

ORIGINAL

OPEN MEETING ITEM



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COMMISSIONERS  
TOM FORESE - Chairman  
BOB BURNS  
DOUG LITTLE  
ANDY TOBIN  
BOYD W. DUNN



ARIZONA CORPORATION COMMISSION

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2017 MAR 27 P 2:09

Arizona Corporation Commission

DOCKETED

DATE: MARCH 27, 2017

DOCKET NOS.: W-02369A-16-0481

TO ALL PARTIES:

MAR 27 2017

DOCKETED BY

Gb

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

WALDEN MEADOWS COMMUNITY CO-OP  
(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:

**All parties have waived the 10 days for 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:

APRIL 5, 2017 AND APRIL 6, 2017

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.

TED VOGT  
EXECUTIVE DIRECTOR

1 On this 27<sup>th</sup> day of March, 2017, the following document was filed with Docket Control as a  
2 Recommended Opinion and Order from the Hearing Division, and copies of the document were mailed  
3 on behalf of the Hearing Division to the following who have not consented to email service. On this  
4 date or as soon as possible thereafter, the Commission's eDocket program will automatically email a  
5 link to the filed document to the following who have consented to email service.

6 DeWald Lucas  
7 Walden Meadows Community Cooperative  
8 9325 Donegal Dr., Ste. A.  
9 Wilhoit, Arizona 86332

10 Timothy La Sota, Acting Director  
11 ARIZONA CORPORATION COMMISSION  
12 1200 West Washington Street  
13 Phoenix, AZ 85007  
14 Attorneys for Utilities Division  
15 [LegalDiv@azcc.gov](mailto:LegalDiv@azcc.gov)  
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17 **Consented to Service by Email**

18 By:



19 Rebecca Tallman  
20 Assistant to Scott M. Hesla  
21  
22  
23  
24  
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26  
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28

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 TOM FORESE – Chairman  
4 BOB BURNS  
5 DOUG LITTLE  
6 ANDY TOBIN  
7 BOYD W. DUNN

8 IN THE MATTER OF THE APPLICATION OF  
9 WALDEN MEADOWS COMMUNITY  
10 COOPERATIVE FOR APPROVAL OF AN  
11 EMERGENCY RATE INCREASE.

DOCKET NO. W-02369A-16-0481

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

**OPINION AND ORDER**

12 DATE OF HEARING: March 24, 2017  
13 PLACE OF HEARING: Phoenix, Arizona  
14 ADMINISTRATIVE LAW JUDGE: Scott M. Hesla  
15 APPEARANCES: Mr. DeWald Lucas, president, on behalf of Walden  
16 Meadows Community Cooperative; and  
17 Mr. Brian E. Smith, Staff Attorney, Legal Division, on  
18 behalf of the Utilities Division of the Arizona  
19 Corporation Commission.

20 **BY THE COMMISSION:**

21 \* \* \* \* \*

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

24 **FINDINGS OF FACT**

25 **Procedural History**

26 1. On December 27, 2016, Walden Meadows Community Cooperative (“Walden  
27 Meadows” or “Cooperative”) filed a letter which resulted in the opening of this docket. In the letter,  
28 Walden Meadows states that current operating expenses exceed revenues and there are insufficient  
funds to repair and upgrade its water distribution system.

2. On December 30, 2016, a Procedural Order was issued directing the Commission’s  
Utilities Division (“Staff”) to assist Walden Meadows in filing the information required under the

1 Commission’s policy for processing emergency rate applications.<sup>1</sup>

2 3. On March 9, 2017, Walden Meadows filed an application for an emergency rate  
3 increase. The application certifies that notice of this proceeding was mailed to all customers of record  
4 on March 1, 2017.

5 4. On March 10, 2017, a Procedural Order was issued scheduling a procedural conference  
6 to commence on March 20, 2017, for the purpose of scheduling a hearing date and other procedural  
7 matters.<sup>2</sup>

8 5. On March 13, 2017, one customer filed public comment opposing the application.

9 6. On March 20, 2017, the procedural conference was convened, as scheduled, with Staff  
10 appearing through counsel, and the Cooperative appearing through its president, Mr. DeWald Lucas.  
11 At that time, the parties agreed to a procedural schedule to govern this proceeding.

12 7. Later, on March 20, 2017, a Procedural Order was issued scheduling a hearing to  
13 commence on March 24, 2017, and ordering the Cooperative to provide public notice of the hearing  
14 date in a form and manner acceptable to Staff.

