

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

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

2014 SEP 29 AM 9 25

DATE: SEPTEMBER 29, 2014

DOCKET NOS.: WS-20794A-11-0140, WS-20794A-11-0279, and
SW-20851A-12-0226

TO ALL PARTIES:

ORIGINAL

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harpring. The recommendation has been filed in the form of an Order on:

DII-EMERALD SPRINGS, L.L.C.
DOYLE THOMPSON
(CC&N/RATES)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

OCTOBER 8, 2014

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

OCTOBER 16, 2014

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

SEP 29 2014

DOCKETED BY

Jodi A. Jerich
JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347
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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SBernal@azcc.gov.

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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

DECISION NO. _____

ORDER

Open Meeting
October 16, 2014
Phoenix, Arizona

BY THE COMMISSION:

This case concerns the provision of wastewater services to the subdivision of Emerald Springs, located in the Town of Ehrenberg, approximately 45 miles south of Parker in La Paz County. The area does not have a certificated wastewater provider, although two different providers, with two different treatment plants, have served the area at different times. This case began with an application for a Certificate of Convenience and Necessity ("CC&N"), and a subsequent rate application, filed by DII-Emerald Springs, L.L.C., which was providing service at the time. It was then expanded to include a competing application for a CC&N, filed by Doyle Thompson, whose services had supplanted those of DII-Emerald Springs, L.L.C. The Commission's Utilities Division ("Staff") has recommended that both CC&N applications be denied. Since that time, an improvement district has been formed to provide service to the area using Mr. Thompson's plant.

* * * * *

1 Having considered the entire record herein and being fully advised in the premises, the
2 Commission finds, concludes, and orders that:

3 **FINDINGS OF FACT**

4 **Background**

5 1. The Emerald Springs subdivision (“subdivision”) consists of 54 contiguous lots, on
6 the banks of the Colorado River, approximately 45 miles north of the Town of Parker, in La Paz
7 County. The subdivision is located within the Town of Ehrenberg and receives water service from
8 the Ehrenberg Improvement Association (“EIA”), a certificated public service corporation. Out of 40
9 homes built in the subdivision, there are only approximately 8 permanent residences.

10 2. DII-Emerald Springs, L.L.C. (“DII”) is an Arizona limited liability company formed
11 in June 2003. DII is wholly owned by Blue Tower Holdings, Inc., a California corporation. Both are
12 managed by Henry A. Melendez, President, who is not a shareholder. DII owns a wastewater
13 treatment plant (“WWTP”) and previously owned 33 of the 54 lots in the subdivision. DII lost most
14 of those lots through foreclosure and no longer owns the property on which its WWTP is located.

15 3. Doyle Thompson is the owner of the Copper State Mobile Home and RV Park (“RV
16 Park”). Mr. Thompson also owns and operates a WWTP, which he uses to serve the RV Park. Mr.
17 Thompson operates his businesses as a sole proprietorship. Since March 2012, Mr. Thompson’s
18 WWTP has been used to provide service to the subdivision.

19 4. The Emerald Springs Homeowners Association (“HOA”) is a non-profit Arizona
20 corporation created to represent the owners of the 40 homes in the subdivision. The HOA owns the
21 wastewater collection system for the entire subdivision, including the main, manholes, service
22 laterals, lift station, and force main—essentially all of the facilities necessary to get wastewater flow
23 to a WWTP.

24 5. Robhana, Inc. and Charles Dunn Capital, Inc. (jointly “Robhana”) are non-Arizona
25 corporations collectively owning real property within and adjacent to the subdivision, including the
26 property on which DII’s WWTP is located. Robhana intends to develop its property in the area.

27 6. From approximately 1997 to 2004, at which time the subdivision contained only
28 approximately 10 homes, the wastewater flow for homes in the subdivision was pumped to Mr.

1 Thompson's WWTP for treatment. In 2004, the HOA and Mr. Thompson had a dispute that resulted
2 in Mr. Thompson's disconnecting the subdivision from his WWTP. For a time, the HOA continued
3 having the wastewater from the subdivision flow to the lift station and arranged for a pumping
4 service to remove the waste.

5 7. In June 2003, DII purchased 33 lots within the subdivision and began constructing a
6 WWTP to serve its properties. In 2004, after the dispute with Mr. Thompson, the HOA arranged to
7 have the wastewater from the subdivision pumped to DII's WWTP for treatment. This continued
8 until March 2012, when the HOA unilaterally disconnected from DII's WWTP, and reconnected to
9 Mr. Thompson's WWTP, as a result of disagreements with DII.

10 8. DII and Mr. Thompson each have considered the HOA to be the sole customer and
11 have billed the HOA a lump sum amount for all wastewater service provided to homes in the
12 subdivision. The HOA, in turn, has billed the individual homeowners for such service.

