

INTERVENTION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS:

2014 SEP 30 P 3:07

BOB STUMP, Chairman
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AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION
OF ARIZONA-AMERICAN WATER
COMPANY, AN ARIZONA
CORPORATION, FOR A DETERMINATION
OF THE CURRENT FAIR VALUE OF ITS
UTILITY PLANT AND PROPERTY AND
FOR INCREASES IN ITS RATES AND
CHARGES BASED THEREON FOR
UTILITY SERVICE BY ITS ANTHEM
WATER DISTRICT AND ITS SUN CITY
WASTEWATER DISTRICT, AND SUN
CITY WATER DISTRICT.

DOCKET NO. W-01303A-09-0343

ORIGINAL

DOCKET NO. SW-01303A-09-0343

**CITY OF PHOENIX MOTION TO
INTERVENE AND MOTION TO
DISMISS CITY OF PHOENIX
FROM RATE MAKING DUE TO
LACK OF JURISDICTION**

IN THE MATTER OF THE APPLICATION
OF ARIZONA-AMERICAN WATER
COMPANY, AN ARIZONA
CORPORATION, FOR A DETERMINATION
OF THE CURRENT FAIR VALUE OF ITS
UTILITY PLANT AND PROPERTY AND
FOR INCREASES IN ITS RATES AND
CHARGES BASED THEREON FOR
UTILITY SERVICE BY ITS
ANTHEM/AGUA FRIA WASTEWATER
DISTRICT AND ITS SUN CITY WEST
WASTEWATER DISTRICT.

Arizona Corporation Commission

DOCKETED

SEP 30 2014

DOCKETED BY

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The City of Phoenix ("Phoenix"), through its undersigned counsel, pursuant to
Arizona Administrative Code ("A.A.C.") R14-3-105, hereby moves to intervene in the
dockets identified above for the limited purpose of challenging the jurisdiction of the

1 Arizona Corporation Commission to set a “rate” applicable to Phoenix as a “rate payer” of
2 EPCOR in either the Anthem Water or Wastewater Districts. In support of its Motions,
3 Phoenix states as follows:

4 1. The City of Phoenix (“Phoenix”) is an Arizona municipal corporation,
5 established by Charter in 1913 pursuant to Article 13 of the Arizona Constitution.

6 2. The Arizona Corporation Commission (“Commission”) is a constitutional body
7 created pursuant to Article 15 of the Arizona Constitution.

8 3. EPCOR Water Arizona, Inc. (“EPCOR”) is an Arizona public service
9 corporation and successor in interest to Arizona-American Water Company (“Arizona-
10 American”) and Citizens Water Resources Company of Arizona (“Citizens”) with respect to
11 water and wastewater services conducted in that certain unincorporated area of Maricopa
12 County, Arizona, known as “Anthem,” as further described in EPCOR’s Certificate of
13 Convenience and Necessity (“CC&N”) for the Anthem Water District and Anthem
14 Wastewater District.

15 4. On September 22, 2000, Phoenix entered into the “Anthem Wholesale
16 Water/Wastewater Service Agreement” (“Agreement”) with Citizens. Citizens subsequently
17 assigned the Agreement to Arizona-American, which in turn assigned it to EPCOR.
18 Currently, Phoenix and EPCOR are parties to the Agreement.

19 5. The Agreement facilitated continued development of Anthem, including areas
20 of Anthem on the west side of Interstate 17. Those areas were originally within
21 Treatco’s/Citizen’s certificated area, but were subsequently removed from Citizens’
22 certificated area by Commission Decision No. 64897 (June 5, 2002) because they were

1 incorporated into Phoenix's municipal service area ("the Phoenix/Anthem Area").
2 According to the Commission's Decisions Nos. 64897 and 70372 (June 13, 2008), because
3 of the Agreement between Citizens and Phoenix, Citizens was able to amend its development
4 agreement with the Del Webb Corporation (subsequently Pulte)("Pulte Agreement") to
5 reclassify \$632,687.71 in Anthem plant costs paid under the Pulte Agreement. Because
6 these costs paid by Pulte related to servicing the Phoenix/Anthem Area, they were
7 reclassified from advances in aid of construction to non-refundable contributions in aid of
8 construction. The Agreement between Phoenix and EPCOR includes numerous other
9 obligations and benefits that flow between the parties, including, but not limited to the
10 following:

- 11 a. Phoenix provides a redundant water supply to EPCOR for peak and
12 emergency water service to ensure reliability of water service to all of
13 Anthem, including EPCOR's retail customers.
- 14 b. Phoenix provides retail water and wastewater services to the
15 Phoenix/Anthem Area, facilitating development which benefits both
16 Pulte and EPCOR.
- 17 c. EPCOR's allows Phoenix to transport or "wheel" Phoenix potable water
18 to facilitate retail water services to the Phoenix/Anthem Area for a price
19 established in the Agreement.
- 20 d. In consideration for Phoenix providing retail water and wastewater
21 services to the Phoenix/Anthem Area as referenced in subsection (b),
22 EPCOR provides wholesale water and wastewater services to Phoenix, a

1 non-jurisdictional entity outside of its certificated area, for a fixed,
2 contractual price.

3 e. EPCOR's predecessors in interest, Citizens and Arizona-American, paid
4 Phoenix \$5,000,000 for construction of the interconnection facilities in
5 consideration for Phoenix's agreement to provide retail water and
6 wastewater services to the Phoenix/Anthem Area, and for additional
7 water service capacity provided by interconnection with the Phoenix
8 system. In accordance with the Commission's Decision No. 64897, the
9 payments were approved as a regulatory asset subject to an amortization
10 period and method of recovery subsequently approved in Decision No.
11 70372.

