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BEFORE THE ARIZONA CORPORATION COMMISSION
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2014 SEP 22 P 4: 06

Arizona Corporation Commission

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AZ CORP COMMISSION
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SEP 22 2014

ORIGINAL

DOCKETED BY 

IN THE MATTER OF THE APPLICATION
OF ARIZONA WATER COMPANY TO
EXTEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY IN CASA
GRANDE, PINAL COUNTY, ARIZONA.

DOCKET NO. W-01445A-03-0559

COMMENTS OF CORNMAN TWEEDY
560 LLC ON THE OREGON PUBLIC
UTILITY COMMISSION'S ORDER
NO. 01-249

Brownstein Hyatt Farber Schreck, LLP
One East Washington, Suite 2400
Phoenix, AZ 85004

At the procedural conference and oral argument held September 4, 2014, the administrative law judge asked the parties to file comments addressing a 2001 order (“Order No. 01-249”) by the Oregon Public Utility Commission (“Oregon PUC”) regarding the application of Oregon Administrative Rule (“OAR”) 860-001-0330(2).¹ In Order No. 01-249, the Oregon PUC considered whether or not former commission employee John Thornton should be permitted to testify in two electric utility rate cases on behalf of the Industrial Customers of Northwest Utilities (“ICNU”). After analyzing the facts, the Oregon PUC found that Mr. Thornton “was actively involved in dockets UE 115 and UE 116”² within the meaning of OAR 860-001-0330 and then developed and applied a new four-part test to determine whether the commission should grant permission for Mr. Thornton to testify as an expert witness on behalf of ICNU. However, a comparison of the actions of Mr. Thornton in the Oregon case and the lack of equivalent actions of Ernest Johnson in this case underscores the fact that Mr. Johnson did not take “an active part in the investigation or preparation as a representative of the Commission” in this case within the meaning of Arizona Administrative Code (“A.A.C.”) R14-3-104(G). Without the threshold finding that Mr. Johnson took an active part in the

¹ Order No. 01-249 refers to OAR 860-012-0010 but the rule was subsequently renumbered as OAR 860-001-0330. Cornman Tweedy will cite the current rule number in these comments.

² Order No. 01-249 at 4.

1 investigation or preparation in this case, there is no basis to apply the Oregon PUC's four-part
2 test or any other test to determine whether permission to testify should be given. Thus, Order
3 No. 01-249 provides no support to preclude Mr. Johnson from testifying on behalf of Cornman
4 Tweedy 560, LLC ("Cornman Tweedy") in this case, and in fact, supports a finding that Mr.
5 Johnson did not take an active part in this case while employed at the Arizona Corporation
6 Commission ("Commission").

7 Arizona Water Company ("AWC") has the burden of proof with its Motion to Strike Pre-
8 Filed Rebuttal Testimony of Ernest G. Johnson and to Preclude his Testimony at Hearing
9 ("Motion to Strike"). AWC has failed to provide evidence that Mr. Johnson took an active part
10 in the investigation or preparation of this case within the meaning of A.A.C. R14-2-1-4(G) and
11 its Motion to Strike should be denied.

12 ANALYSIS

13 OAR 860-001-0330(2) is similar but not identical to A.A.C. R14-3-104(G).³ OAR 860-
14 001-0330(2) states as follows:

15 Except with the Commission's written permission, a former Commission
16 employee may not appear as a witness on behalf of other parties in contested case
17 proceedings in which the former employee took an active part on the
Commission's behalf.

18 The threshold issue that had to be addressed by the Oregon PUC in Order No. 01-249
19 was whether Mr. Thornton "took an active part on the Commission's behalf." The Oregon PUC
20 acknowledged that the rule does not provide a definition of "active participation,"⁴ and stated
21 further that "[a]lthough the Commission adopted [the rule] almost 50 years ago, it did so without
22 comment and, to our knowledge, has never formally addressed or interpreted its meaning."⁵

23 Thus, in considering the threshold issue, the Oregon PUC utilized the following approach:

24 [W]e conclude that the phrase "took an active part on the Commission's behalf"
25 should be broadly construed to protect the integrity and perceived fairness of the
26 Commission proceedings. Thus, the rule should be read to apply to any former
employee that participated personally on any assigned matter during his or her

27 ³ Cornman Tweedy notes at the outset that neither the Oregon Administrative Rules generally nor OAR
860-001-0330(2) specifically are legally binding upon the Arizona Corporation Commission.

