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IN THE MATTER OF THE APPLICATION
OF ARIZONA-AMERICAN WATER
COMPANY, AN ARIZONA
CORPORATION, FOR A
DETERMINATION OF THE CURRENT
FAIR VALUE OF ITS UTILITY PLANT
AND PROPERTY AND FOR INCREASES
IN ITS RATES AND CHARGES BASED
THEREON FOR UTILITY SERVICE BY
ITS ANTHEM WATER DISTRICT AND
ITS SUN CITY WATER DISTRICT.

DOCKET NO. W-01303A-09-0343

Arizona Corporation Commission
DOCKETED

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DOCKETED BY

IN THE MATTER OF THE APPLICATION
OF ARIZONA-AMERICAN WATER
COMPANY, AN ARIZONA
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DETERMINATION OF THE CURRENT
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AND PROPERTY AND FOR INCREASES
IN ITS RATES AND CHARGES BASED
THEREON FOR UTILITY SERVICE BY
ITS ANTHEM/AGUA FRIA
WASTEWATER DISTRICT, ITS SUN CITY
WASTEWATER DISTRICT AND ITS SUN
CITY WEST WASTEWATER DISTRICT.

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**ANTHEM COMMUNITY
COUNCIL'S REPLY POST-
HEARING BRIEF ON
DECONSOLIDATION**

The Anthem Community Council, Inc. ("Anthem") hereby submits its Reply Post-Hearing Brief on Deconsolidation. On any issue not specifically addressed herein, Anthem maintains the positions set forth in its January 17, 2012 Initial Post-Hearing Brief (Deconsolidation) (the "Initial Deconsolidation Brief").

I. SUMMARY OF ANTHEM'S INITIAL POSITIONS

In its Initial Deconsolidation Brief, Anthem advocated for the immediate deconsolidation of the Anthem/Agua Fria Wastewater District because

1 (i) deconsolidation of the Anthem/Agua Fria Wastewater District was part of the
2 quid-pro-quo for Anthem's acquiescence with respect to the ratemaking recognition of
3 the Disputed Refund Payments,¹ (ii) continued consolidation of the Anthem/Agua Fria
4 Wastewater District is inconsistent with cost of service ratemaking principles and is
5 contrary to good public policy, and (iii) indefinite continuation of the \$2.4 million annual
6 subsidy being borne by the Anthem wastewater ratepayers for the benefit of Agua Fria
7 wastewater ratepayers is unfair and unreasonable.² For those reasons, and for the reasons
8 discussed in Section III below, the Commission should order the immediate
9 deconsolidation of the Anthem/Agua Fria Wastewater District and implement separate
10 stand-alone rates for each resulting wastewater district.

11 **II. SUMMARY OF RUCO AND OTHER INTERVENER POSITIONS**³

12 The Residential Utility Consumer's Office ("RUCO") agrees with Anthem that
13 other than for the purpose of continuing to maintain artificially and unfairly lower Agua
14 Fria wastewater rates, there is no compelling basis to continue the consolidation of the
15 Anthem/Agua Fria Wastewater District.⁴ RUCO also agrees with Anthem that
16 deconsolidation of the Anthem/Agua Fria Wastewater District and the adoption of Dan
17 Neidlinger's three-year revenue transition plan are in the public interest.⁵

18 The Agua Fria Intervenors (*i.e.*, the Verrado Community Association, Inc.

19
20 ¹ The term "Disputed Refund Payments" means certain refunds made by AAWC to Pulte Corporation pursuant to an
21 Agreement for the Villages At Desert Hills Water/Wastewater Infrastructure, dated September 28, 1997, between
22 Citizens Water Resources, as predecessor in interest to AAWC, and Del Webb Corporation, as predecessor in
23 interest to Pulte, as amended.

24 ² In the interest of brevity, reference is made to Anthem's January 17, 2012 Initial Deconsolidation Brief for a more
25 complete discussion of these matters.

26 ³ Anthem will not address the City of Phoenix Closing Brief, filed January 17, 2012. In addition, Staff and the
27 Company have not taken a position on deconsolidation of the Anthem/Agua Fria Wastewater District so their briefs
28 will not be discussed at any length.

⁴ RUCO's Opening Brief, filed January 17, 2012 at 4.

⁵ *Id.* at 2.

1 (“Verrado”), DMB White Tank, LLC (“DMB”),⁶ Russell Ranch Homeowners’
2 Association, Inc. (“Russell Ranch”) and Corte Bella Country Club Association, Inc.
3 (“Corte Bella” and, collectively, the “Agua Fria Interveners”) are opposed to
4 deconsolidation. In its January 17, 2012 Initial Closing Brief, Verrado argued that
5 deconsolidation of the Anthem/Agua Fria Wastewater District should be denied because
6 (i) it would create rate shock that is not adequately mitigated by Mr. Neidlinger’s revenue
7 transition plan, (ii) it would be an unnecessary backward step in the Commission’s
8 asserted quest to achieve the benefits of consolidation, and (iii) any precedent for
9 deconsolidation established in this case would be likely to have an impact on other
10 consolidated systems owned by EPCOR Water (USA) (“EPCOR”), as successor in
11 interest to Arizona-American Water Company (“AAWC” or the “Company”), and by
12 other water and sewer providers.⁷ Verrado further argues that if the Commission is
13 inclined to deconsolidate, that it should do so in a future case where the Agua Fria
Interveners may more fully participate.⁸

14 Corte Bella asserts many positions similar to Verrado. Corte Bella suggests that
15 this phase of the proceeding “is about maintaining rates in accordance with past policy
16 inclinations and precedential considerations.”⁹ Corte Bella argues that it would be unfair
17 for the Commission to order deconsolidation of the Anthem/Agua Fria Wastewater
18 District after ten years because it would raise Corte Bella’s wastewater rates too high.

