

**ORIGINAL**

**COMMISSIONERS**  
BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

**OPEN MEETING ITEM**



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**ARIZONA CORPORATION COMMISSION RECEIVED**

2013 MAY 28 P 4: 24

AZ CORP COMMISSION  
DOCKET CONTROL

DATE: MAY 28, 2013  
DOCKET NO.: W-01344A-13-0032

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Opinion and Order on:

**TACNA WATER MANAGEMENT COMPANY  
(EMERGENCY RATE INCREASE)**

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:

JUNE 6, 2013

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:

JUNE 11, 2013 AND JUNE 12, 2013

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.

Arizona Corporation Commission  
**DOCKETED**  
MAY 28 2013

DOCKETED BY *me*

*Jodi A. Jerich*  
JODI JERICH  
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 BOB STUMP - Chairman  
4 GARY PIERCE  
5 BRENDA BURNS  
6 BOB BURNS  
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION OF  
9 TACNA WATER MANAGEMENT COMPANY  
10 FOR AN EMERGENCY RATE INCREASE.

DOCKET NO. W-01344A-13-0032

DECISION NO. \_\_\_\_\_

11 OPINION AND ORDER

12 DATE OF HEARING:

April 11, 2013

13 PLACE OF HEARING:

Tucson, Arizona

14 ADMINISTRATIVE LAW JUDGE:

Belinda A. Martin

15 APPEARANCES:

Nancy Miller, Interim Manager, Tacna  
Water Management Company; and

16 Scott Hesla, Staff Attorney, Legal  
17 Division, on behalf of the Utilities  
18 Division of the Arizona Corporation  
19 Commission.

20 **BY THE COMMISSION:**

21 PROCEDURAL HISTORY

22 On February 21, 2013, Tacna Water Management Company ("Tacna" or "Company"), filed  
23 with the Arizona Corporation Commission ("Commission") an application requesting an emergency  
24 rate increase ("Application"). The Application was prepared and filed by Nancy Miller of Sunstate  
25 Environmental Services ("SES"), Tacna's Interim Manager.

26 Pursuant to a Procedural Order issued March 6, 2013, a procedural conference was held on  
27 March 15, 2013, at which Ms. Miller appeared on behalf of Tacna and the Commission's Utilities  
28 Division ("Staff") was represented by counsel. The parties discussed legal, procedural and  
scheduling issues.

On March 20, 2013, a Procedural Order was issued setting a hearing in this matter for April  
11, 2013, and establishing deadlines.

1 On March 29, 2013, Tacna filed a certification that the Company had mailed to each customer  
 2 by first-class U.S. Mail a copy of the hearing notice, and also that a copy of the notice had been  
 3 posted at the Tacna Post Office in the Company's service area, as directed in the March 20, 2013,  
 4 Procedural Order. Two customers filed opinions in this docket opposed to Tacna's proposed  
 5 emergency rate increase.

6 On April 5, 2013, Staff filed its Staff Report, recommending approval of the Application  
 7 subject to certain conditions.

8 A hearing on the Application was held on April 11, 2013, at the Commission's Tucson  
 9 office.<sup>1</sup> Ms. Miller represented the Company and testified as its management witness. Also  
 10 appearing as witnesses for the Company were Donald Kelland, Tacna's sole shareholder, Charles  
 11 Philpot, Tacna's systems witness, and Tracy Lynn Fauver, Office Manager for SES. Staff was  
 12 represented by counsel. Katrin Stukov, Utilities Engineer, and Darron Carlson, Public Utilities  
 13 Analyst Manager, testified on behalf of Staff. No members of the public were present. After public  
 14 hearing, the matter was taken under advisement pending submission of a recommended Opinion and  
 15 Order to the Commission.

16 On April 23, 2013, Tacna filed a corrected Interim Management Agreement and a letter re-  
 17 certifying Nancy Miller as the Interim Manager.

18 \* \* \* \* \*

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

21 **FINDINGS OF FACT**

22 **BACKGROUND**

23 **COMPANY HISTORY AND RELEVANT DECISIONS**

24 1. In Decision No. 21804 (April 26, 1952) the Commission granted Roy B. Kelland d/b/a  
 25 Tacna Water Company a Certificate of Convenience and Necessity ("CC&N") to provide water

26 \_\_\_\_\_  
 27 <sup>1</sup> At the beginning of the hearing, pursuant to Arizona Administrative Code R14-3-109(T) official notice was taken of: 1) Decision No.  
 28 69208 (December 21, 2006), Docket No. W-01334A-04-0815, 2) Decision No. 69215 (December 21, 2006), Docket No. W-01334A-  
 05-0647, 3) Decision No. 68658 (April 12, 2006), Docket Nos. W-01334A-05-0183 and W-01344A-05-0647, and 4) Decision No.  
 73357 (August 12, 2012), Docket No. W-01334A-12-0336. The parties did not object. Transcript of April 11, 2013, Hearing, pages  
 12-13 (hereinafter, "Tr. at \_\_\_").

1 utility service in the unincorporated area of Tacna, in Yuma County. In approximately 1981, Roy  
2 Kelland passed away and his son, Donald Kelland, assumed ownership and management of the  
3 Company. Tacna re-formed as an Arizona "C" corporation on April 8, 1992, as Tacna Water  
4 Company, Inc., and on December 11, 2000, the Company changed its name to Tacna Water  
5 Management Company. Currently, Tacna is a Class D water utility that serves approximately 138  
6 customers, north and south of Interstate 8, approximately 40 miles east of the City of Yuma.

7       2.       On November 19, 2004, Tacna filed an application to extend its CC&N to include four  
8 separate parcels. The Commission granted intervention in the matter to Mohawk Utility Company  
9 ("MUC") on January 5, 2006. On January 24, 2006, MUC filed a competing CC&N extension  
10 application for a portion of the extension area requested by Tacna. Tacna and MUC negotiated a  
11 settlement agreement and provided a copy to the Commission for review. Part of the settlement  
12 agreement involved the transfer to Tacna of a number of MUC customers located outside of MUC's  
13 existing service territory. The Commission granted an extension of Tacna's CC&N in Decision No.  
14 69208 (December 21, 2006). As a result, part of the Company's approved extension area included a  
15 parcel south of Interstate 8 with a number of MUC customers. The Commission ordered Tacna to file  
16 a notice informing the Commission 30 days before the Company intended to begin providing service  
17 to these customers.<sup>2</sup> Decision No. 69208 also required Tacna to file a copy of executed main  
18 extension agreements for the planned service facilities within 365 days of the Decision.<sup>3</sup>

19       3.       Four months after Tacna filed its CC&N extension application, the Company filed a  
20 rate application on March 11, 2005, using a December 31, 2003, test year. The Company's rates at  
21 the time of filing had been in effect since November 1978.<sup>4</sup> In 2005 Tacna had two wells, two  
22 pumps, an 8,000 gallon pressure tank, the distribution system, and an unused 325,000 gallon storage  
23 tank. Staff noted there were no wellhead meters installed on the wells and it was not possible to  
24 calculate the actual number of gallons pumped. Additionally, the Company reported arsenic  
25

26 <sup>2</sup> According to a letter docketed on September 3, 2009, in MUC's extension application docket, W-02341A-06-00440, MUC planned to  
transfer service to Tacna on October 17, 2009.

27 <sup>3</sup> The size of the approved CC&N extension area was not specifically stated, but in the Staff Report docketed prior to MUC's  
intervention, Staff noted that Tacna's certificated area would increase from 0.13 square miles to 6.13 square miles. Docket No. W-  
01344A-04-0815, Staff Report dated December 1, 2005, page 1.

28 <sup>4</sup> Decision No. 49561 (November 2, 1978).

