

OPEN MEETING ITEM



ORIGINAL

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



BRIAN C. McNEIL
Executive Director

ARIZONA CORPORATION COMMISSION

DATE: OCTOBER 28, 2008

DOCKET NO: W-02258A-07-0470

TO ALL PARTIES:

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

AMERICAN REALTY AND MORTGAGE COMPANY, INC.
DBA HACIENDA ACRES WATER SYSTEM
(COMPLAINT/ORDER TO SHOW CAUSE)

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 ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

NOVEMBER 6, 2008

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:

NOVEMBER 12, 2008 and NOVEMBER 13, 2008

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

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

STAFF OF THE UTILITIES DIVISION,

COMPLAINANT,

VS.

AMERICAN REALTY AND MORTGAGE
COMPANY, INC. DBA HACIENDA ACRES
WATER SYSTEM,

RESPONDENT.

DOCKET NO. W-02258A-07-0470

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: May 29, 2008 (Procedural Conference), February 8 and June 27, 2008.
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Lyn Farmer
APPEARANCES: Mr. Joseph W. Lee, on behalf of Respondent; and
Ms. Kenya Collins and Mr. Kevin Torrey, Staff Attorneys, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On June 4, 2007, American Realty and Mortgage Company, Inc. ("Respondent"),¹ dba Hacienda Acres Water System, filed with the Arizona Corporation Commission ("Commission") an application for approval of a Curtailment Tariff.²

On July 6, 2007, Respondent filed with the Commission an application for an emergency rate increase.³

¹ Respondent occasionally uses an ampersand and/or "Co." in its name, but this is how Respondent's name is reflected in the records of the Commission's Corporations Division.

² Docket No. W-02258A-07-0350.

³ Docket No. W-02258A-07-0414.

1 On August 13, 2007, Commission Utilities Division Staff ("Staff") filed a memorandum with
2 the Commission's Docket Control Center requesting that this docket be opened and also filed a
3 Complaint and Petition for an Order to Show Cause ("Complaint" or "OSC") against Respondent.

4 On August 23, 2007, the Commission issued Decision No. 69865, which ordered Respondent
5 to appear and show cause why the Commission should not make findings and orders on the
6 enumerated counts; ordered Respondent, if it intended to appear and show cause as ordered, to file
7 both a preliminary statement describing how it would respond to the OSC and an Answer; ordered
8 Staff to obtain an agreement with an interim manager; ordered Respondent to cooperate fully with the
9 interim manager; and ordered the Hearing Division to schedule further appropriate proceedings.

10 On September 5, 2007, Respondent filed a "Notice of Surrender of Water Franchise of
11 American Realty and Mortgage Co. Inc.," signed by Joseph W. Lee as attorney for Respondent,
12 stating that the water company had ceased operations at 7:00 a.m. on August 27, 2007, and had
13 provided its customers a "Notice of Termination of Water Service," a copy of which was attached.

14 On September 13, 2007, Staff filed a Motion to Amend Complaint. Therein, Staff stated that,
15 on or about August 21, 2007, upon receiving notice of the Special Open Meeting concerning the
16 OSC, scheduled for August 22, 2007, Respondent contacted Arizona Public Service Company
17 ("APS") and requested to have Respondent's electric bill put into "his" name. Staff also mentioned
18 the Notice of Surrender of Water Franchise filed and the notice provided to Respondent's customers
19 and stated that, on or about August 27, 2007, "Defendant and his cohorts entered onto Hacienda
20 property and dismantled and removed the water system pressure tank, cut the electrical wires to the
21 pump, pulled the plug on the ten thousand (10,000) gallon storage tank, and cut out and confiscated
22 three water meters." The Motion requested that the OSC be amended to include a violation of
23 Arizona Administrative Code ("A.A.C.") R14-2-402(B) and a request for cancellation of the
24 Respondent's Certificate of Convenience and Necessity ("CC&N").

25 On September 17, 2007, Staff filed an update to this docket indicating that Santa Cruz Water
26 Company had been appointed interim manager of Respondent water company on August 22, 2007.

27 By Procedural Order issued September 24, 2007, the Motion to Amend Complaint was
28 granted; Respondent was directed to file an Answer to the Amended Complaint not later than October

1 10, 2007; and Staff was directed to thereafter file a recommendation as to what further proceedings
2 should be scheduled.

3 On September 26, 2007, Respondent filed its Response to Complainants [sic] Motion to
4 Amend Complaint.⁴

5 On October 16, 2007, Staff filed its Staff Recommendation stating that the matter should
6 proceed to hearing on the Complaint as amended.

7 By Procedural Order issued November 7, 2007, the hearing on the OSC was scheduled to
8 commence on February 8, 2008.

9 On February 7, 2008, Respondent filed a Motion to Vacate Order Appointing Temporary
10 Water Manager and Related Matters.

11 The hearing proceeded as scheduled on February 8, 2008, and was subsequently continued
12 pending filing of testimony and exhibits by the parties.

13 On February 28, 2008, by Procedural Order, Staff was ordered to file its testimony and
14 exhibits by March 7, 2008, and Respondent was ordered to file testimony and exhibits by April 4,
15 2008.

16 On March 7, 2008, Staff filed its testimony and exhibits.

17 On March 17, 2008, Joseph W. Lee filed a Request to Withdraw as Attorney for Respondent.
18 The Request was granted pursuant to Procedural Order dated March 31, 2008.

19 Respondent did not file any testimony or exhibits.

20 On April 25, 2008, by Procedural Order, Staff was directed to file a recommendation on how
21 to proceed in this matter.

22 On May 1, 2008, Staff filed a procedural recommendation requesting that a procedural
23 conference be scheduled and that Respondent be put on notice that if it chooses not to appear and
24 participate, a hearing may be scheduled and convened in its absence.

25 _____
26 ⁴ The filing stated:

27 As the Secretary/Treasurer, Attorney and Statutory Agent, Joseph W. Lee, is under Temporary
28 Restraining Order in Maricopa County Superior Court Case No. CV2007-015778 from acting for American
Realty & Mortgage Co., Inc. and the Corporation being heavily in debt and without funds to procure
another attorney, I Alma R. Lee Jr., President, am responding to the Arizona Corporation Commissions
Motion to Amend Complaint

1 On May 12, 2008, a Procedural Order was issued scheduling a procedural conference for May
2 29, 2008.

3 On May 29, 2008, the procedural conference was held as scheduled. Staff appeared, but
4 Respondent did not. Staff recommended that the hearing be recommenced and indicated that Staff
5 had mailed correspondence by certified mail to Respondent and its statutory agent, but had not
6 received a response.

7 On June 6, 2008, a Procedural Order was issued scheduling the hearing to recommence on
8 July 27, 2008.

9 On June 10, 2008, Staff filed a late-filed exhibit outlining Staff's efforts to contact
10 Respondent.

11 On June 27, 2008, the evidentiary hearing resumed. Respondent did not appear at the hearing.
12 At the conclusion of the hearing, Staff proposed that it submit a comprehensive written closing
13 statement. Staff was also directed to brief two additional issues that had arisen in this matter. Both
14 filings were to be submitted by July 18, 2008.

