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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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2011 NOV 10 P 4: 04

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED

NOV 10 2011

DOCKETED BY *[Signature]*

JOHN E. DOUGHERTY,
COMPLAINANT,

DOCKET NO. W-04254A-11-0323

V.

MONTEZUMA RIMROCK WATER
COMPANY, LLC,

RESPONDENT.

PROCEDURAL ORDER

BY THE COMMISSION:

On August 23, 2011, John E. Dougherty and William Nicholas Kopko (jointly "Complainants") jointly filed with the Arizona Corporation Commission ("Commission") a Formal Complaint ("Complaint") against Montezuma Rimrock Water Company, LLC ("Montezuma Rimrock"), in which the Complainants made 14 separate Allegations against Montezuma Rimrock; requested that the Commission schedule an Order to Show Cause ("OSC") Hearing to consider revoking Montezuma Rimrock's Certificate of Convenience and Necessity ("CC&N"); and requested that the OSC hearing be held before the Commission considered Montezuma Rimrock's emergency rate case application, filed in Docket No. W-04254A-11-0296 ("Emergency Rate Case Docket").

Since that time, in this docket, Mr. Kopko has been permitted to withdraw as a Complainant; numerous filings have been made; two procedural conferences have been held; Mr. Dougherty has twice been permitted to modify the Complaint; and Montezuma Rimrock has filed its Answer to the Complaint as modified. In addition, the Emergency Rate Case Docket has been closed.

At the most recent procedural conference in this docket, on October 25, 2011, Mr. Dougherty's Subpoena Duces Tecum issued to Patricia Olsen, the owner of Montezuma Rimrock, was quashed; Mr. Dougherty and Montezuma Rimrock appeared to reach an agreement to allow Mr. Dougherty to review the documents at issue at the office of Montezuma Rimrock's counsel,

1 beginning on October 31, 2011; the Commission's Utilities Division ("Staff") provided its assessment
2 of the Allegations in the Complaint and stated that it does not intend to initiate an OSC; concerns and
3 precautions to be taken regarding Ms. Olsen's security at future proceedings were discussed;¹ and it
4 was established that a status conference would be scheduled in approximately 45 days to determine
5 the status of discovery and whether a hearing could be scheduled at that time. Montezuma Rimrock
6 also agreed to docket a copy of the Felony Release Conditions and Release Order that led to the
7 discussion regarding security.² The parties were also reminded that they are expected to cooperate
8 fully in discovery.

9 On October 28, 2011, Mr. Dougherty filed a Motion to Compel Discovery; Motion to Set
10 Deadline for Production of Documents or Face Contempt ("Dougherty Motion to Compel"), asserting
11 that Mr. Dougherty had filed two Data Requests with Montezuma Rimrock on the afternoon of
12 October 25, 2011—the first requesting the documents sought in the subpoena that was quashed at the
13 procedural conference of that date, but with an additional request for e-mails between Ms. Olsen and
14 government agencies, contractors, and Montezuma Rimrock employees, and the second seeking
15 billing records for 2009, 2010, and 2011. Mr. Dougherty asserted that Montezuma Rimrock
16 responded by e-mail, stating that the two Data Requests violated the Arizona Rules of Civil
17 Procedure because Complainant was asking for more than 10 categories of records, but confirming
18 the October 31, 2011, appointment for Mr. Dougherty to review records. Mr. Dougherty asserted that
19 he followed up by e-mail, asking whether the records requested in the two new Data Requests would
20 be produced for his review on October 31, 2011; that a telephone conversation occurred between
21 himself and Montezuma Rimrock's counsel on October 26, 2011, with no agreement reached; and
22 that he received an e-mail from Montezuma Rimrock on October 27, 2011, stating that the October

23 ¹ The security issue was addressed after Ivo Buddeke, a resident of Montezuma Rimrock's service area, arrived at the
24 procedural conference as a spectator, and Ms. Olsen called the police to respond. Mr. Buddeke faces felony charges
25 originating in Verde Valley Justice Court case CR201103826, and a Felony Release Conditions and Release Order
26 entered in that case on July 12, 2011, orders Mr. Buddeke not to contact in any manner several alleged victims, including
27 Ms. Olsen, and not to go near the alleged victims' residences or places of employment. After discussions with Capitol
28 Police, Mr. Buddeke left the building. Because Mr. Dougherty has indicated that he intends to call Mr. Buddeke as a
witness in this matter, there was a discussion of the accommodations necessary to allow for Mr. Buddeke's live
testimony.

² It appears that Montezuma Rimrock has not yet made such a filing in this docket, although the document has been
filed in Docket Nos. W-04254A-08-0361 et al. ("40-252 Docket"), the other currently pending docket involving the same
parties.

1 31, 2011, appointment had been canceled and that Montezuma Rimrock would be filing a Motion for
2 Protective Order. The Dougherty Motion to Compel requests that Montezuma Rimrock be ordered to
3 promptly and fully comply with the First and Second Data Requests and all subsequent Data Requests
4 submitted in this docket; that a firm deadline for production of such discovery be established and
5 Montezuma Rimrock notified that it will be held in contempt of the Commission if it refuses to
6 comply with the deadline; and that Montezuma Rimrock be required to pay Mr. Dougherty
7 reasonable fees for expenses related to the preparation and submission of the Dougherty Motion to
8 Compel. The Dougherty Motion to Compel was accompanied by a Certificate of Complainant in
9 Support of Discovery Motion. Mr. Dougherty filed a correction to the Dougherty Motion to Compel
10 on October 31, 2011.

