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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 APPLICATION OF
EPCOR WATER ARIZONA INC. FOR A
DETERMINATION OF THE CURRENT FAIR
VALUE OF ITS UTILITY PLANT AND PROPERTY
AND FOR INCREASES/DECREASES IN ITS
RATES AND CHARGES BASED THEREON FOR
UTILITY SERVICE BY ITS AGUA FRIA,
ANTHEM, MOHAVE, SUN CITY, AND SUN CITY
WEST WASTEWATER DISTRICTS AND FOR
CONSIDERATION OF CONSOLIDATION AND
DE-CONSOLIDATION PROPOSALS.

DOCKET NO. WS-01303A-16-0145

PROCEDURAL ORDER

BY THE COMMISSION:

On April 29, 2016, EPCOR Water Arizona, Inc. (“EPCOR”) filed with the Arizona Corporation Commission (“Commission”) an application for a determination of the fair value of its utility plant and property and for increases/decreases in its rates and charges for wastewater utility service in its Agua Fria, Anthem, Mohave, Sun City, and Sun City West Wastewater Districts and for consideration of consolidation and deconsolidation proposals. The Commission’s Utilities Division (“Staff”) issued a Letter of Sufficiency regarding the application on May 27, 2016, and a Procedural Order was issued on June 3, 2016, scheduling the hearing in this matter to commence on January 23, 2017.

Since June 3, 2016, intervention has been granted to Sun City Home Owners Association (“Sun City HOA”), Frederick Botha, Verrado Community Association, Inc. (“Verrado”), DMB Verrado Golf I LLC (“Verrado Golf”), Verrado ARC LLC (“Verrado ARC”), Western Infrastructure Sustainability Effort (“WISE”), Douglas Edwards, Diane Smith, Corte Bella Country Club Association (“CBCCA”), the Residential Utility Consumer Office (“RUCO”), the Property Owners and Residents Association of Sun City West (“SCW PORA”), the Cross River Homeowners Association (“Cross River HOA”), the Anthem Community Council, Inc. (“Anthem”), Willard R. Hansen, the Arizona Investment Council (“AIC”), the Russell Ranch Homeowners’ Association, Inc. (“Russell Ranch HOA”), Michelle Harris,

1 Stephen L. Fribley, the City of Phoenix (“City”), and the GPO-18 Condominium Association (“GPO-
2 18”). Additionally, consent to email service has been approved for the Sun City HOA, Mr. Botha,
3 Verrado, Verrado Golf, Verrado ARC, Mr. Edwards, Ms. Smith, CBCCA, SCW PORA, the Cross
4 River HOA, Anthem, EPCOR, AIC, the Russell Ranch HOA, the City, Staff, Mr. Fribley, and GPO-
5 18.

6 **I. Staff’s Request for Modification of Procedural Schedule**

7 On August 24, 2016, Staff filed Staff’s Request for a Modification of the Procedural Order
8 (“Staff’s Request”), revealing that the Staff engineer originally assigned to this case had commenced
9 discussions regarding employment with EPCOR in June 2016 and that Staff had assigned another
10 engineer to commence a new engineering evaluation and requesting that the procedural schedule in this
11 matter be adjusted to allow additional time for this evaluation due to the “inherent conflict.” Staff
12 proposed a schedule that would extend each established deadline by approximately three to four weeks
13 and would have the hearing commence on February 13, 2017. Staff stated that it had contacted all
14 parties who had opted into email service and that RUCO, Mr. Fribley, the Cross River HOA, CBCCA,
15 the City, SCW PORA, the Sun City HOA, and Anthem did not oppose Staff’s Request.

16 On August 29, 2016, EPCOR filed a Response to Staff’s Motion for Extension of Time, stating
17 that EPCOR is sensitive to Staff’s concerns but believes that Staff’s Request is premature. EPCOR
18 stated that EPCOR had discussed the issue with Staff in June 2016, had delayed the engineer’s start
19 date by three weeks to allow Staff additional time to transition employees assigned to this matter, and
20 had offered and is willing to work with Staff to accommodate prompt scheduling of any additional field
21 review necessitated by the assignment of a different Staff engineer. EPCOR stated that Staff’s Request
22 is premature because the due date for Staff and Intervenor Direct Testimony is more than two months
23 away and may allow sufficient time to conduct the engineering review. EPCOR further stated that the
24 appropriate time for Staff to request any extension needed would be closer to the November 16, 2016,
25 deadline. In case denial of Staff’s Request were not to be granted, however, EPCOR proposed an
26 alternate schedule with most deadlines set several days earlier than those proposed by Staff and a
27 hearing beginning on February 6, 2017. EPCOR also requested that a procedural conference be
28 scheduled to address any continued disputes over Staff’s Request.

