



0000022548

-BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE APPLICATION OF
SABROSA WATER COMPANY FOR AN
EMERGENCY RATE INCREASE.

DOCKET NO. W-02111A-05-0167

DECISION NO. 67990

OPINION AND ORDER

DATE OF HEARING: May 6, 2005

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Lyn Farmer

APPEARANCES: Mr. Raymond S. Heyman, ROSHKA, HEYMAN & DeWULF, on behalf of Sabrosa Water Company;

Mr. Dennis Schumacher, Intervenor; in pro personia; and

Mr. Jason Gellman, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On March 8, 2005, Sabrosa Water Company ("Sabrosa" or "Company") filed the above-captioned application for emergency interim rate relief with the Arizona Corporation Commission ("Commission").

On March 22, 2005, Sabrosa filed a Supplement to the March 8, 2005, emergency rate application.

On April 19, 2005, Mr. Dennis Schumacher filed a Request for Intervention.

On May 6, 2005, a hearing was held in the above-captioned matter. The Utilities Division Staff ("Staff"), Sabrosa and Mr. Dennis Schumacher appeared at the hearing and Mr. Schumacher's Request for Intervention was granted.

...
...

* * * * *

1
2 Having considered the entire record herein and being fully advised in the premises, the
3 Commission finds, concludes, and orders that:

4 **FINDINGS OF FACT**

5 1. Sabrosa provides water service to approximately 65 customers located in the New
6 River, Arizona area.

7 2. On May 11, 2000, the Commission issued a Complaint and Order to Show Cause
8 against Sabrosa alleging a lack of ability to provide adequate and continued water service to its
9 customers and for violation of the Rules of the Arizona Department of Environmental Quality
10 (“ADEQ”). In Decision No. 63136 (November 16, 2000), the Commission authorized the
11 Commission’s Utilities Division Staff (“Staff”) to engage a qualified management entity to operate
12 and manage Sabrosa in order to bring the Company into full compliance with Arizona law, the
13 Commission’s Rules and Orders.¹ The Commission further fined the owner of Sabrosa, Mr. Keith J.
14 Morris, a penalty of \$5,000 as well as ongoing penalties for failure to comply with Arizona law. Mr.
15 Morris has not paid the penalty and has abandoned the utility. In 2000, Arizona American Water
16 Company (“AAWC”) was appointed interim manager for Sabrosa.

17 3. On April 24, 2002, the Staff filed another Complaint against Sabrosa, alleging
18 violations of law and Commission Rules and Orders, and requesting cancellation of Sabrosa’s
19 Certificate of Convenience and Necessity (“Certificate” or “CC&N”). In Decision No. 65217
20 (September 24, 2002), the Commission cancelled Sabrosa’s CC&N and reaffirmed the financial
21 penalties order in Decision No. 63136.²

22 4. On approximately February 1, 2005, Global Water Resources, LLC (“Global”) was
23 appointed the successor interim manager for Sabrosa. According to Global, during its due diligence,
24 it learned that in “addition to ownership, financial and operational issues, Sabrosa has substantial
25 problems with water quality and quantity, infrastructure and expandability.”³ Global states that it
26

27 ¹ In 2000, Arizona American Water Company was appointed interim manager and served until approximately January 31,
2005.

28 ² Those Commission Orders have been referred to the Attorney General’s Offices for enforcement. (TR. p. 16)

³ March 8, 2005 Application at p.2.

1 will attempt to operate Sabrosa for the immediate benefit of the customers, and also intends to fix
2 problems and rehabilitate the utility to provide safe, reliable and adequate water.

3 5. On March 8, 2005, Sabrosa filed this Application, indicating that it is plagued with
4 serious financial, operational and water quality and quantity problems that jeopardize its ability to
5 provide ongoing adequate, reliable and safe water to its customers. The application stated that
6 Sabrosa has been, and will be for the immediate future, operated by interim managers and that its
7 rates are not sufficient to operate the utility or fix its problems.

8 6. On April 1, 2005, Sabrosa filed its Notice of Filing Affidavit of Mailing, stating that it
9 had mailed a copy of the notice of the Application for Emergency Interim Rates to all customers on
10 March 30, 2005.⁴

11 7. According to Sabrosa, the problems that constitute the emergency include: (i)
12 inadequate water supplies; (2) marginal to poor water quality; (iii) poorly maintained equipment and
13 infrastructure; (iv) a series of financial and legal problems as a result of ownership abandonment; and
14 (v) confiscatory rates.

