

ORIGINAL

OPEN MEETING ITEM



0000092927

COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



RECEIVED
MICHAEL P. KEARNS
Interim Executive Director

ARIZONA CORPORATION COMMISSION

2009 APR 21 A 8:05

DATE: APRIL 21, 2009
DOCKET NO: W-03718A-09-0122
TO ALL PARTIES:

AZ CORP COMMISSION
DOCKET CONTROL

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Order on:

SAHUARITA WATER COMPANY, LLC
(FINANCING)

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:

APRIL 23, 2009

Company has waived the 10 days for filing of exceptions

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:

APRIL 28, 2009 and APRIL 29, 2009

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.

Arizona Corporation Commission
DOCKETED

APR 21 2009

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

DOCKETED BY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION OF
9 SAHUARITA WATER COMPANY, LLC FOR
10 AUTHORITY TO INCUR LONG-TERM
11 INDEBTEDNESS TO FINANCE WATER
12 SYSTEM IMPROVEMENTS.

DOCKET NO. W-03718A-09-0122

DECISION NO. _____

ORDER

13 Open Meeting
14 April 28 and 29, 2009
15 Phoenix, Arizona

16 **BY THE COMMISSION:**

17 Having considered the entire record herein and being fully advised in the premises, the
18 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

19 * * * * *

20 FINDINGS OF FACT

21 1. On March 16, 2009, Sahuarita Water Company LLC ("SWC" or "Company") filed an
22 application with the Commission for authorization to execute a loan agreement with the Water
23 Infrastructure Finance Authority of Arizona ("WIFA").¹

24 2. SWC is a for-profit Class "B" Arizona public service corporation located in Sahuarita,
25 Arizona, and provides public water utility service to approximately 4,622 customers in Pima County,
26 Arizona.

27 3. On April 3, 2009, the Company filed an affidavit of publication verifying that it had
28 notice of its application published in the *Arizona Daily Star* on March 29, 2009. The *Arizona Daily
Star* is a daily newspaper of general circulation in Pima County, Arizona.

4. On April 10, 2009, the Commission's Utilities Division ("Staff") issued a Staff Report

¹ This application was filed to take advantage of "stimulus" funds being administered by WIFA, and replaces SWC's earlier financing request made on February 17, 2009, in Docket No. W-03718A-09-0065.

1 that recommends approval of the finance authority.

2 5. On April 15, 2009, Staff filed an Addendum to its Staff Report, correcting a table in
3 the Engineering Report.

4 6. On April 16, 2009, the Company filed Comments on the April 10, 2009 Staff Report,
5 and supports Staff's recommendations. The Company requested that the Commission consider this
6 matter at the earliest possible date.

7 7. On April 17, 2009, the Company filed a waiver of the ten days for filing of exceptions,
8 and Staff filed its response indicating it has no objection to the waiver.

9 8. On February 17, 2009, the American Recovery and Reinvestment Act ("ARRA") of
10 2009 went into effect. WIFA's *Supplemental 2009 ARRA Intended Use Plan* shows that the ARRA
11 authorizes WIFA to provide an additional subsidy on loans, which can include forgivable principal
12 and/or additional interest rate subsidies. In addition, the *Supplemental 2009 ARRA Intended Use*
13 *Plan* provides that projects that receive ARRA funds will need to be capable of moving forward
14 rapidly, hence, expedited regulatory consideration is appropriate.

15 9. The Company requested the WIFA loan to finance a 2,000 gallon per minute ("gpm")
16 centralized arsenic treatment facility and related plant.

17 10. In 2007, the Company's two existing production wells were tested and determined to
18 be in compliance with the United States Environmental Protection Agency ("EPA") requirement for
19 an arsenic maximum contaminant level ("MCL") no greater than 10 parts per billion ("ppb"). At that
20 time, one of the wells was barely in compliance, testing at 9.9 ppb for arsenic. Testing of the two
21 wells in 2008 found them to exceed the 10 ppb limit. In addition, during 2007, the Company initiated
22 a well exploratory program which was designed to enhance the Company's water production
23 capability and quality. The results of that effort indicated that the water produced from each of the
24 five exploratory wells would require arsenic treatment.

