

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

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

DATE: JANUARY 21, 2014
DOCKET NOS.: W-02199A-11-0329 and SW-02199A-11-0330

ORIGINAL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Teena Jibilian. The recommendation has been filed in the form of an Order on:

PIMA UTILITY COMPANY
(ORDER ON REHEARING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JANUARY 30, 2014

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

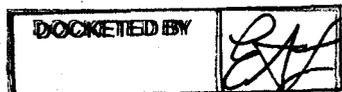
FEBRUARY 6, 2014 and FEBRUARY 7, 2014

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

JAN 21 2014



Jodi A. Jerich
JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SBernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 BOB STUMP - Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION OF
9 PIMA UTILITY COMPANY, AN ARIZONA
10 CORPORATION, FOR A DETERMINATION OF
11 THE FAIR VALUE OF ITS UTILITY PLANT AND
12 PROPERTY AND FOR INCREASES IN ITS
13 WATER RATES AND CHARGES FOR UTILITY
14 SERVICE BASED THEREON.

DOCKET NO. W-02199A-11-0329

15 IN THE MATTER OF THE APPLICATION OF
16 PIMA UTILITY COMPANY, AN ARIZONA
17 CORPORATION, FOR A DETERMINATION OF
18 THE FAIR VALUE OF ITS UTILITY PLANT AND
19 PROPERTY AND FOR INCREASES IN ITS
20 WASTEWATER RATES AND CHARGES FOR
21 UTILITY SERVICE BASED THEREON.

DOCKET NO. SW-02199A-11-0330

DECISION NO. _____

ORDER ON REHEARING

22 Open Meeting
23 February 6 and 7, 2014
24 Phoenix, Arizona

25 **BY THE COMMISSION:**

26 * * * * *

27 Having considered the entire record herein and being fully advised in the premises, the
28 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On August 29, 2011, Pima Utility Company ("Pima" or "Company") filed with the Commission applications for rate increases in both its water and wastewater divisions.
2. The parties to these consolidated dockets are Pima, the Residential Utility Consumer Office ("RUCO"), and the Commission's Utilities Division ("Staff").
3. On November 21, 2012, the Commission issued Decision No. 73573 in these dockets. Decision No. 73573 established new rates for Pima, and also provided that Pima could seek, in these

1 dockets, an allowance for income taxes generated as a result of its operations if the Commission
2 changed its policy regarding the treatment of income taxes for subchapter S corporations.

3 4. On February 21, 2013, in Decision No. 73739, the Commission adopted a policy that
4 allows every utility entity, other than subchapter C corporations and tax-exempt entities, to seek to
5 include in their cost of service an income tax allowance based on the lower of comparable Subchapter
6 C corporate income tax expense, or the combined personal income tax obligation created by the
7 distribution of the utility's profits.

8 5. On March 29, 2013, the Company filed a petition to amend Decision No. 73573
9 pursuant to Arizona Revised Statutes ("A.R.S.") § 40-252.

10 6. On July 16, 2013, the Commission issued Decision No. 73993 in these dockets.
11 Decision No. 73993 modified Decision No. 73573 by increasing the Company's rates to reflect
12 recovery of income tax expense as requested by the Company, classifying the income taxes as an
13 imputed expense, and requiring the Company to file a rate case by no later than June 30, 2017, using
14 a 2016 test year.

15 7. On March 29, 2013, RUCO requested rehearing of Decision No. 73993 pursuant to
16 A.R.S. § 40-253, which the Commission granted on August 15, 2013 ("Rehearing Request"). On
17 September 11, 2013, the Commission also reopened Decision No. 73993 pursuant to A.R.S. § 40-
18 252, in order to ensure RUCO an opportunity to address the matters raised in the rehearing
19 application. The Commission directed the Hearing Division to conduct proceedings and hold
20 evidentiary hearings in order to take evidence in accordance with the *Scates* opinion¹ and Arizona
21 law.

