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**ORIGINAL**

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission  
**DOCKETED**

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COMMISSIONERS

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JUL 30 2007

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED BY

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 and Perkins Mountain Water Company ("Applicants") filed with the Arizona Corporation Commission ("Commission") applications for Certificates of Convenience and Necessity ("Certificate" or "CC&N") to provide wastewater and water service to a master-planned community in Mohave County, Arizona.

Hearings were held in December, 2005, and again in February and March, 2007, and Briefs were filed in this matter. A number of late-filed documents have also been submitted in the docket since that time.

On July 3, 2007, Commissioner Mundell filed a letter requesting that the record be re-opened and that Mr. Jim Rhodes, and perhaps other persons associated with the Applicants, be required to appear and give sworn testimony with respect to recent news stories regarding alleged payments by Mr. Rhodes to former Clark County, Nevada Commissioner Erin Kenny.

On July 5, 2007, Commissioner Mayes filed a letter concurring with Commissioner Mundell's request to conduct additional hearings regarding the alleged payments to Ms. Kenny.

On July 18, 2007, a Procedural Order was issued directing the Applicants to file a response to the request to re-open the record.

On July 23, 2007, the Applicants filed a Response to the Request to Re-Open the Record.

1 The Applicants oppose re-opening the record on the basis that the record in this proceeding is already  
2 extensive and Mr. Rhodes' connection to Ms. Kenny has no bearing on the Applicants. The  
3 Applicants claim that information regarding the connection between Mr. Rhodes and Ms. Kenny was  
4 included in the Staff Report Addendum, yet no questions were raised about the Rhodes/Kenny  
5 connection during Mr. Rhodes' prior testimony. The Applicants also attached an affidavit from Mr.  
6 Rhodes stating, among other things, that: he is personally acquainted with Ms. Kenny; since early  
7 2003, Ms. Kenny provided consulting services to him (Mr. Rhodes) for compensation on real estate  
8 investment and business strategy and related matters; the consulting services provided by Ms. Kenny  
9 occurred after she left the Clark County Commission; Ms. Kenny is no longer being compensated for  
10 consulting services by Mr. Rhodes or any of the companies he controls; and Ms. Kenny has never  
11 been an employee, director or shareholder of Sagebrush Enterprises, The Rhodes Companies, Rhodes  
12 Homes Arizona, Perkins Mountain Water Company, Perkins Mountain Utility Company, or any  
13 affiliate of those companies.

14 On July 26, 2007, Chairman Gleason filed a letter recommending that the record not be re-  
15 opened and that the Administrative Law Judge should proceed with preparation of a Recommended  
16 Opinion and Order.

17 Based on a review of all of the filings submitted in the docket since the hearings concluded in  
18 March 2007, the record should be re-opened to allow the presentation of additional testimony and  
19 evidence. Certain information has come to light through reports of testimony given during a criminal  
20 trial in Nevada that could not have been known at the time the prior hearings in this matter  
21 concluded, and it is reasonable that the other parties, as well as Commissioners and the  
22 Administrative Law Judge, could have questions that they wish to have answered through sworn  
23 testimony. By re-opening the record, no specific weight is being assigned at this time to the veracity  
24 of any of the reported testimony or statements associated with the Nevada criminal trial. However,  
25 addressing the issues through sworn testimony will afford due process to all parties in the case,  
26 including the Applicants, and will enable the Commission to make an informed decision based on a  
27 full factual record.

28 Although the Applicants, through Mr. Rhodes' affidavit, have attempted to explain and

1 minimize the importance of his relationship with Ms. Kenny, the affidavit may be viewed, in effect,  
2 as a *de facto* re-opening of the record because the affidavit represents testimony for which cross-  
3 examination is necessary for due process purposes. Requiring Mr. Rhodes to return to give sworn  
4 testimony is also entirely consistent with his unequivocal offer, during his prior appearance, to return  
5 to the Commission to testify if asked to do so (Tr. V, 1005-1006). Indeed, in their March 30, 2007  
6 Closing Brief, the Applicants sought to provide assurances of Mr. Rhodes' ongoing availability to  
7 answer questions from the Commission by quoting Mr. Rhodes' testimony during the March 2, 2007  
8 hearing. During his testimony, the following exchange occurred between the Administrative Law  
9 Judge and Mr. Rhodes:

10 Q: On an ongoing basis, if – and lets take a hypothetical example. If  
11 there was to be some significant event involving the water  
12 Applicants where there was an issue that the Commission was  
13 concerned with, would you agree on an ongoing basis to come  
14 back to the Commission at the Commission's request and to testify  
15 or appear before the Commission in order to avoid the legal issue  
of whether the Commission subpoena power reaches beyond or  
would not reach beyond the boundaries of Arizona given that  
you're a Las Vegas resident?

16 A: So your question is would I show up here if you asked me to?

17 Q: Right.

18 A: Absolutely. You bet.

19 Q: You would not attempt to invoke the subpoena power or lack of  
20 the Commission's subpoena power into the future if there was a  
21 need as determined by the Commission for you to appear and talk  
to the Commission or offer testimony?

22 A: If you want me here, you let me know. I'll be here. (*Id.*)  
23

24 IT IS THEREFORE ORDERED that the record in this proceeding shall be re-opened to take  
25 additional testimony and evidence.

26 IT IS FURTHER ORDERED that a **procedural conference shall be scheduled on August 3,**  
27 **2007, at 11:00 a.m.,** at the offices of the Commission, 1200 West Washington, Phoenix, Arizona  
28

1 85007. The purpose of the procedural conference is to discuss scheduling of additional hearings and  
2 other related procedural matters.

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

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

9 DATED this 30<sup>th</sup> day of July, 2007.

10  
11 

12 DWIGHT D. NODES  
13 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

14 Copies of the foregoing mailed/delivered  
15 this 30<sup>th</sup> day of July, 2007 to:

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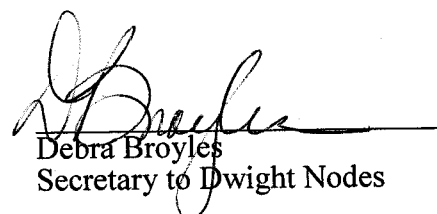
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