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BEFORE THE ARIZONA CORPORATION C

COMMISSIONERS

GARY PIERCE- Chairman
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SANDRA D. KENNEDY
PAUL NEWMAN
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Arizona Corporation Commission

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AZ CORP COMMISSION
DOCKET CONTROL

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

DOCKET NO. WS-20794A-11-0140

**STAFF'S RESPONSE TO AUGUST 26, 2011
PROCEDURAL ORDER**

On April 4, 2011, DII-Emerald Springs, L.L.C. ("Emerald Springs") filed an application for a Sewer Certificate of Convenience and Necessity ("CC&N application") to provide waste water services in the Emerald Springs Subdivision ("Subdivision"), which encompasses 54 lots in La Paz County, Arizona. On July 15, 2011 Emerald Springs filed a Rate Application ("rate case") to have rates set for wastewater service. On August 26, 2011, a procedural order was issued, describing the general landscape of the circumstances surrounding both of Emerald Springs' applications. Additionally the procedural order ordered the parties to file a document stating its position on (1) whether the CC&N application docket should be consolidated with the rate case docket, and (2) whether the Emerald Springs Home Owners Association ("HOA") is a necessary party in interest that should be joined in the CC&N docket and/or the rate case docket.

In response to question (1), Staff believes that consolidation of the dockets is appropriate. Consolidation is authorized under A.A.C. R14-3-109 (H), which provides that "...the presiding officer may consolidate two or more proceedings in one hearing when it appears that the issues are substantially the same and the rights of the parties will not be prejudiced by such procedure..." Although it is unusual to have one company with both a CC&N application and a permanent rate application before the Commission, the issues presented in both are not only substantially related but decisions in one case could affect the other case. It is Staff's belief that no parties' rights will be prejudiced by consolidation.

1 Additionally, consolidation would allow Emerald Springs, and other parties, to appear at only
2 one hearing, instead of multiple hearings. The discovery process would be aided by having all
3 necessary information needed to evaluate both applications in one place. Consolidation would allow
4 for the efficient use of Staff resources to process these applications and avoid a duplication of effort.
5 In fact, Staff had been anticipating requesting consolidation once both applications had been found
6 sufficient.

7 In response to question (2), Staff does not believe the HOA is a necessary party that must be
8 joined pursuant to Rule 19(a) of the Rules of Civil Procedure. Rule 19(a) requires joinder of a party

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10 if (1) in the person's absence complete relief cannot be accorded among
11 those already parties, or (2) the person claims an interest relating to the
12 subject of the action and is so situated that the disposition of the action
13 in his absence may (i) as a practical matter impair or impede the
14 person's ability to protect that interest or (ii) leave any of the persons
15 already parties subject to a substantial risk of incurring double, multiple
16 or otherwise inconsistent obligations by reason of the claimed interest.

17 First, the HOA's absence does not prevent Staff from analyzing whether or not a CC&N for waste
18 water treatment should be granted to Emerald Springs for waste water treatment. Nor does the
19 HOA's absence prevent Staff from recommending a just and reasonable rate for Emerald Springs to
20 charge its one customer. The Commission can provide complete relief as requested in the CC&N
21 Application and Rate Case with only Staff and Emerald Springs as parties. Second, the HOA has not
22 claimed an interest in Emerald Springs obtaining a CC&N nor in its application to set a rate. Since
23 the HOA has no claimed interest, sections (i) and (ii) do not apply.

24 Emerald Springs' rate application states that the HOA owns and operates the lift station, force
25 mains, and manholes ("collection system"), while Emerald Springs only owns and operates the sewer
26 treatment facility. Additionally, Emerald Springs only has one customer, the HOA, to which it
27 charges a flat monthly rate. While these circumstances raise many questions about the relationship of
28 the entire sewer system it does not inhibit Staff from analyzing the applications, granting a CC&N for
sewer treatment, and/or setting just and reasonable rates for the Emerald Springs' sewer treatment
facility. Additionally, despite Staff's repeated suggestion to intervene, the HOA has declined to do

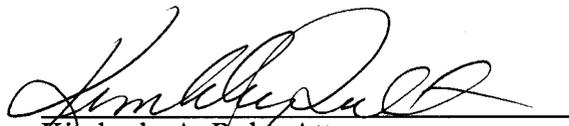
1 so. Staff will again discuss the topic of intervention with the HOA, and explain that Staff, and mostly
2 likely the Commission as well, has questions concerning the relationship between the collections
3 system and treatment facility.

4 If the ALJ shares the same concern as Staff about the ability to elicit information from the
5 HOA about the relationship of the entire sewer collection system, Staff would like to note that they
6 have the ability to obtain that information without the HOA being a formal party. Staff can first
7 employ more informal communications with the HOA, such as telephone calls and letters, in an effort
8 to develop a better understanding of the collection system. However, if necessary, Staff can utilize
9 more formal tactics, such as subpoenas and depositions, to extract answers to their questions.

10 **Conclusion**

11 Staff believes that the CC&N Application and the Rate Case should be consolidated because
12 the issues are substantially related and it will allow for a more efficient analysis and recommendation.
13 Staff does not believe that the HOA is a necessary party. Also, if the HOA does not voluntarily
14 intervene, Staff has the ability to elicit answers to their questions through informal or formal
15 communications.

16 RESPECTFULLY SUBMITTED this 6th day of September 2011.

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18 
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25 Original and thirteen (13) copies
26 of the foregoing filed this
27 6th day of September 2011 with:

28 Docket Control
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2 7th day of September 2011 to:

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