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Director
Utilities Division

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Arizona Corporation Commission
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Date: December 8, 2006

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Re: STAFF REPORT FOR MINGUS PANORAMA ESTATES HOMEOWNERS ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION, APPLICATION FOR ADJUDICATION NOT A PUBLIC SERVICE CORPORATION, DOCKET NO. W-20477A-06-0558

Attached is the Staff Report for Mingus Panorama Estates Home Owners Association's application for adjudication not a public service corporation. Staff recommends the Commission approve the application with conditions.

EGJ:RXL:tdp

Originator: Reg Lopez

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Docket No. W-20477A-06-0558

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**STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

**MINGUS PANORAMA ESTATES HOMEOWNERS ASSOCIATION
AN ARIZONA NON-PROFIT CORPORATION**

DOCKET NO. W-20477A-06-0558

**APPLICATION FOR ADJUDICATION
NOT A PUBLIC SERVICE CORPORATION**

DECEMBER 2006

STAFF ACKNOWLEDGEMENT

The Staff Report for Mingus Panorama Estates Homeowners Association, Docket No. W-20477A-06-0558 was the responsibility of Reg Lopez for the review and analysis of the application. Del Smith was responsible for Staff's Engineering Report.

A handwritten signature in cursive script that reads "Reg Lopez".

Reg Lopez
Public Utilities Consumer Analyst II

A handwritten signature in cursive script that reads "Del Smith".

Del Smith
Engineering Supervisor

EXECUTIVE SUMMARY
MINGUS PANORAMA ESTATES HOMEOWNERS ASSOCIATION
DOCKET NO. W-20477A-06-0558

On September 11, 2006, Mingus Panorama Estates Homeowners Association ("Mingus Panorama" or "Association"), an Arizona Non-Profit Corporation, filed an application for Adjudication Not A Public Service Corporation with the Arizona Corporation Commission ("Commission" or "Staff").

Mingus Panorama is a non-profit association which was established to provide potable water to a proposed subdivision consisting of no more than sixty nine (69) residential lots and several common areas. The subdivision will be a private community in an unincorporated area within Yavapai County, located approximately 1.5 miles east of Cottonwood, Arizona. Mingus Panorama is requesting a determination that it is not a public service corporation.

The criteria to determine that a water provider is not a public service corporation within the meaning of Article XV; Section 2 of the Arizona Constitution was reviewed by the Arizona Supreme Court in Natural Gas Service v. Serv-U Cooperative, Inc. The court provided an eight point review criteria for the Commission to review. Subsequently the Commission issued a policy directive for the evaluation of applications for adjudication not a public service corporation on May 7, 1987, in Decision No. 55568 which consisted of a seven (7) review criteria.

Staff recommends the Commission approve Mingus Panorama's application for adjudication not a public service company subject to the following conditions:

1. That Mingus Panorama file with Docket Control the recorded Codes, Covenants & Restrictions ("CC&R's") for the Association as presented in the application.
2. That Mingus Panorama file with Docket Control, as a compliance item in this docket, a copy of the executed agreement which conveys ownership of the water system to the Association as stated in Article 2.2 of the Association's CC&R's.
3. That Mingus Panorama file with Docket Control, as a compliance item in this docket, revised Bylaws which mirror the wording in Article 5.7.1 and 5.7.2 of the CC&R's which states that "every customer is a member/owner with equal voting rights and that each member is or will be a customer".
4. That Mingus Panorama file with Docket Control, as a compliance item in this docket, a copy of the revised Bylaws which mirror the required criteria found in 2.1 and 2.2 of the CC&R's which states that "the service area involved encompasses a fixed territory which is not within the service area of a municipal utility or public service corporation".

Staff further recommends that the Commission's decision granting this adjudication not a public service company to Mingus Panorama be considered null and void after due process should Mingus Panorama fail to file the required documentation within 18 months of any decision in this matter.

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Introduction

On September 11, 2006, Mingus Panorama Estates Homeowners Association (“Mingus Panorama”) an Arizona Non-Profit Corporation filed an Application for Adjudication Not A Public Service Corporation with the Arizona Corporation Commission (“Commission”).

Mingus Panorama is a non-profit association which was established July 27, 2006, and intends to provide potable water to a proposed private subdivision consisting of no more than 69 residential lots and several common areas. Mingus Panorama will be located approximately 1.5 miles east of Cottonwood, Arizona.

Background

Mingus Panorama was formed for the purpose of representing homeowners who will be residing in an area known as Mingus Panorama Estates subdivision. Mingus Panorama is seeking Commission adjudication that its future water service to the 69 residential lots will not make it a public service corporation for purposes of utility regulation by the Commission.

Mingus Panorama will be serving its members/customers within a 79.72 acre parcel in Yavapai County, located approximately 1.5 miles east of Cottonwood, Arizona. Mingus Panorama has provided engineering plans for the proposed water system (see application’s Exhibit J). Mingus Panorama will address its wastewater via an on-site septic system (also Exhibit J). The respective Covenants, Conditions and Restrictions (“CC&R’s”) section 2.6 addresses the leach field location.