28 ⁴ Order No. 01-249 at 3.

⁵ *Id.* at 2.

1 employment. Such active involvement would, at the very least, give rise to the
2 belief that the employee had gained inside knowledge about Staff's opinions and
3 strategies of the case.⁶

4 There are several important points that must be made regarding the Oregon PUC's
5 comments quoted above. First, the Oregon PUC readily acknowledged that it was adopting a
6 "liberal construction" of OAR 860-001-0330.⁷ It is clear that the Oregon PUC was referring to
7 "liberal" in the sense of "loose" or "generous" or "not literal" and not to a political ideology.
8 Given the Oregon PUC's admittedly liberal interpretation of the rule, the Commission should be
9 wary of stretching the interpretation further.

10 Second, while the Oregon PUC stated that the phrase "took an active part" should be
11 broadly construed, the word "active" cannot simply be read out of the rule. Clearly, the Oregon
12 PUC acknowledged that there must be some material level of "personal participation" in an
13 "assigned matter" for the rule to be triggered. In other words, even under the Oregon PUC's
14 liberal construction of its rule, there is no suggestion that a person is deemed to have taken an
15 active part in a proceeding merely because of the person's title or supervisory position.

16 Third, the Oregon PUC stated that "the rule should be read to apply to any former
17 employee that participated personally on any assigned matter during his or her employment."⁸
18 The docket does not reflect that Mr. Johnson was ever assigned to this case as a Commission
19 employee. Clearly, a Utilities Division Director can be personally assigned to a docket because
20 the current director, Steve Olea, is assigned to this case as shown in e-Docket.

21 In a September 11, 2014, data request to Utilities Division Staff ("Staff"), Cornman
22 Tweedy asked the following question, expressly stating that for purposes of the data request, an
23 "employee" of the Utilities Division includes but is not limited to the Director of the Utilities
24 Division:

25 3.1 During the time period from August 12, 2003, through August 31, 2009,
26 please provide the names of all current and past employees of the Arizona
27 Corporation Commission's Utilities Division who in the proceeding
28 known as Docket No. W-01445A-03-0559 and during such employee's

⁶ *Id.* at 3-4 (emphasis added).

⁷ *Id.* at 4.

⁸ *Id.* at 3 (emphasis added).

1 employment took an active part in the investigation or preparation as a
2 representative of the Commission. Examples of “taking an active part in
3 the investigation and preparation” include, but are not limited to,
4 reviewing an application for sufficiency, investigating an application,
5 attending procedural conferences and oral arguments, preparing data
6 requests, preparing responses to data requests, preparing staff reports and
7 staff recommendations, preparing testimony, serving as a witness, and
8 attending hearings.⁹ (emphasis added)

9 In its response, a copy of which is attached hereto as Attachment 1, responding Staff
10 members Steve Olea, Del Smith and Darron Carlson stated as follows:

11 Staff notes that in addition to “active,” the term “representative” appears to be the
12 subject of ongoing legal dispute. Although the data request provides examples to
13 identify what constitutes “active” participation, it does not set out whether a
14 representative is limited to only attorneys and lobbyists or includes employees
15 performing any role in a Commission matter. For purposes of this response, Staff
16 will assume that the request intends “representative” to mean an employee in any
17 capacity in the Utilities Division. (emphasis added)

18 Thus, Staff responds as follows: Steve Olea, Jim Fisher, Dorothy Hains, and Barb
19 Wells.

20 Without any question, Staff knows best whether Mr. Johnson took an active part in the
21 investigation or preparation in this case as an employee of the Commission, and the Staff
22 response makes clear that he did not. Had Mr. Johnson taken an active part in this case, his
23 name would certainly have been listed along with the names of Steve Olea, Jim Fisher, Dorothy
24 Hains and Barb Wells. Unlike Mr. Johnson, the current Utilities Division Director has taken an
25 active part in this case, and appropriately, his name is listed under “Staff Assigned” on e-Docket
26 and in the response to Cornman Tweedy’s data request. While it is true that Mr. Johnson
27 supervised the Utilities Division as its Director, that fact alone is insufficient to prove active
28 participation under A.A.C. R14-3-104(G) and there is nothing in Order No. 01-249 which
29 supports a different conclusion.