1 concentration levels for its two wells of 30 parts per billion (“ppb”), exceeding the 10 ppb maximum  
 2 contaminant level. In the rate application, the Company indicated that it planned to construct new  
 3 plant to update its facilities to include “treatment and chlorination as [a] switchover from existing  
 4 wells to canal water [is] implemented.”<sup>5</sup>

5 4. Six months after filing the rate application, the Company filed a finance application on  
 6 September 7, 2005, for authority to obtain a loan from the Arizona Water Infrastructure Finance  
 7 Authority (“WIFA”). The Company planned to install water treatment plant estimated to cost  
 8 \$260,268, and was seeking Commission authorization to finance \$195,201 of the costs through  
 9 WIFA. The project included construction of a surface water canal turn-out, pumping site and 8,000  
 10 feet of transmission main, costing approximately \$66,033, and construction of a water treatment  
 11 plant, additional booster pumps, and refurbishment of the 325,000 gallon storage tank at a cost of  
 12 approximately \$194,235. As part of the plan, Tacna would enter into a contract with Wellton-  
 13 Mohawk Irrigation and Drainage District (“Wellton-Mohawk”) for delivery of a minimum 65-acre  
 14 foot, and a maximum 100-acre foot, annual Colorado River Water allocation. The contract price for  
 15 the water was 100 acre-feet at \$37.80 per acre-foot and would be billed in two installments per year.<sup>6</sup>

16 5. The matters were consolidated in an October 31, 2005, Procedural Order.

17 6. In the Staff Report to the rate application, Staff noted Tacna did not provide verified  
 18 information to support most of its schedules. Staff proposed an adjusted \$2,962 fair value rate base,  
 19 and recommended no increase over test year revenues of \$27,045 and operating income of \$11,153.

20 7. In the Staff Report to the finance application, Staff stated that Tacna planned to fund  
 21 the treatment project with \$65,067 in equity and the \$195,201 WIFA loan, resulting in a highly  
 22 leveraged capital structure with only 29.9 percent equity. Staff acknowledged this was not ideal, but  
 23 there were no other known options that would allow Tacna to finance construction of the plant  
 24 needed to provide safe water. Staff’s analysis of the finance application in conjunction with the rate  
 25 application demonstrated that Staff’s recommended rates would not provide Tacna with sufficient  
 26 revenues to cover the debt service and costs associated with the WIFA loan. Staff recommended

27 <sup>5</sup> Docket No. W-01344A-05-0183, Tacna rate application, page 3.

28 <sup>6</sup> Wellton-Mohawk calculated the minimum allocation charge as:  $100 \text{ AF} \times \$37.80 = \$3,780.00 \times .65 = \$2,457 / 2 = \$1,228.50$ . The invoices are sent in approximately October and April.

1 authorization of the loan coupled with implementation of a surcharge to support the debt service. The  
2 amount of the customer surcharge would be finalized after loan closing, but Staff's *pro forma*  
3 calculations projected that an additional \$19,076, approximately \$1,590 per month, of surcharge  
4 revenue would provide sufficient funds for the debt service on the WIFA loan. On April 12, 2006, in  
5 Decision No. 68658, the Commission adopted Staff's recommended revenues and rates and  
6 authorized Tacna to obtain the \$195,201 WIFA loan.

7 8. The Decision also noted that Tacna's owner had been reporting Tacna's profits and  
8 losses on Schedule C to his personal income tax return as though the entity were a sole  
9 proprietorship, rather than filing separate tax returns for Tacna. The Commission directed Tacna to  
10 either correctly file its returns as a corporate entity or dissolve and re-form as a sole proprietorship.  
11 Tacna was also directed to install wellhead meters on both wells.

12 9. The Commission approved the arsenic remedial surcharge ("WIFA Surcharge") in  
13 Decision No. 69215 (December 21, 2006), the same day as Tacna's CC&N extension was granted.

14 10. On February 8, 2011, Tacna filed a rate application in Docket No. W-01344A-11-  
15 0077, but the Company did not provide the necessary information to Staff to bring the application to  
16 sufficiency, despite repeated requests. The docket was administratively closed on March 8, 2013, at  
17 the request of the Interim Manager.

18 11. On July 30, 2012, Staff filed a Complaint and Petition for an Order to Show Cause  
19 against Tacna. Staff alleged that Tacna was in violation of Arizona Administrative Code ("A.A.C.")  
20 R14-2-407(A) because it was not supplying potable water to its customers, noting that Tacna's water  
21 exceeded contamination limits for arsenic and was in violation of Arizona Department of  
22 Environment Quality ("ADEQ") regulations. Staff further alleged that Tacna had defaulted on the  
23 WIFA loan, had not filed its required Utilities Division Annual Reports and had not responded to  
24 Staff's requests for information.

25 12. On August 21, 2012, the Commission issued its Order to Show Cause in Decision No.  
26 73357 (August 21, 1012) ("OSC"), and directed Tacna, among other things, to hire an interim  
27 manager acceptable to Staff within 30 days of the Decision's effective date. Procedural conferences  
28 were held on September 26, 2012, November 29, 2012, and February 5, 2013, during which the

1 Company discussed its on-going efforts to locate and hire an interim manager.

2 13. On February 8, 2013, a Procedural Order was issued setting the next status conference  
3 on the OSC for March 14, 2013.

4 14. On February 26, 2013, Staff docketed a Notice of Filing and Request for Procedural  
5 Order. Staff noted that Tacna had hired SES as Interim Manager on February 14, 2013, and SES had  
6 filed an emergency rate application on Tacna's behalf on February 21, 2013. Staff requested that the  
7 March 13, 2013, status conference be vacated pending a Commission Decision in the emergency rate  
8 docket, stating that in the event Staff believes Tacna is no longer adequately addressing the issues in  
9 the OSC, Staff would recommend that the OSC proceeding be reinstated.

10 15. On February 27, 2013, a Procedural Order was issued granting Staff's Request.

11 **WATER SYSTEM**

12 16. In the Application, Tacna reported there are 130 residential customers and  
13 approximately eight commercial customers, all served by 5/8-inch meters. The Company's current  
14 monthly charges and commodity rates do not vary between customer classes. Tacna operates two  
15 water systems on opposite sides of Interstate 8, the "Northern System" and the "Southern System,"  
16 which are not interconnected.

17 **Northern System**

18 17. The Northern System consists of one well,<sup>7</sup> a filtration system, a chlorinator, a  
19 refurbished storage tank, a booster pump, a bladder tank and a distribution system serving  
20 approximately 135 customers. Tacna did not report the water use data for this system, stating that the  
21 meter readings are not accurate due to the number of broken meters. Without information regarding  
22 the amount of water pumped and sold, Staff states it is not possible to determine the system's  
23 capacity.

24 18. Tacna completed the surface water delivery and treatment system in approximately  
25 2009. It is not known precisely which portion of the planned projects were completed using the  
26 WIFA loan proceeds and which projects, if any, were paid for with equity. Tacna entered into the

27 <sup>7</sup> In the Engineering Staff Report, Staff noted that in 2006 Tacna abandoned one of the wells in the Northern System. The remaining  
28 well was used as an emergency back up well after the switch to surface water in 2009. Staff Report dated April 5, 2013, Attachment  
A, page 1, footnote 1.

1 surface water allocation contract with Wellton-Mohawk and began providing treated water to  
2 customers in June 2009. Tacna's owner claimed the Company experienced operational difficulties  
3 with the treatment plant—including multiple pump failures—and had difficulty paying the increased  
4 costs for the electricity and water treatment chemicals associated with the new plant.<sup>8</sup> In  
5 approximately January 2011, Tacna stopped receiving water delivery from Wellton-Mohawk and  
6 returned to using its well to provide water with reported arsenic levels of 20 ppb to customers.

