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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

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

NOTICE OF FILING REPLY BRIEF

Payson Water Co., Inc. (the "Company") hereby submits its Reply Brief in the above-referenced consolidated dockets. Counsel for the Company had the wrong date calendared for this reply, and by the time the error was detected it was too late to make a filing by close of business on March 21, 2014. The Company had, just moments before detecting the error, received only two other reply briefs and they were not reviewed in the preparation of the Company's brief.

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Arizona Corporation Commission

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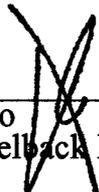
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RESPECTFULLY SUBMITTED this 24th day of March, 2014.

FENNEMORE CRAIG, P.C.

By



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ORIGINAL and thirteen (13) copies
of the foregoing were filed
this 24th day of March, 2014, with:

Docket Control
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Phoenix, AZ 85007

COPY of the foregoing was hand-delivered
this 24th day of March, 2014, to:

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PROPERTY AND PLANT AS SECURITY
17 FOR SUCH INDEBTEDNESS.

DOCKET NO: W-03514A-13-0142

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20 **REPLY BRIEF**

21
22 **March 24, 2014**
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DEFINED TERMS

Full Name/Description	Abbreviated term
A. Glynn Ross	Ross
Arizona Corporation Commission	Commission
Arizona Corporation Commission Utilities Division Staff	Staff
Arizona Department of Environmental Quality	ADEQ
Brooke Utilities, Inc.	BUI
C&S Water Company	C&S Water
Debt Service Recovery	DSR
Decision No. 74175 (October 25, 2013)	Phase 1 Decision
East Verde Park Estates	EVP
Fair Value Rate Base	FVRB
J. Stephen Gehring	Gehring
JW Water Holdings, LLC	JW Water
Kathleen M. Reidhead	Reidhead or KMR
Mesa del Caballo	MDC
Mesa del Caballo Emergency Interim Water Augmentation Surcharge Tariff	MDC Water Augmentation Surcharge Tariff
Payson Water Company	PWC or the Company
Purchased Water Adjustor Mechanism	PWAM
Salt River Project	SRP
Suzanne Nee	Nee or SN
Thomas Bremer	Bremer or TB
Town of Payson	TOP
United Utilities, Inc.	United Utilities
Water Infrastructure Financing Authority	WIFA
Weighted Average Cost of Capital	WACC

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Full Name/Description

Abbreviated term

William Sheppard

Sheppard

1 **TABLE OF ABBREVIATIONS AND CONVENTIONS**

2 Payson Water Co., Inc. uses the following abbreviations in citing to the pre-filed
3 testimony in this brief. Other documents that were admitted as exhibits during the hearing
4 are cited by hearing exhibit number. Other citations to testimony and documents are
5 provided in full, including (where applicable) the Commission's docket number and filing
6 date.

6 **PAYSON WATER CO., INC. PRE-FILED TESTIMONY**

7	Pre-Filed Testimony	Hearing Exhibit	Abbreviation
8	Supplemental Direct Testimony of Jason Williamson (Phase 1)	A-1	Williamson Dt.
9	Responsive Testimony of Jason Williamson (Phase 1)	A-2	Williamson Rt.
10	Responsive Testimony of Thomas J. Bourassa (Phase 1)	A-3	Bourassa Rt.
11	Direct Testimony of Thomas J. Bourassa - Rate Base	A-6	Bourassa Dt.
12	Direct Testimony of Thomas J. Bourassa - Cost of Capital	A-7	Bourassa COC Dt.
13	Rebuttal Testimony of Thomas J. Bourassa - Rate Base	A-8	Bourassa Rb.
14	Rebuttal Testimony of Thomas J. Bourassa - Cost of Capital	A-9	Bourassa COC Rb.
15	Rejoinder Testimony of Thomas J. Bourassa - Rate Base	A-10	Bourassa Rj.
16	Rejoinder Testimony of Thomas J. Bourassa - Cost of Capital	A-11	Bourassa COC Rj.
17	Supplemental Rejoinder Testimony of Thomas J. Bourassa	A-12	Bourassa Supp. Rj.
18	Direct Testimony of Robert T. Hardcastle	A-13	Hardcastle Dt.
19	Rebuttal Testimony of Jason Williamson	A-14	Williamson Rb.
20	Rejoinder Testimony of Jason Williamson	A-15	Williamson Rj.
21	Supplemental Rejoinder Testimony of Jason Williamson	A-16	Williamson Supp. Rj.
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STAFF PRE-FILED TESTIMONY

Pre-Filed Testimony	Hearing Exhibit	Abbreviation
Direct Testimony of Jian W. Liu	S-7	Liu Dt.
Surrebuttal Testimony of Jian W. Liu	S-8	Lius Sb.
Supplemental Surrebuttal Testimony of Jian W. Liu	S-9	Liu Supp. Sb.
Direct Testimony of John Cassidy – Cost of Capital	S-10	Cassidy COC Dt.
Direct Testimony of John Cassidy – Financing	S-11	Cassidy Dt.
Surrebuttal Testimony of John Cassidy	S-12	Cassidy Sb.
Supplemental Surrebuttal Testimony of John Cassidy	S-13	Cassidy Supp. Sb.
Direct Testimony of Crystal Brown	S-14	Brown Dt.
Surrebuttal Testimony of Crystal Brown	S-15	Brown Sb.
Supplemental Surrebuttal Testimony of Crystal Brown	S-16	Brown Supp. Sb.

KATHLEEN M. REIDHEAD PRE-FILED TESTIMONY

Pre-Filed Testimony	Hearing Exhibit	Abbreviation
Direct Testimony of Kathleen Reidhead	KMR-1	KMR Dt.
Surrebuttal Testimony of Kathleen Reidhead	KMR-2	KMR Sb.
Supplement to Pre-Filed Testimony (filed January 6, 2014)	KMR-3	KMR Supp.1
Supplement to Pre-Filed Testimony (filed January 7, 2014)	KMR-4	KMR Supp.2
Response to Supplemental Rejoinder Testimony	KMR-5	KMR Supp.3

1	Pre-Filed Testimony	Hearing Exhibit	Abbreviation
2	Supplement to Pre-Filed Testimony	KMR-6	KMR Supp.4
3	(Filed February 3, 2014)		

4 **SUZANNE NEE PRE-FILED TESTIMONY**

5	Pre-Filed Testimony	Hearing Exhibit	Abbreviation
6	Surrebuttal Testimony	SN-1	SN Sb.
7	Supplement to Pre-Filed Testimony	SN-2	SN Supp.1
8	(filed January 6, 2014)		
9	Supplement to Pre-Filed Testimony	SN-3	SN Supp.2
	(January 7, 2014)		
10	Response to Supplemental Rejoinder	SN-4	SN Supp.3
11	Testimony		
12	Supplement to Pre-Filed Testimony	SN-5	SN Supp.4
	(filed January 31, 2014)		
13	Supplement to Pre-Filed Testimony	SN-6	SN Supp.5
14	(filed February 6, 2014)		

15 **THOMAS BREMER PRE-FILED TESTIMONY**

16	Pre-Filed Testimony	Hearing Exhibit	Abbreviation
17	Notice of Errata and Revision (filed	TB-1	TB Dt.
18	November 19, 2013)		
19	Responses to Payson Water Co. (filed	TB-2	TB Supp.1
20	January 6, 2014)		
21	Pre-Filed Testimony – Responses to	TB-3	TB Supp.2
	Payson Water Co. (filed January 13,		
22	2014)		
23	Responses to First Set of Data	TB-4	TB Supp.3
	Requests from Payson Water Co.		
24	(filed January 23, 2014)		
25	Response to Staff’s Notice of Filing	TB-5	TB Supp.4
26	Regarding Summer WATER		
	Augmentation Surcharge for EVP		
	(filed February 14, 2014)		