13 9. Neither DII nor Mr. Thompson holds or has ever held a CC&N to provide wastewater
14 utility service.

15 10. DII holds an Aquifer Protection Permit ("APP") issued by the Arizona Department of
16 Environmental Quality ("ADEQ") for its WWTP. Mr. Thompson holds a Type 1.09 General Permit
17 issued by ADEQ for his WWTP.

18 **Procedural History**

19 11. On April 4, 2011, in Docket No. WS-20794A-11-0140 ("CC&N Docket"), DII filed
20 with the Commission an application for a CC&N to provide wastewater service to the subdivision.
21 DII stated that it had been operating at a loss and that it desired for the Commission to establish rates
22 that would at least cover its operating costs. DII stated that it had applied for an APP for its WWTP
23 in May 2004 and had been granted an APP in June 2010.

24 12. On July 15, 2011, in Docket No. WS-20794A-11-0279 ("Rate Docket"), DII filed a
25 rate application, using a calendar year 2010 test year ("TY"). In its rate application, *inter alia*, DII
26 stated that the HOA was its only customer and that DII owned, operated, and was responsible for
27 only the actual WWTP and any process thereafter and that the HOA owned, operated, and maintained
28 the entire collection system, including the lift station and the pipes from the lift station to the WWTP.

1 13. Staff issued a Letter of Sufficiency in the Rate Docket on August 15, 2011, stating that
2 DII has been classified as a Class E wastewater utility.

3 14. Staff issued a Sufficiency Letter in the CC&N Docket on August 24, 2011.

4 15. On September 15, 2011, a Procedural Order was issued consolidating the CC&N
5 Docket and the Rate Docket ("DII Dockets"¹); scheduling a hearing to commence on November 18,
6 2011; and establishing other procedural requirements and deadlines, including requirements as to
7 notice.

8 16. On September 29, 2011, a telephonic procedural conference was held at the parties'
9 request, with DII appearing through Mr. Melendez and Staff appearing through counsel. DII
10 indicated that it might not be able to meet the notice deadline provided and was advised that failure to
11 file proof of notice would result in rescheduling of the hearing.

12 17. On October 6, 2011, a Procedural Order was issued vacating the hearing scheduled for
13 November 18, 2011; establishing a December 16, 2011, hearing date and corresponding procedural
14 dates; and extending the time clock by 30 days.

15 18. Later on October 6, 2011, DII made a filing stating that notice would be mailed to all
16 HOA members and the HOA on or before October 10, 2011, and that notice would be published in a
17 newspaper on October 12, 2011.

18 19. A Procedural Order was issued on October 7, 2011, setting a public comment
19 proceeding to convene on November 18, 2011, at the time originally set for hearing.

20 20. On November 9, 2011, DII filed Certification of Mailing and Publication, stating that
21 DII had mailed notice to the HOA and every HOA member individually on October 5 and 21, 2011,
22 and that notice had been published in the *Parker Pioneer* on October 12 and 26, 2011. Copies
23 included in the filing showed that the first published notice included a hearing date of November 18,
24 2011, and the second published notice included a hearing date of December 16, 2011.

25 21. On November 18, 2011, a public comment proceeding convened as scheduled, with
26 Staff appearing, DII not appearing, and no members of the public attending to provide comment.

27 _____
28 ¹ Because all activity in this matter from September 15, 2011, to June 7, 2012, was in the DII Dockets, such references
are omitted for brevity.

1 22. Also on November 18, 2011, Staff filed a motion requesting a 14-day extension of
2 time to file the Staff Report based on the unavailability of an assigned Staff member. Staff also
3 indicated that, based on its analysis thus far, a significant rate increase recommendation was likely.
4 Staff asserted that it would be in the public interest to re-notice anyone within the proposed service
5 area of that likelihood, which might necessitate moving the hearing date. Staff did not state whether
6 DII had been contacted regarding the requested extension or the notice issue.

7 23. On November 21, 2011, a Procedural Order was issued granting Staff an extension to
8 file the Staff Report; extending the date for objections or responses to the Staff Report; changing the
9 evidentiary hearing on December 16, 2011, to a public comment proceeding; and suspending the
10 Commission's time clock in this matter.

11 24. On December 16, 2011, the public comment proceeding convened as scheduled, with
12 Staff appearing through counsel, DII not appearing, and one subdivision homeowner attending and
13 providing public comment. The homeowner desired to provide comment on behalf of the HOA, but
14 was not qualified to do so under existing law, and the differences between participating as a party in a
15 case and providing public comment were discussed, as was the issue of whether the HOA would
16 require legal representation if it desired to intervene.

