ORIGINAL **FORMAL COMPLAINT**

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Arizona Corporation Commission
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE – Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

W-02824A-16-0409

IN THE MATTER OF THE FORMAL COMPLAINT OF TALKING ROCK RANCH ASSOCIATION FOR COMMUNITY PRESERVATION CONCERNING BILLING DISPUTE WITH ICR WATER USERS ASSOCIATION, INC., A PUBLIC SERVICE CORPORATION LOCATED IN YAVAPAI COUNTY, ARIZONA.

DOCKET NO: W-02824A-16-_____

FORMAL COMPLAINT

Pursuant to the provisions of A.R.S. §§ 40-246 and 40-248, and A.A.C. R14-3-106(L), the Talking Rock Ranch Association for Community Preservation ("Association") hereby files this formal Complaint against ICR Water Users Association, Inc. ("ICRWUA") concerning a billing dispute over utility water service.

BACKGROUND

Association is a nonprofit association with approximately 628 total members, professionally managed by HOAMCO and is located in the master planned community of Talking Rock Ranch ("TRR") in Yavapai County, Arizona. The Association is responsible for operating and maintaining common areas within the community and the assessment and collection of dues both at a master and supplemental level. Master association dues are paid by all owners in TRR and supplemental dues are paid by certain areas of the subdivision that directly benefit from certain services (i.e., maintaining common areas and landscaping). For example, 48 owners in TRR Phases 4A and 27 share a common assessment and budget for water delivery to their front and back lawns and they are the affected properties relative to this particular matter.

TRR residents receive water utility service from ICRWUA at rates and charges regulated by the Arizona Corporation Commission ("Commission"). ICRWUA's current rates and charges were approved by the Commission in Decision No. 70977 (May 5, 2009).

In February 2016, ICRWUA contacted the Association about an issue concerning billings dating back to 2010. At that time, ICRWUA claimed that it had failed to bill the Association and under-collected revenue by approximately $96,609.00 from January 2005 through January 2016, but that only $64,638.00 could be collected (retroactively) at that time. After some initial discussions between ICRWUA and the Association's management, a meeting was held on March 14, 2016 to resolve the matter. During this meeting, it was discovered that ICRWUA had failed to allocate certain credits for prior payments made, and that the alleged billing error actually began in early 2011 when the ICRWUA changed internal billing software, causing an incorrect multiplier to be applied to the Association's water rate.

After this meeting, the Association sent its billing records for 2010 for two meters to ICRWUA to assist ICRWUA in their further review of the matter. In turn, ICRWUA again reduced the amount it claimed to be owed to $54,172.02 for one meter. On July 1, 2016, the Association received a formal invoice from ICRWUA for account number 9701001, alleging an outstanding balance of $54,172.02. A copy of the July 1, 2016 invoice is attached hereto at **Exhibit 1**. Further, on September 7, 2016, ICRWUA sent the Association a threatening letter stating that ICRWUA could "disconnect water service without further notice" within ninety (90) days from the date of the July 1, 2016 invoice.

The payment of $54,172.02 by the Association for water service due to ICRWUA's billing error would represent an undue burden to the Association's affected member homeowners. Because the meter in question serves only TRR Phases 4A and 27, the 48 owners therein would each be assessed a pro-rata share of the outstanding amount, or

$1,128.58. The Association has expended a substantial amount of effort already to assist ICWRUA in narrowing the scope of its error. Further, the Association has engaged in several attempts to resolve this matter directly with ICRWUA based on a fair and equitable compromise. Notwithstanding, ICRWUA continues to insist that the Association pay the entire amount that ICRWUA claims should have been recovered, if properly billed, since 2011 ($54,172.02). The Association disagrees, and believes that ICRWUA's culpability in this matter warrants a substantial reduction or elimination of the amount ICRWUA claims it failed to bill and collect over a five-year period – provided ICRWUA is able to substantiate its claim.

