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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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Arizona Corporation Commission

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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 FINANCING TO INSTALL A WATER LINE FROM THE WELL ON TIEMAN TO WELL NO. 1 ON TOWERS.

DOCKET NO. W-04254A-12-0204

IN THE MATTER OF THE APPLICATION OF MONTEZUMA RIMROCK WATER COMPANY, LLC FOR APPROVAL OF FINANCING TO PURCHASE THE WELL NO. 4 SITE AND THE COMPANY VEHICLE.

DOCKET NO. W-04254A-12-0205

IN THE MATTER OF THE APPLICATION OF MONTEZUMA RIMROCK WATER COMPANY, LLC FOR APPROVAL OF FINANCING FOR AN 8,000-GALLON HYDRO-PNEUMATIC TANK.

DOCKET NO. W-04254A-12-0206

IN THE MATTER OF THE RATE APPLICATION OF MONTEZUMA RIMROCK WATER COMPANY, LLC.

DOCKET NO. W-04254A-12-0207

**PROCEDURAL ORDER**

**BY THE COMMISSION:**

On May 31, 2012, Montezuma Rimrock Water Company, LLC ("Montezuma") filed with the Arizona Corporation Commission ("Commission") the following: In Docket No. W-04254A-12-0204, an application for approval of a loan agreement in which Montezuma promises to pay Rask Construction ("Rask") the sum of \$68,592 with interest for Rask's installation of a water line from the well on Tieman to Well No. 1 on Towers ("Rask Financing"); in Docket No. W-04254A-12-0205, an application for approval of a loan agreement in which Montezuma promises to pay Patricia Olsen the sum of \$21,377 with interest for the purchase of the Well No. 4 site and a company vehicle ("Olsen Site and Vehicle Financing"); in Docket No. W-04254A-12-0206, an application for approval of a loan agreement in which Montezuma promises to pay Sergei Arias the sum of \$15,000 with interest for the purchase of an 8,000-gallon hydro-pneumatic tank to provide additional water

1 storage to Montezuma's system ("Arias Tank Financing"); and in Docket No. W-04254A-12-0207,  
2 an application for a rate increase ("Rate Application").

3 On June 25, 2012, John E. Dougherty, III was granted intervention in each of the above-  
4 referenced dockets, without objection.

5 On July 2, 2012, in the docket for the Rate Application, Staff filed a Letter of Insufficiency  
6 ("LOI").

7 On July 24, 2012, the above-referenced dockets were consolidated by Procedural Order. The  
8 Procedural Order also ordered that an evidentiary hearing would be held in this matter, although a  
9 procedural schedule could not be established until the applications were determined to be sufficient  
10 by the Commission's Utilities Division ("Staff").

11 On August 3, 2012, Montezuma filed a document stating that it had not received the LOI until  
12 Gerald Becker of Staff sent it to Montezuma via e-mail on July 27, 2012. Montezuma acknowledged  
13 that there were insufficiencies in its applications and requested a 30-day extension to respond to  
14 Staff's data request included with the LOI.

15 On August 8, 2012, Staff filed Staff's Response to Request for Extension, stating that Staff  
16 recommended extending the period for Montezuma to respond to the LOI by 30 days, to September  
17 3, 2012. Staff also stated that the LOI had been sent to Montezuma by certified mail on July 3, 2012,  
18 and returned as unclaimed on July 25, 2012. Staff expressed concern about why the LOI was  
19 returned unclaimed when it had been sent by certified mail to the listed main address for Montezuma.

20 On August 9, 2012, a Procedural Order was issued directing Staff to exercise discretion  
21 regarding the amount of time permitted for Montezuma to respond to a LOI and Data Request and  
22 requiring Montezuma, by August 30, 2012, to make a filing clarifying the mailing address to be used  
23 for all documents sent to it.

24 On August 14, 2012, Montezuma filed a document stating that its mailing address remained  
25 unchanged: P.O. Box 10, Rimrock, AZ 86335.

26 On September 4, September 14, and October 9, 2012, Montezuma made filings related to the  
27 LOI for its rate application. Montezuma amended its requested rate schedule in the October 9, 2012,  
28 filing.

1 On October 10, 2012, Mr. Dougherty filed a Motion to Order Montezuma Rimrock to Provide  
2 Intervener Copies of Filings, in which Mr. Dougherty asserted that Montezuma had failed to provide  
3 Mr. Dougherty copies of the filings made on July 16, August 3, August 14, September 4, September  
4 14, and October 9, and that Montezuma had also failed to provide Mr. Dougherty with filings made  
5 in the financing cases consolidated with the rate case. Mr. Dougherty requested that the Commission  
6 order Montezuma to provide Mr. Dougherty with complete copies of all past and future filings in the  
7 consolidated docket.

