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Before the Arizona Corporation Commission

In the matter of the application of
Far West Water & Sewer Company
For approval Sewer Rate increase

Docket # WS-03478A-12-0307

Arizona Corporation Commission
DOCKETED

JUN 28 2013

DOCKETED BY

Joint filing of Intervenors

Robert Rist

Robert Gilkey

Barbara Gilkey

Reply Brief

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Far West Water & Sewer has asked for an increase in their sewer rates of 188%, taking the monthly rate for a residential customer to \$62.65. While we agree that a rate increase may be appropriate, we strongly disagree with the amount being requested. The company maintains they are insolvent and that no one will invest or loan money to a company that is insolvent. We strongly maintain the reason for the financial problems and insolvency have been completely the result of their mismanagement of finances, operations of the plants and safety practices.

We, the above named Intervenors joined into this rate case because we firmly believe that the customers have been damaged by the actions of the management of Far West Water & Sewer Company. The company alleges that the Gilkeys and Rists have "perceived grievances going back to the last Century". That statement is grandstanding by the company and is an attempt to minimize our points and belittle us. There is nothing "perceived" - it is a fact that under the current ownership two people were killed and over 50 "Notice of Violations" were issued by ADEQ and subsequently

1 consent orders were issued. During 2012 and now into 2013, the problems continue.^{1 2 3 4} Numerous
2 odor complaints are coming from the area of the Marwood WWTP. Mr. Capestro admitted that it has
3 stunk for twenty years. No operational changes have been made at the plant to try to resolve the
4 problems.⁵ In 2009, the company said there were plans to divert some of the Marwood flow to
5 Section 14 WWTP. The diversion was said to be needed to clear up capacity for new connections
6 coming from El Rancho Encantado. An amount of \$607,000, which came from the IDA bond, was to
7 be used to construct a lift station to accomplish this diversion, however the money was spent and the
8 lift station was not constructed. Ray Jones has testified that the diversion is needed to improve
9 operations at Marwood but he also says it is all right to keep adding connections at El Rancho
10 Encantado because Marwood is not at design capacity. This testimony does not make sense and it is
11 contradictory. We believe this statement was made to support the continuation of sales and
12 connections at El Rancho Encantado, an affiliate of Far West.⁶

13 Continued spills and equipment failures are occurring. The spill report submitted in a data
14 request show several sewage spills which were a result of equipment failures.⁷ Two spills were a
15 result of piping and construction failures at the Palm Shadows lift station, which was constructed by
16 H&S Developers. Another was the result of a failed circuit breaker and high water alarm which did
17 not call out. The high water alarm should have notified on call personnel of a problem before a spill
18 occurred. A failed electrical control should be an extreme rarity. Proper preventive maintenance
19 should be catching problems before they become failures. Mr. Marks and Mr. Capestro seem to
20 maintain that spills are normal in wastewater plants across the United States and these should be
21 expected. Ray Jones testified that the spill report did indicate too many spills. In my (Robert Rist)
22 experience, spills are not tolerated and every effort must be made to prevent them.

23 The decisions to upgrade Section 14, Del Oro, and Seasons and decommission Palm Shadows
24 WWTP, were not proactive management decisions made by the ownership of this company. They
25 were a result of the consent orders, which were brought on by the incompetence of this management.

26 We don't disagree that Far West has serious financial problems. We do, however, feel strongly
27 that management has made many bad decisions in financial matters. No equity has been infused into
28 the company as required by the Commission, the only infusion has been debt in the form of a loan

1 Rist direct testimony Pg. 7 Line 9-10

2 Transcript Pg. 1005 Ln. 1005

3 Gilkey/Rist data request 3 - spill reports 2012

4 Transcript Pg. 1007 Ln. 13-14

5 Transcript Pg. 1015 Ln. 23-25 Pg. 1016 Ln. 1-22

6 Transcript Pg. 1004 Ln. 16 - Pg. 1007 Ln. 15

7 Gilkey/Rist data request 3 - spill report 2012

1 from an affiliate at a high interest rate. Money was used from the IDA bond on water infrastructure,
2 instead of wastewater as required. Over \$200,000 was spent on software for mapping and
3 maintenance. This was nice to have, but was not required to complete construction on the wastewater
4 plant upgrades and was an ill advised expenditure. The software purchase could have waited until the
5 company got on a solid financial footing.⁸

