ORIGINAL OPEN MEETING

COMMISSIONERS
SUSAN BITTER SMITH - Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

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**ARIZONA CORPORATION COMMISSION**

2015 OCT -1 A 10:48

DATE: OCTOBER 1, 2015

DOCKET NO.: I-02274A-15-0285

Arizona Corporation Commission
DOCKETED
OCT 1 2015
DOCKETED BY

TO ALL PARTIES:

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

VERDE WEST IRRIGATION
(EMERGENCY RATES)

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:

OCTOBER 13, 2015

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:

OCTOBER 20, 2015 AND OCTOBER 21, 2015

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.

JODI JERICH
EXECUTIVE DIRECTOR



This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

SUSAN BITTER SMITH - Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

| | |
|---|---|
| IN THE MATTER OF THE APPLICATION OF VERDE WEST IRRIGATION FOR APPROVAL OF AN EMERGENCY RATE INCREASE | DOCKET NO. I-02274A-15-0285<br>DECISION NO. _____<br>**OPINION AND ORDER** |

| | |
|---|---|
| DATE OF HEARING: | September 22, 2015 |
| PLACE OF HEARING: | Phoenix, Arizona |
| ADMINISTRATIVE LAW JUDGE: | Scott M. Hesla |
| APPEARANCES: | Mr. Dane Bullard, owner, on behalf of Verde West Irrigation; and<br>Mr. Matthew Laudone, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission. |

**BY THE COMMISSION:**

* * * * * * * * * *

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

## FINDINGS OF FACT

### I. Procedural History

1. On August 6, 2015, Verde West Irrigation ("Verde West" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for an emergency rate increase to customers in the Company's service area in Camp Verde, Arizona.

2. On August 19, 2015, a Procedural Order was issued scheduling a procedural conference in this matter for August 26, 2015.

3. On August 26, 2015, the procedural conference was held, as scheduled, with Verde West appearing through its owner, Mr. Dane Bullard, and the Commission's Utilities Division ("Staff") appearing through counsel. At that time, a discussion occurred regarding the timely processing of the emergency rate application and the parties agreed to a schedule that would have a Staff Report filed within three weeks and a Company response filed within two days thereafter.

4. On August 26, 2015, a Procedural Order was issued scheduling a hearing for September 22, 2015, and establishing various filing deadlines.

5. On September 4, 2015, Verde West filed a certification of mailing indicating that notice of the hearing was mailed to customers on September 3, 2015.

6. On September 16, 2015, Staff filed its Staff Report recommending approval of the application, subject to certain terms and conditions.

7. Verde West did not file comments in response to the Staff Report.

8. On September 22, 2015, a full public hearing was convened as scheduled, with Verde West appearing through Mr. Dane Bullard, and Staff appearing through counsel. At the conclusion of the hearing, the matter was taken under advisement pending submission of a Recommended Opinion and Order for the Commission's final disposition.

## II. Background

9. Verde West Irrigation is a sole proprietorship engaged in the business of providing irrigation service to approximately 184 customers in Camp Verde, in Yavapai County, Arizona.[1] The Company's current rates were authorized in Decision No. 70139 (January 23, 2008).

10. The Company has two classes of customers: those who are irrigated by lot ("Lot customers"); and those who are irrigated by the acre ("Acre customers"). Under current rates, Lot customers pay a monthly usage charge of $12.00 and Acre customers pay a monthly usage charge of $26.00.[2]

11. Irrigation water is available during the landscape growing season in Camp Verde, approximately from March 15th through November 15th of each year. Lot customers may obtain

[1] The Company is a family-owned and operated public service corporation. The Company was originally operated by Mr. Harold Bullard, but is currently being operated by his stepson, Mr. Dane Bullard. (Tr. at 15-16).
[2] Exh. S-1 at 2.

water any time during the growing season. Acre customers receive their water on two specific days of the week during the growing season. Water is not available during the winter months of December through February.[3]

12. The Company has two separate irrigation systems (not interconnected). System No. 1 consists of: a pumping station that draws water directly from the Verde River; one intake pump; a holding pond; and a distribution system that operates via gravity. System No. 2 consists of: a pumping station that draws water from a diversion ditch fed from the Verde River; one intake pump; a holding pond; and a distribution system. System 1 serves approximately 105 un-metered customers and System 2 serves approximately 79 un-metered customers.[4]

