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BEFORE THE CORPORATION COMMISSION

Commissioners

GARY PIERCE – Chairman  
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PAUL NEWMAN  
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AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAR 21 2012

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

**Response to Company's Signed  
Purchase, Lease and Sublease  
Agreements**

**Supplement to Motion to Bar  
Implementation of Signed  
Contracts**

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**By the Intervener:**

On March 19, 2012, Patricia Olsen submitted signed documents to purchase arsenic treatment equipment and a building, a signed lease agreement to finance the purchase of the equipment and building, and a "water services agreement" signed between herself and her company, **Montezuma Rimrock**.

On March 20, 2012, Counsel for **Montezuma Rimrock** submitted a Response to Motion to Bar Execution of Arsenic Treatment Contract. The response was based on documents filed in February by an unknown party and therefore, is irrelevant, and should be dismissed on its face.

The day before Counsel filed his motion, Patricia Olsen docketed copies of signed agreements with a different leasing company than what was asserted by Counsel and substantially different financial terms. As bad as those terms were to **Montezuma Rimrock** ratepayers alluded to by **Montezuma Rimrock** Counsel in his March 20 filing,

the actual signed contracts Docketed by Ms. Oslen on March 19, 2012 are much, much worse.

The signed lease agreements impose potentially needlessly high costs on ratepayers while providing Ms. Olsen a financial windfall over the next 20 years. The signed agreements will very likely impose costs on ratepayers far higher than what was approved in Decision 71317.

**Montezuma Rimrock** Counsel's assertion that the Commission, Commission Staff and Intervener have no interest or right to comment about the terms of the purchase, lease and water services agreements and are prohibited from seeking to restrict the timing of their signing is without merit and ignores the basic premise of this case.

**Montezuma Rimrock** is attempting modify Decision 71317, which was a rate case that set specific requirements for financing the arsenic treatment facility through a \$165,000 loan obtained from the Arizona Water Infrastructure Financing Authority. On January 24, 2011, **Montezuma Rimrock** requested modification under ARS 40-252 of the decision in order to obtain financing from a private party at prevailing rates rather than obtain the WIFA loan.

ARS 40-252 clearly states: "The *commission* (emphasis added) may at any time, upon notice to the corporation affected, and after opportunity to be heard as upon a complaint, rescind, alter or amend any order or decision made by it."

In this case, the Commission voted on April 27, 2011 to **determine whether to modify Decision 71317 concerning financing approval and related provisions.** Obviously, the Commission cannot determine whether it will modify financing approved in Decision 71317 without first considering the Company's proposed financing modification.

Therefore, it is abundantly clear that since the Commission must determine whether to approve the Company's proposed private financing scheme, that Commission Staff and Intervener have standing to comment and request actions in connection with **Montezuma Rimrock's** modification of financing plans specifically for the arsenic treatment facility.

Intervener is not seeking to interfere with **Montezuma Rimrock's** routine business operations. Instead, Intervener is focused only on the Company's arsenic treatment financing plan. This is the essential element in the ARS 40-252 case.

Under **Montezuma Rimrock** Counsel's freewheeling argument, regulated utilities could simply sidestep rates and financing plans approved by the Commission by simply requesting under ARS 40-252 a reopening of their cases and then enter into *whatever* business arrangements they wish, regardless of possible impact on ratepayers and without input from Interveners, Commission staff and the Commission itself.

This is clearly what **Montezuma Rimrock** is now trying to do.

In a nutshell, Ms. Olsen's proposed arrangement calls for her to lease the arsenic equipment at a *usurious* 14 percent interest rate and then turn around and pillage her own company for more than a quarter million dollars in "standby fees" while, at the same time, telling the Commission Staff, Intervener and the full Commission to butt out of her private business. The Company and Ms. Olsen simply want the Commission to rubberstamp their latest, and most outrageous financing scheme, and to terminate Intervener's role from requesting actions in response to the Company's proposed plans.

This cozy and arrogant proposal by the Company, whose accountant said in a September 2011 sworn statement is insolvent, is fraught with peril for ratepayers and must be subjected to careful scrutiny, especially given the checkered history of **Montezuma Rimrock's** failure to comply with Commission rules and regulations as thoroughly exposed in the formal Complaint under Docket W-04254A-11-0323.

Furthermore, **Montezuma Rimrock** is attempting to obscure the fact that Ms. Olsen is entering into a capital lease agreement to finance the acquisition of the equipment. Ms. Olsen is then attempting to sanitize the capital lease by entering into a "Water Services Agreement" with her own Company, in which she is the sole member.

This is simply a ploy to sidestep regulatory oversight. Commission approval is required of all capital leases entered into by utilities. Stripping away Ms. Olsen's role as an unnecessary third party, whose only purpose appears to be to enrich Ms. Olsen at her Company's and ratepayers' expense, **Montezuma Rimrock** is entering into a capital lease.

*Montezuma Rimrock's Proposed Leasing Scheme*

I. According to the documents filed by Ms. Olsen, she agreed to purchase the arsenic treatment equipment and a building to house the equipment from Kevlor for \$46,000.

II. To finance the purchase of the arsenic treatment equipment and the building, Ms. Olsen signed a capital lease agreement with Nile River Leasing Co. that calls for her to pay the following:

**Arsenic Treatment Building:**

\$342.09/month for 36 months = \$12,315.24 plus \$734.46 upfront payment totaling \$13,049.70

**Arsenic Removal Treatment System:**

\$1,058.18/month for 60 months = \$63,490.80 plus \$2,271.92 upfront payment totaling \$65,762.72

**Total Cost of Lease Financing:**

**\$78,812.42 over five years.**

Total Interest paid, therefore, is \$32,812, which converts to an annual percentage rate of 14.26 percent over five years based on \$46,000 principle. The \$165,000 Water Infrastructure Financing Authority loan was projected at 4 to 6 percent.

