OPEN MEETING ITEM

ORIGINAL

0000042767

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

22

ARIZONA CORPORATION COMMISSION

DATE: February 17, 2006

DOCKET NOS: W-02052A-05-0529 and W-02052A-05-0528

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Opinion and Order on:

WHY UTILITY COMPANY, INC.

(RATES and FINANCING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

FEBRUARY 27, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MARCH 15 AND 16, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For more information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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 WHY UTILITY COMPANY, INC. FOR A RATE INCREASE.	DOCKET NO. W-02052A-05-0529
THE MATTER OF THE APPLICATION OF WHY UTILITY COMPANY, INC. FOR APPROVAL OF FINANCING.	DOCKET NO. W-02052A-05-0528 DECISION NO. ____________ **ORDER**

Open Meeting
March 15 and 16, 2006
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

* * * * * * * * * *

FINDINGS OF FACT

1. Why Utility Company, Inc. ("Why" or "Company") is an Arizona non-profit corporation that provides water utility service to approximately 87 customers in the community of Why, located approximately 10 miles south of Ajo in Pima County.

2. On July 22, 2005, Why filed an application for a permanent rate increase and an application for authorization to borrow $185,000 from the Rural Utilities Service ("RUS") of the United State Department of Agriculture.

3. On August 19, 2005, Commission Utilities Division Staff ("Staff") notified the Company that its rate application was deficient under A.A.C. R14-2-103.

4. After receiving additional information, Staff notified the Company that its rate application was sufficient on October 7, 2005, and classified the Company as a Class E utility.

5. The applications were consolidated by Procedural Order dated November 8, 2005.

6. On December 6, 2005, Staff filed its Staff Report, recommending rates and charges different than those proposed by the Company and recommending approval of long-term financing in the amount of $185,000.

7. On December 29, 2005, Why filed a Response to the Staff Report contesting Staff's recommendation concerning Depreciation Expense. Why asserted that the corrosive qualities of its water necessitated replacing its pumps much more often than recognized in Staff's recommended depreciation rates. Why urged the Commission to approve the rates and charges it requested in its application.

8. On January 4, 2006, Why made a Supplemental Filing which included copies of invoices related to well replacements referenced in its December 29, 2005 Response to the Staff Report.

9. On January 5, 2006 (prior to receiving Why's Supplemental Filing), Staff filed a Memorandum addressing the Company's Response to the Staff Report. Staff did not change its recommendations.

10. By Procedural Order dated January 10, 2006, the Hearing Division ordered Why to file by January 18, 2006, a revised schedule of adjusted revenues and expenses and a corresponding rate schedule that reflected its final position, and directed Staff to file a Reply to the Company's Response to the Staff and Report and Supplemental Filing by January 25, 2006. In addition, the January 10, 2006 Procedural Order suspended the time clock for processing the rate application until April 4, 2006.

11. On January 18, 2006, in response to the January 10, 2006 Procedural Order, Why filed Revised Schedules.

12. On January 25, 2006, Staff filed an Addendum to its Staff Report. In the Addendum, Staff reports that it had reviewed the supplemental information received from the Company and concurred with the Company's position concerning the life of the pumping equipment. Staff agreed

to the Company's proposed depreciation rates, and consequently, its proposed rates. Staff filed revised schedules that reflect its revised recommendations.

13. On January 30, 2006, Staff filed a Notice of Errata that corrected the rate schedule to the Addendum to the Staff Report.

14. The Company notified its customers of its proposed rates and charges by first class U.S. mail on October 5, 2005. The Company mailed notice of its finance application on November 23, 2005.

15. The Commission received three customer opinions against the requested rate increase.

16. The Company's current rates and charges were approved in Decision No. 40053 (June 9, 1969), in which the Commission approved the Company's Certificate of Convenience and Necessity ("CC&N"). Thus, the current application is the Company's first rate case since it received its CC&N.

17. During the test year ended December 31, 2004 ("Test Year"), Why had Total Operating Revenue of $36,064, and adjusted Total Operating Expenses of $66,367, resulting in an Operating Loss of $30,303, a negative rate of return on an adjusted Original Cost Rate Base ("OCRB") of $23,518.

18. Why proposed rates that would produce Total Operating Revenue of $75,000, an increase of $38,936, or 108 percent, over Test Year revenues. Based on Company-proposed Operating Expenses of $66,361, Why's recommended rates would produce Operating Income of $8,639, a rate of return of 36.7 percent on Staff's adjusted OCRB.

