

OPEN MEETING AGENDA ITEM



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3 Rimrock, AZ 86335  
4 Complainant & Intervenor

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BEFORE THE ARIZONA CORPORATION COMMISSION

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DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAR 19 2014

COMMISSIONERS

11 BOB STUMP-Chairman  
12 GARY PIERCE  
13 BRENDA BURNS  
14 BOB BURNS  
15 SUSAN BITTER SMITH

DOCKETED BY

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

W-04254A-12-0204

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

W-04254A-12-0205

30 IN THE MATTER OF THE APPLICATION OF  
31 MONTEZUMA RIMROCK WATER COMPANY,  
32 LLC FOR APPROVAL OF FINANCING FOR AN  
33 8,000-GALLON HYDRO-PNEUMATIC TANK

W-04254A-12-0206

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

W-04254A-12-0207

39 JOHN E. DOUGHERTY,  
40 COMPLAINANT,  
41 V.  
42 MONTEZUMA RIMROCK WATER  
43 COMPANY, LLC,  
44 RESPONDENT.

W-04254A-11-0323

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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 **Supplement to Motion to Deny**  
12 **Montezuma's Motion for**  
13 **Emergency/Interim Rate Relief**  
14

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15 Introduction

16  
17 Staff is basing its recommendation for a \$10-a-month emergency surcharge on  
18 Montezuma's unsupported claim that the Company cannot afford to make Capital lease  
19 payments for the Arsenic Treatment Facility.  
20

21 Staff has cited no other fundamental factor in establishing that an emergency condition  
22 exists other than Montezuma's refusal to make payments on two unapproved Capital  
23 leases the company secretly entered into on March 22, 2012 in direct violation of three  
24 procedural orders issued by the Administrative Law Judge in this consolidated docket.  
25

26 Montezuma owner Patricia Olsen personally guaranteed the ATF capital leases. If the  
27 Company defaults on the leases, the leasing companies have direct recourse against Ms.  
28 Olsen. Such financial pressure may result in Montezuma finding the money necessary to  
29 make the lease payments without burdening ratepayers with interim rate increase that  
30 may, or may not be supported, by the pending Recommended Opinion and Order  
31

32 Staff has not conducted any independent review of Montezuma's financial records,  
33 including its banking records, to verify that the company indeed is unable to make the  
34 payments. Ms. Olsen testified last summer that the lease payments were not negatively  
35 impacting the Company's finances. There has been no fundamental change in the  
36 Company's revenue or expenses since last summer.  
37

38 Staff's lack of scrutiny of Montezuma's financial records is disturbing given the fact that  
39 Montezuma's accountant testified last summer he was completely unfamiliar with  
40 National Association of Regulatory Utility Commissioners accounting standards and that  
41 his primary profession is foot massage. Staff also testified that Montezuma's books were  
42 not kept to NARUC standards and that staff could not rely on the accuracy of the  
43 Company's annual reports.  
44

45 Now, Staff is merely accepting the Company's claim it is unable to afford the leases. By  
46 doing so, Staff is allowing the Company to create a purported emergency out of thin air

1 in order to secure a rate increase to pay for Capital leases that have never been approved  
2 by this Commission.

3  
4 This is a gross oversight on Staff's behalf given the Company's documented history,  
5 supported by testimony and evidence during last summer's five-day evidentiary hearing,  
6 of docketing false, incomplete and purposely misleading reports to the Commission and  
7 other state and county agencies, including, but not limited to the Water Infrastructure  
8 Financing Authority, Yavapai County Development Services, Yavapai County Sheriff's  
9 Office and the Arizona Department of Environmental Quality.

10  
11 The company's deceitful history should make be sufficient warning to a diligent,  
12 impartial regulatory agency to look beyond the Company's unsupported claims of  
13 financial distress before requesting the extraordinary action of implementing emergency  
14 rate increase with less than three days public notice and prior to the issuance of a pending  
15 ROO in this consolidated docket.

