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BEFORE THE ARIZONA CORPORATION COMMISSION Arizona Corporation Commission

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COMMISSIONERS

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

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DOCKETED

AUG 12 2011

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY
LLC FOR AN EMERGENCY RATE INCREASE.

DOCKET NO. W-04254A-11-0296

PROCEDURAL ORDER

BY THE COMMISSION:

On July 25, 2011, Montezuma Rimrock Water Company LLC ("Montezuma Rimrock") filed with the Arizona Corporation Commission ("Commission") an application for an emergency rate increase, requesting that Montezuma Rimrock be authorized to charge each of its customers a monthly surcharge of \$15.64, which is designed to increase Montezuma Rimrock's annual revenues by \$37,536, thereby making Montezuma Rimrock eligible to obtain a loan of \$165,000 from a private lending institution to fund construction and installation of an arsenic treatment system. The water from Montezuma Rimrock's system currently exceeds the maximum contaminant level ("MCL") for arsenic established by the United States Environmental Protection Agency ("EPA") and enforced by the Arizona Department of Environmental Quality ("ADEQ"). ADEQ, through Amendment #1 to Consent Order in Docket No. DW-36-10, has provided Montezuma Rimrock a deadline of April 7, 2012, to complete construction of the approved arsenic treatment system and to submit an administratively complete application for an Approval of Construction for the arsenic treatment system.

On August 1, 2011, a Procedural Order was issued scheduling a procedural conference to be held on August 10, 2011, at 1:00 p.m., at the Commission's offices in Phoenix. The Procedural Order required the Commission's Utilities Division ("Staff") to attend in person, but allowed Montezuma Rimrock to attend telephonically if it first provided the Hearing Division a telephone number through specified means.

On August 2, 2011, John E. Dougherty filed a Motion to Intervene in this matter, explaining

1 that he is an intervenor in another pending matter involving Montezuma Rimrock¹ (“40-252 matter”)
2 and that this matter is directly related to and will impact the 40-252 matter. Mr. Dougherty further
3 requested that the August 10, 2011, procedural conference be postponed until after his Motion to
4 Intervene had been processed and approved.

5 On August 3, 2011, a Procedural Order was issued requiring Montezuma Rimrock and Staff to
6 respond to the Motion to Intervene at the procedural conference to be held on August 10, 2011. The
7 Procedural Order also allowed Mr. Dougherty to attend telephonically in the same manner as provided
8 for Montezuma Rimrock.

9 On August 10, 2011, a procedural conference was held as scheduled at the Commission’s
10 offices in Phoenix, Arizona. Montezuma Rimrock and Staff appeared in person through counsel, and
11 Mr. Dougherty attended and participated telephonically. When asked to respond to the Motion to
12 Intervene, Montezuma Rimrock requested that intervention be denied, asserting that Mr. Dougherty
13 will not be directly and substantially affected by this matter because he is not a customer of
14 Montezuma Rimrock and lives in Phoenix rather than in Montezuma Rimrock’s service area and,
15 further, because Mr. Dougherty’s involvement would unduly broaden the issues in this matter.² Mr.
16 Dougherty was permitted to respond to Montezuma Rimrock’s assertions and stated that he is
17 impacted directly by Montezuma Rimrock’s operations because his residence is in Rimrock and
18 within Montezuma Rimrock’s service area, although he currently obtains water from his own private
19 well. Staff stated that it does not object to the Motion to Intervene, acknowledging that the
20 Commission is generally rather permissive in granting intervention, but also stating that a number of
21 the issues about which Mr. Dougherty has expressed concern would fall outside the scope of an
22 emergency rate case and should more appropriately be addressed in a formal complaint case. Mr.
23 Dougherty confirmed that he does intend to file a formal complaint against Montezuma Rimrock, once
24 he has received responses to his data requests in the 40-252 matter. Mr. Dougherty was advised that if

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26 ¹ The other matter is a pending A.R.S. § 40-252 proceeding in Docket Nos. W-04254A-08-0361 and W-04254A-08-0362.

27 ² Montezuma Rimrock further asserted that the granting of intervention to Mr. Dougherty in the 40-252 matter should
28 be revisited and that intervention therein should be revoked for the same reasons, although Montezuma Rimrock was
unable to provide any legal authority for the revocation of intervention once granted. Montezuma Rimrock was reminded
of its failure to object to Mr. Dougherty’s intervention in the 40-252 matter.

1 he is granted intervention, the issues will be limited in scope to (1) whether there is an emergency that
2 warrants the authorization of interim rates, and (2) if there is such an emergency, what emergency
3 interim rates should be authorized. Mr. Dougherty stated that he understood the scope of the issues.
4 The issue of intervention was taken under advisement.

5 The parties and Mr. Dougherty were also asked for their positions on consolidating this matter
6 and the 40-252 matter. Montezuma Rimrock and Staff both stated that they believe the matters should
7 remain separate, with Montezuma Rimrock stating that it believes the issues in the two matters are
8 different and that consolidation would bog down the process. Mr. Dougherty asserted that he believes
9 the matters should be consolidated. The issue of consolidation was taken under advisement.

