

ORIGINAL



0000130225

BEFORE THE CORPORATION COMMISSION

RECEIVED

Commissioners

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

2011 OCT -3 A 10: 25

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

OCT 3 2011

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF  
MONTEZUMA RIMROCK WATER COMPANY  
LLC FOR AN EMERGENCY RATE INCREASE

DOCKET NO. W-04254A-11-0296

**MOTION TO DENY  
COMPANY'S MOTION TO  
WITHDRAW EMERGENCY  
RATE APPLICATION**

-----  
**BY THE INTERVENER:**

On September 29, 2011, Montezuma Rimrock filed a motion to withdraw its July 25, 2011 application for an emergency rate increase.

The Company claims it has "*found a way to resolve its arsenic problem without incurring the expense of constructing an arsenic treatment facility. The Company is therefore relieved of the need to obtain financing and an emergency rate increase.*"

The Company provided no explanation of what it intends to do solve the arsenic issue, despite repeated Orders by the Commission to provide alternative plans in the event financing for the arsenic treatment plant was not an option.

The Company's vague motion to withdraw comes despite the Commission's directive at the September 22, 2011 hearing not to engage in "gamesmanship". The Company's motion is only the latest in a series of such "gaming" tactics, including:

1. On August 31, 2011 the Company filed a motion for a Protective Order seeking to quash or severely limit Intervener's discovery. During the September 13, 2011 Procedural Conference, the Company agreed to provide Intervener access to Company records, but with the caveat that some records were missing.

The Commission directed the Company to provide Intervener permission to exam records held by third parties, including banks, to allow Intervener to gain access to complete Company records without having to resort to the Commission's subpoena power.

Prior to filing the motion to withdraw the application for an emergency rate increase, the Company, without notice, terminated Intervener's access to third party bank records that were missing from the Company's files examined on September 19 and 20 in the office of the Company's counsel.

2. The Company's motion to withdraw comes seven days after it claimed it was insolvent or on the brink of insolvency during the September 22 hearing.

3. The Company's motion to withdraw comes one week after the Company's counsel confirmed during the September 22 Procedural Conference that the Company was diverting assets into bank accounts for car loan payments for a personal vehicle driven by the Company's owner and mortgage payments for an unknown property.

4. The motion to withdraw comes six days after Intervener filed its Third Data Request with the company seeking additional financial records. (Exhibit 1). The Company has not responded to the Third Data Request that was emailed to the Company's counsel on September 23, 2011.

5. The Company claimed at the September 13, 2011 Procedural Conference that its offices had been repeatedly burglarized since 2009, its computer tampered with, unauthorized emails have been sent to customers and the Company's books have been altered. Notably, the Company stated it never filed police reports.

These events clearly demonstrate an ongoing and persistent pattern of behavior by the Company to abuse the Commission's administrative process and to deny Intervener access to legitimate information through Discovery.

These actions serve as a disturbing backdrop to the Company's constant shifting of its position in regards to its solvency and its plans on how to solve the arsenic issue.

The Company's motion to withdraw its application for an emergency rate increase is another gaming tactic in an attempt to slam the door on Discovery that is uncovering serious financial irregularities and shedding much needed light on the Company's true financial condition.

The Company opened the door to the question of its solvency, and the Public and Ratepayers now have a right to know the Company's true financial condition. The Commission has a legal obligation to require a regulated utility to disclose its true financial condition.

The Company's financial condition has a direct bearing of how and when it will finally comply with Commission and Arizona Department of Environmental Quality orders to provide water that meets arsenic standards.

**Intervener moves the Commission to deny the Company's motion to withdraw its application for an emergency rate increase and keep in place the Commission's September 23, 2011 Procedural Order, including matters related to Discovery and setting a hearing for November 10, 2011.**

Dated this 3rd Day of October, 2011



John E. Dougherty  
Intervener

Copies of the foregoing emailed and mailed  
This 3rd day of October, 2011 to:

Douglas C. Fitzpatrick  
LAW OFFICE OF DOUGLAS C. FITZPATRICK  
49 Bell Rock Plaza  
Sedona, AZ 86351

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