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Law Office of John C. Chui
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John C. Churchill

Julie A. LaBenz

of counsel:

John A. Shannon, Jr.*

Faye Peters, Legal Assistant

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AZ CORP COMMISSION
DOCKET CONTROL

March 7, 2012

1300 Joshua Avenue, Suite B

Parker, Arizona 85344

Telephone (928) 669-6195

Fax (928) 669-5376

Toll Free (888)244-3887

Arizona Corporation Commission

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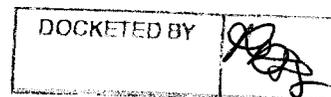
MAR - 9 2012

Docket Control

Arizona Corporation Commission

1200 West Washington

Phoenix, Arizona 85007



Re: 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

To Whom it May Concern:

Enclosed, please find, for filing an original and fourteen copies of the following document regarding the above-mentioned cases:

1. Response and Objection to Staff Report

I am enclosing a self-addressed stamped envelope for return of one conformed copy. If you have any questions concerning the enclosed documents, please do not hesitate to contact me at our toll free number (888) 244-3887. Thank you.

Respectfully,

Yesenia Castillo, Secretary to
Julie A. LaBenz, Attorney for
Emerald Springs HOA

enclosure

E-mail address: jchurchill@johnchurchill.com; johnchurchill@gmail.com or
jlabenz@johnchurchill.com

*on select contested litigation matters

BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

- GARY PIERCE -- Chairman
- BOB STUMP
- SANDRA D. KENNEDY
- PAUL NEWMAN
- BRENDA BURNS

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

RESPONSE AND OBJECTION TO THE STAFF REPORT

Pursuant to the January 4, 2012 Procedural Order, Intervenor Emerald Springs HOA ("HOA") hereby responds and objects to the December 16, 2011 Staff Report as follows:

1. The HOA objects to the Staff's conclusion that DII-Emerald Springs LLC ("the Company") appears to possess the managerial ability to operate the wastewater treatment plant.

The information contained in the Staff Report leads to the conclusion that the Company lacks the managerial ability to operate the wastewater treatment plant ("WWTP") as the Staff Report indicates that the Company has a history of non-compliance with state utilities regulations. For example, the Executive Summary of the Staff Report states that Commission Staff learned of the Company, not through the proper application process, but rather, by an inquiry from the Arizona Department of Environmental Quality ("ADEQ"). (pg. 1, ¶ 4). The Commission Staff then contacted the Company's president, Henry Melendez, who stated that he did not know about his company's regulatory obligations. Moreover, the Staff Report states that Mr. Melendez received a loan for \$250,000 in 2008, however, he failed to apply for authorization pursuant to A.R.S. Section 40-301. (Staff Report, pg. 6, ¶¶ 8-9). Thus, the HOA

1 objects to the Staff's conclusion that the Company appears to possess adequate managerial
2 ability as a Company that is completely unaware of utilities regulations certainly does not
3 possess adequate managerial abilities.

4 Secondly, the Company has a history of non-compliance with ADEQ requirements.
5 According to the Executive Summary of the Staff Report, the Staff recommended that the
6 Company file an ADEQ Compliance Status Report due to deficiencies identified by ADEQ.
7 Additionally, the Staff Report indicates that the Company over budgeted \$9,117 for the costs to
8 correct ADEQ violations (pg. 4, ¶¶ 6, 10) and \$5,000 for unnecessary ADEQ annual permits
9 (pg. 6, ¶ 6).

10 Furthermore, the Company's history not only indicates an inability to comply with
11 regulations, but also is rife with massive financial woes, which further illustrate a lack of
12 managerial ability. In 2004, Henry Melendez, as president of Dynamic Financial and
13 Investment Services, Inc. ("Dynamic"), a California corporation, entered into a sewer services
14 agreement with the HOA. Dynamic, however, did not file an Application for Authority with
15 the Arizona Corporation Commission ("ACC") until November 16, 2005. Moreover, on May
16 13, 2009, the ACC revoked Dynamic's authority to transact business in Arizona as a foreign
17 corporation. Dynamic was the sole member of DII-Emerald Springs, LLC, which filed for
18 bankruptcy on January 18, 2008. Then, on March 10, 2010, Blue Tower Holdings Inc., a
19 "utility business" incorporated on December 13, 2010, became the sole member of DII-Emerald
20 Springs LLC. In or about 2010, the Company lost ownership of the land underlying the
21 wastewater treatment plant to foreclosure along with several other parcels within and adjacent
22 to the area comprising the HOA. Although the Staff Report indicates that the Company is in
23 negotiations with WALTCO, the current owner of the land underlying the wastewater treatment
24 plant, the parties have not reached any agreements and the Staff Report appears to indicate that
25 the Staff did not communicate with any representatives from WALTCO regarding the status of
26 the negotiations.

27 Additionally, the Company over budgeted for taxes which it did not have an obligation
28

1 to pay and did not budget for accounting and bookkeeping expenses. (Staff Report, Schedule
2 BCA-3, page 1, 3). Given that Mr. Melendez has been involved with numerous business
3 entities it is quite surprising that he budgeted \$3,000 for income tax when limited liability
4 companies do not incur income taxes. (Staff Report, pg. 6, ¶ 7). The HOA also questions Mr.
5 Melendez's candor to ACC Staff because, upon information and belief, Mr. Melendez is
6 married to Guisella M. Pesantes (Staff Report, Attachment B, pg. 3), and therefore, he may
7 have an interest in Blue Tower which he did not disclose.

