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BEFORE THE ARIZONA CORPORATION COMMISSION

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STATE OF ARIZONA

In the Matter of:

THE APPLICATION OF PERKINS MOUNTAIN
UTILITY COMPANY FOR 4 CERTIFICATES
OF CONVENIENCE AND NECESSITY

Docket No. SW-20379A-050489
consolidated with 80
Docket Nos. W-20379A-050490

**INTERVENOR SPORTS
ENTERTAINMENT, LLC'S
CLOSING BRIEF**

Intervenor Sports Entertainment, LLC ("Sports Entertainment") hereby submits its closing brief as ordered by Administrative Law Judge Bjelland at the close of the hearing in this matter, held December 5, 2005.

I. INTRODUCTION AND FACTUAL BACKGROUND.

A. General Background.

Sports Entertainment, a Nevada limited liability company, owns 440 acres of raw land in the White Water Hills area of Mohave County, which is commonly described as Assessor's Parcel Number 317-36-051 (the "Subject Property"). In or about July 2004, Sports Entertainment granted Sagebrush Enterprises, Inc. ("Sagebrush") an Option to Purchase 320 acres of the Subject Property (the "Option Property"). Sagebrush exercised its Option to Purchase the Option Property in 2004. Sports Entertainment's sale of the Option Property to Sagebrush is currently pending, with an anticipated closing in September 2006. Following the close of the sale of the Option Property to Sagebrush, Sports Entertainment will own only the remaining 120 acres of the Subject Property (the "SE Property"), and neither Application sought the Commission's approval to provide services to the SE Property.

1 The Perkins Mountain Utility and Perkins Mountain Water Companies¹ (collectively
2 referred to herein as “Perkins Mountain”) each filed applications (collectively referred to herein
3 as the “Applications”) for Certificates of Convenience and Necessity with this Commission on or
4 about July 7, 2005. The Applications sought this Commission’s approval to provide water and
5 portable wastewater services to the Option Property, which is in the master planned community
6 “The Villages at White Hills” in the White Hills area of Mohave County. Even though the
7 Subject Property and the SE Property are contiguous parcels of land, Perkins Mountain’s
8 Applications sought to provide water and wastewater services to only the Option Property.
9 Neither Application referred to the SE Property.

10 As the owner of the Subject Property, including both the Option Property² and the
11 SE Property, Sports Entertainment had an interest in the water and wastewater services to be
12 provided to the Subject Property, and in the issuance of Certificates of Convenience and
13 Necessity to provide such water and wastewater services. Sports Entertainment, therefore, had an
14 interest in the resolution of the issues raised by Perkins Mountain’s Applications. Sports
15 Entertainment therefore filed an Application to Intervene in this proceeding on September 27,
16 2005. The Commission granted Sports Entertainment’s Application to Intervene on
17 November 30, 2005.

18 **B. The Staff Recommended that Perkins Mountain be Required to Provide**
19 **Services to the Subject Property, Including the SE Property.**

20 The Staff issued its Report for Perkins Mountain Utility Company and Perkins Mountain
21 Water Company’s Applications for Certificates of Convenience and Necessity for Wastewater
22 Services on November 10, 2005 (the “Report”). The Report recommended that the Commission

23 _____
24 ¹ The Perkins Mountain Utility Company and Perkins Mountain Water Company are both
25 affiliated with Rhodes Homes, which in turns owns Sagebrush. Sports Entertainment’s sale of the
26 Option Property to Sagebrush is set to close in September 2006.

² Until Sports Entertainment’s transaction with Sagebrush closes in September 2006, Sagebrush
has no legal interest in the Subject Property.

1 grant Perkins Mountain's Applications, subject to thirty-one (31) conditions, including the
2 conditions:

3 10. That the Commission require [Perkins Mountain] to provide
4 utility services to all of the 440 acres of land that is owned by
Sports Entertainment[; and]

5 11. That the Commission require [Perkins Mountain] to file with
6 Docket Control, as a compliance item, an amended legal description
7 for The Village at White Hills CC&N area including the entire 440
8 acres of land that is owned by Sports Entertainment no later than 15
9 days after the effective date of the order granting the application.

10 Report at 4, 6.

11 Perkins Mountain objected to, among other conditions, conditions 10 and 11 in its
12 Response to Staff's Report on November 23, 2005, and claimed that, despite the close proximity
13 of the SE and Option Properties, it was not in the public's interest to include the SE Property in
14 the CC&N area. Response at 5-8. Perkins Mountain further falsely claimed that, despite
15 receiving numerous letters from Sports Entertainment, and despite having actual knowledge of
16 Sports Entertainment's desire to have the SE Property included in the CC&N area, it had no legal
17 description for the SE Property, and no indication that Sports Entertainment planned to develop
18 the SE Property in the near future. Response at 5-8. As Sports Entertainment established at the
19 December 5, 2005 hearing on this matter, Perkins Mountain's objections are without merit.
Sports Entertainment therefore respectfully requests that the Commission grant Perkins
Mountain's Applications subject to conditions 10 and 11.

20 **II. IT IS IN THE PUBLIC'S INTEREST TO INCLUDE THE SE PROPERTY IN THE**
21 **CC&N AREA AND SPORTS ENTERTAINMENT REQUESTS THAT THE**
22 **COMMISSION GRANT PERKINS MOUNTAIN'S APPLICATIONS SUBJECT**
23 **TO CONDITIONS 10 AND 11.**

24 **A. The SE and Option Properties are Contiguous, and it is in the Public's**
25 **Interest to Require Perkins Mountain to Provide Services to the SE Property.**

26 Perkins Mountain does not seriously dispute — nor could it — that the SE and Option
Properties are in close proximity and that assuming its Applications for CC&Ns are granted,
Perkins Mountain is the utility company closest to the SE Property. See Staff's Exhibit 2.

