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
20 February 2019

SUPPLEMENTAL REPLY TO RESPONSES AND REPLIES BY OTHER PARTIES

Summary of This Filing

This supplemental Reply is filed to respond to other parties recent filings. Prior Testimonies and Briefs in Docket 17-0257 are incorporated herein with minor changes that impact only the Interim Rate issues in Docket 19-0011. These issues include determination of the required interim rate revenue for this Public Service Company (PSC), the EPCOR Water Arizona, Inc. and the proposed structure for these rates to meet the adjudicated interim rate required revenue. Compliance with appropriate legal requirements continues to not be met for Interim Rates without total system-wide rate consolidation since prior Commission Decisions Nos. 75268, 71878, 72047, 73145, 60168, 74568, and 74140 continue rate discrimination; however, removal must be accomplished in the final rate case for this PSC.

I. REQUIRED INTERIM RATE REVENUE ISSUES.

EPCOR's Application requested an increase in required revenue of $10,017,966.\(^1\) During the Open Meeting, Commissioner Tobin's Amendment was approved that reduced the performance bonus in the Recommended Opinion and Order (ROO) from 90% to 50% that is not reflected in the Application for required interim rate revenue and should reduce required revenue as also recommended by the Residential Utility Consumer Office RUO.\(^2\)

Other parties, including Commissioners, Staff, RUO, Bull Head City and the Resorts, have proposed additional changes in required interim rate revenue requested in the Application. These changes should be reviewed during the hearing on 20 February 2019, or postponed until the

---

\(^1\) ALJ Procedural Order (Sets Hearing) of 1 Feb 2019, at 3:3-16
\(^2\) Commissioner Andy Tobin's Proposed Amendment No. 1 of 23 Jan 2019.
"final rate case," with conforming interim rate adjustments. This party has no position on these issues that involve post-test year plant inclusion in the base rate, reducing water loss and other plant assets through the SIB process, and potential regional consolidated rate designs.3

This party is concerned that a minor impact on required interim rate revenue that involves the present Low Income Program.4 Resolution of this issue is requested and should not be challenging. This party recommends ceasing all Low Income Plan surcharges and continue refunding credits due to overcharges until the balance is zero. Although this party believes the present Low income Plan is defective and ineffective, it is recommended to continue until a replacement adopted that eliminates rate discrimination.

All changes to the required interim rate revenue impact changes to ratepayer rates and must be considered.

Other than possible changes from the evidentiary hearing, this party presently agrees with the above approach for the determination of the required revenue.

II. EPCOR PROPOSED INTERIM RATE SURCHARGES PER 1000 GALLONS.

EPCOR's Application proposed increases (surcharges) and decreases (credits) in volumetric costs to meet the required interim rate revenue. Of the 11 districts, only two have reductions, because of the increased overall costs since the last rate case. The twelfth, or company-wide district, is not being considered at this time but must be considered in the final rate case in order to eliminate illegal rate discrimination discussed in IV below.

---

3 EPCOR provided this party a regional consolidated rate schedule with billing submitted in Magruder Errata to the Magruder Recommended Exceptions to the ROO Exceptions of 17 Jan 2018 at Pp. 4-8.

EPCOR considered four regional consolidations:

Region 1 - Agua Fria, Anthem, Chaparral, Tubac (in Green)
Region 2 - Havasu, Mohave, North Mohave, Willow Valley (in Pink)
Region 3 - Paradise Valley (in Mauve)
Region 4 - Sun City, Sun City West (In Blue)

The Page 5, calculates potential monthly bill impacts and compares the residential ratepayer costs for 7,000 gallons for the:
- Present Bill,
- ROO Standalone Bill,
- EPROC Regional Consolidated Bill and
- EPROC Full Consolidated Rate Bill

For 5/8-inch, 3/4-inch and 1-inch residential meters.

Pages 6 to 8 provide more detailed billing information for each of these three meter sizes for each of these bills (present, ROO, EPROC Consolidated and Regional) for the average and median usages for each district.

---

If these surcharges/credits, result in overcharging ratepayers when totaled up in the final rate determinations, this must be refunded to all overcharged ratepayers, with interest, and those who were undercharged remain as charged, as required by A.R.S. §40-248.A.

EPCOR is concerned which "interest" method is used. Staff recommended an arbitrary 10% interest if over collected. This party feels this not reasonable. This party presently has no opinion and plans to concur with a more reasonable interest model.

