

**ORIGINAL  
EXCEPTION**

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2009 SEP 11 A 11:47

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

**BEFORE THE ARIZONA CORPORATION COMMISSION**

10 IN THE MATTER OF THE APPLICATION  
11 OF FAR WEST WATER & SEWER  
12 COMPANY, AN ARIZONA CORPORATION,  
13 FOR APPROVAL OF INTERIM RATES AND  
CHARGES.

DOCKET NO: WS-03478A-08-0608

**FAR WEST WATER & SEWER COMPANY'S  
EXCEPTIONS TO  
RECOMMENDED OPINION AND ORDER**

**September 11, 2009**

Arizona Corporation Commission  
**DOCKETED**

SEP 11 2009

DOCKETED BY

1 **INTRODUCTION**

2 Pursuant to A.A.C. R14-3-110(B), Applicant, Far West Water & Sewer Company  
3 (“Far West” or the “Company”) submits these Exceptions to the Recommended Opinion  
4 and Order (“ROO”) dated September 2, 2009. Despite having demonstrated that an  
5 emergency exists that warrants the implementation of interim rates under the legal standard  
6 established by Arizona Attorney General Opinion 71-17, and subsequently followed by the  
7 Arizona Corporation Commission (“Commission”) in recent decisions and orders (e.g.  
8 Decision No. 70667, issued December 24, 2008), the ROO nonetheless concludes that  
9 granting interim rate relief to Far West is not in the public interest. However, the bulk of  
10 the issues raised in the ROO as reasons to deny interim rate relief are not relevant to the  
11 narrow issue in this proceeding: whether the Company is facing an emergency and, if so,  
12 what relief is appropriate.

13 Consequently, the ROO should be rejected, and the matter remanded back to the  
14 Administrative Law Judge with instructions to immediately prepare an order that  
15 authorizes the Company to collect rates on an interim basis (and subject to refund) pending  
16 the completion of its pending rate case. The Company further asks that its pending rate  
17 case, which has been delayed due to its interim rate application, be immediately set for  
18 hearing.

19 **DISCUSSION**

20 As stated in the ROO, Far West operates water and wastewater systems in Yuma  
21 County, in an unincorporated area east of the City of Yuma. It provides water service to  
22 approximately 15,000 customers, and sewer service to approximately 7,300 customers.  
23 The sewer division is the subject of Far West’s application for permanent rate increases,  
24 which was filed on August 29, 2008. Due to rapidly deteriorating financial conditions, Far  
25 West filed an application for emergency interim rate increases on December 19, 2008. The  
26 interim rate increases would be temporary in nature pending the completion of the

1 Company's permanent rate case, and would be subject to refund if the permanent rates  
2 ultimately approved by the Commission turn out to be less than the interim rates.

3 The requested emergency relief is authorized under Arizona law and within the  
4 scope of the Commission's regulatory authority. Under Arizona Attorney General Opinion  
5 71-17, interim rate relief can be granted when: (1) the Commission is unable to grant  
6 permanent rate relief within a reasonable time, (2) there is sudden change that results in  
7 hardship, (3) a utility is insolvent, or (4) the condition of the utility is such that its ability to  
8 maintain service pending a formal rate determination is in serious doubt. The record  
9 contains substantial evidence that Far West is insolvent and faces a serious emergency.

10 Unaudited financial information for 2008 shows that Far West's sewer division  
11 suffered a net loss of over \$2.7 million. Moreover, on a company-wide basis, Far West  
12 suffered a loss of over \$972,000.<sup>1</sup> In fact, Far West ended 2008 with a positive cash flow  
13 of only \$13,058.<sup>2</sup> And the situation has deteriorated further this year. The Company also  
14 has a projected cash flow shortage in excess of \$6.4 million for 2009.<sup>3</sup> Staff's witness  
15 testified the sewer division had a loss in excess of \$2.7 million last year, and that the  
16 Company had a loss of nearly \$1 million.<sup>4</sup> Because Far West can no longer pay its debts  
17 as they come due in the ordinary course of business, it meets the definition of insolvency.<sup>5</sup>

18 In fact, even the ROO recognizes and concludes that the Company is insolvent:

19 Thus, expanding the analysis beyond normal operations, the  
20 Company is insolvent, which is one of the conditions that can  
21 support an application for interim rate relief.

22 ROO at 26.

23 Ignoring Staff's testimony<sup>6</sup> that "fault" is not an issue in an emergency rate

24 <sup>1</sup> Exh. S-1 at Sch. GWB-1; Capestro Rb. at 19, 20; Bourassa Rb. Exh. 1.

25 <sup>2</sup> Exh. S-3. Tr. at 892. Bourassa Rb. Exh. 1.

26 <sup>3</sup> Exh. S-3.

<sup>4</sup> Exh. S-1.

<sup>5</sup> Tr. at 122, 893, 898, 1132-33, 1231-33.

<sup>6</sup> Tr. at 1232.

1 proceeding, the ROO goes on to find fault with Far West's past and current management  
2 decisions, and would deny interim rate relief based on the following reasons: (1) unpaid  
3 bills are overwhelmingly attributable to the construction project for sewer plant upgrades,  
4 (2) the Company has positive cash flow due to its water division's operations, (3) there is  
5 no "sudden" change resulting in a hardship due to Company mismanagement, (4) affiliate  
6 transactions need investigation, (5) the Company's shareholders' and affiliates have not  
7 proved an inability to contribute equity, (6) the lack of a detailed plan for how the  
8 Company will its sewer construction project, and (7) a loss of confidence in current  
9 management's ability to complete the sewer project and operate the Company to the  
10 benefit of the ratepayers. ROO at 26-28.

11 The Company does not agree with these reasons. More importantly, however, they  
12 are irrelevant to the issue of whether interim rate relief should be authorized. As the ROO  
13 acknowledges, the record demonstrates that the Company is insolvent and, therefore, has  
14 met its burden of proof for interim rate relief. Far West is not seeking a "bail out" from  
15 ratepayers. It is simply asking that ratepayers begin providing revenue to pay debt service  
16 on plant that the Company had to build in order to provide service to its customers, which  
17 is a legitimate cost of service. The denial of interim rate relief will exacerbate the  
18 Company's current financial condition, leading to alternatives that could be far less  
19 equitable to ratepayers.

### 20 CONCLUSION

21 Far West's dire financial condition, coupled with its immediate need for cash flow  
22 to complete the sewer treatment plant upgrades as ordered by ADEQ, and to pay creditors,  
23 satisfies the criteria for interim rate relief. Such interim relief is further supported by  
24 Commission decisions, including the 2008 decision granting Arizona Public Service  
25 Company ("APS") interim rate relief to maintain its credit rating despite this agency's  
26 concerns about APS management. The goal in that case was to enable the utility to

1 maintain its financial viability through a temporary rate increase. Given that Far West's  
2 financial situation is far direr than APS's, interim rates should be granted in this case as  
3 well.

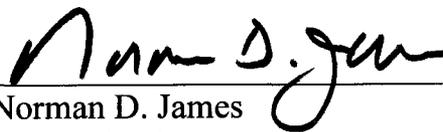
4 If the Commission ultimately determines that interim rate relief is not warranted,  
5 then it is imperative that the permanent rate case be set for hearing and expedited so that  
6 the Company can obtain the cash flow it needs to provide adequate utility service to its  
7 customers.

8 DATED this 11th day of September, 2009.

9 FENNEMORE CRAIG, P.C.

10

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By: 

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**ORIGINAL** and 13 copies filed  
15 this 11th day of September, 2009 to:

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