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BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

OCT 06 2003

COMMISSIONERS

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

DOCKETED BY [Signature]

IN THE MATTER OF THE APPLICATION OF
PARK WATER COMPANY, INC. FOR AN
EMERGENCY RATE INCREASE.

DOCKET NO. W-02353A-03-0507

DECISION NO. 66389

OPINION AND ORDER

DATE OF HEARING: September 2, 2003
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Ms. Patricia O'Connor, on behalf of Park Water Company, Inc.; and
Mr. David Ronald, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation.

BY THE COMMISSION:

On July 23, 2003, Park Water Company, Inc. ("Company" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application requesting an emergency rate increase in the form of a \$5.50 per month per customer surcharge and a fifty cent increase on its gallonage charge from \$2.00 to \$2.50 per 1,000 gallons of water to recover estimated water hauling costs due to drought conditions and excessive customer usage of available water production.

On July 29, 2003, the Commission, by Procedural Order, scheduled a hearing on the above-captioned matter to determine if an emergency existed that would require the relief requested by Applicant. The Commission's Procedural Order also required Applicant to provide notice to each customer by mailing and posting a copy of the notice in a public place so that the Company's customers were aware of the proceeding.

On August 28, 2003, a full public hearing was commenced before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Applicant appeared through its president and the Commission's Utilities Division ("Staff") appeared with counsel. Three

1 through its president and the Commission's Utilities Division ("Staff") appeared with counsel. Three
2 customers of the Company appeared to make public comment concerning the requested increase.
3 After a full public hearing, the matter was taken under advisement pending submission of a
4 recommended Opinion and Order to the Commission.

5 * * * * *

6 Having considered the entire record herein and being fully advised in the premises, the
7 Commission finds, concludes, and orders that:

8 **FINDINGS OF FACT**

9 1. Pursuant to authority granted by the Commission in Decision No. 50073 (July 11,
10 1979), Applicant is an Arizona corporation engaged in the business of providing water service to
11 approximately 124 residential customers in an area nine miles south of Florence, Pinal County,
12 Arizona.

13 2. On July 23, 2003, Applicant filed an application which requested Commission
14 approval for an approximately 26 percent emergency rate increase due to water hauling expenses.
15 The Company's initial proposal called for the surcharge to be imposed to cover a projected water
16 hauling expense of \$51,380 incurred from June 20, 2003 through September 30, 2003. Initially, the
17 Company requested the emergency increase in the form of a surcharge of \$5.50 on the base meter
18 rate and an increase of fifty cents on the gallonage charge per 1,000 gallons. The proposed increase
19 would increase the base residential customer rate from \$20.00 which includes 1,000 gallons of water
20 in the minimum to \$25.50 and would increase the excess gallonage charge from \$2.00 per 1,000
21 gallons to \$2.50 per 1,000 gallons.

22 3. Pursuant to the Commission's Procedural Order, notice of the Company's application
23 and hearing thereon was provided to its customers. The Commission received thirteen telephonic
24 protests from Applicant's customers who oppose Applicant's request for a surcharge because they
25 feel that the Company should have upgraded the system as it added more customers. Three
26 customers also appeared at the hearing and voiced their concerns.

27 4. At present, Applicant is operating with rates which were approved by the Commission
28 in Decision No. 54703 (September 18, 1985).

1 5. At the outset of the proceeding, Ms. Patricia O'Connor, Applicant's president, testified
2 that she became the owner of the Company in 1999, after its former owner, Mr. Gilbert Koritan,
3 transferred his stock in the Company to her as repayment for two loans which she had made to him
4 totaling \$119,000. Prior to that time, she had little, if any, experience in the day-to-day operations of
5 a water utility.

6 6. Ms. O'Connor testified that she has been subsidizing Applicant's operations when
7 revenues are inadequate to pay its operating expenses. The Company's financial records are
8 incomplete because Applicant has failed to keep its books in accordance with the National
9 Association of Regulatory Utility Commissioners ("NARUC") Uniform System of Accounts.

10 7. Ms. O'Connor and a consultant for the Company, Mr. John Byrne, testified that
11 Applicant plans to file a permanent rate case in the near future, but hopes to delay this filing until the
12 end of the 2003 calendar year in order to facilitate the filing with financial data from the most recent
13 complete calendar year.

14 8. From 1999 until recently, Ms. O'Connor relied upon a former employee of Mr.
15 Koritan's to handle Applicant's day-to-day operations as its operator. She has recently hired a new
16 certified operator to deal with the system's operational problems.

17 9. According to Ms. O'Connor, when she took over the Company, it had approximately
18 100 customers and was in compliance with the rules of the Arizona Department of Environmental
19 Quality ("ADEQ"). The Company had adequate water production and storage and had not
20 experienced any water shortages¹.

