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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

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DOCKETED

JUL 25 2011

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

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY [Signature]

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 disapproved the
24 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, Mr. Dougherty filed a copy of a Yavapai County Superior Court
3 Complaint, filed on April 7, 2010, in *Dougherty v. Yavapai County Board of Supervisors*, Docket No.
4 P1300CV201000585 (“Lawsuit”). The Complaint requested reversal of the Yavapai County Board
5 of Supervisors’ (“Board’s”) March 15, 2010, approval of a Use Permit and Screening Variance to
6 allow Montezuma Rimrock to operate Well #4 on residential 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
27

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

1 Order to Show Cause hearing to consider revoking Montezuma Rimrock's Certificate of
2 Convenience and Necessity ("CC&N").

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 which it appears Montezuma Rimrock is now named as a party defendant.

26 On May 11, 2011, another customer comment was filed in support of the arsenic treatment
27

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

1 project.

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

16 On May 16, 2011, a Procedural Order was issued requiring Montezuma Rimrock to file, by
17 June 16, 2011, an update regarding its financing application with the financial institution referenced
18 during the procedural conference, which update was to identify the financial institution; completely
19 describe the terms of the financing requested; provide the status of the application; and if the
20 application had been disapproved, describe the alternate arrangements Montezuma Rimrock was
21 exploring to finance the arsenic treatment facilities for its system or any other actions Montezuma
22 Rimrock intended to explore or to take to remedy its arsenic MCL exceedance. The Procedural Order
23 also required Staff to file, by July 18, 2011, a Memorandum analyzing the information provided by
24 Montezuma Rimrock and making recommendations as to notice and whether a hearing should be
25 held. The Procedural Order required the Memorandum to be a full Staff Report if the financing
26 application had been approved by a financial institution. The Procedural Order further required
27 Montezuma Rimrock's counsel to file an appearance and established a deadline and requirements for
28 Motions to Intervene and responses thereto.

1 On June 9, 2011, Mr. Dougherty filed a letter requesting intervention.

2 On June 14, 2011, Mr. Dougherty amended the June 9, 2011, filing to request that a public
3 hearing be held in this matter. Mr. Dougherty did not specify for what purpose a hearing should be
4 held.

5 On June 15, 2011, a public comment was filed by Karlene Voepel, a resident of Montezuma
6 Estates and Montezuma Rimrock customer, regarding events allegedly occurring at a MEPOA
7 meeting in January 2010 and for several weeks thereafter.

8 On June 15, 2011, Montezuma Rimrock filed a June 10, 2011, letter to Montezuma Rimrock
9 from Sunwest Bank stating that Sunwest Bank had determined that Montezuma Rimrock does not
10 appear to have sufficient cash flow to service the debt for its requested \$165,000 loan. Montezuma
11 Rimrock's filing did not include any other information.

12 On June 29, 2011, because Montezuma Rimrock's filing had not provided all of the
13 information required by the prior Procedural Order, it appeared that Staff would not have sufficient
14 information to make a meaningful filing, and it was unclear for what purpose Mr. Dougherty had
15 requested a hearing, a Procedural Order was issued suspending the requirement for Staff to make a
16 filing by July 18, 2011, and scheduling a procedural conference to be held on July 22, 2011. The
17 Procedural Order also granted intervention to Mr. Dougherty.

18 On July 20, 2011, Mr. Dougherty filed a Motion Seeking Order Directing Commission Staff
19 to Prepare an Order to Show Cause Hearing to Revoke Montezuma Rimrock Water Company LLC's
20 Certificate of Convenience and Necessity ("Motion"), which included copies of several records from
21 Yavapai County; excerpts from Montezuma Rimrock's 2008, 2009, and 2010 Annual Reports filed
22 with Staff; a map showing Lot 500 of Lake Montezuma Estates Unit 2 and the immediately
23 surrounding lots; an excerpt from the Yavapai County Water Well Code; an April 5, 2011, letter from
24 Yavapai County Development Services to Montezuma Rimrock; excerpts from a transcript of an
25 April 21, 2011, oral argument in the Lawsuit; and Plaintiffs' Notice of Filing Supplemental Evidence,
26 filed April 21, 2011, in the Lawsuit.

27 On July 21, 2011, counsel for Montezuma Rimrock filed a Notice of Appearance.

28 On July 22, 2011, a procedural conference was held as scheduled at the Commission's offices

1 in Phoenix, Arizona. Montezuma Rimrock and Staff appeared through counsel, and Mr. Dougherty
2 appeared on his own behalf.³ Montezuma Rimrock explained that of the five financial institutions to
3 which it has applied for a loan, only Sunwest Bank has not denied a loan outright. Montezuma
4 Rimrock hopes to obtain a Small Business Administration (“SBA”) loan from Sunwest Bank and
5 requested additional time to be able to do so. Montezuma Rimrock also indicated that it would like to
6 file an application for an emergency rate increase to enhance the likelihood of its receiving the SBA
7 loan.⁴ Mr. Dougherty explained that he believes a hearing is necessary in this proceeding because he
8 believes that Montezuma Rimrock’s actual financial condition is not known and that Montezuma
9 Rimrock may not need to obtain a loan for the entire \$165,000 as it has asserted. Mr. Dougherty also
10 explained why he believes that an Order to Show Cause should be initiated against Montezuma
11 Rimrock immediately.⁵ Staff explained that it does not currently intend to initiate an Order to Show
12 Cause and expressed a willingness to give Montezuma Rimrock additional time to explore the SBA
13 loan, pointing out that ADEQ has extended Montezuma Rimrock’s deadline to come into compliance
14 with the arsenic MCL. Staff also agreed to docket a letter sent to Montezuma Rimrock directing it to
15 cease collecting an unauthorized arsenic surcharge.⁶ It was determined that Montezuma Rimrock
16 would be provided another 60 days to make a filing providing its plans to finance the arsenic
17 treatment facilities.