DISCUSSION

In Decision No. 70977, the Commission ordered that ICRWUA "shall *ensure* that it charges only those rates and charges that are specifically authorized by its Commission-approved tariffs." [Emphasis added]. Furthermore, A.A.C. R14-2-409.D.1 states that "[e]ach customer shall be billed under the applicable tariff indicated in the customer's application for service." Clearly, ICRWUA is under an affirmative duty to bill the Association correctly. In fact, this affirmative duty is highlighted by the Commission's own concerns expressed in Decision No. 70977, wherein it states:

> "We are concerned with ICR's past actions with respect to the well transfer issues and institution of a hydrant charge without approval from this Commission. Such activities flout the rules and authority of this Commission and demonstrate either a troubling lack of knowledge of our process, or worse, contempt for our process. While ICR has taken steps to address the well transfer and hydrant issues, we remain concerned about this Company's commitment to following the Commission's Orders and rules."[1]

[1] Decision No. 70977 at 32, ln. 15-20.

The Association has its concerns as well, and believes that ICRWUA has not properly complied with the requirements of Decision No. 70977 or A.A.C. R14-2-409.D.1. ICRWUA failed to conduct any sort of annual or special audit to identify the billing error prior to notifying the Association for the first time in February, 2016. Furthermore, no subsequent audit has been conducted to confirm the nature of the alleged billing error, or the amount of outstanding monies claimed by ICRWUA. In fact, the Association has not had the opportunity to review ICRWUA's complete records, or determine whether there was an issue with the water meter during the time of the alleged underbilling.

According to its most recent Annual Utility Report (2015), ICRWUA spent $191,116 for "Outside Services" in 2015, and $183,471 for the same services in 2014. These "Outside Services" include operational, management and accounting services. The Association recommends that ICRWUA should look to the source of the problem, and the internal failures that resulted in the alleged under-collection, for recovery of the alleged lost revenue. If ICRWUA's consultants allowed the alleged error to exist and continue for approximately five (5) years, that would be a fact that cannot be overlooked by the Commission. If this was a billing error involving electric service, the Commission's rules would limit recovery of underbilling to three months for residential customers and six months for non-residential customers.[2]

While there is no such express limitation on the recovery of underbilling in the Commission's rules and regulations governing the provision of water utility service, allowing ICRWUA to recover up to five (5) years of alleged lost revenue is not just and reasonable, nor in the public interest, under the circumstances. The Commission had previously expressed a concern in Decision No. 70977 about ICRWUA's past billing

[2] A.A.C. R14-2-210(E)(3) reads in part "Any underbilling resulting from a stopped or slowed meter, utility or Meter Reading Service Provider meter reading error, *or a billing calculation* shall be limited to three months for residential customers and six months for non-residential customers." [Emphasis added].

practices, and imposed upon the company an affirmative duty to charge only *authorized* tariffed rates. Implicit in that ordering paragraph is the duty of ICRWUA to charge its customers the *correct* rate. This apparently did not happen, and now ICRWUA is requiring the Association and certain members to fix the utility's alleged mistake. The Association strongly disagrees with ICRWUA, and urges the Commission to grant the relief requested herein on behalf of those Association members who would be affected by an assessment.

RELIEF REQUESTED

The Association respectfully requests that the Commission:

A) prohibit ICRWUA from retroactively collecting $54,172.02 from the Association in alleged lost revenue due to billing errors related to Association Account Number 9701001;

B) prohibit ICRWUA from disconnecting water service to TRR; and

C) provide the Association with any other such relief that the Commission determines is necessary to protect the public interest.

RESPECTFULLY SUBMITTED this 4th day of November, 2016.

FENNEMORE CRAIG, P.C.

By_____

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Suite 600
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Association For Community Preservation

ORIGINAL and thirteen (13) copies
filed on November 4, 2016 with:

Docket Control
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

COPY of the foregoing mailed
this 4th day of November, 2016 to:

Mr. Jimmy Stoner, President
ICR Water Users Association
P.O. Box 2344
Prescott, AZ 86302-2344

By: Maria San Jose

Exhibit 1

ICR Water Users Association

C/o Wallace & Associates
302 W. Willis Street, Suite 105 • Prescott, Arizona 86301
Phone (928) 445-6581 Fax (928) 445-1830

July 1, 2016

Talking Rock – Landscape Meter
P.O. Box 10000
Prescott, AZ 86304

Re: Account 9701001 – Billing for difference in Multiplier

Billing Period: January 12, 2011 to January 17, 2016

Water Charges	**$50,871.69**
Gallon Tax	**$ 69.98**
Sales Tax	**$ 3,230.35**
Total Amount Due	**$54,172.02**

