

ORIGINAL

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

OPEN MEETING ITEM



ARIZONA CORPORATION COMMISSION



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BRIAN C. McNEIL
Executive Director

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DATE: OCTOBER 24, 2008
DOCKET NOS: W-02192A-07-0326
TO ALL PARTIES:

Arizona Corporation Commission
DOCKETED
OCT 24 2008

DOCKETED BY

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harpring. The recommendation has been filed in the form of an Order on:

LITTLE PARK WATER COMPANY, INC.
(AMENDING DECISION NO. 70208)

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:

NOVEMBER 3, 2008

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:

NOVEMBER 12, 2008 AND NOVEMBER 13, 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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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON - Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF
9 LITTLE PARK WATER COMPANY, INC. FOR
10 APPROVAL OF AN EXTENSION OF ITS
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE WATER SERVICE
13 IN YAVAPAI COUNTY, ARIZONA.

DOCKET NO. W-02192A-07-0326

DECISION NO. _____

ORDER AMENDING
DECISION NO. 70208

11 Open Meeting
12 November 12 and 13, 2008
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 1. On May 24, 2007, Little Park Water Company, Inc. ("Little Park") filed with the
19 Arizona Corporation Commission ("Commission") an application for an extension of its Certificate
20 of Convenience and Necessity ("CC&N") to provide water utility service in Yavapai County,
21 Arizona.

22 2. On March 20, 2008, the Commission issued Decision No. 70208, granting Little Park
23 an Order Preliminary for the area for which Little Park had requested an extension of its CC&N
24 ("CC&N extension area"). Decision No. 70208 requires Little Park to make the following filings
25 with Docket Control, as compliance items, within the deadlines provided, before Little Park may file
26 a request with the Commission to receive a Final Order for a CC&N extension:

- 27 a. By May 1, 2008, either of the following to demonstrate how Little Park intends
28 to fund construction of the arsenic treatment systems for both wells:

- 1 i. An application for Commission approval of financing under A.R.S. §
2 40-285 along with evidence of having applied for a Water
3 Infrastructure and Finance Authority (“WIFA”) loan or another form of
4 financing, to be filed in a separate docket, with a copy to this docket; or
5 ii. A document evidencing an equity infusion by the owner, to be filed in
6 this docket;
- 7 b. By June 1, 2008,¹ a copy of an Approval to Construct (“ATC”) issued by the
8 Arizona Department of Environmental Quality (“ADEQ”) for the arsenic
9 treatment systems for both wells;
- 10 c. By June 30, 2009:
- 11 i. A copy of a Certificate of Approval of Construction (“AOC”) issued by
12 ADEQ for the installation of the arsenic treatment systems for the two
13 existing wells, and
- 14 ii. A copy of an AOC issued by ADEQ for the plant facilities needed to
15 serve the CC&N extension area; and
- 16 d. By May 1, 2010:
- 17 i. A letter showing that the CC&N extension area’s water consumption is
18 reported with Little Park’s annual Designation report to the Arizona
19 Department of Water Resources (“ADWR”), and
- 20 ii. A letter from ADWR stating that Little Park’s Designation continues in
21 effect.

22 3. On May 1, 2008, Little Park filed with the Commission an affidavit regarding arsenic
23 treatment plant financing, which stated that Little Park expected to execute a line extension
24 agreement (“LXA”) with Camp Soaring Eagle Foundation by May 24, 2008, which would require the
25 developer to provide Little Park approximately \$234,300 in arsenic hook-up fees. The affidavit
26 further provided that, if Little Park has not collected sufficient funds under the arsenic hook-up fee

27 _____
28 ¹ As described below, this filing deadline was extended to August 31, 2008, by a Procedural Order issued on June 20, 2008.

1 tariff to fund the required arsenic treatment facilities by June 30, 2009, the President and Owner of
2 Little Park will make paid-in-capital additions to Little Park to fund any shortfall in the required
3 capital for construction of the arsenic treatment plant. On May 21, 2008, Commission Utilities
4 Division Staff ("Staff") filed a memorandum verifying that Little Park's filing was in compliance
5 with Decision No. 70208.

