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4 **BEFORE THE ARIZONA CORPORATION COMMISSION**

5 IN THE MATTER OF THE APPLICATION OF) **Docket No. SW-01428A-06-0444**
6 LITCHFIELD PARK SERVICE COMPANY FOR)
A CAPACITY RESERVATION CHARGE) **APPLICATION FOR**
7 TARIFF FOR ITS NEW WASTEWATER) **REHEARING OF DECISION NO.**
CERTIFICATE OF CONVENIENCE AND) **69165 AND REQUEST FOR STAY**
8 NECESSITY EXTENSION AREAS.)

9 Litchfield Park Service Company ("LPSCO" or the "Company") hereby submits its
10 Application for Rehearing of Decision No. 69165 and Request for Stay pursuant to Arizona
11 Revised Statutes §40-253. This relief is warranted because the Commission's decision is legally
12 flawed in two material respects. First, the Arizona Corporation Commission's ("Commission")
13 decision results in unjust and unreasonable rates because it is based on erroneous facts regarding
14 the costs of new treatment capacity, a problem exacerbated because the Commission arbitrarily
15 refused to allow LPSCO to withdraw and later refile its application. *See Reporter's Transcript of*
16 *Proceedings ("TR") at 12-14.* Second, the Commission's tying of the hook-up fee to odor
17 concerns associated with LPSCO's Palm Valley Water Reclamation Facility ("PVWRF")
18 violates the Company's rights to due process of law. Specifically, there was no hearing in this
19 docket, rendering the Commission's findings and orders regarding odor concerns unsupported by
20 evidence and unlawful.

21 In support of its request for relief, LPSCO hereby states as follows:

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1 **I. GENERAL BACKGROUND**

2 1. On July 5, 2006 Company filed a Capacity Reservation Charge Tariff (“CRC”)
3 Application as mandated by Decision No. 68744. On November 7, 2006, Staff filed its Staff
4 Report and proposed form of Order on this matter, adopting the Company’s proposed CRC level,
5 but amending the form of the proposed tariff. Additionally, the Staff, recommended that the
6 CRC not become effective until resolution of so-called “odor problems” related to the
7 “PVWRF”.

8 2. The Staff’s proposed Order became the Recommended Opinion and Order (the
9 “ROO”) and was set for the Commission’s Open Meeting on November 21, 2006.

10 3. At that Open Meeting, following multiple amendments related to the odor
11 concerns, the Commission approved Decision No. 69165 (the “Decision”). The Decision was
12 approved over the Company’s objections and after the Commission refused to allow the
13 Company, as the applicant, to withdraw its application.

14 **II. THE CRC TARIFF**

15 4. The Company submits that the Commission’s approval of the CRC results in
16 charges that are unjust and unreasonable for the Company and its customers in violation of the
17 Arizona Constitution Article 15, Section 3 and ARS §40-250 *et seq.*

18 5. On or about November 15, 2006, counsel for the Company contacted Staff
19 requesting that the matter be removed from the November 21, 2006 Open Meeting Agenda
20 because the estimated plant costs and capacity requirements underlying the CRC were incorrect.
21 Specifically, as the Company explained to the Commission, LPSCO’s proposed CRC was based
22 upon the then known costs of a similar sized treatment plant being constructed by a nearby
23 municipality (i.e. \$7.60 per gallon) and the estimated capacity requirement of the Arizona

1 Department of Environmental Quality ("ADEQ") for each customer (i.e. 320 gallons per
2 customer). TR at 13-14. That resulted in a requested CRC of \$2,450 (320 gallons times \$7.60).
3 As clearly reflected in the Application, the plant costs used were estimates, but similar plant costs
4 were running in excess of \$16 per gallon of capacity.

5 6. The Company also objected because the CRC was further modified by Staff to
6 apply to all new customers within the Company's service area as a non-refundable contribution.
7 That provision adversely impacts the Company's capitalization, an expressed concern of the
8 Commission in the Company's last rate proceeding.

9 7. The Company was advised by Staff that due to the Commission's desire to hear a
10 presentation regarding odor concerns associated with PVWRF, the matter could not be removed
11 from the Open Meeting Agenda, but that the Company could request that the CRC not be
12 approved so the Company could later resubmit its request with updated and more accurate
13 information.

