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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

IN THE MATTER OF THE FORMAL  
COMPLAINT OF WESTCOR/GOODYEAR,  
L.L.C. and GLOBE LAND INVESTORS,  
L.L.C. AGAINST LITCHFIELD PARK  
SERVICE COMPANY

DOCKET NO. SW-01428A-08-0234  
**RESPONSE TO MOTION TO  
STAY**

Westcor/Goodyear LLC ("Westcor") and Globe Land Investors, L.L.C. ("Globe")  
(together the "Developers") hereby respond to "Motion to Stay All Proceedings and Request for  
Procedural Conference" filed on June 29, 2008, by Litchfield Park Service Company ("LPSCo").  
LPSCo seeks to stay indefinitely the current proceeding.

1 **I. DEVELOPER'S PROCEDURAL SCHEDULE IS REASONABLE**

2 Developers are only asking to phase this case. The first phase would consider just two  
3 limited issues:

- 4 1. Whether LPSCo should expeditiously provide a will-serve letter and line extension  
5 agreements to Developers.  
6 2. The amount of security, if any, that Developers should provide to secure their  
7 capacity-payment obligation.

8 These are the only issues that Developers request be considered on an expedited basis. The  
9 second phase would then follow, where the Commission would determine the appropriate amount  
10 of Developers' capacity-payment obligation. Phase 2 could proceed on a normal schedule.

11 To summarize, Developers ask for an expedited schedule for Phase 1 that would allow the  
12 Commission to issue a decision by August 31, 2008, on the two limited issues of the will-serve  
13 letter and the amount of security. There should be very little discovery, testimony, or hearing  
14 time needed to resolve these issues. Following a Commission decision concerning the Phase 1  
15 issues, the Judge could then schedule Phase 2.

16 **II. A TIMELY WILL-SERVE LETTER IS CRITICAL**

17 As discussed in the Emergency Motion, a timely will-serve letter mitigates the amount of  
18 damages that LPSCo may be ordered to pay in the court proceeding. If construction does not  
19 begin this fall (2008), Westcor may lose key tenants, thereby causing enormous monetary losses  
20 for Developers. In addition, Westcor/Globe has already incurred damage as a result of the delay  
21 in commencement of construction of the Estrella Falls Mall because Developers will not have  
22 lease payments from any mall tenants to partially offset Improvement District Assessments  
23 Payments due in January 2010. Improvement District assessments will continue to mount,  
24 without corresponding sales tax offsets.

25 LPSCo portray this dispute as having only financial consequences for Developers.  
26 However, LPSCo ignores how further delay would harm the regional economy. Developers are

1 poised to complete their Power Center and construct a Regional Mall to provide local residents  
2 shopping opportunities like those enjoyed by residents of Phoenix, Chandler, Gilbert, Mesa,  
3 Scottsdale and other population hubs. Currently, Goodyear area residents must drive tens of  
4 miles and burn \$4.00/gallon gasoline to shop in a regional mall. Thousands of jobs and millions  
5 of dollars of tax revenue hinge on LPSCo providing a simple will-serve letter and basic line-  
6 extension agreements.

7 **III. LPSCO IGNORES DEVELOPERS' REQUEST FOR A WILL-SERVE LETTER**

8 Developers have asked the Commission to order LPSCo to provide Westcor a will-serve  
9 letter that will allow the development to go forward while the Commission determines the amount  
10 LPSCo is entitled for a capacity contribution. Developers have also proposed an expedited  
11 procedural schedule (including discovery, prefiled testimony, and a hearing) that will allow the  
12 Commission to order LPSCo to execute a will-serve letter in time to avoid another one-year delay  
13 of the Regional Mall and further delay of the Power Center. LPSCo's motion just ignores this  
14 simple, reasonable, request.

15 The requested will-serve order is not an issue in the court case. Nor will ordering the will-  
16 serve letter interfere in any way with the court case if the Superior Court judge determines to  
17 proceed.

18 **IV. LPSCO IGNORES DEVELOPERS' PROFFERED SECURITY**

19 Developers have also offered to secure their capacity-payment obligation through a letter  
20 of credit or similar instrument. This will assure that LPSCo will receive its capacity payment in  
21 the amount ultimately determined by the Commission. This is also not an issue in the court case.  
22 LPSCo's motion also ignores these facts.

23 LPSCo argues that Developers could instead pay under protest "the amount that LPSCo  
24 believes is needed to extend service." This is unacceptable for many reasons.

