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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

APR 27 2011

COMMISSIONERS

GARY PIERCE, CHAIRMAN
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP
BRENDA BURNS

DOCKETED BY

14
15 **IN THE MATTER OF STAFF'S**
16 **REQUEST FOR THE COMMISSION**
17 **ISSUANCE OF AN ORDER TO SHOW**
18 **CAUSE FOR THE FAILURE OF**
19 **CERBAT WATER COMPANY TO**
20 **COMPLY WITH COMMISSION**
21 **RULES AND REGULATIONS.**

DOCKET NO. W-02391A-11-0166

**RESPONSE TO STAFF'S PETITION
FOR ORDER TO SHOW CAUSE AND
MOTION FOR PRELIMINARY
RELIEF**

21 The Cerbat Water Company ("Cerbat") hereby responds to the Arizona
22 Corporation Commission ("Commission") Utilities Division Staff's ("Staff") Petition for
23 Order to Show Cause and Motion for Preliminary Relief. Cerbat asserts that neither the
24 facts nor the law justifies the appointment of an interim manager in this case. For the
25 reasons explained below, the Commission should deny Staff's petition and motion and
26 should not appoint and interim manager.
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1 **Preliminary Statement**

2 Before discussing the factual and legal disputes presented in this case, Cerbat
3 wants to explain how it plans to address the financial shortfalls. Since October 26, 2009,
4 Cerbat has incurred \$85,126.62 in repair costs to the one water production well. When
5 the well failed, Cerbat replaced the failed diesel engine with an electric motor. Since
6 then, Cerbat has struggled to pay the vendors who repaired the well and Unisource, which
7 is the local electric power provider. Cerbat owes Unisource approximately \$12,000 in
8 deposits and service fees.
9

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11 Cerbat wants to pay these debts, but the company's current revenues are not
12 sufficient to pay these debts and meet payroll expenses and other operating expenses.
13 For example, the table below identifies the income and expenses paid by Cerbat in the
14 first two months of 2011:
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	January	February
Income	\$6,090.91	\$5,776.91
Expenses Paid		
Electric	\$3,312.50	\$4,320.43
Payroll to Trust	\$2,000.00	\$1,400.00
Phone	\$315.00	\$0.00
Water Testing	\$0.00	\$390.00
Transportation	\$500.00	\$0.00
Expenses Subtotal	<u>\$6,127.50</u>	<u>\$6,110.00</u>
Monthly Balance	<u>-\$36.59</u>	<u>-\$333.09</u>

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25 See Attachments 1 and 2. As this table illustrates, Cerbat is spending money prudently,
26 but its revenues are insufficient to pay its operating costs and its debt stemming from the
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1 well repairs and improvements. To resolve this issue, Cerbat is proposing the following
2 payment plan:

- 3 1. Seek from the Commission an immediate surcharge of \$10.00 per customer to
4 pay the vendors;
- 5 2. Pay \$1,800 to Trust payroll (approximately \$6.79 per connection);
- 6 3. Pay no more than \$1,000 for other expenses (chemicals, gas, phone, minor
7 repairs, professional services); and
- 8 4. Pay Unisource the remainder for current service, past service, and deposits.

9
10 If the company did not need the entire \$1,000 for other expenses, it would use the saved
11 funds to apply to the electric bill. The Company would agree to document these
12 payments with Staff. Similarly, if there is an unexpected expense that would alter this
13 plan, the Company would inform Staff prior to taking any action. Consistent with this
14 plan, the Company would agree to accept the well site and the water production fixtures
15 associated with the well.

16 **Material Facts at Issue**

17 The issue here is that the Company's revenue is not sufficient to pay the bills. For
18 this reason, Cerbat filed for emergency relief with the Commission approximately 1 ½
19 years ago (November 9, 2009). Staff opposed the emergency relief request and instructed
20 the Company to file a permanent rate case.

21 Accordingly, the Company filed the permanent rate case on June 1, 2010. In the
22 permanent rate case, the Company requested that the rates be set so that the vendors can
23 be paid. Meanwhile, in its report Staff adjusts the operating expenses to exclude the
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1 vendor payments as well as purchased water expense, among other expenses. Under
2 Staff's proposal, the average customer bill will increase \$.48 per month, which is a 1.9%
3 increase. In other words, Staff's position is that the Company's rate increase should
4 amount to about \$125 per month.
5

