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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION OF VALLEY UTILITIES WATER COMPANY INC. FOR AN INCREASE IN ITS WATER RATES FOR CUSTOMERS WITHIN MARICOPA COUNTY, ARIZONA.	DOCKET NO. W-01412A-99-0615
IN THE MATTER OF THE APPLICATION OF VALLEY UTILITIES WATER COMPANY, INC. FOR AUTHORITY TO ISSUE PROMISSORY NOTE(S) AND OTHER EVIDENCES OF INDEBTEDNESS PAYABLE AT PERIODS OF MORE THAN TWELVE MONTHS AFTER THE DATE OF ISSUANCE.	DOCKET NO. W-01412A-00-0023 **STAFF'S RESPONSE TO VALLEY UTILITIES MOTION FOR AN ORDER CONFIRMING COMPLIANCE AND RELEASE OF SET-ASIDE FUNDS**

Arizona Corporation Commission, Utilities Division ("Staff") hereby responds to Judge Martin's September 19, 2008 Procedural Order that Staff file a response to Valley Utilities Water Company Inc.'s ("Valley Utilities" or "Company") response to Staff Report dated August 26, 2008. After a review of the Company's response, Staff stands by the recommendations filed in its Staff Report dated August 15, 2008. Staff recommends that the Commission grant the Company's request to be released from the obligation to maintain the set-aside account. Staff further recommends that the Company be ordered to use the funds, including the shortage created by the utilization of the funds for unauthorized purposes, to prepay $125,540.07 towards the Company's WIFA loan to reduce its existing debt balance of approximately $997,000. Staff also recommends that the Company be fined by the Commission for its failure to comply with Decision No. 62908 and Decision No. 68309.

The Commission, in Decision No. 62908, approved WIFA Loan #1 and ordered Valley Utilities to "set aside the amount of funds equivalent to the annual debt service requirements of the WIFA loan and set aside one-twelfth on a monthly basis when the amount of debt service

requirement becomes known to the Company." [1] The Commission further ordered that, "[u]ntil such time as that amount is known, the Company shall set aside $6.35 per bill per month in a separate interest bearing account to be used solely for the purpose of servicing the WIFA financing."[2] In Decision No. 68309 the Commission: (1) cancelled the WIFA financing authority for Loan #1, (2) authorized WIFA financing for Loan #2, and (3) required Valley Utilities to apply previously collected arsenic removal surcharge tariffs to service WIFA Loan #2.[3] Although Decision No. 68309 vacated the set-aside requirement by cancelling authority for WIFA Loan #1, the Commission has not yet granted Valley Utilities the authority to close the set-aside account. Contrary to the assertions of the Company that "there was no apparent concern by the Commission regarding the set-asides until Valley asked for the compliance approval and release of funds", Staff did indeed voice concern. Staff issued a data request to the Company on December 26, 2007 in Docket No. 07-0560, *et. al.* and met with the Company and its Counsel on February 19, 2008 in order to further understand the use of the set aside funds and the Company's response to Staff's data request.

Staff is somewhat sympathetic to the concerns voiced by the Company in its response concerning its operational woes. However, the Company, through its filing of emergency rates in Docket No. 07-0560, expressly realizes that in the event of operational woes, its remedy is to seek relief from the Commission. The Company has repeatedly sought approval from the Commission for various issues: approval to issue common stock and short term note (Decision No. 70052), an accounting order to defer arsenic treatment operating and maintenance expenses (Docket No. 07-0278). The Company could have sought approval in this instance to use the set aside account differently but it chose not to do so.

Staff contends that the use by the Company of the set aside funds in a way not authorized by the Commission constitutes a violation of a Commission order and that fines may be imposed. The Company has admitted in its response that it disregarded a commission order. The

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[1] Decision No. 62908, p. 15 (cited in Decision No. 68309, p. 8)

[2] *Id.*

[3] Decision 68309, pp. 7 and 9.

Commission has the power to fine corporations under the Arizona Constitution[4] and Arizona Revised Statutes ("A.R.S.") §§ 40-421 *et seq*. ARS §40-425 (A).

Staff did not attempt to address every single allegation in the Company's response and its silence on certain arguments or interpretations offer by the Company should not be taken as agreement. Because this matter is set for hearing, November 18, 2008, Staff will then elaborate its position.

RESPECTFULLY SUBMITTED this 6th day of October, 2008.

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The Original and Fifteen (15) copies of the foregoing were filed this 6th day of October, 2008 with:

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[4] A.R.S. Const. Art. 15 §§ 4, 16, and 19.