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0000129357

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Intervener

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2011 SEP -6 P 4:41

AZ CORP COMMISSION  
DOCKET CONTROL

**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION OF  
MONTEZUMA RIMROCK WATER COMPANY  
LLC FOR AN EMERGENCY RATE INCREASE  
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Docket No. W-04254A-11-0296

RESPONSE TO MOTION  
FOR  
PROTECTIVE ORDER

Intervener John E. Dougherty moves this Court to deny Montezuma Rimrock's Motion for a Protective Order.

**MEMORANDUM OF POINTS AND AUTHORITIES**

I. On August 2, 2011, Intervener filed the first set of Data Requests in W-4254A-08-0361 and 0362.

On August 23, Intervener filed the first set of Data Requests in this case, seeking an additional 30 items not requested in the first data request in W-4254A-08-0361 and 0362.

On August 23, Intervener filed a Formal Complaint against Montezuma Rimrock Water Company in W-4254A-08-0323 listing 14 allegations and 23 detailed exhibits. Intervener mailed copies of the Complaint to Montezuma Rimrock and its Attorney listed above. An email copy was also sent to the Attorney.

On August 24, the Commission mailed the formal complaint by certified mail/return receipt requested to Montezuma Rimrock.

On August 24, the Commission Hearing Officer ordered Montezuma Rimrock to "respond fully and candidly to each discovery request received by it" in Docket W-4254A-08-0361 and 0362.

On August 28, Intervener filed a second Data Request in this case for detailed information related to an undisclosed \$32,000 loan incurred by the Company.

Arizona Corporation Commission

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On August 30, Montezuma Rimrock filed a motion for a protective order stating it “believes that it has responded completely and in good faith to the data requests propounded in 0361 and 0362”.

On August 30, the Commission received a return receipt indicating the Complaint had been rejected by Montezuma Rimrock. The company’s address on the envelope had been crossed out and the postal notice stated “Attempted—Not Known”.

As of this date, Intervener states that Montezuma Rimrock has failed to comply with the data requests in 0361 and 0362 for the following items:

**1.01 Data Requests** – Please provide copies of all data requests and the Company’s responses to such requests to ACC staff and all other parties in this Docket.

As of this date, Intervener has received no information on this item.

**1.02 Accounting** – Please provide an electronic copy of the calendar year 2009 and 2010 General Ledgers and the General Ledger from January 1, 2011 through August 1, 2011.

As of this date, Intervener has received no information on this item. Montezuma Rimrock provided “Trial Balance” reports for Aug. 3, 2011, Dec. 31, 2010 and Dec. 31, 2009.

The “trial balance” is not the same as the “general ledger” which will show a detailed accounting of all expenses on a monthly basis rather than an annual summation. The general ledger will allow inspection of all individual payments and receipts by the company.

The company’s response to this request is evasive and not complete.

**1.03 Debt**—For each debt issuance in line 224 of the 2010 Annual Report provide a copy of the associated debt terms and agreements. Please explain the discrepancy between line 224 in the Liabilities table in the 2010 Annual Report and the failure to disclose the long term debt on the Supplement Financial Data (Long Term Debt) in the 2010 annual report.

As of this date, the Company has only provided a Cashiers check for \$16,757.89 to Yavapai Title Agency. (Exhibit 1) The company has provided no additional information concerning the purpose of the debt, the failure to disclose the debt on annual reports, the debt terms, the promissory note and records related to debt forgiveness.

The company’s response to this request is evasive not complete.

**1.04 Debt**—For all debts, short term and long term, encumbered from January 1, 2011 through August 1, 2011 please provide a copy of the associated debt terms and agreements and the purpose for which the debt was incurred.

As of this date, the company has asserted that it has incurred no short term or long term debt since January 1, 2011.

However, the company has provided a check in response to 1.05 Pipeline Construction, that indicates the company or its managing member, Ms. Patricia Olsen, is indebted to Rask Construction for payments due in connection with construction of a 2,500-foot water transmission line built for the benefit of Montezuma Rimrock.

The company's response to this request is evasive and not complete.

**1.05 Pipeline Construction**—Provide complete copies of all communications, contracts, agreements, receipts, records of payments, deferrals, loans and any other financial consideration in connection with the construction of an approximately 2,500-foot pipeline by Rask Construction Company that began on or about April 18, 2011. The pipeline connects Well No. 4 with the site of a proposed arsenic treatment facility.

As of this date, the company has only provided a copy of a personal check for \$7,000 from Patricia Olsen to Rask Construction. The check states it is a "Down payment towards completion of transmission". (Exhibit 2) The company provided no other records related to this construction project that the company asserts will cost \$42,000.

The company's response to this request is evasive not complete.

**1.06 Utilities**—Provide a copy of electric bills (consumption of electricity and dollar cost) for each of the company's well sites (Well No. 1, Well No. 3 and Well No. 4) from January 1, 2010 through August 13, 2011.