6 Meanwhile, over the past year, the Company has maintained that it is willing to
7 accept the well from the Trust provided the debts transfer as well and there is sufficient
8 revenue for the Company to pay the vendors. Alternatively, the Company has proposed
9 that the Trust could sell the well to the Company for fair market value provided Staff
10 would support that approach. Throughout this period, while Staff demands that the well
11 be transferred to the Company, it has remained tellingly silent as to how it would treat the
12 well value and debt once the proposed transfer occurred. If Staff now supports either of
13 these approaches, the Company will stand by its position (assuming that this is not simply
14 a change in position to make it easier to appoint an interim manager).
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18 In its motion, Staff also makes several factual allegations that need to be
19 addressed. First, Staff alleges that Rick Neal said that the Company management might
20 "walk away" from the Company. Rick Neal will testify to the contrary. Second, Staff
21 argues that the City of Kingman may not be willing to work with Cerbat as a secondary
22 source of water without a hefty deposit because of slow payment the last time Cerbat
23 purchased water from Kingman. However, Cerbat's understanding is that Kingman
24 requires a substantial deposit from any similarly situated party. Moreover, Cerbat admits
25 that it was slow to pay Kingman in the past, primarily because the rates charged by
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1 Kingman are high.¹ For this reason, when there is an outage at Cerbat, the Company
2 chooses to haul water from the Truxton Valley Water Company wells.
3

4 Finally, the arguments regarding the Water Supply Agreement and Management
5 Agreement are misplaced. Staff continues to ignore the provisions in the Management
6 Agreement stating Cerbat is responsible for “all costs, expenses and capital
7 improvements ... including ... (E) Replacement of and repairs to the water system ... (F)
8 All plant additions and improvements....” *See id.* at p. 4, ¶ 4. Even though Cerbat is
9 responsible for the costs to repair the well and the Company should be allowed to recover
10 these costs in rates, this issue should be moot if Staff continues to maintain its position
11 that the debt can transfer with the well.
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14 **Legal Issues**

15 The Commission does not have the authority to assume managerial control of the
16 Company and remove the owner from managing his own company over the owner’s
17 objection. *See* Ariz. Const. Art. 15, § 3; Williams v. Pipe Trades Industry Program of
18 Ariz., 100 Ariz. 14, 409 P.2d 720 (1966). The Commission does not have the power to
19 control the management of the Company without the Company’s permission to do so.
20
21 *See* Phelps Dodge Corp. v. Ariz. Electric Power Coop., 207 Ariz. 95, 101, 83 P.3d 573,
22 579 (App. 2004).
23

24
25 If the Commission does take control of the Company from the owners, such action
26 will constitute a taking. *See* Ariz. Const. Art. 2, § 17. Under constitutional provision that
27

28 ¹ *See* Staff Report, Docket No. W-02391A-09-0516, p. 3 (“Company purchased approximately 1,000,000 gallons ... for a total of \$3,026.61”). Cerbat’s present commodity rate is \$1.65 per 1,000 gallons up to 5,000 gallons.

1 “no private property shall be taken or damaged” without just compensation, a state is
2 liable for injuries to personal property as well as real property. State v. Leeson, 84 Ariz.
3 44, 323 P.2d 692 (Ariz.1958). If the Commission takes control of the Company, the
4 biggest issue may become how much money will the Arizona taxpayers have to pay the
5 Trust for the Company. While the Company does not want to take such action, it is a
6 plausible outcome. Similarly, the Commission cannot order the Company to give up its
7 constitutional rights to protect its property against an interim manager, who will certainly
8 be held responsible for any and all of his or her actions.
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12 Finally, the Arizona Constitution is clear – “no person shall be deprived of life,
13 liberty, or property without due process of law.” A.R.S. Const. Art. 2 § 4. Cerbat is
14 entitled to due process. A party is entitled to an opportunity to be heard at a meaningful
15 time and in a meaningful manner. Comeau v. Arizona State Bd. of Dental Examiners, 196
16 Ariz. 102, 993 P.2d 1066 (App. Div.1 1999). Here, the Company has not had adequate
17 time to conduct discovery and prepare its defense. Therefore, the Company moves the
18 Commission to initiate proceedings regarding this matter in front of an administrative law
19 judge so the Company can have a full evidentiary hearing. Otherwise, the Company’s
20 substantive and procedural due process rights will be violated. *See* Ariz. Const. Art. 2, §
21 4.
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25 RESPECTFULLY SUBMITTED this 27th day of April, 2011.

26 **MOYES SELLERS LTD.**

27
28 
Steve Wene

1 Original and 13 copies filed
2 this 27th day of April, 2011 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

7 Copy of the foregoing mailed electronically
8 this 27th day of April, 2011 to:

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ATTACHMENT 1

CERBAT WATER COMPANY
Cash Disbursements Journal
For the Period From Jan 1, 2011 to Jan 31, 2011

Filter Criteria includes: Report order is by Date. Report is printed in Detail Format.

