



BEFORE THE ARIZONA CORPORATION COMMISSION

MIKE GLEASON
Chairman
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
KRISTIN K. MAYES
Commissioner
GARY PIERCE
Commissioner

Arizona Corporation Commission

DOCKETED

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IN THE MATTER OF THE COMMISSION ON ITS OWN MOTION INVESTIGATING THE FAILURE OF MOUNT TIPTON WATER COMPANY, INC. TO COMPLY WITH COMMISSION RULES AND REGULATIONS.

DOCKET NO. W-02105A-07-0510

ORDER TO SHOW CAUSE

DECISION NO. 69913

OPEN MEETING
SEPTEMBER 18 AND 19, 2007
PHOENIX, ARIZONA

BY THE COMMISSION:

On August 31, 2007, the Staff of the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission"), filed a Complaint and Petition for Order to Show Cause against Mount Tipton Water Company, Inc. ("Mount Tipton" or "Company"), an Arizona Public Service Corporation. Staff seeks an Order to Show Cause against Respondent Mount Tipton.

Staff asserts that Mount Tipton has violated provisions of Arizona law, including Commission Rules, Orders and provisions of the Arizona Revised Statutes. Count One of Staff's Complaint alleges that Mount Tipton has failed to file quarterly reports on quantity of water pumped and sold each month since December 10, 2004 in violation of Decision No. 67162. Count Two of Staff's Complaint alleges that Mount Tipton has failed to provide verification that the water loss was reduced to less than 10 percent (or any water loss analysis was completed) in violation of Decision No. 67162. Count Three of Staff's Complaint alleges that Mount Tipton has failed to file a detailed cost analysis (or identified its water loss percentage as less than 10 percent to avoid making such filing) in violation of Decision No. 67162. Count Four of the Staff's Complaint alleges that Mount Tipton failed to provide quarterly reports on a Hook-Up fee account by the fifteenth of each month

1 after each calendar quarter in violation of Decision No. 67162. Count Five of Staff's Complaint
 2 alleges that Mount Tipton has failed to provide evidence of having a performance audit performed,
 3 evaluating said audit and seeking appropriate relief, if necessary, all in violation of Decision No.
 4 66732 and Decision No. 67162. Count Six of the Staff's Complaint alleges that Mount Tipton has
 5 failed to maintain its 2005 utility annual report as prescribed by the Commission and has failed to
 6 submit its 2006 utility annual report in violation of A.R.S. § 40-221. Count Seven of Staff's
 7 Complaint alleges that Mount Tipton failed to submit the 2007 annual Hook-Up fee report (due each
 8 July 15th) in violation of Decision No. 60988. Count Eight of Staff's Complaint alleges that Mount
 9 Tipton has failed to provide a satisfactory and continuous level of service due to reporting violations
 10 and contaminant exceedances with ADEQ. Mount Tipton's failure to provide the reporting
 11 information precludes ADEQ from determining that the Company is delivering safe water. This
 12 represents a violation of the satisfactory and continuous level of service portion of A.A.C. R14-2-
 13 407(C).

14 * * * * *

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

17 **FINDINGS OF FACT**

18 1. The Commission has jurisdiction to hear complaints against public service
 19 corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to supervise and regulate
 20 public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the
 21 Arizona Revised Statutes.

22 2. Respondent Mount Tipton Water Company (the "Company" or "Mount Tipton") is a
 23 public service corporation as defined by Article XV, § 2 of the Arizona Constitution and A.R.S. §§
 24 40-281 and 40-282.

25 3. Pursuant to Decision No. 40644, issued May 25, 1970, Mount Tipton received a
 26 Certificate of Convenience and Necessity ("CC&N") to provide water service in Mohave County. As
 27 a condition of its CC&N, Mount Tipton is required to comply with Arizona law, Commission Orders,
 28 and Commission Rules and Regulations.

1 4. The Commission approved a request for an increase in rates for Mount Tipton in
2 Decision No. 67162, dated August 11, 2004.

3 5. Mount Tipton has been authorized to charge the rates approved in Decision No. 67162
4 since September 1, 2004.