21 10. Ms. O'Connor also provided copies of ADEQ documentation which reflected that the
22 Company was operating within the rules of ADEQ with respect to operations and maintenance except
23 for failing to test for nitrates in 2001 and 2002. However, she also produced documentation
24 reflecting recent testing for nitrates.

25 11. While Ms. O'Connor acknowledged receipt of a letter from ADEQ in April 1999
26 which pointed out that her system, which then had 88 active connections, could not "reliably support"

27 _____
28 ¹ Presently, the Company's water production facilities consist of one operational well with a 45 GPM capacity
and a 25,000 gallon storage tank and 10,000 gallon storage tank.

1 more than 104 connections "until additional source production" was provided, she responded that the
2 letter was the result of an inquiry concerning additional development in the Company's certified area.
3 However, ADEQ did not place a moratorium on new connections being made on the system at that
4 time.

5 12. Subsequently, in September 1999, ADEQ sent a letter to the Commission advising Mr.
6 Steve Olea² that, if the Company exceeded 104 connections, ADEQ would consider the Company in
7 violation of ADEQ storage rules and subject to possible penalties. However, ADEQ did not seek
8 additional penalties against the Company while small numbers of customers were added over the next
9 several years.

10 13. The Company's first experience of a water shortage occurred around July 4, 2002
11 when the Company experienced a brief water shortage for a day or so. However, a Notice of
12 Violation ("Notice") was not issued by ADEQ even when it was apparent that some new connections
13 had been added to the Company's distribution system.

14 14. The Company's next water shortage arose on or about June 20, 2003, and has
15 continued through the date of the hearing in this proceeding. At one point, Applicant was required to
16 haul water on a daily basis to satisfy what Ms. O'Connor termed "excessive demands" even though
17 the Company had instituted the third level of its Curtailment Tariff which is on file with the
18 Commission. However, these demands have lessened recently and the Company has only been
19 hauling water on weekends. Through August 27, 2003, Ms. O'Connor personally, on the Company's
20 behalf, expended the sum of \$25,026.50 to pay for water hauled by Applicant to satisfy its customers'
21 demands for water.

22 15. Although Applicant had originally sought to recover projected water hauling expenses
23 of \$51,380 through its requested emergency surcharge, at the hearing, Mr. Byrne amended the
24 Company's request to either the actual cost for water hauled through the date of hearing, \$25,062, or
25 a projected amount estimated at \$28,392 through September 30, 2003. This is because Applicant
26 believes that a second well which it owns and is being refurbished and brought on line will be ready
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28 ² A copy of ADEQ's September 1999 letter to Mr. Olea was also sent to Ms. O'Connor.

1 for testing approximately two to three weeks after the hearing. It is expected that the additional well
2 will alleviate the water shortage being experienced by Applicant's customers.

3 16. To recover either of the lesser amounts for water hauling, Mr. Byrne proposed a
4 surcharge of either \$3.62 per 1,000 gallons or \$4.11 per 1,000 gallons to cover either \$25,026 actual
5 cost or \$28,392 projected cost, respectively. Mr. Byrne recommended that this surcharge be charged
6 for all water consumed including the minimum included in the base rate to encourage conservation³.

7 17. Further complicating the Company's operations, Ms. O'Connor pointed out that
8 Applicant has been involved in a lengthy court proceeding in the Pinal County Superior Court
9 brought in 1998 by Mr. Koritan's former business partner who is a part-time resident of Mesa. Based
10 on a late-filed exhibit in the Docket, it is established that Mr. Koritan encumbered the water utility
11 assets as security for a debt to his former partner and executed a Deed of Trust for the well site and
12 main storage tank without prior Commission approval, in violation of A.R.S. § 40-285(A).

13 18. Although Ms. O'Connor's counsel has argued that this transaction by Mr. Koritan was
14 void under the law, it is her understanding that a trustee's sale may take place in October unless
15 halted by the Court.

16 19. While the litigation has been pending, Ms. O'Connor recently hired a new certified
17 operator to bring the Company into compliance with ADEQ rules, and had a new well pump and
18 booster pump installed to improve water pressure for Applicant's customers prior to the instant
19 problems. However, a decision was made not to increase storage capacity until the court case is
20 resolved.

21 20. Lastly, further clouding the picture for Applicant, Ms. O'Connor testified that while
22 sales taxes have been paid, the Company owes approximately \$3,000 for unpaid property taxes in
23 2002, and since June 24, 2003, at or about the time Applicant's water shortage developed, the
24 Company has not been in compliance with ADEQ rules due to an inability to maintain adequate
25 water pressure of 20 psi and an inability to maintain adequate storage.

26 21. Upon the filing of the Company's application, Staff performed a thorough review of
27

28 ³ Mr. Byrne arrives at these proposed surcharges by dividing the cost of purchased or projected purchase cost of water by the number of gallons sold in the first seven months of 2003.