As of this date, the company has provided electric bills from January 2011 through July 2011. The company has failed to provide, despite repeated requests, the August 2011 electric bill, including electricity consumption and cost of power, for all three well sites.

The company's response to this request is evasive and not complete.

**1.09 Lenders**—Provide a complete copy of all company applications to private lenders to obtain approximately \$165,000 in financing for construction of an arsenic treatment facility. Include all supplemental information filed by the company in connection with these applications including, but not limited to, MRWC state and federal income tax returns.

As of this date, the company has provided no response to this item other than stating the company has no copies of the loan applications and is not responsible for obtaining them from third parties.

The company has not provided copies of the federal income tax return that Sunwest Bank officials state they reviewed. (Exhibit 3)

The company's response to this request is evasive and not complete.

Based on the above examples, it is clear Montezuma Rimrock has not fully complied with Data Requests in W-4254A-08-0361 and 0362.

II. Montezuma Rimrock appears to have willfully rejected the Commission's attempt to formally serve the Complaint via certified mail. The Company has 20 days from the date it receives the Complaint to respond in writing and fully answer each item in the Complaint.

It appears the Company is attempting to delay responding to the Complaint until after the scheduled Sept. 22 hearing in this case.

As of this date, Montezuma Rimrock continues to avoid its legal responsibility to respond to the Complaint under R14-3-106 (H).

III. Despite failing to fully respond to Data Requests in W-4254A-08-0361 and 0362 and purposely "ducking" receipt of the Formal Complaint, Montezuma Rimrock now seeks a Protective Order to cut off all additional discovery in this case to protect the company "from annoyance, embarrassment, oppression or undue burden or expense."

The Company argues that providing such financial information is "subjecting the company to substantial professional fees it can ill afford." The Company, however, is seeking to burden more than 200 rates payers with a \$37,536 per year annual rate hike (\$187.68 per ratepayer) that many customers can ill afford.

Montezuma Rimrock is desperately seeking to shut off discovery because Intervener has already uncovered materially damaging information that has been disclosed in the Formal Complaint.

Public records and the company's financial reports reveal Montezuma Rimrock filed false Annual Reports from 2006 through 2010 by failing to report a \$32,000 loan to purchase property for Well No. 4.

Records also show Montezuma Rimrock submitted false information to the Arizona Water Infrastructure Financing Authority when it declared in a 2009 loan application that the company had no long term debt when the company knew it had a \$32,000 loan.

The discovery of the unreported loan along with other irregularities described in the Formal Complaint provides sufficient reason and justification for intervener to seek extensive financial information from the Company prior to a public hearing in this case.

Commission staff has already asserted that Emergency Rate Increase requests are usually based on a "back of the envelope" calculation derived from a company's financial reports. In this case, the Commission has received substantial evidence showing that Montezuma Rimrock's financial statements have not accurately reflected its true financial condition in each of the last five years.

The Company's history of filing false and misleading Annual Reports makes it incumbent that the Commission, Ratepayers and the Public have a detailed understanding of the Company's purported financial condition prior to granting an emergency rate

increase. Intervener's Data Requests are intended to provide sunlight on Montezuma Rimrock's financial reporting in order to ascertain the true financial condition of this company.

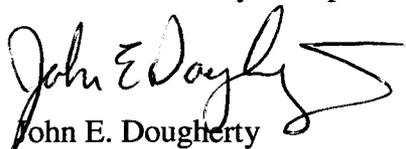
As of this date, there is no indication that Commission Staff is conducting extensive due diligence on Montezuma Rimrock's emergency rate request.

**R14-3-109 (O)** allows for the issuance of subpoenas to obtain information. Intervener has submitted Data Requests rather than subpoenas, however, the requests must be treated the same as subpoenas.

Montezuma Rimrock has failed to provide a valid reason to be exempt from discovery under R140-3-109 (O).

Intervener has demonstrated good cause for an entry denying the Motion for a Protective Order.

Dated this 6<sup>th</sup> Day of September, 2011.

  
John E. Dougherty  
Intevener

Copies of the foregoing mailed  
This 6th day of September, 2011 to:

Douglas C. Fitzpatrick  
LAW OFFICE OF DOUGLAS C. FITZPATRICK  
49 Bell Rock Plaza  
Sedona, AZ 8635 1  
Attorney for Montezuma Rimrock Water Company, LLC

Patricia D. Olsen, Manager  
MONTEZUMA RIMROCK WATER COMPANY, LLC  
P.O. Box 10  
Rimrock, AZ 86335

 **National Bank**  
OF ARIZONA  
6001 N 24th Street - Phoenix, AZ 85016

**CASHIER'S CHECK**

358844

Remitter PATRICIA OLSEN

Date August 25, 2011 91-532/1221

Pay \$ \*\*\*16,757.89\*\*\*  
\*\*\*SIXTEEN THOUSAND SEVEN HUNDRED FIFTY SEVEN and 89/100\*\*\* US Dollars

To The Order Of \*\*\*YAVAPAI TITLE AGENCY\*\*\*

NOTICE TO CUSTOMER: The purchase of a Surety Bond and/or execution of an Indemnity Agreement may be required before the check may be replaced or refunded in the event it is lost, misplaced or stolen.

