February 11, 2019


Commissioners and Interested Parties,

I am writing to urge Chairman Burns to convene an open meeting on this rate case as soon as practical. I am concerned with the procedure taken by the Commission in this case. The process of setting interim rates is a distraction from a decision that needs to be made by the Commission on the underlying rate case.

There has been no decision on the underlying rate case. Although there are no limits on how the Commission chooses to decide a rate case, our rules do require that a decision be made by the Commissioners. Arizona Administrative Code ("A.A.C.") Rule 14-2-103(11)(d) provides “the Commission shall issue a final order that disposes of all issues involved in all parts or phases of the proceeding.” The recommended opinion and order failed on a 2-2 vote but a decision has not been rendered on the company’s application. The Commission, ultimately, acts through a decision by a “majority of the commissioners when in session as a board.” A.R.S. § 40-102(C). The fact that one Commissioner recused herself from deciding the case, does not excuse the Commission from issuing a final decision. It certainly makes it harder to come to three votes, but we are charged with making a decision, even if the decision was to deny the rate request. The Commissioners need to discuss and debate the case until a decision can be made.

The interim rate process itself is premised on the fact that there is an active rate case. A.A.C. Rule 14-2-103(11)(h) states that interim rates are only appropriate “in the event no final order has been issued.” If the rate case is simply deemed denied by the Commission, then the interim rate process could not be used. The process can only be contemplated because a final order has not been issued. Additionally, even if interim rates are approved, the Commission is still bound to issue a final order on the rate case. I am not aware of a rule that would allow a rate case to simply lapse. Parties in the rate case would rightfully challenge the Commission for abdicating its duty to issue a final decision. As I stated before, it is clear a final decision must still be issued by the Commission and the interim rates process is an unnecessary detour.

It is understandable that the company would request interim rates given the Commission has not rendered a decision. The use of interim rates is misplaced for this situation. Interim rates were designed to help address financial shortfalls to utilities caused by a significant delay in the process of a company’s rate
case. Here, the processing of the rate case is complete. The case has been fully argued by the parties, and the case has been tendered to the Commissioners for a decision. That decision can rightfully be made in an open meeting by the Commissioners without any additional procedure or delay. It is not clear to me why the Commission should wait any extended period of time to render a final decision on this rate case.

If the Commission is willing to accept that failing to pass the recommended opinion and order was a “final decision” on the underlying rate case, then the temporary rates available to the company would be emergency rates. Under emergency rates, the company would file a new rate case with a request for an immediate adjustment based on an emergency. The company would need to meet a standard for emergency rates originally provided in AG Opinion 71-17 that there is (1) a sudden change brings hardship to a company, (2) the company is insolvent, (3) the condition of the company is such that its ability to maintain service pending a formal rate determination is in serious doubt, or (4) the Commission will be unable to grant permanent rate relief within a reasonable time. The company’s application for temporary rates is not premised on meeting a standard for emergency rates.

As I stated previously, I believe a consensus can be reached on the recommended opinion and order. There are a number of issues that could be discussed with regard to the case. In addition to the issues I have already raised, I would like to request that the company provide in the docket a recalculation of rates based on a lower monthly minimum charge. I understand the recommended opinion and order included an increase in the monthly minimum charge that would allow the company to recover more revenue in the minimum charge than allowed in the current rates. I request that the company submit to the docket a recalculation based on the monthly minimum charge included in the current rates.

There are still issues concerning the revenue requirement and rate design that can be discussed and negotiated. We should do so as soon as practical.

Sincerely,

[Signature]

Commissioner Justin Olson
On this 11th day of February, 2019, the foregoing document was filed with Docket Control as a Correspondence From Commissioner, and copies of the foregoing were mailed on behalf of Justin Olson, Commissioner - A.C.C. 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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**WS-01303A-19-0011**

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