1 Discussion & Resolution

2 Under EPCOR's proposed schedule, the hearing in this matter would commence on the same
3 date as the hearing for another Class A utility rate case (Southwest Gas Corporation, Docket No. G-
4 01551A-16-0107 ("SW Gas matter")). Although it currently appears that this matter and the SW Gas
5 matter overlap only in the participation and representation of RUCO, having two Class A utility rate
6 cases commence in Phoenix on the same date is likely to present logistical issues due to the number of
7 members of the public in attendance at each as well as resource issues for court reporters, particularly
8 if expedited transcripts are requested in either case. Due to these practical concerns, it would be
9 imprudent to schedule the hearing in this matter to commence on the same date as the hearing in the
10 SW Gas matter.

11 Staff's proposed schedule avoids the concerns associated with concurrent first days of hearing
12 and, of course, also meets Staff's asserted need for additional time, something that Staff is in the best
13 position to judge. Additionally, it is worth noting that Staff's Request was not made due to Staff's
14 failure to devote adequate resources to this matter, but instead because of a legitimate concern about
15 conflict of interest caused by EPCOR's hiring of the Staff engineer originally assigned to this matter.

16 In light of the reason for Staff's Request, the concerns with EPCOR's proposed schedule, and
17 the value in providing all parties with a modified procedural schedule as soon as possible to allow
18 opportunities for planning, it is reasonable and appropriate to grant Staff's Request herein without
19 holding a procedural conference for additional discussion. Further, it is necessary and appropriate to
20 extend the Commission's time frame for this matter by 24 days, the difference in time between the
21 anticipated end date of the originally scheduled hearing and the hearing as rescheduled herein, and to
22 retain the January 23, 2017, hearing date for the purpose of accepting public comment.

23 **II. Mr. Botha's Request for Information**

24 On August 29, 2016, Mr. Botha filed a document requesting that EPCOR be instructed to
25 provide specific information to all consumers and that RUCO be instructed "to compare the value for
26 consumers of this information . . . with the 2015 test information that RUCO requested Epcor to provide
27 for this case" ("Mr. Botha's Request"). In his prayer for relief, Mr. Botha specifically requested:
28

1 Accordingly, please will Judge ... Harpring request Epcor to provide the
2 following information for water and wastewater based on their proposed
3 capital upgrades through 2021 and 2026 and also request RUCO to compare
4 the value of this information with the 2015 test information that they
5 requested from Epcor in this case:

6 a revenue increases, including fair value rate base, revenue increase
7 and percentage increase, including the dollar amounts of the percentage
8 increase by district

9 b current residential rate, the stand-alone proposed rate and
10 consolidated rate, including any phase-in rates if appropriate, by district

11 c current residential rate and proposed deconsolidated residential rate,
12 by wastewater treatment facility

13 Similar formats, using test data from 2015, have already been used in a
14 brochure sent by Epcor to all consumers.

15 On September 6, 2016, EPCOR filed a Response to Mr. Botha's Filing, requesting that Mr.
16 Botha's Request be denied as to EPCOR. EPCOR objected to the information sought by Mr. Botha as
17 irrelevant (as to water district information) and speculative and not calculated to lead to the discovery
18 of admissible evidence (as to projections of rates and revenues in future test years as a means to
19 compare the rates to the current case). EPCOR also asserted that the brochure referenced by Mr. Botha
20 was the customer notice prescribed by Procedural Order, that EPCOR had explained to Mr. Botha that
21 it could not predict 2021 rates with certainty, that EPCOR had provided Mr. Botha with projected
22 wastewater capital expenditures for the next ten years (information that had previously been provided
23 to Mr. Botha with EPCOR's workpapers), that EPCOR had met with Mr. Botha on four occasions to
24 give a detailed explanation of the information in EPCOR's workpapers and to explain the ratemaking
25 process and the detail of previous rate applications, and that Mr. Botha had been provided the
26 information necessary to make projections based on his own assumptions (as had other intervenors
27 upon request).

28 Discussion & Resolution

Mr. Botha's Request is essentially a discovery motion and, as such, should have been
accompanied by a separate statement certifying that after personal consultation and good faith efforts
to do so, Mr. Botha and EPCOR and Mr. Botha and RUCO had been unable to resolve their discovery
dispute satisfactorily. (See Arizona Rules of Civil Procedure 26(g), 37(a).) In spite of this omission,

1 however, both for the sake of efficiency and because it is apparent that Mr. Botha and EPCOR have
2 already engaged in discussion regarding the information requested, Mr. Botha's Request will be
3 addressed and resolved herein.

4 The discovery process is intended to allow parties to prepare for hearing by learning the
5 positions and supporting documents of the other parties, thereby minimizing surprise and increasing
6 the efficiency of hearings. Discovery is not intended to be used by one party to require another party
7 to perform analyses that the other party would not have engaged in otherwise.

8 As a precursor to discussing the specifics of Mr. Botha's Request, it is also helpful to recognize
9 that the Commission establishes a utility's rates and charges based upon analysis of a past 12-month
10 period referred to as a historic test year ("test year").¹ The test year revenues, expenses, and rate base
11 are used, with pro forma adjustments for known and measurable changes, to determine the level of
12 revenues required by a utility. The specific rate design is established to meet the level of revenues
13 required and after consideration of factors such as cost of service and gradualism. A utility's future
14 plans are often discussed in a rate case, but unless imminent and thus known and measurable for
15 purposes of pro forma adjustments, generally do not directly impact the rates and charges that result.