22 8. On October 4, 2013, a procedural conference convened as scheduled to discuss the
23 procedural schedule for the presentation of evidence in the rehearing proceeding, in accordance with
24 the *Scates* opinion and Arizona law. Pima, RUCO and Staff appeared through counsel. Pima and
25 RUCO announced that they had reached a settlement in principle and requested 30 days in which to
26 memorialize and file a settlement agreement.

27
28 ¹ *Scates v. Ariz. Corp. Comm'n*, 118 Ariz. 531, 578 P.2d 612 (Ariz. App. 1978).

1 9. On November 8, 2013, Pima and RUCO jointly filed the Settlement Agreement, a
2 copy of which is attached hereto as Exhibit A.

3 10. The Settlement Agreement states that RUCO received, acknowledged and accepted
4 verification through an independent third-party Certified Public Accountant that the weighted average
5 of the income taxes paid by all of Pima's shareholders for the test year in this rate case is at least
6 equal to or greater than the highest income tax rate used to determine the income tax allowance
7 granted in Decision No. 73993.

8 11. The Settlement Agreement further states that its purpose is solely to resolve the
9 disputed issues between RUCO and Pima regarding Decision No. 73993.

10 12. On November 19, 2013, a Procedural Order was issued setting a procedural
11 conference for the purpose of allowing the parties an opportunity to discuss an appropriate procedural
12 schedule for the rehearing proceeding in light of the settlement reached between RUCO and Pima.

13 13. On December 5, 2013, the procedural conference convened as scheduled. Pima,
14 RUCO, and Staff appeared through counsel. Staff stated that it does not oppose the Settlement
15 Agreement. The parties discussed the issue of an appropriate procedural means for processing the
16 Settlement Agreement in this rehearing proceeding.

17 14. At the procedural conference, RUCO stated that the issues it raised in the Rehearing
18 Request are resolved by the Settlement Agreement, and that no evidentiary hearing or further briefing
19 is necessary. RUCO does not wish to withdraw its rehearing request, but wishes instead for the
20 Commission to issue a Decision on rehearing acknowledging that the Settlement Agreement resolves
21 the issues formerly in dispute.

22 15. The issues the Residential Utility Consumer Office raised in its March 29, 2013
23 Rehearing Request have been reasonably resolved between Pima and RUCO. No party advocates for
24 any modification of Decision No. 73993.

25 16. Given that there is no longer any dispute in regard to the issues RUCO raised in its
26 Rehearing Request, there is no longer a need for an evidentiary rehearing of Decision No. 73993,
27 pursuant to either A.R.S. §§ 40-252 or 253.

28 ...

1 17. The rates and charges authorized in Decision No. 73993 are just and reasonable and
2 require no modification.

3 18. It is reasonable and in the public interest to close this rehearing proceeding with no
4 evidentiary rehearing and no modification to Decision No. 73993.

5 **CONCLUSIONS OF LAW**

6 1. Pima is a public service corporation within the meaning of Article XV of the Arizona
7 Constitution and A.R.S. §§ 40-250 and 40-251.

8 2. The Commission has jurisdiction over Pima and the subject matter of this proceeding.

9 3. Notice was provided in the manner prescribed by law.

10 4. Due to the resolution of all disputed issues raised in the Rehearing Request, there is no
11 longer a need for an evidentiary rehearing of Decision No. 73993, pursuant to either A.R.S. §§ 40-
12 252 or 253.

13 5. The rates and charges authorized in Decision No. 73993 are just and reasonable and
14 require no modification.

15 6. It is reasonable and in the public interest to close this rehearing proceeding with no
16 evidentiary rehearing and no modification to Decision No. 73993.

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ORDER

IT IS THEREFORE ORDERED that the Findings of Fact, Conclusions of Law, and Orders appearing in Decision No. 73993 shall remain unchanged.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN _____ COMMISSIONER _____

COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

IN WITNESS WHEREOF, I, JODI A. JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____ 2014.

