OPEN MEETING ITEM

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Executive Director

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COMMISSIONERS
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ORIGINAL

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED
OCT - 6 2008
DOCKETED BY

DATE: OCTOBER 6, 2008

DOCKET NO: SW-01428A-08-0234

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Opinion and Order on:

WESTCOR/GOODYEAR, L.L.C. and GLOBE LAND INVESTORS, L.L.C.
vs. LITCHFIELD PARK SERVICE COMPANY
(COMPLAINT)

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 ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

OCTOBER 9, 2008

All parties have waived the 10 days for filing of exceptions

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:

OCTOBER 15, 2008 and OCTOBER 16, 2008

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.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman
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IN THE MATTER OF: WESTCOR/GOODYEAR, L.L.C. and GLOBE LAND INVESTORS, L.L.C., COMPLAINANTS, VS. LITCHFIELD PARK SERVICE COMPANY, RESPONDENT.	DOCKET NO. SW-01428A-08-0234 DECISION NO. _____ **OPINION AND ORDER**

DATE OF HEARINGS:	June 13, 2008; July 18, 2008; July 31, 2008 (Procedural Conferences); October 1, 2008 (Evidentiary Hearing)
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Dwight D. Nodes
APPEARANCES:	Mr. Craig A. Marks, CRAIG A. MARKS, PLC, and Mr. Don P. Martin, QUARLES & BRADY, LLP, on behalf of Westcor/Goodyear,L.L.C., and Globe Land Investors, L.L.C.; Mr. Jay Shapiro and Mr. Todd Wiley; FENNEMORE CRAIG, PC, on behalf of Litchfield Park Service Company; and Ms. Ayesha Vohra and Mr. Kevin Torrey, Staff Attorneys, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On May 6, 2008, Westcor/Goodyear, L.L.C., and Globe Land Investors, L.L.C., ("Complainants," "Developers" or "Westcor") filed with the Arizona Corporation Commission ("Commission") a formal complaint against Litchfield Park Service Company ("LPSCO"). The Complainants are developing a regional mall called Estrella Falls, and other surrounding commercial

facilities, in a 330-acre area in Goodyear, Arizona, primarily within LPSCO's Certificate of Convenience and Necessity ("CC&N") area. The Complainants alleged, among other things, that LPSCO refused to accept a check for an amount the Complainants claim represented the final capacity payment for Phase II of the Estrella Falls development pursuant to a 2001 Commercial Agreement between the Complainants and LPSCO.

On May 23, 2008, the Complainants filed an Emergency Motion for Will-Serve Letter and Other Expedited Relief. The Complainants requested that the Commission issue an expedited Show Cause Order and set an expedited hearing date to consider the Complainants' demand for a will-serve letter from LPSCO to serve Phase II of the Estrella Falls development. Alternatively, the Complainants requested that a Procedural Order be issued to schedule an expedited hearing to consider the will-serve letter demand issue.

On May 29, 2008, LPSCO filed an Answer to the Complaint, generally denying the allegations in the Complaint and asserting several affirmative defenses. LPSCO also filed on May 29, 2008, a Motion to Stay All Proceedings and Request for Procedural Conference. In its Motion, LPSCO stated that the dispute raised by the Complaint revolves around the amount the Complainants are required to pay to obtain wastewater service from LPSCO for the Estrella Falls development. LPSCO also claimed that it filed a Motion to Dismiss a companion civil complaint filed in Maricopa County Superior Court and, until that Motion has been considered by the Superior Court, LPSCO requested that the Commission stay the proceedings in this matter in the interest of judicial and administrative economy. LPSCO requested that a procedural conference be scheduled, preferably after a ruling by the Superior Court on LPSCO's Motion to Dismiss.

On May 30, 2008, a Procedural Order was issued scheduling a procedural conference for June 13, 2008.

A teleconference was conducted with the parties on June 5, 2008, to discuss filing dates for pending motions. The parties agreed that the various pending motions would be discussed at the procedural conference.

On June 6, 2008, Westcor filed a Response to LPSCO's Motion to Stay. The Complainants reiterated their argument that an expedited resolution of the dispute was necessary to avoid additional

delays in construction schedules.