16  
17 A prudent regulatory agency – given the undisputed facts documenting Montezuma's  
18 deceptive actions – would instead react with great skepticism to this latest claim and  
19 conduct independent due diligence to determine, if indeed, the Company can't afford to  
20 pay for the unapproved leases beyond simply calling the leasing companies and asking  
21 them what they intend to do if non payment continues.

22  
23 Instead, Staff has adopted a *paternalistic attitude* and is actively assisting an  
24 undercapitalized, mismanaged company rooted in deception to circumvent Commission  
25 statutes and regulations to help the Company avoid potential fines from the ADEQ for  
26 violating a 2010 Consent Order.

27  
28 Staff executive consultant Mr. Gerald Becker dismissed Montezuma's violation of three  
29 procedural orders and the Company's docketing of false and misleading lease agreements  
30 signed by Ms. Olsen, personally, rather than Montezuma, as mere "paperwork" issues  
31 during his testimony last summer.

32  
33 It is not surprising, therefore, that Mr. Becker is now eager to accept the Company's  
34 unsupported claim that it cannot pay for the unapproved leases and therefore is necessary  
35 to declare an emergency and provide ratepayers, the public and Intervenor/Complainant  
36 less than three days notice of hearing.

37  
38 The Commission has an opportunity to send a clear signal to the Company and Staff that  
39 the Commission's statutes and regulations are to be obeyed, regardless of whether it is  
40 financially damaging to the Public Service Corporation and could result in fines from  
41 another state agency.

42  
43 Montezuma's History of Deceptions

44  
45 The following examples are taken directly from the testimony and evidence presented  
46 during the evidentiary hearing. Intervenor/Complainant urges Commissioners to carefully

1 review the record to see for themselves the extensive and consistent pattern of  
2 misrepresentation by Montezuma and its Counsel.

3  
4 **I. Submitting False and Misleading Lease Agreements**

5  
6 It is undisputed that Montezuma secretly signed the Capital leases with Financial Pacific  
7 Leasing for the ATF equipment and Nile River Leasing for the building on March 22,  
8 2012. The Company did not reveal that these leases existed until October 2012, when  
9 Patricia Olsen, while represented by counsel, submitted incomplete and misleading  
10 versions of the Nile River and Financial Pacific leases in the 0361/0362 docket without  
11 notice to other parties, including Intervenor/Complainant.

12  
13 Prior to this, the Company deceived this Commission and Intervenor/Complainant by  
14 knowingly docketing phony lease agreements allegedly signed on March 16, 2012  
15 between Ms. Olsen, personally, and Nile River Leasing for both the building and the  
16 arsenic treatment equipment.

17  
18 The Company docketed these phony lease agreements on March 19, 2012. Nile River  
19 executives testified during the evidentiary hearing that the phony leases included a forged  
20 signature to make it appear Nile River had signed the leases when it had not.

21  
22 This outrageous action was done to circumvent required Commission approval of Capital  
23 leases. Montezuma's counsel stated in pleadings and during an April 30, 2012 procedural  
24 conference that since Ms. Olsen signed the leases rather than the Company they were  
25 exempt from Commission approval.

26  
27 Ms. Olsen and Montezuma Counsel did not provide timely notice to the Commission that  
28 the purported leases signed by Ms. Olsen had in fact already been replaced by Capital  
29 leases signed by Montezuma with Financial Pacific and Nile River. These are now the  
30 leases the Company claims it cannot pay and thereby requires emergency interim rate  
31 relief.

32  
33 **II. Submitting false and misleading statements to Arizona Water Infrastructure**  
34 **Financing Authority.**

35  
36 Montezuma failed to disclose to WIFA that it did not have a valid Yavapai County use  
37 permit to operate Well No. 4 that was, and remains, an integral part of the ATF.  
38 Montezuma also failed to disclose that Well No. 4 was within 300-feet of Montezuma  
39 Well National Monument and Wet Beaver Creek.

