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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

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DOCKETED

NOV 9 2011

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

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY [Signature]

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.

In this docket since that time, Mr. Dougherty has been granted intervention, several procedural conferences have been held, numerous Procedural Orders have been issued, and numerous party filings (mostly related to motions) have been made. This Procedural Order addresses the filings made in this docket on and since September 30, 2011.

On Sept. 30, 2011, Mr. Dougherty filed a Motion for Evidentiary Hearing ("Dougherty

1 Motion for Hearing”), asserting that an evidentiary hearing should be held on Montezuma Rimrock’s
2 “undefined proposal to comply with state and federal drinking water standards without construction
3 of an arsenic treatment facility.”

4 On October 4, 2011, a Procedural Order was issued requiring Montezuma Rimrock to make a
5 filing, by October 17, 2011, responding to the Dougherty Motion for Hearing and explaining in detail
6 how and when it will resolve its arsenic problem. The Procedural Order also required the
7 Commission’s Utilities Division (“Staff”) to make a filing by October 31, 2011, responding to
8 Montezuma Rimrock’s filing and providing a recommendation for the process to be followed in this
9 matter (including whether Montezuma Rimrock’s new plan falls within the scope of this docket).

10 On October 6, 2011, Montezuma Rimrock filed its response to the Dougherty Motion for
11 Hearing, stating that it intends to obtain arsenic treatment facilities for its system through a lease
12 arrangement rather than purchase and asserting that there is no need for an evidentiary hearing.
13 Montezuma Rimrock asserted that more information would be provided when it was available.

14 On October 12, 2011, Montezuma Rimrock filed a Proposed Plan for Arsenic Abatement,
15 stating that it intends to lease arsenic treatment facilities from GCom Water Solutions, Inc.
16 (“GCom”); that it expected to execute the lease within two weeks; that construction would proceed
17 reasonably promptly thereafter so as to meet the April 2012 deadline mandated by the Arizona
18 Department of Environmental Quality (“ADEQ”); and that Montezuma Rimrock would docket the
19 signed lease once executed.

20 On October 18, 2011, Mr. Dougherty filed a Response to Company’s Arsenic Treatment Plan;
21 Motion for Sanctions; Motion to Suspend Lease Agreement (“Dougherty Motion for
22 Sanctions/Suspension”). Mr. Dougherty asserted therein that Montezuma Rimrock should not be
23 permitted to move forward with its lease agreement until after a formal review of the financial impact
24 of the agreement on ratepayers, which should be conducted so as to allow Mr. Dougherty and Staff to
25 review the financial implications of the lease agreement and to submit comments to the Commission
26 and, if necessary, request an evidentiary hearing before the Commission. Mr. Dougherty further
27 asserted that Montezuma Rimrock had acted in bad faith and should be sanctioned for attempting to
28 enter into the lease agreement without Commission approval, requested that the Commission issue an

1 order preventing Montezuma Rimrock from entering into a lease agreement for the arsenic treatment
2 facilities, and requested that the Commission issue an order suspending the lease agreement
3 indefinitely if Montezuma Rimrock had already executed the lease agreement.

4 On October 25, 2011, Montezuma Rimrock filed a Supplemental and Amended Proposed
5 Plan for Arsenic Abatement, stating that Montezuma Rimrock will docket the lease and provide
6 additional financial information related to the lease when it has a proposed lease from GCom and
7 that Montezuma Rimrock will not execute the lease or move forward with construction of the
8 treatment plant until the Commission has signed off on the proposed plan.

9 Also on October 25, 2011, Montezuma Rimrock filed a Motion to Compel Discovery
10 (“Company Motion to Compel”), requesting that Mr. Dougherty be ordered to release records relating
11 to his communications with WIFA, the Commission, and the Arizona Department of Environmental
12 Quality (“ADEQ”); requesting that Mr. Dougherty be ordered to produce written communications
13 and print copies of e-mails between himself and Ivo Buddeke; and requesting that Montezuma
14 Rimrock be awarded reasonable attorney’s fees incurred in connection with the preparation and
15 submission of the Company Motion to Compel. The Company Motion to Compel was accompanied
16 by a Certificate of Counsel in Support of Discovery Motion.

