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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

COMMISSIONERS

2008 SEP -9 P 1:52

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

SEP -9 2008

AZ CORP COM MISS
DOCKET CONTROL

DOCKETED BY	<i>MW</i>
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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 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.

On March 20, 2008, a full evidentiary hearing was held before a duly authorized Administrative Law Judge ("ALJ") of the Commission at its offices in Phoenix. Staff was represented by counsel and presented evidence and testimony. Mount Tipton was represented by then-President Russ Jacoby and presented evidence and testimony. Both Staff and Mount Tipton were ordered to file late-filed exhibits in this matter by April 11, 2008. The matter was taken under advisement pending receipt of the late-filed exhibits.¹

On May 22, 2008, a Procedural Order was issued requiring Mount Tipton to file several

¹ For additional procedural history, please see the Procedural Order issued on May 22, 2008.

1 documents, as late-filed exhibits R-4, R-5, R-6, and R-7, by June 27, 2008. The Procedural Order
2 also required Staff to review the documents filed by Mount Tipton and file a late-filed exhibit
3 including specified information by August 8, 2008.

4 On June 27, 2008, Mount Tipton filed a letter requesting two additional weeks to file its late-
5 filed exhibits. Mount Tipton explained that it had experienced several problems with its system in
6 the past few weeks, was busy preparing for its emergency rate case,² and had been unable to complete
7 the requirements of the Procedural Order.

8 On July 3, 2008, a Procedural Order was issued extending Mount Tipton's filing deadline to
9 July 18, 2008, and extending Staff's filing deadline to August 29, 2008.

10 On July 21, 2008, a letter from Judy Morgan, then an employee of Mount Tipton,³ was faxed
11 directly to the ALJ presiding over this matter. The letter involved both this docket and the
12 emergency rate case docket and stated, among other things, that Ms. Morgan had been unable to
13 comply with the July 18, 2008, deadline and requested an extension of three more weeks. The letter
14 was docketed in both this matter and the emergency rate case matter. Because the request for an
15 extension did not come from an authorized representative of Mount Tipton, no ruling on the request
16 has been made.

17 To date, Mount Tipton has not filed the late-filed exhibits required by the Procedural Orders
18 of May 22, 2008 and July 3, 2008. Nor has Mount Tipton requested further extension of its deadline.

19 On August 22, 2008, an Arizona Department of Environmental Quality ("ADEQ") Sanitary
20 Survey Report for Mount Tipton's water system was filed. The ADEQ Sanitary Survey Report
21 shows that Mount Tipton has major deficiencies as to its physical facilities and monitoring and
22 reporting.

23 At the hearing in the emergency rate case, held on August 25, 2008, Mount Tipton and Staff
24

25 ² The emergency rate case is assigned to Docket No. W-02105A-08-0262. A hearing was held in that case on August
26 25, 2008.

27 ³ Although Ms. Morgan was then an employee of Mount Tipton, she was not authorized to represent Mount Tipton
28 before the Commission. (Docket No. W-02105A-08-0262, Tr. of July 21, 2008, Proc. Conf. at 8, lines 20-22.) Also,
although Mr. Janik, Mount Tipton's President, had requested during the July 21, 2008, Procedural Conference that all
mail to Mount Tipton be sent to his home address, he stated during the hearing in the emergency rate case docket that he
no longer desires for mail to be sent to his home address, just to the Mount Tipton address. (Docket No. W-02105A-08-
0262, Tr. of Aug. 25, 2008, Hearing at 14, lines 1-13.)

1 were each asked to state their positions on having the records in this matter and the emergency rate
2 case matter combined, so that the full evidentiary record in each matter could be considered in the
3 other. Neither Staff nor Mount Tipton objected to the idea, although Staff expressed some
4 reservations about having the emergency rate case delayed, as the stated goal would be to have both
5 cases considered by the Commission at the same open meeting. No decision on combining the
6 records was made at the hearing.

7 On August 26, 2008, Staff filed a Motion requesting that Mount Tipton be compelled to
8 provide the late-filed exhibits required in the Procedural Orders of May 22, 2008, and July 3, 2008.
9 Specifically, Staff requested that Mount Tipton be ordered to provide the late-filed exhibits within 10
10 days after the issuance of a Procedural Order and that Staff be provided six weeks thereafter to
11 produce its late-filed exhibit.

12 Mount Tipton has now had more than three months to comply with the filing requirements of
13 the May 22, 2008, Procedural Order and has failed to do so. Mount Tipton's failure has made it
14 impossible for Staff to comply with its own filing requirement. In light of this, and the need to obtain
15 the additional information required to be provided in the late-filed exhibits, it is appropriate to again
16 order Mount Tipton to make the required filings.

