BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

IN THE MATTER OF THE APPLICATION OF ARIZONA-AMERICAN WATER COMPANY, AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE CURRENT FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN ITS RATES AND CHARGES BASED THEREON FOR UTILITY SERVICE BY ITS ANTHEM WATER DISTRICT AND ITS SUN CITY WATER DISTRICT.	DOCKET No. W-01303A-09-0343
IN THE MATTER OF THE APPLICATION OF ARIZONA-AMERICAN WATER COMPANY, AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE CURRENT FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN ITS RATES AND CHARGES BASED THEREON FOR UTILITY SERVICE BY ITS ANTHEM/AGUA FRIA WASTEWATER DISTRICT, ITS SUN CITY WASTEWATER DISTRICT AND ITS SUN CITY WEST WASTEWATER DISTRICT.	DOCKET No. SW-01303A-09-0343 **ANTHEM COMMUNITY COUNCIL INC.'S PRELIMINARY COMMENTS ON EPCOR WATER COMPANY'S RESPONSE TO COMMISSION DECISIONS**

The Anthem Community Council, Inc. on behalf of the Anthem Community ("Anthem") hereby submits its Preliminary Comments on EPCOR Water Company's Response to Commission Decisions (the "Response") filed on August 8, 2014 in the above-captioned and docketed proceedings (the "Instant Proceeding") to address certain issues raised by and/or discussed in the Response. These Preliminary Comments are not intended to be exhaustive or to be Anthem's final dispositive positions on the issues discussed herein or in the Response. In that regard, Anthem reserves the right to provide additional or alternative arguments arising from or within the Instant Proceeding, and to the extent any prior Arizona Corporation Commission ("Commission") decision is modified, to provide arguments in connection with issues presumptively settled by such prior

decisions.

I. INTRODUCTION

In response to numerous complaints by wastewater ratepayers in the Agua Fria Wastewater District, the Commission issued Decision No. 74588, dated July 30, 2014 (the "Order"), and ordered EPCOR Water Arizona, Inc. (as successor in interest to Arizona-American Water Company, "EPCOR" or the "Company"), to file a response to the Order including, at a minimum, the following issues, as set forth in Finding of Fact No. 25 of the Order:

a. Response to the customer complaints and requests for relief.

b. Response to Staff's opinion that the Commission's examination of these matters should commence with rate design matters related to wastewater rates.

c. Discussion and analysis demonstrating the rate impacts of full consolidation of all districts, including a potential timeline for consolidation and whether phase in is warranted. Discussion and analysis should address when the circumstances in one district necessitate a substantive investment for a new plant and/or infrastructure improvements, for only that district. This discussion should also address whether a rate case(s) would be warranted for consolidation of all districts.

d. Discussion and analysis as to whether consolidation is warranted, when there is no nexus between districts that do not share contiguous service territorial borders, weather conditions, urban or rural locations, farming factors and/or water supply needs.

e. Discussion and analysis demonstrating the rate impacts of full deconsolidation of all districts and systems, including a potential timeline for deconsolidation and whether phase in is warranted. This discussion should also address whether a rate case(s) would be warranted for deconsolidation.

f. Discussion and analysis demonstrating the rate impacts of reversing the deconsolidation of Anthem from the Agua Fria District, including a potential timeline for reversal and whether phase in is warranted. Discussion and analysis should include any and all implications to the settlement agreement in Docket Nos. W-01303A-09-0343 and SW-01303A-09-0343.

g. Discussion of any EPCOR identified potential alternative options and the options' rate impacts on affected customers.

h. Any recent calculations by EPCOR, which have previously identified potential alternative options, must be updated and must also add any new calculations if the next rate case moves forward as scheduled.

To comply with the Order, the Company filed the Response.

