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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

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

SEP 26 2011

DOCKETED BY

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AZ CORP COMMISSION
DOCKET CONTROL

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
SCHEDULING HEARING
ON THE REHEARING OF
DECISION NO. 72386

BY THE COMMISSION:

On June 16, 2011, Truxton Canyon Water Company (“Truxton”) timely filed an application for reconsideration of Arizona Corporation Commission (“Commission”) Decision No. 72386 (May 27, 2011).

On June 28, 2011, the Commission issued Decision No. 72448, granting rehearing of Decision No. 72386 for the limited purpose of further consideration.

At its August 16, 2011 Open Meeting, the Commission further considered these matters and heard comments from the parties concerning rehearing of Decision No. 72386. The Commission found and concluded that rehearing should be granted for Decision No. 72386.

On August 24, 2011, the Commission issued Decision No. 72548 granting Truxton’s request for rehearing. Decision No. 72548 did not limit the scope on rehearing to Truxton’s request for reconsideration, but stated that the rehearing proceedings should provide an opportunity for all parties to raise any issues presented in this docket. The Decision directed the Hearing Division to conduct appropriate proceedings for rehearing and to prepare a recommended opinion and order for the Commission’s consideration. The Decision stated that the parties may raise issues related to whether the Claude K. Neal Family Trust (“Trust”) is a public service corporation; directed Truxton to file a proposed interim tariff for Commission approval for water service to Valle Vista Property Owners Association, Inc. (“Valle Vista”); and allowed Valle Vista to file a response or alternative proposal to

1 Truxton's proposed tariff.

2 On August 29, 2011, by Procedural Order, a procedural conference was set for September 9,
3 2011, to establish a procedural schedule for the rehearing proceeding.

4 On September 1, 2011, counsel for Truxton filed a Motion to Reschedule the Procedural
5 Conference ("Motion"). The Motion stated that counsel for Truxton had a scheduling conflict which
6 required counsel to appear in Superior Court at the same time as the procedural conference scheduled
7 in this matter. The Motion further stated that based upon the availability of all attorneys involved in
8 the above-captioned case, Truxton requested that the procedural conference be rescheduled for
9 September 16, 2011.

10 On the same date, Truxton filed a Notice of Filing Interim Tariff.

11 On September 7, 2011, by Procedural Order, the procedural conference scheduled for
12 September 9, 2011, was rescheduled to September 16, 2011.

13 On September 16, 2011, a procedural conference was held as scheduled. The Commission's
14 Utilities Division ("Staff"), Truxton, and intervenor Valle Vista appeared through counsel.
15 Discussions were held among the parties regarding a procedural schedule for the rehearing
16 proceeding. Counsel for Truxton and Valle Vista stated that they needed additional time to conduct
17 discovery. Staff stated it did not anticipate filing any additional testimony, nor would it be
18 conducting further discovery. The parties recommended that the hearing be set for approximately 45
19 days from the date of the procedural conference.

20 On the same date, Valle Vista filed a response to Truxton's proposed interim tariff, requesting
21 that the Commission not adopt the proposed tariff.

22 During discussions at the Open Meeting on August 16, 2011, the Commissioners raised
23 several issues related to the rehearing. The Commissioners expressed concerns regarding on-going
24 maintenance issues (ie., wells in disrepair, water outages/shortages); Superfund taxing issues related
25 to Valle Vista; the Trust acting as a public service corporation; and the assessment of possible fines
26 and/or penalties against Truxton. In addition, during the first hearing Staff raised issues related to
27 Truxton's commingling of funds (in 2008 and 2009 respectively, 72 and 90 percent of Truxton's
28

1 revenues were transferred to the Trust without documentation);¹ whether Truxton may have
2 additional Main Extension Agreements that had not been filed with the Commission; whether the
3 Trust is selling water to other entities within Truxton's CC&N;² and whether the Trust's accounting
4 books should be examined during the next rate case.³ Further, it is appropriate for Staff to provide
5 updates on Truxton's compliance with applicable requirements of the National Association of
6 Regulatory Utility Commissioners Uniform System of Accounts;⁴ the Arizona Department of
7 Environmental Quality; and the Arizona Department of Water Resources. Although Staff stated it
8 did not anticipate filing additional testimony for the rehearing proceeding, Staff should be prepared to
9 file additional testimony and/or exhibits related to the issues raised by the Commissioners and the
10 issues discussed above.

11 During the procedural conference, the parties and Staff requested an expedited procedural
12 schedule for this proceeding. However, in order to accommodate Truxton's and Valle Vista's request
13 for additional time to conduct discovery; to allow Staff to file additional testimony and/or exhibits;
14 and to ensure that a complete record is made in this proceeding, an abbreviated procedural timeframe
15 is not appropriate. Accordingly, the following procedural schedule shall govern the rehearing
16 proceeding.

17 IT IS THEREFORE ORDERED that a hearing shall be held on **February 16 and 17, 2012,**
18 **at 10:00 a.m.,** or as soon thereafter as is practicable, at the Commission's offices, 1200 West
19 Washington Street, Room 100, Phoenix, Arizona 85007.

