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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

GARY PIERCE – Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

IN THE MATTER OF THE COMMISSION ON ITS OWN MOTION INVESTIGATING THE FAILURE OF TRUXTON CANYON WATER COMPANY TO COMPLY WITH COMMISSION RULES AND REGULATIONS.

DOCKET NO. W-02168A-10-0247

PROCEDURAL ORDER

BY THE COMMISSION:

On June 23, 2010, the Staff of the Utilities Division (“Staff”) of the Arizona Corporation Commission (“Commission”) filed a Complaint and Petition for Order to Show Cause (“OSC”) against Truxton Canyon Water Company (“Truxton”), an Arizona public service corporation. Staff alleges Truxton is in violation of Arizona law, Commission rules and regulations, Arizona Revised Statutes, and the Arizona Constitution.

On August 10, 2010, the Commission issued Decision No. 71837, ordering Truxton to appear and show cause why its actions do not constitute a violation of Arizona law and the Commission’s rules and regulations. The Decision also directed the Hearing Division to conduct further proceedings in this matter.

On August 16, 2010, by Procedural Order, a procedural conference was scheduled for September 1, 2010, to discuss the procedural schedule for this proceeding.

On September 1, 2010, the procedural conference was held as scheduled. Truxton and Staff appeared through counsel. During the proceeding, hearing dates and other procedural deadlines were discussed.

On September 2, 2010, by Procedural Order, the hearing in this matter was scheduled to begin on January 18, 2011.

On December 21, 2010, the Valle Vista Property Owners Association, Inc. (the “Association”) filed a Motion to Intervene stating that as a representative for Truxton’s customers

1 and property owners, any Complaints, Staff recommendations, and potential management and rate
2 changes will have a serious impact upon the Association and its members.

3 On January 5, 2011, by Procedural Order, the Association was granted intervention in this
4 proceeding; Truxton was ordered to mail to each of its customers, via First Class Mail, notice of the
5 hearing and Truxton was ordered to file with the Commission an affidavit indicating that said notice
6 had been mailed to each of its customers.

7 On January 11, 2011, Truxton filed a Motion for Reconsideration regarding notification to its
8 customers. Truxton's Motion stated that notification to its customers pursuant to the Procedural
9 Order would be cost prohibitive. The Motion stated that alternatively the Company would post the
10 notice on its website, but that the cost of mailing as prescribed in the Procedural Order, would be
11 \$2,200, and posting the notice to the website would be more cost-effective.

12 On January 18, 2011, a full public hearing was held as scheduled before a duly Authorized
13 Administrative Law Judge ("ALJ") of the Commission at its offices in Phoenix, Arizona. Truxton,
14 the Association, and Staff appeared through counsel. Staff, Truxton, and the Association provided
15 testimony and evidence on the issues raised in this matter. Based on Truxton's pending Motion
16 regarding notice, Truxton was informed that notice needed to be provided and that another day of
17 hearing would be set to allow for any further public comments or intervention in this matter. The
18 hearing was recessed to allow Truxton to provide notice to its customers.

19 Truxton's Motion is denied. Truxton must provide notice of the OSC hearing in accordance
20 with this Procedural Order. Because the notice provided by Truxton is inadequate to provide its
21 customers with the information necessary to participate in this proceeding, it is appropriate to set this
22 matter for an additional day of hearing.

23 **IT IS THEREFORE ORDERED that the hearing in the above captioned matter shall**
24 **reconvene on February 28, 2011, at 10:00 a.m., or as soon thereafter as is practicable, at the**
25 **Commission's offices, 1200 West Washington Street, Hearing Room 1, Phoenix, Arizona 85007.**

26 **IT IS FURTHER ORDERED that Truxton shall send to each of its customers, via First**
27 **Class Mail, on or before January 28, 2011, the notice attached hereto as Attachment A, with a**
28 **heading in no less than 12-point bold type and the body in no less than 12-point regular type.**

1 IT IS FURTHER ORDERED that **Truxton shall file with the Commission an affidavit of**
2 **mailing** as soon as practicable after mailing has been completed, but no later than **February 11,**
3 **2011.**

4 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing,
5 notwithstanding the failure of an individual customer to read or receive the notice.

6 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105,
7 except that all motions to intervene must be filed on or before **February 11, 2011.**

8 IT IS FURTHER ORDERED that any objections to any motions to intervene shall be filed on
9 or before **February 18, 2011.**

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.

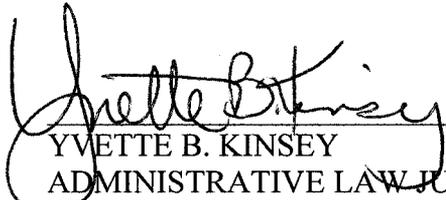
13 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
14 31 and 38 and A.R.S. § 40-243 with respect to practice of law in Arizona and before the Commission
15 and admission *pro hac vice*.

16 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
17 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
18 Supreme Court Rule 42). Representation before the Commission includes appearance at all hearings
19 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for
20 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
21 Law Judge or the Commission.

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

24 DATED this 20th day of January, 2011.

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YVETTE B. KINSEY
ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed/delivered
2 this 20th day of January, 2011 to:

3 B. Marc Neal
4 Mike Neal
5 TRUXTON CANYON WATER CO.
6 7313 East Concho Drive, Suite B
7 Kingman, AZ 86401

8 Steve Wene
9 MOYES SELLERS & SIMS
10 1850 North Central Avenue, Suite 1100
11 Phoenix, AZ 85004
12 Attorneys for Truxton Canyon Water Co.

