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BEFORE THE ARIZONA CORPORATION COMMISSION

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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.

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

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

PROCEDURAL ORDER

BY THE COMMISSION:

On February 26, 2013, a Procedural Order was issued consolidating the above-captioned

1 dockets; scheduling a hearing to commence on May 3, 2013; and establishing a procedural schedule
2 and requirements for the consolidated matter going forward. A correction to a typographical error in
3 the prescribed public notice language was made by a Procedural Order issued on February 28, 2013.

4 On March 21, 2013, pursuant to a joint request for extension from Montezuma Rimrock
5 Water Company, LLC (“Montezuma”) and the Commission’s Utilities Division (“Staff”), a
6 Procedural Order was issued rescheduling the hearing to commence on June 20, 2013; modifying the
7 remainder of the procedural schedule accordingly; and requiring Montezuma to make filings
8 regarding the public notice provided.

9 On April 3, 2013, Montezuma made a filing stating that it had provided public notice of the
10 hearing scheduled for May 3, 2013, through both a billing insert and publication in the *Camp Verde*
11 *Journal*. Montezuma also stated that it had provided public notice of the new June 20, 2013, hearing
12 date through a billing insert sent out on March 28, 2013,¹ and that it was in the process of having the
13 notice published in a local newspaper.

14 Also on April 3, 2013, Montezuma filed a Motion to Compel, stating that John Dougherty has
15 failed to answer a number of data requests included in Montezuma’s first set of data requests to him,
16 without valid and applicable legal objections, and requesting either that Mr. Dougherty be compelled
17 to answer the data requests or, in the alternative, that Mr. Dougherty be precluded from presenting
18 any testimony or evidence in this consolidated matter. Montezuma included a copy of its first set of
19 data requests, a copy of Mr. Dougherty’s response to the data requests, and a copy of e-mail
20 communications between counsel for Montezuma and Mr. Dougherty regarding the data requests.

21 The Commission’s procedural rules provide: “Motions shall conform insofar as practicable
22 with the Rules of Civil Procedure for the Superior Court of the state of Arizona.” (A.A.C. R14-3-
23 106(K).) The Arizona Rules of Civil Procedure provide that discovery motions, and specifically
24 motions to compel, will not be considered or scheduled “unless a separate statement of moving
25 counsel is attached thereto certifying that, after personal consultation and good faith efforts to do so,
26 counsel have been unable to satisfactorily resolve the matter.” (Ariz. R. Civ. P. 26(g) and 37(a)(2)(C))

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28 ¹ Although the Procedural Order correcting a typographical error in the notice language was issued on February 28,
2013, Montezuma appears to have used the prior, uncorrected notice language.

1 (emphasis added).) From the Motion to Compel, it appears that counsel for Montezuma has only
2 communicated with Mr. Dougherty through e-mail and that counsel for Montezuma has not yet made
3 any efforts to discuss his discovery requests with Mr. Dougherty. Thus, Montezuma's Motion to
4 Compel is insufficient as filed. Before the Commission is asked to rule on a Motion to Compel, the
5 moving party must ensure that a good faith effort has been made to resolve the discovery dispute
6 through personal consultation (i.e., live conversation), and a separate certification as to such personal
7 consultation and good faith efforts must be attached to the Motion.

8 Therefore, the Commission will not now require Mr. Dougherty to file a response to the
9 Motion to Compel and will not now rule upon the Motion to Compel.² Rather, counsel for
10 Montezuma will be directed to engage in personal consultation with Mr. Dougherty and to make
11 good faith efforts to resolve the current and any other discovery dispute before filing another Motion
12 to Compel with the Commission. Likewise, Mr. Dougherty will be directed, as to each portion of
13 Montezuma's first data request, to provide a good faith and complete response or, if he has a valid
14 legal rationale for doing so, to file an objection explaining the legal rationale. In the alternative, Mr.
15 Dougherty and Montezuma may reach an agreement regarding the information Mr. Dougherty has
16 and will provide in response to Montezuma's first data request.

17 In the event that Montezuma and Mr. Dougherty are unable to resolve their discovery dispute
18 after making a good faith effort to do so through live conversation, either party may, in lieu of filing a
19 discovery motion, contact the Hearing Division telephonically to request a procedural conference to
20 resolve the discovery dispute, upon which request a procedural conference will be convened as soon
21 as practicable. The party making such a request will be required to contact all other parties to advise
22 them of the procedural conference date, time, and location and will be required to provide a statement
23 during the procedural conference confirming that all other parties were contacted and so notified.

24 Finally, because Montezuma has provided public notice of the May 3, 2013, hearing date, a
25 public comment proceeding must be held on that date.

26 **IT IS THEREFORE ORDERED that counsel for Montezuma shall engage in personal**
27

28 ² See Procedural Order issued in Docket Nos. W-04254A-08-0361 et al. on August 24, 2011.

1 **consultation with Mr. Dougherty and shall make good faith efforts to resolve the current and**
2 **any other discovery dispute before filing another Motion to Compel with the Commission.**

3 IT IS FURTHER ORDERED that **Mr. Dougherty shall**, as to each portion of Montezuma's
4 first data request, **provide a good faith and complete response or, if he has a valid legal rationale**
5 **for doing so, file an objection explaining the legal rationale.**

6 IT IS FURTHER ORDERED that the parties **shall** attempt to settle discovery disputes
7 through informal, good-faith negotiations before seeking Commission resolution of the controversy.

8 IT IS FURTHER ORDERED that, in the **alternative to filing a written discovery motion**,
9 any party seeking resolution of a discovery dispute may telephonically contact the Commission's
10 Hearing Division to request a date for a procedural conference to resolve the discovery dispute; that
11 upon such a request, a procedural conference will be convened as soon as practicable; and that the
12 party making such a request shall forthwith contact all other parties to advise them of the procedural
13 conference date, time, and location and shall provide a statement during the procedural conference
14 confirming that all other parties were contacted and so notified.

15 IT IS FURTHER ORDERED that a **public comment proceeding** shall be held on **May 3,**
16 **2013, at 10:00 a.m.**, in Hearing Room No. 2 at the Commission's offices at 1200 West Washington
17 Street, Phoenix, Arizona.

18 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
19 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
20 hearing.

21
22 DATED this 4th day of April, 2013.

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24 
25 SARAH N. HARPRING
26 ADMINISTRATIVE LAW JUDGE
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this 14th day of April, 2013, to:

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