

ORIGINAL

OPEN MEETING ITEM



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



MICHAEL P. KEARNS
Interim Executive Director

DOCKETED

ARIZONA CORPORATION COMMISSION

JUL 16 2009

DOCKETED BY

DATE: JULY 16, 2009

DOCKET NOS: W-02065A-07-0308, W-02065A-07-0309, W-02065A-07-0311,
AND W-02065A-09-0123

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

WILHOIT WATER COMPANY, INC.,
YAVAPAI MOBILE HOME ESTATES SYSTEM
(FINANCING APPLICATION AND
THE AMENDMENT OF DECISION NO. 70384)

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:

JULY 23, 2009

Company has waived the 10 days for filing exceptions.

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:

JULY 28, 2009 AND JULY 29, 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.

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

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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 WILHOIT WATER COMPANY, INC., YAVAPAI
10 MOBILE HOME ESTATES SYSTEM, FOR
11 RETROACTIVE APPROVAL OF A FINANCING
12 APPLICATION.

DOCKET NO. W-02065A-07-0308

13 IN THE MATTER OF THE APPLICATION OF
14 WILHOIT WATER COMPANY, INC., YAVAPAI
15 MOBILE HOME ESTATES SYSTEM, FOR
16 APPROVAL OF A FINANCING APPLICATION.

DOCKET NO. W-02065A-07-0309

17 IN THE MATTER OF THE APPLICATION OF
18 WILHOIT WATER COMPANY, INC., YAVAPAI
19 MOBILE HOME ESTATES SYSTEM, FOR
20 APPROVAL OF A PERMANENT RATE
INCREASE.

DOCKET NO. W-02065A-07-0311

21 IN THE MATTER OF THE APPLICATION OF
22 WILHOIT WATER COMPANY, INC., YAVAPAI
23 MOBILE HOME ESTATES SYSTEM, FOR
24 APPROVAL OF A FINANCING APPLICATION
25 FOR A NEW ARSENIC TREATMENT SYSTEM.

DOCKET NO. W-02065A-09-0123

26 DECISION NO. _____

27 **OPINION AND ORDER**
28 **AMENDING DECISION NO. 70384**

21 DATE OF PRE-HEARING CONFERENCE: May 6, 2009

22 DATE OF HEARING: July 9, 2009

23 PLACE OF HEARING: Phoenix, Arizona

24 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

25 APPEARANCES: Mr. Douglas G. Martin, Martin & Bell, L.L.C.,
26 on behalf of Wilhoit Water Company, Inc.,
27 Yavapai Mobile Home Estates System; and

28 Ms. Ayesha Vohra, Staff Attorney, Legal
Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

1 BY THE COMMISSION:

2 On June 13, 2008, the Arizona Corporation Commission (“Commission”) issued Decision
3 No. 70384 with respect to the first three dockets referred to hereinabove. Therein, the Commission
4 approved a permanent rate increase for Wilhoit Water Company, Inc.’s Yavapai Mobile Home
5 Estates System (“Applicant” or “Company”). The Commission’s Decision also authorized \$36,105
6 in long-term financing for the Company to file an Arsenic Cost Recovery Mechanism (“ACRM”) to
7 recover funds advanced for the installation of an arsenic remediation system that had been paid by
8 Applicant’s parent corporation, Glenarm Land Company, Inc. (“Glenarm”). However, the arsenic
9 remediation system which had been installed for the Company in order to bring the water utility into
10 compliance with the new arsenic standard failed to operate in a satisfactory manner and it became
11 necessary for the Company to replace the ineffective remediation system with a more expensive
12 system.

13 On March 17, 2009, the Company filed a new financing application (Docket No.
14 W-02065A-09-0123) seeking long-term financing approval from the Commission to borrow up to
15 \$320,000 from the Water Infrastructure Financing Authority (“WIFA”) to fund the design, purchase
16 and installation of a new arsenic remediation system which is to be repaid by utilizing an Arsenic
17 Remediation Surcharge Mechanism (“ARSM”). Concurrently with the filing of the Company’s new
18 financing application, Applicant, on March 17, 2009, pursuant to A.R.S § 40-252, filed a request with
19 the Commission to amend Decision No. 70384 not only to approve the WIFA financing, but to
20 authorize the imposition of an ARSM in lieu of an ACRM as originally approved in the Decision.

