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CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF ARIZONA WATER COMPANY, AN
ARIZONA CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE
OF ITS UTILITY 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

Arizona Corporation Commission
DOCKETED

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**ARIZONA WATER COMPANY'S
RESPONSE IN OPPOSITION TO RUCO'S APPLICATION
FOR REHEARING OF DECISION NO. 73938**

Arizona Water Company, the Applicant in this rate proceeding, hereby responds in opposition to the Application for Rehearing of Decision No. 73938 filed by the Residential Utility Consumer Office ("RUCO") on July 17, 2013.

I. EVERY ISSUE RAISED IN RUCO'S APPLICATION WAS FULLY CONSIDERED BY THE COMMISSION, AND NO GROUNDS FOR REHEARING EXIST.

RUCO argues that the Commission should grant rehearing in this matter based on RUCO's contention that the Commission wrongfully adopted a system improvement benefits ("SIB") mechanism in a proceeding that was separate from the Arizona Water Company Eastern Group Rate proceeding—this very same docket. Although, as RUCO noted, Arizona Water Company argued that a reduction in the return on equity ("ROE")

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1 authorized in Decision No. 73736 would be an improper partial rescission of that Decision
2 in violation of A.R.S. § 40-252, the Commission nonetheless fully considered both the
3 10.55 percent ROE it authorized in Decision No. 73736 in Phase 1 of these proceedings
4 together with implementation of the SIB Mechanism. During the June 12, 2013 Open
5 Meeting at which the Commission adopted Decision No. 73938, nearly all of the argument
6 by the parties and discussion among Commissioners focused on the merits of the SIB
7 Mechanism and whether any change in the authorized 10.55 percent ROE was warranted by
8 the Commission's approval of the SIB Mechanism. The Commission fully considered
9 Pierce Proposed Amendment No. 3, which specifically addressed this issue, and concluded
10 that "the existence or lack of a DSIC should not change the utility's ROE," (Decision No.
11 73938, p. 55). The record in this docket does not support RUCO's argument to the contrary
12 in its Application. Because the Commission actively considered whether Arizona Water
13 Company's ROE should be modified in Phase 2 of this proceeding, and did so in the context
14 of the overall Eastern Group rate proceeding, it follows that the SIB Mechanism was
15 adopted as part of the Commission's approval of Arizona Water Company's entire rate case,
16 including the determination of the Company's fair value rate base.

17 The remainder of RUCO's arguments against the SIB Mechanism merely repeat
18 arguments asserted during the Phase 2 hearing, RUCO's April 29, 2013 closing brief, and at
19 the June 12 Open Meeting. RUCO presents no new grounds that Decision No. 73938 was
20 "in any respect unjust or unwarranted, or should be changed, . . ." A.R.S. § 40-253(E).
21 Accordingly, rehearing is inappropriate and RUCO's application should not be granted.

22 **II. THE COMMISSION PROPERLY DETERMINED THAT THE ROE IT**
23 **ADOPTED IN DECISION NO. 73736 WAS JUSTIFIED AND SHOULD NOT**
24 **BE REDUCED IN EXCHANGE FOR ITS ADOPTING A SIB MECHANISM.**

25 RUCO asserts that the 10.55 percent ROE and the SIB Mechanism are "duplicative
26 devices" and therefore are unreasonable (p. 4, l. 22 – p. 5, l. 4). Arizona Water Company,
27 Commission Staff and the other utility intervenors, however, developed a thorough and
28 well-supported record demonstrating that the SIB Mechanism addresses separate and

1 distinct issues and should not be linked to a utility's ROE. *See* Arizona Water Company's
2 Phase 2 Post-Hearing Brief dated April 29, 2013 at pp. 15-19. These parties established that
3 the benefits of the SIB Mechanism become meaningful only to the extent that Arizona
4 Water Company's actual Commission-determined cost of equity was reflected in its final
5 rates.

6 Arizona Water Company and the utility intervenors also established that authorizing
7 a SIB Mechanism that already includes a five percent efficiency credit fundamentally
8 conflicts with also reducing the authorized ROE applied to *all* of the utility's existing rate
9 base as well as any new SIB plant investments. Doing so would disincentivize investments
10 to replace aging and failing infrastructure and discourage utilities from seeking a SIB
11 Mechanism in the future. Utilities Division Director Steve Olea specifically testified that
12 the efficiency credit built into the agreed SIB Mechanism¹ was *not* negated by the 10.55
13 percent ROE adopted by the Commission, and that a company's ROE should not be a
14 consideration in choosing whether or not to institute a SIB Mechanism. (Phase 2 Transcript
15 at p. 275, l. 23 – p. 276, l. 12). Staff recommended against lowering the Commission's
16 authorized ROE for Arizona Water Company with the adoption of the SIB Mechanism in
17 this case.

18 In summary, the record thoroughly supports both the Commission-authorized 10.55
19 percent ROE and its adoption of a SIB Mechanism in this docket. Rehearing should not be
20 granted on this issue.

21 **III. THE SIB MECHANISM COMPLIES WITH ALL REQUIREMENTS OF**
22 **ARIZONA LAW AND WAS PROPERLY ADOPTED.**

23 The Commission's authority to adopt a SIB Mechanism for Arizona Water Company
24 in this case was also thoroughly briefed by the parties in their closing briefs, supported by
25 the Commission's Legal Division, and should not be the subject of rehearing. Decision No.

26 _____
27 ¹ The efficiency credit itself was based on a targeted 100 basis point reduction in the
28 authorized ROE applicable to SIB-related utility plant investments, as testified to by Mr.
Olea (Phase 2 Transcript at p. 264, l. 22 – p. 265, l. 15).

1 73938 was Phase 2 of a general rate case, and the Commission’s consideration and adoption
2 of the SIB Mechanism was part and parcel of that general rate case. The SIB Mechanism
3 was not extraordinary ratemaking conducted outside the scope of general rate proceedings.
4 Whether or not it is an “adjustment mechanism” is not relevant since it was adopted in a
5 general rate case subject to full hearing, due process and a determination of fair value rate
6 base.

7 The SIB Mechanism the Commission adopted in Decision No. 73938 complies in all
8 respects with *Scates v. Ariz. Corp. Comm’n*, 118 Ariz. 531, 578 P.2d 612 (App. 1978)
9 because it was adopted as part of Arizona Water Company’s rate structure “in accordance
10 with all statutory and constitutional requirements and, further, because [it was] designed to
11 insure that, through an adoption of a set formula geared to a specific readily identifiable
12 cost, the utility’s profit or rate of return does not change.” *Id.* at 535, 578 P.2d at 616. The
13 SIB Mechanism adopted by the Commission was presented in a settlement agreement that
14 was carefully vetted by Staff’s counsel as well as legal counsel for the Company and utility
15 intervenors during negotiations prompted by the Commission’s decision in Phase 1 of this
16 docket. Arizona Water Company and the intervening utilities, as well as Staff, exhaustively
17 briefed these points in their Phase 2 post-hearing briefs. On the other hand, RUCO has
18 raised no new arguments in its Application to justify rehearing. Accordingly, the SIB
19 Mechanism adopted by the Commission in Decision No. 73938 is constitutionally
20 permissible and consistent in every respect with Arizona law.

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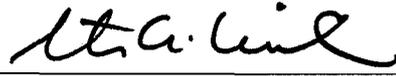
28 ...

1 **IV. CONCLUSION.**

2 For the foregoing reasons, RUCO's application for rehearing of Decision No. 73938
3 should be denied.

4 RESPECTFULLY SUBMITTED this 1st day of August, 2013.

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