II. SUMMARY OF PRELIMINARY COMMENTS

In the following Section III of these Preliminary Comments, Anthem will discuss its following points with respect to the Response:

- The Commission has not yet determined whether A.R.S. § 40-252 applies to the Instant Proceeding and has not restricted the ultimate scope of inquiry to the scope suggested in the Response.
- A full rate case and cost of service studies are required for the Commission to conduct any meaningful examination of wastewater rate design.
- The Instant Proceeding should not be conducted on the schedule suggested by the Company.
- The Company's portrayal of the settlement reached on December 15, 2011 and approved in Decision No. 72047 (the "Settlement Agreement") ignores factual issues regarding (i) the adoption and incorporation of the Settlement Agreement into Decision No. 72047 and (ii) surrounding ratification and implementation of the Settlement Agreement through Decision No. 73227.
- The Response does not respond to customer requests for relief as required by the Order because it fails to explore the most requested customer solution, namely consolidation of the Sun City West Wastewater District and the Agua Fria Wastewater District.
- The Response does not identify any potential alternative options for affected customers as required by the Order.

III. DISCUSSION

A. The Commission Has Not As Yet Determined Whether A.R.S. § 40-252 Applies and Has Not Restricted the Scope of Inquiry

The Commission has not as yet determined whether it will "rescind, alter, or amend any order or decision made by it" as provided for in A.R.S. § 40-252. While the Commission may ultimately decide to modify existing orders, the Company's suggestion that this phase of the Instant Proceeding has already been instituted under A.R.S. § 40-252 is premature. In the event that the Commission does hereafter decide to consider modification of any prior decision, the Order does not place any limitation on the issues that may be reconsidered, including changes in authorized revenues for the Company, if such changes are in the public interest. While the Order noted that there does not seem to be any dispute as to whether EPCOR is charging rates approved

by the Commission, and suggests that the customer complaints are best addressed "initially by an examination of rate design matters related to the Agua Fria District's rates," the Order does not require any final solution to Agua Fria's elevated rates to be "revenue neutral" to the Company.[1]

B. A Full Rate Case and Cost of Service Studies Are Required for the Commission to Conduct any Meaningful Examination of Wastewater Rate Design

The Company's contention that a full rate case is not required at this time in order to examine wastewater rate design is wrong. Decision No. 72047 and Decision No. 73227, each issued in earlier phases of the Instant Proceeding, directed the Company to file a system wide rate case in connection with any future consideration of consolidation of Company water or wastewater rates. In addition, Decision No. 73227 directed that the required system wide rate filing should be accompanied by full cost of service studies. To date, more than two years later, the Company has not made the filings required by Decision No. 72047 and Decision No. 73227. The Response suggests the Commission can side-step this requirement and nevertheless consider consolidation without a full rate case because any revisions in the Company's current wastewater rate design would be revenue neutral. However, any redesign of wastewater rates using billing data from the last rate case necessarily changes total revenues that would result because current customer bill counts will likely differ from previous bill counts. Accordingly, such a redesign cannot be considered revenue neutral unless current billing data is used.

Further, cost of service ratemaking should be the presumptive rule for the Commission except where public policy requires a rate design that deviates from cost of service.[2] Changes to wastewater rate design should accurately reflect current underlying cost of service circumstances and considerations. However, the Company has submitted no studies or data to support the assumption that the now contemplated rate design changes would be cost-based. Moreover, the Company's existing wastewater rates for both of the Agua Fria Wastewater District and the

---

[1] In fact, the words "revenue neutral" do not appear anywhere in the Order.

[2] In that regard, the Commission knew at the time it issued Decision No. 73227, and expressly acknowledged at that time, that deconsolidation would result in higher rates for the Agua Fria Wastewater District. Thus, the consumer complaints discussed in Decision No. 74588 are not in the nature of "new evidence."

