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John E. Dougherty
PO Box 501
Rimrock, AZ 86335
Complainant & Intervenor

BEFORE THE ARIZONA CORPORATION COMMISSION Arizona Corporation Commission

DOCKETED

APR - 5 2013

COMMISSIONERS

BOB STUMP-Chairman
GARY PIERCE
BOB BURNS
SUSAN BITTER SMITH
BRENDA BURNS

DOCKETED BY	
<i>ky</i>	<i>NR</i>

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF FINANCING TO
INSTALL A WATER LINE FROM THE WELL ON
TIEMAN TO WELL NO. 1 ON TOWERS

W-04254A-12-0204

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF FINANCING TO
PURCHASE THE WELL NO. 4 SITE AND THE
COMPANY VEHICLE.

W-04254A-12-0205

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF FINANCING FOR AN
8,000-GALLON HYDRO-PNEUMATIC TANK

W-04254A-12-0206

IN THE MATTER OF THE RATE
APPLICATION OF MONTEZUMA RIMROCK
WATER COMPANY, LLC.

W-04254A-12-0207

JOHN E. DOUGHERTY,
COMPLAINANT,
V.
MONTEZUMA RIMROCK WATER
COMPANY, LLC,
RESPONDENT.

W-04254A-11-0323

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER
COMPANY, LLC FOR APPROVAL OF A
RATE INCREASE.

W-04254A-08-0361

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER
COMPANY, LLC FOR APPROVAL OF A
FINANCING APPLICATION.

W-04254A-08-0362

**Motion to Deny
Company's Motion
to Compel**

**Motion for
Protective Order**

Motion To Deny Motion to Compel

During a telephonic conversation today with Montezuma Rimrock's Counsel, it was agreed that MRWC 1.10, 1.15, 1.16, 1.17 and 1.18 are no longer at issue and have either been satisfied by submission of information or withdrawn by Company.

Complainant/Intervener has provided the Company with all documents required under ARCP Rule 26(b) that are responsive to the Rate Case, various loan requests, the 252 Docket and the Formal Complaint.

The records the Company is continuing to seek are beyond the scope of permissible discovery under Rule 26(b)(1)(A) as they are not reasonably calculated to lead to the discovery of admissible evidence.

These records also are beyond the scope of Rule 26(b)(1)(C)(iii) as the discovery is unduly burdensome given the needs of the case. Montezuma Rimrock is not entitled to harass and harm Mr. Dougherty as Intervenor.

Intervenor/Complainant moves the Commission to deny the Company's motion to Compel production of records in response to MRWC 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.11, 1.12, 1.13, 1.14, 1.19 and 1.20 under Rule 26(b).

Motion for Protective Order

During the telephonic conversation, Intervenor/Complainant requested that Counsel withdraw the above Data Requests and Intervenor/Complainant notified Counsel that if the request was refused, that Intervenor/Complainant would seek a protective order under Rule 26 (C) to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."

Intervenor/Complainant moves this Court for a protective order to prevent the annoyance, oppression and undue burden and expense of the numerous data requests seeking records unrelated to the issues in the Consolidated Docket propounded by Montezuma Rimrock.

This motion is supported by the Certificate of Counsel in Support of Motion for Protective Order filed herewith.

The following Memorandum of Points and Authorities address both the Motion to Deny the Company's Motion to Compel under *ARCP 26(b)* and the Motion for a Protective Order under *ARCP 26[c]*.

MEMORANDUM OF POINTS AND AUTHORITIES

1. Standing

Mr. Dougherty is classified as an Intervenor under R14-3-103 (A) and has been recognized as a Complainant under R14-3-103 (C).

Intervenor was granted intervention status in W-04254A-08-0361/0362 and W-04254A-12-0204, 0205, 0206, 0207, without objection.

Complainant's Formal Complaint W-04254A-11-0323 was filed in August 2011. Various attorneys for the Company have filed two formal responses to the Complaint and never raised the issue of standing.

Mr. Dougherty's standing as Intervenor and Complainant has been settled.

The reason why Mr. Dougherty sought intervention and filed a Formal Complaint is not an issue pending before the Commission in the Rate Case, the requests for approval of long-term loans, the 252 Docket or the Formal Complaint.

2. Records Sought by the Company

The Company is continuing to seek the following Data Requests detailed below.

The requests are beyond the scope of permissible discovery under Rule 26(b)(1)(A) as they are not reasonably calculated to lead to the discovery of admissible evidence.

Further, the requests are beyond the scope of Rule 26(b)(1)(C)(iii) as the discovery is unduly burdensome given the needs of the case. Montezuma Rimrock is not entitled to harass and harm Mr. Dougherty as Intervenor/Complainant.

Finally, the requests fall under the umbrella provided by a protective order under Rule 26 (C) to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."

MRWC 1.1 and 1.11--The Company states the requests “bear directly on Mr. Dougherty's stated reasons for intervening in the rate case, his standing to pursue his complaint against the company, the possible provision of water service to Mr. Dougherty's property, Mr. Dougherty's compliance with ADEQ requirements, the operation of Well No. 4 and Mr. Dougherty's various complaint allegations against the Company.”

