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BEFORE THE ARIZONA CORPORATION COMMISSION  
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COMMISSIONERS

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

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AZ CORP COMMISSION  
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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

PROCEDURAL ORDER

**BY THE COMMISSION:**

On September 5, 2007, the Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff") filed a Complaint and Petition for an Order to Show Cause ("Complaint") against Mount Tipton Water Company, Inc. ("Mount Tipton") for failure to comply with Commission Rules and Regulations.

On September 27, 2007, the Commission issued Decision No. 69913, ordering Mount Tipton to appear and show cause, at a time and place designated by the Hearing Division, to defend why its actions do not represent a violation of Decision No. 67162, Decision No. 66732, A.R.S. § 40-221, Decision No. 60988, and A.A.C. R14-2-407(C) and why other relief deemed appropriate by the Commission should not be ordered. Decision No. 69913 also ordered the Hearing Division to schedule further appropriate proceedings in this matter.

Procedural conferences were held in this matter on October 22, 2007; November 30, 2007; and January 4, 2008. At the procedural conference on January 4, 2008, Mount Tipton's President and designated representative, Mr. Ed Bartlett, did not appear to represent Mount Tipton. Instead, Mr. Bruce Huebsch, Vice President of Mount Tipton, appeared to represent Mount Tipton. Mr. Huebsch stated that Mount Tipton's Board of Directors had not yet specifically authorized him to appear before the Commission on Mount Tipton's behalf, but said that Mount Tipton would file a Resolution passed by its Board of Directors authorizing Mr. Huebsch and other Officers of Mount Tipton to represent it before the Commission. Also at the procedural conference, Staff and Mount Tipton

1 agreed that much progress had been made to resolve the counts of the Complaint and Order to Show  
2 Cause and that it would be appropriate to proceed to hearing on the unresolved counts. Staff further  
3 indicated that it would be filing a pleading to dismiss most of the counts and to amend one of the  
4 remaining counts.

5 On January 10, 2008, Staff filed a Motion to Amend Count 4 of the Complaint and  
6 Voluntarily Dismiss Counts 1-3 and 5-7. Staff stated in its Motion that documents filed by Mount  
7 Tipton had resolved the violations described in Counts 1-3 and 5-7, and Staff thus requested that  
8 those Counts be voluntarily dismissed from the Complaint. Staff also stated in its Motion that  
9 examination of the hook-up fee account report provided by Mount Tipton in response to Count 4  
10 indicated that Mount Tipton has used hook-up fee funds to replace various plant, although  
11 Commission Decision No. 67162 required Mount Tipton to use those funds only for new customer  
12 capital improvements. In light of this new information, Staff requested that Count 4 of the Complaint  
13 and Order to Show Cause be amended to reflect that Mount Tipton has not handled the hook-up fee  
14 account as ordered by Decision No. 67162 and has therefore violated Decision No. 67162.

15 On January 11, 2008, a Procedural Order was issued dismissing Counts 1-3 and 5-7 of the  
16 Complaint and Order to Show Cause and amending Count 4 of the Complaint and Order to Show  
17 Cause to assert that Mount Tipton has not handled the hook-up fee account as ordered by Decision  
18 No. 67162 and has therefore violated Decision No. 67162. In addition, the Procedural Order required  
19 Mount Tipton to file, by January 31, 2008, a Resolution passed by its Board of Directors specifically  
20 authorizing such of its Officers and/or Employees as it deems appropriate to represent it before the  
21 Commission as permitted under A.R.S. § 40-243(B). The Procedural Order also scheduled a hearing  
22 on Count 4 and Count 8 of the Complaint and Order to Show Cause for February 15, 2008, at 9:30  
23 a.m. at the Commission's offices in Phoenix.

24 On January 17, 2008, Mount Tipton filed a 2007 fourth quarter water loss report, a 2007 end  
25 of the year water loss report, a quarterly offsite report, a year end offsite report for 2007, a hook-up  
26 fee report for quarterly and year ending 2005-2007, an ADEQ drinking water compliance status  
27 report, and a resolution authorizing Mr. Bartlett and Mr. Huebsch to represent Mount Tipton in its  
28 business before the Commission.

1 On February 13, 2008, Mount Tipton filed a resolution showing that the identity of its Board  
2 of Directors had changed except as to one individual and authorizing Mr. Russ Jacoby, new President  
3 of Mount Tipton, and Mr. Tim Sanders, new Secretary of Mount Tipton, to represent Mount Tipton  
4 in its business before the Commission.

5 On February 14, 2008, at the request of Mount Tipton, a telephonic procedural conference  
6 was held before an Administrative Law Judge of the Commission. Mount Tipton appeared through  
7 Mr. Jacoby, and Staff appeared through counsel. Mr. Jacoby requested that the hearing scheduled for  
8 February 15, 2008, be continued, as health issues would prevent his attendance, and Mr. Sanders was  
9 also unavailable to attend that day. Staff did not object to the requested continuance. Because there  
10 has been almost a complete change in the composition of Mount Tipton's Board, and the newly  
11 authorized representatives for Mount Tipton were not available on February 15, 2008, it is  
12 appropriate to continue the hearing and reschedule it for a later date.

13 IT IS THEREFORE ORDERED that **the hearing scheduled for February 15, 2008, is**  
14 **continued.**

15 IT IS FURTHER ORDERED that **a hearing** on Count 4 and Count 8 of the Complaint and  
16 Order to Show Cause **shall commence on March 20, 2008, at 10:00 a.m.,** or as soon thereafter as is  
17 practicable, **at the Commission's offices, 1200 West Washington, Room 100, Phoenix, Arizona**  
18 **85007.**

19 IT IS FURTHER ORDERED that the newly authorized representatives for Mount Tipton  
20 shall familiarize themselves with Mount Tipton's affairs and with the documents already filed in this  
21 matter.

22 IT IS FURTHER ORDERED that, if Mount Tipton's newly authorized representatives  
23 determine that neither one of them can appear at the hearing in Phoenix on March 20, 2008, Mount  
24 Tipton shall promptly contact Staff and the Commission's Hearing Division to request another  
25 procedural conference.

26 IT IS FURTHER ORDERED that Mount Tipton's newly authorized representatives and Staff  
27 shall communicate with each other in the interim period between this Procedural Order and the new  
28 hearing date to determine whether it is possible to reach a settlement regarding Counts 4 and 8 of the  
Complaint and Order to Show Cause.

1 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules  
2 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission  
3 *pro hac vice*.

4 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113—Unauthorized  
5 Communications) applies to this proceeding and shall remain in effect until the Commission's  
6 Decision in this matter is final and non-appealable.

7 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive  
8 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

9 DATED this 19~~th~~ day of February, 2008.

10  
11   
12 SARAH N. HARPRING  
13 ADMINISTRATIVE LAW JUDGE  
14

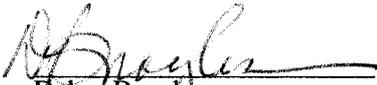
15 Copies of the foregoing mailed/delivered  
16 this 19~~th~~ day of February, 2008, to:

17 MOUNT TIPTON WATER  
18 COMPANY, INC.  
19 P.O. Box 38  
20 Dolan Springs, AZ 86441

21 Christopher Kempley, Chief Counsel  
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23 ARIZONA CORPORATION COMMISSION  
24 1200 West Washington Street  
25 Phoenix, AZ 85007

26 Ernest G. Johnson, Director  
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26 By:   
27 Debra Broyles  
28 Secretary to Sarah N. Harpring