JODI A. JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

TJ:tv

1 SERVICE LIST FOR:

PIMA UTILITY COMPANY

2 DOCKET NOS.:

W-02199A-11-0329 and SW-02199A-11-0330

3 Jay L. Shapiro
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14 Legal Division

15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, AZ 85007

18 Steven M. Olea, Director
19 Utilities Division
20 ARIZONA CORPORATION COMMISSION
21 1200 West Washington Street
22 Phoenix, AZ 85007

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EXHIBIT A

**PROPOSED SETTLEMENT AGREEMENT
DOCKET NOS. W-02199A-11-0329 and SW-02199A-11-0330**

The purpose of this Settlement Agreement ("Agreement") is to settle all issues related to Docket Nos. W-02199A-11-0329 and SW-02199A-11-0330 to RUCO's Motion to Rehear Decision No. 73993. This Agreement is entered into by the following entities:

Pima Utility Company
Residential Utility Consumer Office

These entities shall be referred to collectively as "Signatories"; a single entity shall be referred to individually as a "Signatory."

PROPOSED SETTLEMENT AGREEMENT
DOCKET NOS. W-02199A-11-0329 and SW-02199A-11-0330

I. RECITALS

- 1.1 On August 29, 2011, Pima Utility Company ("Pima" or "Company") filed rate applications in the underlying Docket No. W-02199A-11-0329. Staff found the Applications for the Company's water and wastewater divisions sufficient.
- 1.2 Subsequently, the Arizona Corporation Commission ("Commission") granted intervention to RUCO.
- 1.3 On November 12, 2012, the Commission approved new rates and charges for Pima in Decision No. 73573 but denied Pima's request for the inclusion of income tax expense. The Commission did afford Pima the opportunity to file a 40-252 proceeding should the Commission change its policy.
- 1.4 On February 22, 2013, the Commission issued Decision No. 73739 adopting an Income Tax Policy allowing for an income tax allowance for pass-through entities such as Pima.
- 1.5 On March 29, 2013, Pima filed a Petition to Amend Decision No. 73573 to authorize Pima an income tax allowance for both its water and wastewater Divisions.
- 1.6 On July 16, 2013, the Commission issued Decision No. 73993. Decision No. 73993 increases the Company's rates to reflect the recovery of an allowance for income tax expense for both the water and the wastewater Divisions, and requires the filing of a rate case by no later than June 30, 2017, using the a calendar year of 2016 as the test year.
- 1.7 On July 31, 2013, RUCO filed a Motion to Rehear Decision No. 73993 pursuant to A.R.S. § 40-253 and the Commission subsequently granted RUCO's Motion.
- 1.8 RUCO also sought and the Commission subsequently granted rehearing of Decision No. 73992, docketed July 16, 2013, regarding Johnson Utilities, LLC.
- 1.9 RUCO and the Company thereafter met for the purpose of settling the matter and arrived at an Agreement.

PROPOSED SETTLEMENT AGREEMENT
DOCKET NOS. W-02199A-11-0329 and SW-02199A-11-0330

1.10 The Signatories believe that this Agreement is a fair resolution to this matter and all things considered is in the public interest. The benefits include:

- Independent verification that the Company's actual weighted average tax rate is at least equal to or higher than the rate used to determine the income tax allowance.
- Avoidance of further litigation and cost to both Signatories by clarifying the Signatories' positions and resolving the concerns that led to RUCO's request for rehearing of Decision No. 73993.