This party fully supports the volumetric surcharge/credit plan proposed by EPCOR because it can benefit water conservation while any fixed monthly cost reduction will not.

As Commissioner Olson's letters discussed, reduction in the fixed monthly charge is an issue but it should be determined as a factor during the evidentiary hearing for final rates. This party would like to see all First Tier total customer bills to be less than $30.00 for all residential and commercial ratepayers to ensure that the lower income ratepayers can meet their discretionary needs but considers this issue out of scope for interim rates.

III. STAFF PROPOSED A FLAT MONTHLY BILLING SURCHARGE.

The Staff proposes a flat monthly surcharge per customer. How this was determined is not presented in the Staff Report. No basis for this flat monthly surcharge is known. RURO also sees no basis for this approach.

At flat-rate monthly surcharge/credit will be challenging to convert and allocated to a monthly fixed charge and volumetric rates in a final rate case due to the present significant disparity between these two charges for individual ratepayers at different locations. Further, if an overcharge occurs, then the situation becomes more complex. How the monthly fixed surcharge is later allocated to fixed and variable consumption factors is unknown. Without Schedule H, this cannot be determined if it is fair, just, and/or reasonable.

Further the Staff proposed "flat monthly surcharge" increases rate discrimination between service areas (districts) when such differences should not exist.

This party does not support the proposed Staff interim rate concept due mixing "apples and oranges" without any basis that will require separation for the final rates.

IV. LEGAL ISSUES.

First, is an Interim Rate process legal?

5 Staff Report of 11 Feb 19, Executive Summary at 1-2.
6 Commissioner Olson's letter of 11 Feb 2019, at 2, next to last paragraph.
The Bull Head City, Paradise Valley, Resorts, and RUco oppose holding an Interim Rate case for various reasons. However, the arguments presented by the Commission Staff and EPCOR show the legal deficiencies in opposition of Interim Rates for this case. In the opinion of this party agrees that the ALJ Procedural Order of 1 February is the correct legal approach for this situation.

Second, is a “District” a Public Service Corporation” as defined by the Arizona Constitution and Revised Statutes?

Magruder Response to the Application quotes the Application:

“Although EPCOR Water Arizona, Inc, currently has 11 districts, those 11 districts do not comprise a public service corporation. Rather, as determined by Staff, EPCOR Water Arizona, Inc., is a public service corporation.”

[Emphasis added]

Thus, the Commission Staff confirms a “district” is not legally a PSC.

Third, the term this party uses failure to comply with “legal requirements,” concerns rate discrimination/ is without any definitive responses from other parties, the Staff, RUco, Arizona Court of Appeals or the Arizona Supreme Court. In this and prior water rate cases, all have failed to answer why the Commission does not comply with these legal requirements. All these requirements pertain to a Public Service Corporation (PSC) and to no other entity. These rate discrimination legal requirements include:

a. Arizona Constitution Title XV, Section 12.9 This Section 12 requires all rates to be “just and reasonable.” It is NOT used in the Conclusions of Law in any known Decision found by this party; however, Section 3 is frequently referenced but it fails to prohibit rate discrimination in determination of “just and reasonable” required in Section 12. In the Staff filing in this case, this issue of omission is clearly discussed in the footnote below.10

---

10 Staff's Corrected Response to RUco Re: Commission’s Authority to Grant Interim Rates, of 15 Feb 2019 at 1:20-27, states:

The Commission’s authority to approve interim rates stems from its broad and exclusive rate-making power given by Article 15, section 3 of the Arizona Constitution. Arizona Corp. Comm’n v. Superior Court In & For Maricopa Cry., 107 Ariz. 24, 26, 480 P.2d 988, 990 (1971) ("No other state has given its commission the extensive power and jurisdiction that the Arizona Corporation Commission possesses."). This authority is limited only by the "just and reasonable" clauses of Article 15, section 3 and the fair value requirement set forth in Article 15, section 14.
This shows again that the Commission Staff does not consider Article 15, Section 12 as a requirement for just and reasonable rates. Section 3 gives the Commission "exclusive" ratemaking power. Section 12 is quoted below:

Section 12. All charges made for service rendered, or to be rendered, by public service corporations within this state shall be just and reasonable, and no discrimination in charges, service, or facilities shall be made between persons or places for rendering a like and contemporaneous service..."

