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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission

DOCKETED

DEC 07 2016

DOCKETED BY

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-16-0409

OPPOSITION TO ICR WATER USERS ASSOCIATION'S MOTION TO DISMISS AND, IN THE ALTERNATIVE, MOTION TO STAY

The Talking Rock Ranch Association for Community Preservation (the "Association") hereby files this Opposition to ICR Water Users Association, Inc.'s ("ICRWUA") Motion to Dismiss, and in the alternative, Motion to Stay, in the above-captioned proceeding. The Arizona Corporation Commission ("Commission") should deny both of ICRWUA's motions because the Commission has exclusive jurisdiction to resolve the current billing dispute between the Association and ICRWUA, as well as grant any such relief that it determines will serve the public interest.

DISCUSSION

I. The Commission Has Subject Matter Jurisdiction Over the Current Billing Dispute between the Association and ICRWUA.

Article 15, Section 6 of the Arizona Constitution allows the Arizona legislature to enlarge the powers and extend the duties of the Commission.¹ This provision also allows the Commission to make rules and regulations to govern proceedings instituted by and

¹ See *Corporation Com'n v. Pacific Greyhound Lines* (1939), 54 Ariz. 159, 94 P.2d 443

1 before it. The Arizona legislature has enacted A.R.S. § 40-246(A), which grants to the
2 Commission the power to conduct hearings, either upon its own motion or by any person
3 filing a complaint, to address allegations that a public service corporation has violated one
4 or more provisions of any law, order or rule of the Commission.

5 Title 14, Chapter 3, Article 1 of the Arizona Administrative Code (“A.A.C.”) sets
6 forth the Rules of Practice and Procedure (“Procedural Rules”) before the Commission.
7 These Procedural Rules “shall govern in all cases before the Commission, including but
8 not limited to those arising out of Article XV of the Arizona Constitution, or Titles 10, 40,
9 or 44 of the Arizona Revised Statutes.”² By contrast, the Arizona Rules of Civil
10 Procedural will only apply in cases where procedure is not set forth in law, the Procedural
11 Rules or any regulations or orders of the Commission. As more fully detailed below,
12 ICRWUA’s reliance on Rules 12(b)(1) and (6) and 7.1 of the Arizona Rules of Civil
13 Procedure is misplaced since this proceeding is governed by the Commission’s own
14 Procedural Rules.

15 A. Procedural Rules.

16 Commission Rule A.A.C. R14-3-106(M) governs informal complaints handled by
17 the Commission. Dissatisfied with ICRWUA’s explanations and lack of transparency
18 regarding the disputed amount of the Association’s water bill from 2011 through January
19 2016, the Association filed an informal complaint with the Commission pursuant to
20 A.A.C. R14-3-106(M)(1). ICRWUA participated in the informal complaint process.
21 According to A.A.C. R14-3-106(M)(2):

22 “Informal complaints may be handled by the Commission or its
23 staff, by correspondence or otherwise, with the parties affected in an
24 endeavor to bring about a speedy adjustment of the complaint *without a*
25 *formal hearing*. Informal procedure is recommended in all cases except
those which clearly cannot be adjusted informally. Proceedings on

26 ² A.A.C. R14-3-101(A).

1 informal complaints will be conducted *without prejudice to the*
2 *complainant's right to file and prosecute a formal complaint* if the matter
3 cannot be properly adjusted informally, in which event the proceeding on
4 the informal docket will be discontinued. *A formal complaint must*
thereafter be filed if a hearing is desired." [Emphasis added].

5 After several months of discussion, the Association and ICRWUA were unable to
6 reach a resolution. The Association now desires a hearing in this matter, and has filed the
7 requisite Complaint pursuant to A.A.C. R14-2-106(M)(2) and A.A.C. R14-3-106(L) of the
8 Procedural Rules. At the conclusion of the informal process, Staff forwarded the
9 Association a formal complaint form with a specific complaint number, a copy of which is
10 attached hereto as **Exhibit 1**.³

11 In adopting A.A.C. R14-3-106(L) and A.A.C. R14-3-106(M), the Commission set
12 forth a specific procedural guideline for handling complaints between customers and
13 public service corporations, including any that requires the Commission to conduct a
14 formal hearing pursuant to A.R.S. § 40-246. The Association has followed the
15 Commission's own procedural guidelines in seeking to resolve the billing dispute, both
16 informally and now formally, and a hearing should be scheduled as required by A.R.S. §
17 40-246 and the Procedural Rules.

18 B. The Complaint Does Not Involve a Contract Dispute.

19 The Association has not alleged any breach of contract in its Complaint. By
20 characterizing the current billing dispute and allegations concerning violations of
21 Commission rules and orders as "part of a contract between [ICRWUA] and the
22 Association," ICRWUA seeks to capitalize on a long line of Arizona case law holding that
23 contract disputes are left to the exclusive jurisdiction of Arizona courts. The facts in this
24 proceeding demonstrate that ICRWUA's reliance on these cases is once again misplaced.

