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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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JAN 17 2012

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AZ CORP COMMISSION  
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7 IN THE MATTER OF THE APPLICATION )  
8 OF ARIZONA-AMERICAN WATER )  
9 COMPANY, AN ARIZONA )  
10 CORPORATION, FOR A )  
11 DETERMINATION OF THE CURRENT )  
12 FAIR VALUE OF ITS UTILITY PLANT )  
AND PROPERTY AND FOR INCREASES )  
THEREON FOR UTILITY SERVICE BY )  
ITS ANTHEM WATER DISTRICT AND )  
ITS SUN CITY WATER DISTRICT. )

DOCKET NO. W-01303A-09-0343

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14 OF ARIZONA-AMERICAN WATER )  
15 COMPANY, AN ARIZONA )  
16 CORPORATION, FOR A )  
17 DETERMINATION OF THE CURRENT )  
18 FAIR VALUE OF ITS UTILITY PLANT )  
19 AND PROPERTY AND FOR INCREASES )  
THEREON FOR UTILITY SERVICE BY )  
ITS ANTHEM/AGUA FRIA )  
WASTEWATER DISTRICT, ITS SUN CITY )  
WASTEWATER DISTRICT AND ITS SUN )  
CITY WEST WASTEWATER DISTRICT. )

DOCKET NO. SW-01303A-09-0343

ANTHEM COMMUNITY  
COUNCIL'S INITIAL POST  
HEARING BRIEF  
(DECONSOLIDATION)

20 The Anthem Community Council ("Anthem") hereby submits its Initial Post-  
21 Hearing Brief (Deconsolidation).

22  
23 I. BACKGROUND

24  
25 This phase of the above-docketed proceedings was intended to determine how, not  
26 whether, to deconsolidate the Anthem/Agua Fria Wastewater District.

27 By way of background, on July 2, 2009, Arizona-American Water Company  
28 ("AAWC" or the "Company") filed a rate case application requesting, among other things,

1 that the Arizona Corporation Commission (the "Commission") allow an increase in water  
2 rates for its customers residing within the Anthem Water District of approximately 100%  
3 and an increase in wastewater rates for its customers residing within the Anthem/Agua Fria  
4 Wastewater District of approximately 82%, based on a calendar 2008 test year.<sup>1</sup> A  
5 substantial portion of the proposed increases arose from certain refund payments (the  
6 "Disputed Refund Payments") made by AAWC to Pulte Corporation pursuant to an  
7 Agreement for the Villages At Desert Hills Water/Wastewater Infrastructure, dated  
8 September 28, 1997, between Citizens Water Resources, as predecessor in interest to  
9 AAWC, and Del Webb Corporation, as predecessor in interest to Pulte, as amended.<sup>2</sup> In  
10 order to resolve significant legal and equitable issues resulting from (i) AAWC's proposed  
11 immediate ratemaking recognition of the Disputed Refund Payments and (ii) Anthem's  
12 alternative proposed revenue transition plan to mitigate the consequent rate shock, during  
13 the Open Meeting on December 15, 2010, then Chairman Mayes invited all of the parties<sup>3</sup>  
14 to meet and attempt to reach a global settlement of these and other open disputes.<sup>4</sup> Several  
15 parties thereafter gathered in the hallway and went to the Utilities Division's conference  
16 room to negotiate the various issues.

17 When the Open Meeting resumed consideration of AAWC's rate request later that  
18 same day, Mr. Thomas Broderick of AAWC summarized the "critical" provisions of the  
19 two-page settlement agreement which has been reached as "one overall package that the  
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21 <sup>1</sup> Application of Arizona-American Water Company filed July 2, 2009. In Decision No. 72047, dated January 6, 2011, the  
22 Commission ultimately authorized an 82% increase in water rates for the Company's customers residing within the Anthem Water  
23 District and a 61% increase in wastewater rates for the Company's customers residing within the Anthem/Agua Fria Wastewater  
24 District. In that regard, see AAWC's Final Rate Design Schedules.

25 <sup>2</sup> Direct Testimony of Dan L. Neidlinger, [Phase I] Exh. Anthem-1 at 3-4. The Disputed Refund Payments included a March 2007  
26 \$3.1 million refund payment and a March 2008 \$20.2 million refund payment.

27 <sup>3</sup> See Cross-Examination of Thomas Broderick, [Deconsolidation] Tr. 272:15-17 ("Any party to the case at that point could have  
28 joined. The door was open. Any party in the room was welcome in there.")