5 6. As part of Decision No. 67162, the Commission ordered Mount Tipton to comply with
6 a number of compliance related conditions within specified time periods. Certain of those conditions
7 were assigned due dates within the first two and one half months of the August 11, 2004 issuance of
8 Decision No. 67262.

9 7. On December 10, 2004, approximately four months after the issuance of Decision
10 No. 67162, Staff of the Utilities Division filed a complaint (W-02105A-04-0880) against Mount
11 Tipton for failure to provide compliance items that Decision No. 67162 required to be produced
12 within the first two and one half months after the date of the decision.

13 8. This original complaint covered issues relating to the filing of the following:

- 14 • Revised rate schedules to the Commission.
- 15 • The notification to customers of rates.
- 16 • Certification that all standpipes have been secured and metered.
- 17 • The filing of an Off-Site Facilities Hook-Up Fee Tariff.
- 18 • Quarterly Hook-Up Fee reports.
- 19 • Provision of the Company general ledger.

20 The complaint remained open as the Company gradually complied with these particular items over a
21 period of months. Finally, on August 9, 2005, a procedural order was filed stating that the Company
22 had made the filings relating to the Complaint and the Complaint in W-02105A-04-0880 was
23 dismissed.

24 9. In addition to the compliance requirements due within the first two and one half
25 months of the decision, Decision No. 67162 also included additional requirements with longer due
26 dates. As the original Complaint covered compliance items due within two and a half months of the
27 decision, these other Compliance requirements were not included as a part of the previously filed
28 formal complaint in W-02105A-04-0880.

1 10. The other compliance requirements from Decision No. 67162 not included in
2 W-02105A-04-0880 were:

- 3 • File quarterly reports on quantity of water pumped and sold each month with the
4 first report due within 120 days of the decision.
- 5 • Detailed cost analysis and explanation why water loss reduction to 10 percent is
6 not cost effective. (Due in 18 months if firm reduces its non-account water below
7 15 percent but not below 10 percent.)
- 8 • Have a performance audit performed, evaluate its findings and seek appropriate
9 relief, if necessary.
- 10 • Quarterly reports on Hook-Up fee Account (Current quarter missing).

11 11. The lack of response to the requirement to provide quarterly reports on “water pumped
12 and water sold” is significantly problematic because these are the reports that Staff would use to
13 fulfill the portion of Decision No. 67162 which calls for the analysis of Mount Tipton’s water loss
14 condition. As outlined in Decision No. 67162, the Company’s water loss requirements/reporting
15 obligations hinge on the calculated water loss amount and whether it is above or below 15 and 10
16 percent, respectively. The Company’s failure to comply with the requirement to provide the
17 quarterly reports has hindered performance of the water loss analysis and reduction that the
18 Commission ordered.

19 12. Without the required “water pumped and water sold” report, Staff attempted to utilize
20 information from the 2006 Utilities Division Annual Report to calculate the water loss percentage.
21 Staff found that the Company had not filed its 2006 Utilities Division Annual Report. Staff then
22 attempted to utilize information from the 2005 Utilities Division Annual Report but found that the
23 data was not reliable because the gallons listed for water sold were greater than the gallons listed for
24 water pumped in five of the twelve months that were reflected in the 2005 Annual Report. In
25 summary, proper data is not available to compute the water loss percentage and conduct the water
26 loss analysis ordered in Decision No. 67162 using the 2005 annual report.

27 13. Other Compliance related issues with Commission rules or other decisions outside of
28 Decision No. 67162 include:

- 1 • Failure to provide the 2006 Utilities Division Annual Report.
- 2 • Failure to provide usable information in the 2005 Utilities Division Annual
- 3 Report.
- 4 • Failure to provide the 2006 annual report on Hook-Up Fees which is due each
- 5 July 15th per Decision No. 60988.

6 14. Mount Tipton has also failed to provide the appropriate monitoring and reporting that
7 would allow Arizona Department of Environmental Quality to determine if the system is currently
8 delivering water that meets water quality standards required by the Arizona Administrative Code
9 (A.A.C.). An August 30, 2007 ADEQ Drinking Water Compliance Report shows the following
10 under "Monitoring and Reporting Status":

11 This system has exceeded the MCL for total coliform in April 2007. The ADEQ data
12 base does not show that this water system has provided the calendar year 2005 and
13 2006, consumer confidence report; that the required 2005 and 2006 annual nitrate
14 analyses have been done at EPDS004; that the required 2nd, 3rd and 4th quarter nitrate
15 analyses have been done after exceeding a trigger for increased nitrate monitoring at
16 EPDS010 on 3-29-06; or that the required 2nd quarter nitrate analyses have been done
17 after exceeding a trigger for increased nitrate monitoring on 2-3-04 and the 3rd, 4th
18 quarter after exceeding a nitrate trigger on 2-15-06, at EPDS002.