17 25. Also on December 16, 2011, Staff issued a Staff Report, recommending that DII's
18 application for a CC&N be granted and that DII be authorized to charge a flat rate of \$125.80 per
19 completed residential connection, approximately 102 percent higher than the TY rate.

20 26. On December 19, 2011, a Procedural Order was issued extending the intervention
21 period until a date to be established when the evidentiary hearing was scheduled.

22 27. On December 28 and 30, 2011, DII filed responses to the Staff Report and the
23 Procedural Order of December 19, 2011. Among other things, DII stated that it would be increasing
24 the HOA's monthly bill to \$3,345.30 effective January 1, 2012.

25 28. On January 4, 2012, a Procedural Order was issued scheduling the hearing to
26 commence on March 20, 2012, and establishing an intervention deadline of February 24, 2012.
27 Additionally, DII was required to provide notice by mail and publication, to be completed by
28 February 3, 2012.

1 29. On January 26, 2012, DII made a filing showing that notice had been mailed and
2 published on January 18, 2012. The attached copy of the published notice included a number of
3 errors, including an intervention deadline months later than the hearing date.

4 30. On January 27, 2012, a Procedural Order was issued requiring DII to provide
5 corrected notice by February 3, 2012, and to file proof of notice by February 24, 2012.

6 31. On February 3, 2012, DII made a filing stating that it could not comply with the new
7 notice publication date and requesting that the date be extended to February 15, 2012.

8 32. On February 6, 2012, a Procedural Order was issued changing the March 20, 2012,
9 hearing to a public comment proceeding; vacating the March 21, 2012, hearing date; rescheduling the
10 evidentiary hearing to commence on April 10, 2012; and establishing additional procedural
11 requirements and deadlines.

12 33. On February 24, 2012, the HOA filed a Motion to Intervene.

13 34. On February 28, 2012, DII filed certification of mailing and publication, showing that
14 notice had been provided as required by the Procedural Order of February 6, 2012.

15 35. On March 2, 2012, DII filed a Response stating that DII was not opposing the HOA's
16 Motion to Intervene.

17 36. The HOA was granted intervention by a Procedural Order issued on March 5, 2012.

18 37. On March 7, 2012, the HOA filed a Motion to Continue ("HOA MTC 1"), requesting
19 an additional 60 days to respond to the Staff Report and prepare for the evidentiary hearing.

20 38. On March 9, 2012, the HOA filed a Response and Objection to the Staff Report.

21 39. On March 12, 2012, Robhana filed an Application for Leave to Intervene.

22 40. On March 13, 2012, DII filed a Response to HOA MTC 1, asserting that the HOA was
23 purposely delaying the process and that the HOA had recently unilaterally disconnected from DII's
24 WWTP and connected to Mr. Thompson's WWTP. DII included a copy of a March 6, 2012, letter
25 notifying DII that the HOA would be "temporarily disconnect[ing]" from DII's WWTP "to conduct a
26 test/pilot program with a prospective sewer services provider."

27 41. Later on March 13, 2012, a Procedural Order was issued scheduling a procedural
28 conference to be held on March 20, 2012, immediately following the public comment proceeding.

1 42. On March 14, 2012, Staff filed a Response to HOA MTC 1, requesting that HOA
2 MTC 1 be denied. Staff also filed Staff's Notice of Filing Supplemental Staff Report, stating, *inter*
3 *alia*, that DII was no longer providing service, that Mr. Thompson was now providing service, and
4 that Mr. Thompson had signed a one-year contract to conduct the test/pilot program. Staff asserted
5 that Mr. Thompson might be a necessary party to this matter.

6 43. On March 16, 2012, the HOA filed a Motion to Appear by Telephone for the
7 procedural conference on March 20, 2012.

8 44. On March 20, 2012, a public comment session and a procedural conference were held.
9 DII appeared through Mr. Melendez; the HOA, Robhana, and Staff appeared through counsel. Public
10 comment was provided by four property owners/HOA members, all opposed to DII's applications.
11 Robhana was granted intervention and asserted that it owned the land on which DII's WWTP is
12 located. The parties confirmed that the HOA's sewer line had been disconnected from the DII
13 WWTP and connected to Mr. Thompson's WWTP. Staff reported that Mr. Thompson had been
14 informed that he was legally obligated to obtain a CC&N and had indicated that he would apply for a
15 CC&N. DII asserted that it still intended to pursue its CC&N application, although it had no existing
16 or prospective sewer customers.

17 45. On March 20, 2012, a Procedural Order was issued changing the evidentiary hearing
18 scheduled for April 10, 2012, to a procedural conference and public comment proceeding; vacating
19 the April 11, 2012, hearing date; and imposing other requirements on the parties related to
20 preparation for the procedural conference.