25 11. Under the Safe Drinking Water Act ("SDWA") Reduced Monitoring Cycle program,
26 the next arsenic concentration sample test year for SWC will be 2010. Given the background of its
27 existing production wells and the presence of elevated arsenic levels within its anticipated future
28 sources of water supply, the Company concluded that it should implement arsenic treatment at this

1 time in order to ensure the Company is in compliance with the SDWA and the EPA arsenic
2 concentration regulations at all times.

3 12. The Company operates a water system that consists of two drinking water wells
4 having a combined capacity of 3,450 gpm, and three storage tanks, with a combined storage capacity
5 of 2,550,000 gallons.

6 13. Staff believes that the Company has adequate capacity to serve its existing customer
7 base plus reasonable growth.

8 14. The Company plans to construct a 2,000 gpm arsenic treatment plant and connect it to
9 its existing plant with approximately 2.5 miles of collection transmission mains.

10 15. A general description of the plant and expected costs is as follows:

	<u>Project Description</u>	<u>Estimated Cost (\$)</u>
	<u>Arsenic Treatment Plant</u>	
	Bid Total Labor	654,756
	One 2,000 GPM arsenic treatment plant (four 10 ft diameter vessels manufactured by Layne)	1,505,910
	Transformer	30,000
	Earth work/site design	397,500
	Fiber optics (design/production)	16,667
	Engineering (construction inspections)	19,013
	Labor	10,000
	Subtotal (Arsenic Treatment Facility)	2,633,846
	Contingency	52,677
	Total (Arsenic Treatment Facility)	2,686,523
	<u>Transmission Mains</u>	
	<u>Well #18 Mains</u>	
	Includes 24" DIP (349') @ \$123/ft; 12" PVC (1,050') @ \$80/ft; 24" PVC (4,005') @ \$110/ft; 1" air relief valve @ \$2,000/unit; 4" air relief valve @ \$4,000/unit	1,018,000

1	Contingency	204,000
2	Subtotal (Well #18 Mains)	1,222,000
3		
4	<u>Well #14 Mains</u>	
5	Includes 16" PVC (867') @\$100/ft; 24" PVC (2,513') @ \$110/ft; 4" air relief valve @ \$4,000/unit	655,000
6	Contingency	131,000
7	Subtotal (Well #14 Mains)	<u>786,000</u>
8		
9	Total Arsenic Treatment Facility & Mains	4,694,523

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16. The Company anticipates beginning construction of the transmission mains in May 2009 and beginning construction of the arsenic treatment plant in June 2009. The Company expects all construction work to be completed by December 2009.

17. WIFA has advised the Company that the centralized arsenic treatment facility will qualify for funding under the ARRA.

18. The Commission's Engineering Staff reviewed the Company's proposed capital improvements and found the project costs to be appropriate and the related cost estimates to be reasonable. Staff states, however, that it was making no "used and useful" determination of the proposed improvements, nor any conclusions for rate base or ratemaking purposes.

19. In an Arizona Department of Environmental Quality ("ADEQ") compliance status report, dated May 30, 2008, ADEQ determined that SWC was in full compliance with ADEQ requirements and is delivering water that meets the water quality standards required by Arizona Administrative Code, Title 18, Chapter 4.

20. SWC is located in the Pima Active Management Area ("AMA"). In a compliance status reported dated June 23, 2008, the Arizona Department of Water Resources ("ADWR") determined that the Company was in compliance with ADWR requirements governing water providers and/or community water systems.

21. Staff reports there are no delinquent compliance issues with this Company.

1 assets that are necessary for the provision of service, and thus, it serves to preempt any service
2 impairment due to disposal of assets essential for providing service. Staff states further that pledging
3 assets as security typically provides benefits to the borrower in the way of increased access to capital
4 funds or preferable interest rates, and it is often an unavoidable condition of procuring funds for small
5 or financially stressed entities.

6 27. Staff concludes that issuance of the proposed debt financing for the purposes stated in
7 the application is within the Company's corporate powers, is compatible with the public interest, is
8 consistent with sound financial practices and will not impair its ability to provide service. Staff
9 recommends authorizing SWC to incur debt in an amount not to exceed \$2,820,000 (\$4.7 million less
10 \$1.88 million forgivable principal) for a period of 19-to-22 years, and at a rate not to exceed that
11 available from WIFA.

