BEFORE THE ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION

IN THE MATTER OF:

RIVER VALLEY REGIONAL WATER DISTRICT
2806 BRYAN ROAD, VAN BUREN, AR 72956
REQUEST TO INTITATE RULEMAKING
TO AMEND APCEC REGULATION NO. 2
SECTION 2.304

NO. 06-003-R

SUPPLEMENTAL STATEMENT
OF RIVER VALLEY REGIONAL WATER DISTIRCT'
IN SUPPORT OF ITS
THIRD PARTY PETITION TO INITIATE RULEMAKING
TO AMEND REGULATION NO. 2, SECTION 2.304

On December 9, 2005 the Commission voted to initiate a Third Party Rulemaking that was requested by River Valley Regional Water District. Commission Minute Order 05-29. On January 9, 2006, the Department filed suit against the Commission. Arkansas Department of Environmental Quality v. Arkansas Pollution Control & Ecology Commission, No. CIV 2006-173 (Pulaski Cir. Ct, 3rd Div.). The Department's lawsuit alleges that the Commission's vote to initiate the rulemaking was void for lack of a quorum. The sole basis for the Department's claim regarding the quorum is the fact that one of the nine Commissioners involved in the vote participated by speaker phone.

To avoid having consideration of the merits of its proposed rule diverted or confused by the Department's lawsuit, River Valley Regional Water District has requested permission to withdraw its Petition and terminate that Third Party rulemaking proceeding. Withdrawal of the Petition and termination of that rulemaking proceeding will clearly render the Department's lawsuit moot.

Simultaneous with its request to withdraw its Petition and terminate the original rulemaking proceeding, River Valley has filed a new Petition for Third Party Rulemaking. The

new Petition is identical to the one that was considered by the Commission on December 9th, and the proposed Minute Order is identical to the one adopted by the Commission in December except for four changes:

(i) the dates of the public hearings have been moved back to account for the delay caused by the Department's lawsuit;

(ii) the number of public hearings has been increased from two to four to accommodate a change requested by the Department;

(iii) the period of time for preparing the response to public comments has been increased from 15 days to 45 days to accommodate a request for additional time made by the Department; and

(iv) the date for this matter to come back to the Commission for final action has been moved from May 25, 2006 to October 27, 2006 to accommodate a suggestion that Commissioner Young received from another Commissioner.

River Valley regrets that almost two months has been lost due to the Department's actions, but River Valley is convinced that the public interest will be best served by keeping the discussion focused on the serious questions of public policy raised by its proposed rule, rather than on distracting procedural legalisms.

WHEREFORE, River Valley Regional Water District respectfully requests that the Commission approve its new Petition for Third Party Rulemaking and that the Commission enter the Minute Order initiating rulemaking proceedings once again on River Valley's proposed rule.

Respectfully submitted,

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By _____
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