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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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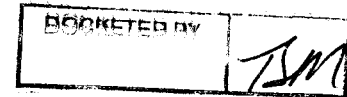
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MAR 20 2013

COMMISSIONERS

- BOB STUMP - Chairman
- GARY PIERCE
- BRENDA BURNS
- BOB BURNS
- SUSAN BITTER SMITH

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL



IN THE MATTER OF THE APPLICATION OF
RIO RICO UTILITIES, INC. FOR A RATE
INCREASE.

DOCKET NO. WS-02676A-12-0196

PROCEDURAL ORDER

BY THE COMMISSION:

On March 1, 2013, Rio Rico Utilities, Inc. ("RRUI" or "Company") filed a Request for Change to Pre-hearing Conference and a Motion to Bifurcate.

On March 7, 2013, the Residential Utility Consumer Office ("RUCO") filed a Response to the Motion to Bifurcate.

On March 8, 2013, Intervenors Santa Cruz Valley Unified School District #23 ("School District") and Santa Cruz County ("County") (collectively "Intervenors") filed a Response to RRUI's Motion to Bifurcate.

On March 11, 2013, RRUI filed a Reply to RUCO's Response and a Reply to the Intervenors' Response/Objection.

On March 12, 2013, Staff filed a Response in Support of Company's Motion to Bifurcate.

The Company requests that the pre-hearing conference on March 21, 2013 be conducted as a telephonic proceeding. RRUI states that it conferred with the other parties and all are in agreement with the request. No party will be prejudiced and a telephonic proceeding will save all parties time and money, thus the request will be granted.

In addition, RRUI moved to bifurcate this proceeding into two phases, with Phase 1 involving issues relating to establishing the fair value of RRUI's plant and property and determining permanent rates and charges for utility service, and Phase 2 involving consideration of the Company's request

1 for a Distribution System Improvement Charge (“DSIC”) and Collection System Improvement
2 Charge. Pursuant to the request, RRUI proposes that Phase 1 of the hearing be conducted as
3 scheduled on March 27-29, 2013, and that Phase 2 commence 20 days after a final decision by the
4 Commission in the second phase of Arizona Water Company’s (“AWC”) pending rate case (Docket
5 No. W-01445A-11-0310).

6 Staff supports bifurcation and states that it is anticipated that in the AWC DSIC proceeding,
7 the Commission will address the circumstances under which a DSIC can be approved, and the terms
8 of the DSIC, and thus, the outcome of the AWC matter will determine the evidence that will be
9 needed in the RRUI docket. Staff believes it would be more efficient for the Administrative Law
10 Judge (“ALJ”) and the parties in the RRUI matter to await the outcome of the AWC case to conduct
11 the hearing on the DSIC. According to Staff, based on the schedule in the AWC case, it is unlikely
12 that a final draft of the settlement and related DSIC in that case will be available prior to the RRUI
13 hearing set to commence on March 27, 2013, and thus, to go ahead with the RRUI hearing on the
14 DSIC would likely mean having to “re-litigate” issues.

15 RUCO does not oppose bifurcation as long as 1) all parties are allowed to supplement the
16 record on Cost of Equity and any other rate-making element they perceive to be affected by the
17 subsequent granting of a DSIC mechanism; and 2) all testimony submitted to date by all parties
18 relative to the DSIC, Sustainable Water Loss Improvement Program (“SWIP”) and System
19 Betterment Cost Recovery (“SBCR”) are included in the record.

20 The Intervenors oppose the Motion to Bifurcate on the grounds that the DSIC is not a stand-
21 alone issue distinct from other rate making issues. They believe that a DSIC mechanism is best
22 addressed during the discussion of depreciation in this case, and further, that if RRUI is granted a
23 DSIC mechanism, it will affect the Company’s financial risk and consequently cost of equity. They
24 argue that granting the Motion to Bifurcate could result in piecemeal ratemaking, which violates the
25 principles of *Scates v. Arizona Corporation Commission*, 118 Ariz. 351 (1978).

26 In addition, the Intervenors argue that the DSIC requested in the AWC case and the RRUI
27 case are not exactly the same. They assert that RRUI assumes that the Commission will approve a
28 DSIC mechanism in the AWC rate case and that a decision in favor of AWC translates to the granting

1 of a DSIC for RRUI. They argue that bifurcation will add confusion and prejudice the Intervenor
2 because they will have to prepare for a second hearing on new facts and issues, rather than a single
3 hearing. The Intervenor also argue that they are prejudiced by RRUI's shifting positions from SWIP
4 to SBCR to DSIC,¹ and request that they be allowed to present verbal testimony, or be allowed
5 additional time to file written testimony, of their expert on DSIC issues.