25
26 ³ See also, Consumer Complaint Process, <http://www.azcc.gov/divisions/utilities/cons/index.asp>

1 There is no written contract for service between the Association and ICRWUA.
2 The Association takes water utility service from ICRWUA pursuant to Commission
3 approved tariffs. The “contract” cases cited by ICRWUA all involved a dispute over a
4 written contract between the parties. In *General Cable Corp. v. Citizens Utilities Co.*, 27
5 Ariz. App. 381, 555 P.2d 350 (1976) the contract at issue involved a special contract
6 negotiated between the parties outside of standard service. There is no such special
7 contract in this proceeding. Likewise, the contract at issue in *Trico Elec. Coop. v.*
8 *Ralston*, 67 Ariz. 358 (1948) included an option agreement for the sale and purchase of
9 electrical transmission and distribution lines and water facilities.

10 Knowing that there is no special contract for service between it and the Association
11 at issue in the Complaint, ICRWUA attempts to bootstrap its own tariffs as “part of a
12 contract between it and the Association” in citing two other cases: *U.S. Airways, Inc. v.*
13 *Qwest Corp.*, 238 Ariz. 413, 416 ¶ 11 (App. 2015), which involves a suit for damages by a
14 non-customer against Qwest based on negligence for severing a telecommunications cable
15 serving a data center (the question before the court was whether limitations on liability
16 found in tariffs extend to a non-customer); and *Sommer v. Mountain States Tel. & Tel.*
17 *Co.*, 21 Ariz. App. 385, 388 (1974), in which a customer entered into a separate
18 agreement with the telephone company for intercept service (due to a change in telephone
19 number) until new telephone directories were distributed.

20 The fundamental issues in this case involve the current billing dispute and
21 allegations concerning ICRWUA’s violation of Commission rules and orders – not the
22 enforcement of charges based on a phantom contract between ICRWUA and the
23 Association.

24 **II. The Association Has Stated a Claim Upon Which the Commission Can Grant**
25 **Relief.**

26 The Association does not dispute ICRWUA’s current tariffed rates and charges,

1 which were established as a result of its last rate case in Decision No. 70977. What the
2 Association does dispute is the amount ICRWUA alleges is due and owing. As set forth
3 in the Complaint, ICRWUA initially determined that it had underbilled the Association
4 \$96,609.00 from January 2005 through January 2016, but could only collect \$64,638.00.
5 After some due diligence by the Association, ICRWUA amended the alleged underbilled
6 amount to \$54,172.02. The Association does not believe that ICRWUA has, to date,
7 provided sufficient evidence to substantiate the alleged outstanding amount.

8 A hearing in this matter will allow the Association to conduct discovery and
9 present evidence to the Commission concerning the disputed amount of the underbilling.
10 For instance, the Association has not had the opportunity to review ICRWUA's complete
11 records and determine whether there was an issue with the meter during the time of the
12 alleged underbilling. If there was an error, and it was the result of a faulty meter, then the
13 provisions of A.A.C. R14-2-408(E) would apply, limiting ICRWUA's recovery to only
14 three months of previous billings.

15 Furthermore, the Association has a right to conduct discovery and present evidence
16 concerning alleged violations of A.A.C. R14-2-409(D)(1) and Decision No. 70977. The
17 Commission has already expressed a concern about IRCWUA's "lack of knowledge"
18 and/or "contempt" for the Commission's process, and ICRWUA's current attempt to
19 resolve the billing dispute in Yavapai Superior Court rather than at the Commission
20 should only reinforce that concern. In its Motion, ICRWUA alleges that the Association
21 filed its November 4, 2016 Complaint with the Commission "in response" to the civil
22 action filed by ICRWUA on October 27, 2016. However, ICRWUA became fully aware
23 on October 14, 2106 – approximately two weeks *prior to* filing its own civil action – that
24 the Association intended to file its Complaint with the Commission. See **Exhibit 2**
25 (October 14, 2016 email from Association to ICRWUA rejecting ICRWUA's proposal
26 and communicating intent to file formal complaint).

1 ICRWUA makes the same blatant misrepresentation of the facts in a November 28,
2 2016 letter to its members, attached hereto as **Exhibit 3**. In the letter, ICRWUA also
3 claims – as it has in the Motion to Dismiss – that during the three months Commission
4 Staff informally mediated the billing dispute, Staff never suggested that the amount billed
5 was not due and owing, and in fact supported ICRWUA’s proposed resolution. This is
6 pure hearsay, especially since Staff does not take a position on behalf of any party during
7 the informal complaint process. The Commission should not look to ICRWUA to make a
8 factual determination about Commission Staff’s position on the current billing dispute, or
9 the Association’s allegations that ICRWUA has violated Commission rules and orders.
10 These determinations should be made based on evidence presented during the hearing.