7 19. On December 19, 2012, ADEQ issued an administrative order requiring compliance  
8 with Arizona law and ADEQ regulations after discovering arsenic contamination issues, numerous  
9 testing and reporting deficiencies, and operations and maintenance deficiencies. In an ADEQ  
10 Compliance Status Report dated February 28, 2013, ADEQ indicated that the violations listed in the  
11 December 19, 2012, administrative order had not been resolved and ADEQ's order remains in effect.  
12 As such, ADEQ cannot determine whether Tacna's Northern System currently delivers water that  
13 meets water quality standards required by 40 CFR 141 and A.A.C., Title 18, Chapter 4, and/or the  
14 system is not in compliance.

15 20. Tacna's certificated area is not within an Arizona Department of Water Resources  
16 ("ADWR") Active Management Area. In a March 2, 2011, Compliance Report, ADWR reported that  
17 Tacna's Northern System was not in compliance with ADWR requirements for Annual Report and  
18 System Water Plan filings.

19 **Southern System**

20 21. The Southern System is one of the parcels approved as part of Tacna's CC&N  
21 extension request, and the customers in this area were formerly served by MUC. The system  
22 consists of a single well, a bladder tank and a distribution system, to serve approximately five  
23 unmetered customers. Given the lack of meters, Tacna could not report the water use data for this  
24 system, or information regarding the amount of water pumped and sold, and Staff stated it is not  
25 possible to determine the system's capacity.

26 22. The Southern System has fewer than 15 customers and is not considered to be a  
27 community water system subject to ADEQ and ADWR regulations and monitoring requirements.

28 <sup>8</sup> Tr. at 29.

**EXISTENCE OF EMERGENCY**

1  
2 23. Arizona Attorney General Opinion No. 71-17 (May 27, 1971) states that it is  
3 appropriate to grant interim rates as an emergency measure when sudden change brings hardship to a  
4 company, when the company is insolvent, or when the condition of the company is such that its  
5 ability to maintain service pending a formal rate determination is in serious doubt. Tacna has the  
6 burden of meeting one of the criteria in order for the Commission to find an emergency exists and  
7 grant the Application.

**Ownership and Management Issues**

8  
9 24. Mr. Kelland testified that in addition to Tacna he also had owned a large company in  
10 Yuma employing approximately 250 people, which kept him very busy. He testified that he  
11 delegated Tacna's management to others and he did not really question what the managers were  
12 doing, nor did he really have an idea of how much money he was putting into Tacna for its operations  
13 and maintenance.<sup>9</sup>

14 25. Mr. Kelland stated that sometime in the early 2000s, he encountered a number of  
15 financial setbacks beginning with the disputed sale of some property owned by Mr. Kelland's other  
16 company, which has been the subject of lawsuits and appeals.<sup>10</sup> Mr. Kelland's erroneous filing of  
17 Tacna's profits and losses on Schedule C for his personal income tax return resulted in a large debt to  
18 the IRS. Tacna's bank account was still held under Mr. Kelland's individual social security number,  
19 allowing the IRS to sweep all of the money out of that account to cover a portion of his IRS debt.<sup>11</sup>  
20 Mr. Kelland testified that because of the expenses related to the on-going lawsuit and back taxes, he  
21 filed for bankruptcy in 2009 for his other company and claimed the Bankruptcy Court has precluded  
22 him from putting any of his own funds into the Company.<sup>12</sup> Mr. Kelland offered that he hoped a  
23 favorable outcome in the lawsuit would perhaps provide enough money to cover all of his and the  
24 Company's debts.<sup>13</sup>

25  
26  
27 <sup>9</sup> Tr. at 30.

<sup>10</sup> Tr. at 20-23.

<sup>11</sup> Tr. at 19-21.

<sup>12</sup> Tr. at 23.

<sup>13</sup> Tr. at 22.



1 payments, meter reading and some certified operator services. SES also would be called out for a  
2 repair if Steve Kelland was unavailable. Eventually, Steve Kelland took over most duties from SES,  
3 leaving only the billing and collections duties to SES. Since 2008, SES has performed this work  
4 without being paid.<sup>22</sup> Ms. Miller testified that Tacna owes SES approximately \$40,000 for its  
5 services prior to becoming Interim Manager.<sup>23</sup>

### 6 Financial Condition

7 29. In the Application, Ms. Miller stated that the Kellands have not provided the  
8 documents and records needed to accurately ascertain the Company's financial obligations, but she  
9 believed Tacna has approximately \$200,000 in debt and accounts payable and has not been paying its  
10 creditors, many as far back as 2010, including WIFA.<sup>24</sup> At the time SES filed the Application, Ms.  
11 Miller did not know how much Tacna owed WIFA in unpaid principal, back interest and fees. She  
12 stated that Tacna has been collecting the WIFA Surcharge from its customers, but the funds had not  
13 been paid to WIFA.<sup>25</sup>

14 30. Additionally, the sales taxes collected from customers have not been paid, but Ms.  
15 Miller testified she had been working with the Arizona Department of Revenue to correct the  
16 problem. The property tax for the parcel with the well has been paid, but there are two other parcels  
17 on which Tacna has been able to pay only a portion of the assessment.<sup>26</sup>

18 31. According to Ms. Miller, one debt that must be paid before Tacna can begin providing  
19 water that meets ADEQ quality requirements is the surface water bill for Wellton-Mohawk. Even if  
20 Tacna was current on that bill, there is no way to get the water from the canal to the system for  
21 treatment and delivery because the pump failed a couple of years ago.<sup>27</sup> Ms. Miller stated the  
22 companies that could repair the pump will not because of Tacna's inability to pay, or because Tacna  
23 already owes them money.<sup>28</sup>

24  
25  
26 <sup>22</sup> Tr. at 44.

27 <sup>23</sup> Tr. at 50.

28 <sup>24</sup> Application, page 3.

<sup>25</sup> Application, page 3.

<sup>26</sup> Tr. at 46.

<sup>27</sup> Tr. at 47-48.

<sup>28</sup> Tr. at 49.

1           32. As to Tacna's other creditors, Ms. Miller testified that without complete records, she  
2 could not compile a full and accurate list of who the Company owed money to, or how much. SES  
3 contacted those creditors it does know about and explained what is being done to try to repay any  
4 outstanding debt.<sup>29</sup>

5           33. Ms. Miller stated that Tacna's well site has not been maintained for years and needs to  
6 be cleared and cleaned before any work can begin to repair the equipment and infrastructure.<sup>30</sup> Many  
7 customer meters are broken resulting in inaccurate meter readings.<sup>31</sup>

8           34. She described the Tacna community as having unpaved roads, very old mobile homes  
9 and decrepit housing. According to Ms. Miller, few homes have house numbers and there are many  
10 people in the town who do not know their homes' address, and everyone in the area must pick up  
11 their mail at the U.S. Post Office. Ms. Miller testified that although the Tacna area is generally a  
12 low-income area and the few businesses are small, there are some winter visitors in the area.<sup>32</sup>

13           35. According to Tracy Fauver, SES' Office Manager, Tacna's customers owe  
14 approximately \$14,000 in unpaid charges.<sup>33</sup> She stated that since SES began managing the Company,  
15 more customers have been paying their bills and bringing their accounts current and others have  
16 called promising to pay their bills by a certain date. SES has sent out disconnect notices and has  
17 disconnected some customers for nonpayment.<sup>34</sup> A few customers have complained about the  
18 collection efforts, but Ms. Fauver noted that three customers complained about having to pay the  
19 WIFA Surcharge when the Company was not providing treated water any more.<sup>35</sup>

20           36. Ms. Miller confirmed that within a day or two of becoming Interim Manager, she  
21 closed Tacna's bank account held by Mr. Kelland and transferred the funds to another account that  
22 only she and Ms. Fauver are authorized to access.<sup>36</sup>

23  
24  
25 <sup>29</sup> Tr. at 47.

