

ORIGINAL



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COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES



ARIZONA CORPORATION COMMISSION

06FC

June 23, 2004

Via facsimile and certified mail

Richard L. Sallquist, Esq.
Sallquist & Drummond, P.C.
2525 E. Arizona Biltmore Circle
Phoenix, Arizona 85016-2129

Re: Complaint against Desert Hills Water Co., Inc.
Docket No. W-02124A-04-0469

RECEIVED
2004 JUN 23 P 4: 31
AZ CORP COMMISSION
DOCUMENT CONTROL

Dear Mr. Sallquist:

Please find enclosed Staff's Complaint against Desert Hills Water Co., Inc. ("Desert Hills"). This letter constitutes service of the Complaint upon Desert Hills. Under A.A.C. R14-3-106(H), Desert Hills must file an Answer within 20 days. Further, during the procedural conference in Docket W-02124A-04-0416 you committed to file the Answer in an expeditious manner. Also, as I mentioned during that procedural conference, I believe it would be appropriate to consolidate this matter with Docket W-02124A-04-0416.

If you have any questions or concerns, please contact me at 602.542.6024.

Very truly yours,

Timothy J. Sabo
Attorney, Legal Division

cc: Docket Control

Court S. Rich, Esq.
Jordan Bischoff McGuire Rose & Hiser PLC
7272 E. Indian School Road, Suite 205
Scottsdale, Arizona 85251

Arizona Corporation Commission
DOCKETED

JUN 23 2004

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| DOCKETED BY | |
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BEFORE THE ARIZONA CORPORATION COMMISSION
RECEIVED

MARC SPITZER
CHAIRMAN
WILLIAM A. MUNDELL
COMMISSIONER
JEFF HATCH-MILLER
COMMISSIONER
MIKE GLEASON
COMMISSIONER
KRISTIN K. MAYES
COMMISSIONER

2004 JUN 23 P 4: 04

AZ CORP COMMISSION
DOCUMENT CONTROL

UTILITIES DIVISION, of the Arizona
Corporation Commission,

Complainant,

v.

DESERT HILLS WATER CO., an Arizona
Corporation,

Respondent.

DOCKET NO. W-02124A-04-0469

COMPLAINT

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission"), for its complaint against Desert Hills Water Co., Inc. ("Desert Hills") alleges:

JURISDICTION

1. The Commission has jurisdiction to hear complaints against public service corporations, such as Desert Hills, pursuant to A.R.S. § 40-246. The Commission exercises jurisdiction over the provision of water service by public service corporations under Article XV Section 3 of the Arizona Constitution, Title 40 of the Arizona Revised Statutes, and Arizona Administrative Code (A.A.C.) R14-2-401 *et seq.* The Commission has the power to impose penalties for violations of its rules pursuant to A.R.S. §§ 40-424, 40-425, and 40-428.

RESPONDENT

2. The Respondent, Desert Hills, is a corporation existing under the laws of the State of Arizona.

3. The Respondent, Desert Hills, is a public service corporation within the meaning of

1 Article XV § 2 of the Arizona Constitution.

2 4. The Respondent, Desert Hills, holds Certificate of Convenience and Necessity
3 (CC&N) granted by the Commission.

4 **BACKGROUND**

5 5. On or about September 15, 2003, AJF Custom Homes, LLC (“AJF”) requested
6 service from Desert Hills for several lots located within Desert Hills’ certificated service area.

7 6. Two of the lots (the “Two Lots”) for which AJF requested service are located on
8 Central Avenue, adjacent to a mainline of Desert Hills water main and within Desert Hills’
9 certificated service area. Upon information and belief, the address of the Two Lots are 14 and
10 15 W. Sommerset, Phoenix, Arizona.

11 7. Desert Hills initially declined to serve the Two Lots, as well as the other lots for which
12 AJF requested service.

13 8. AJF requested mediation concerning Desert Hills’ denial of service.

14 9. During the mediation, Ms. Mary Beth Rowland, an officer of Desert Hills, stated that
15 connecting the Two Lots would be “no problem”.

16 10. Desert Hills accepted deposits from AJF for the Two Lots.

17 11. Upon information and belief, Desert Hills entered into a written service agreements
18 with AJF to serve the Two Lots. Copies of these agreements are attached as Exhibit A.