30 Fourth, the Oregon PUC stated that “active involvement would, at the very least, give
31 rise to the belief that the employee had gained inside knowledge about Staff’s opinions and

32 _____
33 ⁹ The time period specified in the data request begins on August 12, 2003, when AWC filed its
34 application in this docket and runs through August 2009 when Mr. Johnson transitioned from Director of
35 the Utilities Division to Executive Director.

1 strategies of the case.”¹⁰ There has been no evidence that Mr. Johnson gained inside knowledge
2 about Staff’s opinions and strategies in this case, to the extent that Staff has even adopted a
3 strategy or opinion in this case.

4 Fifth, the language of OAR 860-001-0330 is broader than the language of A.A.C. R14-3-
5 104(G). While both the Oregon and Arizona rules use the phrase “took an active part,” the
6 Arizona rule adds the qualifier “in the investigation or preparation.” Given the greater breadth
7 of the Oregon rule, the Commission should again be wary of stretching the interpretation further.

8 If this Commission is going to look to the Oregon PUC decision for guidance
9 (recognizing that the decision is not binding upon the Commission), then it should note not only
10 the decision’s broader language, but also how the Oregon PUC actually applied that language.
11 Consider the relevant facts regarding Mr. Thornton set out by the Oregon PUC in Order No. 01-
12 249 and contrast them with the facts pertaining to Mr. Johnson in this case. This comparison
13 clearly shows that Mr. Johnson did not take an active part as an employee of the Commission in
14 this case. The following statements are taken from Order No. 01-249, and each is followed by a
15 discussion of the relevant facts pertaining to Mr. Johnson.

- 16 • *“Staff disagrees with ICNU’s assertion that Mr. Thornton had no active
17 role in developing Staff’s analysis in these matters while he was a
18 Commission employee. Staff explains that, before his departure, Mr.
19 Thornton helped another staff member on Capital Asset Pricing Model
(CAPM) and Discounted Cash Flow (DCF) analysis in UE 115 and UE
20 116.”*¹¹

21 Unlike the Oregon case, there has been no assertion by Staff that Mr. Johnson has taken
22 an active part in this case and Staff is not opposing Mr. Johnson’s appearance as a witness for
23 Cornman Tweedy. To the contrary, Staff has shown in its response to Cornman Tweedy Data
24 Request 3.1 that Mr. Johnson did not take an active part in this case.¹² This distinction is critical
25 and should be dispositive of the issue because Staff is in the best position to know whether Mr.
26 Johnson participated actively in the case.

27 ¹⁰ Order No. 01-249 at 3-4.

28 ¹¹ *Id.* at 1-2.

¹² A copy of Staff’s response to Cornman Tweedy Data Request 3.1 is attached hereto as Attachment 1.

- “Turning to the facts at issue, we first conclude that OAR 860-[001-0330] is applicable here **because Mr. Thornton was actively involved** in dockets UE 115 and UE 116. In his affidavit, Mr. Thornton stated that he attended Staff meetings, initiated and reviewed data requests, and advised another Staff member on PGE’s cost of debt and preferred stock. He also developed an analytical memorandum on cost of capital for use in UE 115 and UE 116 and, according to a letter from Staff counsel to PacifiCorp, was preparing testimony in UE 116 prior to his departure. **We believe that these activities are sufficient to establish that Mr. Thornton actively participated in these dockets as Staff’s lead policy witness on cost of capital issues.**”¹³ (emphasis added)

There is no evidence that Mr. Johnson initiated and reviewed data requests, developed analytical memorandums, prepared testimony, was a lead policy witness for Staff in this docket, or that he assisted in those activities in any material way. While Mr. Johnson’s name appears on one Staff Report (which was originated by Jim Fisher and initialed by Steve Olea) and two transmittal memos accompanying Staff Reports (neither or which was originated by Mr. Johnson), these were *de minimus* and ministerial actions under Mr. Johnson’s supervisory role as Director of the Utilities Division, not as an assigned Staff member taking an active part in the investigation or preparation of a case. Although AWC’s counsel implies that signing pro forma transmittal memos somehow made Mr. Johnson responsible for the contents being transmitted, his example of the memo transmitting the November 29, 2010, Recommended Opinion and Order (“ROO”) to the parties undermines his argument.¹⁴