15 8. On March 24, 2017, a full public hearing was convened, as scheduled, with Staff  
16 appearing through counsel, and the Cooperative appearing through Mr. Lucas. Mr. Lucas testified on  
17 behalf of the Cooperative, and Mr. Briton Baxter testified on behalf of Staff. Mr. Lucas avowed that  
18 public notice of the hearing date had been posted at the Cooperative’s office as well as on three  
19 community mailboxes located within its service territory on March 20, 2017. At the conclusion of the  
20 hearing, the matter was taken under advisement pending submission of a Recommended Opinion and  
21 Order for the Commission’s final disposition.

22 9. Later, on March 24, 2017, a customer filed public comment opposing the application.  
23 According to the customer, ACME Water Company, LLC (“ACME Water”) owes Walden Meadows  
24 a substantial amount of money for purchased water.

25 ...

26 ...

27 \_\_\_\_\_  
28 <sup>1</sup> Decision No. 75743 (September 19, 2016) at Attachment A.

<sup>2</sup> Due to the unavailability of the Cooperative, March 20, 2017, was the earliest date to convene a procedural conference.

1 **Background**

2 10. Walden Meadows is a non-profit Arizona corporation providing potable water service  
3 to approximately 335 residential customers in an area near the town of Wilhoit, in Yavapai County,  
4 Arizona. The Commission granted to Walden Meadows a Certificate of Convenience and Necessity  
5 ("CC&N") in Decision No. 51174 (July 23, 1980), and approved the Cooperative's current rates and  
6 charges in Decision No. 54802 (December 12, 1985).

7 11. Mr. Lucas testified that customers of Walden Meadows typically consume an average  
8 of approximately 2,500 gallons of water per month. Based on the Company's current rates and charges,  
9 the average residential customer with a 5/8 x 3/4-inch meter is charged approximately \$24.00 per  
10 month.<sup>3</sup>

11 12. Mr. Baxter testified that the Cooperative is currently in compliance with the  
12 departmental requirements of the Arizona Department of Environmental Quality ("ADEQ") and the  
13 Arizona Department of Water Services ("ADWR").

14 **Emergency Rate Application**

15 13. In its application, Walden Meadows seeks authority to impose a \$9.59 per month per  
16 customer surcharge, for a period of 12 months, to pay for an estimated \$38,533 in expenses needed to  
17 provide the Cooperative with sufficient income to safely and reliably operate its water distribution  
18 system.<sup>4</sup> The Cooperative's estimated costs include:

- 19
- 20 • \$5,513 to recover its operating losses in 2015;
  - 21 • \$6,000 to repay a short-term loan that Mr. Lucas provided to the Cooperative to stay current  
22 on its property taxes;
  - 23 • \$1,250 to service the well pumps;<sup>5</sup>
  - 24 • \$264 to purchase two spare meters;
  - 25 • \$7,309 to purchase one 10 horsepower ("HP") and one 15 HP spare booster pumps; and
  - 26 • \$18,192 to purchase various on-site parts and equipment to ensure system reliability.

27 <sup>3</sup> This amount does not include applicable taxes.

28 <sup>4</sup> The Cooperative derived its requested emergency surcharge rate by dividing the estimated costs by the number of customers.

<sup>5</sup> Mr. Lucas testified that the well pumps are currently operational and he has no reason to suspect that the well pumps are in any imminent danger of failing. As a result, the Cooperative may not incur this cost in the foreseeable future.

1           14.     According to the application, the Cooperative has insufficient revenues to continue  
2 operating at a compliant level due to outdated rates and rising costs. In addition, the application states  
3 that the Cooperative “does not have any equipment and/or supplies on hand and no means to purchase  
4 said supplies should there be a breakdown or failure [of the water system], putting service to the  
5 Walden Meadows customers at jeopardy.”

6           15.     The application provides the Cooperative’s comparative income statement for the 2014  
7 and 2015 calendar years. According to the income statement, Walden Meadows had a net income of  
8 \$13,295 in 2014, and a net loss of \$6,610 in 2015.

9           16.     During the hearing, Mr. Lucas testified that he became president of the Cooperative in  
10 November of 2015, and soon discovered that the Cooperative’s finances were in peril. According to  
11 Mr. Lucas, the Company is currently operating at a loss and does not have the necessary funds to  
12 maintain, repair, or upgrade its water system.

13           17.     Mr. Baxter testified that the current financial condition of the Cooperative constitutes  
14 an “emergency” to support the authorization of an interim surcharge. Testifying further, Mr. Baxter  
15 indicated that Walden Meadows lacks the cash flow necessary to adequately maintain the system and  
16 provide for contingencies. According to Mr. Baxter, Staff reviewed the estimated costs and determined  
17 them to be reasonable and their intended uses to be necessary.

18           18.     Staff recommends approval of the emergency interim surcharge, as requested by  
19 Walden Meadows.