12 6. The prices in the Agreement for wholesale water, wastewater and water
13 wheeling services used by Phoenix have not been contractually altered.

14 7. In Decision No. 64897, the Commission refused to approve either the Pulte
15 Agreement or the Agreement between Citizens and Phoenix, noting that Phoenix is a "non-
16 jurisdictional entity," and that "the contract includes wholesale rates, line loss limits, and
17 other items that may not be in line with the Commission's standards." In addition, the
18 Commission refused to confirm Citizens a Certificate of Convenience and Necessity for the
19 Phoenix/Anthem Area because it was within Phoenix's municipal service area.

20 8. The price for wastewater services provided in the Agreement was incorporated
21 inadvertently by the Commission into Decision No. 67093 (June 30, 2004) under a
22 commodity rate category described as "Anthem/Agua Fria Treatco." Because Citizens failed

1 to separate the revenue for rendition of utility services to the non-jurisdictional properties in
2 the Phoenix/Anthem Area as required in A.A.C. R14-2-103(B)(4), the revenue from Phoenix
3 was treated incorrectly as a commodity rate paid by a jurisdictional ratepayer. Decision No.
4 67093 did not include information about the basis for a separate “Anthem/Agua Fria
5 Treatco” rate, nor was the contract addressed.

6 9. In Decision 70372 (June 13, 2008), the Commission recognized the Agreement
7 between Phoenix and Arizona-American as a “regulatory asset.” However, Arizona-
8 American again failed to identify the contract prices paid by Phoenix as revenue for water
9 and wastewater utility services to non-jurisdictional property for purposes of corporate
10 valuation as required by A.A.C. R14-2-103(B)(4). Instead, Arizona-American unilaterally
11 altered the contractual rate and included it in a commodity rate category denoted as
12 “Anthem/Agua Fria Treatco – All.” There is no record in Docket No. WS-01303A-06-0403
13 that Arizona-American informed the Commission that the price paid by Phoenix for
14 wholesale water and wastewater service, as well as the wheeling costs, were revenue sources
15 from the Agreement the Commission considered a regulatory asset. .

16 10. In Decision No. 72047 (January 8, 2011), the Commission approved interim
17 rates for Anthem Water District and Anthem/Agua Fria Wastewater District. Included in the
18 schedule are water and wastewater commodity rates attributable to “Wholesale (Phoenix)
19 OWU.” It does not appear from the record in Docket No. WS-01303A-06-0403 that
20 Arizona-American informed the Commission that the rates denoted as “commodity charges”
21 were actually part of the regulatory asset in the Agreement between Arizona-American and
22 Phoenix.

1 11. In Commission Decision No. 73837, deconsolidating the Anthem/Agua Fria
2 Wastewater District, Arizona-American included wastewater “rates” for “Wholesale –
3 Phoenix” as commodity rates for a wholesale entity within Arizona-American’s CC&N.

4 12. As previously noted, Phoenix is not a customer of EPCOR. It is not within
5 EPCOR’s CC&N. It is a municipal provider of utility services to the Phoenix/Anthem Area
6 within its municipal service area. The Commission *never* made a finding that Phoenix is
7 within EPCOR’s CC&N or that Phoenix is within the jurisdiction of the Commission with
8 regard to the contractual services provided to Phoenix by EPCOR. The Commission did not
9 approve the Agreement between Phoenix and EPCOR because it was between private
10 parties, and found that the terms of the Agreement were not consistent with the
11 Commission’s ratemaking standards. The Commission further found that Phoenix is a “non-
12 jurisdictional party.” The Corporation Commission lacks jurisdiction to establish
13 commodity rates for Phoenix as a “customer” of EPCOR as a matter of law.

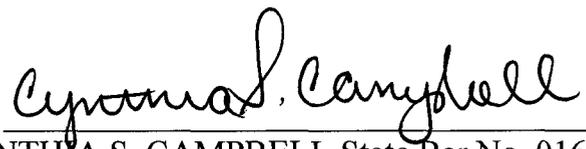
14 13. In the current matter before the Commission, EPCOR is again attempting to
15 apply a commodity rate to the contractual price Phoenix pays for contractual water and
16 wastewater services. Including Phoenix in the mix as a “ratepayer” not only prejudices
17 Phoenix through EPCOR’s continued effort to apply regulatory rates to Phoenix, but also the
18 other rate payers of EPCOR whose rates are based on a flawed consideration of rate base that
19 does not comply with prior Commission decisions or Commission administrative rules.

20 The City of Phoenix respectfully requests that the Commission issue an order (1)
21 finding that Phoenix is not subject to Commission ratemaking in these dockets; and (2)
22 requiring EPCOR to comply with A.A.C. R14-2-103(B)(4) to report the contract revenue

1 from the Anthem Wholesale Water/Wastewater Service Agreement between Phoenix and
2 EPCOR as "revenues . . . associated with the rendition of utility services not subject to the
3 jurisdiction of the Commission." To the extent the Commission declines to issue an
4 immediate order on this purely legal matter, Phoenix requests a hearing for the purpose of
5 oral argument in advance of the November 12, 2014 hearing.

6 RESPECTFULLY SUBMITTED this 30th day of September, 2014.

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