

OPEN MEETING ITEM



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COMMISSIONERS
GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

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Executive Director

ARIZONA CORPORATION COMMISSION

2011 MAR 11 A 10: 36

DATE: MARCH 11, 2011

DOCKET NO.: W-04236A-04-0075

COMMISSION DOCKET CONTROL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Order on:

TIERRA LINDA HOMEOWNERS ASSOCIATION, INC.
(EXTENSION OF TIME DEADLINE CONTAINED
IN DECISION NO. 71291)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MARCH 21, 2011

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MARCH 29, 2011 and MARCH 30, 2011

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

MAR 11 2011

DOCKETED BY

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE, Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION OF
9 TIERRA LINDA HOMEOWNERS ASSOCIATION,
10 INC., FOR A CERTIFICATE OF CONVENIENCE
11 AND NECESSITY TO PROVIDE WATER
12 SERVICE IN PIMA COUNTY, ARIZONA.

DOCKET NO. W-04236A-04-0075

DECISION NO. _____

ORDER EXTENDING TIME
DEADLINE CONTAINED IN
DECISION NO. 71291

13 Open Meeting
14 March 29 and 30, 2011
15 Phoenix, Arizona

16 **BY THE COMMISSION:**

17 Having considered the entire record herein and being fully advised in the premises, the
18 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

19 **FINDINGS OF FACT**

20 1. On July 9, 2004, the Commission issued Decision No. 67104, granting Tierra Linda
21 Homeowners Association, Inc.'s ("Tierra Linda" or "Company"), request for a certificate of
22 convenience and necessity ("CC&N").

23 2. Pursuant to that Decision, Tierra Linda was required to "file a rate application no later
24 than three months following the fifth anniversary of this Decision."¹ Based on the effective date of
25 the Decision, the rate application would have been due to be filed by October 9, 2009, but on August
26 7, 2009, Tierra Linda filed a Motion for Extension of Compliance Condition Filing Deadline ("First
27 Motion") with the Commission requesting an extension of time to file the rate application.

28 3. In its First Motion, the Company noted that on June 26, 2009, Tierra Linda and Gary
Smyth ("Smyth") filed a Joint Application requesting authorization of the sale of Tierra Linda's

¹ Decision No. 67104, page 9.

1 water system assets and transfer of its CC&N to Smyth.² The Company asserted that, given the
2 impending sale of its assets to Smyth, it would be prudent to postpone filing the required rate
3 application until the Commission ruled on the sale and transfer of the system because Smyth may
4 have a different view as to what might constitute appropriate rates and charges.

5 4. In Decision No. 71291 (October 7, 2009), the Commission granted Tierra Linda's
6 First Motion, extending the due date for filing of the rate application from October 9, 2009, to June
7 30, 2011, and the use of a December 31, 2010, test year.

8 5. The hearing on the sale and transfer was held on September 13, 2010.

9 6. On October 7, 2010, after the hearing, but prior to the issuance of a Decision in the
10 sale and transfer application, the Company filed a Motion for Extension of Compliance Condition
11 Filing Deadline in Decision No. 71291 ("Second Motion"), requesting that the Commission grant a
12 second extension of the deadline for filing the rate application from June 30, 2011, to June 30, 2012,
13 using a test year ending no later than April 30, 2012. Tierra Linda observed that the "processing of
14 the Joint Application by means of which Tierra Linda's water system assets and certificate of
15 convenience and necessity...are proposed to be transferred to Smyth did not progress as rapidly as
16 may have been anticipated in October of 2009"³ when the First Motion was granted.

17 7. Further, during the September 13, 2010, evidentiary hearing, the Company related
18 that, in order to effectuate the sale and transfer, Tierra Linda has to change its CC&Rs. But in order
19 to do that, the Company has to receive approval for the changes to the CC&Rs from the Veteran's
20 Administration ("VA").⁴ Mr. Smyth also testified that after the transfer he would be installing a
21 needed arsenic treatment system.

22 8. Decision No. 72002 was issued December 10, 2010, granting the sale and transfer of
23 Tierra Linda to Gary Smyth subject to certain conditions, one of which required the Company to file
24 as a compliance item a copy of the VA's approval of Tierra Linda's new CC&Rs within 180 days of
25 the effective date of the Decision.

26 ² Docket Nos. W-20689A-09-0327 and W-04236A-09-0327.

27 ³ Second Motion, page 2.

28 ⁴ At hearing, Tierra Linda related that approval of the CC&Rs by the Veteran's Administration is necessary because, as a holder of mortgages of homes within the Company's service area, the Veteran's Administration has approval rights over any amendments to the governing CC&Rs.

ORDER

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IT IS THEREFORE ORDERED that Tierra Linda Homeowners Association, Inc.'s request for extension of time to comply with Decision No. 71291 is granted, extending the compliance deadline for filing the rate application to June 30, 2012, using a December 31, 2011, or later, test year.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: TIERRA LINDA HOMEOWNERS ASSOCIATION,
2 INC.

3 DOCKET NO.: W-04236A-04-0075

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