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BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

MAR 19 2013

COMMISSIONERS

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

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- 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
- INTERVENOR HOA MOTION TO CONTINUE HEARING SET APRIL 2-3, 2013**

COMES NOW Intervenor HOA, by and through counsel undersigned, pursuant to R14-3-106 and R14-3-109(Q), and hereby respectfully requests that the April 2-3, 2013 hearing in the above-referenced matters be continued for 30-60 days so that all customers receive notice of Staff's recommended sewer rates and to provide sufficient time for Intervenor HOA to prepare for the hearing and engage in necessary data requests. This Motion is made in good faith and not for the purposes of delay and is based upon the following:

1. Lack of full, informed notice to the customers

On January 10, 2013, the Administrative Law Judge issued a Procedural Order in this matter, which in part, ordered Applicant Doyle Thompson to provide public notice of the April 2-3, 2013 hearing and included specific language for the public notice and that he mail to each customer and publish notice in the local paper at least once no later than February 22, 2013.

Exhibit 1: 1/10/13 Procedural Order, pg. 3-5.

The public notice within the January 10, 2013 Procedural Order states in part: "Mr. Thompson has reported that he is currently charging the HOA \$50.00 per residential connection, for a total of \$2,000 per month (40 residential connections with 52 existing lots in

1 Emerald Springs). Mr. Thompson has proposed that he be authorized to charge the following
2 rates: \$75.00 per on-site built home, \$30.00 per mobile home space, and \$15.00 per RV space.
3 Staff is now in the process of auditing and analyzing all three applications and will be making
4 recommendations regarding the disposition of each CC&N application and rate proposal. . . .”

5 Exhibit 1, pg. 3.

6 On March 11, 2013, just twenty-two (22) days before the April 2nd hearing, undersigned
7 counsel received the Staff Report in which Staff recommends to ***triple*** Mr. Thompson’s current
8 sewer rates. Specifically, Staff recommends that Mr. Thompson’s RV customers’ rates
9 increase from \$15/month to \$44.95/month, that his mobile home customers’ rates increase
10 from \$30/month to \$89.91/month, and that the HOA customers’ rates increase from \$50/month
11 to \$149.85/month. Staff Report, Schedule CSB-4.

12 Yet, the public notice referenced in the January 10, 2013 Procedural Order does not
13 inform the customers that Staff recommends the customers’ monthly rates ***triple***. As a result,
14 the customers have not received full, informed notice and Intervenor HOA respectfully requests
15 that the April 2-3, 2013 hearing dates be continued for 30-60 days and, during that time, a new
16 public notice be issued that clearly informs the customers that the Staff recommends that their
17 rates triple and inform the customers of how they may voice their opinions regarding the
18 monthly rates for sewer fees.

19 **2. Significant change in Staff’s position and Staff’s recommended rate**
20 **increase**

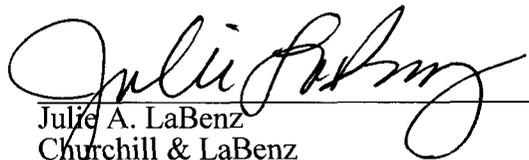
21 In additional to seeking a continuance to provide the public with notice of Staff’s
22 proposed rates so that the public understand the positions of the various parties and so that the
23 public may make an informed decision as to whether they would like to provide comment
24 regarding Staff’s proposed rates, Intervenor HOA also seeks a continuance based upon the
25 content of the Staff Report. In sum, Intervenor HOA seeks a continuance of the April 2-3,
26 2013 hearing to have sufficient time to gather evidence and prepare. Although Staff was
27 ordered to file its Report by March 8, 2013, on March 8, 2013, Staff filed a request for a one
28 week extension. Due to the timing of Staff’s request, none of the interested parties had an

1 opportunity to object or otherwise provide their position. In its recent Report, the Staff
2 significantly changed its position in that it now recommends that neither applicant be granted
3 the CC&N. Furthermore, Staff's Report recommends that the HOA's sewer rates triple. Given
4 Staff's positions, the HOA respectfully requests a continuance of the April 2-3, 2013 hearing so
5 that the HOA have sufficient time to build its case. In other words, moving to the hearing just
6 twenty-two (22) days after receipt of the Staff Report is not sufficient as the HOA is submitting
7 a data request to Staff based upon its recent Staff Report and is also gathering evidence and
8 witnesses to present its case, but fears that the limited amount of time will not be sufficient and
9 will result in prejudice to Intervenor HOA who is directly affected by the outcome of this
10 matter.