18 Also on July 22, 2011, Commissioner Paul Newman filed a Memorandum stating that the
19

20 ³ Initially, Mr. Dougherty was detained by the security guard at the entrance of the Commission building because the
21 security guard had been provided a copy of an Amended Injunction Against Harassment (“Injunction”) issued by the
22 Verde Valley Justice Court in Cottonwood on July 18, 2011, which generally prohibits Mr. Dougherty from having
23 contact with Ms. Olsen. Mr. Dougherty was then permitted to proceed to Room 100 at the Commission’s offices, where
24 he was provided the capability electronically to see, hear, and participate in the proceedings in Hearing Room No. 1 while
25 the Administrative Law Judge elicited from Montezuma Rimrock and Staff their belief that Mr. Dougherty’s presence and
26 participation in Hearing Room No. 1 would not violate the Injunction (because the proceeding was a “public meeting”
27 under the Injunction) and, further, that Mr. Dougherty’s cross-examination of Ms. Olsen during an evidentiary hearing
28 would not violate the Injunction (because a Commission hearing would also be a “public meeting” under the Injunction).
After Montezuma Rimrock and Staff made these assertions, Mr. Dougherty came to Hearing Room No. 1 to participate in
the procedural conference in person. A copy of the Injunction, redacted to eliminate residential addresses and birthdates,
has been docketed by the Hearing Division.

⁴ Montezuma Rimrock was informed that an application for an emergency rate increase would need to be filed in a
new docket.

⁵ Mr. Dougherty was informed that A.R.S. § 40-246 allows any person to file a formal complaint against a public
service corporation. Mr. Dougherty was also informed that any formal complaint would need to be filed in a new docket.

⁶ Montezuma Rimrock asserted that the surcharge had been collected due to a misunderstanding between it and Staff
and further asserted that all of the surcharge revenue collected had been refunded.

1 Montezuma area is a holy ground to both the Hopi and Navajo people and urging that an evidentiary
2 hearing be ordered in this case given the sensitivities.

3 It is now reasonable and appropriate to issue a Procedural Order memorializing the deadline
4 for Montezuma Rimrock to make its filing describing how it will finance the arsenic treatment
5 facilities for its system or, alternatively, how and when it will remedy its system's arsenic MCL
6 exceedance. Further, it is reasonable and appropriate to memorialize Staff's obligation to file a copy
7 of the letter regarding the unauthorized arsenic surcharge and to require Staff, in addition, to make a
8 filing shortly after Montezuma Rimrock's filing providing Staff's determination whether Montezuma
9 Rimrock has provided sufficient information for Staff to make a substantive recommendation
10 concerning whether Decision No. 71317 should be modified under A.R.S. § 40-252 as to financing
11 approval and related provisions and, further, proposing a procedural schedule for the remainder of
12 this matter. It is also reasonable and appropriate to require Montezuma Rimrock and Mr. Dougherty
13 to file responses to Staff's filing and to propose procedural schedules.

14 IT IS THEREFORE ORDERED that **Staff shall, by August 15, 2011, file** a copy of the letter
15 sent to Montezuma Rimrock regarding the collection of the unauthorized arsenic surcharge.

16 IT IS FURTHER ORDERED that **Montezuma Rimrock shall, by September 22, 2011, file**
17 a document explaining **in detail** how the arsenic treatment facilities necessary to bring its system's
18 water into compliance with the MCL for arsenic will be financed **and providing copies** of all
19 documents necessary to obtain a full understanding of any financing to be obtained from any entity.
20 **If Montezuma Rimrock is not to obtain financing** from a financial institution or another entity,
21 Montezuma Rimrock shall explain **in detail** how and when Montezuma Rimrock will remedy its
22 system's arsenic MCL exceedance.

23 IT IS FURTHER ORDERED that **Staff shall, by September 30, 2011, make a filing**
24 indicating whether Montezuma Rimrock has provided sufficient information for Staff to make a
25 substantive recommendation in this case regarding whether the Commission should modify Decision
26 No. 71317 concerning financing approval and related provisions **and, further, proposing a**
27 **procedural schedule** for the remainder of this matter.

28 IT IS FURTHER ORDERED that **Montezuma Rimrock and Mr. Dougherty each shall, by**

1 **October 7, 2011, make a filing responding to Staff's filing and proposing a procedural schedule**
2 for the remainder of this matter.

3 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
4 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

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

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

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

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

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

21 DATED this 25th day of July, 2011.

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23 
24 SARAH N. HARPRING
25 ADMINISTRATIVE LAW JUDGE
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1 Copies of the foregoing mailed/delivered
2 this 25TH day of July, 2011, to:

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17 By: 
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19 Secretary to Sarah N. Harpring
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