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AZ CORP COMMISSION
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Transcript Exhibit(s)

Docket#(s): W-20512A-07-0103

Exhibit #: A1, S1,

Arizona Corporation Commission
DOCKETED

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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

MAY 7 1987

MARCIA WEEKS
Chairman
RENZ D. JENNINGS
Commissioner
DALE H. MORGAN
Commissioner

DOCKETED BY *dmk*

IN THE MATTER OF THE GENERIC)
ISSUE OF ADJUDICATION PRO-)
CEDURES ON THE COMMISSION'S)
OWN MOTION, TO ISSUE A POLICY)
DIRECTIVE FOR FUTURE PRACTICE.)

DOCKET NO. U-87-102

DECISION NO. 55568

Open Meeting
May 6, 1987
Phoenix, Arizona

BY THE COMMISSION:

BACKGROUND AND DISCUSSION

On February 17, 1987, the Arizona Corporation Commission held a Special Meeting to identify and address issues related to the Adjudication not a Public Service process.

By its nature as a constitutional body, the Arizona Corporation Commission must assume regulatory responsibility for public service corporations that provide a service or commodity of a public nature.

The issue of what constitutes a public service corporation was legally addressed in the Arizona Supreme Court's decision in Natural Gas Service vs. Serv-Yu Cooperative, Inc., 70 Ariz. 235, 219 P. 2d 324 (1950), wherein the court set forth the following criteria for determination of a public service corporation:

1. What the corporation actually does.
2. A dedication to public use.
3. Articles of incorporation, authorization and purposes.

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EXHIBIT
A-1
admitted

- 1 4. Dealing with the service of a commodity in which the
- 2 public has been generally held to have an interest.
- 3 5. Monopolizing or intending to monopolize the territory
- 4 with a public service commodity.
- 5 6. Acceptance of substantially all requests for service.
- 6 7. Service under contracts and reserving the right to
- 7 discriminate is not always controlling.
- 8 8. Actual or potential competition with other corporations
- 9 whose business is clothed with public interest.

10 The Court also held that a cooperative could not avoid
11 regulation as a public service corporation by incorporating as a
12 non-profit membership corporation where its purpose was to sell a
13 public commodity to a substantial portion of the public resulting
14 in a monopoly in the business and in competition with a public
15 service corporation already in the field. The Court further held
16 that a corporation's character as a corporation whether it is a
17 public service corporation or otherwise must be determined by
18 what its articles and bylaws authorize it to do rather than by
19 what it is now doing or may do in the future.

20 Since 1976, the Commission has considered numerous
21 applications for adjudication not a public service corporation,
22 but has only issued approximately 37 orders granting an
23 adjudication. The applicants for adjudication were primarily
24 individually formed non profit homeowner associations or
25 cooperatives, who were located in rural areas outside established
26 utility service areas. In November 1982, a developer who had
27 formed a non-profit corporation wherein each property owner
28 become a member/owner of the water system by virtue of his

DECISION NO. 55568

1 ownership in a lot, was adjudicated not a public service
2 corporation with certain restrictions and potential buyer
3 notification guidelines. Subsequently, other developers followed
4 suit in forming homeowner associations and applied for
5 adjudication not a public service.

6 Analysis of adjudication decisions by the different
7 Commissions over the past ten years clearly indicates that there
8 has not been a standard review procedure, nor applied evaluative
9 criteria in determining when applications for adjudication not a
10 public service corporation should be granted.

11 The Arizona Corporation Commission has the constitutional
12 authority and duty to see that utility services under its
13 jurisdiction are provided at a reasonable cost and in an adequate
14 manner. While some utility services are provided outside the
15 Commission's jurisdiction by municipalities and/or homeowner
16 associations, it is expected that judgements of adequate service
17 and reasonable cost will be made by a governing body of the
18 municipality, or private association to which individual
19 customers will have an avenue of appeal and recourse to replace.
20 Thus, the Commission's assessment of the distinction between
21 private and public corporations that provide utility services in
22 adjudication proceedings is critical to ensuring that the public
23 interest is upheld. Therefore, this Commission believes that it
24 would be in the public interest to issue a policy directive on
25 the issue of Adjudication applications to insure consistency.