7 INTERIM MANAGER

8 Installing an Interim Manager is an issue we continue to believe is the only action that will
9 help restore any confidence in the company. We maintain that the people of the Yuma Foothills area
10 don't have any trust or confidence in the management of Far West. The company may be right, that an
11 Interim Manager would be unable to raise more funds, however an Interim Manager can restore trust
12 and confidence and bring in the support of the customer. We must note that it was not the Intervenor
13 who originally suggested an Interim Manager, it was the Commission in the 2009 rate case. Far West
14 is correct in saying that the Commission did "kick the can down the road".⁹ Instead of installing an
15 Interim Manager they voted to deny a rate increase. It was clear at the open meeting of the
16 Commission, that several Commissioners supported an Interim Manager. The company makes the
17 point that an Interim Manager would cost money, that would be borne by the rate payer. That fact is
18 well understood by the Intervenor, however we don't see that argument being made when it comes to
19 spending more than \$200,000 to hire counsel and an expert witness, to support this rate case. Further,
20 they don't make a point of discussing the money which will be borne by the rate payer when it comes
21 to very high interest rates, late fees and legal fees. Far West asserts that an Interim Manager would
22 "further disturb the willingness of investors to provide additional funds."¹⁰ It is not clear what exactly
23 they mean by investor. If they mean someone buying shares of the company, then we assert that no
24 investor who knows the history of this company would ever consider it as an investment under this
25 ownership and management. If they mean more high interest loans, that could happen. When a rate
26 increase is granted, there could be offers to buy the company. A sale of the company would result in
27 new management. An Interim Manager would allow the Commission to know if new ownership is
28 needed. It is beyond our understanding why Far West would not want to clear this up. If an Interim
29 Manager finds that there is no need for new management, then we have no further argument.

8 Exhibits 2 Pg. 131 Ln. 16-20

9 Far West Opening Brief Pg. 18 Ln. 21-25

10 Far West Opening Brief Pg. 21 Ln. 3

FORENSIC AUDIT

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3 We continue to believe there is a critical need for a forensic audit, which goes in depth into all
4 financial matters of the company. It must look specifically at matters between Far West and its
5 affiliates. As we have stated earlier, there is no rate payer trust or confidence in the company. There
6 have been several meetings held in the Foothills, which addressed the problems of Far West. Only
7 one of those meetings was initiated by the Intervenor, and that one was because of our request that
8 the ACC Commissioners hold a Public Comment meeting in Yuma prior to the hearings in Phoenix.
9 At that meeting, Intervenor were not allowed to make comments, so we had no input or influence.
10 Approximately 1200 people attended, filling a large auditorium almost to capacity. Many people
11 expressed their disappointment and documented complaints. The company owners did not feel it was
12 necessary to attend, however counsel did attend. Several meetings have been held in the Foothills this
13 past winter season to address other issues and even though Far West was not initially the reason for
14 the meeting, the topic would soon change to Far West. Those meetings all revealed a deep distrust of
15 Far West by the people attending. At one meeting, County Supervisor, Russ Clark spoke in defense of
16 Far West and was practically run out of the meeting place. That incident caused a huge rebuttal.

17 Far West asserts that Intervenor have not reviewed company financial records, which is true;
18 we don't have access. Neither has staff or RUCO - they have only seen what has been *submitted by*
19 *the company* and we don't have any confidence that it is either accurate or complete. We Intervenor
20 are suggesting that we were denied access to relevant records. For example, a Gilkey/Rist data
21 request asked for a list of all commercial customers. That request was denied, citing privacy
22 violations of those customers. Later, however, Staff asked for water usage information for all
23 commercial customers, and ultimately was given the list that we were denied. In a data request Staff
24 asked for a list of all affiliates of Far West. The list submitted did not show the Schechert Family
25 Aquatics & Fitness Center or the Schechert Family Aquatics & Fitness Center RV Park, both being
26 businesses owned and operated by affiliates. Since the RV Park was also not listed as one of the four
27 RV parks that the company listed as customers, we wondered if it was connected to the sewer system
28 or not. A call to Rick Stacks at Yuma County revealed that their records showed the RV park was on a
29 septic system. It did not make sense to us that the Aquatics & Fitness Center would be connected to
30 the sewer and the RV park on the same property would be served by a septic tank. We subsequently
31 made a data request asking that a sewer dye test be done on the RV park connections to confirm that

1 the dye entered a septic tank. Our data request was answered stating that the RV park is connected to
2 the sewer. The company has graciously agreed to a rate base adjustment that accounts for the fees that
3 would have been collected in the test year. Why don't they go back and pay for all the years it has
4 been connected?