*******A detailed breakdown of charges is attached *******

Acct 9701001 TRR POA Landscape Meter Three Forks/Johnny Mullins

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
1	Read Date	Meter Charge	Reading	Actual Reading with 100 Multiplier gallons	Usage gallons	Tier 1 0 to < = 72,000 g	Tier 2 Water >72,000 gallons	Water $ Tier 1 + 2 See Note 1	ACC Tax on Water $0.0065 /1000 g	Bill date	Water charge	Gallon Tax	Sales Tax See Note 3	Total Paid See Note 4	Under-Billing using Sales Tax @ 6.35% See Note 2
2	01/12/2011		102,482	10,248,200		0	0								
3	02/15/2011	$160.00	102,778	10,277,800	29,600	29,600	0	$118.40	$0.19	02.25.2011	161.18	0.00	11.85	$173.03	$124.86
4	03/16/2011	$160.00	102,778	10,277,800	0	0	0	$0.00	$0.00	03.28.2011	160.00	0.00	11.76	$171.76	$0.00
5	04/14/2011	$160.00	103,649	10,364,900	87,100	72,000	15,100	$363.50	$0.57	04.26.2011	163.48	0.01	12.02	$175.51	$383.44
6	05/16/2011	$160.00	105,602	10,560,200	195,300	72,000	123,300	$904.50	$1.27	05.26.2011	167.81	0.01	12.33	$180.15	$954.89
7	06/15/2011	$160.00	108,235	10,823,500	263,300	72,000	191,300	$1,244.50	$1.71	06.24.2011	170.53	0.02	12.53	$183.08	$1,314.02
8	07/14/2011	$160.00	110,875	11,087,500	264,000	72,000	192,000	$1,248.00	$1.72	07.27.2011	170.56	0.02	12.54	$183.12	$1,317.71
9	08/15/2011	$160.00	113,833	11,383,300	295,800	72,000	223,800	$1,407.00	$1.92	08.26.2011	171.83	0.02	12.63	$184.48	$1,485.67
10	09/15/2011	$160.00	115,732	11,573,200	189,900	72,000	117,900	$877.50	$1.23	09.26.2011	167.60	0.01	12.32	$179.93	$926.36
11	10/17/2011	$160.00	117,685	11,768,500	195,300	72,000	123,300	$904.50	$1.27	10.26.2011	167.81	0.01	12.33	$180.15	$954.89
12	11/16/2011	$160.00	118,340	11,834,000	65,500	65,500	0	$262.00	$0.43	11.28.2011	162.62	0.00	11.95	$174.57	$276.28
13	12/17/2011	$160.00	118,340	11,834,000	0	0	0	$0.00	$0.00	12.26.2011	160.00	0.00	11.76	$171.76	$0.00
14	01/15/2012	$160.00	118,593	11,859,300	25,300	25,300	0	$101.20	$0.16	01.27.2012	160.00	0.00	11.76	$171.76	$107.79
15	02/15/2012	$160.00	118,847	11,884,700	25,400	25,400	0	$101.60	$0.17	02.27.2012	160.02	0.00	11.76	$171.78	$108.20
16	03/15/2012	$160.00	119,100	11,910,000	25,300	25,300	0	$101.20	$0.16	03.25.2012	161.01	0.00	11.83	$173.02	$106.72
17	04/17/2012	$160.00	119,943	11,994,300	84,300	72,000	12,300	$349.50	$0.55	04.27.2012	163.37	0.01	12.01	$175.39	$368.65
18	05/16/2012	$160.00	121,076	12,107,600	113,300	72,000	41,300	$494.50	$0.74	05.25.2012	164.53	0.01	12.09	$176.63	$521.81
19	06/17/2012	$160.00	123,084	12,308,400	200,800	72,000	128,800	$932.00	$1.31	06.25.2012	168.03	0.01	12.35	$180.39	$983.94
20	07/17/2012	$160.00	125,874	12,587,400	279,000	72,000	207,000	$1,323.00	$1.81	07.27.2012	171.16	0.02	12.58	$183.76	$1,396.94
