



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**SUN CITY HOMEOWNERS ASSOCIATION v. ARIZONA
CORPORATION COMMISSION, No. CV-20-0047 (Opinion)**

PARTIES:

Petitioner: Sun City Homeowners Association (“Sun City”)
Respondent: Arizona Corporation Commission (“Commission”)
Intervenor: EPCOR Water Arizona, Inc. (“EPCOR”)
Amici curiae: Freeport Minerals, Inc.; The Goldwater Institute; Arizona Water Company; and Global Water Resources, Inc. and Liberty Utilities (Sub) Corp.

FACTS: EPCOR provides wastewater service to wastewater districts in Agua Fria, Anthem, Mohave, Sun City, and Sun City West. All except Mohave are within the Phoenix metro area. Sun City by far has the most customers. The communities are geographically distinct, but EPCOR’s corporate services are centralized. Historically, the districts have paid different monthly wastewater rates, ranging from \$22.11 per month in Sun City to \$71.16 per month in Agua Fria. The differences have been maintained even between districts that use the same wastewater treatment facility. Those paying higher rates urged the Commission to impose a consolidated rate.

In 2014, the Commission ordered EPCOR to file a rate application to address the rate disparities by addressing three models: (1) full consolidation into one district; (2) a “stand-alone” scenario, where the five districts would remain separate; and (3) full deconsolidation creating seven separate districts based on the wastewater treatment facility serving each area. EPCOR filed the application in April 2016. In February 2017, the Commission addressed consolidation at a hearing. Evidence introduced at the hearing showed that EPCOR’s operational and administrative functions and financing are centralized, that consolidation would provide predictable uniform rate structures, and that the changes suggested would reduce regulatory expenses and increase efficiencies. EPCOR estimated that consolidation would save the utility almost \$1 million over five years, with most of the savings coming from the reduced number of rate cases filed with the Commission. EPCOR also noted that most of its pipes in the Sun City district were nearing the end of their useful life and would require about \$57.5 million in improvements over the next 10 years.

Sun City and the Residential Utility Consumer Office (“RUCO”) intervened and opposed full consolidation in favor of the stand-alone model. They argued that the consolidated rate would not reflect the actual costs to provide services to Sun City residents, which were much lower than the other districts. They also argued that EPCOR’s \$57 million cost estimates for Sun City infrastructure improvements were speculative, and that EPCOR projected spending more than \$100 million total for improvements in the other four wastewater districts over the same time period (while rates mostly decreased there). None of the parties supported full deconsolidation.

In Decision 76162, the Commission approved the full consolidation model supported by EPCOR, the Commission staff, and the Agua Fria, Anthem, and Mohave districts. Commissioner

Burns dissented. A chart in the appellate opinion shows how a five-year phase-in period would affect consumer rates in the districts. The monthly bill for Agua Fria customers would decrease from \$71.16 now to \$38.59. Bills for customers in Anthem and Mohave districts also would decrease significantly. The monthly bill for Sun City customers would increase from \$22.11 now to \$38.59 over five years, while the bill for Sun City West customers would increase from \$32.46 to \$38.59.

Sun City unsuccessfully applied for a rehearing. It argued that the Decision discriminated against Sun City's wastewater customers in violation of provisions of Arizona's constitution and statute that prohibit rate discrimination. It argued that consolidation forced Sun City to subsidize the other districts' customers' rates. With rehearing denied, Sun City appealed. The court of appeals allowed EPCOR to intervene in support of the Commission Decision. The court of appeals in a split decision approved the Commission's decision. This Court granted Sun City's Petition for Review.

ISSUES (as rephrased by the Supreme Court):

"1. Whether the Corporation Commission caused unlawful rate discrimination by consolidating several districts served by one public service corporation into a single district, where substantial cost of service differences existed among the formerly independent districts.

"2. Whether the Corporation Commission's constitutional status commands 'extreme deference' to its decisions."

Definitions:

1. As is relevant to this case, **Article 15, § 12 of the Arizona Constitution, Charges for service; discrimination; free or reduced rate transportation**, provides in part:

All charges made for service rendered, or to be rendered, by public service corporations within this state shall be just and reasonable, and no discrimination in charges, service, or facilities shall be made between persons or places for rendering a like and contemporaneous service....

2. Also as relevant to this case, **ARS § 40-334, Discrimination between persons, localities or classes of service as to rates, charges, service or facilities prohibited**, provides in part:

A. A public service corporation shall not, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any person or subject any person to any prejudice or disadvantage.

B. No public service corporation shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either between localities or between classes of service.

3. "**Cost-causation**" (or, cost of service). In *National Ass'n of Greeting Card Publishers v. U.S. Postal Service*, 103 S.Ct. 2717, 2728 (1983) the U.S. Supreme Court explained: "[T]o avoid undue discrimination every class of service should, at a minimum, pay for all of those costs which it alone causes. . . . It should extend to include what costs it will cause in the foreseeable future." *Id.* at 2730, n. 26.

This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.