BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
Director Of Utilities

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF NACO WATER COMPANY, LLC FOR AN EMERGENCY RATE INCREASE.

DOCKET NO. W-02860A-05-0184

DECISION NO. **67984**

OPINION AND ORDER

DATE OF PUBLIC COMMENT: May 10, 2005

PLACE OF PUBLIC COMMENT: Naco, Arizona

DATE OF HEARING: May 17, 2005

PLACE OF HEARING: Tucson, Arizona

ADMINISTRATIVE LAW JUDGE: Jane L. Rodda

APPEARANCES: Bonnie O'Connor, Southwestern Utility Management, on behalf of Naco Water Company, LLC;

David Ronald, Staff Attorney Legal Division, on behalf of the Utilities Division for the Arizona Corporation Commission.

BY THE COMMISSION:

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Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On March 14, 2005, Naco Water Co. LLC, ("NWC" or "Company") filed an application for approval of an emergency increase in its rates.

2. Naco is a limited liability company that provides water service to approximately 321 customers in the area of Naco in Cochise County, Arizona.

3. By Procedural Order Dated March 25, 2005, the matter was set for hearing on May 10,

2005, at the Commission's offices in Tucson, Arizona.

4. On March 31, 2005, NWC mailed notice of the hearing to all of its customers.

5. On April 21, 2005, residents of the areas served by NWC filed a Petition signed by approximately 88 individuals requesting that the Commission set a Public Comment meeting in the Naco area.

6. By Procedural Order dated April 25, 2005, the Commission set a public comment meeting on May 10, 2005 in Naco and continued the evidentiary hearing until May 17, 2005, at its offices in Tucson.

7. Eighteen customers attended the public comment meeting which convened at 6:00 p.m. on May 10, 2005, at the Naco Elementary School. Customers who spoke at the meeting were primarily concerned about the size of the potential increase and in improving the Company's system which is very old and in need of constant repair.

8. The Company requested that the Commission approve an increase in revenues of $44,682 on an emergency basis. The requested increase would be a 27.3 percent increase over current annual revenues.

9. The Company's current and proposed interim rates are as follows:

Monthly Usage Charges	Current Rates	Proposed Rates
5/8" x ¾ " Meter	$16.43	$24.00
1" Meter	$31.48	$35.00
1 1/2 " Meter	$41.43	$45.00
2" Meter	$48.43	$54.00
Commodity Charge – per 1,000 gallons		
0-10,000 gallons	$2.83	$3.50
Over 10,000 gallons	$4.18	$4.80

10. NWC's current rates were authorized in Decision No. 62033 (November 2, 1999).

11. In Decision No. 61070 (August 7, 1998), the Commission authorized NWC to borrow $620,000 from the Water Infrastructure Finance Authority ("WIFA") for the purpose of designing and constructing upgrades to its systems. From the time the Company started its improvement project until the current date, rising construction costs prevented the Company from finishing the

planned improvements.

12. The Company's request was driven by its inability to pay its obligations as they come due. At the time it filed its application, the Company's accounts payable had grown to $40,843, primarily owed to its utility management company, Southwest Utility Management.

13. In early 2005, the Company had to expend approximately $60,000 to relocate a portion of its system to accommodate a Cochise County road-widening project. In addition, at about the same time, its Well No. 3 went dry and NWC had to drill a new one at a cost of about $30,000.

14. WIFA allowed NWC to use $43,000 from its reserve fund, but requires the Company to replenish the reserve fund with a $1,218 monthly payment. The Company also needs additional capital improvements to increase water storage capacity, to reduce excess water loss and to drill a new well. Well No. 4 appears to be going dry, and the water table level is dropping in the area. The Company estimates that it will need to borrow an additional $600,000 to $700,000 to make the necessary improvements. It feels compelled to meet its current WIFA debt service obligations to be eligible for additional loans to finance its capital improvement needs.

