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COMMISSIONERS

BOB STUMP – Chairman  
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RECEIVED  
AZ CORP COMMISSION  
DOCKET CONTROL  
2013 MAY 3 PM 3 38

**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION  
OF MONTEZUMA RIMROCK WATER  
COMPANY, LLC FOR APPROVAL OF  
FINANCING TO INSTALL A WATER LINE  
FROM THE WELL ON TIEMAN TO WELL  
NO. 1 ON TOWERS.

Docket No. W-04254A-12-0204

IN THE MATTER OF THE APPLICATION  
OF MONTEZUMA RIMROCK WATER  
COMPANY, LLC FOR APPROVAL OF  
FINANCING TO PURCHASE THE WELL  
NO. 4 SITE AND THE COMPANY  
VEHICLE.

Docket No. W-04254A-12-0205

IN THE MATTER OF THE APPLICATION  
OF MONTEZUMA RIMROCK WATER  
COMPANY, LLC FOR APPROVAL OF  
FINANCING FOR AN 8,000-GALLON  
HYDRO-PNEUMATIC TANK.

Docket No. W-04254A-12-0206

IN THE MATTER OF THE RATE  
APPLICATION OF MONTEZUMA  
RIMROCK WATER COMPANY, LLC.

Docket No. W-04254A-12-0207

JOHN E. DOUGHERTY,  
  
COMPLAINANT,  
  
V.  
  
MONTEZUMA RIMROCK WATER  
COMPANY, LLC  
  
RESPONDENT

Docket No. W-04254A-11-0323

Arizona Corporation Commission  
**DOCKETED**

MAY 3 2013

DOCKETED BY

1 IN THE MATTER OF THE APPLICATION  
2 OF MONTEZUMA RIMROCK WATER  
3 COMPANY, LLC FOR APPROVAL OF A  
4 RATE INCREASE.

Docket No. W-04254A -08-0361

4 IN THE MATTER OF THE APPLICATION  
5 OF MONTEZUMA RIMROCK WATER  
6 COMPANY, LLC FOR APPROVAL OF A  
7 FINANCING APPLICATION.

Docket No. W-04254A -08-0362

**RESPONSE TO MOTION TO  
BAR RATE APPLICATION**

7 Montezuma Rimrock Water Company LLC responds to Mr. Dougherty's Motion  
8 to Bar Rate Application filed on April 15, 2013. In the course of these consolidated  
9 dockets, Mr. Dougherty has filed over 40 motions, giving new meaning to the term abuse  
10 of the legal process.<sup>1</sup> Mr. Dougherty's latest attempt to bury the Company in motions and  
11 legal filings should be denied for the following reasons.

12 **I. THE MOTION TO BAR SHOULD BE DENIED.**

13 **A. Brief Statement of the Response.**

14 In his motion, Mr. Dougherty has moved "the Commission to bar the Company's  
15 Financing Application seeking retroactive approval of Capital leases with Nile River  
16 Leasing and Financial Pacific Leasing."<sup>2</sup> Mr. Dougherty claims that Ariz. Rev. Stat. §§  
17 40-301 and 40-302 require prior approval of the capital leases and, therefore, the  
18 Company doesn't have any "legal basis" for seeking retroactive approval.<sup>3</sup>

19 Mr. Dougherty's motion should be denied because those statutes do not preclude  
20 the Commission from retroactively approving financial transactions and, in fact, the  
21 Commission has done exactly that for many years. Under case law and the statutes  
22 themselves, the Commission has authority and discretion to retroactively approve debt  
23 transactions like the leases at issue here. It is established law that the Commission has

24 \_\_\_\_\_  
25 <sup>1</sup> In this rate case alone, Mr. Dougherty has filed 15 motions (including pleadings containing  
26 multiple motions), many of which requested some form of substantive action.

<sup>2</sup> Motion at 6.

<sup>3</sup> *Id.*

1 has plenary ratemaking authority under Article 15 of the Arizona Constitution.<sup>4</sup> Mr.  
2 Dougherty does not cite any case law or authority to the contrary.

3 The Motion also should be denied because Mr. Dougherty previously filed a  
4 motion on January 15, 2013 requesting that “the Commission require the Company to  
5 submit the true and complete, unredacted leases between the Company and Nile River  
6 Leasing for Arsenic Treatment Building and the Company and Financial Pacific Leasing  
7 for the Arsenic Treatment System for Approval by the Commission as Capital Leases  
8 under ARS S40-302(A) as part of the ongoing rate case application and approval of  
9 various long term debt in this consolidated docket.”<sup>5</sup> Given that prior request by Mr.  
10 Dougherty, he can’t now change his mind and oppose the Company’s filings.

11 **B. The Commission Has Authority to Retroactively Approve the Leases**  
12 **Filed by the Company.**

13 As a matter of law, Ariz. Rev. Stat. §§ 40-301 and 40-302 do not prohibit the  
14 Commission from retroactively approving a capital lease under the standards set forth in  
15 those statutes. Those statutes are not one-strike statutes forever penalizing a utility that  
16 fails to initially comply with sections 301 and 302. As Commission Staff routinely states,  
17 the Commission has plenary authority over ratemaking for Arizona public service  
18 corporations. In turn, the Commission exercises control over utility expenditures  
19 indirectly through financing approval for major capital expenditures under §§ 40-301 and  
20 40-302 and through rate regulation by refusing to recognize imprudent expenditures in  
21 setting rates.<sup>6</sup> Here, interpreting § 40-302 to prohibit retroactive review and approval of  
22 financing and debt transactions would violate the Commission’s plenary authority over  
23 ratemaking. The legislature cannot override the Commission’s constitutional ratemaking

24 <sup>4</sup> *Ariz. Corp. Comm’n v. State ex. rel. Woods*, 171 Ariz. 286, 291, 830 P.2d 807, 812 (1992); Ariz.  
25 Const. Art. 15, § 3.

