

OPEN MEETING ITEM



0000094637

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



MICHAEL P. KEARNS  
Interim Executive Director

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ORIGINAL

ARIZONA CORPORATION COMMISSION

2009 MAR 17 P 2:38

AZ CORP COMMISSION  
DOCKET CONTROL

DATE: MARCH 17, 2009  
DOCKET NOS: W-01412A-99-0615 and W-01412A-00-0023

TO ALL PARTIES:

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

VALLEY UTILITIES WATER COMPANY, INC  
(COMPANY MOTION FOR  
COMPLIANCE ORDER)

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 thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MARCH 26, 2009

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 Open Meeting to be held on:

MARCH 31, 2009 and APRIL 1, 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

MAR 17 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 VALLEY UTILITIES WATER COMPANY, INC.  
10 FOR AN INCREASE IN ITS WATER RATES FOR  
11 CUSTOMERS WITHIN MARICOPA COUNTY,  
12 ARIZONA.

DOCKET NO. W-01412A-99-0615

13 IN THE MATTER OF THE APPLICATION OF  
14 VALLEY UTILITIES WATER COMPANY, INC.  
15 FOR AUTHORITY TO ISSUE PROMISSORY  
16 NOTE(S) AND OTHER EVIDENCES OF  
17 INDEBTEDNESS PAYABLE AT PERIODS OF  
18 MORE THAN TWELVE MONTHS AFTER THE  
19 DATE OF ISSUANCE.

DOCKET NO. W-01412A-00-0023

**OPINION AND ORDER**

14 DATE OF HEARING: November 18, 2008  
15 PLACE OF HEARING: Phoenix, Arizona  
16 ADMINISTRATIVE LAW JUDGE: Belinda A. Martin  
17 APPEARANCES: Mr. Patrick Black, Fennemore Craig, P.C., on behalf of  
18 Valley Utilities Water Company, Inc.; and  
19 Ms. Ayesha Vohra and Ms. Robin Mitchell, Staff  
20 Attorneys, Legal Division, on behalf of the Utilities  
21 Division of the Arizona Corporation Commission.

21 **BY THE COMMISSION:**

22 \* \* \* \* \*

23 Having considered the entire record herein and being fully advised in the premises, the  
24 Commission finds, concludes, and orders that:

25 **FINDINGS OF FACT**

26 1. On May 7, 2008, Valley Utilities Water Company, Inc. ("VUWCO" or "Company")  
27 filed with the Arizona Corporation Commission ("Commission") its Motion for an Order Confirming  
28

1 Compliance and Release of Set-Aside Funds regarding Commission Decision No. 62908 (September  
2 18, 2000) ("Motion").

3 2. On August 15, 2008, the Commission's Utilities Division Staff ("Staff") filed its  
4 Response to VUWCO's Motion.

5 3. On August 18, 2008, Staff filed its Motion to Withdraw Staff's Response to  
6 VUWCO's Motion and also filed its Revised Response to VUWCO's Motion ("Revised Response").<sup>1</sup>

7 4. On August 27, 2008, VUWCO filed correspondence dated August 26, 2008,  
8 addressing Staff's Revised Response.<sup>2</sup>

9 5. During a Procedural Conference held on September 17, 2008, the parties stated they  
10 wished to set the matter for hearing.

11 6. On September 18, 2008, a Procedural Order was issued setting the hearing for this  
12 matter for November 18, 2008.

13 7. On October 6, 2008, Staff replied to VUWCO's August 26, 2008, correspondence.

14 8. On October 16, 2008, VUWCO filed a Notice of Substitution of Counsel.

15 9. On October 20, 2008, VUWCO filed the Direct Testimony of Robert L. Prince.<sup>3</sup>

16 10. On November 3, 2008, Staff filed the Direct Testimony of Marvin Milsap.<sup>4</sup>

17 11. On November 13, 2008, VUWCO filed the Rebuttal Testimony of Robert L. Prince.<sup>5</sup>

18 12. On November 18, 2008, the Motion was heard before a duly authorized  
19 Administrative Law Judge.

20 13. On November 21, 2008, VUWCO filed a Late-Filed Exhibit regarding a short-term  
21 loan to the Company from WIFA.<sup>6</sup>

22 **History**

23 14. VUWCO is an Arizona corporation engaged in the business of providing public water

24 <sup>1</sup> Hearing Exhibit S-2.

25 <sup>2</sup> Hearing Exhibit VU-1.

26 <sup>3</sup> Hearing Exhibit VU-2.

26 <sup>4</sup> Hearing Exhibit S-1.

26 <sup>5</sup> Hearing Exhibit VU-3.

27 <sup>6</sup> The Exhibit related to a question asked at hearing by the Administrative Law Judge regarding a short-term WIFA loan  
28 taken by VUWCO prior to Decision No. 70138 (January 23, 2008). The Company never drew on the short-term loan,  
which was converted to a long-term loan after the Commission approved the long-term loan in Decision No. 70138  
(discussed in this Decision later). The Late-Filed Exhibit did not have a bearing on the outcome of this matter.

1 utility service to approximately 1,400 customers in an area located approximately five miles west of  
 2 Glendale, Maricopa County, Arizona. The Commission granted VUWCO a Certificate of  
 3 Convenience and Necessity ("CC&N") in Decision No. 54274 (December 20, 1984).

4 **Decision No. 62908 (September 18, 2000)**

5 15. On September 18, 2000, in Decision No. 62908, the Commission authorized a  
 6 permanent rate increase for VUWCO and also approved a loan to the Company from the Water  
 7 Infrastructure and Finance Authority of Arizona ("WIFA") in the amount of \$452,080, to replace a  
 8 water storage tank, a booster pump, lines and valves, and install new fire hydrants, as well as other  
 9 improvements ("WIFA Loan #1").