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DECISION NO. 55568

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BEFORE THE ARIZONA CORPORATION COMMISSION

MARCIA WEEKS
Chairman
RENZ D. JENNINGS
Commissioner
DALE H. MORGAN
Commissioner

COMMISSION POLICY DIRECTIVE TO)
THE UTILITIES DIVISION ON REVIEW)
AND PROCESSING OF APPLICATIONS)
FOR AN ADJUDICATION NOT A PUBLIC)
SERVICE CORPORATION.)

DOCKET NO. U-87-102

DECISION NO. 55568

Open Meeting
May 6, 1987
Phoenix, Arizona

POLICY DIRECTIVE

WHEREAS: The Arizona Corporation Commission finds that there is a need for clarification and guidelines in the matter of evaluating applications requesting an adjudication not a public service corporation. The Commission further finds that processing and consideration of such applications should be conducted in a consistent manner in accordance with its Constitutional responsibility to ensure that the people of Arizona are given the opportunity to receive reasonable and adequate utility services through a reliable source, be it municipal, private or public.

Now therefore, be it resolved that the Utilities Division shall:

(a) investigate and review all applications for adjudication to ensure that:

...

- 1 - adjudication applications must be submitted by
- 2 non-profit homeowner associations
- 3 - the application for adjudication not a public service
- 4 corporation is a bona fide request by a majority of the
- 5 membership of the association through a petition signed
- 6 by 51% or more of the then existing members
- 7 - that all such associations making such application have
- 8 complete ownership of the system and necessary assets
- 9 - every customer is a member/owner with equal voting
- 10 rights and that each member is or will be a customer
- 11 - the service area involved encompasses a fixed territory
- 12 which is not within the service area of a municipal
- 13 utility or public service corporation or if in such
- 14 territory, that municipal utility or public service
- 15 corporation is unable to serve
- 16 - there is a prohibition against further sub-division
- 17 evidenced by deed restrictions, zoning, water
- 18 restrictions or other enforceable governmental
- 19 regulations
- 20 - membership is restricted to a fixed number of customers
- 21 actual or potential
- 22 (b) present its findings to the Commission on such
- 23 applications.

17 The following minimum filing requirements must be submitted by
18 applicant at the time of filing:

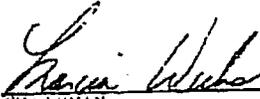
- 19 - an application by the association setting forth all the
- 20 details, and
- 21 - a signed petition by 51% or more of the then existing
- 22 members
- 23 - an executed copy of the Articles of Incorporation,
- 24 - an executed copy of the By-Laws which restrict service
- 25 to a specific area and membership
- 26 - evidence of association ownership of the utility
- 27 assets, including wells and pumps sufficient to serve
- 28 the members' requirements
- a legal description by metes and bounds or CADASTRAL of
- the area to be adjudicated
- a map indicating the area to be adjudicated

DECISION NO. 55568

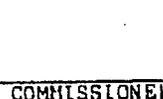
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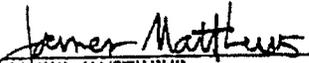
I hereby certify that the foregoing policy directive was duly introduced, passed and adopted at an open meeting of the Arizona Corporation Commission held on the 7 day of May 1987.