<sup>4</sup> See Chairman Kristin K. Mayes, *et. al.*, [Open Meeting] Tr. 198:11-202:7. Commissioner Pierce, Commissioner Newman, and  
Commissioner Kennedy also voiced support for a settlement among the parties. *See id.*

1 parties have agreed to”<sup>5</sup> in order to effect a “full and complete resolution”<sup>6</sup> of the issues  
2 related to ratemaking recognition of the Disputed Refund Payments. From Anthem’s  
3 perspective, one of the critical objectives of the settlement negotiations and agreement was  
4 immediate deconsolidation of the Anthem/Agua Fria Wastewater District and the related  
5 establishment of stand-alone rates for the resulting Anthem and Agua Fria wastewater  
6 districts. However, the negotiating parties recognized that the Commission did not then  
7 have the requisite data necessary to immediately determine and implement appropriate  
8 stand-alone rates. Therefore, the parties agreed to request that the docket remain open in  
9 order to allow the Company to file the data necessary for “initiation of the Anthem/Agua  
10 Fria deconsolidation proceeding”<sup>7</sup>.

11 After a lengthy discussion and consideration of the settlement agreement<sup>8</sup>, the  
12 Commission voted unanimously to approve the following language for inclusion in its  
13 opinion and order:

14 “Good public policy requires the Commission to correctly assign  
15 cost responsibility for all ratemaking components in as expeditious a  
16 manner as possible, and deconsolidation of Anthem/Agua Fria  
17 Wastewater District is consistent with such action. However, the  
18 record does not include adequate rate base or operating income  
19 information to immediately implement stand-alone rate designs for  
20 the resulting Anthem Wastewater district and Agua Fria Wastewater  
21 district at this time. Therefore, we will (i) approve the rates adopted  
22 herein for Anthem/Agua Fria Wastewater district as a consolidated  
23 district on an interim basis, and (ii) order the docket in the instant

24 <sup>5</sup> Thomas Broderick, [Open Meeting] Tr. 205:11-13.

25 <sup>6</sup> Thomas Broderick, [Open Meeting] Tr. 206:19-21.

26 <sup>7</sup> *Id.* at 205:19-24.

27 <sup>8</sup> Discussion of the settlement agreement appears at [Open Meeting] Tr. 202:10-247:4.



1 December 15, 2010 Open Meeting understood that achieving deconsolidation of the  
2 Anthem/Agua Fria Wastewater District in a timely fashion was vital to Anthem's  
3 willingness to support final settlement of the contentious legal and equitable issues  
4 involving the Disputed Refund Payments. At that time, Mr. Lawrence V. Robertson, Jr.  
5 explained to the Commissioners that Anthem's counsel were authorized "to support this  
6 settlement as a complete package" and to forego continuing to press Anthem's compelling  
7 arguments against recognizing the Disputed Refund Payments for ratemaking purposes,  
8 because of the gains that Anthem would make in other areas under the settlement  
9 agreement.<sup>10</sup> More specifically, Mr. Robertson stated that even if the Commission  
10 thereafter ordered company-wide consolidation at some future date, deconsolidation of the  
11 Anthem/Agua Fria Wastewater District in the interim, even if just for few years, was (i) a  
12 worthy objective, (ii) very important to the Anthem community, and (iii) an interrelated  
13 part of the complete settlement deal.<sup>11</sup> Subsequently, Mr. Broderick similarly recalled  
14 Anthem's request for deconsolidation was "an absolutely adamant position by the Anthem  
15 Community Council. We would not have reached a settlement that afternoon had we not  
16 agreed to provide the information in support of a deconsolidation proceeding."<sup>12</sup>

17 Not only did the Commission and the parties who chose to participate in the  
18 settlement discussions fully understand the importance of the deconsolidation provisions  
19 vis-à-vis the global settlement, they also universally accepted the global settlement. In  
20 addition to the Company and Anthem, Staff and RUCO commented during the Open  
21 Meeting that the settlement presented a balanced approach to solving the various open  
22 disputes.<sup>13</sup> Similarly, the Commission, which possessed the full power and authority to

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23 <sup>10</sup> Lawrence V. Robertson, Jr., [Open Meeting] Tr. 208:1-8.

24 <sup>11</sup> *Id.* at 218:23-219:10.

25 <sup>12</sup> Cross-Examination of Thomas Broderick, [Deconsolidation] Tr. 184:21-25.

26 <sup>13</sup> See Daniel Pozefsky, [Open Meeting] Tr. 210:9-9 ("And we think this presents a fair and balanced proposal to address the issues  
27 that the ROO raised."); and see Maureen Scott, [Open Meeting] Tr. 210:17-21 ("... we believe that the amendment appropriately  
28 balances the shareholders' and ratepayers' interests.")

