



0000159648

BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

Arizona Corporation Commission

RECEIVED

SUSAN BITTER SMITH - CHAIRMAN
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

DOCKETED

2015 JAN 23 P 1:44

JAN 23 2015

DOCKETED BY

AZ 6802 COMMISSIONER
DOCKET CONTROL

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

DOCKET NO. W-02113A-14-0359

ORIGINAL

STAFF'S REPLY TO THE TOWN OF
FOUNTAIN HILL'S RESPONSE TO
STAFF'S MOTION TO DISMISS

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") hereby files its Reply to the Town of Fountain Hills' Response to Staff's Motion to Dismiss the Complaint ("Town's Response") filed by the Town of Fountain Hills ("Fountain Hills" or "Town") against Chaparral City Water Company ("CCWC" or "Company").

The Town contends that "A.R.S. §40-246(C) requires the Commission to conduct a hearing on the reasonableness of rates when an A.R.S. §40-246(A) complaint is filed." (Town's Response, p. 2.) This argument implies that any §40-246(A) complaint mandates a hearing on the reasonableness of rates. That statute provides the circumstances wherein any person or association of persons may make a complaint against a utility. When the complaint concerns the reasonableness of rates, the statute also provides the *additional* requirement that the complaint be brought by a mayor, the majority of a legislative body of the city or town where the violation occurred, or at least twenty-five customers or purchasers, current or prospective. A.R.S. §40-246(C) specifies neither the type nor subject of a hearing, stating only that a hearing must be set. While this could infer that the complaint will thereby be addressed, it cannot be inferred that the reasonableness of rates must be addressed as well.

The Arizona Attorney General makes this clear in its Opinion No. 69-6, providing clarification as to the type of hearing required. The Opinion does not specifically state that a hearing must always be held. That opinion states: "Although the statute provides for a hearing upon the filing

1 of a complaint, the statute is silent as to the type of hearing to be held. It seems clear to us that this
2 hearing can only be directly related to the constitutional powers of the Corporation Commission
3 pursuant to Article 15, Section 3, Arizona Constitution....” The Opinion also suggests that no hearing
4 should be held if the complaint does not meet certain procedural requirements.

5 The Town’s statement, recited above, further implies that a substantive hearing regarding the
6 reasonableness of rates – or a full rate evaluation – is also required. The Attorney General’s Opinion
7 does specifically address this issue: “The procedure set up by the foregoing statute [A.R.S. §40-246]
8 is, we believe, an activator procedure designed to initiate an inquiry by the Commission who has the
9 power over rates.” Further, states that Opinion:

10 It would be unreasonable to assume that the Legislature, in enacting A.R.S. §40-246,
11 intended that each time a group of twenty-five consumers or purchasers, or
12 prospective consumers or purchasers of a public service corporation filed a complaint
13 as to the reasonableness of such corporation’s rates and charges, the Commission
14 would be required to conduct a full-scale rate hearing. If the Commission determines
15 that there is sufficient evidence, the arrangements would have to be made with the
16 Legislature for funding the investigation and hearing, if necessary.

17 The Town further asserts that “A.R.S. §40-246 provides a formal process for a community to
18 complain to the Commission about a public service corporation’s rates.” (Town’s Response, p. 4.)
19 That is an overly simplistic characterization of the function of the statute. A.R.S. §40-246 authorizes
20 a community or a group of rate payers, as well as any other person or entity, including the
21 Commission itself, to lodge a complaint against a public service corporation’s action which violates a
22 regulatory law, rule or order, which may include a challenge to the reasonableness of rates. The
23 statute, however, does not displace A.R.S. §§40-254 and 40-251.01, which provide for appeals of
24 Commission orders. A.R.S. §40-246 arguably provides a forum for relief from rates which have
25 become unreasonable due to subsequent facts or circumstances, it is not an appropriate vehicle to
26 challenge the rates so recently established by the Commission in Decision No. 74568.

27 It is clear that any complaint that is filed under A.R.S. §40-246 must be based on a public
28 service corporation’s violation(s) of law or order or Commission rule, not merely on an opposition to
recently established rates. In the present case, Fountain Hills has not alleged that the Company has
violated a law or order or Commission rule. Not only does Fountain Hills’ complaint fail to provide

1 such allegations, but both Fountain Hills and RUCO acknowledge that the Company is following a
2 Commission order that recently established rates.

3 Based on the foregoing, Staff requests that the Commission dismiss the Town's complaint.
4 However, if the Commission elects to process the Town's complaint, Staff requests the issuance of a
5 procedural order to govern the filing of pre-filed testimony and other procedural requirements.

6 RESPECTFULLY SUBMITTED this 23rd day of January, 2015.

7
8 
9 Bridget A. Humphrey, Attorney
10 Brian E. Smith, Attorney
11 Legal Division
12 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

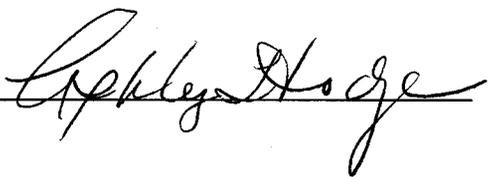
13 Original and thirteen (13) copies of
14 the foregoing filed this 23rd day of
January, 2015, with:

15 Docket Control
16 Arizona Corporation Commission
1200 West Washington Street
17 Phoenix, Arizona 85007

18 Copy of the foregoing mailed this
19 23rd day of January, 2015, to:

20 Andrew J. McGuire
21 David A. Pennartz
22 Landon W. Loveland
GUST ROSENFELD P.L.C.
23 One E. Washington, Suite 1600
Phoenix, AZ 85004-2553
24 Attorneys for Town of Fountain Hills
amcguire@gustlaw.com
dpennartz@gustlaw.com
lloveland@gustlaw.com

Thomas H. Campbell
Michael T. Hallam
Stanley B. Lutz
LEWIS ROCA ROTHGERBER, LLP
201 E. Washington, Suite 1200
Phoenix, AZ 85004
Attorneys for Chaparral City Water Company
tcampbel@lrrlaw.com
mhallam@lrrlaw.com

26
27 
28