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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
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IN THE MATTER OF THE TOWN OF
FOUNTAIN HILLS' FORMAL COMPLAINT
AGAINST CHAPARRAL CITY WATER
COMPANY

Docket No. W-02113A-14-0359

ORIGINAL

RUCO'S RESPONSE TO THE COMPANY'S MOTION TO DISMISS

The Residential Utility Consumer Office ("RUCO") hereby responds to the Company's Motion to Dismiss the Complaint filed by the Town of Fountain Hills ("Town"). RUCO believes that the Company's Motion should be denied for the following reasons.

The Town brings its Complaint under A.R.S. 40-246 (A) which provides:

A. Complaint may be made by the commission of its own motion, or by any person or association of persons by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or any order or rule of the commission, but no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation, unless it is signed by the mayor or a majority of the legislative body of the city or town within which the alleged violation occurred, or by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of the service.

The Company seeks to dismiss the Complaint on various grounds. The Company's grounds lack merit. The Company claims that the Town failed to follow statutory remedies and

1 that the Complaint would render other statutes meaningless. The Company further argues that
2 the statute needs to be harmonized with other statutes.

3 RUCO does not take issue with the legal tenant that statutes need to be read in
4 harmony with others. But the Town's complaint does not offend the basic legal principle. The
5 statute is not ambiguous and a plain reading would allow the Town, via its Mayor, to file a
6 complaint if she/he felt rates were unreasonable – which RUCO agrees are under the
7 circumstances. Harrelson v. Industrial Com'n of Arizona,

8 144 Ariz. 369, 374 697 P.2d 1119, 1124

9 Ariz.App.,1984. "Where statute's language is plain, reviewing court must observe that plain
10 meaning and it is not free to extend that meaning...". There is no requirement in the Statute
11 or anywhere else that requires that a condition be satisfied before filing a complaint under
12 Section 40-246. Nor is there a provision that bars a party from filing a complaint under Section
13 40-246 shortly after a rate case is held. The current EPCOR water consolidation docket was
14 opened as a result of 25 or more ratepayers who claimed their rates were unreasonable
15 several years after the conclusion of a previous rate case where their rates were determined.
16 See Docket No. W-01303A-09-0343. Granted, the timing between the rate case and the
17 complaint filed in the EPCOR matter was greater than the case here, there is no legal
18 requirement that distinguishes time, as the Company suggests, as a factor in a complaint filed
19 under Section 40-246.

20 Likewise, Arizona's Revised Statutes provide a remedy for a party aggrieved by a rate
21 case proceeding. ARS Sections 40-252 et seq. identifies an appeal process for an aggrieved
22 party. Section 40-246 is entirely separate from that process and is numbered in the statutes
23 before the statutes governing that process – that is no coincidence. If the Town's Complaint
24 renders these later statutes meaningless, than the statute under which the Town's Complaint

1 was filed would render these later statutes meaningless. The Company has not made that
2 allegation, but it follows from the Company's arguments.

3 The Company has not challenged the Complaint on the grounds of sufficiency. The
4 relevant Administrative Code governing Complaints provides in relevant part as follows.

5 **R14-3-106. Formal documents, requirement and timeliness, motions,
6 informal complaints and protests**

7 H. Answers. Answers to complaints are required and must be filed within 20
8 days after the date on which the complaint is served by the Commission,
9 unless otherwise ordered by the Commission. All answers shall be full and
10 complete and shall admit or deny specifically and in detail each allegation of
11 the complaint to which such answer is directed. **The answer shall include
12 a motion to dismiss if a party desires to challenge the sufficiency of
13 the complaint.** (Emphasis Added).

14 Regardless of the Company's failure to challenge the sufficiency of the Town's
15 Complaint, it is worth noting that the Company's Complaint is sufficient as to form. The
16 Company's Complaint states a claim under A.R.S. Section 40-246 upon which the Commission
17 can grant relief. The Complaint further states the relief the Company requests which is
18 certainly within the purview of the Commission. The Company may disagree, but that is not a
19 basis for dismissing the Company's Complaint.

20 **CONCLUSION**

21 For the above reasons, the Commission should reject the Company's Motion to Dismiss
22 the Town's Complaint.

23 RESPECTFULLY SUBMITTED this 17th day of November, 2014.

24 
Daniel Pozefsky
Chief Counsel

1 AN ORIGINAL AND THIRTEEN COPIES
2 of the foregoing filed this 17th day
3 of November, 2014 with:

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5 COPIES of the foregoing hand delivered/
6 mailed this 17th day of November, 2014 to:

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