19. Staff concurred with the Company's proposed revenue requirement of $75,000. Staff's recommended adjusted Operating Expenses of $69,697, results in Operating Revenue of $5,303, a 22.55 percent rate of return on Staff's adjusted OCRB.

20. The rates and charges for Why, as proposed in the application, and as recommended by Staff are as follows:

. . .

. . .

MONTHLY USAGE CHARGE:	Present Rates	Proposed Company	Proposed Staff
5/8" x ¾" Meter	$19.00	$40.00	$40.00
¾" Meter	21.00	40.00	40.00
1" Meter	23.00	42.50	42.50
1 ½" Meter	25.00	45.00	45.00
2" Meter	27.00	50.00	50.00
3" Meter	31.00	N/A	120.00
4" Meter	N/A	N/A	220.00
6" Meter	N/A	N/A	450.00
Gallons included in the minimum:	9,000	4,000	4,000
COMMODITY CHARGE			
(Per 1,000 Gallons)			
Excess of Minimum	$1.00	N/A	N/A
4,001 to 9,000 gallons	N/A	$2.00	$2.00
9.001 to 14,000 gallons	N/A	2.15	2.15
0ver 14,000 gallons	N/A	2.35	2.35
Standpipe – 2 inch meter (per 1,000 gallons)	$1.50	$4.00	$4.00

SERVICE LINE AND METER INSTALLATION CHARGES:
(Refundable pursuant to A.A.C. R14-2-40-5)

	Present Rates	Proposed Company	Proposed Staff
5/8" x ¾" Meter	$ 100.00	$600.00	$520.00
¾" Meter	120.00	600.00	600.00
1" Meter	160.00	650.00	690.00
1 ½" Meter	300.00	700.00	935.00
2" Meter	400.00	800.00	1,595.00
3" Meter	N/A	N/A	2,275.00
4" Meter	N/A	N/A	3,520.00
6" Meter	N/A	N/A	6,275.00

SERVICE CHARGE:

Establishment	$10.00	$35.00	$25.00
Establishment (After Hours)	0.00	0.00	35.00
Reconnection (Delinquent)	20.00	35.00	25.00

Meter Test (If Correct)	0.00	0.00	0.00
Deposit	40.00	80.00	*
Deposit Interest	2.00%	2.00%	*
Reestablishment (Within 12 Months)	10.00	35.00	**
NSF Check	25.00	25.00	25.00
Deferred Payment	0.00%	1.00%	1.00%
Meter Reread (If Correct)	0.00	0.00	0.00

* Per Commission rule A.A.C. R-14-2-403(B).

** Months off system times the monthly minimum per Commission rule A.A.C. R14-2-403(D).

21. Staff recommended adjustments that would reduce the Company's proposed rate base by $385,942, from $409,460 to $23,518. Staff's adjustments increased Plant in Service by $46,054 to record additional pumping equipment and to reflect reassignment of assets among accounts. Staff also increased Accumulated Depreciation by $431,963, from $334,389 to $766,352. Staff reported that the Company did not utilize the 5 percent compounded depreciation rates adopted in Decision No. 40053. Staff recalculated the Depreciation Expense using the approved Depreciation rates.

22. Staff's adjustments to rate base, as reflected in the Addendum to the Staff Report are reasonable and should be adopted. Thus, Why's OCRB is determined to be $23,518 which is the same as its fair value rate base ("FVRB").

23. Staff made no adjustments to Test Year Operating Revenue.

24. Staff's adjustments to Operating Expenses resulted in a decrease of $18,334, from $84,701 to $66,367. Staff's major adjustments decreased Depreciation Expense by $16,031, from $28,142 to $12,111. In recent orders the Commission has been shifting away from the 5 percent composite rate in favor of individual depreciation rates by NARUC category because the 5 percent rate is not appropriate for all types of assets. Staff developed typical and customary depreciation rates within a range of anticipated equipment life. Staff agreed with the Company that its pumping equipment should have an average service life of 1 ½ years. Therefore, Staff agreed that the depreciation rate for Pumping Equipment should be 66.7 percent. The remaining equipment is depreciated using the average lives and rates as reflected in Table B of the Staff Engineering Report attached to the Staff Report.