1 relief.

2 22. Staff is recommending a denial of the Company's application because, after its review
3 of the Company's finances and an inspection of the Company's utility plant, Staff does not believe
4 Applicant's current situation meets the requirement of Attorney General Opinion No. 71-17⁴.

5 23. Staff's witness testified that he was unable to determine whether the Company is
6 insolvent from its records and doubts the accuracy of the Utilities Division Annual Reports filed with
7 the Commission from 1998 to 2002 since there was data missing, information was copied over from
8 year to year and depreciation expense was not reflected in these reports.

9 24. Staff believes further that the Company should have been on notice since the time of
10 ADEQ's letter to the Company in April 1999 pointing out the issue of a limitation on customers when
11 water production problems were raised, even though a moratorium was not imposed by ADEQ nor
12 were any Notices issued to Applicant by ADEQ.

13 25. Staff further believes a denial of the application is justified because the problem was
14 an ongoing and developing problem which could have been avoided if Applicant had prudently added
15 more storage capacity as customers were added.

16 26. Under the exigent circumstances herein, after our review of the record in its totality,
17 we find that an emergency within the meaning of Attorney General Opinion No. 71-17 exists. First,
18 evidence of the unexpected water shortage constitutes a sudden change which has brought severe
19 financial hardship to the Company. Second, it appears that without Ms. O'Connor's assistance, the
20 Company would have been rendered insolvent by the water shortage. Lastly, it also appears that the
21 Company's legal problems are creating further financial hardship and we question the Company's
22 ability to maintain service pending a formal rate proceeding.

23 27. We believe that a surcharge of \$2.00 per 1,000 gallons should be adopted for all water
24 consumed, including the amount in the minimum based on actual water hauling expenses through
25 September 30, 2003. As a condition of this interim emergency surcharge, Applicant shall be required

26 ⁴ According to Attorney General Opinion No. 71-17, interim or emergency rates are proper when either all or any
27 of the following conditions occur: when sudden change brings hardship to a Company; when the Company is insolvent;
28 or when the condition of the Company is such that its ability to maintain service pending a formal rate determination is in
serious doubt. Those criteria have been affirmed in *Scates v. Arizona Corporation Comm'n*, 118 Ariz. 531 (Ct. App.
1978) and in *Residential Utility Consumer Office v. Arizona Corporation Comm'n*, 199 Ariz. 588 (2001) ("Rio Verde").

1 to file by October 31, 2003 a final water hauling expense report ending September 30, 2003 with the
2 Commission's Docket Control ("Docket Control") and, upon the effective date that the surcharge is
3 imposed hereinafter, Applicant shall be required to file a monthly financial accounting with Docket
4 Control on the surcharge balance until the balance established on September 30, 2003 is paid in full
5 or resolved by subsequent Order of the Commission.

6 28. However, the effective date of the surcharge's imposition shall be the first day of the
7 month following the Company meeting the following requirements:

- 8 • filing with Docket Control documentary evidence that Applicant is taking steps
9 to pay its back property taxes with Pinal County;
- 10 • filing with Docket Control documentary evidence that the second well is online
11 and has been approved by ADEQ to begin providing water to Applicant's
12 customers;
- 13 • filing with Docket Control a copy for Staff approval of the notice to be mailed
14 to customers, at least 15 days before the expected date of imposition of the
15 surcharge informing customers of the approved surcharge;
- 16 • filing with Docket Control documentary evidence that a bond of \$10.00 has
17 been posted;
- 18 • filing with Docket Control documentary evidence that it is taking steps to
19 resolve its noncompliance with ADEQ regulations; and
- 20 • consulting with Staff, within 14 days of the effective date of this Decision, for
21 instruction in how to maintain its books and records in accordance with the
22 NARUC Uniform System of Accounts.

23 29. Lastly, we shall require that the Company file a permanent rate case with a test year
24 ending December 31, 2003 no later than March 1, 2004.

25 30. We also believe that Staff and the Legal Division, in the best interests of Applicant's
26 customers, should investigate further the litigation which involves the attempt to encumber the
27 Company's assets without prior Commission approval, in violation of A.R.S. § 40-285(A) and take
28 any and all steps they deem necessary to insure that the Company's customers are not adversely

1 affected by the pending litigation.

2 **CONCLUSIONS OF LAW**

3 1. Applicant is a public service corporation within the meaning of Article XV of the
4 Arizona Constitution and A.R.S. §§ 40-250 and 40-251.

5 2. The Commission has jurisdiction over the Company and of the subject matter of the
6 Application.

7 3. Notice of the Application was provided in the manner prescribed by law.

8 4. Applicant is facing an "emergency" within the definition set forth in Attorney General
9 Opinion No. 71-17, as discussed and affirmed in *Scates* and *Rio Verde* cases cited herein.