15 On July 22, 2008, Staff filed a Request for Extension to File Closing Briefs. In its Request,
16 Staff stated that it needed additional time to obtain and review the transcripts of two open meetings.

17 By Procedural Order issued July 28, 2008, Staff was granted additional time, until August 1,
18 2008, to file its Closing Brief, and Respondent was also granted until August 15, 2008, to file its
19 response to Staff's Closing Brief.

20 On August 1, 2008, Staff filed another Request for Extension to File Closing Brief, requesting
21 additional time to file, until August 8, 2008.

22 Staff's Request was granted by Procedural Order issued August 7, 2008, and Respondent was
23 given until August 22, 2008, to file any response to Staff's Closing Brief.

24 On August 8, 2008, Staff filed its Closing Brief. Respondent did not file a response to Staff's
25 Closing Brief.

26 On August 15, 2008, Staff filed, as a late-filed exhibit, a transcript of the June 27, 2007, Open
27 Meeting discussion concerning Respondent's application for approval of a Curtailment Tariff.

28 * * * * *

1 5. On July 6, 2007, Respondent filed an application for an emergency rate increase.⁹ The
2 Respondent's current rates are the initial rates, which have been in effect for 33 years. Respondent
3 never filed a rate application with the Commission prior to its filing of the emergency rate
4 application.¹⁰ The hearing on the emergency rate increase was held on August 20, 2007, and a
5 Recommended Opinion and Order issued on October 9, 2007. The Commission has not yet rendered
6 a Decision in the Emergency Rate Case.

7 6. On August 13, 2007, this OSC docket against Respondent was opened. On August 23,
8 2007, the Commission issued Decision No. 69865, which ordered Respondent to appear and show
9 cause why the Commission should not make findings and orders on the enumerated counts; ordered
10 Respondent, if it intended to appear and show cause as ordered, to file both a preliminary statement
11 describing how it would respond to the Order to Show Cause and an Answer to the Complaint;
12 ordered Staff to obtain an agreement with an interim manager; ordered Respondent to cooperate fully
13 with the interim manager; and ordered the Hearing Division to schedule further appropriate
14 proceedings.

15 7. On September 5, 2007, Respondent filed a "Notice of Surrender of Water Franchise of
16 American Realty and Mortgage Co. Inc." ("Notice of Surrender"), signed by Joseph W. Lee as
17 attorney for Respondent, stating that the water company had ceased operations at 7:00 a.m. on
18 August 27, 2007, and had provided its customers a "Notice of Termination of Water Service," a copy
19 of which was attached. The contents of the Notice of Termination are set out in Findings of Fact No.
20 18 herein.

21 8. On September 13, 2007, Staff filed a Motion to Amend Complaint. Therein, Staff
22 stated that, on or about August 21, 2007, upon receiving notice of the Special Open Meeting
23 concerning the OSC, scheduled for August 22, 2007, Respondent contacted APS and requested to
24 have Respondent's electric bill put into "his"¹¹ name. Staff also mentioned the Notice of Surrender
25 of Water Franchise filed and the notice provided to Respondent's customers and stated that, on or
26 about August 27, 2007, "Defendant and his cohorts entered onto Hacienda property and dismantled

27 ⁹ Administrative notice is taken of Docket No. W-02258A-07-0414 ("Emergency Rate Case").

28 ¹⁰ Emergency Rate Case Tr. at 24, 49, 195.

¹¹ This appears to be a reference to Joseph W. Lee.

1 and removed the water system pressure tank, cut the electrical wires to the pump, pulled the plug on
2 the ten thousand (10,000) gallon storage tank, and cut out and confiscated three water meters.”

3 9. The Motion requested that the OSC be amended to include a violation of A.A.C. R14-
4 2-402(B) and a request for cancellation of the Respondent’s CC&N.

5 10. On September 17, 2007, Staff filed an update to this docket indicating that Global
6 Water - Santa Cruz Water Company had been appointed interim manager of Respondent water
7 system on August 22, 2007.

8 11. On February 7, 2008, Respondent filed a Motion to Vacate Order Appointing
9 Temporary Water Manager and Related Matters.

10 12. The hearing on the Complaint and OSC commenced as scheduled on February 8,
11 2008. Staff and the Respondent appeared and participated in the questioning of Staff Witness Del
12 Smith, Utilities Engineer. After the pre-filing of testimony and exhibits, the evidentiary hearing
13 resumed on June 27, 2008. Respondent did not appear at the June 27, 2008, hearing. Staff presented
14 testimony from its witnesses, Del Smith; Darron W. Carlson, Public Utilities Analyst Manager; Brian
15 K. Bozzo, Compliance and Enforcement Manager;¹² Connie Walczak, Consumer Services Manager;
16 and Gene B. Chapman, customer of Respondent.

17 13. On March 17, 2008, Joseph W. Lee filed a Request to Withdraw as Attorney for
18 Respondent. The Request was granted by a Procedural Order dated March 31, 2008.

19 14. The Complaint and OSC, as amended, allege the following Counts:

- 20 • Count I – Violation of A.A.C. R14-2-407(C) and (D)
- 21 • Count II – Violation of A.A.C. R14-2-409(A)(1)
- 22 • Count III – Violation of A.R.S. § 40-221
- 23 • Count IV – Violation of Obligation to Serve
- 24 • Count V – Violation of Obligation to Keep Taxes Current
- 25 • Count VI – Failure to Maintain System and Service Necessary for Health and Safety of
26 Customers

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28 ¹² Mr. Bozzo’s testimony was sponsored by Mr. Carlson.

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- Count VII – Violation of A.A.C. R14-2-402(B)

Count I - Violation of A.A.C. R14-2-407(C) & (D) (Continuity of Service); Count IV - Violation of Obligation to Serve; Count VII - Violation of A.A.C. R14-2-402(B) (Application for Discontinuance or Abandonment of Utility Service)

15. A.A.C. R14-2-407(C) and (D) provide:

- C. Continuity of service. Each utility shall make reasonable efforts to supply a satisfactory and continuous level of service. However, no utility shall be responsible for any damage or claim of damage attributable to any interruption or discontinuation of service resulting from:
 1. Any cause against which the utility could not have reasonably foreseen or made provision for, i.e., force majeure
 2. Intentional service interruptions to make repairs or perform routine maintenance
 3. Curtailment.
- D. Service interruptions
 1. Each utility shall make reasonable efforts to reestablish service within the shortest possible time when service interruptions occur.
 2. Each utility shall make reasonable provisions to meet emergencies resulting from failure of service, and each utility shall issue instructions to its employees covering procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.
 3. In the event of a national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.
 4. When a utility plans to interrupt service for more than four hours to perform necessary repairs or maintenance, the utility shall attempt to inform affected customers at least 24 hours in advance of the scheduled date and estimated duration of the service interruption. Such repairs shall be completed in the shortest possible time to minimize the inconvenience to the customers of the utility.
 5. The Commission shall be notified of interruptions in service affecting the entire system or any major division thereof. The interruption of service and cause shall be reported within four hours after the responsible representative of the utility becomes aware of said interruption by telephone to the Commission and followed

by a written report to the Commission.