In marked contrast, the Oregon PUC found that Mr. Thornton “actively participated in these dockets as Staff’s lead policy witness on cost of capital issues” and that he was “preparing testimony in UE 116 prior to his departure.”¹⁵ According to PGE, Mr. Thornton had “testified on cost of capital in six different PGE dockets.”¹⁶ Moreover, just three weeks after his departure from the Oregon PUC, the request was made for him to appear as a witness for ICNU, a party

¹³ Order No. 01-249 at 4.

¹⁴ At the September 4, 2014, Procedural Conference and Oral Argument, Judge Nodes, the author of the ROO, remarked that “the cover letter that goes out with the recommended opinion and order, you would agree, is more an administrative function by the Executive Director as opposed to any substantive one. It talks about dates for filing exceptions and tentative date for open meeting. It doesn’t have any indication that the Executive Director had any input regarding the contents.” Reporter’s Transcript of Proceedings (Sept. 4, 2014) at 47, lines 13-19.

¹⁵ Order No. 01-249 at 4.

¹⁶ *Id.* at 2.

1 adverse to the Oregon PUC staff, PGE and PacifiCorp. The great extent of Mr. Thornton's
2 active participation in Dockets UE 115 and UE 116 actually highlights the absence of active
3 involvement on the part of Mr. Johnson in this case.

4 It should also be noted that Mr. Thornton was not the Director of the Utilities Division at
5 the Oregon PUC. Thus, Order No. 01-249 cannot be used to argue that Mr. Johnson took an
6 active part in the investigation or preparation simply because he was acting in a supervisory
7 capacity over Staff. The Oregon PUC did not address that issue.

- 8 • *“PacifiCorp states that Mr. Thornton has inside knowledge of Staff’s case
9 that might include knowledge of Staff’s strengths and weaknesses, as well
10 as settlement ranges that Staff might accept. PacifiCorp claims that Mr.
11 Thornton’s use of this information, even indirectly, prejudices PGE and
12 PacifiCorp.”¹⁷*

13 There has been no evidence that Mr. Johnson has inside knowledge of Staff’s position in
14 this case as a result of his former employment with the Commission, and he has not held the title
15 of Utilities Division Director since August 2009. Even if AWC had presented evidence that Mr.
16 Johnson has inside knowledge regarding the “strengths and weaknesses” of Staff’s case (to the
17 extent that Staff is even presenting a “case” in this docket), that knowledge would now be more
18 than five years old. By comparison, Mr. Thornton left the Oregon PUC only three weeks before
19 ICNU sought permission for him to appear as a witness—three weeks *after* he was preparing
20 cost of capital testimony as a staff policy witness.

21 Additionally, it should be recognized that Staff’s role in this case is very different from
22 the Oregon staff’s role in Dockets UE 115 and UE 116. In the Oregon cases, PGE and
23 PacifiCorp submitted proposals to restructure and reprice their services in accordance with SB
24 1149. Thus, Oregon PUC staff was analyzing those proposals, taking positions and making
25 recommendations within the context of an adversarial proceeding. At this time in this case, Staff
26 is acting in an advisory role to the Administrative Law Judge (“ALJ”), and it is likely safe to say
27 that Staff would not be in this case but for the request of the ALJ. Thus, other than making
28 filings at the request of the ALJ, it is not clear that Staff has a “case” in this docket.

¹⁷ *Id.* at 2.

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- *“For some 13 years, [Mr. Thornton] served as Staff’s expert witness on cost of capital issues and testified in numerous rate cases involving PGE and PacifiCorp. His expertise at the agency is acknowledged by the fact that, after he announced his departure, he was asked to advise other Staff members on the methods Staff should employ in these dockets to be consistent with past practices.”*¹⁸

One of Mr. Thornton’s chief duties as a commission employee was to appear in rate cases as a cost of capital witness for the Oregon PUC staff. By comparison, it was never Mr. Johnson’s role as Director of the Utilities Division to appear as an expert witness on behalf of Staff, and he never appeared as a witness (expert or otherwise) for Staff in this docket.

