

OPEN MEETING AGENDA ITEM



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October 10, 2013

Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

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Arizona Corporation Commission
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OCT 10 2013

RE: DOCKET NOS: W-03514A-13-0111 and W-03514A-13-0142

DOCKETED BY 

Dear Commissioners:

I object to the recommendation issued by Administrative Law Judge, Dwight Nodes on the Phase 1 portion of this case. I am requesting dismissal of the proceeding, based on the following evidence:

- 1) ACC rule R14-3-109(A) was violated, by ratepayers not receiving "at least 10 days" notice of the hearing on 09/25/13. I received only 5 days notice of the hearing via my monthly water bill and Thomas Bremer gave comment during the Phase 1 hearing on 09/25/13 that he received only 1 day notice.
- 2) I am alleging deception by the parties, as per my letter posted to the docket on 10/01/13 stating contradictions in pleadings and testimony. Under ACC rule R14-3-109 (J), "The Commission or presiding officer, may, however, require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties". I request adherence to the "proof by evidence of the facts stipulated to", whereby supporting evidence on the docket substantiates my claim.
- 3) I am alleging that Payson Water Company (PWC) has already entered into agreements (back in December 2012) with Town of Payson to tie into the new Town of Payson Water Treatment Plant currently under construction for purchase and delivery of water from the Cragin reservoir, which should be ruled void, as stated in ARS § 40-285(A), in relevant part: "Every such disposition, encumbrance or merger made other than in accordance with the order of the commission authorizing it is void". I have filed Freedom of Information Act (FOIA) requests to obtain this evidence myself, since this agreement is currently missing from the docket. However, I received verbal confirmation from Buzz Walker of Town of Payson Water Department of these facts this morning. Although I do not have that agreement in my possession yet, it is forthcoming. It will prove that PWC embarked on a plan to deceive the Commission with their claim of an "extraordinary opportunity that just fell into the Company's hands" as described by Jay Shapiro at the 09/04/13 procedural conference. The plan to encumber the Company with \$1,238,000 debt (and ultimately the ratepayers) without **PRIOR** approval by the Commission was hatched back as far as December 2012 (and perhaps earlier). Hence, there is no legitimacy to the claim of "urgency" to proceed with "fast track" approvals for financing of this expensive pipeline proposition.
- 4) Per my letter of 09/30/13 posted to the docket, I pose 6 questions regarding evidence that should be reviewed by ACC staff for proper consideration of this case. As already mentioned, I have filed FOIA requests to obtain this evidence myself, but I have not received the evidence yet. However, under ACC rule R14-3-109 (K), "Rules of evidence before the Superior Court of the state of Arizona will be generally followed but may be relaxed in the discretion of the Commission or presiding officer when deviation

from the technical rules of evidence will aid in ascertaining the facts". I assert that the "deviation from the technical rules of evidence" in this case will NOT aid in ascertaining the facts, but does, in fact, hide and distort the true facts of the case, as noted in item (2) and (3) above.

- 5) ACC Rule R14-3-109 (Q) states that "Either prior to hearing or during a hearing, and on a showing of good cause, a matter may be continued by the Commission or the presiding officer for submission of further or additional evidence or for any other proper purpose". I suggest that the "showing of good cause" was given by the public comments made by 11 ratepayers at the start of the hearing on 09/25/13. No continuance was granted by Judge Nodes, however, despite an appeal by those 11 people who travelled far distances on very short notice to attend the hearing and convey their dissatisfaction with the speedy nature of this matter. Strong opposition to the case is also evidenced by the 25+ comments in opposition posted to the docket. This is problematic, as I strongly assert that questionable evidentiary techniques have been employed in this case, which I believe rises to the level of a violation of the rights of the ratepayers, which are protected by law under Arizona Revised Statute § 40-361.

It appears that the ACC has "bent over backwards" to rush this case through without proper attention to ALL the facts. The hearing on 09/25/13 was focused primarily on addressing an unusual financing arrangement for PWC, with little consideration given to whether the proposed project is just and reasonable for the ratepayers, in violation of ARS § 40-361(A), in relevant part: "Charges demanded or received by a public service corporation for any commodity or service shall be just and reasonable. Every unjust or unreasonable charge demanded or received is prohibited and unlawful".

The hurried approach of this Phase 1 portion of the case favors PWC and disadvantages the ratepayers. A decision to approve PWC's financing application will encumber the Company with debt that will be borne by the ratepayers. I strongly object to financing approval when the viability, benefits, cost and scope of the proposed Cragin pipeline project has NOT been adequately vetted to the Commission.

A ruling to approve the financing application and interim rates will be in direct conflict with the ACC's stated goal to "balance the customers' interest in affordable and reliable utility service with the utility's interest in earning a fair profit". Accordingly, I ask the Commission to dismiss or delay the proceeding until proper evidence collection is made in order to make a proper analysis and determination of the "just and reasonable" course of action, with due consideration given to the ratepayers.

Thank you.

Sincerely,



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