

ORIGINAL



0000077922

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

DOCKETED

1
2
3
4
5

COMMISSIONERS

MIKE GLEASON, CHAIRMAN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

2007 OCT 18 P 3:39

OCT 18 2007

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY	nr
-------------	----

6
7
8

IN THE MATTER OF THE JOINT
APPLICATION OF AMERICAN REALITY &
MORTGAGE CO., INC. DBA HACIENDA
ACRES WATER SYSTEM, FOR AN
EMERGENCY RATE INCREASE

Docket No. W-02258A-07-0414

**Exceptions / Comments of Global Water –
Santa Cruz Water Company**

9

10
11
12
13
14
15
16
17
18
19

Global Water – Santa Cruz Water Company (“Santa Cruz”) respectfully submits these Exceptions/Comments to the Recommended Opinion and Order (“ROO”) issued in this docket. Decision No. 69865 (August 23, 2007) authorized Staff to appoint an interim manager for American Realty & Mortgage Co., Inc. d/b/a Hacienda Acres Water System (“Hacienda”). Staff subsequently entered into an agreement (“Management Agreement”) with Santa Cruz to serve as the interim manager. Santa Cruz desires to ensure the customers of Hacienda receive safe and adequate water supplies. However, Santa Cruz respectfully objects to the obligations imposed on it by the ROO, especially since Santa Cruz was not and is not a party to this docket. Moreover, those obligations are unreasonable, Santa Cruz has not consented to them, and they are beyond the scope of the Management Agreement.

20
21
22
23
24
25
26
27

I. Background.

The deplorable condition of the Hacienda system, and the inadequacy of its management, are well-known. Indeed, only days after Santa Cruz’s appointment, the system was wantonly vandalized in a specific attempt to deny service to the customers. Though massive effort, Santa Cruz has restored service to the customers and made substantial progress in repairing the system. During this time, Santa Cruz provided bottled water to the customers. Since repairing the system, Santa Cruz has hauled water to the system’s storage tank so that sufficient quantities of water are available. This has cost approximately \$1,500 to \$2,000 per day.

1 In conjunction with ADEQ and Staff, Santa Cruz has implemented an Alternative Source
2 Program that will allow for the provision of two sources of water – one potable via bottled water
3 delivery direct to the customers; and a second non-potable system supplied by the repaired well for
4 use as wash water, irrigation water, etc. This program will result in a dramatic reduction in the
5 cost of service (to approximately \$1,500 per month). The Alternative Source Program
6 implementation began 15 October 2006 and included public notification, direct calls to customers
7 and field visits to ensure all were aware of how the program works. A copy of the public notice is
8 included at Exhibit A.

9 Santa Cruz has faithfully carried out its role as interim manager, and Santa Cruz has
10 received no notification that the customers or Staff are unhappy with its performance. Thus, Santa
11 Cruz was very surprised to learn that the ROO contains an ordering paragraph directly imposing
12 numerous requirements on Santa Cruz. Specifically, this ordering paragraph states that “Santa
13 Cruz Water Company, is authorized and shall, when necessary, take all reasonable and appropriate
14 actions to ensure that the operations of the water utility comply with the terms of this decision.”¹
15 Thus, Santa Cruz essentially becomes responsible for all the requirements imposed on Hacienda,
16 an entity it neither owns nor controls. Those requirements include:

- 17 ● Filing a rate case by May 31, 2008;
- 18 ● Posting a bond or “similar financial instrument” of \$25,000; and
- 19 ● Filing various plans and reports.

20 The cost of ongoing operations far exceeds the funds available from Hacienda’s rates.
21 Adding substantial additional costs to Santa Cruz makes no sense. Santa Cruz has experience with
22 filing a rate case as an interim manager for Sabrosa Water Company. That experience suggests that
23 preparing and prosecuting a rate case will involve substantial time and effort. Given the almost
24 complete lack of adequate records, if anything, a Hacienda rate case will be even more difficult to
25 process. Including legal costs, internal costs for management, engineering and accountant time,
26

27 ¹ ROO at 16:1-3.