19 11. The Staff Mediator recommended that Desert Hills serve all the lots requested by AJF.
20 Desert Hills subsequently returned the deposits for the Two Lots and refused to provide
21 service for the Two Lots as well as the other lots owned by AJF.

22 12. Thereafter, Staff sent Desert Hills a letter demanding that Desert Hills provide service
23 to the Two Lots. A copy of Staff’s letter is attached as Exhibit B.

24 13. Desert Hills responded, through counsel, that it would not comply with the demand
25 made by Staff in the letter attached as Exhibit B.

26 14. Upon information and belief, because the Two Lots are next to a Desert Hills’ water
27 main, no main extension agreement is needed.

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CLAIMS

Count 1

Violation of A.R.S. § 40-321(B)

15. Paragraphs 1-15 are incorporated herein by reference.

16. Under A.R.S. § 40-321(B), except as provided in the Commission’s rules, Desert Hills is required to provide service to any applicant within its service area who makes a “proper demand and tender of rates.”

17. By entering into a written service agreement and delivering a deposit, AJF made a “proper demand and tender of rates” as contemplated by A.R.S. § 40-321(B).

18. Desert Hills has therefore violated A.R.S. § 40-321(B).

Count 2

Violation of A.R.S. § 40-203

19. Paragraphs 1-18 are incorporated herein by reference.

20. By dishonoring its written contract with AJF, Desert Hills has committed an unjust practice that the Commission may forbid by order under A.R.S. § 40-203 and Article XV Section 3 of the Arizona Constitution.

Count 3

Violation of A.R.S. § 40-321(A)

21. Paragraphs 1-20 are incorporated herein by reference.

22. By dishonoring its written contract with AJF, and by refusing to provide service to AJF, Desert Hills has committed an “unjust, unreasonable, ... improper, inadequate or insufficient” service that the Commission may forbid by order under A.R.S. § 40-321(A) and Article XV Section 3 of the Arizona Constitution.

Count 4

Violation of A.A.C. R14-2-405

23. Paragraphs 1-22 are incorporated herein by reference.

1 24. Under A.A.C. R14-2-405, a water public service corporation is required to establish
2 service within five days of accepting an application for service and deposit from a prospective
3 customer.

4 25. Desert Hills accepted service as to the Two Lots by entering into written agreements
5 as to the Two Lots.

6 26. Desert Hills accepted deposits from AJF with regard to the Two Lots.

7 27. Upon information and belief, no grounds for refusing service under A.A.C. R14-2-403
8 exist.

9 28. Desert Hills has not established service to the Two Lots.

10 29. Desert Hills has violated A.A.C. R14-2-405 and is in contempt of the Commission.

11 **Count 5**

12 **Violation of CC&N**

13 30. Paragraphs 1-29 are incorporated herein by reference.

14 31. Desert Hills has an obligation under its CC&N, and the orders approving its CC&N, to
15 provide service to all within its certificated service area who make a lawful request for
16 service.

17 32. AJF made a lawful request for service.

18 33. Desert Hills did not provide the requested service.

19 34. Desert Hills has violated its obligations under its CC&N, and the orders approving its
20 CC&N.

21 **Count 6**

22 **Violation of Common Law Duty**

23 35. Paragraphs 1-34 are incorporated herein by reference.

24 36. Desert Hills has a common law obligation as a public utility to provide service to
25 anyone within its service area that makes a lawful request for service.

26 37. AJF made a lawful request for service.

27 38. Desert Hills violated its common law duty to provide service.
28

1 Count 7

2 Breach of Contract

3 39. Paragraphs 1-38 are incorporated herein by reference.

4 40. By dishonoring its written agreements with AJF and refusing to provide service, AJF
5 breached its contract with AJF.

6 RELIEF

7 WHEREFORE, Staff prays that the Commission issue an order:

8 41. finding Desert Hills in violation of A.R.S. § 40-321(B);

9 42. finding Desert Hills in violation of A.R.S. § 40-203;

10 43. finding Desert Hills in violation of A.R.S. § 40-321(A);

11 44. finding Desert Hills in violation of A.A.C. R14-2-405 and in contempt of the
12 Commission;

13 45. finding Desert Hills in violation of its obligations under its CC&N;

14 46. finding Desert Hills in violation of its common law duty as a public utility;

15 47. finding Desert Hills in breach of its contracts with Desert Hills;

16 48. ordering Desert Hills to establish service to AJF within 48 hours of the effective date
17 of the Commission's order in this matter; and

18 49. ordering such other relief as the Commission may find just and reasonable.

