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

ARIZONA CORPORATION COMMISSION

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DATE: AUGUST 13, 2004

DOCKET NOS: W-02124A-04-0416 and W-02124A-04-0469

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amanda Pope. The recommendation has been filed in the form of an Opinion and Order on:

AJF CUSTOMS HOMES, LLC vs. DESERT HILLS WATER CO., INC.
UTILITIES DIVISION vs. DESERT HILLS WATER CO., INC.
(COMPLAINT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

AUGUST 23, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 31, 2004 and SEPTEMBER 1, 2004

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

AUG 13 2004

DOCKETED BY

BRIAN C. McNEIL
EXECUTIVE SECRETARY

Arizona Corporation Commission
DOCKETED

AUG 13 2004

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF:

AJF CUSTOM HOMES, LLC, an Arizona Limited Liability Company,

Complainant,

v.

DESERT HILLS WATER COMPANY, INC., an Arizona Corporation,

Respondent.

DOCKET NO. W-02124A-04-0416

IN THE MATTER OF:

UTILITIES DIVISION, of the Arizona Corporation Commission,

Complainant,

v.

DESERT HILLS WATER COMPANY, INC., an Arizona Corporation,

Respondent.

DOCKET NO. W-02124A-04-0469

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: July 13, 2004

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Amanda Pope

APPEARANCES: Mr. Court S. Rich, Jordan Bischoff McGuire, Rose & Hiser, P.L.C., on behalf of AJF Custom Homes, LLC;

Mr. Timothy J. Sabo, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission; and

Mr. Richard L. Sallquist, Sallquist & Drummond, P.C.,
on behalf of Desert Hills Water Company, Inc.

BY THE COMMISSION:

On June 4, 2004, AJF Custom Homes, LLC ("AJF") filed a Formal Complaint and Motion for Expedited Hearing alleging that Desert Hills Water Company ("Desert Hills") is unjustifiably refusing to serve five parcels owned by AJF and located within Desert Hills certificated service area and that the pending sale of two of these parcels necessitates an expedited hearing in this matter.

By Procedural Order dated June 18, 2004, a pre-hearing conference was set for June 23, 2004.

The pre-hearing conference was held as scheduled and AJF and Desert Hills appeared with counsel. Counsel for the Arizona Corporation Commission's ("Commission") Utilities Division Staff ("Staff") entered an appearance and indicated that it intended to file a complaint against Desert Hills.

On June 23, 2004, Staff filed a Complaint against Desert Hills, which sets forth six counts in which Desert Hills allegedly stands in violation of Commission rules, statutes and obligations pursuant to its Certificate of Convenience and Necessity, common law, and contractual duties.

By Procedural Order dated June 24, 2004, the Complaint filed against Desert Hills by AJF was consolidated with the Complaint filed against Desert Hills by Staff ("Consolidated Complaints") for the purposes of hearing, a hearing was set for July 13, 2004, and various procedural deadlines were established.

On June 25, 2004, Desert Hills filed its Answer to AJF's Complaint.

On July 9, 2004, Desert Hills filed its Answer to Staff's Complaint in this consolidated matter.

On July 12, 2004, Staff and AJF separately filed their List of Witnesses and Exhibits, and Desert Hills submitted its List of Witnesses and Exhibits to the parties.

A hearing on the Consolidated Complaints was held as scheduled on July 13, 2004 before a duly authorized Administrative Law Judge of the Commission. AJF, Desert Hills, and Staff appeared through counsel.

Appearances of counsel were entered on the record. Desert Hills indicated that based upon new engineering information related to system pressure, the parties were interested in pursuing a

1 negotiated settlement of the pending Consolidated Complaints. The parties subsequently underwent
2 such settlement negotiations off the record, and upon completion, detailed the terms of the settlement
3 on the record. The parties requested that the terms of the settlement be set forth in a recommended
4 opinion and order and set for Commission approval.

5 * * * * *

6 Having considered the entire record herein and being fully advised in the premises, the
7 Commission finds, concludes, and orders that:

8 **FINDINGS OF FACT**

9 1. AJF is the owner and developer of five one acre parcels located west of Central
10 Avenue and south of Carefree Highway in Phoenix, Arizona.

