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Arizona Corporation Commission

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Unified School District #35

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE  
APPLICATION OF RIO RICO  
UTILITIES, INC., AN ARIZONA  
CORPORATION, FOR A  
DETERMINATION OF THE FAIR  
VALUE OF ITS UTILITY PLANTS  
AND PROPERTY AND FOR  
INCREASES IN ITS WATER AND  
WASTEWATER RATES AND  
CHARGES FOR UTILITY SERVICE  
BASED THEREON,

DOCKET NO: WS-02676A-12-0196

INTERVENORS'  
RESPONSE/OBJECTION TO  
MOTON TO BIFURCATE

Intervenors Santa Cruz Valley Unified School District #35 and Santa Cruz County (collectively "Intervenors"), by and through their counsel undersigned, submit the following as their Response/Objection to Rio Rico Utilities, Inc.'s ("RRUI" or "Company") Motion to Bifurcate this rate case into the two phases outlined in its Motion.

**I. THERE MUST BE A LEGITIMATE REASON TO BIFURCATE UNDER RULE 42(B), ARIZ.R.CIV.P.**

Pursuant to Rule 42(b), Ariz.R.Civ.P., the Court may order a separate trial of any claim or issue "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to (trial) expedition and economy." The reasons given by RRUI to justify Bifurcation here are: (1) "the DSIC issues raised by RRUI are separate and distinct from the general rate case issues related to a determination of fair value rate base and associated rates thereon;" and (2) "the Commission is deciding the exact same

1 issue at nearly the same time in (the Arizona Water Company's pending rate case,  
2 Docket No. W-01445A-11-0310)."

3         Respectfully, reason number 1 is no legitimate reason at all and as stated in the  
4 arguments below, is a reason not to order bifurcation. Reason number 2, while a  
5 procedurally accurate statement of similar issues in two separate cases before the  
6 Commission, does not demonstrate any trial economy, or avoidance of prejudice or  
7 confusion. The DSIC requests of Arizona Water Company and RRUI are not the exact  
8 same issues; i.e., the Arizona Water Company rate application is not the RRUI rate  
9 application. RRUI apparently assumes that the Commission is going to approve some  
10 form of DSIC mechanism in the Arizona Water Company rate case. Obviously, the  
11 Commission may not decide to do so. Even if the Commission opens the door to utility  
12 companies to ask for DSIC approval in future cases, that will need to be done on a case  
13 by case basis and will require a case by case analysis of each individual utility  
14 company's plant. A decision in favor of Arizona Water Company and its DSIC  
15 requests does not mean the Commission would grant RRUI's DSIC request. That  
16 would require an individual analysis, reviewing facts and records that have not yet been  
17 presented in RRUI's briefs. Thus, granting RRUI's Motion to Bifurcate will have the  
18 effect of delaying the ultimate decision, delaying trial, and will add confusion and  
19 prejudice to Intervenors and presumably all other parties for the simple reason that all  
20 parties would be preparing a second trial on new facts and issues sometime this  
21 summer, rather than a single trial this month.

22         RRUI should be required to present its case on what it originally asked for; not  
23 be allowed to ask for DSIC simply because that issue is on the Commission's agenda on  
24 another case. If RRUI's Motion for Bifurcation is denied and if the Commission opens  
25 the doors to DSICs for utility companies, RRUI's only prejudice would be that it would  
26 have to wait until its next legitimate rate hike request to properly raise the issue. By that  
27 time, presumably the Commission would have given direction to utilities seeking that  
28 treatment. Conversely, if the Commission chooses not to approve Arizona Water

1 Company's DSIC requests, analysis of "expedition, economy, prejudice and confusion  
2 issues" all would have been enhanced by not bifurcating RRUI's scheduled hearing.

3 **II. THE COMMISSION SHOULD NOT MAKE A PIECEMEAL APPROACH**  
4 **TO DETERMINING ISSUES IN RRUI'S RATE INCREASE**  
5 **APPLICATION.**

6 In its Motion RRUI states: "any decision issued by the Commission relating to  
7 DSIC will not impact determinations of RRUI's fair value rate base, revenue  
8 requirements or just and reasonable rates for the current Test Year. For that reason, the  
9 DSIC issue can and should be evaluated in a separate Phase 2 proceeding." It is just  
10 that type of reasoning that forced the Arizona Court of Appeals to set aside the order of  
11 the Commission in *Scates v. Arizona Corporation Commission*, 118 Ariz. 531, 578 P.2d  
12 612 (1978). In *Scates*, the telephone utility rate application focused on just "the  
13 installation, moving and changing of telephones within the State of Arizona."  
14 Throughout the hearing the Commission took the view that the requested increase  
15 should be considered solely on the basis of evidence reflecting the costs of these  
16 particular services. Based on its piecemeal analysis, the Commission approved an  
17 increase of almost five million dollars on the rates charged for the specified services  
18 with no concomitant reduction in the charges for other services and without any inquiry  
19 whatsoever into whether the increased revenues resulted in a rate of return greater or  
20 lesser than that established in the utility's prior rate hearing ten months before. Here  
21 RRUI proposes to do the same thing vis-à-vis its rate hearing two or three months  
22 earlier. As stated by the Court:

23 ...[S]uch a piecemeal approach is fraught with potential  
24 abuse. Such a practice must inevitably serve both as an  
25 incentive for utilities to seek rate increases each time costs  
26 in an area rise, and as a disincentive for achieving  
27 countervailing economies in the same or other areas of their  
28 operations.

26 118 Ariz at 534, 578 P2d at 615.

