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BEFORE THE ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION  
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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

IN THE MATTER OF THE APPLICATION OF DII-EMERALD SPRINGS, L.L.C. FOR APPROVAL OF RATES.

DOCKET NO. WS-20794A-11-0279

PROCEDURAL ORDER

**BY THE COMMISSION:**

On April 4, 2011, in Docket No. WS-20794A-11-0140 ("CC&N Docket"), 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 stated that it applied for an Aquifer Protection Permit ("APP") for its wastewater treatment plan ("WWTP") in May 2004 and was granted an APP by ADEQ in June 2010.

The Commission's Utilities Division ("Staff") issued a Sufficiency Letter as to the CC&N application on August 24, 2011.

On July 15, 2011, in Docket No. WS-20794A-11-0279 ("Rate Docket"), DII filed a rate application, using a calendar year 2010 test year ("TY"). In its rate application, DII stated that it has only one customer, the Emerald Springs Homeowners Association ("HOA"); that its current monthly

1 rate is \$3,041.18; and that DII had TY gross revenues of \$32,164.00 and TY operating expenses of  
2 \$10,962.61, but that many expenses have been subsidized or temporarily suspended. DII did not  
3 propose any specific rates or any level of revenue increase. DII also stated that DII owns, operates,  
4 and is responsible for only the actual WWTP and any process thereafter and that the HOA owns,  
5 operates, and maintains the entire collection system, including the lift station and the pipes from the  
6 lift station to the WWTP.

7 Staff issued a Letter of Sufficiency in the Rate Docket on August 15, 2011, stating that DII  
8 has been classified as a Class E wastewater utility and that a Staff Report would be filed on or before  
9 October 14, 2011.

10 On September 15, 2011, after DII and Staff had expressed no objection to consolidation, a  
11 Procedural Order was issued consolidating the CC&N Docket and the Rate Docket; ordering that the  
12 time clock applicable to the consolidated docket would be that from the CC&N Docket; scheduling a  
13 hearing to commence on November 18, 2011; and establishing other procedural requirements and  
14 deadlines, including a deadline for DII to provide the HOA members notice of the hearing, and to  
15 have notice of the hearing published, by October 10, 2011.

16 On September 29, 2011, a telephonic procedural conference was held at the parties' request,  
17 with DII appearing through Henry Melendez, DII's President, and Staff appearing through counsel.  
18 Mr. Melendez explained that he had not yet obtained the names and addresses of the individual HOA  
19 members, and discussion occurred regarding his obligation to provide notice. Mr. Melendez was  
20 directed to make a filing by October 4, 2011, indicating whether he would be able to comply with the  
21 October 10, 2011, notice deadline and was advised that failure to indicate that DII would be able to  
22 comply with the October 10, 2011, notice deadline would result in rescheduling of the hearing to a  
23 later date.

24 On October 6, 2011, as DII had not yet made a filing regarding its ability to comply with the  
25 October 10, 2011, notice deadline, a Procedural Order was issued vacating the hearing scheduled for  
26 November 18, 2011, and establishing a December 16, 2011, hearing date and corresponding  
27 procedural dates, including a November 18, 2011, deadline for the filing of a Staff Report. The  
28

1 Procedural Order also extended the time clock by 30 days.<sup>1</sup>

2 After the Procedural Order had been issued, also on October 6, 2011, DII filed a document  
3 stating that DII would be able to mail notice to all HOA members and the HOA on or before October  
4 10, 2011, as DII was obtaining mailing addresses from public records and other sources, and that DII  
5 had paid and instructed a newspaper to publish the notice on October 12, 2011.

6 In light of DII's filing, a Procedural Order was issued on October 7, 2011, ordering that a  
7 public comment proceeding convene on November 18, 2011, at the time originally set for hearing in  
8 the consolidated matter, and otherwise ordering that the requirements of the Procedural Order of  
9 October 6, 2011, remain in effect.

10 On November 9, 2011, DII filed Certification of Mailing and Publication, stating that DII had  
11 mailed notice to the HOA and every HOA member individually on October 5, 2011, and October 21,  
12 2011, and that notice had been published in the *Parker Pioneer* on October 12, 2011, and October 26,  
13 2011. Copies included in the filing showed that the first published notice showed a hearing date of  
14 November 18, 2011, and the second published notice showed a hearing date of December 16, 2011.