10 The usual process for an emergency rate case was discussed, Staff was asked when it could
11 issue a Staff Report, and the parties and Mr. Dougherty were asked when they could be ready for
12 hearing in this matter and what witnesses they intended to call.³ Staff also expressed its opinion that
13 an emergency rate case may not be the best means for Montezuma Rimrock to become eligible for
14 financing, as Decision No. 71317 (October 30, 2009), the Decision at issue in the 40-252 matter,
15 already authorizes Montezuma Rimrock to apply for an arsenic remediation surcharge mechanism
16 (“ARSM”) to cover the principal and interest obligations for the Arizona Water Infrastructure
17 Financing Authority (“WIFA”) loan approved therein to fund arsenic treatment facilities.⁴

18 It is now necessary to rule upon Mr. Dougherty’s Motion to Intervene and whether this matter
19 and the 40-252 matter should be consolidated. While Mr. Dougherty is not currently a customer of
20 Montezuma Rimrock and has expressed concern about numerous issues that would not appropriately
21 be considered within the scope of an emergency rate case, he asserts that his residence is in Rimrock,
22 at his property that is located within Montezuma Rimrock’s service area. The Commission has
23 previously granted intervention to a non-customer of a public service corporation based upon the non-
24 customer’s ownership of property located within the public service corporation’s service area.⁵

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26 ³ Because Mr. Dougherty was not yet a party, he was asked when he could be ready for hearing and what witnesses he
would call, assuming that intervention were granted.

27 ⁴ Staff opined that a financial institution should have the sophistication needed to understand that the ARSM would
suffice to cover debt service for a loan, assuming that Decision No. 71317 were amended by the Commission to allow for
financing through a private financial institution rather than WIFA.

28 ⁵ See, e.g., Decision No. 60113 (March 19, 1997).

1 Because there does not appear to be a compelling reason to treat Mr. Dougherty differently than
2 property owners have been treated in the past, it is reasonable and appropriate to grant Mr.
3 Dougherty's Motion to Intervene. However, as Mr. Dougherty was advised during the procedural
4 conference, he will not be permitted to broaden the scope of the issues in this matter beyond those
5 appropriately considered in an emergency rate case.

6 As to the issue of consolidation, it is reasonable and appropriate not to consolidate this matter
7 with the 40-252 matter in light of the objections of both Montezuma Rimrock and Staff and the
8 generally limited scope of issues in, and expedited scheduling for, an emergency rate case.

9 Finally, it is now necessary and appropriate to establish the procedural schedule and notice
10 requirements for this matter.

11 **IT IS THEREFORE ORDERED that the Motion to Intervene of John E. Dougherty is**
12 **hereby granted.**

13 **IT IS FURTHER ORDERED that this matter shall not currently be consolidated with the**
14 **pending A.R.S. § 40-252 proceeding in Docket Nos. W-04254A-08-0361 and W-04254A-08-0362.**

15 **IT IS FURTHER ORDERED that a hearing to determine whether an emergency exists**
16 **pursuant to Arizona Attorney General Opinion No. 71-17 (May 25, 1971)⁶ and whether an emergency**
17 **interim rate increase should be granted shall commence on September 22, 2011, at 9:00 a.m., or as**
18 **soon thereafter as is practicable, in Hearing Room No. 1 at the Commission's offices at 1200 West**
19 **Washington Street, Phoenix, Arizona 85007.**

20 **IT IS FURTHER ORDERED that the Staff Report and associated exhibits to be presented at**
21 **hearing on behalf of Staff shall be reduced to writing and filed on or before September 12, 2011.**

22 **IT IS FURTHER ORDERED that Montezuma Rimrock Water Company and any**
23 **Intervenor/s shall file any Response to the Staff Report with the Commission's Docket Control by**
24 **September 19, 2011.**

25 _____
26 ⁶ The standard described in Arizona Attorney General No. 71-17 was recognized in *Scates v. Arizona Corporation*
27 *Commission*, 578 P.2d 612, 616 (Ariz. Ct. App. 1978), which also established that a bond must be posted to protect
28 customers and allow for refund in the event interim rates are excessive and that the granting of interim rates must be
followed by a full rate case in which just and reasonable rates are established after the fair value of a company's property is
determined. The *Scates* test was cited with approval in *Residential Utility Consumer Office v. Arizona Corporation*
Commission, 20 P.3d 1169, 1173 (Ariz. Ct. App. 2001).

