23 as a result of the proposed transaction, and EPCOR will continue to finance capital projects in the
24 same way it has in the past.

25 47. EPCOR USA intends generally to adopt American Water's projected capital budget
26 plan for Arizona-American for the years 2011 through 2013. Under that plan, capital projects
27 totaling approximately \$36.8 million would be constructed over the next three years. EPCOR USA
28 states that upon approval of the proposed transaction, it may add additional projects, and may

1 substitute or alter the timing of planned projects to ensure that necessary investments to maintain and
2 improve the provision of utility service are undertaken.

3 48. EPCOR USA states that EPCOR has access to the capital market and will be able to
4 support Arizona-American as appropriate, and to assist Arizona-American in obtaining capital, if
5 necessary. Over the period of 2004 to 2009, EPCOR routinely financed an average of \$400 million
6 (\$Cdn) annually in capital improvements for its water, wastewater and electric facilities. EPCOR
7 maintains a Standard & Poor's credit rating of BBB+ stable for long-term unsecured debt and DBRS
8 Ltd. affirmed its credit rating for EPCOR's long-term unsecured debt at A (low) stable.

9 49. The proposed transaction is not anticipated to result in any material changes to
10 Arizona-American's cost of service or its cost of capital. Arizona-American will continue to be
11 operated on a stand-alone basis, will contract for services, equipment and supplies, and will raise
12 capital as necessary for capital improvement. Similar to current American Water practice, EPCOR
13 Water USA will file a single consolidated US federal tax return, but will file a state return for
14 Arizona-American, with taxes calculated on a stand-alone basis for financial statement and regulatory
15 reporting requirements.

16 50. EPCOR USA states that the proposed transaction will not increase the level of risk
17 associated with an investment in Arizona-American. EPCOR USA states that no utility funds will be
18 co-mingled with non-utility funds, nor will any cross-subsidization of non-utility activities take place.
19 EPCOR USA is not requesting any change to the Commission's existing regulatory oversight and
20 approval authority with respect to Arizona-American's rates, operations, or transactions with
21 affiliates.

22 51. The proposed transaction includes debt replacement, whereby EPCOR will replace the
23 existing Arizona-American debt extended by American Water with debt extended by EPCOR under
24 comparable terms. To the extent the debt replacement requires Commission approval under A.R.S. §
25 40-301 and § 40-302, Arizona-American requests such approval in this proceeding.

26 52. None of the utility plant, revenue or other assets currently owned by Arizona-
27 American will be sold, transferred or encumbered as part of the transaction.

28 53. After the transaction closes, Arizona-American will remain the same legal entity, but

1 will be owned by EPCOR USA. Arizona-American will continue to be operated as a public service
2 corporation subject to the Commission's authority and jurisdiction.

3 54. EPCOR USA does not anticipate that any positions will be eliminated as a result of the
4 proposed transaction.

5 55. Under EPCOR USA's ownership, Arizona-American will continue to provide service
6 under its existing rates and tariffs. EPCOR USA does not seek an acquisition adjustment.

7 56. After the proposed transaction closes, Arizona-American will no longer be a part of
8 the American Water system, and EPCOR USA will change the name of the utility.

9 **Positions of the Parties**

10 57. Arizona-American states that the evidence presented supports approval of the
11 proposed transaction pursuant to A.A.C. R14-2-803 ("Rule 803").⁶

12 58. EPCOR USA agrees with Arizona-American that the proposed transaction meets all
13 the standards set forth in Rule 803 and is in the public interest. EPCOR USA states that it is happy to
14 invest in Arizona and continue the tradition of good quality water service provided by Arizona-
15 American, and requests that the Commission approve the proposed transaction.

16 59. Corte Bella points out that Arizona-American is a monopoly provider of water utility
17 service, and requests quantifiable input for the consumer as to the meaning of reasonable and
18 adequate.

19 60. Mr. Hazine agrees with the conditions proposed by RUCO and Staff. Mr. Hazine
20 states that he does not object to the proposed transaction, subject to his proposed condition, discussed
21 below.

22 61. The Town of Paradise Valley has no objections to the proposed transaction. The
23 Town of Paradise Valley believes that EPCOR USA has good intentions to do well on behalf of the
24 customers and to continue to operate in an open manner with good customer service.

25
26 ⁶ A.A.C. R14-2-803.C provides as follows:

27 At the conclusion of any hearing on the organization or reorganization of a utility holding company, the
28 Commission may reject the proposal if it determines that it would impair the financial status of the
public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the
ability of the public utility to provide safe, reasonable and adequate service.

