

OPEN MEETING ITEM
ORIGINAL

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



0000103426

ARIZONA CORPORATION COMMISSION

DATE: FEBRUARY 11, 2010
DOCKET NOS.: W-02065A-07-0313 AND W-02065A-08-0139

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.,
BLUE HILLS NO. 3 SYSTEM
(EXTENSION OF TIME DEADLINE
CONTAINED IN DECISION NO. 70658)

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 10:58

AZ CORP COMMISSION
DOCKET CONTROL

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

Arizona Corporation Commission

DOCKETED

FEB 11 2010

DOCKETED BY

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 SBernal@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
9 OF WILHOIT WATER COMPANY, INC. ON
10 BEHALF OF ITS BLUE HILLS NO. 3 SYSTEM
11 FOR A PERMANENT RATE INCREASE.

DOCKET NO. W-02065A-07-0313

12 IN THE MATTER OF WILHOIT WATER
13 COMPANY, INC. ON BEHALF OF ITS BLUE
14 HILLS NO. 3 SYSTEM FOR APPROVAL OF A
15 FINANCING APPLICATION.

DOCKET NO. W-02065A-08-0139

DECISION NO. _____

ORDER EXTENDING TIME
DEADLINE CONTAINED IN
DECISION NO. 70658

13 Open Meeting
14 March 2 and 3, 2010
15 Phoenix, Arizona

16 **BY THE COMMISSION:**

17 * * * * *

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

20 **FINDINGS OF FACT**

21 1. On December 22, 2008, the Arizona Corporation Commission ("Commission") issued
22 Decision No. 70658 which approved the application of Wilhoit Water Company, Inc. ("Company" or
23 "Applicant") on behalf of its Blue Hills No. 3 System ("Blue Hills") for a rate increase and for
24 financing approval to fund the costs for an arsenic treatment system.

25 2. A condition of the Commission's approval for the Company's financing application
26 required the Company to do the following: to file by December 31, 2009, with the Commission's
27 Docket Control, as a compliance item in this docket, a copy of the Arizona Department of
28 Environmental Quality ("ADEQ") Certificate of Approval of Construction ("AOC") for the arsenic
treatment system.

1 3. On December 11, 2009, the Company filed a Motion for an Extension of Time
2 ("Motion") until August 1, 2010, for approval by the Commission to file the ADEQ AOC. The
3 Company explained that although the Company expected the loan to close by the end of 2009,
4 without the loan funds, the Company lacks the resources to retain a firm to design and construct the
5 arsenic treatment system.

6 4. On January 25, 2010, the Commission's Utilities Division ("Staff") filed a Staff
7 Memorandum in response to the Motion in which Staff recommended approval of an extension until
8 December 31, 2010, in order for the Company to file a copy of the ADEQ AOC.

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

14 6. Staff contacted the Company's consultant who indicated that the Company is
15 concerned with the effects of changes to the federal minimum wage laws which could possibly
16 increase the project's cost by 15 to 20 percent and these costs were not considered when the loan for
17 the project was approved in Decision No. 70658. As a result of the changes to the laws, the
18 Company believes that the authorized loan of \$40,000 may be insufficient to fund the project.

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

21 8. Staff is concerned with the Company's failure to meet this compliance requirement of
22 Decision No. 70658. Because the Company has to close on the loan, apply for and secure the ADEQ
23 Certificate of Approval to Construct ("ATC"), contract for the construction work, complete
24 construction, and secure the ADEQ AOC, Staff is uncertain whether the Company can complete the
25 project in the period of time requested by the Company. Staff believes that if the authorized funding
26 of \$40,000 is insufficient, the Company should promptly apply for additional financing authorization,
27 if necessary, since a surcharge mechanism was previously approved in Decision No. 70658 to repay
28 any financing which is approved by the Commission in this matter.

ORDER

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

IT IS THEREFORE ORDERED that the Wilhoit Water Company, Inc. on behalf of its Blue Hills No. 3 System shall be granted an extension of time until December 31, 2010, to file its ADEQ AOC for the arsenic removal system as required by Decision No. 70658.

IT IS FURTHER ORDERED that the Wilhoit Water Company, Inc. on behalf of its Blue Hills No. 3 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.,
BLUE HILLS NO. 3 SYSTEM

2

3 DOCKET NOS.:

W-02065A-07-0313 AND W-02065A-08-0139

4

5 Douglas G. Martin
6 MARTIN & BELL, L.L.C.
7 365 East Coronado Road, Suite 200
8 Phoenix, AZ 85004-1560
9 Attorneys for Wilhoit Water Company, Inc.

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

15 Steve M. Olea, 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

29

30

31

32

33

34

35