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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE - Chairman
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BRENDA BURNS

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AZ CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

OCT 4 2011

DOCKETED BY
RDS

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, in this docket, Mr. Dougherty has been granted intervention; three procedural conferences have been held; and numerous Procedural Orders have been issued addressing various Motions, establishing filing requirements and deadlines, and scheduling procedural conferences. In response to a Procedural Order issued July 25, 2011, Montezuma Rimrock made a filing on September 19, 2011, apparently indicating its continued intent to remedy its system's arsenic

1 maximum contaminant level ("MCL") exceedance through construction of an arsenic treatment
2 facility using funds obtained through a loan from Sunwest Bank that would require Montezuma
3 Rimrock to encumber its assets as security. The same *Procedural Order* required the Commission's
4 Utilities Division ("Staff") to make a filing by September 30, 2011, indicating whether Montezuma
5 Rimrock had provided sufficient information for Staff to make a substantive recommendation
6 regarding modification of Decision No. 71317 pursuant to A.R.S. § 40-252 and proposing a
7 procedural schedule for this docket and required Montezuma Rimrock and Mr. Dougherty each to
8 make a filing by October 7, 2011, responding to Staff's filing and proposing a procedural schedule.
9 Staff has not yet made the filing due on September 30, 2011.

10 Two additional dockets involving the same parties are also pending: Docket No. W-04254A-
11 11-0296 ("Emergency Rate Case Docket"), concerning an application for emergency interim rates
12 filed by Montezuma Rimrock, and Docket No. W-04254A-11-0323 ("Complaint Docket"),
13 concerning a formal complaint by Mr. Dougherty against Montezuma Rimrock. Montezuma
14 Rimrock has recently filed a Motion to Withdraw its emergency rate application in the Emergency
15 Rate Case Docket ("Motion to Withdraw") and filed its Answer in the Complaint Docket. In its
16 Motion to Withdraw, Montezuma Rimrock stated that it "has found a way to resolve its arsenic
17 problem without incurring the expense of constructing an arsenic treatment facility," although it did
18 not explain the alternate method it intends to use to remedy its arsenic MCL exceedance or how any
19 related costs are to be paid or by whom.

20 On September 30, 2011, in this docket, Mr. Dougherty filed a Motion for Evidentiary
21 Hearing, stating that an evidentiary hearing should be held on Montezuma Rimrock's "undefined
22 proposal to comply with state and federal drinking water standards without construction of an arsenic
23 treatment facility."

24 Montezuma Rimrock has not explained how it intends to resolve its arsenic problem, and its
25 Motion to Withdraw is worded in such a manner that it could mean a number of different things, such
26 as that no arsenic treatment facility needs to be constructed after all (in spite of Montezuma
27 Rimrock's consistent prior assertions that there was no other viable means to remedy its arsenic
28 problem) or that an arsenic treatment facility is to be built wholly at another's expense (e.g., as a gift

1 to Montezuma Rimrock). Montezuma Rimrock has not made any filing in this docket indicating that
2 it desires to withdraw its request to have Decision No. 71317 modified pursuant to A.R.S. § 40-252.

3 The Commission reopened Decision No. 71317 pursuant to A.R.S. § 40-252 to determine
4 whether to modify the decision concerning financing approval (for the arsenic treatment facility) and
5 related provisions. Thus, it is necessary to require Montezuma Rimrock to make a filing explaining,
6 in detail, how and when it will resolve its arsenic problem and responding to Mr. Dougherty's Motion
7 for Evidentiary Hearing. It is also reasonable and appropriate to require Mr. Dougherty to make a
8 filing responding to Montezuma Rimrock's filing required herein. In addition, it is reasonable and
9 appropriate to require Staff to make a filing responding to Montezuma Rimrock's filing required
10 herein, responding to Mr. Dougherty's Motion for Evidentiary Hearing, and providing a
11 recommendation for the process to be followed in this matter (including Staff's analysis concerning
12 whether Montezuma Rimrock's new plan falls within the scope of this 40-252 matter). Finally, it is
13 reasonable and appropriate to vacate the requirements for filings to have been made on September 30,
14 2011, and October 7, 2011.

15 IT IS THEREFORE ORDERED that **Montezuma Rimrock shall, by October 17, 2011,**
16 **make a filing** explaining, in detail, how and when it will resolve its arsenic problem and responding
17 to Mr. Dougherty's Motion for Evidentiary Hearing.

18 IT IS FURTHER ORDERED that **Mr. Dougherty shall, by October 31, 2011, make a filing**
19 responding to Montezuma Rimrock's filing required herein.

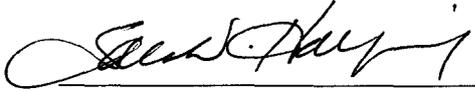
20 IT IS FURTHER ORDERED that **Staff shall, by October 31, 2011, make a filing**
21 responding to Montezuma Rimrock's filing required herein, responding to Mr. Dougherty's Motion
22 for Evidentiary Hearing, and providing a recommendation for the process to be followed in this
23 matter (including Staff's analysis concerning whether Montezuma Rimrock's new plan falls within
24 the scope of this 40-252 matter).

25 IT IS FURTHER ORDERED that **the requirements**, imposed in the Procedural Order of July
26 25, 2011, in this docket, **for filings** to have been made **on September 30, 2011, and October 7,**
27 **2011, are hereby vacated.**

28 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,

1 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
2 hearing.

3 DATED this 4th day of October, 2011.

4
5 
6 SARAH N. HARPRING
7 ADMINISTRATIVE LAW JUDGE

8 Copies of the foregoing mailed and e-mailed
9 this 4th day of October, 2011, to:

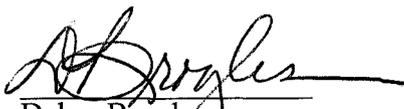
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25
26 By: 
27 Debra Broyles
28 Secretary to Sarah N. Harpring