-BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

JUL 20 2005

IN THE MATTER OF THE APPLICATION OF SABROSA WATER COMPANY FOR AN EMERGENCY RATE INCREASE.

DOCKET NO. W-02111A-05-0167

DECISION NO. 67990

OPINION AND ORDER

DATE OF HEARING: May 6, 2005

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Lyn Farmer

APPEARANCES: Mr. Raymond S. Heyman, ROSHKA, HEYMAN & DeWULF, on behalf of Sabrosa Water Company;

Mr. Dennis Schumacher, Intervenor; in pro personia; and

Mr. Jason Gellman, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On March 8, 2005, Sabrosa Water Company ("Sabrosa" or "Company") filed the above-captioned application for emergency interim rate relief with the Arizona Corporation Commission ("Commission").

On March 22, 2005, Sabrosa filed a Supplement to the March 8, 2005, emergency rate application.

On April 19, 2005, Mr. Dennis Schumacher filed a Request for Intervention.

On May 6, 2005, a hearing was held in the above-captioned matter. The Utilities Division Staff ("Staff"), Sabrosa and Mr. Dennis Schumacher appeared at the hearing and Mr. Schumacher's Request for Intervention was granted.

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

FINDINGS OF FACT

1. Sabrosa provides water service to approximately 65 customers located in the New River, Arizona area.

2. On May 11, 2000, the Commission issued a Complaint and Order to Show Cause against Sabrosa alleging a lack of ability to provide adequate and continued water service to its customers and for violation of the Rules of the Arizona Department of Environmental Quality ("ADEQ"). In Decision No. 63136 (November 16, 2000), the Commission authorized the Commission's Utilities Division Staff ("Staff") to engage a qualified management entity to operate and manage Sabrosa in order to bring the Company into full compliance with Arizona law, the Commission's Rules and Orders. [1] The Commission further fined the owner of Sabrosa, Mr. Keith J. Morris, a penalty of $5,000 as well as ongoing penalties for failure to comply with Arizona law. Mr. Morris has not paid the penalty and has abandoned the utility. In 2000, Arizona American Water Company ("AAWC") was appointed interim manager for Sabrosa.

3. On April 24, 2002, the Staff filed another Complaint against Sabrosa, alleging violations of law and Commission Rules and Orders, and requesting cancellation of Sabrosa's Certificate of Convenience and Necessity ("Certificate" or "CC&N"). In Decision No. 65217 (September 24, 2002), the Commission cancelled Sabrosa's CC&N and reaffirmed the financial penalties order in Decision No. 63136.[2]

4. On approximately February 1, 2005, Global Water Resources, LLC ("Global") was appointed the successor interim manager for Sabrosa. According to Global, during its due diligence, it learned that in "addition to ownership, financial and operational issues, Sabrosa has substantial problems with water quality and quantity, infrastructure and expandability."[3] Global states that it

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[1] In 2000, Arizona American Water Company was appointed interim manager and served until approximately January 31, 2005.

[2] Those Commission Orders have been referred to the Attorney General's Offices for enforcement. (TR. p. 16)

[3] March 8, 2005 Application at p.2.

will attempt to operate Sabrosa for the immediate benefit of the customers, and also intends to fix problems and rehabilitate the utility to provide safe, reliable and adequate water.

5. On March 8, 2005, Sabrosa filed this Application, indicating that it is plagued with serious financial, operational and water quality and quantity problems that jeopardize its ability to provide ongoing adequate, reliable and safe water to its customers. The application stated that Sabrosa has been, and will be for the immediate future, operated by interim managers and that its rates are not sufficient to operate the utility or fix its problems.

6. On April 1, 2005, Sabrosa filed its Notice of Filing Affidavit of Mailing, stating that it had mailed a copy of the notice of the Application for Emergency Interim Rates to all customers on March 30, 2005.[4]

7. According to Sabrosa, the problems that constitute the emergency include: (i) inadequate water supplies; (2) marginal to poor water quality; (iii) poorly maintained equipment and infrastructure; (iv) a series of financial and legal problems as a result of ownership abandonment; and (v) confiscatory rates.

