

EXCEPTION ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION
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2005 MAY 19 P 4:09

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IN THE MATTER OF THE APPLICATION OF
AERIE CONSERVANCY, AN ARIZONA
NONPROFIT CORPORATION, FOR AN
ADJUDICATION THAT IT IS NOT A
PUBLICSERVICE CORPORATION

DOCKET NO. W-04291A-04-0843

EXCEPTIONS TO RECOMMENDED
OPINION AND ORDER

The Aerie Conservancy, an Arizona nonprofit corporation ("Association"), hereby submits its Exceptions to the Recommended Opinion and Order ("ROO") filed in this docket on May 10, 2005. The administrative law judge ("ALJ") has recommended that the Arizona Corporation Commission ("Commission") approve the Association's Application for Adjudication Not a Public Service Corporation ("Application"), subject to the Association's compliance with certain conditions identified in the ROO. The Association supports the ROO, but wishes to clarify certain statements in the ROO.

WATER SYSTEM MATTERS

Red Rock Aerie, LLC, ("Red Rock Aerie") is the developer of The Aerie, a planned 78-lot residential subdivision located adjacent to Sedona, Arizona. Water service to The Aerie will be provided by the Association. The ROO states at page 9, lines 3-4, that "Red Rock Aerie does not have the right to cast votes with respect to water system matters, regardless of the lots actually

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owned." This is a true statement so long as Red Rock Aerie does not own a lot which receives water service from the Association. However, Red Rock Aerie will construct a sales pavilion on one of the lots at The Aerie, and that sales pavilion will receive water service from the Association, thereby making Red Rock Aerie a "water customer" as defined in the CC&Rs for The Aerie. One of the criteria for evaluating an application for adjudication not a public service corporation as set forth in Decision 555668 is "that every customer is a member/owner with equal voting rights and that each member is or will be a customer." As a water customer of the association, Red Rock Aerie should receive a vote on water system matters like all other water customers of the Association. The Association believes that this is what the ALJ intended in the ROO. Thus, in order to address any ambiguity which may exist on this issue, the Association would propose the following modification to Finding of Fact 28(iv):

(iv) Under the Association's amended draft bylaws and CC&Rs, every customer of the Association will be a member with equal voting rights **with respect to Water System Matters (as defined in the CC&Rs)**, and every member is or will be a customer. Red Rock Aerie does not have the right to cast votes with respect to **Water System Matters**, regardless of the number of lots owned, **unless it becomes a water customer**. ROO at p. 9, lines 1-4.

The above amendment to the ROO would afford Red Rock Aerie the same voting rights as any other water customer of the Association.

TECHNICAL CORRECTIONS

There are two technical corrections the Association would like to address. The first is on page 3, line 1, and footnote 1 of page 3. The ROO lists Jay Pennypacker as the Vice President of Communities Southwest Holdings, LLC. For the purpose of Aerie Conservancy, Mr.

1 Pennypacker is the Vice President of Communities Southwest Management, Inc. Further, the
2 directors listed in footnote 1 have no involvement in this project and should be removed.

3 The second technical correction is on page 9, line 14, of the ROO which states that the
4 requested adjudication area contains 78 lots. The number of lots within the Aerie will not exceed
5 78 lots, but the actual number of lots may be a few less than 78, depending on final platting. To
6 address this point, the Association requests the following revision to Finding of Fact 28(v), lines
7 12-14:
8

9 We will require that the stipulated filing consist of provisions in the
10 Association's bylaws and CC&Rs that limit water service to the
11 parcel owners within the requested adjudication area, which
12 contains **will not exceed** 78 lots. ROO, page 9, lines 12-14.

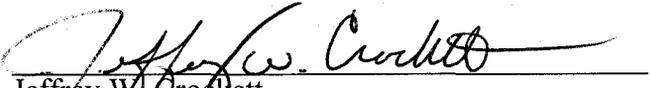
13 Both of these technical corrections will not change the tenor of the ROO but should be
14 included to ensure the Order is factually correct.

15 **CONCLUSION**

16 The Association respectfully requests that the Commission adopt the proposed revisions
17 outlined above. Subject to those changes, the Association agrees with the ROO and urges the
18 approval of the Association's Application for Adjudication Not a Public Service Corporation.

19 RESPECTFULLY submitted this 19th day of May, 2005.

20 SNELL & WILMER

21 

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19th day of May, 2005, with:

Docket Control
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A COPY of the foregoing was hand-delivered
this 19th day of May, 2005, to:

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A COPY of the foregoing was mailed
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