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John E. Dougherty
PO Box 501
Rimrock, AZ 86335
Complainant & Intervenor

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BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION
DOCKET CONTROL

COMMISSIONERS

BOB STUMP-Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

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

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.

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

W-04254A-12-0206

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

W-04254A-12-0207

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

W-04254A-11-0323

Arizona Corporation Commission

DOCKETED

AUG 30 2013

DOCKETED BY

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

W-04254A-08-0361

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

W-04254A-08-0362

10
11
12 **CLOSING BRIEF OF INTERVENOR/COMPLAINANT JOHN E. DOUGHERTY**
13 **AUGUST 30, 2013**
14

15
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1 **Introduction**

2 At the conclusion of a five-day Evidentiary Hearing, Administrative Law Judge
3 Sarah Harpring on June 26, 2013 ordered the parties in the above consolidated
4 dockets to provide closing arguments and legal briefs on three matters:
5

6 A. Whether Montezuma's not having obtained prior Commission approval before
7 encumbering assets of the utility or taking on long-term debt renders the
8 approvals granted in Decision No. 67583 null and void or otherwise does or
9 should impact the approvals granted therein, including Montezuma's CC&N.
10

11 B. Whether the Commission has the authority to grant retroactive approval of
12 long-term debt incurred by a public service corporation with citation to laws or
13 case law providing such authority.
14

15 C. Whether the Commission has the authority to and should impose fines or other
16 penalties on Montezuma or Ms. Olsen personally for noncompliance with statutes,
17 Commission decisions, and/or Commission procedural orders.
18

19
20 **I. Montezuma's failure to obtain Commission approval before encumbering**
21 **assets and taking on long-term debt renders the approvals granted in Decision**
22 **67583 null and void.**
23

24 **Statement of Facts**
25

26 The testimony and exhibits presented during the Evidentiary Hearing provide
27 clear and convincing evidence that Montezuma knowingly and purposely entered
28 into unapproved long-term debt (The Brunner Loan) to acquire property that was
29 used to develop the Well No. 4 site without prior Commission approval, and then
30 took subsequent steps to hide the debt from the Commission.
31

32 In the course of this deceptive action, not only did the Company violate Decision
33 67583 requiring it to obtain prior approval before it borrowed \$32,000 in 2005 to
34 purchase land for Well No. 4, Montezuma's sole member, Patricia Olsen,
35 provided false information to the Company's accountant, thereby violating a
36 second requirement in Decision No. 67583 that the Company maintain its books
37 and records in accordance with NARUC Uniform System of Accounts.
38

39 Testimony and exhibits show that Ms. Olsen deceived Montezuma's accountant,
40 Mr. John Campbell, by falsely stating she had personally paid off the \$28,000
41 balance on the Brunner Loan in 2010.
42

43 The evidence and testimony shows that Ms. Olsen did not repay the Brunner loan
44 in 2010, but instead made a purported \$16,000 payment in 2011. The evidence
45 also shows that the Company made monthly loan payments from 2005 through
46 2011 on the Brunner Loan, not Ms. Olsen personally.

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Nevertheless, based on Ms. Olsen’s assertion that she had personally paid off the Brunner Loan, Mr. Campbell entered a \$28,000 long-term loan from Ms. Olsen to the Company onto the 2010 Annual Report’s balance sheet. The loan was entered without first receiving Commission approval.

The 2011 Annual Report identifies this new, unapproved long-term debt owed to Ms. Olsen as Loan #2 with a “Dollar Amount” issued of \$21,377. Mr. Campbell testified that Ms. Olsen withdrew funds from the company’s “drawing account” for her personal benefit in 2011, causing Mr. Campbell to reduce the Amount Outstanding on Loan #2 to \$11,324.

Mr. Campbell also testified about another unapproved, \$11,180 long-term loan from Ms. Olsen to the company identified as Loan #3 in the 2012 Annual Report. Loan #3 is to repay Ms. Olsen for her company vehicle. Mr. Campbell testified that Ms. Olsen made \$10,594 in draws against the loan in 2012.

Mr. Campbell’s testimony and the evidence shows that Ms. Olsen has already drawn approximately \$20,647 from Montezuma’s accounts that has resulted in the balances for Loan #2 and Loan #3 being reduced by an equal amount. It must be emphasized that the Commission has not approved either of these loans.

Ms. Olsen testified that Loan #2 in the 2011 Annual Report is the same loan the Company is now seeking approval for in its financing application for in W-04254A-12-0204. The Company’s financing application, however, states the loan is to repay Ms. Olsen for purchasing land for Well No. 4 and a company vehicle.

The financing application states the loan is intended to repay Ms. Olsen for her purchase of the same assets, Well No. 4 and a Company vehicle, that the Company has already entered into with Ms. Olsen in Loan #2 and Loan #3 and from which Ms. Olsen has already withdrawn more than \$20,000 from the Company.

This fast-and-loose use of unapproved long-term debt is precisely the type of misconduct that Decision No. 67583 was seeking to prohibit when it imposed the mandatory conditions in Paragraph 37 and Conclusion of Law No. 6.

Decision No. 67583

Decision No. 67583 was docketed on Feb. 15, 2005. The Decision approved Montezuma Estates Property Owner’s Association sale of utility assets and transfer of its Certificate of Convenience of Necessity to Montezuma Rimrock Water Company, L.L.C.¹

Paragraph 37 of the Decision states: We shall approve the application subject to

¹ C-Ex 4, Decision 67583, Pg 9, Ln 26-28

1 MRWC complying with the following conditions, which included the filing of a
2 performance or surety bond since MRWC has not previously been involved in the
3 operation of a public utility:²
4

5 Among the nine conditions listed are the following:³
6

- 7 • MRWC shall secure and file, with the Commission, at least 30 days
8 prior to the close of the transaction, form of performance or surety
9 bond in the amount of \$30,000;
- 10 • MRWC shall maintain said performance or surety bond until further
11 Order of the Commission;
- 12 • **MRWC shall not encumber the assets of the utility in any way**
13 **without prior commission approval; (Emphasis added)**
- 14 • **MRWC shall maintain its books and records in accordance with**
15 **NARUC Uniform System of Accounts; (Emphasis added)**
- 16 • MRWC shall file an annual report with the Director of the Utilities
17 Division concerning its hook-up fee account in the form ordered in
18 Decision No. 64665.
19

20 Decision 67583 included six (6) Conclusions of Law. Conclusion No. 6 states:
21 “The conditions as set forth in Findings of Fact No. 37 are reasonable and should
22 be adopted.”⁴
23

24 Ms. Olsen testified that company was required to abide by the Decision’s terms
25 and conditions.⁵ For example, Ms. Olsen testified she has maintained the surety
26 bond as ordered in Paragraph 37.⁶ Ms. Olsen also testified that MRWC submitted
27 the annual hook-up fee account reports in subsequent years.⁷
28

