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2007 AUG 27 P 2: 20

AZ CORP COMMISSION
DOCKET CONTROL

8 *Attorneys for Intervenors*

BEFORE THE ARIZONA CORPORATION COMMISSION

10 In the matter of

DOCKET NO.: S-20484A-06-0669

11 AGRA-TECHNOLOGIES, INC. (a/k/a
12 ATI), a Nevada Corporation, 5800 North
13 Dodge Avenue, Bldg. A, Flagstaff, Arizona
14 86004-2963;

REPLY RE APPLICATION TO
INTERVENE

15 WILLIAM JAY PIERSON (a/k/a BILL
16 PIERSON), and SANDRA LEE PIERSON
17 (a/k/a SANDY PIERSON), husband and
18 wife, 6710 Lynx Lane Flagstaff, Arizona
19 86004-1404;

(Administrative Law Judge Marc Stern)

Oral Argument Requested

20 RICHARD ALLEN CAMPBELL (a/k/a
21 DICK CAMPBELL), and SONDRRA JANE
22 CAMPBELL, husband and wife, 8686 West
23 Morten Avenue, Glendale, Arizona 85305-
24 3940;

25 WILLIAM H. BAKER, JR (a/k/a BILL
26 BAKER), and PATRICIA M. BAKER,
27 3027 N. Alta Vista, Flagstaff, Arizona
28 86004;

JERRY JOHNSTON HODGES, 1858
Gunlock Court Saint George, Utah 84790-
6705; and

LAWRENCE KEVIN PAILLE (a/k/a
LARRY PAILLE), 220 Pinon Woods Drive,
Sedona, Arizona 86351-6902;

Respondents.

Arizona Corporation Commission
DOCKETED

AUG 27 2007

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1 Applicants for intervention hereby reply to the response filed by the Securities
2 Division ("Division") of the Arizona Corporation Commission ("Commission") to the
3 Application to Intervene.

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 Argument

6 A. Applicants are Directly and Substantially Affected by the Administrative 7 Proceedings and Should be Permitted to Intervene.

8 The Division argues that the Commission "does not have any jurisdiction to
9 adjudicate the *individual and private rights* of the Petitioners [sic] in the instant regulatory
10 action." Response at p. 3. However, that is not the test for intervention under the
11 Commission's rules. The issue for intervention is not the individual and private rights of the
12 Applicants, rather, whether they "are directly and substantially affected by the proceedings."
13 A.C.C. R14-3-105.

14 It cannot be seriously argued that the Applicants will not be directly and substantially
15 affected by the hearing on the order to cease and desist. The Applicants' participation in the
16 Ore Rights and Mining Project of Agra-Technologies Inc. ("ATI") exceeds several million
17 dollars. The hearing, as framed by the Division, will determine whether the ore contracts
18 purchased by Applicants and others (referred to as "Units" in the Division's Response)
19 constitute securities and whether the offer and sale of those Units constitute the offer and
20 sale of unregistered securities by unregistered dealers or salesmen. The hearing will also
21 determine whether fraud was committed in the offer and sale of the Units. *First Amended*
22 *Temporary Order To Cease and Desist and Notice of Opportunity For Hearing ("Amended*
23 *Order") pages 22-26.* The Division requests relief in the form of a permanent cease and
24 desist order, which includes the offer and sale of the Units, restitution and penalties. *Id. at*
25 *page 27.*

26 How can the Applicants not be directly and substantially affected if restitution is
27 ordered and if substantial penalties are imposed against ATI? Undoubtedly, such an order
28 would effectively bring ATI's business operations to a halt. The development and

1 processing of mineral aggregate material, pursuant to Applicants' Ore Rights and Mining
2 Agreements, would be discontinued and the Applicants would lose their entire financial
3 commitments as well as their right to the mineral aggregate purchased pursuant to their
4 contracts. Applicants have clearly met the burden of being directly and substantially affected
5 by the hearing.

6 **B. Applicants' Personal Knowledge Regarding the Allegations in Dispute Is**
7 **Not Only Relevant But Cannot Be Adequately Presented by the Parties to the**
8 **Regulatory Action.**

9 The Applicants are most interested in assuring that the hearing is conducted fairly,
10 and with due process and that the record contains all the relevant evidence and testimony
11 necessary for a reasoned, supportable and just decision. None of the Applicants has been
12 asked to be a witness at the hearing, none has been contacted by the Division, and they have
13 no reason to believe that their testimony or evidence will be presented.