21 46. On April 9, 2012, Staff filed a Response to the Procedural Order, including a Staff
22 Memorandum describing and analyzing the provision of sewer service to the HOA through Mr.
23 Thompson's WWTP. Staff concluded that Mr. Thompson's WWTP currently had sufficient capacity,
24 but that the flow to Mr. Thompson's WWTP would exceed the limits of his Type 1.09 General Permit
25 if all of the existing HOA homes were occupied, resulting in a requirement to apply for an APP at a
26 cost of approximately \$50,000, in addition to any plant modification costs required by ADEQ to
27 obtain the APP.

28 47. On April 10, 2012, a public comment session and a procedural conference were held,

1 at which all parties appeared. One property owner/HOA member provided comment opposing DII's
2 applications. Mr. Thompson orally requested intervention, which was granted; an HOA request to
3 have non-Phoenix parties appear telephonically at all future procedural conferences was denied; and
4 it was determined that Mr. Thompson would file a status update within 30 days and that another
5 procedural conference would be held in approximately 60 days.

6 48. On April 11, 2012, a Procedural Order was issued requiring Mr. Thompson to file, by
7 May 10, 2012, a document notifying the Commission of his plans regarding application for a CC&N
8 or the status of any CC&N application already filed. The Procedural Order further required each
9 party to file, by June 11, 2012, an update of the party's position and how the matter should go
10 forward, including whether the DII Dockets should be consolidated with the Docket for any
11 application filed by Mr. Thompson.

12 49. On May 29, 2012, Mr. Thompson filed a document stating that he had not yet filed a
13 CC&N application, but still intended to do so as soon as possible.

14 50. On June 7, 2012, in Docket No. SW-20851A-12-0226 ("Thompson Docket"), Mr.
15 Thompson filed an application for a CC&N to provide wastewater service to the area including the
16 HOA and its members.

17 51. On June 11, 2012, DII, the HOA, Robhana, and Staff each filed a Response to the
18 Procedural Order. DII stated that Mr. Thompson's intervention should be terminated because of Mr.
19 Thompson's failure to comply with the Procedural Order of April 11, 2012; that DII believed Mr.
20 Thompson would not be able to comply with ADEQ requirements and was already in violation of his
21 ADEQ General Permit; that Robhana was willing to issue DII a lease agreement if DII obtained a
22 CC&N for the area; that DII also had discussed with Robhana the possibility of a third party company
23 taking over DII's WWTP; and that DII requested for the case to move forward to decision. The HOA
24 stated that it opposed DII's applications, that it supported any application filed by Mr. Thompson,
25 and that it intended to file a motion to dismiss DII's applications. The HOA also stated that if the
26 Commission were not to dismiss DII's applications, the HOA would support consolidation of the DII
27 Dockets and the Thompson Docket. Robhana stated that its central concern was the assurance of a
28 competent entity to provide safe, reliable, and affordable wastewater service to the subdivision;

1 identified perceived issues related to the provision of such service by either DII or Mr. Thompson;
2 expressed no apparent preference for either DII or Mr. Thompson; and stated that the docket for any
3 CC&N application filed by Mr. Thompson should be consolidated with the DII Dockets and that
4 Staff should then create a Staff Report comparing the two competing applications and evaluating the
5 likelihood that additional plant and permits would be necessary from each applicant. Staff stated that
6 DII's applications were now irrelevant because DII was no longer providing utility service to any
7 customer and had no request for service from the only customer in the subject service area, that
8 consolidation of the DII Dockets with the Thompson Docket was neither appropriate nor necessary,
9 and that administrative closure of the DII Dockets should be considered.

10 52. On July 9, 2012, Staff issued an Insufficiency Letter in the Thompson Docket.

11 53. Also on July 9, 2012, an amended legal description was filed in the Thompson Docket.

12 54. On July 11, 2012, in the DII Dockets, the HOA filed a Motion to Dismiss for Lack of
13 Jurisdiction ("HOA MTD"), asserting that the Commission lacked jurisdiction to rule upon DII's
14 CC&N and rate application because DII was not a public service corporation. The HOA argued that
15 because DII was not currently furnishing sewer services for profit to any customer and had no
16 prospects to do so (as the HOA did not intend to reconnect to DII's WWTP), DII was not a public
17 service corporation, and the Commission lacked jurisdiction to rule on DII's CC&N and rate
18 applications and was required to dismiss them.