- *“[L]ittle time has passed since Mr. Thornton left the Commission. As PacifiCorp notes, ICNU filed its motion for consent in UE 115 only three weeks after Mr. Thornton resigned from his position with the Commission. His departure during the middle of Staff’s case to almost immediately become an expert witness for an outside party creates an appearance of impropriety.”*¹⁹

Mr. Johnson’s last day physically at the Commission was the last business day of 2012, so unlike Mr. Thornton, he has not been employed by the Commission for approaching two years. Moreover, he has not held the title of Director of the Utilities Division since August 2009, more than five years ago. Even while he was serving as Utilities Division Director, the evidence shows that he did not take an active part in the investigation or preparation of this case, unlike Mr. Thornton. Thus, given the passage of time and the lack of active participation in the case, there would be no appearance of impropriety as a result of Mr. Johnson’s appearance as a witness on behalf of Cornman Tweedy.

In its Reply dated August 20, 2014, AWC argues:

Mr. Johnson served as the head of a Commission Division actively involved in litigating this case during the litigation. Mr. Johnson then became the Executive Director, where he directed the Utilities, Legal and Hearing Divisions on a day-to-day basis while this very visible case was pending at the Commission.²⁰

AWC’s attempt to disqualify Mr. Johnson under A.A.C. R14-3-104(G) is based substantially if not entirely upon the assertion that his supervisory position as Director of the

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 5.

²⁰ Arizona Water Company’s Reply to Responses to Motion to Strike Rebuttal Testimony of Ernest G. Johnson and to Preclude His Testimony at Hearing at 8, lines 21-24.

1 Utilities Division and then Executive Director in and of itself constitutes taking an active part in
2 the investigation or preparation of the case. Given that there were no doubt thousands of
3 dockets initiated while Mr. Johnson was employed for over 11 years at the Commission, the
4 interpretation of the rule urged by AWC would disqualify Mr. Johnson from participating in all
5 of these cases. The Oregon PUC properly acknowledged in Order No. 01-249 that “[w]e must
6 ensure that government power is used for the public good, and at the same time avoid imposing
7 such harsh restrictions so as to limit our ability to attract knowledgeable and skilled
8 employees.”²¹ In order to avoid harsh results, the Oregon PUC required “personal participation”
9 on “assigned matters.” There is nothing in Order No. 01-249 which suggests that a director of a
10 utilities division or an executive director should be excluded as an expert witness absent a
11 showing of personal participation on an assigned matter.

12 Similarly, a reasonable interpretation of A.A.C. R14-2-104(G) should require a showing
13 of personal participation on an assigned matter. In its Reply, AWC argued that Mr. Johnson
14 “reviewed and initialed multiple substantive position statements on behalf of the Utilities
15 Division,” citing four specific documents.²² The first document is a Staff Report dated January
16 9, 2004, and identified as document no. 0000103104. While the transmittal memorandum
17 accompanying this Staff Report bears Mr. Johnson’s name and initials, the Staff
18 Acknowledgement states that Jim Fisher was responsible for the review and analyses of AWC’s
19 application and Dorothy Hains was responsible for the engineering and technical analysis.
20 There is no evidence that Mr. Johnson took an active part in the investigation or preparation of
21 the Staff Report.

22 The second document identified by AWC is a Staff Memorandum dated April 11, 2005,
23 and identified as document no. 0000020055. While the memorandum bears Mr. Johnson’s
24 name, Mr. Johnson testified at his deposition that it was initialed by Mr. Olea.²³ Mr. Johnson
25 explained, “I gave the authority to others in my absence to execute the duties and responsibilities

26 _____
27 ²¹ Order No. 01-249 at 3.

28 ²² Arizona Water Company’s Reply to Responses to Motion to Strike Rebuttal Testimony of Ernest G.
Johnson and to Preclude His Testimony at Hearing at 7, lines 19-20.

²³ Deposition Transcript of the Testimony of Ernest Johnson (August 6, 2014) at 53-54.