OTHER PORTIONS OF THE RECORD

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Document	Hearing Exhibit	
Exhibit C-1 (Phase 1)	A-4	
Revised Staff Report C&S Water Co. – Revised Schedule 3 (Phase 1)	A-5	
Notice of Filing water supply alternatives	A-17	
Notice of Late-Filed Exhibit (WIFA grant application)	A-18	
Notice of Late-Filed Exhibit (ADEQ Consent Order)	A-19	
Decision No. 71902 (Phase 1)	S-1	
Staff Report (Phase 1)	S-2	
Revenue Generated from the monthly minimum (Phase 1)	S-3	
Decision No. 67821 (Phase 1)	S-4	
Decision No. 74175 (Phase 1)	S-5	
Decision No. 71902 (curtailment tariff)	S-6	
Decision No. 62320	S-17	
Staff's Notice of Filing	S-18	
Hearing Transcript		Tr.
9004941.1/073283.0006		

1 PWC hereby submits its Reply Brief in support of its request for a determination of
2 the fair value of its utility plant and property and for the establishment of rates and
3 charges for water utility service based thereon.¹

4 **I. REPLY TO STAFF**

5 PWC is not aware of any issues in dispute between it and Staff. PWC accepts
6 Staff's recommended rates, including all components of the revenue requirement and rate
7 design. PWC has also entered into a Consent Order with ADEQ regarding the third-party
8 owned wells within the MDC system, thus satisfying Staff's recommended condition for
9 rates to go into effect. Finally, PWC accepts Staff's recommended annual cap on hauling
10 charges for the EVP system.²

11 **II. REPLY TO INTERVENORS**

12 This rate case was ordered by the Commission, which wanted the opportunity to
13 revisit its approval of the MDC Water Augmentation Surcharge Tariff.³ This tariff was
14 never viewed as a long-term permanent solution to the chronic water supply shortages that
15 have plagued MDC. The prior owner/operator studied the water supply of the area and
16 concluded that participation in the Cragin Pipeline Project, a multi-party regional water
17 supply enhancement, was the most prudent and reasonable long-term solution to bring
18 more water to MDC.⁴ But that project is still a few years off and there are *no* costs related
19 to the Cragin project included in this rate case.⁵

20 ¹ In this reply brief, PWC uses the same citation format, abbreviations and conventions as
21 utilized in its Initial Closing Brief dated March 10, 2014. Additionally, the parties' initial
22 closing briefs will be identified as "Staff Br.," "Reidhead Br.," "Nee Br.," "Bremer Br.,"
"Sheppard Br.," "Ross Br.," "Gehring Br.," and "PWC Br.," respectively.

23 ² There is one discrepancy between the Company's statement of the facts and Staff's in
24 the initial closing briefs. The Company mistakenly labeled Deer Creek as having been
owned by C&S Water, and Gisela as having been owned by United Utilities. It is the
other way around.

25 ³ Ex. S-6 at 14:8-12.

26 ⁴ *E.g.*, Hardcastle Dt. at 8; Williamson Dt. at 4; Tr. at 614:19 – 616:5 (Smith).

⁵ *E.g.*, Williamson Rj. at 3, 5-6; Tr. at 63:12-15 (Williamson).

1 In the meantime, PWC's new owner/operator has found a way to bridge the gap
2 until Cragin comes on line by building an interconnection between the TOP and PWC
3 water systems, the TOP-MDC line.⁶ When completed, the TOP-MDC line should
4 eliminate the need to haul water to MDC.⁷ The costs of the TOP-MDC will be paid *only*
5 *by MDC customers*, through the DSR surcharge ordered by the Commission in the Phase
6 1 Decision, and the PWAM recommended here by Staff, if approved.⁸ In other words,
7 it would appear that the Commission's purpose behind ordering this rate case – to reassess
8 the water supply situation in MDC – has been fulfilled.

9 The prior owner/operator opposed the timing of this rate case.⁹ In short, the
10 concern was that it would lead to two rate cases when Cragin finally comes on line. That
11 concern seems trivial now in light of the Company's rapidly deteriorating financial
12 condition. The rate increases recommended by Staff and supported by PWC are an
13 absolutely necessary lifeline for the Company. The Commission can well imagine the
14 situation that would be created if PWC continues to be unable to pay its bills in a timely
15 manner.

16 As a consequence, the Commission must look past the opposition of the customers
17 intervening in this rate case. The outright attacks on the Company, its counsel and its
18 consultant are totally unfounded, contrary to the underlying evidence, and should just be
19 ignored. The opposition to rate relief is not supported by substantial evidence and is
20 contrary to law. It should be rejected for the reasons explained in the Company's Initial
21 Closing Brief and in this Reply Brief.

22 _____
23 ⁶ Williamson Dt. at 5-6.

24 ⁷ Williamson Dt. at 5.

25 ⁸ PWC Br. at 16:3-10.

26 ⁹ See PWC's Motion for Extension of Time to Comply with Decision No. 71902 as Amended by Decision No. 72679 (filed November 1, 2012 in Docket No. W-03514A-10-0116, *et al.*).

1 **A. Reply to Sheppard**

2 Sheppard is a part-time resident of a home in the Geronimo Estates system. He did
3 not testify or present any exhibits or other evidence in this proceeding. In his brief,
4 he argues for the first time that the rate case should be dismissed for lack of notice.¹⁰ He
5 also asserts that the requested rate increase will have a detrimental impact on the
6 ratepayers. Neither argument is persuasive.

7 First, there is no evidence that the Company failed to notify its customers.
8 The form of notice was developed in coordination with Staff and approved by the
9 presiding ALJ.¹¹ The Company mailed the notice to all customers using the same mailing
10 services provider utilized in the past.¹² The notice was also published in the Payson
11 Roundup, the local newspaper, which publication has likewise published several articles
12 on the pending rate case.¹³ There were six customers that offered public comment, as well
13 as six separate customer intervenors actively participating in the case, each from a
14 different one of the Company's eight systems.¹⁴ To state or imply that the Company's
15 customers were not aware of the rate filing, or that they somehow deprived of an
16 opportunity to present the customer viewpoint is misleading at best.¹⁵

17 Sheppard's second argument – that the proposed rate increase will have a
18 detrimental impact on customers – must also be rejected. The Commission does not look

19 ¹⁰ Sheppard sought intervention on October 17, 2013 and was granted intervention on
20 October 29, 2013. Procedural Order (filed October 29, 2013). Obviously, he received
notice of the pending matter.

21 ¹¹ See Procedural Order (filed September 10, 2013) at 2:23-27, 5:15 – 7:10.

22 ¹² Tr. at 415:7-9 (Williamson).

23 ¹³ E.g., KMR Dt., Exhibit A (pp. 22-23).

24 ¹⁴ 11 individuals submitted public comment slips at the Phase 1 hearing. Four of them
were from the Phase 2 intervenors – Reidhead, Bremer, Sheppard, and Gehring.
See Tr. (Phase 1) at 5-34.

25 ¹⁵ Nee, whose testimony Sheppard relies on exclusively (Sheppard Br. at 2:2-6), received
26 and opened the notice that was mailed by the Company and then participated fully in the
rate proceeding.

