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BEFORE THE ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION  
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9 IN THE MATTER OF THE APPLICATION OF  
 10 ARIZONA-AMERICAN WATER COMPANY,  
 11 AN ARIZONA CORPORATION, FOR A  
 12 DETERMINATION OF THE CURRENT FAIR  
 13 VALUE OF ITS UTILITY PLANT AND  
 14 PROPERTY AND FOR INCREASES IN ITS  
 15 RATES AND CHARGES BASED THEREON  
 16 FOR UTILITY SERVICE BY ITS ANTHEM  
 17 WATER DISTRICT AND ITS SUN CITY  
 18 WATER DISTRICT.

DOCKET NO. W-01303A-09-0343

ORIGINAL

13 IN THE MATTER OF THE APPLICATION OF  
 14 ARIZONA-AMERICAN WATER COMPANY,  
 15 AN ARIZONA CORPORATION, FOR A  
 16 DETERMINATION OF THE CURRENT FAIR  
 17 VALUE OF ITS UTILITY PLANT AND  
 18 PROPERTY AND FOR INCREASES IN ITS  
 19 RATES AND CHARGES BASED THEREON  
 20 FOR UTILITY SERVICE BY ITS  
 21 ANTHEM/AGUA FRIA WASTEWATER  
 22 DISTRICT, ITS SUN CITY WASTEWATER  
 23 DISTRICT AND ITS SUN CITY WEST  
 24 WASTEWATER DISTRICT.

DOCKET NO. SW-01303A-09-0343

ANTHEM COMMUNITY COUNCIL'S  
REQUEST FOR RECONSIDERATION  
OF COMMISSION'S DENIAL OF  
MOTION FOR STAY OF  
PROCEEDINGS

25 Anthem Community Council ("Anthem"), through its undersigned counsel, hereby submits  
 26 its Request for Commission Reconsideration of the Commission's August 22, 2014 Denial of  
 27 Anthem's August 12, 2014 Motion for Stay of Proceedings ("Motion"),<sup>1</sup> as filed in the above-  
 28 captioned and above-docketed proceedings ("Instant Proceeding"). In support of its request,  
 Anthem submits the following.

<sup>1</sup> Anthem incorporates herein by reference the entirety of Anthem's August 12, 2014 Preliminary Comments on EPCOR Water Company's Response to Commission Decisions, which was attached as Exhibit A to Anthem's Motion and incorporated therein my reference.

1 **BACKGROUND**

2 On July 30, 2014, the Commission issued Decision No. 74588 in the Instant Proceeding.  
3 Therein the Commission directed the Hearing Division to schedule a Procedural Conference seven  
4 to ten calendar days following the filing by EPCOR Arizona Water Company, Inc. (“EPCOR”) of  
5 a response to the “issues” set forth in Finding of Fact No. 25 of Decision No. 74588. The stated  
6 purpose of such Procedural Conference, as set forth in Finding of Fact No. 26 was to “discuss the  
7 further processing of these matters,”<sup>2</sup> as well as to discuss the procedural questions set forth in  
8 Finding(s) of Fact No(s). 27 and 28. In response to the aforesaid directive, on August 7, 2014 the  
9 Commission’s Hearing Division scheduled a Procedural Conference for August 13, 2014 for the  
10 aforementioned purpose.

11 On August 12, 2014, Anthem filed its Motion with the Commission’s Docket Control.  
12 Therein Anthem discussed why the Commission should stay the conduct of any evidentiary  
13 proceedings pursuant to Decision No. 74588 until EPCOR had submitted (i) the “system wide rate  
14 filing” and (ii) “full cost of service studies” contemplated and required by the Commission’s  
15 Decision No. 73227, as issued in the Instant Proceeding on June 5, 2012, or more than two years  
16 ago.

