

OPEN MEETING ITEM



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COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

ORIGINAL



ARIZONA CORPORATION COMMISSION

22

DATE: FEBRUARY 22, 2008

DOCKET NO: W-20435A-07-0649

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:

SONOITA VALLEY WATER COMPANY
(RATE INCREASE)

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 ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MARCH 3, 2008

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 Working Session and Open Meeting to be held on:

MARCH 11, 2008 and MARCH 12, 2008

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

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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

DOCKET NO. W-20435A-07-0649

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: January 14, 2008
PLACE OF HEARING: Tucson, Arizona
ADMINISTRATIVE LAW JUDGE: Jane L. Rodda
APPEARANCES: E.H. "Buck" Lewis, owner, on behalf of Sonoita Valley Water Company; and
Charles Hains, Staff Attorney, Legal Division on behalf of the Utilities Division of the Arizona Corporation Commission.

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. On November 14, 2007, Sonoita Valley Water Company ("SVWC" or "Company") filed an application with the Arizona Corporation Commission ("Commission") for emergency rate relief.
2. By Procedural Order dated December 12, 2007, the Commission scheduled a hearing on the emergency request to commence on January 14, 2008, at the Commission's Tucson offices and required the Company to mail notice of the hearing to its customers by December 31, 2007.

1 3. On January 4, 2008, the Company filed an Affidavit of Mailing indicating that it
2 mailed notice of the hearing on January 3, 2008.

3 4. On January 7, 2008, the Commission's Utilities Division Staff ("Staff") filed a Staff
4 Report recommending that the emergency rate request be granted.

5 5. The hearing convened as scheduled on January 14, 2008 before a duly authorized
6 Administrative Law Judge. Mr. E.H. "Buck" Lewis, the Company's owner, and Ms. Bonnie
7 O'Connor of Southwestern Utility Management, testified on behalf of the Company. Mr. Marvin
8 Millsap and Ms. Katrin Stukov testified on behalf of Staff.

9 6. Subsequent to the hearing, Mr. Hains, counsel for Staff, informed the Administrative
10 Law Judge and the Company that on January 7, 2008, a customer of the Company had filed
11 comments in opposition to the rate request and complained that she had not received the notice of the
12 hearing until January 5, 2008. In addition, the customer also urged the Commission to review the
13 proposed rate structure so as not to place an unfair burden on the smaller water users.

14 7. To ensure that customers had adequate opportunity to file or appear before the
15 Commission to make comments on the application, our Procedural Order dated January 18, 2008,
16 scheduled a Public Comment meeting for February 14, 2008, at the Commission's Tucson offices.

17 8. On January 23, 2008, the Company filed an Affidavit of Mailing that indicates it
18 mailed notice of the Public Comment meeting to its customers on January 22, 2008, as directed by
19 the January 18, 2008 Procedural Order.

20 9. In response to the additional notice and extended public comment period, the
21 Commission received one additional letter from a SVWC customer. This customer was also
22 concerned about the structure of the rates, and urged the Commission to be fair to users of small
23 quantities of water and to use the rate structure to encourage conservation.

24 10. On February 14, 2008, the Commission convened a Public Comment meeting at its
25 Tucson offices. No members of the public appeared at that time.

26 11. SVWC is an Arizona Class E utility engaged in the business of providing potable
27 water service to approximately 98 customers near Sonoita, in Santa Cruz County, Arizona.

28 12. SVWC comprises the assets and operations of the former sole proprietorship owned

1 by Mr. Lewis doing business as Sonoita Valley Water Company and the former Southern Water
2 Company ("SWC"), a system that neighbored the SVWC system.

3 13. The Commission approved the original Certificate of Convenience and Necessity
4 ("CC&N") for Sonoita Valley Water Company in Decision No. 46061 (May 12, 1975). Originally
5 Sonoita Valley Water Company was owned and operated by Michael J. Ronstadt.

