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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

JOHN E. DOUGHERTY,
COMPLAINANT,

V.

MONTEZUMA RIMROCK WATER
COMPANY, LLC,

RESPONDENT.

DOCKET NO. W-04254A-11-0323

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; several procedural conferences have been held; Mr. Dougherty has twice been permitted to modify the Complaint;¹ and Montezuma Rimrock has filed its Answer to the Complaint as modified. In addition, the Emergency Rate Case Docket has been closed.

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

¹ 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,² 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, regarding the availability of a
26 conference bridge line.

27 ² 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 On December 7, 2011, a Procedural Order was issued scheduling a procedural conference to
2 take place on January 18, 2012, at the Commission's offices in Phoenix.

3 On January 6, 2012, Douglas Fitzpatrick, counsel for Montezuma Rimrock, filed a Motion to
4 Withdraw, stating that the "motion is necessary because of the excessive and burdensome barrage of
5 motions and discovery requests submitted by Intervener John Dougherty [which] have resulted in
6 significant time demands on . . . counsel and into bills for legal services which are onerous to the
7 water company."³ Mr. Fitzpatrick included with his Motion to Withdraw Montezuma Rimrock's
8 contact information, Certificate of Counsel in Support of Motion to Withdraw, Consent to Withdraw
9 signed by Ms. Olsen on behalf of Montezuma Rimrock, and a proposed Order. Mr. Fitzpatrick's
10 Motion to Withdraw does not state that Montezuma Rimrock will retain different counsel to represent
11 it in this matter. Mr. Fitzpatrick's Motion to Withdraw also does not address how Montezuma
12 Rimrock will be able to engage in communications with Mr. Dougherty, who is representing himself
13 herein, and vice versa, if Montezuma Rimrock is not represented by counsel.

14 While Mr. Fitzpatrick has obtained his client's consent to withdraw as the client's
15 representative in this matter, and has asserted a cause for withdrawal, Mr. Fitzpatrick has not
16 established in the Motion to Withdraw that his withdrawal as counsel would not interfere with the
17 administration of justice and would not prejudice any party to this matter. The situation at hand is
18 rather unique in that the Verde Valley Justice Court has issued an Injunction Against Harassment,
19 dated July 18, 2011, and effective for one year, under which Mr. Dougherty is prohibited from having
20 any contact with Ms. Olsen "except through attorneys, legal process, and court hearings."⁴ While the
21 Injunction Against Harassment expressly does not prohibit Mr. Dougherty from attending public
22 meetings, it is not clear whether it allows Mr. Dougherty to engage in any of the communications
23 (outside of a formal proceeding at the Commission) that would be typical between parties in a
24 contested case before the Commission and necessary for this matter to move forward with Mr.

25
26 ³ Mr. Fitzpatrick did not provide any factual information to support these assertions, and the Commission makes no
27 finding as to the accuracy of the assertions or specifically as to whether Montezuma Rimrock has incurred excessive legal
28 fees as a result of Mr. Dougherty's conduct in this matter. It is also noted that Mr. Dougherty is the Complainant in this
matter, not an Intervenor.

⁴ Official notice is taken of this Injunction Against Harassment, a redacted copy of which was docketed in Docket Nos.
W-04254A-08-0361 et al. on July 25, 2011.

1 Dougherty continuing to appear *pro se* and Montezuma Rimrock not being represented by counsel.
2 Thus, Mr. Fitzpatrick's Motion to Withdraw cannot and will not be granted until such time as (1)
3 Montezuma Rimrock provides notice that it has retained counsel to replace Mr. Fitzpatrick; **or** (2)
4 Ms. Olsen provides documentation establishing that she is qualified to serve as Montezuma
5 Rimrock's representative under Arizona Supreme Court Rule 31(d)(28) **and** an Order issued by the
6 Verde Valley Justice Court establishing either (a) that Mr. Dougherty may, without violating the
7 Injunction Against Harassment, communicate directly with Ms. Olsen, for purposes of pursuing his
8 interests as a party to this matter, outside of a formal proceeding at the Commission, and using any of
9 the various methods of communication typically employed between parties to contested cases before
10 the Commission; or (b) that the Injunction Against Harassment has been dismissed by the Court.

11 The procedural conference scheduled for January 18, 2012, will be continued to allow time
12 for Montezuma Rimrock to complete the actions necessary to enable it to make one of the filings
13 referenced above.

14 IT IS THEREFORE ORDERED that **Douglas Fitzpatrick's Motion to Withdraw is denied,**
15 **without prejudice,** for the reasons set forth above.

16 IT IS FURTHER ORDERED that the **procedural conference scheduled for January 18,**
17 **2012,** at the Commission's offices in Phoenix, Arizona, is hereby **continued until further Order** of
18 the Commission.

19 IT IS FURTHER ORDERED that **Montezuma Rimrock shall, by March 12, 2012, file**
20 documentation complying with one of the following:

- 21 1. A Notice of Replacement of Counsel, identifying and providing all contact
22 information for new counsel for Montezuma Rimrock;
- 23 2. Documentation establishing that Ms. Olsen is qualified to serve as Montezuma
24 Rimrock's representative under Arizona Supreme Court Rule 31(d)(28) **and** an Order
25 issued by the Verde Valley Justice Court establishing either (a) that Mr. Dougherty
26 may, without violating the Injunction Against Harassment, communicate directly with
27 Ms. Olsen, for purposes of pursuing his interests as a party to this matter, and using
28 any of the various methods of communication typically employed between parties to

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contested cases before the Commission; or (b) that the Injunction Against Harassment has been dismissed by the Court; or

3. Documentation establishing that Ms. Olsen is qualified to serve as Montezuma Rimrock's representative under Arizona Supreme Court Rule 31(d)(28) and documentation setting forth a date certain by which documentation complying with either subparagraph 1 or subparagraph 2 above will be filed with the Commission and explaining either (a) the steps that Montezuma Rimrock has taken with the Verde Valley Justice Court to obtain modification, clarification, or dismissal of the Injunction Against Harassment, or (b) the steps that Montezuma Rimrock has taken to retain new counsel for Montezuma Rimrock.

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

DATED this 11th day of January, 2012.


SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed and e-mailed this 11th day of January, 2012, to:

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28