21 On April 7, 2009, at the Commission’s Staff Open Meeting, the Commission voted to re-open
22 Decision No. 70384 consistent with the Company’s request for the amendment of Decision
23 No. 70384.

24 On April 13, 2009, the Commission’s Utilities Division (“Staff”) filed a Motion to
25 Consolidate and Request for Procedural Conference (“Motion”).

26 On April 23, 2009, by Procedural Order, the above-referenced dockets were consolidated and
27 a procedural conference was scheduled on May 6, 2009.

28 On May 6, 2009, at the procedural conference, Applicant and Staff appeared with counsel.

1 The parties discussed a methodology for amending Decision No. 70384 in light of the Company's
2 recent financing application. The parties further discussed the following: the time required for the
3 preparation of a Staff Report which would address the new financing application by the Company;
4 the time allowed for a Company response; the requirement for a proper form of public notice; and the
5 probable need for a brief hearing on the application and amendment of Decision No. 70384.

6 On May 8, 2009, the Company, after consulting with Staff, filed a draft form of public notice
7 together with a draft cover letter which it proposed to send to its customers further explaining the
8 arsenic problem.

9 By Procedural Order issued May 14, 2009, a hearing on the Company's financing application
10 and the amendment of Decision No. 70384 was scheduled to commence on July 9, 2009. It was
11 further ordered that the Company provide public notice of the proceeding by publication in a
12 newspaper of general circulation and by mailing a copy of the notice as set forth in the Procedural
13 Order to its customer. In response to the public notice, no comments or requests for intervention
14 were received by the Commission.

15 On July 9, 2009, a full public hearing was held before a duly authorized Administrative Law
16 Judge of the Commission at its offices in Phoenix, Arizona. The Company and Staff appeared with
17 counsel. At the conclusion of the hearing, the matter was taken under advisement pending
18 submission of a recommended Opinion and Order to the Commission.

19 * * * * *

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

22 **FINDINGS OF FACT**

23 1. Pursuant to authority granted by the Commission, the Company is engaged in the
24 business of providing public water utilities service in an area east of Highway 89 in Chino Valley in
25 Yavapai County, Arizona.¹

26 _____
27 ¹ According to the Commission's corporation records, the Company is owned and managed by Glenarm, which is owned
28 by the Estate of Robert D. Conlin ("Estate") and David A. Conlin, Jr. Besides operating the Yavapai Mobile Estates
System, the Company also operates the Thunderbird Meadows System in the vicinity of Wilhoit and the Blue Hills No. 3
System in the vicinity of Dewey. Glenarm also operates another water company, the Dells Water Company, Inc.
("Dells") in the vicinity of Prescott.

1 2. On June 13, 2008, the Commission issued Decision No. 70384 establishing new rates
2 and approving long-term financing in the amount of \$36,105, utilizing an ACRM to recover its cost
3 for the installation of an arsenic remediation system.

4 3. Subsequently, the arsenic remediation system which the Company had installed to
5 treat its water in order to bring it into compliance with the Arizona Department of Environmental
6 Quality requirements ("ADEQ") failed, and Applicant was required to pursue another methodology
7 for treating its water.

8 4. Due to the Company's arsenic problem in its water, the Company was permitted to
9 temporarily interconnect its system with that of the City of Prescott ("City"). The City's water meets
10 the requirements of the Safe Drinking Water Act ("SDWA") and does not exceed the current arsenic
11 standard of 10 parts per billion ("ppb").

12 5. In order to address its arsenic problem, Applicant will contract with Fann
13 Environmental to install a system which will be constructed by Siemens at a cost of \$266,200 plus
14 bonding and taxes, for a total of \$280,042.

