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Docket No. **AW-01303A-14-0010**

13 August 2015

In the matter of the Application of EPCOR Water Arizona, Inc., for a determination of the current fair value of its utility plant and property and for increases in its rates and charges for utility service by its Mohave Water District, Paradise Valley Water District, Sun City Water District, Tubac Water District, and Mohave Wastewater District.

**A MOTION TO REMAND THE RECOMMENDED OPINION AND ORDER
BECAUSE IT FAILS TO MEET LEGAL REQUIREMENTS**

by Marshall Magruder

This Motion responds to proposed Recommended Opinion and Order (ROO) by the Administrative Law Judge in this case that does not meet the legal requirements for rates, charges and fees. The ROO failed to resolve serious legal requirement challenges to the rate structure filed by this party.

I. LEGAL REQUIREMENTS THE ROO FAILS TO COMPLY

1. Arizona State Constitution, Title 15, Section 12 titled "Charges for service; discrimination; free or reduced rate transportation states:

Sec. 12. All charges made for service rendered, or to be rendered, by public service corporations within this state shall be just and reasonable, and no discrimination in charges, service, or facilities shall be made between persons or places for rendering a like and contemporaneous service,

This is clear, all charges shall be fair and reasonable and shall not discriminate between persons and places for the same contemptuous service. *Blacks Law Dictionary* defines to discriminate as not the same, not equal or different; and place also means location.

2. Arizona Revised Statutes (A.R.S.) §40-334.B, titled, "Discrimination between persons, localities or classes of service as to rates, charges, service or facilities prohibited" states:

B. No public service corporation shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either between localities or between classes of service.

This statute implements the Constitutional requirements concerning rate discrimination.

1 3. Arizona Revised Statute (A.R.S.) §40-361, states

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3 **A. Charges demanded or received by a public service corporation for any**
4 **commodity or service shall be just and reasonable. Every unjust or unreasonable**
5 **charge demanded or received is prohibited and unlawful.**

6 **B. All rules and regulations made by a public service corporation affecting or**
7 **pertaining to its charges or service to the public shall be just and reasonable.**

8 This makes it unlawful for rates to be unjust and unreasonable,

9 4. Commission Order No. 71410 (9 Dec. 2009), p. 78. The Commission ordered the
10 company in its **next rate case** to file **consolidated** rates for **all its water and waste water**
11 **districts**, conduct town hall meetings, and educate the public, prior to filing. The present
12 case is the **next rate case** for most water districts. Rates are not consolidated.

13 5. **Precedence** – In an electricity rate case, different rates for small business and
14 residential customers existed between ratepayers in Mohave and Santa Cruz County. I filed
15 a ROO Exception that was approved to remove this discrimination. Further, case law also
16 supports having the same charges for all customers of the same service. All other public
17 service corporations, including natural gas, electricity, and communication utilities, other
18 than EPCOR and a few other water/wastewater companies, have any differences in
19 charges based on location.

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21 6. These legal requirements are in Magruder Post-Hearing Brief Exhibit MM-1.

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23 **II. THE PRESENT, PROPOSED AND PROPOSED CHANGES IN CHARGES**
24 **DISCRIMINATE BETWEEN LOCATIONS**

25 1. As shown by facts and overwhelming evidence in my Direct and Rebuttal Testimonies,
26 Opening and Reply Briefs in this docket, significant differences in charges presently exist
27 and are proposed in rates, fees and charges for the four water service locations.

28 2. This rate case does not meet any of these Legal Requirements for “fair and reasonable”
29 rates that do not discriminate based on location for the same service.

30 3. This is shown in the Tables in my Briefs. The Present, Proposed and Proposed
31 Changes violate all of the above Legal Requirements (Magruder Exhibit 5).

32 4. Tables 1 and 2 show the variances in charges for Average and Median Residential
33 ratepayers, over 95% of the company’s customers. Table 3 shows similar variances for
34 Service Charges. There are different “fees” for a meter installation by location for the same
35 class of meter.

5. Attached is a copy of Table 1 from my Brief that validates rate discrimination.

1 6. These differences have existed for decades, some ratepayers paying much more,
2 others much less for the same service in violation of the above Legal Requirements.