20 **Resolution**

21           19.     As described in Attorney General (“AG”) Opinion No. 71-17 (May 25, 1971), it is  
22 appropriate for the Commission to grant interim rates as an emergency measure when (1) sudden  
23 change brings hardship to a company, (2) the company is insolvent, (3) the condition of the company  
24 is such that its ability to maintain service pending a formal rate determination is in serious doubt, or  
25 (4) the Commission will be unable to grant permanent rate relief within a reasonable time. In *Scates*  
26 *v. Arizona Corporation Commission*, the Arizona Court of Appeals recognized this standard and,  
27 additionally, that (1) a bond must be posted to protect the company’s customers and allow for refund  
28 in the event that the interim rates are excessive, and (2) the granting of interim rates must be followed

1 by a full rate case in which just and reasonable rates are established after the fair value of the company's  
2 property is determined.<sup>6</sup> The *Scates* test was cited with approval in *Residential Utility Consumer Office*  
3 *v. Arizona Corporation Commission*, 20 P.3d 1169, 1173 (Ariz. App. 2001) ("*Rio Verde*").

4         20. We find that the Cooperative's current financial condition and inability to maintain and  
5 repair its water system constitutes an "emergency" within the definition set forth in AG Opinion No.  
6 71-17, as discussed and approved in the *Scates* and *Rio Verde* cases cited herein, and that the  
7 implementation of interim rates is necessary to enable the Cooperative to provide safe and reliable  
8 service to its customers.

9         21. We find that it is in the public interest to allow the Cooperative to recover the following  
10 costs through the implementation of an interim emergency surcharge: \$6,000 to repay the personal  
11 short-term loan from Mr. Lucas; \$264 to purchase two spare meters; \$7,309 to purchase two spare  
12 booster pumps; and \$18,192 to purchase various on-site parts and equipment to ensure system  
13 reliability. The foregoing expenses are reasonable and will enable Walden Meadows to continue  
14 providing safe and reliable service to its customers.

15         22. However, we do not believe it is in the public interest for the Cooperative to recover the  
16 \$5,513 in operating losses or the \$1,250 cost to service the well pumps. We find that requiring  
17 customers to reimburse the Cooperative for prior year losses would constitute retroactive ratemaking,  
18 which is impermissible under the law. In addition, since Mr. Lucas indicated that the Cooperative may  
19 not need to service the well pumps in the foreseeable future, we do not believe it is reasonable to allow  
20 recovery of that cost from customers at this time.

21         23. Consistent with the foregoing, we find that it is just and reasonable, and in the public  
22 interest, to authorize Walden Meadows to implement an interim emergency surcharge of \$7.90 per  
23 month per customer, for a period of 12 months.<sup>7</sup>

24         24. We will require the Company to file a full permanent rate case, with a test year ending  
25 December 31, 2017, no later than May 1, 2018.

26         25. We further require the Cooperative to file with the Commission, on a quarterly basis, an

27 <sup>6</sup> 578 P.2d 612, 616 (Ariz. App. 1978).

28 <sup>7</sup> Total allowed costs (\$31,765), divided by the number of customers (335), divided by the number of months (12), equals approximately \$7.90.

1 accounting of emergency surcharge monies collected and disbursed, including the reason(s) for the  
2 disbursement, for the prior quarter.

3 26. Based on the public comment filed on March 24, 2017, we are concerned that ACME  
4 Water’s failure to pay its debts to Walden Meadows has contributed to the emergency condition  
5 discussed herein. We will therefore require Walden Meadows to file, within thirty (30) days of this  
6 Decision, an accounting of the money owed, if any, by ACME Water. We direct Staff to review that  
7 filing, and make recommendations to the Commission, as necessary.

8 **CONCLUSIONS OF LAW**

9 1. Walden Meadows is a public service corporation within the meaning of Article XV of  
10 the Arizona Constitution and A.R.S. Title 40, Chapter 2.

11 2. The Commission has jurisdiction over Walden Meadows and the subject matter of the  
12 application.

13 3. Notice of the emergency rate application was provided in accordance with the March  
14 20, 2017, Procedural Order, the Commission’s rules, and Arizona law.

15 4. Walden Meadows is facing an “emergency” within the definition set forth in AG  
16 Opinion No. 71-17, as discussed and approved in the *Scates* and *Rio Verde* cases cited herein.

17 5. It is just and reasonable and in the public interest to adopt the Cooperative’s emergency  
18 rate application, as discussed herein.

19 6. Approval of the Cooperative’s application for emergency interim rate relief, as  
20 described herein, is consistent with the Commission’s authority under the Arizona Constitution,  
21 applicable statutes, and applicable case law.

22 7. The interim rates approved herein are reasonable and in the public interest, subject to  
23 the requirements discussed herein.

