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BEFORE THE ARIZONA CORPORATION COMMISSION

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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

Arizona Corporation Commission

DOCKETED

JUL 2 2014

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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
07/02/14
FOR SUCH INDEBTEDNESS.

DOCKET NO: W-03514A-13-0142

ORIGINAL

INTERVERNOR Request for Re-Hearing of
Decision #74567 (Phase 2) and to Re-Open
and Reconsider Decision #74175 (Phase 1) -
July 2, 2014

Intervenor Suzanne Nee, "SN," exceptions to Decision #74567 (Phase 2) on 06/20/14 and to Re-open and reconsider decision #74175. SN files the following response.

In at least 2 places this decision states incorrectly that SN had attended the Phase 1 Hearing: Pg. 26, lines 15-18, Pg. 36, lines 21-23.

The Staff ALJ Nodes and Commissioners Susan Bitter Smith, Bob Burns, Brenda Burns, Gary Pierce, Bob Stump have falsely stated that I attended the Phase 1 Hearing. I stated in my Surrebuttal Testimony¹, and Intervenor Expceptions to ALJ Nodes ROO,² and I began my June 10th hearing statement stating that, "I did NOT attend the Phase 1 hearing." As stated in the documents and evidenced by my numerous

¹ Suzanne Nee Surrebuttal Testimony, doc. #151202, pg. 1, lines 39-41

² SN Intervenor Exceptions to ALJ Nodes ROO, doc. #153742, pg. 5, lines 11-15.

1 filings in this hearing, SN would have been at the Phase 1 hearing on Sept. 25th, 2013 if SN had known
2 about it. But because of the **ineffective** public notice mailing, SN did not learn about the Phase 1
3 hearing until September 26th. Keeping these statements that SN attended Phase 1 Hearing in the final
4 Decision is **clear evidence of bias against the Intervenors** in these administrative proceedings. SN took
5 the time and effort to state her case, but the Arizona Corporation Commission's Administrative Law
6 Judge Nodes and the Commissioners have disregarded her testimony. Apparently, while this body is
7 supposed to provide rates that are fair and reasonable to the company and the customers, these
8 proceedings show tremendous bias such as overlooking clear evidence of violation of the Payson Water
9 Co. customers' Due Process Rights. The video of the Phase I Hearing is evidence that SN was not in
10 attendance and did not make public comment. In fact, SN taught at Scottsdale Community College on
11 Sept. 25, 2013 and has at least 24 witnesses to the fact that she was teaching that day.
12

13 Because the public notice mailing was ineffective, SN's Due Process Rights were violated. The Due
14 Process Clause states that a State cannot "deprive any person of life, liberty, or property, without due
15 process of law." U.S. Const. amendment XIB, §1. A rate increase is a deprivation of property. Due
16 process of law requires that such deprivation be preceded by notice and an opportunity for hearing
17 appropriate to the nature of the case. *Carlson v. Ariz. State Pers. Bd.*, 214 Ariz. 426, 430-31, ¶¶ 14-15,
18 153 P.3d 1055, 1059-60 (App.2007) (citation and internal quotation omitted). Such bifurcation denied
19 SN the opportunity to oppose the loan in Phase 1, and ultimately prevented her from successfully
20 challenging the rate hike in Phase 2. Accordingly, SN did not have the opportunity to oppose the rate
21 hike and her due process rights were violated.
22

23 SN acknowledges the A.A.C. requires such Intervenors to be "directly and substantially" affected.
24 However, the AAC cannot deprive an individual of their constitutional rights. Further, the ACC does not
25 define what the terms "directly and substantially" mean. Furthermore, the Arizona courts have not
26 attempted to define this term. However, in *Miller v. Arizona Corp. Com'n*, ratepayers were able to
27 intervene in court proceedings. 251 P.3d, 400, 403. Had these proceedings not been bifurcated, and
28 the commission's decision to allow PWC to take the loan was coupled with the decision to raise rates, no
29 one would argue that SN was not directly and substantially affected. Nevertheless, SN remains directly
30 and substantially affected by the Phase 1 hearings, even with the bifurcation. By allowing PWC to take a
31 loan in Phase 1, there now exists an exceedingly high rate increase today. Therefore, Phase 1 hearings
32 directly and substantially affected SN. Accordingly, she was entitled to notice and intervention of said
33 hearings.
34