25. Staff's recommended adjustments to Test Year Expenses reflected in the Addendum to the Staff Report are reasonable and should be adopted.

26. The Company's current rate structure consists of a single commodity rate for all usage and includes 9,000 gallons in the monthly minimum charge. The Company proposed three tiers and that 4,000 gallons be included in the monthly minimum charge. The Company proposed a first tier break at the 9,000 gallon level, a second tier for consumption between 9,001 and 14,000 gallons and a third tier for usage greater than 14,000 gallons.

27. Staff concurs with the Company's proposed rate design, although Staff recommends a slightly different Service Line charge for the 5/8 x ¾ inch meter and different Service Charges.

28. The average and median usage for the 5/8 inch meter customer in the Test Year was 12,318 gallons and 6,100 gallons, respectively.

29. The rates the Company proposed (and which Staff concurred with) would increase the average 5/8 inch meter bill by 155.96 percent, or $34.81 from $22.32 to $57.13, and the median 5/8 inch meter bill by 132.63 percent, or $25.20, from $19.00 to $44.20.

30. We find that the rates and charges proposed by the Company are fair and reasonable and should be adopted, except that we believe Staff's proposed Service Charges should be adopted. We recognize that the rates we adopt herein will result in a substantial rate percentage increase for the Why ratepayers. Part of the size of the increase is related to the extraordinary time since the last rate review and part of the increase is due to the substantial plant upgrades needed to bring this system into compliance with federal regulations. The rates we approve are based on a careful analysis of the costs of operating this system. We agree with Staff and the Company that a phase in of rates is not warranted in this case as the funds are needed immediately to support the debt service associated with the system upgrades.

31. The Company is requesting authority to incur long-term debt from RUS in the amount of $185,000. In addition to the RUS debt, the Company will receive a grant from RUS in the amount of $864,178, and a Colonia Grant of $300,000. The RUS funds are to be used for installation of water treatment facilities, replacement of two storage tanks and replacement and installation of water

distribution mains. The Rural Community Assistance Corporation ("RCAC") has provided interim financing in the amount of $400,000 while the Company is awaiting the Commission's approval.

32. The RUS loan will have a term of 40 years and interest rate of 4.25 percent annually. For the first two years, one annual interest payment will be due. Beginning in the third year of the loan, principal and interest payments of $820 will be due monthly. The loan will be secured by a lien on the Company's well and water tanks.

33. The Company's finance application also requests approval of a $30,000 note executed in October 2002, which was used to purchase an additional 2.51 acres of land adjoining the Company's existing campground. The loan has a term of 5 years and an annual interest rate of 4.5 percent.

34. Staff recommends denial of the $30,000 loan on the grounds that the purpose of the loan was to expand the campground, a non-regulated activity, not necessary to the Company's provision of utility service.

35. The RUS financing will provide funds to construct an arsenic treatment system and to upgrade the existing water distribution system. The cost estimates for the capital improvements are as follows:

A. Arsenic Treatment System	$ 219,124
B. Lower Storage Tank and Piping	$ 64,905
C. Upper Storage Tank and Piping	$ 99,132
D. Water Distribution System	$ 629,350
Subtotal	$1,102,511
E. Engineering Design/Pilot Testing	$ 93,664
F. Administrative/Certifications	$ 70,876
G. Survey, Const. Ins. & Testing	$ 70,876
H. Contingencies	$ 101,251
Total	$1,349,178

36. The U.S. Environmental Protection Agency ("EPA") has reduced the arsenic maximum contaminant level ("MCL") in drinking water from 50 µg/l to 10 µg/l. The date for compliance with the new MCL is January 23, 2006. The most recent analysis by the Company is not in compliance with Arizona Department of Environmental Quality ("ADEQ") water quality standards and the Company is not delivering water that meets water quality standards required by Arizona Administrative Code Title 18, Chapter 4.

37. The Company experienced a water loss of 14.5 percent in the Test Year. The Company estimates that $830,743 of the funds received in loans and grants will be used to upgrade the water distribution system which will address the water loss situation. The Company reported an arsenic concentration for its two wells at 150 ppb. The Company estimates that $224,124 of the funds received will be used in the construction of an arsenic treatment system.

