



0000119310

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission
DOCKETED

NOV -1 2010

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

DOCKETED BY	ne
-------------	----

IN THE MATTER OF THE APPLICATION OF
MIRABELL WATER COMPANY FOR
AUTHORITY TO INCUR LONG-TERM DEBT.

DOCKET NO. W-02368A-10-0280

IN THE MATTER OF THE APPLICATION OF
MIRABELL WATER COMPANY FOR AN
EMERGENCY RATE INCREASE.

DOCKET NO. W-02368A-10-0286

Decision No. 71943

OPINION AND ORDER

DATE OF HEARING:

August 10, 2010, August 18, 2010, and September 9,
2010 (Procedural Conferences), September 16, 2010
(Evidentiary Hearing)

PLACE OF HEARING:

Tucson, Arizona

ADMINISTRATIVE LAW JUDGE:

Belinda A. Martin

APPEARANCES:

Mr. Morton Freedman, Owner, on behalf of Mirabell
Water Company; and

Ms. Bridget A. Humphrey, Staff Attorney, Legal
Division, on behalf of the Utilities Division of the
Arizona Corporation Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

* * * * *

FINDINGS OF FACT

1. On July 9, 2010, Mirabell Water Company, ("Mirabell" or "Company"), filed with the
Commission an application for authority to incur \$11,000 in long-term debt to finance the
replacement of a failed well pump ("Finance Application").

2. On July 13, 2010, Mirabell filed an application for an emergency rate increase in order
to support the debt service requested in the Finance Application ("Rate Application" and, together

1 with the Finance Application, the “Applications”).

2 3. Pursuant to a Procedural Order filed July 23, 2010, a procedural conference was held
3 on August 10, 2010. During the procedural conference, the Company and the Commission’s Utilities
4 Division Staff (“Staff”) stated that they had no objections to consolidating the Finance Application
5 and the Rate Application dockets.

6 4. Also discussed during the procedural conference was the Rate Application’s lack of
7 sufficient emergency rate information necessary to adequately provide notice to the Company’s
8 customers of the proposed emergency rate increase. The parties agreed to a second procedural
9 conference the following week, by which time the information necessary to provide adequate notice
10 to customers would be determined. At the conclusion of the procedural conference, the Company’s
11 owner, Morton Freedman, was directed to file a corporate resolution authorizing him to appear at
12 hearing on behalf of the Company.¹

13 5. On August 10, 2010, a Procedural Order was issued consolidating the Finance
14 Application docket and the Rate Application docket, and setting a second procedural conference for
15 August 18, 2010.

16 6. At the August 18, 2010, procedural conference, Staff provided sufficient information
17 regarding the requested rate increase for the customer notice. During the procedural conference, Mr.
18 Freedman stated that he doubted his ability to continue to operate the Company and that he had
19 considered simply stopping operations.² As a result, Staff was requested to address in the Staff
20 Report the possibility of appointing an interim operator.³ Additionally, Mr. Freedman was reminded
21 that he was to file a corporate resolution authorizing him to appear at hearing on behalf of the
22 Company.⁴

23 7. On August 18, 2010, a Procedural Order was issued setting the hearing in this matter
24 for September 16, 2010, and directing Mirabell to provide notice to its customers of the hearing no
25 later than August 27, 2010, and to file a certification of the provision of notice with the Commission

26
27 ¹ Transcript of August 10, 2010, Procedural Conference, pages 17-18.

² Transcript of August 18, 2010, Procedural Conference, pages 16-17.

³ *Id.*

28 ⁴ *Id.*, pages 12-13.

1 by September 7, 2010. Mirabell was also directed to file a copy of a corporate resolution authorizing
2 Mr. Freedman to represent the Company at hearing no later than September 7, 2010.

3 8. On September 3, 2010, Staff filed its Staff Report, as directed in the August 18, 2010,
4 Procedural Order, recommending conditional approval of the Applications.

5 9. The Company failed to file certification of notice by September 7, 2010, and on
6 September 9, 2010, it was learned that the Company had failed to provide notice to its customers of
7 the September 16, 2010 hearing. During a telephonic procedural conference with Staff, Mr.
8 Freedman and the Administrative Law Judge, the parties agreed that the hearing would proceed as
9 scheduled, but that immediately after the hearing, Mirabell would provide notice to its customers that
10 the hearing commenced on September 16, 2010, and that the hearing would be held open pending a
11 request by any customer to be heard on the matter. Mr. Freedman stated that he understood that if
12 any customer requested an opportunity to be heard, the hearing would be reconvened.

13 10. On September 9, 2010, Mirabell filed a corporate resolution authorizing the Company
14 to borrow money from the Water Infrastructure Finance Authority ("WIFA").

15 11. On September 16, 2010, the hearing commenced as scheduled before a duly
16 authorized Administrative Law Judge. During the hearing, Mr. Freedman reiterated that he desired to
17 continue with the hearing and that the Company would provide notice to its customers. Mr.
18 Freedman also confirmed that he understood if any customer wishes to be heard in this matter that the
19 hearing would be reconvened and he would be required to appear at the continuation of the hearing.⁵
20 At the conclusion of the hearing, the hearing was held open until October 1, 2010, pending any
21 requests by customers to be heard at hearing.

22 12. Immediately after the September 16, 2010, hearing, a Procedural Order was issued
23 containing the revised form of customer notice. The Procedural Order directed the Company to
24 provide each customer with a copy of the notice by first-class U.S. Mail by no later than September
25 20, 2010, and also directed Mirabell to file a certification of mailing with the Commission no later
26 than September 24, 2010. The form of notice stated that any customer who wishes to provide written
27

28 ⁵ Tr. at 10-11.