This, Section 12 is a mandatory requirement for the Commission to prohibit rate discrimination in all cases for rates to be "just and reasonable."

11 Case 17-0257, Magruder Closing Brief, at 21:4-11; Magruder Opening Brief, at 14:1-25 with footnotes 6 to 8.
12 Case 17-0257, Magruder Opening Brief, at 14:26-17:7 with footnotes 9 and 10. Magruder participated in these cases.
13 Case 17-0257, Magruder Opening Brief, at 17:8-21.
14 Case 17-0257, Magruder Opening Brief, at 17:22-18:2.
SERVICE LIST

Original and 13 copies of the foregoing are hand delivered on 20 February 2019 to:

Docket Control (13 copies)
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007-2927

ALL BELOW HAVE CONSENTED TO SERVICE BY EMAIL SENT ON 19 FEB 2019.

Robin Mitchell, Director, Legal Division
Arizona Corporation Commission
1200 West Washington St., Phoenix AZ 85007
RMitchell@azcc.gov, LegalDiv@azcc.gov
udivservicebyemail@azcc.gov
HearingDivisionServicebyEmail@azcc.gov
wanuclev@azcc.gov, ndavis@azcc.gov

Thomas Campbell and Michael T. Hallam
Attorneys for EPOR
LEWIS ROCA ROTHGERBER CHRISTIE, LLP
201 East Washington Street, Suite 1200
Phoenix, Arizona 85004
mhallam@lrrc.com, Jgellman@epcor.com,
shubbard@epcor.com, Kbohannon@epcor.com,
Rstenholm@epcor.com, Stkaggs@epcor.com,

Daniel W. Pozefsky, Chief Counsel
Residential Utility Consumer Office (RUCO)
1110 West Washington Street, Suite 220
Phoenix, AZ 85007-2958
DPozefsky@azrco.gov, ifuentes@azrco.gov,
cfraulob@azrco.gov, procedural@azrco.gov

Andrew M Miller, Paradise Valley Town Attorney
6401 E Lincoln Drive, Paradise Valley, AZ 85253
amiller@paradisewateraz.gov

Regina Shanney-Saborsky
Corte Bella Country Club Association
22155 North Mission Drive, Sun City West, AZ 85375
rsaborsky@cox.net

Lawrence V Robertson, Jr
Santa Cruz Valley Citizens Council, et al
210 West Continental Road, Suite 216A
Green Valley, AZ 85622
hubaclawyer@aol.com

Diane Smith
13234 W. Cabrillo Dr., Sun City West AZ 85375
Skylar_98@hotmail.com

Jim Patterson, SCVCC
PO Box 1983,
Tubac, AZ 85646
japati@com

Richard Bohman
PO Box 1237,
Tubac AZ 85646
Rtbnmbaz@aol.com

Roger Willis, Kristi Northcutt
Anthem Community Council, Inc.
3701 W. Anthem Way, Suite 201, Anthem AZ 85086
roger@willis-horne.com,
KNorthcutt@anthemcouncil.com

Michelle Van Quathem
Law Offices of Michele Van Quathem
7600 B, 15th St., Suite 150-30, Phoenix AZ 85020
mvq@mvqlaw.com

Douglas Edwards
13517 W. Sola Dr., Sun City West AZ 85375
d.edwards785@yahoo.com

Raymond A. Valle
20823 W. Canyon Drive, Buckeye, AZ 85396
phxvalles@gmail.com

Bob Miller, Ralph Johnson, Albert E. Gervenack
Sun City West Property Owners & Residents Assoc.
13815 Camino Del Sol, Sun City West Arizona 85375
Ram578163@gmail.com, rdiscw@gmail.com
Agrvnck418@gmail.com, Bob.Miller@prascw.org

Greg Eisert and Gail Warmath
Sun City Home Owners Association
10401 W. Coggins Drive, aSun City Arizona 85351
gregeisert@gmail.com, gwarmath@cox.net

Steven L. Wene
1850 North Central Avenue, Suite 1100
Phoenix, AZ 85004
swene@law-msh.com, docket@law-msh.com

Jeffrey W Crockett, John Thornton
2198 E. Camelback Rd, Suite 305,
Phoenix, AZ 85016
jeff@jeffcrocottlaw.com, John@thortonfinancial.org

Magruder Supplemental Reply to Responses and Replies by other Parties