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BEFORE THE ARIZONA CORPORATION COMMISSION

2013 FEB 26 A 11:49

AZ CORP COMMISSION
DOCKET CONTROL

COMMISSIONERS

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

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

JOHN E. DOUGHERTY,

COMPLAINANT,

V.

DOCKET NO. W-04254A-11-0323

Arizona Corporation Commission
DOCKETED

FEB 26 2013

MONTEZUMA RIMROCK WATER COMPANY, LLC,

DOCKETED
JM

RESPONDENT.

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 May 31, 2012, Montezuma Rimrock Water Company, LLC ("Montezuma") filed with the

1 Arizona Corporation Commission (“Commission”) the following: In Docket No. W-04254A-12-
2 0204, an application for approval of a loan agreement in which Montezuma promises to pay Rask
3 Construction (“Rask”) the sum of \$68,592 with interest for Rask’s installation of a water line from
4 the well on Tieman to Well No. 1 on Towers; in Docket No. W-04254A-12-0205, an application for
5 approval of a loan agreement in which Montezuma promises to pay Patricia Olsen, Montezuma’s
6 owner, the sum of \$21,377 with interest for the purchase of the Well No. 4 site and a company
7 vehicle; in Docket No. W-04254A-12-0206, an application for approval of a loan agreement in which
8 Montezuma promises to pay Sergei Arias the sum of \$15,000 with interest for the purchase of an
9 8,000-gallon hydro-pneumatic tank to provide additional water storage to Montezuma’s system; and
10 in Docket No. W-04254A-12-0207, an application for a rate increase. The applications filed on May
11 31, 2012, in Docket Nos. W-04254A-12-0204, -0205, -0206, and -0207 (collectively the “rate case
12 dockets”), have already been consolidated into a single matter, in which John E. Dougherty, III, and
13 the Residential Utility Consumer Office (“RUCO”) have been granted intervention, and the
14 Commission’s Utilities Division (“Staff”) has issued a Letter of Sufficiency classifying Montezuma
15 as a Class D utility. Additionally, a procedural schedule has been created and then vacated.

16 On August 23, 2011, in Docket No. W-04254A-11-0323 (“complaint case docket”), a formal
17 complaint was filed against Montezuma by Mr. Dougherty.¹ Mr. Dougherty has since been permitted
18 to modify the complaint and currently has a pending motion to modify the complaint further by
19 adding an Allegation XVII.

20 On April 27, 2011, in response to a request filed by Montezuma, the Commission voted to
21 reopen Decision No. 71317 (October 30, 2009), issued in Docket Nos. W-04254A-08-0361 and -
22 0362 (collectively “A.R.S. § 40-252 dockets”), under A.R.S. § 40-252, for the purpose of
23 determining whether to modify the decision concerning financing approval and related provisions.
24 Montezuma had requested that the decision be reopened so that it could be authorized to fund an
25 arsenic treatment project through means other than a loan from the Water Infrastructure Finance
26 Authority of Arizona (“WIFA”). Mr. Dougherty has since been granted intervention in the A.R.S. §
27

28 ¹ Another Complainant has been permitted to withdraw.

1 40-252 dockets as well.

2 On February 25, 2013, a joint procedural conference was held for the rate case dockets, the
3 complaint case docket, and the A.R.S. § 40-252 dockets. Montezuma, RUCO, and Staff appeared
4 through counsel, and Mr. Dougherty appeared pro se. The parties had been directed, through
5 Procedural Orders issued in the various dockets on January 31 and February 1, 2013, to be prepared
6 to discuss the procedural schedule for the rate case dockets, how the complaint docket and the A.R.S.
7 § 40-252 docket should proceed toward resolution, and whether the complaint docket and/or the
8 A.R.S. § 40-252 docket should be consolidated with the rate case dockets or administratively closed.

9 Montezuma asserted that the rate case dockets should be permitted to go forward without
10 either pre-filed testimony or a hearing, that the complaint case docket should be dismissed or at least
11 put on hold, and that the A.R.S. § 40-252 dockets should be dismissed as no longer relevant in light
12 of the rate case dockets. The parties were informed that a hearing will be required for the rate case
13 dockets.

14 Mr. Dougherty asserted that the complaint case docket should go forward first, because
15 otherwise the rate case dockets will render the complaint case docket and the A.R.S. § 40-252
16 dockets meaningless. Mr. Dougherty also stated that he would like to modify his complaint by
17 reducing the allegations therein to focus on those issues that he believes are the most serious.

18 RUCO agreed that the complaint case docket should go forward first but was noncommittal
19 regarding whether RUCO would be requesting intervention in the complaint case docket.