29 Ms. Olsen testified that Decision 67583 ordered that Montezuma shall comply in
30 all respects with Findings of Fact No. 37 and Conclusion of Law No. 6 or the
31 approval granted hereinabove shall be null and void.⁸
32

33 Ms. Olsen also testified that Finding of Fact 37 includes the requirement that
34 MRWC shall not encumber the assets of the utility in any way without prior
35
36
37
38

² C-Ex 4, Decision 67583, Pg 8, Ln 22-24

³ C-Ex 4, Decision 67583 Pg 8, Ln-25-28, Pg 9, Ln 5-8

⁴ C-Ex 4, Decision 67583, Pg 9, Ln 23

⁵ Evidentiary Hearing, Vol.1, Pg 162, Ln. 8-10

⁶ Evidentiary Hearing, Vol. 1, Pg 170, Ln. 6-9

⁷ Evidentiary Hearing, Vol 2, Pg 382, Ln 8-10

⁸ Evidentiary Hearing, Vol 1, Pg 171, Ln 15-20

1 Commission approval.⁹
2

3 **The Brunner Loan**
4

5 On Oct. 19, 2005, eight months after Decision 67583 was docketed, Montezuma
6 signed a Deed of Trust and a promissory note to pay Anna Barbara Brunner
7 \$32,000 (Brunner Loan) for vacant land identified as Lot 500, Lake Montezuma
8 Estates, Unit Two. The Deed of Trust states that the Trustor is Montezuma. Ms.
9 Olsen signed the Deed of Trust as Montezuma's "manager".¹⁰
10

11 During her direct examination, Ms. Olsen falsely testified that the property "was
12 not owned by the water company at the time." She also testified that she didn't
13 consider it an asset of the company.¹¹
14

15 Montezuma subsequently invested substantial Company funds to drill Well No. 4
16 in 2006 and install supporting infrastructure including well casing, a pump,
17 electrical service, piping and fencing around the property. These investments,
18 funded by hookup-fees collected from new customers, were made while the Deed
19 of Trust was still in place.
20

21 Ms. Olsen testified that Montezuma did not disclose the long-term debt in its
22 Annual reports in 2005, 2006, 2007, 2008 and 2009.¹²
23

24 Under Cross-examination by Mr. Dougherty, Ms. Olsen stated:
25

26 *Q. So this debt was hidden from the Corporation*
27 *Commission annual reports for five years at least, correct?*

28 *A. It was not hidden.*

29 *Q. How was it disclosed, Ms. Olsen?*

30 *A. My interpretation of long-term debt, that I*
31 *recall, was anything that was over five years was*
32 *considered long-term debt.*¹³
33

34 Ms. Olsen's testimony directly conflicts with the definition of Long Term debt
35 that is clearly stated on each Annual Report. Montezuma's Annual Reports
36 between 2005 and 2012 has a Balance Sheet template that includes under Current
37 Liabilities a line item for "Long-Term Debt". Directly next to the words "Long-
38 Term Debt" is a parenthetical that states (Over 12 Months).¹⁴ Ms. Olsen testified
39 that she approved and signed the Annual Reports on behalf of Montezuma and is

⁹ Evidentiary Hearing, Vol 1, Pg 171, Ln 21-25

¹⁰ C-Ex 70, Deed of Trust

¹¹ Evidentiary Hearing, Vol 1, Pg 114, Ln 14-17

¹² Evidentiary Hearing, Vol 1, Pg 175, Ln 3-15

¹³ Evidentiary Hearing, Vol 1, Pg 175, Ln 16-23

¹⁴ C-Ex, 32 (2009 Annual Report); C-Ex 33 (2008 Annual Report); C-Ex 34 (2007 Annual Report); C-Ex 35 (2006 Annual Report); C-Ex 36 (2005 Annual Report); C-Ex-27 (2010 Annual Report); C-Ex 26 (2011 Annual Report) and C-Ex 25 (2012 Annual Report).

1 responsible for the accuracy of the reports.¹⁵
2

3 Ms. Olsen provided a second explanation for not including the Brunner Loan in
4 the Company's Annual Reports during her Direct Testimony. In this case, Ms.
5 Olsen stated the loan didn't appear because of confusion related to a change in
6 accountants.
7

8 **Question (By Mr. Wiley):**

9 *I mean I just -- maybe try this way. I will open end it for you. Tell us why*
10 *the arrangement with Ms. Brunner, the financial arrangement with Ms.*
11 *Brunner wasn't listed on the company's annual reports after the*
12 *transaction occurred.*
13

14 **Answer (By Ms. Olsen):**

15 *Well, there was, there was a changeover in accountants. And then I didn't*
16 *discuss it with John until later when, after there was the rate case, 2007.*
17 *So that ended up in 2008 or somewhere like that. And I had told John I*
18 *think I was supposed to put that on the annual reports, 2009. And he said*
19 *yes, we are or will, or I am not -- I don't remember all the details, but I did*
20 *tell him to put it on the books in, I believe, 2010.¹⁶*
21

22 Mr. Campbell directly contradicts Ms. Olsen's testimony when he testified why
23 the Yavapai Title Loan (Brunner Loan) did not appear on the annual reports. Mr.
24 Campbell testified that Ms. Olsen told him not to disclose it in the 2005 annual
25 report on a page entitled "Supplemental Financial Data" with subtitle "Long -
26 Term Debt".
27

28 **Question (By Mr. Dougherty):**

29 *Do you see anything that would indicate that the Yavapai Title loan shows*
30 *up on that page?*

31 **Answer (Mr. Campbell):**

32 *It is not there.*

33 **Q.** *Can you tell us why that did not appear at that time on the long-term*
34 *debt?*

35 **A.** *Well, I was told that it was not allowed to have encumbered assets on*
36 *the books. So that was not included.*

37 **Q.** *You were told by whom?*

38 **A.** *Ms. Olsen, Patsy Olsen.*

39 **Q.** *So despite the fact that Yavapai Title was being paid by the company*
40 *and you knew it was part of a debt, it was not disclosed on the financial*
41 *data sheet because Ms. Olsen told you not to disclose it because it would*
42 *encumber the company?*

43 **A.** *Well, the regulation, she said it was encumbered, you could not have*
44 *encumbered assets.*

¹⁵ Evidentiary Hearing, Vol 1, Page 183, Ln 9-15

¹⁶ Evidentiary Hearing, Vol 1, Pg 115, Ln 18 - Pg 116, Ln 5

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Q. Did you ask her why you should do that even though this was showing up as a payment by the company?

*A. No.*¹⁷

Mr. Campbell testified that he made adjustments to the balance sheet to account for the \$360 a month in loan payments Montezuma was making to Yavapai Title for the Brunner Loan by having the payments taken from a “drawing account.”

Q. How did that impact the rest of your bookkeeping for the company if you didn't show \$360 a month in payments to Yavapai Title?

A. Those payments were taken out of the drawing account.

Q. Which account? I am sorry, sir. Could you explain?

A. On the balance sheet, it was taken out of the balance sheet in one of the capital accounts.

Q. So the balance sheet still, it still balanced out because it was taken out of a capital account but it was not disclosed as a long-term debt?