14 Applicants do not agree that this proceeding is an "investigation" as asserted by the
15 Division. *Response at page 4.* Nowhere in the Amended Order does the Division assert its
16 allegations upon information and belief. All of its allegations are based on "fact"¹ and its
17 violations are findings. This matter ceased to be an investigation when the Commission
18 issued the Temporary Order To Cease and Desist and Notice of Opportunity for Hearing and
19 subsequently, the Amended Order. Surely, the Commission had evidence to support its
20 "facts" and findings at the time of serving the original order and the Amended Order.
21 Further "investigation" in the form of examinations under oath is nothing more than
22 discovery.

23 The Commission's statutory authority to investigate, pursuant to A.R.S. § 44-1822,
24 ended when it made its determination in the original order and in the Amended Order that
25 Respondents violated the provisions of A.R.S. § § 44-1801, *et seq.* ("The commission, the
26 director or other agent or agents designated by the commission may make such public or
27 private investigations . . . as the commission deems necessary to determine whether any

28 ¹ Section III of the Amended Order is captioned with the heading "FACTS."

1 person has violated . . . any provision of this chapter or any rule or order hereunder . . ."
2 A.R.S. § 44-1822.

3 The Division believes that it can conduct examinations under oath of witnesses
4 without attendance of parties or others² and use the evidence obtained in a contested
5 proceeding. Applicants do not agree to submitting to such examinations that they believe to
6 be unfair and a violation of due process for the Respondents.

7 Examinations under oath are formal interviews in investigative proceedings. See
8 A.C.C. R14-4-302.1. ("Formal interview" means the examination under oath of an individual
9 compelled or requested to testify as part of an investigation or examination.") The hearing
10 which is the subject of Applicants' Application to Intervene is not an investigation, rather, it
11 is a contested proceeding. Nowhere in the Securities Act, the Commission's rules and
12 regulations, or elsewhere is an investigation defined as including hearings based on orders
13 issued by the Commission. Once the Respondents requested a hearing on the Amended
14 Order, the proceeding became contested and subject to due process requirements. *Sulger v.*
15 *Arizona Corporation Commission*, 5 *Ariz. App.* 69, 73, 423 P.2d 145, 149 (1967) (*due*
16 *process prohibits the state from acting arbitrarily in its proceedings*); and A.C.C. R14-3-
17 101.A. ("In all cases in which procedure is set forth neither by law, nor by these rules, nor
18 by regulations or orders of the Commission, the Rules of Civil Procedure for the Superior
19 Court of Arizona as established by the Supreme Court of the state of Arizona shall govern.")
20 and A.R.S. § 41-1062.³ See generally 73 C.J.S. § 123, *Public Administrative Law and*
21 *Procedure* (Westlaw 2007) (*due process of law requirements apply to administrative bodies*
22 *and their proceedings*); *Broadhead v. Arizona Bd. of Pardons and Paroles*, 151 *Ariz.* 37, 42,
23 725 P.2d 744, 749 (Ct. App. 1986) (*procedural due process rights violated by refusal to*
24 *administer oaths or affirmation to witnesses in contested proceeding*), *overruled on other*
25 *grounds* 154 *Ariz.* 476, 744 P.2d 3 (1987).

26 ² Undersigned counsel requested permission to attend the examination under oath of Respondent William Baker pending
27 a ruling on the Application. His request was denied based on A.C.C. R14-4-304.E.

28 ³ The provisions of the Article 6 of the Administrative Procedure Act ("APA") specifically provide that a hearing officer
may order prehearing depositions. Nowhere in the APA or the Rules of Civil Procedure can depositions be permitted
without all parties presence.

1 **ORIGINAL AND THIRTEEN (13) COPIES**
2 of the foregoing hand-delivered this 27th day of August,
2007, to:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, AZ 85007

7 **ONE COPY** of the foregoing hand-delivered
8 this 27th day of August 2007, to:

9 Marc Stern, ALJ
10 Arizona Corporation Commission
11 1200 West Washington
12 Phoenix, AZ 85007

13 **ONE COPY** of the foregoing hand-delivered
14 and electronically mailed this 27th day
15 of August 2007, to:

16 Securities Division
17 Arizona Corporation Commission
18 Attn: Julie Coleman, Esq., Mike Dailey, Esq., Mark Dinell, Esq.
19 1300 West Washington, Third Floor
20 Phoenix, AZ 85007

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