13. Verde West is not regulated by the Arizona Department of Water Resources or the Arizona Department of Environmental Quality.[5]

14. Staff's Compliance Section database shows no outstanding compliance issues for the Company.[6]

15. Staff's Consumer Services Section database for the period beginning January 1, 2012 to August 21, 2015, shows three customer complaints, all of which have been resolved and closed.[7]

## III. Emergency Rate Application

16. In its application, the Company indicates that its intake pump for System No. 1 failed on June 3, 2015, and the Company has incurred $16,309.20 in associated repair costs. According to the Company, its annual revenues only cover annual expenses and it does not have additional funds available to make extraordinary repairs. The Company is therefore requesting emergency interim rate relief to cover its repair costs.[8]

17. According to the Staff Report, the Company contracted Precision Electric Company ("PEC") to remove, repair, and reinstall the intake pump, and Parker Construction and Ferguson

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[3] Exh. S-1 at 3.
[4] Exh. S-1, Engineering Memorandum at 1.
[5] *Id.* at 2.
[6] Exh. S-1 at 1.
[7] *Id.*
[8] Exh. A-1; Tr. at 8.

Construction were contracted to prepare and clean the well site.[9] PEC removed the intake pump on June 10, 2015, and determined that the pump turbines had sustained significant damage from pulling in rocks, sand, silt, and debris at its intake. Due to the age of the intake pump (over 20 years old), several parts had to be custom machined because replacement parts were no longer available.[10]

18. Staff explained that the intake pump was ready for installation on July 2, 2015; however, cleanup at the well site was not finished, delaying installation of the intake pump until July 20, 2015. Approximately ten days after the intake pump was installed, the pump experienced an oil leak. PEC removed the intake pump on August 4, 2015, repaired the leak, and reinstalled the pump on August 7, 2015.[11] Staff stated that the intake pump was found to be in-service and used and useful during Staff's site inspection on August 19, 2015.[12]

19. As a result of the intake pump failure, the customers on System No. 1 were generally without irrigation water service between June 3, 2015 and August 7, 2015.[13]

20. Approximately 11 customers filed individual comments opposing the Company's emergency rate application. In addition, a petition opposing the emergency rate application was filed containing signatories representing approximately 40 service addresses.[14] The public comments complain that the existing irrigation rates are too high and include allegations that the Company fails to: make timely repairs to the system; timely respond to customer inquiries; and properly budget the monies the Company receives during the winter months in which customers do not receive irrigation service.

21. In response to the customer comments, Mr. Dane Bullard indicated that the delay in repairing the intake pump was beyond the control of the Company.[15] According to Mr. Dane Bullard, the Company engaged three contractors to repair the intake pump and "did everything [it] could to

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[9] Staff explained that the cleanup work at the well site included repairing the wet well access road, removal of a tree branch, draining the wet well sump, and removal of mud, rocks, and debris from the wet well sump. (Exh. S-1, Engineering Memorandum at 2).

[10] Exh. S-1, Engineering Memorandum at 2.

[11] Mr. Dane Bullard testified that PEC repaired the oil leak at no additional expense to the Company. (Tr. at 12).

[12] Exh. S-1, Engineering Memorandum at 2.

[13] *Id.*

[14] The customers who filed individual comments also signed the petition.

[15] Tr. at 11-13.

get the thing taken care of as quickly as possible."[16] Mr. Dane Bullard also testified that he makes every effort to timely respond to customer inquiries; however, he indicated that he has a full-time job (in addition to running the Company) which presents challenges, at times, in responding to customer questions in an expedited manner.[17] Testifying further, Mr. Dane Bullard explained that the Company collects monthly charges from customers during the winter months because the Company's current rates are based on annual expenses for the full year.[18]

**A. Emergency Interim Rate Relief**

22. As described in Attorney General ("AG") Opinion No. 71-17 (May 25, 1971), it is appropriate for the Commission to grant interim rates as an emergency measure when (1) sudden change brings hardship to a utility, (2) the utility is insolvent, (3) the condition of the utility is such that its ability to maintain service pending a formal rate determination is in serious doubt, or (4) the Commission will be unable to grant permanent rate relief within a reasonable time. In *Scates v. Arizona Corporation Commission* ("*Scates*"), the Arizona Court of Appeals recognized this standard and, additionally, found that (1) a bond must be posted to protect the utility's customers and allow for a refund in the event that the interim rates are excessive, and (2) the granting of interim rates must be followed by a full rate case in which just and reasonable rates are established after the fair value of the utility's property is determined.[19]