10 16. Decision No. 62908 notes that Staff recommended the use of a set-aside account  
 11 ("Set-Aside Account"), into which the Company would be required to escrow \$6.35 per bill per  
 12 month to be used solely for the purpose of servicing WIFA Loan #1.<sup>7</sup>

13 17. The Company agreed with Staff's escrow concept, but proposed that the amount of the  
 14 deposits should coincide instead with the actual monthly debt service requirement on WIFA Loan #1.  
 15 Staff agreed with the Company that VUWCO's set-aside proposal was more reasonable since it  
 16 would put aside the exact amount of funds needed for debt service, thereby avoiding any unnecessary  
 17 excess funds in the account. The Decision stated that VUWCO's proposal was reasonable, efficient,  
 18 practical, and accurate and the Commission adopted the Company's proposal.<sup>8</sup>

19 18. Since the amount of debt service was not known at the time of the Decision, the  
 20 Commission required funds to be set-aside as follows:

21 IT IS FURTHER ORDERED that Valley Utilities Water Company, Inc. shall set aside  
 22 the amount of funds equivalent to the annual debt service requirements of the WIFA  
 23 loan and set aside one-twelfth on a monthly basis when the amount of the debt service  
 24 requirement becomes known to the Company. Until such time as that amount is  
 25 known, the Company shall set aside \$6.35 per bill per month in a separate, interest  
 26 bearing account to be used solely for the purpose of servicing the WIFA financing.<sup>9</sup>

27 19. Decision No. 62908 also ordered VUWCO to submit information detailing the amount

27 <sup>7</sup> Decision No. 62908, page 7.

28 <sup>8</sup> *Id.*, pages 7 and 12.

<sup>9</sup> *Id.*, page 15.

1 of the debt service requirement within 60 days of the effective date of the Decision,<sup>10</sup> and to file  
2 copies of the WIFA loan documents within 30 days of closing.

3 20. According to VUWCO, the Company began placing funds in the Set-Aside Account in  
4 November 2000 pursuant to the Decision.<sup>11</sup> A review of deposit information provided by the  
5 Company demonstrates the VUWCO did not consistently deposit each month's fees into the Set-  
6 Aside Account. Several times the Company skipped the deposit for a period and then would "catch-  
7 up" the deposits at a later date.<sup>12</sup>

8 21. On January 7, 2002, the Company filed a motion for extension of time to file the  
9 required actual debt service information.<sup>13</sup> Staff did not object to the extension and, pursuant to a  
10 Procedural Order dated April 16, 2002, VUWCO was given to until June 1, 2002, to provide the data.

11 22. On June 17, 2002, the Company filed for another extension of time to file the WIFA  
12 Loan #1 debt service information.

13 23. On December 9, 2002, Staff filed a memorandum recommending approval of the  
14 Company's extension request, but also recommended that VUWCO not be given any further  
15 extensions.

16 24. A Procedural Order was issued January 21, 2003, granting the Company's extension  
17 request, giving VUWCO until March 31, 2003, to file the information, and adopting Staff's  
18 recommendation that no further extension requests be granted.

19 25. On January 30, 2003, pursuant Decision No. 62908 and the January 21, 2003,  
20 Procedural Order, VUWCO filed a copy of a document entitled "DWRP Funding Cycle 2003 Priority  
21 List Application." According this document, the amount of WIFA Loan #1 would be \$450,850. The  
22 Company did not file anything noting what would be the required monthly debt service.

23 26. Between late 2000 and 2003, the Company experienced a period of rapid growth and  
24 many of the "big ticket" items VUWCO originally sought to finance with WIFA Loan #1 were  
25 financed instead by developers building within the Company's CC&N area.<sup>14</sup>

26 <sup>10</sup> Sixty days from September 18, 2000, would have been November 17, 2000.

27 <sup>11</sup> Motion, page 2.

28 <sup>12</sup> Motion, Exhibit 1, WIFA Set Asides chart.

<sup>13</sup> The Company filed for an extension approximately 14 months after this compliance item first was due.

<sup>14</sup> Transcript at 19; Motion, Exhibit 1, page 2.

1           27. During a meeting with the WIFA Board in September 2003, WIFA related to  
2 VUWCO that the Company could use WIFA Loan #1 funds solely for items that had been originally  
3 approved in Decision No. 62908; the Company could not add new projects. As a result, VUWCO  
4 claims it was certain as of the September 2003 WIFA Board meeting that the WIFA Loan #1 could  
5 not exceed the costs of the remaining approved projects in the amount of \$52,350.<sup>15</sup>

6           28. According to information provided by the Company, the amount of funds in the Set-  
7 Aside Account in September 2003 was approximately \$163,466; three times the amount that would  
8 be required for debt service on a \$52,350 loan.<sup>16</sup>

9           29. As such, rather than a loan amount of \$452,080, as approved by the Commission, or  
10 \$450,850 as indicated on the DWRP application, VUWCO ultimately received a loan from WIFA in  
11 the amount of \$52,350 for the remaining approved projects.<sup>17</sup> VUWCO did not file documents  
12 advising the Commission of the reduced debt service requirement.

13           30. WIFA Loan #1 closed on January 7, 2005,<sup>18</sup> but, according to the Company, VUWCO  
14 never drew down the funds because, in the intervening years, the costs to construct the remaining  
15 projects had increased substantially causing VUWCO to re-evaluate its plans.<sup>19</sup> VUWCO did not file  
16 copies of the closing documents with Docket Control as required by Decision No. 62908.

17           31. According to the Company, beginning in September 2003, VUWCO had a number of  
18 operating, maintenance and emergency construction demands. Short on cash, the Company began  
19 using what it deemed to be excess funds from the Set-Aside Account to pay for those expenses.<sup>20</sup>  
20 VUWCO asserted that it did not withdraw any funds until it believed it had met its financial  
21 obligations under the Decision.<sup>21</sup>

22           32. Although the Company believed that the Decision's terms only required VUWCO to  
23 maintain sufficient funds for the debt service, and therefore was free to use any overage, the

24 <sup>15</sup> *Id.*, pages 19-20.