17 On August 13, 2014, Assistant Chief Administrative Law Judge Dwight D. Nodes  
18 conducted the Procedural Conference contemplated by Decision No. 74588. At that Procedural  
19 Conference, Anthem’s counsel stated for the record that, while Anthem would participate in the  
20 Procedural Conference and the discussion of a possible procedural schedule for addressing the  
21 “issues” set forth in Finding of Fact No. 25 in Decision No. 74588, as thereafter reiterated verbatim  
22 in the August 7, 2014 Procedural Order, Anthem was not withdrawing or waiving its formal  
23 position that proceedings in the Instant Proceeding in response to Decision No. 74588 should be  
24 stayed until EPCOR had submitted the aforesaid (i) “system wide rate filing” and (ii) “full cost of  
25 service studies” contemplated and required by Decision No. 73227. In that regard, Anthem’s  
26

27 <sup>2</sup> Decision No. 74588 at page 9, lines 14-15.  
28

1 Motion was not discussed in any substantive detail, nor was it ruled upon by Judge Nodes during  
2 the Procedural Conference.

3 On August 18, 2014, the Commission issued a Procedural Order establishing a procedural  
4 schedule for the conduct of further proceedings in the Instant Proceeding. That Procedural Order  
5 included the following Ordering Paragraph at page 8, lines 23.5-25.5:

6 "IT IS FURTHER ORDERED that any motions which are filed in this matter and  
7 which are not ruled upon by the Commission within 10 calendar days of the filing  
8 date of the motion shall be deemed denied."<sup>3</sup>

9 [emphasis added]

10 As previously noted, Anthem's Motion was filed with the Commission's Docket Control on  
11 August 12, 2014. As of the close of business on August 22, 2014, or "within 10 calendar days of  
12 the filing" of Anthem's Motion, the Commission had not "ruled" upon the same. Therefore, by  
13 virtue of the language of the above-quoted Ordering Paragraph, Anthem's Motion is "deemed  
14 denied." Accordingly, Anthem's request of reconsideration of that deemed denial is appropriate.

## 15 DISCUSSION

### 16 A. Intended Scope and Purpose of Instant Proceeding.

17 Finding of Fact No 25 in Decision No. 74588, in effect, defines the scope and purpose of  
18 the proceeding initiated by that decision within the framework of the Instant Proceeding. More  
19 specifically, in the First Ordering Paragraph of Decision No. 74588, the Commission directed  
20 EPCOR to make a filing on or before August 8, 2014 "addressing the issues set forth in Finding of  
21 Fact No. 25."<sup>4</sup> In that regard, those "issues" or subjects are as follows:

- 22 a. Response to the customer complaints and requests for relief.
- 23 b. Response to Staff's opinion that the Commission's examination of these matters  
24 should commence with rate design matters related to wastewater rates.
- 25 c. Discussion and analysis demonstrating the rate impacts of full consolidation of  
26 all districts, including a potential timeline for consolidation and whether phase  
27 in is warranted. Discussion and analysis should address when the circumstances

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28 <sup>3</sup> Subsequently, on August 19, 2014, the Commission issued a revised Procedural Order, but this original paragraph was not altered.

<sup>4</sup> Decision No. 74588 at page 10, lines 18-19.

1 in one district necessitate a substantive investment for new plant and/or  
2 infrastructure improvements, for only that district. This discussion should also  
3 address whether a rate case(s) would be warranted for consolidation of all  
4 districts.

- 5 d. Discussion and analysis as to whether consolidation is warranted, when there is  
6 no nexus between districts that do not share contiguous service territorial  
7 borders, weather conditions, urban or rural locations, farming factors and/or  
8 water supply needs.
- 9 e. Discussion and analysis demonstrating the rate impacts of full deconsolidation  
10 of all districts and systems, including a potential timeline for deconsolidation  
11 and whether phase in is warranted. This discussion should also address whether  
12 a rate case(s) would be warranted for deconsolidation.
- 13 f. Discussion and analysis demonstrating the rate impacts of reversing the  
14 deconsolidation of Anthem from the Agua Fria District, including a potential  
15 timeline for reversal and whether phase in is warranted. Discussion and analysis  
16 should include any and all implications to the settlement agreement in Docket  
17 Nos. W-01303A-09-0343 and SW-01303A-09-0343.
- 18 g. Discussion of any EPCOR identified potential alternative options and the  
19 options' rate impacts on affected customers.
- 20 h. Any recent calculations by EPCOR, which have previously identified potential  
21 alternative options, must be updated and must also add any new calculations if  
22 the next rate case moves forward as scheduled.

