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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
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COMMISSIONERS

JEFF HATCH-MILLER Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF:

RICHARD N. CORROW

Complainant,

vs.

ARIZONA WATER COMPANY,

Respondent.

DOCKET NO. W-01445A-04-0622

DECISION NO. 67581

OPINION AND ORDER

DATE OF PRE-HEARING CONFERENCE: October 14, 2004

DATE OF HEARING: November 16, 2004

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Marc. E. Stern

APPEARANCES: Mr. Richard N. Corrow, in propria persona;

Mr. Robert Geake, on behalf of Respondent, Arizona Water Company; and

Mr. David Ronald, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On August 26, 2004, Richard N. Corrow ("Complainant") filed with the Arizona Corporation Commission ("Commission") a Complaint against Arizona Water Company ("AWC" or "Respondent").

On September 20, 2004, AWC filed an Answer to the Complaint.

On September 22, 2004, by Procedural Order, a pre-hearing conference was scheduled on October 14, 2004.

On October 14, 2004, Complainant appeared on his own behalf and AWC appeared with counsel. The Commission's Utilities Division ("Staff") was present for purposes of observation and to encourage settlement of the Complaint.

On October 25, 2004, by Procedural Order, a hearing was scheduled on November 22, 2004.

On October 29, 2004, AWC filed a Motion to Continue ("Motion") the proceeding stating that the Company's principal witness would be on vacation.

On November 1, 2004, the Complainant filed a Response strongly objecting to AWC's Motion.

On November 1, 2004, by Procedural Order, AWC's Motion was denied.

On November 4, 2004, AWC telephonically requested that the hearing be rescheduled. AWC indicated that the parties were in agreement that the hearing be moved from November 22, 2004 to November 16, 2004. By Procedural Order, AWC's telephonic request was granted and the hearing date changed.

On November 16, 2004, a full public hearing was convened before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Complainant appeared on his own behalf. AWC and Staff appeared with counsel. At the conclusion of the hearing, the matter was taken under advisement pending submission of a Recommended Opinion and Order to the Commission.

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. Pursuant to authority granted by the Commission, AWC is an Arizona corporation which is engaged in the business of providing water service to approximately 67,000 customers in portions of Gila, Navajo, Cochise, Maricopa, Pima, Yavapai, Coconino and Pinal Counties, Arizona.

2. On August 26, 2004, Mr. Corrow filed a Complaint against the Respondent alleging that Respondent's requirements for a main extension agreement ("Agreement") to serve two adjacent undeveloped parcels of land in Apache Junction was placing an "undo burden on a property owner."

Mr. Corrow essentially stated that AWC's requiring him to pay $16,000 for a main extension in order to provide water service to his property was unfair to him when he could, for approximately $1,500, serve his property from a "remote" meter.[1]

3. Mr. Corrow's property, which is the subject of this Complaint, is located in a somewhat rural area of Pinal County zoned for one-acre lots. His property consists of two separate one-acre parcels. The first, Lot 5C, is where he is building his own private residence, and the second, Lot 5D, is where he plans to build a "spec" home for sale to a third party.

4. Complainant's parcels were part of a larger, five-acre parcel formerly known as Lot 5, which was split by the original owner into five separate one-acre lots, Lots 5A, 5B, 5C, 5D and 5E. The original owner retained Lots 5A and 5B for his own use and built a home on them.

5. The fifth parcel, Lot 5E, was purchased by another individual, Mr. Darrell Ness, who testified in the proceeding.

6. The five parcels in question are located on what Mr. Corrow termed a "private road", a dirt road extension north of Prospectors Road which is a paved roadway which runs through a platted subdivision to the south of the five parcels. Presently, the dirt road goes by Mr. Ness' and Mr. Corrow's parcels and ends at Lot 5B and provides a means of ingress and egress for the owner of Lots 5A and 5B. A map of the property, which was introduced at the hearing as Exhibit R-1, is attached hereto as Attachment A.

7. AWC is the certificated water provider for Mr. Corrow's property and for substantial portions of the Apache Junction area surrounding his property, some of which consists of planned subdivisions and other portions that reflect either lot splits or larger individual properties.

8. In the area to the south of Mr. Corrow's parcels and Lot 5E, along the east side of the paved portion of Prospectors Road, AWC has a six inch water main that is interconnected with other water mains which extend through the planned subdivision.

