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July 19, 2012

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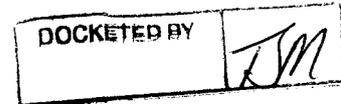
Arizona Corporation Commission

DOCKETED

JUL 25 2012

Docket Control Center  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL



**RE: RESPONSE TO MOTION TO DISMISS FILED BY THE HOA**  
**Docket No. WS-20794A-11-0140 & WS-20794A-11-0279**

DII-Emerald Springs, LLC ("DII") responds to the above mentioned Motion as follows:

On July 11, 2012, Emerald Springs Homeowner's Association (HOA) filed a motion to dismiss the consolidated application of DII. The HOA states the Arizona Corporation Commission (ACC) does not have jurisdiction over the consolidated application of DII; because DII is not a public service corporation.

DII believes the HOA is totally incorrect about the lack of jurisdiction of ACC on DII's application. However, if ACC does not have jurisdiction over DII's consolidated application, then ACC will also have to dismiss the application of Mr. Thompson; as he is NOT a public service corporation either.

The purpose of submitting an application is to become an approved public service corporation. DII has complied with all documentation and requests from ACC for this process; therefore, DII believes ACC has jurisdiction over DII's application and the HOA request is invalid and improper.

**In regards to the other arguments made by the HOA, the responses are below:**

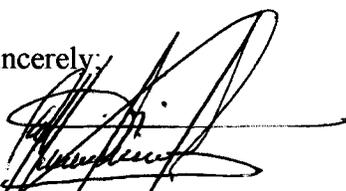
- DII reminds all parties the HOA and DII are still under a sewer service contract dated July 10, 2004. This contract is already on file. DII will seek all legal options to enforce this contract if necessary.
- DII has been providing sewer service to the HOA per their request; since July 2004 without any interruption, concerns, issues, complaints, or threats of disconnections.
- On early 2004, the HOA requested DII help with the sewer problem; because Mr. Thompson who was the sewer provided at that time had cut off the pipe connecting to his treatment facility without any concern to potential contamination to the Colorado River, possible health issues, and damages to the existing houses among other concerns. Yes, it is the same Mr. Thompson; that has now filed an application that carelessly terminated the sewer services to the HOA in 2004. Mr. Thompson was not only cutting off the sewer services to the HOA, but also intentionally blocked the access road to the HOA community claiming sole ownership of such access road. The HOA had very bad experiences with Mr. Thompson prior to July 2004. Several current property owners are not willing to deal with Mr. Thompson because of past bad experiences and present issues.
- DII for 5 years did not increase the cost of the sewage service provided to the HOA.
- HOA started to have problems with DII after HOA was notified DII will have to increase the cost of the sewer service per the terms of the contract signed on July 10, 2004, as DII could no longer continue subsidizing the operation. This was the beginning of the problems with the HOA. So, it is clear the problem with the HOA is about money and not anything else...