11 Thus, based upon the foregoing, Intervenor HOA respectfully requests a 30-60 day
12 continuance of the April 2-3 hearing so that the public receive full and informed notice of the
13 Staff's recommended rates and so that Intervenor HOA have sufficient time to engage in
14 discovery and to prepare for the hearing.

15 RESPECTFULLY SUBMITTED this 18 day of March, 2013.

16 **CHURCHILL & LaBENZ**

17
18 By: 

19 Julie A. LaBenz
20 Churchill & LaBenz
21 1300 Joshua Ave., Ste. B
22 Parker, AZ 85344
23 (928) 669-6195
24 (928) 669-5376 (fax)
25 jlabenz@johnccchurchill.com
26 Attorney for Intervenor Emerald Springs HOA
27
28

1 Original and 15 copies mailed
this 8 day of March, 2013, to:

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

5 Copy of the foregoing mailed
6 this 8 day of March, 2013, to:

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

11 Steve Wene
12 MOYES SELLERS & HENDRICKS
13 1850 N. Central Ave., Ste. 1100
14 Phoenix, AZ 85004
Attorney for Robhana, Inc. and Charles Dunn Capital, Inc.

15 Doyle Thompson
16 COPPER STATE GAME CLUB, R.V. AND MOBILE HOME PARK
17 P.O. Box 287
Ehrenberg, AZ 85334

18 Janice Alward, Chief Counsel
19 Legal Division
20 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

21 Steven M. Olea, Director
22 Utilities Division
23 ARIZONA CORPORATION COMMISSION
24 1200 West Washington Street
Phoenix, AZ 85007

25 Courtesy Copy provided by mail
26 this 8 day of March, 2013, to:

27 Dennis Price
28 P.O. Box 1125
Ehrenberg, AZ 85334-1125

By: 

Exhibit 1

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

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 a rate application, 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. (collectively referred to as "Robhana"); and Doyle Thompson.² In addition, the parties

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 of Robhana and Mr. Thompson were granted at procedural conferences held on March 20, 2012, and April 10, 2012, respectively.

1 have indicated that the HOA has disconnected from DII's wastewater treatment plant ("WWTP") and
2 connected to Mr. Thompson's WWTP for what was originally described by the HOA as a test period,
3 although the HOA has expressed an intention never to terminate that 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.

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

9 On October 16, 2012, Staff issued a letter to Mr. Thompson including several additional
10 insufficiency items.

11 On October 29, 2012, a Procedural Order was issued denying a DII Motion to Dismiss Mr.
12 Thompson's application, which Motion had been opposed by both Staff and the HOA.

13 On November 27, 2012, Mr. Thompson filed information in response to Staff's Insufficiency
14 Letter and Staff's letter with additional insufficiency items.

15 On January 8, 2013, Staff issued a Sufficiency Letter stating that Mr. Thompson's CC&N
16 application has met the minimum sufficiency requirements of A.A.C. R14-2-602.

17 As has been stated in prior Procedural Orders, the Commission's most appropriate course of
18 action when presented with competing applications for a CC&N is to consider the competing
19 applications in one proceeding, compare the qualifications of the two applicants, determine which
20 applicant's services will best satisfy the public interest, and grant the CC&N to that applicant.
21 Because Mr. Thompson's CC&N application has been found sufficient, it is now appropriate to
22 establish the procedural schedule and requirements for this consolidated matter, in which the merits
23 of the DII applications and the Thompson application shall be addressed.

24 IT IS THEREFORE ORDERED that the hearing in the above-captioned matter shall
25 commence on April 2, 2013, at 10:00 a.m., or as soon thereafter as is practicable, in Hearing Room
26 No. 1 at the Commission's offices, 1200 West Washington, Arizona 85007, and shall continue at
27 9:00 a.m. on April 3, 2013, if necessary.