20 ⁶ In its Initial Closing Brief, DMB stated that “DMB is supportive of the Verrado Community Association’s
21 position that deconsolidation should be denied for the reasons cited in Verrado Community Association’s Initial
Closing Brief.” DMB White Tank, LLC’s Initial Closing Brief, filed January 17, 2012 at 2. As a result Anthem’s
22 responses to arguments advanced by Verrado are intended to apply equally to DMB.

23 ⁷ Verrado Community Association, Inc.’s Initial Closing Brief, filed January 17, 2012 at 2-3. On February 1, 2012,
Arizona-American Water Company was acquired by EPCOR Water (USA). Reply Brief EPCOR Water (USA),
24 filed February 7, 2012 at fn 1.

25 ⁸ In that regard, it should be noted that Verrado had full notice of the prospect of rate changes resulting from the
Company’s 2009 rate increase application in the underlying proceeding; and, Verrado declined to intervene and
26 participate at that time. See Section III.H for a further discussion of the Agua Fria Interveners’ respective decisions
not to participate in the underlying proceeding.

27 ⁹ Post-Hearing Brief of Corte Bella County Club Association, Inc., filed January 17, 2012 at 2.

1 Corte Bella thinks that deconsolidation is “unjust” and that it would unnecessarily “alter
2 the lifestyle of Corte Bella residents.”¹⁰ However, a substantial portion of the rate
3 increase associated with deconsolidation is occasioned by the \$1.9 million revenue
4 requirement allocated to the Northwest Valley Treatment Plant (the “Northwest Plant”)
5 which provides service to Corte Bella but not to Anthem.¹¹ Put simply, Corte Bella is
6 seeking justification for someone else to bear wastewater costs of service properly
7 attributable to Corte Bella.

8 The Commission should reject the Agua Fria Interveners’ legal arguments and
9 conclusions for the reasons set forth herein and should not delay ordering the immediate
10 deconsolidation of the Anthem/Agua Fria Wastewater District.

11 **III. ANALYSIS**

12 **A. Deconsolidation is Part of the Quid-Pro-Quo for Anthem Agreeing to 13 Settle Issues Related to the Disputed Refund Payments.**

14 In order to effect a “full and complete resolution”¹² of legal and equitable issues
15 related to ratemaking recognition of the Disputed Refund Payments, the Commission
16 voted unanimously to approve the following language for inclusion in its opinion and
17 order:

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

25 ¹⁰ *Id.* at 2,4.

26 ¹¹ See Anthem Community Council’s Initial Post-Hearing Brief (Deconsolidation), filed January 17, 2012 at 8.

27 ¹² Thomas Broderick, [Open Meeting] Tr. 205:11-13.

1 requirements and rate designs as agreed to in the settlement
2 reached during the Open Meeting for the Anthem Wastewater
3 district and Agua Fria Wastewater district as soon as possible. The
4 Company shall file its initial application no later than April 1,
5 2011.¹³

6 Because the Commission now has the necessary data for purposes of the design
7 and implementation of stand-alone rates for an Anthem wastewater district and an Agua
8 Fria wastewater district, the Commission should order deconsolidation of the
9 Anthem/Agua Fria Wastewater District at this time, in order to completely realize the
10 purpose and intent of the settlement agreement as subsumed in Decision No. 72047.

11 **B. The Commission Ordered This Deconsolidation Phase of the**
12 **Proceeding as a Matter of “Good Public Policy.”**

13 Prompt deconsolidation of the Anthem/Agua Fria Wastewater District, as a matter
14 of “good public policy,” is explicitly contemplated in Decision 72047.¹⁴ Accordingly,
15 Corte Bella’s insistence that “the intent was (and still is) to have Anthem/Agua Fria
16 Wastewater District remain intact”¹⁵ cannot be reconciled with the express language in
17 Decision No. 72047. To pretend that the Commission is against deconsolidation of the
18 Anthem/Agua Fria Wastewater District ignores the actual language of Decision No.
19 72047. Based on the Commission’s decision to order this deconsolidation proceeding, it
20 is now irrelevant whether RUCO, the Company or Staff previously proposed or opposed
21 deconsolidation in the underlying proceeding or in any other rate case. It is similarly
22 irrelevant that the Anthem/Agua Fria Wastewater District has been consolidated for over
23 ten years. The argument that “nobody has ever complained before” (i) cannot annul the
24 Commission’s decision to now explore deconsolidation and (ii) does not bar the

25

26 ¹³ Decision No. 72047 at 84 (Emphasis added).

27 ¹⁴ “Good public policy requires the Commission to correctly assign cost responsibility for all ratemaking
28 components in as expeditious a manner as possible, and deconsolidation of Anthem/Agua Fria Wastewater District
is consistent with such action.” *Id.*

¹⁵ Post-Hearing Brief of Corte Bella County Club Association, Inc., filed January 17, 2012 at 6.