III. Through a Water Services Agreement she signed between herself and the company in which she is the sole shareholder, *Ms. Olsen then seeks to impose an onerous \$1,500/month fee on Montezuma Rimrock ratepayers for 20 years!*

According to the agreement, Ms. Olsen would receive \$360,000 in monthly "standby fees" while spending only \$78,812 for lease payments in the first five years. Ms. Olsen would receive a windfall of \$281,188 taken from her Company, which is funded by ratepayers, for nothing more than subleasing equipment. This averages to \$1,171/month extracted from her Company and, presumably ratepayers, from the standby monthly fee alone.

**Montezuma Rimrock** does not have the capital resources to sustain this fee more than a couple of months, if that, without imposing a steep arsenic surcharge on its ratepayers.

In addition to the standby fee, Ms. Olsen also intends to collect \$400 per acre foot of water used by the arsenic treatment plant for the first 42 AF and then an additional \$800 per acre foot charge for water consumed greater than 42 AF. The company currently uses about 42 AF a year, so any expansion of the customer base and the requirements of extra water needed to operate the ATF will impose significantly higher costs on ratepayers.

The \$400/AF fee based on 42AF/year will result in a monthly charge of \$1,400 that Ms. Olsen will collect from **Montezuma Rimrock** in addition to the \$1,500 standby fee.

Nowhere in the signed contracts does Ms. Olsen, **Montezuma Rimrock**, Kevlor or Nile River Leasing Co., provide any justification for the \$400/AF maintenance charge. **Montezuma Rimrock** Counsel concedes that the operational expenses of **Montezuma Rimrock** may be reviewed by the Commission and Commission Staff as part of a rate case, which Decision 71317 was.

Therefore, Ms. Olsen and **Montezuma Rimrock** must be required to disclose detailed information concerning the basis of the \$400/AF fee and Commission staff must be required to determine if this fee is reasonable. The maintenance fee is an integral part of the Water Services Agreement and must be approved by the full Commission prior implementing the full agreement.

#### *Impact on Ratepayers*

At a minimum, ratepayers, under the signed agreements, will very likely be forced to pay a far higher arsenic surcharge than what was approved in Decision 71317. Based on an average \$2,900 monthly fee charged by Ms. Olsen to **Montezuma Rimrock** (\$1,500/month standby fee + \$1,400/month maintenance fee) and 200 customers, ratepayers will be faced with a \$14.50/month increase in rates.

This is *126 percent higher* than the \$6.41 arsenic surcharge approved in Decision 71317. But even this staggering increase greatly understates the overall cost of the arsenic

treatment system that Ms. Olsen and **Montezuma Rimrock** is attempting to impose on ratepayers, without Intervener or Commission Staff comment and without Commission approval.

Decision 71317 included the following costs when it was determined that the arsenic surcharge would be \$6.41:

Arsenic Treatment System at 160 GPM	\$81,746
Grading and Concrete at Well#1	5,816
Plumbing modifications/electric upgrade	6,812
Water line interconnecting Well#4	42,870
New Pump House	5,907
Radio Telemetry	8,158
Engineering (8.3%)	13,691
Total	\$165,000

Neither Ms. Olsen, nor **Montezuma Rimrock** have included any of the costs listed above other than the arsenic treatment system in the signed purchase contract, leasing contract and water services agreement. Obviously, adding \$83,000 in additional expenses that are integral to the overall arsenic treatment facility to the rate base will greatly increase the impact on ratepayers.

In addition, none of the costs incurred by **Montezuma Rimrock** and Ms. Olsen to purchase the land where Well#4 is located have been included in the cost of the arsenic treatment plant. These costs, at a minimum include \$32,000 plus interest for the property. Ms. Olsen and **Montezuma Rimrock** never disclosed to the Commission that the Company had entered into a long-term loan to purchase this property until it was revealed by Intervener acting as Complainant in W-04254A-11-0323.

Nor has Ms. Olsen or **Montezuma Rimrock** included the costs of the \$42,870 pipeline that was built last year. Based on information available, Ms. Olsen contributed about \$8,000 in personal funds toward the pipeline, leaving **Montezuma Rimrock** facing an approximately \$35,000 long term debt, which, once again, has never been approved by the Commission.

*Conclusion*

The Commission reopened this case to determine whether to modify the financing plan approved in Decision 71317. The Commission therefore must review the Company's financing plans prior to making a decision on whether to modify Decision 71317.

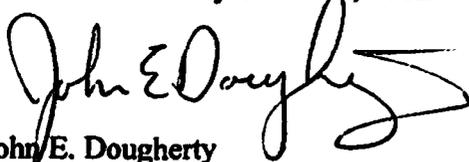
Ms. Olsen's proposed expensive financing and lucrative self-enrichment scheme will very likely have a **direct and permanent impact on rates** approved in Decision 71317, and therefore must be subject to full approval by the Commission prior to implementation.

Rates are clearly under the authority of the Commission.

Intervener entered this case after the Commission granted the 40-252 reopening and his focus has been entirely on the Company's various proposed financing plans for the arsenic treatment facility.

**Intervener respectfully moves the Court to bar implementation of the signed purchase agreement, lease agreement and water services agreement until they receive full Commission approval as required under ARS40-252.**

Dated this 21st Day of March, 2012



John E. Dougherty  
Intervener

Copies of the foregoing mailed  
This 21st day of March, 2012 to:

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