23 [Decision No. 74588 at page 8, line 19 – page 9, line 10]<sup>5</sup>

24 **B. The Process Adopted to Date by the Commission for Addressing and Considering the**  
25 **Issues or Subjects set forth in Finding of Fact No. 25 in Decision No. 74588 Is Flawed.**

26 The process adopted to date by the Commission for addressing and considering the “issues”  
27 or subjects set forth in Finding of Fact No. 25 in Decision No. 74588 is flawed for several reasons,  
28 as discussed below.

29 *1. The Process Currently in use in the Instant Proceeding Will*  
30 *Not Allow the Parties of Record To Make Reasoned Proposals on*  
31 *Central or “Core” Issues, Nor Will It Allow the Commission to*  
32 *Reach Reasoned Decisions, Consistent with Sound Ratemaking*  
33 *Principles*

34 On June 5, 2012 the Commission issued its Decision No. 73227, in which it ordered the

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35 <sup>5</sup> These same “issues” or subjects were repeated verbatim in the Commission’s August 7, 2014 Procedural Order,  
36 which scheduled the August 13, 2014 Procedural Conference for the purpose of establishing a process to address these  
37 issues. [Decision No. 74588 at page 4, lines 7-28, and at page 5, lines 23-28, respectively]

1 deconsolidation of the Anthem-Agua Fria Wastewater District into what are now the Anthem  
2 Wastewater District and the Agua Fria Wastewater District, respectively. In that same decision,  
3 the Commission issued the following additional Ordering Paragraphs:

4 IT IS FURTHER ORDERED that EPCOR Water (USA) shall file the system-wide  
5 rate filing as ordered by Decision No. 72047 that includes all of the affected  
6 districts, including the Sun City West Wastewater district, as soon as possible, so  
7 that all affected parties will receive notice of, and will have a full opportunity to  
8 address, all the issues affecting the Company's revenue requirement, and can make  
9 proposals either for or against consolidation or deconsolidation for Commission  
10 consideration.

11 IT IS FURTHER ORDERED that the above-ordered system-wide rate filing  
12 shall include full cost of service studies and other information supporting  
13 consolidation sufficient for all parties to make their own reasoned proposals either  
14 for or against consolidation or deconsolidation, consistent with sound ratemaking  
15 principles.

16 [Decision No. 73227 at page 41, lines 13-22] [emphasis added]

17 To date, EPCOR has failed to submit the “system wide rate filing” and “full cost of service  
18 studies” required by the Commission’s Decision No. 73227. During the August 13, 2014  
19 Procedural Conference in the Instant Proceeding, EPCOR appeared to take the position that it was  
20 precluded from filing a system wide rate application prior to June 30, 2015. However, Anthem has  
21 reviewed both Decision No. 73227 and the earlier (but related) Decision No. 72047 since the  
22 August 13, 2014 Procedural Conference; and, Anthem has found no reference to a June 30, 2015  
23 date in either decision. Nor, has Anthem found any language which would warrant interpreting the  
24 phrase “as soon as possible,” as the same appears in the above-quoted ordering paragraph, to mean  
25 the required filing shall not be made before June 30, 2015, or three years and twenty-five days after  
26 the issuance of Decision No. 73227.

27 In addition, and equally important is the fact that absent EPCOR submitting the “system  
28 wide rate filing” and “full cost of service studies” required by Decision No. 73227, the  
Commission and the parties of record will not have before them that information necessary to  
make

“reasoned proposals [and decisions] either for or against consolidation or

1 reconsolidation, consistent with sound ratemaking principles. . . .”<sup>6</sup>  
2 as contemplated by the Commission when it issued Decision No. 73227.