1 Commission from properly exercising its full power and authority to review and modify
2 prior decisions.

3 As the Commission previously stated in this case, good public policy requires that
4 the Commission “correctly assign cost responsibility for ratemaking components.”¹⁶
5 Thus, periodic re-examination of assumptions upon which costs have been allocated and
6 rates have been designed is integral to good regulatory policy and is an existing
7 Commission practice. Yet Corte Bella encouraged the Commission to abstain from
8 carefully re-evaluating facts and circumstances simply because maintaining the status quo
9 would be more administratively convenient.¹⁷ In this instance the available data indicates
10 that the population of the Agua Fria area has not developed as was projected ten years
11 ago when Anthem’s then existing rate schedule was simply applied to Agua Fria as well;
12 and, it is unlikely to reach those ten-year-old prognostications of development in the
13 foreseeable future.¹⁸ Therefore, it is appropriate for the Commission to acknowledge the
14 known circumstances by immediately deconsolidating the Anthem/Agua Fria Wastewater
15 District and establishing replacement stand-alone rates.

16 **C. Deconsolidation of the Anthem/Agua Fria Wastewater District is a
17 Logical Extension of the Commission’s Decision to Deny Consolidation
18 in the Underlying Proceeding.**

19 Similar to their misleading description of the Commission’s position on
20 deconsolidation of the Anthem/Agua Fria Wastewater District, Corte Bella and Verrado
21 have mischaracterized the Commission’s current position on consolidation in the instant
22 case. Corte Bella and Verrado’s reliance upon earlier Commission decisions involving

23 ¹⁶ Decision No. 72047 at 84.

24 ¹⁷ See Post-Hearing Brief of Corte Bella County Club Association, Inc., filed January 17, 2012 at 16.

25 ¹⁸ In attempting to determine the appropriate allocation of the Northwest Plant between the Anthem/Agua Fria
26 Wastewater District and Sun City West, Staff estimated that there would be 6,392 AAWC wastewater customers in
27 the Agua Fria area by the end of 2011. See Direct Testimony of Dorothy M. Haines, filed March 8, 2010, DMH-4 at
28 6. However, as of September 30, 2011, there were only 5,289 AAWC wastewater customers in the Agua Fria area,
reflecting a current deficit of 1,103 projected customers as of September 30, 2011 and a projection error of
approximately 18% or nearly one-fifth. See Closing Brief on the Deconsolidation of the Anthem/Agua Fria
Wastewater, Russell Ranch Homeowner’s Association, Inc., filed January 17, 2012 at 5.

1 entirely different fact situations or utility providers is without merit and is deeply
2 flawed.¹⁹ In the underlying proceeding and in order No. 72047, issued a mere year ago,
3 the Commission rejected multiple consolidation scenarios.²⁰ Despite that fact, Verrado
4 cites Decision No. 71410 in an attempt to demonstrate “the Commission’s more recent
5 focus on encouraging consolidation.”²¹ However, Decision No. 71410 was issued on
6 December 8, 2009, over a year before Decision No. 72047 was issued in this case. Even
7 more notably, the three consolidation proposals that were expressly rejected by the
8 Commission in Decision No. 72047 were put forth by Staff in order to comply with
9 Decision No. 71410.²² In glaring contrast to the assertions made by Verrado and Corte
10 Bella, the most recent and relevant statement by the Commission on the issue of
11 consolidating the districts involved in this case is Decision No. 72047, which rejected all
12 Company-wide and partial consolidation proposals.²³ Anthem does agree wholeheartedly
13 with Corte Bella that “the Commission should not change directions in what is essentially
14 a compliance proceeding;”²⁴ and, because the direction of the Commission in the
15 underlying rate case moved away from total and partial consolidation, the Commission
16 should order the immediate deconsolidation of the Anthem/Agua Fria Wastewater
17 District and implementation of stand-alone rates for each resulting wastewater district.

18
19 By ordering immediate deconsolidation of the Anthem/Agua Fria Wastewater

19 ¹⁹ For example, Corte Bella references Decision No. 71845 which involves the Arizona Water Company and very
20 different facts.

21 ²⁰ Decision No. 72047 at 84.

22 ²¹ Verado Community Association, Inc.’s Initial Closing Brief, filed January 17, 2012 at 7 fn 25. Corte Bella also
23 cited Decision No. 71410 in an attempt to show the Commission’s movement toward consolidation. Post-Hearing
24 Brief of Corte Bella County Club Association, Inc., filed January 17, 2012 at 8.

25 ²² Staff’s Initial Post-Hearing Brief, filed July 16, 2010 at 21; Decision No. 72047 at 76.

26 ²³ Staff offered three consolidation proposals for the Commission’s consideration including total consolidation of
27 all of the Company’s water and wastewater districts in Arizona, and two partial consolidation scenarios. *See id.* at
28 21.

²⁴ Post Hearing Brief of Corte Bella Country Club Association, Inc., filed January 17, 2012 at 10.

