

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

TOM FORESE – Chairman
DOUG LITTLE
BOB BURNS
ANDY TOBIN
BOYD DUNN

IN THE MATTER OF THE APPLICATION OF
EPCOR WATER ARIZONA INC. FOR A
DETERMINATION OF THE CURRENT
FAIR VALUE OF ITS UTILITY PLANT AND
PROPERTY AND FOR INCREASES/
DECREASES IN ITS RATES AND CHARGES
BASED THEREON FOR UTILITY SERVICE
BY ITS AGUA FRIA, ANTHEM, MOHAVE,
SUN CITY, AND SUN CITY WEST
WASTEWATER DISTRICTS AND FOR
CONSIDERATION OF CONSOLIDATION
AND DECONSOLIDATION PROPOSALS

DOCKET NO. WS-01303A-16-0145

SUN CITY HOME OWNERS
ASSOCIATION'S APPLICATION
FOR REHEARING

PRELIMINARY STATEMENT

The Arizona Corporation Commission reached an unjust, unreasonable and unwarranted conclusion when it foisted a 76-percent rate increase upon the residents of Sun City—in disregard of controlling law and compelling evidence. The decision was arbitrary, unlawful and factually unsupported. The Sun City Home Owners Association moves the Commission to rehear the issue of consolidation in Decision No. 76162 (the “Decision”) pursuant to A.R.S. § 40-253 and A.C.C. R14-3-111.

I. THE DECISION IS ARBITRARY AND UNREASONABLE

The Decision is arbitrary and unreasonable for several independent yet equally dispositive reasons. Litchfield Park Serv. Co. v. Ariz. Corp. Comm’n, 178 Ariz. 431, 434 (App. 1994) (holding that appellant must demonstrate that the Commission’s decision is arbitrary, unlawful or unsupported by substantial evidence for reversal).



1 A. The Commission abandoned the bedrock principle of cost causation.

2 For more than 40 years, Sun City residents have paid wastewater rates based on
3 the singular principle of cost causation, which translates to “we charge you based on what
4 you cost us.” Cost causation is a bedrock ratemaking principle that James Bonbright
5 describes as “[w]ithout doubt the most widely accepted measure of reasonable public
6 utility rates and rate relationships.” J. Bonbright, *Principles of Public Utility Rates* 389
7 (1988).

8 What is more, this Commission has long treated cost causation as an essential
9 ingredient for “just and reasonable” utility rates. Yet here, the Commission abandoned
10 that long-accepted, long-used practice without ever explaining why. The Commission has
11 concluded that Sun City’s wastewater rates are “just and reasonable” without
12 meaningfully evaluating the actual investment and cost required to serve Sun City. This
13 sudden departure from cost-causation principles is of particular import here because the
14 Commission has ignored the meaningful, abundant differences between and among the
15 consumers and communities under EPCOR’s control. That is unjust and unreasonable.

16 B. The Commission says it applied cost-causation principles when it did not.

17 Just as important, the Commission actually purports to have applied cost-causation
18 principles. Decision at 202. It has not. The Commission instead reinvents cost causation
19 as a simple, meaningless exercise in which it (1) determines an overall revenue
20 requirement and then (2) allocates the revenue requirement equally across all districts—
21 disregarding all other facts and circumstances. That unprecedented approach dilutes the
22 meaning, spirit and significance of cost causation to nil. And it ignores the important
23 differences that exist between distinct and unique Arizona communities.

24 The Commission’s reimagined version of cost causation is arbitrary and
25 unreasonable. The Commission would find no difference between a community that has
26 bought and paid for its wastewater infrastructure (many times over) versus another



1 community that is just beginning to pay for its brand-new wastewater infrastructure. The
2 Commission would ignore the dissimilar costs required to construct a high-tech EPCOR
3 wastewater treatment plant versus the costs to have an independent municipality treat
4 Sun City’s wastewater based on volume. Indeed, the Commission could approve a single
5 wastewater rate for all Arizonans and still justify it as cost causation.