Intervenor/Complainant's reason for intervening in the Consolidated Cases and filing a Formal Complainant is not an issue pending in this Consolidated Case.

The possible provision of water to Intervenor/Complainant's property, compliance with ADEQ requirements and the operation of Well No. 4 are not issues in the Consolidated Docket. The Company does not have a Yavapai County use permit to operate Well No. 4 and it is disconnected from the Company's water system.

The Company fails to state how the information sought is directly connected with any specific allegation(s) in the Complaint or any specific issue in the Consolidated Case.

The request is not reasonably calculated to lead to the discovery of admissible evidence and unduly burdensome given the needs of the case.

This request falls under the provisions provided by a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

MRWC 1.2 – The Company states the “information bears directly on the availability of water service to Mr. Dougherty's property, the possible provision of water service to Mr. Dougherty's property, Mr. Dougherty's compliance with applicable legal obligations relating to leasing or renting his property and Mr. Dougherty's various complaint allegations against the Company.”

The availability of water service at Intervenor/Complainant's property, possible provision of water service and compliance with applicable legal obligations are not issues pending in the Consolidated Case.

The Company fails to state how the information sought is directly connected with any specific allegation(s) in the Complaint or any specific issue in the Consolidated Case.

The request is not reasonably calculated to lead to the discovery of admissible evidence and unduly burdensome given the needs of the case.

This request falls under the provisions provided by a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

MRWC 1.3, 1.4,—Counsel states “the Company requested information based on the express wording of Mr. Dougherty's motion to intervene in the rate case.”

Intervenor/Complainant's reason for intervening in the Consolidated Cases and filing a Formal Complainant is not an issue pending in this Consolidated Case.

The Company fails to state how the information sought is directly connected with any specific allegation(s) in the Complaint or any other specific issue pending in the Consolidated Case.

The request is not reasonably calculated to lead to the discovery of admissible evidence and unduly burdensome given the needs of the case.

This request falls under the provisions provided by a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

1.5 and 1.6-- Counsel states "the Company requested information based on the express wording of Mr. Dougherty's motion to intervene in the rate case."

Counsel further states: "Information relating to Mr. Dougherty's use of the property within the Company's service territory and his occupancy at other locations bears on whether Mr. Dougherty will be impacted by Company operations and/or rate increases from the rate case. That information also relates to Mr. Dougherty's motives relating to his complaint proceeding and his standing to file a complaint against the Company."

Intervenor/Complainant's reason for intervening in the Consolidated Cases and filing a Formal Complainant is not a pending issue before the Commission in the Consolidated Case.

Intervenor/Complainant's use of his property and possible motives are not issues pending in the Consolidated Case or the Complaint.

Intervenor/Complainant is directly impacted by the operation of the Company due to the Company's failure to provide sufficient water supplies to provide adequate Fire Protection.

The Company fails to state how the information sought is directly connected with any specific allegation(s) in the Complaint or any other specific issue pending in the Consolidated Case.

The request is not reasonably calculated to lead to the discovery of admissible evidence and unduly burdensome given the needs of the case.

This request falls under the provisions provided by a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

MRWC 1.7—Counsel states "the Company clearly is entitled to those documents and photographs in Mr. Dougherty's possession relating to the Company, Ms. Olsen, any

property of the Company, any Company operations and similar issues.”

The Company fails to state how the information sought is directly connected with any specific allegation(s) in the Complaint or any other specific issue pending in the Consolidated Case.

The request is not reasonably calculated to lead to the discovery of admissible evidence and unduly burdensome given the needs of the case.

This request falls under the provisions provided by a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

MRWC 1.8--Counsel states this is “a straightforward request for hearing transcripts, video recordings and/or audio recordings in Mr. Dougherty's possession relating to *any legal* (emphasis added) proceedings involving the Company.”

The only legal proceedings pending before the Commission are those clearly stated in the Consolidated Case. No other legal proceedings outside the Consolidated Case are at issue in this Docket.

The Company fails to state how the information sought is directly connected with any specific allegation(s) in the Complaint or any other specific issue pending in the Consolidated Case.

The request is not reasonably calculated to lead to the discovery of admissible evidence and unduly burdensome given the needs of the case.

This request falls under the provisions provided by a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

MRWC 1.9—Counsel states this request is for “Mr. Dougherty's communications with customers and property owners in the Company's service area. The information requested in MRWC 1.9 (a-d) bears directly on Mr. Dougherty's intervention in the rate case and Mr. Dougherty's ~~the~~ various complaint allegations against the Company.”

Counsel provides no basis or any proof whatsoever to support his claim that Intervenor/Complainant's private communications with his neighbors bear directly on his intervention and Complaint.

This request is a gross invasion of privacy and designed to create a chilling affect on the community, intimidate citizens and isolate Intervenor/Complainant from his neighbors.

The Company further fails to state how the information sought is directly connected with any specific allegation(s) in the Complaint or any other specific issue pending in the Consolidated Case.