14 8. The Commission rejected the Company's request to modify the CRC, primarily, it
15 would appear, because the Commission desired to issue a decision on the CRC that also
16 addressed the odor concerns associated with PVWRF. *See* TR at 57. This is an insufficient
17 basis for adoption of a CRC known to be incorrect and, as a result, the CRC approved by the
18 Commission is unjust and unreasonable. The CRC also has the potential to discriminate by
19 treating customers that are assessed the charge differently than future customers in like
20 circumstances but who might not be subject to the charges if the tariff is modified.

21 9. Because the above facts result in conditions that are difficult or impossible to
22 remedy by future action of the Commission or the Company, the Company requests that the
23 Decision be immediately stayed pending rehearing.

1 **III. THE ODOR PROBLEM**

2 10. The CRC is unrelated to any concerns over odors from the PVWRF and nothing
3 in the Company's application ties the CRC to any odor issues.

4 11. Nevertheless, the Commission, in Decision No. 68923 (dated August 29, 2006),
5 suspended the request for approval of the CRC for a period of 90 days and further ordered Staff
6 to report back to the Commission on its investigation of the odor problems at the PVWRF.
7 Decision at 2.

8 12. Thereafter, Staff, without conducting any discovery and without the benefit of a
9 hearing, included discussion in its Staff Report regarding odors and made recommendations
10 related to odors that were entirely irrelevant to the subject matter of the application—the CRC.
11 For example, the Decision refers to several aspects of the Staff Report concerning odors:

12 a. On September 15, 2006, Staff and the Company detected a "skunky" smell from
13 the Company's Palm Valley Water Reclamation Facility, the wastewater treatment
14 plant ("WWTP").

15 b. Phase 1 – short-term solution, the Company is currently addressing the odor
16 problem by the installation of a "pilot test" polisher – a carbon adsorption unit to
17 provide additional polishing of foul air – that began on September 15, 2006. The
18 Company has applied for an Approval To Construct from Maricopa County and
19 on September 28, 2006, Maricopa County issued an Approval To Pre-Purchase
20 Equipment for approval to procure a 16,000-cfm carbon adsorption unit to provide
21 additional polishing of foul air following the chemical scrubbing unit.

22 (According to the Company, this carbon adsorption unit has been delivered to the
23 Palm Valley site and is expected to be installed by the end of 2006.)

1 c. Phase 2 – long-term solution, the Company is considering replacement of existing
2 undersized odor control equipment - with an estimated construction schedule to
3 begin the third quarter of 2007.

4 d. The Company also hired a consulting firm to study the options of increasing its
5 WWTP capacity.

6 Decision at 2.

7 13. The Commission further concluded that it was “concerned about the
8 inconvenience and potential economic harm that these odors are causing nearby residents and
9 businesses. The Company should work with local businesses to minimize the economic harm
10 caused to them by the persistent odor issues. These efforts could include, but are not limited to,
11 purchasing air filters or temporary air fresheners for the businesses and residents most impacted
12 by the odors.” Decision at 3, 5.

13 14. Finally, the Commission ordered that the CRC not become effective until the
14 Phase 1 carbon adsorption unit has been installed, is in operation, and the odor concerns have
15 been resolved as verified by Staff. Decision at 4.

16 15. Again, odor concerns were not part of the Company’s application and, while the
17 Commission has broad discretion when regulating public service corporations, its proceedings
18 are still subject to due process requirements. Due process clearly dictates that the Commission
19 not make findings, like the finding that a “problem” exists and that “economic harm” is being
20 caused by odors from the PVWRF, or order LPSCO to take action without the benefit of an
21 evidentiary record developed in a manner that allows the Company to present and challenge the
22 evidence. No such due process was afforded LPSCO in this case, therefore, the Commission’s
23 decision, at it relates to odor concerns, is arbitrary, capricious and unlawful.

1 WHEREFORE, the Company respectfully requests that the Commission immediately
2 Stay Decision No. 69165 so that it can rehear this matter, and, upon such consideration,
3 withdraw the Decision and allow the Company an opportunity to resubmit an application for a
4 Capacity Reservation Charge once the Company has been able to consider the new information
5 available on cost and required capacity.

6 Respectfully submitted this 21st day of December 2006.

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21 The original and thirteen (13) copies of
22 the foregoing were filed
23 this 21st day of December, 2006:

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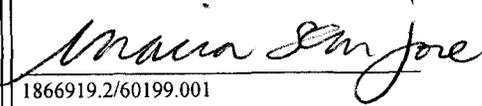
1 A copy of the foregoing was
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2 21st day of December 2006, to:

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