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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

MAR 12 2012

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

24 On December 15, 2011, Mr. Dougherty filed a Response to Interim Report of Montezuma
25 Rimrock Water Co., LLC; Motion to Deny Extension of Deadline; Motion for Evidentiary Hearing
26 ("Dougherty Response to Interim Report"). Mr. Dougherty asserted therein that the proposed lease,
27 as described by Montezuma Rimrock, would be very expensive and would require Commission
28 approval as a "capital" lease; that Montezuma Rimrock was trying to "slip past" the Commission

1 other arsenic treatment expenses that had already been incurred or would be incurred and that
2 Montezuma Rimrock would try to shift to ratepayers; that Montezuma Rimrock was acting in bad
3 faith in that it had begun construction after stating that it would not do so without Commission
4 approval; that Ms. Olsen's proposed dual role as the lessee of the arsenic treatment equipment and
5 building and the lessor of the same to Montezuma Rimrock was fraught with potential for abuse; and
6 that Montezuma Rimrock was insolvent. In addition, Mr. Dougherty moved the Commission to deny
7 Montezuma Rimrock's request for an extension beyond December 9, 2011, to file its lease financing
8 plan and analysis of whether the lease was an operating lease or a capital lease; moved the
9 Commission to schedule an evidentiary hearing to consider Montezuma Rimrock's "final financing
10 plan, its apparent insolvency, and whether to revoke [its] Certificate of Convenience and Necessity";
11 and asserted that it would be premature to close this docket and that it would be in the best interest of
12 ratepayers and the public to keep the docket open until Montezuma Rimrock's "final financing plan"
13 was approved or disapproved.

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

17 On January 4, 2012, a Procedural Order was issued scheduling a procedural conference to be
18 held on January 18, 2012, jointly with a procedural conference already scheduled to occur in the
19 Dougherty Complaint Docket.¹ The Procedural Order also required Montezuma Rimrock to explain
20 the current status of the lease dealings at the procedural conference; required Montezuma Rimrock to
21 file copies of lease documents as soon as they were in Montezuma Rimrock's possession and to
22 provide courtesy copies of the documents to Mr. Dougherty and Staff through electronic mail;
23 required the parties to make every effort to prepare analyses and present the analyses at the
24 procedural conference if the lease documents were made available to the parties at least 24 hours
25 before the procedural conference; otherwise required Montezuma Rimrock to identify at the
26 procedural conference a date by which the lease documents would be made available; and denied the
27

28 ¹ The Dougherty Complaint Docket is Docket No. W-04254A-11-0323.

1 Dougherty Motion for an Evidentiary Hearing.

2 On January 6, 2012, Ms. Olsen, apparently without the involvement of counsel, filed a
3 “Request to have John Dougherty Removed as Intervener” (“Olsen Request”) in which numerous
4 allegations against Mr. Dougherty were made and to which numerous attachments were appended.
5 Among other things, Ms. Olsen asserted that Mr. Dougherty had violated an Injunction by sending
6 Ms. Olsen an e-mail on December 4, 2011, and that Mr. Dougherty was aware that he is not
7 permitted to contact Ms. Olsen due to the Injunction.

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

19 On January 11, 2012, a Procedural Order was issued denying Mr. Fitzpatrick’s Motion to
20 Withdraw, without prejudice, because the Motion to Withdraw had not established how Mr.
21 Fitzpatrick’s withdrawal as counsel would not interfere with the administration of justice and would
22 not prejudice any party to this matter in light of a current Injunction Against Harassment prohibiting
23 Mr. Dougherty from having contact with Ms. Olsen “except through attorneys, legal process, and
24 court hearings.”³ The Procedural Order directed Montezuma Rimrock, by March 12, 2012, to file
25 one of three possible types of documentation relating to Montezuma Rimrock’s ongoing

26 ² Mr. Fitzpatrick did not provide any factual information to support these assertions, and the Commission makes no
27 finding as to the accuracy of the assertions or specifically as to whether Montezuma Rimrock has incurred excessive legal
28 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.

³ The Procedural Order of January 11, 2012, provides additional information.

1 representation in this matter. The Procedural Order also continued the procedural conference
2 scheduled for January 18, 2012, until further Order of the Commission.

3 On February 21, 2012, someone filed in this docket a bundle of documents that appear to be
4 an unexecuted proposal for a contract under which Kevlor Design Group, LLC would build an
5 arsenic treatment system for Ms. Olsen and/or Montezuma Rimrock; an unexecuted "Water Services
6 Agreement" under which Ms. Olsen would construct, install, maintain, and own arsenic treatment
7 facilities to treat the water produced by Montezuma Rimrock's Well #1 and Well #4 for a 20-year
8 period in return for monthly standby fees of \$1,500.00 and treatment fees of \$400.00 per acre foot,
9 and Montezuma Rimrock would be required to purchase the arsenic treatment facilities from Ms.
10 Olsen for \$1.00 at the end of the 20-year period; and an uncompleted and incomplete "Lease
11 Agreement" showing "Financial Pacific Leasing, LLC" as lessor. The bundle of documents was
12 docketed with a cover sheet that was blank except for the docket numbers.

13 On March 9, 2012, Montezuma Rimrock filed a Notice of Replacement Counsel, stating that
14 Todd C. Wiley of Fennemore Craig, P.C. would be serving as counsel for Montezuma Rimrock in
15 this matter.

16 In light of Montezuma Rimrock's having obtained new counsel to replace Mr. Fitzpatrick, it
17 is now reasonable and appropriate to grant Mr. Fitzpatrick's Motion to Withdraw. In addition, it is
18 reasonable and appropriate at this time to reschedule the procedural conference that was previously
19 continued.

20 IT IS THEREFORE ORDERED that **Douglas Fitzpatrick's Motion to Withdraw is**
21 **granted.**

22 IT IS FURTHER ORDERED that a **joint procedural conference** involving the above-
23 captioned dockets and Docket No. W-04254A-11-0323, shall proceed on **April 13, 2012, at 10:00**
24 **a.m.**, or as soon thereafter as is practicable, in Hearing Room No. 2 at the Commission's offices at
25 1200 West Washington Street, Phoenix, Arizona.

26 IT IS FURTHER ORDERED that if **Montezuma Rimrock** has executed any contractual
27 documents related to purchase, construction, installation, operation, or maintenance of an arsenic
28 treatment facility to treat the water from its Well # 1 and/or Well # 4, **Montezuma Rimrock shall,**

1 by March 30, 2012, file a copy of all such contractual documents in this docket.

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 12th day of March, 2012.

6
7
8 
9 SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

10
11 Copies of the foregoing mailed and e-mailed
12 this 12th day of March, 2012, to:

13 Todd C. Wiley
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16 Phoenix, AZ 85012
17 Attorney for Montezuma Rimrock Water
18 Company, LLC

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By: 
Debra Broyles
Secretary to Sarah N. Harpring