27 The same arguments are compelling in deciding that a bifurcation and its piecemeal  
28 review should not be allowed in RRUI's rate increase application.

1           Intervenors' position is that all rate elements should be considered together, and  
2 not piecemeal. If RRUI gains a DSIC mechanism in a subsequent, bifurcated  
3 proceeding, it will lower its financial risk and therefore should command a lower cost of  
4 equity, a determination that cannot be made by an ALJ in a bifurcated hearing.  
5 Similarly, if we proceed with bifurcated hearings and the ALJ determines a cost of  
6 equity without considering the potential DSIC (scheduled for a later hearing) it is likely  
7 that the ALJ/Commission will determine a higher cost of equity and result in higher  
8 rates for ratepayers than if all elements were considered together. Therefore, it is  
9 Intervenors' position that the issues cannot properly be bifurcated, that if one portion of  
10 the case is suspended, the whole case should be suspended; more logically, that the  
11 whole case proceeds as scheduled.

12           Arguably, the piecemeal analysis could be avoided, while at the same time  
13 granting the bifurcation, if RRUI and all parties would stipulate that the Commission  
14 would not need to make its decision on RRUI's application until it heard all of the  
15 evidence and could decide all issues *in toto* after the second hearing. Intervenors would  
16 consider such a stipulation. Otherwise, Intervenors stand by their objection and  
17 position, that two decisions on RRUI's rate hike application would be improper.

18 **III. THE DSIC IS NOT A STAND ALONE ISSUE.**

19           In its Motion, RRUI states "the DSIC issues raised by RRUI are separate and  
20 distinct from the general rate case issues relating to a determination of fair value rate  
21 base and associated rates thereon." That is simply not true. DSIC/SBCR/SWIP all  
22 depend on, and are a function of, depreciation rates on various accounts of existing  
23 infrastructure. Therefore, any such DSIC mechanism is also best addressed during the  
24 depreciation discussion in this case. Granting RRUI's Motion to Bifurcate would have  
25 the effect of discussing depreciation issues and depreciation rates in one hearing and  
26 DSIC issues in a separate hearing. Decisions in the first hearing would, necessarily be  
27 piecemeal, a situation severely criticized by the Court in *Scates, supra*.

28

1 As stated *supra*, it is Intervenor's position that all rate elements should be  
2 considered together, and not piecemeal. As stated *supra*, Intervenor's argue that all  
3 issues affecting the rates paid by rate payers need to be decided by the Commission as  
4 part of the same hearing, not two decisions following two hearings.

5 **IV. RRUI'S DSIC MOTION AND APPLICATION IS NOT TIMELY;  
6 PREJUDICE TO INTERVENORS**

7 RRUI filed its rate application on May 31, 2012. It contained no discussion or  
8 application for DSIC. RRUI's first DSIC discussion and application was in its Rebuttal  
9 Testimony filed January 28, 2013.

10 1. Intervenor's have been and will continue to be prejudiced by RRUI's late  
11 switch from SWIP to SBCR and now to DSIC. Intervenor's have already spent  
12 considerable effort evaluating RRUI's shifting positions and arguments. Intervenor's are  
13 prejudiced in having to do so again.

14 2. Intervenor's have retained John S. Thornton Jr. as an expert to assist  
15 Intervenor's in the presentation of their case and arguments. Unfortunately, Intervenor's  
16 were so late in joining this rate case, Mr. Thornton was not able to submit any written  
17 testimony in this case. Intervenor's ask the ALJ for two concessions: a) Intervenor's  
18 would like to present the verbal testimony of Mr. Thornton testifying as to the written  
19 testimony, rebuttal testimony and surrebuttal testimony of other witnesses in the hearing  
20 set for March 27, 2013; b) if RRUI's Motion to Bifurcate is granted, Intervenor's request  
21 that the time for written testimony in the second phase hearing be enlarged to allow Mr.  
22 Thornton the opportunity to submit written testimony on the DSIC issues.

23 **V. CONCLUSION**

24 In summary, bifurcation of the DSIC issue would be inappropriate: (1) there is no  
25 evidence that bifurcation will avoid prejudice, or will be conducive to hearing  
26 expedition and economy; (2) to the contrary, bifurcation will have the effect of delaying


27 . . .  
28 . . .

1 the ultimate decisions on the hearings, add confusion and prejudice Intervenor and  
2 presumably other parties; (3) a piecemeal decision of rate applications is fraught with  
3 potential for abuse, giving utilities the wrong incentives and disincentives, as articulated  
4 by the Arizona Court of Appeals in *Scates v. Arizona Corporation Commission*, 118  
5 Ariz. 531, 578 P.2d 612 (1978); and (4) the DSIC is not a stand-alone issue. For the  
6 reasons stated herein, Intervenor request that RRUI's Motion for Bifurcation be denied.


7 If the Commission/ALJ grant RRUI's Motion for Bifurcation, Intervenor  
8 request that the time for written testimony on the DSIC portion of the bifurcated  
9 hearings be enlarged to allow Intervenor expert witness, John S. Thornton Jr. the  
10 opportunity to file written testimony on the DSIC issues, to assist the ALJ and  
11 Commission in its decisions on those issues.

12 . . .  
13 DATED: March 8, 2013.

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6 this 8 day of March, 2013, to:

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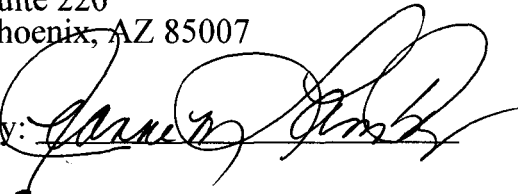
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