25 <sup>16</sup> Exhibit VU-3, attached Exhibit BLP-4.

26 <sup>17</sup> Transcript at 20.

27 <sup>18</sup> WIFA Loan #1 did not close until January 7, 2005, because, according to VUWCO, between December 2000 and the  
end of 2002 VUWCO did not meet WIFA's public health and urgency requirements to qualify for the financing. Exhibit  
VU-2, page 6.

28 <sup>19</sup> Exhibit VU-2, page 10-11.

<sup>20</sup> Exhibit VU-3, page 3.

<sup>21</sup> Transcript at 22-23.

1 Company asserts it did attempt to contact Staff regarding use of the excess funds; first by letter dated  
 2 December 28, 2005, and then by a phone call shortly after that letter.<sup>22</sup> According to the Company,  
 3 they were unsuccessful in their attempts.<sup>23</sup> These attempts to contact Staff did not occur until two  
 4 years after VUWCO first began using the Set-Aside Account funds.

5 **Decision No. 67669 (March 9, 2005)**<sup>24</sup>

6 33. On November 26, 2004, VUWCO filed for Commission approval to establish an Off-  
 7 Site Facilities Hook-Up Fee Tariff ("Tariff Application"). Filed concurrently with the Tariff  
 8 Application was the Company's application for a loan from WIFA to finance construction of an  
 9 arsenic treatment system.<sup>25</sup> VUWCO filed the Tariff Application seeking to use the proceeds from  
 10 the proposed hook-up fees to pay the debt service on the WIFA loan it was requesting.

11 34. The Tariff Application sought a fee of \$1,100 for all new 5/8 x 3/4" connections, with  
 12 a graduated fee for larger sized meters.

13 35. In Decision No. 67669, the Commission approved the requested fee and ordered,  
 14 among other things, that 1) the fees approved be used to pay for only arsenic treatment equipment  
 15 and related appurtenances ("Arsenic Impact Fees" or "AIF"); 2) funds collected by the Company as  
 16 AIF "shall be deposited into a separate interest bearing trust account and used solely for the purposes  
 17 of paying for the costs of arsenic treatment facilities, including repayment of all loans obtained for  
 18 the installation of arsenic treatment facilities that will benefit the entire water system;" and 3)  
 19 VUWCO must file with the Commission an annual status report for the prior year by January 31<sup>st</sup>  
 20 each year, beginning January 31, 2006, to continue until the AIF Tariff is no longer in effect.

21 36. According to Decision No. 67669, the status reports were to contain a list of all  
 22 customers that paid the AIF Tariff, the amount each customer paid, the amount spent from the  
 23 account, the amount of interest earned and a list of all facilities installed using the AIF Tariff funds.

24 37. The Company did not file any status reports until February 22, 2008, which report  
 25 covered years 2005, 2006, and 2007. None of the status reports filed contain all of the information

26

27 <sup>22</sup> Motion, Exhibit 1.

28 <sup>23</sup> Exhibit VU-1, page 2.

<sup>24</sup> We take Administrative Notice of Decision No. 67669 and related compliance filings.

<sup>25</sup> The financing application is discussed later in this Decision.

1 required by the Commission. Those filed for 2005 and 2006 do not list the interest earned, the  
 2 amount spent, or a list of the facilities installed using the AIF Tariff funds. The status report for 2007  
 3 fails to list the customers that paid the AIF Tariff, the amount each paid, and a list of all facilities  
 4 installed using the AIF Tariff funds. As of March 17, 2009, VUWCO has not filed its status report for  
 5 2008.

6 **Decision No. 68309 (November 14, 2005)**

7 38. On October 2, 2004, VUWCO filed an application with the Commission for an  
 8 increase in its water rates. On November 26, 2004, VUWCO filed, concurrently with the Tariff  
 9 Application, an application for approval for the issuance of promissory note(s) and other evidences of  
 10 indebtedness in an amount of up to \$1,926,100. The rate application and the financing application  
 11 were subsequently consolidated.

12 39. The Company sought to borrow \$1.9 million from WIFA to construct water treatment  
 13 facilities for arsenic removal ("WIFA Loan #2").

14 40. In addition to the requested rate increase and financing approval, VUWCO also  
 15 requested the imposition of surcharges to cover the arsenic treatment costs, asserting that if the  
 16 surcharges were not adopted, the Company would experience net losses.

17 41. In Decision No. 68309, the Commission granted the rate increase and approved WIFA  
 18 Loan #2, but denied VUWCO's request for the arsenic treatment surcharge.

19 42. Decision No. 68309 also addressed the unused funds in the Set-Aside Account for  
 20 WIFA Loan #1. The Commission stated:

21 The Company has not incurred the WIFA debt approved in Decision No. 62908, but  
 22 has collected funds intended to pay that debt. The existing balance of the collected  
 23 debt-service funds must either be refunded or applied to WIFA debt. Because the  
 24 Company is again requesting WIFA financing, and is requesting imposition of a  
 25 surcharge to pay the debt service, it would be reasonable and efficient to apply the  
 26 existing balance of the collected funds to service the new WIFA debt. Under the  
 circumstances, it is reasonable to cancel the prior WIFA financing authority, and  
 require the Company to use the collected fund balance to service the arsenic  
 remediation-related long-term debt authorized herein.<sup>26</sup>

27 ...

28 <sup>26</sup> Decision No. 63809, page 9.

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IT IS FURTHER ORDERED that the financing authority granted to Valley Utilities Water Company, Inc. in Decision No. 62908 but which was never utilized, is hereby cancelled.