1 District, the Commission would be treating Anthem fairly and consistently with the other
2 water and wastewater districts in the underlying case. In Decision No. 72047, the
3 Commission rejected consolidation with respect to all of the Company's other water and
4 wastewater districts in question.²⁵ Therefore, it would be completely arbitrary to require
5 the Anthem/Agua Fria Wastewater District to remain consolidated, particularly where the
6 Commission has kept the Anthem Water District and the Agua Fria Water District
7 separate²⁶ and where the Anthem wastewater district and the Agua Fria wastewater
8 district are already operated by EPCOR as separate business units.²⁷ The fact that
9 EPCOR maintains and accounts for the Anthem wastewater district and the Agua Fria
10 wastewater district as separate business units also dispels the argument that
11 deconsolidating Anthem while still keeping the Russell Ranch, Corte Bella and Verrado
12 together would be arbitrary. Deconsolidating only Anthem is entirely consistent with the
13 EPCOR's treatment of the Anthem/Agua Fria Wastewater District.

14 Further, the record in the underlying proceeding reflects that Sun City was
15 strongly opposed to consolidation because the Sun City residents did not want to
16 subsidize Anthem's costs.²⁸ If Sun City's unwillingness to subsidize rates in a
17 community that is neither physically connected nor geographically close motivated the
18 Commission to deny consolidation in the underlying case, the Commission should honor
19 that same sentiment by Anthem now.

20 **D. Immediately Deconsolidating the Anthem/Agua Fria Wastewater
21 District Would Not *Per Se* Adversely Impact any Future Commission**

22 ²⁵ Decision No. 72047 at 84.

23 ²⁶ RUCO's Opening Brief, filed January 17, 2012 at 4.

24 ²⁷ Cross-Examination of Sandra L. Murrey, [Deconsolidation] Tr. 82:9-83:18. Anthem assumes that EPCOR has
25 not modified AAWC's accounting practices with respect to the Anthem wastewater district and the Agua Fria
26 wastewater district.

27 ²⁸ See RUCO's Closing Brief, filed July 16, 2010 at 59 discussing Sun City's objection to "subsidizing Anthem's
28 costs." Mr. Broderick's understanding as to why statewide consolidation has been denied so far is due to "great and
negative customer reaction in those districts that perceive themselves as experiencing a rate increase under a
consolidation scenario," including Sun City and Sun City West. Cross-Examination of Thomas Broderick,
[Deconsolidation] Tr. 198:8-13.

1 EPCOR's water and wastewater districts in the future.

2 **E. Continued Consolidation of the Anthem/Agua Fri Wastewater District**
3 **is an Anathema to Cost of Service Ratemaking Principles.**

4 Cost of service principles fairly dictate that those who use the utility services
5 should pay for them.³¹ Current rates for the consolidated Anthem/Agua Fria Wastewater
6 District are not based on cost of service and therefore do not "correctly assign cost
7 responsibility for all ratemaking components."³² RUCO correctly notes that only when
8 the Commission can identify policies that outweigh the principle of cost of service
9 ratemaking should the Commission deviate from the traditional cost of service
10 ratemaking approach.³³ In this instance, non-cost considerations which might mitigate
11 against deconsolidation of the Anthem/Agua Fria Wastewater District, as discussed in
12 Section III.F below, are not sufficient to justify extreme deviation from cost of service
13 ratemaking. In that regard, the \$2.4 million annual subsidy being provided by the
14 Anthem wastewater ratepayers to the Agua Fria wastewater ratepayers is simply too
15 great.³⁴

16 **F. Non-cost Considerations Which Might Otherwise Mitigate Against**
17 **Deconsolidation of the Anthem/Agua Fria Wastewater District Are Not**
18 **Sufficient to Justify Extreme Deviation from Cost of Service**
19 **Ratemaking Principles.**

20 With respect to non-cost considerations that might otherwise favor consolidation,
21 the record indicates that whether the Anthem/Agua Fria Wastewater District is
22 consolidated or deconsolidated, many of the benefits traditionally associated with

23 ³¹ RUCO's Opening Brief, filed January 17, 2012 at 2.

24 ³² Decision No. 72047, dated January 6, 2011 at 84; *see also* Anthem Community Council's Initial Post-Hearing
25 Brief, filed January 17, 2012 at 7.

26 ³³ *See* RUCO's Opening Brief, filed January 17, 2012 at 2.

27 ³⁴ Direct Examination of Dan L. Neidlinger, [Deconsolidation] Tr. 288:23-289:3. \$2.4 million represents the
28 increase over today's revenues to the proposed stand-alone Agua Fria wastewater district and the corresponding
decrease to the proposed stand-alone Anthem wastewater district. Redirect examination of Dan L. Neidlinger,
[Deconsolidation] Tr. 633:12.

1 consolidated districts have already been achieved because EPCOR already operates on a
2 consolidated basis.³⁵ Specifically, Mr. Broderick has stated that other than rate case
3 expense, which has not been quantified, the Company “has already captured the
4 economies of scale from consolidation, because we presently operate as a single
5 integrated company.”³⁶ Therefore most of the existing³⁷ benefits of consolidation that are
6 universal to all parties would not be lost in the event that the Commission ordered
7 deconsolidation of the Anthem/Agua Fria Wastewater District. What would be lost are
8 those benefits of consolidation that flow, unearned and unfairly, exclusively to Agua Fria
9 ratepayers at Anthem’s cost and expense. More specifically, lower rates for Agua Fria
10 wastewater customers, affordability for Agua Fria wastewater customers and gradualism
11 in Agua Fria wastewater rates are all financed by Anthem’s multi-million dollar annual
12 subsidy. As RUCO has recognized, “the record does not identify any benefit Anthem
13 receives in exchange for subsidizing Agua Fria’s rates.”³⁸

14 Further, any increased EPCOR costs associated with deconsolidation are
15 insubstantial in comparison to the \$2.4 million annual subsidy currently burdening
16 Anthem. Mr. Broderick testified that if the Commission were to approve deconsolidation
17 in this case, the associated administrative costs would be “in the tens of thousands of
18

19 ³⁵ Anthem assumes that EPCOR has maintained AAWC’s existing operations to the extent relevant to this brief.