19 55. On July 20, 2012, Staff filed a Response to the HOA MTD, asserting that the
20 Commission possesses subject matter jurisdiction over CC&N applications to provide sewer service
21 and over applications to establish rates and charges for sewer service; that the Commission has
22 personal jurisdiction over DII, as an applicant, irrespective of whether DII was currently a public
23 service corporation; and that the issue of whether DII was a public service corporation should not be
24 summarily resolved through ruling on the HOA MTD. Staff pointed out that the Commission's rules
25 contemplate CC&N applications being filed by entities that are not yet engaged in furnishing utility
26 service and thus that are not yet public service corporations. Staff also asserted again that
27 administrative closure of the DII Dockets should be considered because the only customer in DII's
28 requested service area was currently being served by another provider.

1 56. On July 25, 2012, DII filed a Response to the HOA MTD, asserting that DII and the
2 HOA still had a contract for DII to provide the HOA sewer services, that some of the assertions made
3 by the HOA in the HOA MTD were factually inaccurate, that DII would be able to obtain the
4 approvals necessary to serve as the sewer provider in the requested CC&N service area, that DII's
5 CC&N application and Mr. Thompson's CC&N application should be compared, that Mr. Thompson
6 should be ordered to install flow meters on his system, that the DII and Thompson applications
7 should move forward, and that the HOA MTD should be invalidated and terminated.

8 57. Robhana did not file a response to the HOA MTD.

9 58. On July 31, 2012, a Procedural Order was issued denying the HOA MTD and
10 consolidating the DII Dockets and the Thompson Docket (collectively "this matter").

11 59. On October 10, 2012, DII filed a Motion to Dismiss Mr. Thompson's CC&N
12 Application ("DII MTD") because Mr. Thompson's CC&N application had not yet been brought to
13 sufficiency.

14 60. On October 15, 2012, Staff filed a Response opposing the DII MTD because Mr.
15 Thompson was working with Staff to achieve sufficiency.

16 61. On October 16, 2012, Staff filed a letter to Mr. Thompson providing a list of
17 additional insufficiency items.

18 62. On October 17, 2012, the HOA filed a Response concurring with Staff's position that
19 the DII MTD should be denied.

20 63. On October 29, 2012, a Procedural Order was issued denying the DII MTD.

21 64. On November 27, 2012, Mr. Thompson filed a bundle of documents addressing
22 insufficiency items.

23 65. On January 8, 2013, Staff issued a Sufficiency Letter for Mr. Thompson's CC&N
24 application, stating that it had met "minimum" sufficiency requirements as outlined in A.A.C. R14-2-
25 602.

26 66. On January 10, 2013, a Procedural Order was issued setting the hearing in this matter
27 to commence on April 2, 2013, and establishing procedural requirements and deadlines, including a
28 requirement for Mr. Thompson to have notice of the competing CC&N applications mailed and

1 published by February 22, 2013, and to file certification of such notice by March 8, 2013.

2 67. On January 15, 2013, Mr. Thompson filed additional documents addressing
3 insufficiency items.

4 68. On February 28, 2013, Staff filed a Request for an Extension of Time, asking for a
5 seven-day extension to file its Consolidated Staff Report and a corresponding extension for the other
6 parties to file any objections thereto.

7 69. On March 1, 2013, a Procedural Order was issued granting Staff's Request.

8 70. On March 8, 2013, Staff filed its Consolidated Staff Report, in which it recommended
9 that both DII's and Mr. Thompson's CC&N applications be denied and that DII's rate application
10 also be denied. Staff asserted that Mr. Thompson was currently serving as a public service
11 corporation, that Mr. Thompson would not be a fit and proper entity to receive a CC&N, and that Mr.
12 Thompson should be required to serve in compliance with Staff's recommended rates and conditions
13 of service. Staff's recommended rates were substantially higher than the rates proposed by Mr.
14 Thompson.² Staff asserted that DII had no current customers and no requests for service, that DII
15 was no longer operating as a public service corporation, and that DII would be in violation of A.A.C.
16 R14-2-602(B)(1) if the HOA were to reconnect to DII without first obtaining Commission approval.
17 Staff also stated that it might file a Complaint to initiate an Order to Show Cause proceeding against
18 DII if DII were to reconnect to the HOA's collection system.

19 71. On March 19, 2013, the HOA filed a Motion to Continue Hearing ("HOA MTC 2"),
20 requesting that the hearing scheduled to commence on April 2, 2013, be continued for 30 to 60 days
21 to allow time for prospective customers to receive specific notice of Staff's recommended sewer rates
22 and to allow the HOA to prepare for hearing and engage in data requests.