6 4. On May 14, 2008, Little Park filed a request for extension of time to comply with
7 Decision No. 70208's requirement for Little Park to file, by June 1, 2008, a copy of an ATC issued
8 by ADEQ for the arsenic treatment systems for both of Little Park's wells. Little Park stated that it
9 had submitted the plans for the arsenic treatment systems to ADEQ on May 13, 2008, and that ADEQ
10 had indicated that it would take approximately 53 working days to obtain the ATC. Little Park
11 requested that the filing deadline be extended from June 1, 2008, to August 29, 2008.

12 5. On May 29, 2008, Little Park filed a letter to Commission Executive Director Brian
13 McNeil requesting that the Commission consider Little Park's request for an extension of time and
14 grant an extension from June 1, 2008, to August 31, 2008.

15 6. On June 9, 2008, Staff filed a memorandum recommending that the Commission's
16 Hearing Division file an order administratively closing the docket in this matter because Little Park
17 had been unable to meet the required filing deadline of June 1, 2008.

18 7. On June 10, 2008, Chairman Mike Gleason filed a letter in this docket proposing that
19 Little Park's request for an extension be placed on a Commission Staff Open Meeting agenda for
20 consideration pursuant to A.R.S. § 40-252.

21 8. At the Commission Staff Open Meeting on June 17, 2008, the Commission voted to
22 extend Little Park's deadline for filing the ATC for the arsenic treatment systems for both wells from
23 June 1, 2008, to August 31, 2008, and directed the Hearing Division to issue a Procedural Order to
24 that effect.

25 9. On June 20, 2008, a Procedural Order was issued amending Decision No. 70208,
26 pursuant to A.R.S. § 40-252, to reflect that Little Park's deadline for filing the ATC for the arsenic
27 treatment systems for both wells is August 31, 2008.

28 10. On June 20, 2008, Little Park filed a copy of its ATCs for the arsenic treatment

1 facilities for its two wells. Staff filed a memorandum on July 25, 2008, stating that Little Park's
2 filing of its ATCs was in compliance with Decision No. 70208.

3 11. On June 20, 2008, Little Park also filed a Motion in the Alternative for a Clarification,
4 Procedural Order, or Conditional Certificate ("Motion"). In its Motion, Little Park stated that at the
5 time of filing its Request for Extension of Time to Comply, it had understood that the Commission
6 had historically allowed construction under an Order Preliminary and believed that it would be able
7 to commence construction within its extension area under its Order Preliminary. Little Park stated
8 that its LXA with Camp Soaring Eagle had been submitted to Staff for approval on May 7, 2008, and
9 was approved by Staff on June 2, 2008. Little Park stated that the LXA contemplates construction of
10 water facilities and the payment of arsenic impact fees in the amount of \$234,300. Little Park stated
11 that it faces a dilemma because it is required to file AOCs for the arsenic treatment facilities and the
12 on-site facilities to serve the CC&N extension area by June 30, 2009, but is prohibited from
13 constructing the on-site facilities under the Order Preliminary and is contractually prohibited from
14 collecting the arsenic impact fees for the construction of the arsenic treatment facilities. Little Park
15 argued that the Order Preliminary is written in a manner that would allow Little Park to begin
16 construction of facilities and asked the Commission, in the alternative, to (1) confirm the
17 interpretation of the Decision to allow construction of the on-site facilities, (2) issue a Procedural
18 Order permitting construction and commencement of service under the Order Preliminary, or (3)
19 issue a conditional CC&N.

