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BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

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

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ARIZONA CORPORATION COMMISSION DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

APR 03 2013

DOCKETED BY [Signatures]

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 January 10, 2013, a Procedural Order was issued in this consolidated matter scheduling a hearing to commence on April 2, 2013, and establishing other procedural requirements and deadlines, among them a requirement for Doyle Thompson to provide prescribed public notice of the hearing by February 22, 2013, and to file proof of that notice in this docket by March 8, 2013. After no proof of notice was timely filed, a subsequent Procedural Order was issued on March 19, 2013, requiring Mr. Thompson, by March 25, 2013, to make a filing regarding notice. No such filing was made.

Because no proof of timely notice had been filed, another Procedural Order was issued on March 26, 2013, vacating the hearing scheduled to commence on April 2, 2013, and ordering that a public comment proceeding and procedural conference instead take place on that date. Additionally, the Procedural Order suspended indefinitely the time frame for the Commission to issue a decision as to Mr. Thompson's application for a Certificate of Convenience and Necessity ("CC&N") to provide wastewater service.

On April 2, 2013, the public comment proceeding and procedural conference convened as scheduled, with DII-Emerald Springs, L.L.C. ("DII") appearing through its President, Henry

1 Melendez; Mr. Thompson appearing pro se; and Intervenor Emerald Springs Homeowners'  
2 Association ("HOA"); Intervenor Robhana, Inc. and Charles Dunn Capital, Inc. ("Robhana"); and the  
3 Commission's Utilities Division ("Staff") appearing through counsel. After public comment was  
4 received from one individual homeowner, the procedural conference took place. During the  
5 procedural conference, it was determined that Mr. Thompson had not provided timely notice, that a  
6 discovery dispute between the HOA and Staff had been resolved, and that no party other than DII  
7 supported a pending DII Motion to Dismiss Mr. Thompson's CC&N application. The DII Motion  
8 was denied. It was also determined that the HOA and Staff desired additional time to prepare their  
9 cases and that all of the parties would be available for a hearing held in the latter part of July 2013.  
10 Several parties opined that two days of hearing may not be sufficient, as at least nine witnesses are  
11 likely to be called to testify at hearing. The need for additional notice was also discussed, and it was  
12 determined that Mr. Thompson would be required to post prescribed notice in/at the office for the  
13 Copper State Game Club, R.V. and Mobile Home Park ("Copper State Park"); to provide the notice  
14 as an attachment to the monthly billing statements provided to Copper State Park residents/guests; to  
15 ensure that the notice is sent via e-mail to the HOA's membership list;<sup>1</sup> and to ensure that the notice  
16 is published in a newspaper of general circulation in the proposed service area. Finally, DII and Mr.  
17 Thompson were advised that each bears the burden of proof as to its/his respective application/s and  
18 that each has the right to engage in discovery with the other parties to this matter.

19 Thus, it is now necessary and appropriate to schedule the hearing in this matter and to  
20 establish the specific requirements for the notice to be provided.

21 IT IS THEREFORE ORDERED that the **hearing** in the above-captioned matter shall  
22 commence on **July 23, 2013, at 10:00 a.m.**, or as soon thereafter as is practicable, in Hearing Room  
23 No. 2 at the Commission's offices, 1200 West Washington, Arizona 85007, and **shall continue at**  
24 **9:00 a.m. on July 24, 25, and 26, 2013**, as necessary.<sup>2</sup>

25  
26 \_\_\_\_\_  
27 <sup>1</sup> The HOA asserted that e-mail is the most effective means to distribute information to its members and that the HOA  
28 has a current e-mail distribution list for its members that may be used. The HOA also offered to file proof of notice itself  
after the e-mail is sent, and it is encouraged to do so.

<sup>2</sup> July 25, 2013, is a contingency Open Meeting date. If an Open Meeting is held on that date, a hearing room may not  
be available for this matter, or the hearing for this matter may need to begin later on that date.

1 IT IS FURTHER ORDERED that **Mr. Thompson 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 ("Copper State  
 22 Park"), for which he is 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.

On March 8, 2013, Staff issued a Consolidated Staff Report providing Staff's  
 recommendations as to both of DII applications as well as Mr. Thompson's application.  
 Staff now recommends that DII not be granted a CC&N. Staff further recommends that  
 if DII's CC&N application is granted by the Commission, DII be authorized to assess a

1 monthly usage charge of \$125.80 per completed residential connection. Staff also  
 2 recommends that Mr. Thompson not be granted a CC&N. Because Mr. Thompson is  
 currently providing service both to Emerald Springs and Copper State Park, Staff further  
 recommends that Mr. Thompson continue to serve Emerald Springs and Copper State  
 Park and assess the following monthly charges for such service:

3 Per HOA lot: \$149.85      Per Mobile Home: \$89.91      Per RV: \$44.95

4 The Commission is not bound by the proposals made by DII, Mr. Thompson, Staff, or  
 any intervenor. **The rates approved by the Commission will not necessarily be the  
 5 rates proposed by any party to this proceeding, including Staff, and may be higher  
 or lower than the rates proposed.** The Commission will issue a Decision regarding the  
 6 applications following consideration of testimony and evidence presented at 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  
 available for inspection during regular business hours at the Commission's Docket  
 Control Center at 1200 West Washington Street, Phoenix, AZ 85007, and at any time on  
 9 the Internet via the Commission's website ([www.azcc.gov](http://www.azcc.gov)) using the e-Docket function,  
 located at the bottom of the webpage. Copies of DII's applications are also available  
 10 from DII at 212 East Rowland Street #423, Covina, CA 91723. Copies of Mr.  
 Thompson's application are also available from Mr. Thompson at [INSERT HOW AND  
 11 WHERE AVAILABLE].