8. According to the Staff Report, the Company's water supply and the size of its water system are inadequate to meet the needs of current customers. During the summer months in 2003 and 2004, the Company did not have enough water to meet the demand and had to buy water from AAWC. Sabrosa has three production wells that are essentially shallow domestic wells drilled into fractured rock. Inspection of the three wells indicated that each well will need significant repairs or will have to be replaced.[5] Staff inspected the system and verified that the system indeed had the problems that were stated in the Company's application. (Tr. p. 97) The sizes of the water lines are too small and may not be looped, causing a lack of circulation. Additionally, the water system's pressure is usually at or below minimum standards and is not able to sustain pressure for critical "fire flow". Staff found the water system to be in general disrepair. According to the Company, the infrastructure problems are compounded by the lack of system maps and the failure to have a dedicated line maintenance program.

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[4] Global also held a public town hall meeting in February and discussed the need for a rate increase. (TR. p. 30)
[5] The Zorillo well failed on February 12, 2005 and required the complete replacement of pump, motor and controller.

9. According to Staff and the Company, the Company's current water quality is not meeting water quality standards. The arsenic levels are approximately 35 ppb; recent samples of Sabrosa's water tested positive for total coliform; and samples from at least two of the wells have indicated the presence of nitrates. In its Supplement to Application for Emergency Interim Rate Relief filed on March 22, 2005, Sabrosa indicated that based upon nitrate results from samples taken in March, the Wright Well was isolated from the Sabrosa distribution system and customers were mailed a "Notice of Exceedance."

10. According to the Application, one of the major problems with Sabrosa is the "quagmire of legal issues that its owner has created", including abandonment of the utility and its customers while maintaining legal title to the assets, including real property; the cancellation of the CC&N; and the nonpayment of property taxes[6]. These negative factors are a deterrent to third party investment in Sabrosa, and make it "virtually impossible to secure needed funding to improve the Sabrosa system." The Application states that the former interim operator lost between $25,000 and $50,000 annually in direct operational costs.

11. According to Staff, Sabrosa's rates do not provide sufficient revenue to pay its operating expenses and to correct its capacity and water quality problems. The Staff Report indicates that the Company is not current on its property taxes; cannot meet needed repairs and perform required maintenance; and is incurring legal expenses to address legal issues caused by its owner.

12. According to Sabrosa, the goal of the proposed rates is to restore Sabrosa to operational stability, including allowing for an infusion of capital for pump and line repair and replacement (TR. p. 33)

13. The Company testified that current revenues are approximately $28,000, but that approximately $90,000 of revenue a year is needed to cover expenses. This increase in revenues would increase the typical residential customer's bill, based upon usage of 8,569 gallons, from $34.21 to $107.62. The current base rates and the proposed interim emergency rates are as set forth below:

[6] Sabrosa owes approximately $400,000 to Maricopa County in back property taxes.

	Current Rates	Company Proposed Emergency Rates
Monthly Minimum Charge Based on 5/8 – inch Meter	$17.50	$39.50
Gallons in Minimum	1,000	0
Commodity Charge:		
0 to 3,000 gallons, per 1,000 gallons	$1.95	$6.00
3,001to 10,000 gallons, per 1,000 gallons	1.95	9.00
10,001 and over gallons, per 1,000 gallons	1.95	10.80

14. Intervenor Schumacher testified that he has been a customer of Sabrosa's for five years and that the Company has substantial, and maybe insurmountable problems, including both water quantity and quality issues, including contaminated wells, a system in disrepair with no accurate system distribution map, and no opportunity for growth to help solve the problems. Mr. Schumacher testified that since Global took over as interim manager this year, he has received several letters from them, notifying customers of what is being done, and his water service has not been interrupted. Mr. Schumacher agrees that the rate increase is necessary, but questions whether rates necessary to ultimately solve the Company's problems could be successfully implemented.