20 Staff asserted that the rate case dockets should go forward first, that the complaint case docket
21 involves serious allegations but should not go forward until after the rate case dockets are resolved,
22 and that the A.R.S. § 40-252 dockets could be closed. Staff stated that it is most concerned with
23 getting Montezuma into a position where it can function.

24 A possible schedule was also discussed. Mr. Dougherty was directed to file his amended
25 complaint by the end of the week² and to provide a courtesy copy of the amended complaint to
26 RUCO. Montezuma and Staff were directed to file responses to the amended complaint within 20
27

28 ² Mr. Dougherty's pending motion to modify his complaint by adding Allegation XVII was thereby rendered moot.

1 days thereafter.³ No other rulings were made at the procedural conference.

2 Thus, it is now necessary to establish a process and procedural schedule that will allow the
3 Commission most effectively and efficiently to address the issues that have been raised in each of the
4 various dockets.

5 Although none of the parties have advocated for further consolidation of any of these dockets,
6 it is in the best interests of the parties as well as the Commission to have all of the interrelated issues
7 related to Montezuma's operations, financial dealings and status, and conduct before the Commission
8 considered within one consolidated matter that can have one hearing and can be resolved through one
9 Commission Decision. This will allow for greater efficiency than would multiple separate hearings
10 because there is significant overlap in the factual circumstances for the various dockets and will be
11 more effective because it will enable the parties to propose and the Commission to consider a range
12 of possible outcomes beyond those typically considered for a rate case, a complaint case, or an A.R.S.
13 § 40-252 case. Because the scope of the newly consolidated matter exceeds the scope of the notice
14 that Montezuma has provided to its customers and the public at large for the rate case dockets, it is
15 also necessary and appropriate to require Montezuma again to provide notice as directed herein.
16 Additionally, because Montezuma and Mr. Dougherty each have the burden of proof as to different
17 aspects of the newly consolidated matter, and so as to save the parties time and money to the extent
18 practicable, each party will be required to file one round of direct testimony and exhibits to support
19 its position and then to file one round of testimony and exhibits in response to the direct testimony
20 and exhibits of the other parties. The parties will be required to include, both in their direct testimony
21 and their responsive testimony, separate sections concerning the rate case dockets, the complaint case
22 docket, and the A.R.S. § 40-252 dockets.

23 IT IS THEREFORE ORDERED that the **following dockets are hereby consolidated for all**
24 **purposes going forward:** the rate case dockets (Docket Nos. W-04254A-12-0204, -0205, -0206, and
25 -0207); the complaint case docket (Docket No. W-04254A-11-0323); and the A.R.S. § 40-252 case
26 dockets (Docket Nos. W-04254A-08-0361 and -0362).⁴

27 ³ Due to the other decisions made in this Procedural Order, Staff will not be required to make this filing.

28 ⁴ As a result of this consolidation of the various dockets, RUCO is now effectively granted intervention as to each docket, and the issue of whether it would request intervention in additional dockets has been rendered moot.

1 IT IS FURTHER ORDERED that **Mr. Dougherty** shall, by **March 1, 2013**, file in the newly
2 consolidated matter an **Amended Complaint** intended to replace, in toto, his prior complaint as
3 modified to date.

4 IT IS FURTHER ORDERED that **Montezuma** shall, by **March 18, 2013**, file an **Answer** to
5 the Amended Complaint.⁵

6 IT IS FURTHER ORDERED that the **hearing** in the above-captioned matter shall commence
7 on **May 3, 2013, at 10:00 a.m.**, in Hearing Room No. 2 at the Commission's offices at 1200 West
8 Washington St., Phoenix, Arizona 85007, and shall **continue**, as necessary on **May 6 through May**
9 **9, 2013**.

10 IT IS FURTHER ORDERED that **Montezuma** has the **burden of proof** as to the requests
11 made by it in the rate case dockets and the A.R.S. § 40-252 dockets, and that **Mr. Dougherty** has the
12 **burden of proof** as to the allegations made by him in the complaint case docket.

13 IT IS FURTHER ORDERED that a **pre-hearing conference** shall be held on **April 29, 2013,**
14 **at 10:00 a.m.**, in Hearing Room No. 2 at the Commission's offices, for the purpose of scheduling
15 witnesses and discussing any existing procedural issues and the conduct of the hearing.

16 IT IS FURTHER ORDERED that **each party** shall reduce to writing and file, on or before
17 **April 5, 2013, direct testimony and associated exhibits** to be presented at hearing in furtherance of
18 the party's position on each substantive issue in these consolidated matters. The direct testimony
19 shall be organized, at a minimum, to include separate sections addressing the rate case dockets'
20 issues, the complaint case docket's issues, and the A.R.S. § 40-252 case dockets' issues.