11 2. The five parcels owned by AJF are located within the certificated service territory of
12 Desert Hills.

13 3. Two of the parcels, located at 14 West Summerset ("Lot 14") and 15 West Summerset
14 ("Lot 15") are contiguous to a main water line located along the west side of Central Avenue that is
15 owned and operated by Desert Hills.

16 4. The remaining three lots ("Three Lots") are located in a cul-de-sac immediately to the
17 west of Lot 14 and Lot 15.

18 5. On April 22, 2004, AJF and Desert Hills appeared at a mediation held at the
19 Commission in an attempt to resolve an informal complaint filed by AJF and obtain water service
20 from Desert Hills for the five parcels at issue.

21 6. On or about April 24, 2004, Desert Hills entered into service contracts with and
22 accepted deposits from AJF, by which Desert Hills agreed to provide water service to Lot 14 and Lot
23 15.

24 7. On May 12, 2004, the Commission's Utilities Consumer Service Division Staff
25 ("Consumer Service Staff") issued a letter to AJF and Desert Hills, by which Consumer Service Staff
26 rendered a decision recommending that Desert Hills accept AJF's request for service. Additionally,
27 Consumer Service Staff requested a written response by which the party or parties indicate whether
28 they accept the recommended action.

1 8. By letter dated May 24, 2004, Desert Hills indicated that it disagreed with the position
2 taken by Consumer Service Staff as set forth in its May 12, 2004 letter.

3 9. On June 4, 2004, AJF filed a Formal Complaint and Motion for Expedited Hearing
4 alleging that Desert Hills is unjustifiably refusing to provide service to the five parcels located within
5 Desert Hills' certificated service area and that the pending sale of Lot 14 and Lot 15 necessitates an
6 expedited hearing in this matter.

7 10. By Procedural Order dated June 18, 2004, a pre-hearing conference was set for June
8 23, 2004.

9 11. The pre-hearing conference was held as scheduled and AJF and Desert Hills appeared
10 with counsel. Counsel for Staff entered an appearance and indicated that it intended to file a
11 complaint against Desert Hills.

12 12. On June 23, 2004, Staff filed a Complaint against Desert Hills, which sets forth six
13 counts in which Desert Hills allegedly stands in violation of Commission rules, statutes and
14 obligations pursuant to its Certificate of Convenience and Necessity, common law, and contractual
15 duties for failure to provide water service to Lot 14 and Lot 15.

16 13. By Procedural Order dated June 24, 2004, the Complaint filed against Desert Hills by
17 AJF was consolidated with Staff's Complaint against Desert Hills ("Consolidated Complaints") for
18 the purposes of hearing, a hearing was set for July 13, 2004, and various procedural deadlines were
19 established.

20 14. On June 25, 2004, Desert Hills filed its Answer to AJF's Complaint.

21 15. On July 9, 2004, Desert Hills filed its Answer to Staff's Complaint in this consolidated
22 matter.

23 16. On July 12, 2004, Staff and AJF separately filed their List of Witnesses and Exhibits,
24 and Desert Hills submitted its List of Witnesses and Exhibits to the parties.

25 17. The hearing on the Consolidated Complaints was held as scheduled on July 13, 2004.
26 AJF, Desert Hills, and Staff appeared through counsel.

27 18. Desert Hills indicated that it had obtained new information, which may make
28 resolution of the matter possible and that prior to the hearing, the parties had discussed the possibility

1 of resolving the Consolidated Complaints by means of a settlement conference.

2 19. Subsequent to the settlement negotiations, Desert Hills went on the record to indicate
3 that the issue of providing service to AJF's five parcels had been resolved and to detail the terms of
4 the agreement to which AJF and Staff agreed.

