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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

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

DOCKET NO. W-04254A-08-0361

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

DOCKET NO. W-04254A-08-0362

PROCEDURAL ORDER

BY THE COMMISSION:

On October 30, 2009, the Commission issued Decision No. 71317, establishing permanent rates for Montezuma Rimrock Water Company, LLC ("Montezuma Rimrock") and authorizing Montezuma Rimrock to incur long-term debt in the form of a Water Infrastructure Finance Authority of Arizona ("WIFA") loan in an amount up to \$165,000, for the purpose of completing an arsenic treatment project as described in the Decision. *Inter alia*, Montezuma Rimrock was also ordered to make the following filings with the Commission by the following dates:

Deadline	Compliance Filing
December 31, 2009	Arizona Department of Environmental Quality ("ADEQ") Certificate of Approval of Construction ("AOC") for Well #4
April 30, 2010	ADEQ AOC for arsenic treatment project
May 31, 2012	Rate application using test year ending December 31, 2011
60 days after executing documents finalizing the WIFA Loan	Arsenic remediation surcharge application requesting approval of surcharge to provide funds to meet principal and interest obligations on WIFA loan
60 days after executing documents finalizing the WIFA Loan	Copies of each executed loan document or agreement setting forth the terms of the financing obtained

On November 24, 2009, a copy of an ADEQ Certificate of Approval to Construct ("ATC") was filed for Well #4, on which ADEQ indicated that Well #4's water exceeds the maximum

1 contaminant level ("MCL") for arsenic and that an AOC for the Well will not be issued until
2 acceptable water quality data has been submitted.

3 On December 11, 2009, Montezuma Rimrock filed a letter requesting that the filing deadline
4 for the AOC for the Well be extended to June 30, 2010, because Montezuma Rimrock would not be
5 able to obtain an AOC until after completing installation of the arsenic treatment system.

6 On February 3, 2010, the Commission's Utilities Division ("Staff") filed a Memorandum
7 stating that Staff agreed that Montezuma Rimrock would be unable to obtain an AOC for the Well
8 without an AOC for the arsenic treatment system and, further, that Staff did not object to the
9 requested extension to June 30, 2010, to file the AOC for the Well.

10 On February 11, 2010, a Recommended Order that would have granted the requested
11 extension was issued by the Hearing Division, for consideration at the Open Meeting of March 2 and
12 3, 2010.

13 On February 19, 2010, John E. Dougherty III, of Rimrock, Arizona, filed extensive objections
14 to the Recommended Order.

15 On February 26, 2010, Staff issued a letter to Montezuma Rimrock expressing concern about
16 Montezuma Rimrock's lack of compliance with the MCL for arsenic and requesting that Montezuma
17 Rimrock submit to Staff, within 60 days, a detailed plan addressing and remediating the arsenic issue,
18 explaining why Montezuma Rimrock declined to sign an ADEQ Consent Order related to the arsenic
19 issue, and describing what actions Montezuma Rimrock had taken to date to comply with the Consent
20 Order. The letter stated that if no plan were submitted within 60 days, the issue would be referred to
21 the Commission's Legal Division for possible enforcement action.

22 At the Open Meeting of March 2 and 3, 2010, the Commission allowed public comment
23 regarding the Recommended Order, discussed the Recommended Order, and unanimously voted to
24 disapprove the Recommended Order.

25 On April 5, 2010, Montezuma Rimrock filed a letter in response to Staff's letter, including a
26 description of steps already taken and being taken by Montezuma Rimrock to come into compliance
27 with ADEQ. Montezuma Rimrock included a copy of an ADEQ Compliance Order issued on
28 February 25, 2010, for which Montezuma Rimrock stated it had requested a hearing and an informal

1 settlement conference with ADEQ.

2 On April 13, 2010, a copy of a Yavapai County Superior Court Complaint, filed by Mr.
3 Dougherty and Frederick Shute against the Yavapai County Board of Supervisors (“Board”) on April
4 7, 2010, was filed. The Complaint requested reversal of the Board’s March 15, 2010, approval of a
5 Use Permit and Screening Variance to allow Montezuma Rimrock to operate Well #4 on residential
6 parcel 405-25-517.