24 **ORDER**

25 IT IS THEREFORE ORDERED that Walden Meadows Community Cooperative is authorized  
26 to assess, as a separate line item on each customer’s monthly bill, an interim emergency surcharge of  
27 \$7.90 for a period of twelve (12) months, for the reasons described herein.

28



1 IT IS FURTHER ORDERED that Walden Meadows Community Cooperative shall, before  
2 implementing the interim emergency surcharge approved herein, provide to the Commission's  
3 Business Office the original of a cashier's check made out to the Arizona Corporation Commission in  
4 the amount of \$10.

5 IT IS FURTHER ORDERED that Walden Meadows Community Cooperative shall, on the  
6 same date the original cashier's check is provided to the Commission's Business Office, file with  
7 Docket Control, as a compliance item in this docket, an original and 1 copy of a notice stating that the  
8 cashier's check has been provided to the Commission's Business Office.

9 IT IS FURTHER ORDERED that the interim emergency surcharge shall become effective on  
10 May 1, 2017, or on the first day of the month following Walden Meadows Community Cooperative's  
11 compliance with the requirements to provide the cashier's check to the Commission's Business Office  
12 and to file notice thereof, whichever is later.

13 IT IS FURTHER ORDERED that Walden Meadows Community Cooperative shall, within  
14 thirty (30) days after the effective date of this Decision, mail or deliver notice of the approved interim  
15 emergency surcharge to its customers, in a form and manner acceptable to the Commission's Utilities  
16 Division, by means of an insert in the Company's next scheduled billing.

17 IT IS FURTHER ORDERED that Walden Meadows Community Cooperative shall, within  
18 thirty (30) days after the effective date of this Decision, file with Docket Control, as a compliance item  
19 in this docket, a revised tariff reflecting the approved interim emergency surcharge.

20 IT IS FURTHER ORDERED that Walden Meadows Community Cooperative shall open a  
21 separate bank account to retain all interim emergency surcharge revenues authorized herein.

22 IT IS FURTHER ORDERED that Walden Meadows Community Cooperative shall, starting  
23 August 1, 2017, file with the Commission, on a quarterly basis, an accounting of all interim emergency  
24 surcharge monies received and disbursed, including the reason(s) for disbursement, for the prior  
25 quarter.

26 IT IS FURTHER ORDERED that Walden Meadows Community Cooperative shall, within  
27 thirty (30) days after the effective date of this Decision, file with Docket Control, as a compliance item  
28 in this docket, an accounting of the money owed, if any, by ACME Water Company, LLC. We direct

1 the Commission's Utilities Division to review that filing, and make recommendations to the  
2 Commission, as necessary.

3 IT IS FURTHER ORDERED that Walden Meadows Community Cooperative shall, no later  
4 than May 1, 2018, in a new docket, file with the Commission's Docket Control a full permanent rate  
5 case application prepared using a test year ending December 31, 2017.

6 IT IS FURTHER ORDERED that Walden Meadows Community Cooperative shall, on the  
7 same date that it files a full permanent rate case application in a new docket, file with Docket Control,  
8 as a compliance item in this docket, notice that the full permanent rate case application has been filed.

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1 IT IS FURTHER ORDERED that the interim emergency surcharge approved herein shall be  
2 interim and that funds collected through the interim emergency surcharge rate are subject to true-up  
3 and refund if surcharge revenues at the end of twelve (12) months are not disbursed for the reasons  
4 discussed herein.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
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8

9 \_\_\_\_\_  
CHAIRMAN FORESE

COMMISSIONER DUNN

10 \_\_\_\_\_  
11 COMMISSIONER TOBIN

COMMISSIONER LITTLE

COMMISSIONER BURNS

12  
13 IN WITNESS WHEREOF, I, TED VOGT, Executive Director of  
14 the Arizona Corporation Commission, have hereunto set my  
15 hand and caused the official seal of the Commission to be affixed  
16 at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day  
17 of \_\_\_\_\_ 2017.

18 \_\_\_\_\_  
TED VOGT  
EXECUTIVE DIRECTOR

19 DISSENT \_\_\_\_\_  
20

21 DISSENT \_\_\_\_\_  
22 SMH/rt

23  
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28

1 SERVICE LIST FOR:

WALDEN MEADOWS COMMUNITY CO-OP

2 DOCKET NO.:

W-02369A-16-0481

3 DeWald Lucas  
4 Walden Meadows Community Cooperative  
5 9325 Donegal Dr., Ste. A.  
6 Wilhoit, Arizona 86332

7 Timothy La Sota, Acting Director  
8 Legal Division  
9 ARIZONA CORPORATION COMMISSION  
10 1200 West Washington Street  
11 Phoenix, Arizona 85007  
12 Attorneys for Utilities Division  
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15 **Consented to Service by Email**