1 IT IS FURTHER ORDERED that Mr. Thompson³ shall ensure that public notice of the
 2 hearing in this matter is provided, in the following form and style, with the heading in no less than
 3 12-point bold type and the body in no less than 10-point regular type:

4 **IN THE MATTER OF THE APPLICATIONS OF DII-EMERALD SPRINGS,**
 5 **L.L.C. AND DOYLE THOMPSON FOR A CERTIFICATE OF**
 6 **CONVENIENCE AND NECESSITY AND APPROVAL OF RATES TO**
 7 **PROVIDE SEWER SERVICE TO AN AREA IN LA PAZ COUNTY**
 8 **INCLUDING THE EMERALD SPRINGS SUBDIVISION.**
 9 **(DOCKET NOS. WS-20794A-11-0140 ET AL.)**

10 **Summary**

11 On April 4, 2011, DII-Emerald Springs, L.L.C. ("DII") filed an application for a
 12 Certificate of Convenience and Necessity ("CC&N") to provide sewer service to a
 13 CC&N service area including a subdivision in Ehrenberg known as Emerald Springs. At
 14 the time, DII considered the Emerald Springs Homeowners' Association ("HOA") to be
 15 DII's only customer, as the HOA would be billed for service and would then bill its
 16 members. On July 15, 2011, DII filed a rate application for the same service area, to
 17 which DII had been providing sewer service since 2004. In September 2011, DII's
 18 CC&N and rate applications were consolidated to proceed as one matter.

19 In March 2012, the HOA, through its own actions, ceased receiving sewer service from
 20 DII and began receiving sewer service from Doyle Thompson, who was already
 21 providing sewer service to Copper State Mobile Home and RV Park, for which he is
 22 identified as the owner.

23 In March 2012, intervention in the DII matters was granted to the HOA and jointly to
 24 Robhana, Inc. and Charles Dunn Capital, Inc. In April 2012, intervention in the DII
 25 matters was granted to Mr. Thompson, who indicated that he soon would be filing an
 26 application for a CC&N to provide sewer service.

27 On June 7, 2012, Mr. Thompson filed an application for a CC&N to provide sewer
 28 service to a CC&N service area including Emerald Springs. The HOA has expressed
 support for Mr. Thompson's CC&N application.

In July 2012, the dockets for Mr. Thompson's application and DII's applications were
 consolidated, to allow the Commission to consider and resolve the competing
 applications and rate proposals through a single proceeding.

DII has proposed that the HOA be charged a flat monthly rate to cover service to all of its
 members. DII has not proposed a specific rate, but was charging the HOA a monthly rate
 of \$3,041.18 at the time service was disconnected. In a December 2011 Staff Report, the
 Commission's Utilities Division ("Staff") recommended that DII be granted a CC&N and
 authorized to charge a monthly rate of \$125.80 per completed residential connection (of
 which there were then 43, per the Staff Report).

Mr. Thompson has reported that he is currently charging the HOA \$50.00 per residential
 connection, for a total of \$2,000 per month (40 residential connections within 52 existing
 lots in Emerald Springs). Mr. Thompson has proposed that he be authorized to charge
 the following rates: \$75.00 per on-site built home, \$30.00 per mobile home space, and
 \$15.00 per RV space.

Staff is now in the process of auditing and analyzing all three applications and will be
 making recommendations regarding the disposition of each CC&N application and rate

³ DII has previously provided notice of hearings scheduled for its applications in this matter.

1 proposal. The Commission is not bound by the proposals made by DII, Mr. Thompson,
 2 Staff, or any intervenors. **The rates approved by the Commission will not necessarily**
 3 **be the rates proposed by any party to this proceeding, including Staff, and may be**
 4 **higher or lower than the rates proposed.** The Commission will issue a Decision
 5 regarding the applications following consideration of testimony and evidence presented at
 6 an evidentiary hearing.

7 **How You Can View or Obtain a Copy of the Applications**

8 Copies of the applications and other documents filed in these consolidated matters are
 9 available for inspection during regular business hours at the Commission's Docket
 10 Control Center at 1200 West Washington Street, Phoenix, AZ 85007, and at any time on
 11 the Internet via the Commission's website (www.azcc.gov) using the e-Docket function,
 12 located at the bottom of the webpage. Copies of DII's applications are also available
 13 from DII at 212 East Rowland Street #423, Covina, CA 91723. Copies of Mr.
 14 Thompson's application are also available from Mr. Thompson at [INSERT HOW AND
 15 WHERE AVAILABLE].