20 ³⁶ Cross-Examination of Thomas Broderick, [Deconsolidation] Tr. 208:1-8; *and see* Post-Hearing Reply Brief of
21 Arizona-American Water Company, filed on August 6, 2010 at 26 (stating “the Company has made clear in its
22 testimony that it already operates as a single company with many shared functions and that there would be no
23 significant cost savings (except for future rate case expense) as a result of consolidation.”)

24 ³⁷ Many benefits of consolidation articulated in the underlying proceeding and recited by the Agua Fria Interveners
25 in their initial briefs do not exist in this instance or are attenuated because there is not statewide consolidation of the
26 Company’s water and wastewater districts. As the Company has stated: “Company-wide consolidation is the best
27 method to achieve the full benefits of consolidation.” Post-Hearing Reply Brief of Arizona-American Water
28 Company, filed August 6, 2010 at 26. Also in response to questions from Administrative Law Judge Jibilian
regarding the benefits of consolidation, Mr. Broderick spoke specifically of statewide consolidation and a single
statewide tariff. Cross-Examination of Thomas Broderick, [Deconsolidation] Tr. 232:8-233:15. Significantly, in the
underlying proceeding Anthem never supported any partial consolidation model.

³⁸ RUCO’s Opening Brief, filed January 17, 2012 at 4.

1 dollars and not more than that.”³⁹ It is unfair to ask the Anthem residents to annually pay
2 millions to save thousands and to subsidize benefits for others that Anthem ratepayers do
3 not, and for the foreseeable future will not, receive.

4 **G. Requiring Anthem Wastewater Ratepayers to Continue to Pay the**
5 **Massive \$2.4 Million Annual Subsidy is Unfair and Unreasonable.**

6 The \$2.4 million annual subsidy has such a large impact on wastewater ratepayers
7 that nobody wants to pay it. In that regard, Verrado and Corte Bella have each argued in
8 effect that, because the proposed rate increase associated with the deconsolidation of the
9 Anthem/Agua Fria Wastewater District would adversely impact the lifestyle of the Agua
10 Fria wastewater ratepayers, Anthem should continue to subsidize their wastewater bills.⁴⁰
11 In doing so, the Agua Fria Interveners have essentially ignored the magnitude and impact
12 of the subsidy as it relates to Anthem. Moreover, it has been well documented in the
13 underlying proceeding and through public comments that the Anthem residents have also
14 suffered due to the economic downturn,⁴¹ are also contending with significant increases
15 in already elevated water and sewer rates,⁴² and accordingly are in no better position to
16 pay the costs associated with the delivery of Agua Fria’s wastewater services. Since
17 nobody wants to pay Agua Fria’s increased sewer delivery charges and there are disputes
18 regarding who can best afford to pay them,⁴³ the best way to fairly decide who should pay

19 ³⁹ Cross-Examination of Thomas Broderick, [Deconsolidation] Tr. 203:23-204:5.

20 ⁴⁰ Post-Hearing Brief of Corte Bella Country Club Association, Inc., filed January 17, 2012 at 4; Verrado
Community Association, Inc.’s Initial Closing Brief, filed January 17, 2012 at 3, 6.

21 ⁴¹ On June 21, 2010, the Arizona Republic reported that the number of foreclosures in the Anthem community
22 quadrupled during the first five months of 2010. Further, the Anthem Community Council was forced to write off
23 305 homeowner association accounts totaling \$433,608.19 in May of 2010 due to the financial circumstances of
24 those homeowners resulting from the recession. Intervener Anthem Community Council’s Initial Post-Hearing
Brief, filed July 16, 2010 at 3 (citing Betty Reid, Anthem Foreclosures Increase at Rapid Rate, Arizona Republic,
June 21, 2010, available at [http://www.azcentral.com/news/articles/2010/06/21/20100621anthem-foreclosure-
rate.html#ixzz0sDiyK7Q0](http://www.azcentral.com/news/articles/2010/06/21/20100621anthem-foreclosure-rate.html#ixzz0sDiyK7Q0)).

25 ⁴² “In Decision No. 72047, the rate increase for Anthem/Agua Fria Wastewater was approximately 54 percent and
26 Anthem Water received an approximately 72 percent increase, which was phased in over three years.” Staff’s
Opening Brief (Deconsolidation), filed January 17, 2012 at 2.

27 ⁴³ See *supra* fn 41.

1 the charges is by determining who uses the related facilities and services. Anthem
2 residents do not use the Northwest Plant, the Verrado Reclamation Facility or the Russell
3 Ranch Reclamation Facility.⁴⁴ Agua Fria residents do. By ordering deconsolidation and
4 thus ending any cross-subsidization between the Anthem and Agua Fria wastewater
5 systems, residents will no longer be asked to pay any significant costs that aren't properly
6 theirs. Therefore, deconsolidation of the Anthem/Agua Fria Wastewater District is
7 neither unfair nor unjust and any arguments to the contrary should be wholly disregarded.

