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DOCKET NOS. W-03514A-13-0111

W-03514A-13-0142

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ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
August 15, 2014
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Ms. Kathleen M. Reidhead
14406 S. Cholla Canyon Drive.
Phoenix, AZ 85044

Re: Response to Your Ethics Complaint Against Judge Nodes

Dear Ms. Reidhead:

This letter is in response to your complaint that Assistant Chief Administrative Law Judge Dwight Nodes misrepresented facts during the Commission's deliberations of the Payson Water Company general rate case at the June 10, 2014 Open Meeting. Your allegation of unethical conduct by Judge Nodes is a serious allegation.

The basis for your claim of unethical conduct is that Judge Nodes' characterization of the WIFA surcharge was false because he told the Commissioners: (1) that the WIFA surcharge only applies to the customers served in the Mesa del Caballo system; and (2) that the WIFA surcharge would not be affected by the Order that was being decided by the Commission at the June 10, 2014 Open Meeting. In your July 15, 2014 letter to me, you wrote, "(Judge Nodes') misrepresentation may have caused the Commissioners and other ratepayers to believe that only the ratepayers of Mesa del Caballo will continue to pay for that WIFA loan taken out for the TOP-MdC interconnect pipeline, which is not true...Ratepayers from all 8 communities served by Payson Water Company are now paying rates to cover that WIFA loan and the debt service under the permanent rate Decision #74567 that was approved by the Commissioners immediately following this exchange."

In order to investigate the claim of unethical conduct, I watched the archived footage of the June 10, 2014 Open Meeting. I also reviewed the several Commission Orders issued for Payson Water Company. I met with the Commission's Chief Counsel and the Chief Administrative Law Judge. Finally, a Certified Public Accountant, who is employed by the Commission but is not an employee of the Utilities Staff Division and who has significant rate case experience, reviewed the evidentiary record and the financial schedules to determine whether the cost of the pipeline was being recovered by rates set in Decision No. 74567 which set new base rates for all Payson Water Company customers.

I find that the factual basis for your complaint is incorrect. From the plain language of the Commission's Orders, only Mesa del Caballo customers are paying for the WIFA loan. Additionally, the review by the Certified Public Accountant shows that the costs of the WIFA loan is not being collected in base rates. Judge Nodes' statements were

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accurate. Moreover, nothing in my review of the record reflects any unethical conduct by Judge Nodes.

PROCEDURAL HISTORY

This case began as a consolidated matter, combining a rate case and a financing application. Although the Company originally requested the consolidated proceeding be expedited, the matter was bifurcated into two phases. The first phase was to expedite the review of the Company's request for approval to obtain a \$275,000 loan in order to construct a pipeline and get it into service before the 2014 summer. The remaining matters (a financing request for a second pipeline and the general base rate case) would be decided at a later date – phase two. Ultimately, the request for approval to obtain financing for the second pipeline was withdrawn and only the rate case remained in phase two.

“The Phase I Order” – Decision No. 74175 (October 25, 2013)

This Order authorizes Payson Water to obtain a \$275,000 loan from the Arizona Water Infrastructure Financing Authority (WIFA) to construct a pipeline from the Town of Payson to the Mesa del Caballo system. The pipeline would provide a reliable source of water for Mesa del Caballo customers. The Order also approves a “WIFA surcharge” to collect funds to repay the loan. These funds would be collected from the customers who would benefit from that pipeline. *“The surcharge shall apply only to customers of the Mesa del Caballo system and shall be calculated based upon the actual amount of the WIFA loan and actual number of customers in the Mesa del Caballo system.”* (Decision No. 74175 at 16)

“The PWAM Order” – Decision No. 74484 (May 22, 2014)

This is an emergency Order of the Commission that occurred between Phase I and Phase II. The Order establishes a “Purchased Water Adjustor Mechanism” (PWAM) to recover the costs of the water that is purchased from the Town of Payson and that flows through the TOP-MdC Pipeline which was financed with the \$275,000 WIFA loan. This Order also canceled the Emergency Interim Water Augmentation Surcharge Tariff for the Mesa del Caballo System. The Commission approved that interim Augmentation Surcharge several years ago to recover the costs to haul water by truck to Mesa del Caballo during times in the summer when the utility's own water supplies are deficient. The Order noted that hauling water is much more expensive than receiving water through the TOP-MdC pipeline. The construction of the pipeline and the delivery of water through it in lieu of water that had to be trucked in to Mesa del Caballo provides significant rate relief to these customers. Like the WIFA surcharge that repays the loan to construct the pipeline, the PWAM surcharge that recovers the cost of the water flowing through that pipeline only applies to Mesa del Caballo customers. *“IT IS FURTHER ORDERED that the interim emergency PWAM approved herein shall apply only to the customers of the Payson Water Co., Inc.'s Mesa del Caballo System.”* (Decision No. 74484 at 6)

