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BEFORE THE 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.

Between April 27, 2011, and August 24, 2011, in this docket, Mr. Dougherty was granted intervention; two procedural conferences were held; Montezuma Rimrock was 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 ("MCL") exceedance; the Commission's Utilities Division ("Staff") was ordered to make a

1 filing by September 30, 2011, indicating whether Montezuma Rimrock has provided sufficient
2 information for Staff to make a substantive recommendation regarding whether Decision No. 71317
3 should be modified concerning financing approval and related provisions and, further, proposing a
4 procedural schedule; Montezuma Rimrock and Mr. Dougherty were each ordered to make a filing by
5 October 7, 2011, responding to Staff's filing and proposing a procedural schedule; and a Motion to
6 Compel filed by Mr. Dougherty was deemed insufficient.¹

7 Meanwhile, in Docket No. W-04254A-11-0296 ("Emergency Rate Case Docket"),
8 Montezuma Rimrock has applied for authority to charge emergency interim rates to provide
9 additional revenue intended to qualify Montezuma Rimrock to obtain a loan from Sunwest Bank. An
10 evidentiary hearing is scheduled to proceed in the Emergency Rate Case Docket on September 22,
11 2011.

12 On August 31, 2011, in this docket, Mr. Dougherty filed Notice of having filed a Formal
13 Complaint ("Complaint") against Montezuma Rimrock in Docket No. W-04254A-11-0323
14 ("Complaint Docket")² and a Motion to Stay the proceedings in this docket ("Motion to Stay A.R.S.
15 40-252"). Mr. Dougherty asserted that the Complaint includes numerous allegations supported by
16 substantial documentation that Montezuma Rimrock has filed materially false and misleading
17 financial statements in Annual Reports, improperly withheld information during a 2009 Staff audit in
18 this docket, and made a false statement on its 2009 WIFA loan application, among other things. Mr.
19 Dougherty asserted that, in light of the allegations in the Complaint, all proceedings in this docket
20 should be stayed until the allegations raised in the Complaint have been fully answered by
21 Montezuma Rimrock. On the same date, in the Emergency Rate Case Docket, Mr. Dougherty filed a
22 substantially similar Notice and Motion to Stay, and Montezuma Rimrock filed a Motion for
23 Protective Order.

24 Also on August 31, 2011, Procedural Orders were issued in this docket, the Emergency Rate
25 Case Docket, and the Complaint Docket scheduling a joint procedural conference to be held on
26 September 13, 2011, at the Commission's offices in Phoenix; requiring each party to attend in person;

27 ¹ More detailed descriptions of the activities in this docket during this time period are set forth in the Procedural
28 Orders issued in this docket on July 25, 2011, and August 24, 2011.

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

1 and requiring each party to be prepared to discuss the Motion to Stay in this docket, the Motion to
2 Stay in the Emergency Rate Case Docket, and the Motion for Protective Order in the Emergency Rate
3 Case Docket.

4 On September 13, 2011, a procedural conference was convened as scheduled before a duly
5 authorized Administrative Law Judge of the Commission at the Commission's offices in Phoenix,
6 Arizona. Montezuma Rimrock and Staff appeared through counsel, and Mr. Dougherty appeared pro
7 se. Montezuma Rimrock and Staff both opposed staying the proceedings in this docket, and Mr.
8 Dougherty argued that a stay is appropriate and should be granted. In addition, Montezuma Rimrock
9 and Staff continued to oppose consolidation of any of the three dockets, and Mr. Dougherty
10 conditionally supported consolidation, depending on the ruling on the pending Motions to Stay. The
11 parties' positions on the Motion to Stay and consolidation were taken under advisement.

12 There are currently no proceedings scheduled in this docket, only filing requirements and
13 deadlines, the first of which is the September 22, 2011, deadline for Montezuma Rimrock to make a
14 filing regarding how it will finance its arsenic treatment facilities or, alternatively, how it will
15 otherwise remedy its arsenic MCL exceedance. It is unclear how granting a Motion to Stay in this
16 docket at this time would benefit Mr. Dougherty's interest or how failing to grant a Motion to Stay in
17 this matter at this time would harm Mr. Dougherty's interest. In other words, Mr. Dougherty has
18 failed to establish that there is good cause to grant his Motion to Stay. Thus, the Motion to Stay will
19 be denied at this time.

20 IT IS THEREFORE ORDERED that the **Motion to Stay filed in this Docket is hereby**
21 **denied at this time.**

22 IT IS FURTHER ORDERED that **the filing deadlines and requirements established in the**
23 **Procedural Order of July 25, 2011, continue in effect.**

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1 IT IS FURTHER ORDERED that the administrative and procedural requirements and
2 deadlines set forth in the Procedural Order of August 31, 2011, continue in effect.

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

6 DATED this 14th day of September, 2011.

7
8 
9 SARAH N. HARPRING
10 ADMINISTRATIVE LAW JUDGE

11 Copies of the foregoing mailed/delivered and e-mailed
12 this 14th day of September, 2011, to:

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By: 
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Secretary to Sarah N. Harpring