6 At bottom, Sun City residents have nearly paid off their wastewater infrastructure
7 over several decades, but EPCOR and this Commission now intend to saddle them with
8 the obligations of different ratepayers in different wastewater districts. That’s arbitrary
9 and unreasonable.

10 C. What happened in 31 months?

11 The Decision is arbitrary and unreasonable when compared to another decision
12 from this Commission, Decision No. 74881. There, only 31 months ago, the Commission
13 found that \$22.11 per month was a just and reasonable wastewater rate for Sun City
14 consumers. Yet here, the Commission finds that \$38.98 per month is the just and
15 reasonable wastewater rate—a rate hike of 76 percent. The Commission never explains
16 what happened in the span of 31 months to justify its brisk retreat.

17 D. The Decision departs from prior Commission guidance and decisions.

18 The Decision is even more arbitrary and unreasonable when compared to prior
19 decisions and guidance from the Commission on a slew of topics, including consolidation,
20 cost causation, geographical separation, lack of interconnection, economic efficiency, clear
21 price signals, and other traditional cost-of-service rate-setting principles.

22 Just six months ago, for instance, the Commission confirmed that “just and
23 reasonable” utility rates account for “the actual costs to serve customers,” emphasizing
24 that actual costs are “a very important consideration when choosing an appropriate and
25 fair rate design, based on cost causation principles.” See Decision No. 75859 at 143:21-24.



1 Only five years ago, the Commission relied on cost-causation principles when it
2 tackled an identical issue (whether to consolidate or deconsolidate) in an identical context
3 (wastewater services) with identical parties (Anthem and Agua Fria). See Decision No.
4 73277 at 30:18-31:1. There, the Commission concluded that Anthem should not share
5 wastewater costs with Agua Fria because Anthem residents did not benefit from the
6 treatment facilities that serve Agua Fria and because the two districts were
7 geographically separated and disconnected. *Id.* The Commission ignored the same facts
8 here—Sun City residents do not benefit from the treatment facilities serving the other
9 districts, and the Sun City district is geographically separated and disconnected from the
10 other districts.

11 E. The Decision bypassed the Commission’s historical methodology for setting
12 rates based on fair value.

13 Arizona’s constitutional framers established the Commission to ensure fair
14 treatment by utilities who have government-sanctioned monopolies. Article 15 of the
15 Arizona Constitution both empowers and restricts the Commission. The Arizona
16 Constitution directs the Commission to set rates based on “fair value.” *Ariz. Const. art.*
17 *XV, § 14.*

18 The Commission’s fair-value determination here is arbitrary and unreasonable.
19 Instead of measuring what it costs to serve discrete and unique communities, the
20 Commission measured the total costs incurred by a private, Canadian-owned utility to
21 serve isolated, dissimilar communities across the State of Arizona. In doing so, the
22 Commission departed from historical practice without explaining why.

23 F. Cost shifting is contrary to the public interest.

24 The same is true of the Commission’s new cost-shifting approach, which turns
25 ratemaking into an arbitrary and unreasonable exercise. Cost shifting is an unreliable
26 method to set wastewater rates. It creates a free-rider problem. Rates should be tied to
actual needs and requirements. In this instance, cost shifting results in meaningless rates



1 untethered to the facts and circumstances of unique communities. A community should
2 not be forced to pay for infrastructure that isn't used and useful to that community.

3 G. The hearing was rife with evidentiary and procedural errors.

4 The Commission made various evidentiary and procedural errors. The Commission
5 refused to consider compelling evidence while disparaging other meaningful evidence. For
6 instance, the Commission refused to consider over 7,000 public comments from concerned
7 EPCOR customers. According to this Commission:

8 [A]lthough the Commission is aware of the sentiments held on both
9 sides of the consolidation issue, and of the multitude of comments
10 provided on each side, public comment does not constitute sworn
11 testimony that may be relied upon for purposes of rendering a legally
defensible decision.