1 comments, wishes to be heard on the matter or wishes to intervene should file a request to do so no
2 later than October 1, 2010. Additionally, Mirabell was again directed to file a corporate resolution
3 authorizing Mr. Freedman to represent the Company at hearing no later than September 24, 2010.

4 13. Mr. Freedman stated he understood that if the Company failed to comply with the
5 requirements listed in the Procedural Order, issuance of a Decision would be delayed.⁶

6 14. In response to the notice, no customers provided comments.

7 15. On September 23, 2010, Mirabell filed its certification of mailing with the
8 Commission's Tucson office, stating that "the public notice of the hearing on the application of
9 Mirabell Water Company, was mailed First Class, and mailed to each and every customer of Mirabell
10 Water Company, late night on September 20, 2010, by Luis Lopez, Certified Well Operator for
11 Mirabell Water Company."

12 16. On September 24 and September 28, 2010, Staff filed its Supplemental Staff Report
13 reflecting the corrections made at hearing.

14 17. On September 27, 2010, the Company filed a corporate resolution authorizing Mr.
15 Freedman to represent Mirabell at hearing.

16 **The Applications**

17 18. Mirabell is a Class E public service corporation that provides water service to
18 approximately 57 customers in an area 25 miles southwest of Tucson in Pima County.

19 19. Mirabell's current rates were approved by the Commission in Decision No. 68233
20 (October 25, 2005).

21 20. In the Applications, Mirabell stated that in late June 2010, the submersible well pump,
22 which was situated approximately 700 feet below the surface, stopped working, causing the stoppage
23 of water service to its customers. The Company immediately repaired the pump, but service was out
24 for a number of days. During this time, water was provided to Mirabell's customers through an
25 interconnection with the City of Tucson.⁷

26 21. The Finance Application requests authority to incur long-term debt of \$11,000 in order

27 _____
28 ⁶ Tr. at 12.

⁷ According to the Staff Report, Mirabell has an Emergency Interconnection Agreement with the City of Tucson.

1 to cover the cost of the repairs. The Rate Application seeks a rate increase to cover the debt service
 2 on a loan, but Mirabell did not specify the amount of the increase the Company was requesting;
 3 rather, Mirabell requested that Staff assist it in making that determination.

4 **Staff Report**

5 22. After review of the Applications and the documentation provided by Mirabell, Staff
 6 recommends:

7 a) That the Commission authorize the Company to obtain a five-year amortizing
 8 loan in an amount not to exceed \$10,243 and at an interest rate not to exceed the
 9 prevailing WIFA rate at the time the loan is executed (currently estimated at 2.25
 percent, less the Company's 20 percent WIFA subsidy) to finance capital
 improvements.

10 b) Approval of a surcharge mechanism that may result in a surcharge of \$2.53 per
 11 customer for customers with a 3/4-inch meter.

12 c) The actual amount of the WIFA loan surcharge be calculated based upon the
 13 actual amount of the WIFA loan and actual number of customers at the time of the
 loan's closing, subject to adjustment needed to result in a DSC ratio of 1.25.

14 d) The surcharge be implemented only after the Company closes on the loan.

15 e) Approval of Mirabell's request for authorization to incur long-term debt with
 16 the understanding that the Commission will also consider a WIFA loan surcharge
 mechanism to enable the Company to meet its principal and interest obligation on the
 proposed WIFA loan.

17 f) The Company file with the Commission a WIFA loan surcharge tariff
 18 application that would enable the Company to meet its principal and interest
 obligation on the proposed WIFA loan.

19 g) The Company follow the same methodology presented herein in the financing
 20 section of the Staff Report [and attached hereto as Exhibit A], to calculate the
 additional revenue needed to comply with the terms of the WIFA loan using actual
 21 loan amounts, and use the result to develop its surcharge tariff application. The
 increase in revenue calculation should be included in the surcharge tariff application.

22 h) The Company make a WIFA loan surcharge filing within 60 days of the loan
 23 closing.

24 i) Approval of the loan and surcharge be rescinded if the Company has not drawn
 25 funds from the loan within one year of the date of the Decision resulting from the
 proceeding.

26 j) The Company file a full permanent rate case no later than April 30, 2011,
 27 using a calendar year 2010 test year. In the event that the Company fails to file a
 permanent rate case by April 30, 2011, then any emergency surcharge approved in this
 proceeding shall terminate immediately.

28 k) The Company file with the Corporations Division of the Commission its

1 annual reports for 2009 and 2010 within 60 days of this Decision. In the event that the
2 Company fails to file these reports within 60 days of a Decision in this matter, then
any emergency surcharge approved in this proceeding shall terminate immediately.

3 l) The Company obtain its Certificate of Good Standing from the Corporations
4 Division and docket it with Docket Control within 90 days of a Decision in this
matter. If the Company fails to comply, then any emergency surcharge approved in
this proceeding shall terminate immediately.

5 m) The Company file with the Utilities Division of the Commission its annual
6 report for 2008 [within 60 days of this Decision]. In the event that the Company fails
7 to file this report within 60 days of a Decision in this matter, then any emergency
surcharge approved in this proceeding shall terminate immediately.

8 n) That the Company be subjected to a fine of \$5,000 in the event that it fails to
9 comply with any requirements resulting from this proceeding. In addition, if the
10 Company fails to comply with any requirements, Staff shall be authorized to appoint
an interim manager to operate this Company and the Company shall be ordered to
cooperate with the interim manager.

11 o) The interim rates be subject to refund pending the Decision resulting from the
permanent rate increase case required to be filed in this proceeding.