11 The Commission has broad power to grant relief that will serve the public interest.
12 It can find that the evidence does not support ICRWUA’s claim that the Association owes
13 the full \$54,172.02 in alleged underbilling. Alternatively, the Commission could find
14 ICRWUA in violation of A.A.C. R14-2-408(D)(1) and/or Decision No. 70977 in
15 negligently failing to charge the Association the correct rate under the applicable tariff.
16 By its own admission, ICRWUA failed to do this until it sent the July 1, 2016 invoice
17 with an outstanding balance of \$54,172.02, which may or may not be correct.⁴

18 **III. ICRWUA’s Motion to Stay Should Be Denied**

19 As already addressed herein, the Commission has the exclusive jurisdiction to
20 resolve the billing dispute and allegations of ICRWUA’s violations of Commission rules
21 and order. ICRWUA’s Motion to Stay is moot. The Association will be bound to the
22 Commission’s decision in this matter. If there is an outstanding balance and the
23 Association does not pay, only then should ICRWUA seek to enforce payment either
24 through the Commission’s rules regarding termination of water service or civil action.

25
26 ⁴ See ICRWUA Motion to Dismiss at 4, lns. 17-19.

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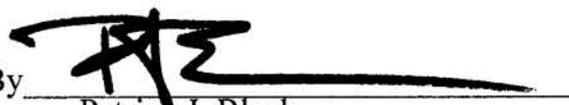
CONCLUSION

The Commission's jurisdiction in this matter is clear. The informal and formal complaint process is codified in A.A.C. R14-3-106(L) and A.A.C. R14-3-106(M). ICRWUA participated in the informal complaint process, and is bound by the provisions of A.A.C. R14-3-106(M)(2). These rules require that the Association file a formal complaint if it desires a hearing to address its unresolved billing dispute with ICRWUA. The Association has alleged in its Complaint, filed pursuant to A.R.S. § 40-246(A) and A.A.C. R14-3-106(L), that ICRWUA is: (i) in violation of Commission rules and a previous Commission order regarding billing for water service; and (ii) failed to properly substantiate the alleged underbilling from 2011 to January 2016. ICRWUA's reliance on the Arizona Rules of Civil Procedure, and Arizona case law regarding the Commission's lack of jurisdiction over contractual disputes should be rejected for the reasons stated herein.

The Association respectfully urges the Commission to deny ICRWUA's Motion to Dismiss and Motion to Stay and allow the discovery and hearing process to continue.

RESPECTFULLY SUBMITTED this 7th day of December, 2016.

FENNEMORE CRAIG, P.C.

By 
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1 ORIGINAL and thirteen (13) copies
2 filed on December 7, 2016 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington St.
6 Phoenix, AZ 85007

7 COPY of the foregoing mailed/hand-delivered
8 This 7th day of December, 2016 to:

9 Marc Stern, Hearing Division
10 Arizona Corporation Commission
11 1200 W. Washington St.
12 Phoenix, AZ 85007

13 Matthew Laudone, Legal Division
14 Arizona Corporation Commission
15 1200 W. Washington St.
16 Phoenix, AZ 85007

17 William P. Sullivan
18 Law Offices of William P. Sullivan, PLLC
19 501 E. Thomas Road
20 Phoenix, Arizona 85012
21 Attorneys for ICR WATER USERS ASSOCIATION

22 By: *WPS*

23 12338285

24
25
26



ARIZONA CORPORATION COMMISSION

Filing Requirements

ALL FILINGS REQUIRE

- 1.) An original + 13 copies
- 2.) The Docket number **MUST** be on all copies of the filing [to include the Cover Sheet].
 - a) The exception is a New Application.
- 3.) All copies must be properly collated.
 - a) Please do not send stacks of documents for Docket to collate.
- 4.) No confidential or proprietary information will be docketed.
 - a) If you must file confidential information, you must make prior arrangements with the Hearing or Legal Division(s).
 - b) It is also the filing parties' responsibility to remove or redact any personal information that would not be appropriate for public view.
- 5.) All documents must be filed on 8-1/2" x 11" paper – **NO EXCEPTIONS.**
(Additional copies to be distributed to parties may be larger if necessary, please contact Docket Control 602-542-3477 for more information.)
- 6.) If the filing is for an existing Docket, the filing party must mail the filed document to **ALL** parties on the Service List (see E-Docket for copy of Service List).

COVER SHEETS ARE NO LONGER REQUIRED

If you have any questions concerning the filing of documents please contact Docket Control at (602) 542-3477.