15. In addition to repaying the reserve find, WIFA is requiring the Company to contribute $794 a month to a sinking fund for future repairs and maintenance. At the time of the application, the Company was about three months delinquent in making the sinking fund payment.

16. The Company's financial statements show that it is operating at a loss. Staff's analysis indicates that the Company is running an annualized cash flow deficit of $25,973.

17. NWC is dependent on its management company, which has made advances to keep the Company current with its other vendors.

18. The Company does not have the ability to raise additional equity or borrow more funds to make other necessary capital improvements needed to reduce excess water loss and meet peek demand.

19. 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.

20. Staff recommends that the Commission approve interim rates, through a monthly surcharge sufficient to generate additional revenues of $30,225 on an annual basis. Staff believed that the Company's recommended increase will allow the Company to meet its on-going obligations and provide a small cushion. Staff's recommendation would not provide for any meaningful reduction of existing accounts payable, but should halt the growth in the accounts payable.

21. Staff recommends the following monthly surcharges:

5/8 x ¾ inch meters	$6.50
¾ inch meters	$9.75
1 inch meters	$16.25
1 ½ inch meters	$32.50
2 inch meters	$52.00
3 inch meters	$97.50
4 inch meters	$162.50
6 inch meters	$325.00

22. Staff further recommends that:

(a) the Company file a permanent rate increase application no later than May 31, 2006, based on a test year ended December 31, 2005[1];

(b) the interim rates be subject to refund pending a final Decision in the permanent rate case; and

(c) the Company docket proof of a bond in the amount of $10 prior to implementing the emergency rate increase authorized in this proceeding.

23. Cochise County's requirement that the Company relocate a portion of its system and need to drill a new well to replace the well that ran dry constitute a sudden change that caused hardship for the Company. The Company is unable to meet its on-going obligations and its ability to maintain service pending a formal rate application is in serious doubt.

24. Although NWC originally requested a larger increase, it accepted Staff's

[1] Staff had originally recommended a filing date of March 31, 2006, but revised its recommendation, to extend the date, at the hearing.

recommendations.

25. Because NWC has a long history of operations, we do not find a compelling need for it to wait until 2006 to file a permanent rate case. We agree with Staff that it should file such permanent rate case no later than May 31, 2006, but believe that it can file such case as soon as it is prepared to do so. It appears that the Company will need a permanent rate increase to obtain additional WIFA financing to complete its capital improvement project, and there may be good cause to file sooner than recommended by Staff.

26. 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 *Scate*[2]*s* 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 conclusion drawn in Op. Att'y Gen 71-17)."[3]

27. Staff's recommendations above comply with the law concerning the Commission's ability to implement interim rates, and, we believe that a bond of $10 is adequate under the circumstances of this case.

CONCLUSIONS OF LAW

1. NWC is a public service corporation pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-250 and 40-251.

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

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

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

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[2] *Scates v. Arizona Corp. Comm'n,* 118 Ariz. 531, 578, P.2d 612.
[3] *RUCO* at 591.

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. 22, 25 and 27 are reasonable and should be adopted.

ORDER

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

5/8 x ¾ inch meters	$6.50
¾ inch meters	$9.75
1 inch meters	$16.25
1 ½ inch meters	$32.50
2 inch meters	$52.00
3 inch meters	$97.50
4 inch meters	$162.50
6 inch meters	$325.00

IT IS FURTHER ORDERED that the surcharge approved herein shall be interim and subject to refund pending resolution of a permanent rate case.

IT IS FURTHER ORDERED that Naco Water Company shall file an application for a permanent rate increase as soon as it is able, but not later than May 31, 2006.

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 Naco Water Company, LLC shall post a bond in the amount of $10 prior to the implementation of the interim rates.

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IT IS FURTHER ORDERED that Naco Water Company, LLC 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

JR:mj

SERVICE LIST FOR: NACO WATER COMPANY

DOCKET NO.: W-02860A-05-0184

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