3 Illustrative of the importance of having access to such information for all concerned at this  
4 time is the fact that three of the central or “core” issues set forth in Finding of Fact No. 25 in  
5 Decision No. 74588 relate to questions of whether or not full consolidation or deconsolidation of  
6 EPCOR’s wastewater districts “is warranted” at this time:

- 7 c. Discussion and analysis demonstrating the rate impacts of full consolidation of  
8 all districts, including a potential timeline for consolidation and whether phase  
9 in is warranted. Discussion and analysis should address when the circumstances  
10 in one district necessitate a substantive investment for new plant and/or  
11 infrastructure improvements, for only that district. This discussion should also  
12 address whether a rate case(s) would be warranted for consolidation of all  
13 districts.
- 14 d. Discussion and analysis as to whether consolidation is warranted, when there is  
15 no nexus between districts that do not share contiguous service territorial  
16 borders, weather conditions, urban or rural locations, farming factors and/or  
17 water supply needs.
- 18 e. Discussion and analysis demonstrating the rate impacts of full deconsolidation  
19 of all districts and systems, including a potential timeline for deconsolidation  
20 and whether phase in is warranted. This discussion should also address whether  
21 a rate case(s) would be warranted for deconsolidation.

22 Absent current (and not outdated)<sup>7</sup> information of the nature that would be provided, if  
23 EPCOR now or in the near future made the “system wide rate filing” and “full cost of service  
24 studies” required by Decision No. 73227, the parties of record in the current phase of the Instant  
25 Proceeding will simply not be in a position “to make their own reasoned proposals either for or  
26 against consolidation or deconsolidation, consistent with sound ratemaking principles.”<sup>8</sup> Nor, will  
27 the Commission be in a position to reach informed and well-reasoned decisions on these central or  
28 “core” issues, “consistent with sound ratemaking principles.”<sup>9</sup> As a consequence, the process

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24 <sup>6</sup> Decision No. 73227 at page 41, lines 19-22.

25 <sup>7</sup> The information underlying both Decision No. 73227 and related Decision No. 72047 is based on a test year that  
26 ended December 31, 2008, almost six years ago.

27 <sup>8</sup> Decision No. 73227 at page 41, lines 20-22.

28 <sup>9</sup> Id. at page 41, lines 21-22.

1 currently being used to address and resolve these three central or “core” issues or questions is  
2 fatally flawed.

3 In that regard, given (i) the absence of that current information requisite to the parties of  
4 record being in a position to make reasoned proposals for or against consolidation or  
5 deconsolidation, and the Commission being in a position to reach informed and well-reasoned  
6 decisions, and (ii) the time and expense that will be expended by all parties and the Commission in  
7 addressing the issues set forth in Finding of Fact No. 25<sup>10</sup> on the basis of severely outdated and  
8 incomplete information, one cannot help but wonder if the process presently underway in the  
9 Instant Proceeding isn’t tantamount to the proverbial “fool’s errand.”

10 *2. The Commission Should Not Reach a Decision on the Issue*  
11 *of Whether or not the Anthem and Agua Fria Wastewater Districts*  
12 *Should Be Reconsolidated based On Information Which Is Not*  
*Current*

13 A fourth “issue” set forth in Finding of Fact No. 25 in Decision No. 74588 relates to the  
14 question(s) of (i) whether or not the Anthem and Agua Fria Wastewater Districts should be  
15 reconsolidated at this time, and (ii) what would be the implications of a reconsolidation at this time  
16 upon a Settlement Agreement reached on Decision 15, 2011 in the Instant Proceeding and  
17 thereafter approved and implemented in Commission Decision Nos. 72047 and 73227:<sup>11</sup>

18 f. Discussion and analysis demonstrating the rate impacts of reversing the  
19 deconsolidation of Anthem from the Agua Fria District, including a potential  
20 timeline for reversal and whether phase in is warranted. Discussion and analysis  
21 should include any and all implications to the settlement agreement in Docket  
22 Nos. W-01303A-09-0343 and SW-01303A-09-0343.

