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MEMORANDUM

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Arizona Corporation Commission

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FROM: Steven M. Olea
Director
Utilities Division

FEB 11 2011

AZ CORP COMMISSION
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DATE: February 10, 2011

RE: TIERRA LINDA HOMEOWNERS ASSOCIATION, INC. - REQUEST FOR EXTENSION OF COMPLIANCE DEADLINE (DOCKET NO. W-04236A-04-0075)

In Decision No. 67104, dated July 9, 2004, the Arizona Corporation Commission (“Commission”) approved the application of Tierra Linda Homeowners Association, Inc. (“Tierra Linda” or “Company”) for a Certificate of Convenience and Necessity (“CC&N”) to provide water service in Pima County, Arizona. Decision No. 67104 ordered the following compliance condition on the Company:

“It is further ordered that Tierra Linda Homeowners Association, Inc. shall file a rate application no later than three months following the fifth anniversary of this Decision.”

Based on the Commission ordered timeframe, the original due date for compliance with the rate case requirement was October 9, 2009.

On August 7, 2009, Tierra Linda docketed a “motion for extension of compliance condition” seeking an extension of time from October 9, 2009 until October 9, 2010, for the provision of the required rate case filing. Staff filed its response on August 20, 2009 recommending approval for an extension of time but recommending the due date be extended until June 30, 2011, using a December 31, 2010 test year. On October 7, 2009, the Commission issued Decision No. 71291 which approved an extension of time until June 30, 2011, using a December 31, 2010 test year.

On October 7, 2010, Tierra Linda docketed a subsequent “motion for extension of compliance condition” seeking further extension of time - from June 30, 2011 until June 30, 2012 (with an April 30, 2012 test year) - to make the required rate case filing. The application outlines that a pending joint application for authority to sell water system assets and transfer the Certificate of Convenience and Necessity (“CC&N”) between Tierra Linda and Mr. Gary Smyth (“Mr. Smyth”) “did not progress as rapidly as may have been anticipated” and caused the hearing to be delayed until September 13, 2010.¹

Given the pending June 30, 2011 rate case deadline, the Company filed for extension because there would be very few months operations experience under the new ownership of Mr. Smyth. Further, the Company states that Mr. Smyth testified at hearing that the Company well requires arsenic treatment which he agreed to install “within months” of his acquisition of the Tierra Linda assets and CC&N. Because of these issues, Tierra Linda requested that the rate application due date be extended from June 30, 2011 to June 30, 2012, using an April 30, 2012 test year.

¹ See Docket Nos. W-20689A-09-0327 and W-04236A-09-0327

On February 8, 2011, Staff contacted Mr. Lawrence Robertson, Company attorney, to discuss the application for extension of time. Mr. Robertson stated that the transfer of ownership has not taken place and is pending final approval of the transaction from the United States Veteran's Administration ("VA"). The VA has approval over the transaction because of the nature of the Covenants, Conditions and Restrictions ("CC&Rs") within the homeowners association. The CC&Rs require that the water system be owned by a homeowners association and they must be amended to allow the water system to be sold to a qualified third party (Mr. Smyth). The VA has approval rights over any amendments to the CC&Rs and the Company was forced to make application for VA approval.

Mr. Robertson hopes that the VA approval and closing on the transaction can take place in two or three months. He also confirmed that Mr. Smyth will construct arsenic treatment facilities within several months of the closing on the transaction and further stated that Mr. Smyth already has engineer's designing the arsenic system that will be installed.

There appears to have been legitimate delays relating to the joint application for sale of the Company and transfer of the CC&N. Although Commission approval has been received, the ownership transfer has not yet taken place as it is pending an approval from a Federal agency. Also, within several months of the ownership transfer being finalized, the new owner will install necessary arsenic treatment facilities. Based on all of the above, Staff recommends that the due date for provision of the rate application be extended until June 30, 2012, using a test year of December 31, 2011, or later. Staff recommends that no further extensions be granted in this matter.

SMO:BKB:ihm

Originator: Brian K. Bozzo

SERVICE LIST FOR:
DOCKET NO.

TIERRA LINDA HOMEOWNERS ASSOCIATION, INC.
W-04236A-04-0075

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