IT IS FURTHER ORDERED that that Valley Utilities Water Company, Inc. file with Docket Control, as a compliance item in this docket, *within 30 days of this Decision, a report that provides detailed information regarding the balance of the fund the Company has collected for the sole purpose of servicing the WIFA debt approved in Decision No. 62908, which debt was never issued. The report shall also include an analysis of the extent to which application of the collected funds to service the debt approved in this proceeding will offset the amount of, or the need for, a surcharge to service the financing approved herein.*<sup>27</sup> (Emphasis added.)

43. Although the Commission denied the Company's request for a possible arsenic removal surcharge tariff, the Commission ordered as follows:

IT IS FURTHER ORDERED that Valley Utilities Water Company, Inc. shall file with Docket Control an application for approval of an arsenic removal surcharge tariff if a surcharge is necessary to allow Valley Utilities Water Company, Inc. to meet its principal and interest obligations on the amount of the WIFA loan [#2] and income taxes on the surcharges.

IT IS FURTHER ORDERED that Valley Utilities Water Company, Inc. shall file with Docket Control, as a compliance item in this docket, copies of its calculation of revenue requirement for principal and interest obligations on the WIFA loan [#2] and incremental income taxes on the surcharge, within 60 days after the loan agreement is signed by both WIFA and the Company. The revenue calculation *shall include the effects of 1) the application of the previously-collected funds referenced in the previous Ordering Paragraph to service the debt authorized herein, and 2) hook-up fees collected pursuant to Decision No. 67669 (March 9, 2005), which approved an Arsenic Impact Fee Tariff for the Company to help pay for the debt service and/or principal on the requested WIFA loan [#2].*<sup>28</sup> (Emphasis added.)

44. In addition, in Decision No. 68309 the Commission ordered VUWCO to 1) initiate policies to ensure all transactions between the Company and its owners are arms-length, and 2) develop and institute a plan to produce a positive equity position by December 31, 2010, and required the Company to file a copy of that plan within 90 days.

45. Further, the Commission ordered Staff to carefully review the Company's books in

<sup>27</sup> *Id.*, page 26.

<sup>28</sup> *Id.*, pages 26-27.

1 VUWCO's next rate case, and bring to the Commission's attention any instances of transactions that  
 2 are not arms length, as well as evidence of any inappropriate practices that contribute to the  
 3 deterioration of equity.

4 46. On December 29, 2005, VUWCO filed with Docket Control, as a compliance item in  
 5 Decision No. 68309, correspondence containing the report regarding the balance information in the  
 6 Set-Aside Account ("Set-Aside Account Report").<sup>29</sup> The Set-Aside Account Report indicated an  
 7 actual balance of \$101,725 as of November 30, 2005, but noted a "desired WIFA balance" of  
 8 \$141,129, and a "shortfall for the WIFA set-asides" of \$39,404.<sup>30</sup> The Set-Aside Account Report did  
 9 not include "an analysis of the extent to which application of the collected funds to service the debt  
 10 approved in [Decision No. 68309] will offset the amount of, or the need for, a surcharge to service"  
 11 WIFA Loan #2, as required by Decision No. 68309. (The Set-Aside Account Report is attached as  
 12 Exhibit A.)

13 47. On February 13, 2006, in compliance with the Decision, the Company filed its  
 14 Positive Equity Position Plan.<sup>31</sup>

15 48. On November 7, 2006, in compliance with the Decision, VUWCO filed copies of the  
 16 closing documents for WIFA Loan #2, indicating that the loan closed on October 19, 2006.

17 49. On May 9, 2007, VUWCO filed with Docket Control, as a compliance item in  
 18 Decision No. 68309, its WIFA Loan Surcharge Calculation and Notice of Implementation  
 19 ("Surcharge Calculation").<sup>32</sup> According to Decision No. 68309, the Company was supposed to file  
 20 the revenue calculation ("Revenue Calculation") that included the effects of an off-set of the  
 21 previously collected Set-Aside Account funds against the WIFA Loan #2 debt. However, VUWCO's  
 22 Attachment One to the "Surcharge Calculation" (Computation of Arsenic Recovery Surcharge) did  
 23 not include any offset, although note 3 indicates Set-Aside Account funds of \$141,129. (The  
 24

25 <sup>29</sup> Motion, Exhibit 1.

26 <sup>30</sup> Exhibit BLP-4 to Exhibit VU-3 shows a different balance of \$101,574.47 as of November 30, 2005.

27 <sup>31</sup> As noted in Finding of Fact No. 26, many of the projects approved under Decision No. 62908 were ultimately financed  
 through the use of contributions in aid of construction. We note that, had the Company used the WIFA funds as approved,  
 the Company's equity position would have improved as these plant items would have been otherwise included in  
 VUWCO's rate base.

28 <sup>32</sup> Under Decision No. 68309, this item should have been filed not later than December 18, 2006, sixty days after WIFA  
 Loan # 2 closed.

1 "Surcharge Calculation" is attached as Exhibit B.)

2 50. On November 13, 2008, VUWCO filed with Docket Control, as a compliance item for  
3 Decision No. 68309, an Application for Approval of Interim Arsenic Removal Surcharge Tariff  
4 ("Surcharge Application"). The Surcharge Application is pending.

5 **Decision No. 70052 (December 4, 2007)**<sup>33</sup>

6 51. On May 9, 2007, the Company filed an application requesting Commission approval  
7 for issuance of \$300,000 of common stock to the Company's owners as partial payment for certain  
8 real and personal property consisting of a 2.45 acre parcel serving as an industrial storage site, and for  
9 a utility vehicle and a backhoe used by the Company, valued at \$429,000. The remainder of the  
10 purchase price was to be funded by VUWCO's issuance of an interest-free, short-term note payable  
11 for up to \$129,000 within one year of the note's issuance. Staff recommended approval of the stock  
12 issuance.<sup>34</sup>

13 52. Noting that the issuance of \$300,000 in stock would move the Company toward a  
14 positive equity position, the Commission approved the requested financing and ordered VUWCO to  
15 file copies of the executed financing documents within 90 days.