*A. That's correct, yeah.*¹⁸

Mr. Campbell testified the Brunner Loan was also not disclosed as long-term debt in Montezuma’s 2006, 2007, 2008 and 2009 annual reports.¹⁹

Montezuma did not cause the Brunner Loan to be paid, or forgiven, until after Intervenor disclosed the debt in a July 20, 2011 pleading in W-04254A-08-0361, 0362.²⁰ Ms. Olsen testified that the \$16,757.89 balance due on the Brunner Loan was paid in August 2011.²¹

Ms. Olsen further testified that an Aug. 15, 2011 Deed of Release and Full Conveyance was filed with the Yavapai County Recorder conveying the Well No. 4 property to Montezuma.²²

Prior to Ms. Olsen purportedly paying off the Brunner Loan with a Cashier’s Check in August 2011, Mr. Campbell testified that Montezuma had been making monthly payments on the loan of approximately \$360 to Yavapai Title since 2005.²³

Loan #2

In the 2010 Annual Report a long-term debt appears for the first time in Montezuma’s Annual reports dating back to 2005. The long-term debt for \$28,611 appears as a line-item entry under the liabilities portion of the balance

¹⁷ Evidentiary Hearing, Vol 3, Pg 567, Ln 13- Page 568, Ln 7
¹⁸ Evidentiary Hearing, Vol 3, Pg 568, Ln 8-20
¹⁹ Evidentiary Hearing, Vol 3, Pg 570, Ln 8-15
²⁰ July 20, 2011, Pleading by Intervenor, W-04254A-08-0361, 0362
²¹ Evidentiary Hearing, Vol 1, Pg 67, Ln 22--Pg 68, Ln 12
²² Evidentiary Hearing, Vol 1, Pg 68, Ln 13-25
²³ Evidentiary Hearing, Vol 3, Pg 579, Ln 24 –Pg 580, Ln 14

1 sheet under accounting code 224.²⁴ The loan, however, is not reported on the
2 Supplemental Financial Data page in the 2010 Annual Report.
3

4 Mr. Campbell testified that the \$28,611 long-term debt was a loan from Ms. Olsen
5 to the Company to repay her for paying off the Brunner Loan in 2010. The loan,
6 he testified, “represents the monies that she (Ms. Olsen) paid off personally
7 against Yavapai Title.”²⁵
8

9 Asked whether Ms. Olsen provided any proof that the Brunner Loan had been paid
10 off in 2010, Mr. Campbell testified that Ms. Olsen “told me she paid it off. So, I
11 am not doing an audit, you know. I am just preparing reports based on what she
12 told me.”²⁶
13

14 When told during his testimony that the Brunner Loan was not paid off until the
15 following year, Mr. Campbell testified: “Well, it would be that the – this is – the
16 information that I had was, you know, based on information I had. That’s what I
17 entered there.”
18

19 Mr. Campbell further testified that Ms. Olsen provided the information that the
20 Brunner Loan had been paid off.²⁷
21

22 In the Supplemental Financial Data section for the 2011 Annual Report, the new
23 debt to Ms. Olsen appears for the first time as Loan #2. The “Dollar Amount
24 Issued” on the loan had declined to \$21,377 from the \$28,611 reported in the 2010
25 Annual Report.²⁸
26

27 **Q. (Mr. Dougherty)** Okay. Just to the right of that there is Loan No. 2 and
28 a dollar amount issued, 21,377. What is that for, sir?

29 **A. (Mr. Campbell)** That's the balance remaining on the note payable that
30 was put on the books the prior year that Ms. Olsen paid off the note with.

31 **Q.** You are saying, so I understand, that the 21,377 is the balance
32 remaining from the note that she told you she paid off in 2010. And you
33 had it listed at 28,000, remember, on the long-term debt, line --

34 **A.** Uh-huh.

35 **Q.** -- item 224. And so now, in 2011, it is shown as 21,377. Correct?

36 **A.** Correct.²⁹
37

38 The 2011 Annual Report shows that the \$21,377 Loan #2 was further reduced
39 during 2011 and reported an Amount Outstanding of \$11,324. (C-Ex 26)
40

²⁴ Evidentiary Hearing, Vol 3, Pg 571, Ln 3-6

²⁵ Evidentiary Hearing, Vol 3, Pg 571, Ln 9-133

²⁶ Evidentiary Hearing, Vol 3, Pg 571, Ln 16-18

²⁷ Evidentiary Hearing, Vol 3, Pg 571, Ln 19 – Pg 572, Ln 2

²⁸ C-Ex 26, Pg 9

²⁹ Evidentiary Hearing, Vol 3, Pg 573, Ln 9-22

1 Mr. Campbell testified that he offset draws Ms. Olsen took from the company in
2 2011 by reducing the Loan #2 “Dollar Amount Issued” of \$21,377 to the
3 “Amount Outstanding” of \$11,324. Mr. Campbell testified that since the Company
4 was reporting that there was no payroll or wages in 2011, a sole proprietor “can
5 take draws from the company”.³⁰
6

7 Ms. Olsen testified she had not “received any payments” from Loan #2, contrary
8 to Mr. Campbell’s explanation that reason the amount outstanding on Loan #2
9 declined was because Ms. Olsen was taking “draws” from the company.
10

11 **By Mr. Dougherty:**

12 *Q. Now, Ms. Olsen, on Exhibit 26, under Loan No. 2, it says the dollar*
13 *number issued, 21,377, correct?*

14 *A. (Ms. Olsen) Correct.*

15 *Q. And the amount outstanding is 11,324?*

16 *A. Yes.*

17 *Q. It would appear that payments are being made on that loan, correct?*

18 *A. None, I have not received any payments on that.*

19 *Q. Well, why does the dollar amount issued say 21,377 and the amount*
20 *outstanding is 11,324?*

21 *A. I don’t know, but I have not received 11,000, or \$10,000.*
22

23 Montezuma’s General Ledger shows Ms. Olsen received \$6,987 in checks under
24 Account #2244 between Oct. 17, 2011 and Dec. 28, 2011.³¹ Mr. Campbell
25 testified that Account #2244 was for “the loan”.³²
26

27 **Ms. Olsen’s Capital Draws Impact Financing Application W-04254A-12-0205**
28

29 Despite Mr. Campbell’s testimony that outstanding balance on Loan #2 declined
30 in 2011 from \$21,377 to \$11,324 because of draws by Ms. Olsen from the
31 Company, Montezuma submitted a financing application in Docket W-04254A-
32 12-0205 for the full \$21,377.³³
33

34 Ms. Olsen testified that Loan #2 that appears on the 2011 Annual Report with
35 “Dollar Amount Issued” of \$21,377 is the same loan that she is seeking
36 repayment for in Montezuma’s financing application in W-04254A-12-0205.
37

38 **By Mr. Dougherty**

39 *Q. Exhibit No. 76 is your 0205 rate application.*

40 *A. (Ms. Olsen) Yes.*

41 *Q. And there is a loan agreement there, correct, about eight pages in?*

42 *A. Yes, yes. Yes.*

³⁰ Evidentiary Hearing, Vol 3, Pg 574, Ln 13-20

³¹ C-Ex 84

³² Evidentiary Hearing, Vol 3, Pg 595, Ln 18.