A.A.C. R14-2-402(B) provides:

- B.** Application for discontinuance or abandonment of utility service
1. Any utility proposing to discontinue or abandon utility service currently in use by the public shall prior to such action obtain authority therefore from the Commission.
 2. The utility shall include in the application, studies of past, present and prospective customer use of the subject service, plant or facility as is necessary to support the application.
 3. An application shall not be required to remove individual facilities where a customer has requested service discontinuance.

A.A.C. R14-2-401(36) Defines "Utility" as "[t]he public service corporation providing water service to the public in compliance with state law."

16. Mr. Chapman testified that he has known Joseph Lee for 15 years¹³ and has been a customer of Respondent for 14 years. Mr. Chapman stated that on August 27, 2007, he was working on his house when he discovered there was no water.¹⁴ Using equipment in his backyard, he raised himself 20 - 25 feet into the air and saw Joseph Lee walking in the fenced well area. Mr. Chapman testified that Joseph Lee was directing another man to remove the plug from the water storage tank and "pointing at some other equipment on the ground that was loaded into the vehicle."¹⁵ Mr. Chapman took the letter he had received from the interim manager appointed by the Commission, confronted Joseph Lee, and stated that he was calling the Sheriff.¹⁶ Mr. Chapman testified that his statement startled the two men working with Joseph Lee, one of whom had just removed the storage tank plug, resulting in the release of water. The other man then stopped sawing off meters, and they both drove away in a truck.¹⁷ After Mr. Chapman repeated that he was going to call the police, Joseph Lee told Mr. Chapman that he did not know what he thought he knew and took off quickly, following the other truck.¹⁸ Mr. Chapman testified that he was also at the site on the following day, when Staff visited, and that the site looked the same as it had the day before, after Joseph Lee had

¹³ Tr. at 229; Exhibit S-106 at 3. Mr. Chapman purchased his home from Mr. Lee and his parents.

¹⁴ Tr. at 226; Exhibit S-106 at 2.

¹⁵ Tr. at 226-27; Exhibit S-103 at 2.

¹⁶ Tr. at 230; Exhibit S-103 at 3.

¹⁷ Tr. at 226-30; Exhibit S-106 at 3.

¹⁸ Exhibit S-106 at 4.

1 left.¹⁹

2 17. Staff witness Smith testified that he had visited the site on June 21, 2007, and that the
 3 system “appeared to be fairly well maintained (all components were connected and appeared to be
 4 operating properly). The water tank was at approximately 75 percent capacity.”²⁰ Mr. Smith testified
 5 that two months later, Staff was notified by Global Water Resources that the water system, including
 6 well production and the water distribution system, had been vandalized on August 27, 2007. On
 7 August 28, 2007, Staff visited the system to assess the damage. According to Mr. Smith, he found
 8 that there was damage to several major components of the water system, making it inoperable. He
 9 testified that the “wellhead had been dismantled, pressure tanks had been removed, the electrical
 10 connections to run the well pump had been – the wires had been cut. The water had been drained
 11 from the storage tank. There had been several customer meters that had been removed.”²¹
 12 According to Mr. Smith, these actions “caused a complete disruption of service to the customers
 13 leaving them without a water supply.”²² Mr. Smith took photographs of the damage to the water
 14 system, and they were admitted as exhibits.

15 18. The “Notice of Surrender” filed on September 5, 2007, stated that water operations
 16 had ceased at 7:00 a.m. on Monday, August 27, 2007. The attached “Notice of Termination of Water
 17 Service” given to customers stated:

18 **NOTICE**

19 TO ALL RESIDENCE [sic] OF HACIENDA ACRES, CUSTOMERS OF
 20 AMERICAN REALTY & MORTGAGE CO., INC.

21 ALL WATER SERVICE BY THIS COMPANY WILL BE
 22 TERMINATED EFFECTIVE UPON RECEIPT OF THIS NOTICE OR
 23 AS OF 7:00 A.M. MONDAY AUGUST 27, 2007

24 DUE TO EXTREME HARDSHIP AND POOR FINANCIAL CONDITION OF THE
 25 WATER COMPANY, AMERICAN REALTY & MORTGAGE CO., INC. IT HAS
 26 BECOME IMPERATIVE THAT IT CEASE OPERATION IMMEDIATELY.

27 ALL WATER SERVICE TO HACIENDA ACRES SUBDIVISION
 28 AND AMERICAN REALTY AND MORTGAGE CO., INC.
CUSTOMERS WILL BE TERMINATED AFTER 7:00 A.M.

¹⁹ Tr. at 230.

²⁰ Exhibit S-103 at 3.

²¹ Tr. at 68, 95-115; Exhibit S-103 at 4-6.

²² Exhibit S-104 at 4.

1 MONDAY AUGUST 27, 2007

2 SECRETARY/TREASURER
3 AMERICAN REALTY & MORTGAGE CO.,
4 JOSEPH W. LEE

5 19. Joseph Lee admitted that he had caused damage to the system. During the direct
6 examination of Staff's witness at the February 8, 2008, hearing, Joseph Lee objected to a question
7 and stated:

8 Objection, Your Honor. He said, if they're saying that the water system
9 did some kind of actions or took some damage, he said, that's totally
10 incorrect. He said, I as an individual did do and go on my property and I
11 did do some things to certain equipment. I admit that and I'll stipulate to
12 it, he said, but the water company didn't do a doggone thing. They were
13 out of business at that time and had surrendered their franchise.²³

14 20. The evidence is undisputed that Joseph Lee and two men acting as his agents
15 vandalized the water system by damaging the well head by severing the well discharge pipe to the
16 storage tank; damaging the power supply and circuit breaker box by severing the well motor
17 electrical cable and tearing apart the electrical service; damaging the storage tank by cutting a valve
18 and emptying water from the tank; removing the booster pumps and hydropneumatic tanks; and
19 removing residential service meters and causing damage to service laterals. This damage left
20 Respondent's customers without a water supply or water service.

21 21. Apparently, as attorney for the Respondent, Joseph Lee was proffering a defense on
22 behalf of the Respondent by claiming that he "as an individual" was responsible for the damage to the
23 water system. Although Joseph Lee argued that the water company was out of business and had
24 "surrendered their franchise," Respondent had not applied for and received authorization from the
25 Commission to discontinue or abandon utility service pursuant to A.A.C. R14-2-402(B),²⁴ had not
26 applied for and received authorization from the Commission pursuant to A.R.S. § 40-285 to dispose
27 of plant that was "necessary or useful in the performance of its duties to the public," and had not
28 applied for and received authority to cancel its CC&N. All of these requirements are necessary to

²³ Tr. at 83. According to Joseph Lee, he has a speech defect which apparently causes him to say "he said" when speaking about himself. Tr. at 135-36.