38. Utilizing the Company's recommended rates, Staff's analysis indicates that the requested debt would yield a Times Interest Earned Ratio ("TIER") of 0.66 and a Debt Service Coverage ("DSC") ratio of 2.21 in the first two years when the payments will comprise only interest, and a TIER of 0.68 and DSC of 1.80 in the third year when principal payments begin.[1]

39. Staff recommends that the RUS loan be approved. Staff noted that under the Company's proposed rates, the TIER is less than 1.00, but the revenue level meets RUS requirements and the DSC ratio indicates that the Company will be able to meet debt payments.[2]

40. After RUS funding, the Company would have a capital structure comprised of 11.2 percent debt and 88.2 percent comprised of either contributions or equity. Contributions in the form of grants will total $1,164,178, or 61.2 percent of projected capital, and equity will comprise $525,384, or 27.6 percent of capital.

[1] The TIER represents the number of times earnings will cover interest expense on long-term debt. A TIER greater than 1.0 means that operating income is greater than interest expense. The DSC ratios represents the number of times internally generated cash will cover required principal and interest payments on long-term debt. A DSC greater than 1.0 indicates that operating cash flow is sufficient to cover debt obligations.

[2] Staff's financial analysis includes the $30,000 note incurred to purchase non-utility assets.

41. Staff concludes that the purchase and/or construction of arsenic removal equipment is necessary for the Company to comply with the federal rules that requires reducing the arsenic level in the drinking water to a maximum of 10 ppb.

42. Staff concludes that the proposed use of funds is appropriate and that authorization to incur up to $185,000 of long-term debt for these purposes is lawful and within the corporate powers of the Company, would be compatible with the public interest, consistent with sound financial practices, and not impair the Company's ability to provide service if the Commission authorizes an operating income no less than recommended by Staff.

43. Staff believes that the estimated costs are reasonable and appropriate, but Staff did not make a determination of whether the capital improvements are "used and useful" at this time.

44. The Company is current on its property and sales tax payments and Staff reports there are no outstanding compliance issues.

45. Staff reports that the Company has not been using the National Association of Regulatory Utility Commissioners ("NARUC") Uniform System of Accounts ("USOA").

46. The Company is not within an AMA, and is not subject to the Arizona Department of Water Resources monitoring and reporting requirements.

47. Staff further recommends:

a. The Company be required to convert and maintain its records in accordance with the NARUC USOA;

b. The Company use the depreciation rates by individual NARUC category, as reflected in the Engineering Report, and as modified by the Addendum to the Staff Report;

c. The Company file with Docket Control, as a compliance item in this docket, a copy of the ADEQ Certificate for Approval to Construct for its water distribution system project by June 30, 2006;

d. The Company file with Docket Control, as a compliance item in this docket, a copy of the ADEQ Certificate for Approval to Construct for its arsenic treatment system by June 30, 2006;

e. The Company file with Docket Control, as a compliance item in this docket, a tariff schedule of its approved rates and charges within 30 days of the Decision in this matter;

f. In addition to the collection of the Company's regular rates and charges, the Company collect from its customers their proportionate share of any privilege, sales or use tax as provided for in A.A.C. R14-2-409(D);

g. The Company be authorized to grant liens in favor of the lender as required to secure the authorized borrowings;

h. The Company be authorized to execute any documents necessary to effectuate the authorizations granted; and

i. The Company provide to Docket Control as a compliance item in this matter, copies of all executed financing documents within 60 days after the loan agreement is signed.

48. Because an allowance for the property tax expense of Why is included in the Company's rates and will be collected from its customers, the Commission seeks assurances from the Company that any taxes collected from ratepayers have been remitted to the appropriate taxing authority. It has come to the Commission's attention that a number of water companies have been unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers, some for as many as twenty years. It is reasonable, therefore, that as a preventive measure Why should annually file, as part of its annual report, an affidavit with the Utilities Division attesting that the Company is current in paying its property taxes in Arizona.

CONCLUSIONS OF LAW

1. Why is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-250, 40-251, 40-301, 40-302, and 40-303.

2. The Commission has jurisdiction over Why and of the subject matter of the application.

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

4. The rates and charges authorized hereinbelow are just and reasonable and should be approved without a hearing.

5. The financing approved herein is compatible with the public interest, with sound financial practices, and with the proper performance by Why of service as a public service corporation, and will not impair Why's ability to perform the service.

6. The financing approved herein is for the purposes stated in the application, is reasonably necessary for those purposes, and such purposes are not, wholly or in part, reasonably chargeable to operating expenses or to income.