Date	Check #	Account ID	Line Description	Debit Amount	Credit Amount
1/18/11	2619	231	Invoice: 030110	442.95	
		231	Invoice: 040110	1,557.05	
		131	CLAUDE K NEAL FAMILY TRUST		2,000.00
1/26/11	12611	675	Misc Expenses	315.00	
		131	SPRINT		315.00
1/28/11	2626	615	Purchased Power	807.30	
		131	UNISOURCE ELECTRIC		807.30
1/28/11	2627	615	Purchased Power	2,505.20	
		131	UNISOURCE ELECTRIC		2,505.20
1/31/11	2625	650	Transportation Expenses	500.00	
		131	REBEL OIL		500.00
	Total			6,127.50	6,127.50

CERBAT WATER COMPANY
Cash Receipts Journal
For the Period From Jan 1, 2011 to Jan 31, 2011

Filter Criteria includes: Report order is by Check Date. Report is printed in Detail Format.

Date	Account ID	Transaction Ref	Line Description	Debit Amnt	Credit Amnt
1/3/11	143 131.5	10311	Invoice: 013111 CERBAT WATER CUSTOMERS	67.37	67.37
1/4/11	143 131.5	10411	Invoice: 013111 CERBAT WATER CUSTOMERS	78.50	78.50
1/5/11	143 131	010511	Invoice: 1112 CERBAT WATER CUSTOMERS	35.15	35.15
1/5/11	143 131.5	10511	Invoice: 013111 CERBAT WATER CUSTOMERS	31.16	31.16
1/6/11	143 131	010611	Invoice: 1112 CERBAT WATER CUSTOMERS	687.55	687.55
1/7/11	143 131	010711	Invoice: 1112 CERBAT WATER CUSTOMERS	370.39	370.39
1/7/11	143 131.5	10711	Invoice: 013111 CERBAT WATER CUSTOMERS	42.53	42.53
1/10/11	143 131	011011	Invoice: 1112 CERBAT WATER CUSTOMERS	954.20	954.20
1/11/11	143 143 131	011111	Invoice: 1112 Invoice: 1111 CERBAT WATER CUSTOMERS	1,304.45	1,098.26 206.19
1/12/11	143 131	011211	Invoice: 1111 CERBAT WATER CUSTOMERS	353.91	353.91
1/12/11	143 131.5	11211	Invoice: 013111 CERBAT WATER CUSTOMERS	10.52	10.52
1/13/11	143 131	011311	Invoice: 1111 CERBAT WATER CUSTOMERS	205.53	205.53
1/14/11	143 131	011411	Invoice: 1111 CERBAT WATER CUSTOMERS	222.13	222.13
1/14/11	143 131.5	11411	Invoice: 013111 CERBAT WATER CUSTOMERS	38.61	38.61
1/17/11	143 131	011711	Invoice: 1111 CERBAT WATER CUSTOMERS	92.86	92.86
1/18/11	143 131	011811	Invoice: 1111 CERBAT WATER CUSTOMERS	243.67	243.67
1/18/11	143 131.5	11811	Invoice: 013111 CERBAT WATER CUSTOMERS	40.00	40.00
1/19/11	143 131	011911	Invoice: 1111 CERBAT WATER CUSTOMERS	393.87	393.87
1/20/11	143 131	012011	Invoice: 1111 CERBAT WATER CUSTOMERS	103.51	103.51
1/20/11	143 131.5	12011	Invoice: 013111 CERBAT WATER CUSTOMERS	132.52	132.52
1/21/11	143 131	012111	Invoice: 1111 CERBAT WATER CUSTOMERS	46.61	46.61

CERBAT WATER COMPANY
Cash Receipts Journal
For the Period From Jan 1, 2011 to Jan 31, 2011

Filter Criteria includes: Report order is by Check Date. Report is printed in Detail Format.

Date	Account ID	Transaction Ref	Line Description	Debit Amnt	Credit Amnt
1/21/11	143 131.5	12111	Invoice: 013111 CERBAT WATER CUSTOMERS	13.17	13.17
1/24/11	143 131	012411	Invoice: 1111 CERBAT WATER CUSTOMERS	49.50	49.50
1/25/11	143 131	012511	Invoice: 1111 CERBAT WATER CUSTOMERS	41.12	41.12
1/26/11	143 131	12611	Invoice: 1111 CERBAT WATER CUSTOMERS	25.95	25.95
1/26/11	143 131.5	12611	Invoice: 013111 CERBAT WATER CUSTOMERS	93.53	93.53
1/27/11	143 131	012711	Invoice: 1111 CERBAT WATER CUSTOMERS	197.22	197.22
1/28/11	143 131	012811	Invoice: 1111 CERBAT WATER CUSTOMERS	95.79	95.79
1/31/11	143 131	013111	Invoice: 1111 CERBAT WATER CUSTOMERS	119.59	119.59
				<u>6,090.91</u>	<u>6,090.91</u>

ATTACHMENT 2

CERBAT WATER COMPANY
Cash Disbursements Journal
For the Period From Feb 1, 2011 to Feb 28, 2011

Filter Criteria includes: Report order is by Date. Report is printed in Detail Format.