On June 12, 2008, LPSCO filed a Reply in Support of Motion to Stay and Request for Procedural Conference. LPSCO argued that the extraordinary relief sought by the Complainants was not warranted, and that a stay of the Commission proceeding was necessary until a ruling was made by the Superior Court in order to avoid inconsistent rulings.

On June 13, 2008, the procedural conference was held as scheduled. Following a discussion of the pending motions, and the possibility of an interim solution, the parties agreed to engage in discussions regarding this matter and to reconvene a procedural conference at a later date.

On June 13, 2008, a letter to Commissioner Mayes from the City of Goodyear's City Manager, John Fishbach, was filed. In the letter, Mr. Fishbach stated that the Estrella Falls mall project is integral to the City's planned growth, and he urged the Commission to provide any available assistance to resolve the dispute.

On July 7, 2008, the Complainants filed a Second Emergency Motion for Will-Serve Letter and Other Expedited Relief. The Complainants stated that the parties were unable to complete a settlement agreement, and claimed that an expedited decision was needed to avoid an additional one-year delay in construction of the mall project. The Complainants also requested that the Commission schedule an expedited Show Cause hearing and to direct LPSCO to issue the requested will-serve letter prior to August 31, 2008.

On July 8, 2008, a Procedural Order was issued scheduling a second procedural conference for July 18, 2008.

On July 15, 2008, LPSCO filed a Response to the Second Emergency Motion for Will-Serve Letter and Other Expedited Relief. LPSCO claimed that there were material issues in dispute between the parties and that a reasonable procedural schedule should be established to address those issues.

On July 18, 2008, the procedural conference was conducted to discuss the status of the proceeding and the possibility of an agreement between the parties. Following the discussion, the parties were directed to attempt to negotiate an interim solution to the dispute until the underlying issues were resolved through a full evidentiary hearing.

On July 22, 2008, a Procedural Order was issued scheduling a third procedural conference for July 31, 2008.

On July 31, 2008, the procedural conference was held to discuss the status of the parties' settlement discussions and to attempt to assist the parties in reaching a consensus on an interim solution. The Complainants and LPSCO agreed to continue to pursue settlement negotiations and to file the agreement upon completion.

On August 13, 2008, LPSCO filed a Will Serve Letter in the docket setting forth the terms under which LPSCO agreed to extend service to the Estrella Falls development.

On August 15, 2008, Westcor filed a responsive letter stating several conditions that must be resolved before it would agree to execute a settlement of the complaint.

On August 21, 2008, LPSCO filed a reply letter to the Complainants describing how, from LPSCO's perspective, each of the items set forth by Westcor should be resolved.

On September 15, 2008, a teleconference was conducted during which counsel for LPSCO and the Complainants represented that a Settlement Agreement had been executed. The parties agreed on an expedited hearing date and dates for filing testimony.

On September 16, 2008, Westcor and LPSCO filed a Joint Notice of Filing Settlement Agreement and Request for Approval. The parties seek unconditional approval of the Settlement Agreement or, at a minimum, approval of the financing and funding provisions of the Agreement, by no later than October 22, 2008.

On September 19, 2008, a Procedural Order was issued scheduling a hearing on the Settlement Agreement for October 1, 2008, and setting testimony filing dates by the parties.

On September 22, 2008, the Complainants filed the Direct testimony of Garrett Newland, Westcor's Vice President of Development, in support of the Settlement. Also, on September 22, 2008, LPSCO filed the Direct Testimony of Greg Sorenson, Director of Operations for the Western Group of Algonquin Water Services, an affiliate of LPSCO.

On September 29, 2008, Staff filed a Response to Joint Notice of Filing Settlement Agreement and Request for Approval. Staff stated that although it is pleased the parties were able to resolve their dispute through negotiations, Staff does not recommend approval by the Commission of

the Agreement's "future rate base implications, if any, at this time." According to Staff, determinations regarding the reasonableness and prudence of plant investments are more appropriately considered in a rate case application.

On September 29, 2008, LPSCO filed a Reply in Support of Joint Request for Approval of Settlement Agreement. LPSCO claims that Staff was confused about the relief being sought from the Commission. LPSCO contends that the parties are not seeking approval of any plant in rate base, at this time, but are requesting only a finding by the Commission that the amount of funding by Westcor under the Settlement is a reasonable and prudent allocation of the responsibility for funding the cost of the additional capacity needed for LPSCO to serve Phase II of the Estrella Falls project. LPSCO claims that the approval being sought from the Commission is comparable to a financing approval, rather than a pre-approval of plant investment.