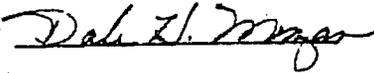
BY ORDER OF THE ARIZONA CORPORATION COMMISSION


CHAIRMAN


COMMISSIONER


COMMISSIONER


JAMES MATTHEWS
Executive Secretary

DISSENT 

WER:IT:jl

DECISION NO. 55568

FILE COPY

MEMORANDUM

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To: Docket Control

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2007 JUL 17 P 4: 00

From: Ernest G. Johnson

Director
Utilities Division *DS*

JUL 18 2007

AZ CORP COMMISSION
DOCKET CONTROL

Date: July 17, 2007

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

Re: **AMENDED** STAFF REPORT FOR EQUESTRIAN ESTATES AT WHITE HILLS WATER COOPERATIVE HOMEOWNERS, AN ARIZONA NON-PROFIT CORPORATION, APPLICATION FOR ADJUDICATION NOT A PUBLIC SERVICE CORPORATION (DOCKET NO. W-20512A-07-0103)

Attached is the **amended** Staff Report for Equestrian Estates at White Hills Water Cooperative Homeowners Association's application for adjudication not a public service corporation. Staff recommends the Commission approve the application with conditions.

The Staff Report has been amended to replace Engineering Report (Attachment A) and correct numerical sequence to 5, 6 and 7 on page 2 reflecting the seven criteria.

EGJ:RL:red

Originator: Reg Lopez



Service List for: Equestrian Estates at White Hills Water Cooperative Homeowners Association
Docket No. W-20512A-07-0103

Mr. Ralph J. McGrath
Equestrian Estates at White Hills Water Cooperative Homeowners Association
10449 East Desert Cove
Scottsdale, Arizona 85259

Mr. William H. Anger
Engelman Berger, P.C.
3636 North Central Avenue, Suite 700
Phoenix, Arizona 85012

Mr. Ernest G. Johnson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Christopher C. Kempley
Chief, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ms. Lyn Farmer
Chief, Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

**AMENDED
STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

**EQUESTRIAN ESTATES AT WHITE HILLS WATER
COOPERATIVE HOMEOWNERS ASSOCIATION,
AN ARIZONA NON-PROFIT CORPORATION**

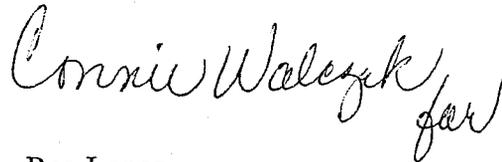
DOCKET NO. W-20512A-07-0103

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

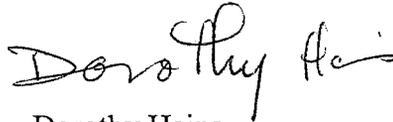
JULY 2007

STAFF ACKNOWLEDGEMENT

The Staff Report for Equestrian Estates at White Hills Water Cooperative Homeowners Association, Docket No. W-20512A-07-0103 was the responsibility of Reg Lopez for the review and analysis of the application. Dorothy Hains 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 "Dorothy Hains".

Dorothy Hains
Utilities Engineer-Water/Wastewater

EXECUTIVE SUMMARY
EQUESTRIAN ESTATES AT WHITE HILLS WATER COOPERATIVE
HOMEOWNERS ASSOCIATION
DOCKET NO. W-20512A-07-0103

On February 17, 2007, Equestrian Estates at White Hills Water Cooperative Homeowners Association ("Equestrian" 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"). On March 9, 2007, a Letter of Insufficiency was docketed and rendered to Equestrian stating that the Applicant's application had not met sufficiency requirements as outlined in Decision No. 55568, dated May 7, 1987. The referenced Decision provides the policy directive for the Utilities Division of the Commission in processing adjudication applications. On April 10, 2007, Equestrian submitted an amended application which replaced the previous application in its entirety. On May 3, 2007, a Letter of Sufficiency was rendered to Equestrian stating that its amended application had met sufficiency requirements as outlined in the above referenced Decision.

Equestrian is a non-profit association which was established to provide potable water to a proposed subdivision consisting of no more than 116 residential lots in the high desert of northern Arizona, between Lake Mead and Lake Mohave in Mohave County. Equestrian's subdivision will encompass all of Section 5, Township 27 North and Range 19 West. The subdivision is located approximately 21 miles east of Hoover Dam and 9 miles north of the Town of Dolan Springs, in Northwest Mohave County. The requested service area is one square mile in size.