19
20 RESPECTFULLY submitted this 23rd day of June, 2004.

21
22 

23 Timothy J. Sabo
24 Attorney, Legal Division
25 Arizona Corporation Commission
26 1200 West Washington Street
27 Phoenix, Arizona 85007
28 Telephone: (602) 542-6022
Facsimile: (602) 542-4870

1 Original and 13 copies filed this
2 23rd day of June 2004 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, AZ 85007

7 Copies of the foregoing were mailed this
8 23rd day of June 2004 to:

9 Richard L. Sallquist, Esq.
10 Sallquist & Drummond, P.C.
11 2525 E. Arizona Biltmore Circle
12 Phoenix, AZ 85016-2129

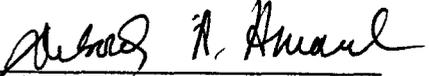
13 
14 Deborah A. Amaral
15 Secretary to Timothy J. Sabo
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EXHIBIT A

DESERT HILLS WATER CO., INC.



SERVICE CONTRACT -- METER

Upon the conditions and for the considerations stated below, Desert Hills Water Co., Inc. will provide water to the customer. The undersigned customer, by signing this contract, acknowledges the receipt of a copy and concurs with all conditions herein stated.

Subject to the stated conditions, the monthly fee for a 5/8 x 3/4 inch meter is \$26.00; 3/4 inch meter is \$30.00, 1 inch meter is \$35.00, plus a charge of \$2.61 per thousand gallons used. (See rate sheet for larger meters.) The rates are subject to change only with the approval of the Arizona Corporation Commission. Water will be furnished by the Company solely for domestic use by the customer or for use in the conduct of business by the customer.

This contract will remain in effect from month to month subject to the payment by the customer within the first 15 days of each calendar month of the balance due on the account. This contract may be canceled as of the end of any calendar month by ten days written notice mailed by the Company to customer at address written below; provided, however, that the Company reserves the right to discontinue all service immediately and without notice to any customer who sells water furnished by the Company to any other person.

Additional charges that the customer may be subject to are listed on the Company's payment policy, a copy of which customer acknowledges receipt and concurs with all conditions therein stated.

DESERT HILLS WATER CO. INC.

ACCEPTANCE BY CUSTOMER:

Peggy Bethel

[Signature]

NAME: A.J.F. Custom Homes BILLING ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____ PHONE: _____

SOCIAL SECURITY # OR AZ. DRIVER LICENSE #: _____

SERVICE ADDRESS/LOCATION: 15 W Summerset

SERVICE START DATE: _____ START READING: _____

METER DEPOSIT: \$ 250 SECURITY DEPOSIT: \$ 100 ESTABLISHMENT FEE: \$ 15.00

TOTAL DUE: \$ 365 + H.O. = 1115.00 PAID CHECK #/CASH: 8033 4/22/04

FOR COMPANY USE:

ACCOUNT #: _____ ROUTE SEQUENCE #: _____

METER SERIAL #: _____ METER SIZE: 5/8 x 3/4 AIAC #: _____

PREVIOUS CUSTOMER: _____ GRD MEMBER? _____ TAX PARCEL ID#: _____

DATE RECEIVED: _____ ORIGINAL METER DEPOSIT: \$ _____ BALANCE: \$ _____

BPA STATUS/INSTALL DATE: _____ METER TEST/REINSTALL DATE: _____

FIRE HYDRANT SERVICE LIMITATIONS:

The Company will supply only such water at such pressures as may be available from time to time as the result of the normal operations of its water system. The Company does not guarantee a specific water pressure or gallons per minute flow rate at any of the fire hydrants installed. In the event service is interrupted or irregular or defective or fails from causes beyond the Company's control or through ordinary negligence of its employees, servants or agents, the Company will not be liable for any injuries or damages arising therefrom. The customer shall make no claim against the Company for any loss or damage resulting from services provided under this schedule except for the Company's gross negligence.

34647 North 10th Street • Phoenix, AZ 85086
(623) 582-0219 • Fax: (623) 582-1365

LOT RECORDING ACKNOWLEDGMENT

In order to determine whether the Company's Off-site Facilities Hook-up Fee Tariff (Hook-Up Fee) is applicable, the undersigned customer acknowledges that the following condition applies to their new water service connection for parcel number/address 15 W Sumner St (check one):

The lot was recorded after January 31, 1996, and is subject to the Hook-Up Fee.

