

ORIGINAL



0000088092



Valley Utilities Water Co. Inc.

RECEIVED

2008 AUG 27 A 9:57

AZ CORP COMMISSION
DOCKET CONTROL

August 26, 2008

Arizona Corporation Commission

DOCKETED

AUG 27 2008

Mr. Ernest Johnson
Arizona Corporation Commission
Utilities Division
1200 West Washington Street
Phoenix, Arizona 85007

DOCKETED BY	<i>mm</i>
-------------	-----------

Re: Valley Utilities Water Company; Docket No W-01412A-99-0615 and Docket No W-01412A-00-023; Decision No. 762908; Response to Staff Report

Dear Mr. Johnson:

Valley Utilities Water Co. Inc. (Valley) is writing this letter in response to the Revised Staff Report dated August 18, 2008.

Valley did indeed set aside monies for the debt service of the WIFA loan that was approved on September 18, 2000, Decision No. 62908, starting with the December, 2000 bills. Valley did indeed use some of these monies to pay operating expenses, from time to time, to meet the operating demands of the company and in good faith, made every attempt to repay and catch up on all installments for the set-asides. The monies used were used to maintain water service to our customers, to not incur any ill will from vendors and employees and to keep from paying penalties and interest on overdue accounts. Valley's credit rating, as a small water utility, was not good and the company was making every effort to improve its rating.

In Staffs Executive Summary, it is stated that Valley did not receive the WIFA loan that would be serviced from the set-asides. This is categorically, not true. As clearly stated in Valley's response to Mr. Marvin Millsap's Memo dated March 19, 2008 and is a matter of record, Valley did receive the WIFA loan. The loan was for \$52,350.00, loan number 920092-05 and closed on January 7, 2005. However, Valley had not drawn any funds from this loan.

Pursuant to Decision No. 62908, the set-asides were to continue "until the amount of the loan was known", page 15, and line 16 through 21. The loan amount was known when the loan closed on January 7, 2005; it was \$52,350.00. Having not drawn any of the loan funds, Valley had over collected and felt that it was within its prerogative to use the funds over and above that amount. Valley also concedes that it should have contacted Staff regarding this interpretation.

Page 2
Response to Staff Report
August 26, 2008

In the application for the Arsenic Removal requirements, Decision No. 68309 dated November 14, 2005, the Commission granted a WIFA loan for \$1,926,100.00 to support the construction of the required arsenic removal systems for Valley production facilities. In this Order, Valley's existing WIFA loan approval for \$52,350.00 was cancelled and Valley was ordered to meet a compliance order regarding the set-aside account. The loan status and set-aside account was explained in Valley's letter to you dated December 28, 2005, docketed with docket control, December 29, 2005, 12:41 PM as a compliance item. Included in this letter was a spreadsheet that detailed the set-aside account activity and balances.

In my letter to you, as a compliance issue, I stated that I would follow up after the first of the year with a phone call to Staff to discuss with Mr. Steve Olea the need to fulfill the work scope that was contemplated in the WIFA loan that had been cancelled. Valley placed a call to Staff but did not receive a return call. It should also be noted that Valley did not follow up with further phone calls and the matter was not addressed again until Valley was required to submit information from a data request from Mr. Millsap for an inquiry from Staff, Mr. Darren Carlson. Valley responded to the Memo from Mr. Millsap to Mr. Carlson and this response was included in the Motion for an Order Confirming Compliance and Release of Set-Aside Funds, dated May 7, 2008.

On May 9, 2007, Valley filed, as a compliance issue from Decision No. 68309, an application for authority to issue common stock in the amount of 4,000 shares with a value of \$300,000 and a short term note for \$129,000 for a total increase in equity to Valley of \$429,000. This was the first step in complying with the Order to produce a positive equity position for Valley by December 31, 2010. The Application was approved, Decision No. 70052, dated December 4, 2007 and allowed for a short term note in the amount of \$129,000, payable by April 14, 2009.

On October 1, 2007, Valley filed an application for an emergency rate case for approval for a \$250,000 WIFA loan and surcharges to replace a production well that had catastrophically failed. Decision No. 70138, dated January 23, 2008 allowed for the approval of the loan and surcharges. Valley initiated the surcharge pursuant to the order on the April 2008 bills and closed the WIFA loan #920131-08 on December 21, 2007.

This list of Commission activity regarding the filings Valley has made since the set-asides were established in the 2000 Rate Case, demonstrates our conclusion that there was no apparent concern by the Commission regarding the set-asides until Valley asked

for the compliance approval and release of the funds. Valley does not dispute the fact that it was in error regarding its use of the funds, the error being that the Commission was not contacted regarding a request for permission to use some of the funds needed for operating expenses and maintaining water service to our customers during equipment failures and high demand times.

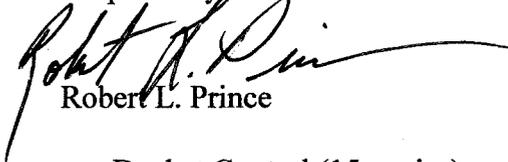
Valley admits this error in judgment, but there was no nefarious activity and Valley acted in good faith and with the conviction that it was doing the very best that it could to continue water service with the resources available. The cascading effect of pump failures, well failures, mainline breaks and other issues that had to be addressed as they occurred, placed the company in a position of making in the dark of night decisions, while maintaining water service to its customers. Valley did not have the luxury of being over built with the ability to wait for a decision to be made at the Commission. I understand that Valley should have at least been in contact with the staff regarding these matters and should have advised staff as to what was going on. The fact of the matter is that it is easy after the disaster has been averted and the crisis is over to relax and be thankful that things did not go any worse than they did and feel that there really isn't any reason to burden the regulators with the problem and to just repay the money and move on. Valley felt that it was following the decision order and that after the amount of the loan was known it seemed that the requirement for the set-asides had been met.

Valley believes the Staff's recommended requirement that all of the set-aside funds plus interest in the amount of \$215,540, be used to service current WIFA debt is unreasonable and clearly punitive. As stated above, sufficient funds were and have been set-aside to cover the full WIFA loan obligation, not just the debt service for the loan that was cancelled. Please recall that the \$6.35 amount was not an additional authorized rate or a surcharge, but a portion of the otherwise authorized return for the Company in that rate case. Valley stopped catching up the set-aside account in September 2005 as it was obvious that it had over funded for the WIFA loan in the amount of \$52,350.

Valley strongly disagrees with Staff in recommending that a fine be assessed. This action would only exacerbate an on going cash flow problem. With the amount of debt that is outstanding, \$1,926,100 arsenic remediation, \$250,000 well replacement and \$129,000 in mandated equity increases, the need to establish sufficient rate structure to service that debt is paramount. Therefore, Valley concludes that fines and a requirement to fund the set-asides to \$215,540, which is \$163,190 over the known value of the WIFA loan of \$52,350, would be detrimental to its financial well being and virtually impossible for the Company to comply with. Valley makes a commitment to maintain a better dialog with Staff in order to prevent a misunderstanding of this nature in the future.

Page 4
Response to Staff Report
August 26, 2008

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Robert L. Prince", with a long, sweeping horizontal line extending to the right.

Robert L. Prince
cc: Docket Control (15 copies)
Hearing Division
Legal Division
Richard L. Sallquist