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July 20, 2006

Arizona Corporation Commission
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The Honorable Amy Bjelland
Hearing Division
Arizona Corporation Commission

Parties to the Docket

Re: Perkins Mountain Utility Company, Docket No. SW-20379A-05-0489
Perkins Mountain Water Company, Docket No. W-20380A-05-0490

Dear Judge Bjelland and Parties to the Docket:

Recently, counsel for Perkins Mountain Utility Company and Perkins Mountain Water Company ("Perkins") requested oral argument in this case to resolve a dispute over whether Mr. Jim Rhodes, the owner of these Companies, must provide Staff with state and federal tax returns requested as part of a data request.[1]

I write today to request that an oral argument on the data request dispute include oral argument regarding the issues I raised in my June 19 letter to Perkins counsel and request that a procedural order scheduling the oral argument be issued. In particular, I would like the Parties to address the question of whether Perkins is in violation of ARS § 40-281 by proceeding with the construction and installation of utility infrastructure prior to receiving a CC&N from this Commission.

As you know, pursuant to ARS § 40-281, prior to commencing construction of any plant, line, or utility system, a public service corporation must first obtain a certificate of convenience and necessity from the Arizona Corporation Commission.

In response to my June 13 letter raising questions about this issue, counsel to Perkins stated that it believes it is not a public service corporation pursuant to the terms of the state Constitution, but failed to address directly my questions regarding the application of ARS § 40-281 to Rhodes Homes, LLC. Instead, counsel argues that Rhodes and Perkins are "separate legal entities" and that therefore Rhodes by definition cannot be a public service corporation. However, more recently, Perkins counsel informed the Commission in its request for oral argument regarding the tax record data request that Mr. Rhodes has transferred all of the stock of Perkins Mountain to Rhodes Homes, LLC.[2]

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[1] On July 14, counsel for Perkins filed notice that the Parties are in negotiations on the discovery dispute and no longer desire an oral argument on the matter. Even if this is the case, I maintain my request that oral argument be held on the issues discussed herein.

[2] See Perkins Response to Staff's Motion to Compel and Request for a Protective Order, page 6, line 15.

Among the questions that I believe must be resolved at oral argument is whether the transfer of one hundred percent of Perkins to Rhodes Homes, LLC means that the Applicant before the Commission will now be Rhodes Homes, LLC, as Perkins no longer exists as a separate entity. Should the Commission view Rhodes Homes, LLC as the entity that must demonstrate that it is a fit and proper entity? And I would like the Parties to address whether, regardless of the relationship between these two entities, Rhodes Homes, LLC or Perkins are acting as a public service corporation in violation of ARS § 40-281 by commencing the construction of utility infrastructure.

I believe the Commission should address the question of whether Rhodes Homes, LLC, or Perkins, are acting as a public service corporation as swiftly as possible. I would like both Perkins and Staff, as part of this oral argument, to state the reason(s) they believe Rhodes Homes or Perkins is or is not currently acting as a public service corporation by constructing the water infrastructure that will eventually serve Golden Valley South development, and whether they believe that Perkins or Rhodes Homes, LLC, are currently in violation of ARS § 40-281.

Further, I would request that the oral arguments on this issue include the appropriate response by the Commission should the Commission determine that Perkins or Rhodes Homes are in violation of ARS § 40-281.

Thank you for your attention to this matter. This will be helpful to me in my future consideration of these matters.

Sincerely,

Kris Mayes
Commissioner

Cc: Chairman Jeff Hatch-Miller
Commissioner William A. Mundell
Commissioner Marc Spitzer
Commissioner Mike Gleason
Brian McNeil
Ernest Johnson
Steve Olea
Heather Murphy
Herb Guenther, Director DWR
Mohave County Supervisor Pete Byers
Mohave County Supervisor Tom Sockwell
Mohave County Supervisor Buster Johnson