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BEFORE THE CORPORATION COMMISSION

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

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AZ CORP COMMISSION
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ARIZONA CORP. COMM
400 W CONGRESS STE 218 TUCSON AZ 85707

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 INVESTIGATE EX
PARTE COMMUNICATIONS

BY THE INTERVENER:

On June 29, 2011, the Commission entered an order that the Ex Parte Rule (A.A.C. R14-3-113 – Unauthorized Communications) applies to this proceeding and shall remain in effect until the Commission Decision in this matter is final and non-appealable.

On October 31, 2011, Staff filed its response to Montezuma Rimrock’s filing of how it will resolve its arsenic issues in light of its withdrawal of its request for the Emergency Rate Increase.

Staff indicates in its response that it has obtained nonpublic information from the Company concerning its payment plans for a proposed operating lease of the Arsenic Treatment Facility (ATF) and the approximate cost of the equipment.

Staff states:

“It is currently Staff’s understanding that Ms. Olsen, the owner of MRWC, is paying or plans to pay for the operating lease from personal funds rather than seek modification of the ARSM to include recovery of operating lease payments.”

Montezuma Rimrock has never disclosed Ms. Olsen’s plan to pay for the operating lease from personal funds in its three filings in this Docket related to a proposed lease of the ATF. Nor has Montezuma Rimrock stated that the Company does

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not intend to seek modification of the ARSM. (1) There have been no hearings or procedural conferences concerning the proposed operating lease.

How, then, has Staff come to the “*understanding*” of Ms. Olsen’s lease payment plan and intent not to modify the ARSM if not from unauthorized communications with the Company?

Staff further states:

“The total cost of the treatment equipment is approximately \$40,000 and the Company is still negotiating the length of the lease.”

Montezuma Rimrock has not stated anywhere in this Docket that the total cost of the treatment equipment it is considering leasing is approximately \$40,000. In fact, Montezuma Rimrock has not disclosed any details regarding the financial terms of the proposed lease in its lease-related filings in this Docket.

How, then, has Staff learned that the total cost of the equipment is approximately \$40,000 if not from an unauthorized communication with the Company?

Staff is using Ms. Olsen’s purported payment plan it obtained from an unknown source that has not previously been disclosed in this Docket as the basis for its sweeping recommendation in its October 31 filing that “there is no need for any further Commission approvals in this Docket and an evidentiary hearing is not necessary.”

Intervener alleges there is evidence that Montezuma Rimrock and Staff have exchanged “oral or written communication, not on the public record, concerning the substantive merits of a contested proceeding” in violation of R14-3-113 (C)(1).

Intervener alleges there is evidence that a “commission employee involved in the decision-making process of a contested proceeding” requested, entertained or considered an “unauthorized communication concerning the merits of the proceeding” in violation of R14-3-113 (C)(2).

Intervener requests that all Remedies available under R14-3-113 (D) be applied in this matter to determine who made the unauthorized communication, who on staff received or initiated the communication, why the communication(s) was not declined and why the unauthorized communication(s) was not documented and reported in the public record as required under R14-3-113(D)(1).

Intervener requests the opportunity to completely review all documentation related to these unauthorized communications, and other possible unauthorized communications, and to call as witnesses all persons involved in the unauthorized

1--The Company’s first mention of a lease was in an October 6, 2011 motion. The Company provided details of the equipment to be leased in a filing on October 12, 2011. The Company docketed an “amended lease” stating it will not sign the proposed lease without Commission approval on October 25, 2011.

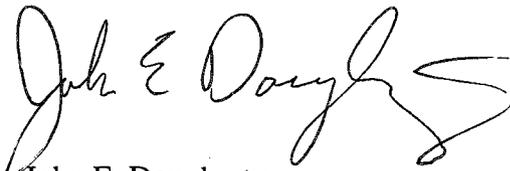
communication(s) and other expert witnesses to rebut on the record any facts or contentions contained in the unauthorized communication(s) under R14-3-113(D)(2).

Intervener Moves the Commission to Order Staff to immediately produce all records related to how Staff came to the "understanding" of Ms. Olsen's payment plans in regards to the proposed operating lease and how Staff learned that the equipment would cost approximately \$40,000.

If no record exists of a written communication, Intervener Moves the Commission to require Staff to make available the personnel who received or initiated unauthorized verbal communication or communications, directly or indirectly, to provide sworn testimony to this Commission. This includes Staff who may have learned of the unauthorized communications from other Staff, including Commission attorney Charles Hains, who submitted Staff's October 31 response.

Intervener Moves that if it is determined that a Party to this proceeding made, or caused to be made, an unauthorized communication, that Party should be required to Show Cause why its claim or interest in this proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of such violation under R14-3-113(D)(3).

Dated this 2nd Day of November 2011,



John E. Dougherty
Intervener

Copies of the foregoing mailed
This 2nd day of November, 2011 to:

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