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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP 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 EXTENDING
DEADLINES AND RESETTING
HEARING DATES**

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 Truxton’s proposed tariff.

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

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

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

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

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

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

21 On September 26, 2011, a Procedural Order was issued scheduling the rehearing for February
22 16 and 17, 2012, and establishing other procedural deadlines.

23 On November 23, 2011, Staff filed a Motion for an Extension of Time ("Motion"). The
24 Motion states that due to Staff's current workload, Staff required an additional five days or until
25 December 2, 2011, to file its testimony. Staff's Motion also stated that in discussions with Valle
26 Vista and Truxton, Valle Vista has requested that its deadline for filing its testimony be extended
27 from November 28, 2011 to December 5, 2011. Truxton did not object to Staff's and Valle Vista's
28 request for an extension of time.

1 On December 1, 2011, a Procedural Order was issued that extended the deadline for filing
2 testimony and exhibits for both Staff and Valle Vista, until December 5, 2011.

3 On December 5, 2011, Valle Vista filed its testimony and exhibits.

4 On the same date, Staff filed its update to Staff's previously filed testimony in this matter.
5 Staff's update included, among other things, updates on maintenance issues; outstanding main
6 extension agreements; compliance with National Association of Regulatory Utility Commission
7 Uniform Systems of Accounts ("NARUC"); and compliance with the Arizona Department of
8 Environmental Quality ("ADEQ"). Although Staff provided an update, Staff did not file the exhibits
9 that support the information and conclusions provided in the update.¹

10 Accordingly, Staff should be given additional time to file its associated exhibits related to its
11 pre-filed testimony and its update. Further, it is appropriate to reset the filing dates and hearing dates
12 scheduled in this matter.

13 IT IS THEREFORE ORDERED that **the hearing scheduled for February 16 and 17, 2012,**
14 **shall be continued to February 29, 2012 and March 1, 2012, at 10:00 a.m.,** or as soon thereafter
15 as is practicable, at the Commission's offices, 1200 West Washington Street, 2nd Floor Conference
16 Room, Phoenix, Arizona 85007.

17 IT IS FURTHER ORDERED that a **pre-hearing conference shall be held on February 22,**
18 **2012, at 10:00 a.m.,** at the Commission's offices, 1200 West Washington Street, 2nd Floor
19 Conference Room, Phoenix, Arizona 85007.

20 IT IS FURTHER ORDERED that **Staff shall file, by January 6, 2012, any exhibits**
21 **associated with its pre-filed testimony and updated testimony.**

22 IT IS FURTHER ORDERED that **the rebuttal testimony and associated exhibits** to be
23 presented by **Truxton** shall be reduced to writing and filed on or before **January 27, 2012.**

24 ...

25 ...

26 _____
27 ¹ For example, Staff concludes that the Trust and Truxton and other entities have been comingling funds and that Truxton
28 is not maintaining its books as required by NARUC, but does not include the exhibits associated with Staff's conclusions.
Also Staff's update states it will address whether the Trust is selling water to other entities within Truxton's CC&N, but
there is no information in the update related to that topic.

1 IT IS FURTHER ORDERED that the **surrebuttal testimony and associated exhibits to be**
2 **presented at hearing by Staff and Valle Vista** shall be reduced to writing and filed on or before
3 **February 3, 2012.**

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

7 IT IS FURTHER ORDERED that **any objections to testimony or exhibits** that have been
8 filed as of February 10, 2012, **shall be made on or before February 15, 2012.**

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

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

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

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

19 IT IS FURTHER ORDERED that discovery shall be permitted by law and the rules and
20 regulations of the Commission, except that: for discovery requests made through **January 27, 2012,**
21 **any objection to discovery requests shall be made within three days² of receipt** and responses to
22 **discovery requests shall be made within seven days of receipt, the response time may be extended by**
23 **mutual agreement of the parties involved if the request requires an extensive compilation effort.**

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

27 _____
28 ² "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.

1 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
2 discovery, any party seeking discovery may telephonically contact the Commission's Hearing
3 Division to request a date for a procedural hearing to resolve the discovery dispute; that upon such a
4 request, a procedural hearing will be convened as soon as practicable; and that the party making such
5 a request shall contact all other parties to advise them of the hearing date and shall at the procedural
6 hearing provide a statement confirming that the other parties were contacted.³

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

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

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

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

17 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
18 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

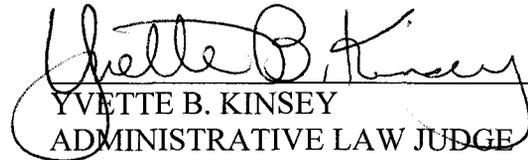
19 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
20 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (Arizona Supreme
21 Court Rule 42). Representation before the Commission includes the obligation to appear at all
22 hearings, procedural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

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26 ...

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28 ³ 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 the Presiding Officer may rescind, alter, amend, or waive
2 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

3 DATED this 23rd day of December, 2011.

4
5
6 
7 YVETTE B. KINSEY
8 ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered
10 this 23rd day of December, 2011 to:

11 B. Marc Neal
12 Mike Neal
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16 Steve Wene
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By: 
Debra Broyles
Secretary to Yvette B. Kinsey