

ORIGINAL

BEFORE THE ARIZONA CORPORATION



0000138119
Arizona Corporation Commission

DOCKETED

JUL 20 2012

RECEIVED

2012 JUL 20 P 1:57

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DOCKETED BY JM

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

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

**STAFF'S RESPONSE TO
MOTION TO DISMISS**

On July 11, 2012, Emerald Springs Homeowners' Association ("HOA") filed a motion to dismiss the consolidated applications of DII-Emerald Springs, LLC ("DII" or "Company") in the above-captioned matters. The HOA submits that the Arizona Corporation Commission ("Commission") does not have jurisdiction over these consolidated applications because DII is not a public service corporation. The Utilities Division ("Staff") hereby provides the following response to that motion.

For the forthcoming reasons, Staff believes that the Administrative Law Judge ("ALJ") assigned to this matter should consider dismissing these consolidated matters. However, Staff does not agree that these consolidated matters should be dismissed for the reasons set forth in the HOA's motion.

I. THE COMMISSION HAS SUBJECT MATTER JURISDICTION OVER THESE CONSOLIDATED MATTERS.

The Commission has jurisdiction to hear applications for Certificates of Convenience and Necessity ("CC&N") to provide sewer service.¹ The Commission similarly has jurisdiction to hear applications to fix and establish rates and charges for sewer services.² DII, as the applicant in these matters, has filed applications with the Commission for a CC&N to provide sewer service and to set

¹ A.A.C. R14-2-602.
² ARIZ. CONST. Art. XV, sec. 3; A.R.S. § 40-203.

1 rates and charges for that service. As a result, the Commission has subject matter jurisdiction over
2 these applications.

3 The HOA nonetheless argues that the Commission lacks jurisdiction to hear these
4 consolidated applications because DII is not a public service corporation. Specifically, the HOA
5 posits that DII is not a public service corporation because DII does not presently own or operate any
6 sewer utility facilities. However, the HOA's contention is misplaced because the Commission's rules
7 and regulations pertaining to CC&N applications contemplate that an applicant should not construct
8 sewer utility facilities or operate a sewer utility prior to obtaining a Commission approved CC&N.³
9 Therefore, the fact that DII does not presently own any sewer utility facilities or provide sewer
10 services to any customers is in fact consistent with Commission rules and regulations.

11 Moreover, Commission rules pertaining to CC&N applications do not require that the
12 applicant be a public service corporation. Arizona Administrative Code ("A.A.C.") R14-2-602(A)(1)
13 defines "[a]pplicant" as "a person who submits an application to obtain a [CC&N] to construct sewer
14 utility facilities or to operate as a sewer utility..." Therefore, the Commission has jurisdiction over
15 DII and the related applications irrespective of whether DII is a public service corporation.

16 **II. THE COMMISSION HAS PERSONAL JURISDICTION OVER DII.**

17 The Commission has personal jurisdiction over DII by virtue of the fact that DII is the
18 applicant in these consolidated matters. Accordingly, the Commission has personal jurisdiction over
19 DII irrespective of whether DII is a public service corporation.

20 **III. THE ISSUE OF WHETHER DII IS A PUBLIC SERVICE CORPORATION
21 PRESENTS A QUESTION OF FACT.**

22 Even assuming the Commission does not have jurisdiction to hear the CC&N and rate
23 applications of entities that are not public service corporations, Staff believes that the issue of
24 whether DII is a public service corporation should not be summarily resolved by the HOA's motion
25 to dismiss. Notably, the allegations that form the basis of the HOA's assertion that DII is not a public
26

27 _____
28 ³ See A.A.C. R14-2-602(B)(1) ("[a]ny person who desires to construct sewer utility facilities or to operate as a sewer utility shall, *prior to commencing construction of utility facilities or operations*, file with the Commission an application for a CC&N and obtain Commission approval") (emphasis added).

1 service corporation are based "upon information and belief."⁴ Accordingly, any determination as to
2 whether DII is a public service corporation would be premature at this time.

3 **IV. THE ADMINISTRATIVE LAW JUDGE ASSIGNED TO THIS MATTER SHOULD**
4 **CONSIDER ADMINSTRATIVE CLOSURE OF THESE MATTERS.**

5 Although the Commission has jurisdiction to hear these consolidated matters, Staff believes
6 that the ALJ should nonetheless consider the administrative closure of these dockets due to the fact
7 that the only customer in the contemplated service territory of DII is being served by another sewer
8 operator. In light of these circumstances, Staff believes that these consolidated applications are no
9 longer relevant and should not be further processed.

10 RESPECTFULLY SUBMITTED this 20th day of July, 2012.

11
12 

13 _____
14 Scott M. Hesla, Attorney
15 Legal Division
16 Arizona Corporation Commission
17 1200 West Washington Street
18 Phoenix, Arizona 85007
19 (602) 542-3402

20 Original and thirteen (13) copies
21 of the foregoing filed this
22 20th day of July, 2012 with:

23 Docket Control
24 Arizona Corporation Commission
25 1200 West Washington Street
26 Phoenix, Arizona 85007

27 Copies of the foregoing mailed this
28 20th day of July, 2012 to:

Henry Melendez
DII-EMERALD SPRINGS, LLC
212 East Rowland Street # 423
Covina, California 91723-3146

⁴ HOA's Motion to Dismiss at p. 3, ln. 25.

1 Julie A. LaBenz
LAW OFFICE OF JOHN C. CHURCHILL
2 1300 Joshua Avenue, Suite B
Parker, Arizona 85344
3 Attorney for Emerald Springs
Homeowners Association

4 Steve Wene, Esq.
5 MOYES SELLERS & HENDRICKS
1850 North Central Avenue
6 Suite 1100
Phoenix, Arizona 85004
7 Attorney for Robhana, Inc.
and Charles Dunn Capital, Inc.

8 Dennis Price
9 Post Office Box 1125
Ehrenberg, Arizona 85334-1125

10 Doyle Thompson, Jr.
11 c/o Copper State Mobile Home & RV Park
48998 Sourdough Road
12 Ehrenburg, Arizona 85334

13
14 
15

16

17

18

19

20

21

22

23

24

25

26

27

28