1 62. The City of Surprise has no opposition to the proposed transaction.

2 63. RUCO states that Arizona-American has met the Rule 803 standard for the proposed
3 transaction, including both financial criteria and the public interest standard, subject to its proposed
4 conditions, discussed below.

5 64. Staff recommends approval of the proposed transaction, subject to its proposed
6 conditions, discussed below.

7 **Proposed Conditions on Approval**

8 65. RUCO recommends approval of the reorganization subject to two conditions:

9 (1) that no acquisition costs related to the transfer of ownership between American Water
10 and EPCOR USA be passed on to Arizona ratepayers; and

11 (2) that no acquisition premium (i.e. the difference between EPCOR USA's purchase
12 price of Arizona-American's outstanding and issued shares of common stock and the
13 book value of Arizona-American at the time the transaction is finalized) be recovered
14 by EPCOR USA in any future rate case decisions.

15 66. Staff recommends approval of the reorganization, subject to the following conditions:

16 (1) that since EPCOR USA is relatively new to Arizona and has a number of affiliates,
17 Arizona-American be put on notice that it and its affiliates must cooperate fully with
18 Staff, subject to reasonable opportunities to object, in any future inquiries or requests
19 for information and/or documents regarding any transactions that Staff determines
20 might have some effect, direct or indirect, on Arizona-American's operational or
21 financial health;

22 (2) that Arizona-American be ordered to refrain from seeking an acquisition adjustment
23 due to this transaction in any future rate case and that existing unamortized acquisition
24 premium reflected on the books of the Company be included in the calculation of the
25 acquisition premium arising from transaction proposed in this proceeding;

26 (3) that Arizona-American be ordered to maintain its quality of service, including, but not
27 limited to, that the number of service complaints should not increase, that the response
28 time to service complaints should not increase, and that service interruptions should
29 not increase as a result of the reorganization;

30 (4) that Arizona-American be ordered to file, within 90 days of finalizing the terms of any
31 replacement long term debt for current short term debt, the details of the replacement
32 long term debt and that Staff be ordered to file a Staff Report and Recommendation
33 for Commission consideration regarding the replacement long term debt;

34 (5) that Arizona-American be ordered to file an application requesting authorization to
35 incur long term debt in the event that Arizona-American incurs any additional debt or
36 any debt with its affiliates including but not limited to EPCOR, the terms of which are
37 not substantially identical to those reflected in existing debt between Arizona-
38 American and American Water Capital Corp.; and

39 (6) that Arizona-American be required to maintain an equity position of at least its present

level of 38.0 percent of its total capitalization.

1
2 67. Staff further recommends that Arizona-American be authorized to assume debt with
3 unaffiliated parties to reflect amounts and terms that are substantially identical to those that presently
4 exist between Arizona-American and unaffiliated parties.

5 68. Mr. Hazine does not object to the proposed transaction, subject to the condition that
6 Arizona-American be required to refrain from implementing any wholesale personnel changes, such
7 as outsourcing an entire operating division, for a period of 18 months following this Decision.

8 69. EPCOR USA's witness testified that Arizona-American will not seek recovery of an
9 acquisition premium in rates. The witness further clarified that Arizona-American will not seek
10 recovery of the acquisition premium that remains on Arizona-American's books dating back to its
11 purchase by American Water from Citizens Utilities.

12 70. EPCOR USA's witness testified that it agrees with RUCO's position that no
13 acquisition costs related to the transfer of ownership between American Water and EPCOR USA will
14 be passed on to Arizona ratepayers.

15 71. Arizona-American's witness testified that Arizona-American does not object to the
16 spirit of Staff's proposed condition number 1, but wishes to ensure that it does not waive any of its
17 legal rights to object to inquiries or requests for information and argue for confidentiality as
18 appropriate.

19 72. Arizona-American's witness testified that Arizona-American takes its commitment to
20 customer service very seriously, and believes that its service quality as a result of the proposed
21 transaction will be the same or better than that it provides at this time. The witness stated that
22 Arizona-American does not object to the spirit of Staff's proposed condition number 3, but would
23 like the condition to be limited to changes in service quality as a result of the proposed transaction.

24 73. EPCOR USA's witness testified that the reorganization is not planned to result in any
25 change to Arizona-American's capital structure.