8 On October 25, 2012, Montezuma made another filing related to the LOI for its rate  
9 application, again including an amendment to the rate application. In this filing, Montezuma  
10 requested a "JD Legal Surcharge," a surcharge of \$6.57 per month per customer for legal fees that  
11 Montezuma attributed to Mr. Dougherty's participation in cases involving Montezuma. Although  
12 Montezuma stated that invoices and statements for the asserted \$47,298.09 in legal fees were  
13 attached to the filing, no such supporting documentation was attached. The filing included a  
14 certification of mailing to the Commission's Docket Control, but did not indicate that the filing had  
15 been sent to any other person.

16 On October 29, 2012, a Procedural Order was issued requiring Montezuma to serve upon Mr.  
17 Dougherty, by November 10, 2012, a copy of each filing made by Montezuma to date in each of the  
18 dockets for this consolidated matter and to file, by November 19, 2012, proof that such service had  
19 been completed upon Mr. Dougherty. The Procedural Order further required Montezuma, on each  
20 future filing, to include proof of service conforming to the requirements of A.A.C. R14-3-107(C).

21 On November 2, 2012, Staff issued a Letter of Sufficiency informing Montezuma that its  
22 application had met the sufficiency requirements outlined in A.A.C. R14-2-103 and that Montezuma  
23 had been classified as a Class D utility.

24 On November 5, 2012, Montezuma filed another amendment to its rate application, including  
25 revised schedules. Montezuma did not include on the filing proof of service conforming to the  
26 requirements of A.A.C. R14-3-107(C).<sup>1</sup>

27 <sup>1</sup> Because this may have been attributable to the lag time occurring with the U.S. Mail, it was not considered  
28 noncompliance with the Procedural Order of October 29, 2012. However, Montezuma was directed to ensure its  
compliance for its future filings.

1 On November 8, 2012, a Procedural Order was issued scheduling a hearing in this matter to  
2 commence on February 7, 2013, and establishing other procedural requirements and deadlines,  
3 including a requirement and December 6, 2012, deadline for Montezuma's filing of direct testimony  
4 and exhibits and a requirement and December 7, 2012, deadline for Montezuma's publication and  
5 mailing of specified notice.

6 Later on November 8, 2012, Staff filed a Staff Request for Procedural Schedule, suggesting  
7 several procedural deadlines.

8 On November 9, 2012, the Residential Utility Consumer Office ("RUCO") filed RUCO's  
9 Application to Intervene, stating that RUCO desired to intervene to fulfill its statutory obligation to  
10 protect the residential utility consumers of Arizona.

11 On November 15, 2012, Montezuma filed a Response to Procedural Orders stating that  
12 Montezuma had received the October 29, 2012, Procedural Order on November 13, 2012, and had  
13 mailed all filings to Mr. Dougherty by certified mail on November 14, 2012. Montezuma also stated  
14 that the documents supporting the requested JD Legal Surcharge had previously been filed on  
15 October 9, 2012. Further, Montezuma requested extensions to dates derived from the Staff Request  
16 for Procedural Schedule rather than the Rate Case Procedural Order issued on November 8, 2012.  
17 Montezuma did not acknowledge the Procedural Order of November 8, 2012. Montezuma also stated  
18 that it had not received any data requests from Mr. Dougherty, but that it requested three weeks to  
19 respond to any such request.

20 A Procedural Order was issued on November 23, 2012, granting RUCO's Application to  
21 Intervene. Montezuma's requests were not granted in the Procedural Order because Montezuma's  
22 requests did not respond to the procedural schedule established in the case, only to a Staff Request  
23 that had not been granted.

24 On November 26, 2012, Montezuma filed an Amendment to Rate Case, which included no  
25 indication that service had been provided either to Mr. Dougherty or to RUCO.

26 On November 30, 2012, Mr. Dougherty filed both a Certificate of Intervener in Support of  
27 Discovery Motion and a document entitled "Notice of Filing First Data Request to Montezuma  
28 Rimrock; Motion to Compel Production of Records requested in First Data Request; Notice of Filing

