

UPPER CASE LETTERS



0000098184

Executive Director

89

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



ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED

ORIGINAL

DATE: OCTOBER 1, 2009

OCT - 1 2009

DOCKET NO.: W-02327A-09-0284

DOCKETED BY [Signature]

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:

ANTELOPE RUN WATER COMPANY
(EMERGENCY RATES)

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:

OCTOBER 13, 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:

OCTOBER 20, 2009 AND OCTOBER 21, 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.

RECEIVED

2009 OCT - 1 P 3:25

AZ CORP COMMISSION
DOCKET CONTROL

[Signature]
ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

www.azcc.gov

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION
OF ANTELOPE RUN WATER COMPANY
FOR AN EMERGENCY RATE INCREASE.

DOCKET NO. W-02327A-09-0284

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING:

August 18, 2009

PLACE OF HEARING:

Tucson, Arizona

ADMINISTRATIVE LAW JUDGE:

Belinda A. Martin

IN ATTENDANCE:

Kristin K. Mayes, Chairman
Paul Newman, Commissioner
Sandra D. Kennedy, Commissioner

APPEARANCES:

Bob B. Watkins, Owner, on behalf of Antelope
Run Water Company; and

Kevin Torrey, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

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

* * * * *

FINDINGS OF FACT

1. On June 2, 2009, Antelope Run Water Company ("ARWC" or "Company"), filed with
the Commission an application requesting an emergency surcharge ("Application"). Filed
simultaneously with the Application were emergency surcharge applications for two other companies
also owned by Bob Watkins: Bob B. Watkins d/b/a East Slope Water Company ("ESWC"), Docket
No. W-01906A-09-0283, and Indiada Water Company ("IWC"), Docket No. W-02031A-09-0285.

1 2. Pursuant to a Procedural Order docketed June 17, 2009, a Procedural Conference was
2 held on June 26, 2009. During the Procedural Conference, ARWC, ESWC, IWC, and the
3 Commission's Utilities Division Staff ("Staff") agreed to certain deadlines in order to coordinate the
4 timing of filings and of the hearings for ARWC, ESWC and IWC.

5 3. On June 30, 2009, a Procedural Order was issued setting a hearing in this matter for
6 August 18, 2009, and establishing coordinated deadlines.

7 4. On July 16, 2009, ARWC filed an Affidavit of Mailing, averring that notice of the
8 hearing was mailed to all customers on July 15, 2009.

9 5. On July 24, 2009, Staff filed its Staff Report, recommending approval of the
10 Application, but using Staff's proposed emergency surcharge.

11 6. On August 12, 2009, ARWC filed its response to the Staff Report, disagreeing with
12 certain of Staff's findings and setting forth a revised emergency surcharge structure ("Response").

13 7. A hearing on the Application was held on August 18, 2009, before a duly authorized
14 Administrative Law Judge at the Commission's Tucson office. Public comment was taken prior to
15 the hearing. After public hearing, the matter was taken under advisement pending submission of a
16 Recommended Opinion and Order to the Commission.

17 8. In response to the Application, the Commission received a total of thirteen written
18 customer comments and five customers appeared during the public comment session at hearing to
19 provide opinion related to the requested increase.

20 9. Many of the customers who provided written comment objected to any rate increase.
21 Others believed that a rate increase is acceptable, but objected to the amount the Company requests.
22 Several customers complained that they encountered occasional pressure or other system problems.
23 One customer asserted that the Company's requested surcharge was too low given the need in the
24 area for stricter water conservation measures. No customer comments were received in response to
25 the Staff Report. One customer comment was received in favor of the revised surcharge proposed in
26 ARWC's Response.

27 10. During the public comment session, customers who live in the low lying areas served
28 by the system reported that they had not experienced any pressure problems. Those who lived at

1 higher elevations, however, stated that they experienced occasional pressure problems. The
2 customers who spoke stated that they believed the current rates are low, but the rates the Company
3 requested in its Application are too high. One customer stated that, in his opinion, more needs to be
4 done to promote water conservation and gave the example of a neighbor who uses system water to
5 irrigate one acre of bluegrass in spite of an area-wide shortage of water.

6 **The Application**

7 11. ARWC is a Class 'D' sole proprietorship owned by Mr. Watkins and provides water
8 service to 165 connections in an unincorporated area near Sierra Vista, Cochise County, Arizona.¹

9 12. In Decision No. 49820 (April 5, 1979) the Commission approved the sale of assets and
10 transfer of a portion of the Certificate of Convenience and Necessity ("CC&N") by S.V.E. Water
11 Company to ARWC.

12 13. ARWC's current rates were approved by the Commission in Decision No. 56062 (July
13 13, 1988).

14 14. ARWC hired Southwestern Utility Management ("SWUM") in September 2008, to
15 manage the Company and to prepare the Application.²

16 15. In its Application, ARWC requested approval by the Commission of an emergency
17 surcharge stating it is insolvent and is concerned that it may run out of water.