26 <sup>5</sup> Motion to Require Company to Submit Capital Leases to Commission for Approval docketed  
January 15, 2013, at 3.

<sup>6</sup> Ariz. Op. Atty. Gen. No. I79-099, 1979 WL 23168 (1979) at 2.

1 authority under Article 15 of the Arizona Constitution. Perhaps for that reason, those  
2 statutes do not include any language prohibiting the Commission from retroactively  
3 approving such financial transactions.

4 Not only do those statutes not expressly prohibit retroactive approval, but the  
5 statutes give the Commission sufficient leeway to do exactly that. Ariz. Rev. Stat. § 40-  
6 302(A) requires that “before a public service corporation issues stocks and stock  
7 certificates, bond, notes and other evidences of indebtedness, it shall first secure from the  
8 commission an order authorizing such issue....” But the statute does not prohibit the  
9 Commission from retroactively reviewing and approving such transactions. After all,  
10 Ariz. Rev. Stat. § 40-302(B) provides that the “Commission may grant or refuse  
11 permission for the issue of evidences of indebtedness or grant the permission to issue  
12 them in a lesser amount, and may attach permission conditions it deems reasonable and  
13 necessary.” Likewise, Ariz. Rev. Stat. § 40-302(A) provides that the power to issues debt  
14 by public utilities “shall be exercised as provided by law and under rules, regulations and  
15 orders of the Commission.” Those statutes clearly provide the Commission with  
16 sufficient authority to grant retroactive approval of the capital leases at issue here, as long  
17 as the Commission “finds that such issue is for lawful purposes which are within the  
18 corporate powers of the applicant, are compatible with the public interest, with sound  
19 financial practices, and with the proper performance by the applicant of service as a public  
20 service corporation and will not impair its ability to perform that service.”<sup>7</sup> Mr.  
21 Dougherty doesn’t cite any legal authority to the contrary.

22 **C. The Commission Has Routinely Approved Such Financial Transactions**  
23 **Retroactively as a Matter of Precedent and Practice.**

24 As noted by the Administrative Law Judge and legal counsel for Commission  
25 Staff, the Commission has issued many decisions retroactively approving financing

26 <sup>7</sup> Ariz. Rev. Stat. § 40-301(C). See also Ariz. Rev. Stat. § 40-302(A).

1 transactions and debt issuances under Ariz. Rev. Stat. §§ 40-301 and 40-302. Those  
2 decisions warrant dismissal of Mr. Dougherty's motion. *See, e.g., Columbus Elec. Coop.,*  
3 *Inc.*, 2012 WL 1996804 (May 18, 2012) at \* 1 (retroactively approving three secured  
4 loans and related mortgages); Decision No. 72667 (Little Park Water Company),  
5 November 17, 2011 at 10-11 (retroactively approving \$140,000 financing request for a  
6 bridge loan not previously approved by the Commission and noting that "Little Park is not  
7 in compliance with A.R.S. § 40-301 with respect to the promissory note issued to Big  
8 Park."); *Yarnell Water Imp. Ass'n, Inc.*, 2009 WL 246452 at \*1, 13 (January 20, 2009)  
9 (retroactively approving financing of \$19,827 for purchase of truck); *Park Water Co.*,  
10 2004 WL 3410764 (August 10, 2004) (retroactively approving \$37,519 in financing to  
11 cover operating costs and plant improvements); *Golden Shores Water Co.*, 2008 WL  
12 622130 at \*1-2, 4-5 (involving promissory note to Bank One for loan in amount of  
13 \$286,200 for new well and storage tank, stating that "GSWC acknowledges that approval  
14 of the loan should have been obtained from the Commission prior to executing the  
15 transaction" under § 40-302 and ordering that "Golden Shores Water Company, Inc. is  
16 hereby retroactively authorized to borrow \$286,200 from Bank One"); Decision No.  
17 65853 (Bellemont Water Co.), April 25, 2003 (granting retroactive approval of a \$22,792  
18 loan to Bellemont from shareholder for drilling of well and pump); *Pinecrest Water Co.*,  
19 1993 WL 495133 (October 18, 1993) at \*1, 4-5 (finding that company "has issued stock  
20 without Commission approval" and retroactively approving stock issuance used to fund  
21 installation of new main).

22 **II. CONCLUSION.**

23 As a matter of law, Mr. Dougherty's Motion to Bar Rate Application should be  
24 denied for the reasons set forth above. That motion also contains various unsupported  
25 arguments relating to the facts underlying the lease agreement and the Company's  
26 motives. The Company denies and objects to those allegations. It is not necessary to

1 address those issues here because Mr. Dougherty's motion is meritless as a matter of law.  
2 As such, the Company requests that the Administrative Law Judge deny the pending  
3 motion.

4 RESPECTFULLY SUBMITTED this 3rd day of May, 2013.

5  
6 FENNEMORE CRAIG

7  
8 By 

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13 An original and 13 copies  
14 of the foregoing was filed  
15 this 3rd day of May, 2013,  
with:

16 Docket Control  
17 Arizona Corporation Commission  
18 1200 West Washington Street  
Phoenix, Arizona 85007

19 A copy of the foregoing  
20 was hand delivered/mailed/mailed this  
3rd day of May, 2013, to:

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