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BEFORE THE ARIZONA CORPORATION

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COMMISSIONERS

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

OCT 29 2012



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

IN THE MATTER OF THE APPLICATION
OF DOYLE THOMPSON FOR APPROVAL
OF A CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE SEWER
SERVICES.

DOCKET NO. SW-20851A-12-0226

PROCEDURAL ORDER

BY THE COMMISSION:

On April 4 and July 15, 2011, DII-Emerald Springs, L.L.C. ("DII") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide wastewater service, in Docket No. WS-20794A-11-0140, and an application for ratemaking, in Docket No. WS-20794A-11-0279 (collectively "DII Dockets"). The requested CC&N service area includes a subdivision known as Emerald Springs, and DII considered the Emerald Springs Homeowners' Association ("HOA") to be DII's only customer at the time of DII's applications.¹ The Commission's Utilities Division ("Staff") found DII's CC&N and rate applications to be sufficient in August 2011, and the DII Dockets were consolidated through a Procedural Order issued on September 15, 2011. The time clock for the DII Dockets was suspended indefinitely by a Procedural Order issued on November 21, 2011. Since that time, the hearing has been scheduled and rescheduled, public comment sessions and procedural conferences have been held, and intervention has been granted to the HOA; Robhana, Inc. and Charles Dunn Capital, Inc. ("Robhana"); and Doyle Thompson.² In addition, the HOA has

¹ DII would bill the HOA, which would then bill the HOA members.

² Robhana asserts that it owns the land on which DII's sewer plant sits. The interventions were granted at procedural conferences held on March 20, 2012, and April 10, 2012, respectively.

1 disconnected from DII's wastewater treatment plant ("WWTP") and connected to Mr. Thompson's
2 WWTP for what has been described by the HOA as a test period, although the HOA has expressed an
3 intention not to terminate the test period.

4 On June 7, 2012, in Docket No. SW-20851A-12-0226 ("Thompson Docket"), Mr. Thompson
5 filed an application for a CC&N to provide wastewater service to the area including Emerald Springs
6 and the HOA. Mr. Thompson's CC&N application has not yet been found sufficient.

7 The DII Dockets and the Thompson Docket were consolidated by a Procedural Order issued
8 on July 31, 2012, that also denied an HOA Motion to Dismiss DII's applications.

9 On October 10, 2012, DII filed a Motion to Dismiss Mr. Thompson's CC&N application
10 because Mr. Thompson has failed to meet filing deadlines and thus far has failed to bring his CC&N
11 application to sufficiency ("DII Motion"). In the DII Motion, DII also requests that its own
12 applications be expedited to the next step of the process.

13 On October 15, 2012, Staff filed Staff's Response to Motion to Dismiss and Status Update.
14 Staff stated that it has been working diligently with Mr. Thompson to address the items of
15 insufficiency and that Mr. Thompson has been cooperative in that process. Staff further stated that it
16 intends to schedule a site visit with Mr. Thompson in the near future to resolve the remaining items of
17 insufficiency. Staff requested that the DII Motion be denied so that the efforts to achieve sufficiency
18 are not wasted.

19 On October 16, 2012, Staff issued to Mr. Thompson a letter listing additional insufficiency
20 items related to Mr. Thompson's CC&N application.

21 On October 17, 2012, the HOA filed Intervenor HOA's Response to Motion to Dismiss and
22 Status Update. The HOA stated that the DII Motion should be denied because Mr. Thompson is
23 working with Staff and making progress toward achieving sufficiency.

24 As was stated in the July 31, 2012, Procedural Order, the Commission's most appropriate
25 course of action when presented with competing applications for a CC&N is to consider the
26 competing applications in one proceeding, compare the qualifications of the two applicants,
27 determine which applicant's services will best satisfy the public interest, and grant the CC&N to that
28 applicant. These consolidated dockets represent a dispute regarding which entity should provide

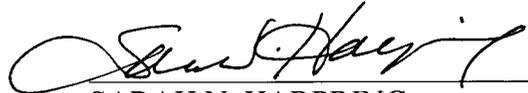
1 certificated wastewater utility service to the HOA and its members in the requested CC&N area. It
2 would not best serve the public interest if the Commission were to act on one of the competing
3 CC&N applications without considering the merits of the other simply because Mr. Thompson's
4 CC&N application is taking longer than expected to reach sufficiency.

5 IT IS THEREFORE ORDERED that **the DII Motion to Dismiss is Denied.**

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

9 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
10 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
11 hearing.

12 DATED this 29th day of October, 2012.



14 SARAH N. HARPRING
15 ADMINISTRATIVE LAW JUDGE

16
17 Copies of the foregoing mailed/delivered
this 29th day of October, 2012, to:

18 Henry Melendez
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