23 [Finding of Fact No. 25(f), as set forth in Decision No. 74588 at page 9, lines 4-5]

24 The process currently in place for addressing the first above “issue” appears to contemplate  
25 relying upon information which was before the Commission at the time that it issued Decision No.

26 <sup>10</sup> Including the issue of reconsolidation.

27 <sup>11</sup> In its August 12, 2014 Motion (including Exhibit “A” thereto), Anthem discussed at length why reconsolidation of  
28 Anthem and Agua Fria at this time would be inconsistent with Decision Nos. 73227 and 72047, and the underlying  
December 15, 2011 Settlement Agreement, and inconsistent with the “public interest.”

1 73227 and ordered deconsolidation of the then existing Anthem-Agua Fria Wastewater District.  
2 This must be so, because since the Commission issued its Decision No. 74588 on July 30, 2014,  
3 EPCOR has endeavored to characterize the resulting proceeding as being "revenue neutral" in  
4 nature, regardless of the amount of changes in rate design and rate levels which might occur within  
5 the previously determined revenue requirement "cap."

6 The flaw with this approach is that, in effect, it asks the Commission to assume for decision  
7 making purposes that (i) the cost of serving Anthem and Agua Fria wastewater ratepayers and (ii)  
8 the consumption patterns and billing determinants of Anthem and Agua Fria wastewater ratepayers  
9 have not changed from the information that the Commission relied on when it issued Decision No.  
10 73227 and the deconsolidated rates therein approved. This is an assumption without a  
11 demonstrable basis in fact as of this point in time, and the accuracy of such an assumption is highly  
12 unlikely. Moreover, the data before the Commission when it issued Decision No. 73227 is now  
13 almost six years old.

14 Furthermore, without current information as to EPCOR's revenues and expenses, rate base  
15 and cost of capital with respect to the Anthem and Agua Fria Wastewater Districts, respectively  
16 and collectively, the Commission is not in a position to determine whether or not EPCOR might be  
17 over-earning its previously authorized rate of return, in the event that those two (2) districts should  
18 be reconsolidated at this time within an otherwise deconsolidated EPCOR wastewater system  
19 structure for ratemaking purposes.

20 Finally, while Anthem understands the desire of the Commission to be responsive to the  
21 concerns expressed by Agua Fria area wastewater users, the Commission should not reach any  
22 decisions on the "issue" of reconsolidation (or the "issue" of full consolidation or full  
23 deconsolidation) without first having before it the (i) "system wide rate filing" and (ii) "full cost of  
24 service studies" required by Decision No. 73227, based upon recent test period information.  
25 Expediency is not an acceptable substitute for well-informed and well-reasoned decision making.  
26 Nor, is expediency without recent and complete information conducive to such decision making  
27 "consistent with sound ratemaking principles," as contemplated by Decision No. 73227.  
28

1                   3.     *A Commission Decision Ordering Reconsolidation of the*  
2                   *Anthem and Agua Fria Wastewater Districts at this time May Be in*  
3                   *Violation of the Scates Decision*

4                   In connection with the discussion set forth in Subsections II(B)(1) and II(B)(2) above,  
5 Anthem submits that a Commission decision at this time to reconsolidate the Anthem and Agua  
6 Fria Wastewater Districts, based upon limited information which is now almost six years old,  
7 conceivably might constitute a violation of the Scates case;<sup>12</sup> and, such a decision by the  
8 Commission would therefore be unlawful.