9. The original property owner who owns Lots 5A and 5B and who split his parcel into five lots receives his water services by means of what is now a "remote" meter set at what appears to

[1] A "remote" meter is one not located at a customer's property line or on his property. It is usually located at the end of a long service line on another person's property.

be the property line of Mr. Ness' parcel, 5E, located at the northeast corner of the intersection of Peralta Estates Road (the northern boundary of the planned subdivision) and Prospectors Road where the pavement ends. However, when the original property owner's service for Lot 5 was connected where it is presently situated, he owned Lot 5 in its entirety.

10. The original owner of Lot 5 and approximately six other property owners in the area are served by "remote" meters, which were once an acceptable means used by AWC to provide water service in the area due to the excessive number of lot splits. However, in recent years, as development has taken place, AWC has interpreted its approved Tariff No. TC-243 ("Tariff") to comply with the Commission's rule in order to insure the orderly and most efficient growth of its system to serve its customers by primarily requiring a customer's meter to be placed on their property or on the property line.

11. The Commission's rule, A.A.C. R14-2-405(B)(4), establishes a guideline for the location of a customer's meter by stating as follows:

> The Company may install its meter at the property line or, at the Company's option, on the customer's property in a location mutually agreed upon.

12. Respondent's Tariff essentially mirrors Commission rule A.A.C. R14-2-405(B)(4), but is somewhat more flexible with respect to the location of a customer's meter stating as follows:

> The Company, at its option, may install its meter at the property line, on the customer's property or in another location mutually agreed upon.

13. Pursuant to AWC's approved Tariff, Respondent retains the option to determine the ultimate location of a customer's meter and as a result, a customer may be required to enter into a more costly main extension for service at his meter on his property rather than a less costly method with Respondent providing water service by means of a "remote" meter.

14. Ms. Joyce Dickson, a land-locked lot owner who owns a lot to the north of Complainant's parcel, testified she had attempted to secure water service by means of a "remote" meter from AWC. AWC denied here request for a "remote" meter and advised her that she would have to secure lawful easements and enter into a similar form of Agreement costing approximately

$16,000 to secure water service from AWC.

15. Mr. Darrell Ness, the owner of Lot 5E at the northeast corner of Peralta Estates Road and Prospectors Road, to the south of Mr. Corrow's parcels, testified that in 2003 he funded a 130-foot main extension from where AWC's main ended on the paved portion of Prospectors Road across Peralta Estates Road to his parcel for slightly less than $8,000.

16. Mr. Ness indicated that when he built his house, he had tried to secure service from AWC by having a "remote" meter placed adjacent to AWC's existing main on someone else's property. AWC did not agree to this location and Respondent informed him that it would not provide service in that manner. He was also required to grant a wider easement to AWC along the western boundary of his property northward along the dirt portion of Prospectors Road to allow for the extension of AWC's main to Mr. Corrow's lot and to other property owners' lots in the future.

17. Mr. Ness acknowledged that prior to purchasing his lot, he had contacted AWC and learned that he would be required to enter into an Agreement to extend Respondent's main to his property.

18. Ms. Sandy Smith, a Pinal County Supervisor, testified that since her involvement in government for approximately 10 years, she has been trying to develop an equitable means to distribute the costs of main extension agreements which are often required for water service to lots that result from lot splitting, a frequent problem in Pinal County. Ms. Smith took no position on the merits of this Complaint.

19. Mr. Corrow indicated that in order for service to be extended to his two parcels from AWC's main where it ends at Mr. Ness' property, he would have to extend the six-inch main approximately 260 feet at a cost of approximately $16,179. The Agreement provides for Mr. Corrow to recover 10 percent of the total gross annual revenues received by AWC for 10 years from any customer whose service line is connected to Mr. Corrow's main which is subject to the Agreement. This refund is the minimum prescribed pursuant to A.A.C. R14-2-406.[2]

20. Mr. Corrow testified that although he was aware that he was purchasing land in a rural

[2] In all probability, the only foreseeable customer at the time of the hearing would be the purchaser of the "spec" home to be built by Mr. Corrow on Lot 5D.

area, he assumed that his parcels, Lot 5C and the "spec" home parcel, Lot 5D, could be provided with water service by utilizing "remote" meters because he believed that the dirt portion of Prospectors Road is a private road. Mr. Corrow claims that the dirt road is not subject to any county claims for easements or a public roadway development in the future running northward from Peralta Estates Road to where it would intersect with Junction Drive.

21. To further support his Complaint that AWC's cost for a main extension was unduly burdensome and that he would never recover the cost of his investment, Mr. Corrow pointed out that he was able to secure his electric, telephone and cable service for a total cost of $3,500.