6 14. In 2003, Staff filed a Complaint and Order to Show Cause against Sonoita Valley
7 Water Company and Mr. Ronstadt. The Company had a history of water shortage and operational
8 problems. On April 25, 2003, the Commission issued Decision No. 65858, an Order to Show Cause
9 and Order for Interim Relief ("OSC"). In its OSC, the Commission ordered Staff to appoint an
10 Interim Operator for the system. On or about May 12, 2003, Staff entered into an Interim
11 Management Agreement with Southwestern Utility Management, Inc. ("SUM") to act as interim
12 manager. At that time SUM was owned and operated by Mr. Lewis. In Decision No. 66731 (January
13 20, 2004), the Commission approved the sale of assets and transfer of CC&N of Sonoita Valley
14 Water Company to Mr. Lewis, who initially held the company as a sole proprietorship.

15 15. In Decision No. 68823 (June 29, 2006), the Commission approved the conveyance of
16 assets and transfer of CC&N of E.H. "Buck" Lewis dba Sonoita Valley Water Company to SVWC, a
17 corporation, owned by Mr. Lewis.

18 16. In Decision No. 69259 (January 19, 2007), the Commission approved the sale of
19 assets of SWC to SVWC, cancelled the CC&N of SWC and extended the CC&N of SVWC to
20 include the service territory of SWC.

21 17. Mr. Lewis had acquired the assets of SWC from the bankruptcy court in 2005.

22 18. The current rates for SVWC have been in effect since March 1, 1991, pursuant to
23 Decision No. 57235.

24 19. The current rates for SWC have been in effect since May 1, 1991, pursuant to
25 Decision No. 57313. When the Commission approved the transfer of SWC's assets to SVWC, it did
26 not consolidate rates, but left the rate structure intact for each company.

27 20. In its request for emergency rate relief, SVWC sought additional revenues in the
28 amount of \$26,562. SVWC presented evidence that in the year ended December 31, 2006, it suffered

1 an operating deficit of \$26,468 and an operating deficit of \$24,369 for the year ended December 31,
2 2007.¹ The Company reported that since acquiring these systems, Mr. Lewis has had to make capital
3 improvements totaling \$153,964, which included replacing the pumps and electronics on three wells,
4 drilling a new well, installing new booster pumps, establishing an emergency connection between the
5 two systems, and making main repairs. Furthermore, the Company has identified additional needed
6 capital improvement projects, including making the interconnection between the two systems
7 permanent, repairing a leaking storage tank, installing a new electrical system for SWC and
8 abandoning a line across private property, which have a total estimated cost of \$97,000.

9 21. Given the substantial sums he has invested in these systems to date, Mr. Lewis reports
10 that he is unable to provide additional financial support to keep the systems operational without the
11 requested emergency rate request. Mr. Lewis expects to file a finance application with the Arizona
12 Water Infrastructure Finance Authority ("WIFA") and the Commission to seek authority to borrow
13 funds for some of the past improvements as well as the future capital needs of the Company. Based
14 on his personal experience, he believes that there is some precedent for WIFA approving a loan for
15 prior capital improvements.

16 22. Mr. Lewis and Ms. O'Connor expect to be able to file a permanent rate case for
17 SVWC in the second quarter of 2008. In the past year, the operations of the once separate
18 companies have been consolidated and Ms. O'Connor believes that the current records are sufficient
19 to support a rate case application.

20 23. Mr. Lewis had "loaned" the Company \$191,300 since 2003 for capital improvements
21 and operating deficits. Mr. Lewis did not seek prior Commission approval for the loans as he states
22 the Company needed the funds immediately to repair broken pumps, and other emergency situations
23 and there was not time to seek Commission approval.

24 24. The Commission need not rule on the accounting treatment of Mr. Lewis's prior
25 "loans" to the Company at this time, but can make a determination when it considers the Company's
26 permanent rate case application.

27
28 ¹ The 2007 operating results do not include depreciation expense.

1 25. Mr. Lewis testified that although the Company has faced a dire financial condition
 2 since prior to Mr. Lewis' involvement commencing in 2003, the records of both Sonoita Valley
 3 Water Company and SWC were either non-existent or too poor to support a rate application filing.
 4 Since acquiring these problem companies, management has had to focus on maintaining the
 5 Company's ability to provide water in the face of one operating emergency after another.