23 72. Later on March 19, 2013, a Procedural Order was issued stating that Mr. Thompson
24 had not complied with the requirement to file certification of notice and that no comments had been
25 filed to suggest that such notice had been provided. Mr. Thompson was directed, by March 25, 2013,

26 ² Mr. Thompson had proposed \$75 per month for each existing home in the subdivision, for a total charge to the HOA
27 of \$3,000 per month; \$30 for each mobile home space in the RV Park; and \$15 for each RV space in the RV Park. Staff
28 recommended monthly charges of \$149.85 for each home in the subdivision; \$89.91 for each mobile home space in the
RV Park; and \$44.95 for each RV space in the RV Park. Staff asserted that these charges would allow Mr. Thompson
just to break even.

1 to file either certification of notice or an explanation of the notice provided and was instructed that
2 the hearing would be vacated and rescheduled, and a public comment proceeding would be held on
3 April 2, 2013, if Mr. Thompson did not provide certification that mailing and publication had been
4 timely accomplished.

5 73. On March 21, 2013, Staff filed a Response to HOA MTC 2, stating that Staff did not
6 object; that Staff anticipated objecting to overly broad data requests submitted to Staff by the HOA;
7 and that Staff requested a procedural conference on the scheduled hearing date if the hearing were
8 continued.

9 74. On March 21, 2013, DII filed a Response to HOA MTC 2, asserting that the HOA was
10 engaging in delay tactics, that HOA MTC 2 should be denied, and that Mr. Thompson's CC&N
11 application should be canceled or withdrawn if Mr. Thompson continued not to comply with
12 Procedural Orders. DII also filed a Response to the Consolidated Staff Report and copies of
13 documents showing that DII had had obtained Administrative Subpoenas Duces Tecum issued to
14 ADEQ and EIA.

15 75. On March 22, 2013, the HOA filed a Response to the Consolidated Staff Report,
16 objecting to Staff's proposed rates for Mr. Thompson's wastewater services, objecting to Staff's
17 account of events occurring in 2004, and asserting that the Commission lacked jurisdiction over Mr.
18 Thompson's operations.

19 76. On March 26, 2013, because there had been no filing to show notice by Mr.
20 Thompson, a Procedural Order was issued vacating the April 2, 2013, hearing date; scheduling a
21 public comment proceeding and procedural conference at the time previously set for hearing; and
22 suspending the time frame for processing Mr. Thompson's CC&N application. The Procedural Order
23 also informed the HOA that HOA MTC 2 would have failed on the merits if it had not already been
24 rendered moot.

25 77. On March 28, 2013, ADEQ filed a Motion to Limit Scope of Subpoena, asserting that
26 the Subpoena issued for DII was vague and over broad and that DII and ADEQ had agreed to limit
27 the scope of the Subpoena. ADEQ requested that the Commission amend the scope of the Subpoena
28 accordingly.

1 78. On March 29, 2013, DII filed a Motion to Dismiss for Lack of Compliance & Total
2 Disregard (“DII MTD”), asserting that Mr. Thompson’s CC&N application should be dismissed for
3 Mr. Thompson’s failure to comply with procedural requirements and that the processing of DII’s
4 applications should be expedited instead.

5 79. On March 29, 2013, a Procedural Order was issued modifying the scope of the
6 Subpoena issued to ADEQ, as agreed by DII and ADEQ, and adding ADEQ to the service list.

7 80. On April 2, 2013, a public comment session and a procedural conference were held.
8 One property owner/HOA member provided comment opposing Mr. Thompson’s CC&N application.
9 The HOA and Staff reported that their discovery dispute had been resolved, the DII MTD was
10 denied, and the scheduling of an evidentiary hearing was discussed.

11 81. On April 2, 2013, Staff filed Notice clarifying that Staff’s recommended rate for Mr.
12 Thompson’s system did not include the estimated \$50,000 cost for Mr. Thompson to obtain a permit
13 from ADEQ, because the permit cost would be considered a rate base item rather than an expense
14 item.

15 82. On April 3, 2013, a Procedural Order was issued scheduling a hearing to commence
16 on July 23, 2013, and establishing other procedural requirements and deadlines, including a
17 requirement for Mr. Thompson to provide public notice through specified methods by May 10, 2013.

18 83. On May 1, 2013, DII filed a Motion Requesting Approval for Witnesses to Testify via
19 Video Conferencing (“VC Motion”).

20 84. On May 3, 2013, a Procedural Order was issued requiring DII to file an amendment to
21 its VC Motion, to provide specified information, and establishing a deadline for responses to the VC
22 Motion.

23 85. On May 15, 2013, DII filed an amendment to its VC Motion.

24 86. On May 28, 2013, Mr. Thompson filed proof that notice of the July 23, 2013, hearing
25 date had been provided to his tenants at the RV Park with their monthly billing statements, had been
26 publicly posted at his business, had been e-mailed to HOA members by the HOA’s Treasurer, and
27 had been published on May 1, 2013, in the *Palo Verde Valley Times*.