18 16. ARWC notes that due to high water demand during the summer months, the current
19 water system cannot keep up with demand during those months, which results in a loss of water
20 pressure in the distribution system. According to the Company, the system's lack of pressure is due
21 to insufficient storage and inadequate pumps. ARWC stated in its Application that it has had to
22 replace approximately 15 to 20 pumps over the last two years due to the pumps and motors burning
23 out from overuse. Also, the Company asserts that a lift station is needed to adequately supply those
24 customers who live at higher elevations. ARWC asserts that without improvements to its system, the
25 Company's ability to provide water to its customers is in doubt.

26 ¹ In its Staff Report, Staff noted that the Commission's Corporation Division found that there is no company operating
27 under the name Antelope Run Water Company in its database. At hearing, Ms. O'Connor stated she believed that the
28 Corporations Division had no record of ARWC because the Company is a sole proprietorship. (Tr. at p. 48-49)

² SWUM's president is Bonnie O'Connor. Ms. O'Connor prepared the Application and the Company's Response on
behalf of ARWC with the assistance of a consultant, Sonn Rowell.

1 17. ARWC also noted that it has had service requests that it cannot accommodate because
2 of system issues and lack of infrastructure.³

3 18. ARWC noted that it is in the process of compiling information needed to apply for a
4 \$2.7 million loan from the Water Infrastructure Financing Authority ("WIFA") in order to make the
5 needed system improvements.⁴

6 19. The Company also asserts that it does not generate enough revenues to meet its
7 operating expenses. ARWC states that, as of the date of the Application, it had amassed accounts
8 payable of approximately \$21,278. Additionally, the Company notes that over the years, the Watkins
9 family has advanced ARWC a total of \$20,000 through notes payable, and the Company has received
10 loans from ESWC and IWC, the current amount of which is \$15,114.⁵ The Company concluded that
11 it is unable to meet its expenses and fears insolvency.

12 20. ARWC's current rates are a per customer monthly minimum charge of \$11.50, which
13 does not include any water usage. The commodity rate is \$1.00 per 1,000 gallons of water usage.

14 21. For purposes of the Application, the Company used a generalized average usage
15 amount of 8,000 gallons, rather than the actual average or median water use. As such, for a current
16 monthly bill based on 8,000 gallons of usage, the commodity charge would be \$8.00. Coupled with
17 the minimum monthly charge, the average monthly bill for ARWC customers using 8,000 gallons of
18 water is \$19.50.

19 22. To determine the amount of the emergency surcharge, the Company used its 2009
20 projections based on historical data. According to its 2009 projections, ARWC's total operating
21 revenues for 2009 would be \$46,480 and its operating expenses would be \$76,242, for a projected net
22 operating loss of \$29,762.

23 23. Based on these numbers, ARWC calculated its projected monthly operating loss at
24 \$2,480. It then added in the monthly amounts needed to cover payments on the delinquent accounts
25 payable (\$1,773 per month for 12 months), the loans from ESWC and IWC (\$1,260 per month for 12

26 ³ Staff stated in its Staff Report that it has not received any complaints about the Company for failure to serve, but Staff
27 stated it will investigate this situation during the permanent rate case matter. (Staff Report, p. 1)

⁴ Tr. at p. 52.

28 ⁵ ARWC did not obtain Commission Approval for the acquisition of any debt. Ms. O'Connor stated that she has made it
clear to the Company that it must obtain Commission approval before incurring debt. (Tr. at 50)

1 months), and the Watkins' notes payable (\$1,667 for 12 months). By adding these amounts to the
2 projected monthly operating losses of \$2,480, the Company concludes it has a \$7,180 operating
3 loss/cash shortage each month. ARWC then divided the \$7,180 monthly operating loss/cash shortage
4 by the number of connections, 165, and arrived at a per customer surcharge amount of \$43.51.

5 24. Using the Company's surcharge combined with the \$19.50 current bill based on 8,000
6 gallons of usage, the average customer's monthly bill would increase to \$63.01.

7 **Staff Report**

8 25. In its Staff Report, Staff found that a financial emergency exists and recommended
9 approval of the Company's Application, but using Staff's proposed emergency surcharge of \$5.58 per
10 customer, per month.

11 26. For the purposes of engineering analysis in an emergency surcharge case, Staff does
12 not conduct a site inspection, but rather, Staff reviews a company's Annual Report for system
13 information, water pumped versus water sold, and number of connections. Staff notes that, according
14 to the Company's Annual Reports, the current water system consists of two active wells with a total
15 production capacity of 195 gallons per minute, two storage tanks with a total storage capacity of
16 20,000 gallons, three pressure tanks, two booster systems, and a distribution system. Staff
17 engineering witness, Dorothy Hains, testified ARWC has sufficient water production to meet
18 customer demands.⁶

19 27. Staff determined that ARWC's current storage capacity is inadequate to serve its
20 current customers. Staff calculated that the Company will need to add an additional 106,000 gallons
21 of storage in order to resolve the storage deficiency. The Company's engineering witness, Gary
22 Newman, testified that he agreed with this assessment.⁷

23 28. Staff acknowledged the Company's needed system upgrades, but notes that ARWC
24 did not submit any cost estimates for any improvements it asserts are needed to alleviate the claimed
25 emergency. Staff concluded that the additional storage and upgrades are better addressed in the
26 permanent rate case and financing application.