26 74. EPCOR USA's witness testified that he is comfortable with the Staff conditions
27 related to debt replacement. American Water Capital Corp. currently holds long term debt for
28 Arizona-American. EPCOR USA's witness testified that when the proposed transaction closes, the

1 debt will no longer be held by American Water Capital Corp. Debt will be issued by either EPCOR
2 or EPCOR Water to replace the existing long term debt, on terms and conditions no worse than the
3 current debt. EPCOR USA's witness testified that at the time the current short term debt is replaced
4 with long term debt, EPCOR USA will endeavor to have it replaced it at the same rate as the current
5 long term debt.

6 75. EPCOR USA does not object to Mr. Hazine's proposed condition.

7 **Public Notice of the Proposed Transaction**

8 76. At the telephonic procedural conference held on August 3, 2011, Arizona-American
9 brought a public noticing error to the attention of the Commission. The publication of notice in
10 Arizona-American's service territories was accomplished as ordered by the March 28, 2011
11 Procedural Order, but many customers in the Agua Fria district did not receive a notice in their bills.
12 At the hearing, Arizona-American's witness testified that the public noticing error occurred when an
13 employee of American Water Works Service Company, Inc., an Arizona-American affiliate, selected
14 the wrong group of customers from Arizona-American's billing system to receive the notice as a bill
15 insert. While the initial public notice mailing included all the customers in the Town of Paradise
16 Valley, Anthem, Sun City, Sun City West, Mohave, Havasu and Tubac districts, there was a problem
17 in the Agua Fria district. The problem occurred when the employee was selecting customer groups
18 from the Arizona-American billing system for the public notice mailing.

19 77. The City of Surprise contracts with another affiliate of Arizona-American, American
20 Water Enterprises, Inc., for billing services for the City's residents who receive their water from the
21 City of Surprise. The American Water Works Service Company, Inc. employee handling the mailing
22 of public notice of this proceeding to Arizona-American customers attempted to exclude those City
23 of Surprise residents who are not Arizona-American customers from receiving the public notice.
24 However, instead of excluding just those City of Surprise customers from the mailing, the employee
25 erroneously excluded a large number of Arizona-American customers who are located in the Agua
26 Fria district. As a result, Arizona-American failed to include billing inserts in those customers' bills
27 notifying them of this proceeding. Arizona-American's witness testified that once it became aware of
28 the failure to notify some Agua Fria district customers, it notified the Commission.

1 78. Following the telephonic procedural conference on August 3, 2011, Arizona-American
2 sent out public notices by first class mail to all its Agua Fria Water district customers.

3 79. On August 19, 2011, Arizona-American filed proof that the additional mailed notice
4 was accomplished.

5 80. Arizona-American's witness testified that subsequent to the notification failure,
6 Arizona-American has implemented a way to have better communications between the billing team
7 and the local team, and has put new internal controls in place to ensure that such a failure to provide
8 public notice does not reoccur. Such internal controls include a requirement for the billing team to
9 confirm the customer list with the local rates team before sending out a customer notice mailing, and
10 performing an annual audit of the customer list to ensure that the list is signed off on annually by
11 different parts of the business. Arizona-American's witness also testified that Arizona-American has
12 discussed the matter with EPCOR USA, and that it is committed to avoiding such a notification error
13 in the future.

14 81. EPCOR USA's witness testified that EPCOR USA will undertake all efforts necessary
15 to ensure that the noticing failure will not happen again. EPCOR USA may contract with American
16 Water Services Corporation for billing and accounting services during a transition to a new system
17 for Arizona-American, but beyond the transition period, American Water Services Corporation will
18 not provide any services to Arizona-American.

19 82. In addition to mailing and publishing notice, Arizona-American made an effort to
20 inform communities in its service territories of the proposed transaction. Arizona-American issued
21 press releases, and sent out approximately 150 letters to elected officials and other key stakeholders.
22 Arizona-American held community open houses in Verrado, at its White Tanks Plant, and at its Sun
23 City office, where it had information available on the proposed transaction.

24 83. EPCOR USA also hosted a number of information sessions across the state, in Lake
25 Havasu, Bullhead City, Tubac, Sun City, Sun City West, Verrado, and Paradise Valley/Scottsdale.

26 **Conclusions**

27 84. Arizona-American requests approval of the proposed transaction pursuant to Rule 803.
28 The Notice provides the information required by Rule 803.

