

ORIGINAL



0000057571

BEFORE THE ARIZONA CORPORATION COMMISSION

25 FD

COMMISSIONERS

2006 JUL 31 P 2:42

Arizona Corporation Commission

DOCKETED

JUL 31 2006

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MIKE GLEASON  
KRISTIN K. MAYES  
BARRY WONG

AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKETED BY [Signature]

IN THE MATTER OF THE APPLICATION OF PERKINS MOUNTAIN UTILITY COMPANY FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY.

DOCKET NO. SW-20379A-05-0489

IN THE MATTER OF THE APPLICATION OF PERKINS MOUNTAIN WATER COMPANY FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY.

DOCKET NO. W-20380A-05-0490

PROCEDURAL ORDER

BY THE COMMISSION:

On July 7, 2005, Perkins Mountain Utility Company ("Perkins Utility") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate" or "CC&N") to provide wastewater service to a master-planned community in Mohave County, Arizona.

On July 7, 2005, Perkins Mountain Water Company ("Perkins Water") filed an application with the Commission for a Certificate to provide water service to a master-planned community in Mohave County, Arizona.

On September 19, 2005, the Commission's Utilities Division Staff ("Staff") filed its Sufficiency Letters indicating that Perkins Utility and Perkins Water (collectively, "the Companies") applications had met the sufficiency requirements of A.A.C. R14-2-402C.

On September 27, 2005, Sports Entertainment filed an Application to Intervene in Docket No. SW-20379A-05-0489 and Docket No. W-20380A-05-0490.

On November 10, 2005, Staff filed its Staff Report.

On November 23, 2005, Perkins Utility and Perkins Water filed a Response to Staff's Report.

On November 29, 2005, Sports Entertainment was granted intervention for both dockets.

On January 31, 2006, a Recommended Opinion and Order was issued in this matter.

1 On February 10, 2006, the Companies filed an Analysis of Adequate Water Supply issued by  
2 the Arizona Department of Water Resources. The filing indicated that legal availability and  
3 continuous availability of the water supply were not proven at the time the letter was issued on  
4 October 19, 2005.

5 On March 6, 2006, the Companies filed a Motion for Expedited Procedural Conference

6 On March 8, 2006, Staff filed its Response to Motion for Expedited Procedural Conference.

7 On March 13, 2006, by Procedural Order, a procedural conference was scheduled for March  
8 17, 2006 and the timeclock was extended. On March 17, 2006, the procedural conference was held  
9 as scheduled to determine how to proceed with this matter in light of new information regarding  
10 water adequacy in the proposed CC&N area.

11 On March 23, 2006, Staff filed Staff's Notice Re: Addendum to Staff Report requesting until  
12 June 30, 2006, to prepare its Addendum to Staff Report.

13 On March 31, 2006, Staff issued its First Set of Data Requests to the Companies and Perkins  
14 Water filed its Amendment to Application for a Certificate of Convenience and Necessity for Perkins  
15 Mountain Water Company ("Amendment"). The Amendment requested a CC&N for a portion of the  
16 service area originally requested and an Order Preliminary for the remainder of the service area  
17 originally requested.

18 On April 13, 2006, by Procedural Order, a procedural schedule was issued, and a hearing was  
19 set for July 31, 2006.

20 On May 3, 2006, the Companies filed Notice of Publication.

21 On June 23, 2006, Staff filed a Motion to Compel, stating that the Companies have failed to  
22 provide adequate responses to two data requests. Staff stated that it has been in contact with the  
23 Companies previously regarding the discovery dispute, but that recent data responses by the  
24 Companies indicate to Staff that they have reached an impasse.

25 On June 26, 2006, Staff filed a request to modify the procedural schedule stating that  
26 additional time is needed to review the documents provided by the Companies in response to Staff's  
27 requests for data.

28

1 On June 28, 2006, by procedural order, the Companies were ordered to file their response to  
2 Staff's Motion to Compel and request to modify procedural schedule by July 6, 2006.

3 On July 6, 2006, the Companies filed their Response to Staff's Motion to Compel and  
4 Request for a Protective Order, and their Response to Staff's Request to Modify Procedural Schedule.  
5 The Companies requested that oral argument be scheduled relating to Staff's Motion to Compel.

6 On July 12, 2006, the parties advised the Administrative Law Judge in this matter that the  
7 parties were working toward a resolution of the discovery dispute that will be satisfactory to both  
8 parties and requested that no further action be taken with regard to the discovery dispute until further  
9 notice by the parties.

10 On July 20, 2006, Commissioner Mayes filed a letter in this docket requesting that oral  
11 argument for the purpose of addressing the discovery dispute also address various other issues  
12 outlined in her letter, including the question of whether the Companies are in violation of A.R.S. §  
13 40-281, and whether the transfer of one hundred percent of the Companies' stock to Rhodes Homes,  
14 LLC means that the Applicant before the Commission should now properly be Rhodes Homes.  
15 Commissioner Mayes requested that the parties address whether either Rhodes Homes, LLC or the  
16 Companies are acting as public service corporations by commencing the construction of utility  
17 infrastructure, and requested responses from Staff at oral argument regarding appropriate  
18 Commission response if a determination is made that A.R.S. §40-281 has been violated.

