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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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2 COMMISSIONERS  
 3 GARY PIERCE - Chairman  
 BOB STUMP  
 4 SANDRA D. KENNEDY  
 PAUL NEWMAN  
 5 BRENDA BURNS

6 JOHN E. DOUGHERTY,  
 7  
 8 COMPLAINANT,  
 9  
 10 V.  
 MONTEZUMA RIMROCK WATER  
 COMPANY, LLC,  
 11  
 12 RESPONDENT.

DOCKET NO. W-04254A-11-0323

**PROCEDURAL ORDER**

**BY THE COMMISSION:**

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

21 Since that time, in this docket, Mr. Kopko has been permitted to withdraw as a Complainant;  
 22 numerous filings have been made; several procedural conferences have been held; Mr. Dougherty has  
 23 twice been permitted to modify the Complaint;<sup>1</sup> and Montezuma Rimrock has filed its Answer to the  
 24 Complaint as modified. In addition, the Emergency Rate Case Docket has been closed.

25 Before the most recent procedural conference, held on November 23, 2011, Mr. Dougherty  
 26 and Montezuma Rimrock were required to meet and attempt to resolve their ongoing discovery

27 \_\_\_\_\_  
 28 <sup>1</sup> A Motion to Modify Formal Complaint with Additional Allegation XVII was denied by a Procedural Order issued on November 10, 2011.

1 dispute. Counsel for the Commission's Utilities Division ("Staff") was also required to attend and  
2 participate in the discussions so as to provide suggestions to aid Mr. Dougherty and Montezuma  
3 Rimrock in reaching an amicable and reasonable resolution of the dispute.

4 At the procedural conference on November 23, 2011, at which Mr. Dougherty appeared *pro se*  
5 and Montezuma Rimrock and Staff appeared through counsel, Mr. Dougherty and Montezuma  
6 Rimrock reported that they had resolved most of the discovery issues, although Mr. Dougherty  
7 expressed concern because Montezuma Rimrock had identified a few requested items as missing.  
8 The parties were asked for the resolution as to each item requested in Mr. Dougherty's first and  
9 second sets of data requests, and alternate methods for Mr. Dougherty to obtain some of the  
10 information sought were discussed briefly. Ultimately, it was determined that Mr. Dougherty would  
11 be permitted to review records at the office of Montezuma Rimrock's counsel on November 29,  
12 2011; that Mr. Dougherty would prepare requests for admission as to some desired information; that  
13 Mr. Dougherty would seek bank records from Chase Bank using a release to be provided by  
14 Montezuma Rimrock; and that Mr. Dougherty would seek records from Yavapai County  
15 Development Services through a public records request. It was also determined that, within 10 days,  
16 Montezuma Rimrock would make a filing providing the dates Ms. Olsen would be unavailable for a  
17 proceeding due to the trial of Ivo Buddeke,<sup>2</sup> and Staff would make a filing as to the availability of a  
18 bridge number for a telephonic procedural conference. It was resolved that another procedural  
19 conference would be held in approximately two months to obtain updates and discuss the scheduling  
20 and process for this matter going forward.

21 On November 30, 2011, Montezuma Rimrock filed a Notice of Unavailability, stating that  
22 Ms. Olsen will be unavailable to appear in this action for an as yet undetermined time frame  
23 commencing on February 8, 2012; running through February 10, 2012; and continuing on February  
24 15, 2012, because she expects to be called as a witness in the trial of Ivo Buddeke.

25 On December 5, 2011, Staff filed Staff's Notice of Filing, stating that Staff had suggested that  
26 a telephonic status conference format might be helpful insofar as it permits greater scheduling

27 <sup>2</sup> Montezuma Rimrock had indicated that Ms. Olsen would be unavailable in January and February 2012. Mr.  
28 Buddeke faces felony charges originating in Verde Valley Justice Court case CR201103826, and currently scheduled for  
trial in Yavapai County Superior Court, case V1300CR201180337, to run on February 8, 9, 10, and 15, 2012.

1 flexibility; stating that Staff has determined that the Commission has a designated bridge line  
2 number; and stating that Staff is prepared to arrange the availability of a conference bridge line in  
3 order to facilitate holding the procedural conference telephonically.

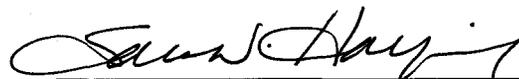
4 Montezuma Rimrock's filing does not state that Ms. Olsen is unavailable in January, as  
5 indicated during the procedural conference on November 23, 2011. In addition, the Commission's  
6 Room 100 has recently been reconfigured and is now a more appropriate hearing room for a contested  
7 case such as this one. For these reasons, and because attending in person appears to enable the parties  
8 to engage in discussions more effectively when necessary, it is reasonable and appropriate to schedule  
9 a procedural conference to be held at the Commission's offices in Phoenix rather than scheduling a  
10 procedural conference to be held telephonically.

11 IT IS THEREFORE ORDERED that a **procedural conference** shall be held in this matter on  
12 **January 18, 2012, at 10:00 a.m.**, in Room 100 at the Commission's offices, 1200 West Washington  
13 St., Phoenix, AZ 85007.

14 IT IS FURTHER ORDERED that **each party shall be prepared**, at the procedural  
15 conference, to provide an update as to the progress of discovery in this matter and to discuss and  
16 make a proposal as to future scheduling for this matter.

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

20 DATED this 7<sup>th</sup> day of December, 2011.

21  
22  
23   
24 SARAH N. HARPRING  
25 ADMINISTRATIVE LAW JUDGE  
26  
27  
28

1 Copies of the foregoing mailed/delivered  
2 this 7th day of December, 2011, to:

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15 Water Company LLC

16 Patricia Olsen  
17 MONTEZUMA RIMROCK  
18 WATER COMPANY, LLC  
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By:

  
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Secretary to Sarah N. Harpring