21	08/15/2012	$160.00	128,238	12,823,800	236,400	72,000	164,400	$1,110.00	$1.54	08.27.2012	169.46	0.02	12.46	$181.94	$1,171.94
22	09/18/2012	$160.00	130,289	13,028,900	205,100	72,000	133,100	$953.50	$1.33	09.26.2012	168.20	0.01	12.36	$180.57	$1,006.65
23	10/16/2012	$160.00	132,147	13,214,700	185,800	72,000	113,800	$857.00	$1.21	10.26.2012	167.43	0.01	12.31	$179.75	$904.72
24	11/14/2012	$160.00	134,088	13,408,800	194,100	72,000	122,100	$898.50	$1.26	11.26.2012	167.76	0.01	12.33	$180.10	$948.55
25	12/15/2012	$160.00	134,088	13,408,800	0	0	0	$0.00	$0.00	12.26.2012	160.00	0.00	11.76	$171.76	$0.00
26	01/16/2013	$160.00	134,088	13,408,800	0	0	0	$0.00	$0.00	01.28.2013	160.00	0.00	11.76	$171.76	$0.00
27	02/16/2013	$160.00	134,088	13,408,800	0	0	0	$0.00	$0.00	02.27.2013	160.00	0.00	11.76	$171.76	$0.00
28	03/14/2013	$160.00	134,088	13,408,800	0	0	0	$0.00	$0.00	03.26.2013	160.00	0.00	11.76	$171.76	$0.00
29	04/17/2013	$160.00	135,272	13,527,200	118,400	72,000	46,400	$520.00	$0.77	04.26.2013	164.74	0.01	12.11	$176.86	$548.74
30	05/17/2013	$160.00	138,250	13,825,000	297,800	72,000	225,800	$1,417.00	$1.94	05.28.2013	171.91	0.02	12.64	$184.57	$1,496.23
31	06/14/2013	$160.00	141,618	14,161,800	336,800	72,000	264,800	$1,612.00	$2.19	06.26.2013	173.47	0.02	12.75	$186.24	$1,702.21
32	07/17/2013	$160.00	145,643	14,564,300	402,500	72,000	330,500	$1,940.50	$2.62	07.26.2013	176.10	0.03	12.95	$189.08	$2,049.19
33	08/16/2013	$160.00	149,468	14,946,800	382,500	72,000	310,500	$1,840.50	$2.49	08.26.2013	175.30	0.02	12.89	$188.21	$1,943.57
34	09/14/2013	$160.00	151,927	15,192,700	245,900	72,000	173,900	$1,157.50	$1.60	09.27.2013	169.84	0.02	12.48	$182.34	$1,222.11
35	10/17/2013	$160.00	155,393	15,539,300	346,600	72,000	274,600	$1,661.00	$2.25	10.28.2013	173.86	0.02	12.78	$186.66	$1,753.97
36	11/15/2013	$160.00	157,649	15,764,900	225,600	72,000	153,600	$1,056.00	$1.47	11.26.2013	169.02	0.01	12.43	$181.46	$1,114.92
37	12/17/2013	$160.00	157,649	15,764,900	0	0	0	$0.00	$0.00	12.26.2013	160.00	0.00	11.76	$171.76	$0.00
38	01/19/2014	$160.00	157,649	15,764,900	0	0	0	$0.00	$0.00	01.26.2014	160.00	0.00	11.76	$171.76	$0.00
39	02/18/2014	$160.00	157,649	15,764,900	0	0	0	$0.00	$0.00	02.26.2014	160.00	0.00	11.76	$171.76	$0.00
40	03/19/2014	$160.00	157,825	15,782,500	17,600	17,600	0	$70.40	$0.11	03.26.2014	160.70	0.00	11.81	$172.51	$74.24
41	04/17/2014	$160.00	163,166	16,316,600	534,100	72,000	462,100	$2,598.50	$3.47	04.26.2014	181.36	0.03	13.33	$194.72	$2,744.23
42	05/16/2014	$160.00	166,482	16,648,200	331,600	72,000	259,600	$1,586.00	$2.16	05.27.2014	173.26	0.02	12.74	$186.02	$1,674.74
43	06/18/2014	$160.00	170,500	17,050,000	401,800	72,000	329,800	$1,937.00	$2.61	06.25.2014	176.07	0.03	12.94	$189.04	$2,045.49