<sup>30</sup> Attached to the Application are pictures showing the condition of the Northern System's well site and plant, and pictures depicting the general area.

26 <sup>31</sup> Application, page 1.

27 <sup>32</sup> Tr. at 57.

<sup>33</sup> Tr. at 92.

<sup>34</sup> Tr. at 93.

28 <sup>35</sup> Tr. at 93-94, 95-96.

<sup>36</sup> Transcript of March 15, 2013, Procedural Conference, page 36.

1            **System Condition**

2            37.     SES hired Charles Philpot in February 2013 as an on-site representative for the  
3 Company, to clean the systems' well sites, and to make smaller repairs to the systems where  
4 feasible.<sup>37</sup>

5            38.     Mr. Philpot testified that Tacna's Northern System plant is in poor condition,  
6 observing that some pieces of equipment are held together with cargo straps.<sup>38</sup> Since he was hired,  
7 Mr. Philpot has located approximately 95 percent of the Company's meters, including one that had  
8 not been read for several years. There is evidence of water theft where he found six to eight  
9 disconnected meters that have been bypassed by plumbing into the main line.<sup>39</sup>

10           39.     According to Mr. Philpot, the wellhead meter installed on the Southern System well is  
11 working, but the wellhead meter on the Northern System well is broken and the pipe coming out from  
12 it leaks.<sup>40</sup> He is aware there is line leak in the Northern System under a service road, but repairs  
13 would require heavy equipment and extensive labor costing between \$4,000 and \$6,000.<sup>41</sup> Mr.  
14 Philpot noted that there are no isolation valves on the system, so if there is a problem in one area of  
15 the system, the entire system must be shut down.

16           40.     Mr. Philpot testified the Northern System well site and plant needs considerable  
17 maintenance and repair, and noted that he had already removed a substantial amount of weeds, trash  
18 and debris that had overwhelmed the site.<sup>42</sup> Mr. Philpot could not say whether the electrical panel for  
19 the well is up to code, but the automatic switch for the pump is broken and he drives out in the  
20 afternoon to turn the well pump on and drives back in the morning to turn it off.<sup>43</sup> Additionally, the  
21 pressure tank at the site is not being used.<sup>44</sup> Mr. Philpot testified that the bag filtration equipment to  
22 treat the surface water from the canal is still at the well site.<sup>45</sup>

23  
24  
25 <sup>37</sup> Tr. at 74.

<sup>38</sup> Tr. at 78.

<sup>39</sup> Tr. at 78

<sup>40</sup> Tr. at 82, 87.

<sup>41</sup> Tr. at 83.

<sup>42</sup> Tr. at 84-85.

<sup>43</sup> Tr. at 78.

<sup>44</sup> Tr. at 85.

<sup>45</sup> Tr. at 85.

1           41.     According to Mr. Philpot, there are no maps for Tacna's Southern System and  
2 although he had found some meter bases, there is a water co-op nearby, so he cannot be certain which  
3 well feeds into the lines served by these meters. The Company's information says there are five  
4 Tacna customers on the system but Mr. Philpot stated it is conceivable there are unknown lines  
5 hooked into the system.<sup>46</sup> The five customers that the Company is aware of are paying the monthly  
6 minimum since their water use cannot be measured until the meters, if any, are located.<sup>47</sup>

7           42.     In addition to not knowing the location of all its meters, over the years Tacna has  
8 provided conflicting information about the meter size used by the majority of the Company's  
9 customers. In the Company's 2005 rate application, the Company listed 160 5/8 x 3/4-inch meters  
10 and zero 3/4-inch meters. In its 2011 rate application, Tacna stated it had zero 5/8 x 3/4-inch meters  
11 and 158 3/4-inch meters. This discrepancy may have been important when the Company calculated  
12 the WIFA Surcharge, as will be discussed later. In this Application, Ms. Miller stated that the  
13 majority of Tacna's customers are served using 5/8-inch meters.

14           43.     Ms. Miller testified that to the best of her knowledge, all of the customers in Tacna's  
15 service area use septic systems for wastewater disposal.<sup>48</sup>

16           44.     Ms. Miller concluded that the Company's current financial situation has been  
17 deteriorating over a number of years due to mismanagement, and that the system is in very poor  
18 condition. Ms. Miller believes Tacna is insolvent and that the condition of the Company is such that  
19 its ability to maintain service pending a formal rate determination is in serious doubt.<sup>49</sup> She stated:  
20 "Meters are broken, lines are broken, and this company is broken."<sup>50</sup>

21           45.     Staff agreed with Ms. Miller's assessment that the Company's infrastructure is in  
22 disrepair. As for Tacna's financial condition, Staff stated it had tried for some time to help the  
23 Company put together a sufficient rate case but as the matter proceeded, it became obvious Tacna  
24 could not survive the usual rate case process without more financial assistance.<sup>51</sup> Staff concluded  
25

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26 <sup>46</sup> Tr. at 80.

27 <sup>47</sup> Tr. at 81.

28 <sup>48</sup> Tr. at 42.

<sup>49</sup> Tr. at 71.

<sup>50</sup> Application, page 1.

<sup>51</sup> Tr. at 106-107.

1 that emergency conditions exist which meet the criteria necessary for the Commission to set interim  
2 rates.<sup>52</sup>

3 46. We find that the owner's and past managers' actions and indifference have  
4 impoverished Tacna to such a degree that there is no doubt it is in danger of financial and operational  
5 failure. Accordingly, given the evidence and testimony regarding Tacna's poor management history  
6 and lack of cooperation with Staff and the Interim Manager, its heavy debt level of debt and apparent  
7 inability to meet its expenses, and its systems' many deficiencies and non-compliance with ADEQ  
8 and ADWR water quality requirements, we find that an emergency situation exists.

### 9 EMERGENCY RATES

#### 10 PROPOSED RATES

11 47. According to the Application, Tacna's average monthly receipts for the four months  
12 before the Application was prepared were \$3,328. Tacna's proposed rates could bring the monthly  
13 income before expenses up to approximately \$5,000 to \$6,000 a month. Ms. Miller believes this  
14 would allow Tacna to begin repairs on the surface water plant in order to bring it back on-line and  
15 provide potable water to customers, perform maintenance on the well site, make small system repairs,  
16 pay the monthly bills and begin to repay some of Tacna's debt.

17 48. Tacna's current rates and the rates proposed in the Application are as follows:

| 18 <u>MONTHLY CHARGES:</u> | <u>CURRENT</u> | <u>REQUESTED</u> |
|----------------------------|----------------|------------------|
| 19 <u>Residential:</u>     |                |                  |
| 20 5/8 x 3/4-Inch Meter    | \$ 7.00        | \$28.00          |
| 3/4-Inch Meter             | 7.00           | 32.00            |
| 1-Inch Meter               | 11.62          | 38.00            |
| 21 1 - 1/2-Inch Meter      | 23.25          | 45.00            |
| 2-Inch Meter               | 37.20          | 65.00            |
| 22 3-Inch Meter            | 69.75          | 85.00            |
| 4-Inch Meter               | 116.25         | 120.00           |
| 23 6-Inch Meter            | 232.50         | 250.00           |
| 24 <u>Commercial:</u>      |                |                  |
| 25 5/8 x 3/4-Inch Meter    | \$ 7.00        | \$100.00         |
| 3/4-Inch Meter             | 7.00           | 132.00           |
| 1-Inch Meter               | 11.62          | 138.00           |
| 26 1 - 1/2-Inch Meter      | 23.25          | 145.00           |
| 2-Inch Meter               | 37.20          | 165.00           |
| 27 3-Inch Meter            | 69.75          | 185.00           |

28 <sup>52</sup> Staff Report, page 5.

|   |   |        |        |
|---|---|--------|--------|
| 1 | 4-Inch Meter                                  | 116.25 | 220.00 |
| 1 | 6-Inch Meter                                  | 232.50 | 250.00 |
| 2 | <b><u>WIFA SURCHARGE:</u></b>                 | \$6.78 | \$6.78 |
| 3 | <b><u>COMMODITY CHARGE (All Classes):</u></b> |        |        |
| 4 | <b><u>(Per 1,000 gallons)</u></b>             |        |        |
| 5 | 0 to 3,000 gallons                            | \$0.75 | \$1.00 |
| 5 | 3,001 to 7,000 gallons                        | 0.95   | 1.50   |
| 6 | Over 7,000 gallons                            | 1.05   | 1.75   |

7           49. Tacna also requests Commission authorization for a variance in the Customer Deposit  
8 Fee pursuant to A.A.C. R14-2-403(B), to allow a \$75.00 Customer Deposit Fee, as well as authority  
9 to charge Late Payment Fees of \$5.00 for residential and 10 percent of the outstanding bill for  
10 commercial customers, rather than the authorized 1.5 percent of the unpaid balance.

