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Arizona Corporation Commission

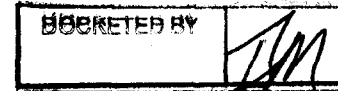
ARIZONA CORPORATION COMMISSION
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MAR 11 2013

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7 **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
PROPERTY AND FOR INCREASES IN
ITS WATER AND WASTEWATER
RATES AND CHARGES FOR UTILITY
SERVICE BASED THEREON.

DOCKET NO: WS-02676A-12-0196

**REPLY TO INTERVENOR'S
RESPONSE/OBJECTION TO MOTION
TO BIFURCATE**

15 Rio Rico Utilities, Inc. ("RRUI" or the "Company") hereby replies to intervenors
16 Santa Cruz Valley Unified School District #35's and Santa Cruz County's ("Intervenors")
17 Response/Objection to Motion to Bifurcate. In their response to the Company's motion,
18 Intervenors oppose bifurcation for a variety of non-persuasive and illusory reasons.
19 Intervenors' justifications for opposing bifurcation are meritless and should be rejected
20 entirely. Further, Intervenors' attempt to use the bifurcation motion as an opportunity to
21 introduce last minute expert testimony on the rate case issues should be denied.

22 **I. BIFURCATION OF THE DSIC IS JUSTIFIED AND WARRANTED.**

23 On pages 1-2 of their response, Intervenors contend that the Arizona Water
24 Company decision on the proposed DSIC there will not have any impact on the RRUI
25
26

1 DSIC and that bifurcating the DSIC issue in this case would add confusion to the pending
2 rate case. Intervenors have it backwards on both issues.

3 Unfortunately, Intervenors may not be fully aware of the DSIC proposal and
4 proceedings in the Arizona Water Company case. Intervenors' suggestion that the
5 Commission may not decide the DSIC issue in the Arizona Water Company case is not
6 well-taken.¹ During its Open Meeting on February 12, 2013, the Commission discussed
7 and approved the recommended opinion and order in Arizona Water's pending rate case,
8 including setting deadlines for further consideration of that utility's proposed DSIC. On
9 February 20, 2013, the Commission issued Decision No. 73736 granting AWC a rate
10 increase and keeping the docket open for purposes of further consideration of Arizona
11 Water's DSIC. In other words, the Commission bifurcated the DSIC issue in the Arizona
12 Water Company case and RRUI is asking for the same procedure here.

13 The parties in that case, including Liberty Utilities and RUCO participating as
14 intervenors, recently reached agreement on general terms of a settlement on the DSIC
15 issues.² One of the primary goals of the Commission in the Phase II DSIC proceeding for
16 Arizona Water Company is to reach consensus on a DSIC that would be used as a
17 template for implementation of DSIC mechanisms industry wide. As such, it makes
18 perfect sense and will serve the best interests of all parties to defer resolution of the DSIC
19 in this case until the Arizona Water Company DSIC proposal has been decided by the
20 Commission. On the other hand, resolving the DSIC issue for RRUI without waiting for
21 resolution of the DSIC in the Arizona Water Company proceeding risks a DSIC decision
22 in the RRUI case that may conflict with or contradict the DSIC decision in the Arizona
23 Water case, in turn leading to unnecessary legal confusion.

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25 _____
¹ Intervenor Response/Objection at 2.

26 ² Of course, any such settlement is subject to review and approval by the Commission.

1 **II. BIFURCATION OF THE DSIC IS NOT PIECEMEAL RATEMAKING.**

2 As stated in the Company's motion, any decision and policy issued by the
3 Commission on the DSIC will not impact determination of RRUI's fair value rate case,
4 revenue requirements or just and reasonable rates based on the Company's current test
5 year. The DSIC is a separate and distinct issue that should be decided in Phase II of this
6 rate case. That is not piecemeal ratemaking by any stretch of the imagination. Rather,
7 the DSIC is a separate and distinct issue for RRUI that should be resolved in a Phase II
8 proceeding. That does not violate *Scates v. Arizona Corporation Comm'n*, 118 Ariz. 531,
9 578 P.2d 612 (1978). Again, that's exactly what the Commission did in the Arizona
10 Water Company case and the Commission has undertaken many bifurcated rate case
11 proceedings in similar settings, including a bifurcated hook-fee proceeding for Litchfield
12 Park Service Company, one of RRUI's sister utilities.