17 The newly received ADEQ Sanitary Survey Report detailing Mount Tipton's current
18 noncompliance with ADEQ requirements also makes it appropriate to require Mount Tipton to
19 provide a response to the ADEQ Sanitary Survey Report and to require Staff to provide any new or
20 revised recommendations that Staff may have as a result of Mount Tipton's new compliance status
21 with ADEQ. In addition, it is appropriate to require both Mount Tipton and Staff to state whether
22 they believe that additional hearing is warranted in this matter and, if so, what should be addressed in
23 such additional hearing.

24 IT IS THEREFORE ORDERED that **Mount Tipton shall, by September 18, 2008, file with**
25 **Docket Control the following items, which shall be late-filed exhibits R-4, R-5, R-6, R-7, and R-8:**

26 R-4: A copy of Mount Tipton's hook-up fee report for quarterly and year-ending 2005-
27 2007 that includes the missing information for the period between October 4, 2006,
28 and May 1, 2007, or, if no information is missing from the report as filed in Exhibit S-

1 5 and Exhibit R-1, an explanation of the gap in time and the increase in the running
2 balance shown on the report;

3 R5: A document stating the number of metered customers that Mount Tipton is currently
4 serving;

5 R6: A document stating, for each hook-up fee that has been charged by Mount Tipton
6 since August 11, 2004: (1) the date on which the hook-up fee was charged, (2) the
7 name of the customer charged the hook-up fee, (3) the service address for which the
8 hook-up fee was charged, (4) the meter size for the service address, and (5) the amount
9 of the hook-up fee charged;

10 R7: A document providing a complete accounting of the items on which the hook-up fees
11 collected were spent, for the period from August 11, 2004, to the present, including for
12 each expenditure: (1) the date on which the expenditure was made, (2) the amount of
13 the expenditure, and (3) a description of what was purchased or paid for; and

14 R8: Mount Tipton's response to the ADEQ Sanitary Survey Report, which shall include a
15 response to each item of deficiency listed therein.

16 IT IS FURTHER ORDERED that **if Mount Tipton is unable to comply fully** with any of the
17 filing requirements above, **Mount Tipton shall file** with Docket Control, **by September 18, 2008,**
18 **such information as is available** for the filing requirement along with **an explanation** as to why
19 Mount Tipton is unable to comply fully **and a description** of the actions that were taken by Mount
20 Tipton in its efforts to comply.

21 IT IS FURTHER ORDERED that **Mount Tipton shall also file, by September 18, 2008,** a
22 document stating whether Mount Tipton believes that additional hearing is warranted in this matter
23 and, if so, what should be addressed in such additional hearing.

24 IT IS FURTHER ORDERED that **Staff shall review the information submitted by Mount**
25 **Tipton and shall file as a late-filed exhibit, by October 30, 2008,** a document (1) analyzing the
26 information submitted by Mount Tipton for compliance with Decision No. 67162 (including the
27 hook-up fee tariff approved therein) and making any revisions and/or additions to Staff's previous
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1 recommendations resulting from Staff's analysis of the information; (2) making any revisions and/or
 2 additions to Staff's previous recommendations regarding Count 8, in light of Mount Tipton's current
 3 compliance status with ADEQ; and (3) indicating whether Staff believes that additional hearing is
 4 warranted in this matter and, if so, what should be addressed in such additional hearing.

5 IT IS FURTHER ORDERED that **Mount Tipton shall, by November 10, 2008, file with**
 6 **Docket Control any response that it desires to make to Staff's filing.**

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

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

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

15 DATED this 9th day of September, 2008.

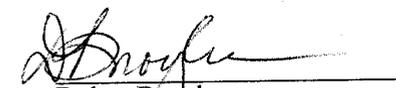
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 18 
 SARAH N. HARPRING
 ADMINISTRATIVE LAW JUDGE

19 Copies of the foregoing mailed/delivered
 20 this 9th day of September, 2008, to:

21 John Janik, President
 MOUNT TIPTON WATER COMPANY, INC.
 P.O. Box 38
 22 Dolan Springs, AZ 86441-0038
 By Certified Mail and First Class Mail

23 Janice Alward, Chief Counsel
 Legal Division
 24 ARIZONA CORPORATION COMMISSION
 1200 West Washington Street
 25 Phoenix, AZ 85007

26 Ernest G. Johnson, Director
 Utilities Division
 27 ARIZONA CORPORATION COMMISSION
 1200 West Washington Street
 28 Phoenix, AZ 85007

By: 
 Debra Broyles
 Secretary to Sarah N. Harpring