

# SacksTierney P.A.

ATTORNEYS



0000155372

Ellen K.  
James W. Arr  
Adrian L.  
Steven R. Be  
Stephen Aron E.

Brian E. Ditsch  
Judith R. Ewerton  
Patty A. Ferguson  
Roxann S. Gallagher  
Steven G. Klein

Michael C. Lamb  
Stephen A. Lenn  
Jeffrey S. Leonard  
Shannon M. Mason  
Matthew B. Meaker

DAVID L. ROSE  
James S. Samuelson  
Sharon B. Shively  
Allyson J. Teply  
David C. Tierney  
Matthew F. Winter

Arizona Corporation Commission  
**DOCKETED**  
AUG 15 2014

**RECEIVED**  
2014 AUG 15 P 3:41

AZ CORP COMMISSION  
DOCKET CONTROL  
Seymour Sacks (1932 - 2011)  
Marvin S. Cohen (1931 - 2009)  
E. Pace, CLM, Executive Director

DOCKETED BY



August 15, 2014

**ORIGINAL**

**VIA HAND DELIVERY**

Writer's Direct Line: 480.425.2673  
Writer's Direct Facsimile: 480.425.4973  
Writer's E-mail: Roxann.Gallagher@SacksTierney.com

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

Re: EPCOR Water Arizona, Inc. W-01303A-09-0343  
Docket No. SW-01303A-09-0343

To Whom It May Concern:

During the Arizona Corporation Commission's Procedural Conference held on August 13, 2014 in the above docketed proceeding, Judge Nodes asked Lawrence V. Robertson, Jr., counsel for Anthem Community Council, Inc. ("**Anthem**"), whether Anthem would agree to a temporary (i.e., 30 day) freeze of existing wastewater rates to accommodate a hearing schedule then under discussion for the evidentiary hearing contemplated by Decision No. 74588, dated July 30, 2014. The rate freeze would allow the extension and expansion of proceedings beyond the schedule and procedures proposed by EPCOR Water Arizona, Inc. ("**EPCOR**" or the "**Company**") in its Response to Commission Decisions, filed on August 8, 2014, in order to allow for adoption of certain changes to that schedule and those procedures suggested by Anthem in its August 12, 2014 written reply to EPCOR's filing, as well as during the August 13, 2014 Procedural Conference. Mr. Robertson responded to Judge Nodes that he would discuss the rate freeze with Anthem and advise Judge Nodes via a filing with Docket Control as to Anthem's answer to his question on or before August 15, 2014. In that regard, Anthem's Board of Directors held a special meeting on August 14, 2014 to address the question posed by Judge Nodes, which resulted in an extended discussion preceding a final decision by the Board of Directors.

By way of background, in Decision No. 73227, dated June 5, 2012, the Commission determined that it was in the public interest to deconsolidate the Anthem/Agua Fria Wastewater

1125197

District. To ameliorate significant rate increases for ratepayers in the Agua Fria District following deconsolidation, Decision No. 73227 adopted Anthem's proposal for a three year phase-in of stand-alone deconsolidated rates with the final step to occur in January 2015. Each step of the phase-in was designed to gradually reduce the \$2.4 million annual subsidy previously paid by the Anthem ratepayers for wastewater costs incurred by EPCOR on behalf of the Agua Fria ratepayers by approximately \$800,000 per year. Additionally, in anticipation of possible 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, Decision No. 73227 noted as follows:

"In order to address the issue of deconsolidation/consolidation in the most expeditious and fair manner possible, we will require the Company to make the system-wide rate filing as ordered by Decision No. 72047 that includes all of the affected districts, including the Sun City West Wastewater district, as soon as possible, 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. The required system-wide rate filing should include 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]

To date, more than two years later, the Company has not made the filings required by Decision No. 72047 and Decision No. 73227.<sup>1</sup>

