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COMMISSIONERS  
MARC SPITZER - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

ORIGINAL



ARIZONA CORPORATION COMMISSION

22

DATE: June 28, 2004  
DOCKET NO: SW-04210A-03-0712  
TO ALL PARTIES:

RECEIVED  
2004 JUN 28 A 11:09  
AZ CORP COMMISSION  
DOCUMENT CONTROL

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

THE LINKS AT COYOTE WASH UTILITIES, L.L.C.  
(CC&N)

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:

JULY 7, 2004

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 Working Session and Open Meeting to be held on:

AUGUST 3 AND 4, 2004

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 Secretary's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

JUN 28 2004

DOCKETED BY [Signature]

[Signature]

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 MIKE GLEASON  
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF  
9 THE LINKS AT COYOTE WASH UTILITIES,  
10 L.L.C., FOR A CERTIFICATE OF CONVENIENCE  
11 AND NECESSITY TO PROVIDE SEWER  
12 SERVICE IN YUMA COUNTY, ARIZONA.

DOCKET NO. SW-04210A-03-0712

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

9 DATE OF HEARING: May 20, 2004

10 PLACE OF HEARING: Phoenix, Arizona

11 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

12 APPEARANCES: Mr. Joshua J. Meyer, Meerchaum and Meyer, on behalf  
13 of the Links at Coyote Wash Utilities, L.L.C.; and  
14 Ms. Lisa VandenBerg, Staff Attorney, Legal Division on  
15 behalf of the Utilities Division of the Arizona  
16 Corporation Commission.

**BY THE COMMISSION:**

17 On September 26, 2003, the Links at Coyote Wash Utilities, L.L.C. ("Company" or  
18 "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for a  
19 Certificate of Convenience and Necessity ("Certificate") to provide wastewater service to various  
20 parts of Yuma County, Arizona.

21 On October 6, 2003, pursuant to A.A.C. R14-2-610(c), the Commission's Utilities Division  
22 ("Staff") issued a notice of insufficiency to the Company that the application had not been deemed  
23 sufficient.

24 On April 2, 2004, Staff issued a letter of administrative completeness.

25 On April 15, 2004, the Commission issued a Procedural Order which set a hearing on the  
26 application for May 20, 2004. The Commission also ordered the Company to publish notice of the  
27 proceeding at least once in a newspaper of general circulation in its proposed service territory.

28 On April 19, 2004, Staff filed its Staff Report in this matter.

1 On May 20, 2004, a full public hearing was convened before a duly authorized Administrative  
2 Law Judge of the Commission at its offices in Phoenix, Arizona. Applicant and Staff appeared with  
3 counsel. At the conclusion of the hearing, the matter was taken under advisement pending  
4 submission of a Recommended Opinion and Order to the Commission.

5 \* \* \* \* \*

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

8 **FINDINGS OF FACT**

9 1. On September 26, 2003, the Company filed an application for a Certificate in order to  
10 provide sewer service to a planned residential and nine hole golf course development consisting of  
11 approximately eight hundred acres to be known as The Links at Coyote Wash ("Links") located in  
12 the Town of Wellton ("Town"), Yuma County, Arizona, which areas are more fully described in  
13 Exhibit A attached hereto, and incorporated herein by reference.<sup>1</sup>

14 2. Applicant is a limited liability company whose sole membership interest is owned by  
15 G-12 L.L.C. ("G12")<sup>2</sup>. G12 is developing the Links and formed the Applicant to provide wastewater  
16 treatment service to the development. Certain portions of the Links also are planned for commercial  
17 development. Initially, G12 expected that during the first five years of development, it would sell  
18 approximately 504 residential lots requiring wastewater service. After development is completed for  
19 the Links in the coming years, the Company believes that it will be required to serve up to  
20 approximately 2,000 more lots.

21 3. Residents and businesses at the Links will receive their water service from the Town's  
22 municipal water system. Since the Town lacks a sewage system, G12 was required to form the  
23 Company to provide the Links with sewage service.

24 4. Although Mr. Curtis and his family have a variety of business interests including  
25 citrus farming, they have not previously been engaged in the operation of a wastewater treatment  
26 system or operated a public service corporation.