44	07/17/2014	$160.00	174,178	17,417,800	367,800	72,000	295,800	$1,767.00	$2.39	07.27.2014	174.71	0.02	12.84	$187.57	$1,865.93
45	08/19/2014	$160.00	175,595	17,559,500	141,700	72,000	69,700	$636.50	$0.92	08.26.2014	165.67	0.01	12.18	$177.86	$671.80
46	09/16/2014	$160.00	180,397	18,039,700	480,200	72,000	408,200	$2,329.00	$3.12	09.26.2014	179.21	0.03	13.38	$195.62	$2,459.55
47	10/17/2014	$160.00	184,272	18,427,200	387,500	72,000	315,500	$1,865.50	$2.52	10.26.2014	175.50	0.03	12.89	$188.42	$1,969.96
48	11/18/2014	$160.00	186,731	18,673,100	245,900	72,000	173,900	$1,157.50	$1.60	11.26.2014	169.84	0.02	12.48	$182.34	$1,222.11
49	12/16/2014	$160.00	187,295	18,729,500	56,400	56,400	0	$225.60	$0.37	12.26.2014	162.26	0.00	11.92	$174.18	$237.89
50	01/16/2015	$160.00	187,295	18,729,500	0	0	0	$0.00	$0.00	01.26.2015	160.00	0.00	11.76	$171.76	$0.00
51	02/18/2015	$160.00	187,295	18,729,500	0	0	0	$0.00	$0.00	02.26.2015	160.00	0.00	11.76	$171.76	$0.00
52	03/21/2015	$160.00	187,295	18,729,500	0	0	0	$0.00	$0.00	03.26.2015	160.00	0.00	11.76	$171.76	$0.00
53	04/18/2015	$160.00	190,181	19,018,100	288,600	72,000	216,600	$1,371.00	$1.88	04.27.2015	171.54	0.02	12.60	$184.16	$1,447.64
54	05/19/2015	$160.00	193,595	19,359,500	341,400	72,000	269,400	$1,635.00	$2.22	05.26.2015	173.66	0.02	12.76	$186.44	$1,726.49
55	06/16/2015	$160.00	197,035	19,703,500	344,000	72,000	272,000	$1,648.00	$2.24	06.26.2015	173.76	0.02	12.77	$186.55	$1,740.23
56	07/17/2015	$160.00	201,723	20,172,300	468,800	72,000	396,800	$2,272.00	$3.05	07.27.2015	178.75	0.03	13.13	$191.91	$2,399.35
57	08/18/2015	$160.00	204,321	20,432,100	259,800	72,000	187,800	$1,227.00	$1.69	08.26.2015	170.39	0.02	12.52	$182.93	$1,295.53
58	09/16/2015	$160.00	207,278	20,727,800	295,700	72,000	223,700	$1,406.50	$1.92	09.26.2015	171.83	0.02	12.63	$184.48	$1,485.13
59	10/16/2015	$160.00	210,486	21,048,600	320,800	72,000	248,800	$1,532.00	$2.09	10.26.2015	172.83	0.02	12.70	$185.55	$1,617.70
60	11/18/2015	$160.00	211,195	21,119,500	70,900	70,900	0	$283.60	$0.46	11.26.2015	162.84	0.00	11.97	$174.81	$299.05
61	12/17/2015	$160.00	211,195	21,119,500	0	0	0	$0.00	$0.00	12.28.2015	160.00	0.00	11.76	$171.76	$0.00
62	01/17/2016	$160.00	211,195	21,119,500	0	0	0	$0.00	$0.00	01.26.2016	160.00	0.00	11.76	$171.76	$0.00
63													Total Under-Billing		$54,172.02
64															
65					Note 1- June 2009 Tariff for 2" Meter: First 72,000 g $4/1000 g; Above 72,000 g $5/1000 g; Meter Charge $160										
66					Note 2- Under-Billing = (Meter Charge + Water $ - Water charge) * 1.0635 + (ACC Tax - Gallon Tax)										
67					Note 3- Sales Tax in 2011, 2012 & 2013 was 7.35%. Sales Tax in 2014, 2015 & 2016 is 6.35%.										
68					Note 4- Columns J, K, L, M & N represent the Original Billing to TRR POA.										