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OPEN MEETING ITEM

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Arizona Corporation Commission

DOCKETED

2002 MAR -6 A 9:12

TO: THE COMMISSION

FROM: Utilities Division

MAR 06 2002

AZ CORP COMMISSION  
DOCUMENT CONTROL

DATE: March 5, 2002

DOCKETED BY	<i>mal</i>
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RE: APPROVAL OF SETTLEMENT AGREEMENT INVOLVING LITIGATION AGAINST DESERT MOUNTAIN PLUMBING FOR UNDERGROUND FACILITIES VIOLATIONS - A.R.S. §§ 40-360.21 to 40-360.32 (DOCKET NO. RG-00000A-01-0951).

This matter comes before the Arizona Corporation Commission ("Commission") to approve a settlement agreement between it and Mark Stewart doing business as Desert Mountain Plumbing. Commission Staff ("Staff") would request that this Commission allow Staff to settle this matter currently before the East Phoenix No. 1 Justice Court. A copy of the Settlement Agreement has been attached as Exhibit A herein.

On October 18, 2001, Desert Mountain Plumbing personnel were excavating on Ocotillo Road near Hawes Road in Queen Creek, Arizona. Prior to, and while excavating (horizontal boring) north and south across Ocotillo Road, Desert Mountain Plumbing failed to determine the exact location of a 4-inch high pressure (HP) gas line main owned and operated by Southwest Gas Corporation. This 4-inch HP gas line main had been previously marked in accordance with Arizona law § 40-360.22(B). Desert Mountain Plumbing is in violation of A.R.S. § 40-360.23(A) by failing to excavate in a careful and prudent manner. To wit: Desert Mountain Plumbing failed to manually determine the exact location of the located and marked facility, therefore, the facility was not uncovered and no means of support or protection was provided.

Commission Office of Pipeline Safety ("OPS") had attempted to negotiate resolutions prior to filing a complaint. Defendant did not accept OPS' offer and Staff initiated proceedings to file this Complaint in Justice Court in accordance with the Underground Facilities Laws (A.R.S. §§ 40-360.21 to 40-360.32). The Commission approved authority to file a complaint against Defendant on the December 18, 2001 Open Meeting. A complaint was filed in East Phoenix No. 1 Justice Court on January 23, 2002. Per Defendant's Counsel, Defendant is now able to pay \$2,000, the full fine in the Settlement Agreement, in two installments, both within two months of the Commission approving the Settlement Agreement. Defendant cites a prior inability to pay as the chief reason why it could not settle prior to this time.

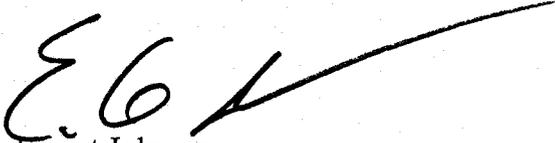
Per the Settlement Agreement, Defendant agrees to pay \$1,000 on or before April 1, 2002 and \$1,000 on or before May 1, 2002. Each party would bear its own costs and Attorney's fees. The maximum fine per A.R.S. § 40-360.28, should the case be ruled in favor of the Commission, would be five thousand dollars. There is no statutory minimum fine. Defendant, per OPS, does not have any prior violations. Settlement of this case would end this litigation and make certain a \$2,000 fine against Defendant for its actions in this case. Defendant's actions in this case did not

THE COMMISSION

March 5, 2002

Page 2

actually damage any facilities. For those reasons, Staff believes that the attached agreement is in the public interest and should be approved.

A handwritten signature in black ink, appearing to be 'E. Johnson', with a long horizontal stroke extending to the right.

Ernest Johnson  
Director  
Utilities Division

EGJ:TF:ev/JDG

Originator: Terry Fronterhouse

SERVICE LIST FOR:

DESERT MOUNTAIN PLUMBING SETTLEMENT

DOCKET NO.

RG-00000A-01-0951

Mark Stewart  
Desert Mountain Plumbing  
25617 South Hawes Road  
Queen Creek, Arizona 85242

John David Sittu, Esq.  
Brebner & Kellers, PC  
3550 North Central Ave., Suite 1806  
Phoenix, AZ 85012-2114

**EXHIBIT A**

**SETTLEMENT AGREEMENT**

## SETTLEMENT AGREEMENT

**THIS AGREEMENT** is made this \_\_\_\_th day of \_\_\_\_\_, 2002, by and between the Arizona Corporation Commission ("Plaintiff") and Mark Stewart doing business as Desert Mountain Plumbing ("Defendant").

In order to resolve this matter, Defendant agrees to pay \$1,000.00 on or before April 1, 2002 and another \$1,000.00 on or before May 1, 2002 to be deposited in the general fund in accordance with A.R.S. § 40-360.28. This Settlement Agreement shall be maintained by Plaintiff, Arizona Corporation Commission, as a public record of resolution of this case. In consideration of Defendant's Agreement above, Plaintiff hereby shall agree to dismiss this claim with prejudice. Each party will bear its own costs and attorney's fees.

By this Agreement, Defendant has not admitted to any fault by payment or otherwise.

The parties hereby agree that all claims herein and arising out of an excavation that occurred on or about October 18, 2001, near Ocotillo Road and Hawes Road in Queen Creek, Arizona, are hereby settled upon execution of this Agreement. This Settlement Agreement is limited to the facts and circumstances arising from this incident only.

The Agreement is three pages long, comprising this page, a second page signed by Plaintiff's authorized representative, and a third page signed by Defendant. This Agreement may be executed in multiple counterparts, and each such counterpart shall be deemed an original of this Agreement.

Dated this \_\_\_\_\_th day of March, 2002

ARIZONA CORPORATION COMMISSION

By: \_\_\_\_\_

STATE OF ARIZONA     )  
  )  
COUNTY OF MARICOPA )

SS:

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2002 by \_\_\_\_\_, authorized agent for Arizona  
Corporation Commission.

\_\_\_\_\_  
Notary Public, State of Arizona

My commission expires:

\_\_\_\_\_

Dated this \_\_\_\_\_th day of March, 2002

Mark Stewart dba  
DESERT MOUNTAIN PLUMBING

By: \_\_\_\_\_

STATE OF ARIZONA     )  
                                  )  
COUNTY OF MARICOPA )

SS:

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2002 by Mark Stewart, doing business as Desert Mountain Plumbing.

\_\_\_\_\_  
Notary Public, State of Arizona

My commission expires:

\_\_\_\_\_