

ORIGINAL



0000130793

BEFORE THE CORPORATION COMMISSION

Commissioners

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

RECEIVED

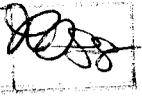
2011 OCT 28 P 3:45

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

OCT 28 2011

DOCKETED BY 

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

**Motion to Deny Company's
Motion to Compel**

BY THE INTERVENER:

On October 24, 2011, prior to the filing of Montezuma Rimrock's Motion to Compel on October 25, Intervener provided Montezuma Rimrock and Commission Staff copies of emails between Intervener and the Arizona Water Infrastructure Financing Authority, the Arizona Department of Environmental Quality and the Arizona Corporation Commission as requested by the Company in its Data Request.

Intervener has repeatedly told the Company there are no emails between Intervener and AZTEC Engineering. Intervener affirms once again there are no emails between Intervener and AZTEC.

Intervener opposes Company's motion to compel Intervener to produce private emails between Intervener and Mr. Ivo Buddeke.

The issue before the Commission in this docket is whether to modify Decision 71317 to allow the Company to obtain financing for the proposed arsenic treatment facility from a source different than the one approved in the original order. It is the Company's burden to present a financing plan that is ultimately approved or rejected by the Commission.

Intervener's communications with private individuals who may be interested in the outcome of this case have nothing to do with the Company's requirement of obtaining alternative financing for the ATF.

Intervener has had no contact with any of the potential private Lenders or Lessors the Company has put forward as possible financiers of the ATF. If Intervener had exchanged emails with possible financiers of the ATF, then Intervener would agree such communications are Discoverable and would produce such communications.

Mr. Buddeke, however, is a private individual who is not party to this case.

The Company has provided no evidence that email communications between Intervener and Mr. Buddeke have any relationship whatsoever to the Company's effort to obtain alternative financing from that approved in Decision 71317. The Company has yet to even put forward its financing plan, despite repeated orders by the Commission to do so.

The Intervener has no knowledge that the Company has sought to obtain financing for the ATF from Mr. Buddeke.

The fact that Mr. Buddeke is Intervener's neighbor, lives near one of the Company's well sites and has an interest in the outcome of this Docket does not establish the relevancy of Intervener's email communications with Mr. Buddeke.

The residents living in the Company's service area are also Intervener's neighbors and live near the Company's well sites. The service area is only approximately 1/3 square mile. The entire community has an interest in the outcome of this case because it could directly impact their water rates, water quality and fire safety. Does this give the Company the right to ask for emails between Intervener and other Company customers?

Absolutely not.

The Company's request for emails between Intervener and Mr. Buddeke is overly broad in that it provides no framework on the topic of discussions. The Company's request is an unreasonable and an unwarranted invasion of Privacy for both Intervener and Mr. Buddeke.

Intervener asserts the Company has an ulterior motive to obtain emails between Intervener and Mr. Buddeke.

Montezuma Rimrock owner Patricia Olsen is actively pursuing criminal charges against Mr. Buddeke in Yavapai County (V-1300-CR-201180337), claiming Mr. Buddeke pointed a loaded weapon at her.

The Company's request for emails between Intervener and Mr. Buddeke is a transparent attempt to use the Commission proceedings to gather possible evidence that could be used against Mr. Buddeke in the criminal case.

Intervener objects to the Company's effort to compel Intervener in a completely unrelated action to the pending criminal case to produce emails that may violate Mr. Buddeke's right against self-incrimination that is protected under the Arizona Constitution, Article 2, Section 100.

Intervener moves the Commission to dismiss the Company's motion to Compel. Intervener further requests that the Company bears all attorney fees in connection with the preparation and submission of its motion. Intervener requests that Company pay Intervener reasonable fees for the preparation and submission of this motion to deny.

Dated this 28th Day of October, 2011



John E. Dougherty
Intervener

Copies of the foregoing mailed
This 28th 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