

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COM

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COMMISSIONERS

2014 JAN 13 P 3:49

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

AZ CORP COMMISSIONER DOCKET CONTROL

ORIGINAL

IN THE MATTER OF THE APPLICATION OF NEW RIVER UTILITY COMPANY, AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN ITS WATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.

DOCKET NO. W-01737A-12-0478

NOTICE OF FILING RESPONSE TO LETTER FROM COMMISSIONER BRENDA BURNS DATED JANUARY 10, 2014

BROWNSTEIN HYATT FARBER SCHRECK, LLP
 One East Washington Street, Suite 2400
 Phoenix, AZ 85004
 602.382.4040

On January 10, 2014, Commissioner Brenda Burns sent a letter to New River Utility Company ("New River" or the "Company"), a copy of which was filed in the docket, requesting that the Company respond to questions listed in the letter. Attached hereto is a letter from New River's tax attorneys dated January 13, 2014, responding to Commissioner Burns' questions.

RESPECTFULLY submitted this 13th day of January, 2014.

BROWNSTEIN HYATT FARBER SCHRECK LLP

Jeffrey W. Crockett, Esq.
 One East Washington Street, Suite 2400
 Phoenix, Arizona 85004
 Attorneys for New River Utility Company

ORIGINAL and thirteen (13) copies filed this 13th day of January, 2014, with:

Docket Control
 ARIZONA CORPORATION COMMISSION
 1200 West Washington Street
 Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED

JAN 13 2014

DOCKETED BY

BROWNSTEIN HYATT FARBER SCHRECK, LLP
One East Washington Street, Suite 2400
Phoenix, AZ 85004
602.382.4040

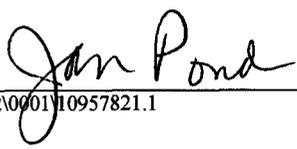
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COPY of the foregoing hand-delivered
this 13th day of January, 2014, to:

Lyn Farmer, Chief Administrative Law Judge
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Steve Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Janice M. Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007



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January 13, 2014

Via Hand-Delivery and E-mail

Brenda Burns, Commissioner
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007-2927

Re: New River Utility Company (Rates) W-01737A-12-0478

Dear Commissioner Burns:

This Firm represents New River Utility Company ("NRUC"), and the undersigned has provided legal and tax advice to NRUC for over 30 years. NRUC has asked us to respond to your letter to Mr. Jeffrey Crockett, regulatory counsel to NRUC in these proceedings, a copy of which is enclosed for your convenience.

In December 2013, Glenn Millar, CPA, the outside accountant for NRUC, contacted us to discuss a proposed distribution (the "Distribution") of the account that is denominated on the books and records of NRUC as "Due from Cody Farms" (the "Receivable") from NRUC to its shareholder, the Robert L. Fletcher and Karen Fletcher Family Trust (the "Shareholder"), as a distribution with respect to the issued and outstanding stock of NRUC.

We have prepared the enclosed Unanimous Consent of the Board of Directors of NRUC, dated effective January 31, 2014 (the "Consent"), and the related Assignment also dated effective January 31, 2014 (the "Assignment"). Following execution of the Consent and the Assignment, the Distribution will have been effectuated as of January 31, 2014.

The descriptions above, and the enclosures, are responsive, we believe, to questions Numbers 1 and 2 of your January 10, 2014 letter. As to question Number 3, the federal and state income taxes on any taxable income of NRUC that provided funds that were then loaned to Cody Farms would have been reported by NRUC on its returns for that tax period, would have been then allocated to its shareholder, and would have then been reported on the income tax returns of Robert L. Fletcher and Mary Karen Fletcher for the tax period that such taxable income was earned by NRUC. The federal and state taxable income, if any, that may relate to the Distribution

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Brenda Burns, Commissioner
Arizona Corporation Commission
January 13, 2014
Page 2

will be reported on the individual income tax returns of Robert L. Fletcher and Mary Karen Fletcher, as the Trustors of the Shareholder.

The end result of the initial recordation of the Receivable on the books and records of NRUC, and the subsequent Distribution, is not substantially different for federal and state income tax purposes, except for timing differences, from the result that would have been obtained if such sums had been initially recorded as a distribution with respect to the stock of NRUC as and when such sums were paid to Cody Farms.

Respectfully submitted,

JENNINGS, STROUSS & SALMON, P.L.C.


Jack N. Rudel, Esq.

ph
Encs.

Cc: New River Utility Company (via e-mail w/encs.)
Jeffrey Crocket (via e-mail w/encs.)

