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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.

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.

The most recent Procedural Order, issued on November 9, 2011, required Montezuma Rimrock to make a filing, by December 9, 2011, to include the following: (1) an explanation of the

1 material terms of the intended lease for arsenic treatment facilities and, if possible, a copy of the  
2 lease; (2) an explanation of the source and ownership of the funds that will be used to make the lease  
3 payments; (3) an analysis of whether the lease is properly characterized as a capital lease or an  
4 operating lease under applicable accounting standards; and (4) an explanation of Montezuma  
5 Rimrock's intentions related to pursuing modification of Decision No. 71317. The Procedural Order  
6 further required Staff and Mr. Dougherty to file by December 23, 2011, any responses to Montezuma  
7 Rimrock's filing; denied several motions filed by Mr. Dougherty; and held in abeyance several  
8 motions related to discovery.

9         On December 5, 2011, Kathy Davis, Superintendent, U.S. Department of the Interior,  
10 National Park Service, Montezuma Castle and Tuzigoot National Monuments, filed a comment letter  
11 urging the Commission to "hold an evidentiary hearing on [Montezuma Rimrock's] request for an  
12 operating lease to fund the arsenic treatment facility" and to require Montezuma Rimrock to  
13 "complete an Environmental Impact Statement as a condition of funding the project."

14         On December 7, 2011, Montezuma Rimrock filed the Interim Report of Montezuma Rimrock  
15 Water Company, LLC ("Interim Report"), stating that Montezuma Rimrock has not yet received the  
16 written lease from GEcom; that Montezuma Rimrock believes that Odyssey Equipment Financing  
17 Company ("OEFC") will provide financing for the lease payments; that the lease will require  
18 payment of \$30,000 over 60 months at \$810 per month; that the \$7,000 charge for "the building" will  
19 be paid for over 48 months at \$275 per month; that construction for the plant is in process; that  
20 Montezuma Rimrock will be paying \$500 per month in to a reserve account for media changeouts or  
21 filters; that Ms. Olsen personally will be entering into the lease with GEcom and will be subleasing  
22 the system to Montezuma Rimrock; that payment to GEcom or OEFC will be made with Ms. Olsen's  
23 personal funds; that Montezuma Rimrock is not yet in a position to offer meaningful analysis as to  
24 whether the lease is or should be characterized as a capital lease or an operating lease; that  
25 Montezuma Rimrock requests an unspecified extension of the deadline to submit such analysis; and  
26 that Montezuma Rimrock believes that there is no longer a need to pursue modification of Decision  
27 No. 71317 and, thus, that this matter may be brought to a close and the docket retained solely for  
28 ongoing compliance filings. Montezuma Rimrock included several e-mails between Ms. Olsen and

1 Gecom and OEFC personnel.

2       On December 15, 2011, Mr. Dougherty filed a Response to Interim Report of Montezuma  
3 Rimrock Water Co., LLC; Motion to Deny Extension of Deadline; Motion for Evidentiary Hearing  
4 (“Dougherty Response to Interim Report”). Mr. Dougherty asserted therein that the proposed lease,  
5 as described by Montezuma Rimrock, would be very expensive and would require Commission  
6 approval as a “capital” lease; that Montezuma Rimrock is trying to “slip past” the Commission other  
7 arsenic treatment expenses that have already been incurred or will be incurred and that Montezuma  
8 Rimrock will try to shift to ratepayers; that Montezuma Rimrock is acting in bad faith in that it has  
9 begun construction after stating that it would not do so without Commission approval; that Ms.  
10 Olsen’s proposed dual role as the lessee of the arsenic treatment equipment and building and the  
11 lessor of the same to Montezuma Rimrock is fraught with potential for abuse; and that Montezuma  
12 Rimrock is insolvent. In addition, Mr. Dougherty moved the Commission to deny Montezuma  
13 Rimrock’s request for an extension beyond December 9, 2011, to file its lease financing plan and  
14 analysis of whether the lease is an operating lease or a capital lease; moved the Commission to  
15 schedule an evidentiary hearing to consider Montezuma Rimrock’s “final financing plan, its apparent  
16 insolvency, and whether to revoke [its] Certificate of Convenience and Necessity”; and asserted that  
17 it would be premature to close this docket and that it would be in the best interest of ratepayers and  
18 the public to keep the docket open until Montezuma Rimrock’s “final financing plan” is approved or  
19 disapproved.

20       On December 22, 2011, Mr. Dougherty made a filing including the text of an online petition  
21 urging the Commission to require an EIS, along with a list of names asserted to be 1,072 online  
22 petition signatures.