³³ C-Ex 76, Pg 2

1 *Q. What is the value of that loan?*
2 *A. \$21,377.*
3 *Q. What is the date of it?*
4 *A. August 30th, 2011.*
5 *Q. Now go back to Exhibit No. 26, Loan No. 2. What is the date that*
6 *appears on Exhibit No. 26?*
7 *A. On what page?*
8 *Q. Under the supplemental financial data page.*
9 *A. Okay. 21,377.*
10 *Q. And the date?*
11 *A. 8/30/2011.*
12 *Q. Does that correspond with the loan agreement application on Exhibit*
13 *76, 0205?*
14 *A. Yes.*
15 *Q. Does that refresh your memory that that's in fact the same loan?*
16 *A. Yes.³⁴*

17
18 According to the financing application, Ms. Olsen signed an Aug. 30, 2011
19 promissory note with Montezuma for \$21,377 where the company agreed to repay
20 her \$413.28 a month for 60 months at 6 percent interest.

21
22 Contrary to Mr. Campbell's testimony that the \$21,377 in Loan #2 was directly
23 related to Ms. Olsen's purported repayment of the Brunner Loan in 2010, the
24 financing application submitted by the Company states the purpose of the \$21,377
25 loan is to "purchase the Well #4 site and the purchase of a company vehicle." (C-
26 Ex 76)

27
28 Mr. Campbell, however, identifies the vehicle loan as Loan #3 in the Supplemental
29 Financial Data section of the 2012 Annual Report. (C-Ex 25).

30
31 The 2012 Annual Report identifies the "Dollar Amount" issued on the car loan as
32 \$11,180 and shows an "Outstanding Balance" of \$586 and "Current Year Principle"
33 payments of \$10,594. Mr. Campbell testified that the \$10,594 in principle was
34 made to Ms. Olsen.

35
36 *By Mr. Dougherty*

37 *All right. How about Loan No. 3, sir?*

38 *A. (Mr. Campbell) Okay.*

39 *Q. What is that for?*

40 *A. I believe that's the automobile.*

41 *Q. And the bottom line says current year principal, 10,594. The company*
42 *spent that much money on the car that year? Or please explain that.*

43 *A. That's draws that were taken out, checks written to her that offset that*
44 *balance of the amount that the company owed her.*

45 *Q. And those were checks written to her that she then in turn wrote to the*

³⁴ Evidentiary Hearing, Vol 1, Pg 193, Ln 11-Pg 194, Ln 8

1 *Bank of the West which had the note on the car?*
2 *A. No. It is just draws on the company.*³⁵
3

4 Based on Mr. Campbell's testimony, Ms. Olsen received \$10,053 in draws in 2011
5 from Loan #2 (\$21,377 (Dollar Amount Issued) - \$11,324 (Amount Outstanding)).
6 And, based on Mr. Campbell's testimony, Ms. Olsen received an additional
7 \$10,594 (Current Year Principle) in draws against the vehicle loan in 2012.
8

9 Therefore, according to Mr. Campbell's testimony, Ms. Olsen has already repaid
10 herself \$20,647 by taking draws from the Company that were deducted from the
11 balances of Loan #2 and Loan #3.
12

13 The Company, through its Financing Application in W-04254A-12-0205, is
14 seeking permission to enter into a \$21,377 loan agreement with Ms. Olsen to repay
15 Ms. Olsen for her personal investments in land and a vehicle after Ms. Olsen has
16 already received \$20,647 in draws from two unapproved long-term loans for the
17 same assets.
18

19 **Legal Analysis**
20

21 There is no dispute that the Commission has the authority to revoke
22 Montezuma's CC&N. A.R.S. 40-252 provides this power: "The commission
23 may at any time, upon notice to the corporation affected, and after opportunity
24 to be heard as upon a complaint, rescind, alter or amend any order or decision
25 made by it."
26

27 It is also well established in Arizona that a regulated utility is allowed to
28 operate as long as it is serving the public interest. A "monopoly is tolerated
29 only because it is to be subject to vigilant and continuous regulation by the
30 Corporation Commission and is subject to rescission, alteration or amendment
31 at any time upon proper service when the *public interest* would be served by
32 such action." (Emphasis added.) (Davis, 96 Ariz. at 218,393 P.2d at 91 1
33 (1964).
34

35 That the public interest is the controlling factor in decisions concerning service
36 of water by water companies was reaffirmed in Arizona Corporation
37 Commission v. Tucson Ins. & Bond Agency, 3 Ariz.App. 458,415 P.2d 472
38 (1966).
39

40 The Arizona Supreme Court upheld this view when it stated, "The
41 Commission's authority to grant a certificate of convenience and necessity is
42 controlled by the public interest A.R.S. SS 40-282(C). (James P. Paul Water
43 Co. v. Ariz. Corp. Com'n, Ariz. Supreme Ct. 671 P.2d 404 (1983)).
44

³⁵ Evidentiary Hearing, Vol 3, Pg 576, Ln 11-24

1 The courts have also ruled the holder of a CC&N is “entitled to an opportunity
2 to provide adequate service at a reasonable rate before a portion of its
3 certificate could be deleted. A certificate holder is entitled to that opportunity
4 because providing it with that opportunity serves the public interest.” (James P.
5 Paul Water Co. v. Ariz. Corp. Com’n, Ariz. Supreme Ct. 671 P.2d 404 (1983))
6

7 Montezuma has been afforded the opportunity to provide “adequate service at
8 a reasonable rate” to its customers since Decision 67583 was issued in
9 February 2005 and Decision 71317 was issued in October 2009.
10

11 It has been unable to legally do so. Simply keeping water running through pipes
12 does not provide a water utility with immunity from penalties imposed for willful
13 violations of state statutes or the terms and conditions included when it acquired
14 the utility and CCN.
15

16 To argue otherwise is to suspend the Commission’s regulations and statutes
17 designed to also serve the public interest and protect ratepayers from
18 unscrupulous operators. It is in the public interest that monopolies not only
19 provide adequate water at a reasonable rate, but that they also comply with all
20 applicable regulations and statutes.
21

22 The Commission included Paragraph 37 and Conclusion of Law No. 6 in Decision
23 67583 to provide future regulators the opportunity to take serious punitive action
24 against Montezuma if it failed to abide by its provisions.
25

26 Montezuma has failed to comply with the Orders included in Paragraph 37 and
27 Conclusion of Law No. 6 in Decision 67583 by repeatedly encumbering the
28 company’s assets without prior Commission approval and failing to maintain its
29 books and records in accordance with NARUC Uniform System of Accounts.
30

31 Montezuma has proven itself not to be a fit and proper entity to hold the utilities
32 assets and CCN.
33

34 ARS SS 40-252 provides the Commission with the authority to reopen Decision
35 Decision 67583 and impose the required remedies for violation of the provisions
36 in Paragraph 37 and Conclusion of Law 6. The Company has flagrantly and
37 knowingly violated these provisions and therefore there is legal justification to
38 revoke its CCN and rescind the sale of the utility.
39

40 **The Commission has the legal authority to deny Montezuma’s financing**
41 **application**
42

43 ARS SS 40-301, 302 and 303 authorize the Commission to approve or deny long-
44 term debt.
45

46 Montezuma is seeking financing approval in W-04254A-12-0205 for a \$21,377

1 loan from Ms. Olsen.

