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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

2013 MAY -3 A 8: 38

ARIZONA CORP COMMISSION
DOCKET CONTROL

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 3, 2013, a Procedural Order was issued in this consolidated matter scheduling a hearing to commence on July 23, 2013, and establishing other procedural requirements and deadlines.

On May 1, 2013, DII-Emerald Springs, L.L.C. ("DII") filed a Motion Requesting Approval for Witnesses to Testify via Video Conferencing ("Motion"). In the Motion, DII requests approval for one or two witnesses to testify via audio-video conferencing at the hearing on July 23, 2013. DII states that one witness resides in North Carolina and cannot be present in person and that the other witness lives in San Diego and may not be able to attend in person. DII does not explain who each witness is, where each witness will be, why each witness's testimony is necessary for DII's case, and why each witness must testify via videoconference rather than in person. Additionally, it is not apparent from the Motion filed whether DII provided service of the Motion on the other parties to this matter, as the Motion shows no service list.

To grant a motion for a witness to appear and testify via videoconference rather than in person, the Commission must find that there is good cause for allowing the witness to testify via videoconference. Factors to be considered include the importance of and necessity for such witness's

1 testimony; the reason(s) why the witness either cannot appear physically or requiring the witness to
2 appear physically would result in undue hardship to the witness and/or the party; and whether other
3 parties to this matter may be prejudiced by the witness's testifying via videoconference. Because
4 granting such a motion could potentially result in technological costs, the party requesting to have the
5 witness testify via videoconference instead of in person must pay all costs for the videoconferencing,
6 both on the Commission's end and on the witness's end, including any costs associated with testing
7 the videoconferencing equipment on each end to ensure that the witness will be able to testify
8 effectively on the date and at the time needed. Also, on a practical level, the witness must be able to
9 travel to a location where technologically compatible videoconferencing facilities are available for
10 the witness to use on the date and at the time needed.

11 Because DII's Motion does not provide adequate information for the Commission to
12 determine that it is reasonable and appropriate to grant the Motion, and because the Motion does not
13 reveal that the other parties to this matter have received the Motion, DII's Motion must be denied
14 unless DII amends the Motion to provide the information necessary to support its Motion and shows
15 that service of the Motion, as amended with supporting information, has been made upon the other
16 parties to this matter. The other parties to this matter must also be provided an opportunity to
17 respond to DII's Motion, once amended.

18 IT IS THEREFORE ORDERED that if DII desires to have any witness testify via
19 videoconference at the July 23, 2013, hearing, **DII shall, by May 17, 2013, file an amendment to its**
20 **Motion**, including at least the following information:

- 21 1. The name of the witness and, if applicable, the witness's title and organization;
- 22 2. An explanation of the subject matter concerning which the witness would be asked to
23 testify;
- 24 3. An explanation of why the witness's testimony concerning the subject matter identified is
25 necessary to DII's case;
- 26 4. The expected location of the witness (city and state) on the dates set for hearing;
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- 1 5. An explanation of why the witness either cannot appear physically at the hearing or why
2 requiring the witness to appear physically at the hearing would result in undue hardship to
3 the witness and/or to DII;
- 4 6. An explanation of why no other party would be prejudiced if the witness were permitted
5 to testify via videoconference;
- 6 7. Identification of the facility at which the witness would appear to participate in live
7 videoconferencing for the purposes of providing the witness's direct testimony and
8 responding to any cross-examination questions from other parties or the presiding
9 Administrative Law Judge, including the name, address, and telephone number of the
10 facility and the name of a point of contact at the facility who would be able to provide
11 technical information and, if necessary, support;
- 12 8. An acknowledgment by DII that it is responsible to coordinate and must pay all costs for
13 the videoconferencing, both on the Commission's end and on the witness's end, including
14 any costs associated with testing the videoconferencing equipment on each end before the
15 hearing date to ensure that the equipment is compatible and that the witness will be able to
16 participate effectively on the date and at the time needed for the hearing; and
- 17 9. A statement by DII that the Motion, as amended, has been served upon the other parties to
18 this matter and the manner of service.

19 IT IS FURTHER ORDERED that each party shall file **any response** to the Motion, as
20 amended, by **May 24, 2013**.

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

24 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
25 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

26 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
27 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
28 Supreme Court Rule 42). Representation before the Commission includes the obligation to appear at

1 all hearings, procedural conferences, and Open Meetings for which the matter is scheduled for
2 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
3 Law Judge or Commission.

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

7 IT IS FURTHER ORDERED that except as otherwise ordered, any response to a motion shall
8 be filed within five calendar days of the filing date of the motion

9 IT IS FURTHER ORDERED that except as otherwise ordered, any reply shall be filed within
10 five calendar days of the filing date of the response.

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

14 DATED this 3rd day of May, 2013.

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17 SARAH N. HARPRING
18 ADMINISTRATIVE LAW JUDGE

19 Copies of the foregoing mailed/delivered
20 this 3rd day of May, 2013, to:

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