28 ...

1 87. On June 5, 2013, a Procedural Order was issued granting DII's VC Motion.

2 88. On July 2, 2013, the HOA filed a Motion to Continue July 23-26 Hearing ("HOA
3 MTC 3"), stating that the HOA and Robhana had taken steps to form a sewer district in Ehrenberg,
4 which would render moot the applications pending in this matter. HOA MTC 3 requested that the
5 hearing be continued for 90 days to allow for the sewer district to be formed. The HOA further stated
6 that the HOA had contacted all of the parties regarding HOA MTC 3 and that only DII objected to
7 HOA MTC 3.

8 89. On July 3, 2013, a Procedural Order was issued vacating the evidentiary hearing
9 scheduled for July 23, 2013; ordering that a public comment proceeding instead be held on July 23,
10 2013; and ordering each party to file, by October 1, 2013, an update on the status of the sewer district
11 formation, along with any pertinent supporting documentation and the party's proposal regarding the
12 process and schedule for the matter going forward.

13 90. On July 23, 2013, the public comment proceeding was held as scheduled. DII,
14 Robhana, and Staff appeared; Mr. Thompson and the HOA did not appear. Public comment was
15 received from two property owners/HOA members, one opposing Mr. Thompson's CC&N
16 application and asserting that the HOA had been misleading homeowners, and the other both
17 supporting the idea of a sewer district and expressing concerns about the HOA's operations, a lack of
18 information, and the proposed costs of sewer service under a CC&N. Additionally, counsel for
19 Robhana provided an update on the status of the sewer district formation, indicating that there was
20 already sufficient property-owner support for the sewer district to be formed, but that efforts were
21 being made to determine the boundaries for the district area and to identify prospective district board
22 members. Council for Robhana also agreed to provide additional information to the two commenters.

23 91. On October 1, 2013, the HOA and Robhana filed a joint status update stating that the
24 petition for the Ehrenberg Improvement District had been drafted and was expected to be filed in
25 early October and heard by the La Paz County Board of Supervisors in early November. The HOA
26 and Robhana further stated that five prospective board members³ had been identified, that steps were
27

28 ³ The five individuals were current board members for the area water provider, Ehrenberg Improvement Association.

1 being taken to amend the boundaries for the district, and that both the HOA and Robhana were
2 encouraged by the progress made thus far and intended to continue moving forward with the sewer
3 district formation.

4 92. On October 1, 2013, Staff also filed its update, recommending that this matter
5 continue to be held in abeyance pending the outcome of the sewer district formation and that
6 Robhana be required to file another status update in 60 days regarding the status and progress of the
7 sewer district formation.

8 93. On October 2, 2013, DII filed its status update, asserting that the other parties had not
9 been in communication with DII except through the joint status update, that DII was disappointed by
10 the "lack of pertinent information" in the joint status update, that the purpose of forming a sewer
11 district was to circumvent the Commission's authority, and that there were a number of questions to
12 which DII would like answers. DII requested that its questions be answered before any additional
13 extensions were granted to allow for the formation of the district.

14 94. On October 8, 2013, a Procedural Order was issued ordering the HOA and Robhana to
15 file, by December 1, 2013, a joint status update describing the actions taken toward formation of the
16 sewer district, providing copies of documents filed with government entities toward that end, and
17 providing the parties' proposal regarding the process and schedule for this matter going forward. The
18 Procedural Order also informed DII that the Commission does not regulate sewer districts and does
19 not have jurisdiction over their formation and that, to the extent DII owns property within the
20 boundaries of the area proposed for the sewer district, DII should have the ability to participate and to
21 voice its position in the appropriate venue regarding that formation.

22 95. On October 10, 2013, the HOA and Robhana filed a supplement to the joint status
23 update stating that they had inadvertently omitted that they supported Staff's recommendation for this
24 matter to be continued with a status update required every 60 days.

25 96. On December 2, 2013, the HOA and Robhana filed a joint status update stating that
26 the Petition to form a sewer district had been signed by the potential district board members, that
27 minor errors in the district map were being corrected, and that the Petition would be filed with the La
28 Paz County Clerk once those corrections were completed, probably within the next 10 business days.

1 The HOA and Robhana requested that the matter be continued for an additional 90 days, with another
2 joint status update required at that time.

3 97. On December 4, 2013, a Procedural Order was issued continuing the matter for 90
4 days and requiring the HOA and Robhana to file a status update by March 3, 2014.

