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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

NOV 16 2010

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IN THE MATTER OF:  
CHARLES J. DAINS,  
COMPLAINANT,  
v.  
RIGBY WATER COMPANY,  
RESPONDENT.

DOCKET NO. W-01808A-09-0137

**PROCEDURAL ORDER**  
**ADMITTING LATE-FILED**  
**EXHIBITS AND SETTING**  
**BRIEFING SCHEDULE**

**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 Complaint states that Rigby is in violation of A.A.C. R14-2-406 (regarding main extension agreements) 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 the Complaint and a Motion to Dismiss.

On September 15, 2009, by Procedural Order, the hearing in this matter was set for October 29, 2009.

On November 9, 2009, by Procedural Order, the hearing in this matter was rescheduled to begin on December 2, 2009.

On November 24, 2009, counsel for Complainant filed a Motion to Continue Hearing, stating that Complainant, Mr. Charles J. Dains, had passed away. According to the motion, Mr. Dains' son, Mr. Charles D. Dains planned to take over for his father in this case, he needed time to prepare for the hearing. The motion requested an indefinite continuance of the hearing and stated that the other parties did not object to the request.

On November 25, 2009, a Procedural Order was issued vacating the hearing scheduled for

1 December 2, 2009, and directing counsel for Complainant to file a status report on or before February  
2 26, 2010.

3 On March 2, 2010, the Complainant filed a status report, stating that the Complainant was  
4 ready to proceed and requesting that a procedural conference be scheduled.

5 On March 22, 2010, a telephonic procedural conference was held as scheduled to discuss the  
6 status of the case. Complainant, Rigby, and Commission's Utilities Division ("Staff) appeared  
7 through counsel. Discussions were held regarding the Complainant's standing, in light of the death of  
8 Mr. Charles Dains; Staff's expanded role in the proceeding; and the length of time needed for a  
9 hearing in this matter.

10 On July 9, 2010, a Procedural Order was issued setting the hearing in this matter for  
11 September 20, 2010, and establishing dates for the filing of testimony and exhibits.

12 On July 20, 2010, Complainant filed the Direct Testimony of Charles D. Dains and David C.  
13 Iwanski.

14 On August 20, 2010, Rigby filed the Direct Testimony of Fred T. Wilkinson. On the same  
15 date, Staff filed the Direct Testimony of Bradley Morton.

16 On August 20, 2010, Rigby filed a Motion to Strike Testimony of David C. Iwanski.

17 On September 3, 2010, Complainant filed its Response to the Motion to Strike.

18 On September 10, 2010, Rigby filed a Reply in Support of Motion to Strike Testimony of  
19 David C. Iwanski.

20 On September 20, 2010, a full public hearing was held before a duly authorized  
21 Administrative Law Judge of the Commission. Complainant, Rigby, and Staff appeared through  
22 counsel and presented testimony and evidence. At the conclusion of the hearing, a discussion was  
23 held regarding a briefing schedule in this matter, and Complainant was directed to file, as a late filed  
24 exhibit, a copy of the Partnership Agreement for Terra Ranchette Estates.

25 On October 4, 2010, Complainant filed a Notice of Filing Partnership Agreement.

26 On October 19, 2010, Complainant filed a Motion to Admit Late-Filed Exhibits ("Motion").  
27 The Motion requests that copies of a Certificate of Approval to Construct issued by Maricopa County  
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1 Health Department dated August 28, 1985,<sup>1</sup> and a memo dated May 2, 1996, from the Maricopa  
2 County Environmental Services Department<sup>2</sup> be admitted into evidence as they are relevant to the  
3 issues in the case.

4 On October 28, 2010, Rigby filed a response to the Motion stating that it has no objection to  
5 Complainant's request to admit the two late-filed exhibits and requesting that two additional  
6 documents disclosed by the Complainant also be admitted as late-filed exhibits: (1) a water report  
7 dated February 24, 1996,<sup>3</sup> which Rigby states shows that construction of the Terra Ranchette Estates  
8 Subdivision required the installation of an additional 50,000 gallons of storage capacity; and (2) a  
9 letter from Rigby to W. Steiner of Arizona Department of Water Resources, dated March 19, 1985,<sup>4</sup>  
10 which Rigby states shows that service for Terra Ranchette Estates Subdivision was conditioned on  
11 Complainant's obtaining financing for construction of the necessary improvements, conveying all  
12 land titles and easements to Rigby, and obtaining all necessary governmental approvals, including  
13 approvals from the Commission.

14 On November 4, 2010, Complainant filed a reply stating that Complainant does not object to  
15 the admission of the additional two late-filed exhibits requested by Rigby.

16 The proposed late-filed exhibits should be admitted into evidence and the briefing schedule  
17 for this matter should be set.

18 **IT IS THEREFORE ORDERED that late-filed exhibits Dains Exhibit 12, Dains Exhibit 13,**  
19 **Rigby Exhibit 15, and Rigby Exhibit 16 are hereby admitted into evidence.**

20 **IT IS FURTHER ORDERED that the parties shall on or before December 15, 2010, file**  
21 **closing briefs, including, but not limited to, a discussion regarding the Commission's jurisdiction**  
22 **over outstanding main extension agreements of a public service corporation involved in a**  
23 **condemnation proceeding as well as a discussion of A.A.C. R14-2-406 (F) and (M) as it relates to the**  
24 **issues raised in the Complaint.**

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27 <sup>1</sup> Proposed Dains Exhibit 12.

<sup>2</sup> Proposed Dains Exhibit 13.

28 <sup>3</sup> Proposed Rigby Exhibit 15.

<sup>4</sup> Proposed Rigby Exhibit 16.

1 IT IS FURTHER ORDERED that **Staff shall file on or before December 15, 2010, a closing**  
2 **brief**, limited to a discussion regarding the Commission's jurisdiction over outstanding main  
3 extension agreements of a public service corporation involved in a condemnation proceeding as well  
4 as a discussion of A.A.C. R14-2-406 (F) and (M) as it relates to the issues raised in the Complaint.

5 IT IS FURTHER ORDERED that **the parties and Staff shall file reply briefs on or before**  
6 **January 14, 2011.**

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

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

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

18 DATED this 16<sup>th</sup> day of November, 2010.

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21   
22 YVETTE B. KINSEY  
ADMINISTRATIVE LAW JUDGE

23 Copies of the foregoing mailed/delivered  
24 this 16<sup>th</sup> day of November, 2010 to:

25 Craig A. Marks  
26 CRAIG A. MARKS, PLC  
10645 North Tatum Blvd., Suite 200-676  
27 Phoenix, AZ 85028  
Attorney for the Estate of Charles J. Dains

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

1 Janice Alward, Chief Counsel  
2 Legal Division  
3 ARIZONA CORPORATION COMMISSION  
4 1200 West Washington Street  
5 Phoenix, AZ 85007

6 Steven M. Olea, Director  
7 Utilities Division  
8 ARIZONA CORPORATION COMMISSION  
9 1200 West Washington Street  
10 Phoenix, AZ 85007

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By:   
Debra Broyles  
Secretary to Yvette B. Kinsey