12 p) The Company be required to post a bond or irrevocable sight draft letter of
13 credit in the amount of \$1,990⁸ to ensure that there is sufficient money available to
14 refund customers if the Commission determines in the permanent rate case that the
15 emergency surcharge was inappropriate. However, should the Commission choose a
minimal bond, Staff recommends an additional option of posting a cashiers check for
\$10.00 with the Commission. This option is recommended as small companies may
be unable to obtain a bond or sight draft letter of credit for small amounts.

16 q) The Company file with Docket Control, within 30 days of the Decision, a
17 revised rate schedule reflecting the emergency rate increase, as a compliance item in
this docket.

18 r) The Company notify its customers of the revised rate, and its effective date, in
19 a form acceptable to Staff, by means of an insertion in the Company's next regularly
scheduled billing.

20 23. Staff's recommendations and the Company's responses are addressed below.

21 **DISCUSSION**

22 **Existence Of An Emergency**

23 24. Arizona Attorney General Opinion No. 71-17 (May 27, 1971) states that it is
24 appropriate to grant interim rates, or in this instance in the form of an interim surcharge, as an
25 emergency measure when sudden change brings hardship to a company, when the company is
26 insolvent, or when the condition of the company is such that its ability to maintain service pending a
27

28 ⁸ Equal to one year of Staff's recommended surcharge.

1 formal rate determination is in serious doubt. Mirabell has the burden of meeting one of the criteria
2 in order for the Commission to find an emergency exists and grant the Rate Application.

3 25. The first justification for finding an emergency is when a sudden change brings
4 hardship to a company. Staff states that the cost of replacing the broken submersible well pump
5 created a financial difficulty for Mirabell, in that Mirabell lacks sufficient earnings and operating
6 cash flow to achieve a debt service coverage ratio (“DSC”)⁹ of 1.25 in order to be able to acquire the
7 requested financing from WIFA.¹⁰ The Company disagrees with Staff’s assessment that the
8 Company generally has sufficient cash flow to make debt service payments on the WIFA loan,¹¹ and
9 asserts that the well pump failure has created a sudden financial hardship for the Company.¹² For
10 these reasons, Staff and the Company believe that this criterion has been met. We agree with Staff’s
11 determination that Mirabell experienced a sudden change causing financial hardship to Mirabell
12 because the Company lacks sufficient earnings and operating cash flow to achieve a debt service
13 coverage ratio DSC of 1.25 in order to be able to obtain financing from WIFA. Therefore, we find
14 that an emergency exists.

15 **Financing**

16 26. In its Finance Application, Mirabell seeks authority to borrow \$11,000 from WIFA to
17 pay for the repairs to the well pump. According to Mr. Freedman, he personally advanced to
18 Mirabell \$3,500 of the \$11,000 for the repairs and he desires to recover the amount advanced.¹³
19 Mirabell anticipates that the interest rate on the WIFA loan will be approximately 3.0 percent, and
20 amortized over five years. This results in estimated monthly payments of \$198, or \$2,376 annually.

21 27. The Company submitted with the Finance Application an invoice in the amount of
22 \$10,243 from the company that performed the repairs. Also attached to the Finance Application was
23 a typed invoice from Mirabell for time spent by the system’s operator, Luis Lopez,¹⁴ and his sons
24

25 ⁹ DSC represents the number of times internally generated cash will cover required principal and interest payments on
long-term debt. A DSC greater than 1.0 indicates that operating cash flow is sufficient to cover debt obligations.

26 ¹⁰ See the Emergency Surcharge Analysis section for an analysis of the Company’s income and DSC.

27 ¹¹ Tr. at 69.

27 ¹² Tr. at 112-113.

27 ¹³ Tr. at 71, 87-88.

28 ¹⁴ Mr. Lopez has worked for the Company as a Certified Operator since February 2006, and works approximately 10
hours a week. Tr. at 33-34.

1 overseeing the repairs and "babysitting" the well approximately 18 hours a day while it was down.¹⁵

2 The amount of this invoice was \$1,600.¹⁶

3 28. At hearing, Mr. Lopez testified that the amount charged per hour for his time was
4 incorrect, and should have been \$20.00 per hour, not \$25.00.¹⁷ Even with this correction, there was
5 still conflicting testimony as to how Mr. Freedman reached the \$11,000 amount for the loan.¹⁸ Mr.
6 Freedman testified that he added Mr. Lopez' time and that of his sons to the \$10,243 invoice for the
7 repairs and just rounded down to \$11,000.¹⁹

8 29. Staff testified that the amount claimed for Mr. Lopez and his sons' time should be
9 disallowed because there was conflicting information about how much was actually paid to them and
10 also because it was not clear whether the hours spent by Mr. Lopez were attributable to the
11 emergency repairs or whether they were partially attributable to his normal working hours.²⁰ Staff
12 also questioned the necessity of "babysitting" the well 18 hours a day while it was down.²¹ The
13 Company did not file any documents clarifying the amounts actually paid to Mr. Lopez and his sons.

14 30. Accordingly, Staff recommends that the amount of debt authorized by the
15 Commission should only be for the verifiable amount of \$10,243. Based on the evidence provided,
16 Staff's recommendation is reasonable and should be adopted.²²

17 31. Engineering Staff also reviewed the Finance Application and determined that the
18 system repairs are appropriate, but no used and useful determination of the plant items was made and
19 no particular treatment should be inferred for rate-making purposes. Staff also concluded that the
20 costs associated with the well pump repairs are reasonable. Finally, Engineering Staff stated that
21 Mirabell has adequate production and storage capacity to serve its existing customers and reasonable
22 growth.

23
24
25
26
27
28

¹⁵ Tr. at 38.

¹⁶ Finance Application, last page. $\$10,243 + \$1,600 = \$11,843$.

