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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE, CHAIRMAN
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP
BRENDA BURNS

IN THE MATTER OF THE APPLICATION OF CLEAR SPRINGS UTILITY CO., INC., FOR AN INCREASE IN RATES **and** **IN THE MATTER OF THE APPLICATION OF CLEAR SPRINGS UTILITY CO., INC., FOR AUTHORITY TO INCUR LONG-TERM DEBT**	Docket Nos. W-01689A-11-0401 WS-01689A-11-0402 **CLEAR SPRING'S RESPONSE TO STAFF'S CLOSING BRIEF**

Clear Springs Utility Co., Inc. ("Company" or "Clear Springs"), hereby files its comments to the Recommended Opinion and Order ("ROO").

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1.0 Revenue

Staff's recommendation adopted in the ROO is that the Company, serving 540 customers, should receive an annual operating income of only $6,409. ROO at p. 13, ¶ 53. Put another way, if we assume no unforeseen expenses will occur, no inflation since 2010 has occurred, and Staff's revenue projections are correct, the Company will make $6,409. But water lines break, pumps fail, inflation occurs, and Staff's revenue projections are usually not met. So expecting a water company with 540 customers to be able to pay its bills with a $6,409 "cushion" is simply unreasonable. Unless the Commission amends the ROO, Clear Springs will leave the rate case in a money loss position from day one.

To make matters worse, since its last rate case in 2006, the Company has lost over $230,000. *See* Hearing Exhibit A-7; see also Attachment 1. In that case, Staff's recommendations regarding operating expenses and revenue requirement were adopted. *See* Decision No. 68443. But Staff's revenue projections proved too high, resulting in a shortfall. Further, its operating expense projections were too low.. So even though Staff had projected the Company would earn an operating income of $25,319 each year, it lost money in all but the first year, culminating in the loss of $188,051 by the end of 2011 and more than $230,000 by the end of 2012.

In response to this point, Staff's witness quipped that it is management's responsibility to hit the revenue target. This incredible position lacks any factual basis. Decision 68443 adopted Staff's projections and rejected the Company's position. It was Staff's rate design that generated the revenue. Moreover, Staff routinely rejects the notion that rate design should address the fact that conservation rates (i.e., tiered rates) will result in some high volume water users to cut back water use. Simply put, Company management did not set the revenue requirement, did not set the rate design, and does not control how much water the customers use. The revenue shortfall was a result of Staff's decision making, not Company management.

Staff also took the position that the Company should have come in for a rate case when it realized Staff's revenue projections were too high and its expense projections were too low. To be clear, Company management became aware of the problem in 2009 and filed on a 2010 test year – within four years after its last rate case decision. But more importantly, the implication by Staff is that the new rate case would fix the problem. Yet, in this case, instead of helping the Company address its financial issues, it recommends cutting the proposed operating income from the projected $25,319 as projected in 2006 to $6,409 today. Knowing that it lost money when Staff projected a $25,319 operating income, the Company believes that Staff's decision to lower operating income to a near break-even point will be catastrophic.

Therefore, the Company requests that the Commission adopt its proposal that would generate $25,788 of operating income, which is almost identical to what Staff recommended in the last rate case. In doing so, the Commission should also adopt the Company's rate design.

2.0 Equity Investment

Despite all of the evidence that the Company has lost so much money, Staff still insists that the Commission should order the owner to use his money to make capital improvements. The problem with this position is that it fails to recognize that the Company owner has been covering all of these ongoing losses for six years. The owner has been bleeding money to pay the electric bills, taxes, and all of the other operational costs that are not being met by the insufficient revenue. Moreover, as the ROO states, the Company's owner just spent $30,000 to repair a pump that failed. Maybe that does not constitute a significant investment to Staff, but to a retired 83 year-old, such an investment is significant.

Finally, the Company might be able to understand Staff's position better if Staff was projecting that the Company would be earning enough money to enable it to make a significant reinvestment in the form of capital improvements. But here, at best the Company is going to break even. There is no income for the Company owner to reinvest. Thus, the Commission should not adopt the recommendation requiring the Company's next significant capital improvement to be funded with equity. *See, e.g.,* ROO at p. 54, line 8-9.

3.0 Storage Tanks for PWS 02-048 and PWS 02-050

Public Water System ("PWS") 02-048 serves 6 customers and PWS 02-050 serves 7 customers. *See* ROO at p. 6. The Company believes 1,000 gallons of storage for each of these systems is adequate, but Staff's position is that each system needs 5,000 gallons of storage. The Company has compromised and agreed to build 5,000 gallons of storage at a cost of approximately $46,473.00.

However, the compliance timeline is too short. The process to finalize a WIFA loan takes four to six months. Thereafter, the Company has to return to the Commission to secure the surcharge funding, which will take another four to six months. Then the project will need to be engineered, permitted, and bid, which will take another four to six months. Moreover, the tank construction will likely be part of the same bid packet as the other construction improvements. Therefore, the Company requests that the timeline for filing an affidavit confirming that the PWS 02-048 and PWS 02-050 storage tanks have been constructed should be the same as the other construction improvements, which is July 1, 2015.