6 RRUI objects to RUCO's condition that the parties be allowed to "re-litigate" the cost of
7 equity or other general rate case issues in Phase 2 on the grounds it would be unfair to the Company,
8 waste time and resources and defeat the purpose of bifurcation, as well as give RUCO and other
9 parties a "second bite at the revenue requirement apple." RRUI argues that when the Commission
10 issued Decision No. 73736 on February 20, 2013, and granted AWC a rate increase and kept the
11 docket open for further consideration of the DSIC, it in effect bifurcated the DSIC issue. RRUI
12 asserts that it is asking for the same treatment.

13 RRUI argues that because one of the primary goals of Phase 2 in the AWC case is to reach
14 consensus on a DSIC to be used as a template industry wide, resolving the DSIC issue for RRUI
15 without waiting for resolution of the AWC case, risks conflicting resolutions and unnecessary legal
16 confusion. RRUI believes that any decision and policy issued on the DSIC will not impact RRUI's
17 fair value rate case, revenue requirements or just and reasonable rates based on the test year, and that
18 allowing argument on return on equity in the general rate case or other rate case issues established in
19 Phase 1 would jeopardize the Commission's DSIC decision and use of a DSIC in the water and
20 wastewater utility industry.

21 Staff believes that when the Commission adopted an amendment to the AWC Recommended
22 Opinion and Order ("ROO") to conduct a hearing on the DSIC request, it may have "implicitly
23 determined" that a subsequently adopted DSIC would not have an impact on rates. However, Staff
24 also states that "[e]ven if the hearing on the DSIC issue is conducted after the June 2013 Open

25 ¹ In its direct testimony, RRUI proposed a SWIP based on Staff's position in the AWC rate case. In Staff's direct
26 testimony, Staff recommended an SBCR mechanism in lieu of the SWIP. In rebuttal testimony, RRUI opposed Staff's
27 recommended SBCR and requested a DSIC modeled after the one proposed by AWC. In surrebuttal, Staff opposed the
28 adoption of a DSIC on the grounds it was raised late in the proceeding without any witness-sponsored support for the
request. In rejoinder testimony, RRUI advocates for bifurcation and opposes the SBCR as well as RUCO's opposition to a
DSIC. In its direct testimony, RUCO opposed the then-proposed SWIP and in surrebuttal testimony opposed a DSIC, or
any mechanism designed to recover the cost of routine plant additions between rate cases.

1 Meeting, it is likely that a ROO on the issue of rates will not be issued and, arguably, could be
2 addressed at the DSIC hearing. At that subsequent hearing, the Administrative Law Judge will also
3 have knowledge of the issue of rates and can take into consideration any impact that a DSIC would
4 have on ratepayers.”²

5 RRUI does not oppose RUCO’s second condition subject to relevancy and other objections
6 relating to admission into evidence in the Phase 2 proceeding. RRUI asserts that upon Commission
7 approval of a DSIC in the AWC case, the DSIC mechanism would then be used by RRUI, in turn
8 potentially making much of the prior testimony in the Phase 1 proceeding no longer relevant.

9 RRUI argues that bifurcation of the DSIC issue is not piecemeal ratemaking, and asserts that
10 the Intervenors do not provide any support for the argument that the DSIC is a function of
11 depreciation rates and moreover, that depreciation rates in the underlying rate case have not been
12 disputed. Similarly, RRUI argues that the issue of how the cost of equity will be impacted by a
13 DSIC, SWIP or SBCR was not raised in direct or surrebuttal testimonies. Thus, RRUI believes that
14 the DSIC is a separate and distinct issue that should be resolved in a separate Phase 2 proceeding.

15 RRUI also argues that the request to present additional rate case testimony should be denied.
16 RRUI notes that when the School District sought intervention after the deadline, the Company did not
17 object based on the School District’s agreement not to seek modification of the procedural schedule,
18 including testimony deadlines. RRUI further notes that surrebuttal testimony was due on February
19 19, 2013, and that the County, which was granted intervention on December 28, 2012, and the School
20 District, which was granted intervention on February 4, 2013, had time to offer surrebuttal testimony,
21 which opportunity neither party took. RRUI argues that to allow the Intervenors’ witness to offer
22 verbal testimony at the hearing would substantially harm RRUI, prevent RRUI from conducting
23 discovery and violate the Procedural Orders issued in this case. The Company states it would not
24 object to Intervenors offering the written testimony of their witness according to the procedural
25 schedule in a Phase 2 proceeding relating to the DSIC.

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28 ² Staff Response at 3.

1 In the AWC docket the Commission did not adopt AWC's DSIC and held the docket open to
2 allow the parties the opportunity to discuss "AWC's DSIC proposal and other DSIC like proposals
3 Staff may wish to introduce."³ The Commission ordered the Hearing Division to issue a proposed
4 Order to be considered no later than the Commission's Open Meeting on June 11 and 12, 2013. Thus,
5 at this juncture, the AWC DSIC proceeding is on-going with a hearing currently scheduled to
6 commence on April 8, 2013. RRUI and Staff reference a settlement in that case, but at this time the
7 terms of the specific DSIC being discussed are not public, including whether the proposed DSIC will
8 affect operating expenses or cost of capital. RRUI seems to imply that it is a foregone conclusion that
9 the Commission will adopt a DSIC in the AWC proceeding and that mechanism will apply to RRUI
10 without affecting the revenue requirement. Even if there is a settlement in the AWC docket, it is not
11 certain that whatever DSIC or DSIC-like mechanism being discussed in that proceeding will be
12 adopted and/or apply to RRUI. The DSIC under discussion in that proceeding hasn't even been filed,
13 much less been subjected to the hearing process. Currently, it cannot be determined whether the
14 AWC DSIC will not affect rates or the revenue requirement as the specifics of that DSIC are not
15 known.

