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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

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

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AZ CORP COMMISSION
DOCKET CONTROL

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JUL 20 2011

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

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

I. 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. Utilities Division Staff ("Staff") filed a Staff Report on January 5, 2010 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. A hearing was convened on January 20, 2010. However, because the Company failed to comply with A.R.S. 40-243, the hearing was continued.

On February 19, 2010, a Notice of Appearance was filed by Steve Wene informing the Commission that the offices of Moyes, Sellers and Sims had been retained to represent Cerbat Water Company. On March 1, 2010, the Company filed a Motion to Withdraw its Application. Staff filed a Response to the Motion supporting its withdrawal on the condition that a permanent rate case be filed April 30, 2010. A Procedural Order was issued on March 3, 2010, authorizing the administrative closure of the docket and ordering Cerbat to file a permanent rate application by April 30, 2010.

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1 After a request for an extension of time was granted, the Company filed a permanent rate
2 application on June 1, 2010. Staff filed its Staff Report on February 4, 2011. The Company filed
3 Comments to the Staff Report on February 22, 2011. Due to the issues raised by the Company
4 regarding Staff's recommendations, a procedural conference was scheduled for March 21, 2011. A
5 hearing was set for May 26, 2011. The Company filed a Notice of Errata on May 18, 2011.

6 On April 19, 2011 Staff filed a Petition for Order to Show Cause and Motion for Preliminary
7 Relief ("OSC"). On April 20, 2011, the Commission convened a Special Open Meeting to consider
8 Staff's motion for an OSC against Cerbat. The Commission adjourned this proceeding to April 27,
9 2011 to avail the Company and public at large additional notice of the proceeding. On April 27, 2011,
10 the Company filed its response to Staff's motion for an OSC and preliminary relief. The Commission
11 considered and discussed the OSC during the regular Open Meeting held on April 27, 2011 as well as
12 taking testimony from the Company. The Commission passed a motion providing a timeline
13 allowing the Commission to potentially consider approval of an emergency surcharge facilitating
14 payment of pass due repairs costs related to the Trust well, if Cerbat at least acquired the well from
15 the Trust.

16 The Company filed Additional Comments and Exhibits on May 13, 2011, and a Notice of
17 Property Transfer on May 18, 2011. Staff filed Staff's Comments on Cerbat Water Company's
18 Application for an Emergency Rate Surcharge on May 20, 2011. The matter was considered during
19 the May 24, 2011 Open Meeting. Decision No. 72384 was docketed on May 27, 2011, consolidating
20 the Permanent Rate Case (W-02391A-10-0218) and the Order to Show Cause (W-02391A-11-0166).
21 Decision No. 72385 was docketed on May 27, 2011 granting Cerbat's request for an Emergency
22 Surcharge and ordering Staff to appoint an interim manager as soon as possible.

23 On May 23, 2011, Staff filed a Supplemental Staff Report for the permanent rate application
24 as a result of the proposed Emergency Surcharge. The hearing for the permanent rate application
25 convened on May 26, 2011.

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

5 **II. DISCUSSION**

6 The Company has requested that the Commission revisit portions of Decision 73285;
7 specifically those portions relating to the authorization of Staff to appoint an interim manager.
8 (Application for Reconsideration of Decision No. 72385, dated June 16, 2011.)¹ A.R.S. § 40-253
9 allows any party to an action, after a final order or decision has been made by the Commission, to
10 apply for a rehearing on any matter determined in the action and specified in the application for
11 rehearing.

12 When a party applies for a rehearing, it must specify in the application the matter or matters it
13 wishes to have reheard and set forth specifically the grounds on which it is based. (A.R.S. §40-
14 253(A)&(C)) Here, Cerbat has specified it would like the Commission to reevaluate the authorization
15 it provided Staff to seek the appointment of an interim manager in Decision No. 72385. Cerbat argues
16 that an interim manager is inappropriate not only because the facts do not support it but also because
17 the Commission does not have the authority to implement one. Staff believes the Commission has the
18 authority to appoint an interim manager for a public service corporation. However, Staff believes that
19 a rehearing on Decision No. 72385 may be warranted under these circumstances because the issue of
20 the interim manager is not amenable to being surgically excised from the Decision.

