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Arizona Corporation Commission
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8 BEFORE THE ARIZONA CORPORATION COMMISSION

9 COMMISSIONERS:

10 GARY PIERCE, Chairman
11 SANDRA D. KENNEDY
12 PAUL NEWMAN
13 BOB STUMP
14 BRENDA BURNS

15 IN THE MATTER OF THE APPLICATION
16 OF ARIZONA-AMERICAN WATER
17 COMPANY, AN ARIZONA
18 CORPORATION, FOR A DETERMINATION
19 OF THE CURRENT FAIR VALUE OF ITS
20 UTILITY PLANT AND PROPERTY AND
FOR INCREASES IN ITS RATES AND
21 CHARGES BASED THEREON FOR
22 UTILITY SERVICE BY ITS
ANTHEM/AGUA FRIA WASTEWATER
DISTRICT, SUN CITY WASTEWATER
DISTRICT, AND SUN CITY WEST
WASTEWATER DISTRICT.

DOCKET NOS. W-01303A-09-0343
and SW-01303A-09-0343

**CITY OF PHOENIX CLOSING
BRIEF**

**COMPLIANCE APPLICATION
TO SUPPORT CONSIDERATION
OF STAND-ALONE REVENUE
REQUIREMENTS AND RATE
DESIGNS FOR THE
ANTHEM/AQUA FRIA
WASTEWATER DISTRICT**

21 The City of Phoenix (Phoenix), through its City Attorney, Gary Verburg, by his
22 Assistant, Cynthia S. Campbell, hereby submits its Closing Brief to the hearing on the

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1 Compliance Application to Support Consideration of Stand-Alone Revenue Requirements
2 and Rate Designs for the Anthem/Aqua Fria Wastewater District, and states as follows:

3 **I. BACKGROUND**

4 From November 14 through 17, 2011, Administrative Law Judge (“ALJ”) Teena
5 Jibilian conducted a hearing regarding the issue of deconsolidation of the Anthem/Agua Fria
6 Wastewater District, which would result in two separate wastewater districts for Anthem and
7 the locations comprising the Agua Fria portion of the current wastewater district (“rate
8 hearing”). While Arizona American Water Company (“AAWC”) did not take a position on
9 deconsolidation during this hearing, it did present a rate design and schedule in a
10 Compliance Application pursuant to the Arizona Corporation Commission’s
11 (“Commission”) Decision 72047. In addition to AAWC and Commission staff (“Staff”),
12 other parties represented at the hearing were interveners Anthem Community Council
13 (“Anthem”); Residential Utility Consumer Office (“RUCO”); the Verrado Community
14 Association (“Verrado”); DMB White Tank LLC (“White Tank”); Russell Ranch
15 homeowners’ Association (“Russell Ranch”); Corte Bella Country Club Association (“Corte
16 Bella”); and Phoenix. While Phoenix takes exception to the rate schedule, it does not take a
17 position on deconsolidation.

18 Prior to the rate hearing, AAWC submitted a rate design to the Commission and the
19 parties as part of the written direct testimony and rebuttal testimony of Sandra Murrey. On
20 the first day of hearing without previous notice to the parties, AAWC struck large portions of
21 Ms. Murrey’s testimony, including the rate schedules applicable to Phoenix on
22 deconsolidation. As a substitute to the rate schedules created by Ms. Murrey and previously

1 distributed by AAWC, AAWC introduced Exhibit A-2, a rate schedule identical to that
2 previously submitted by Staff witness Gerald Becker.

3 **II. ARGUMENT**

4 **The ALJ should recommend that the Commission reexamine the Other**
5 **Wholesale User (“OWU”) interim rate applicable to the City of Phoenix based on**
6 **Decision 72047.¹**

7 In Decision 72047, the Commission clearly indicated that the rates established in the
8 Decision were interim rates, subject to change and final approval by the Commission:

9 IT IS FURTHER ORDERED that the rates approved herein for the
10 Anthem/Agua Fria Wastewater district are interim rates subject to change
11 pursuant to a Commission determination on the above-ordered filing.

12 Decision No. 72047, Page 121, Line 21-23. Moreover, the interim rates established in

13 Decision No. 72047 are not final and the ALJ may recommend a review of the interim rates
14 based on information gathered during the rate hearing. In establishing a final rate, the
15 Arizona Constitution requires that the Commission set rates which are just and reasonable:

16 “The corporation commission shall have full power to, and shall, prescribe . . . just and
17 reasonable rates and charges to be made and collected, by public service corporations within
18 the state” Ariz. Const. art. 15 § 3. The Commission’s decision must be supported by
19 substantial evidence and cannot be arbitrary. *Simms v. Round Valley Light & Power Co.*, 80
20 Ariz. 145, 154, 294 P.2d 378, 384 (1956). While it may have been the Commission’s intent
21 that the hearing address issues pertaining only to deconsolidation, evidence presented at the
22 hearing necessitates a reexamination of the interim rate established for Phoenix in Decision
72047.