5 98. On March 3, 2014, the HOA and Robhana filed a Third Joint Status Update stating
6 that further progress had been made toward the formation of the sewer district. The HOA and
7 Robhana further stated that the Petition and supporting documents had been submitted to the La Paz
8 County Board of Supervisors ("County BOS"), and that the parties were waiting for the County BOS
9 to set a hearing on the Petition. The HOA and Robhana requested that the matter be continued for an
10 additional 90 days, with another joint status update required at that time.

11 99. On March 14, 2014, a Procedural Order was issued requiring the HOA and Robhana
12 to file, by June 3, 2014, a joint status update reciting the actions taken thus far toward formation of a
13 sewer district for the Ehrenberg area, providing copies of any documents filed with the county and/or
14 other governmental entities in furtherance of district formation, and providing the parties' proposals
15 regarding the process and schedule for this matter going forward.

16 100. On June 2, 2014, the HOA and Robhana filed a Fourth Joint Status Update stating that
17 "the sewer district was formed." The filing did not include any documentation to support the
18 formation of the sewer district and did not include any proposal for the process and schedule for this
19 matter.

20 101. On June 25, 2014, a Procedural Order was issued requiring the HOA and Robhana, by
21 July 30, 2014, to file documentation establishing the formation of the sewer district for the Ehrenberg
22 area; explaining how the formation of the sewer district impacted the CC&N service area for which
23 both DII and Mr. Thompson had filed applications for a CC&N herein; specifically addressing
24 whether the entire requested service area was included within the sewer district; providing
25 recommendations for how this matter should be resolved; and providing any further information of
26 which the Commission should be aware in determining how to resolve this matter. Additionally, DII
27 and Mr. Thompson were each required, by the same date, to make a filing explaining how the
28 formation of the sewer district impacted the CC&N service area for which each had applied for a

1 CC&N herein; specifically addressing whether the entire requested service area was included within
 2 the sewer district; asserting the party's current position regarding the party's CC&N application filed
 3 herein; providing a recommendation for how this matter should be resolved; and providing any
 4 further information of which the Commission should be aware in determining how to resolve this
 5 matter.

6 102. On July 30, 2014, the HOA and Robhana filed a Fifth Joint Status Update including a
 7 copy of the County BOS Order for the formation of the Ehrenberg Improvement District ("District"),
 8 stating that the District proposes to be the legally recognized sewer provider for the area and to
 9 provide service through Mr. Thompson's WWTP, and stating that DII's and Mr. Thompson's CC&N
 10 applications should be denied because the area now has a provider with the legal authority to provide
 11 sewer services in the area. The HOA and Robhana stated that the District was currently providing
 12 service to properties in the area and could provide service to others upon application.

13 103. On July 30, 2014, DII filed a response asserting, *inter alia*, that the formation of the
 14 District was done solely to circumvent the Commission's authority and DII's interests; objecting to
 15 the HOA's operations in general and to the formation of the District; and requesting that the District
 16 be disregarded and that the Commission continue with the CC&N process and grant a CC&N to DII.

17 104. On July 31, 2014, Mr. Thompson filed a Response stating that the District had been
 18 approved by the County BOS on April 21, 2014; that the requested CC&N area is included within the
 19 District; and that Mr. Thompson believes his application for a CC&N has become a moot issue.

20 **Resolution**

21 105. On April 21, 2014, the County BOS approved an Order of Establishment for the
 22 District. The Order of Establishment states that all applicable District formation laws were satisfied,
 23 that all interested property owners were heard on all matters relating to establishing the District, and
 24 that the County BOS found that the District will benefit all land therein. The County BOS further
 25 resolved, *inter alia*: "The District shall be a special purpose district and a municipal corporation for
 26 all applicable purposes. These purposes consist of, but are not limited to, the purposes prescribed in
 27 § 48-909(A) as well as the related powers prescribed in A.R.S. § 48-909(B), and A.R.S. § 48-910."
 28

1 IT IS FURTHER ORDERED that Docket Nos. WS-20794A-11-0140, WS-20794A-11-0279,
2 and SW-20851A-12-0226 are hereby closed.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
5
6

7 CHAIRMAN _____ COMMISSIONER _____
8

9 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____
10

11 IN WITNESS WHEREOF, I, JODI JERICH, Executive
12 Director of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this _____ day of _____ 2014.

16 JODI JERICH
17 EXECUTIVE DIRECTOR

18 DISSENT _____
19

20 DISSENT _____
21 SH:tv

22
23
24
25
26
27
28

1 SERVICE LIST FOR: DII-EMERALD SPRINGS, L.L.C.; DOYLE
2 THOMPSON
3 DOCKET NOS.: WS-20794A-11-0140; WS-20794A-11-0279; SW-
4 20851A-12-0226
5 Henry Melendez
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