11           50. The Company's proposed increase to the monthly charge for residential customers on  
12 5/8 x 3/4-inch meters, from \$7.00 to \$28.00, would be a \$21.00 increase, or 300 percent. The  
13 monthly increase for commercial customers, from \$7.00 to \$28.00, would be \$93.00, or 1,329  
14 percent.

15           51. Tacna's commodity charges are calculated per 1,000 gallons of usage. The proposed  
16 commodity charge for the first 3,000 gallons, from \$0.75 to \$1.00, is a 33 percent increase. The  
17 charge for 3,001 to 7,000 gallons increases by 58 percent, from \$0.95 to \$1.50. All usage over 7,000  
18 gallons increases by 67 percent, from \$1.05 to \$1.75.

19           52. Because of the lack of reliable water use information, it was not possible to determine  
20 what the increase in commodity rates would be based on average and median use, or how much  
21 revenue may be generated from the increase.

## 22 **STAFF RECOMMENDATIONS**

### 23 **Rates**

24           53. Staff reviewed the proposed rates and concluded that they do not represent Staff's  
25 normal rate design or pricing levels, but "due to the lack of historical operational information, Staff is  
26 unable to apply its normal rate design determinations. Therefore, Staff will not offer an alternative  
27 rate design at this time."<sup>53</sup>

28 <sup>53</sup> Staff Report, page 4.

1 54. Staff recommended that the docket be held open after the Decision is issued, in case  
2 circumstances arise necessitating prompt attention. At hearing, Staff modified this recommendation  
3 to state that the docket should remain open until a Commission Decision approving Tacna's  
4 permanent rates becomes effective.<sup>54</sup>

5 55. Staff recommended approval of the rates proposed by Tacna on an interim basis.

6 **WIFA Repayment**

7 56. Tacna's required monthly payment to WIFA is \$1,782.54. According to Staff, with  
8 138 customers on 5/8-inch meters, and a WIFA Surcharge of \$6.78 per customer, Tacna should  
9 collect approximately \$935.64 per month for debt service payments. Staff observed that neither  
10 Decision No. 68685 nor Decision No. 69215 required Tacna to segregate the WIFA Surcharge funds  
11 into a dedicated account.

12 57. Tacna has been in default on the WIFA loan since October 2010, and WIFA depleted  
13 the debt service reserve fund in May 2011. Staff noted that after speaking with the Interim Manager  
14 about repayment of the loan, WIFA issued a re-amortized loan schedule, in which WIFA required  
15 Tacna to pay the regular monthly payment of \$1,782.54, plus \$18,393.20 in back interest and fees, on  
16 July 1, 2013. The next six payments would be \$1,782.54, before dropping to \$1,504.13 per month  
17 for the remainder of the loan term. Staff explained that WIFA requires the \$278.41 difference  
18 between the two payments to be deposited into a dedicated replacement reserve account.

19 58. Ms. Miller related to Staff that Tacna could begin making the monthly debt service  
20 payments in July, but the Company did not have the money to cover over \$18,000 back interest and  
21 fees. After discussions with WIFA, Staff related WIFA's offer that if Tacna began making its  
22 \$1,782.54 payments on July 1, 2013, WIFA staff would be amenable to requesting the WIFA Board  
23 to waive the back interest and fees due on the loan.

24 59. Staff believes it is crucial that Tacna take advantage of WIFA's re-amortization offer  
25 and made the following recommendations regarding the WIFA Surcharge and loan repayment:

- 26 a) The Commission should order Tacna to segregate the WIFA Surcharge funds  
27 into a separate bank account and that any withdrawals from this account will  
be restricted to only WIFA.

28 <sup>54</sup> Tr. at 125.

- b) Tacna must further segregate the WIFA Surcharge beginning February 1, 2014, and establish a repair and replacement account that will be funded with \$278.41 of the WIFA Surcharge funds per month thereafter.
- c) The repair and replacement account can be accessed by Tacna as needed to maintain its arsenic treatment facilities.
- d) Staff believes that the current WIFA Surcharge is not adequate to fund the re-amortized loan payments. Following is a calculation of what is needed to fund the WIFA loan payments:

|   |             |
|---|-------------|
| Regular monthly payment:                                  | \$ 1,782.54 |
| Divide by number of customers:                            | 138         |
| Equals per customer per month charge:                     | \$ 12.92    |
|   |             |
| Less current surcharge amount:                            | \$ 6.78     |
| Equals amount necessary to be taken from emergency rates: | \$ 6.14     |

As such, in addition to the \$6.78 WIFA Surcharge currently being collected, Staff recommends that \$6.14 per customer per month be taken from the emergency rate increase funds and deposited each month in the segregated WIFA loan account.

- e) Tacna should begin making WIFA loan payments in a timely manner starting July 1, 2013.
- f) After July 1, 2013, Tacna should file a letter with WIFA requesting that WIFA staff submit a proposal to the WIFA Board to waive the back interest and fees on Tacna's WIFA loan.

60. At hearing, Ms. Miller testified that she has opened a dedicated account for the WIFA funds and would begin segregating the funds as customers' payments are received.

**Compliance Recommendations**

61. Staff recommended that Tacna should file a full permanent rate application no later than March 31, 2014, using a test year ending December 31, 2013, or, alternatively, file no later than September 30, 2014, using a test year ending June 30, 2014.

62. If Tacna fails to file its full permanent rate application by September 30, 2014, all interim rates should end October 1, 2014.

63. Staff notes that Tacna has three delinquent Commission compliance filings:

- a) Tacna failed to file fully executed main extension agreements as required by Decision No. 69208, page 11, lines 14-17.
- b) Tacna failed to inform the Commission 30 days before providing service to new customers coming from the Mohawk Utility Company as required by

Decision No. 69208, pages 11-12, lines 27-2.

1  
2 c) Tacna did not file its Answer to an Order to Show Cause issued by the  
Commission in Decision No. 73357 until March 22, 2013.

3 64. Staff explained that Mr. Kelland and Staff have not been able to “locate, identify, or  
4 otherwise satisfy the two outstanding compliance issues from Decision No. 69208.” Given the age of  
5 these two compliance items and the Company’s inability to comply, Staff recommended they be  
6 permanently withdrawn.

7 65. SES filed an Answer to the OSC on Tacna’s behalf in February 2013. Staff believes  
8 this filing should meet this compliance requirement of Decision No. 73357.

9 66. Staff also recommended that the bonding requirements associated with emergency rate  
10 increases be minimized.

11 67. Further, Staff recommended that the Company be ordered to file monthly income  
12 statements to the Chief of the Financial and Regulatory Analysis section of the Utilities Division  
13 every month until permanent rates are approved in the Company’s next rate case filing.

