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Arizona Corporation Commission

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MAR 21 2014

William Sheppard, Intervenor

2014 MAR 21 P 4: 25

6250 NORTH CENTRAL AVENUE

PHOENIX, AZ 85012

TELEPHONE (602) 256-0566

FAX (602) 256-4475

EMAIL: WSHEPPARD@GBLAW.COM

AZ CORP COMMISSION
DOCKET CONTROL

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF PAYSON WATER CO., INC., AN
ARIZONA CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE
OF ITS UTILITY PLANTS AND
PROPERTY AND FOR INCREASES IN ITS
WATER RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

DOCKET NO. W-03514A-13-0111

ORIGINAL

IN THE MATTER OF THE APPLICATION
OF PAYSON WATER CO., INC., AN
ARIZONA CORPORATION, FOR
AUTHORITY TO: (1) ISSUE EVIDENCE OF
INDEBTEDNESS IN AN AMOUNT NOT TO
EXCEED \$1,238,000 IN CONNECTION
WITH INFRASTRUCTURE
IMPROVEMENTS TO THE UTILITY
SYSTEM; AND (2) ENCUMBER REAL
PROPERTY AND PLANT AS SECURITY
FOR SUCH INDEBTEDNESS

DOCKET NO. W-03514A-13-0142

**REPLY BRIEF OF INTERVENOR
WILLIAM SHEPPARD**

The Intervenor, William Sheppard makes the following points in his Reply Brief.

I. Notice

First, notice of these proceedings was deficient. In anticipation that Payson Water Company (the Company) will argue that all parties to this proceeding had actual notice, that argument really begs the question. There is simply no way of knowing whether or not there are rate payers who have had no notice of this proceeding. But there is no question that the notice

1 went out in a plain envelope with a return address that was unfamiliar to anyone.¹ There can be
2 no other conclusion than that this notice was consciously calculated to deceive. These
3 proceedings should be dismissed until proper notice of this rate increase request, sent in an
4 envelope bearing the Company's name and address, is sent out.

5 **II. Prevailing and Controlling Case Law**

6 Second, Company dismisses the clear finding and holding of *Arizona Community Action*
7 *Ass'n v. Arizona Corporation Commission*, 123 Ariz. 228, 599 P.2d. 184 (1979), as a case which
8 is not relevant to these facts. But the clear language of the case makes it very clear that the
9 impact on the rate payers must be taken into consideration. Neither the Company nor
10 Commission staff have made any effort to do so. The only concern of those parties is the profit
11 of the Company. Yet there is clear undisputed evidence that there will be serious adverse impact
12 on a number of the rate payers.² That evidence, given the prevailing Supreme Court opinion,
13 cannot be ignored. The rate payers are expected by the Company and Commission Staff to bear
14 the immediate impact of a 90-118% increase in water rates. If that is not a detrimental impact
15 that needs to be considered under *Arizona Community Association*, supra, it is hard to imagine
16 what is.

17 At the minimum, to be fair, increases should be staggered at 10-20% per annum until the
18 entire matter comes before the Commission for another rate case. That would, at least, minimize
19 the detrimental impact on the rate payers.

20 **III. Suggestion of Death**

21 Finally, one of the parties to this case, Intervenor Richard Burt, died on March 18 of this
22 year. Under Rule 25 of the Arizona Rules of Civil Procedure, this case cannot proceed until
23 there has been an opportunity for an Estate to be established, a Personal Representative has been
24 appointed for Mr. Burt, and that Personal Representative has an opportunity to be substituted into

25 ¹ TR Vol III at 529: 20-25

26 ² TR Vol III at 530: 2-10

TR Vol III at 567: 7-21

TR Vol III at 479: 11-25; 480: 1-11

1 this proceeding and file an appropriate closing brief on behalf of the Estate. Under Rule 25 that
2 time period must be at least 90 days. Therefore these proceedings cannot continue and must be
3 stayed until June 18, 2014.

4 For all the foregoing this proposed rate increase should either be denied outright (lack of
5 proper notice), staggered in incremental rates (fairness to rate payers under controlling case law)
6 and delayed for final resolution for at least 90 days, due to the untimely demise of Intervenor
7 Richard Burt.

8 RESPECTFULLY SUBMITTED this 21st day of March, 2014.

9
10 By 
11 William Sheppard
12 6250 North Central Avenue
13 Phoenix, Arizona 85012
14 Intervenor

15 **ORIGINAL** and thirteen (13) copies of
16 the foregoing were filed this 21st day of
17 March, 2014, with:

18 Docket Control
19 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

20 **COPY** of the foregoing was mailed this
21 21st day of March, 2014 to:

22 Dwight D. Nodes
23 Assistant Chief Administrative Law Judge
24 Arizona Corporation Commission
1200 W. Washington Street
25 Phoenix, AZ 85007
26

1 Robin Mitchell, Esq.
2 Legal Division
3 Arizona Corporation Commission
4 1200 W. Washington Street
5 Phoenix, AZ 85007

6 **COPY** of the foregoing was e-mailed or
7 mailed this 10th day of March, 2014 to:

8 Kathleen M. Reidhead
9 14406 S. Cholla Canyon Drive
10 Phoenix, AZ 85044

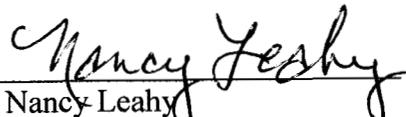
11 Thomas Bremer
12 6717 E. Turquoise Avenue
13 Scottsdale, AZ 85254

14 Jay L. Shapiro, Esq.
15 Fennemore Craig, P.C.
16 2394 E. Camelback Road, Suite 600
17 Phoenix, AZ 85016

18 J. Stephen Gering
19 Richard M. Burt
20 8157 W. Deadeye Road
21 Payson, AZ 85541

22 Suzanne Nee
23 2051 E. Aspen Drive
24 Tempe, AZ 85282

25 Glynn Ross
26 405 S. Ponderosa
Payson, AZ 85541

By: 
Nancy Leahy
Assistant to William Sheppard