²⁴ A.A.C. R14-2-402(B) requires a *utility* to obtain Commission approval before discontinuing or abandoning service, and a utility is defined as a public service corporation in A.A.C. R14-2-401(36).

1 protect the public and reflect the importance of the utility's obligation to serve. Announcing at a
 2 public hearing that failure by Staff to recommend the full amount requested in the Emergency Rate
 3 Case would result in the water company's immediately ceasing operations;²⁵ sending customers a
 4 copy of the Curtailment Tariff application that stated the company was on the verge of bankruptcy
 5 and would not haul water;²⁶ and posting and sending a "Notice of Termination" to customers are not
 6 reasonable or legitimate efforts to comply with the utility's obligation to serve. As an attorney,
 7 Joseph Lee knows or should know the law and ensure that it is followed. The seriousness of the
 8 public policy considerations underlying the utility's obligation to serve is demonstrated in this case.
 9 The actions of Joseph Lee and Respondent had a significant, adverse effect on the public health and
 10 safety of the water customers by literally cutting off water to residents living in a desert in August.

11 22. The evidence is clear that Respondent did not "make reasonable efforts to supply a
 12 satisfactory and continuous level of service" as required by A.A.C. R14-2-407(C) and did not "make
 13 reasonable provisions to meet emergencies resulting from failure of service" as required by A.A.C.
 14 R14-2-407(D). In fact, its Secretary/Treasurer was responsible for damage that ensured that a
 15 "satisfactory and continuous level of service" was impossible. Decision No. 69865 specifically
 16 required Respondent to "cooperate fully with the interim manager." Although Respondent attempts
 17 to blame the Commission for its financial condition and its inability to maintain service, it is the
 18 responsibility of a public service corporation to seek rate relief when necessary. For at least 30 years,
 19 Respondent failed to file needed rate applications that would have ensured the system's continued
 20 viability.

21 23. We find that Respondent has violated A.A.C. R14-2-407(C) and (D) and A.A.C. R14-
 22 2-402(B) and has violated its obligation to serve.

23 **Count II - Violation of A.A.C. R14-2-409(A)(1) (Billing)**

24 24. A.A.C. R14-2-409(A)(1) provides: "Each utility shall bill monthly for services
 25 rendered. Meter readings shall be scheduled for periods of not less than 25 days or more than 35

26 ²⁵ Emergency Rate Case Tr. at 12, 20, 26, 199-200. During the Emergency Rate Case, Joseph Lee stated: "The water
 27 companies that are meeting with the other officials of it, he said, has decided to terminate water service entirely for this
 area unless we get the emergency rate increase we requested. Nothing less will do. So it is an all or nothing taking at this
 particular hearing." *Id.* at 12.

28 ²⁶ Exhibit S-1; *see supra* note 8.

1 days.”

2 25. Staff witness Connie Walczak testified that Consumer Services had received six
3 complaints from Respondent customers indicating that Respondent was not billing customers on a
4 regular basis.²⁷ Customers complained that the billing was sporadic, with charges for 2-3 months
5 appearing on one bill.²⁸ During the hearing on the Emergency Rate Case, Joseph Lee admitted that
6 the Company did not always bill customers on a monthly basis.²⁹

7 26. The evidence is undisputed, and we find that Respondent failed to bill monthly for
8 services rendered and therefore violated A.A.C. R14-2-409(A)(1).

9 **Count III - Violation of A.R.S. § 40-221 (Annual Reports)**

10 27. A.R.S. § 40-221 states:

11 A. The commission may establish a system of accounts to be kept by
12 public service corporations, or classify the corporations and establish a
13 system of accounts for each class, and prescribe the manner in which
14 accounts shall be kept. It may prescribe the forms of accounts, records
15 and memoranda to be kept, including the records of the movement of
16 traffic as well as the receipts and expenditures of money, and any other
records necessary to carry out the provisions of this article. The
commission may prescribe the accounts in which particular outlays and
receipts shall be entered, charged or credited.

17 A.A.C. R14-2-411(D) provides, in pertinent part:

18 **D. Accounts and records**

19 1. Each utility shall keep general and auxiliary accounting
20 records reflecting the cost of its properties, operating
21 income and expense, assets and liabilities, and all other
22 accounting and statistical data necessary to give complete
and authentic information as to its properties and
operations.

23 4. All utilities shall submit an annual report to the
24 Commission on a form prescribed by it. The annual report
25 shall be filed on or before the 15th day of April for the
preceding calendar year.

26 28. Staff witness Darron Carlson testified that Respondent filed its 2004 annual utility

27 ²⁷ Tr. at 247; Exhibit S-105 at 2.

28 ²⁸ Tr. at 247; Exhibit S-105 at 2.

28 ²⁹ Emergency Rate Case Tr. at 190-91.

1 report over six months late, its 2005 annual utility report over five months late, and its 2006 annual
 2 utility report almost four months late.³⁰ Mr. Bozzo's testimony stated that Respondent has a history
 3 of failing to file its annual reports on time and that, from 1999 to 2006, every report was filed late.³¹
 4 Mr. Carlson testified that, in addition to being filed late, the annual reports were inaccurate and
 5 incomplete, for reasons including no on-site manager listed, no dollar value listed for wells, no dollar
 6 value listed for pumps, leased well incorrectly listed as "Other Plant," Original Cost Less
 7 Depreciation total mathematically incorrect, depreciation expense incorrect, total fixed assets end of
 8 year mathematically incorrect, total liabilities and capital mathematically incorrect, balance sheet not
 9 mathematically balancing, accumulated depreciation used incorrectly, unauthorized loan interest
 10 incorrectly deducted, wells listed not matching plant listed, water use data sheet incomplete, no
 11 property tax paid, income tax page incomplete, attestation indicating not current for property or sales
 12 tax, income tax page missing, revenue page indicating no revenue received in 2006, and revenue
 13 pages indicating no sales taxes billed in 2006.³² Mr. Carlson testified that the Commission uses
 14 annual utility reports for statistical purposes, for backup to other information, and to verify and
 15 expand other information.³³ According to Mr. Carlson, the poor quality of Respondent's annual
 16 reports made the Staff's analysis of the emergency rate case more difficult.³⁴

17 29. The evidence establishes that Respondent failed to comply with A.R.S. § 40-221 and
 18 A.A.C. R14-2-411(D) by failing to timely file its annual utility reports and by failing to file annual
 19 utility reports that were accurate and complete.

20 **Count V - Violation of Obligation to Keep Taxes Current**

21 30. As a public service corporation certificated to provide water utility service to the
 22 public, Respondent is obligated to operate its business in compliance with state and federal law.

