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BEFORE THE ARIZONA CORPORATION

Arizona Corporation Commission

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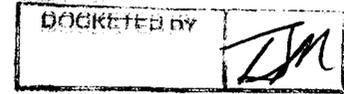
COMMISSIONERS

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MAR 26 2013

- 3 BOB STUMP - Chairman
- 4 GARY PIERCE
- 5 BRENDA BURNS
- 6 BOB BURNS
- 7 SUSAN BITTER SMITH

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL



8 IN THE MATTER OF THE APPLICATION
9 OF DII-EMERALD SPRINGS, L.L.C. FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE WASTEWATER
12 SERVICES.

DOCKET NO. WS-20794A-11-0140

13 IN THE MATTER OF THE APPLICATION
14 OF DII-EMERALD SPRINGS, L.L.C. FOR
15 APPROVAL OF RATES.

DOCKET NO. WS-20794A-11-0279

16 IN THE MATTER OF THE APPLICATION
17 OF DOYLE THOMPSON FOR APPROVAL
18 OF A CERTIFICATE OF CONVENIENCE
19 AND NECESSITY TO PROVIDE SEWER
20 SERVICES.

DOCKET NO. SW-20851A-12-0226

PROCEDURAL ORDER

BY THE COMMISSION:

21 On January 10, 2013, a Procedural Order was issued in this consolidated matter scheduling a
 22 hearing to commence on April 2, 2013, and establishing other procedural requirements and deadlines.
 23 Among those were requirements for the Commission's Utilities Division ("Staff") to file a
 24 consolidated Staff Report by March 1, 2013, and for the other parties to file any objections to the
 25 consolidated Staff Report by March 15, 2013. Pursuant to a Procedural Order issued on March 1,
 26 2013, and in response to a Staff request for extension, those filing deadlines were extended to March
 27 8 and 22, 2013, respectively. Staff's consolidated Staff Report, recommending denial of both
 28 Certificate of Convenience and Necessity ("CC&N") applications at issue in this case, was filed on
 March 8, 2013.

In addition to scheduling the hearing in this matter, the January 10, 2013, Procedural Order
 required that Doyle Thompson, by February 22, 2013, mail public notice of this matter to each
 property owner in the proposed CC&N service area and have public notice published at least once in
 a newspaper of general circulation in the proposed CC&N service area. The Procedural Order also
 required Mr. Thompson to file certification of the mailing and publication as soon as practicable after

1 the mailing and publication had been completed, but no later than March 8, 2013. Mr. Thompson did
2 not make such a filing.

3 On March 19, 2013, a Procedural Order was issued directing Mr. Thompson to file, by March
4 25, 2013, either a certificate of mailing and publication establishing that timely notice had been made
5 as ordered or an explanation of the notice actually provided as well as the reason for the filing delay.
6 Although the Procedural Order was e-mailed and mailed to the parties, and there are no indications
7 that Mr. Thompson did not receive the Procedural Order via e-mail, Mr. Thompson still has not made
8 a filing.

9 Also on March 19, 2013, the Emerald Springs Homeowners' Association ("HOA") filed a
10 Motion to Continue Hearing Set April 2-3, 2013 ("Motion"). The HOA asserted in the Motion that
11 customers have not been provided sufficient notice because the notice required to be provided by Mr.
12 Thompson pursuant to the Procedural Order did not expressly state that Staff would recommend rates
13 that are triple the amount of customers' current monthly rates. The HOA asserted that the hearing
14 should be continued for 30 to 60 days to allow for the provision of additional notice to customers, to
15 include information about how customers may comment. The HOA further asserted that the Motion
16 should be granted because the HOA had not had sufficient time to gather evidence and prepare, in
17 light of Staff's position as included in the Consolidated Staff Report.

18 On March 21, 2013, DII-Emerald Springs, L.L.C. ("DII") filed a Response to the HOA's
19 Motion asserting that the HOA's Motion should be denied and that no continuance should be ordered
20 unless it is necessitated by Mr. Thompson's failure to comply with notice requirements. DII
21 suggested that the HOA and Mr. Thompson may be conspiring to delay the process for as long as
22 possible. DII further asserted that continued noncompliance with Procedural Orders by Mr.
23 Thompson should result in cancellation or withdrawal of his CC&N application. DII included with
24 its filing a Response to the Consolidated Staff Report, along with copies of two subpoenas issued at
25 DII's request for the April 2, 2013, hearing.