The lot is served by a main line for which there is an Line Extension Agreement dated after January 31, 1996, approved by the Arizona Corporation Commission and is therefore subject to the Hook-Up Fee.

Requested service is for a commercial use requiring a meter larger than 1-inch, and is subject to the Hook-Up Fee.

None of the above apply to the new water service, as evidenced by documents verifying recording date, and it is exempt from the Hook-Up Fee.

Acknowledged on April 22, 2004, by:

DESERT HILLS WATER CO. INC.

CUSTOMER

[Signature]

[Signature]

If applicable, the Hook-Up Fee must be paid at the time this Lot Recording Acknowledgment is executed, unless previously paid under a Line Extension Agreement.

Meter size: 5/8 x 3/4

Hook-up fee: \$ 750

Date paid: 4/22/04

Check number: _____

DESERT HILLS WATER CO., INC.



SERVICE CONTRACT -- METER

Upon the conditions and for the considerations stated below, Desert Hills Water Co., Inc. will provide water to the customer. The undersigned customer, by signing this contract, acknowledges the receipt of a copy and concurs with all conditions herein stated.

Subject to the stated conditions, the monthly fee for a 5/8 x 3/4 inch meter is \$26.00, 3/4 inch meter is \$30.00, 1 inch meter is \$35.00, plus a charge of \$2.61 per thousand gallons used. (See rate sheet for larger meters.) The rates are subject to change only with the approval of the Arizona Corporation Commission. Water will be furnished by the Company solely for domestic use by the customer or for use in the conduct of business by the customer.

This contract will remain in effect from month to month subject to the payment by the customer within the first 15 days of each calendar month of the balance due on the account. This contract may be canceled as of the end of any calendar month by ten days written notice mailed by the Company to customer at address written below; provided, however, that the Company reserves the right to discontinue all service immediately and without notice to any customer who sells water furnished by the Company to any other person.

Additional charges that the customer may be subject to are listed on the Company's payment policy, a copy of which customer acknowledges receipt and concurs with all conditions therein stated.

DESERT HILLS WATER CO. INC.

X ACCEPTANCE BY CUSTOMER:
[Signature]

[Signature]

NAME: A.J.F. Custom Homes BILLING ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____ PHONE: _____

SOCIAL SECURITY # OR AZ. DRIVER LICENSE #: _____

SERVICE ADDRESS/LOCATION: 14 W Sumner

SERVICE START DATE: _____ START READING: _____

METER DEPOSIT: \$ 250 SECURITY DEPOSIT: \$ 100 ESTABLISHMENT FEE: \$ 15.00

TOTAL DUE: \$ 365 + HO = 1115.00 PAID CHECK #/CASH: 8033 4/22/04

SO
CP
OP
Y2M

FOR COMPANY USE:

ACCOUNT #: _____ ROUTE SEQUENCE #: _____

METER SERIAL #: _____ METER SIZE: 5/8 x 3/4 AIAC #: _____

PREVIOUS CUSTOMER: _____ GRD MEMBER? _____ TAX PARCEL ID#: _____

DATE RECEIVED: _____ ORIGINAL METER DEPOSIT: \$ _____ BALANCE: \$ _____

BPA STATUS/INSTALL DATE: _____ METER TEST/REINSTALL DATE: _____

FIRE HYDRANT SERVICE LIMITATIONS:

The Company will supply only such water at such pressures as may be available from time to time as the result of the normal operations of its water system. The Company does not guarantee a specific water pressure or gallons per minute flow rate at any of the fire hydrants installed. In the event service is interrupted or irregular or defective or fails from causes beyond the Company's control or through ordinary negligence of its employees, servants or agents, the Company will not be liable for any injuries or damages arising therefrom. The customer shall make no claim against the Company for any loss or damage resulting from services provided under this schedule except for the Company's gross negligence.

34647 North 10th Street • Phoenix, AZ 85086
(623) 582-0219 • Fax: (623) 582-1365

LOT RECORDING ACKNOWLEDGMENT

In order to determine whether the Company's Off-site Facilities Hook-up Fee Tariff (Hook-Up Fee) is applicable, the undersigned customer acknowledges that the following condition applies to their new water service connection for parcel number/address 14 W Somerset (check one):

The lot was recorded after January 31, 1996, and is subject to the Hook-Up Fee.