23 31. Mr. Carlson testified that there were various inconsistencies in the annual reports,
 24 which made it difficult to determine whether the Company was paying its property or sales tax. Mr.
 25 Carlson testified that "[i]n its 2005 annual utility report, [Respondent] indicated that its 2005 property

26 ³⁰ Exhibit S-101 at 3.

27 ³¹ Exhibit S-102 at 5.

28 ³² Exhibit S-101 at 4-6.

³³ Tr. at 235.

³⁴ *Id.*

1 and sales taxes were not current.”³⁵ According to Mr. Carlson, Respondent’s 2006 annual utility
 2 report does not show that any property or sales tax was paid, and the report was internally
 3 inconsistent on the amount of revenues collected in 2006.³⁶

4 32. The evidence establishes that Respondent has failed to demonstrate that it has kept
 5 current on its tax obligations.

6 **Count VI - Failure to Maintain System and Service Necessary for Health and Safety of**
 7 **Customers (Failure to Perform Required Testing)**

8 33. As a certificated public service corporation, Respondent has an obligation to provide
 9 water utility service that complies with applicable health and safety regulations.

10 34. Staff witness Smith testified that documentation from the Arizona Department of
 11 Environmental Quality (“ADEQ”) and discussions with ADEQ establish that Respondent has a
 12 history of monitoring and reporting deficiencies, that the water being delivered by the system did not
 13 meet ADEQ water quality standards, and that the system lacked a certified operator.³⁷ Staff also
 14 presented evidence that the U.S. Environmental Protection Agency (“EPA”) had informed
 15 Respondent that it intended to seek a penalty for Respondent’s violations of the Federal
 16 Administrative Order issued on September 21, 2005, pursuant to Section 1414(g) of the federal Safe
 17 Drinking Water Act.³⁸

18 35. It is clear from the evidence that Respondent has neglected to take appropriate action
 19 to ensure that its customers are provided water that meets the applicable water quality standards of
 20 the state and federal government. As such, it has failed in its duty to provide safe and reliable water
 21 service and to operate as a fit and proper entity authorized to provide water utility service to the
 22 public.

23
 24 _____
 25 ³⁵ Exhibit S-101 at 6.

26 ³⁶ Exhibit S-101 at 6-7; Tr. at 237-38.

27 ³⁷ Exhibit S-103 at 3 and attached Exhibit DS-4, July 12, 2007, ADEQ Drinking Water Compliance Status Report. The
 28 report shows the system is exceeding the maximum contaminant level (“MCL”) for nitrate; no annual lead and copper
 monitoring in the months of June, July, August, or September in 2004, 2005, and 2006; six or more multiple reporting
 violations for total coliform in the last 12 months; and no consumer confidence reports for 2004 and 2005.

³⁸ Exhibit S-103 at 3 and attached Exhibit DS-5; *see also* Exhibit F to Respondent’s September 26, 2007, Response
 (August 14, 2007 EPA letter to Joseph Lee) and Exhibit G (August 2, 2007, ADEQ letter to Joseph Lee concerning June
 21, 2007, inspection).

1 **Other Issues (Notice, Jurisdiction, Ownership, Individual Liability)**

2 36. On February 7, 2008, Respondent filed a Motion to Vacate Order Appointing
3 Temporary Water Manager and Related Matters (“Motion to Vacate”).

4 37. In its Motion to Vacate, Respondent alleged that the Commission did not give
5 appropriate notice prior to the Commission’s Special Open Meeting that resulted in the appointment
6 of an interim manager. Specifically, Respondent stated:

7 The “ACC” never gave any proper or adequate notice to the Water
8 Company at any time prior to the Special Open Meeting on August 22,
9 2007. The “ACC” was duly informed by telephone that Attorney Joseph
10 W. Lee, who was at the all day hearing on August 20, 2007, could not
11 meet with the “ACC” on the morning of August 22, 2007 having received
12 notice less than 24 hours prior to a Special Open Meeting, as attorney
13 Joseph W. Lee had other commitments and could not attend and
14 specifically requested that the Water Company be given proper notice of
15 any upcoming actions or proceedings. And, that any meetings need to be
16 properly noticed and set a few days away. . . .

17 38. In response to the Motion to Vacate, Staff cites A.R.S. § 40-246(C), which provides:

18 C. Upon filing the complaint, the commission shall set the time when
19 and a place where a hearing will be had upon it and shall serve notice
20 thereof, with a copy of the complaint, upon the party complained of not
21 less than ten days before the time set for the hearing, unless the
22 commission finds that public necessity requires that the hearing be held at
23 an earlier date. Service may be made as a summons in a civil action is
24 required to be served, or may be made in any manner giving actual notice,
25 and no irregularity in the service is an excuse or defense.

26 39. Staff argues that the Commission determined that “public necessity” required the
27 Open Meeting to be “held at an earlier date,” as permitted under the statute. Staff cites to the
28 discussion from the June 27, 2007, Open Meeting concerning Respondent’s Curtailment Tariff,
during which Joseph Lee stated that he anticipated that the well would not be able to keep up within
days or hours³⁹ and to Joseph Lee’s testimony at the August 20, 2007, Emergency Rate Case hearing
that “[p]ut it another way, if Staff doesn’t change their recommendation pretty quick here, then
probably by the end of this hearing, he said, the plan is to shut it down immediately.”⁴⁰

40. Based upon the statements and testimony of Joseph Lee that continued provision of

39 Staff’s Late-filed Exhibit at 6-7.

40 Emergency Rate Case Tr. at 26; *see also id.* at 199-202.

1 water to customers was in doubt, it was reasonable for the Commission to schedule and hold a
2 Special Open Meeting after providing less than ten days' notice to the Respondent. As allowed by
3 A.R.S. § 40-246(C), service was made to Respondent in a manner that gave actual notice of the
4 Complaint/OSC. Joseph Lee testified in the Emergency Rate Case hearing that he had received
5 actual notice of the Complaint/OSC when he stated: "If they want to talk to me, speak up, because
6 this is probably the last time that we are going to speak because they [Staff] have already told me
7 they filed an order to show cause. I believe it because I got, I think, a faxed copy of it."⁴¹ The
8 Motion to Vacate itself shows that Respondent received actual notice of the Special Open Meeting, as
9 it states that Joseph Lee informed the Commission by telephone that he could not be at the Special
10 Open Meeting.

11 41. Accordingly, the notice of the Special Open Meeting provided to Respondent was
12 reasonable under the circumstances, necessary and appropriate to protect the public health and safety,
13 and in compliance with the law.

14 42. The Motion to Vacate also argued that once the Respondent "notified" the
15 Commission on August 20, 2007, that "all water operations would cease" and "formally surrendered
16 its CC&N on September 5, 2007," the "Water Franchise" did not exist, and therefore, the
17 Commission no longer has jurisdiction over the assets of Respondent.

