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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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AZ CORP COMMISSION
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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.

A 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 material terms of the

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

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

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

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

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

22 On January 4, 2012, a Procedural Order was issued scheduling a procedural conference to be
23 held on January 18, 2012, jointly with a procedural conference already scheduled to occur in the
24 Dougherty Complaint Docket.¹ The Procedural Order also requires Montezuma Rimrock to explain
25 the current status of the lease dealings at the procedural conference; requires Montezuma Rimrock to
26 file copies of lease documents as soon as they are in Montezuma Rimrock’s possession and to
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28 ¹ The Dougherty Complaint Docket is Docket No. W-04254A-11-0323.

1 provide courtesy copies of the documents to Mr. Dougherty and Staff through electronic mail;
2 requires the parties to make every effort to prepare analyses and present the analyses at the
3 procedural conference if the lease documents are made available to the parties at least 24 hours
4 before the procedural conference; otherwise requires Montezuma Rimrock to identify at the
5 procedural conference a date by which the lease documents will be made available; and denies the
6 Dougherty Motion for an Evidentiary Hearing.

7 On January 6, 2012, Ms. Olsen, apparently without the involvement of counsel, filed a
8 "Request to have John Dougherty Removed as Intervener" ("Olsen Request") in which numerous
9 allegations against Mr. Dougherty are made and to which numerous attachments are appended.
10 Among other things, Ms. Olsen asserts that Mr. Dougherty violated an Injunction by sending Ms.
11 Olsen an e-mail on December 4, 2011, and that Mr. Dougherty is aware that he is not permitted to
12 contact Ms. Olsen due to the Injunction.

13 Also on January 6, 2012, Douglas Fitzpatrick, counsel for Montezuma Rimrock, filed a
14 Motion to Withdraw, stating that the "motion is necessary because of the excessive and burdensome
15 barrage of motions and discovery requests submitted by Intervener John Dougherty [which] have
16 resulted in significant time demands on . . . counsel and into bills for legal services which are onerous
17 to the water company."² Mr. Fitzpatrick included with his Motion to Withdraw Montezuma
18 Rimrock's contact information, Certificate of Counsel in Support of Motion to Withdraw, Consent to
19 Withdraw signed by Ms. Olsen on behalf of Montezuma Rimrock, and a proposed Order. Mr.
20 Fitzpatrick's Motion to Withdraw does not state that Montezuma Rimrock will retain different
21 counsel to represent it in this matter. Mr. Fitzpatrick's Motion to Withdraw also does not address
22 how Montezuma Rimrock will be able to engage in communications with Mr. Dougherty, who is
23 representing himself herein, and vice versa, if Montezuma Rimrock is not represented by counsel.

24 Montezuma Rimrock is currently represented by counsel in this matter and was represented
25 by counsel as of the filing of the Olsen Request. Ms. Olsen is not a party to this matter as an

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27 ² Mr. Fitzpatrick did not provide any factual information to support these assertions, and the Commission makes no
28 finding as to the accuracy of the assertions or specifically as to whether Montezuma Rimrock has incurred excessive legal
fees as a result of Mr. Dougherty's status as an intervenor in this matter. It is also noted that Montezuma Rimrock did not
oppose Mr. Dougherty's request for intervention until after it had been granted without opposition.

1 individual and thus has no standing to file motions on her own behalf herein. In addition, while
2 Montezuma Rimrock is represented herein by counsel, Ms. Olsen has no right to make filings on
3 behalf of Montezuma Rimrock as its representative. (*Lincoln v. Lincoln*, 155 Ariz. 272, 746 P.2d 13
4 (Ariz. Ct. App. 1987).) Thus, Ms. Olsen has no right to conduct any aspect of the litigation of this
5 case except through counsel, until such time as Montezuma Rimrock is no longer represented by
6 counsel, and the Olsen Request was improper and will not be considered. (*See id.*)

