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ARIZONA CORPORATION COMMISSION

DATE: December 30, 2003

DOCKET NO: W-02105A-03-0805

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

MOUNT TIPTON WATER COMPANY, INC.
(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:

JANUARY 8, 2004

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 Working Session and Open Meeting to be held on:

JANUARY 13 and 14, 2004

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 Secretary's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

DEC 30 2003

DOCKETED BY

BRIAN C. McNEIL
EXECUTIVE SECRETARY

This document is available in alternative formats by contacting Yvonne McFarlin, ADA Coordinator, voice phone number 602-542-3931, E-mail YMcFarlin@cc.state.az.us

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF MOUNT TIPTON WATER COMPANY, INC. FOR AN EMERGENCY RATE INCREASE.	DOCKET NO. W-02105A-03-0805 DECISION NO. _____ **OPINION AND ORDER**

DATE OF HEARING:	December 17, 2003
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Marc E. Stern
APPEARANCES:	Ms. Sue Morgan, General Manager, on behalf of Mount Tipton Water Company, Inc.; and Ms. Lisa VandenBerg, Staff Attorney, Legal Division on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On November 4, 2003, Mount Tipton Water Company, Inc. ("Company" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application requesting an emergency rate increase in the form of a $10.00 per month per metered customer surcharge and a 50 percent increase on its bulk water (standpipe) commodity charge from $3.00 to $6.00 per 1,000 gallons of water "without assistance" and from $5.00 to $10.00 per 1,000 gallons of water "with assistance". The Company requested these increases to offset what it says are increasing revenue shortfalls, which have rendered the Company unable to pay its debt service and its regular operating expenses.

On November 19, 2003, the Commission, by Procedural Order, scheduled a hearing on the above-captioned matter to determine if an emergency existed that would require the relief requested by Applicant. The Commission's Procedural Order also required Applicant to provide notice to each customer by mailing and posting a copy of the Notice in a public place so that the Company's

customers were aware of the proceeding.

On December 17, 2003, a full public hearing was commenced before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Applicant appeared through its General Manager and the Commission's Utilities Division ("Staff") appeared with counsel. Although written comments to the application were received, no members of the public appeared to make public comment. After a full public hearing, the matter was taken under advisement pending submission of a Recommended Opinion and Order to 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

1. Pursuant to authority granted by the Commission in Decision No. 40644 (May 26, 1970), Applicant is a non-profit Arizona corporation engaged in the business of providing water service to approximately 740 metered residential customers and a substantial number of standpipe customers in an area approximately 27 miles north of Kingman, Mohave County, Arizona.[1]

2. On November 4, 2003, Applicant filed an application which requested Commission approval of an approximate 50 percent emergency rate increase due to the Company's inability to meet its debt service and its ongoing operational expenses.

3. The Company requests that an emergency rate increase be imposed for four months in the form of a $10 per month per metered customer surcharge and a 50 percent increase on its bulk water commodity charge from $3 to $6 per 1,000 gallons of water "without assistance" and from $5 to $10 per 1,000 gallons of water "with assistance". The proposed increase would increase the base residential customer rate from $18 which includes 1,000 gallons of water in the minimum, to $28.

4. Pursuant to the Commission's Procedural Order, notice of the Company's application and hearing thereon was provided to Applicant's customers both by mailing and by posting copies of the Commission's notice at its standpipe. The Commission received one telephonic protest, a petition

[1] On December 28, 2001, the Commission issued Decision No. 64287, which authorized the sale of assets and transfer of the Certificate of Convenience and Necessity ("Certificate") of Dolan Springs Water Company, Inc. ("Dolan Springs") to Applicant. In order to fund the purchase of the water utility assets of Dolan Springs, the Decision also approved an Arizona Water Infrastructure Authority ("WIFA") loan of $880,000 in long-term debt to the Company.

with 31 signatures and three letters in opposition to Applicant's request for an emergency surcharge.

5. On May 13, 2003, the Company filed an application for permanent rate relief in Docket No. W-02105A-03-0303.

6. According to Ms. Sue Morgan, the Company's new general manager, as of the date of the hearing, the Company was $58,580 in arrears for operating expenses including its December payment that is due to WIFA. This does not include approximately $20,000 which the Company withdrew from its United States Department of Agriculture ("USDA") reserve accounts which are required for three separate loans from the Rural Development Authority ("RDA"). The Company used this money to pay overdue WIFA payments and will need to replenish its reserve accounts.

7. Applicant's current rates were approved by the Commission in Decision No. 60228 (June 12, 1997).

8. Based on data submitted with Applicant's permanent rate application, the Company has unadjusted revenues of approximately $22,000 per month and expenses totaling $24,278 per month composed of debt service payments totaling approximately $11,278 to WIFA and the RDA and other fixed expenses of approximately $13,000.