14 **DISCUSSION**

15 **Proposed Rates**

16 68. The rates proposed by Tacna are extraordinary not only in their amount, but also  
17 because there is no documentation to demonstrate the reasons for the Company’s alleged inability to  
18 achieve its projected revenues. Some possible reasons could be the decrease in the number of  
19 customers, malfunctioning meters and an overall lack of accurate water use data, for example. It is  
20 also possible that with the imposition of a tiered rate design, customers began to conserve water.<sup>55</sup>  
21 As for expenses, Mr. Kelland claimed that the repairs and expenses associated with the water  
22 treatment plant were much higher than anticipated. Combined, these factors may have affected the  
23 Company’s total operating income, but the Company has not provided Staff or SES with all of the  
24 records necessary to evaluate these claims.

25 69. Another possibility is that the Company may have calculated the WIFA Surcharge  
26 amount using incorrect meter size billing determinants, resulting in insufficient revenues to meet the  
27

28 <sup>55</sup> In the last rate case, the average usage was 11,209 and median usage was 6,286 but those numbers were in doubt. The Interim  
Manager could not estimate what the current usage is given the minimal operation data available.

1 WIFA payment. Tacna is currently only collecting approximately \$935.64 per month toward the  
2 \$1,782.54 WIFA debt service, creating an \$847.32 debt service shortfall each month.

3 70. A \$21.00 increase in the 5/8 x 3/4-inch meter monthly charge for 130 residential  
4 customers would provide Tacna with an additional \$2,730. As for the commercial customers, at  
5 hearing Ms. Miller noted that the Company's initial assertion that there are eight commercial  
6 customers was high, and that there are only five.<sup>56</sup> A \$93.00 increase in the 5/8 x 3/4-inch meter  
7 monthly charge for the five commercial customers results in an additional \$465. Based on the  
8 proposed monthly charge increase alone, the Company could receive an additional \$3,195 per month.

9 71. In most cases, it is likely that granting a small water company's request for an  
10 emergency rate increase resulting in over \$3,000 of additional cash per month would be unwarranted.  
11 In this matter, the disconcerting lack of any verified financial documentation or records and the lack  
12 of cooperation by the owner and managers has made it very difficult to evaluate the reasonableness of  
13 the Interim Manager's proposed rates; the request may be too much, but it could conceivably be too  
14 little.

15 72. It is quite troubling that customers are being asked to pay so much more for water that  
16 is simply unacceptable. But if emergency rates are denied, there is no way to predict what may occur  
17 with the system and, ultimately, with water service to the customers, however deficient. Approving  
18 lower emergency rates may mean the Interim Manager would have to make repeated requests to the  
19 Commission for further rate increases, prolonging the time it takes to provide customers with safe  
20 water.

21 73. This decision is made more difficult given the potential that Tacna could be returned  
22 to operational and financial viability on the backs of its customers, ultimately benefiting an owner  
23 whose actions have created the Company's current financial difficulties. At some point, the  
24 Commission might consider whether it is still in the public interest to allow Tacna to hold a CC&N to  
25 the exclusion of others who may be more willing or better able to provide service in the area.

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26  
27  
28 <sup>56</sup> Tr. at 142.

1 74. After reviewing the limited options available within the context of this Application,  
2 we will accept Staff's decision not to propose an alternative rate design at this time and adopt Staff's  
3 recommendation that Tacna's proposed rate increase be authorized on an interim basis.

4 75. Given the circumstances, this authorization is expressly conditioned on Tacna's  
5 operations and management by SES, or, if SES is no longer able or willing to act as Tacna's interim  
6 manager, by another interim manager approved or appointed by the Commission. Under no  
7 circumstances should Donald Kelland or Steve Kelland have a management role in the Company as  
8 long as the interim rates are in effect.

9 76. Further, as long as the interim rates are in effect, the Interim Manager shall use all of  
10 Tacna's available funds for payment of the costs and expenses necessary to bring the Company into  
11 compliance with ADEQ safe water requirements and begin providing safe water to customers, to pay  
12 for immediate and/or urgent system repairs, to pay all operating expenses (including the Interim  
13 Management Fee), and to pay all creditors for which the Interim Manager has verified invoices  
14 (which must sufficiently detail the cost break down for services, materials and/or labor), and all  
15 outstanding Commission-approved secured debt.

16 77. We find that Staff's recommendation that the docket be held open until a Commission  
17 Decision approving Tacna's permanent rates becomes effective is reasonable and we adopt it.

18 **WIFA Repayment**

19 78. Ms. Miller testified that she is concerned that Staff's recommended use of \$6.14 from  
20 each bill specifically to pay WIFA compromises Tacna's ability to take the steps necessary to  
21 immediately begin the process of repairing the infrastructure needed to supply surface water to the  
22 system and pay the past due amounts to Wellton-Mohawk for the surface water allocation.<sup>57</sup>

23 79. The first count of the Commission's OSC charges that Tacna is in violation of A.A.C.  
24 R14-2-407(A) because the Company is not serving potable water to customers and states: "Staff is  
25 concerned for the immediate health and safety of Tacna's customers based on current management's  
26 provision of poor water quality, inadequate attention to maintaining its plant and operations, [and]

27

28 

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<sup>57</sup> Tr. at 65.

1 neglect of necessary water testing and monitoring....”<sup>58</sup>

2 80. In the Staff Report, however, Staff made a number of recommendations focused on the  
3 additional set aside from emergency rates for repayment of the WIFA loan, yet did not provide any  
4 specific guidance or recommendations to ensure that potable water service is quickly reinstated. Nor  
5 did Staff analyze the specifics of how other creditors could be repaid.

6 81. It is troubling that for the past one and half years Tacna customers have shouldered the  
7 burden of the WIFA Surcharge, with no benefit in return. Earmarking emergency funds specifically  
8 for WIFA may further delay Tacna’s fulfillment of its responsibility to its customers to provide safe  
9 drinking water and diminish the Company’s ability to improve its service.

10 82. When asked at hearing whether the Company’s first priority should be taking the  
11 necessary steps to begin serving its customers uncontaminated water, Staff witness Darron Carlson  
12 agreed that it should be. Nevertheless, Mr. Carlson testified that Staff’s set aside for WIFA was  
13 reasonable in this situation for several reasons. First, Staff did not challenge the proposed emergency  
14 rates despite of the lack of documentary support, and believed that the rates requested by Tacna likely  
15 would be sufficient to meet its obligations even after the set aside for WIFA.<sup>59</sup> Second, Mr. Carlson  
16 testified that Staff has “a relationship, if you will, with WIFA because we have to approve those loans  
17 before they’ll give them. So they, there was consideration given to WIFA...when I went into this  
18 particular emergency case, I wasn’t looking at WIFA to...get any special consideration necessarily;  
19 however, again, we did approve the loan.”<sup>60</sup>

20 83. Further, he felt WIFA’s offer to forego over \$18,000 in back interest represented a  
21 significant savings for the Company. Staff acknowledged the offer is only that WIFA staff will  
22 submit a proposal to the WIFA Board requesting a waiver of the \$18,000 in back interest and fees;  
23 WIFA staff cannot guarantee that the Board will agree to the request.<sup>61</sup>

24 84. Mr. Carlson explained that Staff typically does not interfere with companies’  
25 operations; Staff tries to ensure that water utilities “deliver the best water they can. Hopefully it’s  
26

27 <sup>58</sup> Decision No. 73357, page 8.  
<sup>59</sup> Tr. at 113.  
28 <sup>60</sup> Tr. at 111-112.  
<sup>61</sup> Tr. at 114.