20 IT IS FURTHER ORDERED that a **pre-hearing conference shall be held on February 9,**
21 **2012, at 10:00 a.m., Room 100** at the Commission's Phoenix Offices, for the purpose of scheduling
22 witnesses and the conduct of the hearing.

23 IT IS FURTHER ORDERED that the **Staff Report and/or direct testimony and associated**
24 **exhibits** to be presented at hearing **on behalf of Staff** shall be reduced to writing and filed on or
25 before **November 28, 2011.**

26 _____
27 ¹ Direct Testimony of Igwe at 14-15.

28 ² Direct testimony of Igwe at 8.

³ Id. at 16.

⁴ Id. at 11-13.

1 IT IS FURTHER ORDERED that **testimony and associated exhibits to be presented at**
2 **hearing on behalf of Valle Vista** shall be reduced to writing and filed on or before **November 28,**
3 **2011.**

4 IT IS FURTHER ORDERED that the **rebuttal testimony and associated exhibits** to be
5 presented at hearing **by Truxton** shall be reduced to writing and filed on or before **December 30,**
6 **2011.**

7 IT IS FURTHER ORDERED that the **surrebuttal testimony and associated exhibits** to be
8 presented at hearing **by Staff and Valle Vista** shall be reduced to writing and filed on or before
9 **January 20, 2012.**

10 IT IS FURTHER ORDERED that any **rejoinder testimony and associated exhibits** to be
11 presented at hearing on behalf of **Truxton** shall be reduced to writing and filed on or before
12 **February 3, 2012.**

13 IT IS FURTHER ORDERED that any **objections to testimony or exhibits** that have been
14 filed as of January 27, 2012, **shall be made on or before February 3, 2012.**

15 IT IS FURTHER ORDERED that any **substantive corrections, revisions, or supplements**
16 **to the pre-filed testimony** shall be reduced to writing and filed no later than **February 3, 2012.**

17 IT IS FURTHER ORDERED that **all testimony shall include a table of contents which lists**
18 **the issues discussed.**

19 IT IS FURTHER ORDERED that **the parties shall prepare a brief written summary** of the
20 pre-filed testimony of each of their witnesses and shall file each summary **at least one week prior to**
21 **the start of the hearing.**

22 IT IS FURTHER ORDERED that copies of summaries shall be served upon the
23 Administrative Law Judge, the Commissioners, and the Commissions' aides as well as the parties of
24 record.

25 IT IS FURTHER ORDERED that discovery shall be permitted by law and the rules and
26 regulations of the Commission, except that: for discovery requests made through **January 27, 2012,**
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1 any objection to discovery requests shall be made within three days⁵ of receipt and responses to
2 discovery requests shall be made within seven days of receipt, the response time may be extended by
3 mutual agreement of the parties involved if the request requires an extensive compilation effort.

4 IT IS FURTHER ORDERED that for discovery requests, objections, and answers, if a
5 receiving party requests service to be made electronically, and the sending party has the technical
6 capability to provide service electronically, service to that party shall be made electronically.

7 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
8 discovery, any party seeking discovery may telephonically contact the Commission's Hearing
9 Division to request a date for a procedural hearing to resolve the discovery dispute; that upon such a
10 request, a procedural hearing will be convened as soon as practicable; and that the party making such
11 a request shall contact all other parties to advise them of the hearing date and shall at the procedural
12 hearing provide a statement confirming that the other parties were contacted.⁶

13 IT IS FURTHER ORDERED that any Motions which are filed in this matter and which are
14 not ruled upon by the Commission within 20 days of the filing date of the Motion shall be deemed
15 denied.

16 IT IS FURTHER ORDERED that any Responses to Motions shall be filed within five days of
17 the Motion.

18 IT IS FURTHER ORDERED that any replies shall be filed within three calendar days of the
19 filing date of the response.

20 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
21 Communications) applies to this proceeding, as the matter is now set for public hearing, and shall
22 remain in effect until the Commission's Decision in this matter is final and non-appealable.

23 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
24 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

26 _____
27 ⁵ "Days" means calendar days. The date of receipt of discovery requests is not counted as a calendar day, and requests
received after 4:00 p.m. MST will be considered as received the next business day.

28 ⁶ The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before
seeking Commission resolution of the controversy.

1 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
2 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (Arizona Supreme
3 Court Rule 42). Representation before the Commission includes the obligation to appear at all
4 hearings, procedural conferences, and Open Meetings for which the matter is scheduled for
5 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
6 Law Judge or Commission.

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

9 DATED this 26th day of September, 2011.

11 
12 YVETTE B. KINSEY
13 ADMINISTRATIVE LAW JUDGE

14 Copies of the foregoing mailed/delivered
15 this 26th day of September, 2011 to:

16 B. Marc Neal
17 Mike Neal
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26 By: 
27 Debra Broyles
28 Secretary to Yvette B. Kinsey