

ORIGINAL



0000134131

RECEIVED

Arizona Corporation Commission  
DOCKETED

FEB - 7 2012

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED BY

**RYLEY CARLOCK & APPLEWHITE**

One North Central Avenue, Suite 1200

Phoenix, Arizona 85004-4417

Telephone: 602/258-7701

Telecopier: 602/257-9582

Michele L. Van Quathem - 019185

Attorneys for Verrado Community Association, Inc.

2012 FEB - 1 P 3: 43

**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

GARY PIERCE, Chairman

SANDRA D. KENNEDY

PAUL NEWMAN

BOB STUMP

BRENDA BURNS

Docket No. W-01303A-09-0343  
SW-01303A-09-0343

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/AGUA FRIA  
WASTEWATER DISTRICT, SUN CITY  
WASTEWATER DISTRICT, AND SUN  
CITY WEST WASTEWATER DISTRICT

**Verrado Community Association,  
Inc.'s Final Closing Brief**

Verrado Community Association, Inc. ("Verrado"), through its undersigned counsel, submits the following Final Closing Brief requesting that the Commission reject the proposed deconsolidation of Arizona-American Water Company's ("Arizona-American" or "Company") Anthem/Agua Fria Wastewater District. The purpose of this Final Closing Brief is to respond to certain portions of the other parties' initial briefs. Verrado stands by the argument and evidence cited in its Initial Closing Brief, none of which is changed by the parties' initial closing briefs.

1 **I. VERRADO'S RESPONSE TO RUCO**

2 **1. RUCO's Prior Position on Consolidation in this Case**

3 To support its position that the Anthem/Agua Fria Wastewater District should be  
4 deconsolidated in its Opening Brief, on pages 2 through 3, RUCO references findings in  
5 Decision No. 72047 regarding its prior position in this case, but does not include a reference to  
6 the more detailed testimony its Director provided earlier in this case regarding full consolidation  
7 proposals for Arizona-American Water Company's districts. This testimony should be  
8 examined too because it is helpful to understanding RUCO's position.

9 In her May 3, 2010, direct testimony on rate consolidation, RUCO Director Jerich  
10 testified that RUCO opposed consolidation of all Arizona-American districts in this case  
11 primarily because of the potential legal issue raised by consolidating rates for several districts  
12 using two different test years, and the potential legal issue presented by the mathematically  
13 impossible but still-binding "revenue neutrality" requirement in a prior Commission decision.<sup>1</sup>  
14 Those two case-specific legal issues are not a problem here – the districts are already  
15 consolidated. RUCO also had concerns about ratepayer feelings about consolidation earlier in  
16 this case<sup>2</sup>, but the circumstances cited earlier in this case were quite different than the current  
17 circumstances where ratepayers have been very involved with comments on both sides of the  
18 deconsolidation issue. Importantly, Ms. Jerich testified regarding the proposed full  
19 consolidation that a favorable consolidation proposal is one "that has the least detrimental effect  
20 to the systems that are picking up costs for other systems at the initial stage of consolidation.  
21 Over time, rates are stabilized and increases are minimized by spreading the costs of all  
22 systems..."<sup>3</sup> In this present proceeding, because the systems are already consolidated, there is  
23 no concern about the differences in cost at the initial stage of consolidation, but the continued  
24

25  
26 <sup>1</sup> See RUCO's Notice of Filing Direct Testimony, docketed May 3, 2010 in W-01303A-09-0343/SW-01303A-09-  
0343, pp.8-12.

27 <sup>2</sup> *Id.* at 13.

28 <sup>3</sup> *Id.* at 19.

1 consolidation of the Anthem/Agua Fria Wastewater District will promote rate stabilization for  
2 all customers over time.<sup>4</sup>

3 Deconsolidation now may result in RUCO expressing some of the same concerns RUCO  
4 expressed earlier in this same case when a full consolidation proposal is presented. The  
5 Commission should at a minimum wait to hear all consolidation or deconsolidation proposals in  
6 a future case so that all customers are treated fairly.