**NON NEGOTIABLE**  
CUSTOMER COPY

067 02 0786

*Exhibit 1*

Messages Prefs Help Log Out



SUMMARY ACCOUNTS BILL PAY TRANSFERS SERVICES
Balances Activity eStatements Search

View Transaction

Use this screen to view a cleared transaction.

Exhibit 2

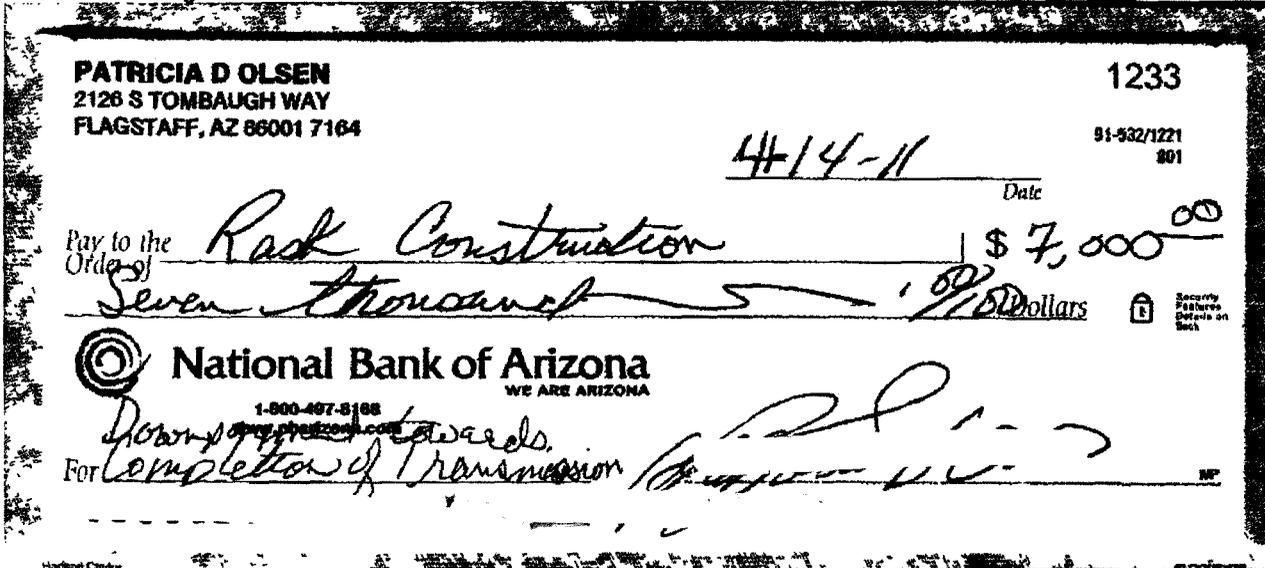
Transaction Information

Description: CHECK
Account: Free Checkin
Transaction: Check 1233
Date 04/28/2011
Cleared:
Amount: \$ 7,000.00

Date 04/28/2011
Initiated:
FI Reference ID:

Note: Check and Deposit images older than 180 days are not available online, but can be obtained by calling Customer Support from the number below. In order to maintain this service, there is scheduled maintenance every Saturday at 11:00 PM MT and on the last day of each month at 7:00 PM MT. During this time, which typically lasts about six hours, your images may not be available. We apologize for the inconvenience this may cause.

Transaction Image





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Exhibit 3

W-04254A-08-0361

W-04254A-08-0362

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704 South Main Street • Cottonwood, Arizona 86326 • Phone: 928/634-8880 • Fax: 928/634-6668

June 10, 2011

2011 JUN 15 P 2:17

Arizona Corporation Commission  
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JUN 15 2011

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED BY  


Patricia Olsen  
Montezuma Rimrock Water Company, LLC  
4615 E Goldmine Rd  
Rimrock, AZ 86335

RE: \$165,000 term loan request

Dear Ms. Olsen,

In reviewing your company's financials there does not appear to be sufficient cash flow to debt service your loan request.

Typically, we like to see a debt service ratio of 1.25%.

As an example:

Loan amount of \$165,000  
Amortized over 10 years  
Interest rate of 7.5%  
Estimated annual loan payments would be around \$23,503.

The income reported on your 2010 tax returns shows a net loss for the year and so there is no reported income to support this loan request. In order to meet the minimum cash flow requirements based on this example and your current negative cash flow you would need to increase your revenues by \$37,536 to support this request.

Please contact me at your convenience to discuss.

Sincerely,

  
Lori Marie Barlow  
Vice President