21 IT IS FURTHER ORDERED that **each party** shall reduce to writing and file, on or before
22 **April 19, 2013, testimony and associated exhibits** to be presented at hearing **in response** to the
23 direct testimony of each other party. The responsive testimony shall be organized, at a minimum, to
24 include separate sections addressing the rate case dockets' issues, the complaint case docket's issues,
25 and the A.R.S. § 40-252 case dockets' issues.

26 IT IS FURTHER ORDERED that any **objections to any pre-filed testimony or exhibits**
27

28 ⁵ This date is set so as to make the filing due before Montezuma's counsel becomes temporarily unavailable on March 19, 2013, as Montezuma's counsel has indicated that a full 20 days is not needed to file an Answer.

1 shall be made before or at the **April 29, 2013 pre-hearing conference.**

2 IT IS FURTHER ORDERED that any **substantive corrections, revisions, or supplements** to
3 the filings required herein shall be reduced to writing and filed no later than **April 30, 2013.**

4 IT IS FURTHER ORDERED that Montezuma shall provide public notice of the hearing in
5 this matter, in the following form and style, with the heading in no less than 12-point bold type and
6 the body in no less than 10-point regular type:

7 **PUBLIC NOTICE OF A HEARING ON THE APPLICATIONS OF**
8 **MONTEZUMA RIMROCK WATER COMPANY, LLC FOR AN**
9 **INCREASE IN RATES AND APPROVAL OF FINANCINGS;**
10 **THE COMPLAINT OF JOHN DOUGHERTY VS.**
11 **MONTEZUMA RIMROCK WATER COMPANY, LLC; & THE**
12 **POTENTIAL MODIFICATION OF DECISION NO. 71317**
13 **UNDER A.R.S. § 40-252.**
14 **(Docket Nos. W-04254A-12-0204 et al.)**

15 Montezuma Rimrock Water Company, LLC (“Montezuma”) has filed with the Arizona
16 Corporation Commission (“Commission”) applications requesting: (1) approval of a loan
17 agreement in which Montezuma promises to pay Rask Construction the sum of \$68,592
18 with interest for installation of a water line from the well on Tieman to Well No. 1 on
19 Towers; (2) approval of a loan agreement in which Montezuma promises to pay Patricia
20 Olsen, Montezuma’s owner, the sum of \$21,377 with interest for the purchase of the Well
21 No. 4 site and a company vehicle; (3) approval of a loan agreement in which Montezuma
22 promises to pay Sergei Arias the sum of \$15,000 with interest for the purchase of an
23 8,000-gallon hydro-pneumatic tank to provide additional water storage to Montezuma’s
24 system; and (4) approval of a rate increase to generate revenues at least \$76,800 higher
25 than reported 2011 test year revenues of \$101,276, in addition to a surcharge of \$6.57 per
26 month per customer for legal fees and a surcharge of \$6.04 per month per customer for
27 storage tank replacement.

28 For a customer served by a 5/8” x 3/4” meter with monthly usage of 5,250 gallons,
Montezuma’s requested rates and charges would increase the monthly bill from \$36.38 to
\$68.38. With the addition of the requested surcharges, the monthly bill would total
\$80.99.

The Commission’s Utilities Division (“Staff”) has issued a Letter of Sufficiency
classifying Montezuma as a Class D utility, but is still in the process of reviewing
Montezuma’s rate and financing applications and has not yet provided any
recommendations related thereto. Both John Dougherty and the Residential Utility
Consumer Office (“RUCO”) have been granted intervention in these matters.

Mr. Dougherty has filed a formal complaint against Montezuma alleging misconduct and
mismanagement and requesting that Staff issue an Order to Show Cause to revoke
Montezuma’s Certificate of Convenience and Necessity to operate as a water utility,
along with other sanctions. The formal complaint will be considered along with the rate
and financing applications.

The Commission has reopened Decision No. 71317 (October 30, 2009), issued in
Montezuma’s last rate and financing case, to determine whether to modify the decision
concerning financing approval and related provisions. Montezuma had requested that the
decision be reopened so that it could be authorized to fund an arsenic treatment project

1 through means other than a loan from the Water Infrastructure Finance Authority of
2 Arizona (“WIFA”). The issue of modifying Decision No. 71317 will be considered along
3 with the current rate and financing applications and the formal complaint.