23       Montezuma Rimrock and Staff have not filed responses to the Dougherty Response to Interim  
24 Report. In addition, Staff has not filed a response to the Interim Report.

25       While the Commission appreciates Montezuma Rimrock’s recognizing that it should seek  
26 leave before failing to comply with a deadline in a Procedural Order, the Commission also recognizes  
27 that denying a requested extension of time, when a party apparently is unable to comply with the  
28 Procedural Order in any event, would be futile. Thus, no action will be taken either on Montezuma

1 Rimrock's request for an extension of time or on Mr. Dougherty's motion to deny the requested  
2 extension of time. Instead, Montezuma Rimrock will be required to explain the current status of the  
3 negotiations for or completion of the lease agreement/s for the arsenic treatment plant and building at  
4 a procedural conference to be held on January 18, 2011, jointly with the procedural conference  
5 already scheduled in the Dougherty Complaint Docket.<sup>1</sup> In addition, Montezuma Rimrock will be  
6 required to file copies of any and all written lease documents as soon as such documents come into  
7 Montezuma Rimrock's possession and to provide the other parties courtesy copies of those  
8 documents through electronic mail.

9       Once the written lease documents are available to all of the parties, the parties will be required  
10 to provide their individual analyses of whether each lease involved is properly categorized as a  
11 capital lease or an operating lease; of whether Commission approval is required for each lease; of  
12 whether this docket should remain open for consideration of whether to modify Decision No. 71317  
13 under A.R.S. § 40-252 concerning financing approval and related provisions; and of whether an  
14 evidentiary hearing should be held for such consideration. If the lease documents are made available  
15 to the parties at least 24 hours in advance of the procedural conference, the parties will be required to  
16 make every effort to prepare such analyses to present at the procedural conference. If the lease  
17 documents are not made available to the parties at least 24 hours in advance of the procedural  
18 conference, Montezuma Rimrock will be required to identify a date by which the lease documents  
19 will be made available, and a deadline for filing the parties' analyses or a date for another procedural  
20 conference will then be set.

21       Because the terms of the lease/s are not yet known, and it is unclear when those terms will be  
22 known, it would be premature at this time to schedule an evidentiary hearing, as requested by Mr.  
23 Dougherty. Thus, Mr. Dougherty's Motion for an Evidentiary Hearing will be denied at this time.

24       IT IS THEREFORE ORDERED that a **procedural conference** is hereby scheduled in this  
25 docket, to be held on **January 18, 2012, at 10:00 a.m.**, in Hearing Room No. 2 at the Commission's  
26 offices at 1200 West Washington, Phoenix, Arizona, jointly with the procedural conference already  
27

28 <sup>1</sup> The Dougherty Complaint Docket is Docket No. 04254A-11-0323.

1 scheduled in the Dougherty Complaint Docket.

2 IT IS FURTHER ORDERED that at the procedural conference, Montezuma Rimrock shall  
3 explain the current status of the negotiations for or completion of the lease agreement/s for the  
4 arsenic treatment plant and building.

5 IT IS FURTHER ORDERED that Montezuma Rimrock shall file copies of any and all written  
6 lease documents for the arsenic treatment plant and building as soon as such documents come into  
7 Montezuma Rimrock's possession and shall provide courtesy copies of those documents to Mr.  
8 Dougherty and Staff through electronic mail.

9 IT IS FURTHER ORDERED that if the lease documents are made available to the parties at  
10 least 24 hours in advance of the January 18, 2012, procedural conference, the parties shall make  
11 every effort to prepare the following analyses and to present the analyses at the procedural  
12 conference: (1) whether each lease involved is properly categorized as a capital lease or an operating  
13 lease; (2) whether Commission approval is required for each lease; (3) whether this docket should  
14 remain open for consideration of whether to modify Decision No. 71317 under A.R.S. § 40-252  
15 concerning financing approval and related provisions; and (4) whether an evidentiary hearing should  
16 be held for such consideration.

17 IT IS FURTHER ORDERED that if the lease documents are not made available to the parties  
18 at least 24 hours in advance of the procedural conference, Montezuma Rimrock shall, at the  
19 procedural conference, identify a date by which the lease documents will be made available.

20 IT IS FURTHER ORDERED that the Dougherty Motion for an Evidentiary Hearing is denied  
21 at this time.

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

4 DATED this Lth day of January, 2012.

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9   
10 SARAH N. HARPRING  
11 ADMINISTRATIVE LAW JUDGE  
12

13 Copies of the foregoing mailed and e-mailed  
14 this Lth day of January, 2012, to:

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