

ORIGINAL



0000130954

BEFORE THE CORPORATION COMMISSION

RECEIVED

Commissioners

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

2011 NOV -4 A 8:41
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

NOV 4 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

REPLY TO STAFF'S
RECOMMENDATION TO
CLOSE DOCKET

MOTION TO REQUIRE
DISCLOSURE OF PROPOSED
LEASE AND CONTINUED
DISCOVERY

BY THE INTERVENER:

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

Staff stated that since Montezuma Rimrock is *planning* to obtain an "operating lease", which would not require Commission approval, the underlying issue in this action is resolved and the Docket should be closed except for ongoing compliance filings by the Company.

Staff's recommendation is premature and should be rejected by the Commission. Staff's endorsement of an undisclosed lease is without merit and is an abject failure of its responsibility to assess the proposed financial arrangements to construct arsenic treatment

facilities that the Commission has repeatedly requested only to be ignored by the Company, and now, by Staff.

Staff, inexplicably, recommends rubberstamping an undisclosed lease -- supposedly proffered by the Company -- without conducting a modicum of financial analysis of the lease's possible impact on Ratepayers and on the Company, which only two months ago was claiming to be insolvent or on the brink of insolvency.

The proposed terms of the lease will determine whether it is classified as an "operating lease" or a "capital lease". A capital lease would automatically require Commission approval.

According to the Financial Accounting Standards Board Statement No. 13— Accounting for Leases, a proposed lease must meet four tests to be considered an "operating lease".

A lease must be treated as a capital lease if it meets any one of the following four conditions:

- a. If the lease life exceeds 75 percent of the life of the asset.
- b. If there is a transfer of ownership to the lessee at the end of the lease term.
- c. If there is an option to purchase the asset at a "bargain price" at the end of the lease term.
- d. If the present value of the lease payments, discounted at an appropriate discount rate, exceeds 90% of the fair market value of the asset.

It is impossible at this point to determine whether the Company's proposed lease actually qualifies as an operating lease until the terms of the lease are publicly released and carefully analyzed by the Staff and Intervener's experts.

Further, even if the proposed lease agreement is in fact an "operating lease", a potential Lessor is required to classify the expenses covered by the lease payments. According to Commission Decision 66400, all potential Lessors of arsenic treatment facilities must agree to break out lease payments into the following three separate components:

1. The Lessor's equipment construction costs.
2. Recoverable Operating & Maintenance Costs.
3. Other O&M Costs.

Decision 66400 also requires potential Lessors of arsenic treatment facilities to identify the interest rate embedded in the lease payment.

None of the lease requirements included in Decision 66400 have been met.

Given the Company's undisputed weak financial condition and the unusual events that have occurred in this docket and related actions, including alleged burglaries of Company business records that were not reported to police, Staff must be required to conduct a thorough financial analysis of any proposed lease that is offered by the Company.

Intervener is also entitled to analyze and comment on the proposed lease.

Finally, Commissioner Paul Newman filed a July 22 letter in this docket requesting that an "evidentiary hearing be ordered in this case" because of the possible impacts on Montezuma Well National Monument.

Intervener Moves the Commission to require Company to fully disclose the terms of the lease and to continue proceedings in this docket, including Discovery, and at a suitable time hold an evidentiary hearing.

Dated this 4th Day of November 2011,



John E. Dougherty
Intervener

Copies of the foregoing mailed
This 4th 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