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BEFORE THE CORPORATION COMMISSION

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AZ CORP COMMISSION
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ARIZONA CORP. COMM
400 W CONGRESS STE 218 TUCSON AZ 8570'

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

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

SUPPLEMENTAL TO MOTION TO INVESTIGATE EX PARTE COMMUNICATIONS

BY THE INTERVENER:

Intervener supplements its motion to investigative ex parte communications dated November 2, 2011 as follows:

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 25, 2011, Montezuma Rimrock filed a Supplemental and Amended Proposed Plan for Arsenic Abatement in this Docket.

In the filing, the Company states:

"When the Company has a proposed lease from GEcom, it will docket the lease and provide additional financial information that relates to the lease. ***It will not execute the lease or move forward with the construction of the treatment plant until the Commission has signed off on the proposed plan." (Emphasis added.)***

Arizona Corporation Commission
DOCKETED

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

In its response, Staff provides a starkly different interpretation of the Company's one-paragraph, October 25, filing.

Staff states:

"On October 25, 2011, the Company filed a Supplemental and Amended Proposed Plan for Arsenic Abatement indicating that when the Company has its proposed lease from GEcom, the Company will be docketing this lease. ***It is Staff's understanding that the purpose of the filing is informational only so that the lease may be considered in the Company's next general rate case." (Emphasis added)***

The Company has filed nothing in this Docket that states the Company now considers any future public disclosure of a lease to be "informational only so that the lease may be considered in the Company's next general rate case."

How, then, has Staff come to the "*understanding*" that the Company's purpose for filing the lease is radically different from what the Company stated in its October 25 filing unless Staff had unauthorized communications with the Company?

Staff also states in its October 31 filing that the Company ***"intends*** *to utilize an* ***operating lease*** *for the necessary equipment."* (Emphasis added.)

Once again, the Company has never stated in its three public filings in this Docket that it "intends" to use an "operating lease" to pay for the arsenic treatment facility. The Company has only stated it intends to "lease" the equipment.

The distinction is important. An "operating lease", contrary to "capital lease", would not require Commission approval. The Company's lease terms with Lessor will determine whether the lease is classified as an operating lease versus a capital lease. As of this date, the proposed lease has not been publicly disclosed.

How, then, does Staff know the undisclosed lease will actually meet the accounting requirements necessary to be classified as an "operating leases" versus a "capital lease" unless the Company and Staff have exchanged unauthorized communications?

Intervener alleges Staff's "understanding" of the Company's purpose of docketing a proposed lease and Staff's assertion the Company "intends" to use an "operating lease" to pay for the treatment facilities are additional evidence that Staff and the Company have engaged in unauthorized communications in violation of A.A.C. R14-3-113.

Dated this 2nd Day of November 2011,

John E. Dougherty
Intervener

Copies of the foregoing mailed
This 2nd day of November, 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