8 Verrado and Corte Bella also argue that the Commission should reject
9 deconsolidation because the resulting rates will be substantially different for Anthem
10 customers and for Agua Fria customers "receiving identical services from the same
11 company in the same area."⁴⁵ However, as Verrado and Corte Bella have acknowledged,
12 there will always be a variation in rates among districts and ratepayers. In this regard,
13 Sun City West residents currently pay roughly \$30 per month for wastewater collection
14 and treatment services provided by the Northwest Plant while Corte Bella residents, who
15 also use the Northwest Plant and "who can who can throw a golf ball into the neighbor's
16 yard"⁴⁶ across the street in Sun City West, pay roughly \$67 per month.⁴⁷ In order to
17 avoid a further increase in the cost disparity among actual users of the Northwest Plant,
18 Corte Bella believes that Anthem residents, who can't and don't use the Northwest Plant
19 at all, should continue to subsidize Corte Bella ratepayers. Suffice it to say, it is tacitly
20 unfair to resolve this issue, which is properly Corte Bella's problem, at Anthem's
21 expense. While it may be difficult to explain to Corte Bella residents why flushing a
22 toilet in Corte Bella is more expensive than flushing a toilet in Sun City West, when both

23 ⁴⁴ In response to data requests posed by Verrado and Corte Bella on the matter, the Company responded that the
24 main factors contributing to the disparity in deconsolidated rates are the "Northwest Valley Regional Reclamation
25 Facility, the Verrado Reclamation Facility and its expansion as well as the Russell Ranch Reclamation Facility."
26 Exh. Anthem-7.

27 ⁴⁵ Verrado Community Association, Inc.'s Initial Closing Brief, filed January 17, 2012 at 9.

28 ⁴⁶ Opening Statement of Troy Stratman, [Deconsolidation] Tr. 33:9-12.

⁴⁷ Verrado Community Association, Inc.'s Initial Closing Brief, filed January 17, 2012 at 9.

1 communities utilize the same Northwest Plant, it is impossible to satisfactorily explain to
2 Anthem residents why they deserve the bill when they don't use, can't use and aren't
3 anywhere near the Northwest Plant.

4 **H. The Commission Has Ordered Deconsolidation to Occur "In As**
5 **Expeditious a Manner as Possible." Therefore Deconsolidation Cannot**
6 **Be Delayed Until a Future Rate Case.**

7 Despite the fact that the Commission has ordered the correct assignment of "cost
8 responsibility for ratemaking components in as expeditious manner as possible,"⁴⁸ Corte
9 Bella and Verrado are asking the Commission to play "kick the can" on the
10 deconsolidation issue. First, in their respective direct testimonies, Agua Fria Intervener
11 witnesses suggested that the Commission should not act on deconsolidation until the
12 Commission entertains a comprehensive consolidation proposal in a future rate case.⁴⁹
13 However, the Commission already has fully and recently considered, and rejected, three
14 consolidation proposals in the underlying proceeding.⁵⁰ Further, EPCOR has neither
15 determined a future year in which it will file for company-wide consolidation in
16 compliance with Decision No. 72047 nor did EPCOR provide any written commitment to
17 AAWC that EPCOR would seek company-wide consolidation.⁵¹

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21
22 ⁴⁸ Decision No. 72047 at 84.

23 ⁴⁹ See Direct Testimony of Melinda Gulick on behalf of the Verrado Community Association, Inc., filed on August
24 16, 2011 at 6; and see Direct Testimony of Kent Simer on behalf of the Verrado Community Association, Inc., filed
25 on August 16, 2011 at 8; and see Direct Testimony of David Nilsen on behalf of DMB White Tank, LLC, filed on
26 August 16, 2011 at 4; and see Direct Testimony of Robert Rials on behalf of Corte Bella County Club Association,
27 Inc., filed on August 16, 2011 at 12.

28 ⁵⁰ Decision No. 72047 at 84.

⁵¹ Exh. Anthem-12. See also Cross-Examination of Sandra L. Murrey, [Deconsolidation] Tr. 85:23-86:14.

1 Further, even if total consolidation is reconsidered by the Commission within the next
2 several years, the record reflects that statewide consolidation of EPCOR's water and
3 wastewater districts is not widely supported and would be extremely difficult to
4 accomplish.⁵² "Corte Bella admits that full consolidation of all of Arizona-American's
5 districts remains controversial and that there is no guarantee full consolidation will ever
6 occur."⁵³ Succinctly stated, consolidation is not imminent.⁵⁴ Therefore, Anthem
7 ratepayers should not have to wait for this issue to be resolved through the full
8 consolidation of EPCOR districts at some as yet unforeseeable point in the future,
9 particularly when they will be required to pay the \$2.4 million subsidy in each year in the
interim under the existing wastewater rate structure.