27 _____
28 ⁶ Tr. at p. 101.

⁷ Tr. at p. 65.

1 29. ARWC has a curtailment tariff in place, but has not employed it this year.⁸

2 30. The Arizona Department of Environment Quality reported to Staff that the ARWC's
3 water system has no deficiencies and has determined that this system is currently delivering water
4 that meets water quality standards required by the Arizona Administrative Code, Title 18, Chapter 4.

5 31. In the Engineering Report attached to the Staff Report as Attachment A, Staff noted
6 that according to an Arizona Department of Water Quality ("ADWR") Compliance Status Report
7 dated July 23, 2009, ARWC is not in compliance with ADWR requirements. At hearing, Ms. Hains,
8 testified that in ARWC's 2008 plan description provided to ADWR, the Company does not have a
9 well meter at one or both of its wells, and when the Company reported the gallons pumped versus
10 gallons sold, the numbers were identical⁹.

11 32. In rebuttal testimony, Mr. Newman testified that both system wells are metered and he
12 does not know the basis for ADWR's non-compliance finding. Mr. Newman stated that he will
13 contact ADWR and endeavor to obtain a Compliance Status Report from ADWR showing that the
14 Company is in compliance.¹⁰

15 33. Engineering Staff recommends that ARWC file with Docket Control, as a compliance
16 item in this docket, no later than December 31, 2009, documentation from ADWR indicating that the
17 Company is in compliance with ADWR regulations and requirements.

18 34. Staff ultimately determined that, from an engineering perspective, an emergency does
19 not exist and Staff does not recommend any emergency surcharge to address system problems.

20 35. Although Staff found that an emergency does not exist from an engineering
21 standpoint, Staff did find that ARWC's current financial situation constitutes an emergency because
22 of the Company's inability to meet its financial obligations, calling into question ARWC's solvency.

23 36. For the purposes of its review of an emergency surcharge application, Staff performs
24 its evaluation based on financial information submitted by a company, rather than conducting a full
25 audit of a company's financial status. In reviewing the Company's proposed surcharge amount, Staff

26 _____
27 ⁸ Tr. at p. 46. During public comment, one of the customers noted that he recalled that the Company instituted a Stage 3
curtailment once during his eight years living in ARWC's service area, but it last for only a very short time. (Tr. at p. 18)

28 ⁹ Tr. at p. 102.

¹⁰ Tr. at p. 117-118.

1 considered the appropriateness of the items included by the Company in its emergency surcharge
2 calculation.

3 37. According to the Staff Report, because the delinquent accounts payable included by
4 the Company are for previous periods of service, including them is improper and Staff disallowed
5 their inclusion. Ms. O'Connor testified that she understands Staff's position.¹¹

6 38. In the Staff Report, Staff also stated:

7 The Company was provided rates in prior periods that were designed to provide
8 for expenses and give ARWC a return on its investment. If the Company's rates
9 failed to provide this, then it was incumbent upon the Company's management to
10 address the situation in a timely manner. ARWC's customers should not be
11 required to provide a remedy or make the Company "whole" for management's
12 lack of timely action or guidance.¹²

13 39. Staff also disagreed with ARWC's inclusion of the loans from ESWC and IWC
14 because the Company never sought approval for the loans from the Commission and Staff has never
15 had an opportunity to review the appropriateness of the debt. Additionally, Staff notes that the
16 Company has a history of intermingling funds among its three companies and is concerned about the
17 use of the funds.¹³ Staff points out that since the origination of the loans in 2000, there has been little
18 change in the overall balance and no rate consideration. Therefore, Staff determined that emergency
19 rate relief for this item is not appropriate.

20 40. Staff also disagreed with the inclusion in the surcharge calculation of the Watkins'
21 notes payable for these same reasons.

22 41. Even with the removal of these amounts from ARWC's calculations, Staff found that
23 the Company is unable to meet operating expense requirements, and determined that it is facing a
24 financial emergency, concluding that emergency rate relief is warranted.

25 42. Staff arrived at its recommended surcharge in a different manner from that of the

26 ¹¹ Tr. at p. 50.

27 ¹² Staff Report, p. 3.