22. However, Mr. Corrow, in response to a question whether he contacted AWC before he purchased the lots as to the cost of getting water service, testified, "No, I didn't. I didn't feel that that information was pertinent at the time, and it was - - no, I did not." (Tr. p. 91)

23. Mr. Corrow insists AWC is conducting a "subterfuge" by requiring lot owners to fund main extensions based on management's theories of how development will take place in rural areas of Pinal County in the future.[3] He further insists that the refunding requirements under his Agreement are unfair to him because the Commission's rule A.A.C. R14-2-406(D) will not permit a refund to him unless other customers' service lines are directly connected to the main funded by his Agreement. Under this scenario, there is little chance of any refund from customer revenues available other than from the customer who purchases his "spec" home on Lot 5D.

24. In rebuttal, AWC called Mr. Michael Whitehead, its Vice-President of Engineering who has been employed by the Respondent for 25 years.

25. Mr. Whitehead testified that AWC's Agreement with Mr. Corrow for $16,179 with the notation "paid under protest" was submitted for approval by the Commission's Staff, but it is being held pending the outcome of this proceeding.

26. Mr. Whitehead termed the quarter section where Mr. Corrow's parcels are located a "wildcat subdivision" because it is developing by lot splitting rather than as a platted subdivision.

27. Mr. Whitehead believes that Prospectors Road will become the main arterial road in

[3] To buttress this argument, Mr. Corrow presented unsworn statements and hearsay evidence to illustrate that growth and road development will not take place as AWC expects because the present lot owners won't sell their lots or grant easements to AWC.

the quarter section and described AWC's future planned main expansion from a map submitted in evidence. The map shows a planned main running northward on Prospectors Road from Mr. Ness' parcel to Mr. Corrow's parcels and beyond where it intersects with a planned main running east and west on Junction Drive to the north. It is AWC's option to either serve the Corrow parcels at meters on the property lines or on the actual parcels. Pursuant to the Commission's rule A.A.C. R14-2-406(H), the main extension will be constructed with a six-inch main.

28. Mr. Whitehead testified that AWC will extend the Prospectors Road main northward over time as parcels are split and sold and new lot owners need water service.

29. Mr. Whitehead based his opinion on his professional experience concerning the extension of AWC's main northward along Prospectors Road as he described how land is ultimately subdivided, particularly by later property owners, especially in flat areas like the valley around Phoenix where subdivisions generally follow section and midsection lines forming a grid like pattern.

30. According to Mr. Whitehead, in isolated situations, AWC may agree, at its option, to the installation of a "remote" meter when it is unreasonable to extend a six-inch main 50 to 100 feet where the main will dead end.

31. Mr. Whitehead indicated that one reason AWC does not believe that sharing the cost of the main is appropriate is because Mr. Corrow is acting as a developer by building a "spec" home to earn a profit. AWC believes that under these circumstances, it would be unfair for AWC's Apache Junction customers to subsidize the cost of the main extension for Mr. Corrow's parcels.

32. Presently, in order to avoid lot split problems with large lot owners who may plan to split their lots in the future, when they request water service, AWC requires them to sign a conditional service agreement that requires the original property owner who may be left with a "remote" meter after a lot split, to acknowledge that he will pay for a main extension, if necessary, to move his water meter line to his new property line.

33. Staff's witness, Ms. Connie Walczak, testified that Staff has developed some language to be used on service applications which involve main extension agreements to avoid future lot-split problems, and has recommended its usage to AWC. She indicated that in this situation, although there are compromises that could be utilized if Respondent is willing, AWC is following its approved

tariff which is in compliance with the Commission's rules for water utilities.[4]

34. In a Complaint proceeding, the burden of proof is upon the Complainant to establish, by a preponderance of the evidence, that the Respondent is in violation of its Tariff, Arizona law, the Commission's rules or prior Orders. Under the circumstances herein, the Complainant has failed to meet his burden of proof to establish that AWC is in violation of its Tariff, Arizona law, the Commission's rules or prior Orders under the terms of the Agreement which has been submitted for Commission approval. Therefore, Mr. Corrow's Complaint should be dismissed.

CONCLUSIONS OF LAW

1. AWC is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. § 40-246.

2. The Commission has jurisdiction over AWC and the Complaint herein.

3. There is no evidence that AWC violated its Tariff on file with the Commission or that there have been any other violations of any Commission Orders, the Commission's rules or Arizona law.

