

ORIGINAL



0000129083

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

DOCKETED

2011 AUG 26 P 2:02

AUG 26 2011

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

MW

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION
OF DII-EMERALD SPRINGS, L.L.C. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE WASTEWATER
SERVICES.

DOCKET NO. WS-20794A-11-0140

PROCEDURAL ORDER

BY THE COMMISSION:

On April 4, 2011, DII-Emerald Springs, L.L.C. ("DII") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("CC&N") to provide wastewater service in a service area adjacent to the Colorado River in Ehrenberg, approximately 45 miles south of Parker, in La Paz County, Arizona. The service area encompasses the 54-lot Emerald Springs Subdivision ("Emerald Springs"), to which DII states it has been providing wastewater service since 2004. DII explained that it established a packaged plant on an emergency basis in 2004, with permission from the Arizona Department of Environmental Quality ("ADEQ"), but that the situation has become permanent. DII stated that it has been operating at a loss and that it desires for the Commission to establish rates that will at least cover operating costs. DII did not include a proposed monthly minimum charge for its residential customers. According to its CC&N application, DII applied for an Aquifer Protection Permit ("APP") for the wastewater treatment plan ("WWTP") in May 2004 and was granted an APP by ADEQ in June 2010.

On May 2, 2011, the Commission's Utilities Division ("Staff") issued a Notice to Docket Regarding Sufficiency, explaining that DII and Staff had worked together to evaluate DII's unique situation and had agreed that the established 30-day timeline for Staff to determine the sufficiency of DII's CC&N application should be waived to allow for the concurrent processing of a rate case.¹

On May 11, 2011, a letter from the Emerald Springs Homeowners Association ("HOA") was

¹ Staff's Notice was silent concerning whether the rate case would proceed in this docket or a separate docket.

1 docketed, with which the HOA included electronic copies of documents purporting to be (1) a
2 February 2011 letter from the HOA's attorney to Henry Melendez, President of DII, regarding a
3 dispute as to rates and billing; (2) a January 2011 e-mail from Mr. Melendez to the HOA asserting
4 that DII had applied to the Commission for adjudication that DII is not a public service corporation
5 and directing the HOA Board that rate and service complaints are to be handled by the HOA Board
6 rather than specific members, that the Board may contact Staff with questions about or objections to
7 DII's application, that HOA members should be required to deal only with the HOA Board and
8 should not contact the Commission, and that only HOA Board members should contact the
9 Commission;² and (3) a July 2004 Agreement Regarding Sewer Services between Dynamic Financial
10 & Investment Services, Inc., dba Dynamic Homes ("Dynamic"), and the HOA, under which the HOA
11 agreed, *inter alia*, to pay Dynamic a monthly sewer service fee of \$55.00 per lot per month
12 commencing upon connection to the sewer plant.

13 On June 13, 2011, two comments were filed by Emerald Springs homeowners who expressed
14 concern about a possible desire of the HOA to obtain service from Doyle Thompson rather than DII.

15 On June 17, 2011, Staff filed a Staff Data Request, in which it included a number of questions
16 along with a statement that Staff was working with DII on other financial and engineering data
17 required for a rate investigation and would process the application in conjunction with the financial
18 and engineering information received.³

19 On August 1, 2011, an amended legal description was filed.

20 On August 24, 2011, Staff issued a Sufficiency Letter, stating that the application had met
21 minimum sufficiency requirements as outlined in Arizona Administrative Code ("A.A.C.") R14-2-
22 602, that Staff would be issuing additional data requests in the near future, and that the Commission
23 has 150 days to complete its substantive review.

24 On July 15, 2011, in a separate docket, Docket No. WS-20794A-11-0279 ("DII rate docket"),
25 DII filed a rate application, using a calendar year 2010 test year ("TY"). In its rate application, DII
26 states that it has only one customer, the HOA; that its currently monthly rate is \$3,041.18; and that it

27 ² The Commission will accept public comment regarding a public service corporation from any individual.

28 ³ No data responses from DII have been docketed in this matter, and no rate application had been filed by DII at this time.

1 had TY gross revenues of \$32,164.00. DII does not propose any rates or any level of revenue
2 increase. DII also states that DII owns, operates, and is responsible for only the actual sewer
3 treatment plant and any process thereafter and that the HOA owns, operates, and maintains the entire
4 collection system, including the lift station and the pipes from the lift station to the sewer treatment
5 plant.

6 On August 15, 2011, Staff issued a Letter of Sufficiency in the DII rate docket, stating that
7 DII has been classified as a Class E wastewater utility and that a Staff Report should be filed on or
8 before October 14, 2011.

9 It appears that the public interest may be best served by consolidation of this docket with the
10 DII rate docket, so that the hearing required to be held in this docket can also be used to elicit
11 information related to DII's rate application, and the issues in this docket and the DII rate docket can
12 be resolved in one Commission Decision. Because neither DII nor Staff has requested consolidation,
13 however, it is necessary and appropriate to require DII and Staff to make filings indicating their
14 positions on consolidation. In addition, because it appears that the HOA may be integrally involved
15 in the provision of wastewater utility service to Emerald Springs, it is also appropriate to require DII
16 and Staff, in their filings, to indicate their respective positions concerning whether the HOA is a
17 necessary party in interest that should be joined in this docket and/or the DII rate docket.

18 IT IS THEREFORE ORDERED that **DII and Staff each shall, by September 6, 2011, file**
19 with the Commission's Docket Control, in this docket, a document stating its position on (1) whether
20 this docket should be consolidated with the DII rate docket, and (2) whether the HOA is a necessary
21 party in interest that should be joined in this docket and/or the DII rate docket.

22 IT IS FURTHER ORDERED that **DII and Staff each shall, by September 12, 2011, file** any
23 response to the other's filing.

24 IT IS FURTHER ORDERED that the **deadline** for issuing an order in this docket is hereby
25 **extended by 17 days.**

26 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
27 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

28 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized

1 Communications) applies to this proceeding and shall remain in effect until the Commission's
2 Decision in this matter is final and non-appealable.

3 IT IS FURTHER ORDERED that any motion filed in this matter, other than a motion to
4 intervene, that is not ruled upon by the Commission within 20 calendar days of the filing date of the
5 motion shall be deemed denied.

6 IT IS FURTHER ORDERED that any response to a motion, other than a motion to intervene,
7 shall be filed within five calendar days of the filing date of the motion.

8 IT IS FURTHER ORDERED that any reply related to a motion shall be filed within five
9 calendar days of the filing date of the response to the motion.

10 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
11 pursuant to Civil Procedure Rule 6(a) or (e).

12 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
13 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
14 hearing.

15 DATED this 26th day of August 2011.


SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

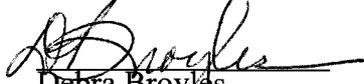
16
17
18
19
20 Copies of the foregoing mailed/delivered
this 26th day of August, 2011, to:

21 Henry Melendez
22 DII-Emerald Springs, LLC
23 212 East Rowland Street, No. 423
24 Covina, CA 91723

25 Julie A. LaBenz
26 LAW OFFICE OF JOHN C. CHURCHILL
27 1300 Joshua Avenue, Suite B
28 Parker, AZ 85344
Attorney for Emerald Springs Homeowners
Association

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Steven M. Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

By: 
Debra Broyles
Secretary to Sarah N. Harpring