16 Bifurcation of the RRUI proceeding, as proposed by RRUI is not in the public interest given
17 the issues raised by the parties concerning single issue rate making and the potential overlap of a
18 DSIC or DSIC-like mechanism with other rate issues. Although there are assertions that a DSIC is
19 appropriate, there are also assertions that a DSIC is not appropriate and that the return on equity or
20 other expenses that affect rates may be affected by a DSIC. These issues are disputed and have not
21 yet been subject to examination in a hearing.

22 The AWC rate case presented a unique set of circumstances that resulted in the Commission
23 holding the docket open in order to consider AWC's proposed DSIC and other DSIC-like proposals.
24 The AWC procedural situation should not serve as precedent for how rates should be set in this case,
25 as it is inefficient and raises the specter of single issue ratemaking. Bifurcation as proposed by RRUI
26 hinders the ability of parties to argue their positions as to whether and how a DSIC affects the cost of
27

28 ³ Decision No. 73736 at 104.

1 capital and/or operating expenses, and could adversely affect the Commission's ability to set just and
2 reasonable rates based on all the evidence. Furthermore, treating a decision on DSIC in the AWC
3 rate case as a rulemaking poses due process issues for parties in other cases.

4 Principles of efficiency and administrative economy support considering RRUI's rate
5 application, including its request for a DSIC, in a single proceeding. Staff makes a good case for
6 continuing the entire proceeding. Staff's Response states that Staff supports bifurcation, but it is
7 unclear whether Staff and RRUI have the same understanding of the meaning of bifurcation.

8 The proposals in this matter for a DSIC or similar mechanism have evolved substantially from
9 the position first advanced by the Company. The Company now seeks a DSIC as proposed in the
10 AWC proceeding. The Company made this request in its rebuttal testimony, but did not offer
11 testimony describing how such a mechanism would function. At that time, RUCO was opposing any
12 such mechanism and Staff was recommending its SBCR. In surrebuttal testimony, Staff opposed a
13 DSIC. RRUI's decision to change its proposed mechanism and to request to bifurcate a single issue
14 from the usual ratemaking process could not have been anticipated by parties, and due process and
15 the need for a complete evidentiary record require that if the proceeding is to be continued in order to
16 consider the DISC issue, all parties should be permitted to offer additional testimony on the effects of
17 the DSIC.

18 Given the unique procedural circumstances surrounding the evolution of the Company's
19 request for a DSIC mechanism and uncertainty surrounding any AWC DSIC and its industry-wide
20 effect, there are several options for proceeding in this matter: 1) proceed with the rate case on all
21 issues as currently scheduled; 2) postpone the hearing on all issues until after the Commission's
22 Decision in the AWC DSIC proceeding; or 3) proceed with a process along the lines suggested by
23 RUCO, which would keep the current hearing dates, but also keep the record open to allow the
24 parties to file additional testimony and hearing dates on whether a DSIC is appropriate for RRUI,
25 how such DSIC would function, and any effects of the DSIC on other ratemaking elements. Under
26 either the second or third option, given that the DSIC is a material modification to the application and
27 that it was proposed late in the process, and remains undefined, there is good cause to suspend the
28 time clock under A.A.C. R14-2-103.

1 IT IS THEREFORE ORDERED that the Motion to Bifurcate is denied.

2 IT IS FURTHER ORDERED that at the March 21, 2013, Pre-hearing Conference, the parties
3 shall be prepared to discuss all three options for proceeding in this matter.

4 IT IS FURTHER ORDERED that in the event any portion of the proceeding is continued or
5 postponed the time clock under A.A.C. R14-2-103 shall be suspended.

6 IT IS FURTHER ORDERED that the **pre-hearing conference on March 21, 2013, at 10:00**
7 **a.m. shall be conducted as a telephonic proceeding.** The parties should contact the Hearing
8 Division, (602) 542-4250, to obtain the bridge line information.

9 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
10 Communications) continues to apply to this proceeding and shall remain in effect until the
11 Commission's Decision in this matter is final and non-appealable.

12 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
13 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

14 DATED this 20th day of March, 2013.


JANE L. RODDA
ADMINISTRATIVE LAW JUDGE

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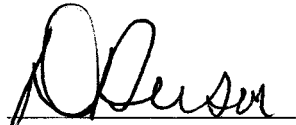
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