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**COMMISSIONERS**

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

IN THE MATTER OF THE APPLICATION OF  
WILHOIT WATER COMPANY, INC.,  
YAVAPAI MOBILE HOME ESTATES  
SYSTEM, FOR AN EMERGENCY RATE  
INCREASE.

DOCKET NO. W-02065A-08-0592

**STAFF'S NOTICE OF FILING  
PROCEDURAL UPDATE**

**I. Introduction**

In response to questions raised by Administrative Law Judge Marc Stern during the February 25, 2009 status conference held in the above captioned matter, Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff") provides notice of filing the attached procedural update. On December 10, 2008, the Wilhoit Water Company Inc., Yavapai Mobile Homes Estates System ("Company" or "Wilhoit") filed an Emergency Rate Case Request in order to recover the cost of purchased water from the City of Prescott.<sup>1</sup> On February 25, 2009, a status conference was held at which Staff and the Company were ordered to make filings. Staff was specifically ordered to address the potential for a Complaint and Petition for an Order to Show Cause ("OSC") against the Company including the possibility of installing interim management. Staff will begin by addressing the background information of this matter as well as related Docket No. W-20265A-09-0038. The issues to be addressed herein include: the Emergency Rate Increase Application (including discussion of continuation of water provision from the City of Prescott), the Financing Application (including discussion of an ACRM and ARSM), and the Company's compliance with Commission orders.

On January 30, 2009, the Company filed a separate Application for Financing Approval and Imposition of an Arsenic Cost Recovery Mechanism in Docket No. W-02065A-09-0038 ("Financing Docket"). In this application the Company states that the City of Prescott water "disconnection will

<sup>1</sup> Company's Emergency Rate Case Request.

1 force the Company to purchase and install an arsenic treatment system to insure the Company's  
2 customers will receive water that meets quality standards."<sup>2</sup> Also, the Company requests approval to  
3 take out a \$280,042 loan from the Water Infrastructure Financing Authority of Arizona ("WIFA").  
4 The Company then states that, "It is estimated that the ACRM for the repayment of the loan would  
5 necessitate a surcharge"<sup>3</sup>

## 6 **II. Discussion**

7 The Company was granted a rate increase by the Commission in Decision No. 70384 (June  
8 13, 2008). This rate increase authorization was contingent upon Wilhoit filing "with the  
9 Commission's Docket Control, as a compliance item, a copy of a finalized agreement with the  
10 Yavapai County Treasurer's Office for the payment of all of its delinquent property taxes owed on all  
11 of its utility property for its three systems in Yavapai County."<sup>4</sup> As of the date and time of this filing  
12 the Company has not filed a copy of a finalized agreement with the Yavapai County Treasurer's  
13 Office for the payment of all of its delinquent property taxes owed on all of its utility property for its  
14 three systems in Yavapai County. Accordingly, the rates authorized in Decision No. 70384 have not  
15 become effective.

16 Furthermore, Decision No. 70384 ordered, "that the rate increase authorized herein shall be  
17 interim and subject to refund if the Company is unable to complete an arsenic treatment facility and  
18 meet all ADEQ requirements in compliance with the twelfth bullet point of Finding of Fact No. 29."<sup>5</sup>  
19 The twelfth bullet point of Finding of Fact No. 29 requires, "that the Company file, by December 31,  
20 2008, as a compliance item in this Docket, with the Commission's Docket Control, documentation  
21 from ADEQ indicating that there are no compliance deficiencies and which establishes that the  
22 Yavapai System is delivering water which meets the requirements of the Safe Drinking Water Act."<sup>6</sup>  
23 No such compliance filing has been made to Staff's knowledge. The Company stated in its  
24 Emergency Rate Case Request that the arsenic remediation system discussed in Decision No. 70384  
25 was installed "at the beginning of 2008" and "failed to reduce the arsenic level to acceptable levels

26 \_\_\_\_\_  
27 <sup>2</sup> Docket No. W-02065A-09-0038 "Application for financing Approval and Imposition of an Arsenic Cost Recovery  
Mechanism for Wilhoit Water Company".

<sup>3</sup> *Id.*

28 <sup>4</sup> Decision No. 70384 (W-02065A-07-0308/0309/0311) at 15:15-19.

<sup>5</sup> Decision No. 70384 at 15:20-22.

<sup>6</sup> Decision No. 70384 at 11:12-14.

1 after a couple of weeks of operation.”<sup>7</sup> Thus, the arsenic remediation system’s failure is a second  
2 reason that the rates authorized in Decision 70384 may not be collected.

3 **A. Prescott Water Shut-Off Issue / Emergency Rates**

4 The Company indicates that, since the failure of the system’s arsenic remediation plant, the  
5 system has been purchasing water from the City of Prescott “at an average of \$5,515 per month.”<sup>8</sup>  
6 However, on January 9, 2009, a letter was filed in this docket from the City of Prescott indicating that  
7 “the City of Prescott will disconnect water service to [Yavapai Mobil Homes Estates & Adjacent  
8 Apartment Complex] on March 31, 2009.”<sup>9</sup>

9 Although Wilhoit has represented that informal discussion have taken place during which the  
10 City of Prescott has indicated that the March 31 cut-off date might be extended, the Company has not  
11 provided any official statement from the City of Prescott indicating that the water service from the  
12 City of Prescott to the Yavapai Mobile Home Estates residents will continue after March 31, 2009.  
13 The Company has not stated that it has received any letter or formal promise from the City of  
14 Prescott that the City will continue to provide water to customers of Wilhoit’s YMHE past March 31,  
15 2009.

