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BEFORE THE ARIZONA CORPORATION COMMISSION

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

2009 APR 14 P 2:49  
AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission  
DOCKETED  
APR 14 2009

DOCKETED BY

STAFF OF THE UTILITIES DIVISION,  
  
Complainant  
  
VS.  
  
BURLINGTON NORTHERN AND SANTA  
FE RAILWAY COMPANY DBA AUBREY  
WATER COMPANY

DOCKET NO. W-03476A-06-0425

COMPLAINT AND PETITION  
FOR AN ORDER TO SHOW CAUSE

Staff of the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission"), for its Complaint and Petition for Order to Show Cause against Burlington Northern and Santa Fe Railway Company dba Aubrey Water Company, an Arizona Corporation, alleges:

JURISDICTION

1. The Commission has jurisdiction to hear complaints against public service corporations pursuant to Arizona Revised Statutes ("A.R.S.") § 40-246. The Commission has jurisdiction to supervise and regulate public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

2. Respondent Burlington Northern and Santa Fe Railway Company dba Aubrey Water Company ("Burlington" or "Company") is a public service corporation as defined by Article XV, Section 2 of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

3. Pursuant to Decision No. 58172, issued February 4, 1993, Burlington received a Certificate of Convenience and Necessity ("CC&N") to provide water service in Yavapai County.

23

1 As a condition of its CC&N, Burlington is required to comply with Arizona law, Commission  
2 Orders, and Commission Rules and Regulations.

3 **FACTUAL BACKGROUND**

4 4. In Decision No. 69379, dated March 22, 2007, the Commission approved the  
5 application of Burlington for a permanent rate increase.

6 5. Burlington has not yet instituted the new rates because the authorized rates were  
7 conditioned upon the Company reducing the water loss on its system to 10 percent or less.

8 6. As part of Decision No. 69379, the Commission ordered Burlington to comply with  
9 a number of individual water loss related compliance conditions.

10 7. Burlington was ordered to docket both "progress" and "monitoring" reports on  
11 water loss program implementation and water loss percentage for filing each January and July,  
12 beginning January 2008.

13 8. The Company has been making these filings. Unfortunately, the January 30, 2009  
14 report, indicates that while the Company "has implemented all of the program recommendations  
15 within the compliance period" it "has not yet been able to achieve the 10 percent level".

16 9. Decision No. 69379 contemplated this possibility and ordered the following as the  
17 next step for the Company:

18 "If the Monitoring Report indicates that reduction of water loss to less than  
19 10 percent is not achieved by December 31, 2008, the Company shall  
20 prepare a Revised Program which outlines procedures, steps, and time  
21 frames to achieve acceptable water losses. The Company shall file the  
22 Revised Program with Docket Control, as a compliance item in this  
23 docket, by February 28, 2009."

24 "The Program Progress Reports and monitoring Reports shall continue to  
25 be filed until two consecutive Monitoring Reports show a water loss of  
26 less than 10 percent."

27 10. The Company was therefore required to provide a Revised Program for water loss  
28 by February 28, 2009. The Revised Program was not and has not been provided to the  
Commission.

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**RELIEF**

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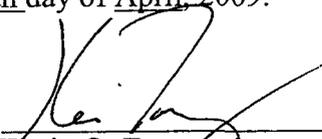
16. Wherefore Staff requests that the Commission issue an **ORDER TO SHOW CAUSE** directing Burlington to appear and show cause:

- a. why its actions do not represent a violation of Decision No. 69379;
- b. why other relief deemed appropriate by the Commission should not be ordered.

17. Staff further requests that after the conclusion of appropriate proceedings, a final **OPINION AND ORDER** be entered:

- a. finding that Burlington has violated Decision No. 69379;
- b. imposing appropriate sanctions which may include fines and penalties pursuant to Article XV, Section 19 of the Arizona Constitution and A.R.S. §§ 40-424 and 40-425;
- c. ordering such other relief as the Commission may find just and reasonable.

RESPECTFULLY SUBMITTED this 14th day of April, 2009.

  
 \_\_\_\_\_  
 Kevin O. Torrey, Attorney  
 Arizona Corporation Commission  
 1200 West Washington Street  
 Phoenix, Arizona 85007  
 (602) 542-3402

The original and thirteen (13) copies of the foregoing were filed this 13th day of April, 2009 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

1 Copy of the foregoing mailed this  
2 14th day of April, 2009 to:

3 Kimberly A Grouse  
4 SNELL & WILMER  
5 One Arizona Center  
6 Phoenix, Arizona 85004-2202  
7 Attorney's for Aubrey Water Co.

8 Ms. Janice Alward  
9 Chief Counsel, Legal Division  
10 Arizona Corporation Commission  
11 1200 West Washington Street  
12 Phoenix, Arizona 85007

13 Ms. Lyn Farmer  
14 Chief Administrative Law Judge  
15 Hearing Division  
16 Arizona Corporation Commission  
17 1200 West Washington Street  
18 Phoenix, Arizona 85007

19 Mr. Ernest G. Johnson  
20 Director, Utilities Division  
21 Arizona Corporation Commission  
22 1200 West Washington Street  
23 Phoenix, Arizona 85007

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

KRISTIN K. MAYES  
Chairman  
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STAFF OF THE UTILITIES DIVISION,

Complainant

VS.

BURLINGTON NORTHERN AND SANTA  
FE RAILWAY COMPANY DBA AUBREY  
WATER COMPANY

DOCKET NO. W-03476A-06-0425

**ORDER TO SHOW CAUSE**

Open Meeting  
April 28 and 29, 2009  
Phoenix, Arizona

On April 14, 2009, the Staff of the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission"), filed a Complaint and Petition for Order to Show Cause against Burlington Northern and Santa Fe Railway Company dba Aubrey Water Company ("Burlington" or "Company"), an Arizona Public Service Corporation. Staff seeks an Order to Show Cause against Respondent Burlington.