25 First, LPSCo's previous demand was six times more than called for by the 2001  
26 Commercial Agreement, four times more that provided for in LPSCo's hook-up fee tariff, and

1 unsupported by any engineering, design, or other cost studies. Although Developers do not  
2 believe that any new treatment capacity is required, LPSCo has known of the expected  
3 wastewater demands of the Power Center and the Regional Mall for at least seven years. Further,  
4 LPSCo has apparently still not decided if its next capacity expansion will be at the Palm Valley  
5 Facility, at a new facility at Sarival Road, or through acquiring capacity from the City of  
6 Goodyear. LPSCo really cannot say what it will build and what it will cost. Clearly, at this time  
7 LPSCo's "belief" as to what is needed should not control the amount of the payment.

8 Second, LPSCo does not need any funds to issue a will-serve letter. If its demands are  
9 met, LPSCo says it is ready to issue a will-serve letter, but also states that it needs to fund  
10 additional treatment capacity. As discussed above, this will require LPSCo to select an expansion  
11 option. Design, permitting, construction and final approvals will then take years before the new  
12 facility can enter service. LPSCo will not need significant expansion funds for quite some time,  
13 and certainly none are needed to issue a will-serve letter.

14 Third, LPSCo should not be provided the full amount of its back-of-the-envelope estimate  
15 and then simply be allowed to earn interest on the amount for years to come. If LPSCo's  
16 Canadian mutual-fund owners could earn just five percent on the requested amount, the fund  
17 would gain \$725,000 in supplemental annual earnings for many years.

18 Fourth, LPSCo is not offering to provide any security for a payment under protest.  
19 According to its 2006 Annual Report to the Commission, LPSCO's 2006 net operating income  
20 was just \$1,645,378. This is clearly insufficient to secure a likely Commission-ordered \$10-12  
21 million refund plus interest,<sup>1</sup> and a multimillion court damage award. LPSCO's promise to  
22 provide a refund would then be of little or no value. Bankruptcy would be LPSCO's only likely  
23 option.

24 **V. THERE IS NO REASON TO WAIT FOR COURT RESOLUTION**

25 Developers are filing a response to LPSCo's Motion to Dismiss the Superior Court

26 <sup>1</sup> \$14.5 million demand, less \$2.6 million (2001 Commercial Agreement) or \$4.1 million (Hook-up Fee Tariff).

1 Complaint. As that response will show, LPSCo's motion is unfounded. The court complaint is a  
2 breach-of-contract action. The Commission cannot, as LPSCo well knows, award contract  
3 damages, so the court action is absolutely necessary. At the same time, Developers are asking the  
4 Commission for relief that a court cannot award, in particular for the Commission to order LPSCo  
5 to provide a will-serve letter and line-extension agreements, and to enforce LPSCo's Hook-up  
6 Fee Tariff.

7 The best that LPSCo could hope for would be that the court stays its proceeding to await  
8 the outcome of this Commission matter, and then attempt to use the Commission's determination  
9 as part of the record in the court's damage hearing. LPSCo has not identified any possible  
10 outcome in the court proceeding that would affect the Commission's ability to provide full relief  
11 in this matter. The court action provides no basis for the Commission to further delay this  
12 proceeding.

13 **VI. CONCLUSION**

14 Developer's request is reasonable. In response, LPSCo only offers further delay, but the  
15 consequences of further delay are enormous. Developers have suggested a process that will allow  
16 the Power Center and Regional Mall to proceed, while protecting LPSCo's right to fully litigate  
17 the amount of the capacity payment to which it may be entitled. It is simply amazing that LPSCo  
18 would not voluntarily accept this generous offer, and that Developers now must ask the  
19 Commission to order LPSCo to do the sensible thing.

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**VII. REQUESTED RELIEF**

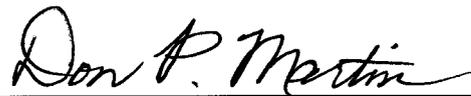
WHEREFORE, Westcor/Goodyear LLC and Globe Land Investors, L.L.C. respectfully request that at the June 13, 2008, Procedural Conference, the Commission:

- A. Grant Their Emergency Motion;
- B. Deny LPSCo's Motion to Stay; and
- C. Award Developers such other relief as the Commission deems proper.

RESPECTFULLY SUBMITTED on June 6, 2008.

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