4. The Complaint of Mr. Corrow should be dismissed.

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[4] Compromises such as extending the duration of the Agreement and refunding a higher percentage of the gross revenues.

ORDER

IT IS THEREFORE ORDERED that the Complaint of Mr. Richard N. Corrow in the above-captioned matter be, and is hereby, dismissed.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 15th day of Feb., 2005.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

SERVICE LIST FOR: ARIZONA WATER COMPANY

DOCKET NO.: W-01445A-04-0622

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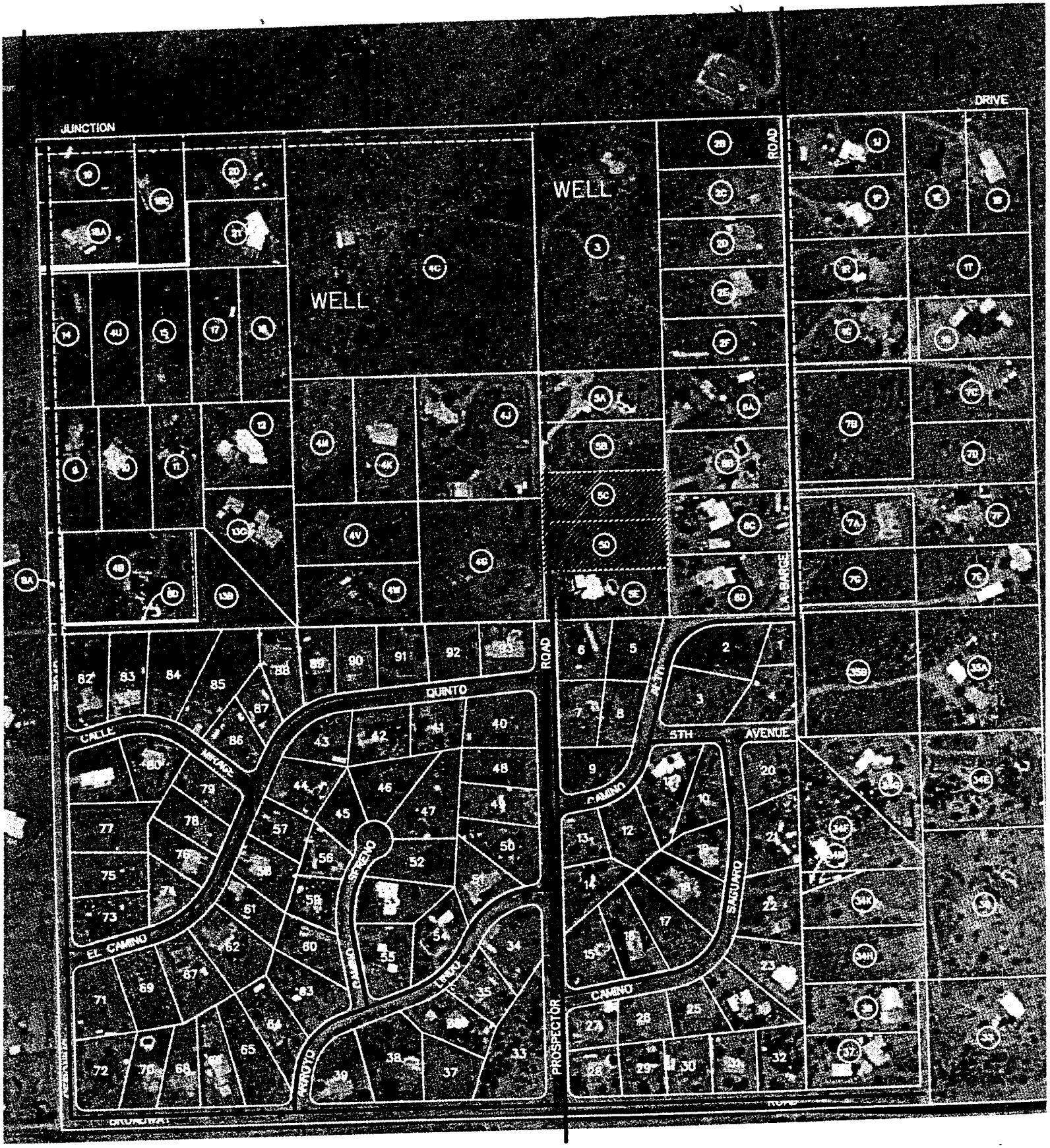

EXHIBIT A

DECISION NO 67581