1 Rather, Perkins Mountain assumes, without any basis whatsoever, that because the
2 SE and Option Properties are separated by White Hills Road, it would be “too expensive” to
3 require that Perkins Mountain service the SE Property. Perkins Mountain then asks that the
4 CC&N area include all the Option Property on this basis.

5 As Sports Entertainment established at the December 5, 2005 hearing, the SE Property is
6 not in fact separated from the Option Property by White Hills Road. Rather, and as illustrated by
7 Intervenor’s Exhibit 1, Subpart G, White Hills Road bisects the SE Property into two parcels.
8 One parcel, totaling more than 55.8 acres is south of White Hills Road (the “Southern Parcel”),
9 and is adjacent to the Option Property. *See* Intervenor’s Exhibit 1, Subpart G. The remaining
10 62 acres of the SE Property is north of White Hills Road (the “Northern Parcel”). *Id.* Based upon
11 the reasoning in Perkins Mountain’s Response, there is no reason to exclude at least the Southern
12 Parcel of the SE Property from the CC&N area, since the Southern Parcel and the Option
13 Property are contiguous.

14 Nor is there good cause to exclude the Northern Parcel of the SE Property from the
15 CC&N area. Although this parcel is separated from the Option Property by White Hills Road,
16 Perkins Mountain is the utility company closest to the SE Property. *See* Staff’s Exhibit 2.
17 Requiring Sports Entertainment to locate its own utility company to service the Northern Parcel,
18 which comprises only one-half of the SE Property and would be both prohibitively expensive and
19 unfair, particularly since Perkins Mountain is located literally across the street. Requiring Sports
20 Entertainment to, at some point in the future, institute separate proceedings with this Commission
21 for the sole purpose of requesting that Perkins Mountain’s CC&N area be expanded to include the
22 Northern Parcel — the same request Sports Entertainment is making in this proceeding — would
23 be similarly expensive, unfair, unnecessary and duplicative.

24 As set forth below, Sports Entertainment has taken all steps necessary to establish a need
25 for service, and has made the appropriate request to Perkins Mountain to be included in the
26 CC&N area. That Perkins Mountain, which is ultimately owned and controlled by the same

1 company that is under contract to buy the Option Property, has ignored Sports Entertainment's
2 request is of no consequence, and should not serve as a basis to require Sports Entertainment to
3 bring a second, identical action to obtain services for the Northern Parcel.

4 **B. Sports Entertainment has made the Appropriate Requests for Service from**
5 **Perkins Mountain and the SE Property Should be Included in Perkins**
6 **Mountain CC&N Area.**

7 Sports Entertainment has established a need for service and has made the appropriate
8 requests for inclusion in the CC&N area. Perkins Mountain should, therefore, be required to
9 provide services to the SE Property.

10 First, contrary to the claims in Perkins Mountain's Report, Sports Entertainment had plans
11 to develop the SE Property in the near future but has been asked by Rhodes Homes, parent
12 company of Perkins Mountain, to delay those plans. In fact, Sports Entertainment had engineered
13 plans for an RV Park to cover all or part of the SE Property. Before Sports Entertainment could
14 submit them for approval, however, Jim Rhodes of Rhodes Homes asked that Sports
15 Entertainment not move forward with those plans. According to Mr. Rhodes, the SE Property
16 was "the gateway to his city," and any development on the SE Property would significantly
17 impact the look and feel of his master planned community. Sports Entertainment complied with
18 Mr. Rhodes' request that it go back to the proverbial "drawing board" on its plans to develop the
19 SE Property, and is currently working on new plans for a commercial development satisfactory to
20 Mr. Rhodes. That Mr. Rhodes has not yet reviewed Sports Entertainment's new plans for
21 development does not mean that Sports Entertainment has no "imminent" plans to develop the
22 SE Property.

23 Second, Sports Entertainment has made sufficient requests that Perkins Mountain include
24 the SE Property in the CC&N area. *See* Intervenor's Exhibit 1, Subpart B. In fact, and contrary
25 to their claims in the Response, by letter dated June 27, 2005, Perkins Mountain and Rhodes
26 Homes asked for Sports Entertainment's approval to include the Southern Parcel (which is owned
by Sports Entertainment), in Perkins Mountain's Applications. *Id.* Sports Entertainment did not

1 simply sign and return the June 27, 2005 letter as requested, but instead responded with a list of
2 questions and requests for service to Perkins Mountain and Rhodes Homes. *See Id.* at 3. To date,
3 neither company has responded to Sports Entertainment's questions and both have instead chosen
4 to ignore Sports Entertainment. Perkins Mountain's failure to respond to Sports Entertainment
5 does not make Sports Entertainment's request for service any less effective.

6 **III. CONCLUSION.**

7 Sports Entertainment does not oppose Perkins Mountain's Application for CC&Ns to
8 service the Option Property. Sports Entertainment opposes Perkins Mountain's attempts to
9 unnecessarily increase Sports Entertainment's costs to obtain services for the SE Property. Sports
10 Entertainment has plans to develop the SE Property in the near future and has made the
11 appropriate requests for service both within this proceeding, and prior to appearing before this
12 Commission. It is in the public's best interest to require that Perkins Mountain also service the
13 SE Property and Sports Entertainment therefore, respectfully requests that the Commission grant
14 the Applications subject to conditions 10 and 11.

15 RESPECTFULLY SUBMITTED: January 6, 2006.

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