17 On October 28, 2011, Mr. Dougherty filed a Motion to Compel Discovery; Motion to Set
18 Deadline for Production of Documents (“Dougherty Motion to Compel”), requesting that Montezuma
19 Rimrock be ordered to produce all records responsive to Mr. Dougherty’s Second Data Request by a
20 firm deadline and further that Mr. Dougherty be awarded reasonable fees for expenses related to
21 preparation and submission of the Dougherty Motion to Compel. The Dougherty Motion to Compel
22 was accompanied by a Certificate of Intervener in Support of Discovery Motion.

23 Also on October 28, 2011, Mr. Dougherty filed a Motion for Protective Order (“Dougherty
24 Motion for Protective Order”), requesting that a protective order be issued quashing the Company
25 Motion to Compel. Mr. Dougherty asserted that production of the e-mails may violate Mr.
26 Buddeke’s right against self-incrimination under the Arizona Constitution. The Dougherty Motion
27 for Protective Order was accompanied by a Certificate of Intervener in Support of Motion for
28 Protective Order.

1 Also on October 28, 2011, Mr. Dougherty filed a Motion to Deny Company's Motion to
2 Compel ("Dougherty Motion to Deny"), requesting that the Company Motion to Compel be
3 dismissed, that Montezuma Rimrock bear all attorney fees in connection with the preparation and
4 submission of the Company Motion to Compel, and that Montezuma Rimrock pay Mr. Dougherty
5 reasonable fees for the preparation and submission of the Dougherty Motion to Deny.

6 On October 31, 2011, Staff filed Staff's Response to Procedural Order, stating that
7 Montezuma Rimrock has selected GEcom's method for removing arsenic, which uses titanium media
8 from Dow Chemical Company called "Adsorbsia," has been approved for use by ADEQ, is currently
9 being used by Little Park Water Company, and will cost a total of approximately \$40,000. Staff
10 stated that Montezuma Rimrock is still negotiating the length of the lease, that Montezuma Rimrock
11 intends to docket the lease once received, and that Staff understands that the lease would be docketed
12 for informational purposes only. Staff further stated that the GEcom treatment plant and process is
13 the same initial treatment process for which Montezuma Rimrock received an ADEQ Certificate of
14 Approval to Construct in June 2010. In response to the Dougherty Motion for Hearing, Staff stated
15 that there is no need for an evidentiary hearing because Montezuma Rimrock has explained its
16 current plan to resolve its arsenic contamination problem, which uses the same technology Staff
17 analyzed in the underlying case that led to Decision No. 71317. Staff stated that the significant
18 difference between Montezuma Rimrock's original proposal and its current proposal is the method of
19 funding the treatment facilities, as Montezuma Rimrock now intends to use an operating lease, which
20 does not require Commission approval. Staff stated its understanding that Patricia Olsen, the owner
21 of Montezuma Rimrock, intends to make lease payments using personal funds and, thus, that there is
22 no need for any further Commission approvals in this docket or for an evidentiary hearing. Staff
23 asserted that because there is no longer a need to substitute lending entities, there is no longer a need
24 to pursue modification of Decision No. 71317, and this matter may be brought to a close and the
25 docket retained solely for ongoing compliance filings by Montezuma Rimrock.

26 On November 2, 2011, Montezuma Rimrock filed a copy of the Felony Release Conditions
27 and Release Order entered by the Verde Valley Justice Court on July 12, 2011, in *State v. Buddeke*,
28 CR201103826, in which Mr. Buddeke was ordered not to contact in any manner several alleged

1 victims, including Ms. Olsen, and not to go near the alleged victims' residences or places of
2 employment.

3 On November 3, 2011, Mr. Dougherty filed a Motion to Investigate Ex Parte
4 Communications ("Dougherty Motion to Investigate"), asserting that Staff has violated the
5 Commission's rule against ex parte communications (A.A.C. R14-3-113) by communicating with
6 Montezuma Rimrock to obtain information regarding its arsenic remediation plans and requesting
7 various relief related to the alleged unauthorized communications and the individuals involved.