On September 29, 2008, Goodyear's City Manager filed a letter sent to each of the Commissioners urging approval of the Agreement between Westcor and LPSCO. Mr. Fishbach's letter states that Goodyear strongly supports the Agreement and the City has offered to assist the parties.

On October 1, 2008, the hearing was conducted, as scheduled. Westcor, LPSCO and Staff appeared through counsel, and Westcor and LPSCO each presented a witness to testify in support of the Settlement. Shawn Bradford, the City of Goodyear's Director of Water Resources, offered public comment in support of the Settlement Agreement.

* * * * * * * * * *

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

FINDINGS OF FACT

1. On May 6, 2008, Westcor filed a formal complaint against LPSCO alleging, among other things, that LPSCO refused to accept a check for an amount the Complainants claim represents the final capacity payment for Phase II of the Estrella Falls development pursuant to a 2001 Commercial Agreement between the Complainants and LPSCO.

2. The Complainants are developing a regional mall called Estrella Falls, and other

surrounding commercial facilities, in a 330-acre area in Goodyear, Arizona, primarily within LPSCO's CC&N area. The mall project is located north of Interstate 10, between Pebble Creek Parkway and Bullard Avenue. According to Westcor witness Newland, Phase I of the project is a portion of the 66-acre "power center" that has already opened. Phase II of the project, the area that is the subject of the dispute in this case, will include the remainder of the power center, as well as a regional mall. Mr. Newland stated that Westcor is now ready to begin construction on Phase II, upon resolution of the LPSCO complaint (Ex. C-1, at 2-3).

3. All but 30 acres of the Estrella Falls project is located within LPSCO's CC&N area, with the remainder in the City of Goodyear's service territory. Phase I will require 60,000 gallons per day ("gpd") of wastewater collection and treatment, and there is no dispute regarding the provision of service by LPSCO to the Phase I area. Phase II is expected to require an additional 558,780 gpd of wastewater capacity at buildout. According to Mr. Newland, lenders will not fund construction, and tenants will not enter into leases, without a wastewater service commitment (*Id.* at 3-4).

Developers' Position

4. As described by Mr. Newland, the dispute in this case arises from four agreements that were entered into between the developers and LPSCO: separate residential and commercial water facilities agreements, and separate residential and commercial wastewater facilities agreements. In this proceeding, only the commercial wastewater facilities agreement is in dispute. Under the 2001 Commercial Agreement, the Developers were required to advance funds to LPSCO for the additional wastewater treatment capacity needed to treat the computed wastewater flows from all phases of the development. Mr. Newland testified that Exhibit D to the commercial agreement provided that the Developers' required advance was to be $2,538,000, or additional capacity costs, whichever is higher (plus a 2 percent administrative fee) (*Id.* at 5).

5. According to Mr. Newland, in late 2007, the Developers were ready to begin construction on Phase II of the project and, on February 1, 2008, attempted to tender $2,588,760 to LPSCO for the amount Westcor believed was owed under the 2001 Agreement. However, that tender was rejected by LPSCO. Mr. Newland claims that LPSCO took the position that the Phase II

capacity payment should be based on the cost to construct a new treatment plant on Sarival Road, as well as a new force main, at a cost of $14.5 million (*Id.* at 5-6). On February 13, 2008, Westcor announced a one-year delay in the mall project, in part due to the dispute with LPSCO over the wastewater capacity payment (*See*, May 23, 2008 Emergency Motion, Newland Affidavit at 5-6). On April 23, 2008, Westcor attempted to resolve the dispute by tendering a check for $4,134,375 for the capacity payment, which amount was calculated in accordance with LPSCO's new hook-up fee tariff, which became effective April 1, 2008. According to Mr. Newland, the tender of payment was rejected by LPSCO on April 29, 2008 (*Id.* at 7-8).