Staff recommends the Commission approve Equestrian's application for adjudication not a public service company subject to Equestrian filing 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 page 1 of the Covenants, Conditions and Restrictions.

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

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ATTACHMENT

ENGINEERING REPORT	ATTACHMENT A
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Introduction

On February 17, 2007, Equestrian Estates at White Hills Water Cooperative Homeowners Association ("Equestrian" 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"). On March 9, 2007, a Letter of Insufficiency was docketed and rendered to Equestrian stating that the Applicant's application had not met sufficiency requirements as outlined in Decision No. 55568, dated May 7, 1987. The referenced Decision provides the policy directive for the Utilities Division of the Commission in processing adjudication applications. On April 10, 2007, Equestrian submitted an amended application which replaced the previous application in its entirety. On May 3, 2007, a Letter of Sufficiency was rendered to Equestrian stating that its amended application had met sufficiency requirement as outlined in the above referenced Decision.

Equestrian is a non-profit association which was established to provide potable water to a proposed subdivision consisting of no more than 116 residential lots in the high desert of northern Arizona, between Lake Mead and Lake Mohave in Mohave County. Equestrian's subdivision will encompass all of Section 5, Township 27 North and Range 19 West.

Background

Equestrian was formed for the purpose of representing homeowners who will be residing in an area known as Equestrian Estates At White Hills Water Cooperative Homeowners Association. Equestrian is seeking Commission adjudication that its future water service to the 116 residential lots will not make it a public service corporation for purposes of utility regulation by the Commission.

Equestrian has provided engineering plans for the proposed water system as shown in the application's Exhibit B. Equestrian will address its wastewater via an on-site septic system per legal counsel's letter dated and docketed April 25, 2007, referenced in Exhibit B.

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 eight 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 subsequently issued a directive for the evaluation of applications for adjudication not a public service corporation on May 7, 1987, in Decision No. 55568. The 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.
7. That there is a prohibition against further sub-division evidenced by deed restrictions, zoning, water restrictions or other enforceable governmental regulations.
8. That the membership is restricted to a fixed number of customers, actual or potential.

Compliance to Directive 1 and 2

Equestrian incorporated as a non-profit corporation on March 9, 2007, thus complies with Directive 1.

Equestrian is owned by White Hills Development, LLC. The developer has not sold any lots in the development; therefore, there are no customers/owners to support or oppose the application. Currently, the Board of Directors ("Board") is acting on behalf of the eventual

customer/members and has appointed Mr. Ralph J. McGrath, President/Treasurer and Managing Member, to represent the Association by way of a Certified Resolution ("Resolution") dated March 23, 2007. The Resolution provides written consent by the Board supporting this application for adjudication. Thus, the application complies with Directive 2.

Non-Compliance to Directive 3

The first page of the Amended Covenants, Conditions and Restrictions ("CC&R's") reflects the conveyance of the system and necessary assets to the Association upon a decision by the Commission, adjudicating the Association not a public service corporation. Equestrian will be required to file with Docket Control the required documentation as stipulated in the CC&R's within the time frame specified in Staff's Recommendation.

Compliance to Directive 4

Directive states that "every customer is a member/owner with equal voting rights and that each member is or will be a customer". The Association's Bylaws, page 1 and the CC&R's pages 1 and 2 reflect compliance to this directive.

Compliance to Directive 5

Directive states "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". The Association's Bylaws, page 1 and the CC&R's page 1 reflect compliance to this directive.

Compliance to Directive 6

Directive states "there is a prohibition against further sub-division evidenced by deed restrictions, zoning, water restrictions or other enforceable governmental regulations". The CC&R's page 4, Item No. 12, reflects compliance to this directive.