1 at what customers can afford when it sets rates for public service corporations like APS,
2 Southwest Gas, or PWC. By law and as discussed in PWC's Initial Closing Brief,
3 in Arizona the Commission is required to set rates that will produce sufficient revenue to
4 allow the utility to recover its operating expenses and earn a reasonable rate of return on
5 the fair value of its property devoted to public service.¹⁶ Rates that do not provide for
6 recovery of operating expenses and a return are by definition not just and reasonable.¹⁷
7 Sheppard makes no effort to reconcile the Company's right to rates that meet this well-
8 established legal standard with his reliance on the decision in *Arizona Community*
9 *Action*.¹⁸ Sheppard cannot overcome controlling Arizona law on these issues

10 As explained in PWC's closing brief, *Arizona Community Action* does not and
11 cannot stand for the proposition that the Commission may lower rates below the cost of
12 service to accommodate some customers' unspecified financial abilities.¹⁹ Any such
13 application of *Arizona Community Action* would violate Article 15 of the Arizona
14 Constitution along with a host of long-standing Arizona cases. Here, there is no automatic
15 rate increase if the utility's equity returns were to fall below a certain threshold, as there
16 was at issue in *Arizona Community Action*. In that case, the rates were found to be
17 unreasonable because the court recognized that APS could manipulate equity returns by
18 changing its capital structure, and held that it was unreasonable to establish an automatic
19

20 ¹⁶ See PWC Br. at 8:12-15 citing *US West Comm., Inc. v. Ariz. Corp. Comm'm*, 201 Ariz.
21 242, 246, 34 P.3d 351, 355, ¶ 18 (2001) ("a line of cases nearly as old as the state itself
has sustained the traditional formulaic approach" to setting rates).

22 ¹⁷ *Scates v. Ariz. Corp. Comm'm*, 118 Ariz. 531, 534, 578 P.2d 612, 615 (App. 1978).

23 ¹⁸ Sheppard Br. at 2:18 – 3:2 citing *Ariz. Comm'ty Action*, 123 Ariz. 228, 231, 599 P.2d
24 184, 187 (1979). Sheppard's sole reliance on one judicial decision and failure to identify
25 on point jurisprudence that contradicts his arguments reflects a lack of candor. As a
practicing attorney, in contrast to the other intervenors, he should have been candid with
the presiding ALJ and Commission and pointed out that there is clear precedent in this
state that directly contradicts his assertions.

26 ¹⁹ PWC Br. at 12.

1 adjustment based solely on a factor that the utility controlled.²⁰ In this case, however,
2 the rates are set solely on the basis of the Company's operating expenses plus a return on
3 FVRB.²¹ The decision in *Arizona Community Action* is not applicable here, nor does that
4 case contradict *Scates, Simms*, and the many other cases establishing that a fair return is
5 the touchstone for setting just and reasonable rates. In fact, *Arizona Community Action*
6 expressly recognized that "[a] utility has the right to assure its investors a reasonable
7 return,"²² something Sheppard is asking the Commission to deny to PWC. His explicit
8 request that the Commission violate the law should be rejected.²³

9 **B. Reply to Ross**

10 Ross is a resident in the Gisela system. He did not testify or present any exhibits or
11 other evidence in this proceeding. In his jumbled and unorganized brief, he simply rails
12 on the Staff and Judge Nodes, and on PWC, under past and present ownership, for what
13 he claims are a series of alleged improprieties. But none of these assertions is supported
14 by a single citation to evidence in the record in these dockets, or by any applicable law.
15 Indeed, Ross' brief is nothing more than an unsupported generalized rant against every
16 aspect of this rate case. As such, there is simply nothing for the Company to respond to in
17 this reply brief.²⁴ The Commission should disregard Ross' brief and his unfounded

18 _____
19 ²⁰ *Id.*

20 ²¹ PWC Br. at 14:14 – 15:1 & n.67.

21 ²² *Ariz. Comm'ty Action*, 123 Ariz. at 231, 599 P.2d at 187.

22 ²³ PWC was and is reluctant to get into a debate about its customers' finances; it has its
23 own frightful financial condition. PWC notes, however, that the only evidence Sheppard
24 points to is the hearsay testimony of three other intervenors, who claimed, without any
25 basis or support, that an unknown number of the Company's customers are living at or
26 near the poverty line. None of these intervenors, who reside in the Phoenix area but have
second-homes in the Company's service territories, claimed that they were unable to
afford to pay rates for water utility service that allowed the Company to recover its
operating expenses and gave it a reasonable opportunity to earn a return on the fair value
of its assets.

²⁴ Ross has filed multiple motions seeking to eliminate the Gisela system and him from
the rate setting process. *See Motion to Separate the Gisela Rate Payers from further*

1 arguments.

2 **C. Reply to Gehring**

3 Gehring is a resident in the MDC system. He did not testify or present any exhibits
4 or other evidence in this proceeding, and participated to a limited extent on the final two
5 days of hearing. He is the plaintiff in a pending complaint against the Company before
6 the Commission relating to 2011 billings by the Company for utility service.²⁵ He is also
7 closely affiliated with a matter brought by another MDC customer, Alan Smith, who has a
8 similar complaint pending.²⁶ In short, Gehring has been opposing and organizing
9 opposition to the Company for several years now.

10 Gehring starts out his latest attack on PWC by misrepresenting that the previous
11 shareholder's failure to maintain the system is the basis for the requested rate increases.²⁷
12 This allegation is untrue, and flatly contradicted by the evidence in this case. The only
13 substantial evidence in this record clearly and convincingly establishes that the rates
14 requested, and the rates recommended by Staff and the Company, are based on the
15 Company's actual operating expenses and a return on FVRB.²⁸ Whether or not the prior
16 owner/operator adequately maintained or operated the system has no bearing on the
17 current condition of the utility and the undisputed need for rate increases. Gehring does
18 not point to evidence that any of the test year expenses are higher because of the manner
19 in which PWC was or is being operated. And the FVRB includes the original cost less
20 depreciation of the current plant. To the extent any plant improvements are made, those

21
22 proceedings (filed February 4, 2014); Motion for 30 Day Extension for Post Hearing
23 Briefs / Second request to separate Gisela/Deer Creek Village (filed February 24, 2014).
At least in this respect, his rambling tirade against the establishment is consistent.

24 ²⁵ See Docket No. W-03514A-12-0008.

25 ²⁶ See Docket No. W-03514A-12-0007.

26 ²⁷ Gehring Br. at 1:36-41.

²⁸ PWC Br. at 14:14 – 15:1 & n.67.

1 costs will impact a future rate base and future rates. Thus, Gehring's underlying premise
2 is wrong.

3 From this erroneous starting point, Gehring goes on a 9 page, 35 paragraph tirade
4 full of unsupported and unsubstantiated allegations against the Company, including
5 repeated recitations to facts that are wholly outside of the record before the Commission
6 in this case, and, argument on matters that are outside the scope of this rate proceeding.
7 For example, paragraphs 1-23 of Gehring's brief set forth allegations about past water
8 hauling and challenge the previous owner's actions and claims with respect to attempting
9 to combat the water shortages impacting MDC. The Commission has already approved
10 financing and recovery of debt service so PWC can build the TOP-MDC line, and that
11 decision of the Commission is final and not before the Commission at this time.²⁹
12 Nor can Gehring collaterally attack that prior decision in this rate case as a matter of
13 law.³⁰

14 Gehring was aware of the Phase 1 proceeding and even gave public comment.³¹
15 As noted, he also has a separate proceeding with respect to his claims about past billing.
16 His attempts here to reargue his complaint that he was overcharged in 2011 or his
17 attempts to reargue the relief granted in Phase 1 is simply misplaced, and PWC will not
18 enter into after-the-fact hydrogeology debates with individual customers acting as
19 Monday morning quarterbacks. Suffice to say, the Company and Staff strongly disagree
20 with the conclusions offered by Gehring, as well as other intervenors, claiming that more
21 drilling should take place in MDC.³² The Company stands behind its decision to finance

22 ²⁹ See Phase 1 Decision at 15:24-27.