6. Following various procedural conferences conducted in this case, the parties attempted to negotiate a settlement of the dispute regarding the amount of the capacity payment. After several unsuccessful attempts, the Developers and LPSCO reached agreement on the Phase II payment to be made, and agreed to settle the Complaints filed at the Commission and Superior Court. Under the Settlement Agreement, the Developers agreed to pay LPSCO $4,844,623 for the Estella Falls Phase II capacity. The payment was calculated at the rate of $8.67 per gallon, applied to the expected Phase II wastewater flows of 558,780 gpd (Ex. J-1, §4.1; Ex. C-1, at 6). The Agreement provides that the capacity payment will be treated by LPSCO as an advance in aid of construction, subject to the refunding provisions contained in the 2001 Commercial Agreement (Ex. J-1, §4.2)[1].

7. The Settlement Agreement also requires LPSCO to execute a Memorandum of Agreement with the City of Goodyear whereby the City would agree to provide backup treatment capacity to LPSCO to serve Estrella Falls in the event LPSCO's planned treatment expansion is delayed (*Id.* at §4.4). At the hearing, Mr. Newland testified that the Memorandum of Agreement between LPSCO and Goodyear for backup capacity was approved unanimously by the Goodyear City Council on September 22, 2008 (Tr. 39).

8. Mr. Newland's testimony also described, from the Developers' perspective, the benefits to be derived from approval of the Agreement. He indicated that the parties would be able to avoid the costs of protracted litigation, both at the Commission and in Superior Court. In addition,

[1] The 2001 Commercial Agreement provides for refund of the advance at a rate of 10 percent of annual gross revenues from customers located in the development, over a 15 year period. The balance of unrefunded advances would be treated as contributions in aid of construction.

Mr. Newland stated that the Settlement Agreement provides certainty regarding the outcome of the dispute, and would conserve the resources of the Commission, Staff and Superior Court that would have been devoted to resolving the dispute (Ex. C-1, at 7).

9. Mr. Newland described other benefits associated with resolution of the Complaint, including millions of dollars of sales and property tax revenues for the City of Goodyear and the creation of approximately 2,000 jobs for residents of Goodyear and surrounding communities (*Id.* at 9). Mr. Newland testified that if the Settlement Agreement, or at least Section 4 of the Agreement, is not approved by October 22, 2008, the Developers "will have no choice but to delay the mall and will be unable to lease to any tenants for Phase II of the Power Center" (*Id.*).

10. Mr. Newland testified that, without timely approval, Westcor will be unable to proceed with financing, engineering and construction, and the planned opening of the mall in the third quarter of 2010 will be delayed again. He claims that further delay would harm the Developers because they are obligated to begin making Improvement District Assessment payments in January 2010.

LPSCO's Position

11. LPSCO witness Greg Sorenson also testified in support of the Settlement Agreement. He testified that LPSCO's position regarding the 2001 Commercial Agreement was that the Developers were required to fund the actual cost of the wastewater capacity at the time LPSCO was required to build the capacity, and not in year 2000 dollars, which was the basis of the Developers' calculation of the $2,538,000 estimated capacity cost. Mr. Sorenson also claims that LPSCO rejected the alternative tender from the Developers because it is unclear whether LPSCO's new hookup tariff applies to this situation. According to Mr. Sorenson, the hookup fee tariff applied to new service laterals "established" after the effective date (April 1, 2008), but it is not clear whether the tariff would be applicable to the 2001 Commercial Agreement between the Developers and LPSCO. He stated that LPSCO's concern with accepting the proposed payments from the Developers is that LPSCO would be required to fund any difference between the Developers' payment and the actual cost to construct the needed capacity, and LPSCO's ratepayers would ultimately bear the burden of those additional costs. Alternatively, LPSCO feared that if the Company accepted the Developers'

payment, and the Commission later determined that LPSCO should have collected the entire actual cost of building the capacity, the Commission may disallow in rate base the additional investment cost to construct the treatment capacity (Ex. R-1, at 4-5).

12. With respect to the Settlement Agreement, Mr. Sorenson testified that LPSCO needs Commission approval of the Settlement Agreement or, at a minimum, for the Commission to "conclude that the amount to be funded by Developers, $8.67 per gallon for up to 558,780 gpd of treatment capacity, and LPSCO's funding of the balance of those capacity costs, is a reasonable and prudent means of financing the cost of additional wastewater treatment capacity necessary to serve Estrella Falls Phase II, even if the actual cost is greater than that level of developer funding" (*Id.* at 6-7). Mr. Sorenson concedes that LPSCO would be required, in a future rate case, to demonstrate that the actual cost of capacity funded by LPSCO was reasonable and prudent based on facts and circumstances known at the time, and that the plant investment is used and useful over a reasonable planning horizon of at least five years (*Id.* at 7).