10 5. The standards for approval of a request for interim rate relief require the existence of
11 an emergency; the posting of a bond by the utility company; and subsequent filing of a permanent
12 rate application.

13 6. Approval of the Company's application for interim rate relief, as described herein, is
14 consistent with the Commission's authority under the Arizona Constitution, ratemaking statutes, and
15 applicable case law.

16 7. The request for interim emergency rate relief is just and reasonable and should be
17 collected by means of adding a \$2.00 surcharge per 1,000 gallons to each customer's monthly bill for
18 all water used until the established balance is collected or until further Order, but shall not be
19 effective until the first day of the month following Applicant complying with Findings of Fact Nos.
20 27 and 28 hereinabove.

21 8. Applicant should file a permanent rate case with a test year ending December 31,
22 2003, no later than March 1, 2004.

23 9. Staff and the Legal Division should investigate the Company's pending litigation
24 described hereinabove and take any and all steps necessary to protect the interests of Applicant's
25 customers.

26 **ORDER**

27 IT IS THEREFORE ORDERED that the application of Park Water Company, Inc. for an
28 emergency surcharge be, and is hereby, approved to the extent described herein.

1 IT IS FURTHER ORDERED that the application of Park Water Company, Inc. shall recover
2 its emergency expenses as discussed hereinabove by means of a surcharge of \$2.00 per 1,000 gallons
3 for all water used until the established balance as of September 30, 2003 is recovered or until further
4 Order, but said authorization shall be conditioned upon Park Water Company, Inc. complying with
5 the requirements of Findings of Fact Nos. 27 and 28.

6 IT IS FURTHER ORDERED that Park Water Company, Inc. shall file an application for
7 permanent rate relief with a test year ending December 31, 2003, no later than March 1, 2004.

8 IT IS FURTHER ORDERED that the surcharge approved herein shall be interim and subject
9 to refund pending the review by Staff of the permanent rate application.

10 IT IS FURTHER ORDERED that Park Water Company, Inc. shall maintain its books and
11 records in accordance with the NARUC Uniform System of Accounts.

12 IT IS FURTHER ORDERED that Park Water Company, Inc. shall file on or before the first
13 day of the month it is enabled to collect a surcharge, a tariff authorizing it to collect the \$2.00 per
14 1,000 gallons of water used emergency surcharge as authorized herein.

15 IT IS FURTHER ORDERED that the surcharge authorized hereinabove shall be effective for
16 all service provided on and after the first day of the month following that in which the requirements
17 of Findings of Fact No. 28 have been met.

18 IT IS FURTHER ORDERED that Park Water Company, Inc. shall, in a form approved by
19 Staff, notify its customers by mail of the emergency surcharge authorized herein and the prospective
20 effective date of same at least 15 days before the expected date of its imposition.

21 IT IS FURTHER ORDERED that Park Water Company, Inc.'s application for authority to
22 implement interim rates is approved, to the extent and in the manner described herein.

23 IT IS FURTHER ORDERED that Park Water Company, Inc. shall comply with all
24 requirements and recommendations discussed in this Order as a condition of approval of its request
25 for interim rate relief.

26 IT IS FURTHER ORDERED that Park Water Company, Inc. shall file all information
27 requested by Staff necessary to analyze the collection of funds for the emergency water surcharge.

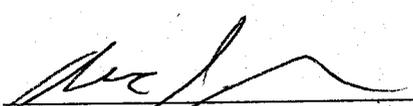
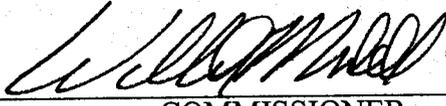
28 IT IS FURTHER ORDERED that Park Water Company, Inc. shall post a bond in the amount

1 of \$10.00 prior to implementing the emergency water surcharge authorized by this Decision.

2 IT IS FURTHER ORDERED that the emergency water surcharge shall end when the water
3 hauling expenses as of September 30, 2003 have been collected or a Commission Decision is issued
4 regarding the Company's permanent rate case application.

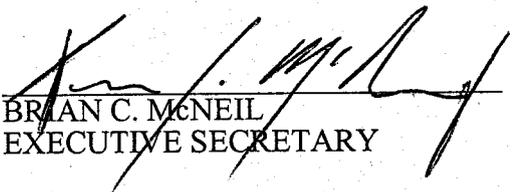
5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8   
9 CHAIRMAN COMMISSIONER COMMISSIONER

10 
11 COMMISSIONER

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 6th day of October, 2003.

17 
18 BRIAN C. McNEIL
19 EXECUTIVE SECRETARY

20 DISSENT _____

21 DISSENT _____

22 MES:mj

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1 SERVICE LIST FOR:

PARK WATER COMPANY, INC.

2 DOCKET NO.

W-02253A-03-0507

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