The criteria to determine that a provider is not a public service corporation within the meaning of Article XV; Section 2 of the Arizona Constitution, was reviewed by the Arizona Supreme Court in *Natural Gas Service v. Serv-U Cooperative, Inc.* The Court provided an eight review criteria for the Commission to review.

1. What the corporation actually does.
2. Whether the service is dedicated to public use.
3. That the articles of incorporation evidence authorization and purposes.
4. Whether the corporation is dealing with the service of a commodity in which the public has been generally held to have an interest.
5. Whether the corporation is monopolizing or intending to monopolize a territory with a public service commodity.
6. Whether the corporation is accepting of substantially all requests for service.

7. That service is under contract and reserving the right to discriminate is not always controlling.
8. Whether the corporation will have actual or potential competition with other corporations whose business is clothed with the public interest.

The Commission issued a directive for the evaluation of applications for adjudication not a public service corporation on May 7, 1987, in Decision No. 55568. The Utilities Division Staff ("Staff") was directed to ensure that all such applications complied with the following seven criteria.

1. Adjudication applications must be submitted by non-profit homeowners associations.
2. The application for adjudication not a public service corporation is a bonafide request by a majority of the membership of the association through a petition signed by 51 percent or more of the then existing members.
3. That all such associations making such application have complete ownership of the system and necessary assets.
4. That every customer is a member/owner with equal voting rights and that each member is or will be a customer.
5. That the service area involved encompasses a fixed territory, which is not within the service area of a municipal utility or public service corporation; or if in such territory, that municipal utility or public service corporation is unable to serve.
6. That there is a prohibition against further sub-division evidenced by deed restrictions, zoning, water restrictions or other enforceable governmental regulations.
7. That the membership is restricted to a fixed number of customers, actual or potential.

Compliance to Directive 1 and 2

Mingus Panorama incorporated as a non-profit corporation on July 27, 2006, thus complies with Directive 1.

The developer is the current owner of Mingus Panorama; ownership is under the name of Mingus Panorama Estates Homeowners Association. The developer has not sold any lots in the development; therefore, there are no customers/owners to support or oppose the application. Currently, the developer is acting on behalf of the eventual customers/members as director of the association. Ms. Clara Mak, President of Mingus Panorama, by way of a Certified Resolution dated August 30, 2006, certified that pursuant to action by unanimous written consent of

directors adopted a resolution which approved and supported this application for adjudication. Thus, the application complies with Directive 2.

Non-Compliance to Directive 3

Article 2.2 of the CC&R's for the Association indicates that "Upon completion of construction of the Water System, Declarant for and in consideration of the Association agreeing to provide water service to the Project, shall assign and transfer the Water System to the Association". The Association does not yet have a water system constructed consistent with state regulations for public water systems. Staff recommends that Mingus Panorama file with Docket Control an executed agreement which conveys ownership of the water system to the Association within 18 months of any decision in this matter.

Non-Compliance to Directive 4

Mingus Panorama intends to have two types of membership, with those being Types A and B. The descriptive nature of these memberships is found in Articles 5.7.1 and 5.7.2. of the CC&R's. The Type A is specifically for Water System Matters and meets the required criteria in that every customer is a member/owner with equal voting rights and that each member is or will be an owner. Notwithstanding, Staff is unable to locate this in the Bylaws which exactly mirrors the wording in Article 5.7.1 and 5.7.2 of the CC&R's. Staff therefore recommends the Association be required to amend the proposed Bylaws to make the aforementioned inclusion to the Bylaws which mirror the required criteria. Staff further recommends that the changes be filed with the Commission's Docket Control with the required inclusion within 18 months of any decision in this matter.

Non-Compliance to Directive 5

Articles 2.1 and 2.2 of the CC&R's reflect compliance to this directive but fails to reflect this in Mingus Panorama's Bylaws. Staff therefore recommends the Bylaws be revised to make the required changes which would mirror the required criteria which states that "the service area involved encompasses a fixed territory which is not within the service area of a municipal utility or public service corporation". Staff further recommends that the changes be filed with the Commission's Docket Control with the required inclusion within 18 months of any decision in this matter.

Compliance to Directive 6

The Association prohibits further subdivision of the existing lots as evidenced by Article 3.23 of the Association's CC&R's thus meeting the requirement to this directive.

Compliance to Directive 7

Compliance to Directive 7 is reflected in Item C in the Recitals of the Association's CC&R's which states "Regarding the Domestic Water System, said described Property shall consist of sixty-nine (69) customers, fixed or potential".

Arizona Department of Water Resources ("ADWR")

Mingus Panorama is not within ADWR's Active Management Area and will require a Water Adequacy Report.

Wastewater Treatment

Mingus Panorama's Engineering Plans in Exhibit J and Article 2.6 of the CC&R's indicate the subdivision's wastewater will be addressed via an on-site septic system.