“The Rate Case: Phase II Order” – Decision No. 74567 (June 20, 2014)

This Order sets new base rates for the utility. Base rates had not increased in approximately 14 years, and the Order noted the Company was operating at a substantial loss. In a general rate case, the Commission sets rates that allow a utility the opportunity to collect revenues from customers to reach its approved revenue requirement.

This Order set Payson Water Company’s revenue requirement. The revenue requirement is derived by applying a fair value rate of return to the utility’s rate base that was in use during the Test Year and then including reasonable test year operating expenses. The TOP-MdC pipeline did not exist during the Test Year. As confirmed by the CPA, the \$275,000 WIFA loan that paid for the pipeline is not part of the revenue requirement – it is not in the rate base, the rate of return does not reflect the debt, and there is no evidence of that cost in the depreciation expense. The rates approved in Decision No. 74567 simply do not recover this cost. The cost of the WIFA loan is a separate line item listed on the Mesa del Caballo customer bills and was set in the Phase I Order. At several points in Decision No. 74567, the Commission affirms that the WIFA surcharge only applies to the Mesa del Caballo customers.

1. *“Staff states that the \$275,000 debt authorized in the Phase I decision was excluded from the Company’s overall capital structure because only Mesa del Caballo customers are responsible for repayment of that debt.” (at 23-24)*
2. *“According to Staff, the (WIFA) surcharge will allow the Company to service that debt obligation independent of any rates set as a result of the Phase 2 proceeding. Additionally, Staff notes the surcharge is only being assessed to the Mesa del Caballo system customers.” (at 26-27)*
3. *“IT IS FURTHER ORDERED, that, in accordance with Decision No. 74484, the interim approval of the Company’s PWAM tariff shall be made permanent. As stated therein, as well as in Decision No. 74175, the debt surcharge and the PWAM will apply only to customers in the MDS system.” (at 72)*

CONCLUSION

You previously complained of misconduct of several Commission employees during the hearing. The Commission rejected these claims. The Commission stated that these wholly unsupported allegations were “far beyond the pale of reasonable advocacy.” (Id. at 52) This current complaint appears to be an extension of these prior claims.

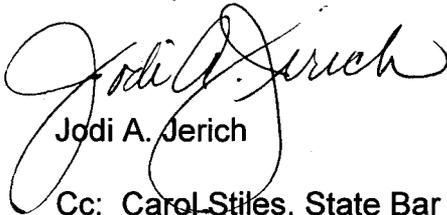
As reviewed in detail above, your concern that the Phase II Rate Case Order allows Payson Water Company to collect the WIFA surcharge from all of its customers is groundless. Judge Nodes’ comment at the June 10, 2014 Open Meeting was correct. As Judge Nodes stated, the Phase II Rate Case Order left the WIFA surcharge

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“unabated.” The Order expressly reaffirms that the WIFA surcharge only applies to Mesa del Caballo customers.

find no support for your claim that Judge Nodes’ comments made at the June 10, 2014 Open Meeting were material misrepresentations of fact. In the most unequivocal term, I find that Judge Nodes acted in a professional and ethical manner not only at the Open Meeting, but throughout these several hearings. I call to your attention Canon 3 of the Model Code of Judicial Conduct for State Administrative Law Judges which directs and ALJ to perform his duties impartially and diligently. Judge Nodes demonstrated judicial restraint and temperament during the hearing and at the Open Meeting. I find no merit in your ethics complaint against Judge Nodes.

Sincerely,



Jodi A. Jerich

Cc: Carol Stiles, State Bar of Arizona

July 15, 2014

Ms. Jodi Jerich, Executive Director
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

RE: Payson Water Company Rate Case, Docket W-03514A-13-0111 & W-03514A-13-0142

Dear Ms. Jerich,

I wish to file this ethics complaint against Administrative Law Judge Dwight D. Nodes for his misrepresentation of the facts at the Open Meeting on June 10, 2014 in front of the Commissioners, who voted to approve a large rate increase in the referenced case that day. I am an Intervenor in that case.