7 On October 1, 2010, a White Paper regarding wells and water use near Montezuma Well
8 National Monument was filed.

9 On October 7, 2010, public comments were filed by a former board member of Montezuma
10 Estates Property Owners Association (“MEPOA”). A petition with the signatures of 102 “property
11 owners and/or residents within Montezuma Estates,” expressing support for Montezuma Rimrock,
12 was also filed.

13 On January 24, 2011, Montezuma Rimrock filed a request, pursuant to A.R.S. § 40-252, to
14 have the Commission amend Decision No. 71317 to allow Montezuma Rimrock to seek funding from
15 a private financial institution, with terms and prevailing interest rates of the financial institution.
16 Montezuma Rimrock asserted that such an amendment would allow Montezuma Rimrock to meet an
17 ADEQ Consent Order requirement to have its arsenic treatment facility completed by June 2011.
18 Montezuma Rimrock asserted that the Environmental Impact Statement required by WIFA for its
19 loan would take one to two years to complete with an estimated cost in excess of \$100,000.

20 On February 10, 2011, Staff issued a Status Report on Montezuma Rimrock, providing
21 information regarding Montezuma Rimrock’s status with ADEQ and WIFA, stating that Montezuma
22 Rimrock was seriously attempting to fulfill its arsenic treatment mandate to comply with ADEQ and
23 the Commission and that Staff was not recommending any action¹ at that time. Staff noted that
24 Montezuma Rimrock’s A.R.S. § 40-252 request was pending possible Commission action.

25 On March 14, 2011, Mr. Dougherty filed extensive comments in opposition to Montezuma
26 Rimrock’s A.R.S. § 40-252 request. Mr. Dougherty asserted that the Commission should set an Order
27

28 ¹ Due to the context, this is understood to mean that Staff was not recommending any adverse action at that time.

1 to Show Cause hearing to consider revoking Montezuma Rimrock's Certificate of Convenience and
2 Necessity.

3 On April 7, 2011, Mr. Dougherty filed a letter formally requesting to be included on the
4 service list for "all documents and notifications of hearings or any other proceedings involving the
5 Montezuma Rimrock Water Company." Mr. Dougherty included several attachments to his letter,
6 including documents from the U.S. Environmental Protection Agency ("EPA"); AZTEC Engineering,
7 Arizona LLC; the U.S. Department of the Interior National Park Service; and the Arizona Game and
8 Fish Department.

9 From April 22 through 26, 2011, five comments were filed by Montezuma Rimrock
10 customers expressing support for funding of the arsenic treatment plant.²

11 On April 27, 2011, e-mail correspondence between Mr. Dougherty and Commission
12 personnel were filed. In the e-mails to Commission personnel, Mr. Dougherty asserted that action
13 should be taken against Montezuma Rimrock to stop construction of a pipeline to link Well #4 to the
14 location for the arsenic treatment plant.

15 On April 27, 2011, at the Commission's Staff Open Meeting, the Commission voted to reopen
16 Decision No. 71317 pursuant to A.R.S. § 40-252 to determine whether to modify the decision
17 concerning financing approval and related provisions. The Commission directed the Hearing
18 Division to schedule a procedural conference to discuss the process for the A.R.S. § 40-252
19 proceeding. Montezuma Rimrock attended the Staff Open Meeting via teleconference, and Mr.
20 Dougherty attended in person.

21 On April 28, 2011, a Procedural Order was issued scheduling a procedural conference for
22 May 16, 2011, at the Commission's offices in Phoenix, Arizona.

23 On May 10, 2011, Montezuma Rimrock filed a letter with numerous attachments, including a
24 Declaration of Patricia Olsen, owner of Montezuma Rimrock, apparently made for purposes of the
25 lawsuit in Yavapai County Superior Court, in which it appears Montezuma Rimrock is now a party
26 defendant.

27 _____
28 ² The comments appear to have been received by the Commission's Consumer Services Section on April 21 and 22,
2011.

