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BEFORE THE ARIZONA CORPORATION COMMISSION

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DOCKET NO. W-01303A-09-0343

Arizona Corporation Commission

DOCKETED

FEB - 7 2012

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DOCKET NO. SW-01303A-09-0343

**POST-HEARING REPLY BRIEF OF
CORTE BELLA COUNTRY CLUB
ASSOCIATION, INC.**

IN THE MATTER OF THE APPLICATION
OF ARIZONA-AMERICAN WATER
COMPANY, AN ARIZONA CORPORATION,
FOR A DETERMINATION OF THE
CURRENT 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, AND POSSIBLE
RATE CONSOLIDATION FOR ALL OF
ARIZONA AMERICAN WATER
COMPANY'S DISTRICTS.

IN THE MATTER OF THE APPLICATION
OF ARIZONA-AMERICAN WATER
COMPANY, AN ARIZONA CORPORATION,
FOR A DETERMINATION OF THE
CURRENT 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 AND ITS SUN CITY WEST
WASTERWATER DISTRICT, AND
POSSIBLE RATE CONSOLIDATION FOR
ALL OF ARIZONA AMERICAN WATER
COMPANY'S DISTRICTS.

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1 Corte Bella Country Club Association, Inc. (hereinafter, "Corte Bella"), by and
2 through undersigned counsel, hereby files its Post-Hearing Reply Brief.

3
4 **I. INTRODUCTION**

5 The Commission ordered this docket to remain open to consider the proposed
6 deconsolidation of the Anthem / Agua Fria Wastewater District. Notwithstanding this,
7 Anthem is now taking the strained position (for the very first time) that the Commission
8 mandated deconsolidation as part of Decision No. 72047. Anthem's position is not
9 supported by the Decision or common sense.
10

11 Significantly, Corte Bella residents (as well as other Agua Fria customers) were
12 unfairly thrust into this proceeding because of a last-minute settlement agreement between
13 Anthem, RUCO, Staff and Arizona-American at the Opening Meeting in December 2010
14 (the "Settlement Agreement"). Corte Bella residents were not a party to that Settlement
15 Agreement.
16
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18 **II. THE COMMISSION DID NOT MANDATE DECONSOLIDATION**

19 Contrary to Anthem's Closing Brief, the Commission did not mandate
20 deconsolidation of the Anthem / Agua Fria Wastewater District as part of Decision No.
21 72047. Rather, the Commission specifically ordered the following:
22

23 [T]he docket in the instant proceeding is to remain open for the sole
24 purpose of considering the design and implementation of stand-
25 alone revenue requirements and rate designs as agreed to in the
26 settlement reached during the Open Meeting for the Anthem Waster
27 District and Agua Fria Wastewater District as soon as possible.

28 *See Decision No. 72047, Page 84.*

1 As evidenced by the foregoing language, the Commission wished to consider the
2 effects of deconsolidation (e.g., the rate impact) before making a decision that could
3 drastically impact thousands of customers. The Commission did not “blindly” approve
4 deconsolidation in Decision No. 72047 – as Anthem now suggests.
5

6 At this eleventh hour, Anthem claims that it only capitulated to the issue(s) with the
7 Disputed Refund Payments because the parties agreed to deconsolidate the Anthem / Agua
8 Fria Wastewater District as part of the Settlement Agreement. There is absolutely no
9 evidence in the record to support Anthem’s “new” interpretation of the Settlement
10 Agreement and Decision No. 72047.¹ Anthem’s subjective, self-serving interpretation is
11 irrelevant and not supported by Arizona-American or Staff.
12

13 Yet, even if Anthem’s interpretation is somehow correct, there are serious due
14 process issues because Corte Bella residents (as well as other Agua Fria customers) were
15 not a party to that Settlement Agreement. Significantly, Agua Fria customers were not put
16 on notice of the proposed deconsolidation of the Anthem / Agua Fria Wastewater District
17 (and the resulting 139.7% rate increase) until Arizona-American filed its Compliance
18 Application on April 1, 2011 – four (4) months after Decision 72047 was docketed. These
19 due process issues were also recognized by Anthem’s expert witness:
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21
22

23 Q. [by Mr. Stratman]: Would you agree with me that the public
24 notice for the prior proceeding did not state
25 that deconsolidation of the Anthem / Agua Fria
26 Wastewater District would be discussed or
27 would occur?

28 A. [by Mr. Niedlinger]: Not in the main case. No, No.

¹ Anthem did not raise this argument at any time during the evidentiary hearing.

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Q. [by Mr. Stratman]: Would you agree with me that, of course, Agua Fria customers were not represented in the last minute settlement agreement discussions at the open meeting because they weren't there, correct?