Summary

Mingus Panorama has thus filed proposed CC&R's and Bylaws that comply with four (4) of the Commission's seven (7) criteria for adjudication. Mingus Panorama must thus file documentation to ensure compliance with the remaining criteria within 18 months of any decision in this matter as noted in the *Summary* and *Recommendation* sections of this report. The Association is a non-profit corporation with a resolution from the director/declarant/developer of the Association to request adjudication.

Recommendation

Staff recommends the Commission approve the Mingus Panorama Estates Homeowners Association's application for adjudication not a public service company subject to the following conditions:

1. That Mingus Panorama file with Docket Control the recorded Codes, Covenants & Restrictions ("CC&R's") for the Association as presented in the application.
2. That Mingus Panorama file with Docket Control, as a compliance item in this docket, a copy of the executed agreement which conveys ownership of the water system to the Association as stated in Article 2.2 Association's CC&R's.
3. That Mingus Panorama file with Docket Control, as a compliance item in this docket, revised Bylaws which mirrors the wording in Article 5.7.1 and 5.7.2 of the CC&R's which states that "every customer is a member/owner with equal voting rights and that each member is or will be a customer".

4. That Mingus Panorama file with Docket Control, as a compliance item in this docket, a copy of the revised Bylaws which mirror the required criteria found in 2.1 and 2.2 of the CC&R's which states that "the service area involved encompasses a fixed territory which is not within the service area of a municipal utility or public service corporation".

Staff further recommends that the Commission's decision granting this adjudication not a public service company to Mingus Panorama be considered null and void after due process should Mingus Panorama fail to file the required documentation within 18 months of any decision in this matter.

MEMORANDUM

DATE: November 6, 2006

TO: Reg Lopez
Public Utilities Consumer Analyst
Utilities Division

FROM: Del Smith *DS*
Utilities Engineer Supervisor
Utilities Division

RE: Application of Mingus Panorama Estates Homeowners Association for an
Adjudication Not A Public Service Corporation
(Docket No. W- 20477A-06-0558)

Introduction

Mingus Panorama Estates Homeowners Association (the "Association") filed the reference application on September 1, 2006. The Mingus Panorama Estates Subdivision ("MPE") is a 69 lot residential community that covers approximately 80 acres and is located in northeast Yavapai County in an unincorporated area within the Town of Cornville. More specifically, the Subdivision and proposed adjudication area are located in the southeast corner of Section 35 of Township 16 North, Range 4 East.

The Proposed MPE Water System

MPE is not located within or adjacent to the certificated service area of any public service corporation or municipal domestic water service provider.¹ Oak Creek Public Service, LLC, a public service corporation regulated by the Arizona Corporation Commission ("ACC") is located approximately three miles south of MPE. Water service to MPE lots will be provided by a domestic water system to be owned, operated and maintained by the Association. Murphy Engineering of Show Low, Arizona designed the contemplated domestic water system which will serve MPE and the developer will construct the water system. The proposed MPE system will consist of a well with an expected production rate of 35-45 gallons per minute ("GPM"), booster pumps, pressure tank, water treatment system, chlorination system, 51,300 gallon storage tank and a distribution system to serve 69 residential lots. Also, the system has been designed to accommodate fire flow at 500 GPM for one hour.² Staff concludes that the proposed system will have adequate capacity to serve MPE.

¹ See Application at Page 3, Lines 12 through 14.

² System information contained in Exhibit 1 attached to Applicant's Responses dated October 5, 2006.

Contract Wastewater Operations, LLC³ has been selected to be the certified operator of the MPE system.

Arizona Department of Environmental Quality (“ADEQ”) Compliance

The proposed system is not in operation therefore ADEQ compliance is not available at this time.

The proposed MPE system includes water treatment equipment that will enable the system to deliver water that complies with the new arsenic standard of 10 micrograms per liter.

An application dated July 26, 2006, was filed with ADEQ for an Approval to Construct Drinking Water Facilities.

Arizona Department of Water Resources (“ADWR”) Compliance

MPE does not lie within an Active Management Area.

An application for an Analysis of Adequate Water Supply was filed with ADWR on August 8, 2006.

ACC Compliance

ACC compliance is not applicable at this time.

Conclusions

1. Water service to MPE lots will be provided by a domestic water system to be owned, operated and maintained by the Association. A certified operator has been selected to operate the proposed system.
2. Staff concludes that the proposed system will have adequate capacity to serve MPE.

Recommendations

If MPE is found to be a Public Service Corporation, Staff recommends that the Association file the Water Adequacy Report issued by ADWR for MPE within 18 months of the effective date of the Decision in this matter. Staff further recommends that the Water Adequacy Report be filed with Docket Control, as a compliance item in this docket.

If MPE is found to be a Public Service Corporation, Staff further recommends that the Association file the Approval of Construction (“AOC”) issued by ADEQ for the MPE water facilities within 18 months of the effective date of the Decision in this matter. Staff further recommends that the AOC be filed with Docket Control, as a compliance item in this docket.

³ ADEQ Operator Certification #06736.