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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

COMMISSIONERS

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- GARY PIERCE - Chairman
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- PAUL NEWMAN
- BRENDA BURNS

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AZ CORP COMMISSION
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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,

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

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

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

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

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

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

26 After the Procedural Order had been issued, also on October 6, 2011, DII filed a document
27

28 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.

1 stating that DII would be able to mail notice to all HOA members and the HOA on or before October
2 10, 2011, as DII was obtaining mailing addresses from public records and other sources, and that DII
3 had paid and instructed a newspaper to publish notice on October 12, 2011.

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

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

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

19 Also on November 18, 2011, Staff filed Staff's Motion for an Extension of Time, requesting a
20 14-day extension of time to file the Staff Report, until December 2, 2011. Staff stated that the Staff
21 member assigned had been out of the office and unable to work for several weeks due to a serious
22 medical issue and that it did not believe the hearing date needed to be moved for the requested
23 extension. Staff also stated, however, that its preliminary calculations indicated that a
24 recommendation for a significant rate increase was likely, in which event Staff believed it would be
25 in the public interest to re-notice anyone within the proposed service area of the recommended rates,
26 which might necessitate moving the hearing date. Staff did not state in the motion whether DII had
27 been contacted regarding the requested extension or the notice issue.

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

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

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

17 Also on December 16, 2011, Staff filed its Staff Report, recommending approval of DII's rate
18 increase application using Staff's recommended rates and charges and recommending approval of
19 DII's CC&N application. Staff recommends a flat charge of \$125.80 per completed residential
20 connection, in lieu of the current fixed monthly flat rate for the HOA as DII's single customer, which
21 equates to a monthly charge of \$70.73 per completed residential connection. Staff determined that
22 the TY monthly flat rate for the HOA equated to a monthly charge of \$62.33 per completed
23 residential connection. Thus, Staff's recommended monthly charge per completed residential
24 connection represents an increase of 101.83 percent over the equivalent TY rate and an increase of

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

27 ⁴ Party status provides an intervenor with the opportunity to conduct discovery with other parties; to present the live
28 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.

1 77.86 percent over the equivalent current rate.

2 On December 19, 2011, a Procedural Order was issued explaining the requirements of
3 Arizona Supreme Court Rule 31(d)(28), setting forth requirements that would need to be met if the
4 HOA desired to intervene and to be represented by an individual who is not an active member of the
5 state bar, and extending the deadline for submission of requests for intervention until further order of
6 the Commission.

7 On December 28, 2011, DII made two filings. The first filing, captioned "Comments and
8 Responses to Staff Report Dated 12/16/2011," states that DII would be increasing its monthly bill
9 amount to \$3,345.30 effective January 1, 2012; states that DII will be completing a financing
10 application for an existing \$250,000 loan that has an interest payment of \$1,500 per month that DII
11 needs to recover; and requests reconsideration of recovery of a number of additional asserted
12 operating costs as well as a return on investment. The second filing, captioned "Procedural Order
13 Dated – December 19, 2011," appears to take issue with the extension of the deadline for
14 intervention, as the HOA has failed to intervene thus far, and requests to move forward with the
15 hearing without further delay.

16 It is now necessary to schedule an evidentiary proceeding in this matter and, in light of the
17 large increase recommended by Staff, to require DII to provide notice of its applications, the
18 scheduled hearing, and the Staff-recommended rate. DII is reminded that it must provide timely
19 notice that complies with the requirements of this Procedural Order if its desires to avoid additional
20 delay in this proceeding.

21 IT IS THEREFORE ORDERED that the **hearing** in this matter shall commence on **March**
22 **20, 2012, at 10:00 a.m.**, or as soon thereafter as is practicable, at the Commission's offices, Hearing
23 Room No. 1, 1200 West Washington, Phoenix, Arizona 85007, and shall continue, if necessary, on
24 **March 21, 2012, at 9:30 a.m.**, in the same location.

25 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
26 105, except that all motions to intervene must be filed on or before **February 24, 2012**.

27 IT IS FURTHER ORDERED that any **objections to intervention** shall be filed on or before
28 **March 2, 2012**.

1 IT IS FURTHER ORDERED that DII shall, by February 3, 2012, mail a copy of the
 2 following notice by first class U.S. Mail to the HOA, the individual HOA members who receive
 3 service from DII's WWTP, and each owner of land within the proposed service area and cause
 4 the following notice to be published in a newspaper(s) of general circulation in the proposed
 5 service area, in the following form and style:

6 **PUBLIC NOTICE OF HEARING ON THE**
 7 **APPLICATIONS OF DII-EMERALD SPRINGS, L.L.C. FOR A CERTIFICATE**
 8 **OF CONVENIENCE AND NECESSITY TO PROVIDE WASTEWATER**
 9 **SERVICE AND FOR APPROVAL OF RATES.**
 10 **(Docket Nos. WS-20794A-11-0140 et al.)**

11 **Summary**

12 On April 4, 2011, DII-Emerald Springs, L.L.C. ("DII") filed with the Arizona
 13 Corporation Commission ("Commission") an application for a Certificate of
 14 Convenience and Necessity ("CC&N") to provide wastewater service in a service area
 15 adjacent to the Colorado River in Ehrenberg, approximately 45 miles south of Parker,
 16 in La Paz County, Arizona. The service area encompasses the 54-lot Emerald Springs
 17 Subdivision ("Emerald Springs"), to which DII states it has been providing wastewater
 18 service since 2004. DII explained that it established a packaged plant on an
 19 emergency basis in 2004, with permission from the Arizona Department of
 20 Environmental Quality ("ADEQ"), but that the situation has become permanent. DII
 21 stated that it has been operating at a loss and that it desires for the Commission to
 22 establish rates that will at least cover operating costs.

