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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
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FEB 24 2009

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IN THE MATTER OF THE APPLICATION OF FISHER'S LANDING WATER AND SEWER WORKS, LLC, FOR APPROVAL OF A RATE APPLICATION FOR WATER COMPANIES WITH ANNUAL GROSS OPERATING REVENUES (INCLUDING REQUESTED RATE RELIEF) OF LESS THAN \$250,000.

DOCKET NO. WS-04047A-07-0700

IN THE MATTER OF THE APPLICATION OF FISHER'S LANDING WATER AND SEWER WORKS, LLC, FOR APPROVAL OF A RATE APPLICATION FOR WASTEWATER COMPANIES WITH ANNUAL GROSS OPERATING REVENUES (INCLUDING REQUESTED RATE RELIEF) OF LESS THAN \$250,000.

DOCKET NO. WS-04047A-07-0708

PROCEDURAL ORDER

BY THE COMMISSION:

On December 19, 2007, Fisher's Landing Water and Sewer Works, LLC, ("Company") filed with the Arizona Corporation Commission ("Commission"), in the above-captioned dockets, separate applications for an increase in water rates and wastewater rates.

On March 24, 2008, the Commission's Utilities Division Staff ("Staff") filed a Letter of Sufficiency in each docket, classifying the Company as a Class D utility for both water and wastewater.

On May 19, 2008, a Procedural Order was issued consolidating the dockets and granting a Staff request to suspend the time clock.

On July 25, 2008, Staff issued a Staff Report in each docket, to which the Company filed no response.

On October 24, 2008, the Hearing Division issued a Recommended Opinion and Order ("ROO") for the consolidated dockets, for consideration at the Open Meeting on November 12 and

1 13, 2008.

2 On October 31, 2008, the Company filed exceptions to the ROO that included new financial
3 information regarding a lease agreement for the wastewater system for which the annual payments
4 total \$79,992. The filing shows that the Company is leasing 20 acres of land, on which the system's
5 evaporating pools are located, pursuant to an August 2004 lease agreement with Northwest
6 Development Company ("NDC"), identified as a California corporation, and that the Company had
7 previously been occupying the land pursuant to assignment of a lease between Fisher's Landing, Inc.
8 (identified previously as the Company's majority owner) and NDC's predecessors in title, Donald
9 and Roberta Fisher and Albert and Louise Ferguson (three of whom are currently listed as officers of
10 Fisher's Landing, Inc.). The filing explains that NDC is owned by Gregory Brown, who along with
11 his wife, Donna Brown, owns 75 percent of Fisher's Landing, Inc.; that NDC purchased the 20 acres
12 of land for \$900,000 in August or September 2004; and that NDC has not required current lease
13 payments but has not forgiven the Company for past due lease payments. The Company had not
14 previously included this information in its wastewater ratemaking application or in its data responses
15 to Staff and provided no real explanation¹ for why this information was omitted until after the ROO
16 had been issued. The Company requested that the capitalized cost of the lease payments or the value
17 of the leased property be considered in setting the Company's rates for wastewater service.

18 On November 6, 2008, Staff filed a Motion to Suspend Time Clock, stating that the
19 Company's exceptions included information not previously in the record and that Staff had not had
20 an opportunity to review the lease agreement and recommend a specific treatment in the rate case.
21 Staff stated that to analyze the implications of the lease fully, it would need to issue a data request,
22 review the Company's response, and perhaps conduct additional follow up. Thus, Staff requested
23 that the time clock in this matter be suspended until Staff had had an opportunity to request and
24 review the documentation necessary to evaluate the Company's exceptions.

25 On November 7, 2008, a Procedural Order was issued requiring Staff to file, by January 30,
26 2009, a Supplemental Staff Report setting out its analysis of the new information and any changes in
27

28 ¹ The Company stated that the lease had not come to the attention of Staff because the Company had not had the capital or net income to make the payments.

1 its recommendations resulting therefrom; requiring Staff to provide Staff's procedural
2 recommendation, including whether a hearing is needed to address the new information; requiring the
3 Company to file, by February 23, 2009, any response that it may have to the Supplemental Staff
4 Report; and suspending the time clock in this matter indefinitely.

5 On January 30, 2009, Staff filed its Supplemental Staff Report, recommending that the
6 \$79,992 lease payments be treated as an increase in test year operating expenses for the wastewater
7 system and recommending sewer rates that would result in an increase in operating revenue of
8 \$60,330, or 75.6 percent, to bring total operating revenue to \$140,130. Previously, Staff had
9 recommended total operating revenue of \$58,193 and a decrease in rates. In its Supplemental Staff
10 Report, Staff recommended that the Company re-notice its customers, in its next monthly billing, of
11 Staff's recommended additional revenues and rates and the effect on a median residential bill. Staff
12 did not, however, describe in any detail its analysis of the new information; describe any additional
13 information obtained from the Company regarding the lease; or discuss the apparently other-than-
14 arm's-length nature of the lease arrangement, the value of the land leased, the reasonableness of the
15 lease payments, or the issue of the overdue lease payments that are apparently owed. Staff also did
16 not provide a procedural recommendation or indicate expressly whether a hearing is needed.

17 The Company did not file a response to the Supplemental Staff Report.

18 Because the lease does not appear to have been entered into at arm's length; the \$79,992
19 annual rent expense is much higher than the \$12,000 annual rent expense reported for this property in
20 the Company's last rate case (Docket No. WS-04047A-01-0713);² and there is currently no
21 information in the record to explain why the property has increased in value to such an extent that a
22 \$67,992 annual rent increase is appropriate, it is necessary to obtain additional information in the
23 record regarding this lease, the entities involved, and the value of the property before this matter can
24 proceed further.

25 ...

26 ...

27 _____
28 ² The Company's application in the last rate case stated that "\$1,000 per month in rent is paid to private parties who own the property where the sewer ponds are located."

1 IT IS THEREFORE ORDERED that Staff shall, by March 6, 2009, file with Docket
2 Control all of the information that it has received from the Company since the Company filed
3 its exceptions on October 31, 2008. If any of the information has been designated as confidential by
4 the Company, Staff shall file a redacted copy with Docket Control and provide an unredacted copy
5 directly to the undersigned.

6 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
7 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

8 Dated this 24th day of February, 2009.

9
10 

11 SARAH N. HARPRING
12 ADMINISTRATIVE LAW JUDGE

13 Copies of the foregoing mailed/delivered
14 this 24th day of February, 2009, to:

14 Don Fisher
15 FISHER'S LANDING WATER
16 AND SEWER WORKS, LLC
17 P.O. Box 72188
18 Yuma, AZ 85365-0188

17 Janice Alward, Chief Counsel
18 Legal Division
19 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

20 Ernest G. Johnson, Director
21 Utilities Division
22 ARIZONA CORPORATION COMMISSION
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23 By:

24 
25 Debra Broyles
26 Secretary to Sarah N. Harpring
27
28