1 85. Arizona-American has presented evidence that the proposed transaction will not
2 impair Arizona-American's ability to provide safe, reasonable and adequate service to its customers;
3 will not cause any change in the manner in which Arizona-American will be operated; will not impair
4 Arizona-American's financial status; will not have a direct impact on Arizona-American's cost of
5 providing utility service; and will not prevent Arizona-American from attracting capital at fair and
6 reasonable rates.

7 86. Based on the evidence presented, we find that the proposed transaction will not impair
8 the financial status of Arizona-American, otherwise prevent it from attracting capital at fair and
9 reasonable terms, or impair its ability to provide safe, reasonable and adequate service.

10 87. It is in the public interest to approve the reorganization as set forth in the Notice,
11 subject to the following conditions:

- 12 (1) no acquisition costs related to the transfer of ownership between American Water and
13 EPCOR USA shall be passed on to Arizona ratepayers;
- 14 (2) no acquisition premium (i.e. the difference between EPCOR USA's purchase price of
15 Arizona-American's outstanding and issued shares of common stock and the book
16 value of Arizona-American at the time the transaction is finalized, plus the
17 unamortized balance of the existing acquisition premium on the books of the
18 Company at the time of closing) shall be recovered by EPCOR USA in any future rate
19 case decisions;
- 20 (3) Arizona-American and its new affiliates shall cooperate fully with Staff, subject to
21 reasonable opportunities to object, in any future inquiries or requests for information
22 and/or documents regarding any transactions that Staff determines might have some
23 effect, direct or indirect, on Arizona-American's operational or financial health;
- 24 (4) Arizona-American shall maintain its quality of service, including, but not limited to
25 the following quality of service measurements: the number of service complaints shall
26 not increase as a result of the reorganization, the response time to service complaints
27 shall not increase as a result of the reorganization, and service interruptions shall not
28 increase as a result of the reorganization;
- (5) within 90 days of finalizing the terms of any replacement long term debt for current
 short term debt, Arizona-American shall file the details of the replacement long term
 debt so that Staff can file a Staff Report and Recommendation for Commission
 consideration regarding the replacement long term debt;
- (6) Arizona-American shall file an application requesting authorization to incur long term
 debt in the event that Arizona-American incurs any additional debt or any debt with its
 affiliates including but not limited to EPCOR, the terms of which are not substantially
 identical to or better than those reflected in existing debt between Arizona-American
 and American Water Capital Corp.;
- (7) Arizona-American shall maintain an equity position of at least its present level of 38.0

percent of its total capitalization; and

(8) Arizona-American shall not implement any wholesale personnel changes, such as outsourcing an entire operating division, for a period of 18 months following this Decision.

88. Arizona-American should be authorized to assume debt with unaffiliated parties to reflect amounts and terms that are substantially identical to those that presently exist between Arizona-American and unaffiliated parties.

89. Arizona-American should be authorized to replace the current debt extended by American Water or American Water Capital Corp. with debt extended by EPCOR under substantially identical or better terms.

90. Arizona-American is in compliance with local and state regulatory requirements.

91. Arizona-American is current on all property taxes.

CONCLUSIONS OF LAW

1. Arizona-American is a public service corporation within the meaning of Article 15, Section 3 of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

2. The Commission has jurisdiction over Arizona-American and the subject matter of the Notice, pursuant to Article 15, Section 3 of the Arizona Constitution and the Commission's Affiliated Interests Rules, A.A.C. R14-2-801 through 806.

3. Pubic notice of the Notice was given in accordance with Arizona law.

4. The public interest requires that the Commission apply the Affiliated Interests Rules in a manner that will maximize protection to ratepayers.

5. Approval of the proposed transaction would serve the public interest only if the conditions set forth and discussed herein are imposed to provide adequate protection to ratepayers.

6. It is in the public interest to approve the proposed transaction subject to compliance with the conditions set forth and discussed herein.

7. It is in the public interest to authorize Arizona-American to assume debt with unaffiliated parties to reflect amounts and terms that are substantially identical to those that presently exist between Arizona-American and unaffiliated parties.

8. It is in the public interest to authorize Arizona-American to replace the current debt

1 extended by American Water or American Water Capital Corp. with debt extended by EPCOR under
2 substantially identical or better terms.

3 9. Pursuant to A.A.C. R14-2-801 *et seq.*, the proposed transaction will not impair the
4 financial status of the public utility, otherwise prevent it from attracting capital at fair and reasonable
5 terms, or impair the ability of the public utility to provide safe, reasonable and adequate service.

