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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

- GARY PIERCE - Chairman
- BOB STUMP
- SANDRA D. KENNEDY
- PAUL NEWMAN
- BRENDA BURNS

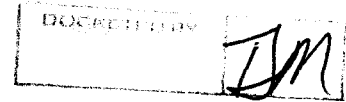
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Arizona Corporation Commission

DOCKETED

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DEC 07 2012



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"). The address shown on the LOI is P.O. Box 10, Rimrock, Arizona 86335.

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 that Staff may exercise discretion
21 regarding the amount of time Montezuma may be permitted to respond to a LOI and Data Request
22 and requiring Montezuma, by August 30, 2012, to make a filing clarifying the mailing address to be
23 used for all documents sent to it.

24 On August 14, 2012, Montezuma filed a document stating that its mailing address remains the
25 same and identifying it as 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 (“Dougherty Motion”), in which Mr. Dougherty asserts that Montezuma
3 has failed to provide Mr. Dougherty copies of the filings made on July 16, August 3, August 14,
4 September 4, September 14, and October 9, and that Montezuma has also failed to provide Mr.
5 Dougherty with filings made in the financing cases consolidated with the rate case. Mr. Dougherty
6 requests that the Commission order Montezuma to provide Mr. Dougherty with complete copies of
7 all past and future filings in the 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,” requesting a surcharge of \$6.57 per month per customer for legal
11 fees that Montezuma attributed to Mr. Dougherty’s participation in cases involving Montezuma.
12 Although Montezuma stated that invoices and statements for the asserted \$47,298.09 in legal fees
13 were 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).¹

27 ¹ 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 desires to intervene so that it may fulfill its statutory
10 obligation to 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 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 will be filed in this matter 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, violated the Procedural Order of October
16 29, 2012, because it did not include 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 requests 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 includes the
7 names and addresses for Mr. Dougherty and RUCO, which is understood to indicate that service was
8 made upon them.

9 Because it appears that Montezuma is not now sufficiently familiar with the Commission's
10 rules and procedures to comply with the requirement for direct testimony to be filed, and because it
11 appears to be necessary in any event to discuss the parties' obligations both as to discovery and
12 service, it is reasonable and appropriate to grant Montezuma's Request for Procedural Conference. It
13 is also appropriate to remind Montezuma and Mr. Dougherty that both RUCO and Staff are parties to
14 this matter and must be provided service of all filings made herein and to remind Montezuma that it
15 is obligated to comply with Procedural Orders and, as a public service corporation, to be familiar
16 with the Commission's rules and procedures. Due to construction activities at the Commission's
17 Phoenix offices, as well as the winter holidays and other scheduling obstacles, the procedural
18 conference cannot be held until January. In light of this, Montezuma will be required, in the interim,
19 to provide responses to Mr. Dougherty's Data Requests or file competent and legally justifiable
20 Motions objecting to specific Data Requests² and to review the Commission's rules of procedure.
21 Additionally, the current procedural schedule for this matter will be vacated at this time, the
22 Commission's time frame for issuing a decision in this matter will be suspended, and a new
23 procedural schedule will be discussed at the procedural conference. Montezuma will be required,
24 before the procedural conference, to make a filing notifying the Commission concerning the status of
25 notice to its customers. If notice has been provided, the February 7, 2013, hearing date will be
26 retained solely for receiving public comment.

27
28 ² Due to its previous discovery disputes with Mr. Dougherty in other dockets, Montezuma should be familiar with its obligations in this regard.

1 IT IS THEREFORE ORDERED that a **procedural conference** shall be held in this matter on
2 **January 2, 2013, at 10:00 a.m.** or as soon thereafter as is practicable, in Hearing Room No. 1 at the
3 Commission's offices at 1200 West Washington Street, Phoenix, Arizona 85007. **Each party to this**
4 **matter shall appear in person at the procedural conference and shall be prepared to make**
5 **proposals regarding a new procedural schedule for this matter.**

6 IT IS FURTHER ORDERED that **Montezuma** shall, as soon as possible and before the
7 **January 2, 2013, procedural conference** in this matter, as to each portion of Mr. Dougherty's First
8 Data Request and Second Data Request, **provide a good faith and complete response or, if**
9 **Montezuma has a valid legal rationale for doing so, file an objection** explaining the legal
10 rationale. In the alternative, **Montezuma may reach an agreement** with Mr. Dougherty regarding
11 the information Montezuma has and will provide in response to Mr. Dougherty's First Data Request
12 and Second Data Request.

13 IT IS FURTHER ORDERED that **Montezuma and Mr. Dougherty** shall, at the **procedural**
14 **conference, each report** as to the status of their respective discovery requests and compliance
15 therewith.

16 IT IS FURTHER ORDERED that **Montezuma** shall, as soon as possible and before the
17 **January 2, 2013, procedural conference** in this matter, **thoroughly review** the Commission's rules
18 contained in **Arizona Administrative Code Title 14, Chapter 3, Article 1.**³

19 IT IS FURTHER ORDERED that **Montezuma** shall, as soon as possible and before the
20 January 2, 2013, procedural conference in this matter, use the Commission's e-Docket function to
21 **review direct testimony** filed in other water utility cases.⁴

22 IT IS FURTHER ORDERED that **each party** to this matter shall ensure that all documents
23 filed are appropriately **served upon each other party** to this matter and that **proof of such service,**
24 in accordance with the Commission's procedural rules, is included on each filing.

26 ³ The rules are available on the Arizona Secretary of State's website (www.azsos.gov) or through a link on the
27 Commission's website (www.azcc.gov).

28 ⁴ As the applicant, Montezuma has the burden of proving to the Administrative Law Judge and the Commission,
through the introduction of documentary evidence and witness testimony, that its position should be adopted. (A.A.C.
R14-3-109(G).)

1 IT IS FURTHER ORDERED that the **procedural schedule** for this matter, established
2 pursuant to the Procedural Order of November 8, 2012, is hereby **vacated**, except as provided in the
3 following ordering paragraph.

4 IT IS FURTHER ORDERED that, if **Montezuma** has, prior to this **Procedural Order**,
5 **provided** to its customers either by mail or through newspaper publication the **notice** required by the
6 Procedural Order of November 8, 2012, the proceeding on **February 7, 2013**, shall convene only for
7 the purpose of receiving **public comment**.

8 IT IS FURTHER ORDERED that **Montezuma** shall, as soon as possible and before the
9 **procedural conference on January 2, 2013**, make a filing indicating whether **Montezuma** has
10 **provided such notice** to its customers either by mail or through newspaper publication.

11 IT IS FURTHER ORDERED that the **Commission's time frame** for issuing a decision in this
12 matter is hereby **suspended**.

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

16 DATED this 7th day of December, 2012.

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19 
20 SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

21 Copies of the foregoing mailed/delivered
22 this 7th day of December, 2012 to:

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

25 John E. Dougherty, III
26 P.O. Box 501
Rimrock, AZ 86335

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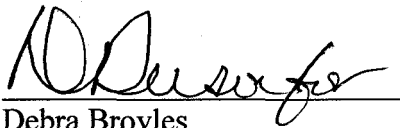
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11
12
13 By:


Debra Broyles
Secretary to Sarah N. Harpring

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