

OPEN MEETING ITEM

ORIGINAL

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



0000089980

ARIZONA CORPORATION COMMISSION

DATE: OCTOBER 27, 2008

DOCKET NO: W-02355A-08-0288

TO ALL PARTIES:

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

HEART CAB COMPANY, INC. dba
SULGER WATER COMPANY #2
(EMERGENCY RATES)

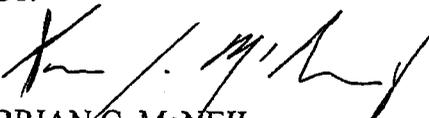
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

NOVEMBER 5, 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:

NOVEMBER 12, 2008 and NOVEMBER 13, 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 Director'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
HEART CAB COMPANY, INC., D/B/A SULGER
WATER COMPANY #2 FOR AN EMERGENCY
RATE INCREASE.

DOCKET NO. W-02355A-08-0288

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: September 22, 2008
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Belinda A. Martin
APPEARANCES: Valerie Betts, President, on behalf of Heart Cab Company, Inc., d/b/a Sulger Water Company #2.; and
Wes Van Cleve, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

PROCEDURAL HISTORY

On June 2, 2008, Heart Cab Company, Inc., d/b/a Sulger Water Company #2 (“Sulger” or “Company”), filed with the Arizona Corporation Commission (“Commission”) an application requesting an emergency rate increase (“Application”).

On August 6, 2008, the Commission’s Utilities Division Staff (“Staff”) filed a request for Procedural Order setting a hearing in this matter.

On August 7, 2008, a Procedural Order was issued setting a hearing in this matter for September 22, 2008, and establishing deadlines.

On August 8, 2008, a former employee of Sulger filed correspondence with the Commission asserting that Sulger owes her back wages.

On September 2, 2008, Staff filed its Staff Report, recommending approval of the

1 Application.

2 A hearing on the Application was held on September 22, 2008, before a duly authorized
3 Administrative Law Judge at the Commission’s Phoenix office. No members of the public appeared.
4 After public hearing, the matter was taken under advisement pending submission of a recommended
5 Opinion and Order to the Commission.

6 On September 26, 2008, Sulger filed an Affidavit stating that Public Notice of the hearing was
7 mailed to its customers on August 17, 2008. No written comments were received from Sulger’s
8 customers.

9 * * * * *

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

12 **FINDINGS OF FACT**

13 1. In Decision No. 50157 (August 13, 1979), the Commission granted Sulger a
14 Certificate of Convenience and Necessity (“CC&N”) to provide water service in an unincorporated
15 portion of Cochise County near Huachuca City, Arizona. All of Sulger’s customers are residential
16 customers. Sulger has not increased its rates since the Commission granted Sulger’s CC&N in 1979.

17 2. According to the Application, on April 13, 2008, Shelia Reeve, Sulger’s Vice
18 President, resigned that position due to health issues. In May 2008, Ethel Sulger resigned her position
19 as Sulger’s President due to her failing health and difficulty managing Sulger. Subsequently, Valerie
20 Betts was appointed President of Sulger and Timothy Sulger was appointed as Vice-President.

21 3. On June 3, 2008, Sulger filed its Application for an emergency rate increase.

22 4. On September 2, 2008, Staff filed its Staff Report recommending approval of Sulger’s
23 Application.

24 5. On September 26, 2008, Sulger filed an affidavit stating that Notice of Hearing was
25 mailed to all Sulger’s customers and posted at both well sites.

26 6. Sulger is an Arizona Class ‘E’ utility engaged in the business of providing water
27
28

1 service to 17 residential customers¹ near Huachuca City, Cochise County, Arizona. Sulger's water
2 system consists of two wells, one 2,500 gallon storage tank and one 5,000 gallon pressure tank.