3 7. In 2002, two rate cases ago, in the "last rate case" in 2009, and now in this rate case in
4 2014, the ROO has the company filing consolidated rates in 2018, to add about two more
5 years before implementation, in 2020, for rate relief and fair rates for others and, to satisfy
6 the Legal Requirements. This is WAY TO LONG for such a serious injustice to continue, at
7 least 18 years in which I have been involved and is the reason for this filing.
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10 **III. THREE MAJOR ISSUES AND OTHER ISSUES IMPACTS ON THE COMPANY'S**
11 **RETURN ON INVESTMENT (ROI)**

- 12 1. It is noted that NONE of the three major issues or other issues in my Briefs impact the
13 company's return on investment (ROI).
14 2. The only impact is "how" the required revenue is obtained from the ratepayers.
15 3. The CEO of the Arizona American Water Company (AAWC) CEO, our prior water
16 company in the "last rate case", testified more than once that he wanted consolidated rates,
17 to benefit his company, reduce expenses and make operations more efficient.
18 4. The present company, EPCOR, has testified in a companion wastewater rate case it
19 wants consolidated rates.
20 5. There were NO objections to my Oral Testimony that continued my arguments, other
21 than a staff attorney requesting I read A.R.S. 40-334.B, cited above, into the record of
22 these proceedings, which I did.
23 6. Compliance with the legal requirements must be met before this case should continue.
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26 **IV. RATE CONSOLIDATION IMPACTS THE THREE MAJOR ISSUES IN MY FILINGS**

- 27 1. The first major issue, for this case to consolidate rates, leads to the next two issues.
28 2. The second major issue concerns the same legal requirements for the proposed "low
29 income plan" that continues rate discrimination.
30 a. In particular, the differences in its unique funding mechanism based on location,
31 to fund this program, are rate discrimination, and should not be implemented.
32 b. With two commercial rate tiers to fund this program, commercial customers, will
33 have excessive, unfair charges.
34 c. The existing low income program, required in the "last rate case" for all water and
35 wastewater districts, has failed in only the two districts implemented to date.
d. Almost all other utilities have a low-income schedule of charges; without adding a
surcharge but by factoring in its cost into their revenue requirements.

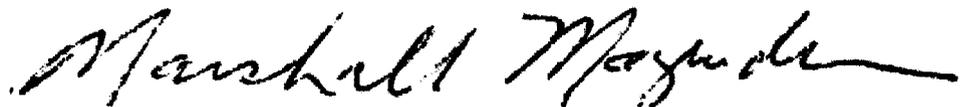
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3 3. Obviously, if rate consolidation is implemented, a new rate structure will be required for
4 the company, the third major issue in my filings.

5 a. Water conservation is a critical concern in our state, and designing a rate
6 structure that has multiple rate tiers with significant increased in rates between tiers,
7 leads to water conservation.

8 b. The proposed rate structure, with two rate tiers does NOT send price signals to
9 ratepayers to conserve water, a state and national priority.

10 **V. TIME TO RESPOND TO THE ROO WITH DETAILED EXCEPTIONS**

- 11 1. I received the ROO on Monday morning, 10 August 2015, when picking up my mail at
12 the Post Office, on our way out of town on a multiple-week road trip to make an overdue
13 visit to my wife's brother in Oregon and visiting national park sites and museums.
14 2. Today, we visited Sequoia and Kings Canyon National Park, and have just a few hours
15 in the motel to put this Motion before the Commission.
16 3. My Testimonies and Briefs provide a preponderance of evidence supporting this issue,
17 in much greater detail, confirms what is stated herein.
18 4. Table 1 validates rate discrimination exists. It must be eliminated this year, not in 2020.
19 Respectfully submitted this 13th day of August 2015.

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23 By _____
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2 **Service List**

3 Original and 13 copies of the foregoing are filed by mail this date with:

4
5 **Docket Control (13 copies)**
6 **Arizona Corporation Commission**
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19 Additional Distribution (1 copy each) are filed by email this date:

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TABLE 1. COMPARISON OF PRESENT AND PROPOSED RESIDENTIAL COSTS FOR MONTHLY AVERAGE USAGE.