5 20. AJF, Staff, and Desert Hills agreed that service to the five parcels at issue, namely Lot
6 14, Lot 15, and the Three Lots, will be provided in the following manner and subject to the following
7 conditions:

8 a. Desert Hills will provide water service to Lot 14 and Lot 15, which face
9 Central Avenue just south of Carefree Highway, by tapping into its existing 8 inch line
10 on Central Avenue. Water service to these two lots will be provided by July 27, 2004;

11 b. Desert Hills will provide water service to AJF's Three Lots, which are located
12 in a cul-de-sac to the west of Lot 14 and Lot 15, by running a 6 inch line from its
13 existing 8 inch line on Central Avenue by November 15, 2004;

14 c. If construction of the line extension necessary to serve the Three Lots is not
15 completed by November 15, 2004, Desert Hills will pay liquidated damages to AJF in
16 the amount of two hundred and seventy dollars per day until such time as the line
17 extension is completed and water service is provided to the Three Lots;

18 d. The November 15, 2004 deadline for provision of water service to AJF's Three
19 Lots is, however, contingent upon AJF's timely preparation of a utility easement;

20 e. For all five of the parcels, AJF will pay Desert Hills' tariff rates including but
21 not limited to, establishment fees, hook-up fees, and deposits in the total amount of
22 approximately \$1,100 per parcel;

23 f. Desert Hills will book the fees paid by AJF for each of the five parcels as tariff
24 charges and subsequently refund all fees paid by AJF;

25 g. Desert Hills will install, at its own expense, the approximately 500 feet of six
26 inch line necessary to provide water service to AJF's Three Lots;

27 h. Beginning July 23, 2004, Desert Hills will submit a bi-weekly report to AJF
28 and Staff, which details the status of obtaining approvals, necessary engineering, and

1 bids on contracts for construction of the six inch line. The first report, due on July 23,
2 2004, will contain the Maricopa County Environmental Services Tracking Number for
3 the line extension proposed to serve AJF's Three Lots;

4 i. AJF waives all claims against Desert Hills associated with its Complaint in this
5 consolidated proceeding; and

6 j. Staff waives any claim to penalties or fines associated with its Complaint in
7 this consolidated proceeding.

8 21. AJF, Staff, and Desert Hills requested that the above referenced settlement terms be
9 incorporated into an order to be approved by the Commission.

10 **CONCLUSIONS OF LAW**

11 1. Desert Hills is a public service corporation within the meaning of Article XV of the
12 Arizona Constitution and A.R.S. § 40-246.

13 2. The Commission has jurisdiction over Desert Hills and the subject matter of the
14 Consolidated Complaints.

15 3. The terms of the settlement agreement, as set forth in Findings of Fact No. 20, are
16 reasonable and should be adopted.

17 **ORDER**

18 IT IS THEREFORE ORDERED that Desert Hills Water Company, Inc. shall provide water
19 service to Lot 14 and Lot 15, in the manner stated herein by July 27, 2004.

20 IT IS FURTHER ORDERED that Desert Hills Water Company, Inc. shall provide water
21 service to AJF Custom Homes, LLC's Three Lots, in the manner stated herein and contingent upon
22 AJF's timely preparation of a utility easement, by November 15, 2004.

23 IT IS FURTHER ORDERED that Desert Hills Water Company, Inc., AJF Custom Homes,
24 LLC and the Commission's Utilities Division Staff shall comply with the terms of the settlement
25 agreement as set forth in Findings of Fact No. 20.

26 IT IS FURTHER ORDERED that the Consolidated Complaints filed by AJF Custom Homes,
27
28

1 LLC and the Commission's Utilities Division Staff are hereby dismissed.

2 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

3 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

4
5 CHAIRMAN COMMISSIONER COMMISSIONER

6
7 COMMISSIONER COMMISSIONER

8
9 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
10 Secretary of the Arizona Corporation Commission, have
11 hereunto set my hand and caused the official seal of the
12 Commission to be affixed at the Capitol, in the City of Phoenix,
13 this ____ day of _____, 2004.

14
15 _____
16 BRIAN C. McNEIL
17 EXECUTIVE SECRETARY

18
19 DISSENT _____

20
21 DISSENT _____
22 AP:mj

1 SERVICE LIST FOR: DESERT HILLS WATER COMPANY, INC.

2 DOCKET NO.: W-02124A-04-0416 et al.

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