

OPEN MEETING ITEM



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

ARIZONA CORPORATION COMMISSION

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DATE: JUNE 24, 2014

DOCKET NO.: W-01774A-12-0089

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

**ORIGINAL**

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sarah Harpring. The recommendation has been filed in the form of an Order on:

PICACHO WATER IMPROVEMENT CORPORATION  
(ORDER EXTENDING TIME DEADLINE IN DECISION NO. 73258)

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:

JULY 3, 2014

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:

JULY 22, 2014 and JULY 23, 2014

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**

JUN 24 2014

DOCKETED BY

JODI JERICH  
EXECUTIVE DIRECTOR

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF  
PICACHO WATER IMPROVEMENT  
CORPORATION FOR APPROVAL OF AN  
EMERGENCY RATE INCREASE.

DOCKET NO. W-01774A-12-0089

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

**ORDER EXTENDING TIME  
DEADLINE IN DECISION NO. 73258**

Open Meeting  
July 22 and 23, 2014  
Phoenix, Arizona

**BY THE COMMISSION:**

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

1. In Decision No. 73258 (July 30, 2012), the Arizona Corporation Commission ("Commission") approved the application of Picacho Water Improvement Corporation ("PWIC") for an emergency rate increase, finding that PWIC met the standard for an emergency interim rate adjustment due to insolvency. The Commission found that PWIC had been operating at a loss for at least two years, had had a negative cash flow for at least two years, had a negative equity position that was worsening over time, and had been and expected to continue losing its small customer base (70 as of May 2012) as a result of the Arizona Department of Transportation's ("ADOT's") I-10 Realignment Project in PWIC's service area. The Commission also found that PWIC had not had a rate case for 25 years and that PWIC had entered into long-term debt, in the form of a bank loan, without obtaining prior Commission approval.

2. In Decision No. 73258, the Commission authorized PWIC to assess emergency

1 interim surcharges each month, starting on August 1, 2012, or the first day of the month following  
 2 PWIC's compliance with the requirement to post a bond, letter of credit, or cashier's check in the  
 3 amount of \$20.00, with the original to be filed with the Commission's Business Office and copies to  
 4 be filed in this docket. Among other things, the Commission also required PWIC to:

- 5 (a) Mail to its customers, with its next regularly scheduled bill or by separate  
 6 mailing within 30 days after the effective date of the Decision, notice of the  
 7 approved interim emergency surcharge, in a form and manner acceptable to the  
 8 Commission's Utilities Division ("Staff");
- 9 (b) File, within 12 months after the effective date of the Decision, an application  
 10 for a full permanent rate case;<sup>1</sup>
- 11 (c) Apply, as soon as possible, to the Water Infrastructure Finance Authority  
 12 ("WIFA") for a technical assistance grant through the Planning and Design  
 13 Assistance Grant Program administered by WIFA, for the purpose of  
 14 completing a more comprehensive evaluation of the water system after the I-10  
 15 Realignment Project construction in the service area was completed and before  
 16 PWIC invested in a proposed storage tank repair;
- 17 (d) File, within 45 days after the effective date of the Decision, as a compliance  
 18 item in this docket, proof that it had applied to WIFA for such a technical  
 19 assistance grant; and
- 20 (e) File, as soon as possible but no later than 45 days after the effective date of the  
 21 Decision, as a compliance item in this docket, a curtailment tariff for Staff's  
 22 review and certification.

23 3. After the Decision was issued, no filings were made in this docket for nearly 16  
 24 months.

25 <sup>1</sup> Henry Holmes, President of PWIC, had testified that PWIC had the data and capability to get together a permanent  
 26 rate application and would do so within the next year. Mr. Holmes also testified that an application for abandonment  
 27 would likely be filed if PWIC was unable to obtain funds from ADOT. ADOT had consistently informed PWIC that it  
 28 could not provide PWIC monetary compensation for its loss of customers and revenues because the I-10 Realignment  
 Project was funded entirely by the Federal Highway Administration ("FHA"), and FHA regulations do not allow for such  
 compensation. ADOT had informed PWIC that its only avenue to seek additional monetary recovery from ADOT was  
 through legal action.

1           4.     On November 25, 2013, PWIC filed in this docket a Notice of Implementation of  
2 Emergency Interim Surcharge, showing that the emergency interim surcharge would become  
3 effective on December 1, 2013. In the Notice filing, PWIC included a copy of a teller's check made  
4 out to the Commission in the amount of \$20.00. PWIC stated that the original teller's check had been  
5 filed with the Commission's Business Office and that copies had been filed in this docket. PWIC did  
6 not provide any explanation of its delay in implementing the emergency interim surcharge or of its  
7 not having made the other overdue compliance item filings.

