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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission

DOCKETED

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

DOCKET NO. W-02369A-16-0481

DECISION NO. 76068

OPINION AND ORDER

DATE OF HEARING: March 24, 2017
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Scott M. Hesla
APPEARANCES: Mr. DeWald Lucas, president, on behalf of Walden Meadows Community Cooperative; and Mr. Brian E. Smith, 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

Procedural History

1. On December 27, 2016, Walden Meadows Community Cooperative (“Walden Meadows” or “Cooperative”) filed a letter which resulted in the opening of this docket. In the letter, 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.¹

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.²

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.

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28 ¹ Decision No. 75743 (September 19, 2016) at Attachment A.

² 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.³

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.⁴ 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;⁵
 - 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.

26 ³ This amount does not include applicable taxes.

27 ⁴ The Cooperative derived its requested emergency surcharge rate by dividing the estimated costs by the number of
28 customers.

⁵ 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 Waldon 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 2016, 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.⁶ 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; \$1,250 to test both well pumps and determine their operational
12 condition; \$264 to purchase two spare meters; \$7,309 to purchase two spare booster pumps; and
13 \$18,192 to purchase various on-site parts and equipment to ensure system reliability. The foregoing
14 expenses are reasonable and will enable Walden Meadows to continue providing safe and reliable
15 service to its customers.

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

22 23. Consistent with the foregoing, we find that it is just and reasonable, and in the public
23 interest, to authorize Walden Meadows to implement an interim emergency surcharge of \$8.21 per
24 month per customer, for a period of 12 months.⁷

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

27 ⁶ 578 P.2d 612, 616 (Ariz. App. 1978).

28 ⁷ Total allowed costs (\$33,015), divided by the number of customers (335), divided by the number of months (12), equals approximately \$8.21.

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.

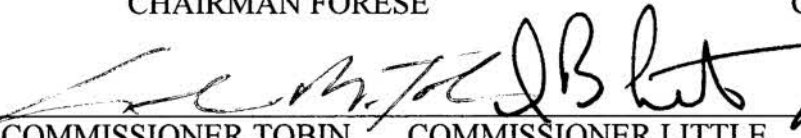
6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9 CHAIRMAN FORESE



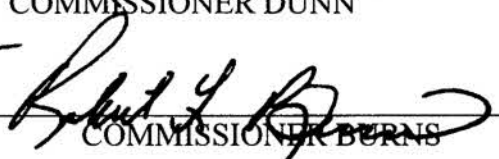
10 COMMISSIONER DUNN

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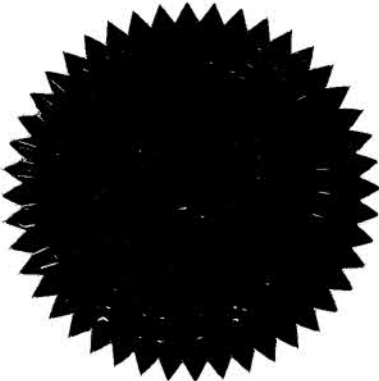
12 COMMISSIONER TOBIN



13 COMMISSIONER LITTLE



14 COMMISSIONER BURNS



15 IN WITNESS WHEREOF, I, TED VOGT, Executive Director of
16 the Arizona Corporation Commission, have hereunto set my
17 hand and caused the official seal of the Commission to be affixed
18 at the Capitol, in the City of Phoenix, this 11th day
19 of April 2017.



20 TED VOGT
21 EXECUTIVE DIRECTOR

22 DISSENT _____

23 DISSENT _____
24 SMH/rt

1 SERVICE LIST FOR: WALDEN MEADOWS COMMUNITY CO-OP
2 DOCKET NO.: W-02369A-16-0481

3 DeWald Lucas
4 Walden Meadows Community Cooperative
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6 Wilhoit, Arizona 86332

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15 **Consented to Service by Email**

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