2
3 The exhibits and testimony at the Evidentiary Hearing provides clear and
4 convincing evidence that Ms. Olsen has already received approximately \$20,647
5 in draws from the Company for repayment of the unapproved long-term debts in
6 Loan #2 and Loan #3 for the same assets identified in the financing application in
7 W-04254A-12-0205.

8
9 Montezuma's submission of the financing application should be denied under
10 ARS 40-302 (B) which states "the commission may grant or refuse permission for
11 the issue of evidences of indebtedness or grant the permission to issue them in a
12 lesser amount, and may attach to its permission conditions it deems reasonable and
13 necessary."

14
15 Montezuma's financing application also fails to meet the provisions in ARS
16 40-301 (C).

17
18 ARS 40-301 (C) states: The Commission shall not make any order or
19 supplemental order granting any application as provided by this article unless it
20 finds that such issue is for lawful purposes which are within the corporate powers
21 of the applicant, are compatible with the public interest, with sound financial
22 practices, and with the proper performance by the applicant of service as a public
23 service corporation and will not impair its ability to perform that service."

24
25 Ms. Olsen is seeking to use the Company's loan application to repay herself a
26 second time for assets she purportedly purchased for the benefit of the Company.

27
28 Montezuma's submission of the financing approval that would benefit Ms. Olsen
29 is also a violation of ARS 40-303 (C, 2), which states:

30
31 C. A person is guilty of a class 4 felony who:

32
33 2. In any proceeding before the commission knowingly makes any false statement
34 or representation, or, with knowledge of its falsity, files or causes to be filed with
35 the commission any false statement or representation, which may tend to influence
36 the commission to make an order authorizing the issue of any stock or stock
37 certificate, bond, note or other evidence of indebtedness, or which results in
38 procuring from the commission the making of any such order.

39
40 **Requested Relief**

41
42 The testimony and exhibits presented at the hearing provide clear and convincing
43 evidence that Montezuma Rimrock has repeatedly entered into long-term debt
44 without prior Commission approval.

45
46 1) The \$32,000 Brunner Loan was hidden from the Commission from

1 the date of its inception in 2005 until Intervenor revealed the loan in a
2 July 2011 pleading.

3
4 2) The Company “created” debt to Ms. Olsen through the unsupported
5 claim by Ms. Olsen that she personally repaid the Brunner loan in 2010.
6 The evidence shows the Brunner loan was not satisfied until 2011. The
7 new unapproved long-term debt, known as Loan #2, was then used by
8 Ms. Olsen to make draws against the company.

9
10 3) The Company entered into a third unapproved long-term debt to
11 repay Ms. Olsen for a company vehicle. Ms. Olsen made capital draws
12 against Loan # 3 as well.

13
14 The Company has repeatedly incurred long-term debt without prior Commission
15 approval. These actions clearly violate Paragraph 37 and Conclusion of Law No. 6
16 in Decision 67583.

17
18 The appropriate remedy is the enforcement action stated in the Decision 67583:
19 “IT IS FURTHER ORDERED that Montezuma Rimrock Water Company, LLC
20 shall comply with Findings of Fact No. 37 and Conclusion of Law No. 6 or the
21 approved granted hereinabove shall be null and void.”

22
23 Intervenor/Complainant respectfully requests the Commission to declare that the
24 order approving Montezuma Estate Property Owners Association sale of utility
25 assets and transfer of its Certificate of Convenience and Necessity to Montezuma
26 Rimrock Water Company, LLC, is hereby null and void.

27
28 In addition, Montezuma is seeking financing approval in W-04254A-12-0205 for a
29 \$21,377 loan from Ms. Olsen. The evidence and testimony shows Ms. Olsen has
30 already received \$20,647 in draws from the Company for repayment of Loan #2
31 and Loan #3 for the same assets identified in financing application in W-04254A-
32 12-0205.

33
34 Intervenor/Complainant respectfully requests the Commission to deny
35 Montezuma’s financing application in W-04254A-12-0205.

36
37
38
39
40 **II. The Commission does not have the authority to grant retroactive approval**
41 **of long-term debt incurred by a public service corporation.**

42
43 **Statement of Facts**

44
45 Montezuma is seeking retroactive approval for two capital lease agreements it
46 entered into on or about March 22, 2012. This section will only address the

1 circumstances surrounding the Company's request for retroactive approval.

2
3 Montezuma's repeated violation of Commission Procedural Orders and its
4 submission of forged lease agreements will be addressed in Part III that focuses on
5 whether the Commission has the authority to and should impose fines or other
6 penalties on Montezuma or Ms. Olsen personally for noncompliance with statutes,
7 Commission decisions, and/or Commission procedural orders.

8
9 On April 12, 2013, the Company docketed its application for financing approval
10 pursuant to ARS 40-301 and 40-302 for an \$8,000 promissory note for the Nile
11 River lease and a \$38,000 promissory note for the Financial Pacific lease. The
12 applications were docketed in W-04254A-12-0204 et.al. The application was filed
13 13 months after the Company signed both leases without prior Commission review
14 or approval. Ms. Olsen testified that Montezuma is seeking retroactive approval of
15 the two capital lease agreements.³⁶

16
17 The Nile River lease and the Financial Pacific lease docketed on April 12 were not
18 the true and complete copies of the effective lease agreements. The Nile River
19 lease was missing Rider No. 2, which proved it was a Capital Lease, and the
20 Financial Pacific Lease was dated May 2, 2012.³⁷

21
22 Montezuma, however, during the evidentiary hearing entered into evidence the
23 complete and true lease agreements with Nile River³⁸ and Financial Pacific.³⁹

24
25 If approved, the Nile River lease would provide financing for construction of a
26 building to house arsenic treatment equipment and the Financial Pacific lease
27 would provide financing for the purchase of arsenic treatment equipment.

28
29 The Nile River lease calls for monthly payments of \$342.09 for 36 months plus a
30 \$734.46 advance payment. The Financial Pacific lease requires monthly payments
31 of \$1,135.96 for 60 months. The Nile River lease carries a 35 percent interest rate
32 and the Financial Pacific lease carries a 28 percent interest rate.⁴⁰

33
34 Montezuma signed the capital lease agreements without Commission approval on
35 or about March 22, 2012. The company subsequently constructed the building and
36 installed the arsenic treatment equipment. Both the Company and Ms. Olsen,
37 personally, have made the lease payments.