1 drinkable. But some systems, any water is better than none. And again, our concern is that  
2 they...deliver clean water, and that they don't gouge anybody in the process. That's basically all  
3 we're worried about."<sup>62</sup>

4 85. Staff may be correct that once SES has a better idea of monthly income and  
5 outstanding debts, setting aside \$6.14 for WIFA will not diminish impact Tacna's ability to begin  
6 providing safe drinking water as quickly as possible. We have adopted Staff's recommendation to  
7 hold the docket open; if Tacna finds the WIFA set aside onerous, Tacna may contact Staff to address  
8 its concerns and Staff can act accordingly. Further, although Staff recommended that the Company  
9 send a letter to WIFA after the July payment requesting a waiver of the back interest and fees, there is  
10 nothing precluding Tacna from seeking additional concessions from WIFA in that letter.

11 86. Accordingly, we accept Staff's position and the recommendations regarding the \$6.14  
12 set aside.

13 87. We believe Staff's recommendation that after July 1, 2013, Tacna should submit a  
14 letter to WIFA staff requesting submission of a proposal to the WIFA Board for a waiver of back  
15 interest and fees on Tacna's WIFA loan is reasonable, but it should be modified to require that Tacna  
16 file with Docket Control, as a compliance item in this docket, copies of the letter submitted to WIFA.

17 88. Staff's recommendation that beginning February 1, 2014, Tacna should further  
18 segregate WIFA Surcharge funds of \$278.41 into the replacement reserve account, as required by the  
19 WIFA loan documents,<sup>63</sup> is reasonable and we adopt it.

20 89. Staff further recommends that the funds in the replacement reserve account may be  
21 used by Tacna to maintain its arsenic facilities, but Staff does not state what other restrictions, if any,  
22 the loan documents place on this account.

23 90. We believe it is reasonable to modify Staff's recommendation to state that Tacna's  
24 access to, and use of, the funds in the replacement reserve account must be in compliance with the  
25 terms of the WIFA loan documents.

26  
27  
28 <sup>62</sup> Tr. at 130.

<sup>63</sup> Tr. at 125.

1           **Compliance Recommendations**

2           91.     We find Staff's recommendation that Tacna should file a full permanent rate  
3 application no later than March 31, 2014, using a test year ending December 31, 2013, or,  
4 alternatively, no later than September 30, 2014, using a test year ending June 30, 2014, is reasonable  
5 and we adopt it.

6           92.     However, if Tacna chooses to file a rate application based on a June 30, 2014, test  
7 year, we believe it is reasonable to require the Company to file a letter with Docket Control by  
8 January 31, 2014, notifying the Commission of its choice and stating the reasons supporting its  
9 choice of the June 30, 2014, test year.

10          93.     Staff's recommendation that if Tacna does not file a full permanent rate application by  
11 September 30, 2014, all interim rates should end October 1, 2014, is reasonable and we adopt it.

12          94.     We find Staff's recommendation to minimize the bond in this matter is reasonable and  
13 we direct Tacna to post a performance bond of \$10.00 or similar financial instrument, no later than  
14 June 28, 2013. Tacna should submit the original performance bond or financial instrument to the  
15 Commission's Business Office for safekeeping and shall file notice with Docket Control as a  
16 compliance item in this Docket stating that the original performance bond or financial instrument was  
17 provided as directed.

18          95.     Staff's recommendation that Tacna should provide monthly income statements to the  
19 Chief of the Financial and Regulatory Analysis section of the Utilities Division every month until a  
20 Commission Decision approving Tacna's permanent rates becomes effective is reasonable.

21          96.     We direct that the first income statement must be sent no later than July 31, 2013.

22          97.     Further, we believe it is reasonable to direct Staff to review the income statements  
23 when received and, unless immediate attention is warranted, Staff should file with Docket Control a  
24 Status Update no later than December 31, 2013, summarizing the Company's financial and  
25 operational progress and outlining the status of the OSC docket. Staff should simultaneously file this  
26 Status Update in the OSC docket.

27          98.     We find that Staff's recommendation that the two outstanding compliance items from  
28 Decision No. 69208 stated in Finding of Fact No. 63 (A) and (B), above are permanently withdrawn.

1           99. As noted by Staff at hearing, Tacna's proposed revenues result in rates that classify it  
 2 as a Class D utility, necessitating Tacna to maintain its accounting records in accordance with the  
 3 National Association of Regulatory Commissioners Uniform System of Accounts.<sup>64</sup> Accordingly, we  
 4 believe it is reasonable to require that Tacna maintain its accounting records in accordance with the  
 5 National Association of Regulatory Commissioners Uniform System of Accounts.

6           100. Tacna shall notify its customers of the authorized interim rates and charges and their  
 7 effective date, in a form acceptable to Staff, by means of an insert in its next regularly scheduled  
 8 billing or in a separate mailing.

9           101. Further, we believe it is reasonable to allow Tacna to continue to collect from its  
 10 customers a proportionate share of any privilege, sales or use tax per A.A.C. R14-2-409(D)(5).

11           102. We recognize that SES has agreed to act as Interim Manager in spite of the \$40,000 in  
 12 outstanding fees owed by Tacna and we appreciate SES' efforts. We realize there are a large number  
 13 of conditions that must be satisfied under the terms of this Decision, but they are necessary given the  
 14 magnitude of the emergency rate increase. SES is encouraged to contact Staff with any questions or  
 15 concerns it may have regarding compliance with any of the stated orders.

#### CONCLUSIONS OF LAW

17           1. Tacna is a public service corporation pursuant to Article XV of the Arizona  
 18 Constitution and ARS §§ 40-250 and 40-251.

19           2. The Commission has jurisdiction over Tacna and the subject matter of the Application.

20           3. Notice of the Application and hearing was provided in accordance with the law.

21           4. Tacna is facing an emergency within the definition set forth in Attorney General  
 22 Opinion No. 71-17.

23           5. Given the facts and circumstances as presented in this case, the emergency rates  
 24 requested by Tacna are reasonable and should be implemented on an interim basis

25           6. The recommendations set forth herein are reasonable and should be adopted.

26 ...

27 ...

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28 <sup>64</sup> Tr. at 120-121.

**ORDER**

IT IS THEREFORE ORDERED that Tacna Water Management Company shall file with Docket Control, as a compliance item in this docket, by July 1, 2013, revised tariffs setting forth the following interim rates and charges:

**MONTHLY CHARGES:****Residential:**

|                      |         |
|----------------------|---------|
| 5/8 x 3/4-Inch Meter | \$28.00 |
| 3/4-Inch Meter       | 32.00   |
| 1-Inch Meter         | 38.00   |
| 1 - 1/2-Inch Meter   | 45.00   |
| 2-Inch Meter         | 65.00   |
| 3-Inch Meter         | 85.00   |
| 4-Inch Meter         | 120.00  |
| 6-Inch Meter         | 250.00  |

**Commercial:**

|                      |          |
|----------------------|----------|
| 5/8 x 3/4-Inch Meter | \$100.00 |
| 3/4-Inch Meter       | 132.00   |
| 1-Inch Meter         | 138.00   |
| 1 - 1/2-Inch Meter   | 145.00   |
| 2-Inch Meter         | 165.00   |
| 3-Inch Meter         | 185.00   |
| 4-Inch Meter         | 220.00   |
| 6-Inch Meter         | 250.00   |

**WIFA SURCHARGE:**

\$6.78

**COMMODITY CHARGE (All Classes):****(Per 1,000 gallons)**

|                        |        |
|------------------------|--------|
| 0 to 3,000 gallons     | \$1.00 |
| 3,001 to 7,000 gallons | 1.50   |
| Over 7,000 gallons     | 1.75   |

**INTERIM SERVICE CHARGES:**

|                        |                       |
|------------------------|-----------------------|
| Late Fee (Residential) | \$ 5.00               |
| Late Fee (Commercial)  | 10% of Unpaid Balance |

IT IS FURTHER ORDERED that the above interim rates and charges shall be effective for all service provided on and after July 1, 2013.

