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BOB STUMP
Chairman

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GARY PIERCE
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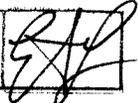
BRENDA BURNS
Commissioner

Arizona Corporation Commission
DOCKETED

SUSAN BITTER SMITH
Commissioner

NOV 25 2014

BOB BURNS
Commissioner

DOCKETED BY 

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

DOCKET NO: W-02113A-14-0359

**RESPONSE TO RESIDENTIAL
UTILITY CONSUMER OFFICE'S
APPLICATION TO INTERVENE**

The Residential Utility Consumer Office's ("RUCO") Application to Intervene dated November 10, 2014 should be denied as RUCO is attempting to utilize intervention in a proceeding initiated by the elected representatives of the affected consumers to achieve what it could not by other means – reconsideration by the Arizona Corporation Commission ("Commission") of Decision No. 74568, docketed June 20, 2014. Because RUCO's intervention is unnecessary to protect ratepayers in this instance, and because allowing RUCO to intervene in this proceeding would permit RUCO to inappropriately challenge final decisions of the Commission, RUCO's Application should be denied.

RUCO's proposed intervention (and stated desire to examine and present witnesses and evidence) is nothing more than an attempt to improperly attack the Commission's earlier, final decisions. As noted in Chaparral City Water Company's Motion to Dismiss, docketed October 27, 2014, the Commission established the rates to be charged by the Company in Decision No. 74568 (as corrected by Decision No. 74585) in June of this

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1 year. Those rates went into effect following the dates of those decisions. Both the Town
2 of Fountain Hills (“Town”) and RUCO filed Applications for Rehearing following
3 issuance of Decision No. 74568. Those Applications were denied by operation of law.
4 RUCO subsequently filed a Notice of Appeal with the Arizona Court of Appeals on
5 August 25, 2014.

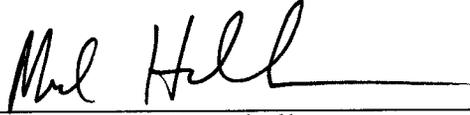
6 RUCO’s attempt to intervene to re-litigate the rate case provides further support for
7 the grounds for dismissal. Under A.R.S. § 40-252 and principles of Arizona law, RUCO
8 is estopped from collaterally challenging the rates approved by the Commission in
9 Decision Nos. 74568 and 74585. Once RUCO’s Application for Rehearing was denied,
10 RUCO’s sole recourse for further relief was through appeal. See A.R.S. §§ 40-252 (final
11 decisions of the Commission not subject to collateral attack); -254.01 (allowing party to a
12 rate case to file an appeal with the Court of Appeals within thirty days of the
13 Commission’s denial of an application for rehearing, but not thereafter). Allowing
14 RUCO to intervene in this proceeding would sanction an impermissible collateral attack
15 on the Commission’s final decisions in this proceeding in contravention of the statutory
16 scheme. A.R.S. § 40-252 (“In all collateral actions or proceedings, the orders and
17 decisions of the commission which have become final shall be conclusive”). That result
18 should not be permitted, and RUCO’s Application should be denied.

19 Moreover, while RUCO is often granted intervention in proceedings before the
20 Commission, RUCO’s present Application is unnecessary. RUCO was created to protect
21 the interest of the rate paying public. RUCO is not, however, statutorily required to
22 intervene in every proceeding before the Commission. See A.R.S. § 40-264 (providing
23 the RUCO’s Director “may” participate in certain proceedings before the Commission).
24 In this instance, RUCO’s participation is unnecessary. The Town, which is the political
25 entity representing the citizens of Fountain Hills, has filed a formal complaint against
26 Chaparral City Water Company pursuant to A.R.S. § 40-246. Unlike other proceedings in

1 which consumers' interests may not be fully represented, the interests of the rate paying
2 public in this proceeding are being represented by their elected representatives. As a
3 result, RUCO's participation in the present proceeding is duplicative and superfluous, and
4 its Application to Intervene should be denied.

5
6 Respectfully submitted this 25th day of November, 2014

7
8 LEWIS ROCA ROTHGERBER, LLP

9
10 By 

11 Thomas H. Campbell
12 Michael T. Hallam
13 201 E. Washington, Suite 1200
14 Phoenix, Arizona 85004
15 Attorneys for Chaparral City Water Company

16 ORIGINAL and thirteen (13) copies
17 of the foregoing filed
18 this 25th day of November 2014, with:

19 The Arizona Corporation Commission
20 Utilities Division – Docket Control
21 1200 W. Washington Street
22 Phoenix, Arizona 85007

23 Copy of the foregoing hand-delivered
24 this 25th day of November, 2014, to:

25 Steve Olea
26 Utilities Division
Arizona Corporation Commission
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Phoenix, Arizona 85007

Lyn Farmer
Chief Administrative Law Judge, Hearing Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

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