15 8. According to the Staff Report, the Company's water supply and the size of its water
16 system are inadequate to meet the needs of current customers. During the summer months in 2003
17 and 2004, the Company did not have enough water to meet the demand and had to buy water from
18 AAWC. Sabrosa has three production wells that are essentially shallow domestic wells drilled into
19 fractured rock. Inspection of the three wells indicated that each well will need significant repairs or
20 will have to be replaced.⁵ Staff inspected the system and verified that the system indeed had the
21 problems that were stated in the Company's application. (Tr. p. 97) The sizes of the water lines are
22 too small and may not be looped, causing a lack of circulation. Additionally, the water system's
23 pressure is usually at or below minimum standards and is not able to sustain pressure for critical "fire
24 flow". Staff found the water system to be in general disrepair. According to the Company, the
25 infrastructure problems are compounded by the lack of system maps and the failure to have a
26 dedicated line maintenance program.

27
28 ⁴ Global also held a public town hall meeting in February and discussed the need for a rate increase. (TR. p. 30)

⁵ The Zorillo well failed on February 12, 2005 and required the complete replacement of pump, motor and controller.

1 9. According to Staff and the Company, the Company's current water quality is not
2 meeting water quality standards. The arsenic levels are approximately 35 ppb; recent samples of
3 Sabrosa's water tested positive for total coliform; and samples from at least two of the wells have
4 indicated the presence of nitrates. In its Supplement to Application for Emergency Interim Rate
5 Relief filed on March 22, 2005, Sabrosa indicated that based upon nitrate results from samples taken
6 in March, the Wright Well was isolated from the Sabrosa distribution system and customers were
7 mailed a "Notice of Exceedance."

8 10. According to the Application, one of the major problems with Sabrosa is the
9 "quagmire of legal issues that its owner has created", including abandonment of the utility and its
10 customers while maintaining legal title to the assets, including real property; the cancellation of the
11 CC&N; and the nonpayment of property taxes⁶. These negative factors are a deterrent to third party
12 investment in Sabrosa, and make it "virtually impossible to secure needed funding to improve the
13 Sabrosa system." The Application states that the former interim operator lost between \$25,000 and
14 \$50,000 annually in direct operational costs.

15 11. According to Staff, Sabrosa's rates do not provide sufficient revenue to pay its
16 operating expenses and to correct its capacity and water quality problems. The Staff Report indicates
17 that the Company is not current on its property taxes; cannot meet needed repairs and perform
18 required maintenance; and is incurring legal expenses to address legal issues caused by its owner.

19 12. According to Sabrosa, the goal of the proposed rates is to restore Sabrosa to
20 operational stability, including allowing for an infusion of capital for pump and line repair and
21 replacement (TR. p. 33)

22 13. The Company testified that current revenues are approximately \$28,000, but that
23 approximately \$90,000 of revenue a year is needed to cover expenses. This increase in revenues
24 would increase the typical residential customer's bill, based upon usage of 8,569 gallons, from
25 \$34.21 to \$107.62. The current base rates and the proposed interim emergency rates are as set forth
26 below:

27

28 ⁶ Sabrosa owes approximately \$400,000 to Maricopa County in back property taxes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<u>Current Rates</u>	Company Proposed <u>Emergency Rates</u>
Monthly Minimum Charge Based on 5/8 – inch Meter	\$17.50	\$39.50
Gallons in Minimum	1,000	0
Commodity Charge:		
0 to 3,000 gallons, per 1,000 gallons	\$1.95	\$6.00
3,001 to 10,000 gallons, per 1,000 gallons	1.95	9.00
10,001 and over gallons, per 1,000 gallons	1.95	10.80

14. Intervenor Schumacher testified that he has been a customer of Sabrosa’s for five years and that the Company has substantial, and maybe insurmountable problems, including both water quantity and quality issues, including contaminated wells, a system in disrepair with no accurate system distribution map, and no opportunity for growth to help solve the problems. Mr. Schumacher testified that since Global took over as interim manager this year, he has received several letters from them, notifying customers of what is being done, and his water service has not been interrupted. Mr. Schumacher agrees that the rate increase is necessary, but questions whether rates necessary to ultimately solve the Company’s problems could be successfully implemented.

15. In *Residential Utility Consumer Office v. Arizona Corp. Com’n* (App. Div. 1 2001) 199 Ariz. 588, 20 P.3d 1169, the court agreed with the *Scates*⁷ court’s approval of the circumstances in which interim rates may be considered and approved by the Commission. “*Scates* follows the Attorney General’s conclusion that, while the Commission has broad authority when setting rates, the interim rate-making authority is limited to circumstances in which (1) an emergency exists; (2) a bond is posted by the utility guaranteeing a refund to customers if the interim rates paid are higher than the final rates determined by the Commission; and (3) the Commission undertakes to determine final rates after a valuation of the utility’s property. 118 Ariz. At 535, 578 P.2d at 616 (following the

⁷ *Scates v. Arizona Corp. Comm’n*, 118 Ariz. 531, 578 P.2d 612.