1 of the division, and this would have been one of those instances, I'm presuming, where Steve
2 Olea exercised that authority and initialed this document and forwarded it to docket control."²⁴
3 The originator of this memorandum was Jim Fisher and not Mr. Johnson (or even Mr. Olea), and
4 Mr. Johnson testified at this deposition that "I don't know where I was during that time period,
5 [s]o I don't know to what extent that we discussed this."²⁵ Thus, there is no evidence that Mr.
6 Johnson took an active part in the investigation or preparation of the Staff Memorandum. To the
7 contrary, based upon his deposition testimony, Mr. Johnson was unavailable to review the
8 document before it was filed with Docket Control under Mr. Olea's initials.

9 The third document identified by AWC is a Staff Report dated June 12, 2006, and
10 identified as document no. 0000051086. While the transmittal memorandum accompanying the
11 Staff Report bears Mr. Johnson's name, Mr. Johnson testified at his deposition that it was
12 initialed by Elijah Abinah, Assistant Director of the Utilities Division.²⁶ Mr. Johnson explained,
13 "So by virtue of his initials being on this document, I can only assume that he was available and
14 I wasn't and Mr. Olea was not available. ... Mr. Abinah, I'm guessing to try to help get us
15 through this thing, is that Mr. Abinah probably signed this because the underlying document was
16 executed by Mr. Olea."²⁷ The Staff Acknowledgement states that Mr. Olea was responsible for
17 the review and analysis contained in the Staff Report. There is no evidence that Mr. Johnson
18 took an active part in the investigation or preparation of the Staff Report. To the contrary, based
19 upon his deposition testimony, Mr. Johnson was unavailable to review the document before it
20 was filed with Docket Control under Mr. Abinah's initials.

21 The fourth document identified by AWC is the November 29, 2010, Recommended
22 Opinion and Order that was prepared by Judge Nodes which includes a transmittal memorandum
23 signed by Mr. Johnson. As explained above in footnote 14, the transmittal memorandum
24 accompanying a ROO is an administrative function by the Executive Director as opposed to a
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26 _____
27 ²⁴ *Id.* at 54, lines 4-8 (emphasis added).

28 ²⁵ *Id.* at 54, lines 15-17.

²⁶ *Id.* at 61-62.

²⁷ *Id.* at 62, lines 19-25 (emphasis added).

1 substantive one. Thus, there is no evidence that Mr. Johnson took an active part in the
2 investigation or preparation of the ROO, and it would be very surprising if he did.²⁸

3 In summary, it is difficult to imagine weaker evidence that Mr. Johnson “took an active
4 part in the investigation or preparation” of this case than that offered by AWC. Of the four
5 documents cited as evidence, three are merely transmittal memorandums accompanying a Staff
6 Report or a ROO. A fourth Staff Memorandum was originated by Mr. Fisher and initialed by
7 Mr. Olea. Mr. Johnson is not the originator of any of the documents, and two of the documents
8 were not even initialed by Mr. Johnson. Thus, the cited documents provide no support for a
9 finding that Mr. Johnson actively participated in the investigation or preparation of this case
10 within the meaning of A.A.C. R14-3-104(G).²⁹ Likewise, there is no support under Order No.
11 01-249 for such a finding.

12 CONCLUSION

13 OAR 860-001-0330(2) is not binding upon the Commission, and even if it were, the
14 four-part test announced by the Oregon PUC for determining when a former commission
15 employee will be given permission to testify only applies once it has been established that the
16 employee “took an active part” in the proceeding. To the extent that the Oregon PUC’s
17 interpretation of the rule in Order No. 01-249 is instructive in this case, it only highlights the fact
18 that Mr. Thornton’s substantial participation in that case is very different from the *de minimis*
19 contact that Mr. Johnson had in this case as the supervisor of Staff. Because AWC has failed to
20 present evidence that Mr. Johnson took an active part in the investigation or preparation of this
21 case as a representative of the Commission, there is no requirement that Mr. Johnson obtain the
22 Commission’s permission to appear as a witness for Cornman Tweedy. Thus, AWC’s Motion to
23 Strike should be denied.

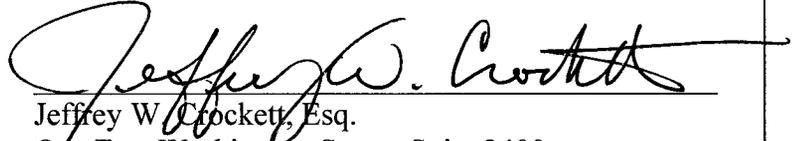
24 ²⁸ See *supra* footnote 14.