9. According to Ms. Morgan, the majority of Applicant's problems began to develop after the Company's acquisition of Dolan Springs. At or about that time, representatives of WIFA suggested that the Company pursue the formation of an improvement district, which if approved, would result in the lowering of Applicant's interest rate on its WIFA loan from 8.5 percent to 4.75 percent reducing the monthly payment from approximately $9,000 a month to approximately $7,000 a month.

10. According to Ms. Morgan, it was recommended to the Company that it retain a consultant/manager who was experienced in the formation of improvement districts and who could also work for the Company for two days a week as a manager in return for $2,500 per month and living quarters.[2]

11. Subsequently, the consultant/manager who was retained for this position undertook the formation of a district and managed the Company for a period of approximately one year from

[2] This consultant/manager had previously performed consulting work for Applicant and Dolan Springs.

November 2002 until November 2003. The Company's efforts at forming a district under the direction of this individual failed and involved substantial expense to Applicant. Following an initial mailing of ballots to approximately 15,000 people in Mohave County, the Company only received back approximately 1,200 responses.

12. Over the course of the consultant/manager's employment, he received a salary of approximately $30,000 and also was paid in excess of $100,000 in consulting fees which were approved by the former board of the Company. Following the election of an entirely new board of directors for the Company in October 2003, the consultant/manager left the Company.

13. Before the former consultant/manager left the Company, he had instructed its payables clerk at that time, Ms. Morgan, to cease the payment of its WIFA loan starting in September 2003.

14. As a result of the Company's failure to pay its WIFA loan when payments were due, the loan went into default and on December 8, 2003, WIFA wrote the Company that "Events of Default" had occurred and were continuing, but that WIFA would forebear from legal action if Applicant agreed to WIFA's terms to bring the loan current.

15. In order to secure WIFA's forbearance from legal action, the Company has withdrawn its reserves totaling approximately $20,000 for its three USDA loans and utilized these funds to make up the monies which were due for the September, October and November, 2003 installments due to WIFA.

16. As part of its agreement of forbearance, WIFA agreed to accept a deferred payment plan for the balance due for the month of December 2003 in the amount of $6,975 over a 16 week period commencing December 6, 2003 through March 19, 2004 with weekly payments of $436 per week in addition to each month's next regularly scheduled installment of $6,975.

17. Additionally, the Company began to pursue arrangements with the USDA to restore its reserve accounts for its three USDA loans. Applicant learned that the reserve funds had been under funded for a number of years because the Company had only been paying $65 per month when it should have been paying $260 per month into its reserve fund accounts.[3]

18. In order to save on expenses, Applicant has reduced its staff to only two full-time

[3] Conditions of the USDA loans require these reserve funds to be maintained to insure loan repayment.

employees, Ms. Morgan and a field technician. The Company's new board is also meeting weekly and providing assistance to the Company to the best of their abilities.

19. In addition, Ms. Morgan described how the Company has worked out payment schedules with various creditors who were due monies for prior services and materials purchased by paying the oldest invoices first in an attempt to bring Applicant's accounts current.

20. The Company is also faced with a property and liability insurance premium of approximately $21,000 due for the calendar year 2004 which requires a down payment of approximately $5,200 and bi-monthly installments of $2,000.

21. During the proceeding, Ms. Morgan acknowledged that there is a significant sum owed to the Mohave County Treasurer in back property taxes, but a substantial portion is due to back taxes which were unpaid by Dolan Springs at the time of the Company's acquisition of its assets.

22. Applicant is in compliance with ADEQ regulations and provides water which meets the requirements of the Safe Drinking Water Act.

23. Upon the filing of the Company's application, Staff performed a thorough review of the Company's request and is recommending approval of the Company's request for emergency rate relief.

24. However, Staff is recommending approval of lower emergency surcharges for Applicant based on its analysis of data which was filed in the Company's permanent rate proceeding. The surcharges recommended by Staff are also proposed to run for four months, and should generate the equivalent of Applicant's monthly loan payment to WIFA of $6,976. This is approximately $4,000 less than the $10,997 proposed by the Company. This should assist the Company in meeting its weekly payments of $436 under the forbearance agreement with WIFA until the conclusion of Applicant's permanent rate case proceeding.

25. Staff is proposing that both metered and standpipe customers pay a monthly surcharge for a period of four months as follows: metered customers, $8.11, which should generate revenues of approximately $6,000 per month; and standpipe customers, pay an additional $1.20 per 1,000 gallons, which should produce an additional $976 per month. Staff's recommended surcharges should enable Applicant to generate $6,976 for a total of $27,904 during the imposition of Staff's recommended

surcharges.