23 ³⁰ See A.R.S. § 40-252.

24 ³¹ See n.13 *supra*.

25 ³² Williamson Dt. at 4:1-8 ("Q. What is the problem with [MDC's] water supply? A. I
26 have learned from Steve Noel at Southwest Groundwater Consulting, that there is
essentially no aquifer below [MDC]. Mr. Noel documented that the subdivision is built
on a solid granite outcropping where water trickles through cracks in the granite. This

1 and build the TOP-MDC line to improve water utility service to customers in its MDC
2 system.

3 Beyond his effort to reargue his pending complaint, and second-guess PWC's
4 choice to improve service in MDC, Gehring does little more in his closing brief than show
5 his utter disdain for the Company, the Commission and this proceeding. There is simply
6 no place for statements like "I wonder" is Jason Williamson "a son, adopted son,
7 illegitimate son or some kind of relation to Hardcastle or one of his fellow 'Thugs?'"³³
8 Nor, "[a]ny representations made by the Company, its officers, agents and attorney that
9 the [c]ustomers in the Gisela System must conserve water or that the system there is
10 incapable of providing for the demand or that the rate must be increased in order to
11 continue to provide service should research the word phrase '*bovine defecation*[.]'"³⁴
12 *Pro per* intervenors are subject the same legal and ethical standards as licensed attorneys
13 representing parties before the Commission. Gehring's brief violates accepted standards
14 for legal argument and good faith.

15 Respectfully, customers are entitled to intervene, and they are entitled to their
16 opinions. But they should not be allowed to disrespect the process and abuse the opposing
17 parties, as these examples show. The Company's current owner/operator, like Staff and
18

19 makes drilling wells (especially deeps ones) a very risky (and expensive) proposition."").
20 In response to Reidhead's question regarding more drilling in MDC, and specifically the
21 drilling of wells yielding only ten gallons per minute (Tr. at 613:14-20), Staff witness
22 Smith testified: "I think if there were any other alternative available to me other than
23 drilling multiple wells with low producers, I would be looking at those alternatives closely
24 before I drilled . . . any wells that were going to be low producers like this." Tr. at
25 615:11-15. *See also* Ex. S-6 at Finding of Fact No. 44 ("The primary problem which the
26 Company's MDC System faces is its well capacities since the water production of the
Company's nine wells total 59 gallons a minute at peak capacity and fluctuate down to
19 gallons a minute when production slows. However, even when the wells are producing
at maximum capacity, there is insufficient water available for the customers during the
peak summer months[.]").

³³ Gerhing Br. at 8:18-20.

³⁴ Gerhing Br. at 8:27-30 (emphasis added).

1 Judge Nodes, has been the subject of an unprecedented attack by some of the intervenor-
2 customers.³⁵ The Company is not going to respond to these unsupported, often
3 personalized, attacks. They are not supported by any evidence, and are simply false.
4 They are also offensive. The current owners have worked very hard to improve the
5 Company, its service and its system in the less than one year since the stock sale.³⁶ Again,
6 customers can disagree. They should not, however, have their attacks on the Company
7 and Staff considered as substantial evidence or persuasive argument in the setting of rates
8 for PWC.

9 **D. Reply to Bremer**

10 1. **Opposition to a Rate Increase for EVP**

11 Bremer is a part-time resident of the EVP system.³⁷ He did testify and presented
12 evidence in this proceeding.³⁸ Despite several concessions made by the Company in
13 response to his testimony, Bremer opposes any rate increases. Specifically, Bremer
14 reasons that the “PWC’s history of chronic water restrictions every summer and the
15

16 ³⁵ *E.g.*, KMR Supp.3 at KMR-J; Gehring Br. at 6-8, ¶¶ 19, 22, 24, 25; Objection to
17 Exclusion of Intervenor Glynn Ross from Hearings Held on 2/7/14 and 2/10/14
18 (filed February 10, 2014). *See also Reply Brief Exhibit 1*. Reidhead threatened to file
19 with the state attorney general a request for a criminal investigation of PWC. Tr. at
20 484:21 – 485:10. Based on the e-mail notification to WIFA it appears she has. PWC has
21 not been given proper notice of the filing. Nor has PWC heard anything from the attorney
22 general, and PWC does not expect to given that Reidhead’s claims of a criminal
23 conspiracy are entirely without merit.

24 ³⁶ *See generally Williamson Dt. See also Tr. at 21.* The Company’s counsel and rate
25 consultant have also tried very hard to help improve the situation. Both of them are
26 working on this case and not being timely paid due to PWC’s current financial crises.
Bourassa COC Rb. at 11:4-12. Not that being timely paid would justify the attacks on
Messrs. Shapiro and Bourassa by some of the customer-intervenors. *E.g.*, KMR Supp.3,
Exhibit KMR-J; Gehring Br. at 6-8, ¶¶ 19, 22, 24, 25.

³⁷ *See Bremer’s Motion to Intervene (filed September 27, 2013), which indicates*
Scottsdale, Arizona to be his primary residence.

³⁸ Bremer claims to speak for all of the customers in the EVP system. Bremer Br. at 3:2.
However, he is not an attorney and no other EVP customer has intervened in this rate
case.

1 decaying condition of the EVP water system” warrant denial of new rates.³⁹

2 This recommendation is not only contrary to law, it is poor public policy.

3 Bremer complains at length about the alleged neglect of the prior
4 owner/stockholder over the last 13 years.⁴⁰ The current owner/operator cannot comment
5 on or change the past practices of the Company. It is notable though that Bremer does not
6 cite to anything in the record beyond customer allegations, nor is there any evidence of
7 past violations, or findings by the Commission or any other agency that the EVP system is
8 not adequate or that the Company has done something wrong in its operations.
9 Furthermore, as discussed at length in its closing brief, PWC is entitled to recovery of its
10 operating expenses and an opportunity to earn a return on the fair value of its *current*
11 plant.⁴¹ Thus, Bremer is essentially asking the Commission to confiscate the Company’s
12 property and force it to continue to provide below-cost service without any opportunity to
13 earn a return on the fair value of its plant.⁴² That would be unlawful and a clear violation
14 of the Arizona Constitution and controlling Arizona cases.

15 It is also ill-advised. There is substantial evidence before the Commission that
16 PWC is in dire financial condition.⁴³ Despite this, PWC under new ownership is trying to
17 improve its services to customers.⁴⁴ With respect to EVP, the Company has already
18 agreed to Staff’s recommendation to undertake a study of the water supply situation in
19 EVP, and the Company has already applied for a grant to conduct this study.⁴⁵

20 ³⁹ Bremer Br. at 3:2-18.

21 ⁴⁰ *Id.* See also TB Supp.1; Tr. at 554-555.

22 ⁴¹ See *Scates*, 118 Ariz. at 533-34, 578 P.2d at 614-15. See also *US West*, 201 Ariz. at
23 244, 34 P.3d at 353, ¶ 13.

24 ⁴² See Williamson Rb. at 5:3-4; Bourassa Supp. Rj. at 3:9-16; Tr. at 54:18 – 55:5
(Bourassa); Tr. at 379:4-12 (Williamson).

25 ⁴³ Bourassa COC Rb. at 11:4-12; Williamson Dt. at 3:3-5; Williamson Rb. at 2:6-16, 8:18-
26 20; Tr. at 191:16-18, 192:21 – 193:6, 379:4-12 (Williamson).