28 ¹³ We take Administrative Notice of Decision 57076 (September 19, 1990), regarding ESWC's last rate increase. In that Decision, the Commission noted that ESWC had a practice of moving money between its three companies when needed and also intermingling personal funds of the owner. As a result, ESWC was ordered to document properly the allocation of expenses between ESWC, its owners or any affiliated entities. (Decision No. 57076, p. 16) According to Ms. O'Connor's testimony, the Company has kept good records regarding the allocation of expenses among ESWC, ARWC and IWC. (Tr. at p. 50-51)

1 Company. Rather than use ARWC's total 2009 projections based on historical data, Staff used as a
2 starting point the Company's actual income and expense information for January 1, 2009, through
3 April 30, 2009, using the data provided by the Company.

4 43. According to this data, as of the end of April 2009, ARWC had collected \$14,912 in
5 water revenues resulting in a monthly average income for these four months of \$3,743. This amount
6 annualized over the course of twelve months equals \$44,916, as opposed to the \$46,480 projected by
7 the Company.¹⁴

8 44. As of the end of April 2009, the Company had \$19,525 in operating expenses,
9 resulting in a monthly average expense for the four months of \$4,554. This amount annualized over
10 the course of twelve months equals \$55,957, as opposed to the \$76,242 in annual operating expense
11 projected by the Company.¹⁵

12 45. Based on this data, Staff calculated the Company's monthly average operating loss as
13 \$4,555,¹⁶ plus \$109 per month for property taxes that were not included in ARWC's statement of its
14 monthly operating loss. Therefore, Staff's recommendation is based on an average monthly net loss
15 of \$921. Staff divided this amount by the number of connections and arrived at its recommended
16 emergency surcharge rate of \$5.58 per customer, per month.

17 46. Staff notes that, while its projected monthly loss is higher than the Company's, Staff
18 believes it is more reflective of ARWC's additional monthly financial requirements needed in order
19 to allow it to continue to provide service. It is notable that the \$3,743 average monthly operating
20 revenue adopted by Staff is based on revenues received in January through April, 2009. These
21 months are traditionally lower water usage months. As such, Staff's calculations of annualized
22 revenue of \$44,916 do not include the higher revenues that might be expected in the higher use
23 summer months, and its total revenue calculations may be low.

24 47. According to Staff, the Company's proposed rates would increase the typical
25

26 ¹⁴ The Company's Calculation of 2009 Projected Income Statement attached to the Application notes that for the period
ending December 31, 2008, ARWC's actual water revenue was \$47,001.

27 ¹⁵ The Company's Calculation of 2009 Projected Income Statement notes that for the period ending December 31, 2008,
ARWC's actual expenses were \$65,310. As such, for 2008, the Company had a net operating loss of \$18,309.

28 ¹⁶ Due to rounding, the Company calculated its monthly average operating loss as \$4,554, whereas Staff arrived at
\$4,555.

1 residential bill with 8,000 gallons of usage from \$19.50 to \$63.01; an overall increase of \$43.51, or
2 223.1 percent. ARWC's requested emergency rates would produce an additional \$7,179 per month in
3 revenues.

4 48. Staff's recommended rates would increase the typical residential bill with 8,000
5 gallons of usage from \$19.50 to \$25.08, an overall increase of \$5.58, or 28.6 percent. Staff's
6 recommended emergency surcharge would produce approximately an additional \$921 per month in
7 revenues; an amount Staff asserts is sufficient to address the Company's operating shortfall during
8 the pendency of a permanent rate application.

9 49. Staff also recommends that the Company be required to post a bond or an irrevocable
10 sight draft letter of credit in the amount of \$10,000 to ensure that there is money available to refund
11 to ratepayers if the Commission determines in the permanent rate case that the emergency surcharge
12 was too large.

13 50. In addition to the above recommendations, Staff also recommended the following:

- 14 a. that the emergency surcharge be interim;
- 15 b. that the interim rate be subject to refund pending the decision resulting from the
16 permanent rate increase case required to be filed in this proceeding;
- 17 c. that the Company be directed to file within 30 days of the Decision, a revised rate
18 schedule reflecting the emergency surcharge with Docket Control, as a compliance
19 item in this docket;
- 20 d. that the Company notify its customers of the surcharge, and its effective date, in a
21 form acceptable to Staff, by means of an insertion in the Company's next regularly
22 scheduled billing;
- 23 e. that the Company file a full rate application utilizing a December 31, 2009, test year
24 no later than April 30, 2010;
- 25 f. that if the Company believes it will need to incur debt in order to solve its operation
26 problems, it file a financing application concurrent with the rate application; and
- 27 g. that the Company file with Docket Control, as a compliance item in this docket,
28 documentary evidence that the Company has posted a bond or an irrevocable sight

1 draft letter of credit in the amount of \$10,000, prior to implementing the emergency
2 rate increase authorized in this proceeding.

- 3 h. that the Company file with Docket Control, as a compliance item in this docket, no
4 later than December 31, 2009, documentation from ADWR indicating that the
5 Company is in Compliance with ADWR regulations.