¹⁷ Tr. at 39-40, 57-59.

¹⁸ See Tr. at 54-59, 63-64.

¹⁹ Tr. at 99-100.

²⁰ Tr. at 122-123, 138-189.

²¹ Tr. at 124-127.

²² This finding does not mean that Mr. Lopez and his sons should not be paid, only that they are not to be paid with the loan funds.

1 **Emergency Surcharge Analysis**

2 32. Based on the information provided by the Company, Staff determined that Mirabell
3 seeks a monthly surcharge per customer of \$3.01 to cover the \$198 monthly loan payment on
4 \$11,000 in WIFA debt.

5 33. According to Staff, along with the Rate Application, it reviewed the Company's 2009
6 tax return in order to perform a financial analysis of the Company.²³ As calculated by Staff:

7 The Company's annual operating income as of December 31, 2009, was
8 approximately \$1,574 and depreciation expense was \$1,532, for a total annual
9 cash flow of \$3,106. This amount of annual cash flow is sufficient to cover the
10 annual debt service on the WIFA amounts as proposed by the Company as well as
11 the debt service on the WIFA amount recommended by Staff, \$2,376 and \$2,209,
12 respectively. However, the Company's present operating income is not adequate
13 for the Company to meet a [DSC] requirement of 1.25, and a surcharge is
14 necessary.

15 The Company's proposed increase of \$2,376 would produce total operating
16 revenues of \$38,627 for an operating income of \$3,950 and DSC ratio of 1.35.
17 The Company's requested rates would increase the typical ¾-inch meter
18 residential bill with an estimated average usage of 9,269 gallons from \$44.49 to
19 \$47.50 for an increase of \$3.01, or 6.8 percent.

20 Once Staff determined the annual loan payment of \$2,209 [based on a loan
21 amount of \$10,243], it evaluated whether the annual loan payment amount needed
22 to be adjusted upward or downward, in order for the Company to have a DSC
23 ratio of 1.25. In this case, Staff determined that the Company would need an
24 annual surcharge of \$1,990 instead of the \$2,209 shown above as the annual loan
25 payment, for a reduction of \$219 to calculate the surcharge.

26 Staff's recommended increase of \$1,990 would produce total operating revenues
27 of \$38,241 for an operating income of \$3,564 and DSC ratio of 1.25. Staff
28 recommended rates would increase the typical ¾-inch meter residential bill with
an estimated average usage of 9,269 gallons from \$44.49 to \$47.02 for an increase
of \$2.53, or 5.7 percent.²⁴

34. Staff's calculation of the surcharge is based on the recommended loan amount of
\$10,243, the number of customers and the current interest rate set by WIFA; however, Staff stated
that because interest rates and/or the number of customers may change between the time this
Decision becomes effective and the time the WIFA loan actually closes, Staff's calculated surcharge
for a customer on a ¾-inch meter of \$2.53 may change. Accordingly, Staff included in its Staff
Report its methodology for calculation of the surcharge, which the Company shall use at the time of

²³ Staff also requested from the Company certain bank statements and also customer account information in order to more precisely calculate the typical bill impact, but the Company did not provide them. Tr. at 132.

²⁴ Staff Report dated September 3, 2010, page 3, and Supplemental Staff Report, dated September 24, 2010, page 1.

1 loan closing to determine what the actual surcharge would be based on meter size and number of
2 customers. Staff's methodology is attached hereto as Exhibit A.

3 35. Based on the foregoing analysis, Staff recommends that the Commission authorize
4 Mirabell to obtain a five-year amortizing loan from WIFA in an amount not to exceed \$10,243 at an
5 interest rate not to exceed the prevailing WIFA rate at the time the loan closes in order to finance the
6 capital improvements.²⁵ Staff also recommends Commission approval of the surcharge mechanism.
7 Although the exact amount of the surcharge won't be known until the WIFA loan closes, it is
8 estimated to be approximately \$2.53 per month for customers on a ¾-inch meter. Customers on a
9 larger meter may experience a higher surcharge. (See Exhibit A for an example of the emergency
10 surcharge based on meter size.)

11 36. Also, in relation to the interim surcharge and the WIFA loan, Staff recommends that
12 the Company comply with the recommendations stated in Findings of Fact No. 22(c)-(i).

13 37. Staff's recommendations are reasonable and shall be adopted.

14 **Compliance and Interim Manager Issues**

15 38. In its Staff Report, Staff noted that Mirabell had failed to file its 2009 Annual Report
16 with the Corporations Division, resulting in its administrative dissolution as corporation on June 19,
17 2009. As of September 23, 2010, Mirabell had not filed its 2010 Annual Report with the
18 Corporations Division.

19 39. Staff recommends that the Company file with the Corporations Division within 60
20 days of the effective date of this Decision its 2009 and 2010 Annual Reports. Staff also recommends
21 that Mirabell obtain its Certificate of Good Standing from the Corporations Division and file a copy
22 of it with Docket Control within 90 days of the effective date of this Decision. If the Company fails
23 to perform either of these tasks within the allotted time, Staff recommends that the emergency
24 surcharge approved in this Decision should be terminated immediately.

25 40. Further, Staff notes that Mirabell has not filed its 2008 Annual Report with the
26 Utilities Division. Staff recommends that the Company file, within 60 days of the effective date of

27 _____
28 ²⁵ WIFA's current interest rate, according to Staff, is currently estimated at 2.25 percent, less the Company's 20 percent WIFA subsidy.

1 this Decision, its Annual Report with the Utilities Division. If the Company fails to do so within the
2 allotted time, Staff recommends that the emergency surcharge approved in this Decision should be
3 terminated immediately.

