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BEFORE THE ARIZONA CORPORATION COMMISSION

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SUSAN BITTER SMITH, Chairman  
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AZ CORP COMMISSION  
DOCKET CONTROL

In the matter of:  
Deer Park Development Corporation,  
Marty O'Malley and Julie Unruh O'Malley,  
husband and wife,  
Robert D. Bjerken,  
Respondents.

DOCKET NO. S-20926A-15-0116

Securities Division Response to Pleadings filed by  
Respondent Robert D. Bjerken Arizona Corporation Commission

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The Third Procedural Order ("Order") issued by Administrative Law Judge Marc Preny on June 25, 2015, required that the Securities Division of the Arizona Corporation Commission respond to the pleading filed by respondent Robert D. Bjerken.

The Order was issued after Bjerken failed to timely request a hearing and then untimely filed a document that appears Bjerken intended to be his answer to the Division's Notice of Opportunity. The Notice was filed on April 8, 2015. On April 13, 2015, the Division served Bjerken with a copy of the Notice at Bjerken's residence. As stated in the Notice, Respondent Bjerken had 10 days after service of the Notice to request a hearing and 30 days after service to file an answer. The Notice included instructions about how and where to file these documents along with a phone number and a link to the Commission's website page that contains filing instructions. These instructions included a requirement that Bjerken serve his answer by hand-delivery to 1300 W Washington St., Third Floor or by mailing it to Division counsel, Ryan J. Millecam.

In spite of these detailed instructions, and in spite of Bjerken's former experience before the Commission (he was a respondent in three prior Commission orders), Bjerken did not file a request for hearing. And he did not timely file an answer. Bjerken did send a document titled "Answer Docket #

1 S-20926A-15-0116” addressed to the Commission at 1300 W. Washington. A stamp on the document  
2 indicates that the Commission’s corporations division received this document on May 18 and it was  
3 sent to the Division on May 20 where Division counsel received it a few days after the June 3 pre-  
4 hearing conference. Counsel then phoned Bjerken and left a message instructing him to file his answer  
5 with the Commission’s Docket, as instructed in the Notice. When a little over a week passed without  
6 any response from Bjerken, on June 16, the Division, as a courtesy to Bjerken delivered the document  
7 to Docket Control for filing. Three days later, on June 19, someone filed a substantially-similar  
8 document with Docket Control. (Unlike the June 16 document, the June 19 document is stamped  
9 “Original,” it lacks the Outlook email formatting and header, it is addressed to Docket Control, it lacks  
10 the “Received” date stamps of the Division and the corporations division, and the paragraph starting  
11 with “PAGE 4 24” has the extra words “...WAS A GREATER AMT.”)

12 The June 19 document appears to be Bjerken’s answer to the Notice. It is titled “Answer  
13 Docket # S-20926A-15-116.” It does not have a response to each line of the Notice as required by  
14 R14-4-305 and instructed in the Notice (“The Answer shall contain an admission or denial of each  
15 allegation in this Notice...”). But it does have what appear to be responses to paragraphs 17, 22, 24,  
16 26, 32, 33 and 43 of the Notice. It contains no assertions of any defenses.

17 This document claims that Bjerken filed late because of “hospital stay.” If this is true, then a  
18 medical condition, coupled with Bjerken’s lack of representation, could constitute arguments for  
19 granting relief from some of the formal filing requirements per R14-4-305(G). Consequently, the  
20 Division does not oppose the portion of the Order granting Bjerken a chance to appear at the July 9  
21 procedural conference and explain why he had good cause to miss his filing deadlines. The Division  
22 agrees that if Bjerken fails to appear at the July 9 procedural conference, such failure should  
23 conclusively establish that he does not request a hearing in this matter.

24 Dated July 1, 2015.

25 

26 Ryan J. Millecam  
Attorney, Securities Division