6 **Company's Response and Revised Surcharge Calculation**

7 51. In its Response, ARWC stated that, given the technical and financial issues facing the
8 Company, a \$5.58 surcharge per customer, per month is not sufficient to meet its needs. The
9 Company asserts that Staff's recommended surcharge will not produce sufficient funds to allow it to
10 adequately maintain the water system until such time as the Commission issues its decision in the
11 permanent rate case.

12 52. ARWC concedes that it should have filed a rate case sooner; however, in weighing the
13 costs of prosecuting a rate case against the immediate needs of maintaining the water system, the
14 Company felt its priority was to spend the money to ensure that customers received water, rather than
15 incur the expense of filing a rate application.¹⁷

16 53. The Company claims in its Response that Staff's conclusion that there is no
17 emergency from an engineering standpoint is erroneous because it fails to take into consideration that
18 the Company is struggling with low pressure and low volume issues, as well as problems with a
19 decreasing water table and inadequate storage. Mr. Newman also testified that a large development
20 near ARWC's system drilled a well to approximately 1000 feet, and it pumps approximately 800-
21 1000 gallons per minute. Mr. Newman believes this is draining the basin and causing well depth
22 issues for surrounding wells, including ARWC's,¹⁸ and as a result, the Company is on the verge of
23 running out of water.¹⁹

24 54. As a result of these problems, the Company claims it frequently has had to repair or
25

26 ¹⁷ Mr. Watkins stated that another reason the Company has not filed for a rate increase in 21 years because in ESWC'S
27 1990 rate case, the Commission imposed a rate decrease. (See Footnote 13) However, Decision No. 57076 indicates that
28 the Commission actually granted ESWC a rate increase. Additionally, ESWC sought retroactive Commission approval of
debt ESWC obtained without Commission approval, but the Commission denied the request.

¹⁸ Tr. at p. 70-71.

¹⁹ Tr. at p. 70.

1 replace pumps and motors over the last two years, at a cost of \$25,727. In the Response, the
2 Company states that these expenditures have been capitalized, resulting in non-recovery either by
3 repair expense or depreciation expense.

4 55. The Company's consultant, Sonn Rowell, testified that ARWC had to replace items
5 normally classified as plant, such as pump and motors, so frequently that the Company has not
6 received the full benefit of the depreciation, and they have taken on a character of repairs and
7 maintenance.²⁰ The Company believes that the \$25,727 repairs from the past two years should be
8 considered from an historical cash flow standpoint and should be included in operating expenses as
9 repairs and maintenance for the purposes of the Application.²¹

10 56. Staff objects to the inclusion of the \$25,727 as repair and maintenance expenses
11 because such items are more appropriately classified as plant and more properly included in rate base
12 calculations.²²

13 57. ARWC acknowledges that a \$43.51 surcharge is substantial, but believes that its
14 customers have had the benefit for many years of paying extremely low rates in comparison to those
15 of other water companies. After review of both the Staff Report and the customer comments, ARWC
16 revised its surcharge application to request a lower emergency surcharge, which the Company
17 believes realistically addresses its repair and maintenance costs.

18 58. Attached to its Response is ARWC's Revised Calculation of Monthly Surcharges.
19 The Company used as its starting point for the revised calculation Staff's recommended emergency
20 surcharge of \$5.58, which will generate additional monthly revenue of \$920.70.²³ ARWC then noted
21 that Staff used the repair and maintenance information submitted by the Company for January
22 through April 2009, in the amount of \$666, resulting in a monthly repair and maintenance expense of
23 \$167 per month.

24 59. ARWC asserted this number was too low because, as noted above, in the past two
25

26 ²⁰ Tr. at p. 85.

27 ²¹ Tr. at p. 85-86.

28 ²² Tr. at 112-113.

²³ Staff determined that the Company's monthly loss is \$921. Staff then divided that number by the number of connections, 165, which equals 5.581, rounding down to a \$5.58 surcharge. Because of rounding, the actual monthly amount achieved by the \$5.58 surcharge is \$920.70, rather than \$921.

1 years, the Company had to replace a number of pumps and motors at a cost of \$25,727 incurred
2 between January 2007 and December 2008. The Company filed copies of the supporting invoices
3 with its Response. ARWC divided \$25,727 by 24 months, for a monthly amount for those two years
4 of \$1,027 for repairs and replacement of items that are otherwise capitalized.

5 60. ARWC then added these additional monthly historical costs of \$1,027 to Staff's
6 proposed monthly repair expenses of \$167, for a revised total monthly revenue requirement of
7 \$1,826.16. ARWC used this figure as a basis for determination of its revised surcharge calculations.

8 61. ARWC proposed a two-prong surcharge structure. First, the Company proposed a flat
9 monthly surcharge of \$5.00 added to the monthly minimum of \$11.50. According to the Company,
10 the \$5.00 monthly emergency surcharge would generate \$825 in revenues per month.