16 53. On March 4, 2008, VUWCO filed copies of the executed stock certificate and  
17 promissory note. There is no indication of whether the Company has repaid the short-term note.

18 **Decision No. 70138 (January 23, 2008)**<sup>35</sup>

19 54. In August 2007, one of the Company's wells failed. On October 1, 2008, VUWCO  
20 filed an application for an emergency rate increase in the form of a well surcharge and an application  
21 for approval to borrow \$250,000 from WIFA to cover the costs of replacing the failed well. The  
22 emergency interim surcharge sought was \$0.64 per customer, per month for a 5/8 x 3/4-inch meter,  
23 and increased by meter size.

24 55. Decision No. 70138 (January 23, 2008) approved both applications and also required  
25 the Company to file no later than December 1, 2008, an application for a permanent rate increase

26

27 <sup>33</sup> We take Administrative Notice of Decision No. 70052 and related compliance filings.

28 <sup>34</sup> Because the note was short-term, Commission approval was not required for the Company to incur the debt. A.R.S. § 40-301.

<sup>35</sup> We take Administrative Notice of Decision No. 70139 and related compliance filings.

1 using a June 30, 2008, test year.

2 56. On December 2, 2008, VUWCO filed a permanent rate increase application as  
3 required by Decision No. 70138 ("Rate Application").<sup>36</sup> The Rate Application is pending.

4 **Decision No. 70561 (October 23, 2008)**<sup>37</sup>

5 57. Contrary to the Commission's orders in Decision No. 68309 (approving WIFA Loan  
6 #2) that VUWCO should file an application for Commission approval of an arsenic removal  
7 surcharge tariff, on May 9, 2007, VUWCO instead filed an Application for an Accounting Order  
8 requesting deferral of arsenic treatment operating and maintenance expenses.<sup>38</sup>

9 58. In Decision No. 70561 (October 23, 2008), the Commission denied the Company's  
10 accounting order application.<sup>39</sup>

11 **Motion for Order Confirming Compliance and Release of Set-Aside Funds.**

12 59. On May 7, 2008, the Company filed its Motion for an order finding that VUWCO is in  
13 compliance with Decision No. 62908 and requesting to have the funds in the Set-Aside Account  
14 authorized in that Decision released for its unrestricted use.

15 60. In its Revised Response, Staff agreed with the Company that the set-aside funds  
16 should be released, but urged that the funds should be applied to debt service for WIFA Loan #2.

17 61. Staff further asserted that VUWCO was not in compliance with Decision No. 62908  
18 because the Company had used some of the Set-Aside Account funds for purposes other than those  
19 approved in that Decision. As such, Staff recommended that VUWCO be fined for violating the terms  
20 of the Decision.

21 62. The Company argues that it is in compliance with Decision No. 62908 because it  
22 continued to put funds in the Set-Aside Account until it knew what the final loan amount would be  
23 and was certain that there were sufficient funds to cover the debt service on that loan amount.  
24 VUWCO asserts that the Commission sought to prevent the accumulation of excess funds in the  
25 account by ordering the Company to "set aside the amount of funds equivalent to the annual debt  
26

27 <sup>36</sup> Docket No. W-01412A-08-0586.

<sup>37</sup> We take Administrative Notice of Decision No. 70561 and related compliance filings.

<sup>38</sup> See Decision No. 70561 (October 23, 2008).

28 <sup>39</sup> As noted in the discussion of Decision No. 68309, the Company filed its Surcharge Application on November 13, 2008.

1 service requirements of the WIFA loan and set aside one-twelfth on a monthly basis when the amount  
2 of the debt service requirement becomes known to the Company.”<sup>40</sup>

3 63. The Company claims it became aware in September 2003 that the WIFA Loan #1  
4 amount would be \$52,350. As of that time, VUWCO’s documentation indicates that there was three  
5 times that amount in the Set-Aside Account. VUWCO asserts it was free to use any overage once the  
6 Company knew it had sufficient funds to cover the debt service; therefore, it argues, it is in  
7 compliance with Decision No. 62908. VUWCO believes its only error was not being more diligent in  
8 attempting to contact Staff regarding its use of the funds.<sup>41</sup> Robert Prince, president of VUWCO,  
9 testified that the Company “had absolutely no intent of violating a commission order. We know the  
10 seriousness of that.”<sup>42</sup>

11 64. Even though VUWCO believed there were sufficient funds in the Set-Aside Account  
12 to cover the debt service on WIFA Loan #1, Mr. Prince stated that the Company continued to place  
13 money in the account because the account paid interest. VUWCO believed it was a good way to save  
14 for the Company’s future needs.<sup>43</sup>

15 65. According to the account information provided by the Company, the amount of funds  
16 in that account never dropped below the required WIFA Loan #1 debt service amount of \$52,350.<sup>44</sup>

17 66. Although in its Motion the Company originally requested that the Set-Aside Account  
18 funds be released for the unrestricted use of the Company, in his Pre-Filed Testimony, Mr. Prince  
19 revised VUWCO’s Motion and requested that the funds be released in compliance with Decision No.  
20 68309, to allow the funds to be used to offset the debt service on WIFA Loan #2.<sup>45</sup>

21 67. Staff witness, Marvin Milsap, agreed with the Company that the funds should be used  
22 as directed in Decision No. 68309.<sup>46</sup>

23 68. Staff disagreed, however, with the Company’s assertion that is it in compliance with  
24 Decision No. 62908. Mr. Milsap testified that because Decision No. 62908 required the funds in the

25 <sup>40</sup> Decision No. 62908, page 15.

26 <sup>41</sup> Transcript at 12-13.

27 <sup>42</sup> *Id.*, at 29.

28 <sup>43</sup> Exhibit VU-3, page 4.

<sup>44</sup> Exhibit VU-3, attached Exhibit BLP-4.