FORMAL COMPLAINT FILING PROCEDURE

- A. Customer Service Section enters complaint number.
- B. The complaint shall be in writing containing the name and address of the person or entity filing the complaint (Complaint). If necessary, use additional pages provided.
- C. The complaint shall list the name of utility company or person whom the complaint was made against.
- D. The Complaint shall be a COMPLETE statement indicating the date or dates of actions transpired, along with all related documentation associated with the complaint.
- E. The complaint shall describe in detail the nature of relief sought.
- F. The Complaint should be signed by either:
 - 1. Complainant, or,
 - 2. One of the Complainants if more than one, or,
 - 3. The Officer of the Complainant, if Complainant is a corporation, association, or other organization, or for the Complainant by an agent or attorney. (If by attorney, his name and address shall appear in the complaint and he shall sign the complaint).
- G. The original and thirteen (13) copies of formal documents, including the complaint, shall be filed with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
- H. Docket Control will send one of the copies by certified mail to the utility company that the complaint is made against.
- I. An answer or response to the complaint is required to be made by the utility to the Commission within twenty (20) days after the date the complaint is filed with the Commission.
- J. All testimony considered by the Commission in formal hearings shall be under oath, except matter of which judicial notice is taken or entered by stipulation.
- K. Complainants carry the burden of proof. The Complainant must provide evidence as to the Rules, Statutes, and/or Tariffs that they believe the utility company has violated.

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tion for leave to intervene shall be granted where by so doing the issues theretofore presented will be unduly broadened, except upon leave of the Commission first had and received. Upon the granting of an application to intervene by the Commission or the presiding officer, the intervening person shall thereafter be designated an "Intervenor".

- C. Other appearances. Notwithstanding the provisions of subsections R14-3-105(A) and R14-3-105(B), any consumer or prospective consumer may appear at any proceeding and make a statement on his own behalf, at a time designated by the Commission or presiding officer. A person so appearing shall not be deemed a party to the proceedings. When two or more interested persons under this rule have substantially like interests and positions, the presiding officer may declare them a class of interested persons for purposes of the hearing. The members of the class shall designate to be spokesman for the class one of their number, or his attorney, or such greater of their number, or attorneys, as the presiding officer shall determine. More than one class may be established for a hearing.

Historical Note

Former Section R14-3-105 repealed, new Section R14-3-105 adopted effective December 17, 1975 (Supp. 75-2).

R14-3-106. Formal documents, requirement and timeliness, motions, informal complaints and protests

- A. Formal documents. Formal documents include applications, complaints, answers, motions, replies and protests.
- B. Verification. Applications, complaints and answers need not be verified unless required by law.
- C. Form. Formal documents shall be typewritten, reproduced or printed, properly captioned and signed by an appropriate authorized individual, officer or attorney. Formal documents shall state the name and address of each party thereto and shall clearly identify the proceedings by docket number and title.
- D. Defective filing. No case need be set for hearing wherein any data required by statute or by General Order of this Commission has not been furnished by applicant.
- E. Amendments to formal documents. The Commission or presiding officer, in his discretion, may allow any formal document to be amended or corrected. Formal documents will be liberally construed and defects which do not affect substantial rights of the parties will be disregarded. The Commission or presiding officer shall cause parties or formal documents to be redesignated whenever necessary in accordance with these rules.
- F. Applications. A request for a right, authority or other affirmative relief (other than by complaint or counterclaim) or a request for leave to intervene shall be designated an "Application". The application shall set forth the name and post office address of the applicant and shall contain the facts upon which the application is based, with such exhibits as may be required or deemed appropriate by the applicant.
- G. Application for rehearing. A request for rehearing, filed either under R14-3-111 or R14-3-112, shall be designated as an "Application for Rehearing". Applications filed under R14-3-111 shall be governed by the provisions of that rule and A.R.S. § 40-253. Applications filed under R14-3-112 shall be governed by that rule.
- H. Answers. Answers to complaints are required and must be filed within 20 days after the date on which the complaint is served by the Commission, unless otherwise ordered by the Commission. All answers shall be full and complete and shall admit or deny specifically and in detail each allegation of the complaint to which such answer is directed. The answer shall include a motion to dismiss if a party desires to challenge the sufficiency of the complaint.
- I. Protests. Unless otherwise provided by special order of the Commission, a person who may be adversely affected by an application shall have the right to file a written protest with the Commission or be heard orally as a protestant at a public hearing.
- J. Response to application when required by Commission. After the filing of an Application, the Commission in its discretion may make any public service corporation or other person subject to its jurisdiction, a party to the proceedings and may require such person or corporation to respond to the allegations of the Application.
- K. Motions. Motions shall conform insofar as practicable with the Rules of Civil Procedure for the Superior Court of the state of Arizona.
- L. Formal complaints. Complaints shall be in writing and shall contain the name and address of the complainant, the name of the person or company against whom complaint is made, a complete statement of the grounds for said complaint, indicating the date or dates of the commission or omission of the acts or things complained of, and the nature of the relief sought by the complainant. The complaint shall be signed by the complainant, or by one of the complainants if there be more than one, or by an officer of the complainant if the complainant be a corporation, association or other organization, or for the complainant by an agent or attorney. If the complainant has an attorney, his name and address shall appear in the complaint and he shall sign the complaint.
- M. Informal complaints
1. Informal complaints may be made by letter or other writing. No particular form is required; however, the writing must clearly state the matters complained of and must satisfactorily identify the party complained against. It need not be verified but must be signed by the complainant or attorney and show the address of the complainant and his attorney if he has one.
 2. Informal complaints may be handled by the Commission or staff, by correspondence or otherwise, with the parties affected in an endeavor to bring about a speedy adjustment of the complaint without formal hearing. Informal procedure is recommended in all cases except those which clearly cannot be adjusted informally. Proceedings on informal complaints will be conducted without prejudice to the complainant's right to file and prosecute a formal complaint if the matter cannot be properly adjusted informally, in which event the proceeding on the informal docket will be discontinued. A formal complaint must thereafter be filed if a hearing is desired.

