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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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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DOCKETED BY [Signature]

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:

This consolidated docket concerns two applications filed by DII-Emerald Springs, L.L.C. ("DII")--an application for a Certificate of Convenience and Necessity ("CC&N") to provide wastewater service, filed on April 4, 2011, in Docket No. WS-20794A-11-0140 ("CC&N Docket"), and an application for ratemaking, filed on July 15, 2011, in Docket No. WS-20794A-11-0279 ("Rate Docket"). The CC&N Docket and Rate Docket were found to be sufficient by the Commission's Utilities Division ("Staff") on August 24, 2011, and August 15, 2011, respectively, and were consolidated through a Procedural Order issued on September 15, 2011. The time clock in this docket was suspended indefinitely by a Procedural Order issued on November 21, 2011.

The hearing in this matter was originally scheduled to be held on November 18, 2011, but was rescheduled as a result of an issue with the public notice of the hearing provided by DII. Thus, a public comment proceeding was held on November 18, 2011, at the time set for hearing.

The hearing in this matter was then scheduled to be held on December 16, 2011, but was rescheduled as a result of an extension of time requested by Staff for the issuance of the Staff Report. Thus, a public comment proceeding was held on December 16, 2011, at the time set for hearing.

The hearing is currently scheduled to be held on March 20, 2012, pursuant to a Procedural Order issued on January 4, 2012. Because the Staff Report recommended rates significantly higher than DII's test year and current rate equivalents, the Procedural Order required DII, by February 3,

1 2012, to provide specific notice by first class U.S. Mail to the Emerald Springs Homeowners
2 Association (“HOA”), to the individual HOA members who receive service from DII’s wastewater
3 treatment plant, and to each owner of land within the proposed service area and, further to cause the
4 specific notice to be published in a newspaper of general circulation in the proposed service area.
5 The Procedural Order also required DII to file certification of mailing and publication as soon as
6 practicable after the mailing and publication had been completed, but no later than February 24,
7 2012.

8 On January 26, 2012, DII filed Certification of Mailing and Publication (“Certification”)
9 stating that notice had been mailed to the HOA and to every member/property owner on January 18,
10 2012. The Certification further stated that notice had been published in the *Parker Pioneer* on
11 January 18, 2012, and included a copy of the notice as published.

12 In reviewing the notice published in the *Parker Pioneer*, it is evident that the notice contains a
13 number of errors, one of which, an erroneous date for intervention, is sufficiently significant to
14 necessitate that DII immediately provide corrected notice of the hearing and applications in this
15 matter, by both mail and publication, so as to avoid again rescheduling the hearing for this matter. A
16 copy of the published notice, with the errors marked, is attached for DII’s reference.

17 IT IS THEREFORE ORDERED that **DII shall, by February 3, 2012, mail** a copy of the
18 following notice by first class U.S. Mail **to the HOA, the individual HOA members who receive**
19 **service from DII’s wastewater treatment plant, and each owner of land** within the proposed
20 service area **and cause the following notice to be published in a newspaper(s) of general**
21 **circulation** in the proposed service area, in the following form and style:

22 ...
23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

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

Summary

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.

On July 15, 2011, DII filed a rate application, using a calendar year 2010 test year ("TY"). In its rate application, DII stated that the Emerald Springs Homeowners Association ("HOA") is DII's only customer; that the HOA's currently 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 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

1 Washington, Phoenix, Arizona. Public comments will be taken on the first day of the
 2 hearing. Written public comments may be submitted by mailing a letter referencing
 3 Docket Nos. WS-20794A-11-0140 et al. to Arizona Corporation Commission,
 4 Consumer Services Section, 1200 West Washington, Phoenix, AZ 85007, or by e-
 5 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

6 The law provides for an open public hearing at which, under appropriate
 7 circumstances, interested parties may intervene. Any person or entity entitled by law
 8 to intervene and having a direct and substantial interest in the matter will be permitted
 9 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:

- 10 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;
- 11 2. A short statement of your interest in the proceeding (e.g., a potential customer
 12 of DII, property owner in the proposed service area, etc.);
- 13 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
- 14 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,
 15 information and any appropriate documentation demonstrating compliance
 with Arizona Supreme Court Rules 31, 38, and 42, as applicable.

16 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
 17 that all motions to intervene must be filed on or before February 24, 2012. If
 18 representation by counsel is required by Arizona Supreme Court Rule 31, intervention
 19 will be conditioned upon the intervenor's obtaining counsel to represent the
 20 intervenor. For information about requesting intervention, visit the Commission's
 website at <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>. The
 21 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

22 The Commission does not discriminate on the basis of disability in admission to its
 23 public meetings. Persons with a disability may request a reasonable accommodation
 24 such as a sign language interpreter, as well as request this document in an alternative
 25 format, by contacting the ADA Coordinator, Shaylin Bernal, at sabernal@azcc.gov,
 voice phone number (602) 542-3931. Requests should be made as early as possible to
 allow time to arrange the accommodation.

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

4 IT IS FURTHER ORDERED that **DII shall file**, with its certification of mailing and
5 publication, **a copy of the notice as published and a copy of the notice as mailed** to property
6 owners.

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

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

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

16 DATED this 27th day of January, 2012.

17
18 
19 SARAH N. HARPRING
20 ADMINISTRATIVE LAW JUDGE

21 Copies of the foregoing
22 e-mailed/delivered/mailed
23 this 27th day of January, 2012, to:

24 Henry Melendez
25 DII-Emerald Springs, LLC
26 212 East Rowland Street, No. 423
27 Covina, CA 91723
28 diigroup@aol.com

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

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

4 **Courtesy Copies provided by mail to:**

5 Julie A. LaBenz
LAW OFFICE OF JOHN C. CHURCHILL
1300 Joshua Avenue, Suite B
6 Parker, AZ 85344-5732
Attorney for Emerald Springs Homeowners Association

7
8 Dennis Price
P.O. Box 1125
Ehrenberg, AZ 85334-1125

9
10 By: 
Debra Broyles
Secretary to Sarah N. Harpring
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**PUBLIC NOTICE OF HEARING
ON THE APPLICATIONS OF
DII-EMERALD SPRINGS, L.L.C.
FOR A CERTIFICATE
OF CONVENIENCE AND NECESSITY
TO PROVIDE WASTEWATER
SERVICE AND FOR APPROVAL
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The Commission is not bound by the proposal 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 a Copy of Each Application
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Arizona Corporation Commission

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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.); and
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;
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 November 23, 2012. If representation by counsel is required by Arizona Supreme Court Rule 31, intervention will be conditioned upon the intervenor obtaining counsel to represent the intervenor. For information about requesting intervention, visit the Commission's website at <http://www.azcc.gov/divisions/utilities/forms/intervenor.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.

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Publish: 1-18-2012 7626

Statement

February 24
intervenor

Documents
and other
documents
filed in
this
matter
documents