38
39 **Legal Analysis**

40
41 There is no statutory authority for the Commission to retroactively approve long-

³⁶ Evidentiary Hearing, Vol 1, Pg 99, Ln 16-20

³⁷ Notice of Filing Financing Applications, April, 13, 2013 W-04254A-12-0204 et el

³⁸ A-Ex 9

³⁹ A-Ex10

⁴⁰ C-Ex 25

1 term debt.

2
3 While the Commission has on rare occasion granted retroactive approval of long-
4 term debt, it has done so reluctantly and without citing a specific legal citation that
5 provides the authority for it to grant such approval.

6
7 And, in the cases reviewed, the Commission explicitly ordered the utility to
8 comply with Arizona law and, in the future, to seek Commission approval of long-
9 term debt prior to its execution.

10
11 For example, in Decision No. 72667 (Little Park Water Company), November 17,
12 2011, the Commission granted retroactive approval of long-term financing, stating
13 in Paragraph 6 under Conclusions of Law:

14
15 “The proposed long-term financing is for lawful purposes within Applicant’s
16 corporate lowers, is compatible with the public interest, with sound financial
17 practices and the proper performance by Applicant of service as a public service
18 corporation, and will not impair Applicant’s ability to perform that service.” But
19 notably, the Commission did not cite ARS 40-301 (C) from which this language
20 was extracted.

21
22 In addition, the Commission also stated in Findings of Fact, Paragraph 37: “In the
23 future, the Company should follow Arizona law and secure prior Commission
24 approval before the taking on any long-term debt obligations to insure its approval.”

25
26 In Golden Shores Water Company, Decision 70171, Feb. 27, 2008, Findings of
27 Fact 11, GSWC “acknowledges that approval of the loan should have been
28 obtained from the Commission prior to executing the transaction, in accordance
29 with Arizona Revised Statutes (“A.R.S.”) §§40-302 and 40-285.

30
31 Like Montezuma is doing now, GSWC stated that it “apologizes for this error,
32 which was simply a mistake on its part and was not intended to avoid Commission
33 oversight.”

34
35 Staff recommended retroactive approval of a \$286,000 loan. The Commission, in
36 granting the retroactive approval, imposed a penalty for the Company’s failure to
37 abide by state Statute by obtaining the Commission’s prior approval before
38 incurring long-term debt.

39
40 The Commission stated it was “appropriate and necessary to also impose on
41 GSWC a penalty of \$2,600 for the Company’s failure to seek Commission
42 approval of the loan agreement, pursuant to A.R.S. SS 40-285 and
43 40-302.

44
45 In the Conclusions of Law, the Commission extracted the same language from 40-
46 301 (C) as in the Little Park Decision, but again did not specifically cite the law.

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In Park Water Company, Decision 67165, Aug. 10, 2004, the Commission granted retroactive approval of long-term debt. But once again, in Findings of Fact, No. 36, the Order stated, “In the future, the Company should follow Arizona law and secure approval before the taking on any long-term debt obligations to insure its approval.”

Continuing the pattern established in Golden Shores and Little Park, the Conclusions of Law referred to language taken from ARS 40-301 (C), but did not specifically cite the statute.

In Yarnell Water Improvement District, Decision No. 70698, Jan. 20, 2009, the Commission granted retroactive approval for long-term debt but again stated “that the Company obtain Commission approval for any long-term debt prior to its execution in the future.” And, once again under Conclusions of Law, the Commission used the same language as documented in the above Decisions, without a direct citation of ARS 40-301(C).

The cited Decisions include a time period from 2004 through 2011. None of the Decisions specifically cite a state Statute that allows retroactive approval of long-term debt.

It appears the Commission has simply been generous in granting such approvals but has no legal authority to do so. It is also notable that there was not an Intervenor or Complainant opposing the retroactive approval of long-term debt in any of the cited decisions.

While there is no specific statute granting retroactive approval of long-term debt, the law is very clear about the requirement for public service corporations to obtain Commission approval before entering into long-term debt.

ARS 40-302 (A) states: “Before a public service corporation issues stocks and stock certificates, bonds, notes and other evidences of indebtedness, it shall first secure from the Commission an order authorizing such issue and stating the amount thereof, the purposes to which the issue or proceeds thereof are to be applied, and that, in the opinion of the commission, the issue is reasonably necessary or appropriate for the purposes specified in the order, pursuant to 40-301, and that, except as otherwise permitted in the order, such purposes are not, wholly or in part, reasonably chargeable to operative expenses or income.”

ARS 40-301 (A) states the power of a public service corporation to issue...notes and other evidences of indebtedness...is a special privilege, the right of supervision, restriction and control of which is vested in the state.

There is nothing expressly stated in ARS 40-301 (C) that gives the Commission the authority to ignore the fundamental requirement in ARS 40-302 (A) that a

1 public service corporation receive Commission approval BEFORE issuing notes or
2 other evidences of indebtedness.

3
4 ARS 40-301 (C) simply provides further standards the Commission must ensure
5 are present before approving long-term debt. This standards are meant to ensure
6 the issuance of he debt “is for lawful purpose”, is “compatible with the public
7 interest”, follows “sound financial practices”, that the public service corporation is
8 “properly performing” and that such debt will not “impair its ability to perform”
9 its function.

10
11 None of these requirements provide the Commission with the authority to simply
12 ignore the fundament premise of ARS 40-302 (A) that the Commission must
13 approve long-term debt before a pubic service corporation incurs such debt.

14
15 **Requested Relief**

16
17 Intervenor/Complainant respectfully requests the Commission to deny retroactive
18 approval of the long-term debt associated with Nile River and the Financial Pacific
19 Capital leases.

20
21 There is no legal basis for granting retroactive approval of the debt associated with
22 the capital leases. In the rare instances where the Commission has granted
23 retroactive approval of long-term debt it has done so without statutory authority
24 and has admonished the utilities to comply with state law in the future.

25
26 ARS 40-302 (A) clearly states that a public service corporation must seek approval
27 from the Commission before it enters into long-term debt.

28
29 The fact that Montezuma is a severely undercapitalized utility and may not be able
30 to pay for an arsenic treatment system if the leases are not retroactively approved,
31 does provide any authority for the Commission to ignore the clear requirements of
32 ARS 302 (A).

33
34
35 **III. The Commission has the authority to and should impose fines or other**
36 **penalties on Montezuma or Ms. Olsen personally for noncompliance with**
37 **statutes, Commission decisions, and/or Commission procedural orders.**

38
39
40 **Statement of Facts**

41
42 Testimony and exhibits presented during the Evidentiary Hearing provide clear
43 and convincing evidence that Montezuma violated three Procedural Orders issued
44 in early 2012 in W-04254A-08-0361, 0362 and secretly incurred long-term
45 debt to finance the Arsenic Treatment Facility without prior Commission
46 approval in violation of ARS S40-301, 302 and 303.