8           5.     On January 24, 2014, PWIC filed an application for approval of a Curtailment Tariff.

9           6.     On April 18, 2014, PWIC filed a letter requesting an extension of time, until April 1,  
10 2015, to file an application for a full permanent rate case. PWIC stated that it had not instituted the  
11 emergency interim surcharge "or the remainder of the stipulations" until January 1, 2014. PWIC also  
12 stated that since the Commission had found it not to be in compliance, on October 23, 2013, "re-  
13 issuing the original compliance demands,"<sup>2</sup> PWIC had been "work[ing] diligently" on the compliance  
14 items. PWIC stated that an application for a WIFA Design Assistance Grant had been submitted on  
15 February 28, 2014, and that the remaining compliance items to be completed were the application for  
16 a full permanent rate case and submission of either a plan or a cost-benefit analysis related to  
17 reducing water loss to less than 10 percent.

18           7.     PWIC stated that it requests an extension of the rate case application filing deadline  
19 for the following reasons:

20                   Firstly, the time, energy, and resources our small utility is expending to  
21 assure that our customers continue to have reliable water are consuming  
22 our attention. A Rate Application requires significant cost of time,  
resources and money. We believe that is [sic] in the best interest of the  
AZCC to work with PWIC closely, as one of the possibilities is  
abandonment.

23                   Secondly, we have applied to WIFA for a grant to redesign our system and  
24 the findings would best be reflected in our rate application.

25                   Thirdly, we have assisted the Citizens of Picacho to form a Steering  
Committee with the purpose of forming a Domestic Water Improvement  
District (DWID). Should this be established, everything will change.

26                   Fourthly, we continue to pursue compensation from ADOT. While the  
27 odds remain small, this would profoundly impact the rate application.

28 <sup>2</sup> This appears to be a reference to undocketed communications PWIC has had with Staff.

1 PWIC requests that the AZCC extend the time allowed for PWIC to file a  
2 full rate increase.

3 8. On May 19, 2014, Staff filed a Memorandum stating that various Staff members had  
4 been in contact with PWIC regarding the rate case requirement and PWIC's operations generally and  
5 that Mr. Holmes had been receptive to Staff's requests and provided information as required. Staff  
6 noted that PWIC faces operational challenges and a significant amount of uncertainty because of the  
7 WIFA grant application, the potential for a DWID, the loss of customers due to the I-10 Realignment  
8 Project, and PWIC's ongoing effort to obtain compensation from ADOT.<sup>3</sup> Staff stated that it does  
9 not object to PWIC's request for an extension of the July 30, 2013, rate application deadline. Staff  
10 recommended that the deadline be extended to April 1, 2015; that PWIC use a test year ending no  
11 earlier than December 31, 2014; and that no further extensions of time be granted in this matter.

12 9. In Decision No. 73258, the Commission stated the following:

13 We are troubled by the amount of additional revenue needed by PWIC,  
14 and we admonish PWIC that this situation could have been avoided if it  
15 had come in for general rate cases in a responsible fashion within the past  
16 25 years. Nonetheless, we also recognize that PWIC's customers will not  
17 be best served if the Commission denies PWIC the additional emergency  
18 revenue that it needs to continue operating at this time.<sup>4</sup>

19 PWIC's failure to comply with the requirements of Decision No. 73258 in a timely fashion is also  
20 troubling, particularly as PWIC had asserted in its March 2012 interim emergency rate application  
21 that it was insolvent and that its ability to maintain service pending a formal rate determination was in  
22 serious doubt because its operating revenue would be exhausted within a month. PWIC's delaying  
23 the implementation of the authorized emergency interim surcharge for more than 16 months strongly  
24 suggests that PWIC's financial situation was not as dire as Staff and the Commission were led to  
25 believe. However, the Commission has been unable to determine PWIC's actual financial situation  
26 because of PWIC's failure to file its permanent rate application as required by the Decision.

27 10. To grant interim rates as an emergency measure, the Commission must (1) find that  
28 sudden change has brought hardship to a company, that the company is insolvent, that the company's  
condition is such that its ability to maintain service pending a formal rate determination is in serious

<sup>3</sup> There is no indication from PWIC or Staff that PWIC has initiated legal action against ADOT to seek compensation.

<sup>4</sup> Decision No. 73258 at 20.