19 On July 26, 2006, a procedural order was issued ordering oral argument relating to the issues  
20 set forth by Commissioner Mayes in her July 20, 2006 letter and postponing the evidentiary hearing  
21 in this matter, while retaining the schedule for public comment.

22 On July 27, 2006, the Companies docketed an Emergency Request for Continuance of Oral  
23 Argument. This request was granted by procedural order issued on July 28, 2006.

24 On July 31, 2006, a procedural conference was held and public comment was taken. At the  
25 procedural conference, the parties agreed that Staff should have 60 days to file its Staff Report and/or  
26 testimony after notice is given of a resolution of the parties' discovery dispute.

27 At the procedural conference, based on questions raised by Commissioner Mayes and  
28 Commissioner Mundell, a list of issues to be addressed by brief and at oral argument was developed.

1 The issues to be briefed by the parties include:

- 2 1. Who is the Applicant in this case, Rhodes Homes or the  
3 Companies?
- 4 2. Is Rhodes Homes of Arizona acting as a public service corporation  
5 by constructing water infrastructure to serve Golden Valley South?  
6 If yes, is Rhodes Homes of Arizona violating ARS § 40-281?
- 7 3. Are the Companies acting as public service corporations? If yes,  
8 are the Companies violating ARS §40-281?
- 9 4. Are either Rhodes Homes of Arizona or the Companies acting as  
10 public service corporations by supplying water to the design homes  
11 discussed at the procedural conference?
- 12 5. Does the current setup for providing water to the design homes  
13 qualify as a water utility system?
- 14 6. Are there prior examples in Arizona where developers have  
15 constructed water infrastructure for a development before a  
16 Certificate was issued?
- 17 7. Are there prior examples in Arizona where developers have  
18 constructed water infrastructure for a development before a  
19 Certificate was issued and where there was a pending Certificate  
20 for the development area?
- 21 8. What is the standard in Arizona for piercing the corporate veil?
- 22 9. If the Commission were to find that Rhodes Homes of Arizona was  
23 not acting as a public service corporation, is it appropriate for the  
24 Commission to implement ARS § 40-281 in such a way as to allow  
25 the public service corporation to set up an affiliate designed to  
26 bypass the statute?

27 IT IS THEREFORE ORDERED that the parties shall file simultaneous **Opening Briefs**  
28 addressing the issues enumerated above no later than **August 14, 2006**.

IT IS FURTHER ORDERED that the parties, at their option, shall file simultaneous  
**Response Briefs** no later than **August 28, 2006**.

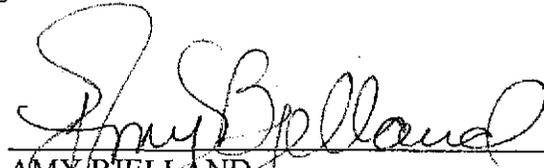
IT IS FURTHER ORDERED that a **procedural conference** for the purpose of **oral**  
**argument** shall be held on **August 30, 2006, at 10:00 a.m.** at the Commission's offices, located at  
1200 West Washington Street, Phoenix, Arizona.

1 IT IS FURTHER ORDERED that upon resolution of the discovery dispute among the parties,  
2 the parties shall file a joint proposal for procedural and hearing schedule that is consistent with the  
3 schedule discussed at the procedural conference.

4 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized  
5 Communications) applies to this proceeding and shall remain in effect until the Commission's  
6 Decision in this matter is final and non-appealable.

7 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive  
8 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

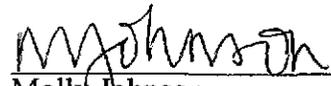
9 DATED this 31 day of July, 2006

10  
11   
12 AMY BJELLAND  
13 ADMINISTRATIVE LAW JUDGE

13 Copies of the foregoing mailed/delivered  
14 this 31 day of July, 2006 to:

15 Robert J. Metli  
16 Kimberly A. Grouse  
17 SNELL & WILMER  
18 One Arizona Center  
19 400 East Van Buren Street  
20 Phoenix, AZ 85004

ARIZONA REPORTING SERVICE, INC.  
2627 N. Third Street, Suite Three  
Phoenix, Arizona 85004-1104

By:   
Molly Johnson  
Secretary to Amy Bjelland

19 Booker T. Evans  
20 Kimberly A. Warshawsky  
21 GREENSBERG TRAUIG  
22 2375 E. Camelback Road, Ste. 700  
23 Phoenix, AZ 85016  
24 Attorneys for Sports Entertainment, LLC

23 Christopher Kempsey, Chief Counsel  
24 Legal Division  
25 ARIZONA CORPORATION COMMISSION  
26 1200 West Washington Street  
27 Phoenix, Arizona 85007

26 Ernest Johnson, Director  
27 Utilities Division  
28 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007