6 26. The current rates for the SWC system are as follows:

<u>Meter Size</u>	<u>Monthly Minimum Charge</u>
5/8 inch meter	\$15.00
1 inch meter	\$30.00
1 ½ inch meter	\$45.00

11 Usage is billed at \$2.84 per 1,000 gallons.

12 The current rates for the SVWC system are as follows:

<u>Meter Size</u>	<u>Monthly Minimum Charge</u>
5/8 inch meter	\$16.00
1 inch meter	\$20.00
1 ½ inch meter	\$25.00

17 Usage is billed at \$4.00 per 1,000 gallons.

18 27. The Company requests interim rates for both systems as follows:

<u>Meter Size</u>	<u>Monthly Minimum Charge</u>
5/8 inch meter	\$24.00
1 inch meter	\$32.00
1 ½ inch meter	\$47.00

23 The Company proposed a commodity rate of \$4.74 per 1,000 gallons for usage between 0 and 10,000
 24 gallons; \$5.50 per 1,000 gallons for usage between 10,001 and 20,000 gallons; and \$6.50 per 1,000
 25 gallons for usage greater than 20,000 gallons.

26 28. Staff testified that the serious financial condition appears to have resulted from the
 27 need to make repeated repairs and replace equipment failures, which expenditures could not be
 28 anticipated. Staff believes that SVWC's current situation meets the general conditions necessary for

1 interim emergency rate relief because SVWC has experienced a situation of sudden change that
2 brings a hardship to the Company and places the ability of SVWC to maintain services pending a
3 formal rate determination in serious doubt. Therefore, Staff recommends that SVWC's emergency
4 rate increase be approved.

5 29. Staff reviewed the operating and maintenance expenses reported by the Company, and
6 states that they appear to be reasonable and appropriate. Staff cautions, however, that this does not
7 imply any particular future treatment for rate making purposes. Staff notes that in 2006, SVWC
8 incurred expenses of more than \$17,000 for leak repairs and an additional \$3,200 for other repairs
9 and maintenance. Staff believes that this abnormal level of maintenance has caused the Company's
10 transportation expenses to increase dramatically as well.

11 30. Staff further recommends:

12 (a) The emergency rate increase be interim, and subject to refund pending a
13 permanent rate case;

14 (b) The Company be directed to file within 30 days of the date of this Order a revised
15 schedule reflecting the emergency rate increase with Docket Control, as a compliance item in this
16 docket;

17 (c) The Company notify its customers of the revised rates, and its effective date, in a
18 form acceptable to Staff, by means of an insert in the Company's next regularly scheduled billing;

19 (d) The Company file a full rate case by April 30, 2009, or earlier, using a test year
20 ending December 31, 2008;

21 (e) That if the Company believes it will need to incur debt in order to solve its water
22 distribution and storage problems, that it file a financing application prior to, or concurrent with the
23 permanent rate application; and

24 (f) The Company post a performance bond, or similar financial instrument, in the
25 amount of \$10.00 prior to implementing the emergency rate increase authorized in this proceeding.

26 31. SVWC operates three systems. Staff reports that pursuant to status reports dated
27 August 1, 2006 and March 9, 2007, the Arizona Department of Environmental Quality ("ADEQ")
28 determined that the water systems are in full compliance and delivering water that meets water

1 quality standards required by the Arizona Administrative Code, Title 18, Chapter 4.²

2 32. Staff is recommending the interim rates as proposed by the Company be approved.
3 Staff's analysis indicates the Company's proposed interim rates would produce an additional \$27,108
4 per year based on annual water sales of 6,325,000 gallons. Staff believes these additional funds are
5 needed for the Company to continue providing needed system repairs to distribution facilities, pumps
6 and storage facilities, and that SVWC's financial viability and ability to maintain service will be
7 achieved as a result of the increased revenues.

8 33. The average usage for a 5/8 inch meter on the former SWC system is 7,700 gallons.
9 Under the rates proposed by the Company, and agreed to by Staff, the average 5/8 inch meter bill on
10 the SWC system will increase from \$36.86 to \$60.57, an increase of \$23.71, or 64.32 percent. The
11 median user on the former SWC system uses 5,500 gallons per month. The median 5/8 inch meter
12 bill on the former SWC system will increase from \$30.62 to \$50.13, an increase of \$19.51, or 63.71
13 percent.