27 \_\_\_\_\_  
28 <sup>1</sup> As part of the development plan, the Links was annexed by the Town.  
<sup>2</sup> G12's two membership interests are owned by Glen G. "Spike" Curtis and the Curtis Family Trust.

1           5.     Applicant has hired a certified operator, Sun State Environmental Services, to operate  
2 the system and to maintain compliance with Arizona law.

3           6.     At the outset of the proceeding, counsel for the Applicant acknowledged that  
4 Applicant had failed to publish notice of the application and the hearing thereon as ordered in the  
5 Commission's Procedural Order of April 15, 2004.

6           7.     In order to resolve the lack of public notice, the Company agreed to confer with Staff  
7 to develop a form of notice to notify existing lot owners and prospective lots purchasers at the Links  
8 of the Company's application for a Certificate. The Company further agreed to late-file, within 30  
9 days of the hearing, certification that notice had been provided in the manner and form agreed upon  
10 with Staff.<sup>3</sup>

11          8.     It was also disclosed that the Company had already begun making connections and  
12 providing sewer service at no charge to the golf course's clubhouse and a limited number of  
13 residential customers, because demand for lots in the Links has greatly exceeded expectations.

14          9.     The Company stipulated to Staff's recommendations in the Staff Report including  
15 Staff's proposed initial rates and charges as set forth in Schedule RDN-2 to the Staff Report which is  
16 more fully described in Exhibit B attached hereto, and incorporated herein by reference.

17          10.    Although G12 expected that it would take five years to sell out its first development  
18 phase of 504 lots, after beginning to take reservations in the spring of 2003 and receiving its public  
19 report from the Arizona Department of Real Estate in mid August, all 504 of the lots were either sold  
20 or had reservations on them by March, 2004. Because of the sales rush, the requirement for sewer  
21 service grew rapidly in the proposed area to be certificated for sewer service.

22          11.    The Company's witness, Christopher Cleary, an employee of G12, believes that the  
23 development of the remaining 2,000 lots in the Links will take place in approximately a year and a  
24 half to two years.

25          12.    According to Mr. Cleary, because the sales of lots have occurred so quickly, homes  
26 have been built rapidly also. He disclosed that as homes are being built, when a lot owner requests a  
27

28 <sup>3</sup> On June 15, 2004, Applicant late-filed certification that notice had been published on May 27, 2004.

1 sewer connection, a hook-up is made to the Company's collection system, but the prospective  
2 customer will receive service free of charge until the Commission issues Applicant a Certificate and  
3 initial rates are approved.

4 13. Since Applicant's actions of constructing its system and providing service prior to  
5 receiving its Certificate are in violation of Arizona law and the Commission's rules, during the  
6 proceeding a recess was taken for discussions with Staff as to how to resolve this situation. After the  
7 recess, the Company agreed that it would not add any more connections to its system after 60 days  
8 from the date of the hearing in order to accommodate property owners whose homes were under  
9 construction until a Certificate is issued to Applicant.

10 14. Mr. Cleary testified that although the Company's initial customers are receiving sewer  
11 service without being charged for it, the Arizona Department of Real Estate's public report for the  
12 project advises prospective buyers that the Links will provide service, currently at no cost, but cost is  
13 estimated to be \$30 a month after approval by the Commission of the application herein.

14 15. Mr. Cleary testified further that G12, which is developing the Links, invested the  
15 funds necessary to construct the Company's sewer system for the Links. He further indicated that  
16 G12 has the means and will subsidize the system, if necessary, to support its initial operations.  
17 Applicant is also willing to post a performance bond, if one is required, as a condition for the  
18 issuance of its Certificate.

19 16. To provide service to the first phase of development at the Links, the Company has  
20 constructed at a cost of approximately \$378,000, a 126,000 gallons per day treatment facility which  
21 utilizes an activated sludge process with de-nitrification. The sludge will be hauled off-site for  
22 disposal. According to the Staff Report, the system appears to be an economical and cost effective  
23 project to service the initial phase of development until additional plant is added as more customers  
24 are connected.