1 conclusion drawn in Op. Atty Gen 71-17):⁸

2 16. According to Attorney General Opinion No. 71-17, interim or emergency rates are
3 proper when either all or any one of the following conditions occur: when sudden change brings
4 hardship to a Company; when the Company is insolvent; or when the condition of the Company is
5 such that its ability to maintain service pending a formal rate determination is in serious doubt.

6 17. Staff recommends that the Commission approve the requested interim rates, stating
7 that the Company is not currently providing adequate service and there is no reasonable expectation
8 that it could begin to provide adequate service at existing rates. Staff believes that implementation of
9 emergency rates may prevent further deterioration of the perilous condition of this system.

10 18. Staff further recommends that Sabrosa file a permanent rate application by May 31,
11 2006, using a test year ending March 31, 2006; that the interim rates be subject to refund pending the
12 decision on the permanent rate case; and that the Company post a bond in the amount of \$10 prior to
13 implementing the emergency rate increase authorized in this proceeding.

14 19. Staff's recommendations above comply with the law concerning the Commission's
15 ability to implement interim rates, however, we believe that a bond of \$10 is inadequate for
16 'guaranteeing a refund to customers if the interim rates paid are higher than the final rates determined
17 by the Commission'. We realize that the Company's poor financial condition is the reason that it filed
18 this application, but we cannot ignore the requirement that the customers are to be protected if the
19 interim rates are higher than the final rates. Accordingly, we will require a bond in the amount
20 \$3,000, which is approximately 5 percent of the increase in annual revenues allowed in this
21 emergency rate application.

22 CONCLUSIONS OF LAW

- 23 1. Sabrosa is a public service corporation pursuant to A.R.S. §§ 40-250 and 251.
- 24 2. The Commission has jurisdiction over Sabrosa and the subject matter of the
25 application.
- 26 3. Notice of the Application was provided in accordance with the law.
- 27

28 ⁸ *RUCO* at 591.

1 4. Sabrosa is facing an "emergency" within the definition set forth in Attorney General
2 Opinion No. 71-17.

3 5. The emergency rate increase requested herein is just and reasonable on an interim
4 basis and should be granted.

5 6. The recommendations set forth in Findings of Fact Nos. 17 and 18 as modified herein
6 are reasonable and should be adopted.

7 **ORDER**

8 IT IS THEREFORE ORDERED that Sabrosa Water Company shall file on or before July 29,
9 2005, a revised tariff that allows for the following interim emergency rates:

	<u>Rates</u>
10 Monthly Minimum Charge	
11 Based on 5/8-inch Meter	\$39.50
12 Commodity Charge:	
13 0 to 3,000 gallons, per 1,000 gallons	\$6.00
14 3,001 to 10,000 gallons, per 1,000 gallons	9.00
15 10,001 and over gallons, per 1,000 gallons	10.80

16 IT IS FURTHER ORDERED that the above rates and charges shall be effective for all service
17 provided on and after August 1, 2005.

18 IT IS FURTHER ORDERED that Sabrosa Water Company shall file an a permanent rate case
19 application using a test year ending March 31, 2006, no later than May 31, 2006.

20 IT IS FURTHER ORDERED that Sabrosa Water Company shall post a bond in the amount of
21 \$3,000 prior to implementing the new emergency interim rates.

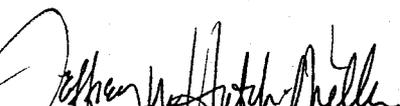
22 ...
23 ...
24 ...
25 ...
26 ...
27 ...

1 ...
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

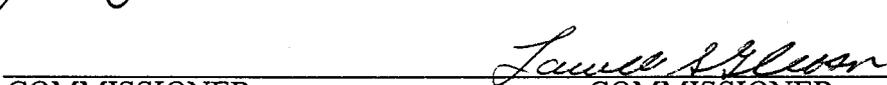
IT IS FURTHER ORDERED that Sabrosa Water Company shall notify its customers of the rates authorized herein and their effective date within 15 days of the effective date of this Order.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN


COMMISSIONER


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 18th day of July, 2005.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____
LF:dap

1 SERVICE LIST FOR: SABROSA WATER COMPANY

2 DOCKET NO.: W-02111A-05-0167

3
4 Raymond S. Heyman
5 Michael W. Patten
6 ROSHKA, HEYMAN & DeWULF
7 One Arizona Center
8 400 E. Van Buren, Suite 800
9 Phoenix, Arizona 85004
10 Attorneys for Sabrosa Water Company

11 Dennis Schumacher
12 123 W. Sabrosa Drive
13 Phoenix, Arizona 85087

14 Christopher Kempley, Chief Counsel
15 ARIZONA CORPORATION COMMISSION
16 1200 W. Washington Street
17 Phoenix, Arizona 85007

18 Ernest Johnson, Director of Utilities
19 ARIZONA CORPORATION COMMISSION
20 1200 W. Washington Street
21 Phoenix, Arizona 85007

22
23
24
25
26
27
28