⁴⁴ *E.g.*, Tr. at 192, 206 (Williamson); Williamson Dt. at 2; Williamson Rb. at 2.

⁴⁵ Williamson Rb. at 8:14-22; Ex. A-18.

1 The Company has also expressed its desire to operate the EVP system in a manner that
2 minimizes, to the extent possible, the need to augment supplies in the summer.⁴⁶ Denying
3 the Company the funds it needs to operate is going to undermine its ability to provide
4 service, and make it virtually impossible to attract capital to make the very system
5 improvements that Bremer demands. Not only would this deprive the customers of EVP
6 and the other systems of any chance of improved service, it will send the message to
7 prospective owners that acquiring small, troubled water utilities in Arizona is a bad idea.
8 The Company suggests that sending such a message to the utility industry would be poor
9 public policy in a state with roughly 400 private utility companies, many of which qualify
10 as small and troubled.

11 2. Opposition to the Proposed EVP Water Augmentation Surcharge
12 Tariff

13 Bremer's opposition to the proposed EVP Water Augmentation Surcharge Tariff
14 should also be rejected. As noted in his brief, PWC had already accepted some of Staff's
15 modifications concerning this tariff,⁴⁷ and obviously Bremer could not be aware that PWC
16 accepted Staff's annual cap on the hauling costs in its closing brief filed March 10,
17 2014.⁴⁸ At this stage, there are no disagreements between the Company and Staff over the
18 EVP Water Augmentation Surcharge Tariff. But Bremer's opposition to any
19 augmentation tariff would leave the Company's customers in EVP at risk. Whatever
20 Bremer may think the Company has or has not done in the past, or needs to do in the
21 future, PWC cannot modify its current assets serving EVP overnight, nor make more
22 water appear from nowhere. Without this augmentation tariff, PWC will not have the
23 ability to augment its water supplies in EVP should supplies come up short at any time in

24 ⁴⁶ See Tr. at 193:6 – 194:2 (Williamson).

25 ⁴⁷ Bremer Br. at 1:34-25.

26 ⁴⁸ PWC Br. at 16:11 – 17:5.

1 the future and before the Company has a chance to complete its analysis and make any
2 necessary system improvements. The augmentation tariff is a pass-through of only actual
3 costs, which discourages the utility from augmenting because it prefers to sell its own
4 water.⁴⁹ The onerous curtailment provisions deemed necessary in MDC have been
5 removed from the proposed tariff for EVP and, as noted, PWC would be subject to an
6 annual cap in an amount less than the historic average cost of augmentation.⁵⁰ In short,
7 notwithstanding Bremer's dogged challenge, the EVP Water Augmentation Surcharge
8 Tariff as currently proposed by PWC and Staff is clearly in the public interest as it
9 constitutes a minimum safety net for PWC and the EVP customers under current
10 conditions. It should be approved.

11 **E. Reply to Nee**

12 **1. The Notice Was Adequate**

13 Nee is a part-time resident of the Mead Ranch system who testified and presented
14 evidence in this proceeding. Thus, there can be no legitimate dispute that Nee participated
15 in Phase 2.⁵¹ Nee claims her due process rights have been violated because she was
16 unable to intervene in Phase 1 of these consolidated dockets due to inadequate notice.⁵²
17 This claim must fail for several reasons.

18 First, as discussed above in response to Sheppard, the Company sent the notice to
19 all customers in the form directed by the Commission and before the deadline ordered,

20 _____
21 ⁴⁹ Tr. at 161:22 – 162:6, 177:12 – 178:6 (Bourassa).

22 ⁵⁰ PWC Br. at 17:6-14.

23 ⁵¹ Nee filed six sets of testimony: Surrebuttal Testimony (December 18, 2013) (SN Sb.);
24 Supplement to Pre-Filed Testimony (January 6, 2014) (SN Supp.1); Supplement to Pre-
25 Filed Testimony (January 7, 2014) (SN Supp.2); Intervenor Response to Supplemental
26 Rejoinder Testimony Phase 2 (January 22, 2014) (SN Supp.3); Supplement to Pre-Filed
Testimony (January 31, 2014) (SN Supp.4); and Supplement to Pre-Filed Testimony
(February 3, 2014) (SN Supp.5). In total, Nee filed well over 350 pages of testimony and
exhibits in this rate case.

⁵² Nee Br. at 2:33.

1 and published notice in the local newspaper, which also ran several stories regarding the
2 Company and its rate filings.⁵³ Second, the Phase 1 Decision was final and non-
3 appealable on November 15, 2013. As noted above, Nee cannot collaterally attack the
4 Phase 1 Decision in this rate case. Further, the Company does not understand how notice
5 of the Phase 1 proceeding is an issue in this second phase. The second phase of this rate
6 case is to determine the fair value of the Company's property and set rates thereon.⁵⁴

7 Again, this is not to say that customers should not be given an opportunity to voice
8 their concerns. Nee participated in Phase 2 by filing testimony, taking the witness stand,
9 cross examining other witnesses and filing closing arguments. But the issue in Phase 1
10 was whether the Commission should approve financing of the WIFA loan to fund the
11 TOP-MDC line and whether certain emergency rate relief related thereto should be
12 approved.⁵⁵ The fact that Nee disagrees with the Company's decision to build the TOP-
13 MDC line does not justify "rescission of the Phase 1 Decision."⁵⁶

14 Third, the Phase 1 Decision did not directly and substantially impact Nee.
15 Nee lives part-time in Mead Ranch. The Phase 1 Decision approved collection of a
16 surcharge *only* from residents of MDC.⁵⁷ None of the Company's existing rates were
17 increased or otherwise modified in Phase 1. The rates in Phase 2 are not predicated on
18

19 ⁵³ E.g., KMR Dt., Exhibit A (pp. 22-23).

20 ⁵⁴ Tr. at 331:5-8.

21 ⁵⁵ See generally Ex. S-5.

22 ⁵⁶ Nee Br. at 3:3. Nee can express her layperson's opinion on complex hydrogeology
23 matters but those lay opinions are in sharp contrast with the opinion of Staff's Chief of
24 Engineering. Mr. Smith respectfully discounted the intervenors' attempts to use
25 generalized evidence about the geology of the region coupled with hearsay about the
26 experiences of other MDC well owners to establish that more drilling was prudent. Tr. at
606, 609-610, 613-616 (Smith). The intervenors' passionate belief that they know how
and where to find water for MDC, as well as run a water utility, does not make evidence
substantial, nor discount the substantial evidence presented by the Company and Staff to
rebut their lay opinions.

⁵⁷ Ex. S-5 at 16:18-21.

1 any finding of fact, conclusion of law, or order of the Commission in the Phase 1
2 Decision. Therefore, Nee's assertion – that she was deprived of her “only opportunity to
3 argue the facts that led to the decision regarding the increasing of her rates” – is just not
4 true.⁵⁸ In fact, the rescission of the Phase 1 Decision would have no impact on Nee's rates
5 for water utility service by the Company. This is because the rates recommended by Staff
6 and accepted by PWC are based on the cost of service and fair value of rate base, neither
7 of which were at issue in or the subject of the Phase 1 Decision.

8 On the other hand, modification of the Phase 1 Decision would be very harmful to
9 PWC. In compliance with the Phase 1 Decision, PWC has borrowed the money from
10 WIFA and is building the TOP-MDC line.⁵⁹ PWC has made the required compliance
11 filings with the Commission and is working to bring more water to MDC before summer
12 2014. The Company was required to follow the orders in the Phase 1 Decision, which
13 was not appealed, and did so in good faith. Absent approval to borrow, and the means to
14 service the WIFA debt, the Company will be in default of that loan, a situation that does
15 not require much explanation to be viewed as untenable.

