

ORIGINAL

OPEN MEETING ITEM



0000173905

COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN



JODI JERICH
Executive Director

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

DATE: OCTOBER 14, 2016

OCT 14 2016

DOCKET NO.: W-20933A-16-0314

DOCKETED BY *RA*

TO ALL PARTIES:

2016 OCT 14 PM 1 00
AZ CORP COM
DOCKET CONTROL

Enclosed please find the recommendation of Chief Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Opinion and Order on:

RANCHEROS BONITOS WATER CO., LLC
(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 24, 2016

The Company has waived the 10 days for the filing of Exceptions.

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 27, 2016 and OCTOBER 28, 2016

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 A. Jerich
JODI A. JERICH
EXECUTIVE DIRECTOR

On this 14th day of October, 2016, the following document was filed with Docket Control as a Recommended Opinion & Order from the Hearing Division, and copies of the document were mailed on behalf of the Hearing Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the filed document to the following who have consented to email service.

Nancy Miller
Rancheros Bonitos Water Co., LLC
4743 E. 30th Place
Yuma, AZ 85365

Dawn Simpson
Sunstate Environmental Services
4743 East 30th Place
Yuma, AZ 85365

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007
Attorneys for Utilities Division
JAlward@azcc.gov
TBroderick@azcc.gov
Consented to Service by Email

By: RTallman
Rebecca Tallman
Assistant to Dwight D. Nodes

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 DOUG LITTLE – Chairman
4 BOB STUMP
4 BOB BURNS
5 TOM FORESE
5 ANDY TOBIN

7 IN THE MATTER OF THE APPLICATION OF
8 RANCHEROS BONITOS WATER CO., LLC FOR
9 AN EMERGENCY RATE INCREASE.

DOCKET NO. W-20933A-16-0314

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: October 12, 2016

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes

13 APPEARANCES: Ms. Dawn Simpson, Sunstate Environmental Services
14 (Interim Manager), on behalf of Rancheros Bonitos
Water Co., LLC; and

15 Mr. Robert Geake, Staff Attorney, Legal Division, on
16 behalf of the Utilities Division of the Arizona
Corporation Commission.

17 **BY THE COMMISSION:**

18 On September 8, 2016, the Commission's Utilities Division ("Staff") filed a Memorandum
19 which resulted in the opening of this docket.

20 On September 22, 2016, Rancheros Bonitos Water Co., L.L.C. ("Rancheros Bonitos" or
21 "Company") filed an application for an emergency rate increase.

22 On September 29, 2016, a Procedural Order was issued scheduling a procedural conference in
23 this matter for October 4, 2016, at 1:00 p.m.

24 On October 4, 2016, Dawn Simpson, a representative of the Company's Interim Manager,
25 Sunstate Environmental Services ("Sunstate"), appeared telephonically, and Staff appeared through
26 counsel for the procedural conference to discuss scheduling the hearing. The parties agreed to a hearing
27 date of October 12, 2016, at 10:00 a.m., at the Commission's offices.
28

1 On October 5, 2016, a Procedural Order was issued scheduling the hearing, directing Rancheros
2 Bonitos to provide notice of the hearing to customers, and establishing other procedural deadlines.

3 The hearing convened, as scheduled, on October 12, 2016, at the Commission's offices in
4 Phoenix, Arizona, before a duly authorized Administrative Law Judge. Rancheros Bonitos was
5 represented by Ms. Simpson and Staff was represented by counsel.

6 * * * * *

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

9 **FINDINGS OF FACT**

10 1. On September 22, 2016, Rancheros Bonitos filed an emergency rate application seeking
11 authority to impose a \$12.08 per month per customer surcharge, for a period of 12 months, to pay for
12 a loan of \$6,523.81 from Sunstate that was used to replace an aging and failing pressure tank. (App. at
13 2.)

14 2. Rancheros Bonitos provides potable water service to 45 residential customers in an area
15 approximately 6 miles east of Yuma, Arizona, and has been in operation since 1976. (Id., See also,
16 Decision No. 60085 (February 20, 1997), at 1.) The interim operator, Sunstate, is owned by Richard
17 and Nancy Miller.

18 3. According to the Company, Sunstate employees previously spent countless hours
19 welding patches onto the pressure tank, but due to the age and quality of the tank it could no longer
20 operate on a satisfactory level. (App. at 1.) The Application states that because of constant repairs on
21 the tank, customers were experiencing frequent, short outages and low water pressure. (Id.)