6 10. The transaction proposed in the Notice, with the conditions set forth and discussed
7 herein, is reasonable and in the public interest and should be approved.

8 **ORDER**

9 IT IS THEREFORE ORDERED that the transaction proposed in the Notice is hereby
10 approved, as a reorganization of a holding company pursuant to A.A.C. R14-2-803, subject to the
11 conditions set forth in Findings of Facts No. 87.

12 IT IS FURTHER ORDERED that Arizona-American Water Company shall, within thirty
13 days of the close of the transaction, in a form approved by the Commission's Utilities Division,
14 notify its customers of the change in ownership of the utility, and shall file, as a compliance item in
15 this docket, proof of such customer notice.

16 IT IS FURTHER ORDERED that Arizona-American Water Company shall, at least thirty
17 days prior to any change in the customer billing system, notify its customers of the impending
18 change. The customer notice shall include at a minimum both a telephone number and a website
19 address by which customers may contact the utility to seek answers to any questions they may have
20 about the billing system change.

21 IT IS FURTHER ORDERED that within 90 days of Arizona-American Water Company's
22 filing of the details of replacement of current short term debt with new long term debt, the
23 Commission's Utilities Division shall file a Staff Report and Recommendation for Commission
24 consideration regarding the replacement long term debt.

25 IT IS FURTHER ORDERED that Arizona-American Water Company is hereby authorized to
26 assume debt with unaffiliated parties to reflect amounts and terms that are substantially identical to
27 those that presently exist between Arizona-American Water Company and unaffiliated parties.

28 ...

IT IS FURTHER ORDERED that Arizona-American Water Company is hereby authorized to replace the current debt extended by American Water or American Water Capital Corp. with debt extended by EPCOR under substantially identical or better terms.

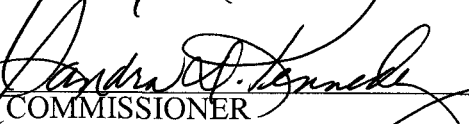
IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN

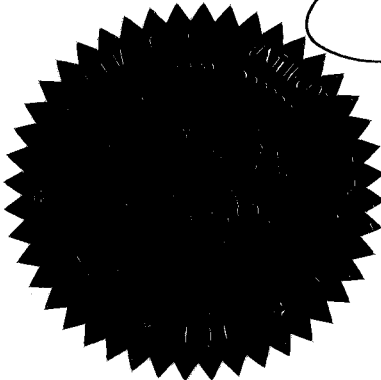

COMMISSIONER

EXCUSED
COMM. NEWMAN

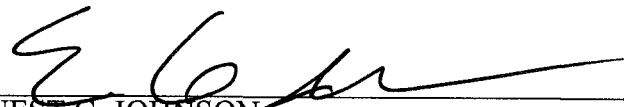

COMMISSIONER

COMMISSIONER


COMMISSIONER



IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 17th day of November 2011.


ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: ARIZONA-AMERICAN WATER COMPANY

2 DOCKET NO.: W-01303A-11-0101

3 Thomas H. Campbell
Michael T. Hallam
4 LEWIS AND ROCA, LLP
40 N. Central Avenue
5 Phoenix, AZ 85004
Attorneys for Arizona-American Water Co.

6 Daniel Pozefsky, Chief Counsel
7 RUCO
1110 W. Washington, Suite 220
8 Phoenix, AZ 85007

9 Robert Rials, President
CORTE BELLA COUNTRY CLUB
ASSOCIATION, INC.
10 22155 North Mission Drive
Sun City West, AZ 85375

11 Jay L. Shapiro
12 Patrick J. Black
FENNEMORE CRAIG, PC
13 3003 N. Central Ave., Suite 2600
Phoenix, AZ 85012
14 Attorneys for EPCOR Water (USA) Inc.

15 Andrew M. Miller, Town Attorney
TOWN OF PARADISE VALLEY
6401 E. Lincoln Drive
16 Paradise Valley, AZ 85253

17 Maher M. Hazine
39506 N. Daisy Mountain Dr. Suite 122-488
18 Anthem, AZ 85086

19 Jim Gruber
City Attorney's Office
20 CITY OF SURPRISE
16000 N. Civic Center Dr.
21 Surprise, AZ 85374

22 Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
23 1200 West Washington Street
Phoenix, AZ 85007-2927

24 Steven Olea, Director
Utilities Division
25 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
26 Phoenix, AZ 85007-2927

EXHIBIT A**EPCOR Utilities Inc.
Corporate Organization
Chart**