25 ²⁹ AWC also makes much out of the issue of whether the “null and void language” of Decision 66893
26 was self-executing, but the issue was decided in this case years ago and is not at issue today. In its
27 Reply, AWC quotes an excerpt from Mr. Johnson’s deposition in which he states that the null and void
28 language “would have been the type of issue that would have been discussed, and it would have been the
type issue that would have come to my attention.” (AWC Reply at 4-5). However, AWC selectively
omits the critical last sentence of that quote where Mr. Johnson states of the null and void discussion, “I
don’t remember specific input however.” (Deposition Transcript of the Testimony of Ernest Johnson
(August 6, 2014) at 49, line 18 (emphasis added)).

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DATED this 22nd day of September, 2014.

BROWNSTEIN HYATT FARBER SCHRECK LLP



Jeffrey W. Crockett, Esq.
One East Washington Street, Suite 2400
Phoenix, Arizona 85004
Attorneys for Cornman Tweedy 560, LLC

ORIGINAL and thirteen (13) copies of the foregoing
filed this 22nd day of September, 2014, with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered
this 22nd day of September, 2014, to:

Dwight D. Nodes, Assistant Chief Administrative Law Judge
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
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COPY of the foregoing sent via e-mail and
hand-delivered this 22nd day of September, 2014, to:

Steven A. Hirsch, Esq.
Stanley B. Lutz, Esq.
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Two North Central Avenue, Suite 2200
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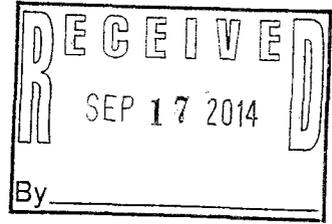
ATTACHMENT 1

COMMISSIONERS
CHAIRMAN
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH



ARIZONA CORPORATION COMMISSION

JODI JERICH
Executive Director



September 15, 2014

Jeffrey W. Crockett, Esq.
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Via E-mail & United States Mail to:
jcrockett@bhfs.com

Re: Staff's Data Responses to Cornman Tweedy 560, L.L.C.'s Third Set of Data Requests
Docket No. W-01445A-03-0559

Dear Mr. Crockett:

Enclosed are Staff's data responses to your third set of data requests, in the above-referenced matter.

Please do not hesitate to contact me if you have any questions regarding the matter at (602) 542-3402.

Sincerely,

Charles H. Hains, Staff Attorney
Legal Division

CHH:rbo

Enclosure

**ARIZONA CORPORATION COMMISSION
STAFF'S RESPONSES TO
CORNMAN TWEEDY 560, L.L.C.
THIRD SET OF DATA REQUESTS
DOCKET NO. W-01445A-03-0559
SEPTEMBER 15, 2014**

Please provide the name and job title of the person or persons providing the response to this data request.

For purposes of this data request, an "employee" of the Utilities Division includes but is not limited to the Director of the Utilities Division.

- 3.1 During the time period from August 12, 2003, through August 31, 2009, please provide the names of all current and past employees of the Arizona Corporation Commission's Utilities Division who in the proceeding known as Docket No. W-01445A-03-0559 and during such employee's employment took an active part in the investigation or preparation as a representative of the Commission. Examples of "taking an active part in the investigation and preparation" include, but are not limited to, reviewing an application for sufficiency, investigating an application, attending procedural conferences and oral arguments, preparing data requests, preparing responses to data requests, preparing staff reports and staff recommendations, preparing testimony, serving as a witness, and attending hearings.

STAFF RESPONSE:

Staff notes that in addition to "active," the term "representative" appears to be the subject of ongoing legal dispute. Although the data request provides examples to identify what constitutes "active" participation, it does not set out whether a representative is limited to only attorneys and lobbyists or includes employees performing any role in a Commission matter. For purposes of this response, Staff will assume that the request intends "representative" to mean an employee in any capacity in the Utilities Division.

Thus, Staff responds as follows: Steve Olea, Jim Fisher, Dorothy Hains, and Barb Wells

STAFF RESPONDENTS: Darron Carlson, Del Smith and Steve Olea