BULLHEAD CITY’S RESPONSE TO RECOMMENDED OPINION AND ORDER

The City of Bullhead City ("City" or "Bullhead City") hereby files its response to the Recommended Opinion and Order ("ROO") granting interim rates. For the reasons set forth below, the City opposes setting interim rates.

1. LEGAL STANDARD FOR INTERIM RATES.

The ROO correctly cites the legal standard for setting interim rates. Id. at p. 8. Interim rates are appropriate when either there is an ongoing delay in deciding a rate case or there is an emergency. See id. 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.

Attorney General Opinion No. 71-17, p. 13 (May 25, 1971) ("AG Op. 71-17"). Importantly, the Attorney General also explained “[i]nterim 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.” Id.

2. NO EMERGENCY EXISTS.

Here, no emergency exists. As the ROO correctly states, EPCOR acknowledges that an emergency does not exist. See id. at ¶ 57 (the three scenarios of sudden hardship, insolvency, and inability to maintain service do not apply). 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. Thus, Bullhead City agrees with the ROO that interim rates cannot be justified as an “emergency” measure.

3. THE COMMISSION ACTED IN A REASONABLE TIME.

Bullhead City agrees with the ROO’s legal conclusion that the Commission has the authority to implement interim rates. See ROO at ¶ 57. The City also agrees that A.A.C. R.14-2-103(B)(11)(h) allows a company to apply for interim rates in the event that the Commission has not made a final decision in the applicable time period. Id. at ¶ 38.

Bullhead City does disagree, however, with the ROO’s summary conclusion that the vote in January 25, 2019 was not a final decision. In the legal context, the term “final” refers to an order “ending a court action or proceeding leaving nothing further to be determined by the court or to be done except the administrative execution of the court's
finding....” Webster’s Third New Int’l Dictionary 851 (2002); see also Black’s Law Dictionary 747 (10th ed.2014) (defining “final” as “not requiring any further judicial action by the court that rendered judgment to determine the matter litigated; concluded”).

In the 17-0257 Docket, there is no further judicial action to be taken; the application was litigated and it did not pass. As the ROO points out, Chairman Burns filed a letter stating that placing the matter on an open meeting agenda for further consideration would not be fruitful. ROO at ¶ 61. EPCOR did not file a motion for reconsideration nor did the Commission remand the matter, so there are no ongoing proceedings in the 17-0257 Docket. Simply put, the four Commissioners made their decisions and voted; the vote was a 2-2 tie; hence, the application did not pass; and EPCOR did not seek reconsideration of the matter; consequently, the decision is now final.

In conclusion, as the name implies, “interim rates” apply when the company is waiting on the Commission to act, which is no longer the case. 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. A Reasonable Rate of Return Is No Basis 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.” AG Op. 71-17

Id. Nevertheless, EPCOR’s central argument is that as a public service corporation it “has the right to earn a reasonable return on its investment and recover prudently incurred costs of providing service to its customers.” Id. at p. 2. EPCOR’s interim rates are based upon its final position in the 17-0257 Docket – a $10,017,966 annual rate of return. ROO at ¶ 67. Staff recommended a higher rate of interim rate of return at $10,327,592. Id. at ¶ 71. This includes the post-test year plant sought by EPCOR, which was opposed by two Commissioners in the 17-0257 Docket.
Even if the Commission decides to consider interim rates, it is important to note that there is no evidence that EPCOR is not receiving a reasonable rate of return. The interim rate request is based upon 2016 data. EPCOR did not present data from either 2017 or 2018. No EPCOR or Staff witness provided any testimony on EPCOR’s current, or even recent, rate of return. But a simple review of EPCOR’s latest annual report shows that EPCOR’s revenues increased by approximately $2.6 million from 2016 to 2017. This substantial increase occurred with no change in rates. There is no evidence of whether EPCOR’s revenues increased in 2018.

Based upon the facts in this case, there is no way for the Commission to know if the current revenue and expenses are resulting in a reasonable return for EPCOR. The Commission could very well be increasing rates when EPCOR’s current rates are resulting in a reasonable rate of return for EPCOR.

5. **Interim Rates Necessitate a 2018 Test Year.**

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). Bullhead City agrees with the ROO that if interim rates are adopted, then EPCOR should file a rate case this year based upon a 2018 test year.

RESPECTFULLY SUBMITTED this 22nd day of March, 2019.

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ORIGINAL and thirteen (13) copies of the foregoing were filed this 22nd day of March, 2019 to:
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mailed/delivered/e-mailed this 22nd
day of March, 2019, to:

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