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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

2011 AUG 31 P 4: 08

DOCKETED

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

AZ CORP COMMISSION
DOCKET CONTROL

AUG 31 2011

DOCKETED BY

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.¹ In addition, in Docket No. W-04254A-11-0296 ("Emergency Rate Case
6 Docket"), Montezuma Rimrock has applied for emergency interim rates to provide additional revenue
7 intended to qualify Montezuma Rimrock to obtain a loan from Sunwest Bank, a procedural
8 conference has been held, Mr. Dougherty has been granted intervention, and a procedural schedule
9 including a hearing has been established.

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

19 On August 24, 2011, a Procedural Order was issued finding that the Motion to Compel was
20 insufficient as filed because it did not include a certification as to personal consultation and good
21 faith efforts to resolve the discovery dispute as required by Arizona Rules of Civil Procedure 26(g)
22 and 37(a)(2)(C), ordering Mr. Dougherty to engage in personal consultation with counsel for
23 Montezuma Rimrock and to make good faith efforts to resolve the current and any other discovery
24 dispute before filing another Motion to Compel with the Commission, and ordering Montezuma
25 Rimrock to respond fully and candidly to each discovery request received by it.

26 On August 31, 2011, in this docket, Mr. Dougherty filed Notice of having filed a Formal

27 ¹ 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.

1 Complaint (“Complaint”) against Montezuma Rimrock Water Company in Docket No. W-04254A-
2 11-0323 (“Complaint Docket”)² and a Motion to Stay the proceedings in this docket (“Motion to Stay
3 A.R.S. 40-252”). Mr. Dougherty asserts that the Complaint includes numerous allegations supported
4 by substantial documentation that Montezuma Rimrock has filed materially false and misleading
5 financial statements in Annual Reports, improperly withheld information during a 2009 Staff audit in
6 this docket, and made a false statement on its 2009 WIFA loan application, among other things. Mr.
7 Dougherty asserts that, in light of the allegations in the Complaint, all proceedings in this docket
8 should be stayed until the allegations raised in the Complaint have been fully answered by
9 Montezuma Rimrock. Mr. Dougherty has filed a substantially similar Notice and Motion to Stay in
10 the Emergency Rate Case Docket.

11 Also on August 31, 2011, in the Emergency Rate Case Docket, Montezuma Rimrock filed a
12 Motion for Protective Order, along with a separate Certificate of Counsel in Support of Motion for
13 Protective Order, requesting that the Commission quash or severely limit the scope of Mr.
14 Dougherty’s data requests so as to protect Montezuma Rimrock from annoyance, embarrassment,
15 oppression, or undue burden or expense.

16 In light of the issues raised by Mr. Dougherty in his Notice and Motion to Stay in this docket
17 and in the Emergency Rate Case Docket and Montezuma Rimrock’s Motion for Protective Order, it
18 is now appropriate to schedule a joint procedural conference for this docket, the Emergency Rate
19 Case Docket, and the Complaint Docket, at which the parties shall be prepared to discuss the Motion
20 to Stay filed in this docket, the Motion to Stay filed in the Emergency Rate Case Docket, the Motion
21 for Protective Order filed in the Emergency Rate Case Docket, how the three dockets should proceed,
22 whether any or all of the three dockets should be consolidated, and any other appropriate issues.

23 **IT IS THEREFORE ORDERED that a joint procedural conference shall be held in this**
24 **docket, the Emergency Rate Case Docket, and the Complaint Docket on September 13, 2011, at**
25 **10:00 a.m., in Hearing Room No. 1** at the Commission’s offices at 1200 West Washington Street in
26 Phoenix, Arizona 85007.

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28 ² Mr. Dougherty and a co-complainant filed a Formal Complaint in the Complaint Docket on August 23, 2011.

1 IT IS FURTHER ORDERED that all parties shall appear in person at the procedural
2 conference.

3 IT IS FURTHER ORDERED that the parties shall be prepared to discuss the Motion to
4 Stay filed in this docket, the Motion to Stay filed in the Emergency Rate Case Docket, the Motion for
5 Protective Order filed in the Emergency Rate Case Docket, how the three dockets should proceed,
6 whether any or all of the three dockets should be consolidated, and any other appropriate issues.

7 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
8 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

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

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

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

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

18 IT IS FURTHER ORDERED that **discovery** shall be as permitted by law and the rules and
19 regulations of the Commission, except that any objection to discovery requests shall be made within
20 7 calendar days of receipt,³ and responses to discovery requests shall be made within 10 calendar
21 days of receipt. The response time may be extended by mutual agreement of the parties involved if
22 the request requires an extensive compilation effort.

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

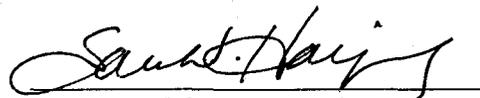
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27
28 ³ The date of receipt of discovery requests is not counted as a calendar day, and requests received after 4:00 p.m. Arizona time will be considered as received the next business day.

1 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
2 discovery, any party seeking resolution of a **discovery dispute** may telephonically contact the
3 Commission's Hearing Division to request that a procedural conference be scheduled to resolve the
4 discovery dispute;⁴ that upon such a request, a procedural conference will be convened as soon as
5 practicable; and that the party making such a request shall forthwith contact all other parties to advise
6 them of the date and time of the procedural conference and shall at the procedural conference provide
7 a statement confirming that the other parties were notified of the date and time.

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

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

17 DATED this 31st day of August, 2011.

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20 SARAH N. HARPRING
21 ADMINISTRATIVE LAW JUDGE
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27 ⁴ 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 Copies of the foregoing mailed/delivered
this 31~~st~~ day of August, 2011, to:

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