7 While Mr. Fitzpatrick has obtained his client's consent to withdraw as the client's
8 representative in this matter, and has asserted a cause for withdrawal, Mr. Fitzpatrick has not
9 established in the Motion to Withdraw that his withdrawal as counsel would not interfere with the
10 administration of justice and would not prejudice any party to this matter. The situation at hand is
11 rather unique in that the Verde Valley Justice Court has issued an Injunction Against Harassment,
12 dated July 18, 2011, and effective for one year, under which Mr. Dougherty is prohibited from having
13 any contact with Ms. Olsen "except through attorneys, legal process, and court hearings."³ While the
14 Injunction Against Harassment expressly does not prohibit Mr. Dougherty from attending public
15 meetings, it is not clear whether it allows Mr. Dougherty to engage in any of the communications
16 (outside of a formal proceeding at the Commission) that would be typical between parties in a
17 contested case before the Commission and necessary for this matter to move forward with Mr.
18 Dougherty continuing to appear *pro se* and Montezuma Rimrock not being represented by counsel.
19 Thus, Mr. Fitzpatrick's Motion to Withdraw cannot and will not be granted until such time as (1)
20 Montezuma Rimrock provides notice that it has retained counsel to replace Mr. Fitzpatrick; **or** (2)
21 Ms. Olsen provides documentation establishing that she is qualified to serve as Montezuma
22 Rimrock's representative under Arizona Supreme Court Rule 31(d)(28) **and** an Order issued by the
23 Verde Valley Justice Court establishing either (a) that Mr. Dougherty may, without violating the
24 Injunction Against Harassment, communicate directly with Ms. Olsen, for purposes of pursuing his
25 interests as a party to this matter, outside of a formal proceeding at the Commission, and using any of
26 the various methods of communication typically employed between parties to contested cases before
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28 ³ A redacted copy of the Injunction Against Harassment was docketed herein on July 25, 2011.

1 the Commission; or (b) that the Injunction Against Harassment has been dismissed by the Court.

2 The procedural conference scheduled for January 18, 2012, will be continued to allow time
3 for Montezuma Rimrock to complete the actions necessary to enable it to make one of the filings
4 referenced above.

5 IT IS THEREFORE ORDERED that **Douglas Fitzpatrick's Motion to Withdraw is denied,**
6 **without prejudice,** for the reasons set forth above.

7 IT IS FURTHER ORDERED that the **procedural conference scheduled for January 18,**
8 **2012,** at the Commission's offices in Phoenix, Arizona, is hereby **continued until further Order of**
9 the Commission.

10 IT IS FURTHER ORDERED that **Montezuma Rimrock shall, by March 12, 2012, file**
11 documentation complying with one of the following:

- 12 1. A Notice of Replacement of Counsel, identifying and providing all contact
13 information for new counsel for Montezuma Rimrock;
- 14 2. Documentation establishing that Ms. Olsen is qualified to serve as Montezuma
15 Rimrock's representative under Arizona Supreme Court Rule 31(d)(28) **and** an Order
16 issued by the Verde Valley Justice Court establishing either (a) that Mr. Dougherty
17 may, without violating the Injunction Against Harassment, communicate directly with
18 Ms. Olsen, for purposes of pursuing his interests as a party to this matter, and using
19 any of the various methods of communication typically employed between parties to
20 contested cases before the Commission; or (b) that the Injunction Against Harassment
21 has been dismissed by the Court; **or**
- 22 3. Documentation establishing that Ms. Olsen is qualified to serve as Montezuma
23 Rimrock's representative under Arizona Supreme Court Rule 31(d)(28) **and**
24 documentation setting forth a date certain by which documentation complying with
25 either subparagraph 1 or subparagraph 2 above will be filed with the Commission and
26 explaining either (a) the steps that Montezuma Rimrock has taken with the Verde
27 Valley Justice Court to obtain modification, clarification, or dismissal of the
28 Injunction Against Harassment, or (b) the steps that Montezuma Rimrock has taken to

1 retain new counsel for Montezuma Rimrock.

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

5 DATED this 11th day of January, 2012.

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SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed and e-mailed
this 11th day of January, 2012, to:

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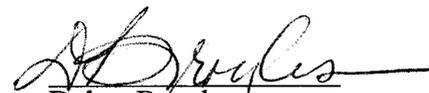
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