26 Also on March 21, 2013, Staff filed its Response to the HOA Motion, asserting that Staff does
27 not object to the requested continuance, but would not support any further continuances absent
28 extenuating circumstances. Staff asserted that the HOA has had more than one year to engage in

1 discovery; that the HOA appears to be engaging in a “fishing expedition” rather than a valid effort to
2 obtain relevant information; that Staff anticipates objecting to the HOA’s Second Set of Data
3 Requests; and that Staff requests a procedural conference be held on April 2, 2013, to discuss
4 customer notice, new hearing dates, Staff’s objections to the HOA’s Second Set of Data Requests,
5 and the scope and necessity of any future discovery between the parties.

6 On March 22, 2013, the HOA filed its Response to the Consolidated Staff Report, asserting
7 both that Staff’s recommended rates would be unjust and unreasonable and that Mr. Thompson is not
8 a public service corporation subject to ACC regulation.

9 Although the HOA premised its Motion largely upon the failure of proper notice due to the
10 contents of the notice required by the Procedural Order of January 10, 2013, there is currently no
11 indication in the docket for this case that Mr. Thompson has either mailed or published any notice.
12 While the HOA would appear to be in a position to know whether such notice has been provided, as
13 its members should have received the notice, the Commission cannot assume that such notice has
14 been provided. For that reason and that reason alone, the evidentiary hearing scheduled to commence
15 on April 2, 2013, must be vacated. Additionally, the Commission’s time frame for issuing a decision
16 as to Mr. Thompson’s CC&N application must be suspended.

17 In light of this, the HOA Motion has effectively been rendered moot. However, the HOA
18 should be aware that its Motion would not have been granted on the merits. The required notice set
19 forth in the Procedural Order of January 10, 2013, very clearly states that Staff’s original
20 recommendation for DII’s rates was \$125.80 per completed residential connection per month. This
21 should have put the HOA, and its members, on notice that Staff’s recommendation could greatly
22 exceed the current amount charged. Additionally, the required notice includes the following bolded
23 statement: **“The rates approved by the Commission will not necessarily be the rates proposed**
24 **by any party to this proceeding, including Staff, and may be higher or lower than the rates**
25 **proposed.”** This language also should have put the HOA, and its members, on notice that the rates
26 could exceed the current amount charged. Turning to the HOA’s assertion that it has not had
27 sufficient time to conduct discovery and prepare its case, it is noted that the HOA could have engaged
28 in a great deal of discovery and preparation within the past year and that, if it had chosen to do so,

1 might have better anticipated Staff's current position. Finally, as to the HOA's suggestion that the
2 public has not had sufficient opportunity to comment, it is noted that the Commission has already
3 convened four public comment sessions regarding DII's CC&N application and rate application.

4 Because it is necessary to discuss the future scheduling for this matter, the notice to be
5 provided for any future hearing, and the current discovery dispute between Staff and the HOA, it is
6 reasonable and appropriate to hold a procedural conference on April 2, 2013, at 10:00 a.m., as
7 suggested by Staff. Convening at that time will also ensure that any public commenters who may
8 have received notice of that date and time from Mr. Thompson are afforded an opportunity to provide
9 public comment, should they choose to do so.

10 IT IS THEREFORE ORDERED that the **evidentiary hearing** scheduled for **April 2, 2013**, at
11 10:00 a.m. is hereby **vacated**.

12 IT IS FURTHER ORDERED that a **public comment proceeding and procedural**
13 **conference** shall be held on **April 2, 2013, at 10:00 a.m.** in Hearing Room No. 1 at the
14 Commission's offices, 1200 West Washington Street, Phoenix, AZ 85007.

15 IT IS FURTHER ORDERED that the Commission's **time frame** to issue a decision as to
16 Doyle Thompson's application for a Certificate of Convenience and Necessity is hereby **suspended**
17 **indefinitely**.

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

21 DATED this 26th day of March, 2013.

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23 
24 SARAH N. HARPRING
25 ADMINISTRATIVE LAW JUDGE
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1 Copies of the foregoing mailed/delivered/e-mailed
this 26th day of March, 2013, to:

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