7 **2. Mr. Rigsby's Direct Testimony**

8 In support of its position in this follow-up proceeding, RUCO also states that "[i]t is  
9 critical to RUCO's analysis of the question presented to the Commission [] that Anthem and  
10 Agua Fria have absolutely no shared infrastructure, the communities are located several miles  
11 away from one another and there is no evidence in the record to explain why the two wastewater  
12 systems were consolidated in the first place."<sup>5</sup> RUCO's testimony at the hearing on this issue  
13 indicated an early misunderstanding of the physical layout of the Anthem/Agua Fria Wastewater  
14 District, however. RUCO's primary witness for this compliance proceeding, Mr. Rigsby,  
15 admitted he did not understand at the time he drafted his Direct Testimony that the Agua Fria  
16 portion of the Anthem/Agua Fria Wastewater District included three physically separate  
17 wastewater infrastructure systems.<sup>6</sup> There are four physically separate wastewater service  
18 infrastructure systems within the current Anthem/Agua Fria Wastewater District.<sup>7</sup> The four  
19 separate systems serve the communities of Anthem, Verrado, Russell Ranch, and a portion  
20 referred to as the northeast Agua Fria area that includes Corte Bella.<sup>8</sup> These communities are all  
21

22  
23 <sup>4</sup> See Exhibit V-2, pp. 7-8.

24 <sup>5</sup> RUCO's Opening Brief, docketed January 17, 2012, pp. 3-4. RUCO is incorrect that there is no evidence in the  
25 record regarding why the Anthem/Agua Fria Wastewater District systems were consolidated in the first place.  
26 Ms. Murrey testified regarding the creation of the district and its continuation as a consolidated district through  
27 a number of CC&N decisions and rate cases. See Ex. A-1, pp. 3-4; Tr.I at 97:19-98:3. At a minimum, there is  
28 evidence in the record that Arizona-American proposed consolidated rates a number of times and they were  
approved repeatedly without controversy.

<sup>6</sup> See Exhibit RUCO 1, p.5; Tr.IV at 501:6-503:4.

<sup>7</sup> Tr.I at 108:5-17.

<sup>8</sup> *Id.*

1 miles from each other – Anthem is adjacent to northern Phoenix, Corte Bella is located west of  
2 Anthem near the City of Surprise; Verrado is to the southwest in the Town of Buckeye; and  
3 Russell Ranch is near the City of Litchfield Park.<sup>9</sup> Heavy reliance by RUCO on the physical  
4 separation and cost of service differences between only one of four separate systems is arbitrary.  
5 This sort of position also ignores the substantial rate component connections that exist between  
6 the districts due to their substantial shared costs,<sup>10</sup> and the nearly identical wastewater collection  
7 and treatment services provided to customers in the same urban area.

8 Further, if the Commission adopts RUCO’s position on deconsolidation in this case and  
9 applies it consistently, such a position will lead to continuing deconsolidation of water systems,  
10 causing the “Domino Effect” discussed in Verrado’s Initial Closing Brief on pages 7 and 8.  
11

## 12 **II. VERRADO’S RESPONSE TO ANTHEM**

### 13 **1. “Quid-pro-quo” is an Inappropriate Standard**

14 Anthem’s primary reason for demanding deconsolidation in this case is as “quid-pro-  
15 quo” for accepting what it felt was an unfair rate increase attributable to infrastructure refund  
16 payments made by Arizona-American to Anthem’s developer.<sup>11</sup> Anthem argues in effect that it  
17 agreed to the last-minute settlement agreement described in Verrado’s Initial Closing Brief (see  
18 page 4) only because it thought it could push off a significant amount of the rate increase to  
19 Agua Fria wastewater customers who were not represented at these last-minute settlement  
20 discussions. Agua Fria residents certainly did not agree to such “quid-pro-quo.” And the  
21 Commission did not agree to deconsolidate the district in the prior Decision either, despite  
22 Anthem’s assertion otherwise on the first page of Anthem’s Initial Post Hearing Brief. The  
23 Commission did not have in front of it the information necessary to determine whether the  
24 resulting rates for the proposed deconsolidated systems would be just and reasonable.  
25

---

26 <sup>9</sup> See Ex. S-3.

27 <sup>10</sup> See Tr.II at 196:22-198:1.

28 <sup>11</sup> See Anthem Initial Post Hearing Brief docketed January 18, 2012, p. 4.

1 Now that the Commission has evidence regarding the rate changes that will result from  
2 the proposed deconsolidation, it is clear the proposed rates, even with Anthem's revenue phase-  
3 in proposal, are not just and reasonable for Agua Fria customers for all those reasons cited by  
4 Verrado in its Initial Closing Brief.

5 "Quid-pro-quo" is an inappropriate standard. In this rate case, the Commission is  
6 charged with determining if the charges proposed by Arizona-American in a deconsolidated  
7 scenario are "just and reasonable." Ariz. Const. Art. 15, § 12; A.R.S. § 40-361. For all the  
8 reasons cited in Verrado's Initial Closing Brief, the Commission should deny the request for rate  
9 deconsolidation in this proceeding.

