



0000101723

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

AUG 06 2009

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

DOCKETED BY	nr
-------------	----

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

DOCKET NO. W-02065A-07-0308

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

DOCKET NO. W-02065A-07-0309

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

DOCKET NO. W-02065A-07-0311

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

DOCKET NO. W-02065A-09-0123

DECISION NO. 71235

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

- DATE OF PRE-HEARING CONFERENCE: May 6, 2009
- DATE OF HEARING: July 9, 2009
- PLACE OF HEARING: Phoenix, Arizona
- ADMINISTRATIVE LAW JUDGE: Marc E. Stern
- APPEARANCES: Mr. Douglas G. Martin, Martin & Bell, L.L.C., on behalf of Wilhoit Water Company, Inc., Yavapai Mobile Home Estates System; and  
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 customers. 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.<sup>1</sup>

26 \_\_\_\_\_  
27 <sup>1</sup> 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*.<sup>2</sup>

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 <sup>2</sup> 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.<sup>3</sup>

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,<sup>4</sup> 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 <sup>3</sup> See Schedule PMC-I attached to the Staff Report for projected surcharge rates according to meter size.

<sup>4</sup> 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 Plan  
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.

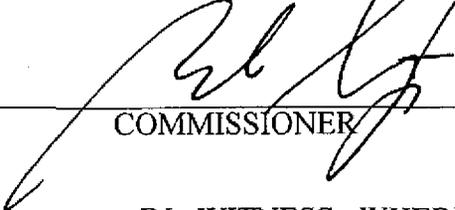
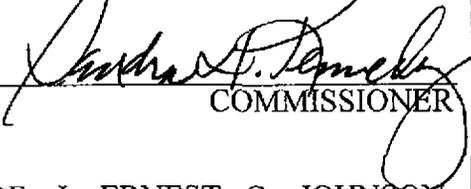
24 IT IS FURTHER ORDERED that upon approval by WIFA of the long-term financing for  
25 Wilhoit Water Company, Inc.'s, Yavapai Mobile Home Estates System and the Company's filing of  
26 the appropriate WIFA loan documentation, Staff shall calculate the actual surcharge rates and file the  
27 appropriate 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 by Wilhoit Water Company, Inc.'s  
3 Yavapai Mobile Home Estates System to its customers in a form approved 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  COMMISSIONER  COMMISSIONER  COMMISSIONER  
11  
12

13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
14 Executive Director of the Arizona Corporation Commission,  
15 have hereunto set my hand and caused the official seal of the  
16 Commission to be affixed at the Capitol, in the City of  
17 Phoenix, this 6th day of August, 2009.

18  
19   
20 ERNEST G. JOHNSON  
21 EXECUTIVE DIRECTOR

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

23 DISSENT: \_\_\_\_\_  
24 MES:db

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

5 Douglas G. Martin  
6 Jim West  
7 MARTIN & BELL, L.L.C.  
8 365 East Coronado Road, Suite 200  
9 Phoenix, Arizona 85004

10 Janice Alward, Chief Counsel  
11 Legal Division  
12 ARIZONA CORPORATION COMMISSION  
13 1200 West Washington Street  
14 Phoenix, AZ 85007

15 Ernest G. Johnson, Director  
16 Utilities Division  
17 ARIZONA CORPORATION COMMISSION  
18 1200 West Washington Street  
19 Phoenix, AZ 85007

20  
21  
22  
23  
24  
25  
26  
27  
28