4 41. When asked why these reports had not been filed, Mr. Freedman testified that he finds
5 the number of reports necessary for the operation of the Company burdensome, duplicative and they
6 “benefit no one.”²⁶ He believes that the Company is in compliance by serving quality water to
7 Mirabell’s customers and anything else is unnecessary.²⁷ Mr. Freedman states that the Company’s
8 failure to timely file certain reports is often due to unreceived correspondence from the relevant
9 agency.²⁸

10 42. According to the Staff Report, Staff received an Arizona Department of
11 Environmental Quality (“ADEQ”) Drinking Water Compliance Status Report dated July 29, 2010, in
12 which ADEQ reported that the Mirabell water system is in compliance with ADEQ requirements and
13 is currently delivering water that meets water quality standards required by Arizona Administrative
14 Code, Title 18, Chapter 4.

15 43. Mirabell is located in the Tucson Active Management Area and is subject to the
16 Arizona Department of Water Resources (“ADWR”) reporting requirements. Staff received a Water
17 Provider Compliance Status Report dated July 14, 2010, in which ADWR reported that Mirabell was
18 currently in compliance with departmental requirements governing water providers and/or
19 community water systems.

20 44. The Commission’s Consumer Services Department of the Utilities Division reports
21 that a search of the Consumer Services database from January 1, 2007, through the present reveals
22 that in 2007, Mirabell received three complaints; two quality of service complaint (outage), and one
23 service complaint (restrictions). In 2008, Mirabell received three complaints; one quality of service
24 complaint (outage), one billing complaint, and one service complaint (restrictions). In 2009, Mirabell
25 had one quality of service complaint (outage). In 2010, Mirabell has received three complaints; one
26 quality of service (outage), one service (not working) and one billing complaint. One complaint in

27 ²⁶ Tr. at 88-92.

28 ²⁷ Tr. at 27.

²⁸ Tr. at 89, 98.

1 2010 remains open pending investigation.

2 45. Mr. Freedman testified that a number of the complaints relating to outage were beyond
3 Mirabell's control, citing as an example, outages of service from Trico, which in turn caused the
4 system to shut down due to lack of power.²⁹

5 46. As noted by Staff in its Staff Report, during a procedural conference on August 20,
6 2010, Mr. Freedman stated that "it's getting to a point where it's much beyond my dealing with all of
7 this." Mr. Freedman indicated that he did not want to continue to lose money and stated that he had
8 considered just shutting down the Company. As a result, Staff was directed to consider in its Staff
9 Report the possibility of appointing an interim manager for Mirabell.³⁰

10 47. After consideration, Staff concluded that the Company "needs an incentive to act more
11 responsibly and to devise solutions that are more constructive and effective to resolve its issues."³¹
12 Accordingly, Staff states that it would recommend the appointment of an interim manager only if the
13 Company fails to comply with the orders resulting from this proceeding. One of Staff's
14 recommendations proposed that Mirabell be fined \$5,000 if it fails to comply with any of Staff's
15 recommendations adopted by the Commission. (See Staff's recommendations stated in Findings of
16 Fact No. 22(j)-(n).)

17 48. Mr. Freedman objected to the tenor of Staff's recommendations, characterizing them
18 as threats, and stated that he could not say unequivocally that he would comply with the
19 recommendations proposed by Staff.³² He stated, "[t]he reason for this hearing is for me to tell you
20 that I am not able to comply with all of the requirements that you have outlined in the Staff Report."³³

21 49. In response to Staff's recommendation that Mirabell should file a permanent rate case
22 application by April 30, 2011, Mr. Freedman stated that the last time the Company came into the
23 Commission for a rate increase in 2005, "his permanent rate increase was completely turned down."³⁴

24
25 ²⁹ Tr. at 93.

26 ³⁰ Transcript of August 20, 2010, Procedural Conference, pages 16-17.

27 ³¹ Staff Report dated September 3, 2010, page 4.

28 ³² Tr. at 84-85.

³³ Tr. at 78.

³⁴ Tr. at 24. In Decision No. 68233 (October 25, 2005), the Commission did not deny Mirabell a rate increase. The Commission adopted Staff's recommended rates, rather than the Company's proposed rates. The rates adopted by the Commission did result in a rate increase.

1 As such, Mr. Freedman stated that Staff's recommendation that Mirabell file a permanent rate
2 application by April 30, 2011, is a troublesome one for him.³⁵

3 50. When asked if he believed the Commission should appoint an interim manager, Mr.
4 Freedman replied "[w]hat makes you think that we can afford to pay someone to come in and manage
5 our company when we don't have the dollars in the company for me to take 10 cents out?"³⁶ "[W]e
6 need the money to operate the system, not pay a regulatory genius."³⁷ He also stated, "I think [the
7 Commission] should appoint somebody, and I think [the Commission] should come up with the few
8 bucks that it's going to take to do it."³⁸

9 51. Mr. Freedman testified that he had considered hiring a management company, but
10 believed it is too expensive, and he does not have faith that the fees for a manager could be recouped
11 in a permanent rate case.³⁹ Mr. Freedman also stated that he has attempted in the past to sell the
12 Company, but that the potential buyers, "kind of laughed at me when I told them what the financial
13 situation was."⁴⁰

14 52. Staff's recommendations regarding filing recommendations and the deadlines
15 discussed above are reasonable and shall be adopted, except that we believe it more reasonable to
16 require the Company to file these compliance items with the Commission as a condition precedent to
17 the implementation of the emergency surcharge. In other words, Mirabell may not begin collecting
18 the emergency surcharge until all of the above-stated filing requirements have been met.