11 62. Second, the Company also proposed to charge a commodity surcharge of \$.46 per
12 1000 gallons of water use. Applying the \$.46 emergency commodity surcharge to the total average
13 water usage of 13,185²⁴ equals an additional \$6.07 per customer, per month in revenues for total
14 commodity surcharge revenues of \$1,001.55, on average. Combined with the \$5.00 emergency
15 surcharge, a customer using 13,185 gallons of water will have an increase of \$11.07.

16 63. Adding in the total emergency surcharge of \$11.07 to the average customer's current
17 bill of \$24.69 results in a total average bill of \$35.76. This equals an overall increase to the current
18 average bill of 44.8 percent, an amount significantly less than that originally proposed by the
19 Company, but approximately 15 percent higher than that proposed by Staff.

20 Existence Of An Emergency

21 64. Arizona Attorney General Opinion No. 71-17 (May 27, 1971) states that it is
22 appropriate to grant interim rates, or in this instance an interim surcharge, as an emergency measure
23 when sudden change brings hardship to a company, when the company is insolvent, or when the
24 condition of the company is such that its ability to maintain service pending a formal rate
25 determination is in serious doubt. ARWC has the burden of meeting one of the criteria in order for
26 the Commission to find an emergency exists and grant the Application.

27 ²⁴ At hearing Mr. Watkins testified that the high average usage amount of 13,185 gallons may be a result of the nature of
28 the customer base. Mr. Watkins noted that the area contains larger lots and homes with pools and more affluent
customers. (Tr. at p. 56-57)

1 65. The first justification for finding an emergency is when a sudden change brings
2 hardship to a company. Although Ms. O'Connor testified that ARWC believes all three of the
3 emergency criteria were met,²⁵ none of the evidence presented by ARWC demonstrated any sudden
4 change to the Company's situation thereby creating its current difficulties. The Company has been
5 dealing with system issues and financial difficulties for years, but has only just now applied for an
6 emergency rate increase. We believe that the Company does not meet this criterion.

7 66. The second point, the insolvency of the Company, is not in dispute. Staff agrees with
8 ARWC's assertion that it is insolvent as it is unable to meet its month-to-month financial obligations,
9 and the evidence supports this conclusion.

10 67. Finally, there is the question of whether the condition of the company is such that its
11 ability to maintain service pending a formal rate determination is in serious doubt. Evidence
12 presented by the Company supports the fact that the system is in need of repair or replacement and
13 ARWC is in the process of applying to WIFA for a loan to overhaul the aging water system.

14 68. Staff's position is that, although the Company has experienced system problems in the
15 past and continues to experience problems in the present, none of them rise to the level of an
16 immediate emergency necessitating a surcharge to address those issues. Further, ARWC presented
17 neither specific plans for immediately needed repairs nor any cost estimates for repairs. We also note
18 that the Company has not implemented any water use curtailments because of system, pumping, or
19 water table problems.

20 69. While it is possible that the Company may require additional repairs between now and
21 the issuance of a decision in a permanent rate case, we find that the condition of the company is such
22 that its ability to maintain service pending a formal rate determination is not in serious doubt.

23 70. Although the Company has not met its burden of meeting the first and third criteria
24 supporting a finding of an emergency, it has met the second criterion, and therefore, we find an
25 emergency exists.

26 . . .

27
28

²⁵ Tr. at p. 51.

1 **Emergency Surcharge**

2 71. ARWC asserts that because it faces ongoing problems with system malfunctions, the
3 amount proposed by Staff of \$5.58 per customer, per month is insufficient to meet its cash flow
4 needs. As such, the Company proposes a two-pronged emergency surcharge consisting of a flat
5 \$5.00 monthly surcharge and a commodity surcharge of \$.46 per thousand gallons of usage. Aside
6 from aiding it in addressing its repairs and maintenance expenses, the Company asserts its proposed
7 commodity surcharge is beneficial because it places a greater burden on the customers who use more
8 water.²⁶ This proposal would generate an additional \$1,826.16 per month in revenue, on average.

9 72. Staff's proposed interim emergency surcharge of \$5.58 per customer, per month, until
10 the resolution of a permanent rate case, will provide ARWC with an additional \$921 per month to
11 meet its monthly financial requirements. Staff asserts that its recommendation has the benefit of
12 providing the Company with a sum certain each month allowing ARWC to plan for expenditures.

13 73. We find that Staff's proposal is the more reasonable proposal for the reasons stated
14 below.

15 74. First, Staff's flat emergency surcharge will provide ARWC with a known amount of
16 revenue each month, whereas the use by the Company of a commodity surcharge will cause
17 fluctuations in the Company's monthly revenue making it more difficult for it to plan financially.

18 75. We acknowledge the Company's commodity surcharge proposal and agree that
19 ARWC needs to have a more appropriate commodity rate structure given the issues surrounding the
20 area's decreasing water table. We believe, however, that the question of an increased commodity
21 charge or tiered commodity rate structure will be better addressed in the permanent rate case, after
22 Staff has had an opportunity to address customer water use data and to review more fully the
23 Company's finances in conjunction with the financing application the Company intends to file.