13. According to Mr. Sorenson, the Commission's approval of the payment from the Developers in this proceeding would preclude the Commission in a future rate case from finding that LPSCO should have required a larger advance or contribution from the Developers, no matter the final actual cost. Mr. Sorenson stated that, absent the requested approval by the Commission, LPSCO "cannot take such investment risk" and would be better off litigating the dispute with the Developers (*Id.* at 7-8).

14. Mr. Sorenson also testified that LPSCO believes that approval of the Settlement Agreement is in the public interest because the level of funding agreed to by the Developers is greater than the amount they claimed was due under the 2001 Commercial Agreement and greater than the amount the Developers would have been required to pay if the new LPSCO hook-up fee tariff was found to be applicable to Westcor. He claims that, under the Commission's main extension rules, LPSCO could have elected to fund the entire amount of capacity on its own without funding from the Developers and LPSCO would be entitled to full recovery of that capacity investment upon a finding that the plant is used and useful. Mr. Sorenson asserts that the funding mechanism negotiated in the Settlement benefits LPSCO and its customers, as well as serving the Developers' need for wastewater

treatment service. He added that LPSCO believes the Settlement Agreement represents a good faith and reasonable settlement of the dispute between the parties and will resolve the complaint proceeding at both the Commission and Superior Court (*Id.* at 8).

15. Mr. Sorenson supports the testimony presented by Westcor's witness, and public comment by the City of Goodyear's representative, that the Estrella Falls project is vital to Goodyear and surrounding communities due to the expected tax revenue and employment opportunities that will be provided by the mall. He also pointed out that the additional customers that will be added by the mall development would enable LPSCO to spread the costs of its system over a larger base of customers, thereby benefiting all customers. Finally, Mr. Sorenson indicated that approval of the Settlement will avoid the litigation costs that would be incurred by both LPSCO and the Developers if the dispute is not resolved amicably. He therefore asked that the Agreement be approved by the Commission prior to the October 22, 2008 deadline requested by the Developers (*Id.* at 8-9).

Staff's Position

16. Staff did not present a witness at the evidentiary hearing. However, in its September 29, 2008, Response to the Joint Notice of Filing Settlement Agreement, Staff expressed the concern that the Settlement appeared to be seeking pre-approval of LPSCO's proposed investment in the wastewater treatment plant needed to serve the Estrella Falls Phase II development. Staff stated in its filing that, although it is pleased that the parties were able to resolve their dispute regarding the required capacity payment, Staff "recommends that the Commission refrain from making any rate-making determinations as to prudence outside of a rate case" (September 29, 2008 Staff Response, at 2).

17. At the hearing, counsel for the parties, and Staff, were asked if they would be agreeable to language in the Commission's Order to the effect that the agreed-upon amount of the capacity advance is reasonable, with the caveat that no finding would be made regarding pre-approval of LPSCO's actual plant investment and the prudence of that investment would be specifically reserved for consideration in a future rate case (*See*, Tr. 20-36). In addition to the agreement by counsel for LPSCO and Westcor that no prudence pre-approval of plant investment was being sought under the Settlement Agreement, Staff counsel indicated Staff's satisfaction with a Commission

Order that would limit approval to only the reasonableness of the negotiated capacity charge (Tr. 31).

Discussion and Resolution

18. Based on the entirety of the facts and circumstances presented in this proceeding, we believe that the financial terms set forth in Section 4 of the Settlement Agreement between LPSCO and the Developers are reasonable and should be approved. The wastewater treatment capacity payment negotiated by LPSCO and the Developers appears to be a reasonable compromise of the parties' disagreement over the amount that was owed by the Developers under the 2001 Commercial Agreement, as well as the uncertainty that apparently exists regarding the applicability of the new hook-up fee tariff to the 2001 Agreement.