15 6. On March 17, 2009, the Company filed its application (Docket No.W-02065A-09-
16 0123) seeking Commission approval to secure long-term financing from WIFA in the amount of
17 \$280,042 to pay for the costs of an arsenic remediation system which will enable Applicant to
18 provide water which meets the requirements of ADEQ and the SDWA. Concurrently with the
19 application for financing approval, the Company filed a request with the Commission, pursuant to
20 A.R.S. § 40-252, to amend Decision No. 70384 to allow the Company to utilize an ARSM to repay
21 the WIFA loan, in place of the ACRM authorized in Decision No. 70384.

22 7. On April 7, 2009, at the Commission's Staff Open Meeting, the Commission voted to
23 re-open Decision No. 70384 in response to the Company's request for the amendment of Decision
24 No. 70384.

25 8. On April 13, 2009, Staff filed a Motion with respect to the re-opening of Decision No.
26 70384 in light of the Company's request for financing approval (Docket No. W-02065A-09-0123).

27 9. On April 23, 2009, by Procedural Order, the above-referenced dockets were
28 consolidated and a procedural conference was scheduled to address the issues raised by the Company.

1 10. On May 6, 2009, a procedural conference was held to address the Company's most
2 recent financing application and the methodology for the amendment of Decision No. 70384 to
3 authorize an ARSM in place of the ACRM.

4 11. By Procedural Order issued on May 14, 2009, a hearing was scheduled on the
5 Company's financing application and the Company's request for the amendment of Decision No.
6 70384 after appropriate public notice.

7 12. On May 29, 2009, the Company filed certification that it had provided public notice
8 on the proposed amendment of Decision No. 70384 and its financing application herein by publishing
9 notice in a newspaper of general circulation in its service area on May 27, 2009, and also by mailing
10 a copy of the notice to Applicant's customers as required by the Commission's Procedural Order.

11 13. On June 12, 2009, Staff filed its Staff Report pursuant to the Commission's Procedural
12 Order and therein recommended approval of the Company's application for long-term financing in an
13 amount not to exceed \$280,042 for the new arsenic treatment system and further recommended the
14 amendment of Decision No. 70384 to authorize an ARSM in place of the ACRM previously
15 authorized.

16 14. Staff agrees that the Company should secure long-term funding for the construction of
17 an arsenic treatment system to treat its water. The Company's two wells that serve its customers
18 have arsenic levels exceeding 20 times the legal limit of 10 ppb, and the water being provided now by
19 the City is a temporary fix to the problem.

20 15. The Company has submitted an application to WIFA to fund the costs for the
21 construction and installation of the arsenic treatment system. With bonding and taxes, the cost of the
22 system will total \$280,042, which is to be amortized over a term of 20 years at a subsidized interest
23 rate of 1 percent to 6 percent *per annum*.²

24 16. According to the Engineering Memorandum attached to the Staff Report, the proposed
25 arsenic treatment system is appropriate for the Company and the cost estimate is reasonable. Staff
26 makes no "used and useful" determination of the proposed project items and no particular treatment
27

28 ² Staff indicates that subsidy rates on WIFA loans vary from company to company, but Staff has been informed that it is most likely that Applicant will receive a 1 percent interest rate on this particular loan.

1 should be inferred for rate making or rate base purposes in the future.

2 17. Staff's witness, Mr. Pedro Chavez, described the difference between an ACRM, which
3 recovers costs previously expended by a company and an ARSM, which provides a method to
4 determine the surcharge amount necessary to pay debt service obligations on any authorized
5 financing and the additional income taxes resulting from the surcharge revenue.

6 18. With the imposition of an ARSM in place of an ACRM, the Company will have to file
7 a separate request with Staff to determine the surcharge rates after it obtains its financing from
8 WIFA.

9 19. Staff has determined that an ARSM is necessary for the Company to secure sufficient
10 financing to make the additional improvements to its system to meet the of ADEQ requirements of
11 10 ppb maximum contaminant level for arsenic.