1 Second Data Request to Montezuma Rimrock; Notice of Montezuma Rimrock Violating Oct. 29  
2 Procedural Order requiring Company to Comply with A.A.C. R14-3-107(C) and Motion for  
3 Sanctions; Notice of Filing Yavapai County Judgment Case No: V32012000758 vs. Montezuma  
4 Rimrock.” In the document, Mr. Dougherty asserted that he had sent his First Data Request to  
5 Montezuma on October 26, 2012, by both e-mail and first class mail and that he had followed up with  
6 Montezuma with voicemail messages left on two different Montezuma phone lines on October 29,  
7 2012, and again on November 5, 2012. Mr. Dougherty further asserted that he had sent a second e-  
8 mail on November 5, 2012, to request compliance with the First Data Request. Mr. Dougherty  
9 asserted that on November 20, 2012, he had received the first copies of Montezuma’s filings in this  
10 consolidated matter, which included the November 15, 2012, statement that Montezuma had not  
11 received any data requests from Mr. Dougherty. Mr. Dougherty stated that all future Data Requests  
12 from him will be docketed as well as sent to Montezuma by mail and e-mail and, further, that he will  
13 also provide Montezuma notice by telephone. Mr. Dougherty also provided notice that he had mailed  
14 and e-mailed a Second Data Request to Montezuma on November 28, 2012. Mr. Dougherty also  
15 pointed out that Montezuma’s filing of November 26, 2012, had violated the Procedural Order of  
16 October 29, 2012, by not including proof of service on Mr. Dougherty. Mr. Dougherty also provided  
17 notice of a November 13, 2012, Yavapai County Development Services judgment against  
18 Montezuma for a zoning violation, which judgment imposes a \$100 fine and, if Montezuma does not  
19 cease all uses on the property and return it to vacant land by December 20, 2012, also imposes a  
20 \$10,000 civil penalty. Mr. Dougherty asserted that the parcel in question is the property containing  
21 Montezuma’s Well No. 4. Mr. Dougherty requested that the Commission order Montezuma to  
22 comply immediately with Mr. Dougherty’s First Data Request by delivering all records to Mr.  
23 Dougherty by December 10, 2012, and further that the Commission impose appropriate sanctions  
24 against Montezuma for violating the October 29 Procedural Order. Mr. Dougherty included  
25 certification that the filing had been mailed to Montezuma, but did not indicate that it had been  
26 mailed either to Staff or to RUCO.

27 On December 3, 2012, Montezuma re-filed its November 26, 2012, Amendment to  
28 Application along with Proof of Service on RUCO and Mr. Dougherty, but not Staff.

1           Also on December 3, 2012, Montezuma filed a Request for Procedural Conference and  
2 Additional Rate Case Information. In its filing, Montezuma requested a procedural conference to  
3 discuss the Procedural Order of November 8, 2012, due to Montezuma's understanding that "small  
4 water companies are not required to submit testimony and in the past have not been required to  
5 submit testimony" and its belief that the Procedural Order gave "no information . . . as to the type,  
6 nature, and requirements regarding the testimony request." Montezuma's Request included the  
7 names and addresses for Mr. Dougherty and RUCO, which was understood to indicate that service  
8 had been made upon them.

9           On December 7, 2012, a Procedural Order was issued scheduling a procedural conference to  
10 be held on January 2, 2013, at the Commission's offices in Phoenix, Arizona; requiring all parties to  
11 appear at the procedural conference in person and prepared to make proposals regarding a new  
12 procedural schedule for this matter; ordering Montezuma as soon as possible and before the  
13 procedural conference to provide a good faith and complete response or file a valid objection to each  
14 portion of Mr. Dougherty's First Data Request and Second Data Request; allowing Montezuma, in  
15 the alternative, to reach an agreement with Mr. Dougherty regarding the information to be provided  
16 in response to the data requests; requiring Montezuma and Mr. Dougherty to report regarding the  
17 status of discovery at the procedural conference; requiring Montezuma as soon as possible and before  
18 the procedural conference to review thoroughly the Commission's rules of practice and procedure  
19 and to review direct testimony filed in other water utility cases; ordering each party to ensure that all  
20 documents filed are appropriately served upon each other party and that proof of such service is  
21 included on each filing; vacating the previously established procedural schedule, except as to the  
22 February 7, 2013, proceeding, which would convene only for the purpose of receiving public  
23 comment, if Montezuma had already provided notice of the proceeding by mail to its customers or  
24 through newspaper publication; ordering Montezuma as soon as possible and before January 2, 2013,  
25 to make a filing indicating whether notice had been provided; and suspending the Commission's time  
26 frame for issuing a decision in this matter.

27

28

1 On December 14, 2012, Montezuma filed proof of notice, stating that notice had been mailed  
2 to its customers on December 1, 2012, and showing that notice had been published in *The Camp*  
3 *Verde Journal* on December 5, 2012.