13 Todd C. Wiley
14 FENNEMORE CRAIG
15 3003 North Central Avenue, Suite 2600
16 Phoenix, AZ 85012
17 Attorneys for Valle Vista Property
18 Owners Association, Inc.

19 Janice Alward, Chief Counsel
20 Legal Division
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
23 Phoenix, AZ 85007

24 Steven M. Olea, Director
25 Utilities Division
26 ARIZONA CORPORATION COMMISSION
27 1200 West Washington Street
28 Phoenix, AZ 85007

ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
Phoenix, AZ 85004-1481

20
21 By: 
22 Debra Broyles
23 Secretary to Yvette B. Kinsey
24
25
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27
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ATTACHMENT A

**PUBLIC NOTICE IN THE MATTER OF THE COMMISSION
ON ITS OWN MOTION INVESTIGATING THE FAILURE OF
TRUXTON CANYON WATER COMPANY TO COMPLY WITH
COMMISSION RULES AND REGULATIONS.
(DOCKET NO. W-02168A-10-0247)**

On August 10, 2010, in response to a Complaint filed by the Commission's Utilities Division ("Staff"), the Arizona Corporation Commission ("Commission") issued Decision No. 71837, ordering Truxton Canyon Water Company ("Truxton") to appear and show cause ("OSC") why its actions as alleged in the Staff Complaint does not constitute a violation of Arizona law, Commission rules and regulations, Arizona Revised Statutes ("A.R.S."), and the Arizona Constitution. Staff's Complaint alleges Truxton's water system is not safe, proper, or adequate, in violation of A.R.S. § 40-321(A); that Truxton is not providing potable water, in violation of Arizona Administrative Code ("A.A.C.") R14-2-407(A); that Truxton does not maintain a minimum delivery pressure of 20 psi, in violation of A.A.C. R14-2-407(E); that Truxton is not supplying its customers with satisfactory and continuous service, in violation of A.A.C. R14-2-407(C); that Truxton obtained long term debt without Commission approval, in violation of A.R.S. § 40-301(B) and § 40-302(A); that Truxton does not maintain its books and records in accordance with the prescribed methods, in violation of A.R.S. §§ 40-221, 40-221(C) and A.A.C. R14-2-411(D)(2); that Truxton does not maintain accurate accounts and records, in violation of A.A.C. R14-2-411(A)(1) and (A)(2); and that Truxton has not created written agreements evidencing main extension agreements with customers, in violation of A.A.C. R14-2-406(G). Staff's Complaint further alleges that Truxton has not had its main extension agreements approved by the Commission, and has not refunded advances to customers, in violation of A.A.C. R14-2-406(M); has not billed under its tariff on certain occasions, in violation of A.A.C. R14-2-409(D)(1); is not in compliance with Commission orders, decisions, rules or regulations, in violation of A.R.S. §40-202(L); does not consistently provide accurate information to the Commission, in violation of A.R.S. § 40-204(A); and does not provide information or documentation to Staff when requested, in violation of A.R.S. § 40-204(B). Finally, Staff asserts a Commission order is necessary for the safety and preservation of the health of Truxton's customers, as is authorized under Article XV § 3 of the Arizona Constitution.

The Commission is not bound by the proposals made by Truxton, Staff, or any intervenors. The Commission will issue a Decision in this matter following consideration of testimony and evidence presented at an evidentiary hearing.

Copies of Staff's Complaint, the Commission's OSC, and any responses filed by Truxton or any intervenor are available at Truxton's offices [insert addresses] and at the Commission's offices at 1200 West Washington Street, Phoenix, Arizona, for public inspection during regular business hours, and on the internet via the Commission website (www.azcc.gov) using the e-docket function.

The Commission will hold a hearing on the OSC on **February 28, 2011, at 10:00 a.m.**, at the Commission's offices, 1200 West Washington Street, Hearing Room 1, Phoenix, Arizona. Public comments will be taken at the beginning of the hearing. Written public comments may be submitted via e-mail (visit <http://www.azcc.gov/divisions/utilities/consumerservices.asp>), or

by mailing a letter referencing Docket No. W-02168A-10-0247 to: Arizona Corporation Commission, Consumer Services Section, 1200 West Washington Street, Phoenix, Arizona 85007. If you require assistance, you may contact the Consumer Services Section at 1-800-222-7000 or 602-542-4251.

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Any person or entity entitled by law to intervene and having a direct and substantial interest in the matter will be permitted to intervene. If you wish to intervene, you must file an original and 13 copies of a written motion to intervene with the Commission no later than **February 11, 2011**, and send a copy of the motion to Truxton or its counsel and to all parties of record. Your motion to intervene must contain the following:

1. Your name, address, and telephone number and the name, address, and telephone number of any person upon whom service of documents is to be made, if not yourself;
2. A short statement of your interest in the proceeding (e.g., a customer of Truxton, etc.); and
3. A statement certifying that you have mailed a copy of the motion to intervene to Truxton or its counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before February 11, 2011. If representation by counsel is required by Arizona Supreme Court Rule 31, intervention will be conditioned upon the intervenor obtaining counsel to represent the intervenor. For information about requesting intervention, visit the Commission's website at <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and providing public comment on the OSC or from filing written comments in the record of the case.

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting the ADA Coordinator Shaylin Bernal, E-mail sabernal@azcc.gov, voice phone number 602-542-3931. Requests should be made as early as possible to allow time to arrange the accommodation.