12 20. According to the Staff Report, in order for the Company to maintain the same level of
13 cash flow which results from Decision No. 70384 to meet the debt requirements of a \$280,042 WIFA
14 loan, Applicant will need additional annual revenues totaling \$18,818. Based on Staff's calculations,
15 this would equate to a monthly surcharge of \$12.45 for a 5/8" x 3/4" meter customer.³

16 21. In addition to recommending approval of the Company's request for long-term
17 financing in the amount of \$280,042 and the authorization for the use of an ARSM in place of the
18 ACRM previously approved in Decision No. 70384, Staff is also recommending that the Company
19 file, by March 31, 2010,⁴ with the Commission's Docket Control, as a compliance item in this docket,
20 a copy of the ADEQ Certificate of Approval of Construction ("AOC") for the new arsenic
21 remediation system; and that the Company file, by December 31, 2009, with the Commission's
22 Docket Control, as a compliance item in this docket, documentation issued by the Arizona
23 Department of Water Resources ("ADWR") indicating that the Company's System Water Plan meets
24 ADWR requirements.

25 22. The Company has indicated that it agrees with Staff's recommendations herein and
26 will comply with the compliance requirements recommended by Staff.

27 _____
28 ³ See Schedule PMC-1 attached to the Staff Report for projected surcharge rates according to meter size.

⁴ This date resulted from an amendment to the Staff Report during the hearing.

1 IT IS FURTHER ORDERED that such authority is expressly contingent upon the Wilhoit
2 Water Company, Inc., Yavapai Mobile Home Estates System's use of the proceeds for the purposes
3 set forth in its application.

4 IT IS FURTHER ORDERED that the Wilhoit Water Company, Inc., Yavapai Mobile Home
5 Estates System is hereby authorized to engage in any transaction and to execute any documents
6 necessary to effectuate the authorization granted hereinabove.

7 IT IS FURTHER ORDERED that the Wilhoit Water Company, Inc., Yavapai Mobile Home
8 Estates System shall file, within 60 days of the execution of the loan documents, with the
9 Commission's Docket Control, as a compliance item in this docket, copies of all executed documents
10 associated with the financing authorized herein.

11 IT IS FURTHER ORDERED that the financing approved herein shall not guarantee or imply
12 any specific treatment of any capital addition for rate base or rate making purposes.

13 IT IS FURTHER ORDERED that the Wilhoit Water Company, Inc., Yavapai Mobile Home
14 Estates System shall file by March 31, 2010, with the Commission's Docket Control, as a compliance
15 item in this docket, a copy of the ADEQ AOC for the construction of its arsenic treatment facilities.

16 IT IS FURTHER ORDERED that the Wilhoit Water Company, Inc., Yavapai Mobile Home
17 Estates System shall file, by December 31, 2009, with the Commission's Docket Control, as a
18 compliance item in this docket, documentation from ADWR that the Company's System Water Plant
19 has met ADWR requirements.

20 IT IS FURTHER ORDERED that Decision No. 70384 shall be amended to authorize Wilhoit
21 Water Company, Inc.'s, Yavapai Mobile Home Estates System to incorporate an Arsenic
22 Remediation Surcharge Mechanism in place of the Arsenic Cost Recovery Mechanism as originally
23 authorized therein and as set forth herein below.

24 IT IS FURTHER ORDERED that upon approval by WIFA of the long-term financing for
25 Wilhoit Water Company, Inc.'s, Yavapai Mobile Home Estates System and the Company's filing of
26 the appropriate WIFA loan documentation, Staff shall calculate the actual surcharge rates and file the
27 appropriate surcharge amount to be collected from customers according to their meter size within
28 30 days of the filing.

1 IT IS FURTHER ORDERED that surcharge rates shall not go into effect until the first day
2 of the month following Staff's filing and notice has been provided to customers in a form approved
3 by Staff.

4 IT IS FURTHER ORDERED that all other provisions of Decision No. 70384 remain in effect.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
7
8

9 CHAIRMAN _____ COMMISSIONER

10
11 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

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

17 _____
18 MICHAEL P. KEARNS
19 INTERIM EXECUTIVE DIRECTOR

20 DISSENT: _____

21 DISSENT: _____

22 MES:db

23
24
25
26
27
28

1 SERVICE LIST FOR: WILHOIT WATER COMPANY, INC., YAVAPAI MOBILE
2 HOME ESTATES SYSTEM

3 DOCKET NO.: W-02065A-07-0308, W-02065A-07-0309, W-02065A-07-0311,
4 and W-02065A-09-0123

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