Historical Note

Former Section R14-3-106 repealed, new Section R14-3-106 adopted effective December 17, 1975 (Supp. 75-2). Amended effective March 13, 1979 (Supp. 79-2).

R14-3-107. Filing and service of formal documents

- A. Formal documents. An original and three legible copies of all formal documents shall be filed with the Commission. One copy shall be served on any person who is already a party to the proceeding. In addition, the Commission may direct that a copy of any such documents shall be made available by the party filing same to any person whom the Commission may specify.
- B. Manner of service. Except as provided in R14-3-103(B) or unless otherwise ordered by the Commission or otherwise provided by law, all notices, orders to show cause, opinions and orders required to be served by the Commission and all documents filed by any party may be served by mail, and service thereof shall be deemed complete when a true copy of such

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paper or document, properly addressed and stamped, is deposited in the United States mail with first class postage prepaid.

- C. Proof of service. There shall appear on all documents required to be served by a party an acknowledgement of service or the following certificate:

I hereby certify that I have this day served the foregoing documents on all parties of record in this proceeding (by delivering a copy thereof in person to _____)

(By mailing a copy thereof, properly addressed with first class postage prepaid to _____)

Dated at _____, Arizona,
this ____ day of _____, 19 ____

(Signature)

Historical Note

Former Section R14-3-107 repealed, new Section R14-3-107 adopted effective December 17, 1975 (Supp. 75-2).

R14-3-108. Prehearing conference

- A. Procedure. The Commission or presiding officer upon its own motion or upon motion of any party and upon written notice to all parties of record, may direct that a prehearing conference shall be held for the purposes of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepared expert testimony, limitation of number of witnesses and consolidation of the examination of witnesses, procedure at the hearing and such other matters which may expedite orderly conduct and disposition of the proceedings or settlements thereof.
- B. Action taken. The action taken at such conference and the agreements made by the parties concerned shall be made a part of the record and, if approved by the parties, such action will control the course of subsequent proceedings, unless modified at the hearing by the presiding officer.
- C. Recessing hearing for conference. In any proceeding the presiding officer, in his discretion, may call all parties together for a conference prior to the taking of testimony, or may recess the hearing for such conference, with the view of carrying out the purpose of this rule. The presiding officer shall state on the record the results of such conference.

Historical Note

Former Section R14-3-108 repealed, new Section R14-3-108 adopted effective December 17, 1975 (Supp. 75-2).

R14-3-109. Hearings, prehearings, conduct of hearings, procedure, evidence, subpoenas, briefs, arguments, official notice and rulings

- A. Procedure. Hearings will be held before one or more Commissioners, one or more Hearing Officers, or any combination thereof. Notice of the place, date and hour of the hearing will be served by the Commission at least ten days before the time set therefor, unless otherwise provided by law or as ordered by the Commission.
- B. Publication of notice of hearings. Publication of notice of hearings shall be as required by law or as ordered by the Commission in a particular proceeding. If publication is required, affidavit of publication shall be filed with the Arizona Corporation Commission at or prior to the time of initial hearing.
- C. Dismissal of proceeding. The Commission may dismiss the application or complaint with or without prejudice or may recess said hearing for a further period to be set by the Commission. A single Commissioner or a Hearing Officer may adjourn or recess a hearing at any time to submit a recommen-

ation to the Commission to dismiss the proceeding, or may recess said hearing for a further period to be set by the Commission.