True to the Commission's 2012 prediction, numerous complaints by wastewater ratepayers in the Agua Fria Wastewater District have been filed asking for their current and prospective rates to be reduced and suggesting consolidation of the Agua Fria Wastewater District with the Sun City West Wastewater District or further deconsolidation of the Agua Fria Wastewater District as potential solutions. In that regard, few, if any, Agua Fria consumers have requested reconsolidation of the Anthem/Agua Fria Wastewater District. Nevertheless, the Commission is now considering hearing at this time to examine potential solutions to Agua Fria's high wastewater rates including (i) full

---

<sup>1</sup> EPCOR stated during the August 13, 2014 Procedural Conference that it believes it is prohibited from filing a new rate case prior to June 30, 2015. However, later that same day Anthem's counsel conducted a review of both Decision Nos. 73227 and 72047, and found no reference to that date in either decision, nor any language requiring use of test period ending no earlier than June 30, 2015. Accordingly, Anthem continues to believe that the Motion to Stay Proceedings it filed with the Commission's Docket Control on August 13, 2014 is with merit.

consolidation of all EPCOR wastewater districts, (ii) further deconsolidation of the Agua Fria Wastewater District, and (iii) reconsolidation of the Anthem/Agua Fria Wastewater District.<sup>2</sup>

In connection with the foregoing, and with respect to full consolidation, currently filed rate data is stale. With respect to further deconsolidation, rate data is reportedly unavailable and costly to produce. As a consequence, the lack of current data for the other articulated options potentially marks reconsolidation of the Anthem/Agua Fria Wastewater Districts on the basis of data 5-6 years old as the proverbial “path of least resistance,” if the Commission insists on taking immediate action to reduce Agua Fria wastewater rates in response to the aforesaid complaints. However, such a course of action is not consistent with intelligent and responsible rate regulation.

Because Anthem believes that there is not sufficient information at this time for all parties to make reasoned proposals either for or against consolidation, deconsolidation, or reconsolidation scenarios, and because Anthem residents empathize with Agua Fria ratepayers, Anthem will agree to freeze existing rates for a 30-day period to allow for more intelligent decisions to be made, with the third phase of the rate deconsolidation plan approved in Decision No. 73227 to commence on February 1, 2015. This is not an easy decision for Anthem to reach for several reasons.

First, Anthem residents, who pay among the highest combined water and wastewater rates in the State of Arizona, are delaying their own needed rate relief, as provided for in Decision No. 73227. Further, Anthem is frustrated that proposed solutions for Agua Fria ratepayers continue to come at Anthem’s expense rather than at the expense of the entities that own, operate, and/or share use of the Agua Fria area wastewater treatment facilities. Succinctly stated, Anthem is shouldering a burden that does not, in any way, belong to Anthem. Finally, reconsolidation is being considered as a potential “solution” even though it would require the Commission to, in effect, renege on the terms of a Settlement Agreement that was (i) negotiated within the context of a Commission proceeding, (ii) concurrently approved in Decision No. 72047, and (iii) thereafter ratified in and implemented in relevant part by Decision No. 73227. Needless to say, Anthem believes that such a course of action by the Commission at this time would not be consistent with the “public interest.”

---

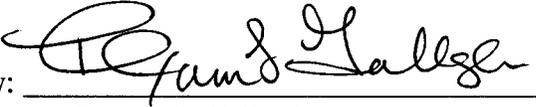
<sup>2</sup> In that regard, it should be noted that the Commission did not ask the Company to explore consolidation of the Agua Fria Wastewater District and the Sun City West Wastewater District. Needless to say, this is also a potential and perhaps very appropriate “solution,” and one which has been suggested by Agua Fria complainants themselves.

Sincerely,

Judith M. Dworkin and  
Roxann S. Gallagher  
Sacks Tierney P.A.

and

Lawrence V. Robertson, Jr.  
Of Counsel, Munger Chadwick, P.L.C.  
Attorneys for Anthem Community Council

By:   
Roxann S. Gallagher

Copy of the foregoing mailed  
this 5<sup>th</sup> day of August, 2014 to:

Service List for Docket No. W-01303A-09-0343  
and SW-013-03A-09-0343