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BRENDA BURNS PROPOSED AMENDMENT NO. 1

Arizona Corporation Commission

DOCKETED

MAY 12 2014

TIME/DATE PREPARED: Monday, May 12, 2014

RECEIVED

COMPANY: Montezuma Rimrock Water Company, LLC

AGENDA ITEM NO. 25

DOCKETED BY

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DOCKET NO(S). W-04254A-12-0204,

OPEN MEETING DATE: May 13-14, 2014

AZ CORP COMMISSION
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W-04254A-12-0205,

W-04254A-12-0206, W-04254A-12-0207, W-04254A-11-0323,

W-04254A-08-0361 & W-04254A-08-0362

ORIGINAL

The purpose of this Amendment is to impose fines on the Company and Ms. Olsen for the violation of Commission orders and statutes found in this Decision. The Amendment, however, suspends payment of the fines pending Staff's review of the compliance reports submitted by the Company regarding its timely compliance with this Decision and with all applicable Commission statutes, rules, Decisions and Orders. If Staff finds based upon its review of the reports on an ongoing basis that the Company is timely complying with the requirements of this Decision and all applicable Commission statutes, rules, Decisions and Orders, Staff may recommend to the Commission that the Commission waive payment of the fines, or a portion thereof. If the Staff finds that the Company is not timely complying with the requirements of this Order or applicable Commission statutes, rules and Decisions, the Staff shall file a report regarding the Company's infractions and the Commission may require immediate payment of the fines, or portion thereof, assessed in this Order.

Page 137, lines 7 through 15, **DELETE** paragraph and **REPLACE** with the following new paragraphs:

The Commission has the legal authority to impose fines upon Montezuma and its owner Ms. Olsen, but also has the discretion not to impose fines upon the Company and Ms. Olsen, if the imposition of fines is not believed to be in the public interest. In determining whether to assess fines in this case, we must balance our very strong desire to ensure compliance with our Decisions, related statutes, and our rules and regulations with the adverse impact that the imposition of fines could have on a small water company which is already financially stressed.

While we are cognizant of the tension between these two considerations, our action today must give heightened consideration to the need to ensure compliance with our Orders, rules, regulations and statutes. We cannot send a message to companies, including Montezuma, that they are free to ignore our Decisions, related statutes, rules and regulations with impunity and suffer no adverse consequences for their actions. Other factors which persuade us that this consideration deserves an elevated position in this balancing, is the fact that this Order finds repeated violations of statutes the Commission is charged with enforcing, as well as violations of its orders. Moreover, this Order finds that the Company and Ms. Olsen actively attempted to conceal the need for Commission approval by submitting documents designed to make it appear that the transactions did not need Commission approval. All of these factors lead us to believe that significant fines are appropriate in this case.

The Order finds the following: 1) Allegation I of Mr. Dougherty's complaint was substantiated to the extent that it alleged Montezuma's failure to obtain approval from the Commission before entering into \$32,000 of long-term debt in 2005 was a violation of A.R.S. §§ 40-301 and 40-302; 2) Allegation II of Mr. Dougherty's complaint was substantiated to the extent that it alleged Montezuma failed to maintain its books and records in compliance with the NARUC USOA, which was a violation of Decision No. 67583 as well as A.A.C. R14-2-411(D)(1) and (2); 3) Allegation IV was substantiated to the extent that Montezuma failed to maintain its Annual Reports, in compliance with the NARUC USOA, which was a violation of Decision No. 67583 as well as A.A.C. R14-2-411(D)(1) and (2); 4) Allegation XI was substantiated by the evidence which establishes that an arsenic surcharge of \$10.11 per account was invoiced in and collected from the December 2009 billing, which was unlawful and in violation of Decision No. 71317, and that the surcharge funds so collected were never refunded to Montezuma's customers; 5) Allegation XII was substantiated by the evidence establishing that Montezuma invoiced and collected an arsenic surcharge of \$15.00 per account in its April 2011 billing, which was unlawful and in violation of Decision No. 71317; and 6) Allegation XVII was substantiated to the extent that it alleged a violation of A.R.S. §§ 40-301 and 40-302 and a violation of the Procedural Order issued on April 9, 2012, resulting from Montezuma's entering into long-term debt in the form of capital leases with Nile River and Financial Pacific in March 2012 without prior Commission approval, and then filing misleading information and documents with the Commission.

Thus, altogether this Order finds at least twelve (12) separate violations of Commission Orders, statutes, rules and regulations. The Commission's fining authority emanates directly from the Arizona Constitution, Art. 15, Sections 16 and 19. Moreover, the Commission also has statutory fining authority which is set forth in Arizona Revised Statutes, Article 9. A.R.S. § 40-424(A) provides that "If any corporation or person fails to observe or comply with any order, rule, or requirement of the commission or any commissioner, the corporation or person shall be in contempt of the commission and shall, after notice and hearing before the commission, be fined by the commission in an amount not less than one hundred nor more than five thousand dollars." Subpart B of A.R.S. § 40-424 provides that this remedy is cumulative in nature. A.R.S. § 40-425 provides that "[a]ny public service corporation which violates or fails to comply with any provision of the constitution or of this chapter, or which fails or neglects to obey or comply with any order, rule or requirement of the commission, the penalty for which is not otherwise provided, is subject to a penalty of not less than one hundred nor more than five thousand dollars for each offense."

In addition A.R.S. § 40-428 provides that "[a]ll penalties accruing shall be cumulative to each other, and an action for recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public service corporation, or any officer or employee thereof, or any other person, or be a bar to the exercise by the commission of its power to punish for contempt."

