

OPEN MEETING ITEM ORIGINAL



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BEFORE THE ARIZONA CORPORATION C

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Arizona Corporation Commission

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COMMISSIONERS

GARY PIERCE- Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
OF CERBAT WATER COMPANY FOR
APPROVAL OF A RATE INCREASE

DOCKET NO. W-02391A-10-0218

IN THE MATTER OF THE COMMISSION ON
ITS OWN MOTION INVESTIGATING THE
FAILURE OF CERBAT WATER COMPANY
TO COMPLY WITH COMMISSION RULES
AND REGULATIONS

DOCKET NO. W-02391A-11-0166

**NOTICE OF FILING STAFF'S RESPONSE
TO COMPANY'S APPLICATION FOR
RECONSIDERATION OF DECISION NO.
72385**

Arizona Corporation Commission Staff ("Staff") hereby submits its Response to Cerbat Water Company's Application for Reconsideration of Decision No. 72385. Additionally, Staff has attached a proposed form of order for the convenience of the Arizona Corporation Commission should a rehearing be granted in this matter.

This is only a Staff recommendation, the Commission can decide to accept, amend or reject Staff's proposed order. Comments to the proposed order may be made by filing an original and thirteen (13) copies of the comments with the Commission's Docket Control Center at the Phoenix address listed below by 4:00 p.m. on or before August 3, 2011.

Staff anticipates this matter to be scheduled for Commission deliberation at its Open Meetings scheduled August 16, 2011, at 10:00 a.m. and August 17, 2011, at 10:00 a.m.

RESPECTFULLY SUBMITTED this 20th day of July 2011.

Kimberly A. Ruht, Attorney
Charles H. Hains, Attorney
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

1 Original and eighteen (18) copies
2 of the foregoing filed this
20th day of July 2011 with:

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

6 Copies of the foregoing mailed this
20th day of July 2011 to:

7 B. Marc Neal
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12 Phoenix, Arizona 85004

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14 Kayla Christene
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BEFORE THE ARIZONA CORPORATION COMMISSION

GARY PIERCE
Chairman
BOB STUMP
Commissioner
SANDRA D. KENNEDY
Commissioner
PAUL NEWMAN
Commissioner
BRENDA BURNS
Commissioner

IN THE MATTER OF IN THE MATTER OF)
THE APPLICATION OF CERBAT WATER)
COMPANY FOR APPROVAL OF A RATE)
INCREASE)

DOCKET NO. W-02391A-10-0218
DECISION NO. _____
ORDER

Open Meeting
August 16 and 17, 2011
Phoenix, Arizona

BY THE COMMISSION:

PROCEDURAL HISTORY

On November 9, 2009, Cerbat Water Company ("Cerbat" or "Company") filed an application with the Arizona Corporation Commission ("Commission") for emergency rate relief in the form of a rate increase and a surcharge.

On January 5, 2010, Utilities Division Staff ("Staff") filed a Staff Report recommending denial of the request for emergency rate relief because the equipment failure creating the emergency was not owned by the Company.

On January 8, 2010, Cerbat filed a Response to the Staff Report.

On January 20, 2010, a hearing was convened. However, because the Company failed to comply with A.R.S. 40-243, the hearing was continued.

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1 On February 19, 2010, a Notice of Appearance was filed by Steve Wene informing the
2 Commission that the offices of Moyes, Sellers and Sims had been retained to represent Cerbat
3 Water Company.

4 On March 1, 2010, the Company filed a Motion to Withdraw its Application. Staff filed a
5 Response to the Motion supporting its withdrawal on the condition that a permanent rate case be
6 filed April 30, 2010.

7 On March 3, 2010, a Procedural Order was issued authorizing the administrative closure of
8 the docket and ordering Cerbat to file a permanent rate application by April 30, 2010.

9 On June 1, 2010, after a request for an extension of time was granted, the Company filed a
10 permanent rate application.

11 On February 4, 2011, Staff filed its Staff Report.

12 On February 22, 2011, the Company filed Comments to the Staff Report.

13 A procedural conference was held on March 21, 2011 to address the issues raised by the
14 Company regarding Staff's recommendations. A hearing was set for May 26, 2011.

15 On May 18, 2011, the Company filed a Notice of Errata.

16 On April 19, 2011, Staff filed a Petition for Order to Show Cause and Motion for
17 Preliminary Relief ("OSC").

18 On April 20, 2011, the Commission convened a Special Open Meeting to consider Staff's
19 motion for an OSC against Cerbat. The Commission adjourned this proceeding to April 27, 2011
20 to avail the Company and public at large additional notice of the proceeding.

21 On April 27, 2011, the Company filed its response to Staff's motion for an OSC and
22 preliminary relief. The Commission considered and discussed the OSC during the regular Open
23 Meeting held on April 27, 2011 as well as taking testimony from the Company. The Commission
24 passed a motion providing a timeline allowing the Commission to potentially consider approval of
25 an emergency surcharge facilitating payment of pass due repairs costs related to the Trust well if
26 Cerbat at least acquires the well from the Trust.