Anthem Wastewater District are based upon information which is now at least five to six years old. It is unlikely that this antediluvian data accurately reflects or represents the current cost of providing wastewater service to ratepayers in the Agua Fria Wastewater District or the Anthem Wastewater District, and, simply "reshuffling" such data into new rates at this time is inappropriate. In the absence of current cost of service information, the Commission cannot intelligently determine at this time whether the Company's existing wastewater rates should be altered by means of (i) consolidation, (ii) further deconsolidation or (iii) reconsolidation of the Anthem/Agua Fria Wastewater District. The Commission essentially agreed with this proposition in Decision No. 73227 by noting:

> The evidence presented in this proceeding . . . demonstrates the need for the Company to file an updated cost of service study and we will require it to do so. We will require the cost of service studies and other information supporting consolidation that are provided by the Company in its filing to be sufficient for all parties to make their own reasoned proposals either for or against consolidation or deconsolidation, consistent with sound ratemaking principles.

C. The Instant Proceeding Should Not Be Conducted on the Procedural Schedule Suggested by the Company

As previously noted, at the time the Commission issued Decision No. 73227, the Commission had thoughtfully considered the rate impacts and other potential effects of deconsolidating Anthem from the Anthem/Agua Fria Wastewater District, including the prospect of future requests from Agua Fria wastewater customers to further deconsolidate the Agua Fria Wastewater District or to consolidate with the Sun City West Wastewater District. In response, the Commission welcomed Agua Fria intervenors to advocate for further deconsolidation in "future Commission proceedings" and proposed and ordered the following mechanics:

> In order to address the issue of deconsolidation/consolidation in the most expeditious and fair manner possible, <u>we will require the Company to make the system-wide rate filing</u> as ordered by Decision No. 72047 that includes all of the affected districts, including the Sun City West Wastewater district, <u>as soon as possible</u>,[3] so that all affected parties will receive notice of, and will have a full opportunity to address, all the issues affecting the Company's revenue requirement, and can make proposals either for or against consolidation or deconsolidation for Commission consideration. <u>The required system-wide rate filing should include</u>

---

[3] In that regard, Decision No. 73227 was issued on June 5, 2012.

> full cost of service studies and other information supporting consolidation sufficient for all parties to make their own reasoned proposals either for or against consolidation or deconsolidation, consistent with sound ratemaking principles. [Decision No. 73227 at page 39, line 80-page 40, line 10] [Emphasis added.]

The Commission made it clear in both Decision No. 72047 and Decision No. 73227 that (i) a system wide rate application by the Company and (ii) a cost of service study underlying and supporting such filing were necessary predicates to any future consideration of further consolidation or deconsolidation proposals. The Company has not to date submitted the required system wide rate filing or cost of service studies. Therefore there is not sufficient information at this time for all parties to make reasoned proposals either for or against consolidation, deconsolidation, or reconsolidation scenarios. Accordingly, the Commission should defer the scheduling of the evidentiary hearing and related pre-hearing activities contemplated by the Order until the Company has (i) made the system wide rate filing and (ii) contemporaneously submitted the full cost of service studies and other information supporting consolidation required by Decision No. 73227.

Alternatively, in the event that the Commission should decide to not stay the Instant Proceeding, as discussed above, the Instant Proceeding should not be subjected to an expedited procedural schedule, such as that proposed by the Company. Few, if any, parties possess the substantial resources available to the Company to address the facts and issues to be considered by the Commission on the rushed schedule proposed by the Company. These issues are too important for all concerned parties to utilize an expedited procedural schedule. Getting to a fair and reasoned result may take time. Also, whether or not the Instant Proceeding is accorded expedited treatment, the procedural schedule should provide for filing of Surrebuttal Testimony by Staff and the Intervenors. If the Commission does not stay the Instant Proceeding until the Company submits a system wide rate filing and cost of service studies, Anthem proposes the filing of Surrebuttal Testimony should be scheduled for the week of October 27 and the hearing date to be moved into the second full week in November, 2014.

D. The Company's Portrayal of the Settlement Agreement Ignores Factual Issues regarding the Adoption and Incorporation of the Settlement Agreement into Decision No. 72047 and Surrounding Ratification and Implementation of the Settlement Agreement through Decision No. 73227.