1 Examination of the OWU rate established in Decision 72047 is within the scope of the
2 Commission's direction for this hearing. AAWC proposed a rate design and schedule on the
3 first day of hearing that was identical to that of Staff's witness, Gerald Becker. In fact,
4 AAWC's witnesses affirmed that AAWC was adopting the analysis of Mr. Becker, as it had
5 no other basis to propose a rate for Phoenix. Testimony of Sandra Murrey, Transcript Page
6 52, Lines 5-9. Ms. Murrey did not offer any justification for the schedules which would be
7 applicable if deconsolidation does not occur, but instead relies upon Decision 72047. *Id.* at
8 Transcript Page 49, Lines 7-11. Moreover, any analysis of the interim rates referenced in
9 Decision 72047 remains relevant to this hearing, as the Commission will determine final
10 rates based on the schedules presented and supported by evidence in this hearing. Decision
11 No. 72047, Page 121, Line 21-23.

12 During the rate hearing, testimony revealed that the OWU rate of \$5.57 per 1,000
13 gallons established in Decision No. 72047 was unsupported by any analysis of the parties,
14 and was in fact, incorrect or skewed from the rates established for other classes of customers.
15 Thomas Broderick, the Director of Rates and Regulation for AAWC, testified that the rates
16 proposed in this case, both initially and in the event of deconsolidation, were based on a cost
17 of service study conducted in a 2006 rate case. Testimony of Thomas Broderick, Transcript
18 Page 237, Lines 5-15. Mr. Broderick admitted that the rate of \$5.57 per 1,000 gallons
19 established in Decision No. 72047 was not consistent with the previous cost of service study
20 which supported proportional increases to all classes:
21

22 ¹ The acronym "OWU" has been used to mean "Other Wholesale User" or "Other Water User" in various portions of the record. The difference in terms does not essentially change the nature of the relationship between Phoenix and AAWC to the extent Phoenix is deemed to be a "customer" of AAWC for purposes of ACC jurisdiction.

1 I discovered through discussions that the price established [for Phoenix]
2 appeared to be out of line with the ratio that was established in a prior case... It
3 appeared that in the succession of analysis in the prior case that the company
4 had attempted to preserve that ratio, and along the way something got changed.

5 Testimony of Thomas Broderick, Transcript Page 246 Lines 24-25; Page 247 Lines 1-7.

6 Regardless of whether the rates proposed in this case, either in Decision 72047 or
7 upon deconsolidation, are based on a cost of service study conducted in a previous case, rate
8 experts representing each party testified in the hearing that the rate established in Decision
9 72047 for Phoenix was incorrect. *Id.* at Transcript Page 243, Lines 7-21 (“I can see that
10 there was a general linking of your [Phoenix’] rate to kind of the commodity rate in the
11 general service class, sort of that ratio, and somehow that ratio got lost in this Decision
12 72047. The \$5.57 was an increase way beyond what the ratio would have suggested.”). *See*
13 *also*, Testimony of Gerald Becker, Transcript Page 606 Lines 14-22; and Testimony of Dan
14 Neidlinger, Transcript Page 631, Line 6-9. There simply is no support in the previous
15 hearing or the hearing on deconsolidation for the rate of \$5.57, which would likely be
16 adopted by the Commission as the final rate in the event the Agua-Fria Wastewater District
17 remains intact. The Hearing Officer should include a recommendation that the Commission
18 reexamine the rate applicable to Phoenix to prevent the Commission from making a final
19 determination that is unsupported by the evidence and susceptible to challenge.

20 The fact that Phoenix did not participate in the proceedings which resulted in
21 Decision 72047 is not relevant to the issue of whether the rates applicable to Phoenix are
22 arbitrary. There is nothing in the Arizona Constitution or caselaw that suggests that a party’s
lack of participation in a rate hearing diminishes the Commission’s obligation to set “just and
reasonable rates” applicable to utilities. Ariz. Const. art. 15 § 3. In addition, Phoenix

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1 attempted to introduce evidence that it did not receive notice regarding the original
2 proceedings, but was prohibited from doing so by the Hearing Officer. Statement of
3 Administrative Law Judge Jibilian, Transcript Page 264, Lines 14-21. Inasmuch as the rates
4 in Decision 72047 are interim rates, subject to change, and the undisputed testimony in this
5 hearing was that the rate established in that decision that pertains to Phoenix was flawed,
6 Phoenix has the right to raise the issue of notice to the extent it impacts the inclination of the
7 Commission to adopt different rates in its final decision.

8 WHEREFORE, the City of Phoenix respectfully requests that if the Hearing Officer
9 recommends that the Agua-Fria Wastewater District remain intact, that she recommends that
10 the Commission reexamine the wastewater rate applicable to the City of Phoenix.

11 RESPECTFULLY SUBMITTED this 17th day of January, 2012.

12 GARY VERBURG, City Attorney

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16 Original and 13 Copies of the
17 foregoing hand delivered this
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