Compliance to Directive 7

Directive states "membership is restricted to a fixed number of customers actual or potential". The Association's CC&R's page 2, Item No.3, reflects compliance to this directive.

Arizona Department of Water Resources ("ADWR")

Equestrian is not within ADWR's Active Management Area.

Wastewater Treatment

Equestrian's engineering plans in Exhibit B reflect the use of a septic system as does Equestrian's legal counsel's letter dated and docketed April 25, 2007.

Summary

Equestrian has filed CC&R's and Bylaws that comply with six (6) of the Commission's seven (7) criteria for adjudication. Equestrian 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 Equestrian application for adjudication not a public service company subject to Equestrian filing 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 page 1 of the CC&R's.

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

MEMORANDUM

DATE: July 12, 2007

TO: Reg Lopez
Consumer Analyst II

FROM: Dorothy Hains, P. E. *DH*
Utilities Engineer

RE: Adjudication Application for Equestrian Estates at White Hills Water Cooperative, Inc. (Docket No. W-20512A-07-0103)

I. Introduction

Equestrian Estates at White Hills Water Cooperative Homeowner's Association (the "Association") has submitted an Adjudication application to provide water service to Equestrian Estates at White Hills Subdivision ("Subdivision"). The Subdivision is located approximately 21 miles east of the Hoover Dam and 9 miles north of the Town of Dolan Springs, in Northwest Mohave County. The requested service area is approximately one square mile in size.

II. System Analysis**A. Water System**

The Association proposes a water system that will consist of one well (DWR #55-902005) producing 75 gallons per minute ("GPM"), a McPhee's ArsenX^{NP} treatment plant, a chlorinator, one storage tank (approximately 83,000 gallons in size), a three pump booster station (including two fire flow pumps), four 220 gallon pressure tanks and a distribution system to serve 116 customers at Subdivision build-out. The system is designed to meet fire flow demand per Lake Mohave Fire Department requirements.

Staff concludes that the proposed water system will have adequate production and storage capacity to serve the requested area at Subdivision build-out.

B. Wastewater System

An individual septic tank system for wastewater treatment and disposal for each lot is planned. Each lot is approximately 5 acres in size which is adequate for a septic tank system.

III. Estimated Construction Cost

The Association estimates that the cost of installing the proposed water system will be approximately 1.1 million dollars. This estimated cost appears reasonable.

IV. Water Quality Issues

Initial water quality test results for the new well indicated high levels of both arsenic and chromium in the groundwater. A concentration of 9 parts per billion ("ppb") was recorded for arsenic which exceeds the "alert" level of 8 ppb. Test results for the chromium contaminant exceeded its maximum contaminant level. To ensure ongoing compliance with water quality standards, the Association plans to utilize a McPhee ArsenX^{np} treatment plant which, according to the vendor, is capable of removing both arsenic and chromium containments from the groundwater.

V. Arizona Department of Environmental Quality ("ADEQ") Compliance

ADEQ issued a Certificate of Approval To Construct for the proposed water system on December 22, 2006. The proposed system is not in operation therefore ADEQ compliance is not available at this time.

VI. Arizona Department of Water Resources ("ADWR") Compliance

The Association does not lie within an Active Management Area. ADWR has not issued a Designation of Adequate Water Supply for the Association yet.

VII. ACC Compliance

ACC compliance is not applicable at this time.

VIII. Summary

Conclusions

1. Water service to the Subdivision lots will be provided by a domestic water system to be owned, operated and maintained by the Equestrian Estates at White Hills Water Cooperative Homeowner's Association.
2. Staff concludes that the proposed water system will have adequate production and storage capacity to serve the requested area at Subdivision build-out

IX. Recommendations

Staff recommends that the Association file the Analysis of Adequate Water Supply issued by ADWR for Equestrian Estates At White Hills Subdivision prior to the issuance of a Certificate of Convenience and Necessity. Staff further recommends that the Water Adequacy Report be filed with Docket Control as a compliance item in this docket.