7. Staff's recommendations, as set forth in Findings of Fact No. 47 are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that Why Utility Company, Inc. is hereby directed to file with Docket Control as a compliance item, within 30 days of the effective date of this Decision, revised rate schedules setting forth the following rates and charges:

MONTHLY USAGE CHARGE:

5/8" x ¾" Meter	$40.00
¾" Meter	40.00
1" Meter	42.50
1 ½" Meter	45.00
2" Meter	50.00
3" Meter	120.00
4" Meter	220.00
6" Meter	450.00

Gallons included in the minimum: 4,000

COMMODITY CHARGE

(Per 1,000 Gallons)

Excess of Minimum	
4,001 to 9,000 gallons	$2.00
9.001 to 14,000 gallons	2.15
0ver 14,000 gallons	2.35
Standpipe – 2 inch meter (per 1,000 gallons)	$4.00
5/8" x ¾" Meter	$520.00
¾" Meter	600.00
1" Meter	690.00
1 ½" Meter	935.00
2" Meter	1,595.00
3" Meter	2,275.00
4" Meter	3,520.00
6" Meter	6,275.00

<u>SERVICE CHARGE:</u>

Establishment	$25.00
Establishment (After Hours)	35.00
Reconnection (Delinquent)	25.00
Meter Test (If Correct)	0.00
Deposit	*
Deposit Interest	*
Reestablishment (Within 12 Months)	**
NSF Check	25.00
Deferred Payment	1.00%
Meter Reread (If Correct)	0.00

* Per Commission rule A.A.C. R-14-2-403(B).

** Months off system times the monthly minimum per Commission rule A.A.C. R14-2-403(D).

IT IS FURTHER ORDERED that the above rates and charges shall be effective for all service provided on and after April 1, 2006.

IT IS FURTHER ORDERED that Why Utility Company, Inc. shall notify its customers of the rates and charges authorized hereinabove and the effective date of same by means of an insert in its next regular monthly billing.

IT IS FURTHER ORDERED that Why Utility Company, Inc. shall collect a proportionate share of any privilege, sales or use tax.

IT IS FURTHER ORDERED that Why Utility Company, Inc. is authorized to issue long-term debt to the Rural Utility Services in an amount not to exceed $185,000 for a term of forty years at an interest rate not to exceed 4.25 percent.

IT IS FURTHER ORDERED that such finance authority shall be expressly contingent upon Why Utility Company, Inc.'s use of the proceeds for the purposes stated in its application and approved herein.

IT IS FURTHER ORDERED that approval of the financing set forth hereinabove does not constitute or imply approval or disapproval by the Commission of any particular expenditure of the proceeds derived thereby for purposes of establishing just and reasonable rates.

IT IS FURTHER ORDERED that on a going-forward basis, Why Utility Company, Inc. shall use the depreciation rates by individual NARUC category, as recommended by the Engineering Report as modified by the Addendum to the Staff Report.

IT IS FURTHER ORDERED that Why Utility Company, Inc. is authorized to grant liens in favor of the lender as required to secure the authorized borrowing.

IT IS FURTHER ORDERED that Why Utility Company, Inc. shall file copies with Docket Control, as a compliance item in this docket, of all executed financing documents setting forth the terms of the financing within 60 days of obtaining such financing.

IT IS FURTHER ORDERED that Why Utility Company, Inc. shall file with Docket Control, as a compliance item in this docket, a copy of the ADEQ Certificate for Approval to Construct for its water distribution system project by June 30, 2006.

IT IS FURTHER ORDERED that Why Utility Company, Inc. shall file with Docket Control, as a compliance item in this docket, a copy of the ADEQ Certificate for Approval to Construct for its arsenic treatment system by June 30, 2006.

IT IS FURTHER ORDERED that Why Utility Company, Inc. shall annually file as part of its annual report, an affidavit with the Utilities Division attesting that the Company is current in paying its property taxes in Arizona.

. . .

. . .

IT IS FURTHER ORDERED that Why Utility Company, Inc. is authorized to engage in any transactions and to execute any documentation necessary to effectuate the authorization granted.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director 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 _____ day of _________, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT ________________

DISSENT ________________

JR:mj

SERVICE LIST FOR: WHY UTILITY COMPANY, INC.

DOCKET NO.: W-02052A-05-0528
W-02052A-05-0529

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