BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS
ROBERT "BOB" BURNS – Chairman
ANDY TOBIN
BOYD DUNN
SANDRA D. KENNEDY
JUSTIN OLSON

IN THE MATTER OF THE APPLICATION OF
EPCOR WATER ARIZONA, INC. FOR INTERIM
WATER RATES PURSUANT TO A.A.C. R14-2-103(B)(11)(h).

DOCKET NO. WS-01303A-19-0011
DOCKETED
FEB 13 2019

PROCEDURAL ORDER
(Grants Intervention)

BY THE COMMISSION:

On December 31, 2018, the Arizona Corporation Commission ("Commission") Hearing Division issued a Recommended Opinion and Order ("ROO") in Docket No. WS-01303A-17-0257, which recommended approval of new rates and charges for EPCOR Water Arizona, Inc.'s ("EPCOR") 11 Water Districts. The Commission discussed the ROO at its Regular Open Meeting on January 15 and 16, 2019, and at a Special Open Meeting on January 25, 2019. At the Commission's Special Open Meeting on January 25, 2019, the ROO failed to pass in a two-two vote.¹ At the conclusion of the Special Open Meeting, Chairman Burns ordered the Hearing Division to open a new docket for the purpose of considering EPCOR's application for interim rates pursuant to A.A.C. R14-2-103(B)(11)(h) and to commence the evidentiary hearing process by scheduling a procedural conference during the week of January 28, 2019.

On January 25, 2019, the Commission's Utilities Division ("Staff") filed a memorandum requesting the opening of this docket to facilitate the application by EPCOR for interim rates under A.A.C. R14-2-103(B)(11)(h).

On January 28, 2019, a Procedural Order was issued scheduling a Procedural Conference for February 1, 2019, to discuss the procedural guidelines for this proceeding.

Also on January 28, 2019, Motions to Intervene were filed jointly by DMB White Tank, LLC;

DMB Verrado Golf I LLC; and Verrado ARC LLC (collectively “DMB”); by Verrado Community Association, Inc. (“Verrado”); and by the Residential Utility Consumers Office (“RU CO”). RU CO also requested to appear telephonically for the procedural conference on February 1, 2019, due to its representative’s being out of state.

On January 29, 2019, a Motion to Intervene was filed by Anthem Community Council (“Anthem CC”).

On January 31, 2019, the Hearing Division, as a courtesy, filed Marshall Magruder’s Motion to Intervene and Consent to Email Service and Request to Participate Telephonically. Mr. Magruder included the language required for consenting to email service and explained that he would be out of state from approximately February 1 through 19, 2019.

On January 31, 2019, RUCO’s request to appear telephonically for the procedural conference was granted by Procedural Order.

On January 31, 2019, EPCOR filed an Application and a Notice of Filing Proposed Form of Notice.

On February 1, 2019, Motions to Intervene were filed by the Property Owners and Residents Association of Sun City West (“PO RA”) and by the Sun City Homeowners Association (“SCHOA”).

Also on February 1, 2019, a procedural conference convened as scheduled. Present at the procedural conference were SCHOA; Verrado; DMB; PO RA; Anthem CC; Town of Paradise Valley (“Paradise Valley” or “Town”); City of Bullhead City (“Bullhead City”); Mr. Magruder; and RU CO. During the procedural conference the parties discussed notice, intervention, and scheduling, among other procedural matters.

After the procedural conference on February 1, 2019, a Procedural Order was issued scheduling the hearing in this matter to commence on February 20, 2019, and continue on February 21, 2019, if necessary; scheduling a public comment proceeding to commence on February 19, 2019; requiring EPCOR to provide specified notice; establishing other procedural requirements and deadlines; and granting intervention to RU CO, Verrado, DMB, Mr. Magruder, Paradise Valley, Anthem CC, PORA, PO RA, SCHOA.  

2 Mr. Magruder filed his Motion to Intervene and Consent to Email Service and Request to Participate Telephonically on February 4, 2019.
On February 7, 2019, SCHOA filed a Response to EPCOR’s Application.

On the same date, Mountain Shadows Resort (Westroc Collection) (“Mountain Shadows”), Montelucia Scottsdale (Omni Hotels & Resorts) (“Montelucia”), Andaz Scottsdale Resort & Spa (World of Hyatt) (“Andaz”), JW Marriott Camelback Inn (Marriott International, Inc.) (“Camelback Inn”), and Sanctuary Camelback Mountain Resort & Spa (“Sanctuary”) filed Applications to Intervene and Consents to Email Service, stating that they are all customers of EPCOR that will be directly and substantially affected by this proceeding.

On February 11, 2019, the Commission’s Utilities Division (“Staff”) filed its Staff Report.

Also on February 11, 2019, by Procedural Order, intervention was granted to Mountain Shadows, Montelucia, Andaz, Camelback Inn, and Sanctuary (collectively “Resorts”).

Also on February 11, 2019, the Resorts filed a joint Response to the Application for Interim Rates, a Partial Joinder in Response of RUCO to Application for Interim Rates, and Notice of Filing Direct Testimony of John S. Thornton, Jr.

Also on February 11, 2019, Commissioner Olson filed a letter, urging Chairman Burns to convene an open meeting on the EPCOR rate case as soon as practical.

Also on February 11, 2019, Paradise Valley and Bullhead City each filed Responses to EPCOR’s Application.

On February 11, 2019, EPCOR filed its Response to Motions to Intervene stating that the Company did not oppose the Resorts’ intervention but that their intervention should not broaden the scope of the proceeding or result in any delay.

On February 12, 2019, Staff filed a Notice of Filing, including schedules that were inadvertently omitted from the Staff Report filed on February 11, 2019.

