BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION OF GOLD CANYON SEWER COMPANY, AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN ITS RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.	Docket No. SW-02519A-06-0015

RUCO'S RESPONSE TO THE TESTIMONY OF TREVOR HILL

The Residential Utility Consumer Office ("RUCO") hereby responds to pre-filed testimony of Trevor Hill. Mr. Hill was formerly the president of Gold Canyon Sewer Company's ("Gold Canyon" or "Company"). The issue raised by Mr. Hill's testimony, a utility's bad-faith misrepresentation to its customers, is not one of first impression. The Commission has seen misrepresentations made by utilities through their representatives in one form or another on several occasions. Perhaps the most noteworthy example was the case of Qwest Corporation's compliance with Section 252(e) of the Telecommunications Act of 1996 (Docket No. RT-00000F-02-0271). The Commission has always taken these matters seriously and should continue to do so in this case. First and foremost the Commission needs to protect the public, and impose remedies which, at the very least, will deter this type of behavior in the future.

Mr. Hill is scheduled to testify in this matter on December 4, 2006. RUCO's response at this point is based on the evidence in the record at this time. RUCO reserves the right to change or modify its position or any other part of this response after the record is complete.

THE COMPANY MISREPRESENTED ITS INTENTIONS REGARDING THE RATEMAKING TREATMENT OF THE PLANT IMPROVEMENTS

The Company misrepresented its intentions regarding the ratemaking treatment of its plant improvements. The Company, through its President at the time, Trevor Hill, provided a handout to its customers in or about 2002 or 2003, which in question and answer format addressed the issues regarding then-planned plant upgrades. One specific question and answer in the Company's handout read as follows:

> Will the upgrade mean an increase in Rates?
>
> No. GCSC is committed to providing the upgrade through a combination of paid-in-capital and new development hook-ups.

The Company's answer - no - means no. While the reference to "paid-in-capital" might suggest to a reader familiar with the ratemaking process that an increase in rates could result in the future, the average residential customer would not be expected to be familiar with the technical details of how the Company's rates are set, and thus would not likely understand that the second sentence of the response directly contradicts the first sentence. The structure of the Company's response – a definite and conclusory "no", followed by a statement whose implication most readers would not understand – can itself be seen as an indicator of the Company's attempt to hide the truth.

Further, the Company's misrepresentation is not immaterial. RUCO understands that customers who were intervenors in Gold Canyon's last rate case agreed to the settlement of

that case at least in part on reliance on the Company's statement that the plant would not impact the Company's rates.

THE COMMISSION HAS JURISDICTION TO CONSIDER AND ACT ON THE COMPANY'S MISCONDUCT

The Company has gone to great lengths to frame this issue as a legal issue governed by the law of contract and outside the jurisdiction and authority of the Commission. See Company's Legal Brief. However, the Commission does not have to address the Company's contract claim to establish jurisdiction since Arizona's Constitution empowers the Commission with exclusive and broad ratemaking authority. The Commission's authority over utility rate making derives directly from the Arizona Constitution. Article 15, section 3 states:

> The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the State for service rendered therein, and make such reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the State, and may prescribe the forms of contracts and the systems of keeping accounts to be used by such corporations; ... Provided ... that classifications, rates, charges, rules, regulations, orders, and forms or systems prescribed or made by said Corporation Commission may from time to time be amended or repealed by such Commission.

In addition, the Commission has authority under A.R.S. § 40-203 to proscribe utilities from engaging in practices that are unjust, illegal or insufficient.

THE REDUCTION OF THE COMPANY'S RATES BASED ON THE COMPANY'S BAD FAITH MISREPRESENTATIONS IS NOT AN APPROPRIATE REMEDY

Some customers have suggested that the appropriate remedy for the Company's misrepresentation is to disallow the new treatment plant in rate base. While it could be within

the Commission's discretion to reduce the Company's rates based on its bad-faith misrepresentations, such a remedy is not appropriate in this case. The objective of imposing any remedy should be to deter future bad acts not only by this Company, but by all the utilities regulated by the Commission. The denial of recovery of over $16 million of plant upgrades based on the Company's misrepresentations would place the Company in financial distress, which in turn could affect service to the Company's customers. Moreover, such action would likely act as a disincentive to this Company and others from making necessary upgrades and improvements in the future. The Commission should encourage utilities to make plant improvements when necessary. Utilities should also feel secure knowing that they will be allowed recovery provided the improvements are appropriate and meet proper regulatory accounting standards. Moreover, denial of recovery here could encourage utilities to seek Commission approval of rate case treatment before they make any improvements. Such requests, though usually denied, impede the regulatory process by utilizing the Commission's resources that could be directed to other matters before the Commission.

Finally, regardless of what the Company promised, it is undisputed that the Company's customers had been complaining for a long time about odor problems that necessitated the improvements and the customers wanted the odor problem fixed. The Company did respond to the customers' complaints and, it appears, has solved the problem. It would be unfairly punitive to deny the Company recovery of its expenses associated with the improvements.

THE APPROPRIATE PENALTY FOR THE COMPANY'S BAD ACTS WOULD BE TO ESTABLISH A FINE

A utility should be held accountable for its misconduct, and the most appropriate and fair way is generally for the Commission to impose a fine on the utility. The Commission is authorized to impose a fine on a public service corporation

> which violates or fails to comply with any provision of the constitution or of [Chapter 2 of Title 40], or which fails or neglects to obey or comply with any order, rule or requirement of the commission…

A.R.S. § 40-425. A fine would be an appropriate penalty for a utility's material misrepresentation to its customers because it sends a message to all regulated utilities in Arizona that they will be held responsible for misconduct regarding business before the Commission. It is a message that is long overdue in Arizona given the pervasiveness of this type of activity in the past.

Unfortunately, RUCO is not aware of any provision in the Arizona Constitution, Chapter 2 of Title 40 of the Arizona Revised Statues, or the Commission's Rules which prohibit a utility's misrepresentations to its customers. Stated another way, the Company did not violate a Commission Rule, Order or law which would allow the Commission to establish a penalty and impose a fine. RUCO recommends that the Commission use this case as an opportunity to initiate a rulemaking process to consider rules which govern some basic corporate conduct principles that regulated utilities shall be required to adhere to in their dealings with the public, including prohibiting misrepresentations to customers. Regulated utilities should not be allowed to operate with impunity for bad acts when dealing with the public in matters before this Commission.

RESPECTFULLY SUBMITTED this 22nd day of November 2006

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