23. Based on its analysis, Staff concluded that Verde West's application meets the requirements for emergency interim rate relief because a sudden change caused financial hardship to the Company.[20] Further, Staff reviewed the invoices provided by the Company and concluded that costs totaling $16,309.20 are reasonable and appropriate for the repairs identified in the Company's application.[21]

24. Staff recommends the implementation of an emergency repair surcharge that would produce total operating revenue of $16,309.20, or $1,359.10 per month for the duration of one year.

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[16] Tr. at 12.
[17] Tr. at 14.
[18] In addition, Mr. Bullard testified that the Company has ongoing expenses throughout the year, including property taxes, electricity charges (even though the pumps are not active), and blue stake descriptions. (Tr. at 11).
[19] 578 P.2d 612, 616 (Ariz. App. 1978).
[20] Exh. S-1 at 1-2; Tr. at 27-28.
[21] Exh. S-1, Engineering Memorandum at 3.

Staff's recommended surcharge amounts are weighted based on current base rates for Lot customers and Acre customers. According to Staff's analysis, 31.58 percent of base rate revenue is derived from Lot customers ($12.00 divided by $38.00) and 68.42 percent of base rate revenues is derived from Acre customers ($26.00 divided by $38.00). After allocating the weighted percentage of base rate revenue to the corresponding customer class, Staff divided the monthly repair expense by the number of customers in each class to arrive at the following recommended surcharge amounts:[22]

| | Monthly Usage Charge Current Rates | Staff Recommended Monthly Repair Surcharge | Total | Increase |
|---|---|---|---|---|
| Lot Customers | $12.00 | $2.60 | $14.60 | 22.7 % |
| Acre Customers | $26.00 | $48.94 | $74.94 | 188.2 % |

## IV. Staff's Recommendations

25. Staff is recommending that the Commission approve Verde West's application for an emergency rate increase, subject to the following conditions:

(a) Approval of the recommended Repair Surcharge of $2.60 per month for Lot customers and $48.94 per month for Acre customers. This surcharge will continue for one year;

(b) That the bonding requirements associated with an emergency rate increase be minimized since Verde West has very limited funding available;

(c) That Verde West file quarterly, beginning January 15, 2016, as a compliance item in this Docket, a report identifying all surcharge monies billed, collected, and withdrawn from the account;

(d) That the revenue received be used exclusively to fund plant, and that the Company record the surcharge revenue for the portion funding plant as Contribution In Aid of Construction on Verde West's books and records;

(e) That Verde West file a full permanent rate case no later than June 1, 2017, using calendar year 2016 test year;

[22] Staff's analysis assumed that the Company's 184 customers were divided into 165 Lot customers and 19 Acre customers. However, we note that in the Company's last rate case, 183 customers were divided into 117 Lot customers and 66 Acre customers. (Decision No. 70139 at 2-3). As a result, it is not clear whether the customer division assumed in Staff's analysis is accurate. We note that if the customer division is not accurate, the Company will not collect the correct revenues under Staff's surcharge methodology.

(f) That Verde West file with Docket Control, within 30 days of the Decision, a revised rate Schedule reflecting the emergency rate increase, as a compliance item in this docket; and

(g) The surcharge automatically terminates after one year.

26. At the hearing, Mr. Dane Bullard testified that the Company was in agreement with Staff's recommendations.[23]

## V. Discussion and Resolution

27. Staff's conclusion that the Company's application meets the criteria for emergency interim rate relief is just and reasonable and should be adopted.

