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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

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AZ CORP COMMISSION  
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Arizona Corporation Commission

DOCKETED

MAR 20 2012

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 applications filed in 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 the two dockets were consolidated through a Procedural Order issued on September 15, 2011. The time clock in this consolidated docket was suspended indefinitely by a Procedural Order issued on November 21, 2011. Since that time, the matter has been scheduled and rescheduled for hearing, several public comment sessions have been held, and intervention has been granted to the Emerald Springs Homeowners' Association ("HOA") and to Robhana, Inc. and Charles Dunn Capital, Inc. ("Robhana and Dunn"). In addition, the HOA filed a Motion to Continue, requesting that its deadline to respond to the Staff Report and the hearing set for April 10, 2012, be continued for 60 days to allow it time to complete a data request and prepare for hearing.

On March 20, 2012, a public comment session and procedural conference were held, with DII

1 appearing through its President and the HOA, Robhana and Dunn,<sup>1</sup> and Staff appearing through  
2 counsel. Public comment was provided by four property owners/HOA members, all of whom  
3 expressed opposition to DII's applications, and several of whom made assertions to the effect that DII  
4 is not a fit and proper entity to be granted a CC&N.<sup>2</sup> During the procedural conference, the parties  
5 agreed that the HOA has disconnected from DII's sewer system and connected to a sewer system  
6 owned by Doyle Thompson, the owner of a local mobile home park, although Mr. Thompson does  
7 not hold and has not yet applied for a CC&N. Staff reported that Mr. Thompson has been informed  
8 that he is legally required to obtain a CC&N to provide sewer service as a public service corporation  
9 and further reported that Staff has provided Mr. Thompson with a CC&N application. Staff reported  
10 that Mr. Thompson has indicated that he will apply for a CC&N. Staff also observed that the  
11 Commission can establish rates for a sewer provider that does not hold a CC&N, if the sewer  
12 provider is a public service corporation. DII stated that it still intends to pursue its CC&N  
13 application, although it now has no existing or prospective sewer customers. DII also asserted that  
14 Mr. Thompson's plant is over capacity and unqualified to serve the HOA under Arizona Department  
15 of Environmental Quality ("ADEQ") standards. The HOA acknowledged uncertainty regarding the  
16 sufficiency of Mr. Thompson's plant capacity, particularly in the higher volume summer months, but  
17 stated that the service thus far has been satisfactory. The HOA Motion to Continue, filed on March 7,  
18 2012, was discussed, with DII and Staff continuing to oppose the Motion. In light of the changed  
19 circumstances surrounding provision of service, it was determined that the hearing of April 10, 2012,  
20 would be vacated and the time used instead for another procedural conference and for public  
21 comment, if any. Staff stated that it would like 30 days to investigate the current situation, but also  
22 suggested that a procedural conference be held on April 10, 2012. Robhana and Dunn indicated that  
23 they could be ready to go to hearing in 30 to 60 days. It was determined that a hearing date would  
24 not yet be set, but would instead be discussed at the procedural conference on April 10, 2012. In  
25 addition, no decision was made regarding whether additional notice should be required.

26

27 <sup>1</sup> Robhana and Dunn's intervention was granted during the procedural conference on March 20, 2012. Robhana and  
Dunn assert that they own the land on which DII's sewer plant sits.

28 <sup>2</sup> Each commenting property owner/HOA member asserted that his comments were being provided on his own behalf  
as an individual, not on behalf of the HOA.

1           Thus, it is now reasonable and appropriate to make the procedural changes described herein.  
2 In addition, it is reasonable and appropriate to direct Staff to investigate the current situation, and  
3 specifically to determine whether Mr. Thompson's sewer plant has sufficient capacity to serve the  
4 HOA during the higher volume summer months, with the results of the investigation to be presented  
5 at the procedural conference on April 10, 2012. Each party shall plan and prepare to attend the  
6 procedural conference in person and to present the party's proposal as to how this matter should go  
7 forward, along with a proposed procedural schedule and recommendations as to future notice  
8 requirements. The parties are urged to engage in discussions prior to the procedural conference for  
9 the purpose of determining whether a joint proposal as to scheduling and notice requirements can be  
10 made.

11           IT IS THEREFORE ORDERED that **the evidentiary hearing scheduled for April 10, 2012,**  
12 **shall proceed only for the purpose of holding a procedural conference and accepting any**  
13 **additional public comment.**

14           IT IS FURTHER ORDERED that the second date of the evidentiary hearing, scheduled for  
15 **April 11, 2012,** is hereby **vacated.**

16           IT IS FURTHER ORDERED that **each party shall attend the procedural conference in**  
17 **person** and shall be prepared, at the procedural conference, to present the party's proposal as to how  
18 this matter should go forward, along with a proposed procedural schedule and recommendations as to  
19 future notice requirements.

20           IT IS FURTHER ORDERED that **Staff shall investigate** the current situation regarding  
21 sewer service to the HOA and its members, specifically determining whether Mr. Thompson's sewer  
22 plant has sufficient capacity to serve the HOA and its members during the higher volume summer  
23 months, **and shall present the results** of its investigation, along with its related recommendations, at  
24 the procedural conference to be held on **April 10, 2012.**

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

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 20<sup>th</sup> day of March, 2012.



SARAH N. HARPRING  
ADMINISTRATIVE LAW JUDGE

8  
9 Copies of the foregoing mailed/delivered  
10 this 20<sup>th</sup> day of March 2012, to:

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