

**ORIGINAL**

OPEN MEETING AGENDA ITEM



BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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- 6 SUSAN BITTER SMITH  
COMMISSIONER

ARIZONA CORPORATION COMMISSION  
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8 IN THE MATTER OF THE APPLICATION OF  
9 ARIZONA WATER COMPANY, AN ARIZONA  
10 CORPORATION, FOR A DETERMINATION  
11 OF THE FAIR VALUE OF ITS UTILITY  
12 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

**RUCO'S RESPONSE TO STAFF'S MOTION TO STRIKE**

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15 The Residential Utility Consumer Office ("RUCO") herby responds to Staff's Motion  
16 to Strike as follows. Staff's motion, is overbroad and, if approved would go far beyond the  
17 normal practice of this Commission. RUCO will address Staff's motion as it pertains to  
18 each page of Mr. Rigsby's testimony that Staff requests be stricken and then the exhibits.

19 Page 10, lines 11-12. Mr. Rigsby here lists legality as one of the reasons why  
20 RUCO does not support the SIB. Staff appears to be suggesting that a non-lawyer witness  
21 cannot even testify to the basis of an objection to an issue if that basis is legal. In other  
22 words, if RUCO's only objection is legal, Staff is suggesting that only a lawyer or someone  
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1 with legal qualifications can advise the Commission of the agencies position. Staff's  
2 objection is overbroad, misplaced and should be rejected.

3 Page 12, Lines 1-23. The first half of this page that Staff objects has nothing  
4 to do with the legality of the SIB – it addresses the efficiency adjustment. The second part,  
5 Mr. Rigsby proclaims that he is not a lawyer and that RUCO's legal objections here are  
6 consistent with its legal objections in the underlying case. Again, this testimony is strictly  
7 informational, and contains no legal analysis. Staff's objection here is overbroad,  
8 misplaced and should be rejected.

9 Page 13, lines 1-12, Page 14, lines 6-22, Page 15, lines 1-6

10 Mr. Rigsby provides a factual basis on how the SIB will work. There is no legal  
11 argument – Mr. Rigsby is simply stating the facts. Staff seems to be confused with the  
12 difference between legal and factual argument. The legal argument is based on the facts  
13 – the factual argument is not based on the legal. Here, Mr. Rigsby, who is well within his  
14 qualifications, explain s factually how the SIB surcharge mechanism works. There is  
15 nothing objectionable here.

16 Staff's witness, Jeffrey Michlik, who is not a lawyer, testified in the underlying case,  
17 among other things, that the DSIC is an adjustor mechanism, how the DSIC allows the  
18 recovery of costs outside of ratemaking, how the DSIC provides less scrutiny of prudence,  
19 and how the DSIC introduces the element of single issue ratemaking. S-3 at 33-34, S-4 at  
20 2. Under Staff's perspective of admissibility, it could easily be argued that Mr. Michlik's  
21 testimony the acceptable legal boundary and should have been stricken. Mr. Michlik's  
22 testimony goes at least as far, and really, even farther into legal concepts than what Mr.  
23 Rigsby has testified to here.

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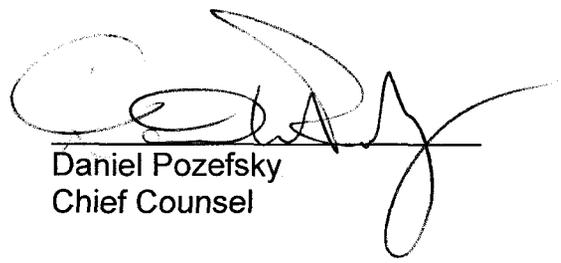
1 Staff's interpretation is overbroad. Mr. Michlik, like Mr. Rigsby is well within his  
2 qualifications to discuss and comment on the facts as well as general and widely  
3 understood ratemaking principles even if they have a legal basis. Neither Mr. Michlik nor  
4 Mr. Rigsby are citing legal cases or making legal arguments and/or conclusions based on  
5 their legal arguments. And to the extent they are crossing a boundary, the Judge is well  
6 within his discretion to give the testimony it the weight he deems appropriate.

7 Exhibits 1-4. RUCO has no objection striking these exhibits given the Procedural  
8 Order of April 4, 2013. RUCO's interest is, and has always been making sure that the  
9 record in this matter is complete.

10 Finally, it is worth noting that the type of testimony that Staff is objecting to here has  
11 been filed by various Staff and RUCO witnesses in cases before the Commission for as  
12 long as the undersigned can remember. For example, in the APS Interim Rate Relief case  
13 (Docket No. E01345A-06-0009), Staff's witness, J. Randall Woolridge, who is not an  
14 attorney, testified about whether the Company's circumstances constituted a financial  
15 emergency – which was a legal standard in question in that case. RUCO's witness, Mrs.  
16 Diaz Cortez, who was not an attorney, also filed testimony in that case on behalf of RUCO  
17 that clearly addressed the legal issues. See Direct Testimonies of J. Randall Woolridge  
18 and Mrs. Diaz Cortez dated February 28, 2006 in Docket No. E-01345A-06-0009. Neither  
19 Mr. Woolridge's testimony nor Mrs. Diaz' was stricken.

20 For the reasons stated above, Staff's objection should be denied as it relates to the  
21 testimony itself. RUCO has no objection with striking Mr. Rigsby's Exhibits 1-4.

1 RESPECTFULLY SUBMITTED this 5th day of April, 2013.

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Daniel Pozefsky  
Chief Counsel

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