19 In addition to the above, a May 22, 2007 ADEQ Drinking Water Compliance Report showed that the
20 Company had previously exceeded the total coliform MCL in May 2006 and December 2006. Mount
21 Tipton has therefore incurred actual exceedances on ADEQ regulated contaminants in addition to
22 failing to provide the appropriate monitoring and reporting related to those contaminants. These
23 failures resulted in ADEQ listing the Company as having Major Deficiencies in the Monitoring and
24 Reporting Status which resulted in a Major Deficiencies classification for Mount Tipton's Overall
25 Compliance Status. Owing to these failures, ADEQ is unable to determine that the Company is
26 delivering safe water.

27 15. Staff requests that the Commission issue an Order to Show Cause directing Mount
28 Tipton to appear and show cause:

- 26 a. why its actions do not represent a violation of Decision No. 67162;
- 27 b. why its actions do not represent a violation of Decision No. 66732;
- 28 c. why its actions do not represent a violation of A.R.S. § 40-221;

- d. why its actions do not represent a violation of Decision No. 60988;
- e. why its actions do not constitute a violation of A.A.C. R14-2-407(C);
- f. why other relief deemed appropriate by the Commission should not be ordered.

16 Staff's requests described in Findings of Fact 15 are reasonable.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to hear complaints against public service corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to supervise and regulate public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

2. Respondent Mount Tipton is a public service corporation as defined by Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

3. The Commission has jurisdiction over the subject matter of Staff's Complaint and Petition for Order to Show Cause.

4. Notice of this proceeding has been given in accordance with law.

5. A.R.S. § 40-321(A) provides: "[w]hen the Commission finds that the equipment, appliances, facilities or service of any public service corporation, or the methods of manufacture, distribution, transmission, storage, or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the Commission shall determine what is just, reasonable, safe, proper, adequate or sufficient, and shall enforce its determination by order or regulation."

6. Under Article XV, § 3 of the Arizona Constitution, the Commission may enter "orders for the convenience, comfort, and safety, and preservation of the health" of the customers of a public service corporation.

7. Pursuant to A.R.S. §§ 40-202, 40-203, 40-322, and Article XV, Section 3 of the Arizona Constitution, the Commission may prohibit unjust and unreasonable service.

8. Pursuant to A.R.S. §§ 40-331 and 40-332, the Commission may require additions and improvements to the facilities of a public service corporation.

1 IT IS FURTHER ORDERED that the Hearing Division shall schedule further appropriate
2 proceedings.

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

4 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

5 *James S. Weaver*
6 CHAIRMAN

Will A. White
COMMISSIONER

7 *Deborah M. Hatch-Miller*
8 COMMISSIONER

R. M. [Signature]
COMMISSIONER

Gary [Signature]
COMMISSIONER

9 IN WITNESS WHEREOF, I DEAN S. MILLER, Interim
10 Executive Director of the Arizona Corporation Commission,
11 have hereunto, set my hand and caused the official seal of this
12 Commission to be affixed at the Capitol, in the City of Phoenix,
13 this 27th day of September, 2007.

14 *Dean S. Miller*
15 DEAN S. MILLER
16 Interim Executive Director

17 DISSENT: _____

18 DISSENT: _____

19 EGJ:BKB:lmh
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1 SERVICE LIST FOR: Mount Tipton Water Company, Inc.
2 Docket Nos. W-02105A-

3 The original and thirteen (13) copies
4 of the foregoing were filed this
4th day of September, 2007 with:

5 Docket Control
6 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

7 Copy of the foregoing mailed this
8 4th day of September, 2007 to:

9 Mount Tipton Water Company, Inc.
10 P.O. Box 38
Dolan Springs, Arizona 86441

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