18 43. In response to the Motion to Vacate, Staff notes that Respondent's argument about the
19 "surrender" of its CC&N is legally irrelevant. Staff argues that a utility is under an obligation to
20 serve until the Commission authorizes otherwise and that Respondent is inappropriately equating the
21 existence of a CC&N with an obligation to serve. Staff also disputes Respondent's apparent belief
22 that if a corporation is dissolved, there is no longer a public service corporation.

23 44. Commission Corporations Division records reveal that Respondent filed Articles of
24 Dissolution on September 27, 2007, and that the Dissolution was completed on August 1, 2008, with
25 an effective date of September 27, 2007.

26 45. A.R.S. § 10-1405(A) provides that a "dissolved corporation continues its corporate
27

28 ⁴¹ Emergency Rate Case Tr. at 200.

1 existence but shall not carry on any business except that business appropriate to wind up and
 2 liquidate its business affairs.” A.R.S. § 10-1405(B) provides, in pertinent part:

3 **B. Dissolution of a corporation does not:**

4 1. Transfer title to the corporation’s property.

5
 5. Prevent commencement of a proceeding by or against the
 6 corporation in its corporate name or any officers, directors or shareholders
 7 or affect applicable statutes of limitation.

6 6. Abate or suspend a proceeding pending by or against the
 7 corporation or any officers, directors or shareholders on the effective date
 8 of dissolution.

7 7. Terminate the authority of the statutory agent of the corporation.

9 46. Under A.R.S. § 10-1405, although Respondent has voluntarily dissolved, this matter
 10 may continue to proceed against the Respondent, as its corporate existence continues by operation of
 11 the statute.

12 47. The law is well settled that a public service corporation that does not have a CC&N is
 13 subject to the jurisdiction of the Commission:

14 Article XV, Section 3 of the Arizona Constitution grants the Corporation
 15 Commission power to “prescribe just and reasonable classifications to be
 16 used and just and reasonable rates and charges to be made and collected,
 17 by public service corporations within the State for service rendered
 18 therein. . . .” This constitutional power over rates and classifications has
 19 been described as both exclusive and plenary. *Tucson Elec. Power Co.*,
 20 132 Ariz. at 242, 645 P.2d at 233. It is not dependent upon the public
 21 service corporation being subject to a certificate of convenience and
 22 necessity. Certificates of convenience and necessity are creatures of
 23 statute and nowhere mentioned in the Constitution. The definition of a
 24 public service corporation contained in Article XV, Section 2 makes no
 25 differentiation on the basis of whether one holds a certificate of
 26 convenience and necessity. Article XV, Section 12 prohibiting public
 27 service corporations from discrimination in charges, services or facilities
 28 does not differentiate on the basis of whether one holds a certificate of
 convenience and necessity. A.R.S. title 40 only requires a public service
 corporation to obtain a certificate of convenience and necessity prior to
 constructing a system or service, not as a prerequisite for application of
 regulations regarding service and charges to their customers.⁴²

26 48. As noted above, Respondent has not applied for and received authorization from the

42 *Tonto Creek Estates Homeowners Ass’n v. Arizona Corp. Comm’n*, 177 Ariz. 49, 58, 864 P.2d 1081, 1090 (Ariz. Ct. App. 1993).

1 Commission to discontinue or abandon utility service pursuant to A.A.C. R14-2-402(B), applied for
 2 and received authorization from the Commission pursuant to A.R.S. § 40-285 to dispose of plant that
 3 was “necessary or useful in the performance of its duties to the public,” or applied for and received
 4 authority to cancel its CC&N. Although Respondent claims that it has “surrendered” its “franchise,”
 5 until the Commission has granted Respondent the authority to cease providing service, Respondent
 6 remains a public service corporation subject to the Commission’s jurisdiction, and the Commission
 7 has the authority to appoint an interim manager.

8 49. Respondent’s Motion to Vacate should be denied.

9 50. As discussed above, Joseph Lee has made conflicting statements about ownership of
 10 Respondent and its assets. In the Response to Complainants Motion to Amend Complaint,
 11 Respondent’s President, Alma R. Lee, Jr., identified by Joseph Lee as his older brother,⁴³ stated:

12 I as President and Director, therefore knowing the terrible financial
 13 condition of the corporation and of the Schuh law suit found it in the best
 14 interest of the Corporation to sell and convey to Joseph W. Lee the well
 15 site and well equipment but not the water franchise itself. And, Joseph W.
 16 Lee agreed to loan the Corporation operating monies and to try to save the
 water franchise. See copy of Deed dated February 19, 2007 marked
 EXHIBIT “D” and Bill of Sale dated February 19, 2007 marked EXHIBIT
 “E”.⁴⁴

17 Exhibit D is a document labeled “Warranty Deed,” apparently filed with the Pinal County
 18 Recorder on August 24, 2007, purporting to convey real property in Pinal County from Respondent to
 19 “Joseph W. Lee, a married man as his sole and separate property.”⁴⁵ Exhibit E is a document labeled
 20 “Bill of Sale” [sic] between Respondent as seller and “Joseph William Lee, Husband of Alma Rosa
 21 Lee”⁴⁶ as buyer, which purports to sell to Joseph Lee all operating equipment plant and personal
 22 property owned by Respondent in the Hacienda Acres subdivision, including but not limited to:

24 ⁴³ Joseph Lee stated in the Emergency Rate Case hearing that Respondent’s President, A.R. Lee, Jr. is his older brother.
 25 Emergency Rate Case Tr. at 33.

26 ⁴⁴ The Schuh lawsuit resulted in a judgment against Respondent and Joseph Lee, jointly and severally. The Schuhs
 27 were former customers who sued for breach of contract, breach of implied covenant of good faith and fair dealing,
 common law fraud, and statutory consumer fraud. See Response, Exhibit C (Pinal County Justice Court Final Judgment
 Case CV2006-400, August 16, 2007).

28 ⁴⁵ The Warranty Deed is signed by Alma R. Lee, Jr., President, American Realty & Mortgage Co, Inc., who warrants
 “the title against all persons whomsoever, subject to the matters above set forth under penalty of fine and imprisonment.”

⁴⁶ It appears that Joseph Lee’s brother and wife share the first name “Alma” and the middle initial “R.”

- 1 1. The 10,000 gallons water tank, well pump, two (2) pressure
tanks and two (2) inline water pumps.
- 2 2. The electric pole and electric service, storage room, fencing
and miscellaneous maaterials [sic];
- 3 3. All water mains, risers, piping, water meters, water meter
boxes, turn on valves, etc., for delivery of water now owned by the
4 corporation.
- 5 4. Any and all other physical plant, facilities and equipment;
- 6 5. The corporation name, stock and water franchise are hereby
specifically excluded from this agreement or sale.