16 2. Management Fees

17 The operating expense levels recommended by Staff and PWC include \$198,220 in
18 Miscellaneous Expenses, of which \$173,903 represents the Company's current
19 management fees.⁶⁰ This equals approximately \$13 per customer per month for
20 management, billing and customer services.⁶¹ There are no other costs for management in
21 the operating expenses.⁶² These costs are reasonable when compared with similarly

22 ⁵⁸ Nee Br. at 2:34-35.

23 ⁵⁹ See PWC's notices of compliance (filed March 4 and March 20 of 2014).

24 ⁶⁰ Bourassa Rb. at 10:3-7; Brown Supp. Sb. at 6:1-6 & Supplemental Surrebuttal Schedule
CSB-7; Tr. at 70:5-17 (Bourassa).

25 ⁶¹ See Tr. at 150 (Bourassa).

26 ⁶² Tr. at 43:17-25 (Bourassa).

1 situated utilities and less than the test year cost under the prior owner/operator.⁶³ There is,
2 in sum, substantial evidence showing that the recommended Miscellaneous Expenses are
3 reasonable and prudent under the facts of this case.

4 Despite filing hundreds of pieces of paper on this issue, Nee has not produced
5 substantial evidence to challenge this expense. This is not an “inflated” amount of
6 “discretionary spending,” or a bunch of random expenses typically recorded as
7 “miscellaneous” expenses because they do not fit another category. Rather, as was clearly
8 and convincingly demonstrated in response to Nee’s relentless argument, PWC previously
9 recorded its Central Overhead Allocation in Miscellaneous Expenses.⁶⁴ These costs were
10 for the operations and management of the Company prior to June 2013, and are no longer
11 reflective of the Company’s operating expenses.⁶⁵ These costs have been replaced by a
12 fixed fee agreement with a new operator and manager, and could just as easily have been
13 booked under “Professional Services.”⁶⁶ In contesting this amount based on what other
14 utilities spend on miscellaneous expenses, Nee is comparing apples to oranges. The only
15 question here is whether the amounts included in the Company’s operating expenses for
16 management and operations services are reasonable. Nee may be confused, but she has
17 not presented substantial evidence to warrant a change in this or any other expense level.

18 3. Deconsolidation of Mead Ranch

19 Nee wants the system in which she resides part-time to be separated, or somehow
20 treated as a stand-alone, separately operated water system.⁶⁷ But there is no evidence,
21 let alone substantial evidence supporting deconsolidation.

22 ⁶³ Tr. at 44:10 – 45:2 (Bourassa). The test year amount under the prior owner/operator
23 was \$197,722, as opposed to \$173,903 for JW Holdings. Bourassa Rb. at Rebuttal
Schedule C-2, page 1.

24 ⁶⁴ Tr. at 122:7-21 (Bourassa).

25 ⁶⁵ See Tr. at 133:6 – 134:9 (Bourassa).

26 ⁶⁶ Tr. at 149:9-21 (Bourassa).

⁶⁷ Nee Br. at 9-10.

1 PWC is a series of small rural water systems and therefore all customers in all
2 systems benefit from the economies of scale from consolidated operations.⁶⁸ Mead Ranch
3 and several other of PWC's systems are not physically connected, and only some of the
4 systems seem to suffer the plague of water supply limitations. However, these differences
5 do not justify separation into stand-alone systems. Actually, the evidence in this case
6 clearly and convincingly demonstrates that the rates would be considerably higher if the
7 systems were to operate as separate systems with different operations and separate rates.⁶⁹
8 The Commission surely recognized this in Decision No. 60972 (July 19, 1998) when it
9 approved the reorganization and consolidation of several former companies/systems into
10 the current configuration.⁷⁰ The costs related to separate and unique issues impacting
11 MDC have been rightly allocated directly to MDC.⁷¹ These costs will not be borne by
12 Nee and other Mead Ranch customers.⁷² Therefore, there is no reason to change what the
13 Commission found reasonable in its Phase 1 Decision, or in its decision to consolidate
14 more than a decade ago.

15 **F. Reply to Reidhead**

16 Reidhead is a part-time resident of the Deer Creek system. Reidhead testified and
17 presented evidence in this proceeding.⁷³ The first section of Reidhead's closing brief

18 ⁶⁸ Williamson Rj. at 13; Tr. at 49-51 (Bourassa) (“[Y]ou take advantage of economies of
19 scale when you consolidate rates. The more customers you share the costs over, the less
each customer has to pay as a result.”).

20 ⁶⁹ See Tr. at 51 (Bourassa); Tr. at 699-703 (Brown).

21 ⁷⁰ *Brooke Water, L.L.C., et al.*, Decision No. 60972 at Finding of Fact No. 8 (“The
22 geographic regrouping and transferring of the water systems is intended to result in
operating, administrative, and regulatory reporting efficiencies.”).

23 ⁷¹ PWC Br. at 16:7-10 & n.74.

24 ⁷² *Id.*

25 ⁷³ Reidhead filed six sets of testimony: Direct Testimony by Intervenor Phase 2
26 (November 14, 2013) (KMR Dt.); Surrebuttal Testimony by Intervenor Phase 2
(December 20, 2013) (KMR Sb.); Supplement to Pre-filed Testimony Phase 2 (January 6,
2014) (KMR Supp.1); Supplement to Pre-Filed Testimony Phase 2 (January 7, 2014)
(KMR Supp.2); Intervenor Response to Supplemental Rejoinder Testimony Phase 2

1 makes virtually the identical argument regarding Phase 1 and the notice as Nee's makes,
2 and goes so far as to claim that the outcome of Phase 1 would "absolutely" have been
3 different had she participated.⁷⁴ Reidhead's notice claim fails for the same reasons
4 discussed above in reply to Nee.⁷⁵ The Company further notes that Reidhead's certainty
5 that she "absolutely" would have changed the outcome is premised on her insistence that
6 her layperson's view of the hydrogeology in MDC would have carried the day.⁷⁶

7 For one thing, Reidhead does not reside in or own property in MDC; she lives part
8 time in Phoenix and has a second home in the Company's Deer Creek water system.
9 Consequently, the Phase 1 Decision does not impact her. Further, Reidhead may be
10 entitled to her opinion on the complex science that underlies the region's water problems,
11 and concerning the Company's decision-making. But she has no experience in geology,
12 hydrology, hydrogeology, well drilling, water exploration, or owning and operating public
13 service corporations.⁷⁷ She has simply submitted a bunch of generic information on the
14 region's overall hydrology and information on a number of small, private wells that she
15 admits to finding on the internet.⁷⁸ This is not substantial evidence. Reidhead is not a
16 competent witness to testify on these subjects, and for the reasons explained already,
17 the Company stands by its decision to build the TOP-MDC pipeline, the cost of which
18 will not be borne by Reidhead or any other ratepayers outside of MDC.⁷⁹

19 (January 27, 2014) (KMR Supp.3); and Supplement to Pre-Filed Testimony (February 3,
20 2014) (KMR Supp.4). In total, Reidhead filed over 250 pages of testimony and exhibits in
21 this rate case. Reidhead was also present during the Phase 1 hearing but did not make a
22 request to participate as an intervenor. She also apparently has requested a criminal
23 investigation into PWC. See Reply Brief Exhibit 1.

22 ⁷⁴ Reidhead Br. at 4:5-7.

23 ⁷⁵ See Section II(E)(1) *supra*.