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23 ¹ Although styled and pled as an application for reconsideration, Commission Staff notes that there is no provision
24 within the relevant Commission rules of procedure or in the governing statutes that provides for a reconsideration of
25 Commission decisions. Reconsideration is a rule of civil procedure used within the Superior Court system pursuant to
26 Rule Civ. Pro. Rule 7.1 (e). The rules governing the procedure used in Commission practice are set out at Arizona
27 Administrative Code ("A.A.C.") R14-3-101 *et seq.* Pursuant to A.A.C. R14-3-101(A), the Rules of Civil Procedure are
28 only applicable where a procedure is not set out by statute within Title 40 of the Arizona Revised Statutes ("A.R.S."),
A.A.C. Title 14, or within the regulations or orders of the Commission. The relief being requested is available pursuant
to A.R.S. § 40-253 and as such, the Rules of Civil Procedure do not apply under the circumstances. Because the
motion was filed within the time frame for an application for rehearing pursuant to A.R.S. § 40-253, Staff's response
assumes that an application for rehearing pursuant to A.R.S. § 40-253 was intended. By providing this response, Staff
is not waiving any argument that the Company failed to properly request rehearing pursuant to A.R.S. § 40-253.

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

10 I'm not certain that I would vote for the emergency rate increase
11 without an interim manager being put in place as opposed to just giving
12 Staff the authority to do it, because I am just concerned about the
13 continued -- and I'm very sorry to be in this position, but the continued
14 items that the company has deadlines on that just don't seem to be met,
15 repeatedly.

14 *Id.* at 13:8-15. Likewise, Commissioner Kennedy voiced similar reservations about approving an
15 emergency rate increase without an interim manager in place in light of concerns about the
16 performance of the existing management:

17 There have been violations from ADEQ. They can't file documents on
18 time. And I really believe that there is an issue in trying to operate from
19 the State of Nevada. I'm not willing to vote for a \$12 surcharge without
20 an interim manager. That I will not do. And I believe that this is in the
21 best interests of the ratepayers.

20 *Id.* at 50:20-51:1.

21 Considering that four of five Commissioners approved the Amendment after Commissioners
22 Burns' and Kennedy's views were expressed, it can be inferred the majority of the Commission also
23 believes these two issues are tied together. Because the approval of the emergency surcharge was
24 contingent upon the implementation of an interim manager, if the authorization for the appointment
25 of the interim manager is called into question than the rate increase must necessarily be questioned as
26 well. Since the Commission approved the Decision, Staff has been unable to enlist the services of an
27 interim manager. Owing to the limited number of qualified entities that could provide suitable interim
28 management service for a company that operates in the area, finding an interim manager in the near

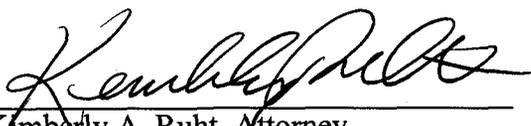
1 future appears increasingly doubtful. Staff also believes a rehearing would be an appropriate avenue
2 to evaluate whether some alternative measure exists to safeguard the Commission's concern of
3 approving an emergency rate increase without the additional oversight of an interim manager.

4 For the purposes of the rehearing, Staff believes an immediate stay of the Order is
5 appropriate. This would relieve Staff of attempting to locate an interim manager to be appointed to
6 Cerbat immediately, and remove Cerbat's authority to collect the emergency surcharge until the
7 Commission has had the opportunity to re-evaluate the situation. Alternatively, a substitute condition
8 could be utilized for the interim manager requirement, such as a requiring the Company to obtain a
9 bond or sight tariff letter of credit, if that would quell the Commission's concerns.

10 **III. CONCLUSION**

11 Staff believes that a rehearing on the appointment of an interim manager and the approval of
12 the emergency surcharge in Decision No. 72385 is warranted and appropriate under the
13 circumstances and supports the Company's Application for Reconsideration of Decision No. 72385
14 filed June 16, 2011.

15 RESPECTFULLY SUBMITTED this 20th day of July 2011.

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17 
18 Kimberly A. Ruht, Attorney
19 Charles H. Hains, Attorney
20 Legal Division
21 Arizona Corporation Commission
22 1200 West Washington Street
23 Phoenix, Arizona 85007
24 (602) 542-3402

24 Original and thirteen (13) copies
25 of the foregoing filed this
26 20th day of July 2011 with:

26 Docket Control
27 Arizona Corporation Commission
28 1200 West Washington Street
Phoenix, Arizona 85007

1 Copies of the foregoing mailed this
2 20th day of July 2011 to:

3 B. Marc Neal
4 Cerbat Water Company, Inc.
5 7313 East Concho Drive
6 Suite 2
7 Kingman, Arizona 86401-9707

8 Steve Wene, Esq.
9 Moyes Sellers & Sims
10 1850 North Central Avenue
11 Suite 1100
12 Phoenix, Arizona 85004

13 Kayla Christine

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23
24
25
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27
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