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BEFORE THE ARIZONA CORPORATIC

COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

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Arizona Corporation Commission
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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY, AN
ARIZONA CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE OF
ITS UTILITY PLANT AND PROPERTY AND
FOR ADJUSTMENTS TO ITS RATES AND
CHARGES FOR UTILITY SERVICE
FURNISHED BY ITS EASTERN GROUP AND
FOR CERTAIN RELATED APPROVALS.

DOCKET NO. W-01445A-11-0310

PROCEDURAL ORDER

BY THE COMMISSION:

On August 5, 2011, Arizona Water Company ("AWC") filed with the Arizona Corporation Commission ("Commission") an application requesting adjustments to its rates and charges for utility service provided by its Eastern Group water systems. AWC also requested several other authorizations in the application.

Intervention in this matter was granted to the Residential Utility Consumer Office ("RUCO") and to Kathie Wyatt, although Ms. Wyatt did not actively participate thereafter. The pre-hearing conference was held on May 11, 2012, and the evidentiary hearing was held on May 14, May 16-18, May 21, and May 23-24, 2012. At the conclusion of the hearing, a post-hearing schedule was established, with final schedules due on June 8, initial briefs due on June 26, and responsive briefs due on July 11, 2012. Final schedules have been filed by AWC, RUCO, and the Commission's Utilities Division ("Staff").

On June 13, 2012, RUCO filed a Motion to File Late Filed Exhibit (Expedited Ruling Requested), asking for an attached document to be admitted as a late-filed exhibit or, in the alternative, for judicial notice of the document to be taken ("Motion"). The document in question is a set of Comments prepared by the Regulatory Affairs & Public Advocacy Section of the Alaska Attorney General's Office ("RAPA"), with an appendix comprised of various states' statutes and

1 session laws related to Distribution System Improvement Charges (“DSICs”). The RAPA Comments
2 were submitted to the Regulatory Commission of Alaska (“Alaska Commission”) on May 31, 2012,
3 after the hearing in this matter had adjourned, in a docket for “Consideration of a Plant Replacement
4 Surcharge Mechanism for Water and Wastewater Utilities.” In its Motion, RUCO asserts that the
5 Plant Replacement Surcharge Mechanism (“PRISM”) is a DSIC mechanism; that RAPA’s Comments
6 include a lengthy analysis of DSICs and their implementation in other states; that RAPA’s Comments
7 analyze whether DSICs in other states have reduced rate case frequency and improved quality of
8 service, whether the DSICs are affordable for ratepayers, and whether the DSICs are actually being
9 implemented by eligible utilities; and that RAPA’s Comments are responsive to a request for
10 information made by Commissioner Burns on the first day of hearing in this matter. RUCO asserts
11 that its Motion was filed because AWC had indicated to RUCO that AWC would object to admission
12 of RAPA’s Comments in this matter. RUCO requests an expedited ruling because RUCO desires to
13 use RAPA’s Comments in its initial brief.

14 On June 15, 2012, AWC filed a Response in Opposition to RUCO’s Motion (“Response”).
15 AWC asserts that RUCO’s Motion should be denied because RAPA’s Comments are an adversarial
16 briefing filed by Alaska’s counterpart to RUCO, not an order of the Alaska Commission, and are not
17 of any value in this matter except as a starting point for RUCO to produce an objective description of
18 DSIC mechanisms in other states. AWC included with its Response a copy of the Alaska
19 Commission’s May 1, 2012, Order Seeking Comments (“Order”) in response to which RAPA’s
20 Comments were submitted. The Order solicited comments concerning a position paper and
21 suggested regulations filed by a group of utilities for discussion purposes. The copy of the Order
22 included with AWC’s Response did not include a copy of either the position paper or the suggested
23 regulations.

24 Staff has not filed a response to RUCO’s Motion.

25 The Commission’s rules require the Commission generally to follow the Arizona Rules of
26 Evidence (“Ariz. R. Evid.”), although the rules may be relaxed in the discretion of the Commission or
27 Administrative Law Judge (“ALJ”) when deviation from the rules will aid the Commission or ALJ in
28 ascertaining the facts. (A.A.C. R14-3-109(K).) The Commission’s rules also require that they be

1 liberally construed to secure just and speedy determination of all matters and, if good cause appears,
2 allow for application of the rules to be waived when waiver is not in conflict with law and will not
3 adversely affect the substantial interests of any party. (A.A.C. R14-3-101(B).) The Commission
4 generally has a rather permissive policy regarding the admission of evidence in its litigated cases,
5 because the Commission values a complete record, because there is value in allowing parties to put
6 forward what they believe to be their best and most complete cases, and because the Commission and
7 its ALJs are capable of sorting through the evidence and giving specific items of evidence their
8 appropriate weight. Late-filed exhibits are generally submitted at the express request of a
9 Commissioner or the ALJ, to provide additional information in evidence regarding a particular issue,
10 and the parties are provided an opportunity to voice any objections to such requested late-filed
11 exhibits. Unfortunately, RAPA's Comments were not available until after the hearing in this matter
12 had adjourned, and thus it was not possible for RUCO to offer RAPA's Comments in the usual
13 manner.