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1 On May 13, 2011, the Company filed Additional Comments and Exhibits.

2 On May 18, 2011, the Company filed a Notice of Property Transfer.

3 On May 20, 2011, Staff filed Staff's Comments on Cerbat Water Company's Application
4 for an Emergency Rate Surcharge.

5 During the May 24, 2011 Open Meeting, the matter was considered.

6 On May 27, 2011, Decision No. 72384 was docketed, consolidating the Permanent Rate
7 Case (W-02391A-10-0218) and the Order to Show Cause (W-02391A-11-0166). Decision No.
8 72385 was docketed on May 27, 2011 granting Cerbat's request for an Emergency Surcharge and
9 ordering Staff to appoint an interim operator as soon as possible.

10 On May 23, 2011 Staff filed a Supplemental Staff Report for the permanent rate
11 application as a result of the proposed Emergency Surcharge.

12 On May 26, 2011, the hearing for the permanent rate application convened.

13 On June 16, 2011, Cerbat filed an Application for Reconsideration of Decision No. 72385,
14 requesting that the Commission reconsider and strike from the Decision provisions directing
15 Commission Staff to appoint an interim operator. (Cerbat Water Company's Application for
16 Reconsideration for Decision No. 72385 at 2:1-2.)

17 **FINDINGS OF FACT**

18 **I. BACKGROUND INFORMATION.**

19 1. The Company made a filing requesting that the Commission revisit portions of
20 Decision 73285; specifically those portions relating to the authorization of Staff to appoint an
21 interim manager.¹

22 2. Cerbat has specified it would like the Commission to reevaluate the authorization it
23 provided Staff to seek the appointment of an interim manager in Decision No. 72385. Cerbat
24 argues that an interim manager is inappropriate not only because the facts do not support it but that
25 the Commission does not have the authority to implement one.

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¹ Application for Reconsideration of Decision No. 72385, dated June 16, 2011.

1 3. Staff believes the Commission has the authority to appoint an interim manager for a
2 public service corporation.

3 4. However, Staff believes that a rehearing on Decision No. 72385 may be warranted
4 under these circumstances because the issue of the interim manager is not amenable to being
5 surgically excised from the Decision.

6 5. Staff's review of the transcript from the Commission Open Meeting on May 24,
7 2011 demonstrates that for at least two Commissioners, the approval of an emergency surcharge is
8 inextricably linked to the appointment of an interim manager. The original Staff recommendation
9 would have authorized Staff to appoint an interim manager without further action by the
10 Commission only if Cerbat failed in the future to comply with provisions in the Decision. (Staff's
11 Notice of Filing Re: Comments on Cerbat Water Company's Application for Emergency Rate
12 Surcharge dated May 20, 2011, Attachment A at 3). The Commission specifically amended the
13 proposed order to implement an interim manager immediately. (May 24, 2011 OM Tr. at 64:22-
14 24.)

15 6. As explained in the Open Meeting by Commissioner Burns:

16
17 I'm not certain that I would vote for the emergency rate increase
18 without an interim manager being put in place as opposed to just
19 giving Staff the authority to do it, because I am just concerned about
20 the continued -- and I'm very sorry to be in this position, but the
21 continued items that the company has deadlines on that just don't
22 seem to be met, repeatedly. *Id.* at 13:8-15.

23 7. Likewise, Commissioner Kennedy voiced similar reservations about approving an
24 emergency rate increase without an interim manager in place in light of concerns about the
25 performance of the existing management:

26 There have been violations from ADEQ. They can't file documents
27 on time. And I really believe that there is an issue in trying to
28 operate from the State of Nevada. I'm not willing to vote for a \$12
 surcharge without an interim manager. That I will not do. And I
 believe that this is in the best interests of the ratepayers. *Id.* at 50:20-
 51:1.

...

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1 4. When a party applies for a rehearing, it must specify in the application the matter or
2 matters it wishes to have reheard and set forth specifically the grounds on which it is based.
3 (A.R.S. §40-253(A)&(C)).

4 5. A.R.S. § 40-253(D) states “[a]n application for rehearing shall not excuse any
5 person from complying with and obeying any order or decision, or any requirements of any order
6 or decision of the commission theretofore made, or operation in any manner to stay or postpone
7 the enforcement thereof, except in such cases and upon such terms as the commission by order
8 directs.”

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ORDER

IT IS THEREFORE ORDERED that Cerbat Water Company's Application for Reconsideration of Decision No. 72385 is granted pursuant to A.R.S. §40-253 for the purposes of rehearing the issues of the appointment of an interim manager and approving the emergency surcharge.

IT IS FURTHER ORDERED that all provisions related to the interim manager and emergency surcharge contained in Decision No. 72385 be stayed until a further notice.

IT IS FURTHER ORDERED that the Hearing Division shall schedule further appropriate proceedings.

IT IS FURTHER ORDERED it is further ordered that this decision shall be effective immediately.

BY THE 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 this Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

XXX:XXX:XXX/XXX

1 SERVICE LIST FOR: Cerbat Water Company

2 DOCKET NO. W-02391A-10-0218

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