- D. Preliminary procedure. The presiding officer shall call the proceeding for hearing and proceed to take the appearances and act upon any pending motions or applications. The parties may then make opening statements if they desire.
- E. Conduct at hearings. All parties to hearings, their counsel and spectators will conduct themselves in a respectful manner. Smoking shall not be permitted at formal hearings of the Commission.
- F. Testimony under oath. All testimony to be considered by the Commission in formal hearings shall be under oath, except matters of which judicial notice is taken or entered by stipulation.
- G. Order of procedure. Applicants or complainants (each of whom must carry the burden of proof) shall present their evidence and then such parties as may be opposing the application or complaint shall submit their evidence. The presiding officer shall determine the order in which parties shall introduce their evidence. Intervenor shall, insofar as possible, follow the party with respect to whom their interests are most closely identified. If the intervention is not in support of either original party, the presiding officer shall designate at which stage such intervenors shall be heard. Evidence will ordinarily be received in the following order unless otherwise directed by the presiding officer:

Upon applications

Applicant
Intervenor or protestants
Commission staff

Upon formal complaints

Complainant
Respondent
Commission staff
Intervenor

Upon complaints by Commission

Commission staff
Respondent
Intervenor

Examination of witnesses shall proceed as follows:

Direct examination by applicant
Cross-examination by each protestant or intervenor
Cross-examination by staff
Examination by presiding officer of Commissioners
Re-direct examination by applicant
Re-cross examination as permitted by the presiding officer
Examination by presiding officer or Commissioners
Opening and closing statements may be allowed

- Once a party has rested his case he shall not be allowed to introduce further evidence without consent of the presiding officer.
- H. Consolidation. The Commission or the presiding officer may consolidate two or more proceedings in one hearing when it appears that the issues are substantially the same and that the rights of the parties will not be prejudiced by such procedure. At such consolidated hearing the presiding officer shall determine the order in which all the parties shall introduce their evidence and which party or parties shall open and close.
- I. Limiting number of witnesses. To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue.
- J. Stipulations. With the approval of the presiding officer, the parties may stipulate as to any fact at issue, either by written stipulation introduced in evidence as an exhibit or by oral

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- statement shown upon the record and such stipulation shall be binding upon all parties thereto. The Commission or presiding officer, may, however, require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties.
- K. Rules of evidence. In conducting any investigation, inquiry or hearing, neither the Commission nor any officer or employee thereof shall be bound by the technical rules of evidence, and no informality in any proceeding or in the manner of taking of testimony shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Commission. Rules of evidence before the Superior Court of the state of Arizona will be generally followed but may be relaxed in the discretion of the Commission or presiding officer when deviation from the technical rules of evidence will aid in ascertaining the facts.
- L. Documentary evidence. Unless otherwise ordered by the Commission or presiding officer and if practicable, exhibits should be limited in size when folded to 8 1/2 x 11 inches. A copy of each documentary exhibit shall be furnished to each party of record present, and three additional copies shall be furnished for the use of the Commission unless the Commission or presiding officer otherwise directs. Where relevant and material matter offered in evidence is embraced in a written or printed statement, book or document of any kind containing other matter not material or relevant and not intended to be put in evidence, such statement, book or document in whole shall not be received or allowed to be filed, but counsel and other parties offering the same shall present in convenient and proper form for filing a copy of such material and relevant matter, or at the discretion of the presiding officer, read the same into the record, and that only shall be received and allowed to be filed as evidence and made a part of the record. Whenever practicable, or when ordered by the Commission or presiding officer, the parties shall interchange copies of exhibits before or at the hearing. Any documentary evidence offered, whether in the form of exhibit or introduced by reference, shall be subject to appropriate and timely objection.
- M. Prepared testimony. The Commission may order the prefiling and service of testimony and exhibits. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer, the court reporter, and all counsel or parties. Admissibility shall be subject to the rules governing oral testimony. If the presiding officer deems that substantial saving in time will result, he may direct prepared testimony be copied into the record without reading.
- N. Resolutions. Resolutions properly authenticated by the governing bodies of a governmental entity will be received in evidence if offered at the hearing by the president, secretary, or other proper person. Such resolutions shall be received subject to rebuttal by adversely affected parties as to either the authenticity of the resolution or the circumstances surrounding its procurement. Recitals of fact contained in resolutions shall not be deemed proof of those facts, and such resolutions shall only be received for the limited purpose of showing the expression of the official action of the resolving body with respect to the matter under consideration in the proceeding.
- O. Subpoenas. Subpoenas requiring the attendance of a witness from any place in the state of Arizona to any designated place of hearing for the purpose of taking testimony of such witnesses orally before the Commission may be issued upon application in writing. A subpoena may also command the person to whom it is directed to produce books, papers, documents or tangible things designated therein. The application for such subpoenas must specify, as clearly as possible, the books, waybills, papers, accounts or other documents desired.
- The Commission or presiding officer, upon motion made promptly and, in any event, at or before the time specified in the subpoena for compliance therewith may:
1. Quash the subpoena if it is unreasonable or oppressive, or
 2. Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued, of the reasonable cost of producing the books, waybills, papers, accounts or other documents desired.
- Witnesses who are summoned are entitled to the same fees as are paid for like service in the courts of the state of Arizona, such fees to be paid by the party at whose instance the witness is subpoenaed. If service of subpoena is made by an officer of the state or his deputy, such service shall be evidenced by his return thereon. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service the original subpoena shall be exhibited to the person served, shall be read to him if he is unable to read, and a copy thereof shall be left with him. The original subpoena, bearing or accompanied by the required return, shall be returned forthwith to the Commission.
- P. Depositions. The Commission, a Commissioner, or any party to any proceeding before it may cause the depositions of witnesses to be taken in the manner prescribed by law and of the civil procedure for the Superior Court of the state of Arizona.
- Q. Continuance. Either prior to hearing or during a hearing, and on a showing of good cause, a matter may be continued by the Commission or the presiding officer for submission of further or additional evidence or for any other proper purpose.
- R. Briefs. In any hearing, briefs may be ordered by the Commission or presiding officer to be filed within such time as may be allowed. Four copies of briefs shall be filed with the Commission and shall be accompanied by a proof of service showing service on other parties of record.
- S. Oral argument. Following the filing of briefs or upon contested motions, the presiding officer may set the matter for oral argument.
- T. Official notice. The presiding officer may take official notice of the following matters:
1. Rules, regulations, official reports, decisions and orders of the Commission and any regulatory agency of the state of Arizona.
 2. Contents of decisions, orders, certificates and permits issued by the Commission.
 3. Matters of common knowledge and technical or scientific facts of established character.
 4. Official documents, if pertinent, when properly introduced into the record of formal proceedings by reference; provided, however, that proper and definite reference to such document shall be made by the party offering the same and that the same is published and generally circulated so that an opportunity shall be given to all of the parties of interest at the hearing to examine the same and present rebuttal evidence.
 5. Such other matters as may be judicially noticed by the Courts of the state of Arizona.
- U. Reliance on other records in Commission's files. When a party desires to offer in evidence any portion of the testimony, exhibits, order, decision or record in any other proceeding before the Commission, such portion shall be plainly designated in the stenographic record and, if admitted, shall be deemed to be a part of the testimony in the immediate proceeding without physical production and marking for identification.
- V. Open hearings. All hearings conducted pursuant to these rules shall be open to the public.