1 On May 11, 2011, another customer comment was filed in support of the arsenic treatment
2 project.

3 On May 16, 2011, a procedural conference was held as scheduled at the Commission's offices
4 in Phoenix, Arizona. Montezuma Rimrock appeared through Ms. Olsen, and Staff appeared through
5 counsel. Ms. Olsen stated that Montezuma Rimrock does have an attorney to represent it, but that the
6 attorney was unable to attend. Jodi Jerich, Director of the Residential Utility Consumer Office
7 ("RUCO") attended, but stated that RUCO currently is just monitoring the case. Ms. Olsen indicated
8 that Montezuma Rimrock has applied for financing from a single financial institution, but does not
9 know when a decision on the application will be forthcoming. Staff indicated that it does not yet
10 have the information necessary to produce a Staff Report because Montezuma Rimrock does not yet
11 have a firm proposal for financing through a financial institution. Staff suggested that Montezuma
12 Rimrock be required to make a filing in three weeks to provide the information for Staff to analyze
13 for the Staff Report, which would be issued four weeks later. Staff indicated that customer notice at
14 this point would not be valuable because it is not yet apparent what the financing information will be.
15 It was determined that a procedural order would be issued to establish the filing deadlines for
16 Montezuma Rimrock and Staff.

17 IT IS THEREFORE ORDERED that **Montezuma Rimrock shall, by June 16, 2011**, file
18 with the Commission's Docket Control an update regarding its financing application with the
19 financial institution referenced during the procedural conference, which update shall identify the
20 financial institution, completely describe the terms of the financing requested, and provide the status
21 of the application as to approval or disapproval. If the application has been disapproved, Montezuma
22 Rimrock shall also describe what alternate arrangements it is exploring to finance the arsenic
23 treatment facilities for its system or any other actions it intends to explore or to take to remedy its
24 system's arsenic MCL exceedance.

25 IT IS FURTHER ORDERED that **Staff shall, by July 18, 2011**, file with the Commission's
26 Docket Control a Memorandum analyzing the information provided by Montezuma Rimrock;
27 recommending what additional notice, if any, should be provided by Montezuma Rimrock; and
28 recommending whether a hearing should be held. If Montezuma Rimrock's filing indicates that its

1 financing application has been approved by a financial institution, Staff's filing shall consist of a full
2 Staff Report analyzing the proposed financing to be obtained.

3 IT IS FURTHER ORDERED that if Montezuma Rimrock is to be represented by counsel in
4 this proceeding, **Montezuma Rimrock's counsel shall** promptly file an appearance to that effect.

5 IT IS FURTHER ORDERED that **any person who desires to intervene** in this proceeding
6 **shall file, by June 16, 2011, a Motion to Intervene**, which must be sent to Montezuma Rimrock or
7 its counsel and to all parties of record and must contain the following:

- 8 1. The name, address, and telephone number of the proposed intervenor and of any
9 person upon whom service of documents is to be made if different than the intervenor;
- 10 2. A short statement of the proposed intervenor's interest in the proceeding (e.g., a
11 customer of Montezuma Rimrock, etc.);
- 12 3. A statement certifying that a copy of the Motion to Intervene has been mailed to
13 Montezuma Rimrock or its counsel and to all parties of record in the case; and
- 14 4. Whether the proposed intervenor desires for a hearing to be held in this proceeding
15 and, if so, for what purpose/s.

16 IT IS FURTHER ORDERED that any **response to a Motion to Intervene** shall be filed
17 within **10 calendar days** after the filing date of the Motion to Intervene.

18 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
19 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

20 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
21 Communications) applies to this proceeding and shall remain in effect until the Commission's
22 Decision in this matter is final and non-appealable.

23 IT IS FURTHER ORDERED that any motion filed in this matter that is not ruled upon by the
24 Commission within 20 calendar days of the filing date of the motion shall be deemed denied.

25 IT IS FURTHER ORDERED that any response to a motion other than a Motion to Intervene
26 shall be filed within five calendar days after the filing date of the motion.

27 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
28 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
Supreme Court Rule 42). Representation before the Commission includes appearing at all hearings,
procedural conferences, and Open Meetings at which the matter is scheduled for discussion, unless

1 counsel has previously been granted permission to withdraw by the Administrative Law Judge or the
2 Commission.

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

6 DATED this 16th day of May, 2011.

7
8 
9 SARAH N. HARPRING
10 ADMINISTRATIVE LAW JUDGE

11 Copies of the foregoing mailed/delivered
12 this 16th day of May, 2011, to:

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

16 John Dougherty
17 P.O. Box 644
Tempe, AZ 85280

18 Janice Alward, Chief Counsel
19 Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

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

22
23
24
25 By: 
26 Debra Broyles
Secretary to Sarah N. Harpring