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BEFORE THE ARIZONA CORPORATION COMMISSION

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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 a number of compliance filings.

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

Since that time, Mr. Dougherty has been granted intervention; two procedural conferences have been held; Montezuma Rimrock has been ordered to make a filing by September 22, 2011, explaining in detail how it will finance arsenic treatment facilities for its system or, alternatively, how and when it will remedy its system's arsenic maximum contaminant level exceedance; Staff has been ordered to make a filing by September 30, 2011, indicating whether Montezuma Rimrock has

1 provided sufficient information for Staff to make a substantive recommendation regarding whether  
2 Decision No. 71317 should be modified concerning financing approval and related provisions and,  
3 further, proposing a procedural schedule; and Montezuma Rimrock and Mr. Dougherty each have  
4 been ordered to make a filing by October 7, 2011, responding to Staff's filing and proposing a  
5 procedural schedule.<sup>1</sup> In addition, in another docket,<sup>2</sup> Montezuma Rimrock has applied for  
6 emergency interim rates to provide additional revenue intended to qualify Montezuma Rimrock to  
7 obtain a loan from Sunwest Bank, a procedural conference has been held, Mr. Dougherty has been  
8 granted intervention, and a procedural schedule including a hearing has been established.

9 On August 23, 2011, Mr. Dougherty filed a Motion to Compel Montezuma Rimrock Water  
10 Company to Produce Records Requested in Intervenor's First Set of Data Requests ("Motion to  
11 Compel"). In the Motion to Compel, Mr. Dougherty asserts that Montezuma Rimrock has failed to  
12 respond to his Data Requests 1.02 and 1.03 ("DRs 1.02 and 1.03") and that Montezuma Rimrock has  
13 failed to respond fully to DRs 1.05, 1.09, and 1.06. Mr. Dougherty requests that the Commission  
14 order Montezuma Rimrock to respond as specified in his Motion to Compel. In the Motion to  
15 Compel, Mr. Dougherty explains the e-mail correspondence that he has sent in his efforts to obtain  
16 additional information in response to the DRs, but does not assert that he has had any other  
17 communication with counsel for Montezuma Rimrock.

18 The Commission's procedural rules provide: "Motions shall conform insofar as practicable  
19 with the Rules of Civil Procedure for the Superior Court of the state of Arizona." (A.A.C. R14-3-  
20 106(K).) The Arizona Rules of Civil Procedure provide that discovery motions, and specifically  
21 motions to compel, will not be considered or scheduled "unless a separate statement of moving  
22 counsel is attached thereto certifying that, after personal consultation and good faith efforts to do so,  
23 counsel have been unable to satisfactorily resolve the matter." (Ariz. R. Civ. P. 26(g) and 37(a)(2)(C)  
24 (emphasis added).) From the Motion to Compel, it appears that Mr. Dougherty has only  
25 communicated with counsel for Montezuma Rimrock through e-mail and that Mr. Dougherty has not  
26

27 <sup>1</sup> The events and filings in this docket occurring between the issuance of Decision No. 71317 and the Staff Open  
28 Meeting of April 27, 2011, and between the Staff Open Meeting of April 27, 2011, and the present are more fully  
described in the Procedural Order issued in this docket on July 25, 2011.

<sup>2</sup> The emergency rate application matter is Docket No. W-04254A-11-0296.

1 yet made any efforts to discuss his discovery requests with counsel for Montezuma Rimrock. Thus,  
2 Mr. Dougherty's Motion to Compel is insufficient as filed. Before the Commission is asked to rule  
3 on a Motion to Compel, the moving party must ensure that a good faith effort has been made to  
4 resolve the discovery dispute through personal consultation (i.e., live conversation), and a separate  
5 certification as to such personal consultation and good faith efforts must be attached to the Motion.

6 Therefore, the Commission will not now require Montezuma Rimrock to file a response to the  
7 Motion to Compel and will not now rule upon the Motion to Compel. Rather, Mr. Dougherty will be  
8 directed to engage in personal consultation with counsel for Montezuma Rimrock and to make good  
9 faith efforts to resolve the current and any other discovery dispute before filing another Motion to  
10 Compel with the Commission. Likewise, Montezuma Rimrock will be directed to respond fully and  
11 candidly to each discovery request received.

12 **IT IS THEREFORE ORDERED that Mr. Dougherty shall engage in personal consultation**  
13 **with counsel for Montezuma Rimrock and shall make good faith efforts to resolve the current**  
14 **and any other discovery dispute before filing another Motion to Compel with the Commission.**

15 **IT IS FURTHER ORDERED that Montezuma Rimrock shall respond fully and candidly**  
16 **to each discovery request received by it.**

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

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

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

24 **IT IS FURTHER ORDERED that any response to a motion shall be filed within five calendar**  
25 **days of the filing date of the motion.**

26 **IT IS FURTHER ORDERED that any reply shall be filed within five calendar days of the**  
27 **filing date of the response.**

28

1 IT IS FURTHER ORDERED that **discovery** shall be as permitted by law and the rules and  
2 regulations of the Commission, except that any objection to discovery requests shall be made within  
3 7 calendar days of receipt,<sup>3</sup> and responses to discovery requests shall be made within 10 calendar  
4 days of receipt. The response time may be extended by mutual agreement of the parties involved if  
5 the request requires an extensive compilation effort.

6 IT IS FURTHER ORDERED that for discovery requests, objections, and answers, if a  
7 receiving party requests service to be made electronically, and the sending party has the technical  
8 capability to provide service electronically, service to that party shall be made electronically.

9 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel  
10 discovery, any party seeking resolution of a **discovery dispute** may telephonically contact the  
11 Commission's Hearing Division to request that a procedural conference be scheduled to resolve the  
12 discovery dispute;<sup>4</sup> that upon such a request, a procedural conference will be convened as soon as  
13 practicable; and that the party making such a request shall forthwith contact all other parties to advise  
14 them of the date and time of the procedural conference and shall at the procedural conference provide  
15 a statement confirming that the other parties were notified of the date and time.

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26 <sup>3</sup> The date of receipt of discovery requests is not counted as a calendar day, and requests received after 4:00 p.m. Arizona time will be considered as received the next business day.

27 <sup>4</sup> The parties shall attempt to settle discovery disputes through informal, good-faith negotiations before seeking  
28 Commission resolution of the controversy. A party shall ensure that any motion to compel is accompanied by the separate certification required by Arizona Rule of Civil Procedure 26(g) and 37(a)(2)(C) and that such a certification could also be made at any requested procedural conference.

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 appearing at all hearings,  
4 procedural conferences, and Open Meetings at which the matter is scheduled for discussion, unless  
5 counsel has previously been granted permission to withdraw by the Administrative Law Judge or the  
6 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 24<sup>th</sup> day of August, 2011.

11  
12   
13 SARAH N. HARPRING  
14 ADMINISTRATIVE LAW JUDGE

15 Copies of the foregoing mailed/delivered  
16 this 24<sup>th</sup> day of August, 2011, to:

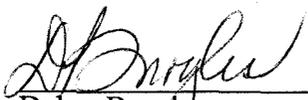
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By:   
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Secretary to Sarah N. Harpring