12 **Public Hearing Information**

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

16 **About Intervention**

17 Any person entitled by law to intervene and having a direct and substantial interest in the  
 matter will be permitted to intervene. The granting of intervention entitles a person to  
 participate as a party at hearing by presenting sworn evidence and cross-examining other  
 18 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  
 19 than June 10, 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  
 20 function.

21 Your motion to intervene must contain the following:

- 22 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;
- 23 2. A short statement of your interest in the proceeding (e.g., a customer of either  
 24 applicant, a property owner in the proposed CC&N service area, etc.); and
- 25 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.

26 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 June 10, 2013.

27 If representation by counsel is required by Arizona Supreme Court Rule 31, intervention  
 28 will be conditioned upon the intervenor obtaining counsel to represent the intervenor. A

1 sample intervention request form is available on the Commission's website at  
2 <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>.

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

8 **ADA/Equal Access Information**

9 The Commission does not discriminate on the basis of disability in admission to its public  
10 meetings. Persons with a disability may request a reasonable accommodation such as a  
11 sign language interpreter, as well as request this document in an alternative format, by  
12 contacting the ADA Coordinator, Shaylin Bernal, E-mail [SBernal@azcc.gov](mailto:SBernal@azcc.gov), voice  
13 phone number 602-542-3931. Requests should be made as early as possible to allow  
14 time to arrange the accommodation.

15 IT IS FURTHER ORDERED that **Mr. Thompson shall provide a copy** of the above notice,  
16 as an **attachment to the next regularly scheduled billing statement provided to each resident/guest**  
17 **at Copper State Park.**

18 IT IS FURTHER ORDERED that **Mr. Thompson shall post a copy** of the above notice, in a  
19 **conspicuous location, inside and/or outside the main office location at Copper State Park.**

20 IT IS FURTHER ORDERED that **Mr. Thompson shall ensure that a copy** of the above  
21 notice is **e-mailed to each property owner** in the proposed CC&N service area, **using the current**  
22 **e-mail distribution list maintained by the HOA.**

23 IT IS FURTHER ORDERED that **Mr. Thompson shall cause the above notice to be**  
24 **published at least once in a newspaper** of general circulation in the proposed CC&N service area.

25 IT IS FURTHER ORDERED that **Mr. Thompson shall ensure that all of the actions**  
26 necessary to provide **notice as listed above are completed no later than May 10, 2013.**

27 IT IS FURTHER ORDERED that **Mr. Thompson shall ensure that certification of notice,**  
28 to include a copy of the notice and a description of each manner in which notice was provided and  
when, is filed with the Commission as soon as practicable after notice has been completed, but no  
later than **May 31, 2013.**

IT IS FURTHER ORDERED that **notice shall be deemed complete once it has been**  
**properly posted, provided, e-mailed, or published,** notwithstanding the failure of an individual to  
read or receive the notice.

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

4 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules  
5 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

6 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
7 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona  
8 Supreme Court Rule 42). Representation before the Commission includes the obligation to appear at  
9 all hearings, procedural conferences, and Open Meetings for which the matter is scheduled for  
10 discussion, unless counsel has previously been granted permission to withdraw by the Administrative  
11 Law Judge or Commission.

12 IT IS FURTHER ORDERED that any motion, other than a Motion to Intervene, that is filed  
13 in this matter and that is not ruled upon within 20 calendar days of the filing date of the motion shall  
14 be deemed denied.

15 IT IS FURTHER ORDERED that any response to a motion shall be filed within five calendar  
16 days of the filing date of the motion.

17 IT IS FURTHER ORDERED that any reply shall be filed within five calendar days of the  
18 filing date of the response.

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

22 DATED this 3rd day of April, 2013.

23  
24   
25 SARAH N. HARPRING  
26 ADMINISTRATIVE LAW JUDGE  
27  
28

1 Copies of the foregoing mailed/delivered  
this 3<sup>rd</sup> day of April, 2013, to:

2 Henry Melendez ✓  
3 DII-EMERALD SPRINGS, LLC  
212 East Rowland Street, No. 423  
4 Covina, CA 91723-3146

5 Julie A. LaBenz ✓  
6 CHURCHILL & LABENZ  
1300 Joshua Avenue, Suite B  
7 Parker, AZ 85344  
Attorney for Emerald Springs HOA

8 Steve Wene ✓  
9 MOYES SELLERS & HENDRICKS  
1850 North Central Avenue, Suite 1100  
Phoenix, AZ 85004  
Attorney for Robhana, Inc. and Charles Dunn Capital, Inc.

10 Doyle R. Thompson ✓  
11 COPPER STATE GAME CLUB, R.V. AND MOBILE HOME PARK  
P.O. Box 287  
12 Ehrenberg, AZ 85334

13 Curtis Cox ✓  
Assistant Attorney General  
Attorney General's Office  
14 1275 West Washington Street  
Phoenix, AZ 85007  
15 Attorney for Arizona Department of Environmental Quality

16 Janice Alward, Chief Counsel ✓  
Legal Division  
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17 1200 West Washington Street  
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18 Steven M. Olea, Director  
19 Utilities Division  
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21 ARIZONA REPORTING SERVICE, INC ✓  
22 2200 North Central Avenue, Suite 502  
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23  
24 By:



25 Debbi Person  
Assistant to Sarah N. Harpring  
26  
27  
28