Staff asserts that Burlington has violated provisions of Arizona law, including Commission Rules, Orders and provisions of the Arizona Revised Statutes. Count One of Staff's Complaint alleges that Burlington has failed to meet the time limit for a Revised Program filing in relation to a Commission imposed Water Loss Analysis Program. This Revised Program filing was ordered to be filed in Decision No. 69379 if the Company water loss percentage was not reduced to 10 percent by December 31, 2008. Under those circumstances, the Revised Program filing was due by February 28, 2009. The Company has admitted that the 10 percent water loss requirement

1 appears unattainable. Burlington’s failure to provide the required Revised Program filing is a  
2 violation of Decision No. 69379.

3 \* \* \* \* \*

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

6 FINDINGS OF FACT

7 1. The Commission has jurisdiction to hear complaints against public service  
8 corporations pursuant to Arizona Revised Statutes (“A.R.S.”) § 40-246. The Commission has  
9 jurisdiction to supervise and regulate public service corporations pursuant to Article XV of the  
10 Arizona Constitution and Title 40 of the Arizona Revised Statutes.

11 2. Respondent Burlington Northern and Santa Fe Railway Company dba Aubrey  
12 Water Company (the “Company” or “Burlington”) is a public service corporation as defined by  
13 Article XV, Section 2 of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

14 3. Pursuant to Decision No. 58172, issued February 4, 1993, Burlington received a  
15 Certificate of Convenience and Necessity (“CC&N”) to provide water service in Yavapai County.  
16 As a condition of its CC&N, Burlington is required to comply with Arizona law, Commission  
17 Orders, and Commission Rules and Regulations.

18 4. In Decision No. 69379, dated March 22, 2007, the Arizona Corporation  
19 Commission (“Commission”) approved the application of Burlington Northern and Santa Fe  
20 Railway Company dba Aubrey Water Company (“Burlington” or “Company”) for a permanent  
21 rate increase.

22 5. Burlington has not yet instituted the new rates because the authorized rates were  
23 conditioned upon the Company reducing the water loss on its system to 10 percent or less.

24 6. As part of Decision No. 69379, the Commission ordered Burlington to comply with  
25 a number of individual water loss related compliance conditions.

26 7. Burlington was ordered to docket both “progress” and “monitoring” reports on  
27 water loss program implementation and water loss percentage for filing each January and July,  
28 beginning January 2008.

1           8.       The Company has been making these filings. Unfortunately, the January 30, 2009  
2 report indicates that while the Company “has implemented all of the program recommendations  
3 within the compliance period” it “has not yet been able to achieve the 10 percent level”.

4           9       Decision No. 69379 contemplated this possibility and ordered the following as the  
5 next step for the Company:

6                    “If the Monitoring Report indicates that reduction of water loss to less than  
7 10 percent is not achieved by December 31, 2008, the Company shall  
8 prepare a Revised Program which outlines procedures, steps, and time  
9 frames to achieve acceptable water losses. The Company shall file the  
10 Revised Program with Docket Control, as a compliance item in this  
11 docket, by February 28, 2009.”

12                    “The Program Progress Reports and monitoring Reports shall continue to  
13 be filed until two consecutive Monitoring Reports show a water loss of  
14 less than 10 percent.”

15           10.     The Company was therefore required to provide a Revised Program for water loss  
16 by February 28, 2009. The Revised Program was not and has not been provided to the  
17 Commission.

18           11.     Rather than filing the Revised Program, on February 27, 2009, Burlington docketed  
19 a filing with the Commission requesting a 12 month extension of time until February 28, 2010, for  
20 the requirement to provide the Revised Program.

21           12.     It was the Company’s intention to obtain an extension on the Revised Program and  
22 use the additional time to make a 40-252 filing to amend the decision and “revisit” the water loss  
23 compliance requirements. The reason for this rests in the continuing water loss problem which  
24 persists after significant expenditure and after a period of more than two years. The Company’s  
25 application for extension of time flatly states that the “achievement of a 10 percent system loss  
26 does not appear to be attainable” and indicates that the Company hopes to work with the  
27 Commission to “explore other options to reduce water loss”.

28           13.     In summary, Decision No. 69379 required the Company to file the Revised  
Program by February 28, 2009. It further directed Staff to proceed with an Order to Show Cause  
 (“OSC”) if the Company did not meet the time limits for its Water Loss Analysis Program.





1 IT IS THEREFORE ORDERED that the Hearing Division shall schedule further  
2 appropriate proceedings.

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

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**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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CHAIRMAN

COMMISSIONER

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COMMISSIONER

COMMISSIONER

COMMISSIONER

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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 this Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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\_\_\_\_\_  
MICHAEL P. KEARNS  
INTERIM EXECUTIVE DIRECTOR

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DISSENT: \_\_\_\_\_

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DISSENT: \_\_\_\_\_

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EGJ:BKB:lhm\KOT

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1 SERVICE LIST FOR: Burlington Northern and Santa Fe Railway Company dba Aubrey Water  
Company  
2 DOCKET NO. W-03476A-06-0425

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4 Ms. Kimberly A Grouse  
SNELL & WILMER  
5 One Arizona Center  
Phoenix, Arizona 85004-2202  
6 Attorney's for Aubrey Water Co.

7

8 Mr. Ernest G. Johnson  
Director, Utilities Division  
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9 1200 West Washington Street  
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11 Ms. Janice M. Alward  
Chief Counsel, Legal Division  
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