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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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2011 AUG 31 P 4: 23

AUG 31 2011

AZ CORP COMMISSION  
DOCKET CONTROL

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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.

Since the application was filed in this matter, a procedural conference has been held, a Motion for Intervention filed by John E. Dougherty has been granted, and consolidation of this docket with a related docket in which the Commission has reopened Decision No. 71317 (October 30, 2009) under A.R.S. § 40-252 to determine whether to modify the decision concerning financing approval and

1 related provisions (“40-252 Docket”)<sup>1</sup> has not been ordered. In addition, a procedural schedule has  
2 been established that includes a hearing to be held in this matter on September 22, 2011.<sup>2</sup>

3 On August 24, 2011, Montezuma Rimrock filed an Affidavit of Mailing and Posting in this  
4 docket showing that notice of the hearing has been provided to its customers by mail and has been  
5 posted at four separate locations in its service area.

6 On August 31, 2011, in this docket, Mr. Dougherty filed Notice of having filed a Formal  
7 Complaint (“Complaint”) against Montezuma Rimrock Water Company in Docket No. W-04254A-  
8 11-0323 (“Complaint Docket”)<sup>3</sup> and a Motion to Stay the proceedings in this docket. Mr. Dougherty  
9 asserts that the Complaint includes numerous allegations supported by substantial documentation that  
10 Montezuma Rimrock has filed materially false and misleading financial statements in Annual Reports,  
11 improperly withheld information during a 2009 Staff audit in this docket, and made a false statement  
12 on its 2009 WIFA loan application, among other things. Mr. Dougherty asserts that, in light of the  
13 allegations in the Complaint, all proceedings in this docket should be stayed until the allegations  
14 raised in the Complaint have been fully answered by Montezuma Rimrock. Mr. Dougherty has filed a  
15 substantially similar Notice and Motion to Stay in the 40-252 Docket.

16 Also on August 31, 2011, in this docket, Montezuma Rimrock filed a Motion for Protective  
17 Order, along with a separate Certificate of Counsel in Support of Motion for Protective Order,  
18 requesting that the Commission quash or severely limit the scope of Mr. Dougherty’s data requests so  
19 as to protect Montezuma Rimrock from annoyance, embarrassment, oppression, or undue burden or  
20 expense.

21 In light of the issues raised by Mr. Dougherty in his Notice and Motion to Stay in this docket  
22 and in the 40-252 Docket and Montezuma Rimrock’s Motion for Protective Order, it is now  
23 appropriate to schedule a joint procedural conference for this docket, the 40-252 Docket, and the  
24 Complaint Docket, at which the parties shall be prepared to discuss the Motion to Stay filed in this

25  
26 <sup>1</sup> The 40-252 Docket is Docket Nos. W-04254A-08-0361 et al. The Commission reopened the Decision in response to  
27 a Montezuma Rimrock request for modification of the decision to allow it to obtain financing for arsenic treatment  
28 facilities through a loan from a private financial institution rather than through the Arizona Water Infrastructure Finance  
Authority (“WIFA”) loan authorized in the Decision.

<sup>2</sup> Additional procedural background in this matter is set forth in the Procedural Order issued on August 12, 2011.

<sup>3</sup> Mr. Dougherty and a co-complainant filed a Formal Complaint in the Complaint Docket on August 23, 2011.

1 docket, the Motion to Stay filed in the 40-252 Docket, the Motion for Protective Order filed in this  
2 docket, how the three dockets should proceed, whether any or all of the three dockets should be  
3 consolidated, and any other appropriate issues.

4 IT IS THEREFORE ORDERED that a **joint procedural conference shall be held in this**  
5 **docket, the 40-252 Docket, and the Complaint Docket on September 13, 2011, at 10:00 a.m., in**  
6 **Hearing Room No. 1** at the Commission's offices at 1200 West Washington Street in Phoenix,  
7 Arizona 85007.

8 IT IS FURTHER ORDERED that **all parties shall appear in person at the procedural**  
9 **conference.**

10 IT IS FURTHER ORDERED that the **parties shall be prepared to discuss** the Motion to Stay  
11 filed in this docket, the Motion to Stay filed in the 40-252 Docket, the Motion for Protective Order  
12 filed in this docket, how the three dockets should proceed, whether any or all of the three dockets  
13 should be consolidated, and any other appropriate issues.

14 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules  
15 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

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

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

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

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

25 IT IS FURTHER ORDERED that **discovery** shall be as permitted by law and the rules and  
26 regulations of the Commission, except that any objection to discovery requests shall be made within 7  
27  
28

1 calendar days of receipt,<sup>4</sup> and responses to discovery requests shall be made within 10 calendar days  
2 of receipt. The response time may be extended by mutual agreement of the parties involved if the  
3 request requires an extensive compilation effort.

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

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

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

20 ...  
21 ...  
22 ...  
23 ...  
24 ...

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26 <sup>4</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>5</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 the Administrative Law Judge may rescind, alter, amend, or  
2 waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
3 hearing.

4 DATED this 31<sup>st</sup> day of August, 2011.

5  
6  
7 

8 SARAH N. HARPRING  
9 ADMINISTRATIVE LAW JUDGE

10 Copies of the foregoing mailed/delivered and e-mailed  
11 this 31<sup>st</sup> day of August, 2011, to:

12 Patricia D. Olsen, Manager  
13 MONTEZUMA RIMROCK WATER  
14 COMPANY LLC  
15 P.O. Box 10  
16 Rimrock, AZ 86335  
17 patsy@montezumawater.com

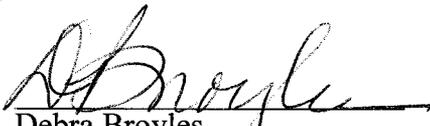
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By:   
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Secretary to Sarah N. Harpring