1 reject any portion or all of the settlement agreement, instead adopted the substance of the  
2 agreement in its entirety and expressly supported deconsolidation of the Anthem/Agua Fria  
3 Wastewater District as a policy matter.<sup>14</sup>

4 In that regard, it is clear from the record that the Commission envisioned  
5 deconsolidation as the ultimate regulatory result, and only intended the instant phase of the  
6 proceeding to be used to compile information sufficient for purposes of the design and  
7 implementation of stand-alone rates for an Anthem wastewater district and an Agua Fria  
8 wastewater district.<sup>15</sup> The Commission now has the necessary data for that purpose.  
9 Accordingly, the Commission should order deconsolidation of the Anthem/Agua Fria  
10 Wastewater District at this time, in order to completely realize the purpose and intent of the  
11 settlement agreement as subsumed in Decision No. 72047. It would be patently unfair for  
12 the Commission to deny deconsolidation and thereby prevent Anthem from realizing that  
13 settlement objective which was intended by the settling parties and approved by the  
14 Commission.

15 **B. Continued consolidation of the Anthem/Agua Fria Wastewater District**  
16 **would be inconsistent with cost of service ratemaking principles and is contrary to**  
17 **good public policy.**

18 Cost of service is the single most important criterion in the development of fair and  
19 reasonable revenues and related rates for a utility in a regulated environment.<sup>16</sup> Cost of  
20 service as a basis for rate design provides a reasonably objective and legitimate framework  
21 by which to set a rate or a price and is the “very essence of rate design.”<sup>17</sup> Current rates for

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22 <sup>14</sup> “Good public policy requires the Commission to correctly assign cost responsibility for all ratemaking components in as  
23 expeditious a manner as possible, and deconsolidation of Anthem/Agua Fria Wastewater District is consistent with such action.”  
24 Decision No. 72047, dated January 6, 2011 at 84. Commissioner Pierce described the provision of the settlement agreement  
25 requesting deconsolidation as “brilliant.” See [Open Meeting] Tr. 218:12-13.

26 <sup>15</sup> Decision No. 72047, dated January 6, 2011 at 84. See also Chairman Mayes’ recognition that the Commission was supporting  
27 deconsolidation in this particular situation. [Open Meeting Tr. 217:14-22 and 219:19-21.

28 <sup>16</sup> Direct Testimony of Dan L. Neidlinger Anthem/Agua Fria Wastewater District Deconsolidation, Exh. Anthem-1 at 2.

<sup>17</sup> See Redirect Examination of William Rigsby, [Deconsolidation] Tr. 566:1-.567:8.

1 the consolidated Anthem/Agua Fria Wastewater District are not based on cost of service  
2 and therefore do not “correctly assign cost responsibility for all ratemaking components”<sup>18</sup>.  
3 At present rates, on a stand-alone basis, the Anthem wastewater district would provide a  
4 rate of return on rate base of approximately 12.5%.<sup>19</sup> Similarly, on a stand-alone basis, the  
5 Agua Fria wastewater district would provide a slightly negative rate of return on rate  
6 base.<sup>20</sup> The result is a very wide disparity in returns generated by each of the proposed  
7 wastewater districts, confirming the underlying need for deconsolidation of the  
8 Anthem/Agua Fria Wastewater District. On a deconsolidated basis, based on the  
9 Company’s Statements and Schedules, over \$2.4 million of the revenue responsibility  
10 would be transferred from Anthem to Agua Fria, thereby terminating a significant annual  
11 subsidy currently paid by Anthem wastewater customers to Agua Fria wastewater  
12 customers.<sup>21</sup>

13 Anthem recognizes that noncost considerations can be considered in connection with  
14 ratemaking in some instances. However, in this instance, the Commission cannot easily  
15 shove the aforesaid \$2.4 million annual subsidy under the rug based upon noncost  
16 considerations.<sup>22</sup> The magnitude of the subsidy is just too great.

17 **C. The substantial subsidy being provided by the Anthem wastewater  
18 ratepayers to the Agua Fria wastewater ratepayers is unfair and unreasonable.**

19 Without a reasonably objective and legitimate framework like cost of service by  
20 which to set a rate or a price, fairness depends entirely on the perspective of the various

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21 <sup>18</sup> Decision No. 72047, dated January 6, 2011 at 84.

22 <sup>19</sup> Direct Examination of Dan Neidlinger, [Deconsolidation] Tr. 289:4-6.

23 <sup>20</sup> *Id.* at 289:6-12.