5
6 So our point with all this. The people have no trust or confidence in the ability of Far West
7 owners and management to operate the wastewater system in a manner that meets regulations and
8 provides service at the lowest cost for the customers. We have no confidence that data we are being
9 given is true and accurate and complete. We believe an Interim Manager and forensic audit will bring
10 out the actual facts and help restore confidence that this is a company we can or can't support.

11 12 **Quality of Service**

13 In reply to Staff: Mr. Liu stated he did not find any service complaints. We maintain that the
14 average customer has no idea they need to make a complaint with the ACC. If a customer calls Far
15 West with an odor complaint or to report a sewage spill, does anybody think that Far West is going to
16 tell them to call the ACC to get their complaint on record? Even with my (Robert Rist) 30 years
17 experience working in wastewater treatment, I would never think of calling the ACC. I would call the
18 company and then if needed, call the ADEQ. It was shown in testimony that there were several spills
19 that took place in 2012, and these don't show up in your documentation.

20 As far as the ADEQ is concerned, in their statement they indicated they are encouraged with
21 progress. We do hope there is some encouraging progress, however that does not mean that there is
22 "Quality of service". This company was forced to implement safety standards and put under consent
23 orders that required major plant modifications. These consent orders have fallen short of bringing a
24 system wide "quality of service". As a matter of fact it was brought out in hearings that the new
25 Section 14 plant may not be meeting permit standards. Mr. Duffett testified that company employees
26 stated they are not using the Vadose well because nitrate levels are too high.¹¹ This would mean
27 section 14 is not meeting the "A+" standard.

28 If Staff continues to base its determination of "Quality of Service" on complaints it finds in its
29 database, then this system must be improved.

30

11 Transcript Pg. 457 Ln. 2-9

CONCLUSION

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2 In our conclusion, we appeal to the Commission to seriously consider our side. We did not
3 enter into this case easily - only after long consideration. Presenting our side of the case has come at
4 considerable time and expense to us. The cost of travel, accommodations, printing and mailing came
5 out of our pockets with some help of contributions from other rate payers who share the same
6 concerns as we do. We have not had the option of hiring legal counsel or expert witness at huge cost
7 to the rate payer.¹² We believe the fact that Far West owners were completely absent from all
8 proceedings speaks volumes. They went out of their way to avoid being served with a subpoena so
9 that management would not be questioned in court.¹³ ¹⁴ Management must be able to justify the
10 position they have taken, not hide behind lawyers and hired experts. This raises serious doubts as to
11 the ability and trustworthiness of this management.

12 This hearing and previous hearings have shown that the company routinely violates
13 regulations of the ACC, ADEQ, and have violated safety regulations of OSHA. Employees of an
14 affiliate of Far West have recently resigned because of safety concerns on the golf courses, which
15 were not addressed by management.¹⁵ Far West makes payments to affiliates for mainline extension
16 agreements while ignoring other contractors who are owed.¹⁶ We believe Far West is not dealing with
17 affiliates at "Arms Length" as required. Awarding a no bid contract to H&S Developers for a project
18 in excess of one million dollars is not at "Arms Length". Far West claims it was negotiated, but when
19 you are negotiating with yourself you are always going to win.

20 We believe all of these charges justify the need to take a very close look into the operations of
21 the company. Only an Interim Manager and forensic audit will get to the truth.
22

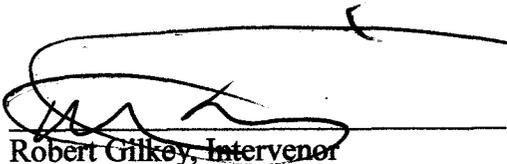
12 Aricor Consulting agreement

13 Transcript Pg. 1003 Ln. 16 - Pg. 1004 Ln. 1-9

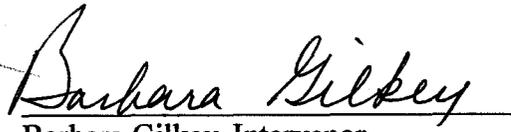
14 Transcript Pg. 429 Ln. 5-20

15 Transcript Pg. 37 Ln. 7-22

16 Data Request Staff GB 2-2 MXA Schedule of Activity



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