10 Similarly, Anthem ratepayers should not have to wait indefinitely for Agua Fria's
11 rate base to grow in order to receive relief from the massive subsidy.⁵⁵ The Agua Fria
12 area has not developed as rapidly as anticipated and the area is likely to experience a
13 sustained delay in recovery.⁵⁶ In addition, according to data provided by AAWC, the
14 costs associated with carrying out the projected five-year capital improvement plan for
15 the Agua Fria wastewater system are higher than the costs associated with carrying out
16 the projected five-year capital improvement plan for the Anthem wastewater system, thus
17 indicating that if deconsolidation is denied, Anthem is likely to continue to subsidize

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20 ⁵² *Supra* fn 28 and accompanying text. "RUCO cannot say when is the best time, if there ever is a good time, to
21 approve rate consolidation for this Company. However, a better time than the present will be when there is: (1) one
22 rate application; (2) that includes all of the districts; (3) based on one test year and (4) one revenue requirement; (5)
23 when the public has had adequate notice and all of the facts; and (6) there is more support from the public." RUCO's Closing Brief, filed July 16, 2010 at 61. Notably, RUCO witness Mr. William Rigsby has stated that to his
knowledge, there has never been a rate case before the Commission involving all of the Company's water and
wastewater districts using a single test year and one revenue requirement. Cross-Examination of William Rigsby,
[Deconsolidation] Tr. 553:4-21.

24 ⁵³ Post-Hearing Brief of Corte Bella County Club Association, Inc., filed January 17, 2012 at 7.

25 ⁵⁴ See Cross-Examination of Dan L. Neidlinger, [Deconsolidation] Tr. 323:22-24.

26 ⁵⁵ See Verrado Community Association, Inc.'s Initial Closing Brief, filed January 17, 2012 at 10.

27 ⁵⁶ See *supra* fn 18.

1 Agua Fria into the foreseeable future.⁵⁷ Further, there is nothing in the record which
2 supports the notion that Agua Fria wastewater customers have subsidized Anthem
3 wastewater customers at any point in the past, or will subsidize them in the foreseeable
4 future. Given these circumstances, the Commission should immediately correct the
5 imbalance in cost recovery responsibility which results from the existing Anthem/Agua
6 Fria Wastewater District consolidated rate structure.

7 Verrado has also requested the Commission to delay any decision on
8 deconsolidation until a future rate case when Agua Fria residents have more notice, more
9 information and can participate more fully.⁵⁸ However, as previously noted, the Agua
10 Fria Interveners were afforded a full and fair opportunity to participate in the underlying
11 proceeding (including the settlement discussions), and for whatever reasons, they
12 declined.⁵⁹ The Agua Fria Interveners received notice of a potential 81% increase in
13 wastewater rates and chose not to act.⁶⁰ The Agua Fria Interveners received notice that
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23 ⁵⁷ Exh. Anthem-10.

24 ⁵⁸ See Verrado Community Association, Inc.'s Initial Closing Brief, filed January 17, 2012 at 3,4,5.

25 ⁵⁹ DMB did intervene in the underlying proceeding.

26 ⁶⁰ See Verrado Community Association, Inc.'s Initial Closing Brief, filed January 17, 2012 at 2. Verrado's counsel
27 admits that even if the Agua Fria Interveners had known the full amount of the wastewater rate increase, they may
28 not have fully participated in the underlying proceeding. See *id.* at 5.

1 full consolidation was being considered and they chose not to act.⁶¹ Since they received
2 notice of the rate case, the Agua Fria Interveners should have understood that other issues
3 affecting their water rates could also be considered. Yet, they chose not to act. The fact

4 ⁶¹ The following cross examination occurred between Judith Dworkin, counsel for Anthem, and David Nilsen,
5 Director of Land Development for DMB Associates, who provided testimony on behalf of Verrado and DMB on
6 November 16, 2011:

7 Q. In your direct testimony on page 4, line 6 through 9, you testified that the Anthem/Agua
8 Fria district should remain consolidated until a future rate case where the parties will have the
9 opportunity to fully evaluate the proposed rate increase and further consolidation proposals, is
10 that correct?

11 A. That is correct.

12 Q. And were you aware that in a prior portion of the case, the early portion of this case, the
13 company-wide consolidation and other partial consolidations of the Arizona-American water
14 and wastewater districts were considered?

15 A. I was.

16 Q. And were you aware that DMB White Tank, LLC, was an intervener in that earlier portion
17 of this proceeding?

18 A. That we were an intervener?

19 Q. Yes.

20 A. Yes, I am.

21 Q. In fact, in your direct testimony, I believe, on page 3, line 25 and 26, you have referred to
22 the briefs that were filed in that proceeding, is that correct?

23 A. That is correct.

24 Q. And were you aware that even though there were a number of different consolidation
25 proposals and transition plans presented, DMB White Tank took no position on consolidation
26 in that portion of the case?

27 A. I am aware of that.

28 Q. Were you aware that at the open meeting on December 15th, 2010 Chairman Mayes, with
the concurrence of the other Commissioners, invited the parties to meet and attempt to settle all
-- a global settlement of all he issues outstanding?

A. I am aware of that, but not of -- I don't have any knowledge of the details of that.

Q. Were you aware that the intervener DMB White Tanks did not participate in those settlement
negotiations?

A. Yes, I am aware of that.

Q. You were aware, however, that they had an opportunity to do so based upon Chairman
Mayes' invitation to all the parties to negotiate and give us the time, in fact I think several
hours, up in the Commissioners' conference room on the second floor to discuss the
outstanding issues?