26. After Staff's review of Applicant's current situation, it believes that the Company meets the requirements of Attorney General Opinion No. 71-17.[4]

27. According to Staff's witness, Charles Myhlhousen, based on his initial review of Applicant's income statement in the permanent rate case, the Company suffered a net loss of approximately $178,000 for the test year ended December 31, 2002.

28. Staff believes that it is in the public interest for the Commission to approve the surcharges as recommended by Staff to provide Applicant with sufficient funds to service its loan agreement with WIFA to prevent a default which could have a possibly damaging effect upon the Company's ratepayers who actually own this system as a nonprofit cooperative.

29. Staff is also recommending that the emergency rates be granted subject to refund if not required and that the Commission order a bond in a minimal amount to keep the Company's expenses down.

30. Under the circumstances herein, we believe that the requirements of Arizona Attorney General Opinion No. 71-17 have been met, and that the surcharge rates proposed by Staff should be adopted. Because the Company is a non-profit corporation owned by its members, only a minimal deposit should be required.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-250 and 40-251.

2. The Commission has jurisdiction over the Company and of the subject matter of the Application.

3. Notice of the Application was provided in the manner prescribed by law.

4. Applicant is facing an "emergency" within the definition set forth in Attorney General Opinion No. 71-17, as discussed and affirmed in *Scates* and *Rio Verde*.

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[4] According to Attorney General Opinion No. 71-17, interim or emergency rates are proper when either all or any 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. Those criteria have been affirmed in *Scates v. Arizona Corporation Comm'n*, 118 Ariz. 531 (Ct. App. 1978) and in *Residential Utility Consumer Office v. Arizona Corporation Comm'n.*, 199 Ariz. 588 (2001) ("Rio Verde").

5. The standards for approval of a request for interim rate relief require the existence of an emergency; the posting of a bond by the utility company; and subsequent filing of a permanent rate application.[5]

6. Approval of the Company's application for interim rate relief, as described herein, is consistent with the Commission's authority under the Arizona Constitution, applicable statutes, and applicable case law.

7. The request for interim rate relief is just and reasonable and should be collected by means of adding an $8.11 surcharge to each metered customer's monthly bill and $1.20 per 1,000 gallons to each standpipe customer's bill for four consecutive months following the effective date of this Decision.

ORDER

IT IS THEREFORE ORDERED that the application of Mount Tipton Water Company, Inc. for an emergency surcharge be, and is hereby approved consistent with the surcharges recommended by Staff.

IT IS FURTHER ORDERED that Mount Tipton Water Company, Inc. shall recover its emergency expenses as discussed hereinabove by means of a monthly surcharge of $8.11 per metered customer and by means of a surcharge of $1.20 per 1,000 gallons for standpipe customers for a period of four consecutive months following the effective date of this Decision.

IT IS FURTHER ORDERED that the surcharge approved herein shall be interim and subject to refund pending the review by Staff of the permanent rate application filed in Docket No. W-02105A-03-0303.

IT IS FURTHER ORDERED that Mount Tipton Water Company, Inc. shall maintain its books and records in accordance with the NARUC Uniform System of Accounts.

IT IS FURTHER ORDERED that Mount Tipton Water Company, Inc. shall file on or before January 30, 2004, a tariff to collect the surcharges as authorized hereinabove.

IT IS FURTHER ORDERED that the surcharges authorized hereinabove shall be effective for

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[5] In the instant case, the Company meets the requirements for the filing of a permanent rate application even though it pre-dated the filing of the emergency rate application herein.

all service provided on and after the first February 1, 2004.

IT IS FURTHER ORDERED that Mount Tipton Water Company, Inc. shall, in a form approved by Staff, notify its metered customers by mail and its bulk water customers by posting a notice at the standpipe, of the emergency surcharges authorized herein and the effective date of same, by January 20, 2004.

IT IS FURTHER ORDERED that Mount Tipton Water Company, Inc.'s for application for authority to implement interim rates is approved, to the extent and in the manner described herein.

IT IS FURTHER ORDERED that Mount Tipton Water Company, Inc. shall comply with all requirements and recommendations described in this Order as a condition for approval of its request for interim rate relief.

IT IS FURTHER ORDERED that Mount Tipton Water Company, Inc. shall post a bond in an amount of $10 prior to implementing the emergency water surcharges authorized by this Decision.

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IT IS FURTHER ORDERED that the emergency water surcharges shall end when they have been collected for four consecutive months or a Commission Decision is issued regarding the Company's permanent rate case, whichever comes first.

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 _____ day of _____, 2004.

_____
BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

MES:mj

SERVICE LIST FOR: MOUNT TIPTON WATER COMPANY, INC.

DOCKET NO.: W-02105A-03-0805

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