II. TERMS AND CONDITIONS

- 2.1 The Company has provided and RUCO has received, acknowledged and accepted verification through an independent third party certified CPA that the weighted average of the income taxes paid by all of the Company's shareholders for the test year is at least equal to or greater than the highest rate approved in Decision No. 73993.
- 2.2 If the Commission approves this Agreement, RUCO will not challenge Decision Nos. 73573, 73993 or the Decision approving this Agreement, in any matter, whether before the Commission or in a court of applicable jurisdiction.
- 2.3 The purpose of this Agreement is to resolve the outstanding case and not to act as precedent and impair or impede in any manner either Signatories' right to challenge and/or support any future decision of the Commission in any other case on any of the issues that are the subject of this Agreement. The Signatories understand and accept that future positions of the Signatories in other cases on the same issues that are inconsistent with or adverse to the positions taken by the Signatories in this Agreement do not constitute a breach of this Agreement for failure to support the terms and conditions of this Agreement, or any other reason.

PROPOSED SETTLEMENT AGREEMENT
DOCKET NOS. W-02199A-11-0329 and SW-02199A-11-0330

III. COMMISSION EVALUATION OF PROPOSED SETTLEMENT

- 3.1 The Signatories recognize that the Commission will independently consider and evaluate the terms of this Agreement. If the Commission issues an order adopting all material terms of this Agreement, such action shall constitute Commission approval of the Agreement. Thereafter, the Signatories shall abide by the terms as approved by the Commission.
- 3.2 If the Commission fails to issue an order adopting all material terms of this Agreement, any or all of the Signatories may withdraw from this Agreement, and such Signatory or Signatories may pursue without prejudice their respective remedies at law. For purposes of this Agreement, whether a term is material shall be left to the discretion of the Signatory choosing to withdraw from the Agreement.

IV. MISCELLANEOUS PROVISIONS

- 4.1 Each Signatory whose signature appears below is fully authorized and empowered to execute this Agreement. Each Signatory has been represented by competent legal counsel and understands all of the terms of this Agreement, has had an opportunity to participate in the drafting of this Agreement and fully review this Agreement with its counsel before signing, and executes this Agreement with full knowledge of the terms of the Agreement.
- 4.2 The acceptance by any Signatory of a specific element of this Agreement shall not be considered as precedent for acceptance of that element in any other context.
- 4.3 No Signatory is bound by any position asserted in negotiations, except as expressly stated in this Agreement. No Signatory shall offer evidence of conduct or statements made in the course of negotiating this Agreement before this Commission, any other regulatory agency, or any court.
- 4.4 Neither this Agreement nor any of the positions taken in this Agreement by any of the Signatories may be referred to, cited, and or relied upon as precedent in any proceeding before the Commission, any other regulatory agency, or any court for any purpose except to secure approval of this Agreement and enforce its terms.

PROPOSED SETTLEMENT AGREEMENT
DOCKET NOS. W-02199A-11-0329 and SW-02199A-11-0330

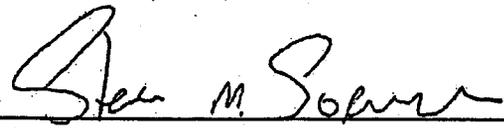
- 4.5 To the extent any provision of this Agreement is inconsistent with any existing Commission order, rule, or regulation, this Agreement shall control.
- 4.6 Each of the terms of this Agreement is in consideration of all other terms of this Agreement. Accordingly, the terms are not severable.
- 4.7 The Signatories shall make reasonable and good faith efforts necessary to obtain a Commission order approving this Agreement. The Signatories shall support and defend this Agreement before the Commission and, if necessary, in court if challenged by another person or entity. Subject to paragraph 3.2 above, if the Commission adopts an order approving all material terms of the Agreement, the Signatories will support and defend the Commission's order before any court or regulatory agency in which it may be at issue.
- 4.8 This Agreement may be executed in any number of counterparts and by each Signatory on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute one and the same instrument. This Agreement may also be executed electronically or by facsimile.

PROPOSED SETTLEMENT AGREEMENT
DOCKET NOS. W-02199A-11-0329 and SW-02199A-11-0330

RESIDENTIAL UTILITY CONSUMER OFFICE

By 
Title DIRECTOR RUCC
Date 11/8/2013

PIMA UTILITY COMPANY

By 
Title VP
Date 11-7-13