If Equestrian Estates at White Hills Water Cooperative Homeowner's Association is found to be a Public Service Corporation, also Staff further recommends that the Association file the Approval of Construction ("AOC") issued by ADEQ for the Equestrian Estates at White Hills Subdivision 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.

FILE COPY MEMORANDUM

LEGAL

To: Docket Control

From: Ernest G. Johnson
Director
fer Utilities Division

Date: June 27, 2007

Re: STAFF REPORT FOR EQUESTRIAN ESTATES AT WHITE HILLS WATER COOPERATIVE HOMEOWNERS, AN ARIZONA NON-PROFIT CORPORATION, APPLICATION FOR ADJUDICATION NOT A PUBLIC SERVICE CORPORATION, DOCKET NO. W-20512A-07-0103

Attached is the Staff Report for Equestrian Estates at White Hills Water Cooperative Homeowners Association's application for adjudication not a public service corporation. Staff recommends the Commission approve the application with conditions.

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Originator: Reg Lopez

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JUN 27 2007

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

Service List for: Equestrian Estates at White Hills Water Cooperative Homeowners Association
Docket No. W-20512A-07-0103

Mr. Ralph J. McGrath
Equestrian Estates at White Hills Water Cooperative Homeowners Association
10449 East Desert Cove
Scottsdale, Arizona 85259

Mr. William H. Anger
Engelman Berger, P.C.
3636 North Central Avenue, Suite 700
Phoenix, Arizona 85012

Mr. Ernest G. Johnson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Christopher C. Kempley
Chief, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ms. Lyn Farmer
Chief, Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

**STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

**EQUESTRIAN ESTATES AT WHITE HILLS WATER COOPERATIVE
HOMEOWNERS ASSOCIATION
AN ARIZONA NON-PROFIT CORPORATION**

DOCKET NO. W-20512A-07-0103

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

JUNE 27, 2007

STAFF ACKNOWLEDGEMENT

The Staff Report for Equestrian Estates at White Hills Water Cooperative Homeowners Association, Docket No. W-20512A-07-0103 was the responsibility of Reg Lopez for the review and analysis of the application. Dorothy Hains was responsible for Staff's Engineering Report.

A handwritten signature in cursive script that reads "Connie Walask" followed by a flourish.

Reg Lopez
Public Utilities Consumer Analyst II

A handwritten signature in cursive script that reads "Dorothy Hains".

Dorothy Hains
Utilities Engineer-Water/Wastewater

EXECUTIVE SUMMARY
EQUESTRIAN ESTATES AT WHITE HILLS WATER COOPERATIVE
HOMEOWNERS ASSOCIATION
DOCKET NO. W-20512A-07-0103

On February 17, 2007, Equestrian Estates at White Hills Water Cooperative Homeowners Association ("Equestrian" 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"). On March 9, 2007, a Letter of Insufficiency was docketed and rendered to Equestrian stating that the Applicant's application had not met sufficiency requirements as outlined in Decision No. 55568, dated May 7, 1987. The referenced Decision provides the policy directive for the Utilities Division of the Commission in processing adjudication applications. On April 10, 2007, Equestrian submitted an amended application which replaced the previous application in its entirety. On May 3, 2007, a Letter of Sufficiency was rendered to Equestrian stating that its amended application had met sufficiency requirements as outlined in the above referenced Decision.

Equestrian is a non-profit association which was established to provide potable water to a proposed subdivision consisting of no more than 116 residential lots in the high desert of northern Arizona, between Lake Mead and Lake Mohave in Mohave County. Equestrian's subdivision will encompass all of Section 5, Township 27 North and Range 19 West. The subdivision is located approximately 21 miles east of Hoover Dam and 9 miles north of the Town of Dolan Springs, in Northwest Mohave County. The requested service area is one square mile in size.

Staff recommends the Commission approve Equestrian's application for adjudication not a public service company subject to Equestrian filing 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 page 1 of the Covenants, Conditions and Restrictions.