9                   More specifically, as currently structured, the process under way in the Instant Proceeding  
10 would rely upon 2008 test period data for the Anthem Wastewater District, Agua Fria Wastewater  
11 District, Sun City Wastewater District and Sun City West Wastewater District, and 2007 test  
12 period data for the Mohave Wastewater District. In that regard, EPCOR implicitly acknowledges  
13 this in part in its August 27, 2014 “Response to Anthem Community Council’s Motion to Stay  
14 Proceedings,” wherein<sup>13</sup> EPCOR states as follows with respect to the nature of the current phase of  
15 the Instant Proceeding:

16                   the Arizona Corporation Commission (“Commission”) Staff’s July 8, 2014  
17 Memorandum and the Commission’s subsequent Decision No. 74588 contemplate  
18 a very focused, limited proceeding. The revenue requirement, billing determinants  
19 and similar information from the prior rate cases (Decision Nos. 72047 and 72337;  
20 collectively, the “Rate Decisions”) are left in place. Rather, this proceeding only  
21 focuses on the three scenarios ordered by the Commission for amending the  
22 wastewater rate design in those Rate Decisions. As a result, the discovery and  
23 hearing in this A.R.S. § 40-252 proceeding must be limited to the wastewater rate  
24 design and must not expand beyond that scope.<sup>14</sup>

25 [EPCOR’s Response to Anthem’s Motion at page 1, line 21 – page 2, line 4] [emphasis added]

26 \_\_\_\_\_  
27 <sup>12</sup> See Scates v. Arizona Corporation Commission 118 Ariz. 531 (App. Div. 1978), 578 P.2d 612.

28 <sup>13</sup> Anthem intends to file a timely Reply to EPCOR’s “Response to Anthem Community Council’s Motion to Stay Proceedings.”

<sup>14</sup> In connection with the foregoing, EPCOR is in error when it asserts that “this proceeding only focuses on the three scenarios ordered by the Commission.” To the contrary, in Finding of Fact No. 25(g) in Decision No. 74588, as adopted by the Commission, EPCOR was directed to also identify and discuss additional “potential alternative options,” which EPCOR has failed to do. In fact, EPCOR has been “stunningly silent” in that regard.

1 In addition to relying on test period data that is six or more years old, EPCOR's endeavor to  
2 "shoe horn" the current phase of the Instant Proceeding into a "revenue neutral" conceptual box  
3 ignores the reality that billing determinants, revenue and expense, cost of capital and rate base  
4 information from six or more years ago is no longer reliable for the Commission in determining  
5 what would constitute "just and reasonable" rates under Arizona law at this point in time for  
6 EPCOR's five wastewater districts, in the event that the Commission should be otherwise inclined  
7 to alter the rates and rate design previously approved in Decision Nos. 72047, 73227 and 71410.

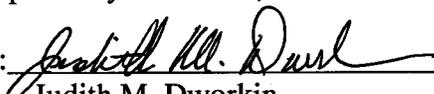
8 Succinctly stated, by relying upon such outdated and disparate test period information, the  
9 Commission would not be in a position to know whether or not EPCOR would over-or under-earn  
10 its previously authorized rate of return in one or more of its wastewater districts under the new  
11 rates. Thus, a violation of the Scates decision could occur in such event.

#### 12 CONCLUSION

13 For the reasons discussed above, Anthem believes that the Commission should promptly  
14 issue an appropriate order (i) reconsidering and reversing the Commission's August 22, 2014  
15 deemed denial of Anthem's August 12, 2014 Motion, (ii) granting Anthem's Motion and (iii)  
16 staying the conduct of any further process or proceedings in the Instant Proceeding until EPCOR  
17 has submitted to the Commission's Docket Control the (i) "system wide rate filing" and (ii) "full  
18 cost of service studies" contemplated and required by Commission Decision No. 73227. In that  
19 regard, Anthem believes that the new docket presumably resulting from such a submittal by  
20 EPCOR would provide a forum in which the Commission could address and resolve the "issues"  
21 set forth in Finding of Fact No. 25 in Decision No. 74588 on the basis of current and complete  
22 information.

23 DATED this 28th day of August, 2014.

24  
25 Respectfully submitted,

26 By:   
27 Judith M. Dworkin  
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