1 copying, responding to data requests, and the like, Santa Cruz estimates that a rate case would cost
2 tens of thousands of dollars. Given that Hacienda has only 25 to 30 customers, there will be no
3 practical way to recover those expenses. Moreover, the costs of the rate case process would far
4 exceed the additional revenues that could reasonably be expected from either a permanent rate case
5 or this emergency rate case.

6 **II. Santa Cruz has been denied due process.**

7 This case is an emergency rate case filed by Hacienda's owners. The hearing was
8 conducted prior to Santa Cruz's appointment as interim manager. Santa Cruz was never notified
9 of the hearing. Santa Cruz never intervened in this case and it was never made a respondent or
10 otherwise brought into the case. Therefore Santa Cruz was not and is not a party to this case. The
11 Commission's rules state that parties to Commission proceedings consist of Applicants,
12 Complainants, Respondents, Intervenors, or Protestants. A.A.C. R14-3-103.A. Santa Cruz does
13 not fall into any of these categories, and it therefore cannot be a party. More fundamentally, Santa
14 Cruz has not consented to being a party, and the Commission never took any action to bring Santa
15 Cruz into the case against its will. Thus, Santa Cruz is not now, and never has been, a party to this
16 case.

17 Due process requires notice and the right to be heard. *Sulger v. Arizona Corp. Comm'n*, 5
18 Ariz. App. 69, 73, 423 P.2d 145, 149 (1967). The Commission must provide due process in its
19 proceedings. *Id.* The essence of due process is the right to be heard, and this right has "little
20 reality or worth unless one is informed that the matter is pending and can choose for himself
21 whether to appear or default, acquiesce or contest." *Roberts v. Robert*, 158 P.3d 899, 903 ¶ 18
22 (Ariz. App. 2007)(quoting *Mullane v. Cent. Hanover Bank Trust Co.*, 339 U.S. 306 (1950)). Here,
23 as a non-party, Santa Cruz had no opportunity to participate in the hearing. Moreover, Santa Cruz
24 was never provided notice that the hearing would affect its rights by becoming subject to new
25 regulatory obligations. Indeed, Santa Cruz was never notified of the hearing at all. Thus, Santa
26 Cruz has been denied due process.

27

1 **III. The conditions are beyond the scope of Santa Cruz's role as interim manager.**

2 Santa Cruz had not consented to the requirements in the order, and Santa Cruz believes that
3 they are beyond its role as interim manager. Santa Cruz has already spent over \$100,000 as
4 interim manager. This far exceeds Hacienda's meager revenues. Adding yet more unfunded
5 burdens is unreasonable. Requiring Santa Cruz to file a rate case, and to take the other actions
6 required in the ROO, will result in a substantial addition to the burden of being interim manger.

7 In addition, the Management Agreement between Staff and Santa Cruz allows Santa Cruz
8 to resign as interim manager upon 30 days notice. The ROO does not recognize this right.

9 Many of the obligations are the result of the Commission's desire to document
10 performance of the owner's management of Hacienda. As the Commission has no reason to
11 suspect that Santa Cruz would operate the system in a similar manner to the owner, those
12 obligations create an unnecessary administrative burden.

13 Moreover, imposing such requirements on interim managers is contrary to public policy. It
14 is often difficult to find interim managers. Few, if any, utilities would agree to assume the role of
15 interim manager if they were at risk of the Commission, without notice, imposing numerous
16 requirements on the interim manager beyond the obligation assumed under the Management
17 Agreement.

18 **IV. Conclusion.**

19 For these reasons, the Commission should not impose any requirements on Santa Cruz.
20 This could be done by removing the ordering paragraph referring to Santa Cruz, or by denying the
21 emergency rate surcharge in full.
22
23
24
25
26
27

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

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

RESPECTFULLY SUBMITTED this 18th of day of October 2007.