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

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ATTACHMENT

ENGINEERING REPORT.....ATTACHMENT A

Introduction

On February 17, 2007, Equestrian Estates at White Hills Water Cooperative Homeowners Association ("Equestrian" 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"). On March 9, 2007, a Letter of Insufficiency was docketed and rendered to Equestrian stating that the Applicant's application had not met sufficiency requirements as outlined in Decision No. 55568, dated May 7, 1987. The referenced Decision provides the policy directive for the Utilities Division of the Commission in processing adjudication applications. On April 10, 2007, Equestrian submitted an amended application which replaced the previous application in its entirety. On May 3, 2007, a Letter of Sufficiency was rendered to Equestrian stating that its amended application had met sufficiency requirement as outlined in the above referenced Decision.

Equestrian is a non-profit association which was established to provide potable water to a proposed subdivision consisting of no more than 116 residential lots in the high desert of northern Arizona, between Lake Mead and Lake Mohave in Mohave County. Equestrian's subdivision will encompass all of Section 5, Township 27 North and Range 19 West.

Background

Equestrian was formed for the purpose of representing homeowners who will be residing in an area known as Equestrian Estates At White Hills Water Cooperative Homeowners Association. Equestrian is seeking Commission adjudication that its future water service to the 116 residential lots will not make it a public service corporation for purposes of utility regulation by the Commission.

Equestrian has provided engineering plans for the proposed water system as shown in the application's Exhibit B. Equestrian will address its wastewater via an on-site septic system per legal counsel's letter dated and docketed April 25, 2007, referenced in Exhibit B.

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 eight 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 subsequently issued a directive for the evaluation of applications for adjudication not a public service corporation on May 7, 1987, in Decision No. 55568. The 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.
7. That there is a prohibition against further sub-division evidenced by deed restrictions, zoning, water restrictions or other enforceable governmental regulations.
8. That the membership is restricted to a fixed number of customers, actual or potential.

Compliance to Directive 1 and 2

Equestrian incorporated as a non-profit corporation on March 9, 2007, thus complies with Directive 1.

Equestrian is owned by White Hills Development, LLC. The developer has not sold any lots in the development; therefore, there are no customers/owners to support or oppose the application. Currently, the Board of Directors ("Board") is acting on behalf of the eventual

customer/members and has appointed Mr. Ralph J. McGrath, President/Treasurer and Managing Member, to represent the Association by way of a Certified Resolution ("Resolution") dated March 23, 2007. The Resolution provides written consent by the Board supporting this application for adjudication. Thus, the application complies with Directive 2.

Non-Compliance to Directive 3

The first page of the Amended Covenants, Conditions and Restrictions ("CC&R's") reflects the conveyance of the system and necessary assets to the Association upon a decision by the Commission, adjudicating the Association not a public service corporation. Equestrian will be required to file with Docket Control the required documentation as stipulated in the CC&R's within the time frame specified in Staff's Recommendation.

Compliance to Directive 4

Directive states that "every customer is a member/owner with equal voting rights and that each member is or will be a customer". The Association's Bylaws, page 1 and the CC&R's pages 1 and 2 reflect compliance to this directive.

Compliance to Directive 5

Directive states "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". The Association's Bylaws, page 1 and the CC&R's page 1 reflect compliance to this directive.

Compliance to Directive 6

Directive states "there is a prohibition against further sub-division evidenced by deed restrictions, zoning, water restrictions or other enforceable governmental regulations". The CC&R's page 4, Item No. 12, reflects compliance to this directive.

Compliance to Directive 7

Directive states "membership is restricted to a fixed number of customers actual or potential". The Association's CC&R's page 2, Item No.3, reflects compliance to this directive.

Arizona Department of Water Resources ("ADWR")

Equestrian is not within ADWR's Active Management Area.

