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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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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 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 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 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."⁴ 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 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 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 On March 13, 2012, a Procedural Order was issued granting Mr. Fitzpatrick's Motion to
15 Withdraw; scheduling a joint procedural conference⁵ to be held on April 13, 2012; and requiring that
16 unless the parties made a joint filing before April 13, 2012, indicating that they had resolved their
17 discovery dispute and that Mr. Dougherty's Motion to Compel Discovery was withdrawn, Mr.
18 Dougherty, Montezuma Rimrock, and Staff were required to arrive at the hearing room no later than
19 one hour before the April 13, 2012, procedural conference and to engage in discussions in an attempt
20 to settle the discovery dispute themselves before the procedural conference. The Procedural Order
21 further imposed requirements as to the parties' preparation for the procedural conference.

22 On April 6, 2012, Mr. Dougherty filed a Motion to Reschedule April 13 Hearing ("Motion"),
23 stating that he would be flying to Virginia on April 9 and staying there for approximately 10 days due
24 to an unforeseen serious medical situation involving a family member there. Mr. Dougherty further
25 stated that he then would be traveling for business until approximately April 25. Mr. Dougherty
26 stated that he would be available to participate by telephone, if necessary, but that he believed

27 _____
28 ⁵ The other matter is an A.R.S. § 40-252 proceeding in a consolidated ratemaking and financing docket, Docket No. W-04254A-08-0361 et al.

1 personal attendance to be essential. In addition, Mr. Dougherty related that he had sent Mr. Wiley an
2 e-mail on March 22 in an attempt to resolve some discovery issues and request some additional
3 documents, but had not yet received a response.

4 Although Montezuma Rimrock has not yet responded to Mr. Dougherty's Motion, in light of
5 the purpose for the procedural conference and the requirement for the parties to meet and discuss
6 their ongoing discovery dispute beforehand if it has not already been settled by that time, it is
7 reasonable and appropriate to grant the Motion and reschedule the procedural conference for a time
8 when Mr. Dougherty should be available to attend in person.

9 IT IS THEREFORE ORDERED that the **joint procedural conference** scheduled for **April**
10 **13, 2012**, is hereby **vacated**.

11 IT IS FURTHER ORDERED that a **joint procedural conference** involving the above-
12 captioned docket and Docket Nos. W-04254A-08-0361 et al. shall proceed on **April 30, 2012, at**
13 **1:00 p.m.**, or as soon thereafter as is practicable, in Hearing Room No. 2 at the Commission's offices
14 at 1200 West Washington Street, Phoenix, Arizona.

15 IT IS FURTHER ORDERED that **unless** the parties make a joint filing before April 30, 2012,
16 indicating that they have resolved their discovery dispute and that Mr. Dougherty's Motion to
17 Compel Discovery is withdrawn, **Mr. Dougherty, Montezuma Rimrock, and Staff shall arrive at**
18 **the hearing room by no later than 12:00 p.m. on April 30, 2012, and shall engage in discussions**
19 in an earnest attempt to settle the current discovery dispute themselves before the procedural
20 conference is convened at 1:00 p.m.

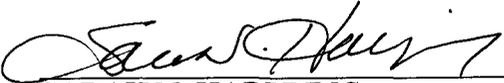
21 IT IS FURTHER ORDERED that if Mr. Dougherty and Montezuma Rimrock are unable to
22 reach an amicable and reasonable resolution of the discovery dispute themselves, each will be
23 required during the procedural conference to explain his/its position on each and every request in
24 dispute, with Mr.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

28 IT IS FURTHER ORDERED that **each party shall be prepared**, at the procedural

1 conference, to discuss and make a proposal as to future scheduling for this matter.

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

5 DATED this 9th day of April, 2012.

7
8 
9 SARAH N. HARPRING
10 ADMINISTRATIVE LAW JUDGE

11
12 Copies of the foregoing mailed/delivered/e-mailed
13 this 9th day of April, 2012, to:

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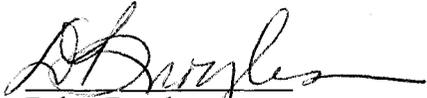
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By: 
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Secretary to Sarah N. Harpring