Please watch a short portion of the archived video from that June 10, 2014 Open Meeting - the relevant part is at 04:28:50 - 04:30:11 (a little more than 1 minute).

After I ask Judge Nodes to clarify his statement about the WIFA loan surcharge, you will hear Judge Nodes say, ***"it was made permanent in the Phase 1 order and it continues in existence unabated by this subsequent order, so it continues in existence and continues to be charged by the Company at this time"***.

That verbal statement is a direct contradiction to Judge Nodes' written language regarding that surcharge in 3 Decisions (follow these three links):

1) Decision #74175: <http://images.edocket.azcc.gov/docketpdf/0000148385.pdf>

See Findings of Fact #14 & #15 on page 8, lines 10-27 and page 9 lines 1-10, in part: ***"Staff asserts that approval of interim rates, through the WIFA loan surcharge and purchased water adjustor, is justified in this case given the substantial rate increases experienced by Mesa del Caballo customers over the last two summers associated with water hauling. (Ex. S-2, at 3.)"*** as well as page 15, Conclusions of Law, #6, ***"The interim rates represented by the Phase 1 WIFA loan surcharge are reasonable and in the public interest because PWC has a pending permanent rate case pending, as well as a financing application for the remainder of the Cragin Pipeline project;"***

2) Decision #74484: <http://images.edocket.azcc.gov/docketpdf/0000153891.pdf>

See Findings of Fact #3 on page 2, lines 9-10. ***"In Phase 1, the Commission granted the Company interim emergency rate relief related to the costs of constructing the pipeline"***.

3) Decision #74567: <http://images.edocket.azcc.gov/docketpdf/0000154849.pdf>

See page 26, lines 22-24 *"In addition, Staff contends that notice was not required for the Phase 1 proceeding because the Commission was granting emergency interim rate relief, which does not require notice or an opportunity to be heard."* and page 37, lines 1-2. *"...that notice was not required for the Phase 1 proceeding because the Commission was granting emergency interim rate relief, which does not require notice or an opportunity to be heard."*

This misrepresentation may have caused the Commissioners and other ratepayers to believe that only the ratepayers of Mesa del Caballo will continue to pay for that WIFA loan taken out for the TOP-MdC interconnect pipeline, which is not true. The WIFA loan surcharge approved in Phase 1 (Decision #74175) was not made permanent in the Phase 1 order as stated by Judge Nodes. Proof of that is the fact that it was still referred to as an "interim rate" in the 2 later Decisions #74484 and #74567 and there is no ordering language in Decision #74567 that makes it permanent. Ratepayers from all 8 communities served by Payson Water Company are now paying rates to cover that WIFA loan and the debt service under the permanent rate decision #74567 that was approved by the Commissioners immediately following this exchange. This mis-statement of the facts appears to be judicial misconduct or a very serious ethics violation. It is simply NOT true!

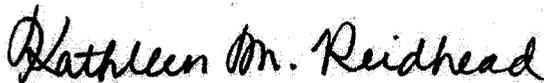
Please investigate this complaint and take appropriate action on this matter as soon as possible.

Furthermore, I was never contacted when you investigated an ethics complaint made by Mr. George Chrisman earlier in this case against Staff Attorney Robin Mitchell, even though Mr. Chrisman named me as a witness in that complaint. See your letter posted to the Docket on 03/28/14, available at this link: <http://images.edocket.azcc.gov/docketpdf/0000152076.pdf>. I ask you to re-open that matter and re-investigate it, this time interviewing all named witnesses including myself and another Intervenor, Mr. Tom Bremer who was also named as a witness in that complaint. I complained about this lack of proper investigation in my filing of 03/31/14, available at this link: <http://images.edocket.azcc.gov/docketpdf/0000152168.pdf>, see page 4, lines 11-19. I am also complaining that Judge Nodes did nothing regarding this improper investigation and allowed the appearance of bias to overshadow the remainder of the case. This is also a serious violation of ethics.

Please let me know the results of your investigation into these two matters at your earliest convenience.

Thank you.

Sincerely,



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

Intervenor from Deer Creek Village

cc: All parties to the case
George Chrisman
Carol Stiles - State Bar of Arizona