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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION
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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

STAFF'S RESPONSE TO COMPANY'S
APPLICATION FOR MODIFICATION
AND RECONSIDERATION OF DECISION
NO. 72386

I. PROCEDURAL HISTORY

On June 23, 2010, Staff of the Utilities Division ("Staff") filed a Complaint and Petition for an Order to Show Cause ("OSC") against Truxton Canyon Water Company ("Truxton" or "Company"). Staff alleged in the OSC that Truxton was, or had been, in violation of Arizona Corporation Commission ("Commission") rules and regulations, Arizona Revised Statutes ("A.R.S.") and the Arizona Constitution. The Commission issued Decision No. 71837 on August 10, 2010, ordering Truxton to appear and show cause as to why its actions did not constitute a violation of Arizona law and Commission rules and regulations.

On September 2, 2010, a Procedural Order was issued by the Hearing Division presenting the schedule for the case. Direct testimony was filed by Staff on November 10, 2010, the Company filed rebuttal testimony on December 10, 2010, followed by Staff surrebuttal testimony filed on December 23, 2010. Valle Vista Property Owners Association ("Association") filed a Motion to Intervene on December 21, 2010, and the Motion was granted on January 5, 2011.

A public hearing was held on January 18, 2011. Staff, Truxton, and the Association appeared through counsel and provided testimony and evidence on the issues raised. Truxton and Staff also presented a Stipulated Agreement for the Judge's consideration, in an effort to reduce the hearing time. Another day of hearing was scheduled for February 28, 2011, to allow for

1 additional notice to the customers. The hearing reconvened as scheduled on February 28, 2011. No
2 additional members of the public appeared to give public comment. However, Truxton did present
3 additional testimony and evidence. Truxton, the Association and Staff filed closing briefs on March
4 25, 2011.

5 The Hearing Division issued a Recommended Opinion and Order (“ROO”) on May 10, 2011,
6 incorporating the Stipulated Agreement. The Commission signed Decision No. 72386 on May 27,
7 2011, after one minor amendment to the timeline. On June 17, 2011, the Company filed an
8 Application for Modification and Reconsideration of Decision No. 72386.

9 **II. DISCUSSION**

10 Truxton is a public service corporation, providing water to approximately 875 residential and
11 commercial customers in Mohave County, Arizona. The Company was granted its Certificate of
12 Convenience and Necessity (“CC&N”) in Decision No. 41781. Its service territory encompasses
13 approximately five and one half square miles, and is located nine miles north of Kingman, Arizona.

14 Truxton is a C-Corporation, with its sole shareholder identified as B. Marc Neal. B. Marc
15 Neal is also the President. Currently, Truxton is being managed by Rick Neal and Chris Hopper of
16 Blackhawk Developers based out of Las Vegas, Nevada. Mike Neal is the Water Manager,
17 overseeing the day to day operations.

18 On June 16, 2011, Truxton filed an Application for Modification and Reconsideration of
19 Decision No. 72386 (“Application”). The Application requested that the Commission modify the
20 decision by: clarifying issues related to the Water Supply Agreement between the Claude K. Neal
21 Family Trust and the Association; removing portions of the Stipulated Agreement related to the
22 appointment of an interim manager, claiming it was signed under duress; and questioned the
23 Commission’s authority to appoint an interim manager.

24 Arizona Revised Statute § 40-253 allows any party to an action, after a final order or decision
25 has been made by the Commission, to apply for a rehearing on any matter determined in the action
26 and specified in the application for rehearing.¹ When a party applies for a rehearing, it must specify in

27
28 ¹ Although styled and pled as an application for modification and reconsideration, Commission Staff notes that there is no provision within the relevant Commission rules of procedure or in the governing statutes that provides for a reconsideration of Commission decisions. Reconsideration is a rule of civil procedure used within the Superior Court system pursuant to Rule Civ. Pro. Rule 7.1 (e). The rules governing the procedure used in Commission practice are set

1 the application the matter or matters it wishes to be reheard and set forth specifically the grounds on
2 which it is based. A.R.S. § 40-253(A)&(C). The Company's Application has specified portions of
3 the Stipulated Agreement; however, by presenting its duress argument the Company has taken issue
4 with the validity of the entire Stipulated Agreement.