24 <sup>21</sup> The \$2.4 million revenue shift from the Anthem wastewater customers to the Agua Fria wastewater customers represents 18%  
25 of the combined revenue requirement of \$13.3 million authorized in Decision No. 72047. Direct Testimony of Dan L. Neidlinger  
Anthem/Agua Fria Wastewater District Deconsolidation, Exh. Anthem-1 at 4.

26 <sup>22</sup> Direct Examination of Dan L. Neidlinger, [Deconsolidation] Tr. 288:23-289:3. \$2.4 million represents the increase over today's  
27 revenues to the proposed stand-alone Agua Fria wastewater district and the corresponding decrease to the proposed stand-alone  
28 Anthem wastewater district. Redirect Examination of Dan L. Neidlinger, [Deconsolidation] Tr. 633:9-12.

1 parties. From Anthem's perspective, requiring Anthem wastewater customers to provide a  
2 massive \$2.4 million subsidy to the Agua Fria wastewater customers indefinitely<sup>23</sup> is unfair  
3 and unreasonable. Anthem's wastewater infrastructure is self-contained and designed to  
4 serve all of Anthem's wastewater needs, and only Anthem's needs. It is neither physically  
5 connected nor geographically close to any of the treatment facilities owned by the  
6 Company to serve Agua Fria wastewater customers.<sup>24</sup> However, under present rates,  
7 Anthem's wastewater customers are required to provide a return on the Company's  
8 Northwest Treatment Plant ("Northwest Plant") which they do not and cannot use. On a  
9 consolidated basis, Anthem shoulders a large portion of the estimated \$1.9 million<sup>25</sup>  
10 revenue requirement of the Northwest Plant. This is unfair to the Anthem wastewater  
11 customers, particularly where there have been few, if any, other articulated benefits to  
12 Anthem ratepayers directly resulting from the consolidation of the Anthem/Agua Fria  
13 Wastewater District. On a deconsolidated basis, the Agua Fria wastewater district, which is  
14 serviced by the Northwest Plant, would be responsible for 100% of the allocated revenue  
15 requirement associated with this plant.

16 Clearly, Anthem wastewater ratepayers have been subsidizing Agua Fria wastewater  
17 ratepayers under consolidated rates and would continue to do so for the foreseeable future  
18 if the consolidated rate structure is retained. Anthem recognizes that the deconsolidation

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19 <sup>23</sup> Some of the Agua Fria intervenors (*i.e.*, DMB White Tank LLC ("White Tank"), the Verrado Community Association  
20 ("Verrado"), Russell Ranch Homeowners' Association ("Russell Ranch") and Corte Bella Country Club Association ("Corte Bella")  
21 and, collectively, the "Agua Fria Intervenors") have argued that deconsolidation is premature since the Commission has ordered the  
22 Company to present a Company-wide consolidation proposal in a future (but not necessarily the next) rate case. However, the full  
23 record in the above-captioned docket indicates that company-wide consolidation of all of the Company's water and wastewater  
24 districts is not imminent. In that regard, the Commission, merely one year ago, rejected multiple consolidation scenarios in an  
25 earlier phase of this proceeding, based, in part, on wide variances in cost of service among the Company's districts for both water  
and wastewater service. These cost of service variances remain today. Further, though the Company has been ordered to present a  
company-wide consolidation proposal in a future (but not necessarily the next) rate case, that rate case may be years away. Even  
then, there is no guarantee that the Commission will approve consolidation at that time, particularly because the composition of the  
Commission could be substantially different after the 2012 elections. Thus, it is literally impossible to predict when or how a future  
Commission may view the subject of company-wide rate consolidation.

26 <sup>24</sup> Direct Testimony of Dan L. Neidlinger Anthem/Agua Fria Wastewater District Deconsolidation, Exh. Anthem-1 at 3.

27 <sup>25</sup> Revenue requirement estimate per Company Response to Anthem Data Request 1.2.

1 contemplated by Decision No. 72047 entails a significant transfer of revenue responsibility  
2 from Anthem to Agua Fria. That is precisely why Anthem agreed to continue to subsidize  
3 Agua Fria wastewater customers on an interim (and declining) basis through the final step  
4 of Mr. Neidlinger's proposed revenue transition plan discussed below. However, asking  
5 Anthem to continue to pay the \$2.4 million annual subsidy for an indefinite period of time  
6 is unfair and unreasonable; and, any suggestions to the contrary should be rejected by the  
7 Commission.

