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8 **BEFORE THE ARIZONA CORPORATION COMMISSION**

9 IN THE MATTER OF THE
10 APPLICATION OF RIO RICO
11 UTILITIES, INC., AN ARIZONA
12 CORPORATION, FOR A
13 DETERMINATION OF THE FAIR
14 VALUE OF ITS UTILITY PLANTS AND
15 PROPERTY AND FOR INCREASES IN
16 ITS WATER AND WASTEWATER
17 RATES AND CHARGES FOR UTILITY
18 SERVICE BASED THEREON.

DOCKET NO: WS-02676A-12-0196

MOTION TO BIFURCATE

14 In accordance with Arizona Rules of Civil Procedure 42(b), and for the reasons
15 noted below, Rio Rico Utilities, Inc. ("RRUI" or "Company") requests that the
16 Administrative Law Judge ("ALJ") issue an order bifurcating this rate case into two
17 phases. This request is supported by Staff.

18 As envisioned by Staff and RRUI, the first phase ("Phase 1") would involve issues
19 relating to establishing the fair value of RRUI's plant and property used for providing
20 public water and wastewater utility service and determining permanent rates and charges
21 for utility service designed to produce a fair return on such fair value rate base. The
22 second phase ("Phase 2") would involve consideration of the Company's request for a
23 Distribution System Improvement Charge ("DSIC") and Collection System Improvement
24 Charge.¹

25 ¹ The only difference in the two mechanisms is one is for sewer. Therefore, the Company will only refer
26 to the DSIC hereinafter.

1 Staff and the Company further propose that the Phase 1 evidentiary hearing be
2 conducted as scheduled on March 27 through March 29, 2013, followed by briefing and a
3 decision consistent with the applicable time-clock. Phase 2 would commence 20 days
4 after a final decision by the Commission in the second phase of Arizona Water
5 Company's pending rate case, Docket No. W-01445A-11-0310 ("DSIC Phase").

6 **I. BRIEF STATEMENT OF THE MOTION.**

7 In accord with Staff, RRUI requests that the ALJ bifurcate this rate case into two
8 phases, the second phase to address the Company's requested DSIC. Bifurcation would
9 allow the rate case to proceed as scheduled while at the same time allow the Commission
10 to decide on the issue of DSIC currently pending in the DSIC Phase.

11 **II. PROCEDURAL BACKGROUND**

12 On May 31, 2012, RRUI filed its rate application which included testimony from
13 Christopher Krygier supporting the Company's request for Commission approval of a
14 Sustainable Water Loss Improvement Program ("SWIP"). RRUI considered submitting a
15 proposal for a DSIC mechanism but decided that a SWIP was a practical way to begin to
16 achieve the Company's goals, noting that the Arizona Water Company ("AWC") rate case
17 was still in hearing and the DSIC/SWIP issue in that docket had not yet been decided on
18 by the Commission.

19 On December 31, 2012, Staff presented its analysis and recommendations of the
20 Company's SWIP proposal in direct testimony by James R. Armstrong. Mr. Armstrong
21 recommended that RRUI's request for approval of a SWIP program be denied and that
22 Staff's System Betterment Cost Recovery ("SBCR") be approved in the alternative.

23 On January 28, 2013, the Company addressed Staff's SBCR proposal in its rebuttal
24 testimony. Mr. Krygier testified that the Company first requested approval of a SWIP
25 modeled after Staff's recommendation in the AWC rate case. Mr. Krygier further stated
26

1 that because Staff recently abandoned the SWIP in favor of the SBCR and because the
2 Commission appeared ready to consider the DSIC issue, RRUI was requesting a DSIC.

3 Meanwhile, during its Open Meeting on February 12, 2013, the Commission
4 discussed and approved the recommended opinion and order in Arizona Water's pending
5 rate case, including setting deadlines for further consideration of that utility's proposed
6 DSIC.

7 On February 20, 2013, the Commission issued Decision No. 73736 granting AWC
8 a rate increase and keeping the docket open for purposes of further consideration of
9 Arizona Water's DSIC. The decision further ordered that interested parties be allowed the
10 opportunity to request late intervention for the specific and limited purpose of discussing
11 Arizona Water's DSIC proposal, other DSIC like proposals, and the possibility of
12 achieving a settlement/compromise on the two.

13 On February 21, 2013, a procedural order was issued scheduling the matter for
14 hearing commencing April 8, 2013 and granted intervention to RRUI as well as, EPCOR
15 Water Arizona, Inc., the Arizona Investment Council, and Global Water Utilities. RUCO
16 and Staff are already parties to that rate case.

17 After the procedural order was issued in the pending AWC rate case, Staff
18 approached the Company about the possibility of delaying its rate case until the DSIC
19 Phase was decided. RRUI is willing to consent to bifurcation of the DSIC request
20 pending the outcome of the DSIC Phase so long as new rates are implemented before the
21 current time clock expires so long as the ratemaking phase of its case is not disturbed and
22 there is some certainty to when Phase 2 will commence and proceed.

23 **III. THE ADMINISTRATIVE LAW JUDGE SHOULD GRANT BIFURCATION**
24 **OF THE GENERAL RATE CASE FROM THE DSIC PROCEEDINGS.**

25 Rule 42(b) provides that "[t]he court, in furtherance of convenience or to avoid
26 prejudice, or when separate trials will be conducive to expedition and economy, may

1 order a separate trial of any claim...or of any separate issue...”² Courts have “broad
2 discretion to order a separate trial under Rule 42(b)”³ While the rules of civil
3 procedure may not strictly apply here, they do provide helpful guidance.

4 Here, bifurcation is warranted because the DSIC issues raised by RRUI are
5 separate and distinct from the general rate case issues relating to a determination of fair
6 value rate base and associated rates thereon. More importantly, the Commission is
7 deciding the exact same issue at nearly the same time in the DSIC Phase, where Staff,
8 RUCO, the Company, and several industry representatives are all involved.

9 It bears emphasis that whatever the Commission decides on the DSIC issues will
10 not impact RRUI’s rates based on a test year ending February 29, 2012. Any decision
11 issued by the Commission relating to DSIC will not impact determinations of RRUI’s fair
12 value rate base, revenue requirements or just and reasonable rates for the current Test
13 Year. For that reason, the DSIC issue can and should be evaluated in a separate Phase 2
14 proceeding. Further, bifurcation would minimize the risk of inconsistent decisions and
15 save the Commission, the intervenors, Staff, and the Company time and costs by awaiting
16 the Commission decision on the same issue for the DSIC Phase.

17 **IV. CONCLUSION.**

18 For the reasons above, the ALJ should issue an order bifurcating this rate case
19 proceeding into two phases as proposed above. RRUI notes that with Staff it sought the
20 concurrence of all parties. However, intervenors RUCO, Santa Cruz Valley Unified
21 School District #5 and Santa Cruz County are opposed to the bifurcation.

22 ...
23 ...
24 ...

25 ² Arizona Rule of Civil Procedure 42(b). *See also* Fed. R. Civ. P. 42(b).

26 ³ *See, e.g., Davis & Cox v. Summa Corp.*, 751 F.2d 1507, 1517 (9th Cir. 1985).

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RESPECTFULLY SUBMITTED this 1st day of March, 2013.

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By: 
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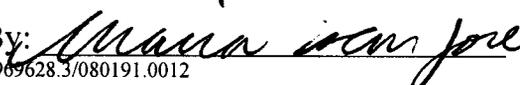
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