24 ⁷⁶ Reidhead Br. at 4:5-24.

25 ⁷⁷ Tr. at 481:21 – 482:18 (Reidhead).

26 ⁷⁸ Tr. at 462:13-24, 469:11-20, 606:2-5 (Reidhead); KMR Sb. at 2 & Exhibit KMR-1;
KMR Supp.1; KMR Supp.2; KMR Supp.3.

⁷⁹ There are no longer any costs associated with the Cragin Pipeline project requested for

1 Like several of the other intervenors, Reidhead also wants her system to be
2 operated on a stand-alone basis.⁸⁰ This request is largely premised on Reidhead's
3 opposition to any restrictions on water use or other conservation requirements. She also
4 imposes Company deconsolidation of systems for the same reasons discussed above.⁸¹
5 The Company is in stark disagreement with Reidhead's anti-conservation preferences.
6 In short, Reidhead argues for deconsolidation largely because she is opposed to the state's
7 efforts to protect its precious water resources. These efforts, codified in part in the
8 Arizona Groundwater Management Act, have been supported by the Commission for
9 many years. Nevertheless, Reidhead wishes to be exempt from all conservation
10 requirements because she believes she lives in an area with sufficient water supplies.⁸²
11 PWC strongly disagrees with Reidhead's scorn for water conservation and supports the
12 efforts of Arizona, including the Commission, to protect the desert state's limited water
13 resources everywhere, not just in places where hauling is needed.

14 The remaining 10 pages of Reidhead's brief are dedicated to her assertion that

15 recovery from any PWC ratepayers in this case. *E.g.*, Williamson Rj. at 3, 5-6; Tr. at
16 63:12-15 (Williamson). This was pointed out several times during the Phase 2 hearings,
17 but Reidhead maintains her misunderstanding or misrepresentation of this fact.
18 Despite her persistence, and even assuming Reidhead had standing to argue about rates to
19 be paid by other persons, not her, the Company's requested rates are not "tied to the high
20 cost of Cragin water" as she claims (Reidhead Br. at 17:3). As such, her challenge is
21 misplaced, at best.

19 ⁸⁰ Reidhead Br. at 16:27-31.

20 ⁸¹ See Section II(E)(3) *supra*.

21 ⁸² Reidhead Br. at 16:6-7 ("The ratepayers in the Tonto Creek Basin should not be
22 penalized for their misfortune of being served by the same water Company [PWC] that
23 serves ratepayers in the Verde River Basin. They should not be put on a 'conservation'
24 inverted tier rate structure, merely because it benefits PWC[.]"); KMR Sb. at 2:38 – 3:15
25 ("[I]t would be discriminatory to impose a more stringent ratemaking structure on the
26 ratepayers in the Tonto Creek Basin than what is necessary[.] . . . That would have the
impact of placing an unfair financial burden on customers in those communities, driving
them to conserve, with no benefit to anybody for those conserved resources[.] . . . A more
reasonable approach would be to implement a rate structure that allows customers in these
two communities [Gisela and Deer Creek] to use as much water as they demand, hence
ratemaking should be designed to allow for maximum consumption at very affordable
costs.").

1 PWC and its counsel and consultant have engaged in “deceptive” and “fraudulent”
2 activities.⁸³ In fact, it appears that Ms. Reidhead has filed something with the Arizona
3 Attorney General seeking criminal remedies against PWC and its agents.⁸⁴ PWC
4 respectfully suggests that these assertions currently lack and unlikely will ever have the
5 requisite evidentiary support. Put bluntly, Reidhead’s accusations are outrageous,
6 factually unsupported and entirely without merit. PWC is not going to respond in this rate
7 case to these slanderous attacks. It is trying to meet its obligation to provide safe and
8 reliable water service to all of its customers, notwithstanding the financial, regulatory and
9 hydrological challenges it faces. Responding to Reidhead’s outlandish conspiracy
10 theories and paranoid tales of the Company and its agents engaging in an “elaborate web of
11 deception” is in no way going to further the Company’s goals or efforts in that regard.

12 **III. CONCLUSION**

13 Based on the reasons stated herein and in PWC’s Initial Closing Brief,
14 the Company respectfully urges the Commission to authorize an increase in revenue of
15 \$289,731 for a total revenue requirement of \$610,256, which would allow the Company to
16 earn a 9.00 percent return on the fair value of its utility plant and property devoted to
17 public service. This return is clearly low given the risks faced by PWC. PWC also asks
18 for approval of the rate design recommended by Staff, including the PWAM, and the EVP
19 Water Augmentation Surcharge Tariff, along with any other relief as may be required to
20 provide the Company with a reasonable opportunity to actually earn such rate of return.

21 ...

22 ...

23 ...

24

25 ⁸³ Reidhead Br. at 4-14; *see also* KMR Supp.3 at 2-3 & Exhibit KMR-J; Tr. at 505-506.

26 ⁸⁴ Reply Brief Exhibit 1.

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RESPECTFULLY SUBMITTED this 24th day of March, 2014.

FENNEMORE CRAIG, P.C.

By 
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Attorneys for Payson Water Co., Inc.

ORIGINAL and thirteen (13) copies
of the foregoing were filed
this 24th day of March, 2014, with:

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

COPY of the foregoing was hand-delivered
this 24th day of March, 2014, to:

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

Robin Mitchell, Legal Division
Arizona Corporation Commission
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Phoenix, AZ 85007

COPY of the foregoing was e-mailed/mailed
this 24th day of March, 2014, to:

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1 J. Stephen Gehring
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4 Tempe, Arizona 85282

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405 S. Ponderosa
6 Payson, AZ 85541

7 By: *Lela Robertson*

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REPLY BRIEF
EXHIBIT 1

From: Kwink77 . [<mailto:kathiereidhead@gmail.com>]
Sent: Monday, February 24, 2014 8:02 AM
To: Sandy Sutton; Patricia Incognito
Cc: Suzanne Nee
Subject: Payson Water Company

Dear Ms. Sutton & Ms. Incognito,

I believe there is considerable evidence to pursue a criminal investigation into the practices of this small private Class-C water utility and the possible collusion of State officials at the ACC, in pursuit of Cragin Reservoir water resources (supervised by the U.S. Department of the Interior, Bureau of Reclamation). I am an Intervener in the rate case that was just heard at the ACC on February 4, 5, 7, & 10, 2014. I reside part-time in Deer Creek Village (DCV), a small rural community approximately 15 miles south of the Town of Payson, AZ. I have filed a complaint with the State Attorney General, but am asking you to be aware of this matter and be advised of my complaint.

I am a ratepayer of the private water Company called Payson Water Company (PWC). Despite the name, this Company is not affiliated with the Town of Payson (TOP), simply the 8 rural communities it serves are each within a 20 mile radius of the Town. This Company serves 1,114 customers from 8 different systems (DCV, Gisela/Tonto Creek Shores, Mesa del Caballo, East Verde Park, Flowing Springs, Whispering Pines, Geronimo Estates/Elusive Acres & Mead Ranch) each a well system that is not interconnected with any of the others. The Company was previously owned by a Parent Company called Brooke Utilities Inc. (BUI) and for approximately the last 13 years, our bills came to us from BUI (I believe a California entity). On 6/1/2013, the Company changed hands and is now owned and managed by a Parent Company called JW Water Holdings, LLC (a Colorado entity).