Wastewater Treatment

Equestrian's engineering plans in Exhibit B reflect the use of a septic system as does Equestrian's legal counsel's letter dated and docketed April 25, 2007.

Summary

Equestrian has filed CC&R's and Bylaws that comply with six (6) of the Commission's seven (7) criteria for adjudication. Equestrian 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 Equestrian application for adjudication not a public service company subject to Equestrian filing 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 page 1 of the CC&R's.

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

MEMORANDUM

DATE: May 7, 2007

TO: Reg Lopez
Consumer Analyst II

FROM: Dorothy Hains, P. E. DH
Utilities Engineer

RE: Adjudication Application for Equestrian Estates at White Hills Water Cooperative, Inc. (Docket No. W-20512A-07-0103)

I. Introduction

Equestrian Estates at White Hills Water Cooperative Homeowner's Association (the "Association") has submitted an Adjudication application to provide water service to Equestrian Estates at White Hills Subdivision ("Subdivision"). The Subdivision is located approximately 21 miles east of the Hoover Dam and 9 miles north of the Town of Dolan Springs, in Northwest Mohave County. The requested service area is approximately one square mile in size.

II. System Analysis

A. Water System

The Association proposes a water system that will consist of one well (DWR #55-902005) producing 75 gallons per minute ("GPM"), a McPhee's ArsenX^{np} treatment plant, a chlorinator, one storage tank (approximately 83,000 gallons in size), a three pump booster station (including two fire flow pumps), four 220 gallon pressure tanks and a distribution system to serve 116 customers at Subdivision build-out. The system is designed to meet fire flow demand per Lake Mohave Fire Department requirements.

Staff concludes that the proposed water system will have adequate production and storage capacity to serve the requested area at Subdivision build-out.

B. Wastewater System

An individual septic tank system for wastewater treatment and disposal for each lot is planned. Each lot is approximately 5 acres in size which is adequate for a septic tank system.

III. Estimated Construction Cost

The Association estimates that the cost of installing the proposed water system will be approximately 1.1 million dollars. This estimated cost appears reasonable.

IV. Water Quality Issues

Initial water quality test results for the new well indicated high levels of both arsenic and chromium in the groundwater. A concentration of 9 parts per billion ("ppb") was recorded for arsenic which exceeds the "alert" level of 8 ppb. Test results for the chromium contaminant exceeded its maximum contaminant level. To ensure ongoing compliance with water quality standards, the Association plans to utilize a McPhee ArsenX^{np} treatment plant which, according to the vendor, is capable of removing both arsenic and chromium containments from the groundwater.

V. Arizona Department of Environmental Quality ("ADEQ") Compliance

ADEQ issued a Certificate of Approval To Construct for the proposed water system on December 22, 2006. The proposed system is not in operation therefore ADEQ compliance is not available at this time.

VI. Arizona Department of Water Resources ("ADWR") Compliance

The Association does not lie within an Active Management Area. ADWR has not issued a Designation of Adequate Water Supply for the Association yet. Staff recommends that the Association file the Water Adequacy Report issued by ADWR for Equestrian Estates At White Hills Subdivision 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.

VII. ACC Compliance

ACC compliance is not applicable at this time.

VIII. Summary

Conclusions

1. Water service to the Subdivision lots will be provided by a domestic water system to be owned, operated and maintained by the Equestrian Estates at White Hills Water Cooperative Homeowner's Association.

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2. Staff concludes that the proposed water system will have adequate production and storage capacity to serve the requested area at Subdivision build-out

IX. Recommendations

If Equestrian Estates at White Hills Water Cooperative Homeowner's Association is found to be a Public Service Corporation, Staff recommends that the Association file the Analysis of Adequate Water Supply issued by ADWR for Equestrian Estates At White Hills Subdivision prior to the issuance of a Certificate of Convenience and Necessity.

If Equestrian Estates at White Hills Water Cooperative Homeowner's Association 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 Equestrian Estates at White Hills Subdivision 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.