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



BRENDA BURNS
COMMISSIONER
Direct Line: (602) 542-0746
Fax: (602) 542-0786
E-mail: Burns-web@azcc.gov

ARIZONA CORPORATION
COMMISSION

January 10, 2014

Re: New River Utility Company (Rates) W-01737A-12-0478

Dear Mr. Crockett:

In your Exceptions filed January 9, you stated that New River Utility Company "concedes that there is some confusion in the record regarding the proper characterization and accounting for approximately \$1.1 million in inter-affiliate transfer of funds."

The company has known, since Staff brought it up during the rate case's hearings, that there have been questions involving inter-affiliate transfers of funds. However, I see no evidence that the company has sought to resolve the "discrepancy" as described by the ROO.

It would be helpful to me in my consideration of this matter if the company would address the following questions:

1. What steps has the company undertaken to address the concerns addressed by the ALJ?
2. If no steps were taken, is there any reason New River Utility Company cannot resolve the discrepancy prior to new rates being approved?
3. Were personal income taxes paid on the \$1.1 million, allegedly treated as a dividend distribution?

Please file your written responses to these questions by Monday, January 13, 2014.

I look forward to reviewing the company's responses. I have not reached any conclusions regarding this matter, and your prompt response to these questions will assist me in my full consideration of this case.

Sincerely,

Brenda Burns
Commissioner

1-10-14
Jack + Glenn
Please answer

**UNANIMOUS WRITTEN CONSENT OF
THE BOARD OF DIRECTORS
OF
NEW RIVER UTILITY COMPANY,
an Arizona corporation**

January 31, 2014

The undersigned, being the sole member of the Board of Directors of NEW RIVER UTILITY COMPANY, an Arizona corporation (the "**Corporation**"), acting by written consent in lieu of a meeting, as authorized by A.R.S. § 10-821, hereby adopts the following resolutions and declare them to be in full force and effect as if adopted at regularly a scheduled meeting of the Board of Directors of the Corporation, effective as of the date first written above. The undersigned waive notice of any meeting to consider the matters incorporated in this Consent.

WHEREAS, the Board wishes to declare a distribution with respect to its issued and outstanding shares of common stock (the "Distribution") of all of the Corporation's right, title and interest in and to a certain asset (the "Receivable") that is denominated "Due from Cody Farms", and is reflected as a receivable in the amount of approximately \$1.173 Million on the books and records of the Corporation.

WHEREAS, the Corporation is permitted to approve and consummate the Distribution under Arizona law, and the Board of Directors of the Corporation deems it to be in the best interests of the Corporation and the Corporation's sole shareholder to declare the Distribution.

NOW, THEREFORE, BE IT RESOLVED, that the Distribution is hereby declared, ratified and approved and that the Corporation's officers are authorized to make the Distribution to the Corporation's sole shareholder consistent with the terms of this Consent as of January 31, 2014.

FURTHER RESOLVED, that the officers of the Corporation and each of them are authorized to execute, deliver and perform, and to take any other actions (or to refrain from taking any actions) that he or she determines to be necessary or desirable, in his or her discretion to effectuate the payment of the Distribution.

FURTHER RESOLVED, that this Consent be filed with the minutes of proceedings of the Board of Directors of the Corporation, and that the resolutions herein shall be deemed resolutions of the Board of Directors of the Corporation.

IN WITNESS WHEREOF, this Consent is adopted effective as of the date first written above. This Consent may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile transmission (including the e-mail delivery in Adobe pdf format) of any signed original

counterpart and/or retransmission of any signed facsimile transmission shall be deemed the same as the delivery of an original.

SOLE DIRECTOR:

Robert L. Fletcher

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, New River Utility Company, an Arizona corporation, hereinafter designated Assignor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned does hereby transfer and assign to the Robert L. Fletcher and Karen Fletcher Family Trust, hereinafter designated as Assignee, all of the Assignor's right, title and interest in and to a certain asset (the "Receivable") that is denominated as "Due from Cody Farms" on the books and records of the Assignor.

Said Assignor hereby made, executed and appointed said Assignee its true and lawful attorney, irrevocably in its name or otherwise, to use and take all lawful ways and means for any recovery of any money and interest payable under said Receivable, and in the case of payment to discharge the same as fully as the said Assignor might or could do if these presents were not made, including the execution and delivery of any releases respecting same.

IN WITNESS WHEREOF, said Assignor has set its hand and has executed these presents on January 31, 2014.

NEW RIVER UTILITY COMPANY,
an Arizona corporation

By: _____
Robert L. Fletcher, President

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN TO before me, the undersigned Notary Public, this 31st day of January, 2014, by Robert L. Fletcher, President of New River Utility Company, an Arizona corporation.

Notary Public

My Commission Expires:
