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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

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BOB STUMP
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PAUL NEWMAN
BRENDA BURNS

2011 JUL 25 P 12: 24

AZ CORP COMMISSION
DOCKET CONTROL

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

**STAFF'S NOTICE OF FILING INFORMAL
COMPLAINT REPORT**

During the July 22, 2011 procedural conference in the above captioned matter, discussion took place regarding the issue of Montezuma Rimrock Water Company, LLC ("Montezuma" or "Company") mischarging an arsenic surcharge. Staff hereby provides notice of filing a copy of the informal complaint report generated by Staff's Consumer Services Section relating to the matter as Attachment A.

RESPECTFULLY SUBMITTED this 25th day of July, 2011.

Arizona Corporation Commission

DOCKETED

JUL 25 2011

DOCKETED BY

Charles H. Hains
Attorney, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

Original and thirteen (13) copies of
the foregoing filed this 25th day of
July, 2011, with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

1 **Copy of the foregoing mailed this**
2 **25th day of July, 2011, to:**

3 Patricia D. Olsen, Manager
4 MONTEZUMA RIMROCK WATER COMPANY
5 P.O. Box 10
6 Rimrock, Arizona 86335

7 Douglas C. Fitzpatrick
8 Attorney for Montezuma Rimrock Water Company
9 49 Bell Rock Plaza
10 Sedona, Arizona 86351

11 John Dougherty
12 P.O. Box 501
13 Rimrock, Arizona 86335

14 *Roseann Osorio*

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ATTACHMENT A

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Investigator: Guadalupe Ortiz

Phone: (602) 542-2406

Fax: (602) 542-2129

Priority: Respond Within Five Days

Inquiry No. 2011 - 94591

Date: 4/15/2011

Complaint Description: 08F Arsenic
N/A Not Applicable

Complaint By: First: Ronnie Last: Garcia

Account Name: Ronnie Garcia

Home: (602) [REDACTED]

Street: [REDACTED]

Work:

City: [REDACTED]

CBR:

State: AZ Zip: [REDACTED]

is:

Utility Company: Montezuma ** Rimrock Water Company, L.L.C.

Division: Water

Contact Name: Patsy Olsen

Contact Phone: (928) 592-9211

Nature of Complaint:

Customer is calling to question if the Commission has in fact authorized MRWC to charge an arsenic surcharge to customer's? Per customer, he received the following letter with his bill a week ago and is just trying to confirm that the Commission has allowed this. In addition, customer states that his bill does reflect an arsenic surcharge in the amount of \$15.00.

4/15/11 FAX RECEIVED FROM CUSTOMER - LETTER TO CUSTOMER'S, DATED 4/1/11

Montezuma Rimrock Water Co. LLC
P.O Box 10
Rimrock, AZ 86336
928-592-9211

April 1, 2011

Dear Customer:

As you may be aware, MRWC has been in the process of seeking funding for the Arsenic Treatment Facility (ATF) installation. Since the bids for the project were received in 2009, MRWC must rebid the construction. Construction is scheduled to commence in May, 2011.

We all look forward to this project moving forward. However, with the installation and work required, it also incorporates changes to the system. These changes affect the system and the customers in several areas:

1. This will require that the system will be taken down in order to implement the final installation of the treatment facility. MRWC will do its best to send letters to its customers to inform them of scheduled interruptions in service. However, there may also be times when MRWC will encounter unforeseen short interruptions in service. MRWC appreciates your patience and assistance in helping us to monitor these interruptions. If there is an interruption in your service, MRWC requests that the customers notify us immediately. Please call our office

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

at 928-592-9211. This will help us ascertain and assist with the area and nature of the interruption.

2. Along with the ATF project, charges are incurred on your billing statement. You will notice on your billing statement the arsenic surcharge line item. Especially during these challenging economic times, MRWC realizes the financial burden the arsenic surcharge will place on its customers. However, MRWC received approval from the Arizona Corporation Commission (ACC) to begin the arsenic surcharge in October, 2009 and chose not to begin implementing it in 2009. In order to proceed with the ATF, MRWC must now begin implementing the surcharge as approved by ACC.

3. During construction, road access will be interrupted in the areas of Bentley, Goldmine and Tiemann. We ask for your patience as this part of the construction process progresses.

QUESTIONS TO MRWC:

PURSUANT TO ACC DECISION NO 71317, MRWC WAS ORDERED TO FILE AN APPLICATION WITH THE COMMISSION FOR THE SURCHARGE, PLEASE SEE BELOW:

IT IS FURTHER ORDERED that Montezuma Rimrock Water Company, LLC shall file the following with the Commission's Docket Control, as compliance items in this Docket, within 60 days after executing the documents finalizing the Water Infrastructure Finance Authority of Arizona loan:

(1) an arsenic remediation surcharge application requesting approval of a surcharge that will provide the funds needed to enable Montezuma Rimrock Water Company, LLC to meet its principal and interest obligations on the loan, and (2) copies of each executed loan document or agreement setting forth the terms of the financing obtained.

PLEASE ADVISE THE COMMISSION WHEN AND HOW THIS APPLICATION WAS FILED? WAS THE APPLICATION FILED IN DOCKET NO. W-04254A-08-0361? IF NOT, PLEASE PROVIDE THE APPLICABLE DOCKET NO? DID THE COMMISSION ISSUE A DECISION FOR THE SURCHARGE? IF SO, ON WHAT DATE AND WHAT IS THE DECISION NO?

DID MRWC START BILLING CUSTOMERS AN ARSENIC SURCHARGE? IF SO, ON WHAT DATE AND HOW WAS THE AMOUNT OF THE SURCHARGE DETERMINED?

D

End of Complaint

Utilities' Response:

4/22/11 Email from Montezuma Rimrock:

From: Patricia Olsen [mailto:patsy@montezumawater.com]
Sent: Friday, April 22, 2011 6:27 AM
To: Guadalupe Ortiz
Subject: Re: ACC Complaints: Garcia, Ronnie - Complaint No. 94591

Ms. Ortiz,
Attached is my response. If there are any questions, please do not hesitate to contact me.

Patricia Olsen, Manager
Montezuma Rimrock Water Co. LLC
P.O. Box 10
Rimrock, AZ 86335
928-592-9211

ARIZONA CORPORATION COMMISSION

UTILITY COMPLAINT FORM

ATTACHED - UTILITY RESPONSE:

Montezuma Rimrock Water Company LLC does not meet the EPA's drinking water quality standards. It exceeds the arsenic levels of 10 ppb. MRWC's current arsenic levels range between 30 and 40 ppb.

MRWC currently has a consent order from ADEQ to install an Arsenic Treatment Facility (ATF) by June 7, 2011.

MRWC applied for a WIFA loan in the amount of \$165,000.00 for its ATF. A citizen complaint required that MRWC conduct an Environmental Information Document (EID). MRWC complied and submitted its EID. AZTEC Consultants conducted a review of the EID and recommended an EIS be submitted. According to WIFA, an EIS could possibly take a year or more to conduct and cost an additional \$100,000 to \$200,000. MRWC contacted WIFA to oppose the review conducted by AZTEC. MRWC feels that the issues considered were invalid. The National Park Service complains that its residence wells will be impacted by pumping its wells. Residence wells are not cultural resources and should therefore not be considered in the review by AZTEC Consultants. Montezuma Well, a cultural resource, has been verified by USGS that no impact will occur to Montezuma Well from the current wells in the area which are shallower than 750 feet. MRWC's wells are 400 feet or less. However, WIFA is allowing the residence wells to be included in the AZTEC review and would not allow MRWC to write a response to the review conducted by AZTEC Consulting.

In order to construct the ATF, MRWC submitted its request for construction to ADEQ. MRWC had received an Approval to Construct (ATC) from ADEQ. This ATC is valid for one year. If construction has not begun within one year, MRWC must resubmit plans and pay additional fees. On April 18, 2011, MRWC began construction of its pipeline in order to keep its ATC current. MRWC also requested an extension from ADEQ on its consent order from ADEQ and has not received a response from ADEQ at this time.

The WIFA funding is no longer an option due to the additional time and expense its customers would incur. In January 2011, MRWC requested an amendment to Decision No. 71317 allowing it to seek funding elsewhere. To date, MRWC has received no documentation or information that it would be allowed to seek funding from a private lending institution.

MRWC contacted four private lending institutions. During these difficult economic times, private lending institutions are reluctant to provide funding. MRWC received a letter from one of the institutions stating MRWC could not meet the debt service of the loan. MRWC contacted the institution to discuss the matter. This left MRWC in a position that it must provide evidence to the institution that it could meet the debt service by implementing the arsenic surcharge. MRWC believed it was authorized to implement the surcharge based on Decision No. 71317 which was approved in October, 2009. MRWC implemented the arsenic surcharge on its April 1st, 2011, billing statement in order to provide the documentation to the private lending institution that it would be able to meet the debt service of the loan. MRWC has not entered into an agreement or signed any contracts with any private lending institutions incurring debt for the \$165,000 for the ATF. MRWC will refund the arsenic surcharge and include a letter of explanation to its customers in the next billing statement that will be issued on May 1, 2011.