24 76. Second, we are concerned by ARWC's requested inclusion of over \$25,000 in repairs
25 in its revised calculations. This expenditure has created financial issues for the Company, but to
26 allow this amount to be included as part of the monthly repairs and maintenance represents
27

28 ²⁶ Ms. Rowell testified that because the proposed commodity rate is only \$.46 per one thousand gallons, she was not certain how effective the commodity rate would be at encouraging water conservation. (Tr. at p. 89)

1 extraordinary costs that may or may not repeat in the future. Inclusion of this amount (which includes
2 plant that should be treated as rate base) would result in artificially high expense allowance, which is
3 likely to result in over-collection. We note that in 2008, the Company had a total repair and
4 maintenance expense of \$12,747, which is substantially higher than that projected for 2009 by Staff
5 of \$1,998, or the Company's 2009 projections of \$7,373. However, it does not appear that the
6 Company has experienced any extraordinary expenses this year like those incurred in 2008. Mr.
7 Newman testified that ARWC is "in pretty good shape right now," and the last major replacement the
8 Company had to make was in late 2008.²⁷

9 77. Furthermore, as noted in Finding of Fact No. 46, Staff revenue projections of \$3,743
10 per month do not take into account the higher use, and therefore higher revenue, summer months.
11 The higher revenue from the summer season will provide additional revenue for the Company to
12 address system problems and/or other financial obligations.

13 78. A review of this financial information demonstrates that if the Commission were to
14 adopt the Company's revised emergency calculations, it may create a circumstance where ARWC
15 over-collects, requiring the Company to return funds to its customers. The purpose of interim rates is
16 not to provide a profit to the Company, but rather to provide it with sufficient funds to ensure its
17 ability to maintain service pending a formal rate determination.

18 79. Additionally, we note that the Commission last granted the Company a rate increase in
19 Decision No. 56062 (July 13, 1988). In that Decision, the Commission noted that ARWC had not
20 applied for a rate increase since its inception in 1979. In 1988, the 1979 rates produced a negative
21 cash flow, and the Company's financial straits necessitated the filing of a rate application. In that
22 application, ARWC requested an approximate 193.1 percent increase, whereas Staff's recommended
23 rates resulted in an approximate 51.3 percent increase. The Commission found that Staff's
24 recommended rates would generate "cash from operations of \$10, cover the cash expenses and, at the
25 same time, keep the rate shock at a minimum"²⁸ The Commission noted that the rates "should enable
26 Applicant to operate, at least temporarily, in a viable fashion."²⁹

27 ²⁷ Tr. at p. 66.

28 ²⁸ Decision 56062, p. 5.

29 ²⁹ *Id.*

1 80. The Company has waited 21 years before it filed this emergency request, during which
2 time its customer base grew from 10 connections to 165. We surmise that only through this large
3 increase in customers, and thus, a corresponding increase in revenue, has the Company been able to
4 operate on its 1988 rates. But it once again has waited until it is in financial straits to apply for
5 another rate increase.

6 81. We agree with Staff that if ARWC's rates failed to provide a sufficient return to
7 enable it to make repairs or install new plant, then it was incumbent upon the Company's
8 management to address the situation in a timely manner. The Company states that it preferred to
9 spend money on the immediate system problems rather than invest the funds in a rate case. This
10 approach is somewhat short-sighted and has placed the Company in financial difficulty. Staff is
11 correct in concluding that ARWC's customers should not be required to provide a remedy or make
12 the Company whole for management's lack of timely action or guidance. Nevertheless, Staff
13 concludes that ARWC faces a financial emergency that must be addressed.

14 82. Given the totality of the circumstances, we believe that Staff's recommended
15 emergency surcharge of \$5.58 per customer, per month is reasonable and should be adopted.

16 83. Staff recommended that the Company post a \$10,000 bond in order to protect
17 ARWC's customers in the event that in the permanent rate case the interim surcharge is found to be
18 unnecessary or too high. ARWC objects to the amount of the bond, asserting that because it is
19 insolvent, this requirement is onerous. Instead, the Company requests that the bond amount be
20 reduced to \$10.³⁰ Although this is a low amount, the Company notes that, should the interim rates be
21 deemed too high in the permanent rate case, it can then refund the overage to its customers by means
22 of a credit to their monthly bills. Ms. O'Connor notes that she has participated in other matters in
23 which the Commission has adopted this proposal in similar situations.³¹

24 84. Staff witness, Darak Eaddy, testified that Staff is not opposed to lowering the bond
25

26 ³⁰ Tr. at p. 46.