A. Perhaps we were.. .

Cross-Examination of David Nilsen, [Deconsolidation] Tr. 415:5-416:25

1 that the Agua Fria Interveners were not represented in the previous phase of these
2 proceeding and in the settlement discussions that led to this phase of the proceeding is a
3 direct result of their own respective choices not to participate. Accordingly, Anthem
4 wastewater ratepayers should not be prevented from realizing the benefit of the
5 settlement agreement, nor should they be punished to the tune of \$2.4 million each year,
6 because the Agua Fria Interveners chose not to act.

7 Delaying consideration of deconsolidation until a future rate proceeding in order
8 to compile more information is not warranted. The purpose of this phase of the
9 underlying proceeding was to give the Company an opportunity to produce and file data
10 necessary for the deconsolidation of the Anthem/Agua Fria Wastewater District and the
11 determination and implementation of appropriate stand-alone rates. The Commission
12 now has sufficient information to undertake deconsolidation and to “assign cost
13 responsibility for all ratemaking components.”⁶² The Agua Fria Interveners have had
14 ample opportunity to file data requests, vet all compiled information, cross-examine the
15 Company’s experts, offer their own witnesses, hire experts, offer public comments, and
16 develop solutions to mitigate the potential rate increases.⁶³ Delaying reconsideration of
17 deconsolidation until some future rate case would not provide the Agua Fria Interveners
18 any meaningful opportunity to participate that they have not already been afforded.

19 In that regard, it is appropriate to observe that now that they are fully participating
20 in the proceeding, the Agua Fria Interveners have not offered any meaningful solution to
21 their own problem of rising wastewater charges other than to suggest that Anthem

22 ⁶² Decision No. 72047 at 84.

23 ⁶³ For example, Verrado wants “a full opportunity to investigate the reason for the significant cost of service in the
24 Agua Fria areas.” Verrado Community Association, Inc.’s Initial Closing Brief, filed January 17, 2012 at 5.
25 Verrado has had the opportunity to pursue this issue, and in fact did so. In response to a data requests posed by
26 Verrado and Corte Bella on the matter, the Company indicated that the main factors contributing to the disparity in
27 deconsolidated rates are the “Northwest Valley Regional Reclamation Facility, the Verrado Reclamation Facility
28 and its expansion as well as the Russell Ranch Reclamation Facility.” Exh. Anthem-7. Verrado was free to pursue
the issue further through additional data requests, consulting an expert, or cross-examining the Company’s
witnesses, at Verrado’s discretion, but failed to do so.

1 continue to subsidize them. In every instance, Verrado, Corte Bella and DMB's singular
2 answer is to deny deconsolidation and make Anthem keep paying the massive annual
3 subsidy. Not one of them has proposed a single remedy that is not at Anthem's expense
4 nor has any one of them investigated any relief beyond continuing the status quo.
5 Anthem's collective pocketbook should not be the remedy for Agua Fria's wastewater
6 rate problems. By way of contrast, Anthem invested significant resources and energy to
7 develop solutions to its own increasing water and wastewater rates and helped the Agua
8 Fria ratepayers in the process.⁶⁴ Anthem intervened in the underlying proceeding,
9 developed a plan to mitigate its own rate shock, advocated for a delay in winter-average
10 rate design in order to give residents enough time to institute conservation measures,
11 supported reallocation of costs associated with the Northwest Plant, negotiated a lower
12 cost of capital, and advocated for consolidation.

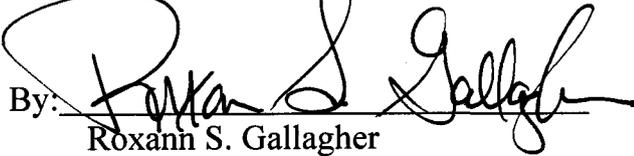
13 Against this background, it is patently unfair for the Agua Fria Interveners to
14 repeatedly sit on the sidelines while Anthem expends its resources, watch the game
15 unfold and then come in after the fact, protest the result and ask that Anthem play another
16 game in the distant future in which the Agua Fria Interveners may or may not decide to
17 participate. Because there is nothing to suggest that the Agua Fria Interveners would take
18 a different position on deconsolidation in a future proceeding and because they have been
19 afforded a meaningful opportunity to participate now, Anthem ratepayers should not have
20 to wait for a future rate case in order to receive relief from the massive subsidy burden
21 they currently bear. The Commission was explicit that the issue of deconsolidation
22 should be decided "in as expeditious a manner as possible" and further delay is entirely
23 inconsistent with that instruction.

24
25 ⁶⁴ Anthem notes that the Agua Fria Interveners have benefitted from some provisions of the settlement agreement
26 including the lower rate of return and delayed implementation of the winter average rate design. *See* Decision No.
27 72047 at 44-45. It is contradictory for the Agua Fria Interveners to avail themselves of some portions of the
28 settlement agreement while arguing that they shouldn't be bound by less favorable provisions.

1 expressed merely a year ago that: "Good public policy requires the Commission to
2 correctly assign cost responsibility for all ratemaking components in as expeditious a
3 manner as possible, and deconsolidation of Anthem/Agua Fria Wastewater District is
4 consistent with such action."⁶⁸

5 DATED this 7th day of February 2012.

6 Respectfully submitted,

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⁶⁸ Decision No. 72047 at 84.

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