14 34. The average 5/8 inch meter customer on the former SVWC system uses 4,300 gallons
15 per month. The average 5/8 inch meter bill for the SVWC system will increase from \$33.20 to
16 \$44.42, an increase of \$11.22, or 33.73 percent. The median usage for a 5/8 inch meter on the
17 SVWC system is 2,500 gallons. The typical median bill for a 5/8 inch customer on the SVWC
18 system will increase from \$26.00 to \$35.88, an increase of \$9.88, or 38.0 percent.

19 35. Mr. Lewis acquired both these systems when they were in operational and financial
20 distress. Neither system has had a rate increase since 1991. Since acquiring them, Mr. Lewis has
21 made capital improvements and made up for operational shortfalls requiring his investment of
22 \$191,300. The systems continue to require capital improvements, and they both have experienced
23 operating deficits in 2006 and 2007. Mr. Lewis does not have the financial resources to continue to
24 support the operations and repairs of these systems. Without the requested emergency relief, the
25 ability of the systems to continue providing adequate service is in serious doubt.

26 36. Staff reports that except for the Company's request to extend a deadline in a prior
27

28 ² Staff sent a request for compliance check on December 13, 2007, but had not received a response from ADEQ by the time of the hearing.

1 Commission order, there are no Commission compliance matters outstanding.

2 37. In Decision No. 69259 (the order that approved the transfer of assets of SWC to
3 SVWC), the Commission ordered SVWC to file with Docket Control a copy of an Approval of
4 Construction issued by ADEQ for the interconnection between the SVWC systems and SWC system
5 by June 30, 2008, and the Approval of Construction for the addition of a storage tank with a
6 minimum capacity of 7,500 gallons for the former SWC system by December 31, 2007.

7 38. On December 11, 2007, the Company requested, by filing a letter in Docket No. W-
8 20435A-06-0411 and W-02017A-06-0410, an extension of time regarding the installation of the
9 7,500 storage tank. The Company reported that it had other more urgent projects that required
10 precedence over the new storage tank, including the replacement of an existing storage tank that is
11 leaking beyond repair. The Company reported that its financial condition prevented it from
12 completing both storage tank projects at the same time. The Company requested at least a 90 to 120
13 day extension.

14 39. On January 15, 2008, Staff filed a memorandum in Docket Nos. W-02017A-06-0410
15 and W-20435A-06-0411, in which Staff recommended granting the extension to comply with the
16 requirement to install the additional 7,500 storage tank for 180 days.

17 40. By Procedural Order dated February 20, 2008, the Commission extended the deadline
18 to install the new tank until June 30, 2008. Depending on the timing of the permanent rate case and
19 anticipated finance application, the Commission may extend the deadline further.

20 41. The interim rates we approve as part of this emergency request are fair and reasonable
21 and reasonably calculated to achieve the additional revenues needed to maintain operations. In the
22 permanent rate case, the Commission will be able to analyze the rate design further with the goal of
23 addressing conservation goals as well as achieving financial viability. In the meantime, the interim
24 rates implement a tiered structure, that offers lower rates for lower usage and should encourage
25 conservation.

26 CONCLUSIONS OF LAW

27 1. SVWC is a public service corporation pursuant to Article XV of the Arizona
28 Constitution and ARS §§ 40-250 and 40-251.

1 refund pending resolution of the required permanent rate case.

2 IT IS FURTHER ORDERED that Sonoita Valley Water Company shall file an application for
3 a permanent rate increase no later than April 30, 2009, based on a year end 2008 test year. Sonoita
4 Valley Water Company may file a permanent rate case sooner than April 30, 2009, based on a
5 reasonable test year.

6 IT IS FURTHER ORDERED that if Sonoita Valley Water Company believes it will need to
7 incur debt in order to solve its water distribution and storage problems, that it file a financing
8 application prior to, or concurrent with the permanent rate application.

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IT IS FURTHER ORDERED that Sonoita Valley Water Company shall post a performance bond of \$10.00 or similar financial instrument, prior to implementing the emergency rate increase authorized in this proceeding. Sonoita Valley Water Company shall provide the original performance bond or financial instrument to the Commission's Business Office for safekeeping and shall file the appropriate copies with Docket Control as a compliance item in this docket by March 31, 2008.

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, DEAN S. MILLER, Interim 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 _____, 2008.

DEAN S. MILLER
INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: SONOITA VALLEY WATER COMPANY

2 DOCKET NO.: W-20435A-07-0649

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