25 17. As development at the Links continues, the treatment facility can be easily expanded.

26 18. Based on the Company's application using pro forma revenues and expenses with a  
27 proposed monthly minimum charge of \$30 for sewer service, and with a charge of \$2.00 per 1,000  
28 gallons of effluent, which are consistent with Staff's recommendations, the Company estimated that it

1 would earn a profit by its fourth year of operations. It would appear that due to the rapid sale of lots,  
 2 Applicant may even earn a profit before that.

3 19. Applicant has agreed to secure the necessary permit, license or franchise from the  
 4 Town for the area described in Exhibit A.

5 20. Other than the sewage treatment facilities constructed by the Company there are no  
 6 public service corporations authorized to provide wastewater service in the areas requested to be  
 7 certificated herein.

8 21. Applicant has received the required Arizona Department of Environmental Quality  
 9 ("ADEQ") permits to operate a sewer utility as follows: an Aquifer Protect Permit ("APP"); an  
 10 Arizona Pollutant Discharge Elimination System ("AZPDES"); and a reclaimed water reuse permit.  
 11 Applicant will file copies of the permits issued to it by ADEQ if ordered to do so by the  
 12 Commission.<sup>4</sup>

13 22. Staff is recommending approval of the Company's application for a Certificate for the  
 14 Links subdivision as described in Exhibit A, and the authorization of Staff's initial rates and charges  
 15 as set forth in Schedule RDN-2, as set forth in at Exhibit B attached hereto.

16 23. Additionally, Staff is recommending that the Commission condition the issuance of a  
 17 Certificate upon the following:

- 18
- 19 1. that the Company's fair value of the property devoted to wastewater service  
is \$379,390;
- 20 2. that the Commission authorize the Company to charge Staff's rates and  
21 charges shown on Exhibit B attached hereto;
- 22 3. that the Company file, within 30 days of the effective date of this Decision,  
with the Utilities Division Director ("Director"), a tariff consistent with the  
23 rates and charges authorized by the Commission;
- 24 4. that the Company file, no later than three months following the fifth  
anniversary of this Decision, with the Commission, a rate application;
- 25 5. that the Company file, within 365 days of the effective date of this  
26 Decision, with the Director, the relevant franchise, permit or license from  
the Town;<sup>5</sup>

27 <sup>4</sup> On June 15, 2004, the Company late-filed a copy of its APP issued by ADEQ.

28 <sup>5</sup> This requirement was rendered moot since Applicant late-filed, on June 15, 2004, a letter from the Town's attorney permitting Applicant to use Town right-of-ways for its collection system.

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- 6. that the Company maintain its books and records in accordance with the NARUC Uniform System of Accounts for Sewer Utilities; and
- 7. that the Company adopt Staff's recommended depreciation rates at page five of the Staff Report.

24. Staff further recommends that the Commission's Decision granting this Certificate to the Company be null and void without further Order by the Commission if the Company fails to meet conditions 3 and 5 within the times specified.

25. Under the circumstances herein, we believe that the Company's application should be approved with Staff' initial rates and charges as set forth in Exhibit B and agreed upon by Applicant. We further find that Staff's additional recommendations should be adopted and complied with by the Company.

26. Additionally, we believe that as a further condition for the issuance of Certificate, the Company should be required to file, within 30 days of the effective date of this Decision, copies of all relevant permits such as its APP and AZPDES issued to Applicant by ADEQ that enable Applicant to operate a sewer utility in Arizona, if not previously filed, and since there is no evidence in the record which reveals that the Company has any prior experience in successfully operating a public utility, a performance bond in the amount of \$30,000 should be posted to insure that Applicant will be able to continue operations for a reasonable period if outside financial support is necessary, and unavailable from the Company's owner.

27. Because the Applicant proceeded to connect customers to its system prior to being granted a certificate, we believe it is necessary and appropriate to impose a penalty for violating Arizona law and Commission rules. Therefore, as a condition of approval of the requested Certificate, the Applicant shall pay \$500 for each active service connection made prior to the date of the hearing.

**CONCLUSIONS OF LAW**

- 1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.
- 2. The Commission has jurisdiction over the Company and of the subject matter of the

1 application.