16 **Public Hearing Information**

17 The Commission will hold a hearing on this matter beginning April 2, 2013, at 10:00
 18 a.m., in Hearing Room No. 1, at the Commission's offices at 1200 West Washington
 19 Street, Phoenix, AZ 85007. Public comments will be taken on the first day of hearing.
 20 Written public comments may be submitted at any time by mailing a letter, referencing
 21 **Docket Nos. WS-20794A-11-0140 et al.**, to: Arizona Corporation Commission,
 22 Consumer Services Section, 1200 West Washington Street, Phoenix, AZ 85007. If you
 23 require assistance, you may contact the Consumer Services Section at 1-800-222-7000.

24 **About Intervention**

25 Any person entitled by law to intervene and having a direct and substantial interest in the
 26 matter will be permitted to intervene. The granting of intervention entitles a person to
 27 participate as a party at hearing by presenting sworn evidence and cross-examining other
 28 party's witnesses. **If you wish to intervene, you must file an original and 13 copies of**
 a written motion to intervene with the Commission's Docket Control Center **no later**
 than **March 15, 2013**, and send a copy of the motion to all parties of record or their
 counsel. Contact information may be obtained using the Commission's e-Docket
 function.

Your motion to intervene must contain the following:

1. Your name, address, and telephone number, and the name, address, and telephone number of any person upon whom service of documents is to be made, if not yourself;
2. A short statement of your interest in the proceeding (e.g., a customer of either applicant, a property owner in the proposed CC&N service area, etc.); and
3. A statement certifying that you have mailed a copy of the motion to intervene to all parties of record in the case or to their counsel.

The granting of motions to intervene is governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before March 15, 2013.

If representation by counsel is required by Arizona Supreme Court Rule 31, intervention will be conditioned upon the intervenor obtaining counsel to represent the intervenor. A sample intervention request form is available on the Commission's website at <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>.

If you do not intervene, you will receive no further notice of the proceedings in this docket. **However, all documents filed in this docket are available online** (usually within 24 hours after docketing) at the Commission's website, www.azcc.gov, using the e-Docket function, located at the bottom of the webpage. RSS feeds are also available through e-Docket.

ADA/Equal Access Information

1 The Commission does not discriminate on the basis of disability in admission to its public
2 meetings. Persons with a disability may request a reasonable accommodation such as a
3 sign language interpreter, as well as request this document in an alternative format, by
4 contacting the ADA Coordinator, Shaylin Bernal, E-mail SABernal@azcc.gov, voice
5 phone number 602-542-3931. Requests should be made as early as possible to allow
6 time to arrange the accommodation.

7 IT IS FURTHER ORDERED that Mr. Thompson shall mail a copy of the above notice to
8 each property owner in the proposed CC&N service area and shall cause the above notice to be
9 published at least once in a newspaper of general circulation in the proposed CC&N service area,
10 with publication and mailing to be completed no later than February 22, 2013. (P)

11 IT IS FURTHER ORDERED that Mr. Thompson shall file certification of mailing and
12 publication as soon as practicable after mailing/publication has been completed, but no later than
13 March 8, 2013.

14 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing/
15 publication, notwithstanding the failure of an individual to read or receive the notice.

16 IT IS FURTHER ORDERED that the consolidated Staff Report and any associated exhibits
17 to be presented at hearing by Staff shall be reduced to writing and filed on or before March 1, 2013. (P)
18 The consolidated Staff Report shall address and make recommendations regarding Commission
19 action as to each applicant's CC&N application and each applicant's rate proposal, and shall include
20 Staff's determinations as to which applicant is better qualified to provide service in the requested
21 CC&N service area, which applicant's services would best satisfy the public interest, and what initial
22 rates should be charged.

23 IT IS FURTHER ORDERED that any objections to the consolidated Staff Report shall be
24 reduced to writing and filed on or before March 15, 2013. (P)

25 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-
26 105, except that all motions to intervene must be filed on or before March 15, 2013. (P)

27 IT IS FURTHER ORDERED that any objections to any Motions to Intervene shall be filed
28 on or before March 22, 2013. (P)

IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
Communications) applies to this proceeding and shall remain in effect until the Commission's