5 Staff believes a rehearing is appropriate to resolve the issues contained in the Stipulated
6 Agreement. The Stipulated Agreement resolved many issues in the case, not just the potential
7 appointment of an interim manager or the water supply agreement. Because the validity of the
8 Stipulated Agreement is now at issue, there is a question of whether the other compliance matters set
9 out in the Stipulated Agreement will be fulfilled by the Company. These compliance matters
10 resolved issues directly impacting the public interest in the delivery of safe, adequate and reliable
11 water service at reasonable rates. However, the Company's current manager has made assertions to
12 Staff that the Company does not intend to fulfill the compliance items contained in the Stipulated
13 Agreement. Not only is a rehearing to litigate the issues contained in the Stipulated Agreement is
14 appropriate for the reasons stated above, but the hearing should also include the remedies and
15 disciplinary actions, such as fines or revocation of CC&N, that Staff did not pursue because of the
16 parties entrant into the Stipulated Agreement.

17 In an attempt to extricate itself from what it no longer views as an advantageous agreement,
18 Truxton claims it signed the Stipulated Agreement under duress. (Company's Application for
19 Modification and Reconsideration of Decision No. 72386 at 4). Black's Law Dictionary (9th ed.
20 2009) defines duress strictly as "the physical confinement of a person or the detention of a
21 contracting party's property," or more broadly as "a threat of harm made to compel a person to do
22 something against his or her will or judgment" or to "use or threatened use of unlawful force –
23 usually that a reasonable person cannot resist – to compel someone to commit an unlawful act."

25 out at Arizona Administrative Code ("A.A.C.") R14-3-101 *et seq.* Pursuant to A.A.C. R14-3-101(A), the Rules of
26 Civil Procedure are only applicable where a procedure is not set out by statute within Title 40 of the Arizona Revised
27 Statutes ("A.R.S."), A.A.C. Title 14, or within the regulations or orders of the Commission. The relief being requested
28 is available pursuant to A.R.S. § 40-253 and as such, the Rules of Civil Procedure do not apply under the
circumstances. Because the motion was filed within the time frame for an application for rehearing pursuant to A.R.S.
§ 40-253, Staff's response assumes that an application for rehearing pursuant to A.R.S. § 40-253 was intended. By
providing this response, Staff is not waiving any argument that the Company failed to properly request rehearing
pursuant to A.R.S. § 40-253.

1 The Company claims that it was presented with the choice of either having an interim
2 manager appointed immediately or signing the stipulation to resolve the issues before the
3 Commission appoints an interim manager. (Company's Application for Modification and
4 Reconsideration of Decision No. 72386 at 4:6.5-10.5.) Staff disagrees with the Company's
5 characterization of the circumstance surrounding the signing of the Stipulated Agreement; but even if
6 the characterization is completely accurate, it fails to meet the definition of duress. The purpose of
7 entering into the Stipulated Agreement was to limit the time spent litigating the issues at the hearing
8 and to present the Commission with a resolution that was both in the Company's interest and the
9 public interest. Settlement of issues to resolve the litigation prior to the hearing does not remotely
10 constitute duress. Regardless, the matter will be moot if the Commission grants rehearing and the
11 parties resume the litigation that had been previously resolved by the Stipulated Agreement.

12 Finally, Staff would note that A.R.S. § 40-253(D) provides:

13 [a]n application for rehearing shall not excuse any person from
14 complying with and obeying any order or decision, or any requirements
15 of any order or decision of the commission theretofore made, or
16 operation in any manner to stay or postpone the enforcement thereof,
except in such cases and upon such terms as the commission by order
directs.

17 Despite Truxton's Application, Decision No. 72386 remains an approved Order of the Commission.
18 Regardless of the Company's assertion to Staff that it does not intend to fulfill the requirements
19 contained the Order, the Company has not requested a stay of Decision No. 72386. As the Stipulated
20 Agreement was incorporated into Decision No. 72386 as a final Order of the Commission because no
21 Stay has been ordered, the Company is required by law to comply with the Stipulated Agreement.

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1 **III. CONCLUSION**

2 For all the above stated reasons, Staff believes that a rehearing should be granted to litigate
3 the issues contained in the Stipulated Agreement.

4 RESPECTFULLY SUBMITTED this 20th day of July, 2011.

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7 _____
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11 Original and thirteen (13) copies
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18 Copies of the foregoing mailed this
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