28. We note that Staff's recommended emergency interim surcharge substantially allocates the collection of the additional revenues from the Company's Acre customers. Under Staff's recommendation, an Acre customer would pay a monthly surcharge amount that is nearly 20 times higher than the surcharge amount for a Lot customer, yet the current base rate for an Acre customer is only approximately 2 times higher than a Lot customer. Under the circumstances, we find that collecting the additional revenues from customers equally is reasonable and appropriate because it will mitigate the extreme bill impact to Acre customers while only modestly increasing Staff's recommended surcharge amount for Lot customers. Additionally, it is appropriate to collect the additional revenues from customers equally because the Company did not provide, as part of its application, the bill count data necessary to accurately predict the revenue that would be collected under Staff's recommended surcharge. Based on the foregoing, we find that an emergency interim surcharge of $7.39 per customer per month is just and reasonable and should be adopted.[24]

29. The emergency interim surcharge amount authorized herein would increase the monthly charges of Lot customers from $12.00 to $19.39, or 61.6 percent, and increase the monthly charges of Acre customers from $26.00 to $33.39, or 28.4 percent.

30. Staff's recommendations as set forth in Findings of Fact No. 25, as modified herein, are just and reasonable and will be adopted.

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[23] Tr. at 9.

[24] The monthly cost of repairs ($1,359.10) divided by the total number of customers (184) equals a monthly surcharge amount of $7.39 for all customers.

## CONCLUSIONS OF LAW

1. Verde West Irrigation is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-250 and 40-251.

2. The Commission has jurisdiction over Verde West Irrigation and the subject matter of the emergency rate application.

3. Notice of the emergency rate application was provided in accordance with Arizona law.

4. Verde West Irrigation is experiencing an "emergency" within the definition set forth in AG Opinion No. 71-17, as discussed herein.

5. It is just and reasonable and in the public interest to adopt Staff's recommendations set forth in Findings of Fact No. 25, as modified herein.

## ORDER

IT IS THEREFORE ORDERED that Verde West Irrigation is authorized to assess, as a separate line item on each customer's monthly bill, an emergency interim surcharge of $7.39, as conditioned in the ordering paragraphs below.

IT IS FURTHER ORDERED that Verde West Irrigation shall, before implementing the emergency interim surcharge approved herein, provide to the Commission's Business Office the original of a cashier's check made out to the Arizona Corporation Commission in the amount of $10.00. The Commission may use the funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion.

IT IS FURTHER ORDERED that Verde West Irrigation shall file with Docket Control, as a compliance item in this docket, on the same date the original cashier's check is provided to the Commission's Business Office, notice stating that the cashier's check has been provided to the Commission's Business Office.

IT IS FURTHER ORDERED that the emergency interim surcharge shall become effective for all service provided on or after November 1, 2015, or on the first day of the month following Verde West Irrigation's compliance with the requirements to provide the cashier's check to the Commission's Business Office and file notice thereof, whichever is later.

IT IS FURTHER ORDERED that the emergency interim surcharge shall terminate, without

further order of the Commission, after October 31, 2016, or one year after the first day of the month following Verde West Irrigation's compliance with the requirements to provide the cashier's check to the Commission's Business Office and file notice thereof, whichever is later.

IT IS FURTHER ORDERED that Verde West Irrigation shall provide notice of the approved emergency interim surcharge to its customers, in a form and manner acceptable to the Commission's Utilities Division Staff, by means of an insert in Verde West Irrigation's next regularly scheduled billing following the effective date of this Decision.

IT IS FURTHER ORDERED that Verde West Irrigation shall file with Docket Control, as a compliance item in this docket, within 30 days following the effective date of this Decision, a revised tariff reflecting the emergency interim surcharge approved herein.

IT IS FURTHER ORDERED that Verde West Irrigation shall file with Docket Control, as a compliance item in this docket, beginning January 15, 2016, quarterly reports identifying all emergency interim surcharge monies billed, collected, and withdrawn from its account.

IT IS FURTHER ORDERED that Verde West Irrigation shall only use the emergency interim surcharge monies to fund the plant repair items identified in its application.

IT IS FURTHER ORDERED that Verde West Irrigation shall record the emergency interim surcharge revenue as Contribution In Aid of Construction on its accounting books and records.

IT IS FURTHER ORDERED that Verde West Irrigation shall file a full permanent rate case application no later than June 1, 2017, using a test year ending December 31, 2016.

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IT IS FURTHER ORDERED that the emergency interim rates shall be subject to refund pending the Decision resulting from the full permanent rate case application, the filing of which is ordered herein.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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 _____ 2015.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
SH:ru

SERVICE LIST FOR: VERDE WEST IRRIGATION

DOCKET NO.: I-02274A-15-0285

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