Corporation Commission - Rules of Practice and Procedure

- W. Transcripts. The Commission will cause a stenographic record to be made of all public hearings. Parties desiring copies of such transcript may purchase same from the court reporter.
- X. Objections and rulings. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. The presiding officer shall rule on the admissibility of all evidence.
- Y. Offer of proof. An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained.
- Z. Documents in the docket file as evidence for the record. The docket file is a public record and, as such, is available and open to inspection to all. Any document in such file shall not be considered unless same is offered and accepted in evidence. Such document need not be produced as an exhibit but may be received in evidence by reference, provided that the particular portions of such document are specifically identified and are competent, relative and material. If testimony in proceedings other than the one being heard is offered in evidence, a copy thereof shall be presented as an exhibit, unless otherwise ordered by the presiding officer.

Historical Note

Former Section R14-3-109 repealed, new Section R14-3-109 adopted effective December 17, 1975 (Supp. 75-2).
Amended subsection (L) effective July 8, 1980 (Supp. 80-4).

R14-3-110. Hearing officer recommendations, service of recommendations, decision and orders

- A. Decisions. A proceeding is submitted for decision by the Commission after taking of evidence, the filing of briefs or the presentation of oral argument as may have been prescribed by the presiding officer.
- B. Recommendations of Hearing Officers. In a proceeding heard by a Hearing Officer, the Hearing Officer shall prepare his recommendation which may be in the form of an opinion and order, unless otherwise directed by the Commissioners. Such recommendation by the Hearing Officer shall become part of the Docket. Upon prior written request by a party to the Executive Secretary, a copy of such recommendation shall be sent to such party by the Executive Secretary. Such proposed order shall include recommended findings, conclusions, and order, which may be narrative form at the discretion of the Hearing Officer.
Any party to the proceeding may serve and file five copies of exceptions to the proposed order within ten days after service thereof. There shall be no reply to exceptions and the proposed order and any exceptions filed shall be submitted to the Commission for its consideration.
Any party to a proceeding may offer at the conclusion of the hearing, a proposed order, with Findings of Fact and Conclusions of Law for consideration by the Commission, or Hearing Officer.
- C. Service of orders. Except as otherwise provided by law, conformed copies of orders of the Commission shall be served by mailing copies thereof to the parties of record or their representatives or by personal service thereof.

Historical Note

Former Section R14-3-110 repealed, new Section R14-3-110 adopted effective December 17, 1975 (Supp. 75-2).

R14-3-111. Rehearings in cases relating to the regulation of public service corporations

All applications filed under A.R.S. § 40-253 for further hearings, rehearings, re-arguments, reconsideration or modification of orders issued in proceedings arising out of Article XV of the Constitution

or Title 40 of Arizona Revised Statutes with respect to the Commission's regulation of public service corporations shall be filed within 20 days from the date of the order of the Commission.

Historical Note

Former Section R14-3-111 repealed, new Section R14-3-111 adopted effective December 17, 1975 (Supp. 75-2).
Amended effective March 13, 1979 (Supp. 79-2).