The lot is served by a main line for which there is an Line Extension Agreement dated after January 31, 1996, approved by the Arizona Corporation Commission and is therefore subject to the Hook-Up Fee.

Requested service is for a commercial use requiring a meter larger than 1-inch, and is subject to the Hook-Up Fee.

None of the above apply to the new water service, as evidenced by documents verifying recording date, and it is exempt from the Hook-Up Fee.

Acknowledged on April 22, 2004, by:

DESERT HILLS WATER CO. INC.

Beggy Bethel

CUSTOMER

CP Led

If applicable, the Hook-Up Fee must be paid at the time this Lot Recording Acknowledgment is executed, unless previously paid under a Line Extension Agreement.

Meter size: 5/8 x 3/4

Hook-up fee: \$ 750

Date paid: _____

Check number: _____

EXHIBIT B

Tem

COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES



BRIAN C. MCNEIL
Executive Secretary

ARIZONA CORPORATION COMMISSION

June 7, 2004

Via facsimile and first class mail

Richard L. Sallquist, Esq.
Sallquist & Drummond, P.C.
2525 E. Arizona Biltmore Circle
Phoenix, Arizona 85016-2129

Re: Desert Hills Water Company (Company)
Failed Mediation

Dear Mr. Sallquist:

Staff is disappointed that your client rejected the Staff Mediator's decision in this matter. Forcing this matter to go to a formal complaint only waste the time and resources of all involved. Staff urges all public service corporations to participate in meditation and to accept mediator decisions.

In particular, I am writing you in regard to the two lots adjacent to Central Avenue and the Company's existing main. No main extension is needed for these lots. The Company has a Certificate of Convenience and Necessity (CC&N) for this area and is obligated to provide service to anyone within this area who requests service. When a main extension is not needed, failure to provide requested service is grounds for cancellation of the Company's CC&N as well as other appropriate administrative penalties.

We understand that the Company is concerned with the investigation by the Arizona Department of Real Estate. Staff shares this concern. Indeed, the Commission has repeatedly expressed concern about inappropriate development practices. Nevertheless, it is not the Company's role to enforce Arizona's Real Estate laws. Rather, this is the responsibility of the Arizona Department of Real Estate. We are confident that our colleagues at the Arizona Department of Real Estate will take appropriate actions if illegal actions occurred. In similar circumstances, Staff would likely oppose granting a new CC&N. However, in this case, the Company already has a CC&N for the area in question. The Company must comply with its obligations under its CC&N, including providing service to all eligible persons within its service area.

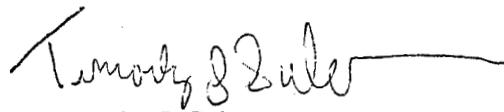
The Company's actions are even more egregious in light of the Company's statements and conduct during the mediation. In particular, the Company's Vice President, Ms. Rowland, stated during the mediation that connecting these two lots would be "no problem". Relying on

Richard L. Sallquist, Esq.
June 7, 2004
Page 2

this statement, the developer made a deposit to establish service. Only after the mediation concerning the other lots failed did Ms. Rowland return the deposits and refuse service. Staff expects that regulated utilities will comply with commitments they make during Staff facilitated mediations. Staff hereby demands that the Company forthwith connect the two lots in question. Failure to do so will result in Staff initiating appropriate enforcement proceedings, as well as Staff actively participating in the developer's formal complaint proceeding.

Staff requests that the Company give this matter its immediate attention. If you have any questions about this letter, please feel free to contact me at 602.542.6024.

Very truly yours,



Timothy J. Sabo
Attorney, Legal Division

cc: Mr. Steve Olea
Ms. Connie Walczak
Mr. Bill Day, Arizona Department of Real Estate
Jordan Rose, Esq.
(via facsimile at 480.505.3901 and first class mail)
Jordan Bischoff McGuire Rose & Hiser PLC
7272 E. Indian School Road Suite 205
Scottsdale, Arizona 85251-0001
Mr. Alan Fernandez
A.J.F. Custom Homes
P.O. Box 27705
Scottsdale, Arizona 85255
Mr. Dennis Collins and Ms. Brenda Collins
PMB 414
515 E. Carefree Hwy.
Phoenix, Arizona 85085