22 4. The Application indicates that on August 2, 2016, Priority Well Service ("Priority")
23 inspected the pressure tank and told the Company that the tank could not continue to be maintained in
24 its present condition, and the tank should be replaced immediately before it became completely un-
25 repairable. (Id.) Priority provided an estimate to replace the old tank with two smaller pressure tanks,
26 with variable frequency drive ("VFD"), a new technology that has been shown to be satisfactory and
27
28

1 has a lower cost than the larger tank being replaced. (Id.)¹ The estimate for the new pressure tanks,
2 including installation, removal of the old tank, and placement of a sun shade structure for the tanks,
3 was \$6,523.81. (Id.)

4 5. Because of the urgency of the situation, Sunstate provided a short-term loan to
5 Rancheros Bonitos to expedite the repair process. (Id. at 2.) As a result, Ms. Simpson testified that as
6 of the date of the hearing, the new pressure tanks have been installed and are now operational (with the
7 exception of the sun shade). Mr. Smith testified that although he had not personally inspected the new
8 tanks as of the date of the hearing, Ms. Simpson showed him pictures of the tanks. Mr. Smith stated
9 that the tanks appeared to be at the same location he had previously inspected. Attachment B hereto is
10 a photograph showing the two new bladder tanks (Staff Late-Filed Exhibit.)

11 6. The Company's Application states that Sunstate is asking for the loan to be repaid within
12 12 months, and that it calculated the \$12.08 per month surcharge by dividing the amount of the loan
13 (\$6,523.81) by 12 months (\$543.65), and then dividing that amount by 45 customers to determine the
14 \$12.08 monthly surcharge. (App. at 2.) The Application indicates that Sunstate intends to open a
15 secondary Wells Fargo savings account to retain all surcharge revenues, which would then be disbursed
16 to Sunstate on a monthly basis. (Id.) According to the Application, Sunstate intends to file with the
17 Commission, on a quarterly basis, an accounting of monies received and disbursed for the prior quarter.
18 (Id.) Any excess funds collected at the end of the 12-month period would be refunded to customers.
19 (Id.)

20 7. Company witness Dawn Simpson also testified at the hearing that Rancheros Bonitos is
21 currently seeking a \$10,000 grant from the Water Infrastructure Finance Authority ("WIFA") to
22 perform engineering and related work regarding the Company's plan to replace its storage tank. Ms.
23 Simpson stated that the Company would be seeking, in the near future, authority to obtain a WIFA loan
24 of approximately \$90,000 to \$100,000 to replace its aging storage tank.² Ms. Simpson further indicated

25 ¹ At the hearing, Staff Engineer Del Smith testified that replacing the old 2,000 gallon tank with two 80 gallon bladder tanks
26 with VFD was a newer technology that would be more economical because the pumps would operate only at the speed
27 needed rather than requiring the pumps to start every time and run at full speed. Mr. Smith inspected the tank on August
28 24, 2016, and stated that the need for a new tank was an "emergency situation." Attached hereto, as Attachment A, are two
photographs showing leaks and the extensive patching previously done on the old tank. [Due to the expedited nature of this
proceeding, citations to the hearing transcript are not available.]

² A photograph of the storage tank is attached hereto as Attachment C. (Staff Late-Filed Exhibit.)

1 that Rancheros Bonitos intends to file a full permanent rate application, likely within the next month
2 or so.

3 8. As described in Attorney General ("AG") Opinion No. 71-17 (May 25, 1971), it is
4 appropriate for the Commission to grant interim rates as an emergency measure when (1) sudden
5 change brings hardship to a company, (2) the company is insolvent, (3) the condition of the company
6 is such that its ability to maintain service pending a formal rate determination is in serious doubt, or
7 (4) the Commission will be unable to grant permanent rate relief within a reasonable time. In *Scates*
8 *v. Arizona Corporation Commission*, the Arizona Court of Appeals recognized this standard and,
9 additionally, that (1) a bond must be posted to protect the company's customers and allow for refund
10 in the event that the interim rates are excessive, and (2) the granting of interim rates must be followed
11 by a full rate case in which just and reasonable rates are established after the fair value of the company's
12 property is determined.³ The *Scates* test was cited with approval in *Residential Utility Consumer Office*
13 *v. Arizona Corporation Commission*, 20 P.3d 1169, 1173 (Ariz. App. 2001) ("*Rio Verde*").