35 "The urgency of the circumstances," stated by ALJ Nodes should not have factored into the decision to
36 bifurcate the Hearing into two Phases and expedite Phase 1. The scope of Phase 1 Hearing is not at
37 issue here; only the necessity of bifurcating and expediting. The bifurcation of the Hearing into two
38 phases prevented SN from participating in the Phase 1 Hearings as an Intervenor. Under un-bifurcated
39 proceedings with timely notice, SN would have been heard at that time and be able to bring her full
40 arguments and evidence to record. [MDC 2012 Water Use Data and over a decade of neglect of the
41 MDC system]. The proper remedy for this violation would be to reverse the decision and redo the
42 proceedings consistent with the Due Process Clause. *Hendricks v. Arizona Dept. of Economic Sec.*, 270
43 P.3d 874, at 879. Further, SN is requesting the Phase 1 Decision be reopened according to ARS 40-252.

1 **Incorrect and Incomplete Annual Reports, New Payson Water Co. President, Jason Williamson, made**
2 **error in his testimony. Hauling water to MDC when there was no need for it in 2012. Hauling in more**
3 **water than there was storage for at MDC. This evidence was also omitted in this decision. This is**
4 **more proof of bias by the ACC.**
5

6 PWC's 2011 Annual Report is missing MDC's water use data sheet. Mr. Williamson testified that the
7 2012 Annual Report was both "incomplete and inaccurate."³ Mr. Hardcastle had signed an affidavit that
8 both of the 2011 and 2012 Annual Reports were "both complete and correct." Even though this was
9 brought to Staff's attention⁴, to my knowledge there have been no repercussions to Mr. Hardcastle for
10 turning in the PWC's 2011 Annual Report incomplete and their 2012 Annual Report both "incomplete
11 and incorrect."

12 The missing MDC water use information with no follow up by staff for replacement data indicates bias.
13 Are the sworn affidavits the ACC requires on the Annual Reports being both "complete and correct"
14 information **not really taken seriously or enforced** by the ACC?

15 Further, Mr. Jason Williamson filed his Rejoinder with a subtraction error in it to make his point that
16 leakage at East Verde Park (EVP) was only 1.6% to make his argument that no water could have been
17 hauled out of EVP.⁵ No one on Staff noticed this subtraction error, nor to my knowledge did ALJ Nodes
18 think it was perjury to swear to tell the "whole truth and nothing but the truth," yet make a purposeful
19 error to make an argument.

20 Further, Mr. Jian Liu, Engineer in this case, did not notice that PWC hauled and charged MDC customers
21 for 4 months in 2012 when the wells pumped more water than was sold.⁶ Further proof of fraud, is that
22 MDC only has 105,000 gallons of water storage. If you look at gallons hauled in versus storage capacity,
23 there is clear proof that Payson Water Company had to have hauled a lot of water **OUT** of MDC.⁷ Mr. Liu
24 and Mrs. Crystal Brown wrote their memo on Sept. 18th saying that there was a severe water shortage at
25 MDC. It was their job to notice these discrepancies.

³ Jason Williamson's Supplemental Rejoinder, January 15th on pg. 6, lines 15-21.

⁴ SN Intervenor Post-Hearing Brief, document #151680, pg. 5, lines 9-10.

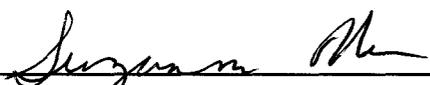
⁵ SN Intervenor Post-Hearing Brief, document #151680, pg. 5, lines 18-30.

⁶ SN Intervenor Exceptions to Staff's Recommended Order, document #153506, Exhibit A, pg. 5.

⁷ SN Intervenor Exceptions to Staff's Recommended Order, document #153506, pg. 2, lines 2-11, 5/22/14.

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Respectfully submitted this 2nd day of July, 2014.

By 
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ORIGINAL and thirteen (13) copies
of the foregoing were filed this 2nd
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