14 There does not appear to be any reason to question whether RAPA's Comments are what they
15 appear to be—a document created by RAPA, a Section of the Alaska Attorney General's Office that
16 fills the same role as RUCO fills in Arizona, for the purpose of providing the Alaska Commission
17 with RAPA's position regarding suggested regulatory treatment of PRISMs. RAPA's Comments
18 include argument and were obviously provided for the purpose of advocacy. However, RAPA's
19 Comments also are characterized as “the culmination of a substantial research project conducted by
20 RAPA staff on the issues presented in [the Alaska Commission's Order soliciting comments],” which
21 included RAPA staff's review of statutes and regulations; review of state commission orders; review
22 of utility and intervenor testimony related to DSICs; review of state commission websites; review of
23 National Regulatory Research Institute (“NRRRI”) white papers; participation in NRRRI webinars on
24 water utility issues; discussions with the National Association of State Utility Consumer Advocates
25 (“NASUCA”) Water Committee; discussions with at least one utility representative, state
26 commission staff member, and/or consumer advocate from each jurisdiction in which DSICs have
27 been allowed; and communications with the National Association of Water Companies (“NAWC”).
28 RAPA's Comments do not identify the individuals with whom RAPA staff engaged in discussions

1 and other communications, either by name or title. Thus, while there is no doubt that RAPA's
2 Comments represent RAPA's position as to the merits of DSICs in general and specifically the merits
3 of the PRISM-related regulations considered by the Alaska Commission, it would be problematic and
4 could be misleading to accept as fact the conclusions drawn and assertions made in RAPA's
5 Comments, without having an opportunity to test the validity of the conclusions and assertions
6 through cross-examination regarding their basis in fact and the sources of the information.

7 However, in spite of these potential shortcomings, the Commission has an interest in
8 additional information regarding DSIC implementation in other states, as specifically requested by
9 Commissioner Burns. Consequently, in the ALJ's discretion, limited official notice will be taken of
10 RAPA's Comments, in spite of RAPA's Comments not strictly fitting within the requirements of
11 A.A.C. R14-3-109(T).¹ This official notice is limited in that the assertions made and conclusions
12 drawn in RAPA's Comments may not be treated as facts that have been established by the evidence
13 in this matter. Rather, wherever RUCO or any other party repeats assertions/conclusions from
14 RAPA's Comments, the party shall attribute the assertion/conclusion to RAPA and identify the area
15 of RAPA's Comments from which the assertion/conclusion is taken.²

16 Because the statutes and session laws included in the appendix to RAPA's Comments are
17 matters for which judicial notice could be taken by the courts of the State of Arizona,³ official notice
18 of the statutes and session laws included in the appendix to RAPA's Comments is taken without
19 limitation under A.A.C. R14-3-109(T)(5).

20 IT IS THEREFORE ORDERED that admission of RAPA's Comments as a late-filed exhibit
21 is denied.

22 IT IS FURTHER ORDERED that limited official notice of RAPA's Comments is taken and
23 that the assertions made and conclusions drawn in RAPA's Comments may not be treated as facts
24 that have been established by the evidence in this matter but instead must be specifically identified as

25 _____
26 ¹ See A.A.C. R14-3-101(B).

27 ² For example, rather than asserting that there has been no showing that water quality or quality of service has
28 improved in Pennsylvania as a result of DSIC implementation, a party would be required to assert that RAPA concluded
that there has been no showing that water quality or quality of service has improved in Pennsylvania as a result of DSIC
implementation, and the party would be required to cite to page 22 of RAPA's Comments for that information.

³ See Ariz. R. Evid. 201.


1 assertions made or conclusions drawn by RAPA, with appropriate citation to the area of RAPA's
2 Comments from which each assertion or conclusion is taken.

3 IT IS FURTHER ORDERED that official notice, without limitation, is taken of the statutes
4 and session laws included in the appendix to RAPA's Comments.

5 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
6 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
7 hearing.

8 DATED this 21st day of June, 2012.

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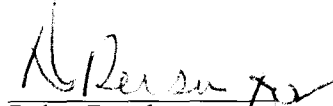

SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered
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