The City of Bullhead City ("City" or "Bullhead City") hereby files its response. For the reasons set forth below, the City opposes setting interim rates.

1. **LEGAL STANDARD FOR INTERIM RATES.**

   "Interim rate relief is not proper merely because a company's rate of return has, over a period of time, deteriorated to the point that it is unreasonably low." Attorney General Opinion No. 71-17, p. 13 (May 25, 1971) ("AG Op. 71-17"). Rather, interim rates are appropriate when either there is an ongoing delay in deciding a rate case or there is an emergency. See id.
Nearly 50 years ago, the Arizona Attorney General explained that it is appropriate for the Commission to grant interim rates "as an emergency measure" when:

1. Sudden change brings hardship to a company;
2. The company is insolvent;
3. The company's ability to maintain service pending a formal rate determination is in serious doubt; or
4. The Commission is unable to grant permanent rate relief within a reasonable time.

See AG Op. 71-17, at p. 13. Here, there is neither an emergency nor has the Commission unduly delayed in acting upon EPCOR's permanent rate application.

2. NO EMERGENCY EXISTS.

The first three prongs of the interim rates test (sudden hardship, insolvency, and inability to maintain service) are commonly referred to as an emergency. However, EPCOR does not allege that a sudden hardship has occurred. EPCOR does not allege that it is insolvent or that it is unable to maintain service. In fact, throughout the rate case proceedings EPCOR has stressed that it is extremely well-funded and it is offering excellent service to its customers. Therefore, interim rates cannot be justified as an "emergency" measure.

3. THE COMMISSION ACTED IN A REASONABLE TIME.

EPCOR relies upon A.A.C. R.14-2-103(B)(11)(h) to support its request for interim rates. Yet, A.A.C. R.14-2-103(B)(11)(h) only applies "in the event no final order has been issued within the time periods specified." EPCOR argues that interim rates can be set because it is a Class A utility and its rate case should have been finished within approximately a year, taking into account a 63 day extension. See EPCOR's Application at p. 2. When EPCOR made this argument at hearing, the Commission's Chief Administrative Law Judge explained that the one year time clock deadline does not apply
because EPCOR has filed 11 different rate cases.\(^1\) This statement is consistent with A.A.C. R14-2-103(B)(11)(g), which states, “the time periods prescribed by subsection (B)(11)(a) shall not be applicable to any filing submitted by a utility which has more than one rate application before the Commission at the same time.”

More importantly, regardless of whether EPCOR’s or the Chief Administrative Law Judge’s argument is correct, the fact is that the Commission has made its decision and there is no pending rate case. As the name implies, “interim rates” apply when the company is waiting on the Commission to act, which is no longer the case. In Docket WS-01303A-17-0257, the Commission decided not to pass the rate increase. The Commission is not delaying its decision on a rate increase – the issue has already been decided. Thus, A.A.C. R.14-2-103(B)(11)(h) does not apply and cannot be the basis for interim rates.

4. EQUITY SUPPORTS MAINTAINING THE STATUS QUO.

The underlying argument EPCOR is making to justify its interim rate increase is that it is unfair for the Commission to delay increasing its rates any longer. EPCOR’s Application makes the point that “a public service corporation has the right to earn a reasonable return on its investment and recover prudently incurred costs of providing service to its customers.” \textit{Id.} at p. 2. However, as stated above, “interim rate relief is not proper merely because a company’s rate of return has, over a period of time, deteriorated to the point that it is unreasonably low.” Attorney General Opinion No. 71-17, p. 13 (May 25, 1971) (“AG Op. 71-17”). Ironically, to justify its interim rate request, EPCOR does not use 2018 data; it relies upon 2016 data. Based upon the information presented by EPCOR, there is no way for the Commission to know if the current revenue and expenses are resulting in a reasonable return for the company.

\(^1\) Special Open Meeting Video starting at 1:56:30.

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Finally, it is important to remember that EPCOR chose not to have the rates implemented. On January 25, 2019, after the Amended Recommended Opinion and Order ("ROO") failed to pass, Commission Olson made it clear that if EPCOR would accept two amendments, then he could support the ROO. Olson’s amendments were very reasonable – limit post-test year plant to six months and allow the SIB mechanism for systems with water loss above 10%. Rather than accepting this modest compromise, EPCOR chose to reject Commissioner Olson’s proposal. Commissioner Tobin then offered another compromise for EPCOR. Commissioner Tobin offered to allow $37,676,252 in post-test year plant. However, EPCOR wanted the $55,240,064 of post-test year plant recommended in the ROO and chose to reject Commissioner Tobin’s compromise as well. Simply stated, EPCOR had an opportunity to have its rates, but refused to compromise its position on post-test year plant. Accordingly, giving EPCOR its rates now after it rejected the compromises offered by two Commissioners who were clearly trying to work with the company seems highly unwarranted.

5. **GRANTING INTERIM RATES WOULD BE INEFFICIENT.**

If interim rates are granted, then a full rate case must follow. *See Residential Utility Consumer Office v. Arizona Corporation Commission*, 20 P.3d 1169, 1173 (Ariz. App. 2001). EPCOR’s decision to reject the rates in the ROO if it could not have more post-test year plant should not result in additional legal expenses to the customers, which would necessarily occur if another full rate case must be litigated. There is no reason to follow this interim rate process and burden Bullhead City and other intervenors with another permanent rate case.

\[\textbf{2} \text{Special Open Meeting Video starting at 3:14:30.}\]
\[\textbf{3} \text{Id. starting at 3:16:40 (EPCOR later accepted the SIB amendment).}\]
\[\textbf{4} \text{Id. starting at 3:17:15.}\]
\[\textbf{5} \text{Id. starting at 3:18:08.}\]
RESPECTFULLY SUBMITTED this 11th day of February, 2019.

MOYES SELLERS & HENDRICKS

[Signature]

Steve Wene
Attorneys for Bullhead City

ORIGINAL and thirteen (13) copies of the foregoing were filed this 11th day of February, 2019 to:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

COPIES of the foregoing mailed/delivered/e-mailed this 11th day of February, 2019, to:

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