14 9. We find that Rancheros Bonitos' deteriorating pressure tank represented an
15 "emergency" within the definition set forth in AG Opinion No. 71-17, as discussed and approved in
16 the *Scates* and *Rio Verde* cases cited herein, and that the replacement of the pressure tank was an
17 appropriate emergency response to ensure that the Company is able to provide uninterrupted service to
18 its customers.

19 10. We also find that it is just and reasonable, and in the public interest, to authorize
20 Rancheros Bonitos to implement an interim emergency surcharge of \$12.08 per month per customer,
21 for a period of 12 months, to repay the emergency loan provided by Sunstate.

22 CONCLUSIONS OF LAW

23 1. Rancheros Bonitos is a public service corporation within the meaning of Article XV of
24 the Arizona Constitution and A.R.S. Title 40, Chapter 2.

25 2. The Commission has jurisdiction over Rancheros Bonitos and the subject matter of the
26 application.

27

28 ³ 578 P.2d 612, 616 (Ariz. App. 1978).

1 IT IS FURTHER ORDERED that Rancheros Bonitos Water Co., L.L.C. shall, within 30 days
2 after the effective date of this Decision, mail or deliver notice of the approved interim emergency
3 surcharge to its customers, in a form and manner acceptable to Staff, by means of an insert in the
4 Company's next regularly scheduled billing.

5 IT IS FURTHER ORDERED that Rancheros Bonitos Water Co., L.L.C. shall, within 30 days
6 after the effective date of this Decision, file with the Commission's Docket Control, as a compliance
7 item in this docket, a revised tariff reflecting the approved interim emergency surcharge.

8 IT IS FURTHER ORDERED that Rancheros Bonitos Water Co., L.L.C. shall open a secondary
9 savings account to retain all surcharge revenues, which shall be disbursed to Sunstate Environmental
10 Services on a monthly basis.

11 IT IS FURTHER ORDERED that Rancheros Bonitos Water Co., L.L.C. shall, starting January
12 16, 2017, file with the Commission, on a quarterly basis, an accounting of monies received and
13 disbursed for the prior quarter. Any excess funds collected at the end of the 12-month period shall be
14 refunded to customers.

15 IT IS FURTHER ORDERED that Rancheros Bonitos Water Co., L.L.C. shall, no later than
16 June 30, 2017, in a new docket, file with the Commission's Docket Control a full permanent rate case
17 application prepared using a test year ending December 31, 2016.

18 IT IS FURTHER ORDERED that Rancheros Bonitos Water Co., L.L.C. shall, on the same date
19 that it files a full permanent rate case application in a new docket, file with the Commission's Docket
20 Control, as a compliance item in this docket, notice that the full permanent rate case application has
21 been filed.

22 ...
23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

1 IT IS FURTHER ORDERED that the emergency surcharge approved herein shall be interim
2 and that funds collected through the emergency surcharge rate are subject to true-up and refund if
3 surcharge revenues at the end of 12 months exceed the amount of the loan from Sunstate Environmental
4 Services.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
7
8

9 CHAIRMAN LITTLE

COMMISSIONER STUMP

10
11 COMMISSIONER FORESE

COMMISSIONER TOBIN

COMMISSIONER BURNS

12
13 IN WITNESS WHEREOF, I, JODI A. JERICH, Executive
14 Director of the Arizona Corporation Commission, have hereunto
15 set my hand and caused the official seal of the Commission to be
16 affixed at the Capitol, in the City of Phoenix, this
17 _____ day of _____ 2016.

18 JODI A. JERICH
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21
22 DISSENT _____
23 DN/rt
24
25
26
27
28

1 SERVICE LIST FOR:

RANCHEROS BONITOS WATER CO., LLC

2 DOCKET NO.:

W-20933A-16-0314

3 Nancy Miller
4 Rancheros Bonitos Water Co., LLC
5 4743 E. 30th Place
6 Yuma, AZ 85365

7 Dawn Simpson
8 Sunstate Environmental Services
9 4743 East 30th Place
10 Yuma, AZ 85365

11 Janice Alward, Chief Counsel
12 Legal Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
15 Phoenix, AZ 85007
16 Attorneys for Utilities Division
17 JAlward@azcc.gov
18 TBroderick@azcc.gov
19 **Consented to Service by Email**
20
21
22
23
24
25
26
27
28

ATTACHMENT A