<sup>45</sup> Exhibit VU-1, pages 2-3.

<sup>46</sup> Transcript at 53-54.

1 Set-Aside Account to be used solely for debt service on WIFA Loan #1, the Company violated the  
2 terms of the Decision when it used the funds for operating, maintenance and other expenses.<sup>47</sup>

3 69. In his pre-filed direct testimony, Mr. Milsap revised Staff's original recommendation  
4 that the Company be fined for this violation, recommending instead that Staff be required to file an  
5 Order to Show Cause ("OSC") against VUWCO.<sup>48</sup> According to Mr. Milsap, the use of an OSC  
6 would be the proper procedural course,<sup>49</sup> allowing for proper due process.

### 7 Conclusions

8 70. Decision No. 62908 states that the set-aside funds were to be placed "in a separate,  
9 interest bearing account to be used solely for the purpose of servicing" the WIFA Loan #1 debt.<sup>50</sup>  
10 VUWCO's commingling of Set-Aside Account funds with other funds and use of funds from this  
11 account for other purposes is contrary to the terms of Decision No. 62908.

12 71. Additionally, the Company never advised Staff of the actual amount of WIFA Loan #1  
13 debt service or filed copies of the closing documents as required by Decision No. 62908.

14 72. Therefore, we find that VUWCO did not comply with Decision No. 62908 when it  
15 commingled funds, failed to advise Staff of the actual debt service amount, and failed to file copies of  
16 the closing documents.

17 73. We are concerned that the Company commingled funds within the Set-Aside Account,  
18 which account was ordered to be used solely for collection of funds for WIFA Loan #1's debt  
19 service. It is reasonable to require VUWCO to provide a detailed accounting of how withdrawals  
20 from the Set-Aside Account were used, including exact amounts, to whom the money was paid, and  
21 for what purpose, for the period beginning September 2003 through the present. The accounting  
22 should be filed with Docket Control under both the Company's pending Surcharge Application and  
23 Rate Application dockets within 30 days of this Decision.

24 74. We find it prudent to require Staff to review and analyze VUWCO's detailed  
25 accounting in the context of the Rate Application and/or OSC to determine whether the funds

26 \_\_\_\_\_  
27 <sup>47</sup> Exhibit S-2, page 1; Exhibit S-1, pages 2-3.

<sup>48</sup> Exhibit S-1, page 7.

<sup>49</sup> Transcript at 57.

28 <sup>50</sup> Decision No. 62908, page 15.

1 commingled in the Set-Aside Account were used for utility purposes.

2 75. Regarding the Company's request to release the Set-Aside Account funds, we find the  
3 terms of Decision No. 62908 have been modified by those of Decision No. 68309. Therefore, the  
4 Set-Aside Account funds must be both calculated and applied according to the terms of Decision No.  
5 68309 to the extent they modified Decision No. 62908.

6 76. As noted earlier, Decision No. 68309 required VUWCO to file the Set-Aside Account  
7 Report indicating the amount in the Set-Aside Account and also a Revenue Calculation  
8 demonstrating the application of the Set-Aside Account to the debt service for WIFA Loan #2 in  
9 order to offset any arsenic treatment surcharge. According to the Set-Aside Account Report filed by  
10 the Company, the actual balance in the Set-Aside Account as of November 30, 2005, was \$101,725.  
11 However, both the Set-Aside Account Report and the Company's "Surcharge Calculation" indicate  
12 that the Company believed that the amount in the Set-Aside Account as of November 30, 2005,  
13 should have been \$141,129. The Company's "Surcharge Calculation" did not apply any off-set.

14 77. According to Staff's calculations, there should have been \$201,981.45 in the Set-  
15 Aside Account as of November 2005. Staff's calculations included interest and what it believed the  
16 amount of deposits in the Set-Aside Account should have been based actual customer counts.  
17 However, when making its calculations, Staff did not consider the final amount of the WIFA Loan #1  
18 and what effect the lower debt service amount might have on those calculations.<sup>51</sup>

19 78. We currently do not have sufficient information to determine what funds should be in  
20 the Set-Aside Account. Because the Company commingled funds in the Set-Aside Account, used  
21 some funds for purposes other than servicing debt associated with WIFA Loan #1, and due to  
22 unresolved issues involving interest and customer counts, we need more evidence to make a  
23 determination as to the amount of funds that must be used to off-set the debt service for WIFA Loan  
24 #2. Such information will also assist in determining whether an OSC is warranted.

25 79. In accordance with Decision No. 62908 and Decision No. 68309, VUWCO must use  
26 the funds in the Set-Aside Account to service the debt for WIFA Loan #2. Accordingly, we will  
27

28 <sup>51</sup> Motion, Exhibit 2.

1 allow VUWCO to begin using the currently existing balance in the Set-Aside Account to service  
2 WIFA Loan #2, with the understanding that additional funds that should have been in the Set-Aside  
3 Account may also be required to offset the WIFA Loan #2. Such a determination of what, if any,  
4 additional funds will be attributed as an offset will be made in the context of either the pending Rate  
5 Application, Surcharge Application, or an OSC.

6 80. VUWCO shall file quarterly reports demonstrating the dates, amounts and manner in  
7 which the funds from the Set-Aside Account are applied to service the debt for WIFA Loan #2. The  
8 first quarterly report shall be filed no later than July 15, 2009, and successive quarterly reports shall  
9 be filed on the 15<sup>th</sup> of the corresponding month, continuing until further order of the Commission.

10 81. Additionally, the Company shall file with Docket Control, no later than 20 days after  
11 the effective date of this Decision, complete copies of bank statements for the Set-Aside Account,  
12 beginning with the creation of the Set-Aside Account through the present, indicating the amount of  
13 funds and showing the transactions that occurred in that account.