2 3. Notice of the Company's application as described herein was given in the manner  
3 prescribed by law.

4 4. The public convenience and necessity require and the public would benefit by the  
5 issuance to the Company of a Certificate to provide certificated sewer service to the area described in  
6 Exhibit A.

7 5. Applicant is a fit and proper entity to provide sewer service and to receive a Certificate  
8 which encompasses the areas more fully described in Exhibit A.

9 6. Applicant should charge the rates and charges as set forth in Exhibit B.

10 7. The Company's application for a Certificate should be approved subject to Staff's  
11 recommendations and the Company's compliance with Findings of Fact Nos. 23, 24 and 26.

12 8. The Company should file copies of all relevant operating permits as issued by ADEQ,  
13 post a performance bond of \$30,000, and pay the appropriate penalty for providing active sewer  
14 utility service prior to the hearing in this proceeding as discussed in Findings of Fact No. 27.

15 **ORDER**

16 IT IS THEREFORE ORDERED that the application of The Links at Coyote Wash Utilities,  
17 L.L.C. for a Certificate of Convenience and Necessity for the operation of sewage facilities in the  
18 areas more fully described in Exhibit A be, and is hereby, approved.

19 IT IS FURTHER ORDERED that The Links at Coyote Wash Utilities, L.L.C. shall charge  
20 those customers in the areas more fully described in Exhibit A Staff's rates and charges as set forth in  
21 Exhibit B until further Order of the Commission.

22 IT IS FURTHER ORDERED that the approval of The Links at Coyote Wash Utilities,  
23 L.L.C.'s application for a Certificate of Convenience and Necessity shall be expressly contingent  
24 upon Applicant's filing with Docket Control in this Docket, within 30 days of the effective date of  
25 this Decision, a copy of a form of performance bond in the amount of \$30,000 (cash deposit, surety  
26 bond, or similar alternative, i.e., certificate of deposit) to insure that The Links at Coyote Wash  
27 Utilities, L.L.C. shall meet its obligations arising under its Certificate; that in the event The Links at  
28 Coyote Wash Utilities, L.L.C. chooses to make a cash deposit, said amount shall be deposited with a

1 federally insured financial institution and bear interest at a commercially acceptable rate; and that the  
2 performance bond shall be maintained and copies of the same filed annually on the anniversary date  
3 of the initial filing until further Order of the Commission or ten years have passed, whichever is  
4 sooner, at which time the bonding requirement may be terminated upon the Company's application  
5 for same.

6 IT IS FURTHER ORDERED that the Links at Coyote Wash Utilities, L.L.C. shall file, within  
7 30 days of the effective date of this Decision, copies of the relevant permits issued to it by the  
8 Arizona Department of Environmental Quality to operate a public sewer utility.

9 IT IS FURTHER ORDERED that as a condition of receipt of the requested Certificate the  
10 Links at Coyote Wash Utilities, L.L.C. shall pay, as a financial penalty, within 30 days of the  
11 effective date of this Decision, \$500 per active service connection prior to the date of hearing, said  
12 payment to be presented to the Arizona Corporation Commission and made payable to the State of  
13 Arizona.

14 IT IS FURTHER ORDERED that The Links at Coyote Wash Utilities, L.L.C. file, within 30  
15 days of the effective date of this Decision, with the Utilities Division Director, a tariff consistent with  
16 the rates and charges in Exhibit B as authorized by the Commission.

17 IT IS FURTHER ORDERED that The Links at Coyote Wash Utilities, L.L.C. file, no later  
18 than three months following the fifth year anniversary of the effective date of this Decision, with the  
19 Commission, a rate application.

20 IT IS FURTHER ORDERED that The Links at Coyote Wash Utilities, L.L.C. shall maintain  
21 its books and records in accordance with the NARUC Uniform System of Accounts for Sewer  
22 Utilities.

23 IT IS FURTHER ORDERED that The Links at Coyote Wash Utilities, L.L.C. shall adopt  
24 Staff's recommended depreciation rates at page five of the Staff Report.

25 ...  
26 ...  
27 ...  
28 ...