R14-3-112. Rehearings in cases relating to the regulation of securities and corporations

- A. Except as provided in subsection (G), any party in a contested case before the Commission arising out of Title 10 or 44 of Arizona Revised Statutes, who is aggrieved by a decision rendered in such case may file with the Commission, not later than ten days after service of the decision, a written application for rehearing or review of the decision specifying the particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at his last known residence or place of business.
- B. An application for rehearing under this rule may be amended at any time before it is ruled upon by the Commission. A response may be filed within ten days after service of such application or amended application by any other party or the staff. The Commission may require the filing of written briefs upon the issues raised in the application and may provide for oral argument.
- C. A rehearing of the decision may be granted for any of the following causes materially affecting the moving party's rights:
 1. Irregularity in the proceedings before the Commission or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 2. Misconduct of the Commission, its staff or its hearing officer or the prevailing party;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing;
 7. That the decision is not justified by the evidence or is contrary to law.
- D. The Commission may affirm or modify the decision or grant a rehearing as to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
- E. The Commission, within the time for filing an application for rehearing under this rule, may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing on application of a party. After giving the parties notice and an opportunity to be heard on the matter, the Commission may grant an application for rehearing, timely served, for a reason not stated in the application. In either case, the order granting such a rehearing shall specify the ground therefor.
- F. When an application for rehearing is based upon affidavits, they shall be served with the application. An opposing party or the staff may within ten days after such service serve opposing affidavits.
- G. If in a particular decision the Commission makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace,

Subject: FW: HOA Account 9701001, Offer of Payment Schedule

-----Original Message-----

From: Kaline Hutchinson [<mailto:KHutchinson@hoamco.com>]
Sent: Friday, October 14, 2016 4:33 PM
To: Jimmy Stoner
Cc: Peter Burger; Clint Poteet; Deborah Reagan; William Meyer
Subject: RE: HOA Account 9701001, Offer of Payment Schedule

Hello Jimmy -

Thank you for taking the time to put this together. I apologize for the late hour, but wanted to get a response out today.

We sincerely regret being unable to settle this matter in a mutually agreeable way. After careful consideration, and based on counsel and our own fiduciary responsibility to the owners of Talking Rock, it is the Association's intention to proceed with the formal process available through the Arizona Corporation Commission. We will begin the process immediately.

Please let me know if you have any further questions.

Thank you.

Kaline Hutchinson
Community Association Manager

HOAMCO
T 928.776.4479, ext. 1124
khutchinson@hoamco.com
<https://protect-us.mimecast.com/s/nKnQBah03eYtm>

"How did we do?"
Let us know at HOAMCO Owner Satisfaction Questionnaire

"This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. This message contains confidential information and is intended only for the individual named. If you are not the named addressee, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient, you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited."

ICR Water Users Association
302 W. Willis Street, Suite 105,
Prescott, AZ 86301, PH 928-445-5606
November 28, 2016



Subject: Billing Dispute with Talking Rock Ranch Association for Community Preservation

Dear Members,

We hope you had a wonderful Thanksgiving. This letter provides basic background on an ongoing billing dispute with Talking Rock Ranch Association for Community Preservation (the "HOA").

Arizona Corporation Commission rule R14-2-409(D)(1) requires every water company to collect for all water delivered at its Commission approved rates. Unfortunately, when our billing system was upgraded, an incorrect multiplier was applied to the billing statements for an irrigation meter supplying the HOA. As a result, the HOA was under billed \$54,000 for the water it received from January 2011 through January 2016.

The Association notified the HOA of the under billing in February 2016. Our efforts to resolve the matter with a payment agreement were unsuccessful, despite the efforts of the Arizona Corporation Commission staff. The Commission staff became involved after the HOA filed an informal complaint with the Commission. The Commission staff never suggested to us that we should not be paid in full for all water delivered to the HOA.

In an effort to resolve the matter, we offered a multi-year payment agreement waiving interest and penalties, so long as payments were made timely. We understood Commission staff to support such a resolution. Our offers were rejected with the HOA seeking to pay only a modest percentage of the total amount due.

In late October, we filed a breach of contract claim against the HOA in Yavapai County Superior Court. Instead of immediately serving the complaint, we provided the HOA a copy of the complaint and offered them another opportunity to resolve the matter without litigation. In response, the HOA filed a formal complaint with the Commission.

While the Association remains open to resolving the matter through a mutually acceptable payment agreement, it is committed to securing full payment of the amount due for all water delivered to the HOA based upon the Commission approved rates. Therefore, your Association is pursuing payment through the superior court action and will respond to the HOA's Commission complaint by requesting it be dismissed or, alternatively, stayed pending the outcome the court action.

If you have any questions regarding this matter or any other Association matter, please contact the Association office or a member of the Association Board. We are here to serve you - our member/customers.

Sincerely,

Jimmy Stoner, President