27 ³¹ See for example, *In the Matter of the Application of Naco Water Company, LLC, for an Emergency Rate Increase*,
28 Decision No. 67984 (July 18, 2005); *In the Matter of the Application of Valle Verde Water Company for Implementations
of an Emergency Surcharge and Request for Access to Water Infrastructure and Request for Access to Water
Infrastructure Finance Authority Funds*, Decision No. 70098 (December 21, 2007); and, *In the Matter of the Application
of Sonoita Valley Water Company for an Emergency Rate Increase*, Decision No. 70202 (March 20, 2008).

1 requirement provided that Staff's recommended surcharge is adopted.³²

2 85. We believe that a bond of \$10.00 is adequate under the circumstances of this case.

3 86. We find that Staff's remaining recommendations as set forth in Finding of Fact No. 50
4 are reasonable and shall be adopted.

5 87. We note that the Company has a demonstrated history of intermingling funds between
6 ARWC, ESWC, IWC, and personal funds of the owner. We believe it is reasonable to require Staff
7 to review the Company's books and records in the context of the permanent rate case to review the
8 propriety of the Company's actions.

9
10 **CONCLUSIONS OF LAW**

11 1. ARWC is a public service corporation pursuant to Article XV of the Arizona
12 Constitution and ARS §§ 40-250 and 40-251.

13 2. The Commission has jurisdiction over ARWC and the subject matter of the
14 Application.

15 3. Notice of the Application and hearing was provided in accordance with the law.

16 4. ARWC is facing an emergency within the definition set forth in Attorney General
17 Opinion No. 71-17.

18 5. The interim emergency surcharge recommended by Staff is reasonable and should be
19 implemented.

20 6. Staff's additional recommendations as modified, as well as Finding of Fact No. 87, are
21 reasonable and should be adopted.

22 **ORDER**

23 IT IS THEREFORE ORDERED that Antelope Run Water Company's Application for an
24 interim emergency surcharge is granted, adopting Staff's recommended surcharge of \$5.58 per
25 customer, per month.

26 IT IS FURTHER ORDERED that Antelope Run Water Company shall notify its customers of
27 the interim emergency surcharge and its effective date, in a form acceptable to Staff, by means of an

28 ³² Tr. at p. 110-111.

1 insert in its next regularly scheduled billing.

2 IT IS FURTHER ORDERED that Antelope Run Water Company shall file with Docket
3 Control, as a compliance item in this docket, within 30 days of the effective date of this Decision, a
4 revised rate schedule reflecting the interim emergency surcharge.

5 IT IS FURTHER ORDERED that Antelope Run Water Company shall file an application for
6 a permanent rate increase utilizing a December 31, 2009, test year, no later than April 30, 2010.

7 IT IS FURTHER ORDERED that if Antelope Run Water Company believes it will need to
8 incur debt to address its system deficiencies, it shall file a financing application concurrent with
9 above-ordered permanent rate increase application.

10 IT IS FURTHER ORDERED that Antelope Run Water Company shall post a performance
11 bond of \$10.00 or similar financial instrument, prior to implementing the interim emergency
12 surcharge authorized in this proceeding. Antelope Run Water Company shall provide the original
13 performance bond or financial instrument to the Commission's Business Office for safekeeping and
14 shall file the appropriate copies with Docket Control as a compliance item in this Docket.

15 IT IS FURTHER ORDERED that Antelope Run Water Company shall file with Docket
16 Control, as a compliance item in this docket, no later than December 31, 2009, documentation from
17 the Arizona Department of Water Resources indicating that Antelope Run Water Company is in
18 compliance with the Arizona Department of Water Resources' regulations.

19 IT IS FURTHER ORDERED that should Antelope Run Water Company fail to comply with
20 the timeframes stated herein, the authorized interim emergency rates shall be rescinded and that all
21 emergency funds collected shall be refunded to customers.

22 IT IS FURTHER ORDERED that in Antelope Run Water Company's permanent rate case
23 that Staff shall review accounting treatment and allocation of expenses and plant and any
24 intermingling of funds between Antelope Run Water Company, Bobby B. Watkins d/b/a East Slope
25 Water Company, Indiada Water Company and the companies' owner.

26 ...

27 ...

28 ...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS FURTHER ORDERED that the rates approved herein shall be interim and subject to refund pending resolution of the required permanent rate increase.

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, ERNEST G. JOHNSON, 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.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: ANTELOPE RUN WATER COMPANY

2 DOCKET NO.: W-02327A-09-0284

3 Bonnie O'Connor, President
4 SOUTHWESTERN UTILITY
5 MANAGEMENT, INC. for
6 ANTELOPE RUN WATER COMPANY
7 P.O. Box 85160
8 Tucson, Arizona 85754

9 Janice Alward, Chief Counsel
10 Legal Division
11 ARIZONA CORPORATION COMMISSION
12 1200 W. Washington Street
13 Phoenix, Arizona 85007

14 Steven M. Olea, Director
15 Utilities Division
16 ARIZONA CORPORATION COMMISSION
17 1200 W. Washington Street
18 Phoenix, Arizona 85007

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35