10 DATED this 7th day of February, 2012.

11 RYLEY CARLOCK & APPLEWHITE

12  
13 By Michele Van Quathem  
14 Michele Van Quathem  
15 One North Central Avenue, Suite 1200  
16 Phoenix, Arizona 85004-4417  
17 Attorneys for Verrado Community Association,  
18 Inc.  
19 [mvanquathem@rcalaw.com](mailto:mvanquathem@rcalaw.com)

20 ORIGINAL and 13 copies of the foregoing  
21 filed this 7<sup>th</sup> day of February, 2012, with:

22 Docket Control  
23 Arizona Corporation Commission  
24 1200 West Washington  
25 Phoenix, Arizona 85007

26 COPY of the foregoing mailed this  
27 7<sup>th</sup> day of February, 2012, to:

28 Lyn Farmer  
Chief Administrative Law Judge  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, Arizona 85007

Maureen Scott  
Robin Mitchell  
Legal Division  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, Arizona 85007

1 Steve Olea, Director  
2 Utilities Division  
3 Arizona Corporation Commission  
4 1200 W. Washington St.  
5 Phoenix, Arizona 85007  
6 Daniel W. Pozefsky, Chief Counsel  
7 Residential Utility Consumer Office  
8 1110 W. Washington St., Suite 220  
9 Phoenix, Arizona 85007  
10 Greg Patterson  
11 Water Utility Association of Arizona  
12 916 W. Adams, Suite 3  
13 Phoenix, Arizona 85007  
14 Judith M. Dworkin  
15 Roxanne S. Gallagher  
16 Sacks Tierney PA  
17 4250 N. Drinkwater Blvd, Fourth Floor  
18 Scottsdale, Arizona 85251-3693  
19 Jay Shapiro  
20 Patrick Black  
21 Fennemore Craig, P.C.  
22 3003 North Central Avenue, Suite 2600  
23 Phoenix, Arizona 85012  
24 Andrew M. Miller, Town Attorney  
25 Town of Paradise Valley  
26 6401 E. Lincoln Dr.  
27 Paradise Valley, Arizona 85253  
28 Sun City Grand Community Assoc.  
Palm Center  
19726 N. Remington Dr.  
Surprise, Arizona 85374  
Larry Woods  
Property Owners and Residents Assoc.  
13815 E. Camino Del Sol  
Sun City West, Arizona 85735-4409

Craig A. Marks  
Craig A. Marks, PLC  
10645 N. Tatum Blvd., Suite 200-676  
Phoenix, Arizona 85028  
Attorney for Arizona-American Water Co.  
Joan S. Burke  
Law Office of Joan S. Burke  
1650 N. First Ave.  
Phoenix, Arizona 85003  
Lawrence V. Robertson, Jr.  
P.O. Box 1448  
Tubac, Arizona 85646-1448  
Bradley J. Herrema  
Robert J. Saperstein  
Brownstein Hyatt Farber Schreck, LLP  
21 E. Carillo St.  
Santa Barbara, CA 83101  
W.R. Hansen  
12302 W. Swallow Drive  
Sun City West, Arizona 85375  
Thomas M. Broderick  
Arizona-American Water Company  
2355 W. Pinnacle Peak Rd., Suite 300  
Phoenix, Arizona 85027  
Philip H. Cook  
10122 W. Signal Butte Circle  
Sun City, Arizona 85373  
Desi Howe  
Anthem Golf & Country Club  
2708 W. Anthem Club Dr.  
Anthem, Arizona 85086

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Pauline A. Harris Henry  
Russell Ranch Homeowners Assoc., Inc.  
21448 N. 75<sup>th</sup> Avenue, Suite 6  
Glendale, Arizona 85308

Chad R. Kaffer  
Troy Stratman  
Mack, Drucker & Watson, PLC  
3200 N. Central Ave., Suite 1200  
Phoenix, AZ 85012

Larry D. Woods  
15141 W. Horseman Lane  
Sun City West, Arizona 85375

Gary Verburg, City Attorney  
Daniel L. Brown, Asst. City Attorney  
City of Phoenix  
200 W. Washington, Suite 1300  
Phoenix, AZ 85003

Jason D. Gellman  
Roshka, DeWulf & Patten, PLC  
400 E. Van Buren St., Suite 800  
Phoenix, AZ 85004

Frederick Botha  
23024 N. Giovota Drive  
Sun City West, Arizona 85735

By 