End of Response

Investigator's Comments and Disposition:

4/15/11 Emailed to MRWC.

4/18/11 @4:21pm Called Patsy Olsen at MRWC, advised that the Company must immediately stop charging this surcharge as the Commission has not issued the Company approval to do so, which is required pursuant to Decision #71317. Ms. Olsen was under the impression that the Commission did authorize the Company's ability to assess a surcharge for the arsenic plant. Per Ms. Olsen, the Company was unable to obtain a loan from WIFA due to a complaint from John Doherty. The Company filed a letter with the Commission in January 2011 requesting an amendment to the Decision to allow MRWC to obtain funding from a private financial institution.

ARIZONA CORPORATION COMMISSION

UTILITY COMPLAINT FORM

Ms. Olsen further explained that since that time she has been in contact with Brian Bozzo, in the Compliance Dept and Marlin Scott in the Engineering Dept. Ms. Olsen has questioned the status of this matter and was instructed by Brian to seek funding from a bank and when she finds a bank that will lend the necessary funds to have the information ready to present to the Commissioners when this matter is scheduled for Open Meeting. Ms. Olsen went to four different banks and was denied by all of them. Ms. Olsen then applied with M&I Bank and was told that if she could prove the Company had a Cost of Service debt, M&I Bank would loan MRWC the money. In order for MRWC to prove they had a Cost of Service debt they had to bill their customer's this surcharge.

Ms. Olsen is very frustrated with Commission Staff for not taking any action on this matter. MRWC's deadline is in June 2011 and the Company is desperately in need of the Commission addressing this matter.

Ms. Olsen says that she has no problem issuing a refund for the surcharge but if the Commission does not handle this in a timely manner she will be unable to provide potable drinking water to her customer's.

I advised Ms. Olsen that I would speak to Staff about this situation and follow up with her tomorrow.

4/19/11 @8AM - Advised Steve Olea of the Company's situation and questioned what the next step is? Per Steve, Staff has done what it needs to do by filing the Status Report. It is now up to the Commissioners to put this on an OM agenda. MRWC needs to start calling the Commissioner's offices. Steve advised me to give the Company the telephone numbers for all Commissioners. Company does need to refund money collected thru the surcharge as a credit on its customer's next bill. Since this is the first time the surcharge has been billed, the Company does not have to refund with interest.

4/19/11 @8:53am Called Ms. Olsen, advised of information from Steve Olea and instructed Ms. Olsen to call the office of the Chairman and all Commissioners. Ms. Olsen requested that I leave the telephone numbers on her voicemail as she is currently in the field. Ms. Olsen will call each office to request action on this matter when she returns to the office.

4/19/11 @8:59am Left Message - Called Ms. Olsen, provided the telephone number for Chairman Pierce, Commissioner's Newman, Stump, Kennedy and Burns offices.

4/19/11 @4:27pm Called Patsy Olsen at MRWC, advised that she will need to send a letter to her customer's explaining the surcharge that was billed and the credit they will see on their next bills. I further advised Patsy, that the Commission would like to review the letter prior to her sending it to customers. Patsy said that she may not be able to send the letter to the Commission until early next week as she will be in the field most of this week. Customer bills will not be sent out until May 1st.

I questioned if Patsy called any of the Commissioner offices? Patsy stated that before she could, she received a call from Steve Olea, Del Smith and Marlin. Per Patsy, Commissioner Burns is going to put this on an Open Meeting agenda and Staff called to question if Patsy would be able to attend. Patsy confirmed with Staff that she would attend if this matter is scheduled for Open Meeting. Per Patsy, it was difficult for her to pay full attention to what Staff was saying during the conference call as John Dougherty was screaming and yelling at her in the background and trying to threaten her.

4/21/11 @11:07am Called Patsy Olsen at MRWC, advised that Staff is working on a public filing concerning MRWC and questioned status of her response to the customer complaint. Per Patsy, she will work on it and have it to the Commission by tomorrow.

4/22/11 @10:34am - Left msg on voicemail, advising customer of the utility's response. I further advised the customer of the credit and letter of explanation that the Company will be sending to customers in May concerning the arsenic surcharge. Left my name, number and welcomed the customer to call me if he has any further questions or concerns related to this matter. CLOSED

End of Comments

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Date Completed: 4/22/2011

Inquiry No. 2011 - 94591