3 7. As of the date of the hearing in this matter, Staff had not received a Compliance Status
4 Report from the Arizona Department of Environmental Quality ("ADEQ"). Sulger's witness,
5 Timothy Sulger, testified that Sulger currently is in compliance with ADEQ water quality
6 requirements. (Transcript of the September 22, 2008, Hearing ("Tr.") at 12, 13.) Staff indicated that it
7 would docket the ADEQ Compliance Status Report when Staff received it. (Tr. at 50.)

8 8. Sulger is not located in an Active Management Area. The Staff Report notes that,
9 according to the Arizona Department of Water Quality ("ADWR"), Sulger is in compliance with
10 ADWR requirements.

11 9. Staff notes that Sulger is in good standing with the Commission's Corporations
12 Division.

13 10. Staff testifies that from January 1, 2005, through August 15, 2008, no complaints,
14 inquiries, or opinions have been filed against Sulger.

15 11. Staff determined that Sulger's 2007 Annual Report to the Utilities Division was an
16 exact duplicate of its 2006 Annual Report and rejected Sulger's 2007 Annual Report.

17 12. Sulger's current rates are \$9.95² for the minimum monthly charge including up to
18 2000 gallons of water, and \$1.50 per thousand gallons thereafter. (Tr. at 60.) The Application states
19 that the average water bill is \$17.18 per month. The Company did not provide information regarding
20 the average and median monthly water usage, although Mr. Sulger did testify that he believes that
21 some of the meters are not working properly. Mr. Sulger stated that he is in the process of testing
22 each meter. (Tr. at 25.)

23 13. According to the Staff Report, Staff asked Sulger to provide a bill count for the
24 months of February, 2008, through June, 2008, in order to estimate Sulger's revenues. Staff found
25 that there were a number of missing bills, making it difficult for Staff to estimate revenues.

26 14. Staff states that Ms. Betts is relatively new to the water business and is in the process

27 ¹ Sulger has 18 meters, but currently is only serving 17 customers. (Tr. at 25.)

28 ² Sulger's witness testified that the current minimum monthly billing is \$10.59. This amount is the approved \$9.95
minimum charge plus sales tax.

1 of verifying Sulger's accounting data. (Staff Report, pg. 4.)

2 15. Based on the information available, Staff estimated Sulger's current annual revenues
3 to be \$2,083.65. Sulger's 2006 reported metered water revenues was \$1,776.53.

4 16. Staff utilized Sulger's 2006 Annual Report to calculate the Company's current
5 expenses, and estimated Sulger's annual operating expenses to be \$5,330.58. This results in an annual
6 deficit of between \$3,246.93 and \$3,554.05.

7 17. In his testimony, Mr. Sulger discussed the financial challenges facing the Company.
8 Mr. Sulger stated that at its current rates, Sulger would not be able to pay its property taxes this year.
9 (Tr. at 12.) Furthermore, a couple of days before the hearing in this matter, a pump failed. Mr. Sulger
10 testified he was able to keep the system operational, but it will need a new pump at an estimated cost
11 of approximately \$550. Mr. Sulger testified that the Company does not have the funds for the new
12 pump. (Tr. at 17-18.) Additionally, the Company also needs a new storage tank and fencing around
13 the well sites. (Tr. at 23-24.)

14 18. Mr. Sulger stated that he has discussed the possibility of financing water system
15 upgrades with the Water Infrastructure Financing Authority.³ (Tr. at 23.)

16 19. Finally, Mr. Sulger testified that he believes Sulger is insolvent and without a rate
17 increase, he does not feel that Sulger can continue operations. (Tr. at 30-31.)

18 20. Ms. Betts testified that she believes Sulger is insolvent and without a rate increase, she
19 does not feel that Sulger can continue operations. (Tr. at 43.) She also testified that since she was
20 appointed President, she has used some personal funds to pay Sulger's expenses. (Tr. at 43.)

21 21. Marlin Scott, Utilities Engineer, testified for Staff. Mr. Scott estimated that Sulger's
22 annual water testing costs are between \$550 and \$650, and its costs for its Certified Water Operator
23 are \$160 per month, or approximately \$1900 per year. (Tr. at 49.)

