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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

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

Arizona Corporation Commission  
**DOCKETED**

APR - 7 2011

DOCKETED BY

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

DOCKET NO. W-04236A-04-0075

DECISION NO. 72250

**ORDER EXTENDING TIME  
DEADLINE CONTAINED IN  
DECISION NO. 71291**

Open Meeting  
March 29 and 30, 2011  
Phoenix, Arizona

**BY THE COMMISSION:**

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

**FINDINGS OF FACT**

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

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

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

<sup>1</sup> Decision No. 67104, page 9.

1 water system assets and transfer of its CC&N to Smyth.<sup>2</sup> 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"<sup>3</sup> 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").<sup>4</sup> 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 <sup>2</sup> Docket Nos. W-20689A-09-0327 and W-04236A-09-0327.

27 <sup>3</sup> Second Motion, page 2.

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

1           9.       According to the Commission's Utilities Division Staff ("Staff"), on February 8, 2011,  
2 Staff contacted counsel for the Company, Larry Robertson, who related that the transfer of ownership  
3 from Tierra Linda to Mr. Smyth has not taken place because the VA has yet to grant approval of the  
4 new CC&Rs. Mr. Robertson related to Staff that he anticipated that closing on the sale and transfer  
5 of the water system would occur within the next two-to-three months.

6           10.       The Company asserted in its Second Motion that, due to the delays in the transfer of  
7 ownership, "there will not be an opportunity to acquire that twelve (12) months of test period  
8 experience for the Tierra Linda system under Smyth's ownership which may have been contemplated  
9 by Decision No. 71291."<sup>5</sup>

10          11.       On February 11, 2011, Staff filed a Memorandum recommending approval of the  
11 Second Motion, stating:

12                   There appears to have been legitimate delays relating to the joint application for  
13 sale of the Company and transfer of the CC&N. Although Commission approval  
14 has been received, the ownership transfer has not yet taken place as it is pending  
15 an approval from a Federal Agency. Also, within several months of the  
16 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.

17          12.       The Company has not yet received the necessary approval from the VA and the  
18 transfer will not have occurred, and the arsenic system will not have been installed, in sufficient time  
19 to provide the new owner with adequate data for the filing of a rate application by June 30, 2011.

20          13.       Accordingly, we find that Staff's recommendation is reasonable and shall be adopted.

#### CONCLUSIONS OF LAW

22          1.       Tierra Linda is a public service corporation within the meaning of Article XV of the  
23 Arizona Constitution and A.R.S. §§40-281 and 40-282.

24          2.       The Commission has jurisdiction over Tierra Linda and the subject matter of the  
25 request for extension for time to comply with Commission Decision No. 71291.

26          3.       Staff's recommendation is reasonable and should be adopted.

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28 <sup>5</sup> Second Motion, page 2.

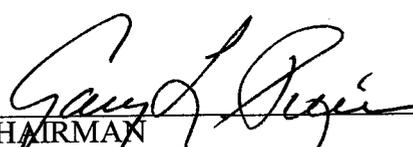
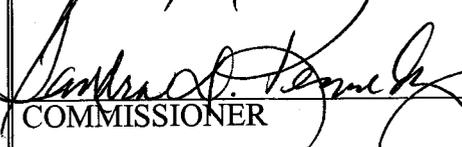
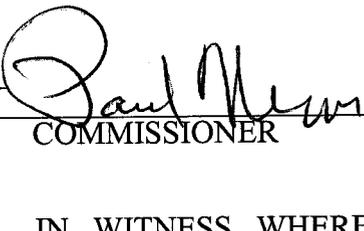
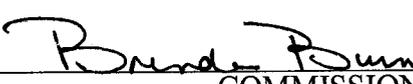
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**ORDER**

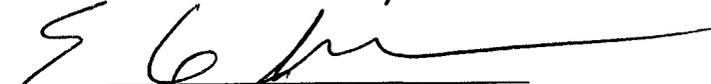
IT IS THEREFORE ORDERED that Tierra Linda Homeowners Association, Inc.'s request for extension of time to comply with Decision No. 71291 is granted, extending the compliance deadline for filing the rate application to June 30, 2012, using a December 31, 2011, or later, test year.

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 7<sup>th</sup> day of April, 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

4 Lawrence V. Robertson, Jr., Esq.  
5 P. O. Box 1448  
6 Tubac, AZ 85646

7 Robert Zammit  
8 TIERRA LINDA HOMEOWNERS  
9 ASSOCIATION, INC.  
10 4729 East Sunrise Drive, # 311  
11 Tucson, AZ 85718

12 Gary Smyth  
13 4010 East Illinois  
14 Tucson, AZ 85714

15 Janice Alward, Chief Counsel  
16 Legal Division  
17 ARIZONA CORPORATION COMMISSION  
18 1200 West Washington Street  
19 Phoenix, AZ 85007

20 Steven M. Olea, Director  
21 Utilities Division  
22 ARIZONA CORPORATION COMMISSION  
23 1200 West Washington Street  
24 Phoenix, AZ 85007

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