23 On July 15, 2011, DII filed a rate application, using a calendar year 2010 test year
 24 ("TY"). In its rate application, DII stated that the Emerald Springs Homeowners
 25 Association ("HOA") is DII's only customer; that the HOA's currently monthly rate is
 26 \$3,041.18; and that DII had TY gross revenues of \$32,164.00 and TY operating
 27 expenses of \$10,962.61, but that many expenses have been subsidized or temporarily
 28 suspended. DII did not propose any specific rates or level of revenue increase. DII
 also stated that DII owns, operates, and is responsible for only the actual sewer
 treatment plant 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 sewer treatment plant.

DII's CC&N application and rate application have been consolidated into one matter
 for the Commission's consideration and decision. The Commission's Utilities
 Division ("Staff") has filed a Staff Report recommending approval of DII's rate
 increase application using Staff's recommended rates and charges and recommending
 approval of DII's CC&N application. Staff recommends a flat rate of \$125.80 per
 completed residential connection, in lieu of the current fixed monthly flat rate for the
 HOA as DII's single customer. The \$3,041.18 monthly rate paid by the HOA equates
 to a monthly charge of \$70.73 per completed residential connection. Thus, Staff's
 recommended monthly charge per completed residential connection represents an
 increase of 77.86%. In addition, Staff determined that its recommended rate
 represents an increase of 101.83% over the TY monthly flat rate, which Staff
 calculated as equivalent to \$62.33 per completed residential connection.

The Commission is not bound by the proposals made by DII, Staff, or any intervenors.
 The Commission will issue a decision regarding DII's applications following
 consideration of testimony and evidence provided at an evidentiary hearing.

How You Can View or Obtain Documents

Copies of the applications and other documents filed in this matter are available for inspection during regular business hours at the Commission's Docket Control Center in Phoenix, at 1200 West Washington Street, Phoenix, Arizona, and at DII's offices [COMPANY INSERT ADDRESS HERE]. The documents are also available on the Internet via the Commission's website (www.azcc.gov) using the e-Docket function.

Arizona Corporation Commission Public Hearing Information

The Commission will hold a hearing on this matter beginning **March 20, 2012, at 10:00 a.m.**, at the Commission's offices, Hearing Room No. 1, 1200 West Washington, Phoenix, Arizona. Public comments will be taken on the first day of the hearing. Written public comments may be submitted by mailing a letter referencing Docket Nos. WS-20794A-11-0140 et al. to Arizona Corporation Commission, Consumer Services Section, 1200 West Washington, Phoenix, AZ 85007, or by e-mail. For a form to use and instructions on how to e-mail comments to the Commission, go to <http://www.azcc.gov/Divisions/Utilities/forms/PublicCommentForm.pdf>. If you require assistance, you may contact the Consumer Services Section at 1-800-222-7000 or 602-542-4251.

About Intervention

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Any person or entity entitled by law to intervene and having a direct and substantial interest in the matter will be permitted to intervene. If you desire to intervene, you must file a written motion to intervene with the Commission no later than **February 24, 2012**. You must send a copy of the motion to intervene to DII or its counsel and to all parties of record. Your motion to intervene must contain the following:

1. Your name, address, and telephone number and the name, address, and telephone number of any person upon whom service of documents is to be made, if not yourself;
2. A short statement of your interest in the proceeding (e.g., a potential customer of DII, property owner in the proposed service area, etc.);
3. A statement certifying that you have mailed a copy of the motion to intervene to DII or its counsel and to all parties of record in the case; and
4. If you are not represented by an attorney who is an active member of the Arizona State Bar, and are not representing yourself as an individual, information and any appropriate documentation demonstrating compliance with Arizona Supreme Court Rules 31, 38, and 42, as applicable.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before February 24, 2012. If representation by counsel is required by Arizona Supreme Court Rule 31, intervention will be conditioned upon the intervenor's obtaining counsel to represent the intervenor. For information about requesting intervention, visit the Commission's website at <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>. The granting of intervention, among other things, entitles a party to present sworn evidence at the hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and providing public comment on the application or from filing written comments in the record of the case.

ADA/Equal Access Information

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative

1 format, by contacting the ADA Coordinator, Shaylin Bernal, at sabernal@azcc.gov,
2 voice phone number (602) 542-3931. Requests should be made as early as possible to
allow time to arrange the accommodation.

3 IT IS FURTHER ORDERED that **DII shall file certification of mailing and publication** as
4 soon as practicable after the mailing and publication has been completed, but **no later than**
5 **February 24, 2012.**

6 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing/publication
7 of same, notwithstanding the failure of an individual to read or receive the notice.

8 IT IS FURTHER ORDERED that any **objection or response to the Staff Report** from any
9 intervenor shall be made in writing and filed on or before **March 12, 2012.**

10 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
11 Communications) applies to this proceeding and shall remain in effect until the Commission's
12 Decision in this matter is final and non-appealable.

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

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

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

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

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

25 ...
26 ...
27 ...
28 ...

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 4th day of January, 2012.

6 
7 SARAH N. HARPRING
8 ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered
10 this 4th day of January, 2012, to:

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

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

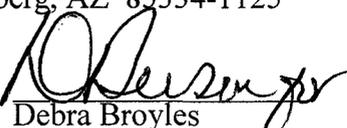
15 Steven M. Olea, Director
16 Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

17 ARIZONA REPORTING SERVICE, INC.
18 2200 N. Central Ave., Suite 502
19 Phoenix, AZ 85004-1481

20 **Courtesy Copies provided to:**

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

24 Dennis Price
25 P.O. Box 1125
Ehrenberg, AZ 85334-1125

26 By: 
27 Debra Broyles
28 Secretary to Sarah N. Harpring