4 **THE COMMISSION IS NOT BOUND BY THE PROPOSALS MADE BY**
5 **MONTEZUMA, STAFF, MR. DOUGHERTY, OR RUCO. THE COMMISSION**
6 **WILL DETERMINE THE APPROPRIATE RELIEF TO BE GRANTED BASED**
7 **ON THE EVIDENCE PRESENTED BY THE PARTIES AT HEARING. THE**
8 **FINAL RATES AND CHARGES APPROVED BY THE COMMISSION MAY**
9 **DIFFER FROM, AND MAY BE HIGHER OR LOWER THAN, THE RATES AND**
10 **CHARGES REQUIRED BY MONTEZUMA OR RECOMMENDED BY OTHER**
11 **PARTIES. THE RELIEF ORDERED BY THE COMMISSION AS TO THE**
12 **FORMAL COMPLAINT AND THE REQUEST FOR MODIFICATION OF**
13 **DECISION NO. 71317 MAY DIFFER FROM THE RELIEF REQUESTED BY**
14 **THE PARTIES.**

15 If you have any questions concerning how Montezuma’s applications would affect your
16 bill, or you have other substantive questions about Montezuma’s applications, you may
17 contact Montezuma at [COMPANY SHOULD INSERT NAME, ADDRESS,
18 TELEPHONE NUMBER, AND E-MAIL ADDRESS FOR CUSTOMER
19 CONTACTS CONCERNING THE APPLICATIONS.]

20 **How You Can View or Obtain a Copy of Documents**

21 Copies of the applications, the formal complaint, and the other documents filed in the
22 dockets related to them are available for inspection during regular business hours at
23 Montezuma’s offices [INSERT COMPANY ADDRESS] and at the Commission’s
24 Docket Control Center at 1200 West Washington, Phoenix, Arizona. Copies of all of
25 these filed documents are also available on the Internet via the Commission’s website
26 (www.azcc.gov) by selecting the eDocket function at the bottom of the page, entering 12-
27 0204 in the search box on eDocket’s main page, using the Linked Documents tab to view
28 the multiple consolidated dockets, and using the Documents tab for each docket to view
the documents filed therein.

29 **Public Hearing Information**

30 The Commission will hold a **hearing** on these matters beginning on **May 3, 2013, at**
31 **10:00 a.m.**, in Hearing Room No. 2 at the Commission’s offices at 1200 West
32 Washington, Phoenix, Arizona 85007. Public comments will be taken at the beginning of
33 the hearing.

34 Written public comments may be submitted by mailing a letter referencing Docket Nos.
35 W-04254A-12-0204 et al. to Arizona Corporation Commission, Consumer Services
36 Section, 1200 West Washington, Phoenix, Arizona 85007. If you require assistance, you
37 may contact the Consumer Services Section at 1-800-222-7000 or 602-542-4251.

38 **ADA/Equal Access Information**

39 The Commission does not discriminate on the basis of disability in admission to its public
40 meetings. Persons with a disability may request a reasonable accommodation such as a
41 sign language interpreter, as well as request this document in an alternative format, by
42 contacting the ADA Coordinator, Shaylin Bernal, E-mail SABernal@azcc.gov, voice
43 phone number 602-542-3931. Requests should be made as early as possible to allow
44 time to arrange the accommodation.

45 **IT IS FURTHER ORDERED that Montezuma shall mail to each of its customers a copy of**
46 **the above notice, as a billing insert, by April 5, 2013, and shall cause the above notice to be**
47 **published at least once in a newspaper of general circulation in its service territory, with**
48 **publication to be completed no later than April 5, 2013.**

1 IT IS FURTHER ORDERED that **Montezuma shall file a certification of mailing and**
2 **publication**, which shall **include a copy** of the notice as sent and published, as soon as practicable
3 after mailing and publication have been completed, but no later than **April 19, 2013**.

4 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing and
5 publication of same, notwithstanding the failure of an individual customer to read or receive the
6 notice.

7 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
8 pursuant to Rule 6 of the Rules of Civil Procedure.

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

15 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
16 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

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

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

23 DATED this 26th day of February, 2013.

24
25
26 
27 SARAH N. HARPRING
28 ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed/delivered
2 this 26th day of February, 2013, to:

3 Todd C. Wiley
4 FENNEMORE CRAIG
5 3003 North Central Avenue
6 Suite 2600
7 Phoenix, AZ 85012-2913
8 Attorney for Montezuma Rimrock Water
9 Company, LLC

10 Patricia Olsen
11 MONTEZUMA RIMROCK
12 WATER CO., LLC
13 P.O. Box 10
14 Rimrock, AZ 86335

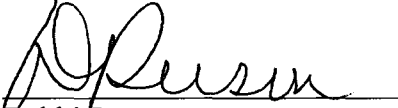
15 John E. Dougherty, III
16 P.O. Box 501
17 Rimrock, AZ 86335

18 Daniel W. Pozefsky
19 Michelle Wood
20 RESIDENTIAL UTILITY
21 CONSUMER OFFICE
22 1110 West Washington Street, Suite 220
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24 Janice Alward, Chief Counsel, Legal Division
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28 Steven Olea, Director, Utilities Division
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25 By: 
26 Debbi Person
27 Assistant to Sarah N. Harpring