8 Also on November 3, 2011, Mr. Dougherty filed a Supplemental to Motion to Investigate Ex
9 Parte Communications, providing further argument related to the alleged unauthorized
10 communications between Staff and Montezuma Rimrock.

11 On November 4, 2011, Mr. Dougherty filed a Reply to Staff's Recommendation to Close
12 Docket; Motion to Require Disclosure of Proposed Lease and Continued Discovery ("Dougherty
13 Motion for Disclosure and Discovery"), asserting that Staff's recommendation is premature and
14 should be rejected and requesting that Montezuma Rimrock be required to disclose the terms of the
15 lease, that discovery continue, that proceedings continue, and that an evidentiary hearing be held at a
16 suitable time in this docket.

17 On November 7, 2011, Staff filed Staff's Response to Intervener John Dougherty's Motion to
18 Investigate Ex Parte Communications, asserting that the Dougherty Motion to Investigate is based
19 upon Mr. Dougherty's misunderstanding of both the law applicable to ex parte communications and
20 Staff's role as a party in matters before the Commission and requesting that the Dougherty Motion to
21 Investigate be denied.

22 Also on November 7, 2011, Mr. Dougherty filed his Second Supplemental to Motion to
23 Investigate Ex Parte Communications; Motion to Stay Proceedings; Motion for Independent
24 Investigation ("Dougherty Motion to Stay"), asserting that Staff and Montezuma Rimrock have
25 engaged in a conspiracy to willfully initiate, conduct, and fail to disclose unauthorized
26 communications in violation of A.A.C. R14-2-113; asserting that Mr. Dougherty has lost all trust in
27 Staff and that the proceedings will be conducted in a fair and honest manner in compliance with the
28 law; requesting that the Commission stay the proceedings and issue an order preventing Montezuma

1 Rimrock from moving forward with construction of arsenic treatment facilities; and requesting that
2 the Commission undertake an independent investigation of the allegedly unauthorized
3 communications and failure to disclose the communications.

4 On November 9, 2011, Staff filed Staff's Response to Intervener's Second Supplement to
5 Motion and Request for Procedural Conference, asserting that the Dougherty Motion to Investigate
6 and the Supplemental filings thereto are without merit and requesting the scheduling of a procedural
7 conference at the Hearing Division's earliest convenience to discuss the issue.

8 At this time, it is necessary to address the various motions filed by Mr. Dougherty, the motion
9 filed by Montezuma Rimrock, and the filings made by Staff so as to ensure that this matter can move
10 forward in an appropriate manner.

11 The Dougherty Motion for Hearing has been deemed denied under the Procedural Order
12 issued on April 28, 2011 ("April 28 P.O."), which ordered that any motion not ruled upon by the
13 Commission within 20 calendar days of the filing date is deemed denied.

14 The Dougherty Motion for Sanctions/Suspension has also been deemed denied under the
15 April 28 P.O.

16 Several of Mr. Dougherty's motions relate to Mr. Dougherty's mistaken interpretation of the
17 Commission's Ex Parte Rule, A.A.C. R14-2-113, which has led Mr. Dougherty to believe that Staff
18 is prohibited from communicating with another party to this case. The Ex Parte Rule prohibits any
19 person from communicating, off-the-record, with a Commissioner or Commission employee involved
20 in the decision-making process for a contested case, regarding the substantive merits of the case. As
21 Staff correctly explained in its response to the Dougherty Motion to Investigate, the Utilities
22 Division's Staff is a party to this matter and is not involved in the decision-making process for this
23 matter. As a party to this matter, Staff has the right to engage in off-the-record substantive
24 discussions regarding the merits of this case with the other parties to the matter, just as Montezuma
25 Rimrock and Mr. Dougherty have the right to engage in substantive discussions with each other. Mr.
26 Dougherty has not alleged that there have been any off-the-record communications regarding the
27 substantive merits of this case between a party and a Commissioner, the presiding Administrative
28 Law Judge, or any Commission employee involved in the decision-making process for this case.

