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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

TOM FORESE, Chairman
BOB BURNS
ANDY TOBIN
BOYD DUNN
JUSTIN OLSON

IN THE MATTER OF:

STACEY CHAMPION, et al.,

Complainant,

v.

ARIZONA PUBLIC SERVICE COMPANY, an Arizona Public Service Corporation,

Respondent.

DOCKET NO. E-01345A-18-0002

ARIZONA PUBLIC SERVICE COMPANY'S RESPONSE TO COMMISSIONER LETTERS

On September 21, 2018, Commissioner Tobin filed a letter in this docket requesting clarity regarding whether the parties who settled APS's prior rate case are obligated under Paragraph 40.6 of that Settlement Agreement to defend the Settlement Agreement in this proceeding. On September 24, 2018, Commissioner Burns filed a letter in the docket offering his opinion regarding Commissioner Tobin's inquiry and

requesting the parties' perspective on the nature of Ms. Champion's claim in relation to Decision No. 76295.[1] This filing offers APS's response to both Commissioners' letters.

The settling parties are not obligated to participate in this proceeding because this proceeding does not and cannot directly challenge (much less undo) the Settlement Agreement underlying Decision No. 76295. Indeed, a direct challenge to a final Commission decision would be an impermissible collateral attack. Arizona law draws a very clear distinction between the grounds on which parties to an underlying Commission proceeding and non-parties can challenge a Commission decision:

> Parties to an administrative proceeding may seek judicial review on significantly broader grounds than litigants who collaterally attack a final decision. An aggrieved party to the underlying Commission proceedings, for example, might argue on appeal that the Commission's decisions were not supported by substantial evidence, were arbitrary and capricious, or were legally erroneous. In a collateral attack, though, the challengers may question only the Commission's jurisdiction.[2]

Ms. Champion was not a party to APS's last rate case, and thus can only challenge Decision No. 76295 by questioning the Commission's jurisdiction to enter that Decision. Messrs. Woodward and Gayer were parties to APS's rate case. Both sought rehearing of portions of Decision No. 76295 regarding issues unrelated to this proceeding. Mr. Woodward's appeal is currently pending.

By contrast, the greatest relief permitted by the statute on which Ms. Champion relies for her claim, A.R.S. § 40-246, for a challenge to the reasonableness of APS's rates, is a Commission order requiring APS to file of a new rate case. A.R.S. § 40-246 permits a challenge to the reasonableness of a public service corporation's rates if that challenge is signed by 25 consumers.[3] The statute does not expressly identify a remedy. A 1969 Attorney General Opinion, however, sheds light on the matter, making clear that

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[1] Commissioner Burns also requested that the parties' witnesses testify regarding these topics to create a record. Because Commissioner Burns' letter raised questions regarding issues of law, however, APS offers this written response.

[2] *Miller v. ACC*, 227 Ariz. 21, 24, ¶10 (2011).

[3] A.R.S. § 40-246 also permits a claim predicated on an allegation that a public service corporation has violated a law or Commission decision. The violation of a law or Commission decision may give rise to other remedies or penalties. Ms. Champion, however, has made clear that her claim does not invoke this aspect of the statute.

the final result of a challenge to the reasonableness of rates under A.R.S. § 40-246 is a "full-scale rate hearing."[4]

A full-scale rate hearing is just that: a full-scale rate case. This can only mean a rate application filed under A.A.C. R14-2-103. As discussed above, it cannot be a collateral attack seeking to undo a final Commission decision. Similarly, a full-scale rate hearing is not the same as a "rehearing" as contemplated by A.R.S. § 40-253. A "rehearing" is a term of art that can encompass part or whole of Commission decision and need not be full-scale. Only a party to a Commission proceeding can seek rehearing, and must file an application within 20 days of a final Commission decision to do so.[5]

The court in *Scates v. Arizona Corporation Commission* relied on Attorney General Opinion No. 69-6 to confirm that the rate-related remedy arising out of a successful customer complaint under A.R.S. § 40-246 is a full rate case.[6] In *Scates*, the court rejected the use of "restricted procedures" in rate cases as falling short of the constitutional requirements for full-scale rate cases. The court then extended this rejection to rate hearings that arise out of A.R.S. § 40-246:

> A.R.S. ss 40-246 and 249 authorize proceedings known as "complaint proceedings" with respect to rates. An opinion of the Arizona Attorney General suggests that if a complaint proceeding is instituted and the Commission determines that a hearing with respect to a rate change is warranted, then restricted procedures such as those followed by the Commission in this case would be inappropriate.

If A.R.S. § 40-246 could prompt a rehearing, however, or some other proceeding less than a full-scale rate case, the court would not have needed to reject the restricted procedures in connection with A.R.S. § 40-246 because only a rate case requires the full, unrestricted procedures discussed in *Scates*.

Finally, the alternative is untenable. If <u>any</u> 25 consumers could seek a rehearing of <u>any</u> rate case at <u>any</u> time, the floodgates of litigation will open. Instead of seeking rehearing (or even intervening in the first place), people dissatisfied with a decision

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[4] AG Op. No. 69-6 at 3 (1969).

[5] The Court filed a letter on January 5, 2018 indicating that Ms. Champion's complaint is not an application for rehearing, but instead is a customer complaint.

[6] 118 Ariz. 531, 536, n. 1 (App. 1978).

could just file a customer complaint after the fact. Every Commission decision could be litigated twice (or more). This would not only throw all Commission proceedings into chaos, but risk severely draining Commission resources. This cannot be what the legislature intended.

If Ms. Champion meets her burden of proof, A.R.S. § 40-246 permits prospective remedies up to a full-scale rate hearing. But these remedies do not and cannot include a rehearing or reopening of Decision No. 76295. *See Mountain States Tel. & Tel. Co. v. Arizona Corp. Comm'n*, 124 Ariz. 433, 436 (App. 1979) ("When an agency approves a rate, and the rate becomes final, the agency may not later on its own initiative or as the result of collateral attack make a retroactive determination of a different rate and require reparations."). Accordingly, Ms. Champion's complaint does not directly implicate the Settlement Agreement underlying Decision No. 76295, and the settling parties are not obligated to participate in this proceeding.

RESPECTFULLY SUBMITTED this 25th day of September, 2018.

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ORIGINAL and thirteen (13) copies
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