The Response erroneously suggests that the recited language of Decision No. 72047 provides a complete description of the Settlement Agreement as it relates to the deconsolidation of the Anthem/Agua Fria Wastewater District. In that regard, Anthem offers the following language from Decision No. 73227 which indicates the Commission's view with respect to the Settlement Agreement reached in connection with Decision No. 72047:

> Moreover, even if we were to set aside our desire to establish rates on cost causation principles, <u>we believe deconsolidation of the Anthem wastewater district would be appropriate in this case in order to preserve the integrity of settlement negotiations that occur in Commission proceedings</u>. In our December 15, 2010 Open Meeting, we encouraged the parties to negotiate the settlement of contentious legal and equitable issues involving the disputed refund payments that the Company paid to Pulte. As part of the settlement agreement that was ultimately reached, Anthem surrendered several arguments against recognizing the disputed refund payments to Pulte for ratemaking purposes. Anthem's willingness to do so was based on the gains Anthem would make in other areas under the settlement agreement, including the timely deconsolidation of the Anthem/Agua Fria Wastewater District. <u>The record suggests that deconsolidation of the Anthem/Agua Fria Wastewater District was vital to Anthem's willingness to support the settlement as a complete package. Therefore, in order to preserve the integrity of the settlement negotiations that occur in Commission proceedings, we believe it is in the public interest to deconsolidate Anthem from the Anthem/Agua Fria Wastewater District at this time</u>. [Decision No. 73227 at page 31, lines 13-28] [Emphasis added.]

As a result of the Company's failure to acknowledge this additional language, the Response does not "include any and all implications to the settlement agreement" as required by the Order. At the very least, failure by the Commission to honor the Settlement Agreement would risk compromising the Commission's integrity, discourage settlement in future rate cases and other Commission proceedings, and expose the Commission to potential legal claims, unintended practical consequences, and unflattering media attention.

E. The Response Does Not Fully Respond to Customer Requests for Relief as Required by the Order.

Finding of Fact 25(a) of the Order requires the Company to address "customer complaints and requests for relief." However, the Response fails to explore at all the most requested form of

relief, namely, consolidation of the Sun City West Wastewater District and the Agua Fria Wastewater District.[4] Sun City West is adjacent to Corte Bella; Anthem is geographically remote. Sun City West and Corte Bella share wastewater treatment facilities; Anthem does not and physically cannot share these facilities. Sun City West has approximately 15,000 customers to spread wastewater costs; Anthem has roughly 8,600 residents. Sun City West residents enjoy among the lowest water and wastewater rates in the State of Arizona; Anthem residents pay among the highest combined water and wastewater rates in the State. Sun City West residents pay significantly less than Corte Bella residents for the same service from the same facility; Anthem has been and is currently subsidizing Corte Bella's wastewater rates. Nevertheless, the Company did not explore the customer-requested consolidation of the Sun City West Wastewater District and the Agua Fria Wastewater District. Anthem believes that it is inexcusable for potentially fair and reasonable solutions for reducing Agua Fria wastewater rates to remain unexamined while a "completely arbitrary"[5] reconsolidation of Anthem into the Agua Fria Wastewater District constitutes a threat to Anthem ratepayers. If a "completely arbitrary" would now be deemed to be acceptable, then why not investigate the partial consolidation of the Agua Fria Wastewater District with the Mohave Wastewater District, or with the Sun City Wastewater District? Anthem should not be included in the only partial consolidation model to date explored by the Commission and the Company simply because Anthem is perceived as the proverbial "path of least resistance," and an administratively convenient place to dump Agua Fria's costs.

