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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

2009 JUL 21 A 11: 14
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED
JUL 21 2009

DOCKETED BY *MW*

IN THE MATTER OF THE APPLICATION OF
PINE WATER COMPANY FOR A
DETERMINATION OF THE CURRENT FAIR
VALUE OF ITS UTILITY PLANT AND
PROPERTY AND FOR INCREASES IN ITS
RATES AND CHARGES BASED THEREON FOR
UTILITY SERVICE AND FOR APPROVAL TO
INCUR LONG-TERM DEBT.

DOCKET NO. W-03512A-03-0279

PROCEDURAL ORDER

BY THE COMMISSION:

On August 10, 2004, the Arizona Corporation Commission ("Commission") issued Decision No. 67166 which approved a rate increase and authority to incur long-term debt for Pine Water Company ("Pine Water" or "Company"), and imposed certain other conditions on the Company. One of the conditions imposed on Pine Water by Decision No. 67166 was a requirement that the Company file a rate application by June 1, 2008, using a 2007 test year.

On February 27, 2008, Pine Water filed a Request for Extension of Deadline to File Rate Case. The Company argued that its extension request was justified because it was working with the Pine Strawberry Water Improvement District ("PSWID" or "District") on a deep well project in Strawberry, Arizona, and that it had begun to explore the possible acquisition of another deep well in Pine, Arizona. Pine Water claimed that if one or both of the projects are successful, a rate filing would follow to allow the Company the opportunity to recover its investment. The Company further asserted that the earlier filing deadline set forth in Decision No. 67166 would not enable it to include the investments in either of the deep well projects, and would result in a "pancaking" of rate applications. Pine Water stated that the public interest would not be served by requiring multiple rate applications and the Company therefore requested that the rate case filing deadline be extended by one year, until June 1, 2009.

1 On August 6, 2008, the Commission issued Decision No. 70452 which granted the Company
2 an extension of time, until June 1, 2009, to file a rate application in accordance with the requirement
3 set forth in Decision No. 67166. Decision No. 70452 also stated that no additional extensions would
4 be granted absent extraordinary circumstances.

5 On December 15, 2008, Pine Water filed a Second Request for Modification of Deadline to
6 File Rate Case. The Company sought to vacate entirely the rate case filing requirement given the
7 pending arbitration and litigation between Pine Water and the PSWID regarding the K2 Well project
8 and a condemnation action by the PSWID in Gila County Superior Court. Pine Water claimed that
9 neither the Company nor its customers would benefit from the filing of a rate case until the cloud of
10 the condemnation proceeding has been removed. Alternatively, Pine Water requested that the
11 Company should be ordered only to file a rate case within 6 months of a final determination that the
12 PSWID will not condemn the Company's assets.

13 On January 28, 2009, Staff filed a Memorandum recommending denial of the request to
14 vacate the rate case filing requirement. Staff recommended instead that the filing date be amended to
15 require a rate application no later than June 1, 2010, using a 2009 test year. Staff acknowledged that
16 the pending arbitration and litigation between the Company and the PSWID would likely be costly,
17 and that requiring a rate filing in 2009 would be cost prohibitive for Pine Water given its current
18 financial circumstances. Staff stated that the arbitration and litigation are likely to be lengthy and if
19 the Company's financial health does not improve, a rate case may be necessary before those court
20 proceedings conclude. Staff therefore recommended a one-year extension of the current rate case
21 filing requirement, but that no additional extensions be granted.

22 On February 5, 2009, Pine Water filed a Notification of Acceptance of Staff
23 Recommendations Concerning Pine Water Company's Second Request for Modification of Deadline
24 to File Rate Case. In its filing, the Company accepted Staff's recommendation to limit the requested
25 extension for only one additional year.

26 On March 17, 2009, the Commission issued Decision No. 70839 granting Pine Water an
27 additional one-year extension of the rate application filing requirement, until June 1, 2010. However,
28 Decision No. 70839 also directed Staff to conduct a financial and rate review of the Company and

1 required Pine Water to submit all data necessary to facilitate the rate review within 60 days, and for
2 Staff to file a Staff Report within 90 days thereafter.

3 On May 15, 2009, Pine Water filed a Request for Stay asking that all outstanding compliance
4 obligations be immediately stayed, including the 60-day rate review data submission requirements
5 described in Decision No. 70839. The Company claims that the Gila County Superior Court granted
6 the PSWID immediate possession of the Pine Water system, effective May 22, 2009, and that the
7 Company is ready to transfer its assets. Pine Water noted, however, that the District notified the
8 Company on May 13, 2009 that it was unable to post the bond required by the court and could
9 therefore not take possession of the Pine Water system on May 22, 2009. The Company argued that
10 it would not be in the public interest for it and Staff to expend resources conducting a rate review for
11 assets that are about to be taken over by the PSWID.

12 On June 9, 2009, the PSWID filed a Response to Pine Water's Request for Stay. The District
13 states that a change of venue of the condemnation proceeding, to the Yavapai County Superior Court,
14 occurred on May 22, 2009, and the District filed in the new venue, on May 28, 2009, a Motion to
15 Vacate Order for Immediate Possession. The PSWID contends that Pine Water should not be granted
16 a stay of its compliance obligations at the Commission, including the rate review requirement, based
17 on the motion pending before the Yavapai County Superior Court. The District asserts that the
18 Company is being uncooperative and has avoided proving information to the PSWID.

19 On June 11, 2009, Pine Water filed a Reply in Support of Request for Stay. According to the
20 Company, the District signed an Order for Immediate Possession that was entered by the Gila County
21 Superior Court on May 5, 2009, and which Order required the PSWID to post a \$3,200,000 bond and
22 take possession of the system on May 22, 2009. Pine Water claims that the District failed to take
23 possession as required by the court's Order, and that the Company filed a Motion for Sanctions
24 against the District as a result. Pine Water contends that the District's actions have wasted the court's
25 time by failing to comply with the terms of the Order have caused the Company to incur thousands of
26 dollars of attorney fees related to negotiating and executing the Order for Immediate Possession.
27 Pine Water argues that the Request for Stay is appropriate considering the District's actions, and that
28 the time and resources of the Commission, the Commission's Staff, and the Company should not be

1 wasted at the same time the PSWID continues to seek condemnation of Pine Water's assets after
2 failing to comply with the court's Order for Immediate Possession.

3 IT IS THEREFORE ORDERED that a procedural conference shall be scheduled for
4 August 5, 2009, at 11:00 a.m., at the offices of the Commission, Hearing Room 1, 1200 West
5 Washington Street, Phoenix, Arizona 85007. The purpose of the conference is to discuss the
6 appropriate procedures for addressing the rate review requirements established in Decision No.
7 70839, the status of the condemnation proceedings in Yavapai County Superior Court, and any other
8 relevant procedural issues.

9 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
10 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
11 hearing.

12 DATED this 21st day of July, 2009.



DWIGHT D. NODES
ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

16 Copies of the foregoing delivered/mailed
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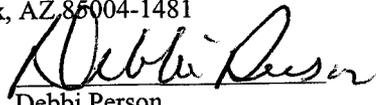
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