19 53. The only exception to this would be that Mirabell does not have to file its permanent
20 rate application prior to implementation of the emergency surcharge. To require it to wait to until
21 filing of the rate application would mean it would be at least seven months before it could begin
22 charging customers the emergency surcharge. But if the Company fails to timely file its rate
23 application then, as recommended by Staff, the emergency surcharge would be immediately
24 rescinded.

25 _____
26 ³⁵ Tr. at 24, 81-81, 96-97.

27 ³⁶ Tr. at 108.

28 ³⁷ Tr. at 74.

³⁸ Tr. at 109.

³⁹ Tr. at 74, 79-81.

⁴⁰ Tr. at 72-73.

1 54. As a public service corporation, the Company is required by law to comply with
2 Commission Decisions and we expect the Company to fully and timely comply with this Decision,
3 including the recommendations made by Staff. If Mirabell does not comply with the
4 recommendations, Staff recommends that, "Staff shall be authorized to appoint an interim manager to
5 operate this Company and the Company shall be ordered to cooperate with the interim manager,"⁴¹
6 and also recommends the imposition of a \$5,000 fine. We agree that the failure to comply with the
7 requirements stated in this Decision or the Company's failure to provide service to its customers may
8 result in the appointment of an interim manager, but, at this time, we will reserve the determination of
9 the amount of any fines or penalties to a later decision.

10 55. Mr. Freedman and the Company are put on notice that failure to operate a public
11 service corporation in accordance with statutory and regulatory requirements⁴² may not only result in
12 the appointment of an interim operator, but may also result in the imposition of fines and/or penalties
13 by the Commission.

14 **Amount of Bond**

15 56. Staff recommends that Mirabell be required to post a bond or irrevocable sight draft
16 letter of credit in the amount of \$1,990, which is equal to one year of Staff's recommended
17 emergency surcharge, in order to ensure that there is sufficient money available to refund customers
18 if the Commission determines in the permanent rate case that the emergency surcharge was
19 inappropriate or excessive. As an alternate recommendation, given the Company's current financial
20 situation, Staff recommends an option of posting a cashier's check in the amount of \$10.00 with the
21 Commission. This is a recommendation the Commission has previously adopted in other emergency
22 rate cases involving financially stressed companies⁴³ and shall be adopted here.

23 **Timing of Customer Notice**

24 57. Staff recommends that the Company file with Docket Control, within 30 days of this
25 Decision, a revised rate schedule reflecting the emergency rate increase, as a compliance item in this
26

27 ⁴¹ Staff Report dated September 3, 2010, page 10.

28 ⁴² These requirements include the obligation to provide service to customers.

28 ⁴³ See for example, *In the Matter of the Application of Antelope Run Water Company for an Emergency Rate Increase*,
Decision No. 71323 (October 30, 2009).

1 docket. Staff also recommends that the Company notify its customers of the revised rates and their
2 effective date, in a form acceptable to Staff, by means of an insert in the Company's next regular
3 billing.

4 58. A component to Staff's emergency surcharge recommendation is that, at the time this
5 Decision is issued, Staff and the Company do not know the exact amount of the surcharge, and will
6 not know it until the WIFA loan has closed. At hearing, Staff's witness stated that the Company
7 could simply use the estimated amounts provided by Staff in the Staff Report as calculated by its
8 sample methodology,⁴⁴ attached hereto as Exhibit A.

9 CONCLUSIONS OF LAW

10 1. Mirabell is a public service corporation pursuant to Article XV of the Arizona
11 Constitution and ARS §§ 40-250 and 40-251.

12 2. The Commission has jurisdiction over Mirabell and the subject matter of the
13 Applications.

14 3. Notice of the Applications and hearing was provided in accordance with the law.

15 4. Mirabell is facing an emergency within the definition set forth in Attorney General
16 Opinion No. 71-17.

17 5. The financing approved herein is for lawful purposes within Mirabell's corporate
18 powers, is compatible with the public interest, with sound financial practices, and with the proper
19 performance by Mirabell of service as a public service corporation, and will not impair Mirabell's
20 ability to perform that service.

21 6. The financing approved herein is for the purposes set forth in Mirabell's Finance
22 Application, is reasonably necessary for those purposes, and such purposes are not, wholly or in part,
23 reasonably chargeable to operating expenses or to income.

24 7. The emergency surcharge mechanism recommended by Staff is reasonable and should
25 be implemented as set forth herein.

26 8. Staff's recommendations as stated in Findings of Fact No. 22(a)-(r), as modified
27

28

⁴⁴ Tr. at 146.

1 herein, are reasonable and should be adopted.

2 **ORDER**

3 IT IS THEREFORE ORDERED that Mirabell Water Company's Finance Application for
4 authorization to incur long term debt from WIFA is granted, and the Company is authorized to obtain
5 a five-year amortizing loan in an amount not to exceed \$10,243 and at an interest rate not to exceed
6 the prevailing WIFA rate at the time the loan is executed, in order to finance the capital
7 improvements discussed herein.

8 IT IS FURTHER ORDERED that Mirabell Water Company's Emergency Rate Application
9 for an emergency surcharge to cover the debt service on the WIFA loan is granted, as conditioned
10 herein.

11 IT IS FURTHER ORDERED that Mirabell Water Company is hereby authorized to engage in
12 any transactions and to execute or cause to be executed any documents so as to effectuate the
13 authorizations requested with the Finance Application.

14 IT IS FURTHER ORDERED that Mirabell Water Company shall file with Docket Control, as
15 a compliance item in this docket, copies of all executed financing documents, within 30 days after the
16 date of execution.