- The HOA emailed a letter to DII on 3-6-2012 (exhibit-1) indicating the HOA was temporarily disconnecting the sewage pipe from DII's plant and connecting it to Mr. Thompson to conduct a test/pilot program. Therefore, the existing contract dated 7-10-2004 remains in effect and the HOA is still a legal customer of DII's treatment plant.
- DII has not abandoned the plant. It still has utilities and it runs several hours per day to keep it ready and active.
- The ownership of the treatment facility is not in question. The HOA made reference to a judgment that indicated several pieces of equipment. That list of equipment in it's entirety was located in Redlands, CA since the day of acquisition until it was taken back sometime after the judgment.
- The HOA is correct as to the current ownership of the land where DII's plant is currently sitting on. The new owner is Intervenor Waltco/Robhana, they have indicated they will be willing to enter into an agreement with DII for the purchase or lease of the site in question.
- Currently, Neither Mr. Thompson, the HOA or DII have an agreement with Waltco/Robhana as to the easement needed where the transmission pipes are currently running. These pipes are running from the lift station to the treatment facility. DII has spoken to Waltco/Robhana about this easement and they are open to cooperate with DII on this easement as well.
- On April 9, 2012 (image # 0000135725 of the docket) Staff filed a response to procedural order with the results of Staff's investigation of Mr. Thompson's waste water treatment facility. The investigation report was prepared by Marlin Scott, Jr., where clearly indicates Mr. Thompson's facility will require a new permit in order to accommodate the HOA's flow. I hope the ACC does not ignore this facts originated by own staff.
- DII has valid knowledge and experience dating from July 2004 as to the current flows going into Mr. Thompson's system during this test/pilot period. DII believes the HOA at their peak during this 2012 summer is outputting around 11,000 to 15,000 Gallons per day (GPD). Mr. Thompson's average per Staff is 11,200 to 14,600 GPD. Therefore, by adding the HOA flow plus Mr. Thompsons flow the totals are from 22,200 to 29,600 GPD. This indicates Mr. Thompson is already in violation of his general permit that limits him to 20,000 GPD. A new permit is needed.!
- DII requests, a comparison of both applications (Mr. Thompson's and DII's) to include the cost to secure the proper permits, potential expansion to the existing system, cost of easements from Waltco/Robhana, etc., in order to have true and accurate costs. Anything less than that will be inaccurate and misrepresentation of the true costs in order to arrive to new and fair rates.
- DII requests ACC to immediately demand installation of two flow meters to accurately measure the flows going into Mr. Thompson's facility. One flow meter should be set up on the pipe going from the HOA lift station to the treatment facility and the other flow meter should be installed on the pipe carrying the flow from Mr. Thompson's own connections to his facility. These flow meters will document the peak flow from each source. The installation of these flow meters should be supervised by ACC, the flow counts should be provided to ACC on the weekly basis.

Based upon the foregoing, DII Respectfully requests the Motion to Dismiss filed by the HOA; be invalidated and terminated. DII also requests to move forward with both applications, analyze them and conclude what are the actual numbers to determine the lowest rates for the customers.

If additional information is required, please contact me at 626-664-0602.

Sincerely:



DII-Emerald Springs, LLC  
Henry Melendez, President

"EXHIBIT-1"

Emerald Springs Homeowners Association  
128 N. Spring Street  
Blythe, CA 92225

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March 6, 2012

Mr. Henry Melendez  
DII-Emerald Springs, L.L.C  
212 East Rowland Street, No. 423  
Covina, CA 97723

Re: SEWER SERVICES TO EMERALD SPRINGS

Dear Mr. Melendez & DII-Emerald Springs, L.L.C.,

Since July 2004, DII-Emerald Springs has allowed the homeowners within Emerald Springs to connect to the sewer treatment plant located behind Emerald Springs. (See paragraph H of the July 10, 2004 Agreement Regarding Sewer Services).

→ The purpose of this letter is to notify you that at approximately 10:00 a.m. P.S.T. the pipe connecting the Emerald Springs homeowners to the sewer treatment plant located behind Emerald Springs will be temporarily disconnected in order for the HOA to conduct a test/pilot program with a prospective sewer services provider in an effort to determine if such provider can accommodate the HOA's sewer service needs.

It is our understanding that once this process takes place that sewage may remain in the sewer treatment plant located behind Emerald Springs. It is your responsibility to see that the remaining sewage is treated as necessary to avoid any health and safety issues. We intend to work with you and the county Health Department to ensure that the proper steps are taken to safeguard the health and safety of the homeowners.

Following this test/pilot period, the HOA intends to contact you in order to discuss prospective future sewer services to the homes within Emerald Springs.

Thank you for your attention to this matter. Should you have any questions, you may contact the HOA board through the HOA email address, [estreasurer@yahoo.com](mailto:estreasurer@yahoo.com).

Sincerely,

Emerald Springs HOA

cc: Julie A. LaBenz,  
Law Offices of John C. Churchill

Alan Kabaker  
Charles Dunn Financial Services Group

Docket: WS-20794A-11-0140 & WS-20794A-11-0279