F. The Response Does Not Identify any Potential Alternative Options for Affected Customers as Required by the Order.

Finding of Fact 25(a) of the Order requires the Company to discuss "any EPCOR identified potential alternative options and the options' rate impacts on affected customers." The Response identifies none. Considering the significant financial benefit that the Company derives from the ownership and operation of the Agua Fria wastewater treatment facilities, the Company should be compelled to present at least one option for rate relief for Agua Fria wastewater consumers that

---

[4] In contrast, not a single petitioner requested reconsolidation of the Anthem/Agua Fria Wastewater District. The Company also notified representatives of Anthem by email dated August 8, 2014, that the Company was not recommending reconsolidation.

[5] In Decision No. 73227, the Commission recognized that the continued consolidation of the Anthem/Agua Fria Wastewater District would be "completely arbitrary" and accordingly ordered deconsolidation.

reaches into its own pocketbook and not into those of its customers. The Commission cannot find the most appropriate solution for Agua Fria wastewater consumers if all possible options are not available for consideration.

DATED this 12th day of August, 2014.

Respectfully submitted,

By:
Judith M. Dworkin

Attorneys for Anthem Community Council
Judith M. Dworkin
Roxann S. Gallagher
Sacks Tierney PA
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, Arizona 85251-3693

and

Lawrence V. Robertson, Jr.
Of Counsel to Munger Chadwick
P.O. Box 1448
Tubac, Arizona 85646-1448

ORIGINAL AND THIRTEEN (13) COPIES
of the foregoing Hand-Delivered for FILING
this 12th day of August, 2014 to:

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

COPY of the foregoing mailed or e-mailed
this 12th day of August, 2014, to:

Dwight D. Nodes, Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Lyn Farmer, Chief Administrative Law Judge
Lfarmer@azcc.gov
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

1120354

Janice M. Alward, Chief Counsel
JAlward@azcc.gov
Maureen Scott, Esq.
MScott@azcc.gov
Legal Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007-2927

Steve Olea, Director
SOlea@azcc.gov
Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Daniel Pozefsky
DPozefsky@azruco.gov
RUCO
1110 W. Washington St., Suite 220
Phoenix, AZ 85007

Greg Patterson, Esq.
gpatterson3@cox.net
916 W. Adams, Suite 3
Phoenix, AZ 85007
Attorneys for WUAA

Bradley J. Herrema, Esq.
BHerrema@bhfs.com
Brownstein Hyatt Farber Schreck, LLP
21 E. Carrillo Street
Santa Barbara, CA 93101
Attorneys for Anthem Golf and Country Club

Norman D. James, Esq.
njames@fclaw.com
Jay L. Shapiro, Esq.
jshapiro@fclaw.com
Patrick Black, Esq.
pblack@fclaw.com
Fennemore Craig
3003 N. Central Avenue, Suite 2600
Phoenix, AZ 85012
Attorneys for DMB White Tank, LLC

Joan S. Burke, Esq.
joan@jsburkelaw.com
Law Office of Joan S. Burke
1650 N. First Avenue
Phoenix, AZ 85003
Attorneys for Mashie, LLC, dba Corte Bella Golf Club

Dan Neidlinger
dneid@cox.net
Neidlinger & Associates, Ltd.
3020 N. 17th Drive
Phoenix, AZ 85012

Frederick G. Botha
23024 N. Giovata Drive
Sun City West, AZ 85375

Troy B. Stratman, Esq.
TStratman@mackazlaw.com
Mack Drucker & Watson, P.L.C.
3200 North Central Avenue, Suite 1200
Phoenix, Arizona 85012

Gary Verburg, City Attorney
gary.verburg@phoenix.gov
Daniel L. Brown, Assistant City Attorney
Cythia S. Campbell, Assistant City Attorney
cythia.campbell@phoenix.gov
Office of The City Attorney
200 W. Washington, Suite 1300
Phoenix, AZ 85003

Jason Gellman
One Arizona Center
400 E. Van Buren, Suite 800
Phoenix, AZ 85004

Michele Van Quathem
Ryley Carlock & Applewhite
One North Central
Suite 1200
Phoenix, AZ 85004-4417

