

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

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AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

OCT 23 2009

DOCKETED BY [Signature]

IN THE MATTER OF:

CHARLES J. DAINS,

Complainant,

v.

RIGBY WATER COMPANY,

Respondent.

DOCKET NO. W-01808A-09-0137

PROCEDURAL ORDER

BY THE COMMISSION:

On March 19, 2009, Charles J. Dains ("Complainant") filed with the Arizona Corporation Commission ("Commission") a Formal Complaint ("Complaint") against Rigby Water Company ("Rigby" or "Respondent"). The Complainant alleges a dispute between the parties regarding a main extension agreement and requests that the Commission grant Complainant relief in the amount of \$237,000 less any previously refunded amounts.

On April 13, 2009, Rigby filed an Answer to Formal Complaint and a Motion to Dismiss the Complaint.

On May 5, 2009, Complainant filed a Response to Answer to Formal Complaint and Motion to Dismiss and a Motion for Summary Judgment.

On May 14, 2009, by Procedural Order, a procedural conference was set for June 2, 2009.

On May 18, 2009, Rigby filed Notice of Filing Mainline Extension Agreement.

On May 18, 2009, Rigby filed a Reply in Support of Motion to Dismiss.

On June 2, 2009, a procedural conference was held as scheduled. Counsel for Complainant, Respondent, and Staff appeared for the conference. At the conclusion of the procedural conference, the parties were directed to discuss settlement of the issues, and to jointly file a status report on the settlement discussions.

1 On June 9, 2009, Rigby filed a Response to Complainant's Motion for Summary Judgment.

2 On June 29, 2009, counsel for Complainant and Respondent filed a Joint Filing Regarding
3 Settlement Status, stating the parties had been unable to reach a settlement of the issues.

4 On September 15, 2009, a Procedural Order was issued stating that genuine issues of dispute
5 had been raised and therefore the matter should be set for hearing beginning on October 29, 2009.

6 On October 5, 2009, the Complainant filed a Motion to Continue Hearing. In Complainant's
7 Motion to Continue, Complainant states that one of the witnesses for the hearing is unavailable for
8 the October 29, 2009, hearing date and requests that the hearing be continued. The Motion to
9 Continue also requests a procedural conference to reschedule the hearing in order to avoid further
10 delays.

11 On the same date, Complainant filed a Motion to Compel, which states that Complainant
12 submitted a request for discovery and that Respondent objected to the discovery on various grounds,
13 including relevance and that the information sought was confidential in nature. The Motion to
14 Compel requests that Respondent be ordered to turn over the information sought in the discovery
15 request.

16 On October 7, 2009, Respondent filed a Response to Complainant's Motion to Continue
17 ("Response"). In the Response, Respondent states that the hearing date currently set should be used
18 for the parties to present oral argument on Respondent's Motion to Dismiss. The Response further
19 states that Respondent does not object to a continuance of the evidentiary portion of the hearing.

20 On the same date, Respondent filed a Response to the Motion to Compel. The Response
21 stated that Complainant's request for discovery amounts to a "fishing expedition" and Respondent
22 claims that the information requested is irrelevant to the issues raised in the Complaint. Respondent
23 requests that the Motion to Compel be denied.

24 Genuine issues of dispute have been raised in this matter and therefore Respondent's Motion
25 to Dismiss should not be granted at this time. Based on Complainant's Motion to Compel and
26 Respondent's Response to the Motion to Compel, oral argument should be held on the Motion to
27 Compel to resolve the discovery dispute. Further, good cause has been shown for continuing the
28 hearing in this matter.

1 IT IS THEREFORE ORDERED that the **hearing currently scheduled for October 29, 2009**
2 **is hereby vacated.**

3 IT IS FURTHER ORDERED that counsel for **Complainant, Respondent, and Staff shall**
4 **jointly file** mutually agreed upon dates when the parties are available for the hearing in this matter **on**
5 **or before November 30, 2009.**

6 IT IS FURTHER ORDERED that **oral argument on Complainant's Motion to Compel**
7 shall be heard on **November 5, 2009, at 1:30 p.m.** at the Commission's Offices, 1200 West
8 Washington Street, Hearing Room #1, Phoenix, Arizona.

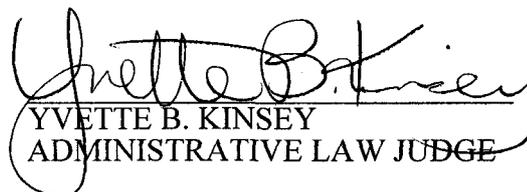
9 IT IS FURTHER ORDERED that the parties shall continue to work toward resolution of the
10 issues raised in this matter.

11 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
12 Communications) continues to apply to this proceeding.

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

19 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
20 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
21 hearing.

22 DATED this 23rd day of October 2009.

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26 YVETTE B. KINSEY
27 ADMINISTRATIVE LAW JUDGE
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Copies of the foregoing mailed/delivered
this 23rd day of October 2009 to:

Craig A. Marks
CRAIG A. MARKS, PLC
10645 North Tatum Blvd., Suite 200-676
Phoenix, Arizona 85028
Attorney for Charles J. Dains

Steven A. Hirsch
Stanley B. Lutz
BRYAN CAVE LLP
Two North Central Avenue, Suite 2200
Phoenix, Arizona 85004-4406
Attorneys for Rigby Water Company

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Steven Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
Phoenix, Arizona 85004

By: 
Debra Broyles
Secretary to Yvette B. Kinsey