19. As described in the testimony presented at the hearing, the Settlement was the product of lengthy, arms-length negotiations, and produced a result that allows the Developers to move forward with Phase II of the Estrella Falls project while requiring a substantial up-front advance to LPSCO for the purpose expanding its existing wastewater treatment plant. The negotiated capacity payment of $8.67 per gallon, applied to an estimated 558,780 gpd capacity requirement, will provide LPSCO an advance in aid of construction of $4,844,623, an amount that is almost twice the amount originally tendered by the Developers under their interpretation of the 2001 Commercial Agreement, and exceeds the amount calculated under the hook-up fee by more than $700,000. Although a portion of the advance will be refunded to the developers over a 15-year period, it is likely that a significant amount of the capacity payment will eventually be treated as a contribution in aid of construction. The Settlement Agreement therefore ultimately provides a benefit to LPSCO's ratepayers, who will bear less of the burden of LPSCO's treatment plant investment and will also benefit from the increased customer base created by the mall project.

20. We believe the Settlement Agreement provides a number of other indirect benefits to the community in which LPSCO's customers are located, by allowing the Estrella Falls Phase II project to move forward without any additional delays. As noted by the witnesses, and the City of Goodyear's representatives, the Commission's approval of the Agreement will permit the Developers to move forward with construction with the expectation that the mall will be completed by the third quarter of 2010, thereby providing the City with additional sales and property tax revenues, and

providing employment opportunities for residents of Goodyear and surrounding communities. Other less tangible benefits of the Settlement Agreement include the mitigation of litigation-related expenses that would have been incurred by the parties, as well as avoidance of additional costs to the Commission and its Staff.

21. For all these reasons, we find that the Section 4 of the Settlement Agreement between LPSCO and the Developers is reasonable and, accordingly, the financing terms and allocation of funding between the Developers and LPSCO for wastewater facilities needed to serve Phase II of the Estrella Falls project are approved. We wish to make clear that this approval in no way constitutes a finding that any of the wastewater facilities constructed to serve the Estrella Falls project are deemed reasonable or prudent. Rather, the prudence of those facilities, for purposes of inclusion in rate base, is specifically reserved for consideration in a future rate case.

CONCLUSIONS OF LAW

1. LPSCO is a public service corporation within the meaning of Article XV of the Arizona Constitution and Arizona Revised Statutes.

2. The Commission has jurisdiction over LPSCO and the subject matter of the Complaint filed in this docket by the Developers.

3. Section 4 of the Settlement Agreement between LPSCO and the Developers represents a reasonable disposition of the dispute raised regarding the terms of the 2001 Commercial Agreement between the parties, and regarding the potential applicability of LPSCO's hook-up fee tariff.

4. The approval granted herein shall not guarantee or imply any specific treatment of any capital additions for rate base or rate making purposes.

ORDER

IT IS THEREFORE ORDERED that Section 4 of the Settlement Agreement between Litchfield Park Service Company and Westcor/Goodyear, L.L.C./Globe Land Investors, L.L.C., including the agreed capacity price to be paid by the Developers, the Developer financing terms, and the allocation of funding between the Developers and LPSCO for wastewater facilities to serve Phase II of the Estrella Falls project (as set forth in sub-sections 4.1 through 4.4 of the Settlement Agreement), are hereby approved as a fair and reasonable allocation of responsibility between the

Developers and LPSCO for funding the cost of the additional wastewater treatment capacity needed for LPSCO to serve Phase II of the Estrella Falls project.

IT IS FURTHER ORDERED that approval of Section 4 of the Settlement Agreement in this Decision in no way constitutes a finding that any of the wastewater facilities constructed to serve the Estrella Falls project are deemed reasonable or prudent. The approval granted herein does not guarantee or imply any specific treatment of any capital additions for rate base or rate making purposes, and the prudence of those facilities for purposes of inclusion in rate base is specifically reserved for consideration in a future rate case to be filed by LPSCO.

IT IS FURTHER ORDERED that this docket shall be closed upon satisfaction of the terms of the Settlement Agreement and submission of a joint filing by LPSCO and the Developers that the conditions of dismissal of the Complaint have been satisfied.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2008.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

SERVICE LIST FOR: WESTCOR/GOODYEAR, L.L.C. and GLOBE LAND INVESTORS, L.L.C. v. LITCHFIELD PARK SERVICE COMPANY

DOCKET NO.: SW-01428A-08-0234

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