40  
41 Intervenor/Complainant notified WIFA of these issues on January 29, 2010. WIFA  
42 subsequently withdrew a pending \$165,000 loan to Montezuma for construction of the  
43 ATF and required the Company to prepare an Environmental Information Document.  
44 WIFA hired a private contractor to review the EID, and sought advice from the U.S.  
45 Environmental Protection Agency Region IX. Both the private contractor and the EPA  
46 recommended that the potential impact of Well No. 4's operation on the National

1 Monument and Wet Beaver Creek required preparation of the Environmental Impact  
2 Statement. Montezuma subsequently withdrew the WIFA loan rather than paying for the  
3 EIS.

4  
5 Montezuma's attempt to deceive WIFA to obtain the federally subsidized \$165,000 loan  
6 failed. Since this occurred, Montezuma has been unable to secure financing for the ATF  
7 without taking the extraordinary deceptive actions that were described above by  
8 docketing phony leases with forged signatures.

### 9 10 **III. Montezuma and Staff hide information from ALJ**

11  
12 On April 26, 2012, Montezuma, ACC staff members and ADEQ water quality managers  
13 held a joint meeting to discuss the Company's failure to install the ATF and a pending  
14 June 2012 deadline to comply with an ADEQ 2010 Consent Order that had been  
15 extended twice. During the meeting, Ms. Olsen made it clear that she had signed leases to  
16 obtain the ATF and that it would be in the ground by the June deadline.

17  
18 Four days later, on April 30, 2012, a procedural conference was held to discuss  
19 Montezuma's financing plan that was supposedly based on the purported leases signed by  
20 Ms. Olsen with Nile River Leasing for both the arsenic equipment and building. The  
21 purported plan called for Ms. Olsen to sublease the ATF to her Company through a Water  
22 Services Agreement. Staff issued an opinion that the Water Services Agreement was a  
23 Capital lease that would require Commission approval. Montezuma's Counsel stated  
24 during the procedural conference that a new Water Services Agreement would be drafted  
25 so that it would fit the definition of an operating lease and therefore would not need  
26 Commission approval.

27  
28 At no time during the April 30, 2012 procedural conference did the Company or Staff  
29 disclose to the ALJ that the Company was moving ahead with the acquisition and  
30 installation of the ATF despite the fact the purported financing plan of Ms. Olsen leasing  
31 the equipment and then subleasing the ATF to the Company through the WSA had not  
32 yet been approved. Furthermore, at no time during the April 30, 2012 procedural  
33 conference did the Company reveal that the purported financing scheme had already been  
34 scrapped for the current arrangement where Montezuma signed the Capital leases with  
35 Financial Pacific and Nile River.

36  
37 The ALJ stated during the hearing that she did not know during the April 30 meeting that  
38 the Company, with Staff's knowledge, was moving ahead with the purchase and  
39 installation of the ATF without Commission approval.

### 40 41 **IV. False and misleading documentation to Yavapai County Development Services**

42  
43 Montezuma submitted a false site plan depicting the location of Well No. 4 on a  
44 residential lot in Yavapai County. The site plan indicated the well was greater than 50-  
45 feet from neighboring properties, when in fact, it was only 41-feet from one neighbor's  
46 fence line.

1 This fact did not come to light until Intervenor/Complainant discovered in 2009 that  
2 Montezuma did not have a Yavapai County commercial use permit to operate the well  
3 that was drilled in the summer of 2006.

4  
5 The Yavapai County Board of Supervisors issued a conditional use permit in March 2010  
6 that required Montezuma to comply with the Yavapai County Water Well Code's 50-foot  
7 set back provisions before the permit would be in effect. Montezuma was unable to meet  
8 the setback provision and in 2012 Yavapai County revoked the conditional use permit.

