



MEMORANDUM

Date: April 8, 2022

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: Jan Leshner 
County Administrator

Re: **City of Tucson Differential Water Rate Lawsuit Update**

Following up on my April 7 communication, I am pleased to inform you that Judge Randall Warner submitted a ruling following the hearing held yesterday, denying the City of Tucson motion to compel arbitration. Please see the attached order. The case will thus proceed in Maricopa Superior Court with a schedule to be determined by April 22.

Please let me know if you have any questions.

JKL/anc

Attachment

c: Carmine DeBonis, Jr., Deputy County Administrator for Public Works
Yves Khawam, PhD, Assistant County Administrator for Public Works

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-001141

04/07/2022

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT
A. Meza
Deputy

PIMA COUNTY

JEFFREY WILLIS

v.

CITY OF TUCSON, et al.

CHARLES W WIRKEN

JUDGE WARNER

MINUTE ENTRY

East Court Building – Courtroom # 414

1:29 p.m. This is the time set for Oral Argument regarding Defendants' February 14, 2022 Motion to Compel Arbitration. Plaintiff, Pima County, is represented by counsel, Brett W. Johnson and Ian R. Joyce, appearing for counsel of record, Jeffrey Willis. Jan Leshar is present via Court Connect as client representative for Plaintiff. Defendants, the City of Tucson, Regina Romero, Lane Santa Cruz, Paul Cunningham, Kevin Dahl, Nikki Lee, Richard Fimbres, Steve Kozachik, and Michael Ortega, are represented by counsel, Charles W. Wirken. All appearances are in person unless otherwise stated.

A record of the proceedings is made digitally in lieu of a court reporter.

The Court has reviewed the Motion, Response, and Reply.

Oral argument is presented to the Court.

Based on the matters presented,

IT IS ORDERED taking this matter under advisement.

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1:44 p.m. Matter concludes.

Later

Pima County brought this action against the City of Tucson challenging as unlawful the water rates Tucson charges customers outside its city limits. Tucson argues that the dispute is subject to arbitration under a 2000 Supplemental Intergovernmental Agreement Relating to Effluent. That 2000 Agreement modified a 1979 Sewer Merger Intergovernmental Agreement between Tucson and Pima County.

The parties are bound to arbitrate any dispute they agreed to arbitrate. *See S. California Edison Co. v. Peabody W. Coal Co.*, 194 Ariz. 47, 51, 977 P.2d 769, 773 (1999) (“Although it is commonly said that the law favors arbitration, it is more accurate to say that the law favors arbitration of disputes that the parties have agreed to arbitrate.”). Thus, the issue is whether this lawsuit falls within the terms of their arbitration agreement:

14.1. The following non-binding alternative dispute resolution process shall be followed for any dispute arising under this Supplemental IGA or the 1979 IGA.

14.1.1 The City and the County shall meet and confer about the issue or issues in an attempt to resolve the dispute. If there are issues that cannot be resolved by City and County, each shall appoint one arbitrator to a three party panel of arbitrators which will decide the dispute. The appointment of the two arbitrators will occur within 30 days of the meeting referred to above.

The scope of the parties’ duty to arbitrate is defined by the words “any dispute arising under this Supplement IGA or the 1979 IGA.” A dispute arises out of a contract only if it “raise[s] some issue the resolution of which requires a reference to or construction of some portion of the contract itself.” *Dusold v. Porta-John Corp.*, 167 Ariz. 358, 362, 807 P.2d 526, 530 (App. 1990).

The dispute before the Court is not one “arising under” the 2000 Agreement or the 1979 Agreement. There is no allegation that Tucson’s water rates violate either intergovernmental agreement. Neither party points to a provision in either agreement that the Court must construe to decide this dispute. Nor do the duties Tucson is alleged to have breached arise from the agreements. Rather, they are constitutional, statutory, and common law duties allegedly owed to ratepayers. *See id.*, 167 Ariz. at 363, 807 P.2d at 531 (if the “duty alleged to be breached is one

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imposed by law in recognition of public policy and is generally owed to others besides the contracting parties, then a dispute regarding such a breach is not one arising from the contract”).

IT IS ORDERED denying the Motion.

IT IS FURTHER ORDERED that the parties file a joint report and proposed scheduling order within 15 days.