14 82. We find that there is adequate evidence to direct Staff to investigate whether VUWCO  
15 is in compliance with Decision No. 68309. Such investigation should be conducted concurrently with  
16 any proceeding discussed in Finding of Fact No. 82, below, and Staff should bring any appropriate  
17 action it deems necessary.

18 83. Additionally, it appears that VUWCO's status reports for the AIF Tariff required  
19 pursuant to Decision No. 67669 do not contain the information required by that Decision. We find  
20 that there is adequate evidence to direct Staff to investigate whether VUWCO is in compliance with  
21 Decision No. 67669. Such investigation should be conducted concurrently with and proceeding  
22 discussed in Finding of Fact No. 84, below.

23 Finally, Staff recommended that it be ordered to file an OSC against the Company for  
24 violating Decision No. 62908. We find that Staff should initially address the transfers to and from  
25 the Set-Aside Account in the pending Surcharge and Rate Applications, and Staff may, in its  
26 discretion, file an Order to Show Cause or other proceeding against Valley Utilities Water Company,  
27 Inc., if such action is deemed warranted.

28

**CONCLUSIONS OF LAW**

1  
2 1. VUWCO is a public service corporation pursuant to Article XV of the Arizona  
3 Constitution, A.R.S. §§ 40-281 and 40-282.

4 2. The Commission has jurisdiction over VUWCO and the subject matter of this Motion  
5 pursuant to Article XV of the Arizona Constitution; A.R.S. §§ 40-202 and 40-203.

6 3. VUWCO did not comply with Decision No. 62908 (September 18, 2000).

7 4. Decision No. 68309 (November 14, 2005) modified Decision No. 62908 (September  
8 18, 2000).

9 **ORDER**

10 IT IS THEREFORE ORDERED that Valley Utilities Water Company, Inc.'s Motion for an  
11 Order Confirming Compliance is hereby denied.

12 IT IS FURTHER ORDERED that Valley Utilities Water Company, Inc.'s Motion for Release  
13 of Set-Aside Funds is granted to the extent discussed herein.

14 IT IS FURTHER ORDERED that Valley Utilities Water Company, Inc. shall use the funds in  
15 the Set-Aside Account for the sole purpose of servicing the debt for WIFA Loan #2.

16 IT IS FURTHER ORDERED that Valley Utilities Water Company, Inc. shall file with Docket  
17 Control, as a compliance item in this docket and in Docket No. W-01412A-04-0849 (Decision No.  
18 68309), no later than 20 days after the effective date of this Decision, complete copies of bank  
19 statements for the Set-Aside Account, beginning with the creation of the Set-Aside Account through  
20 the present, indicating the amount of funds and showing the transactions that occurred in the Set-  
21 Aside Account.

22 IT IS FURTHER ORDERED that Valley Utilities Water Company, Inc., shall file with  
23 Docket Control, as a compliance item in this Docket and in Docket No. W-01412A-04-0849  
24 (Decision No. 68309), quarterly reports demonstrating the dates, amounts and manner in which the  
25 funds from the Set-Aside Account are applied to service the debt for WIFA Loan #2. The first  
26 quarterly report shall be filed no later that July 15, 2009, and successive quarterly reports shall be  
27 filed no later than the 15<sup>th</sup> of the corresponding month. Such quarterly reports will continue until  
28 further order of the Commission.

1 IT IS FURTHER ORDERED that Valley Utilities Water Company, Inc., shall file with  
2 Docket Control within 30 days of the effective date of this Decision, as a compliance item in this  
3 docket, a detailed accounting of how funds withdrawn from the Set-Aside Account were used,  
4 including exact amounts, to whom the money was paid and for what purpose, for the period  
5 beginning September 2003 through the present. The accounting shall also be filed in Valley Utilities  
6 Water Company, Inc.'s, Surcharge Application, Docket No. W-01412A-04-0849, and its Rate  
7 Application, Docket No. W-01412A-08-0586.

8 IT IS FURTHER ORDERED that Staff shall review and analyze Valley Utilities Water  
9 Company, Inc.'s, detailed accounting of the Set-Aside Account in the context of the Rate Application  
10 to determine the amount of funds collected pursuant to Decision No. 62908 that should offset the  
11 WIFA Loan #2 and to determine whether the funds commingled in the Set-Aside Account were used  
12 for utility purposes.

13 IT IS FURTHER ORDERED that Staff shall investigate whether Valley Utilities Water  
14 Company, Inc., is in compliance with Decision No. 67669. Such investigation should be conducted  
15 concurrently with any proceeding instituted pursuant to the next-to-last Ordering Paragraph.

16 IT IS FURTHER ORDERED that Staff shall investigate whether Valley Utilities Water  
17 Company, Inc., is in compliance with Decision No. 68309. Such investigation should be conducted  
18 concurrently with any proceeding instituted pursuant to the following Ordering Paragraph.

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IT IS FURTHER ORDERED that once Staff has completed its review and analysis of Valley Utilities Water Company, Inc.'s compliance with Commission Decisions, and its accounting filed pursuant to the above ordering paragraphs, Staff may, in its discretion, file an Order to Show Cause or other proceeding against Valley Utilities Water Company, Inc., if such action is deemed warranted.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

MICHAEL P. KEARNS  
INTERIM EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

1 SERVICE LIST FOR:

VALLEY UTILITIES WATER COMPANY, INC.