13 In their response, Intervenors contend that the DSIC is not a stand-alone issue
14 because "DSIC/SBCR/SWIP all depend on, and are a function of, depreciation rates on
15 various accounts of existing infrastructure."³ Intervenors do not provide any support for
16 this argument and it should be rejected. To start, the depreciation rates for plant and
17 facilities in the general rate case have not been disputed or contested in this case. That
18 means the depreciation rates in the general rate case will apply in the Phase II DSIC
19 proceeding because no one has disputed or contested depreciation rates in the general rate
20 case. On page 4 of their response, Intervenors imply that cost of equity will be impacted
21 by a DSIC/SWIP/SBCR mechanism. That argument is unfounded and has not been raised
22 by any party in this docket. RUCO, Staff and Intervenors did not make that argument in
23 their direct or surrebuttal testimonies and the record is clear that the DSIC is a separate
24 and distinct issue that should be resolved in a separate Phase II proceeding.

25
26 ³ Intervenor Response/Objection at 4.

1 **III. INTERVENORS' REQUEST TO PRESENT ADDITIONAL RATE CASE**
2 **TESTIMONY SHOULD BE REJECTED.**

3 Last, on page 5 of their response, Intervenors expand the bifurcation discussion
4 into a plea for presenting eleventh hour, untimely testimony on the general rate case
5 issues. Specifically, Intervenors acknowledge that they "were so late in joining this rate
6 case, [that] Mr. Thornton was not able to submit any written testimony in this case."⁴
7 Even so, Intervenors now ask that Mr. Thornton be allowed to present verbal testimony at
8 the March 27, 2013 hearing addressing all of the issues raised in the direct, rebuttal and
9 surrebuttal testimony of the parties. That request should be summarily denied.

10 Fundamentally, after the School District sought late intervention on January 23,
11 2013, underlying counsel discussed intervention with counsel for the School District. As
12 noted in RRUI's response to the School District's motion to intervene filed on January 30,
13 2013, the Company did not object to late intervention based on the School District's
14 agreement and stipulation not to seek any modifications to the procedural schedule in this
15 case, including filing of testimony. Intervenors' attempts to present surprise verbal
16 testimony from Mr. Thornton at hearing would do exactly that.

17 Further, surrebuttal testimony in this case was due on February 19, 2013 and
18 Intervenors had ample opportunity to file surrebuttal testimony from Mr. Thornton by that
19 deadline. Santa Cruz County was granted intervention on January 2, 2013 and the School
20 District was granted intervention on February 6, 2013. Both Intervenors opted not to offer
21 any written testimony in this case and allowing Mr. Thornton now to offer verbal
22 testimony at hearing would substantially harm RRUI, prevent RRUI from conducting any
23 discovery and violate the Administrative Law Judge's procedural orders in this case.
24 Even worse, this request for untimely testimony from Mr. Thornton has absolutely
25

26 ⁴ Intervenor Response/Objection at 5.

1 nothing to do with the bifurcation motion at issue. With respect to bifurcation, the
2 Company does not have any objection to Mr. Thornton offering written testimony
3 according to the procedural schedule in the Phase 2 proceeding relating to the DSIC.

4 All other issues aside, Intervenors will not be prejudiced or harmed in any way
5 from bifurcation of the DSIC to a Phase II proceeding. In their response, Intervenors do
6 not cite any alleged prejudice resulting from a Phase II proceeding on the DSIC. Rather,
7 Intervenors complain that they are prejudiced by RRUI's changes from a SWIP to a
8 SBCR and now to a DSIC. As in most rate cases before the Commission, various issues
9 are subject to change resulting from testimony, discussions and other developments.
10 Here, RRUI changed to a DSIC following Staff's testimony and SBCR proposal, and the
11 evolving status of Commission policy and the pending Arizona Water Company case. In
12 that regard, Intervenors will actually benefit from a Phase II DSIC proceeding because the
13 DSIC proposal for RRUI will be refined once and for all after the DSIC decision in the
14 Arizona Water Case and RRUI's final DSIC proposal will be addressed by all parties in
15 the Phase II proceeding.

16 **III. CONCLUSION.**

17 For the reasons above, the Administrative Law Judge should issue an order
18 bifurcating this rate case proceeding into two phases as proposed by the Company and the
19 ALJ should deny the Intervenors' objections and requests contained in their response.

20 RESPECTFULLY SUBMITTED this 11 day of March, 2013.

21 FENNEMORE CRAIG, P.C.

22
23 By:  

Jay L. Shapiro

Attorney for Rio Rico Utilities, Inc.

1 **ORIGINAL** and 13 copies filed
2 this 11th day of March, 2013 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
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7 **COPY** of the foregoing was emailed/mailed
8 this 11th day of March, 2013 to:

9 Jane L. Rodda
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