16 Mr. Botha essentially has requested that EPCOR be required, based upon proposed capital
17 upgrades through 2021 and 2026, to project water and wastewater revenue increases (dollars and
18 percentage), rate base, and rates, with and without consolidation, and that RUCO be required to
19 compare these figures with the test year information that RUCO has requested from EPCOR in this
20 matter. EPCOR has not performed these projections and considers the requested information to be
21 overly speculative and, as to water utility operations, irrelevant. RUCO has not responded to Mr.
22 Botha's Request. EPCOR has provided Mr. Botha with the information concerning planned capital
23 upgrades upon which EPCOR would base its own projections if EPCOR were to perform such
24 projections.

25 Because the requested projections and analyses concerning water utility operations are
26 irrelevant to this wastewater utility rate case, that portion of Mr. Botha's Request is denied.

27
28 ¹ See A.A.C. R14-2-103.

1 Because EPCOR has provided Mr. Botha the information that EPCOR would use if it were to
 2 perform its own analyses to project revenues and rates through 2021 and 2026, to the extent that is
 3 possible, the remainder of Mr. Botha's Request is also denied. Neither EPCOR nor any other party to
 4 this matter can accurately predict what capital upgrades will actually be made to EPCOR's wastewater
 5 systems in the next 10 years, what other circumstances may arise impacting revenues and expenses for
 6 the next 10 years, or whether EPCOR will file one or more wastewater utility rate cases between now
 7 and 2026. The projections requested by Mr. Botha would be purely speculative and of little if any
 8 value in establishing just and reasonable rates and charges and terms and conditions of service in this
 9 matter, and requiring EPCOR to create such projections would place an undue burden upon EPCOR.

10 IT IS THEREFORE ORDERED that the **pre-hearing conference** in this matter scheduled for
 11 **January 19, 2017**, is hereby **vacated**.

12 IT IS FURTHER ORDERED that the **January 23, 2017**, hearing date in this matter shall
 13 convene as scheduled for the purpose of taking **public comment** only.

14 IT IS FURTHER ORDERED that the **hearing dates** of **January 24 through February 3,**
 15 **2017**, are hereby **vacated**.

16 IT IS FURTHER ORDERED that the procedural schedule in this matter is hereby modified as
 17 follows:

Occurrence or Item Due	Original Date/s	New Date/s
Staff and Intervenor Direct Testimony (other than rate design)	November 16, 2016	December 14, 2016
Staff and Intervenor Direct Testimony (rate design)	November 23, 2016	December 21, 2016
EPCOR Rebuttal Testimony	December 16, 2016	January 13, 2017
Staff and Intervenor Surrebuttal Testimony	January 6, 2017	January 25, 2017
EPCOR Rejoinder Testimony	January 16, 2017	February 3, 2017
Summaries of Testimony; Substantive Corrections, Revisions, or Supplements to Prefiled Testimony	January 18, 2017	February 6, 2017
Pre-Hearing conference; Objections to Prefiled Testimony or Exhibits	January 19, 2017	February 7, 2017
Hearing Commences	January 23, 2017	February 13, 2017

25 IT IS FURTHER ORDERED that the **pre-hearing conference** in this matter shall commence
 26 at **1:00 p.m. on February 7, 2017**, in Hearing Room No. 2 at the Commission's offices at 1200 West
 27 Washington Street, Phoenix, Arizona 85007.
 28

1 IT IS FURTHER ORDERED that the **hearing** in this matter shall commence at **10:00 a.m.** on
2 **February 13, 2017**, in Hearing Room No. 2 at the Commission's offices at 1200 West Washington
3 Street, Phoenix, Arizona 85007, and shall commence in the same location at **9:00 a.m.** on each
4 subsequent hearing date needed, currently anticipated to be **February 14 through 17, 21 through 24,**
5 **and 27, 2017.**

6 IT IS FURTHER ORDERED that the Commission's **time frame** for this matter is hereby
7 **extended by 24 days.**

8 IT IS FURTHER ORDERED that **Mr. Botha's Request is denied.**

9 IT IS FURTHER ORDERED that each party or prospective party shall **refer to the Procedural**
10 **Order Regarding Consent to Email Service** issued in this matter on June 3, 2016, for additional
11 information regarding the process to consent to service by email. Information regarding Consent to
12 Email Service is also available on the Commission's website (www.azcc.gov) by clicking on "Email
13 Service Consent."

14 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
15 31, 38, 39, and 42 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

16 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
17 Communications) applies to this proceeding and shall remain in effect until the Commission's Decision
18 in this matter is final and non-appealable.

19 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or
20 waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
21 hearing.

22 DATED this 7th day of September.

23 
24 SARAH N. HARPRING
25 ADMINISTRATIVE LAW JUDGE
26
27
28

On this 7th day of September, 2016, the foregoing document was filed with Docket Control as a Procedural Order – Reschedules a Hearing, and copies of the foregoing were mailed on behalf of the Hearing Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

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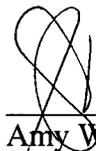
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