9  
10 In December 2012, Yavapai County ordered the Company to clear the lot. The Company  
11 failed to remove all appurtenances from the property and was subsequently fined \$5,000.  
12 As of this date, Montezuma does not have a use permit to operate Well No. 4 on a  
13 residential lot.

#### 14 15 **V. False Police Report**

16  
17 Ms. Patricia Olsen falsely alleged that Intervenor/Complainant struck her with his  
18 motorcycle in May 2012. Intervenor/Complainant was inspecting the ongoing  
19 construction of the ATF that was underway despite the fact the Commission had not  
20 approved of the Company's purported financing plan that supposedly was in effect in the  
21 summer of 2012.

22  
23 Ms. Olsen charged up a dirt road towards Intervenor/Complainant and yelled profanity.  
24 Intervenor/Complainant did not respond and veered his motorcycle around Ms. Olsen and  
25 returned to his home. A Yavapai County Sheriff's Office deputy investigated the incident  
26 and interviewed Intervenor/Complainant and concluded the incident did not occur as Ms.  
27 Olsen described and that Intervenor/Complainant did not strike her with his motorcycle.

#### 28 29 Conclusion

30  
31 The examples described above are just a few of the deceptive and misleading actions by  
32 this company. There is substantial, well-documented evidence supported by exhibits and  
33 testimony presented during the evidentiary hearing, that clearly demonstrate Ms. Olsen  
34 and Montezuma have a long history of making false and misleading statements.

35  
36 Montezuma's latest claim that it cannot afford to make payments on unapproved Capital  
37 leases should not be taken on face value. Rather than rushing through an emergency rate  
38 increase, Commission staff should be directed to conduct a thorough review of the  
39 Company's financial condition, including a detailed analysis of the Company's various  
40 checking accounts for at least the last six months. Montezuma hasn't paid the Nile River  
41 Leasing in full since at least October 2013.

42  
43 Intervenor/Complainant conducted such a review of the Company's checking accounts  
44 spanning several years, but not the last six months. The accounts, which were obtained  
45 through subpoenas, showed that Montezuma was using Company funds to make monthly  
46 payments on Mr. Greg Olsen's pickup truck, Ms. Olsen's student loans, insurance

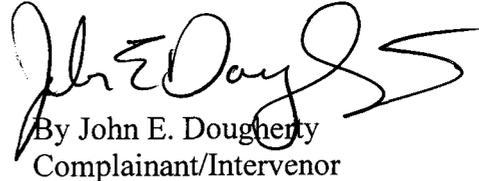
1 policies for Ms. Olsen's children, cell phones for the entire family of four, mortgage  
2 payments on at least two properties, credit card payments for expenses unrelated to  
3 Company operations, fuel for various, non company vehicles, vacations and even goat  
4 feed and supplies.

5  
6 The records also showed that Montezuma had entered into a \$28,000 long-term debt to  
7 acquire property for Well No. 4 without first obtaining Commission approval.

8  
9 That pattern is clear. Montezuma cannot be trusted.

10  
11 A similar review of the Company's checking accounts would be prudent and wise and in  
12 the best interest of ratepayers before concluding that Montezuma does not have the  
13 financial capability to pay the leases and asserting that an emergency exists.

14  
15 RESPECTFULLY SUBMITTED this 18<sup>th</sup> Day of March, 2014

16  
17  
18  
19  
20  
  
By John E. Dougherty  
Complainant/Intervenor

21 An original and 13 copies of the foregoing was filed  
22 this 18th day of March, 2014, with:

23  
24 Docket Control  
25 Arizona Corporation Commission  
26 1200 West Washington Street  
27 Phoenix, Arizona 85007

28  
29 A copy of the foregoing was hand delivered/mailed/emailed  
30 this 17<sup>th</sup> Day of March, 2014 to:

31  
32 Sarah N. Harpring  
33 Administrative Law Judge  
34 Arizona Corporation Commission  
35 1200 W. Washington  
36 Phoenix, Arizona 85007

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