The "long story short" is that I believe PWC may have engaged in a complicated scheme to deceive and defraud the ratepayers of PWC in order to obtain access to water rights from the Cragin Reservoir for Mesa del Caballo (MdC). I am a "Pro Se" Intervener in the rate case that has just been litigated before the Arizona Corporation Commission (ACC). What that means is I represented myself in the case, even though I am not an attorney. There are 7 Interveners in the case, from 6 of the 8 communities served by PWC. I researched this case extensively for 141 days and filed multiple pleadings in the case before I was a witness in the Hearing, which took place on February 4, 5, 7 & 10, 2014. The case was bifurcated and Phase 1 was expedited which essentially took away any ratepayers' rights to Intervene in the Phase 1 portion of the case, effectively silencing any opposition voice during the Phase 1 proceedings. The ratepayers did not receive the required 10 days notice of the Phase 1 Hearing and the Public Notice arrived in a nondescript envelope with a mysterious return address. I received only 5 days notice and another Intervener testified that he received only 1 day notice. Another Intervener testified that she didn't recognize the mysterious return address, so she did not open her envelope in a timely matter, so she was not aware of the Phase 1 Hearing until after it had passed. Our due process rights were violated at the very start of this case. The questions raised during that portion of the case were not answered to my satisfaction until now. The premise for a \$275,000 TOP/MdC Interconnect Pipeline that was approved in Phase 1 was to avoid water hauling exercises this coming summer according to PWC, yet the record now shows that PWC has not established that water hauling exercises were absolutely necessary or prudent over the last 5 summers.

In fact, the record shows that PWC expressed an interest in pursuing Cragin water in April 2008 via a letter from Robert Hardcastle (former shareholder of BUI) to the Town of Payson (who has acquired 3,000 acre-feet of water/year from the Cragin Reservoir). The Company advised the ACC in November 2009 that they wished to pursue Cragin water, after they noticed a sudden drop in well production in MdC beginning in July 2009 and even before they had conducted an Engineering Study in MdC in early 2010. A letter dated March 30, 2010 from Southwest Water Consultants interpreting the Engineering Study the Company had commissioned told Mr. Hardcastle that he could drill wells up to 500 feet deep in MdC that would likely produce 10-25 gpm. Still, he went on hauling water instead of examining the wells to find out why the production dropped so dramatically, drilling any new wells or adding additional storage capacity in MdC. On March 31, 2010 (one day after the date of the letter from Southwest Water Consultants) the Company filed an application for the emergency implementation of a water augmentation surcharge for its MdC system and was granted an ACC Decision on September 28, 2010, Decision 71902. So the water hauling continued, but now at the expense of the people of MdC, with great hardship endured. PWC bore none of that expense, it was all on the backs of the ratepayers in MdC. PWC hauled lots and lots of water during summer 2011, 2012 and 2013 and did nothing (that we know) to rectify the water production problems in MdC. I saw a water bill from a person from MdC for over \$500 for one month of usage. No efforts were made to mitigate the damages to the people of MdC. Even after the Company changed hands on 6/1/2013, they continued to haul water at an expense of \$88,000 during summer 2013, "the worst year yet" and they used this claimed water hauling "crisis" to obtain expedited approval for the TOP/MdC Interconnect pipeline via Decision 74175 on October 25, 2013, with very little scrutiny given to the details of this matter. The record shows PWC has not made attempts to resolve the claimed water shortages in MdC via any other solution but kept moving towards their goal for the Cragin water solution since water hauling began in 2009. In fact, Mr. Williamson (the new owner of PWC) admits that he did not examine the wells they claim have been significantly underperforming since he took over the Company.

Furthermore, before and since the Phase 1 Decision, ratepayers from the other 7 communities outside of MdC have expressed loud and clear opposition to paying for the TOP/MdC interconnect pipeline or the costs of tying into the Cragin pipeline, and many assurances were given that we would not be paying for those costs, only the people of MdC would be paying. However, the Phase 1 Decision issued by the ACC has language that requires a debt service coverage (DSC) of 1.2 be collected to satisfy WIFA loan requirements for that pipeline, which is revenue that will be collected from all 8 of the systems, as they are proposing only 1 consolidated rate structure for all 8 water systems. Also, the evidence now shows that the costs for that pipeline (debt) MAY BE embedded in our rates in the next rate case, which is recommended be filed by 6/30/2017.

Through my investigation of this case, I now understand some of the politics of Cragin water. I had a telephone conference call with an Attorney and a Water Analyst from SRP, who were very upfront with me about their goals for the Cragin water project. I discovered that Gila County paid \$4M to upsize the pipeline for the 500 acre feet available to Rim Area Communities and that there was an out in the open approach visible in the Public Record. Town of Payson has been upfront about their plans for 3,000 acre feet that will spur growth for their community. The State of Arizona is also aware of the long-term plan for growth of the Payson area through 2040, as shown in a report published in April 2008 by the US Department of the Interior called Mogollon Rim Water Resources Management Study found at:

www.usbr.gov/lc/phoenix/reports/mogollonrim/mrwrfr.html. But PWC has been less than forthcoming to their ratepayers about their intentions for Cragin water supplies or the costs associated.

It is reasonable to conclude that a small water Company, like PWC, would face obstacles gaining support from its ratepayers for a large rate increase tied to the high cost of Cragin water unless growth demanded it or a water shortage crisis existed. There is reason to doubt that the Company's claimed water shortage crisis in MdC is legitimate.

Since 2011, 9 property owners in MdC have drilled new wells there and all have obtained water at depths

ranging from 120 to 276 feet below ground. For this reason, I am asking for a criminal investigation into this matter. I have requested the ACC contact the Arizona Attorney General and aid them in an investigation, as required by ARS 40-421. I filed a complaint with the ACC and with the Arizona Attorney General, but I am not aware of any action on those complaints or any investigation underway. In fact, I received a form letter from the Attorney General that sounds like they are not pursuing an investigation and thanks me "for my good citizenship". I believe that only through a criminal investigation can it be determined if the Company intended to deceive or defraud the ratepayers through water hauling exercises in pursuit of Cragin water resources.

PWC also attempted to purchase the Beaver Valley water system, just down the road from MdC, which may indicate a desire to expand the Company's access to Cragin water resources and bring them to that Community. This was done during 2012, when PWC claims they were losing money for the last 4-5 years, so it makes me wonder why the owner's mindset was on acquisition of another water Company when PWC claims they had been running in the red for the last 4-5 years? Where would they get the money to purchase another water Company if the financial data is true?

There are also many accounting and data irregularities noted in the evidence of this case, too many to accept that the data provided by PWC is sound, yet it was used by the ACC in making the rate design proposals. It doesn't appear that the ACC saw the glaring "red flags" that many of the Interveners saw so clearly, or that the ACC changed course even after we pointed these things out.

Furthermore, the people of DCV and Gisela reside in the Tonto Creek water basin, which has abundant water resources in underground storage. The other 6 communities served by PWC reside in the Verde River water basin, where different hydro-geological conditions may exist. We should not be lumped all together and put on a "conservation" inverted tier rate structure, merely because it benefits PWC with administrative efficiencies, yet this is precisely what the ACC and PWC have agreed to do. It was stated that this inverted tier rate structure is a long-standing practice the ACC adopted approximately 10 years ago, but this "practice" appears to be highly discriminatory based upon the facts of this case, which is a violation of ARS 40-203.

The Docket Number for this case is W-03514A-13-0111. You can review all documents pre-filed in the case by visiting the ACC website at www.azcc.gov, click on the edocket button at the bottom of the page and enter the Docket Number into the search field.

The parties to the case (including the 7 Interveners) will be filing "Post-Hearing Briefs" by March 10, 2014 and expect a Recommended Opinion and Order sometime late-March or early-April. The Commissioners will likely vote on this matter in either April or May.

Thank you!

Sincerely,

Kathleen M. Reidhead

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