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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

- BOB STUMP - Chairman
- GARY PIERCE
- BRENDA BURNS
- BOB BURNS
- SUSAN BITTER SMITH

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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, in this docket, the Commission issued Decision No. 71317, establishing permanent rates for Montezuma Rimrock Water Company, LLC ("Montezuma") and authorizing Montezuma 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 was also ordered to make a number of compliance filings.

On April 27, 2011, in response to a request filed by Montezuma, 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 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 (the most recent on April 30, 2012), numerous filings have been made, numerous Procedural Orders have been issued, and Montezuma's counsel has been replaced.

At the April 30, 2012, procedural conference, Montezuma represented that it would soon be

1 filing a general rate case application and that it needed to determine whether to move forward with a
2 capital lease or an operating lease for arsenic treatment facilities. This docket was left open with the
3 understanding that it needed to remain open in case Montezuma desired to request implementation of
4 the arsenic remediation surcharge mechanism (“ARSM”) authorized for it in Decision No. 71317,
5 which was specifically authorized to cover debt service for the WIFA loan approved in that Decision.
6 It was understood that having the ARSM implemented to cover any other financing would necessitate
7 modification of Decision No. 71317.

8 Since the April 30, 2012, procedural conference, several filings have been made in this
9 docket. On May 16, 2012, Mr. Dougherty filed an Emergency Motion for Temporary Restraining
10 Order and Order to Show Cause, to which neither Montezuma nor Staff replied.¹ On May 25, 2012,
11 Mr. Dougherty filed notice of the Verde Valley Justice Court’s dismissal of the Injunction Against
12 Harassment Order previously obtained by Patricia Olsen, Montezuma’s owner, against Mr.
13 Dougherty.

14 On December 4, 2012, Ms. Olsen made several filings ostensibly on behalf of Montezuma:
15 (1) a copy of a November 21, 2012, Arizona Department of Environmental Quality (“ADEQ”)
16 Approval of Construction Partial Approval for an arsenic treatment facility; (2) a document entitled
17 “WIFA Loan Request Withdrawal,” apparently intended to request modification or elimination of
18 compliance item filing requirements in Decision No. 71317; and (3) a document entitled “Approval
19 of Construction for Well #4 Extension,” apparently intended to request a one-year extension of time
20 to file an Approval of Construction for Well #4. These filings made by Ms. Olsen, ostensibly
21 requesting Commission action on behalf of Montezuma, have been disregarded as improper because
22 Montezuma is represented by counsel in this matter.²

23 Most recently, on January 14, 2013, Mr. Dougherty filed a Motion to Bar Olsen’s Submittals
24 and Imposition of Appropriate Penalties, requesting that the December 4, 2012, filings be rejected as
25 improper; that notice to that effect be issued; and that the Commission impose sanctions under A.R.S.
26 § 40-424 against Ms. Olsen for violating the January 11, 2012, Procedural Order, including finding

27 ¹ This Motion has been deemed denied pursuant to operation of the Procedural Order of April 28, 2011.

28 ² As was explained in the Procedural Order of January 11, 2012, issued in this docket, Ms. Olsen does not have the authority to file such requests in this matter, as Montezuma is represented by counsel herein.

1 her in contempt of the Commission and imposing a financial penalty against her.

2 Although Ms. Olsen lacks the authority to file such requests in this matter on behalf of
3 Montezuma, the Commission does not believe that the Commission's limited resources would be best
4 used or that the public interest would be best served by initiating a separate proceeding in which to
5 provide the notice and hold the hearing required by A.R.S. § 40-424 in order to impose penalties
6 upon Ms. Olsen. Ms. Olsen's filings, ostensibly made on behalf of Montezuma, have been
7 disregarded as improper. Thus, Mr. Dougherty's January 14, 2013, Motion will be denied to the
8 extent that it requested initiation of a contempt and penalty proceeding under A.R.S. § 40-424.

9 Montezuma currently is involved in two other pending matters before the Commission: one
10 involving a Formal Complaint filed by Mr. Dougherty in Docket No. W-04254A-11-0323
11 ("Complaint Docket"), and one involving a general rate case application and several financing
12 applications filed by Montezuma in Docket No. W-04254A-12-0204 et al. ("Rate Docket").

13 Because this docket, the Rate Docket, and the Complaint Docket have overlapping parties and
14 are closely related on a factual level, it is reasonable and appropriate to have a joint procedural
15 conference at which the parties will discuss the procedural schedule for the Rate Docket, how this
16 docket and the Complaint Docket should progress toward resolution, and whether either this docket
17 or the Complaint Docket (or both of them) should be consolidated with the Rate Docket or
18 administratively closed.

19 IT IS THEREFORE ORDERED that a joint **procedural conference** shall convene in this
20 matter, the Rate Docket, and the Complaint Docket on **February 25, 2013, at 10:00 a.m.** or as soon
21 thereafter as is practicable, in Hearing Room No. 1 at the Commission's offices at 1200 West
22 Washington Street, Phoenix, Arizona 85007.

23 IT IS FURTHER ORDERED that the parties shall appear in person at the procedural
24 conference.

25 IT IS FURTHER ORDERED that the parties shall be prepared at the procedural conference to
26 make proposals regarding a new procedural schedule for the Rate Docket and to discuss how this
27 docket and the Complaint Docket should progress toward resolution and whether either this docket or
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1 the Complaint Docket (or both of them) should be consolidated with the Rate Docket or
2 administratively closed.

3 IT IS FURTHER ORDERED that **Mr. Dougherty's January 14, 2013, Motion is denied to**
4 the extent that it requested initiation of a contempt and penalty proceeding under A.R.S. § 40-424.

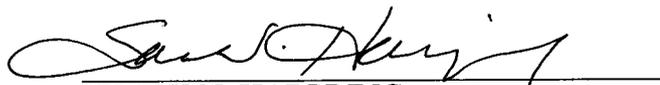
5 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
6 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
7 Supreme Court Rule 42). Representation before the Commission includes appearing at all hearings,
8 procedural conferences, and Open Meetings at which the matter is scheduled for discussion, unless
9 counsel has previously been granted permission to withdraw by the Administrative Law Judge or the
10 Commission.

11 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
12 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

13 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
14 Communications) applies to this proceeding and shall remain in effect until the Commission's
15 Decision in this matter is final and non-appealable.

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

19 DATED this 1st day of February, 2013.

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23 SARAH N. HARPRING
24 ADMINISTRATIVE LAW JUDGE
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27
28

1 Copies of the foregoing mailed/delivered/e-mailed
this 1st day of February, 2013, to:

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