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ORIGINAL

1 William Sheppard, Intervenor

2 6250 NORTH CENTRAL AVENUE

3 PHOENIX, AZ 85012

4 TELEPHONE (602) 256-0566

5 FAX (602) 256-4475

6 EMAIL: WSHEPPARD@GBLAW.COM

ARIZ CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

7 IN THE MATTER OF THE
8 APPLICATION OF PAYSON WATER
9 CO., INC., AN ARIZONA
10 CORPORATION, FOR A
11 DETERMINATION OF THE FAIR
12 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

Arizona Corporation Commission

DOCKETED

JUN 05 2014

DOCKETED BY

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

DOCKET NO. W-03514A-13-0142

**OBJECTIONS TO RECOMMENDED
ORDER AND OPINION**

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23 The Intervenor, William Sheppard (hereinafter Sheppard), takes issue with, and
24 exception to, the Recommended Order and Opinion of Administrative Law Judge Dwight
25 L. Nodes (hereinafter ALJ) all as more fully set forth hereinafter.
26

1 First, contrary to the findings of ALJ the notice originally sent out in this
2 proceeding was deficient. You can put lipstick on a pig, but it is still a pig. It is the
3 undisputed uncontroverted evidence based on the testimony of Suzanne Née and
4 documents she submitted into evidence that the original notice was sent to customers in a
5 plain envelope bearing a return address with no correlation to any address used by Payson
6 Water Company (hereinafter Company).

7 That is not simply Sheppard's assertion, as ALJ states. It is a fact. And it is
8 incurable. The fact that no one has come forward showing they did not receive notice
9 creates the ultimate Catch 22. For as soon as someone comes forward they are put on
10 notice.

11 The Commission needs to take two things into consideration on this issue:

12 First, the notice was sent out in a manner that most ordinary people would
13 think was junk mail. If and when this Commission approves immediate rate increases
14 approximating 100% and those first bills are sent out, then the Commission, ALJ and
15 every voter in Gila County will learn of a significant number of ratepayers who had NO
16 notice of these proceedings because of the way the mailing was sent.

17 Second, publication in The Payson Roundup is not sufficient. Many of the
18 affected ratepayers do not live full time in these communities and are there only on
19 weekends or summer holidays. They do not read or see The Payson Roundup. Given the
20 seasonal nature of many ratepayers the notice should have been published in a newspaper
21 with a larger statewide covering, like The Arizona Republic.

22 Next, the proceedings absolutely must be stayed 90 days under Rule 25 of
23 the Arizona Rules of Civil Procedure. Mr. Richard Burt died on March 18, 2014. Rule
24 25 of The Arizona Rules of Civil Procedure provides that proceedings must be stayed 90
25 days to give the heirs of the decedent an opportunity to appear and be substituted in his
26 place.

1 This will not affect the Commission's ability to set rates as ALJ asserts. It merely
2 provides a brief (90 days) for the legitimate heirs of Mr. Burt to come forth and assert his
3 claims. ALJ asserts that Mr. Burt's claim is extinguished because he no longer has an
4 interest in future rates set by the Commission. ALJ ignores the fact that whoever inherits
5 the property from Mr. Burt will have to immediately begin paying INCREASED RATES
6 OF AROUND 100%. Rule 25 is a rule to protect the rights of the heirs of those who die
7 while legal proceedings are pending. In his rush to give Payson Water Company as large
8 an increase as possible ASAP, ALJ has ignored those rights.

9 Since Rule 25 has been arbitrarily ignored by ALJ, the Commission should correct
10 this judicial oversight by placing this matter on hold at the hearing on June 10 for 90 days
11 until after September 10 to cure ALJ's judicial error.

12 Finally, ALJ ignores the clear holding of Arizona Community Action Association
13 v. Arizona Corporation Commission, 123 Ariz. 228, 599 P.2d 184 (1979). What that case
14 clearly and unequivocally states is that in determining rates the Corporation Commission
15 must consider NOT ONLY the impact of rates on the Company but also those of the
16 ratepayer. Staff, ALJ and the Company have never considered the impact on the
17 ratepayer. There has been considerable testimony about the number of economically
18 disadvantaged ratepayers living in the affected communities. And if there was any doubt
19 in the minds of the three Commission members who attended the long, acrimonious
20 public hearing in Payson as to the devastating economic impact these rates will have, that
21 doubt should have been eliminated that evening. The testimony elicited by Intervenors
22 established that many of these ratepayers can barely afford food much less increased
23 water bills of OVER 100%.

24 Yet, notwithstanding all this, ALJ is primarily, almost exclusively, concerned with
25 the fact "...that the Company is operating at a substantial loss and requires a significant
26

1 increase in revenues to remain solvent...". Intervenor Sheppard has two responses to
2 ALJ's overwhelming concern for the Company's bottom line.

3 First, Jason Williamson, as he testified, knew quite well what the financials of the
4 Company were when he bought it from Brooke Utilities. No one held a gun to his head
5 and forced him to buy this Company. He is an educated and sophisticated businessman
6 who knew exactly what he was doing. He was going to make this Company highly
7 profitable, with the help of this Commission, by forcing INCREASED WATER RATES
8 OF 100%, on the backs of the residents of these small rural communities.

9 Second, Sheppard acknowledges there has been no rate increase for some time.
10 That is not the fault of Mr. Williamson. It is the fault of his predecessor. But is certainly
11 not the fault of the ratepayers in the small affected rural parts of Gila County. Yet they
12 are expected by ALJ, Staff and the Company to bear this enormous financial hardship in
13 one fell swoop. That is simply wrong. It is unfair. It flies against the express language
14 in Arizona Community Association, supra, that the Commission must consider the impact
15 on the ratepayers as well as the Company. And this is the reason so many voters in Gila
16 County (as evidenced in the community hearing in Payson) are so very, very angry.

17 If the Commission truly follows what the Supreme Court of Arizona wrote in
18 Arizona Community Association, supra, and considers the effect on the ratepayers, it
19 will, at the very least phase in these enormous increases over a period of years (not
20 months as ALJ has proposed with Gisela) and give these affected citizens and voters a
21 fighting chance to be able to afford them and not be out in the position of choosing
22 between water and food.

23 For all the foregoing reasons, Sheppard respectfully requests that the Commission
24 reject the Recommendations of ALJ and remand these proceedings to ALJ for revisions
25 of the prior Recommendations that are consistent with these objections.

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RESPECTFULLY SUBMITTED this 5th day of June, 2014.

By: 

William Sheppard
6250 North Central Avenue
Phoenix, Arizona 85012
Intervenor

ORIGINAL and thirteen (13) copies of the foregoing were filed this 5th day of June, 2014, with:

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

COPY of the foregoing was mailed this 5th day of June, 2014 to:

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

Robin Mitchell, Esq.
Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

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

1 Thomas Bremer
2 6717 E. Turquoise Avenue
3 Scottsdale, AZ 85254

4 Jay L. Shapiro, Esq.
5 Fennemore Craig, P.C.
6 2394 E. Camelback Road, Suite 600
7 Phoenix, AZ 85016

8 J. Stephen Gering
9 Richard M. Burt
10 8157 W. Deadeye Road
11 Payson, AZ 85541

12 Suzanne Nee
13 2051 E. Aspen Drive
14 Tempe, AZ 85282

15 Glynn Ross
16 405 S. Ponderosa
17 Payson, AZ 85541

18 By: *Nancy Leahy*
19 Nancy Leahy
20 Assistant to William Sheppard
21
22
23
24
25
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