On February 13, 2019, Santa Cruz Valley Citizen’s Council, Inc. (“SCVCC”)3 and Richard

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3 The Motion to intervene was filed by James Patterson and Richard Bohman. Commission Corporations Division records show that James Patterson is the President of SCVCC, which is a nonprofit corporation. Mr. Bohman is not identified as an officer or director for SCVCC. Arizona Supreme Court Rule 31(d)(28) allows a corporate officer of a nonprofit organization to represent the organization before the Commission if (A) the non-profit organization has specifically authorized the representation in the matter; (B) the representation is not the person’s primary duty to the organization but only secondary or incidental to the person’s duties to the management or operation of the organization;
Bohman jointly filed a Motion to Intervene and Consent to Email Service and Request to Participate Telephonically. SCVCC and Mr. Bohman state that SCVCC was represented by counsel during the recent EPCOR water rate case, Docket No. WS-01303A-17-0257, but that SCVCC is no longer able to fund representation by an attorney. SCVCC and Mr. Bohman assert that they are residential EPCOR customers and that the interim rates will likely affect all EPCOR customers in Tubac. SCVCC and Mr. Bohman did not include the language required for consent to email service and did not address their apparent request to appear telephonically (which appeared in the title to their filing).

Because of the expedited schedule for this matter, it is reasonable and appropriate to act on SCVCC’s and Mr. Bohman’s Motion to Intervene at this time, although the other parties to this matter have not yet had an opportunity to respond.

SCVCC’s Motion to Intervene will be granted, subject to a requirement for Mr. Patterson to file an SCVCC Resolution establishing that he is specifically authorized and meets the other criteria to represent SCVCC under Arizona Supreme Court Rule 31(d)(28).

Mr. Bohman’s Motion to Intervene will also be granted, with the understanding that Mr. Bohman represents only himself in this matter.

Although SCVCC and Mr. Bohman did not explain their apparent desire to participate remotely, it is reasonable to authorize them to appear remotely due to the distance involved and the relatively short notice before the hearing is to be held in this matter. SCVCC and Mr. Bohman will be provided the option of appearing in person or appearing remotely via videoconference using the WebEx application, which should allow them to view documents during the proceeding, or via landline telephone, which would not. SCVCC and Mr. Bohman will each be required to notify the Hearing Division of whether they intend to appear in person or remotely and if they intend to appear remotely, of which technology they intend to use. Each who appears remotely will also be required to take the other steps described herein for whichever technology is selected.

IT IS THEREFORE ORDERED that the Applications for Leave to Intervene by Santa Cruz Valley Citizen’s Council, Inc. and Richard Bohman are hereby granted.

and (C) the person is not receiving separate or additional compensation, other than reimbursement for costs, for the representation.
IT IS FURTHER ORDERED that Santa Cruz Valley Citizen’s Council, Inc. and Richard Bohman are hereby authorized to appear and participate remotely in the hearing to commence on February 20, 2019, either by videoconference using the WebEx application or by telephone using a landline.

IT IS FURTHER ORDERED that SCVCC and Mr. Bohman each shall, by noon on February 19, 2019, telephone and/or email the Hearing Division at 602-542-4250 and/or Santrim@azcc.gov and Gbeltran@azcc.gov to notify the Hearing Division (1) whether each intends to appear in person or remotely; and (2) if either intends to appear remotely, (a) of the technology that each will be using to participate in the hearing, and (b) of the telephone number at which each will be available during the hearing.

IT IS FURTHER ORDERED that if SCVCC or Mr. Bohman desires to participate via videoconference using the WebEx app,4 SCVCC or Mr. Bohman shall speak with the Commission’s Communications Division at least one hour prior to the hearing to ensure that the videoconferencing will operate as desired. If this conversation does not occur, SCVCC or Mr. Bohman shall not be permitted to use videoconferencing via WebEx.

IT IS FURTHER ORDERED that if SCVCC or Mr. Bohman desires to participate via telephone, SCVCC or Mr. Bohman shall, on the date of and at least five minutes before the time set for the hearing to commence, call 1 (800) 689-9374, passcode 415962#, from a landline5 to participate telephonically.

IT IS FURTHER ORDERED that SCVCC shall, by February 20, 2019, file a Board Resolution establishing that James Patterson is authorized to represent SCVCC in this matter in accordance with Arizona Supreme Court Rule 31(d)(28)(A) through (C).

IT IS FURTHER ORDERED that each party or prospective party shall refer to the Procedural Order Regarding Consent to Email Service issued in this matter on January 28, 2019, for additional information regarding the process to consent to service by email. Information regarding Consent to

4 To participate via WebEx, the party would need to use the WebEx app on a computer or tablet with an internet connection and audio capabilities (although a telephone connection can be used for audio along with the computer or tablet if the computer or tablet lacks a microphone).

5 Mobile telephones do not provide adequate audio quality to permit the verbatim transcription of witness testimony.
IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona Supreme Court Rule 42). Representation before the Commission includes the obligation to appear at all hearings, procedural conferences, and Open Meetings for which the matter is scheduled for discussion, unless counsel has previously been granted permission to withdraw by the Administrative Law Judge or Commission.

IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules 31, 38, 39, and 42 and A.R.S. § 40-243 with respect to the practice of law and admission pro hac vice.

IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized Communications) continues to apply to this proceeding and shall remain in effect until the Commission's Decision in this matter is final and non-appealable.

IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 13th day of February, 2019.

BELINDA A. MARTIN
ADMINISTRATIVE LAW JUDGE
On this 12th day of February, 2019, the foregoing document was filed with Docket Control as a Procedural Order – Regarding Intervention, and copies of the foregoing were mailed on behalf of the Hearing Division 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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