17 IT IS FURTHER ORDERED that Mirabell Water Company shall file its WIFA loan
18 emergency surcharge tariff with the Commission's Docket Control as a compliance item in this
19 Docket, within 30 days of the WIFA loan closing.

20 IT IS FURTHER ORDERED that the amount of Mirabell Water Company's WIFA loan
21 emergency surcharge shall be based upon the actual amount of the WIFA loan and actual number of
22 customers at the time of the loan closing, subject to adjustment needed to achieve a DSC ratio of
23 1.25.

24 IT IS FURTHER ORDERED that Mirabell Water Company shall follow the methodology
25 attached hereto as Exhibit A to calculate the additional revenue needed to comply with the terms of
26 the WIFA loan using actual loan amounts, and use the calculations to develop its WIFA loan
27 emergency surcharge tariff filing, and the increase in revenue calculations shall be included in the
28 WIFA loan emergency surcharge tariff filing.

1 IT IS FURTHER ORDERED that Mirabell Water Company shall file its Annual Reports for
2 the years 2009 and 2010 with the Commission's Corporations Division, within 60 days of the
3 effective date of this Decision.

4 IT IS FURTHER ORDERED that Mirabell Water Company shall obtain its Certificate of
5 Good Standing from the Commission's Corporations Division and shall file a copy of the Certificate
6 with Docket Control, as a compliance item in this docket, within 90 days of the effective date of this
7 Decision.

8 IT IS FURTHER ORDERED that Mirabell Water Company shall file its Annual Report for
9 the year 2008 with the Commission's Utilities Division, within 60 days of the effective date of this
10 Decision.

11 IT IS FURTHER ORDERED that Mirabell Water Company shall post a performance bond or
12 similar financial instrument in the amount of \$10.00 by providing the original performance bond or
13 financial instrument to the Commission's Business Office for safekeeping and shall simultaneously
14 file the appropriate copies with Docket Control as a compliance item in this Docket, within 30 days
15 of the WIFA loan closing.

16 IT IS FURTHER ORDERED that Mirabell Water Company shall notify its customers of the
17 estimated amount of emergency surcharge, and its anticipated effective date, in a form acceptable to
18 Staff, by means of an insert in the Company's next regularly scheduled billing.

19 IT IS FURTHER ORDERED that Staff shall review Mirabell Water Company's WIFA loan
20 emergency surcharge tariff and file with Docket Control a Compliance Memorandum confirming, 1)
21 that the amount of the emergency surcharge calculated by the Company is correct, and 2) verifying
22 that Mirabell Water Company has:

- 23 • filed its Annual Reports for the years 2009 and 2010 with the Commission's
24 Corporations Division, within 60 days of the effective date of this Decision.
- 25 • obtained its Certificate of Good Standing from the Commission's Corporations
26 Division and filed a copy of the Certificate with Docket Control, as a compliance item
27 in this docket, within 90 days of the effective date of this Decision.
- 28 • filed its Annual Report for the year 2008 with the Commission's Utilities Division,

1 within 60 days of the effective date of this Decision.

- 2 • filed with Docket Control, as a compliance item in this docket, copies of all executed
3 financing documents, within 30 days after the date of execution.
- 4 • notified its customers of the estimated amount of emergency surcharge, and its
5 anticipated effective date, in a form acceptable to Staff, by means of an insert in the
6 Company's billing.
- 7 • posted a performance bond or similar financial instrument in the amount of \$10.00 and
8 provided the original performance bond or financial instrument to the Commission's
9 Business Office for safekeeping and filed the appropriate copies with Docket Control
10 as a compliance item in this Docket within 30 days of the WIFA loan closing.

11 IT IS FURTHER ORDERED that Mirabell Water Company's emergency surcharge will
12 become effective only upon Staff filing a Compliance Memorandum confirming that the WIFA loan
13 emergency surcharge tariff complies with the requirements of this Decision and verifying that
14 Mirabell Water Company has complied with the requirements of this Decision.

15 IT IS FURTHER ORDERED that Mirabell shall file with Docket Control, as a compliance
16 item in this docket, within 30 days of Staff's filing of its Compliance Memorandum, a revised rate
17 schedule reflecting the emergency surcharge.

18 IT IS FURTHER ORDERED that Mirabell Water Company shall file a permanent rate
19 application no later than April 30, 2011, using a December 31, 2010, test year.

20 IT IS FURTHER ORDERED that should Mirabell Water Company fail to file a permanent
21 rate application by April 30, 2011, the authorized emergency surcharge shall cease.

22 IT IS FURTHER ORDERED that upon any failure of Mirabell Water Company to comply
23 with the terms of this Decision, Staff is hereby authorized to appoint an interim manager to operate
24 the Company and the Company is ordered to cooperate with the appointed interim manager; and the
25 Company is also hereby put on notice that such failure to comply with this Decision subjects the
26 Company to penalties as determined by the Commission after due process.

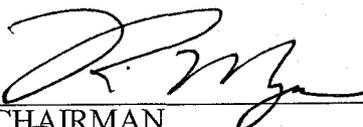
27 IT IS FURTHER ORDERED that the rates approved herein shall be interim and subject to
28 refund pending resolution of the required permanent rate increase.

1 IT IS FURTHER ORDERED that the authorizations and surcharge granted herein shall be
2 rescinded if the Company has not drawn funds from the WIFA loan within one year of the effective
3 date of this Decision.