12 Decision at 203.

13 That is wrong from a constitutional, institutional and evidentiary perspective.
14 First, by ignoring public comments, the Commission abandoned its constitutional role to
15 hear and consider the concerns of affected consumers and violated the Due Process rights
16 of Arizona residents. *Arizona Cmty. Action Ass'n v. Arizona Corp. Comm'n*, 123 Ariz. 228,
17 231 (1979) ("In determining what is a reasonable price to be charged for services by a
18 public-service corporation, ... [t]he effect of the rate upon persons to whom services are
19 rendered is as deep a concern in the fixing thereof as is the effect upon the stockholders or
20 bondholders. A reasonable rate is one which is as fair as possible to all whose interests are
21 involved.").

22 The omission is most concerning here given the advanced age and disabilities of
23 many Sun City seniors who could not attend Commission hearings through no fault of
24 their own. As one Sun City resident (Elsie Nicolai) wrote Commissioner Doug Little: "I am
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1 handicapped, so I am unable to attend the meetings regarding this issue. This is my voice,
2 please take this into consideration when making decisions regarding this matter.”¹

3 Second, the Commission disregarded its historical practice and foundation. The
4 Commission often turns to public comment as evidence. See, e.g., Decision No. 71865 at
5 51:2-4. In Decision No. 69164, the Commission explained that while public comment is
6 not evidence in a “strict sense” and “it may not be appropriate to rely solely on
7 unsubstantiated claims made in public comments,” the Commission believed “ratepayer
8 input is important to consider as an indication of how customers view the operations of a
9 regulated utility company.” Decision 69164 at 34:28-35:2. It continued:

10 [I]f corroborating sworn testimony or documentary evidence is
11 presented in the course of the hearing, it is entirely appropriate to
12 treat the public comments as an indicator of customer perception and
13 experience in dealing with regulated monopoly utility companies.
14 Indeed, such comments are invaluable for the Commission to
15 understand both positive and negative experiences of customers,
16 especially since those customers have no choice but to take service
17 from the utility holding an exclusive Certificate to provide service.

16 See 2006 Ariz. PUC LEXIS 195, *69-70 (Ariz. Corp. Comm’n December 05, 2006)
17 (emphasis added). Even the Commission’s website explains: “Your comments become part
18 of the data that the Commissioners review prior to making their decision.”²

19 Thus, in its own words, the Commission has ignored “important” and “invaluable”
20 information in reaching its decision.

21 Third, the Commission abused its discretion to admit and exclude evidence,
22 ignoring its own relaxed evidentiary rules. See, e.g., A.R.S. § 40-243 (“Neither the
23 commission nor a commissioner shall be bound by technical rules of evidence, and no
24 informality in any proceeding or in the manner of taking testimony before the commission
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¹ See <http://docket.images.azcc.gov/0000180794.pdf> (last visited on July 13, 2017).

² See <http://www.azcc.gov/divisions/utilities/water/faq.asp> (last visited on July 13, 2017).



1 or a commissioner shall invalidate any order, decision, rule or regulation made, approved
2 or confirmed by the commission.”).

3 The ALJ also disregarded a potent universe of demographic and economic evidence.
4 For instance, the Commission should have considered the median income of Sun City
5 because it sheds light on whether a particular community can bear an enormous rate
6 increase. It is neither just nor reasonable to substantially increase the wastewater rates
7 of those least able to bear it.

8 Finally, the Commission arbitrarily allowed witnesses supporting consolidation
9 unbridled latitude to testify concerning irrelevant and unfounded subjects, while both
10 restricting the scope of witnesses testifying in opposition to consolidation and preventing
11 attorneys from conducting meaningful cross-examination of witnesses supporting
12 consolidation.

13 H. No criteria were set for consolidation.

14 The Decision to consolidate is not anchored to specified criteria. Unlike other
15 states, the Commission has never outlined a list of minimum or determinative factors in
16 deciding whether consolidation is appropriate. This omission amplifies the arbitrary and
17 unreasonable nature of the Decision.

18 I. The Commission disregarded the principles of rate shock, gradualism and a
19 partial consolidation alternative.

20 The decision is erroneous for more reasons. Among other errors, the decision
21 springs rate shock upon Sun City residents and violates the principles of gradualism. The
22 Commission also refused to consider viable partial consolidation alternatives.