2 DOCKET NOS.:

W-01412A-99-0615 AND W-01412A-00-0023

3

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EXHIBIT "A"

VALLEY UTILITIES WATER COMPANY, INC.  
 ACTUAL WIFA SET ASIDES  
 FROM NOVEMBER 2000  
 TO SEPTEMBER 2005

Date	Deposit Amt	Amnt Withdrawn	Reason	Balance
12/8/2000	\$4,032			\$4,032
6/27/2001	\$24,611		Catch up payment due to insufficient cash flow in the previous months.	\$28,643
9/5/2001	\$4,208			\$32,851
11/12/2001	\$4,382			\$37,108
12/20/2001	\$4,637			\$41,544
1/18/2002	\$4,810			\$46,250
2/14/2002	\$4,802			\$51,052
3/20/2002	\$5,058			\$56,111
4/16/2002	\$5,147			\$61,258
5/20/2002	\$5,488			\$66,728
6/28/2002	\$5,796			\$72,526
8/22/2002	\$6,321			\$78,846
9/11/2002	\$6,348			\$85,192
10/21/2002	\$6,498			\$91,631
11/25/2002	\$6,442			\$98,073
12/30/2002	\$13,342		Catch up payment due to insufficient cash flow in the previous month.	\$111,415
3/18/2003	\$7,017			\$118,432
4/28/2003	\$7,058			\$125,490
5/21/2003	\$7,346			\$132,836
6/19/2003	\$7,834			\$140,368
7/16/2003	\$7,918			\$147,987
8/20/2003	\$7,708			\$155,695
9/10/2003	\$7,880			\$163,376
10/8/2003		\$10,000	Payroll shortfall and the account was over funded by \$17,530.00	\$153,376
10/15/2003		\$12,000	IX Payroll Acct. was funded. WIFA account still over funded by \$7,530.00	\$141,376
11/12/2003	\$7,710			\$149,086
11/17/2003		\$10,000	Funds needed in checking account in order to satisfy accounts payable requirements.	\$139,086
12/8/2003	\$4,281			\$143,346
4/22/2004		\$20,000	Insufficient funds to satisfy accounts payable.	\$123,346
6/22/2004		\$5,000	Payroll short fall.	\$118,346
5/12/2004	\$2,649			\$120,995
5/12/2004		\$6,110	WIFA Project Engineering Invoice.	\$114,885
6/9/2004	\$5,845		\$2,671 WIFA Project Engineering Invoice.	\$117,414
6/8/2004	\$5,848			\$123,469
6/30/2004	\$6,846			\$130,305
11/12/2004	\$3,161			\$133,466
12/10/2004		\$5,000	Acoustic Remediation Coalition (ARC) one time dues	\$128,466
1/14/2005		\$10,000	Payroll short fall.	\$118,466
2/10/2005	\$3,420			\$121,886
3/11/2005		\$10,000	Payroll short fall and income taxes.	\$111,886
3/28/2005		\$20,000	Insurance, liability & vehicle. Well repair #4 well.	\$91,886
4/6/2005	\$8,282		Payroll short fall.	\$83,604
6/16/2005		\$118	WIFA Project, legal opinion for closing documents.	\$83,486
7/12/2005	\$8,300			\$91,786

EXHIBIT "A"

DECISION NO. \_\_\_\_\_

EXHIBIT "A"

VALLEY UTILITIES WATER COMPANY, INC.  
 ACTUAL WIFA SET ASIDES  
 FROM NOVEMBER 2000  
 TO SEPTEMBER 2005

Date	Deposit Amt	Part Withdrawn	Reason	Balance
10/18/2005				\$101,498
11/18/2005		\$285	WIFA Project Engineering Invoice	\$101,115
11/20/2005	\$810	\$504	WIFA Project Engineering Invoice Interest payment. See "NOTE"	\$101,725
TOTALS	\$217,814	\$116,089		
			Desired WIFA Balance (less WIFA related expenses) Currently the short fall for the WIFA set asides etc.	\$147,129 \$38,404
			NOTE: All previous WIFA set aside payments provided herein with the listed amounts.	

EXHIBIT "A"

DECISION NO. \_\_\_\_\_

## EXHIBIT "B"

Valley Utilities Water Company  
Computation of Arsenic Recovery Surcharge

Exhibit

Line No.			
1			
2	WIFA Debt Service Requirements (May 2007 to April 2008) <sup>1</sup>		\$ 247,849
3	Reductions		
4	Arsenic Impact Fees to be used <sup>2</sup>	\$ (247,849)	
5	WIFA Loan Set Asides to be Used <sup>3</sup>	-	
6	Total Reductions		\$ (247,849)
7	Amount to be Collected via Arsenic Recovery Surcharge		\$ (0)
8			
9	Gallons Sold (In 1,000's) during Prior Year (2006)		333,824
10			
11	Surcharge per 1,000 gallons	\$	-
12			
13	<u>Computation of Impact on Average 5/8 Inch metered Customer</u>		
14	Average Use (in gallons)		9,251
15	Average Bill (without surcharge)	\$	30.18
16	Arsenic Recovery Surcharge at Average Use	\$	-
17	Average Bill (with surcharge)	\$	30.18
18	Percent Increase in Average Bill		0.00%
19			
20	<sup>1</sup> WIFA Debt Service Requirements (May 2007 to April 2008) (From Loan Repayment Schedule)		
21	May '07	\$ 66,537	
22	June	16,483	
23	July	16,483	
24	August	16,483	
25	September	16,483	
26	October	16,483	
27	November	16,483	
28	December	16,483	
29	January '08	16,483	
30	February	16,483	
31	March	16,483	
32	April	16,483	
33	Total	\$ 247,849	
34			
35	<sup>2</sup> Arsenic Impact Fees Collected and Used		
36	Fees Collected	\$	314,171
37	Less: Funds Previously Used for Arsenic Plant or Debt Service		(44,355)
38	Less: Funds used for Current Year's Debt Service		(247,849)
39	Balance of Arsenic Impact Fee Fund to be used in Future	\$	21,967
40			
41	<sup>3</sup> WIFA Loan Set Asides (Collected between Nov. 2000 and Sept. 2005)		
42	Loan Set Asides	\$	141,129
43	Less: Funds Previously Used for Plant or Debt Service		-
44	Less: Funds used for Current Year's Debt Service		-
45	Balance of WIFA Loan Set Asides to be used in Future	\$	141,129
46			

EXHIBIT "B"

DECISION NO. \_\_\_\_\_