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BEFORE THE ARIZONA CORPORATION

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BOB STUMP
CHAIRMAN

2014 MAR 24 P 4: 50

GARY PIERCE
COMMISSIONER

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

ORIGINAL

BRENDA BURNS
COMMISSIONER

Arizona Corporation Commission
DOCKETED

SUSAN BITTER SMITH
COMMISSIONER

MAR 24 2014

BOB BURNS
COMMISSIONER

DOCKETED BY

W-01303A

IN THE MATTER OF THE FORMAL
COMPLAINT OF FIDENCE
DEVELOPMENT, LLC AGAINST EPCOR
WATER ARIZONA, INC.

DOCKET NO. ~~W-02113A~~-09-0097
MOTION TO DISMISS

Through this filing, EPCOR Water Arizona, Inc. ("EWAZ") moves for dismissal of the complaint filed by Fidence Development LLC ("Fidence") for failure to prosecute under Rule 41(b) of the Rules of Civil Procedure for the Superior Courts of Arizona. Under Arizona case law, "[m]ere delay can be the basis of dismissal." *Cooper v. Odom*, 6 Ariz. App. 466 (1967) (citing *Mack v. Augustine*, 3 Ariz. App. 542 (1966)). See also *Paid v. Paid*, 28 Ariz. 598 (1925) (sixteen-month period of inactivity indicated abandonment of suit and warranted dismissal); *Old Republic Nat. Title v. New Falls*, 224 Ariz. 526 (App. 2010) (affirming trial court's dismissal following a two and one-half year period of inactivity).

No filings have been made in this docket for more than three years. EWAZ has not had contact with Fidence for more than three years. Fidence has the burden to prosecute its complaint. Clearly, its failure to take any action for more than three years is a complete failure to prosecute its complaint warranting dismissal.

For these reasons, EWAZ requests that the Arizona Corporation Commission dismiss Fidence's complaint with prejudice.

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LEWIS ROCA
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RESPECTFULLY SUBMITTED this 24th day of March, 2014.

LEWIS ROCA ROTHGERBER, LLP

By Matt Dingham for
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Attorneys for EPCOR Water Arizona, Inc.

ORIGINAL and thirteen (13) copies
of the foregoing filed
this 24th day of March, 2014, with:

The Arizona Corporation Commission
Utilities Division – Docket Control
1200 W. Washington Street
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered
this 24th day of March, 2014, to:

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COPY of the foregoing mailed
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