1 IT IS FURTHER ORDERED that **Montezuma Rimrock Water Company shall, on or**
2 **before August 22, 2011, cause public notice, in the following format and style, to be sent to each of**
3 **its customers by First Class Mail:**

4 **PUBLIC NOTICE OF THE HEARING ON MONTEZUMA RIMROCK WATER**
5 **COMPANY'S APPLICATION FOR AN EMERGENCY RATE INCREASE**
6 **(Docket No. W-04254A-11-0296)**

7 Montezuma Rimrock Water Company ("Montezuma Rimrock") has applied to the
8 Arizona Corporation Commission ("Commission") for an emergency rate increase. In
9 its application, Montezuma Rimrock has proposed a surcharge of \$15.64 per month to
10 be paid by each customer, which is designed to increase Montezuma Rimrock's annual
11 revenues by \$37,536 and thereby make Montezuma Rimrock eligible to obtain a
12 \$165,000 loan from a private lending institution to fund construction and installation of
13 an arsenic treatment system. Based on evidence presented at a hearing, the
14 Commission will determine whether an emergency exists and whether an interim rate
15 increase should be granted. The Commission may deny the request for an emergency
16 rate increase or approve an interim rate increase either higher or lower than that
17 requested by Montezuma Rimrock.

18 The Commission will hold a **public hearing** on the application beginning **September**
19 **22, 2011, at 9:00 a.m.**, in Hearing Room No. 1 at the Commission's offices, 1200
20 West Washington Street, Phoenix, Arizona. Interested persons may attend the hearing
21 and make public comments and/or file written comments with the Commission.
22 Written comments may be submitted by e-mail or by mailing a letter referencing
23 Docket No. W-04254A-11-0296 to:

24 Arizona Corporation Commission
25 Consumer Services Section
26 1200 West Washington St.
27 Phoenix, AZ 85007

28 For a form to use and instructions on how to e-mail comments to the Commission, go
to <http://www.azcc.gov/Divisions/Utilities/forms/PublicCommentForm.pdf>. If you
require assistance, you may contact the Consumer Services Section at 1-800-222-7000
or 602-542-4251.

Interested parties may intervene by filing a written motion to intervene with the
Commission no later than **September 12, 2011**. If representation by counsel is
required by Arizona Supreme Court Rule 31, intervention will be conditioned upon the
intervenor obtaining counsel to represent the intervenor. For information about
requesting intervention, visit the Commission's website at
<http://www.azcc.gov/divisions/utilities/forms/interven.pdf> or contact the Commission's
Consumer Services Section at 1-800-222-7000 or 602-542-4251. Failure to intervene
will not preclude an interested person from appearing at the hearing and making a
statement on his or her own behalf.

The application and all filings are available on the Commission's website
(www.azcc.gov) using the e-Docket function.

The Commission does not discriminate on the basis of disability in admission to its
public meetings. Persons with a disability may request a reasonable accommodation
such as a sign language interpreter, and may request this document in an alternative
format, by contacting the ADA Coordinator, Shaylin Bernal, at SABernal@azcc.gov,
voice phone number (602) 542-3931. Requests should be made as early as possible to
allow time to arrange the accommodation.

1 IT IS FURTHER ORDERED that **Montezuma Rimrock shall, on or before August 22,**
2 **2011, cause the above public notice information,** formatted with the heading in at least 36-point
3 bold type and the body in at least 18-point regular type, **to be posted** in a conspicuous manner at the
4 following locations: (1) Montezuma Rimrock's offices, (2) the kiosk from which Montezuma
5 Rimrock's customers currently obtain bottled water, (3) the local post office within the service area,
6 and (4) on the public notice board maintained by the local homeowners' association.

7 IT IS FURTHER ORDERED that **Montezuma Rimrock Water Company shall, no later**
8 **than September 2, 2011, file** with the Commission's Docket Control **certification that the public**
9 **notice was mailed and posted** in accordance with this Procedural Order, specifying when the mailing
10 and each posting took place.

11 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
12 105, except that all motions to intervene must be filed on or before **September 12, 2011.**

13 IT IS FURTHER ORDERED that notice in accordance with this Procedural Order shall be
14 deemed complete upon mailing and posting of same, notwithstanding the failure of an individual
15 customer to receive or read the notice.

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

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 Administrative Law Judge may rescind, alter, amend, or
21 waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
22 hearing.

23 DATED this 12th day of August, 2011.

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26 
27 SARAH N. HARPRING
28 ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed/delivered and e-mailed
this 27th day of August, 2011, to:

2 Patricia D. Olsen, Manager
3 MONTEZUMA RIMROCK WATER
4 COMPANY LLC
5 P.O. Box 10
6 Rimrock, AZ 86335
7 patsy@montezumawater.com

8 Douglas C. Fitzpatrick
9 LAW OFFICE OF DOUGLAS C.
10 FITZPATRICK
11 49 Bell Rock Plaza
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14 Attorney for Montezuma Rimrock Water
15 Company LLC

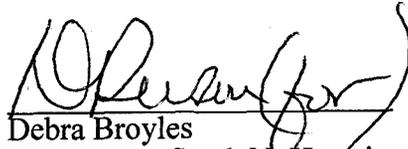
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24 Debra Broyles
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28