7 The Respondent did not present testimony to explain the documents and did not move for
8 their admission into evidence during the hearing. From the above statement made in the Response by
9 Respondent's President, it appears that the documents may have been an attempt to shield
10 Respondent from a judgment and/or remove the assets from the corporation. As stated above, the
11 Commission has authorized neither a transfer of assets nor any utility debt. Pursuant to A.R.S. § 40-
12 285, any disposition of plant other than in accordance with a Commission order authorizing it is void.
13 Pursuant to A.R.S. § 40-303, "every bond, note or other evidence of indebtedness of a public service
14 corporation, issued without a valid order of the commission authorizing the issue . . . is void."
15 Accordingly, the assets of Respondent remain with the public service corporation, and such public
16 service corporation is not obligated under any bond, note, or other evidence of indebtedness.

17 51. It is established that public service corporation status can be conferred on all forms of
18 ownership, including individual ownership, and that a lack of actual corporate status does not
19 preclude one from being a public service corporation.⁴⁷

20 52. We find that it is appropriate to reach not only the Respondent in this matter, but also
21 Joseph W. Lee as an individual. As Joseph Lee stated, he personally, as an individual, damaged the
22 water system, rendering it inoperable. In addition, Joseph Lee stated that although his older brother,
23 Alma R. Lee, Jr., is Respondent's President, and his mother is Respondent's sole shareholder, Joseph
24 Lee "make[s] most of the decisions . . . as secretary/treasurer. The legal ones I do wearing my legal
25

26 ⁴⁷ *Arizona Corp. Comm'n v. Nicholson*, 108 Ariz. 317, 319, 497 P.2d 815, 817 (Ariz. 1972)(citing *VanDyke v. Geary*,
27 244 U.S. 39 (1917); *Williams v. Pipe Trades Industry Program of Arizona*, 100 Ariz. 14, 409 P.3d 720 (1966)). The court
28 further stated that when one devotes his private property to a public use with a public interest, he grants to the public an
public interest. *Id.* at 320, 818.

1 hat.”⁴⁸ Joseph Lee has also stated that he has loaned Respondent funds; that he is responsible for
 2 reading the meters, although he contracts that out; that he is responsible for Respondent’s billing; that
 3 he is responsible for Respondent’s annual reports; and that the administrative staff employed by his
 4 private law practice provides the only office help for Respondent, which has no employees.⁴⁹
 5 Furthermore, it is Joseph Lee who acts as Respondent’s statutory agent; who has appeared before the
 6 Commission on Respondent’s behalf; who has prepared virtually all of Respondent’s filings with the
 7 Commission in this matter, the Emergency Rate Case, and the Curtailment Tariff case; who has
 8 apparently served as Respondent’s contact with ADEQ and EPA, per the ADEQ and EPA documents
 9 filed in this matter; and to whom Respondent purported to transfer all of its assets. In addition, it is
 10 striking that Respondent has wholly failed to participate in this matter since Joseph Lee filed his
 11 Request to Withdraw as Attorney, although Respondent has been provided with actual notice of all
 12 proceedings. The evidence establishes that although Alma R. Lee, Jr. is named as President of
 13 Respondent, Joseph Lee has been operating Respondent as his alter ego, and Respondent fails to act
 14 except through Joseph Lee or at his behest. Where an individual operates a corporation as an alter
 15 ego, and injustice would result from observing the corporate form and allowing it to shield the
 16 individual from liability, the corporate veil can be pierced to reach the individual as well.⁵⁰ The
 17 Commission has previously pierced the corporate veil to reach an individual in Decision No. 66036
 18 (July 3, 2003), a case in which the operator of a water system had, among other things, abandoned the
 19 system, kept inadequate records, failed to cooperate with Staff, and allowed the corporate entity to be
 20 dissolved for failure to file an annual report.

21 Staff Recommendations

22 In Staff’s Closing Brief, Staff recommends that the Commission immediately revoke
 23 Respondent’s CC&N. Staff also believes that due to the damage done to the water system and the
 24 effect that had on the ratepayers, the Commission should impose financial penalties. Finally, Staff
 25 recommends any additional action necessary to remedy the harm caused by the Respondent’s actions.

27 ⁴⁸ Emergency Rate Case Tr. at 33.

28 ⁴⁹ *Id.* at 22, 24, 35, 37, 38.

⁵⁰ *See, e.g., Honeywell, Inc. v. Arnold Constr. Co., Inc.*, 134 Ariz. 153, 654 P.2d 301 (Ariz. Ct. App. 1982).

1 **Conclusion**

2 53. As a public service corporation, Respondent is obligated to provide water utility
3 service in accordance with Arizona law and the rules and regulations of the Commission.

4 54. Respondent has failed to maintain facilities and provide service that is adequate,
5 efficient, sufficient, reasonable, satisfactory, safe, and proper.

6 55. The record in this matter establishes that Respondent violated state law and
7 regulations and failed in its legal obligation as a public service corporation to render competent and
8 adequate service, thereby endangering the public health and the safety of its customers. Accordingly,
9 we find that Respondent should be fined a total of \$41,000 under Arizona law as follows: \$5,000 for
10 Violation of A.A.C. R14-2-407(C) (Continuity of Service); \$5,000 for Violation of A.A.C. R14-2-
11 407(D) (Service Interruption); \$6,000 for Violation of A.A.C. R14-2-409 (Billing, \$1,000 for each
12 customer complaint); \$5,000 for Violation of A.R.S. § 40-221 (Reports); \$5,000 for Violation of
13 Obligation to Serve; \$5,000 for Violation of Obligation to Keep Taxes Current; \$5,000 for Failure to
14 Maintain System and Service Necessary for Health and Safety of Customers; and \$5,000 for
15 Violation of A.A.C. R14-2-402 (Application for Discontinuance or Abandonment of Utility Service).

16 56. However, because it is in the public interest that the customers of Respondent receive
17 water utility service from a certificated public service corporation, we will stay the requirement to
18 pay the fine for 90 days from the date of this Decision to allow Respondent time to enter into an
19 agreement to transfer the utility assets to an entity that is, or has applied to become, certificated to
20 provide water utility service to Respondent's customers. If, within 90 days of the date of this
21 Decision, Respondent enters into an agreement to transfer the utility assets to an entity that is, or has
22 applied to become, certificated to provide water utility service to Respondent's customers, payment
23 of the fine will be stayed for another 240 days pending Commission approval of the CC&N or CC&N
24 extension, if necessary, and the asset transfer request. Upon successful transfer of assets to a
25 certificated public service corporation as approved by the Commission, the fine imposed by this
26 Decision would be waived. In the event that the Respondent fails to enter into such an agreement
27 within 90 days from the date of this Decision, or the transfer of assets to a certificated public service
28 corporation is not approved by the Commission within 240 days after such agreement is filed, the fine

1 shall be immediately due and payable.

2 **CONCLUSIONS OF LAW**

3 1. Respondent is a public service corporation pursuant to Article XV of the Arizona
4 Constitution, A.R.S. §§ 40-281 and 40-282.

5 2. As a public service corporation, Respondent is obligated to provide water utility
6 service in accordance with Arizona law and the rules and regulations of the Commission.