12 28. Staff further recommends that the Company:

- 13 a. be authorized to engage in any transactions and to execute any documents necessary to
14 effectuate the authorizations granted here;
- 15 b. be authorized to pledge its assets in the state of Arizona pursuant to A.R.S. § 40-285
16 and A.A.C. R18-15-104 in connection with the WIFA loan;
- 17 c. file with Docket Control, as a compliance item in this matter, a copy of the loan
18 documentation within 60 days of the execution of any financing transaction authorized
19 herein; and
- 20 d. file with Docket Control as a compliance item in this docket by December 31, 2010,
21 copies of the Certificates of Approval of Construction ("AOC") issued by ADEQ for
22 the arsenic treatment plant and transmission mains.

23 29. Staff's pro forma analysis indicates that SWC has the capacity to support the requested
24 borrowing based on its 2008 operating results.

25 30. Staff recommendations are reasonable.

26 31. On April 17, 2009, in order to have this request considered at the Commission's
27 regularly scheduled Open Meeting in April 2009, the Company filed a waiver of the full ten days
28 allowed for exceptions pursuant to A.A.C. R14-3-110(B). Staff does not oppose having this matter

1 considered on the April 28, 2009 Open Meeting agenda.

2 **CONCLUSIONS OF LAW**

3 1. SWC is a public service corporation within the meaning of Article XV of the Arizona
4 Constitution and A.R.S. §§ 40-301, 40-302, and 40-303.

5 2. The Commission has jurisdiction over SWC and of the subject matter of the
6 application.

7 3. Notice of the application was given in accordance with the law.

8 4. The financing as approved herein is for lawful purposes within SWC's corporate
9 powers, is compatible with the public interest, with sound financial practices, and with the proper
10 performance by SWC of service as a public service corporation, and will not impair SWCs ability to
11 perform the service.

12 5. The financing approved herein is for the purposes stated in the application, is
13 reasonably necessary for those purposes and such purposes may not be reasonably chargeable to
14 operating expenses or to income.

15 **ORDER**

16 IT IS THEREFORE ORDERED that Sahuarita Water Company LLC is hereby authorized to
17 incur long-term indebtedness in an amount up to \$4,694,523 pursuant to a loan arrangement with
18 WIFA, under which \$1,880,000 of the principal amount is forgivable principal, for a total principal
19 amount to be repaid of \$2,814,523, at an interest rate not to exceed the current WIFA subsidized rate
20 at the time the loan is executed, for the purpose of funding an arsenic treatment plant and related
21 facilities as described in the application.

22 IT IS FURTHER ORDERED that the finance authority granted herein shall be expressly
23 contingent upon Sahuarita Water Company LLC's use of the proceeds for the purposes stated in its
24 application and approved herein.

25 IT IS FURTHER ORDERED that Sahuarita Water Company LLC is authorized to pledge its
26 assets in the state of Arizona pursuant to A.R.S. § 40-285 and A.A.C. R18-15-104 in connection with
27 the loan approved herein.

28 IT IS FURTHER ORDERED that Sahuarita Water Company LLC is authorized to execute

1 any documents necessary to effectuate the authorizations granted.

2 IT IS FURTHER ORDERED that Sahuarita Water Company LLC shall file with Docket
3 Control, as a compliance item in this docket, copies of any executed financing documents related to
4 this authority within 60 days after the date of execution.

5 IT IS FURTHER ORDERED that Sahuarita Water Company LLC shall file with Docket
6 Control, as a compliance item in this docket, by December 31, 2010, copies of the Certificates of
7 Approval of Construction issued by ADEQ for the arsenic treatment plant and transmission mains.

8 IT IS FURTHER ORDERED that approval of the financing set forth hereinabove does not
9 constitute or imply approval or disapproval by the Commission of any particular expenditure of the
10 proceeds derived thereby for purposes of establishing just and reasonable rates.

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

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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14

15 CHAIRMAN _____ COMMISSIONER _____

16
17 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

18

19 IN WITNESS WHEREOF, I, MICHAEL P. KERNS, Interim
20 Executive Director of the Arizona Corporation Commission,
21 have hereunto set my hand and caused the official seal of the
22 Commission to be affixed at the Capitol, in the City of Phoenix,
23 this _____ day of _____, 2009.

24 _____
MICHAEL P. KERNS
INTERIM EXECUTIVE DIRECTOR

25 DISSENT _____

26 DISSENT _____

27 JR:

28

1 SERVICE LIST FOR: SAHUARITA WATER COMPANY, LLC.

2 DOCKET NO.: W-03718A-09-0122

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