15. In *Residential Utility Consumer Office v. Arizona Corp. Com'n* (App. Div. 1 2001) 199 Ariz. 588, 20 P.3d 1169, the court agreed with the *Scates*[7] court's approval of the circumstances in which interim rates may be considered and approved by the Commission. "*Scates* follows the Attorney General's conclusion that, while the Commission has broad authority when setting rates, the interim rate-making authority is limited to circumstances in which (1) an emergency exists; (2) a bond is posted by the utility guaranteeing a refund to customers if the interim rates paid are higher than the final rates determined by the Commission; and (3) the Commission undertakes to determine final rates after a valuation of the utility's property. 118 Ariz. At 535, 578 P.2d at 616 (following the

[7] *Scates v. Arizona Corp. Comm'n,* 118 Ariz. 531, 578 P.2d 612.

conclusion drawn in Op. Att'y Gen 71-17)."[8]

16. According to Attorney General Opinion No. 71-17, interim or emergency rates are proper when either all or any one of the following conditions occur: when sudden change brings hardship to a Company; when the Company is insolvent; or when the condition of the Company is such that its ability to maintain service pending a formal rate determination is in serious doubt.

17. Staff recommends that the Commission approve the requested interim rates, stating that the Company is not currently providing adequate service and there is no reasonable expectation that it could begin to provide adequate service at existing rates. Staff believes that implementation of emergency rates may prevent further deterioration of the perilous condition of this system.

18. Staff further recommends that Sabrosa file a permanent rate application by May 31, 2006, using a test year ending March 31, 2006; that the interim rates be subject to refund pending the decision on the permanent rate case; and that the Company post a bond in the amount of $10 prior to implementing the emergency rate increase authorized in this proceeding.

19. Staff's recommendations above comply with the law concerning the Commission's ability to implement interim rates, however, we believe that a bond of $10 is inadequate for "guaranteeing a refund to customers if the interim rates paid are higher than the final rates determined by the Commission". We realize that the Company's poor financial condition is the reason that it filed this application, but we cannot ignore the requirement that the customers are to be protected if the interim rates are higher than the final rates. Accordingly, we will require a bond in the amount $3,000, which is approximately 5 percent of the increase in annual revenues allowed in this emergency rate application.

CONCLUSIONS OF LAW

1. Sabrosa is a public service corporation pursuant to A.R.S. §§ 40-250 and 251.

2. The Commission has jurisdiction over Sabrosa and the subject matter of the application.

3. Notice of the Application was provided in accordance with the law.

[8] *RUCO* at 591.

4. Sabrosa is facing an "emergency" within the definition set forth in Attorney General Opinion No. 71-17.

5. The emergency rate increase requested herein is just and reasonable on an interim basis and should be granted.

6. The recommendations set forth in Findings of Fact Nos. 17 and 18 as modified herein are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that Sabrosa Water Company shall file on or before July 29, 2005, a revised tariff that allows for the following interim emergency rates:

	Rates
Monthly Minimum Charge Based on 5/8–inch Meter	$39.50
Commodity Charge:	
0 to 3,000 gallons, per 1,000 gallons	$6.00
3,001to 10,000 gallons, per 1,000 gallons	9.00
10,001 and over gallons, per 1,000 gallons	10.80

IT IS FURTHER ORDERED that the above rates and charges shall be effective for all service provided on and after August 1, 2005.

IT IS FURTHER ORDERED that Sabrosa Water Company shall file an a permanent rate case application using a test year ending March 31, 2006, no later than May 31, 2006.

IT IS FURTHER ORDERED that Sabrosa Water Company shall post a bond in the amount of $3,000 prior to implementing the new emergency interim rates.

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IT IS FURTHER ORDERED that Sabrosa Water Company shall notify its customers of the rates authorized herein and their effective date within 15 days of the effective date of this Order.

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, BRIAN C. McNEIL, Executive Secretary 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 18th day of July, 2005.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____
LF:dap

SERVICE LIST FOR: SABROSA WATER COMPANY

DOCKET NO.: W-02111A-05-0167

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