4 IT IS FURTHER ORDERED that approval of the financing set forth herein does not
5 constitute or imply approval or disapproval by the Commission of any particular expenditure of the
6 proceeds derived thereby for purposes of establishing just and reasonable rates.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

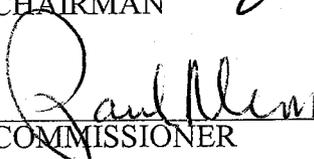
8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9
10 

11 CHAIRMAN



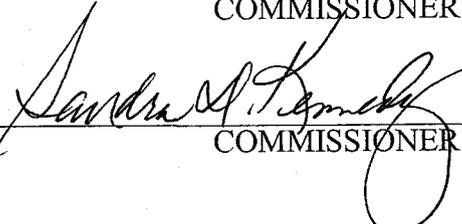
COMMISSIONER

12 

13 COMMISSIONER



COMMISSIONER



COMMISSIONER

14
15 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
16 Executive Director of the Arizona Corporation Commission,
17 have hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this 1st day of Nov., 2010.



20 ERNEST G. JOHNSON
21 EXECUTIVE DIRECTOR

22
23 DISSENT _____

24
25 DISSENT _____

1 SERVICE LIST FOR: MIRABELL WATER COMPANY
2 DOCKET NO.: W-02368A-10-0280 and W-02368A-10-0286

3 Morton Freedman
4 MIRABELL WATER COMPANY
5 3361 Caminito Luna Nueva
6 Del Mar, CA 92014

7 MIRABELL WATER COMPANY
8 P. O. Box 11912
9 Tucson, AZ 85734

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

15 Steven M. Olea, Director
16 Utilities Division
17 ARIZONA CORPORATION COMMISSION
18 1200 W. Washington Street
19 Phoenix, AZ 85007
20
21
22
23
24
25
26
27
28

EXHIBIT A

INSTRUCTIONS TO CALCULATE THE SURCHARGE ON THE LOAN

Example - For Illustrative Purposes Only

Loan amount: \$10,243
 Term: 5 years
 Stated Annual Interest Rate: 3.00%

*Instruction for Step 1*Step 1. Find the Annual Payment on the Loan

Refer to Table A, the Conversion Factor Table on page 8. Reading the table from top to bottom, find the interest rate in Column A that is equal to the stated annual interest rate of the loan. Reading across the table, find the Annual Payment Conversion Factor in Column B that corresponds with the loan interest rate (in the event that the loan interest rate is different from the interest rates in Table A, use the next higher interest rate that can be found in Table A). Multiply that annual payment conversion factor by the total amount of the loan to calculate the annual debt service on the loan.

Result

0.21562	Annual Payment Conversion Factor (Table A, Line 4, Column B)
X \$10,243	Total loan amount
\$ 2,209	Annual loan payment

Once the annual loan payment is determined, one must evaluate whether the annual loan payment amount needs to be adjusted, upward or downward, in order for the Company to have a DSC ratio of 1.25. In this case, Staff determined that the Company would need an annual surcharge of \$1,990 instead of the \$2,209 shown above as the annual loan payment, for a reduction of \$219 to the surcharge. To calculate the DSC, add net income, depreciation and income taxes and divide the result by the sum of the principal and interest payments. The calculation of the DSC is shown on the attached Schedule GWB-1.

*Instruction for Step 2*Step 2. Find the equivalent bills.

Ordinarily, Staff would multiply the AWWA⁹ meter capacity multipliers by the number of current customers and by the number of months per year. However, in the instant case, the existing rates¹⁰ do not mirror the standard meter multipliers, and Staff recommends that the

⁹ American Water Works Association

¹⁰ Approved in Decision No. 68233

surcharges mirror the proportionate relationships among the existing monthly minimum charges. The sum of the products in Column E equals the total equivalent bills.

Result

Col A	Col B	Col C	Col D	Col E
Meter Size	Meter Capacity Multiplier	Number of Customers	Number of Months In Year	Equivalent Bills Col B x C x D
3/4" Meter (see Note)	1	48	12	576
1" Meter	1.6	11	12	211
1½" Meter	3	0	12	0
2" Meter	5	0	12	0
			Total	787

Note: In this case, Staff adjusted the capacity multiplier for the 3/4" meter to be equal to 1 (rather than 1.5, per AWWA) because Miraball does not have 5/8"x 3/4" meter customers. Therefore, the 3/4" inch meter serves as the base customer class and is, therefore, the starting point for the remaining multipliers.

Instruction for Step 3

Step 3. Find the monthly surcharge for 3/4" customers.

Divide the result obtained in step 1 by the number of equivalent bills calculated in step 2 to obtain the monthly surcharge for 3/4" customers.

Result

\$ 1,990	Total annual surcharge amount (Step 1)
÷ 787	Number of equivalent bills (Step 2)
\$ 2.53	Total monthly surcharge for 3/4" customers

Instruction for Step 4

Step 4. Find the monthly surcharge for remaining meter size customers.

Multiply the Result obtained in step 3 by the existing meter capacity multipliers, as approved in Decision No. 68233, to obtain the monthly surcharges for all other meter sizes.

Col A	Col B	Col C	Col D
Meter Size	Meter Capacity Multiplier	5/8" x 3/4" Customers' Surcharge	Surcharge by Meter Size Col B x C
3/4" Meter	1	\$2.53	\$ 2.53
1" Meter	1.6	\$2.53	\$ 4.05
1½" Meter	3	\$2.53	\$ 7.59
2" Meter	5	\$2.53	\$ 12.65

Table A
Conversion Table Factor (Based on a 5-year Loan)

Column A Annual Interest	Column B Payment Factor
1.50%	\$0.20772
2.00%	\$0.21033
2.50%	\$0.21297
3.00%	\$0.21562
3.50%	\$0.21830
4.00%	\$0.22100
4.50%	\$0.22372
5.00%	\$0.22645
5.50%	\$0.22921
6.00%	\$0.23199
6.50%	\$0.23479
7.00%	\$0.23761