1 IT IS FURTHER ORDERED that the Commission's Decision granting this Certificate of  
2 Convenience and Necessity to The Links at Coyote Wash Utilities, L.L.C. for the area described in  
3 Exhibit A shall be null and void without further Order by the Commission if the Company fails to  
4 timely file or provide evidence of the following: a copy of its tariff consistent with Exhibit B to the  
5 Staff Report; copies of all relevant permits issued by the Arizona Department of Environmental  
6 Quality; a copy of its performance bond in the amount of \$30,000 or a similar alternative as ordered  
7 hereinabove; and make payment of \$500 for each active service connection made prior to the hearing  
8 in this proceeding.

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

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

11  
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13 CHAIRMAN COMMISSIONER COMMISSIONER

14  
15 COMMISSIONER COMMISSIONER

16  
17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
18 Secretary of the Arizona Corporation Commission, have  
19 hereunto set my hand and caused the official seal of the  
20 Commission to be affixed at the Capitol, in the City of Phoenix,  
21 this \_\_\_\_ day of \_\_\_\_\_, 2004.

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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

MES:mlj

1 SERVICE LIST FOR: THE LINKS AT COYOTE WASH UTILITIES, LLC

2 DOCKET NO. W-04210A-03-0712

3  
4 Joshua J. Meyer  
11593 South Fortuna Road  
Yuma, AZ 85367  
5 Attorney for The Links at Coyote Wash Utilities, L.L.C.

6 Christopher Kempsey, Chief Counsel  
Legal Division  
7 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
8 Phoenix, AZ 85007

9 Ernest G. Johnson, Director  
Utilities Division  
10 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
11 Phoenix, AZ 85007

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LEGAL DESCRIPTION

PARCEL 1

The Southeast quarter (SE  $\frac{1}{4}$ ); that part of the Southwest quarter (SW  $\frac{1}{4}$ ) lying south of the Wellton Canal right-of-way; and that part of the Northeast quarter (NE  $\frac{1}{4}$ ) lying south of the Interstate 8 right-of-way; of Section 7; and the Southwest quarter (SW  $\frac{1}{4}$ ) of the Southwest quarter (SW  $\frac{1}{4}$ ) of Section 8; all in Township 9 South (T9S), Range 18 West (R18W), Gila and Salt River Base and Meridian, Yuma County, Arizona; and

PARCEL 2

The Northwest quarter (NW  $\frac{1}{4}$ ) and the South half (S  $\frac{1}{2}$ ) of Section 13; and the Southeast quarter (SE  $\frac{1}{4}$ ) of Section 14; all in Township 9 South (T9S), Range 19 West (R19W), Gila and Salt River Base and Meridian, Yuma County, Arizona.

The Links at Coyote Wash Utilities, L.L.C.  
Docket No. W-04210A-03-0712

Schedule RDN-2

**RATE DESIGN - WASTEWATER**

Monthly Flat Rate	Proposed Rates	
	Company	Staff
Residential	\$30.00	\$30.00
Commercial	*	*

\* Each commercial customer will be required to have its own flow meter.

The commercial rate will be calculated for each commercial customer by dividing one single family equivalent (SFE) into the average daily flow rate of the commercial customer. One SFE is equal to 262 gallons per day (the approved design flow rate per single family unit by ADEQ). The resulting factor will be multiplied by the approved residential flat rate to create the custom commercial rate.

Effluent Sales

Per 1,000 Gallons	\$2.00	\$2.00
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Service Charges

Flow Meter Installation Charge	\$0.00	\$100.00
Establishment (R14-2-603D)	25.00	25.00
Reconnection (Delinquent)	30.00	30.00
NSF Check	25.00	25.00
Late Payment Penalty (per month)	1.50%	1.50%
Deposit	**	**
Deposit Interest	**	**
Re-Establishment (Within 12 Months)	***	***

\*\* As per Commission Rules (R14-2-603B)

\*\*\* Months off system times the minimum (R14-2-603.D)

Other Rates and Charges Approved By Order

In addition to the collection of its regular rates and charges the Company will collect from customers their proportionate share of any privilege, sales or use tax in accordance with R14-2-608.D5.