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BEFORE THE 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"). DII stated that it has been providing wastewater service to Emerald Springs since 2004, when DII established a packaged plant on an emergency basis 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 ADEQ granted DII an Aquifer Protection Permit for its wastewater treatment plant ("WWTP") in June 2010.

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 rate is $3,041.18; and that DII had TY gross revenues of $32,164.00 and TY operating expenses of $10,962.61, but that many expenses have been subsidized or temporarily suspended. DII did not propose any specific rates or any level of revenue increase. DII also stated that DII owns, operates,

and is responsible for only the actual WWTP and any process thereafter and that the HOA owns, operates, and maintains the entire collection system, including the lift station and the pipes from the lift station to the WWTP.

The Commission's Utilities Division ("Staff") issued a Letter of Sufficiency in the Rate Docket on August 15, 2011, stating that DII has been classified as a Class E wastewater utility and that a Staff Report would be filed on or before October 14, 2011.

Staff issued a Sufficiency Letter as to the CC&N application on August 24, 2011.

On September 15, 2011, a Procedural Order was issued consolidating the CC&N Docket and the Rate Docket;[1] ordering that the time clock applicable to the consolidated docket would be that from the CC&N Docket; scheduling a hearing to commence on November 18, 2011; and establishing other procedural requirements and deadlines, including an October 10, 2011, deadline for DII to provide the HOA members notice of the hearing, and for DII to have notice of the hearing published.

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

On October 6, 2011, as DII had not yet made a filing regarding its ability to comply with the October 10, 2011, notice deadline, a Procedural Order was issued vacating the hearing scheduled for November 18, 2011, and establishing a December 16, 2011, hearing date and corresponding procedural dates, including a November 18, 2011, deadline for the filing of a Staff Report. The Procedural Order also extended the time clock by 30 days.[2]

After the Procedural Order had been issued, also on October 6, 2011, DII filed a document

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[1] Neither DII nor Staff had objected to consolidation.

[2] The time clock previously had been extended by 17 days by a Procedural Order issued on August 26, 2011.

stating that DII would be able to mail notice to all HOA members and the HOA on or before October 10, 2011, as DII was obtaining mailing addresses from public records and other sources, and that DII had paid and instructed a newspaper to publish notice on October 12, 2011.

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

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

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

Also on November 18, 2011, Staff filed Staff's Motion for an Extension of Time, requesting a 14-day extension of time to file the Staff Report, until December 2, 2011. Staff stated that the Staff member assigned had been out of the office and unable to work for several weeks due to a serious medical issue and that it did not believe the hearing date needed to be moved for the requested extension. Staff also stated, however, that its preliminary calculations indicated that a recommendation for a significant rate increase was likely, in which event Staff believed it would be in the public interest to re-notice anyone within the proposed service area of the recommended rates, which might necessitate moving the hearing date. Staff did not state in the motion whether DII had been contacted regarding the requested extension or the notice issue.

On November 21, 2011, a Procedural Order was issued granting Staff a four-week extension

of the deadline to file the Staff Report; correspondingly extending the deadline for DII or any intervenor to file an objection or response to the Staff Report; scheduling a public comment proceeding on December 16, 2011, at the time previously scheduled for evidentiary hearing; and suspending the Commission's time clock in this matter.

On December 16, 2011, the public comment proceeding convened as scheduled before a duly authorized Administrative Law Judge of the Commission at the Commission's offices in Phoenix, Arizona. Staff appeared through counsel, DII did not appear, and Dennis Price attended and provided public comment. Mr. Price indicated that he is a resident of DII's requested service area, that he receives service from DII, that he had been requested to provide public comment by and on behalf of the HOA, that he is not presently a member of the HOA Board, and that the HOA Board had not passed a resolution specifically authorizing him to represent it before the Commission. Mr. Price did not indicate that he is an active member of the state bar. The comment Mr. Price provided suggested that the HOA might desire to provide evidence as a party in this matter. The HOA has not, however, filed a request to intervene.[3] The differences between participating as a party in a case and providing public comment were discussed,[4] as was the issue of whether the HOA would need legal counsel to represent it if it desired to intervene.

Pursuant to Arizona Supreme Court Rule 31(d)(28), a non-profit organization may be represented before the Commission by a corporate officer, an employee, or a member who is not an active member of the state bar, if (1) the non-profit organization has specifically authorized the officer, employee, or member to represent it in the particular matter; (2) such representation is not the person's primary duty to the non-profit organization, but is secondary or incidental to such person's duties relating to the management or operation of the non-profit organization; and (3) the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation. Arizona Supreme Court Rule 31(d)(28) further states that the Commission or

[3] The HOA previously had provided public comment in the form of a letter to the Chairman sent by its attorney and docketed in the CC&N Docket.

[4] Party status provides an intervenor with the opportunity to conduct discovery with other parties; to present the live testimony of its own witnesses and its own documentary evidence during hearing; to cross-examine other parties' witnesses; to submit any written exceptions that it may have to the Recommended Opinion and Order ultimately issued in this matter; and to appeal the Commission's Decision, if it so desires. Public comment is reviewed by the Administrative Law Judge and the Commissioners, but is not considered to be and thus does not have the weight of evidence.

presiding officer may require counsel in lieu of lay representation whenever it is determined that lay representation is interfering with the orderly progress of the proceeding, imposing undue burdens on the other parties, or causing harm to the parties represented.

If the HOA desires to intervene in this matter and to be represented by an individual who is not an active member of the state bar, the HOA must docket an intervention request and must include therewith information establishing that the representative is a corporate officer, employee, or member of the HOA, along with specific authorization, such as a Board resolution, for the individual to represent it in this matter. The HOA is not required to intervene at all, but if it desires to do so, it may hire an attorney or specifically authorize any lay person meeting the requirements of Arizona Supreme Court Rule 31(d)(28) to represent it. Without such authorization, the Commission cannot allow Mr. Price or any other lay person to appear and represent the HOA in this matter. The Commission will, however, allow public comment by individual prospective customers of DII who appear at the first day of the evidentiary hearing in this matter, and will also allow individual prospective customers of DII to file written public comments in the docket at any time.

Because the time clock in this matter has been suspended, and there is not yet an evidentiary hearing scheduled in this matter, the Commission will continue to entertain requests for intervention, even though the initial deadline established for such requests has passed, until a date to be established in a later Procedural Order scheduling the evidentiary hearing in this matter. Any requests for intervention must conform to the requirements of A.A.C. R14-3-105 and demonstrate compliance with Arizona Supreme Court Rules 31, 38, and 42. Any persons interested in requesting intervention should also consult the guidance as to the form for such requests that can be found on the Commission's website at http://www.azcc.gov/divisions/utilities/forms/interven.pdf.

IT IS THEREFORE ORDERED that the **deadline for submission of requests for intervention is extended until further order of the Commission.**

IT IS FURTHER ORDERED that any requests for intervention must conform to the requirements of A.A.C. R14-3-105 and demonstrate compliance with Arizona Supreme Court Rules 31, 38, and 42, as described herein.

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

DATED this 19th day of December, 2011.

SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 19th day of December, 2011, to:

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