ROSHKA DEWULF & PATTEN, PLC

By 
Michael W. Patten
Timothy J. Sabo
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

Original + 13 copies of the foregoing
filed this 18th day of October 2007, with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

Copies of the foregoing hand-delivered/mailed
this 18th day of October 2007, to:

Lyn A. Farmer, Esq.
Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Christopher C. Kempley, Esq.
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Ernest G. Johnson, Esq.
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 Mike Gleason, Chairman.
2 Arizona Corporation Commission
3 1200 West Washington
4 Phoenix, Arizona 85007

5 Commissioner William Mundell
6 Arizona Corporation Commission
7 1200 West Washington
8 Phoenix, Arizona 85007

9 Commissioner Jeff Hatch-Miller
10 Arizona Corporation Commission
11 1200 West Washington
12 Phoenix, Arizona 85007

13 Commissioner Kristin K. Mayes
14 Arizona Corporation Commission
15 1200 West Washington
16 Phoenix, Arizona 85007

17 Commissioner Gary Pierce
18 Arizona Corporation Commission
19 1200 West Washington
20 Phoenix, Arizona 85007

21 *Debbie Amara*

22
23
24
25
26
27

EXHIBIT

"A"



NOTIFICATION OF ALTERNATIVE SOURCE PROGRAM
Hacienda Acres Water Company PWS# 11-301

The water delivered by the well associated with the Hacienda Acres Water Company currently exceeds the Maximum Contaminant Level ("MCL") for nitrate (NO₃-N). Global Water has been hauling water in to the system from our system located in the City of Maricopa at a cost of \$2000 per day. In conjunction with the Arizona Department of Environmental Quality ("ADEQ") and the Arizona Corporation Commission ("ACC"), Global is implementing an "Alternative Source Program" solution.

ALTERNATIVE SOURCE PROGRAM

During the operation of this program, Global Water will arrange for the delivery of bottled water for consumption and cooking. Each resident will be established with an account and will be delivered a volume of water typically used for consumptive purposes. Deliveries will be scheduled by the bottled water provider and coordinated by Global Water.

Once the Alternative Source Program is implemented, **water provided to the tap in the residence will not meet the requirements for nitrate and therefore must not be used for consumption.** The water in the pressurized main will be suitable for all other purposes (cleaning, toilet flushing, laundry etc).

If you choose to not be provided with an alternative drinking water source for reasons of having a household treatment device or other means, you may sign below indicating your decision.

Customer Name: _____ **Customer Signature:** _____

Address: _____

I accept delivery of bottled water under the Alternative Source Program

I refuse delivery of bottled water under the Alternative Source Program

IMPORTANT: Please complete this form as soon as possible and call 520.233.2910 to inform Global of your decision. Then, please deliver or mail this form to 22590 N. Powers Parkway, Maricopa, AZ 85238; or FAX it to 520.568.6367.

NITRATE HEALTH EFFECTS

Nitrate in drinking water is a serious health concern for infants less than six months old. The MCL for nitrate is 10 mg/L; the water from the Hacienda Acres well measured 11 mg/L.

**DO NOT GIVE THE WATER TO INFANTS UNDER
SIX MONTHS OLD OR USE IT TO MAKE INFANT FORMULA
AVISO
NO USE EL AGUA PARA PREPARAR ALIMENTOS PARA BEBES**

What should I do?

DO NOT CONSUME WATER IN THE TAP. USE BOTTLED WATER SUPPLIED TO YOU FOR DRINKING AND/OR COOKING. Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome. Blue baby syndrome is indicated by blueness of the skin. Symptoms in infants can develop rapidly, with health deteriorating over a period of days. If symptoms occur, seek medical attention immediately.

Water, juice, and formula for children under six months of age should not be prepared with tap water. Bottled water or other water low in nitrates should be used for infants until further notice.

Do not boil the water. Boiling, freezing, filtering, or letting water stand does not reduce the nitrate level. Excessive boiling can make the nitrates more concentrated, because nitrates remain behind when the water evaporates.

Further information on nitrate may be obtained from your doctor or by calling:

1. Graham Symmonds, SVP Regulatory Affairs & Compliance: 623-580-9600
2. Arizona Department of Environmental Quality: 602-771-2300