15 On November 18, 2011, a public comment proceeding convened as scheduled before a duly  
16 authorized Administrative Law Judge of the Commission at the Commission's offices in Phoenix,  
17 Arizona. Staff appeared through counsel, and DII did not appear. No member of the public appeared  
18 to provide comment. At the public comment proceeding, Staff stated that it would be filing a request  
19 for an extension of time to file the Staff Report, which was due the same date.

20 Also on November 18, 2011, Staff filed Staff's Motion for an Extension of Time ("Staff's  
21 Motion"), requesting a 14-day extension of time to file the Staff Report, until December 2, 2011.  
22 Staff stated that the Staff member assigned had been out of the office and unable to work for several  
23 weeks due to a serious medical issue and that it did not believe the hearing date needed to be moved  
24 for the requested extension. Staff also stated, however, that preliminary calculations indicate that a  
25 significant rate increase is likely, in which event Staff believes it would be in the public interest to re-  
26 notice anyone within the proposed service area of that likelihood, which may necessitate moving the

27  
28 <sup>1</sup> The time clock previously had been extended by 17 days by a Procedural Order issued on August 26, 2011.

1 hearing date. Staff did not state in the motion whether DII had been contacted regarding the  
2 requested extension or the notice issue.

3       Although DII has not responded to Staff's Motion, it is reasonable and appropriate to address  
4 Staff's Motion at this time, to ensure that this proceeding can move forward in the most productive  
5 and efficient manner possible. Staff has provided good cause for an extension, and Staff will be  
6 granted an extension to file the Staff Report in this matter. Although Staff has only requested a two-  
7 week extension, a four-week extension will be granted to ensure that the Staff analyst has sufficient  
8 time to create a thorough Staff Report addressing the somewhat unusual circumstances of this case.  
9 Both because of the extension granted herein and because of the possible need for notice to be  
10 provided once again after the Staff Report is issued, the December 16, 2011, proceeding will go  
11 forward only for the taking of public comment. If the Staff Report recommends a significant rate  
12 increase, as anticipated by Staff, it will be necessary to require DII to provide its potential customers  
13 notice of Staff's recommended rates and of a hearing date. Without a Staff Report, it is not yet  
14 possible to determine whether such notice will be needed or the contents of such a notice. Thus, it  
15 will be necessary to resolve the issue in a Procedural Order, to be issued after the Staff Report is  
16 filed, in which the new date for a hearing in this matter can also be set. The uncertainty concerning  
17 the scheduling of the hearing in this matter and the somewhat unusual circumstances of this case  
18 make it reasonable and appropriate at this time to suspend the time clock for this matter so that the  
19 matter can be provided the time and attention that it needs.

20       IT IS THEREFORE ORDERED that the **deadline for filing of the Staff Report** in this  
21 matter is hereby **extended until December 16, 2011**.

22       IT IS FURTHER ORDERED that the **deadline for DII or any intervenor to file an**  
23 **objection or response to the Staff Report is hereby extended until January 3, 2011**.

24       IT IS FURTHER ORDERED that a **public comment proceeding shall convene on**  
25 **December 16, 2011, at 10:00 a.m.**, or as soon thereafter as is practicable, at the Commission's  
26 offices, Room 100, 1200 West Washington, Phoenix, Arizona 85007.

27       IT IS FURTHER ORDERED that the **Commission's time clock in this matter is hereby**  
28 **suspended**.

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

4 DATED this 21<sup>st</sup> day of November, 2011.

5  
6 

7 SARAH N. HARPRING  
8 ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered  
10 this 21<sup>st</sup> day of November, 2011, to:

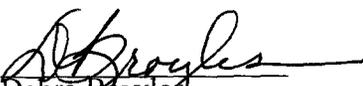
11 Henry Melendez  
12 DII-Emerald Springs, LLC  
212 East Rowland Street, No. 423  
Covina, CA 91723

13 Julie A. LaBenz  
14 LAW OFFICE OF JOHN C. CHURCHILL  
1300 Joshua Avenue, Suite B  
15 Parker, AZ 85344  
Attorney for Emerald Springs Homeowners  
Association

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

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

21 ARIZONA REPORTING SERVICE, INC.  
22 2200 N. Central Ave., Suite 502  
Phoenix, AZ 85004-1481

23  
24 By:   
25 Debra Broyles  
26 Secretary to Sarah N. Harpring