The request is not reasonably calculated to lead to the discovery of admissible evidence and unduly burdensome given the needs of the case.

This request falls under the provisions provided by a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

MRWC 1.12—Counsel stated “the information requested in MRWC 1.12 (a-d) bears directly on Mr. Dougherty's intervention in the rate case and Mr. Dougherty's various complaint allegations relating to Company operations.”

Intervenor/Complainant has provided the Company with all communications with Commission staff that are directly related to the issues in the Consolidated Case and Complaint.

Counsel for Commission has stated repeatedly during Procedural Conferences that the Commission has no control or direct interest over what happens without side agencies, including WIFA, ADEQ and Yavapai County.

If those agencies enter formal decisions that impact the operations of the Company, then those matters are relevant and a matter of public record.

Beyond such agency actions, Intervenor/Complainant's communications with any agencies beyond the Commission are not related to this Consolidated Case and carry no authority to impose any action on the Company in and of themselves.

The Company further fails to state how the information sought is directly connected with any specific allegation(s) in the Complaint or any other specific issue pending in the Consolidated Case.

The request is not reasonably calculated to lead to the discovery of admissible evidence and unduly burdensome given the needs of the case.

This request falls under the provisions provided by a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

MRWC 1.13—The Company requests information related to “any and all public or private meetings attended by Mr. Dougherty.” The company states the information “bears directly on Mr. Dougherty's intervention in the rate case and Mr. Dougherty's various complaint allegations relating to Company operations.”

The Company further states that the Company “clearly is entitled to know who Mr. Dougherty has met with to discuss those issues and what was discussed.”

Counsel provides no basis or proof to support his claim that Intervenor/Complaint's private communications with his neighbors bear directly on the Consolidated Case and Complaint.

This is a gross invasion of privacy and designed to create a chilling affect on the community, intimidate citizens and isolate Intervenor/Complainant from his neighbors.

Intervenor/Complainant is not under any requirement or obligation to maintain a record of any public or private meetings he attends, the attendees of such meetings and purpose of such meetings or to disclose such information if such a record exists.

The Company fails to state how the information sought is directly connected with any specific allegation(s) in the Complaint or any other specific issue pending in the Consolidated Case.

The request is not reasonably calculated to lead to the discovery of admissible evidence and unduly burdensome given the needs of the case.

This request falls under the provisions provided by a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

MRWC 1.14—The Company seeks “copies of any and all emails in Mr. Dougherty’s possession relating to the Company and/or Ms. Olsen”. The Company states “given that Mr. Dougherty has made *various claims* (emphasis added) relating to Company operations and *various legal proceedings* (emphasis added) involving the Company, the Company clearly is entitled to review all emails in Mr. Dougherty's possession relating to the Company and Ms. Olsen.”

This request is vague, unreasonably expansive and an invasion of Intervenor/Complaint’s privacy. Intervenor/Complainant has disclosed all emails with the Commission staff in connection with Mrs. Olsen and MRWC. Intervenor/Complainant has also docketed hundreds of pages of records directly relevant to this Case, some of which include MRWC and/or Olsen emails.

The fact that there are “various claims” in “various legal proceedings” outside the Commission proceedings does not require Intervenor/Complainant to open his hard drive for the Company’s inspection of all emails that may mention the Company or Mrs. Olsen.

The Company fails to state how the information sought is directly connected with any specific allegation(s) in the Complaint or any other specific issue pending in the Consolidated Case.

The request is not reasonably calculated to lead to the discovery of admissible evidence and unduly burdensome given the needs of the case.

This request falls under the provisions provided by a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

MRWC 1.19—The Company states this request “is based on the statements in Mr. Dougherty's motion to intervene in the rate case relating to Mr. Dougherty's private well. Mr. Dougherty specifically intervened in the rate case based on potential impacts to his well and the Company is entitled to all of the information requested.”

Intervenor/Complainant's reason for intervening in the Consolidated Cases and filing a Formal Complainant is not an issue pending in this Consolidated Case.

The Company fails to state how the information sought is directly connected with any specific allegation(s) in the Complaint or any other specific issue pending in the Consolidated Case.

The request is not reasonably calculated to lead to the discovery of admissible evidence and unduly burdensome given the needs of the case.

This request falls under the provisions provided by a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

MRWC 1.20—The Company states this request is because “Mr. Dougherty specifically intervened in the rate case based on potential impacts to his well and the Company is entitled to all of the information requested.”

Intervenor/Complainant's reason for intervening in the Consolidated Cases and filing a Formal Complainant is not an issue pending in this Consolidated Case.

The Company fails to state how the information sought is directly connected with any specific allegation(s) in the Complaint or any other specific issue pending in the Consolidated Case.

The request is not reasonably calculated to lead to the discovery of admissible evidence and unduly burdensome given the needs of the case.

This request falls under the provisions provided by a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

Dated this 5th Day of April, 2013


John E. Dougherty
Complainant & Intervenor

Copies of the foregoing Mailed/Hand Delivered
This 5th day of April, 2013 to:

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