

OPEN MEETING ITEM



0000103423

EXECUTIVE DIRECTOR

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

ORIGINAL



ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

FEB 11 2010

DATE: FEBRUARY 11, 2010

DOCKET NOS.: W-02065A-07-0306, W-02065A-07-0307,
W-02065A-07-0312 AND W-02065A-08-0138

DOCKETED BY

TO ALL PARTIES:

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

WILHOIT WATER COMPANY, INC.,
THUNDERBIRD MEADOWS SYSTEM
(EXTENSION OF TIME DEADLINE
CONTAINED IN DECISION NO. 71234)

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:

FEBRUARY 22, 2010

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:

MARCH 2, 2010 AND MARCH 3, 2010

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
2010 FEB 11 A 10 52
AZ CORP COMMISSION
DOCKET CONTROL

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 **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.,
10 THUNDERBIRD MEADOWS SYSTEM, FOR
11 RETROACTIVE APPROVAL OF A FINANCING
12 APPLICATION.

DOCKET NO. W-02065A-07-0306

13 IN THE MATTER OF THE APPLICATION OF
14 WILHOIT WATER COMPANY, INC.,
15 THUNDERBIRD MEADOWS SYSTEM, FOR
16 APPROVAL OF A FINANCING APPLICATION.

DOCKET NO. W-02065A-07-0307

17 IN THE MATTER OF THE APPLICATION OF
18 WILHOIT WATER COMPANY, INC.,
19 THUNDERBIRD MEADOWS SYSTEM, FOR
20 APPROVAL OF A PERMANENT RATE
21 INCREASE

DOCKET NO. W-02065A-07-0312

22 IN THE MATTER OF THE APPLICATION OF
23 WILHOIT WATER COMPANY, INC.,
24 THUNDERBIRD MEADOWS SYSTEM, FOR
25 THE APPROVAL OF A FINANCING
26 APPLICATION.¹

DOCKET NO. W-02065A-08-0138

DECISION NO. _____

ORDER EXTENDING TIME
DEADLINE CONTAINED IN
DECISION NO. 71234

27 Open Meeting
28 March 2 and 3, 2010
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

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

FINDINGS OF FACT

1. On August 6, 2009, the Arizona Corporation Commission ("Commission") issued

¹ On February 4, 2009, this Docket was closed administratively.

1 Decision No. 71234 which approved the application of Wilhoit Water Company, Inc. ("Company" or
2 "Applicant") on behalf of its Thunderbird Meadows System ("Thunderbird") for a rate increase and
3 for financing approval to fund the costs for additional storage facilities.

4 2. The Commission's approval of the Company's financing application was conditioned
5 upon the Company filing by December 31, 2009, with the Commission's Docket Control, as a
6 compliance item in this docket, a copy of the Arizona Department of Environmental Quality
7 ("ADEQ") Certificate of Approval to Construct ("ATC") for the additional storage facilities; and
8 upon the Company filing by December 31, 2010, in a like fashion, a copy of the ADEQ Certificate of
9 Approval of Construction ("AOC") for the additional storage.

10 3. On December 11, 2009, the Company filed a Motion for an Extension of Time
11 ("Motion"), until May 1, 2010, for approval by the Commission to file the ADEQ ATC. The
12 Company explained that although the Company had recently learned its loan had been approved and
13 that it expected the loan to close soon, that without the loan funds, the Company lacks the resources
14 to retain a firm to design and construct the new storage facilities. Subsequently, the Company's
15 consultant also requested a similar extension of time to file a copy of the ADEQ AOC for the new
16 storage facilities.

17 4. On January 29, 2010, the Commission's Utilities Division ("Staff") filed a Staff
18 Memorandum in response to the Motion in which Staff recommended approval of an extension until
19 December 31, 2010, in order for the Company to file a copy of the ADEQ ATC, and until May 1,
20 2011, to file a copy of the ADEQ AOC for the additional storage facilities.

21 5. Staff stated that it had recently contacted the Executive Director and a Senior Loan
22 Officer of the Water Infrastructure Authority ("WIFA") who advised Staff that although the loan had
23 been approved on October 14, 2009, it had not closed as of January 11, 2010, and that recent changes
24 related to the federal minimum wage laws must be included in the Company's construction contracts
25 and this would delay the processing and the closing of the loan.

26 6. Staff contacted the Company's consultant who indicated that the Company is
27 concerned with the effects of changes to the federal minimum wage laws which could possibly
28 increase the project's cost by 15 to 20 percent and these costs were not considered when the loan for

1 the project was approved in Decision No. 71234. As a result of the changes to the laws, the
2 Company believes that the authorized loan of \$145,877 may be insufficient to fund the project.

3 7. The Company's consultant indicated that he has been in contact with Commission
4 Staff concerning how to address the possible funding shortfall.

5 8. Staff is concerned with the Company's failure to meet the compliance requirements of
6 Decision No. 71234 because the Company has to close on the loan, contract for the construction
7 work, and apply for and secure the ADEQ ATC in barely three months time. Then the Company will
8 have to complete the construction of the facilities and secure the ADEQ AOC to further comply with
9 Decision No. 71234. Staff is uncertain whether the Company can complete the project in the period
10 of time requested by the Company. Additionally, Staff believes that if the authorized funding of
11 \$145,877 is insufficient, the Company should promptly apply for additional financing authorization,
12 if necessary, since an infrastructure surcharge mechanism was previously approved in Decision No.
13 71234 to repay any financing which is approved by the Commission in this matter.

14 9. Under the circumstances, the Company should be granted an extension of time until
15 December 31, 2010, in which to file a copy of its ADEQ ATC as recommended by Staff, and until
16 May 1, 2011, to file a copy of the ADEQ AOC.

17 **CONCLUSIONS OF LAW**

18 1. The Company is a public service corporation within the meaning of Article XV of the
19 Arizona Constitution and A.R.S. §§ 40-250 and 40-251.

20 2. The Commission has jurisdiction over Applicant and of the subject matter of the
21 extension request addressed herein.

22 3. Staff's recommendation for the extension of time to file the Company's ADEQ AOC
23 should be adopted.

24 ...
25 ...
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

ORDER

IT IS THEREFORE ORDERED that the Wilhoit Water Company, Inc. on behalf of its Thunderbird Meadows System shall be granted an extension of time until December 31, 2010, to file its ADEQ ATC and until May 1, 2011, to file its ADEQ AOC for the storage facilities as required by Decision No. 71234.

IT IS FURTHER ORDERED that the Wilhoit Water Company, Inc. on behalf of its Thunderbird Meadows System shall be granted no further extensions in this matter, absent good cause shown.

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 _____, 2010.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

1 SERVICE LIST FOR:

WILHOIT WATER COMPANY, INC.,
THUNDERBIRD MEADOWS SYSTEM

2

3 DOCKET NOS.:

W-02065A-07-0306, W-02065A-07-0307,
W-02065A-07-0312 and W-02065A-08-0138

4 Douglas G. Martin

Jim West

5 MARTIN & BELL, L.L.C.

365 East Coronado Road, Suite 200

6 Phoenix, AZ 85004-1560

Attorney for Wilhoit Water Company

7

Daniel E. Furnas

8 9432 Steven Trail

Wilhoit, AZ 86332

9

Janice Alward, Chief Counsel

10 Legal Division

ARIZONA CORPORATION COMMISSION

11 1200 West Washington Street

Phoenix, AZ 85007

12

Steven M. Olea, Director

13 Utilities Division

ARIZONA CORPORATION COMMISSION

14 1200 West Washington Street

Phoenix, AZ 85007

15

16

17

18

19

20

21

22

23

24

25

26

27

28