24 22. Jeffrey Michlik, a Public Utilities Analyst, testified on behalf of Staff. Mr. Michlik
25 testified that he believed that the sudden change of officers caused a hardship to Sulger. He further
26 testified that, in Staff's opinion, Sulger is insolvent, and that Sulger does not have enough money to
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28 ³ Mr. Sulger testified that Sulger is aware that it must receive Commission approval to incur debt. (Tr. at 62.)

1 maintain service. (Tr. at 54-55.)

2 23. On August 8, 2008, Lisa Evans, a former employee of Sulger, filed correspondence
3 with the Commission asserting that Sulger owes her \$56,000 back wages for services rendered. Mr.
4 Michlik testified that Staff believes that the question of the back wages is more appropriately
5 addressed in a permanent rate increase application. (Tr. at 56.)

6 24. Arizona Attorney General Opinion No. 71-17 (May 27, 1971) allows that the
7 Commission may approve interim rates only upon a finding that an emergency exists. Interim rates,
8 or in this case a one-time surcharge, may be used "when sudden change brings hardship to a
9 company, when the company is insolvent, or when the condition of the company is such that its
10 ability to maintain service pending a formal rate determination is in serious doubt." Sulger has the
11 burden of meeting one of the criteria in order for the Commission to find an emergency exists and
12 grant the Application.

13 25. The first justification for finding an emergency is "when a sudden change brings
14 hardship to a company." Staff asserts that this condition has been met because two corporate officers
15 resigned.

16 26. We agree with Staff that these resignations have created difficulties for Sulger's
17 operations. Moreover, a couple of days before the hearing in this matter, a pump failed and the
18 Company does not have the funds to repair it. We believe that Sulger has suffered sudden changes
19 causing a hardship.

20 27. In addition, Staff estimates Sulger's current revenues to be approximately \$2,083.65,
21 but Sulger's estimated annual operating expenses are \$5,330.58. As such, we believe that Sulger is
22 insolvent, meeting the second criteria for funding an emergency.

23 28. Finally, Sulger's financial status coupled with its need to replace capital plant places
24 its ability to maintain service during the pendency of a formal rate application in serious doubt.

25 29. Sulger has met its burden of showing that an emergency exists under Arizona law.

26 30. Based on the rates recently approved for another water company in the area,⁴ Sulger
27

28 ⁴ Staff believes the rate structure referenced by Sulger is that approved for Northern and Southern Sunrise Water Company in Decision No. 68826 (June 29, 2006).

1 proposes a base charge of \$31.00 per month and a three-tier commodity charge: 0-5,000 gallons,
 2 \$2.00 per thousand gallons; 5,001-10,000 gallons, \$2.75 per thousand gallons; and 10,001 gallons
 3 and over, \$3.90 per thousand gallons.

4 31. The increase in the base charge from \$9.95 to \$31.00 reflects in an increase of \$21.05
 5 per month, or 212 percent.

6 32. The proposed rate structure would produce annual operating revenues of \$6,122.45.
 7 Based on Staff's estimated operating expenses, Sulger would have an annual operating income of
 8 \$791.87, or an operating margin of 12.93 percent.

9 33. Mr. Michlik testified that the rates requested by Sulger would be sufficient to cover its
 10 operating expenses pending submission of a formal rate application. (Tr. at 59.)

11 34. Staff recommends approval of Sulger's requested emergency rate increase. In
 12 addition, Staff also recommends:

13 a) Sulger should file an application for a permanent rate increase by June 1, 2009,
 14 using a 2008 Test Year;

15 b) Sulger should provide the Commission with a performance bond or irrevocable
 16 sight draft letter of credit in the amount of \$4,000⁵ prior to instituting its emergency
 17 rates;

18 c) Sulger should file an updated and correct 2007 Annual Report by November
 19 28, 2008, as a compliance item in this docket;⁶

20 d) Sulger should maintain its accounting records in accordance with the National
 21 Association of Regulatory Commissioners Uniform System of Accounts; and

22 e) Should Sulger fail to comply with recommendations (a) and (c), above, the
 23 approved emergency rates should be rescinded and the emergency funds collected to
 24 that time should be refunded to Sulger's customers.