4.0 Water Testing

As the Commission knows, ADEQ rules do not require water systems serving less than 15 connections or 25 people to perform routine sample testing. Three of Clear Spring's systems (PWS 02-048, 02-050, and 02-051) fall below this testing threshold. As the ROO explains, the Company is not opposed to testing the smaller systems. *See* ROO at p. 34.

However, the compliance timeline is too short. The Company can test within the 20 days after the issuance of the order. However, often lab tests for lead and copper take three weeks before the results are provided to the Company. Therefore, the Company requests that the timeline for filing the affidavit to verify testing and compliance as set forth in ¶ 140 at page 52, line 16 be revised to 40 days rather than 30 days.

5.0 BMPs

As explained in the ROO, Staff wanted the Company to be subject to five BMPs. As a compromise, the Company took the position that it would implement three BMPs for Commission review and consideration. See ROO at p. 36. The Company is willing to abide by its compromise position.

Nonetheless, the Company recognizes that the Commission's position regarding the implementation of BMP's has evolved. The Commission recognizes that the Arizona Department of Water Resources already enforces BMPs and BMPs are an additional expense to the Company and its customers. Clear Springs has no staff, so it will have to pay its management company and consultants to draft, revise, finalize, copy, and file the BMPs. Management and consultants will have to engage in the approval process that requires, at a minimum, reviewing the BMP staff report as well as travel to and attend a Commission open meeting. After the BMPs are adopted, they will have to be finalized and filed with docket control and tracked as a compliance matter. All of this expense eventually will be absorbed by the customers. Accordingly, if the Commission decides that the BMPs are unnecessary, the Company will support its decision.

6.0 Financing Requirements

The Company appreciates the approval of the financing application, especially the approval to include the Debt Service Reserve in the WIFA Surcharge. But there are several compliance issues that should be addressed.

First, the Commission should strike provision that "no other funds may be placed into this [WIFA Surcharge] account." *See* ROO at p. 51, lines 15-16. The Company believes this provision needs to be deleted because the Company may need to deposit other money into this account to make the WIFA payment.

Second, the Commission should not adopt Staff's position as reflected in the ROO that the income collected to pay the Debt Service Reserve Fund ("DSRF") be treated as both revenue and a regulatory liability. This creates an accounting nightmare and will require the Company to spend thousands of dollars on both a regulatory accountant and a tax accountant to try and stay compliant with this recommendation while not committing tax evasion. The Company is not staffed with accountants, so it will have to pay two specialized accountants to review the records annually to try and abide by this proposed rule and the federal and state tax codes. The high cost of these professionals will necessarily be included in rates as soon as practical at a much higher cost than whatever small savings Staff believes will flow to the customers in 20 years.

This added regulatory complexity and cost does not benefit anyone. The Company's proposal is straightforward – the money collected from the WIFA Surcharge will be deposited into a WIFA designated account and passed on to WIFA as required by the loan payment schedule. If and when 19 years from now, WIFA closes the loan and confiscates the money held as in the DSRF, any money left over will be rebated to customers. There is no reason to violate the rules of accounting and label income as a regulatory liability. The pass-through of money from the customers to WIFA can occur without reinventing accounting rules.

Dated this 25th day of July, 2013.

MOYES SELLERS & HENDRICKS LTD.

Steve Wend

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Original and 13 copies of the foregoing filed this 25th day of July, 2013 with:

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ATTACHMENT 1

Clear Springs Utility Company, Inc. - Water Division
Annual Comparison of Actual Amounts versus Recommendations in Decision 68443

	2006	2007	2008	2009	2010	2011	Cumulative Total	2012	New Cum
Water Division Revenue	$ 196,517	$ 168,384	$ 168,947	$ 175,234	$ 168,250	$ 176,409	$ 1,053,741	$ 164,303	$ 1,218,044
Revenue per Decision 68443 - rates effective 02/01/2006	182,903	182,903	182,903	182,903	182,903	182,903	1,097,418	182,903	1,280,321
Revenue Shortage	$ 13,614	$ (14,519)	$ (13,956)	$ (7,669)	$ (14,653)	$ (6,494)	$ (43,677)	$ (18,600)	$ (62,277)
Operating Expenses per Decision 68443	$ 157,584	$ 157,584	$ 157,584	$ 157,584	$ 157,584	$ 157,584	$ 945,504	$ 157,584	$ 1,103,088
Water Division Operating Expenses	160,300	176,328	173,569	187,309	206,676	185,696	1,089,878	181,602	1,271,480
Excess Operating Expenses	$ 2,716	$ 18,744	$ 15,985	$ 29,725	$ 49,092	$ 28,112	$ 144,374	$ 24,018	$ 168,392
Excess/(Shortfall)	$ 10,898	$ (33,263)	$ (29,941)	$ (37,394)	$ (63,745)	$ (34,606)	$ (188,051)	$ (42,617)	$ (230,668)