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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission

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FIDENCE DEVELOPMENT, LLC
Complainant,
v.
ARIZONA-AMERICAN WATER COMPANY,
Respondent.

DOCKET NO. W-01303A-09-0097

ORIGINAL

PROCEDURAL ORDER

BY THE COMMISSION:

On March 2, 2009, Fidence Development, LLC (“Fidence” or “Complainant”) filed with the Arizona Corporation Commission (“Commission”) a Formal Complaint (“Complaint”) against Arizona-American Water Company (“AZ-American” or “Respondent”).¹ Fidence is a developer for a subdivision known as Northpointe. The Complaint alleges that the parties executed a mainline extension agreement (“MXA”) that required Fidence to construct a Production Well; AZ-American refuses to revise the MXA to eliminate the Production Well; AZ-American has sufficient water capacity without the need for a new Production Well; that AZ-American could upsize its existing well and pump to accommodate the first 80 homes in Fidence’s proposed subdivision; and that AZ-American is in violation of Arizona Administrative Code (“A.A.C.”) R14-2-406(M) because the MXA has not been filed with the Commission for approval.

On March 11, 2009, counsel for AZ-American filed a Notice of Appearance.

On March 25, 2009, the parties filed a joint Notice of Stipulated Extension, stating that the parties agree to extend the time for AZ-American to file its Answer to the Complaint until April 8, 2009.

On April 8, 2009, the parties filed a second joint Notice of Stipulated Extension, stating that

¹ AZ-American is now EPCOR Water Arizona, Inc.

1 the parties agree to extend the time for AZ-American to file its Answer to the Complaint until April
2 15, 2009.

3 On April 17, 2009, AZ-American filed its Answer to the Complaint.

4 On May 2, 2009, by Procedural Order, a Procedural Conference was set for June 2, 2009.

5 On June 2, 2009, a Procedural Conference was held as scheduled. The Commission's
6 Utilities Division ("Staff") and the parties appeared through counsel. During the conference, the
7 parties were directed to engage in settlement discussions and to file an update regarding the status of
8 the discussions by July 2, 2009.

9 On July 2, 2009, the parties docketed a joint filing requesting an additional forty-five (45)
10 days, or until August 17, 2009, to continue settlement discussions.

11 On August 17, 2009, the parties docketed a second joint filing requesting an additional sixty
12 (60) days, or until October 16, 2009, to continue settlement discussions.

13 On October 16, 2009, the parties filed a third joint filing requesting additional time, until
14 December 15, 2009, to continue settlement discussions.

15 On November 4, 2009, by Procedural Order, the parties were directed to make a joint filing,
16 on or before January 30, 2010, updating the Commission on the status of the Complaint.

17 On January 28, 2010, the parties filed a Joint Status Update. In the filing, the parties
18 requested an additional sixty (60) days to finalize a written settlement agreement.

19 On February 4, 2010, by Procedural Order, the parties were granted an extension of time, until
20 April 1, 2010, to update the Commission on the status of the settlement negotiations or to file a
21 finalized settlement agreement.

22 On March 25, 2010, the parties filed a Joint Status Update requesting additional time, until
23 June 1, 2010, to finalize a written settlement agreement.

24 On April 13, 2010, by Procedural Order, the parties were granted an extension of time until
25 July 2, 2010, to file a finalized settlement agreement.

26 On June 25, 2010, the parties filed a Joint Status Update, requesting an extension of time until
27 September 3, 2010, to file a written settlement agreement. The filing stated the parties have continued
28 to work on finalizing the settlement agreement, but that additional time was needed.

1 On June 29, 2010, by Procedural Order, the parties were granted an extension of time until
2 December 31, 2010, to file a finalized settlement agreement.

3 On January 3, 2011, AZ-American filed a Status Update regarding the status of settlement
4 discussions. AZ-American stated that some or all of the real property that is the subject of the MXA
5 in this matter had been transferred to a new owner; that AZ-American has begun discussions with the
6 new owner; and that AZ-American needed additional time, until March 4, 2011, to finalize a written
7 settlement agreement.

8 On February 15, 2011, by Procedural Order, the parties were granted an extension of time
9 until March 4, 2011, to file a finalized settlement agreement.

10 On March 8, 2011, AZ-American filed a Status Update regarding the status of settlement
11 discussions. AZ-American stated that discussions with the new owner were on-going and that AZ-
12 American needed an additional 90 days to file an agreement resolving this matter.

13 No other filings were made in this docket until March 24, 2014.

14 On March 24, 2014, EPCOR Water Arizona f/k/a/ Arizona-American Water Company
15 ("EPCOR") filed a Motion to Dismiss ("MTD") the Complaint with prejudice. The MTD states that
16 Fidence has failed to prosecute its Complaint for more than three years and that under Arizona Rules
17 of Civil Procedure Rule 41(b) the Complaint should be dismissed with prejudice.

18 Fidence has not filed a response to the MTD. It is appropriate for the Complainant to file a
19 response to the MTD. However, it is unclear whether EPCOR provided notice of its MTD to the new
20 owner of Northpointe. Therefore, it is appropriate to require EPCOR to advise the Commission who
21 the new owner for Northpointe is and to require EPCOR to file an affidavit attesting that a copy of
22 the MTD was mailed to the new owner.

23 **IT IS THEREFORE ORDERED that EPCOR shall file, on or before April 23, 2014, a**
24 **pleading in this docket, identifying the new property owner for Northpointe and an affidavit attesting**
25 **that a copy of the Motion to Dismiss was mailed to the new owner for Northpointe.**

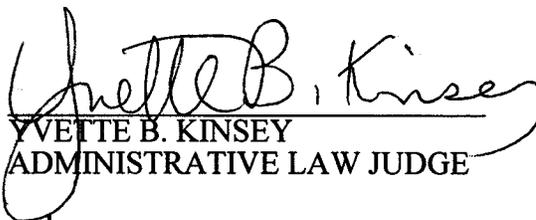
26 **IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized**
27 **Communications) applies to this proceeding.**

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1 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
2 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
3 Supreme Court Rule 42). Representation before the Commission includes the obligation to appear at
4 all hearings and procedural conferences, as well as all Open Meetings for which the matter is
5 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the
6 Administrative Law Judge or the Commission.

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

10 DATED this 9th day of April, 2014.

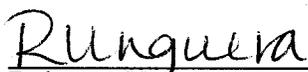
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12
13 
14 YVETTE B. KINSEY
ADMINISTRATIVE LAW JUDGE

15 Copies of the foregoing mailed/delivered
16 this 9th day of April, 2014 to:

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