25 35. Sulger agreed with Staff's recommendations.

26 36. Staff recommendations are reasonable and should be adopted.

27 ⁵ \$4,000 represents the approximate amount of the requested emergency rate increase.

28 ⁶ The timing of this Decision may make it difficult for Sulger to comply with this recommendation by November 28, 2008. As such, we believe it is reasonable to alter this recommendation to December 8, 2008, to give Sulger time to comply with this term of the Decision.

CONCLUSIONS OF LAW

1
2 1. Sulger is a public service corporation pursuant to Article XV of the Arizona
3 Constitution and ARS §§ 40-250 and 40-251.

4 2. The Commission has jurisdiction over Sulger and the subject matter of the
5 Application.

6 3. Notice of the Application and hearing was provided in accordance with the law.

7 4. Sulger is facing an emergency within the definition set forth in Attorney General
8 Opinion No. 71-17.

9 5. The emergency rates requested by Sulger are reasonable and should be implemented.

10 6. The recommendations set forth in Findings of Fact No. 34 are reasonable and should
11 be adopted.

ORDER

12
13 IT IS THEREFORE ORDERED that Heart Cab Company, Inc., d/b/a Sulger Water Company
14 #2's application for an emergency rate increase is granted.

15 IT IS FURTHER ORDERED that Heart Cab Company, Inc., d/b/a Sulger Water Company #2
16 shall file an application for a permanent rate increase by June 1, 2009, based on a 2008 Test Year.

17 IT IS FURTHER ORDERED that Heart Cab Company, Inc., d/b/a Sulger Water Company #2
18 shall file a performance bond or irrevocable sight draft letter of credit in the amount of \$4,000 prior
19 to commencing its billing of the rates authorized herein.

20 IT IS FURTHER ORDERED that Heart Cab Company, Inc., d/b/a Sulger Water Company #2
21 shall file its updated and correct 2007 Annual Report not later than December 8, 2008, as a
22 compliance item in this docket.

23 IT IS FURTHER ORDERED that Heart Cab Company, Inc., d/b/a Sulger Water Company #2
24 shall maintain its accounting records in accordance with the National Association of Regulatory
25 Commissioners Uniform System of Accounts.

26 IT IS FURTHER ORDERED that, should Heart Cab Company, Inc., d/b/a Sulger Water
27 Company #2 fail to comply with the timeframes stated herein, that the authorized emergency rates
28 shall be rescinded and that all emergency funds collected shall be refunded to customers.

1 IT IS FURTHER ORDERED that the rates approved herein shall be interim and subject to
2 refund pending resolution of the required permanent rate increase.

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

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5
6
7 CHAIRMAN

COMMISSIONER

8
9 COMMISSIONER

COMMISSIONER

COMMISSIONER

10
11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
12 Director of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this ___ day of _____, 2008.

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17 _____
18 BRIAN C. McNEIL
19 EXECUTIVE DIRECTOR

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DISSENT _____

1 SERVICE LIST FOR:

HEART CAB COMPANY, INC., D/B/A SULGER
WATER COMPANY #2.

2
3 DOCKET NO.:

W-02344A-08-0288

4 Valerie Betts
SULGER WATER COMPANY #2
1380 West Caroline Lane
5 Tempe, Arizona 85284

6 Timothy Sulger
SULGER WATER COMPANY #2
7 2611 North Calle Seis
8 Huachuca City, Arizona 85616

9 Janice Alward, Chief Counsel
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11 Ernest Johnson, Director
12 Utilities Division
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