Chad Kaffer
3200 N. Central Ave., Suite 1200
Phoenix, AZ 85012

Craig & Nancy Plummer
17174 W. Saguaro Ln.
Surprise, Arizona 85388

Nicholas Mascia
1600 W. Broadway Rd., 200
Tempe, Arizona 85282

Mike Albertson
6634 N. 176th Ave.
Waddell, Arizona 85355

Jim Weihman
17200 W. Bell Rd.
Surprise, Arizona 85374

1120354

Michael Bailey
16000 N. Civic Center Plaza
Surprise, Arizona 85374

Kevin Chiariello
16074 W. Christy
Surprise, Arizona 85379

Brian O'Neal
21373 W. Brittle Bush Ln.
Buckeye, Arizona 85396

Thomas and Laurie Decatur
924 Torridon Ct.
Pickerington, Ohio 43147

Peggy Rahkola
17221 N. Citrus
Surprise, Arizona 85374

Kenneth Hewitt
18729 N. Palermo Court
Surprise, Arizona 85387

Peter Corpus
Rochanee Corpus
8425 N. 181st Drive
Waddell, Arizona 85355

Robert Metli
2398 E. Camelback Rd., Ste. 240
Phoenix, Arizona 85016

Thomas Campbell Michael Hallam
Lewis Roca Rothgerber, LLP
201 East Washington Street, Suite 1200
Phoenix, Arizona 85004

Tammy Ryan
200 West Washington, 9th Fl
Phoenix, Arizona 85003

Lynn Krupnik
6720 North Scotttsdale Rd., Ste 261
Scottsdale , Arizona 85253

George Turner
P O Box 12560
Glendale, Arizona 85318

Craig Marks
10645 N. Tatum Blvd.
Suite 200-676
Phoenix, AZ 85028

1120354

Andrew Miller
6401 E. Lincoln Drive
Paradise Valley, AZ 85253

Scottsdale Citizens for Sustainable Water
7322 East Cactus Wren Road
Scottsdale, Arizona 85250-4526

Phillip Cook
10122 West Signal Butte Circle
Sun City, AZ 85373

Larry Woods
15141 West Horseman Lane
Sun City West, AZ 85375

Larry Woods
13815 East Camino Del Sol
Sun City West, AZ 85375

W.R. Hansen
12302 West Swallow Drive
Sun City West, AZ 85375

Marshall Magruder
P.O. Box 1267
Tubac, AZ 85646

William Lipscomb
14976 W. Bottletree Ave.
Surpirse, AZ 85374

Coash & Coash
1802 North 7th Street
Phoenix, AZ 85006

Jeanne Stockard
4742 N. 24th Street, Suite 325
Phoenix, AZ 85016

Jerome Ellison II
P.O. Box 25466
Tempe, Arizona 85285-5466

Susan Harr
13201 N. 35th Ave., Suite B-3
Phoenix, AZ 85029

Jared Evenson
1600 W. Broadway Rd., Suite 200
Tempe, AZ 85282

Dana Rosenbaum
P.O. Box 25466
Tempe, AZ 85285-5466

1120354

Timothy Duffy
Cindy J. Duffy
19997 N. Half Mood Drive
Surprise, AZ 85374

Mike Smith
15396 N. 83rd Ave., Bldg. B.
Suite 101
Peoria, AZ 85381

Garry Hayes
1702 E. Highland Avenue
Suite 204
Phoenix, AZ 85016

Jan Garcia
1600 W. Broadway Rd., Suite 200
Tempe, AZ 85282

Jim Oravetz
1600 W. Broadway Rd., Suite 200
Tempe, AZ 85282

Owen Dejanovich
P.O. Box 72
Waddell, Arizona 85355

Stan Mucha
17300 N. Sun Valley Parkway
Surprise, Arizona 85374

William and Erin Parr
18044 W. Georgia Ct.
Litchfield Park, AZ 85034

Sharon Wolcott
20117 N. Painted Cove Lane
Surprise, AZ 85387

By: Sharon Rider

1120354