IT IS FURTHER ORDERED that Tacna Water Management Company shall notify its customers of the authorized interim rates and charges and their effective date, in a form acceptable to the Commission's Utilities Division Staff, by means of an insert in its next regularly scheduled billing or in a separate mailing.

1 IT IS FURTHER ORDERED that Tacna Water Management Company may collect from its  
2 customers a proportionate share of any privilege, sales or use tax per A.A.C. R14-2-409(D)(5).

3 IT IS FURTHER ORDERED that Tacna Water Management Company shall continue to  
4 collect the WIFA Surcharge as directed in Decision No. 69215.

5 IT IS FURTHER ORDERED that Tacna Water Management Company shall segregate the  
6 WIFA Surcharge funds authorized in Decision No. 69215 into a dedicated WIFA Surcharge bank  
7 account and that any withdrawals from this account shall be for the purpose of making payments on  
8 the WIFA loan pursuant to the terms of the WIFA loan documents.

9 IT IS FURTHER ORDERED that Tacna Water Management Company must further segregate  
10 the WIFA Surcharge beginning February 1, 2014, and establish a dedicated replacement reserve  
11 account to be funded with \$278.41 of the WIFA Surcharge per month until the WIFA loan has been  
12 paid in full.

13 IT IS FURTHER ORDERED that any access to and use of the funds in the dedicated  
14 replacement reserve account by Tacna Water Management Company must be in accordance with the  
15 terms of the WIFA loan documents.

16 IT IS FURTHER ORDERED that Tacna Water Management Company shall set aside \$6.14  
17 per customer, per month from the emergency rate increase funds approved in this Decision and  
18 deposit the funds each month in the segregated WIFA Surcharge account until further order of the  
19 Commission or until a Commission Decision approving Tacna Water Management Company's  
20 permanent rates becomes effective.

21 IT IS FURTHER ORDERED that Tacna Water Management Company shall begin making  
22 WIFA loan payments in a timely manner starting July 1, 2013, and in accordance with the terms of  
23 the WIFA loan documents.

24 IT IS FURTHER ORDERED that Tacna Water Management Company shall, after July 1,  
25 2013, file a letter with WIFA requesting that WIFA staff submit a proposal to the WIFA Board to  
26 waive the back interest and fees on Tacna Water Management Company's WIFA loan.

27 IT IS FURTHER ORDERED that Tacna Water Management Company shall file with Docket  
28 Control, as a compliance item in this docket, a copy of the waiver request submitted to WIFA within

1 10 days of the date of the request.

2 IT IS FURTHER ORDERED that Tacna Water Management Company shall maintain its  
3 accounting records in accordance with the National Association of Regulatory Commissioners  
4 Uniform System of Accounts.

5 IT IS FURTHER ORDERED that Tacna Water Management Company shall file a full  
6 permanent rate application no later than March 31, 2014, using a test year ending December 31,  
7 2013, or, alternatively, no later than September 30, 2014, using a test year ending June 30, 2014.

8 IT IS FURTHER ORDERED that if Tacna Water Management Company chooses to file a  
9 full permanent rate application based on a test year ending June 30, 2014, Tacna Water Management  
10 Company shall file a letter with Docket Control by January 31, 2014, notifying the Commission of its  
11 choice, and stating the reasons why a June 30, 2014, test year is appropriate.

12 IT IS FURTHER ORDERED that if Tacna Water Management Company does not file its full  
13 permanent rate application by September 30, 2014, all interim rates and charges shall end October 1,  
14 2014.

15 IT IS FURTHER ORDERED that Tacna Water Management Company shall post a  
16 performance bond of \$10.00, or similar financial instrument, prior to implementing the interim  
17 emergency surcharge authorized in this proceeding. Tacna Water Management Company shall  
18 provide the original performance bond or financial instrument to the Commission's Business Office  
19 for safekeeping and shall file with Docket Control, as a compliance item in this Docket, a notice  
20 stating that Tacna Water Management Company filed the original performance bond or financial  
21 instrument as directed.

22 IT IS FURTHER ORDERED that Tacna Water Management Company shall provide monthly  
23 income statements to the Chief of the Financial and Regulatory Analysis section of the Utilities  
24 Division every month until a Commission Decision approving Tacna Water Management Company's  
25 permanent rates becomes effective, with the first income statement to be submitted no later than July  
26 31, 2013.

27 IT IS FURTHER ORDERED that Staff shall review the income statements when received  
28 and, unless immediate attention is warranted, Staff shall file with Docket Control a Status Update no

1 later than December 31, 2013, summarizing Tacna Water Management Company's financial and  
2 operational progress and also outlining the status of the OSC docket. Staff shall simultaneously file  
3 this Status Update in Docket No. W-01344A-12-0336.

4 IT IS FURTHER ORDERED that the authorized interim rates are expressly conditioned on  
5 Tacna Water Management Company's operations and management by Sunstate Environmental  
6 Services, or, if Sunstate Environmental Services is no longer able or willing to act as Tacna Water  
7 Management Company's interim manager, by another interim manager approved or appointed by the  
8 Commission. Neither Donald Kelland nor Steve Kelland shall have any management role in Tacna  
9 Water Management Company as long as the interim rates remain in effect.

10 IT IS FURTHER ORDERED that as long as the interim rates remain in effect, Tacna Water  
11 Management Company's Interim Manager shall use all available funds for the payment of the costs  
12 and expenses necessary to bring Tacna Water Management Company into compliance with ADEQ  
13 safe water requirements and begin providing safe water to customers, to pay for immediate and/or  
14 urgent system repairs, to pay all operating expenses (including the Interim Management Fee), and to  
15 pay all creditors for which the Interim Manager has verified invoices (which must sufficiently detail  
16 the cost break down for services, materials and/or labor), and all outstanding Commission-approved  
17 secured debt.

18 IT IS FURTHER ORDERED that this Docket No. W-01344A-13-0032 is held open until a  
19 Commission Decision approving Tacna Water Management Company's permanent rates becomes  
20 effective.

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1 IT IS FURTHER ORDERED that the two outstanding compliance items from Decision No.  
2 69208 (December 21, 2006), Docket No. W-01344A-04-0815, stated in Finding of Fact No. 63 (A)  
3 and (B), above are permanently withdrawn.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
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7

8 CHAIRMAN

COMMISSIONER

9  
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11  
12 IN WITNESS WHEREOF, I, JODI JERICH, Executive  
13 Director of the Arizona Corporation Commission, have  
14 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 \_\_\_\_\_ 2013.

15  
16 \_\_\_\_\_  
17 JODI JERICH  
EXECUTIVE DIRECTOR

18 DISSENT \_\_\_\_\_

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20 DISSENT \_\_\_\_\_  
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1 SERVICE LIST FOR: TACNA WATER MANAGEMENT COMPANY

2 DOCKET NO.: W-01344A-13-0032

3  
4 Nancy Miller, Interim Manager  
5 TACNA WATER MANAGEMENT COMPANY  
6 c/o SUNSTATE ENVIRONMENTAL SERVICES  
7 4743 East 30<sup>th</sup> Place  
8 Yuma, AZ 85365

9 Don Kelland, President  
10 TACNA WATER MANAGEMENT COMPANY  
11 2993 South Arizona Avenue  
12 Yuma, AZ 85365

13 Janice Alward, Chief Counsel  
14 LEGAL DIVISION  
15 ARIZONA CORPORATION COMMISSION  
16 1200 West Washington Street  
17 Phoenix, AZ 85007

18 Steven M. Olea, Director  
19 UTILITIES DIVISION  
20 ARIZONA CORPORATION COMMISSION  
21 1200 West Washington Street  
22 Phoenix, AZ 85007

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