A. [by Mr. Niedlinger]: Correct.

Q. [by Mr. Stratman]: And would you also agree with me that there were decisions made in the prior proceeding, for example, the northwest allocation to Agua Fria, that now have a great impact if deconsolidation takes place?

A. [by Mr. Niedlinger]: Yes. And that we could have used your help, by the way, in that allocation.

Tr. (Niedlinger) at 318-19.

The clear purpose of this proceeding was to consider (not implement) the proposed deconsolidation of the Anthem / Agua Fria Wastewater District. Based on the evidence in the record, the Commission should deny the proposed deconsolidation.

III. THE ANTHEM SUBSIDY IS ONLY TEMPORARY

According to Anthem, the Commission should approve deconsolidation because the Anthem customers currently "subsidize" the Agua Fria customers – as evidenced by the Compliance Application filed by Arizona-American. This argument is misleading, at best.

In this regard, the subsidy is only temporary because (i) the Anthem wastewater facilities are completely built out; (ii) the Agua Fria wastewater facilities have excess capacity; and (iii) the Agua Fria customer base continues to increase. The current subsidy will likely "zero out" and even shift in Anthem's favor over time – as Anthem's expert

1 capacity; and (iii) the Agua Fria customer base continues to increase. The current subsidy
2 will likely “zero out” and even shift in Anthem’s favor over time – as Anthem’s expert
3 witness even acknowledges. *See Tr. (Neidlinger) at 303-304.* Moreover, there is no
4 evidence to suggest that Anthem customers have been subsidizing Agua Fria customers
5 over the past ten (10) years. The current subsidy is merely a “snapshot” of the revenue
6 requirements authorized by Decision 72047.
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9 Lastly, it is important to note that periodic subsidies will always exist in a
10 consolidated district. The goal of consolidation is to stabilize rates and spread costs over a
11 larger customer base. In fact, cross-subsidization still occurs in a stand-alone system
12 between residential, commercial and industrial customers. *See Tr. (Neidlinger) 300-301.*
13

14 Accordingly, the Commission should not approve deconsolidation based on a
15 temporary subsidy that will undoubtedly shift in the future. Anthem’s position is
16 shortsighted.
17

18 **IV. DECONSOLIDATION IS UNFAIR TO AGUA FRIA CUSTOMERS**

19 Anthem argues that a consolidated district is unfair to its customers. Yet, that same
20 argument holds true for Agua Fria customers if the district is deconsolidated.
21

22 As more fully set forth in the Closing Brief, it is unfair to Corte Bella residents (as
23 well as other Agua Fria customers) to deconsolidate the Anthem / Agua Fria Wastewater
24 District after ten (10) years – especially when deconsolidation will result in a 139.7%
25 increase in wastewater rates on the remaining customers in the Agua Fria District. The
26 average wastewater bill for Corte Bella residents will increase from \$67.97 per month
27
28

1 (which includes the 53.93% increase already approved in Decision No. 72047) to an
2 astonishing \$108.34 per month. *See Procedural Order docketed April 27, 2011 at 7-8.*

3
4 Again, Arizona-American formed this consolidated district and no other party (until
5 this docket) has ever opposed that arrangement. The intent was to have the Anthem / Agua
6 Fria Wastewater District remain intact. Agua Fria customers should not be unfairly
7 penalized for being part of a consolidated district they had no part in forming.
8

9 Furthermore, if deconsolidation is approved, the outcome will be a partially
10 consolidated district (known as the Agua Fria Wastewater District) that contains three
11 separate wastewater systems that are not physically connected in any way.² The very
12 situation Anthem advocates against (partial consolidation) will still be in place for those
13 remaining customers in the Agua Fria Wastewater District – but with the Anthem area
14 carved out. That is unfair to Agua Fria customers and goes against the strict “cost-of-
15 service” principles adopted by Anthem and RUCO.
16
17

18 **V. CONCLUSION**

19
20 Based on the foregoing, Corte Bella respectfully requests that the Commission
21 leave the Anthem / Agua Fria Wastewater District intact and maintain the rates set forth in
22 Decision No. 72047.

23 ...

24 ...

25

26
27 ² As the Court is aware, the four (4) service areas within the Anthem / Agua Fria Wastewater District (i.e., Anthem,
28 Verrado, Russell Ranch and Northeast Agua Fria, which includes Corte Bella) are not physically connected in any way.
See Tr. (Murrey) at 93-94. Each of these service areas utilizes a separate wastewater collection system and treatment
plant.

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DATED this 7th day of February 2012.

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