1 doubt, or that the Commission will be unable to grant permanent rate relief within a reasonable time;  
2 (2) require the company to post a bond to protect the company's customers and allow for refund in  
3 the event that interim rates are excessive, and (3) follow the granting of interim rates with a full rate  
4 case in which just and reasonable rates are established after the fair value of the company's property  
5 is determined. (See Arizona Attorney General Opinion No. 71-17 (May 25, 1971); *Scates v. Arizona*  
6 *Corporation Commission*, 578 P.2d 612, 616 (Ariz. App. 1978); *Residential Utility Consumer Office*  
7 *v. Arizona Corporation Commission*, 20 P.3d 1169, 1173 (Ariz. App. 2001).) The requirement for a  
8 full rate application following authorization of emergency interim rates serves to protect ratepayers  
9 because the rate case audit involved reveals the full financial situation of the company and can result  
10 in lower rates or even refunds to customers if emergency interim surcharges resulted in over-  
11 recovery. While the harm that could result to ratepayers from the delayed filing of the rate case  
12 application is ameliorated by PWIC's corresponding delay in implementing the emergency interim  
13 surcharge,<sup>5</sup> PWIC's ability to operate with existing revenues for a period much longer than the one  
14 month asserted by it calls into question all of the assertions made by PWIC in general and specifically  
15 concerning its financial status.

16 11. PWIC asserts that its situation could change significantly as a result of its currently  
17 pending WIFA grant application, the potential creation of a DWID for its service area, or any success  
18 in its continuing effort to obtain compensation from ADOT. Staff has communicated with and  
19 apparently obtained information from PWIC relating to its current operations and the rate case  
20 requirement. Staff has not questioned the validity of PWIC's assertions regarding these potential  
21 events.

22 12. While the public interest would be served by a full permanent rate case in which  
23 PWIC's financial records and operations could be audited by Staff and the Commission could receive  
24 accurate and complete information regarding PWIC's condition and operations, and the Commission  
25 has a legal obligation to require a full permanent rate case to be completed following authorization  
26 for emergency interim rates, the public interest (and PWIC's ratepayers specifically) may be better

27 \_\_\_\_\_  
28 <sup>5</sup> We note that PWIC's delay in implementing the emergency interim surcharge has rendered the rate case application  
filing delay less problematic because ratepayers have not yet been paying the surcharge for an extended period of time.

1 served by having the full permanent rate case occur after the question of whether PWIC will receive a  
 2 WIFA grant has been resolved.<sup>6</sup> Additionally, Staff does not object to PWIC's requested extension  
 3 and has found PWIC to be cooperative, which is encouraging. We find that it is reasonable and  
 4 appropriate and in the public interest to extend PWIC's deadline for filing a full permanent rate case  
 5 application to April 1, 2015, and to require PWIC to use a test year ending no earlier than December  
 6 31, 2014. We further find that it is reasonable and appropriate to require PWIC to file documentation  
 7 of its WIFA grant application<sup>7</sup> and to promptly provide the Commission notice if one of the potential  
 8 events occurs.

### CONCLUSIONS OF LAW

9  
 10 1. PWIC is a public service corporation within the meaning of Article XV of the Arizona  
 11 Constitution and A.R.S. §§ 40-250 through 40-252.

12 2. The Commission has jurisdiction over PWIC and the subject matter of its request.

13 3. Extending PWIC's rate application filing deadline, and imposing the other filing  
 14 requirements set forth herein, is reasonable and appropriate and in the public interest.

### ORDER

15  
 16 IT IS THEREFORE ORDERED that the deadline for Picacho Water Improvement  
 17 Corporation to file an application for a full permanent rate case, as required by Decision No. 73258,  
 18 is extended to April 1, 2015.

19 IT IS FURTHER ORDERED that Picacho Water Improvement Corporation shall, in its full  
 20 permanent rate case application, use a test year ending no earlier than December 31, 2014.

21 IT IS FURTHER ORDERED that Picacho Water Improvement Corporation shall, within 30  
 22 days after the effective date of this Decision, file with the Commission's Docket Control, as a  
 23 compliance item in this docket, documentation establishing that it has applied to WIFA for a  
 24 technical assistance grant and providing the status of such application to WIFA.

25 IT IS FURTHER ORDERED that Picacho Water Improvement Corporation shall, within 30  
 26 days after the occurrence, file with the Commission's Docket Control documentation establishing that

27 <sup>6</sup> If a DWID is formed, the need for a rate case would almost certainly be eliminated. In light of the prior evidence  
 28 received concerning ADOT's position, PWIC's receiving monetary compensation from ADOT seems unlikely.

<sup>7</sup> This filing was required by Decision No. 73258, but has not been made.

1 any of the following has occurred: Picacho Water Improvement Corporation has received a grant  
2 from WIFA, Picacho Water Improvement Corporation has received monetary recovery from the  
3 Arizona Department of Transportation, or a Domestic Water Improvement District has been created  
4 in Picacho Water Improvement Corporation's service area.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have 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 \_\_\_\_\_ 2014.

\_\_\_\_\_  
JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

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SERVICE LIST FOR: PICACHO WATER IMPROVEMENT CORPORATION

DOCKET NO.: W-01774A-12-0089

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