Considering the number of violations in this case, the repeated nature of those violations, and the Company's and Ms. Olsen's attempts to conceal the violations through repeated filings of erroneous documents, against the current financial status of the Company and our desire not to harm the customers of the Company, we believe that a fine of \$1,000 per violation is appropriate.

Under A.R.S. § 40-425, twelve violations at \$1,000 would be \$12,000. Moreover, the Commission may impose contempt fines in addition to any fines imposed under A.R.S. § 40-425 since its fining authority under A.R.S. § 40-424 is cumulative. Thus, we will impose another \$250 fine under A.R.S. § 40-424 upon the Company for each of the twelve violations of Commission Orders, related statutes and rules found in the Order and a \$250 fine upon Ms. Olsen for each of her separate violations of the Commission Order, related statutes and regulations for a total under the contempt statute of \$6,000. Altogether the fines imposed in this case total \$18,000.

However, we shall suspend payment of the fine by Montezuma at this time. If Staff finds in its review of the Company's compliance reports that the Company and Ms. Olsen are timely complying with all the requirements of this Order and with all statutes, rules and regulations under the Commission's jurisdiction, the Staff may recommend waiver of the fine or portions thereof after the various compliance periods. If Staff finds that the Company and Ms. Olsen are not timely complying with the requirements of this Order, or of statutes, rules or regulations under the Commission's jurisdiction, the Staff shall make a recommendation to the Commission as to whether payment of the fine, or a portion thereof, is appropriate.

Page 151, lines 21 through 28, Page 152, lines 1-2, **DELETE** existing Finding of Fact No. 48 and **REPLACE** with the following new Findings of Fact No. 48, 49 and 50 and renumber accordingly:

48. The Commission's authority to assess penalties and fines emanates directly from the Arizona Constitution, Article 15, Sections 16 and 19, as well as Title 40, Chapter 2, Article 9 of the Arizona Revised Statutes. In addition, the Commission's authority to impose fines is cumulative in nature. A.R.S. § 40-428 provides that "[a]ll penalties accruing shall be cumulative to each other, and an action for recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public service corporation, or any officer or employee thereof, or any other person, or be a bar to the exercise by the commission of its power to punish for contempt".

49. Considering the number of violations in this case, the repeated nature of those violations, and the Company's and Ms. Olsen's attempt to conceal the violations through repeated filings of erroneous documents, we find that a fine of \$1,000 per violation is appropriate. Under A.R.S. § 40-425, twelve violations at \$1,000 would be \$12,000. Moreover, the Commission may impose contempt fines in addition to any fines imposed under A.R.S. § 40-425 since its fining authority under A.R.S. § 40-424 is cumulative. Thus, the Commission will impose another \$250 fine under A.R.S. § 40-424 upon the Company for each of the twelve violations and a \$250 fine upon Ms. Olsen for her separate violations of the Commission orders, related statutes and regulations for a total fine under the contempt statute of \$6,000. Altogether the fines to be imposed in this case total \$18,000.

50. A large fine for a company of this size if imposed immediately and all at once, could have potentially adverse implications for Montezuma's customers. The Commission will therefore suspend payment of the fine by Montezuma at this time. If Staff finds in its review of the Company's compliance reports that the Company and Ms. Olsen are timely complying with

all the requirements of this Decision and with all statutes, rules and regulations under the Commission's jurisdiction, the Staff may recommend waiver of the fine or portions thereof after the various compliance periods. On the other hand, if Staff finds that the Company and Ms. Olsen are not timely complying with the requirements of this Decision, statutes, rules or regulations under the Commission's jurisdiction, the Staff shall make a recommendation to the Commission as to whether payment of the fine, or a portion thereof, is appropriate. The Company shall have an opportunity to comment on Staff's recommendation, and the Commission shall take the Company's comments into consideration when making any decision on the matter."

Page 154, line 15, INSERT a new Conclusion of Law Paragraph, as follows:

"11. Under Article 15, Sections 16 and 19 of the Arizona Constitution and A.R.S. Title 40, Chapter 2, Article 9, the Commission has authority to impose monetary penalties on Montezuma, and to impose those penalties cumulatively, for each of Montezuma's violations of a Commission Decision, order, rule or requirement and for each of Montezuma's violations of a provision of A.R.S. Title 40, Chapter 2."

Page 161, lines 16 through 24, **DELETE** Ordering Paragraph and **REPLACE** with the following new Ordering Paragraph:

IT IS FURTHER ORDERED that pursuant to the Commission's authority under A.R.S. § 40-425, we impose a fine upon the Company in the amount of \$1,000 for each of the twelve violations found in this Order, or a total fine of \$12,000. Further, pursuant to our contempt authority under A.R.S. § 40-424, we impose an additional \$250 per violation upon the Company and an additional \$250 per separate violation upon Ms. Patricia Olsen for total contempt fines of \$6,000. Altogether the fines imposed upon the Company and/or Ms. Olsen total \$18,000. Because the Commission desires to avoid any potentially adverse impact on the Company's customers, the Commission hereby suspends payment of the fine by Montezuma and Ms. Olsen at this time subject to the provisions of Finding of Fact 50 of this Order.

****PLEASE MAKE ALL CONFORMING CHANGES**

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| THIS AMENDMENT: | | |
| _____ Passed _____ | Passed as amended by _____ | |
| _____ Failed _____ | _____ Not Offered _____ | _____ Withdrawn _____ |