4 On December 14, 2012, Mr. Dougherty filed a Request to Attend January 2, 2013, Procedural  
5 Conference Telephonically. Mr. Dougherty stated that he has made extensive international travel  
6 plans based upon the absence of proceedings until the pre-hearing conference previously scheduled  
7 for January 31, 2013, and the hearing scheduled for February 7, 2013, and requested either  
8 permission to attend the January 2, 2013, procedural conference telephonically or, in the alternative,  
9 that the procedural conference be postponed until a date no sooner than January 31, 2013. Mr.  
10 Dougherty also requested that Montezuma's discovery response deadline remain January 2, 2013.

11 Although RUCO and Staff have not yet had an opportunity to weigh in on Mr. Dougherty's  
12 request, it is reasonable and appropriate to resolve it without delay due to its procedural nature and  
13 the impending holidays.

14 Because Mr. Dougherty will not be available to attend the January 2, 2013, procedural  
15 conference in person, it is reasonable and appropriate to vacate the January 2, 2013, procedural  
16 conference and hold the procedural conference when all of the parties are available. Because  
17 Montezuma has provided notice of the hearing previously scheduled to be held on February 7, 2013,  
18 a proceeding must convene on that date to receive public comment. In light of the hearing previously  
19 scheduled on February 7, 2013, the parties should also be available to appear in person for a  
20 procedural conference to be held on that date. Thus, the procedural conference will be held on that  
21 date, immediately following any public comment received. Although Mr. Dougherty has requested  
22 to have Montezuma's discovery response deadline remain January 2, 2013, it is more appropriate  
23 (particularly considering that Mr. Dougherty will apparently be out of the country in any event) to  
24 allow Montezuma additional time to ensure that its responses are prepared in good faith and are  
25 complete and that any objections made are legally valid. Thus, Montezuma's deadline will be  
26 extended to January 16, 2013, which should still provide Mr. Dougherty ample time to review them  
27 before the February 7, 2013, procedural conference.

28 IT IS THEREFORE ORDERED that the **procedural conference** scheduled to be held on

1 **January 2, 2013**, at the Commission's offices at 1200 West Washington Street, Phoenix, Arizona  
2 85007, is hereby **vacated**.

3 IT IS FURTHER ORDERED that a **public comment proceeding** shall convene in this matter  
4 on **February 7, 2013, at 10:00 a.m.** or as soon thereafter as is practicable, in Hearing Room No. 1 at  
5 the Commission's offices at 1200 West Washington Street, Phoenix, Arizona 85007, **and shall be**  
6 **immediately followed by a procedural conference** at which each party to this matter **shall appear**  
7 **in person and shall be prepared to make proposals regarding a new procedural schedule for**  
8 **this matter.**

9 IT IS FURTHER ORDERED that **Montezuma's deadline to respond** to each portion of Mr.  
10 Dougherty's First Data Request and Second Data Request as provided in the Procedural Order of  
11 December 7, 2012; to review the Commission's rules; and to review direct testimony filed by other  
12 water utilities is hereby **extended to January 16, 2013.**

13 IT IS FURTHER ORDERED that the **remaining provisions of the Procedural Order**  
14 **issued on December 7, 2012, are in full force and effect.**

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

18 DATED this 10<sup>th</sup> day of December, 2012.

19  
20  
21   
22 SARAH N. HARPRING  
ADMINISTRATIVE LAW JUDGE

23 Copies of the foregoing mailed/delivered  
24 this 11<sup>th</sup> day of December, 2012 to:

25 Patricia Olsen  
26 MONTEZUMA RIMROCK WATER CO., LLC  
P.O. Box 10  
Rimrock, AZ 86335

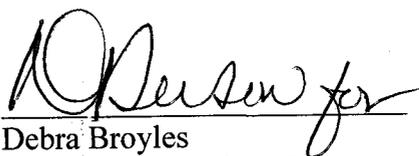
27 John E. Dougherty, III  
28 P.O. Box 501  
Rimrock, AZ 86335

1 Daniel W. Pozefsky  
RESIDENTIAL UTILITY CONSUMER OFFICE  
2 1110 West Washington Street, Suite 220  
Phoenix, AZ 85007

3  
4 Janice Alward, Chief Counsel, Legal Division  
ARIZONA CORPORATION COMMISSION  
5 1200 West Washington Street  
Phoenix, AZ 85007-2927

6  
7 Steven Olea, Director, Utilities Division  
ARIZONA CORPORATION COMMISSION  
8 1200 West Washington Street  
Phoenix, AZ 85007-2927

9  
10 ARIZONA REPORTING SERVICE, INC.  
2200 North Central Avenue, Suite 502  
Phoenix, AZ 85004-1481

11  
12  
13 By:   
Debra Broyles  
14 Secretary to Sarah N. Harpring

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