Date	Check #	Account ID	Line Description	Debit Amount	Credit Amount
2/1/11	11	231 131	Invoice: 1231 MOHAVE ENVIRONMENTAL	390.00	390.00
2/2/11	2628	630 131	Contractual Services - Billing CLAUDE K NEAL FAMILY TRUST	1,400.00	1,400.00
2/7/11	2630	615 131	Purchased Power UNISOURCE ELECTRIC	1,612.98	1,612.98
2/18/11	2942	615 131	Purchased Power UNISOURCE ELECTRIC	2,664.00	2,664.00
2/18/11	5610	615 131	Purchased Power UNISOURCE ELECTRIC	43.45	43.45
	Total			<u>6,110.43</u>	<u>6,110.43</u>

CERBAT WATER COMPANY
Cash Receipts Journal
For the Period From Feb 1, 2011 to Feb 28, 2011

Filter Criteria includes: Report order is by Check Date. Report is printed in Detail Format.

Date	Account ID	Transaction Ref	Line Description	Debit Amnt	Credit Amnt
2/1/11	143 131	020111	Invoice: 1111 CERBAT WATER CUSTOMERS	959.25	959.25
2/1/11	143 131.5	20111	Invoice: 013111 CERBAT WATER CUSTOMERS	43.90	43.90
2/2/11	143 131	20211	Invoice: 1111 CERBAT WATER CUSTOMERS	380.87	380.87
2/2/11	143 131.5	20211	Invoice: 013111 CERBAT WATER CUSTOMERS	33.17	33.17
2/3/11	143 131	20311	Invoice: 1111 CERBAT WATER CUSTOMERS	621.88	621.88
2/4/11	143 131	20411	Invoice: 1111 CERBAT WATER CUSTOMERS	431.53	431.53
2/7/11	143 131	020711	Invoice: 1111 CERBAT WATER CUSTOMERS	566.96	566.96
2/8/11	143 131	20811	Invoice: 1111 CERBAT WATER CUSTOMERS	249.31	249.31
2/9/11	143 131	020911	Invoice: 1111 CERBAT WATER CUSTOMERS	357.83	357.83
2/10/11	143 131	21011	Invoice: 1111 CERBAT WATER CUSTOMERS	25.00	25.00
2/10/11	143 131.5	21011	Invoice: 013111 CERBAT WATER CUSTOMERS	31.22	31.22
2/11/11	143 131	21111	Invoice: 1111 CERBAT WATER CUSTOMERS	329.80	329.80
2/11/11	143 131.5	21111	Invoice: 013111 CERBAT WATER CUSTOMERS	7.00	7.00
2/14/11	143 143 131	21411	Invoice: 1111 Invoice: 013111 CERBAT WATER CUSTOMERS	460.67	217.53 243.14
2/14/11	143 131.5	21411	Invoice: 013111 CERBAT WATER CUSTOMERS	30.32	30.32
2/15/11	143 131	21511	Invoice: 013111 CERBAT WATER CUSTOMERS	137.62	137.62
2/15/11	143 131.5	21511	Invoice: 013111 CERBAT WATER CUSTOMERS	63.27	63.27
2/16/11	143 131	21611	Invoice: 013111 CERBAT WATER CUSTOMERS	255.55	255.55
2/16/11	143 131.5	21611	Invoice: 013111 CERBAT WATER CUSTOMERS	78.50	78.50
2/17/11	143 131	21711	Invoice: 013111 CERBAT WATER CUSTOMERS	43.21	43.21
2/21/11	143 131	22111	Invoice: 013111 CERBAT WATER CUSTOMERS	72.85	72.85

CERBAT WATER COMPANY
Cash Receipts Journal
For the Period From Feb 1, 2011 to Feb 28, 2011

Filter Criteria includes: Report order is by Check Date. Report is printed in Detail Format.

Date	Account ID	Transaction Ref	Line Description	Debit Amnt	Credit Amnt
2/21/11	143 131.5	22111	Invoice: 013111 CERBAT WATER CUSTOMERS	51.31	51.31
2/22/11	143 131	22211	Invoice: 013111 CERBAT WATER CUSTOMERS	127.23	127.23
2/22/11	143 131.5	22211	Invoice: 013111 CERBAT WATER CUSTOMERS	27.86	27.86
2/23/11	143 131	22311	Invoice: 013111 CERBAT WATER CUSTOMERS	134.39	134.39
2/24/11	143 131	22411	Invoice: 013111 CERBAT WATER CUSTOMERS	100.00	100.00
2/25/11	143 131	22511	Invoice: 013111 CERBAT WATER CUSTOMERS	134.54	134.54
2/28/11	143 131	22811	Invoice: 013111 CERBAT WATER CUSTOMERS	21.87	21.87
				<u>5,776.91</u>	<u>5,776.91</u>