8 Having experienced rate shock resulting from the implementation of the phased-in  
9 water and wastewater rates set forth in Decision No. 72047, Anthem is sensitive to the  
10 Agua Fria Intervenors' concerns regarding the attendant rate shock of deconsolidation.<sup>26</sup>  
11 Therefore, in order to mitigate the rate shock for Agua Fria wastewater customers resulting  
12 from deconsolidation, Mr. Neidlinger, on behalf of Anthem, has proposed a three-step  
13 revenue and rate transition plan to be implemented over a period of three (3) years.<sup>27</sup>  
14 Under his plan, annual adjustments of approximately \$800,000 would be made to  
15 progressively increase Agua Fria's rates and reduce Anthem's rates. The Company would  
16 remain whole since there would be no change in overall revenue levels. In that regard, the  
17 revenue impact on Anthem and Agua Fria under each step is shown on Anthem Exhibit  
18 Anthem 21.<sup>28</sup> As discussed by Mr. Neidlinger during his testimony at the deconsolidation  
19 hearing, adjustments would be made to currently approved revenue levels rather than the  
20 test year revenue levels shown in the Company's deconsolidation filing.<sup>29</sup> For the Anthem  
21 wastewater district, class revenues would be reduced by 9.12% in Step 1, 10.03% in Step 2

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22 <sup>26</sup> See Redirect Examination of William Rigsby [Deconsolidation] Tr. 565:9-18 (stating that even if the Commission orders  
23 deconsolidation, and if the Commission adopts Mr. Neidlinger's revenue transition plan, Anthem's rate will still remain elevated).

24 <sup>27</sup> Direct Testimony of Dan L. Neidlinger Anthem/Aqua Fria Wastewater District Deconsolidation, Exh. Anthem-1 at 5.

25 <sup>28</sup> The rates in Anthem Exhibit 21 are based upon the Staff's proposed rates, adopted by the Company, as shown on Exhibit A-2.  
26 Recalled Direct Examination of Dan L. Neidlinger [Deconsolidation] Tr. 629:19-630:13.

27 <sup>29</sup> Mr. Neidlinger's detailed discussion of his revenue transition plan is set forth at Recalled Direct Examination of Dan L.  
28 Neidlinger [Deconsolidation] Tr. 628:11-634:5.

1 and 11.15% in Step 3.<sup>30</sup> Agua Fria wastewater district class revenues would be increased  
2 by 20.95% in Step 1, 17.32% in Step 2 and 14.77% in Step 3.<sup>31</sup> Equal percentage  
3 adjustments would be applied to each customer class. No upward or downward adjustment  
4 is proposed for effluent revenues. While the Agua Fria Intervenors object to  
5 deconsolidation, some acknowledge that a revenue transition plan would be preferable in  
6 the event that the Commission orders deconsolidation.<sup>32</sup> Accordingly, the Commission  
7 should not deny deconsolidation simply because there would be some resulting rate shock.  
8 The current situation is both contrary to good public policy and unfair to Anthem  
9 wastewater ratepayers. Thus, it must be corrected, and corrected now.

### 10 **III. CONCLUSION**

11  
12 For the reasons discussed above, and based upon the entire record in the instant  
13 proceeding, Anthem respectfully requests the Commission to enter an opinion and order (i)  
14 providing for the immediate deconsolidation of the Anthem/Agua Fria Wastewater District  
15 and (ii) adopting stand-alone rates for the resulting Anthem wastewater district and Agua  
16 Fria wastewater district, utilizing Mr. Neidlinger's revenue transition plan. Such action by  
17 the Commission would implement its position, expressed merely a year ago that: "Good  
18 public policy requires the Commission to correctly assign cost responsibility for all  
19 ratemaking components in as expeditious a manner as possible, and deconsolidation of  
20 Anthem/Agua Fria Wastewater District is consistent with such action."<sup>33</sup>

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23 <sup>30</sup> Direct Testimony of Dan L. Neidlinger Anthem/Aqua Fria Wastewater District Deconsolidation, Exh. Anthem-1, Exhibit DLN-1.

24 <sup>31</sup> *Id.* at Exhibit DLN-2.

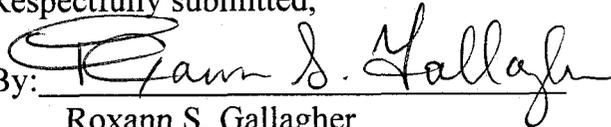
25 <sup>32</sup> Cross-Examination of Melinda Gulick, [Deconsolidation] Tr. 356:12-20; Cross-Examination of Kent Simer [Deconsolidation] Tr. 360:10-17.

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27 <sup>33</sup> Decision No. 72047 at 84.  
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DATED this 17th day of January 2012.

Respectfully submitted,

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