16 Staff believes that emergency rates may be warranted to cover the cost of purchasing water  
17 from the City of Prescott. However, as in the previous rate case, if Staff does recommend an  
18 emergency rate increase Staff will also recommend that the emergency rates not become effective  
19 until the Company has resolved the back tax issues that were identified in Decision No. 70384. Even  
20 if the City of Prescott ceased to provide water to Wilhoit, the Company may present other compelling  
21 reasons why the emergency rate relief should be granted.

22 **B. ARSM v. ACRM**

23 In the Company’s financing application in Docket No. W-20265A-09-0038, it requests an  
24 Arsenic Cost Recovery Mechanism<sup>10</sup> (“ACRM”) to use for repayment of a proposed WIFA loan  
25 taken out to install an arsenic treatment system to be purchased from FANN Environmental. It  
26 appears from the Company’s “Application for Financing Approval and Imposition of an Arsenic Cost  
27

28 <sup>7</sup> Company’s Emergency Rate Case Request.

<sup>8</sup> Company’s Emergency Rate Case Request.

<sup>9</sup> Letter from City of Prescott.

<sup>10</sup> An ACRM provides a Utilities Corporation a return on capital costs for completed facilities.

1 Recovery Mechanism” that the Company may actually be better served by requesting authorization  
2 for an Arsenic Recovery Surcharge Mechanism (“ARSM”)<sup>11</sup> in which case the Company would be  
3 seeking approval for a surcharge to enable them to pay off a prospective WIFA debt for installation  
4 of the proposed arsenic treatment system. Staff believes that the Company may have several options  
5 for seeking approval for an ARSM.

6 The first option would be to request that the Commission modify Decision No. 70384  
7 pursuant to A.R.S. § 40-252. Staff notes Decision 70384 orders the docket to remain open to  
8 facilitate implementation of an ACRM as set forth in the Staff report. The Staff report referred to in  
9 Decision 70384 specifically relates to the Company’s installation of an arsenic treatment system that  
10 the Company financed with its own capital. In its current Application for Financing Approval, the  
11 Company is requesting that a new arsenic treatment system be financed through WIFA debt and  
12 customer surcharge payments to service the WIFA debt. Furthermore, the ACRM contemplated in  
13 Decision 70384 is specific to the now unusable and failed arsenic treatment facility. Therefore, Staff  
14 believes that if the Company did want to attempt to use the authorization in Decision 70384 to  
15 request an ARSM for a new arsenic treatment system, it is Staff’s belief that the Company must first  
16 request that the Commission modify Decision 70384 through an application for amendment to  
17 Decision 70384, pursuant to ARS § 40-252. If this action were taken by the Company, new  
18 information and testimony regarding the surcharge could be introduced to the record.

19 A second option available to the Company would be to request an ARSM within this  
20 emergency rate case. Implementing an ARSM through the pending emergency rate application could  
21 potentially be processed more quickly as there are timelines set by rule that govern such applications.

22 **C. Company Compliance Issues**

23 Decision 70384 orders

24 that the Utilities Division’s Staff shall monitor the conduct and operations of Wilhoit  
25 Water Company, Inc. including the delinquent taxes owed in Docket No. W-02056A-  
26 03-0490 and in the event that Staff determines that Wilhoit Water Company, Inc. is  
27 failing to lawfully discharge its duties and failing to maintain its books and records in  
28 accordance with the NARUC USOA, and failing to provide service to its customers in

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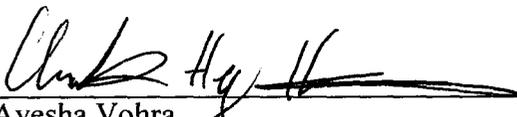
<sup>11</sup> An ARSM provides a Utilities Corporation the ability to collect a surcharge from its customers to allow it to pay for need arsenic treatment facilities.

1 a lawful manner, then Staff shall institute a Complaint and/or Order to Show Cause  
2 against Wilhoit Water Company, Inc. for appropriate relief.<sup>12</sup>

3 Likewise, Staff was ordered at the February 26, 2009 status conference in this docket to include in  
4 this filing Staff's position on the possibility of an OSC. Staff does note that the Company is not in  
5 compliance with Decision No. 70384 because the Company has failed to resolve its delinquent tax  
6 matter with Yavapai County. Staff further notes that the Company has not secured a permanent  
7 means to provide compliant drinking water to ratepayers pending completion of a viable arsenic  
8 treatment system.

9 Despite this context, Staff is not presently requesting an OSC against the Company. Staff  
10 believes that pursuing an OSC against Wilhoit at this time may have practical implications that could  
11 impact continued water service to ratepayers. An OSC would likely complicate the processing of the  
12 emergency rate case and the financing application, especially in the event that Staff were to pursue  
13 installation of interim management as part of its request for relief in the OSC. Further, bringing in an  
14 interim manager and pursuing an OSC at present might exacerbate the difficulties facing the  
15 Company rather than helping. However, Staff may pursue an OSC against Wilhoit in the future if  
16 immediate steps necessary to ensure continued drinking water service to ratepayers are not taken.

17 RESPECTFULLY SUBMITTED this 6th day of March, 2009.

18   
19 Ayesha Vohra  
20 Charles H. Hains  
21 Attorney, Legal Division  
22 Arizona Corporation Commission  
23 1200 West Washington Street  
24 Phoenix, Arizona 85007  
25 (602) 542-3402

26 Original and thirteen (13) copies  
27 of the foregoing were filed this  
28 6th day of March 2009 with:

29 Docket Control  
30 Arizona Corporation Commission  
31 1200 West Washington Street  
32 Phoenix, Arizona 85007

<sup>12</sup> Decision 70384 at 17:1-7.

1 Copy of the foregoing mailed this  
2 6th day of March 2009 to:

3 Douglas G. Martin  
4 Jim West  
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*Rosanna Osorio*