8 Overall, the information contained in the Staff Report shows that the Company lacks
9 the managerial ability to properly manage the wastewater treatment plant. The Staff Report
10 details a history of non-compliance with and a state of oblivion to state utilities regulations.
11 Moreover, the Company's recent history of financial problems, the fact that the Company has
12 not reached a lease agreement or other such arrangement with WALTCO, and the Company's
13 inability to draft a realistic budget for the WWTP, all further illustrate the Company's lack of
14 proper managerial skills.

15 **2. The HOA objects to the Staff's recommendation that the Arizona Corporate**
16 **Commission approve DII-Emerald Springs LLC's application for a certificate of**
17 **convenience and necessity.**

18 Before the ACC considers approval of the Company's application for a certificate of
19 convenience and necessity ("CC&N"), the Company must first be required to prove that it has
20 permission to continue its operations given the fact that the Company no longer owns the land
21 underlying the pocket plant.

22 Additionally, before the ACC considers approval of the Company's application for a
23 CC&N, the Company should be required to first show compliance with all ADEQ regulations.

24 **3. The HOA objects to the \$21,998 depreciation expense.**

25 The Company did not budget for depreciation and the Staff proposed \$21,998 for
26 depreciation. (Staff Report, Schedule BCA-1). That number breaks down to \$431 for
27 structures and improvements, \$228 for flow measuring devices, and \$21,339 for treatment and
28 disposal equipment. (Staff Report, Schedule BCA-3). The depreciation expense represents the

1 largest increase in all expense categories. Given that the Company failed to account for
2 depreciation in the past nor take the steps necessary to draft a proper budget and accounting, it
3 is unfair to now add those numbers in the current budget and place that financial burden on the
4 backs of the homeowners.

5 **4. The HOA objects to the Staff's recommendation that the Arizona Corporate**
6 **Commission approve DII-Emerald Springs LLC's application for a rate increase.**

7 The HOA objects to a rate increase for several reasons. First, the HOA objects as the
8 proposed rate increase sets aside monies for improvements to the Company's wastewater
9 treatment plant, yet as the Company does not own the land underlying the plant nor have any
10 agreement in place to operate the plant at the current location, such monies could be used to
11 make improvements to the Company's plant which the Company could remove, or be forced to
12 remove by the landowner, on a truck bed at any time just as easily as the Company installed the
13 mobile pocket plant in 2004.

14 Secondly, given the Company's financial woes, the inability to draft a WWTP budget,
15 the inability to implement basic accounting measures, and the unapproved debt of \$250,000,
16 the Company should not be entrusted with more of the homeowners' monies.

17 **5. The HOA questions if the Staff Report allocated funds for the maintenance of**
18 **the collection system and force mains, which according to DII-Emerald Springs LLC, are**
19 **owned by the HOA.**

20 According to Mr. Melendez, his Company owns the wastewater treatment plant and the
21 HOA owns the collection system and force mains for the sewer system. The HOA is unclear
22 whether the Staff Report accounts for capital for improvements to and upkeep of the collection
23 system and force mains or if the homeowners would be expected to bear that expense in
24 addition to a significant rate increase.

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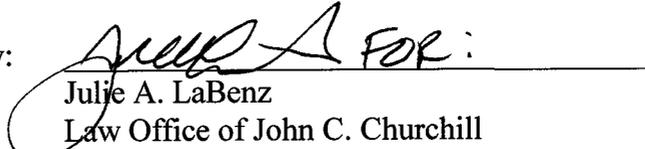
1 **CONCLUSION**

2 For the foregoing reasons, Intervenor HOA responds and objects to the Staff Report.
3 Additionally, the HOA requests an opportunity to supplement to this Response and Objection
4 following the completion of a Data Request.

5 Respectfully submitted this 7th day of March, 2012.

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

7
8 By:


9 Julie A. LaBenz
10 Law Office of John C. Churchill
11 1300 Joshua Ave., Ste. B
12 Parker, AZ 85344
13 (928) 669-6195
14 (928) 669-5376 (fax)
15 ilabenz@johnchurchill.com
16 Attorney for Emerald Springs HOA
17
18
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20
21
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23
24
25
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27
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1 Original and 13 copies mailed
2 this 7th day of March, 2012, to:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

6 Copy of the foregoing mailed
7 this 7th day of March, 2012, to:

8 Henry Melendez
9 DII-Emerald Springs, L.L.C.
10 212 East Rowland Street, No. 423
11 Covina, CA 97723
12 diigroup@aol.com

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

15 Steven M. Olea, Director
16 Utilities Division
17 ARIZONA CORPORATION COMMISSION
18 1200 West Washington Street
19 Phoenix, AZ 85007

18 Courtesy Copy provided by mail
19 this 7th day of March, 2012, to:

20 Dennis Price
21 P.O. Box 1125
22 Ehrenberg, AZ 85334-1125

23 By: EMP