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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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Arizona Corporation Commission  
DOCKETED

MAR 13 2012

DOCKETED BY

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;<sup>1</sup> 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

<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 would 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 expected 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 <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 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."<sup>3</sup> 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 did not state that Montezuma Rimrock would retain different counsel to  
11 represent it in this matter. Mr. Fitzpatrick's Motion to Withdraw also did not address how  
12 Montezuma Rimrock would be able to engage in communications with Mr. Dougherty, who is  
13 representing himself herein, and vice versa, if Montezuma Rimrock were not represented by counsel.

14 On January 11, 2012, a Procedural Order was issued denying Mr. Fitzpatrick's Motion to  
15 Withdraw, without prejudice, because the Motion to Withdraw had not established how Mr.  
16 Fitzpatrick's withdrawal as counsel would not interfere with the administration of justice and would  
17 not prejudice any party to this matter in light of a current Injunction Against Harassment prohibiting  
18 Mr. Dougherty from having contact with Ms. Olsen "except through attorneys, legal process, and  
19 court hearings."<sup>4</sup> The Procedural Order directed Montezuma Rimrock, by March 12, 2012, to file  
20 one of three possible types of documentation relating to Montezuma Rimrock's ongoing  
21 representation in this matter. The Procedural Order also continued the procedural conference  
22 scheduled for January 18, 2012, until further Order of the Commission.

23 On February 7, 2012, Mr. Dougherty filed a Motion to Compel Discovery, requesting that the  
24 Commission order Montezuma Rimrock immediately to produce four categories of records requested  
25 in Mr. Dougherty's Third Data Request. No response to Mr. Dougherty's Motion to Compel

26 <sup>3</sup> 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.

<sup>4</sup> The Procedural Order of January 11, 2012, provides additional information.

1 Discovery has been filed.

2       On February 27, 2012, a Procedural Order was issued holding in abeyance Mr. Dougherty's  
3 Motion to Compel Discovery until further Order of the Commission. The Procedural Order stated  
4 that in light of the then unresolved issue related to Mr. Fitzpatrick's Motion to Withdraw, it was not  
5 appropriate at that time to rule on Mr. Dougherty's Motion to Compel Discovery. The Procedural  
6 Order also reminded the parties that each party has a duty to deal with the other in good faith, stated  
7 that the continuing disputes between the parties suggest a failure to honor that duty, strongly urged  
8 the parties to make additional efforts to resolve their current discovery dispute without Commission  
9 involvement, and reminded the parties that they have previously shown that they are capable of  
10 resolving their own discovery disputes with a little bit of effort.

11       On March 12, 2012, Montezuma Rimrock filed a Notice of Replacement Counsel, stating that  
12 Todd C. Wiley of Fennemore Craig, P.C. would now be serving as counsel for Montezuma Rimrock  
13 in this matter.

14       In light of Montezuma Rimrock's having obtained new counsel to replace Mr. Fitzpatrick, it  
15 is now reasonable and appropriate to grant Mr. Fitzpatrick's Motion to Withdraw. In addition, it is  
16 reasonable and appropriate at this time to reschedule the procedural conference that was previously  
17 continued, at which Mr. Dougherty's Motion to Compel Discovery will be addressed if the parties are  
18 not able to resolve their discovery dispute beforehand. The parties are again urged to make all  
19 reasonable efforts to resolve their discovery disputes themselves. To that end, unless the parties  
20 make a joint filing before the April 13, 2012, procedural conference indicating that they have  
21 resolved their discovery dispute and that Mr. Dougherty's Motion to Compel Discovery is  
22 withdrawn, the parties will again be required to meet and attempt to resolve their discovery dispute in  
23 the hearing room for the hour before the procedural conference is scheduled, with Counsel for Staff  
24 in attendance to aid Mr. Dougherty and Montezuma Rimrock in reaching an amicable and reasonable  
25 resolution of the dispute.

26       IT IS THEREFORE ORDERED that **Douglas Fitzpatrick's Motion to Withdraw is**  
27 **granted.**

28       IT IS FURTHER ORDERED that a **joint procedural conference** involving the above-

1 captioned docket and Docket Nos. W-04254A-08-0361 et al. shall proceed on **April 13, 2012, at**  
2 **10:00 a.m.**, or as soon thereafter as is practicable, in Hearing Room No. 2 at the Commission's  
3 offices at 1200 West Washington Street, Phoenix, Arizona.

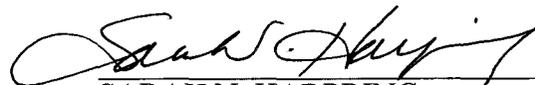
4 IT IS FURTHER ORDERED that **unless** the parties make a joint filing before April 13, 2012,  
5 indicating that they have resolved their discovery dispute and that Mr. Dougherty's Motion to  
6 Compel Discovery is withdrawn, **Mr. Dougherty, Montezuma Rimrock, and Staff shall arrive at**  
7 **the hearing room by no later than 9:00 a.m. on April 13, 2012, and shall engage in discussions**  
8 in an earnest attempt to settle the current discovery dispute themselves before the procedural  
9 conference is convened at 10:00 am.

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

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

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 13<sup>th</sup> day of March, 2012.

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

1 Copies of the foregoing mailed  
2 this 13<sup>th</sup> day of March, 2012, to:

3 Todd C. Wiley  
4 FENNEMORE CRAIG, P.C.  
5 3003 North Central Avenue, Suite 2600  
6 Phoenix, AZ 85012  
7 Attorney for Montezuma Rimrock Water Company, LLC

8 Douglas C. Fitzpatrick  
9 LAW OFFICE OF DOUGLAS C. FITZPATRICK  
10 49 Bell Rock Plaza  
11 Sedona, AZ 86351  
12 Former Attorney for Montezuma Rimrock Water Company, LLC

13 Patricia Olsen  
14 MONTEZUMA RIMROCK WATER COMPANY, LLC  
15 P.O. Box 10  
16 Rimrock, AZ 86335

17 John Dougherty  
18 P.O. Box 501  
19 Rimrock, AZ 86335

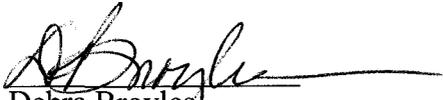
20 William Nicholas Kopko  
21 5185 Kramer Drive  
22 Rimrock, AZ 86335

23 Janice Alward, Chief Counsel  
24 Legal Division  
25 ARIZONA CORPORATION COMMISSION  
26 1200 West Washington Street  
27 Phoenix, AZ 85007

28 Steven M. Olea, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

ARIZONA REPORTING SERVICE, INC.  
2200 N. Central Ave., Suite 502  
Phoenix, AZ 85004-1481

By:

  
Debra Broyles  
Secretary to Sarah N. Harpring