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Testimony and exhibits also provide clear and convincing evidence that Montezuma submitted two lease agreements with forged signatures in order to give the appearance that the Company was complying with the Commission's Procedural Orders.

The Commission issued three Procedural Orders on Jan. 4, 2012, March 12, 2012 and April 9, 2012 in W-04254A-08-0361, 0362 requiring the Company to docket all lease agreements entered into by the Company and/or Ms. Olsen in connection with the Arsenic Treatment Facility.⁴¹

On March 19, 2012 Ms. Olsen personally docketed in W-04254A-08-0361, 0362 two lease agreements dated March 16, 2012 between Mrs. Olsen, personally, and Nile River Leasing Company.⁴²

The cover sheet of the filing did not identify who docketed the leases. Montezuma was represented by Counsel at this time.

One of the lease agreements was for a building to house an arsenic treatment system and the other lease agreement was for the arsenic treatment equipment. Each lease agreement consisted of a single page. Ms. Olsen's signature appears on each of the lease agreements that are dated March 16, 2012.⁴³

Each of the lease agreements appears to be signed by "Robin Richards" on behalf of Nile River. The signatures are also dated March 16, 2012.

Testimony and evidence presented during the Evidentiary Hearing definitively demonstrates that Nile River's authorized representative did not sign the lease agreement and that the signature that appears on the leases is not that of Robin Richards, who was a Nile River employee at the time.

Nile River's managing member John Torbenson testified that he signed and agreed with a sworn affidavit⁴⁴ that stated he did not sign the Nile River leases dated March 16, 2012 and that he is the only person in the company authorized to do so.⁴⁵

Nile River's administrative assistant, Robin Richards testified that she signed

⁴¹ Jan. 4, 2012, Procedural Order, W-04254A-08-036 1, W-04254A-08-0362; March 12, 2012, Procedural Order, W-04254A-08-036 1, W-04254A-08-0362; April 9, 2012, Procedural Order, W-04254A-08-036 1, W-04254A-08-0362

⁴² Evidentiary Hearing, Vol 2, Pg 305, Ln 17-19

⁴³ C-Ex 8

⁴⁴ C-Ex 18

⁴⁵ Evidentiary Hearing, Vol V, Pg 970, Ln 21-Pg 971, Ln 2

1 and agreed with a sworn affidavit⁴⁶ stating that the signature that appears on
2 the lease agreements is not her signature and she is not authorized to lease
3 agreements on behalf of Nile River.⁴⁷
4

5 But in March and April 2012 when the March 16 leases were docketed, there
6 was no reason to believe that they had forged signatures.
7

8 To the contrary, Company's counsel subsequently argued in legal briefs that
9 the March 16, 2012 Nile River leases were personal leases between Ms. Olsen
10 and Nile River and therefore were not subject to prior Commission approval.
11

12 On April 13, 2012, Montezuma's Counsel docketed a "Notice of Filing" in W-
13 04254A-08-0361, 0362 that included copies of the March 16, 2012 Nile River
14 leases, along with a "Water Services Agreement".
15

16 The Company's counsel argued in an April 27, 2012 Legal Brief that the
17 March 16, 2012 leases between Ms. Olsen, acting personally, and Nile River
18 were not subject to Commission review.
19

20 The Company's counsel also stated that Ms. Olsen intended to sublease the
21 ATF equipment to Montezuma through the Water Services Agreement that the
22 Company claimed was also exempt from Commission review because it was
23 an operating agreement. Commission Staff, however, concluded that the Water
24 Services Agreement was a Capital Lease that would need Commission
25 approval.
26

27 "Staff believes that the Water Services Agreement represents a lease, that the
28 lease is a capital lease, and because it is a capital lease, Arizona Corporation
29 Commission ("Commission") approval will be necessary for the lease to go
30 into effect." (April 27, 2012, Staff Report, Pg. 1, Lines 25-27, April 27, 2012,
31 W-04254A-08-0361,0362)
32

33 Montezuma's Counsel stated at the conclusion of the April 30, 2012
34 Procedural Conference that he would submit a new Water Services Agreement
35 that would qualify as an operating lease and therefore become exempt from
36 Commission approval. Montezuma, however, never submitted a modified
37 Water Services Agreement for Staff's review.
38

39 Mr. Dougherty testified that he sent a June 5, 2012 email to Montezuma's
40 Counsel asking when the company was going to submit the Water Service
41 Agreement because he was considering filing a motion to compel.⁴⁸

⁴⁶ C-Ex 19

⁴⁷ Evidentiary Hearing, Vol V, Pg 993, Ln 3-9

⁴⁸ C-Ex 53

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By Mr. Dougherty

I left a voicemail for Mr. Wiley June 6th, 9:45 a.m. Mr. Wiley called me back that same day. Mr. Wiley told me the water services agreement, it is on my desk, just haven't gotten to it, there is really nothing to compel, we will file it shortly.⁴⁹

During the summer of 2012, Montezuma constructed the arsenic treatment building and installed the arsenic treatment system.

By Mr. Dougherty

My assumption at this time was that the arsenic treatment facility was operating under, or was being financed under the personal lease agreements that Ms. Olsen had signed with Nile River and that had been docketed and that at some point a water services agreement was going to come forth and get reviewed because it was considered by Staff and myself to be a capital lease. And I assumed that Ms. Olsen was paying for this herself and at some point the long-term debt moving into the company needed to be approved.⁵⁰

On December 4, 2012, Montezuma docketed a letter dated Dec. 3, 2012 in the W-04254A-12-0361, 0362 stating the Company had obtained a lease for the arsenic treatment system a copy of which was filed on Oct. 25, 2012 in Docket W-04254A-12-0204. The notice was not filed by Counsel nor was it copied to Mr. Dougherty, who was an Intervenor in the 0361 case.⁵¹

Montezuma's Oct. 25, 2012 filing in Docket W-04254A-12-0204 was not copied to Mr. Dougherty, who was an Intervenor in the 0204 case. The filing included two lease agreements entered into by Montezuma rather than Ms. Olsen personally.

One lease agreement was with Nile River for the arsenic treatment building and was dated March 22, 2012. The second lease agreement was with Financial Pacific Leasing for the arsenic treatment equipment and was dated May 2, 2012.⁵²

Testimony and evidence would subsequently prove that Montezuma's Oct. 26, 2012 filing did not include the true and complete lease agreements. The Nile River lease did not include "Rider No. 2" that proved it was a capital lease, and the May 2, 2012 Financial Pacific lease was an "unauthorized version" of the actual lease agreement and was missing page 5 of the agreement that showed the agreement was signed on March 22, 2012.

⁴⁹ Evidentiary Hearing, Vol 3, Pg 656, Ln 23-Pg 657, Ln 3

⁵⁰ Evidentiary Hearing, Vol 3, Pg 657, Ln 2-21

⁵¹ C-Ex 43

⁵² C-Ex 12

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Intervenor/Complainant subsequently issued subpoenas to Nile River⁵³ and Financial Pacific Leasing⁵⁴ and obtained the true and correct copies of the leases.