11 On November 2, 2011, Montezuma Rimrock filed a Motion for Protective Order (“Company
12 Motion for Protective Order”), requesting that the Commission issue a protective order to prevent the
13 annoyance, oppression, and undue burden and expense of the numerous data requests propounded by
14 Mr. Dougherty. In the Company Motion for Protective Order, Montezuma Rimrock acknowledges
15 that some of Ms. Olsen’s personal expenses have been paid from Montezuma Rimrock’s business
16 account, but argues that such payments should not open the door to discovery of all of Ms. Olsen’s
17 personal financial records, particularly Ms. Olsen’s personal credit card bills. Montezuma Rimrock
18 requests that reasonable limitations be placed on the scope and number of discovery requests
19 propounded by Mr. Dougherty, that discovery of Ms. Olsen’s personal financial records be precluded,
20 that further discovery related to the closed Emergency Rate Case Docket be precluded, that Mr.
21 Dougherty be precluded from submitting duplicate sets of discovery requests in the two remaining
22 dockets, and that the Commission identify the data requests to which Montezuma Rimrock must
23 respond and set a deadline for such responses. The Company Motion for Protective Order was
24 accompanied by a Certificate of Counsel in Support of Motion for Protective Order.

25 On November 7, 2011, Mr. Dougherty filed a Motion to Modify Formal Complaint with
26 Additional Allegation XVII (“Dougherty Motion to Modify”), requesting that the Complaint be
27 modified to add Allegation XVII, which asserts that Montezuma Rimrock and Staff have engaged in
28 unauthorized communications related to Montezuma Rimrock’s plan to build an arsenic treatment

1 facility, in violation of R14-3-113, and seeks all remedies available under R14-3-113(D) and state
2 statutes.³

3 The Dougherty Motion to Modify results from Mr. Dougherty's mistaken interpretation of the
4 Commission's Ex Parte Rule, A.A.C. R14-3-113, which has led Mr. Dougherty to believe that Staff is
5 prohibited from communicating with another party to this case. The Ex Parte Rule prohibits any
6 person from communicating, off-the-record, with a Commissioner of Commission employee involved
7 in the decision-making process for a contested case, regarding the substantive merits of the case. The
8 Utilities Division's Staff has been required to participate in this matter as a party thus far and is not
9 involved in the decision-making process for this matter. Mr. Dougherty has not alleged that there
10 have been any off-the-record communications regarding the substantive merits of this case between a
11 party and a Commissioner, the presiding Administrative Law Judge, or any Commission employee
12 involved in the decision-making process for this case. Because Mr. Dougherty's allegation regarding
13 violation of the Ex Part Rule is without merit, the Dougherty Motion to Modify will be denied.⁴

14 In light of the revival of the discovery dispute between Mr. Dougherty and Montezuma
15 Rimrock, exhibited by the pending Dougherty Motion to Compel and Company Motion for Protective
16 Order, it is now necessary and appropriate to schedule a procedural conference to address the dispute.
17 To ensure that the procedural conference is as productive as possible, it is also reasonable and
18 appropriate to require Mr. Dougherty, Montezuma Rimrock, and Staff to arrive one hour before the
19 start time for the procedural conference and engage in discussions, in an earnest attempt to settle the
20 dispute themselves. While Staff is not directly involved in the discovery dispute, Staff's attendance
21 at and participation in the discussions will be required in the hope that Staff may be able to provide
22 suggestions to aid Mr. Dougherty and Montezuma Rimrock in reaching an amicable and reasonable
23 resolution of the dispute. If Mr. Dougherty and Montezuma Rimrock are unable to reach an amicable
24 and reasonable resolution of the dispute, each will be required during the procedural conference to
25 explain its position on each and every data request. That is, Mr. Dougherty will be required to state
26

27 ³ Mr. Dougherty erroneously cited R14-3-133 in Allegation XVII, but cited to the correct section for the Commission's
Ex Parte Rule elsewhere in the document.

28 ⁴ Several motions made in the 40-252 Docket related to alleged violations of the Ex Parte Rule by Staff and
Montezuma Rimrock were denied by a Procedural Order issued on November 9, 2011.

1 why each category of information requested in his data requests is reasonably calculated to lead to the
2 discovery of admissible evidence, and Montezuma Rimrock will be required to explain its specific
3 objection/s to each individual category of information requested in Mr. Dougherty's data requests.

4 IT IS THEREFORE ORDERED that the Dougherty Motion to Modify is denied.

5 IT IS FURTHER ORDERED that a **procedural conference** shall be held in this matter on
6 **November 23, 2011, at 10:00 a.m.**, in Hearing Room No. 1 at the Commission's offices, 1200 West
7 Washington St., Phoenix, AZ 85007.

8 IT IS FURTHER ORDERED that Mr. Dougherty, Montezuma Rimrock, and Staff **shall**
9 **arrive at Hearing Room No. 1 by no later than 9:00 a.m. on November 23, 2011, and shall**
10 **engage in discussions** in an earnest attempt to settle the current discovery dispute themselves.

11 IT IS FURTHER ORDERED that if Mr. Dougherty and Montezuma Rimrock are unable to
12 reach an amicable and reasonable resolution of the discovery dispute themselves, each will be
13 required during the procedural conference to explain its position on each and every request, with Mr.
14 Dougherty required to state why each category of information requested in his data requests is
15 reasonably calculated to lead to the discovery of admissible evidence, and Montezuma Rimrock
16 required to explain its specific objection/s to each individual category of information requested in Mr.
17 Dougherty's data requests.

18 IT IS FURTHER ORDERED that **each party shall be prepared**, at the procedural
19 conference, to discuss and make a proposal as to future scheduling for this matter.

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

23 DATED this 10th day of November, 2011.

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26 
27 SARAH N. HARPRING
28 ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed/delivered and e-mailed
this 10th day of November, 2011, to:

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