



BEFORE THE ARIZONA CORPORATION COMM

COMMISSIONERS

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2012 FEB 24 A 9:43

AZ CORP COMMISSION DOCKET CONTROL

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

MOTION TO INTERVENE

Pursuant to A.A.C. R14-3-105 and the Procedural Order entered in this matter dated January 4, 2012, Emerald Springs Homeowners' Association (hereinafter "HOA"), hereby moves to intervene in the above-captioned proceeding. In support of its motion, the HOA states as follows:

I. Service

Please serve all documents on:

Julie A. LaBenz
 Law Office of John C. Churchill
 1300 Joshua Ave., Ste. B
 Parker, AZ 85344
 (928) 669-6195
 (928) 669-5376 (fax)
jlabenz@johnchurchill.com
 Attorney for Emerald Springs HOA

Arizona Corporation Commission

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II. Interest in Proceeding

The HOA consists of forty (40) homes located in Ehrenberg, Arizona. Prior to July 10, 2004, the HOA contracted for sewer services with a neighboring provider. Upon information and belief, in 2004 Henry Melendez of DII-Emerald Springs, L.L.C. brought in a sewer treatment plant on the bed of a truck, disconnected the neighboring sewer services provider's sewer pipe, connected his sewer pipe, and thus began providing the HOA with sewer services. On or about July 10, 2004, the HOA entered into a sewer services contract with DII-Emerald Springs L.L.C. as, at the time, it seemed to be in the best interests of the HOA. Since then and

1 to the present day, all homes within Emerald Springs rely upon DII-Emerald Springs, L.L.C.
2 for sewer services. Upon information and belief, DII-Emerald Springs L.L.C. never received a
3 Certificate of Convenience and Necessity from the A.C.C. or any other permits or required
4 documentation to provide sewer services.

5 At the time DII-Emerald Springs, L.L.C. and the HOA entered into the sewer services
6 contract, DII-Emerald Springs, L.L.C. owned the land underlying the sewer treatment plant,
7 subject to a deed of trust. On or about September 2010, the deed of trust was foreclosed upon,
8 and upon information and belief, Charles Dunn Financial Services Group is the current owner
9 of the land underlying the sewer treatment plant, however, the Charles Dunn Financial Services
10 Group is not in the business of providing sewer service. Due to the foreclosure it is not clear
11 who currently owns the sewer treatment plant itself as there has been no determination
12 regarding whether the sewer treatment plant qualified as a fixture or an improvement that
13 passed with the land through the foreclosure or if the sewer treatment plant is the personal
14 property of DII-Emerald Springs L.L.C. or if the HOA has an ownership interest in the sewer
15 treatment plant or any parts thereof.

16 Furthermore, since entering into the sewer services contract, DII-Emerald Springs
17 L.L.C., through Henry Melendez, made what the HOA interpreted to be promises to perform
18 repairs and upgrades to the sewer treatment plant. Such promises, however, were never
19 fulfilled. Furthermore, the HOA's requests to Mr. Melendez to produce receipts and financial
20 records related to the sewer treatment plant have not been fulfilled. As a result of the failure to
21 follow through on promises made to the HOA, the refusal to produce financial records, and the
22 foreclosure of the land underlying the sewer treatment plant, the HOA distrusts DII-Emerald
23 Springs L.L.C. and Henry Melendez and questions the financial stability of both DII-Emerald
24 Springs and Henry Melendez. In fact, Henry Melendez recently requested that the HOA begin
25 making the checks for payment of sewer services payable to a Blue Tower L.L.C. The HOA,
26 however, refused to do so. The HOA perceives DII-Emerald Springs L.L.C.'s pending
27 applications with the A.C.C. as a last ditch effort to avoid financial ruin and perpetuate another
28 fraud upon the HOA.

1 The HOA also seeks to intervene as the homeowners within Emerald Springs currently
2 pay \$70.73 per month for sewer services, however, the A.C.C. Staff Attorney recommended a
3 substantial rate increase. The HOA opposes any and all rate increases.

4 Overall, the HOA opposes both DII-Emerald Springs L.L.C.'s Application for a
5 Certificate of Convenience and Necessity and DII-Emerald Springs L.L.C.'s Application for
6 Approval of Rates. In fact, the HOA is seeking an alternative sewer treatment services
7 provider because the HOA distrusts Henry Melendez and DII-Emerald Springs L.L.C. and no
8 longer wants to do business with him or his various L.L.C.s.

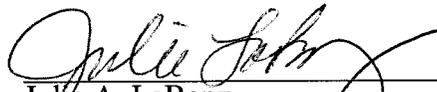
9 **III. Requested Relief**

10 The HOA asks that the Commission grant its Motion to Intervene.

11 RESPECTFULLY SUBMITTED this 22 day of February, 2012.

12 **LAW OFFICE OF JOHN C. CHURCHILL**

13
14 By:



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21 jlabenz@johnccchurchill.com
22 Attorney for Emerald Springs HOA
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26
27
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1 Original and 15 copies mailed
this 22nd day of February, 2012, to:

2
3 Docket Control
4 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

5 Copy of the foregoing mailed
this 22nd day of February, 2012, to:

6
7 Henry Melendez
8 DII-Emerald Springs, L.L.C.
212 East Rowland Street, No. 423
9 Covina, CA 97723
diigroup@aol.com

10 Janice Alward, Chief Counsel
11 Legal Division
ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
Phoenix, AZ 85007

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

16 Courtesy Copy provided by mail
this 22nd day of February, 2012, to:

17 Dennis Price
18 P.O. Box 1125
Ehrenberg, AZ 85334-1125

19 By: Conde M. King

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