20 12. On September 17, 2008, Staff issued a Memorandum stating that A.R.S. § 40-281
21 prohibits construction of facilities in an area before a company receives a CC&N for that area and
22 that a company granted an Order Preliminary does not receive a CC&N until all of the required
23 compliance items have been filed with the Commission and a subsequent Order is issued by the
24 Commission. Staff stated that Little Park's Order Preliminary does not allow it to begin construction
25 of the plant facilities for which Decision No. 70208 requires the filing of an AOC by June 30, 2009,
26 and that the filing of the required AOC thus is not possible. Staff added that since there will be no
27 construction until the CC&N is issued, there will also be no water consumption associated with the
28 CC&N extension area. Staff recommended that the Commission amend Decision No. 70208 to

1 remove the requirement for Little Park to file by June 30, 2009, a copy of the AOC for the plant
2 facilities needed to serve the CC&N extension area, and to remove the requirement for Little Park to
3 file by May 1, 2010, a letter showing that the CC&N extension area's water consumption is reported
4 with Little Park's annual Designation report to ADWR.² Staff recommended that the remaining
5 compliance items (listed as items (c)(i) and (d)(ii) in Findings of Fact No. 2 above) remain in effect.
6 Finally, Staff stated that it does not believe an evidentiary hearing is necessary for its recommended
7 modification, if Little Park is in agreement.

8 13. On September 24, 2008, Little Park filed a letter stating that Little Park concurs with
9 Staff's recommendations, including Staff's opinion that an evidentiary hearing is not needed on this
10 matter.

11 14. Staff's recommendations, described in Findings of Fact No. 12, are reasonable and
12 should be followed.

13 **CONCLUSIONS OF LAW**

14 1. Little Park is a public service corporation within the meaning of Article XV of the
15 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

16 2. The Commission has jurisdiction over Little Park and the subject matter of the
17 Motion.

18 3. It is reasonable to amend Decision No. 70208 by eliminating the requirement for Little
19 Park to file by June 30, 2009, a copy of the AOC for the plant facilities needed to serve the CC&N
20 extension area and by eliminating the requirement for Little Park to file by May 1, 2010, a letter
21 showing that the CC&N extension area's water consumption is reported with Little Park's annual
22 Designation report to ADWR.

23 4. It is not necessary for the Commission to hold an evidentiary hearing before amending
24 Decision No. 70208 as described herein.

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28 ² Staff stated that this second filing may be a condition when the CC&N is issued.

ORDER

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IT IS THEREFORE ORDERED that Decision No. 70208 is amended by eliminating the requirement for Little Park Water Company, Inc. to file by June 30, 2009, a copy of the Approval of Construction for the plant facilities needed to serve the CC&N extension area (Decision No. 70208, Findings of Fact No. 57(c)(ii)) and by eliminating the requirement for Little Park Water Company, Inc. to file by May 1, 2010, a letter showing that the CC&N extension area's water consumption is reported with Little Park Water Company, Inc.'s annual Designation report to the Arizona Department of Water Resources (Decision No. 70208, Findings of Fact No. 57(d)(i)).

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1 IT IS FURTHER ORDERED that, consistent with Decision No. 70208, as amended herein,
2 Little Park Water Company, Inc. shall file the following with the Commission's Docket Control, as
3 compliance items in this docket, within the deadlines provided, before Little Park Water Company,
4 Inc., may file a request with the Commission to receive a Final Order for an extension of its
5 Certificate of Convenience and Necessity:

6 1. By June 30, 2009, a copy of a Certificate of Approval of Construction issued by the
7 Arizona Department of Environmental Quality for the installation of the arsenic treatment systems for
8 the two existing wells; and

9 2. By May 1, 2010, a letter from the Arizona Department of Water Resources stating that
10 Little Park Water Company, Inc.'s Designation continues in effect.

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

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
13
14

15 CHAIRMAN _____ COMMISSIONER
16
17 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

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

23 _____
24 BRIAN C. McNEIL
25 EXECUTIVE DIRECTOR

26 DISSENT _____

27 DISSENT _____
28 SNH:db

1 SERVICE LIST FOR: LITTLE PARK WATER COMPANY, INC.

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3 DOCKET NO.: DOCKET NO. W-02192A-07-0326

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