1 Because Mr. Dougherty's motions related to alleged violations of the Ex Parte Rule are without
2 merit, they will be denied.¹ There does not appear to be any need for a procedural conference to
3 discuss the issue. However, if Staff is aware of any additional information that would necessitate a
4 procedural conference, it is welcome to make another filing requesting a procedural conference and
5 explaining why it believes that a procedural conference is necessary at this time.

6 Staff's filing of October 31, 2011, asserts that Montezuma Rimrock no longer needs to pursue
7 modification of Decision No. 71317 because Montezuma Rimrock no longer intends to obtain
8 financing of its arsenic treatment facilities through long term debt. Montezuma Rimrock has not
9 responded to Staff's filing, and it is appropriate at this time to require Montezuma Rimrock to do so,
10 so as to gain additional information from Montezuma Rimrock concerning the lease it intends to
11 execute, the source of the funds that will be used to make the lease payments, and Montezuma
12 Rimrock's intentions related to pursuing modification of Decision No. 71317. If Montezuma
13 Rimrock no longer desires to obtain modification of Decision No. 71317 concerning financing
14 approval and related provisions, Montezuma Rimrock should file a motion to withdraw its request for
15 modification of Decision No. 71317 under A.R.S. § 40-252.

16 Because it is necessary at this time to obtain Montezuma Rimrock's response to Staff's filing,
17 it is not necessary or appropriate at this time to address the substance of the discovery motions
18 pending herein. However, rather than having the discovery motions deemed denied under the April
19 28 P.O., it is appropriate to hold them in abeyance.

20 IT IS THEREFORE ORDERED that **Montezuma Rimrock shall, by December 9, 2011,**
21 **make a filing** explaining the material terms of the lease it intends to execute and, if possible,
22 including a copy of the lease; explaining the source and ownership of the funds that will be used to
23 make the lease payments; analyzing whether the lease is properly characterized as a capital lease or
24 an operating lease under applicable accounting standards; and explaining Montezuma Rimrock's
25 intentions related to pursuing modification of Decision No. 71317.

26 _____
27 ¹ Mr. Dougherty is directed to read Ariz. R. Civ. P. 11(a), as his filings, although not signed by an attorney, are equally
28 expected to be made after a reasonable inquiry to determine that the positions taken therein are well grounded in fact and
warranted by existing law or a good faith argument for a change in existing law. Mr. Dougherty may seek legal advice
from an attorney as needed to ensure that his filings are made in compliance with Ariz. R. Civ. P. 11(a).

1 IT IS FURTHER ORDERED that any response to Montezuma Rimrock's filing to be
2 made by Staff or Mr. Dougherty shall be made by December 23, 2011.

3 IT IS FURTHER ORDERED that the Dougherty Motion for Hearing and the Dougherty
4 Motion for Sanctions/Suspension have been deemed denied.

5 IT IS FURTHER ORDERED that the Dougherty Motion to Investigate is denied.

6 IT IS FURTHER ORDERED that the Dougherty Motion for Disclosure and Discovery is
7 denied.

8 IT IS FURTHER ORDERED that the Dougherty Motion to Stay is denied.

9 IT IS FURTHER ORDERED that the Company Motion to Compel is held in abeyance.

10 IT IS FURTHER ORDERED that the Dougherty Motion to Compel is held in abeyance.

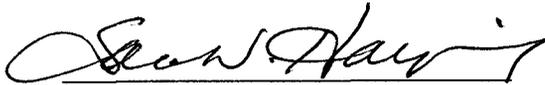
11 IT IS FURTHER ORDERED that the Dougherty Motion for Protective Order is held in
12 abeyance.

13 IT IS FURTHER ORDERED that the Dougherty Motion to Deny is held in abeyance.

14 IT IS FURTHER ORDERED that a party shall not file a motion in this matter unless the party
15 has made a reasonable inquiry and determined that the motion is well grounded in fact and warranted
16 by existing law or a good faith argument for the extension, modification, or reversal of existing law.

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

20 DATED this 9th day of November, 2011.

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24 
25 SARAH N. HARPRING
26 ADMINISTRATIVE LAW JUDGE
27
28

1 Copies of the foregoing mailed and e-mailed
2 this 9th day of November, 2011, to:

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