23 II. THE DECISION IS UNLAWFUL

24 The decision was unconstitutional for at least three reasons. First, the Arizona
25 Constitution directs that the Commission “shall prescribe just and reasonable
26 classifications to be used and just and reasonable rates and charges to be made and



1 collected.” Ariz. Const. art. XV, § 3. The Commission here approved wastewater rates
2 that are unjust and unreasonable.

3 Second, the Constitution prohibits discrimination when “rendering a like and
4 contemporaneous service.” Ariz. Const. art. XV, § 12. As Professor Charles Phillips
5 explains: “When a firm sells the same service at rates which are not proportional to costs,
6 discrimination results.” Charles F. Phillips, Jr., *The Regulation of Public Utilities*
7 (Arlington, VA: Public Utilities Reports, Inc. 1993) at 410-11. That’s what happened here.

8 Third, in refusing to consider public comments, the Commission abandoned its
9 constitutional role to hear from and consider the interests of affected consumers:

10 The consideration of consumer interests in setting just and
11 reasonable rates fulfills the protective role the constitutional framers
12 envisioned in creating the Commission and clothing it in creating the
13 Commission and clothing with exclusive power to set rates and
14 regulate utilities.

15 *Phelps Dodge Corp. v. Ariz. Elec. Power Coop., Inc.*, 207 Ariz. 95, 100 (App. 2004).

16 III. THE DECISION IS UNSUPPORTED BY SUBSTANTIAL EVIDENCE

17 Substantial evidence was not presented that consolidation is just, fair, reasonable
18 and in the public interest. The Commission ultimately ignored or dismissed evidence of
19 harm that will result from consolidation while embracing unsubstantiated benefits.

20 The Commission disregarded extensive, impactful evidence that weighed against
21 consolidation and a 76-percent rate hike. Among that evidence: Sun City and the other
22 districts were established as separate and dissimilar communities. Sun City is comprised
23 almost exclusively of retired, fixed-income seniors who no longer generate wage income.
24 Sun City has smaller and older homes and its property values are much lower than those
25 in other districts. It has many seasonal residents and fewer users per home, which is
26 significant because EPCOR’s contract with the City of Tolleson is largely based on volume.
Seniors chose to live in Sun City in order to stretch their modest, fixed incomes and cannot
simply move to escape the oncoming rate shock. And given their advanced age, Sun City



1 residents are unlikely to realize EPCOR’s promise of long-term benefits, which EPCOR
2 says are “decades” away. Decision at 167. Economists call this an “intergenerational
3 subsidy.”

4 On the other hand, Anthem, Verrado, and Russell Ranch are dynamic family
5 communities with high median incomes that continue to rise as time passes and wages
6 increase. The residents of Anthem have a mean household income 213 percent higher
7 than residents of Sun City. The same is true of Agua Fria, where residents generate a
8 mean household income that’s 168 percent higher than residents of Sun City. What is
9 more, Agua Fria is “expected to experience a lot of growth” in the future, which means
10 more wastewater ratepayers and reduced monthly wastewater rates. Decision at 162.

11 Sun City wastewater systems are geographically separate from and unconnected to
12 systems of other districts. And unlike any other district, EPCOR does not treat Sun City’s
13 wastewater. The City of Tolleson does. Yet no evidence was presented to compare and
14 contrast the cost differences between consumers treated by EPCOR versus Tolleson.

15 Sun City has largely paid off its wastewater system while other districts are still
16 paying for their brand new, state-of-the-art infrastructure. In the end, fixed-income
17 retirees in their closing years should not be forced to subsidize the wastewater
18 infrastructure of well-heeled, full-time residents in growing family communities.

19 EPCOR and the Commission insist that consolidation will decrease the
20 administrative costs and burdens on them, but a reduction in paperwork for large
21 corporations and government administrators cannot trump what is just and reasonable.
22 The Commission should not pursue administrative expedience or convenience at the
23 expense of fixed-income retirees.

24 Substantial evidence was not presented to demonstrate that Sun City will require
25 enormous improvements to its wastewater infrastructure in the next decade. Indeed, the
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