7 3. The Commission has jurisdiction over Respondent and the subject matter of this
8 matter pursuant to Article XV of the Arizona Constitution; A.R.S. §§ 40-202, -203, -221, -281, -282,
9 -246, -281, -282, -301, -302, -303, -321, -322, -331, -332, -422, -423, -424, -425, and -426; and
10 A.A.C. R14-2-402, -407, and -409.

11 4. In Decision No. 69865, the Commission issued an Order to Show Cause against
12 Respondent.

13 5. Notice of the Order to Show Cause, the Special Open Meeting, and the evidentiary
14 hearing was provided in accordance with the law.

15 6. It is lawful and in the public interest to revoke Respondent's CC&N.

16 7. Dissolution of a public service corporation's corporate status does not change its legal
17 status as a public service corporation and does not abate or suspend a proceeding pending against it
18 on the effective date of dissolution.

19 8. Upon revocation of its CC&N, Respondent will remain a public service corporation
20 subject to the Commission's jurisdiction.

21 9. Respondent has not been authorized by the Commission to issue long-term debt.

22 10. Respondent has not been authorized by the Commission to sell its assets necessary for
23 the provision of service.

24 11. Pursuant to Article XV, Section 16 of the Arizona Constitution and A.R.S. §§ 40-424
25 and -425, the Commission may fine Respondent from \$100 to \$5,000 for each violation of a
26 Commission rule or Order and for each failure to comply with statutory requirements.

27 12. Pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-202, -321, -322,
28 and -361, the Commission has the jurisdiction and authority to determine what is just, reasonable,

1 safe, proper, adequate, and sufficient and shall enforce its determination by Order or regulation.

2 13. Respondent's Motion to Vacate is denied.

3 14. Joseph W. Lee has operated Respondent as his alter ego and thus is subject to the
4 Commission's jurisdiction to the same extent as is the Respondent.

5 15. Based upon the disregard for public health and safety exhibited by Respondent/Joseph
6 W. Lee and upon the violations of Commission rules and regulations and state law, and pursuant to
7 the authority granted the Commission, it is lawful, reasonable, and in the public interest to impose a
8 fine of \$41,000 on Respondent and Joseph W. Lee, jointly and severally.

9 16. It is in the public interest for Respondent's customers to receive water utility service
10 from a certificated public service corporation. Accordingly, the fine imposed in this Decision may be
11 waived upon compliance with the conditions set forth herein.

12 17. The conduct of Respondent and Joseph W. Lee endangered public health and safety.
13 It is appropriate to direct Staff to refer this matter to the appropriate County Attorney and/or the
14 Arizona Attorney General for review and potential criminal prosecution.

15 18. Until a permanent solution is put in place for the provision of water utility service to
16 Respondent's customers, there is a continuing need for an interim manager to operate the water utility
17 system.

18 **ORDER**

19 IT IS THEREFORE ORDERED that the Certificate of Convenience and Necessity granted to
20 American Realty and Mortgage Company, Inc., dba Hacienda Acres Water System, in Decision No.
21 44444 is hereby revoked.

22 IT IS FURTHER ORDERED that American Realty and Mortgage Company, Inc., dba
23 Hacienda Acres Water System, remains a public service corporation subject to the jurisdiction of the
24 Arizona Corporation Commission.

25 IT IS FURTHER ORDERED that American Realty and Mortgage Company, Inc., dba
26 Hacienda Acres Water System, and Joseph W. Lee, jointly and severally, shall pay a fine of \$41,000,
27 either by cashiers check or money order made payable to the "State of Arizona" and presented to the
28 Arizona Corporation Commission's business office for deposit into the general fund for the State of

1 Arizona, no later than 90 days from the date of this Decision, unless the conditions of the following
2 ordering paragraph are met.

3 IT IS FURTHER ORDERED that if within 90 days of the date of this Decision, American
4 Realty and Mortgage Company, Inc., dba Hacienda Acres Water System, files with the Commission's
5 Docket Control, as a compliance item in this Docket, a signed agreement to transfer its utility assets
6 to an entity that is, or has applied to become, certificated to provide water utility service to its
7 customers, then payment of the fine shall be stayed for an additional 240 days pending Commission
8 approval of the asset transfer request.

9 IT IS FURTHER ORDERED that if American Realty and Mortgage Company, Inc., dba
10 Hacienda Acres Water System, fails to file with the Commission's Docket Control an agreement to
11 transfer its utility assets, as described above, within 90 days after this Decision, the fine shall be
12 immediately due and payable.

13 IT IS FURTHER ORDERED that if American Realty and Mortgage Company, Inc., dba
14 Hacienda Acres Water System, files an agreement to transfer its utility assets, as described above,
15 within 90 days after this Decision, but the Commission does not approve the transfer agreement
16 within 240 days after the signed agreement is filed with the Commission's Docket Control, the fine
17 shall be immediately due and payable.

18 IT IS FURTHER ORDERED that upon successful transfer of assets to a certificated public
19 service corporation as approved by the Commission, the fine imposed by this Decision shall be
20 waived.

21 IT IS FURTHER ORDERED that Staff shall refer this matter to the appropriate County
22 Attorney and/or the Arizona Attorney General for review and potential criminal prosecution of
23 Joseph W. Lee and American Realty and Mortgage Company, Inc., dba Hacienda Acres Water
24 System, and its officers and directors.

25 IT IS FURTHER ORDERED that the Motion to Vacate filed by American Realty and
26 Mortgage Company, Inc., dba Hacienda Acres Water System, is denied.

27 IT IS FURTHER ORDERED that until such time as a permanent solution is put in place for
28 the provision of water utility service to the customers of American Realty and Mortgage Company,

1 Inc., dba Hacienda Acres Water System, Staff shall continue to engage an interim manager to operate
2 the system, and Joseph W. Lee and American Realty and Mortgage Company, Inc., dba Hacienda
3 Acres Water System, and its officers, owners, and employees shall not interfere with the provision of
4 service and shall cooperate fully with the interim manager.

5 IT IS FURTHER ORDERED that if American Realty and Mortgage Company, Inc., dba
6 Hacienda Acres Water System, and/or Joseph W. Lee fail to comply with any requirements of this
7 Decision, the Commission's Legal Division is authorized and directed to bring any action necessary
8 in an appropriate court of law to enforce compliance and to protect the plant and system necessary or
9 useful in the provision of water service to the public.

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

11 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

12
13
14 CHAIRMAN

COMMISSIONER

15
16 COMMISSIONER

COMMISSIONER

COMMISSIONER

17
18 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
19 Director of the Arizona Corporation Commission, have
20 hereunto set my hand and caused the official seal of the
21 Commission to be affixed at the Capitol, in the City of Phoenix,
22 this _____ day of _____, 2008.

23 BRIAN C. McNEIL
24 EXECUTIVE DIRECTOR

25 DISSENT _____

26 DISSENT _____
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SERVICE LIST FOR: AMERICAN REALTY AND MORTGAGE COMPANY, INC. DBA HACIENDA ACRES WATER SYSTEM

DOCKET NO.: W-02258A-07-0470

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