In response to the subpoena, Nile River provide a copy of the true and effective capital lease agreement it signed with Montezuma for the arsenic treatment building on March 22, 2012.⁵⁵ The Uniform Commercial Code filing corresponding with this debt was recorded with the Arizona Secretary of State.⁵⁶

In response to the subpoena, Financial Pacific provided a copy of the true and effective capital lease agreement for the arsenic treatment equipment that Montezuma signed on March 22, 2012.⁵⁷ The Uniform Commercial Code filing corresponding with this debt was recorded with the Arizona Secretary of State.⁵⁸

In a March 22, 2013 letter, Financial Pacific’s legal department explained that the lease that was signed on March 22, 2012 was not officially booked into its records until April 3, 2012. The letter also states that the May 2, 2012 Lease agreement docketed by Montezuma in its Oct. 26, 2012 filing was “an unauthorized modified version of the original.”⁵⁹

Ms. Olsen in her direct testimony filed prior to the Evidentiary Hearing stated she did not consult with counsel before she signed the March 22, 2012 capital lease agreements with Nile River and Financial Pacific.

“I did not consult legal counsel about these agreements at the time and due to the pressure with ADEQ, I signed the leases. Again, I felt it was more important to get the financing leases in place and proceed with construction of the arsenic facilities.”⁶⁰

Ms. Olsen testified that she did not disclose the fact that Montezuma, rather her personally, had signed capital lease agreements in March 2012 because she was under pressure from the Arizona Department of Environmental Quality to install the arsenic treatment system.

⁵³ C-Ex 16
⁵⁴ C-Ex 13
⁵⁵ C-Ex 20
⁵⁶ C-Ex 17
⁵⁷ C-Ex 22
⁵⁸ C-Ex 15
⁵⁹ C-Ex 14
⁶⁰ A-Ex 2, Pg 12, Ln 13-16

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By Mr. Wiley

Q. You understand that the statutes governing the Arizona Corporation Commission require financing arrangements like this to be filed beforehand for approval by the Commission, correct?

A. (By Ms. Olsen) Yes.

Q. Okay. And can you explain in your own words why that didn't happen here?

A. Because I was under an enormous amount of pressure from the county and from ADEQ to install the arsenic treatment system regardless of whether there was or was not funding available.⁶¹

Montezuma was facing a June 7, 2012 Consent Order deadline to have the arsenic system installed.

Corporation Commission executive consultant Gerald Becker testified that if Montezuma had submitted the Capital Lease for Commission approval in March 2012, "it could easily be five, six months" before they could have been approved.⁶²

Montezuma is now seeking retroactive approval of the March 22, 2012 Nile River and Financial Pacific Capital Leases that it purposely withheld from the Commission for more than seven months after the Company signed the agreements.

As part of its scheme to avoid Commission approval that might have resulted in missing an ADEQ deadline that could have resulted in substantial penalties, the Company submitted forged lease agreements to make it appear to be in compliance with Procedural Orders.

Legal Analysis

The Commission has the authority to impose fines or other penalties on Montezuma or Ms. Olsen personally for noncompliance with statutes, Commission decisions, and/or Commission procedural orders.

ARS 40-424 authorizes the Commission to hold a corporation or a person in contempt of the Commission. The statute states:

A. If any corporation or person fails to observe or comply with any order, rule, or requirement of the commission or any commissioner, the corporation or person shall be in contempt of the commission and shall, after notice and hearing before the commission, be fined by the commission in an amount not less than one

⁶¹ Evidentiary Hearing, Vol 1, Pg 98, Ln 17-Pg 99, Ln 2
⁶² Evidentiary Hearing, Vol V, Pg 1016, Ln 15-21

1 hundred nor more than five thousand dollars, which shall be recovered as
2 penalties.

3 B. The remedy prescribed by this article shall be cumulative.

4 **ARS 40-303 (A)** also provides the Commission with authority to declare
5 Montezuma's capital lease agreements void.

6 A. All stock and every stock certificate, and every bond, note or other
7 evidence of indebtedness of a public service corporation, issued without a
8 valid order of the commission authorizing the issue...is void.

9 **ARS 40-303 (C)** states "A person is guilty of a class 4 felony who:

10 2. In any proceeding before the commission knowingly makes any false
11 statement or representation, or, with knowledge of its falsity, files or
12 causes to be filed with the commission any false statement or
13 representation, which may tend to influence the commission to make an
14 order authorizing the issue of any stock or stock certificate, bond, note or
15 other evidence of indebtedness, or which results in procuring from the
16 commission the making of any such order.

17 3. With knowledge that any false statement or representation was made to
18 the commission in any proceeding tending in any way to influence the
19 commission to make such order, issues, executes or negotiates, or causes
20 to be issued, executed or negotiated any stock or stock certificate, bond,
21 note or other evidence of indebtedness.

22 **Requested Relief**

23 Montezuma's lengthy, ongoing, calculated and intentional violation of
24 Commission orders and regulations clearly shows the Company does not
25 legally operate in the public interest.

26
27 There is no justification for the Company's actions of submitting forged lease
28 agreements in a willfull effort to deceive the Commission into believing
29 Montezuma was complying with Procedural Orders.

30
31 There is no justification for the Company's actions of knowingly entering into
32 capital lease agreements when it knew that it was required to obtain prior
33 Commission approval

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35 There is no justification for the Company's actions for filing incomplete and
36 unauthorized versions of the capital lease agreements once it belatedly did so
37 in October 2012.

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The Company offers only one excuse: That it was under pressure from another state agency to comply with a Consent Order. There is nothing in the Commission's Statutes or Regulations that gives the Commission the authority to waive its laws and rules in order to allow a public service corporation to comply with other statutes.

Intervenor/Complainant respectfully requests the following remedies:

1. The Commission finds Ms. Olsen, Montezuma and Montezuma's Counsel in Contempt of the Commission under ARS 40-424 for purposefully withholding the true and effective Capital Leases and docketing forged leases in their place.

There are multiple Contempt Violations including failure to comply with each the three Procedural Orders issued in 2012; the docketing of each of the invalid March 16, 2012 Nile River leases and the Oct. 26, 2012 docketing of the unauthorized version of the Financial Pacific Lease and incomplete Nile River lease that did not include Rider No. 2.

2. The Commission declare the March 22, 2012 Capital Leases with Nile River and Financial Pacific void under ARS 40-303 (A).

3. The Commission seek all remedies under ARS 40-303 (C) that could result in Ms. Olsen being found guilty of a Class 4 felony.

4. Any other such penalties and remedies that the Commission deems appropriate.

1 RESPECTFULLY SUBMITTED this 30th Day of August, 2013.

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John E. Dougherty
Complainant/Intervenor

Copies of the foregoing Mailed/Hand Delivered
This 30th day of August, 2013 to:

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