4 **1(a) PRESENT COST: Average Usage, Monthly Cost, and Cost per 1000 Gallons Of Water**

AVERAGE Monthly Usage	Residential Rate Categories							
	5/8 and 3/4-inch meter service				1-inch meter service			
	Tubac	Sun City	Paradise Valley	Mohave	Tubac	Sun City	Paradise Valley	Mohave
In gallons	8,348	7,203	19,271	6,800	13,838	14,786	55,400	23,601
Present COST	\$53.57	\$17.35	\$52.30	\$20.63	\$146.05	\$43.44	\$165.40	\$80.90
COST per 1000 gallons	\$6.42 w/ARCM	\$2.41	\$2.71	\$3.03	\$10.55 w/ARCM	\$2.94	\$2.99	\$3.43

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11 **1(b) EPCOR FINAL PROPOSAL: Average User Monthly Cost and Cost Increase**

[Based on EPCOR's 6 April 2015 Final Schedule H-2]

Proposed COST INCREASE	+\$32.72 (+25.50)	+\$2.79	+\$4.47	+\$8.63	+\$46.55 (55.05)	+\$6.20	+\$14.20	+\$21.92
Proposed COST (+DAMRO Tubac only)	\$86.29 (+25.50) \$110.79	\$20.46	\$56.76	\$29.26	\$192.60 (+55.05) \$247.65	\$49.64	\$179.60	\$102.82
Percent COST INCREASE	+61.07% (+108.68%)	+17.91%	+8.54%	+41.84%	+31.87% (69.57%)	+14.27%	+8.58%	+27.10%
COST per 1000 gals (+DAMRO Tubac only)	\$10.34 (+1.77) \$12.11	\$2.84	\$2.96	\$4.30	\$13.92 (+1.77) \$24.69	\$3.35	\$3.24	\$4.36

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20 **1(c) MAGRUDER CONSOLIDATED RATES: Monthly Cost for Average User and Water Lifeline**

[Based on Magruder Direct Testimony, Appendix 3, for Combined Rates in the "last rate case"]

AVERAGE Usage Cost	\$39.81	\$36.95	\$64.33	\$35.94	\$49.45	\$52.30	\$179.54	\$78.74
Water Lifeline @ 3,000 gallons	\$17.44	\$17.44	\$17.44	\$17.44	\$22.94	\$22.94	\$22.94	\$22.94

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24 **1(d) MAGRUDER COMBINED RATES PLUS 10% REVENUE INCREASE, AVERAGE USE COST**

[Based on Magruder Direct Testimony, Appendix 3, for Combined Rates in the "last rate case"]

AVERAGE Usage Cost	\$43.79	\$40.64	\$70.76	\$39.54	\$54.41	\$57.53	\$197.49	\$86.61
Cost Change	(\$11.91)	+\$23.28	+\$18.46	+\$18.91	(\$91.64)	+\$14.09	+\$31.79	(\$5.71)
COST/1000 gals	(18.3%)	+134.2%	+35.3%	+91.7%	(62.8%)	+32.4%	+19.2%	(\$7.05)
Water Lifeline @ 3,000 gallons	\$19.15	\$19.15	\$19.15	\$19.15	\$25.23	\$25.23	\$25.23	\$25.23

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29 **1(d) EPCOR ORIGINAL PROPOSAL: PRESENT AVERAGE USER MONTHLY COST AND INCREASE**

[Based on EPCOR's 14 October 2014 Schedules H-2]

Proposed COST INCREASE	+\$47.19	+\$3.82	+\$5.06	+\$9.06	+\$82.49	+\$8.47	+\$16.05	+\$23.41
Proposed COST	\$101.76	\$21.17	\$57.36	\$29.69	\$228.54	\$51.91	\$181.45	\$104.31
Percent INCREASE in COST	+88.1%	+22.0%	+9.7%	+43.9%	+56.5%	+19.5%	+9.7%	+28.7%

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35 A proposed EPCOR Deferred Arsenic Media Replacement O&M (DAMRO) surcharge of \$1.77 per 1,000 gallons is included for Tubac (in bracket). No other locations have a DAMRO surcharge for their arsenic treatment plants. [Ref: EPCOR Final Schedule H-3, page 6].