



BEFORE THE ARIZONA CORPORATION COMMISSION

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2010 OCT 14 P 4: 45

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF LITCHFIELD PARK SERVICE COMPANY, AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY AND FOR INCREASES IN ITS WATER AND WASTEWATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.

DOCKET NO. SW-01428A-09-0103

IN THE MATTER OF THE APPLICATION OF LITCHFIELD PARK SERVICE COMPANY, AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY AND FOR INCREASES IN ITS WATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.

DOCKET NO. W-01427A-09-0104

IN THE MATTER OF THE APPLICATION OF LITCHFIELD PARK SERVICE COMPANY, AN ARIZONA CORPORATION, FOR AUTHORITY (1) TO ISSUE EVIDENCE OF INDEBTEDNESS IN AN AMOUNT NOT TO EXCEED \$1,755,000 IN CONNECTION WITH (A) THE CONSTRUCTION OF TWO RECHARGE WELL INFRASTRUCTURE IMPROVEMENTS AND (2) TO ENCUMBER ITS REAL PROPERTY AND PLANT AS SECURITY FOR SUCH INDEBTEDNESS.

DOCKET NO. W-01427A-09-0116

Arizona Corporation Commission

DOCKETED

OCT 14 2010

DOCKETED BY	
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1 IN THE MATTER OF THE APPLICATION OF
2 LITCHFIELD PARK SERVICE COMPANY,
3 AN ARIZONA CORPORATION, FOR
4 AUTHORITY (1) TO ISSUE EVIDENCE OF
5 INDEBTEDNESS IN AN AMOUNT NOT TO
6 EXCEED \$1,170,000 IN CONNECTION WITH
7 (A) THE CONSTRUCTION OF ONE 200 KW
8 ROOF MOUNTED SOLAR GENERATOR
9 INFRASTRUCTURE IMPROVEMENTS AND
10 (2) TO ENCUMBER ITS REAL PROPERTY
11 AND PLANT AS SECURITY FOR SUCH
12 INDEBTEDNESS.

DOCKET NO. W-01427A-09-0120

**CITY OF LITCHFIELD PARK'S
EXCEPTIONS TO
RECOMMENDED OPINION AND
ORDER**

9 The City of Litchfield Park (the "City"), pursuant to A.A.C. R14-3-110(B),
10 hereby files its exceptions to the Recommended Opinion and Order ("ROO") filed October 5,
11 2010 in the above entitled matter recommending an increase of 72.6% (\$4,913,457) increase
12 in water revenues and a 49.48% (\$3,1965,653) increase in sewer revenues in order to provide
13 the Company with an 8.7% return on the Fair Value Rate Bases for Litchfield Park Service
14 Company ("LPSCO" and "Company"). While the City commends Administrative Law Judge
15 Dwight Nodes on his efforts and analysis, in the end the ROO falls short of being fair to both
16 the Company and its customers. As explained in the City's post hearing briefs, the record
17 supports capping the allowed return on the Company's fair value rate bases at 7.5%, or 1.2%
18 below the 8.7% return derived from the mathematical 'weighted cost of capital' formula
19 approach utilized by the ROO.

22 The City also takes exception to the ROO's rejection of the cost of service
23 based water rate design jointly proposed by the City and the Company. While the overall rate
24 increase for the water division is 72.6%, the increase for water customers with 1" meters
25 ranges from 53.31% for a customer using 4,000 gallons per month to 112.90% for a customer

1 using 100,000 gallons per month. (Exhibit B to ROO, Typical Bill Analysis, 1" Residential,
2 ROO Full Amount of Increase).

3 But the full impact on customers with yards and cities watering parks can not be
4 appreciated by looking solely at percentages. It is the actual dollar impact on the customer's
5 budget that must also be considered by the Commission. For example, water customers with
6 a 1" meter using 25,000 gallons a month (such as a typical homeowner in Litchfield Park that
7 are proud to be "a small, green oasis in the desert" ROO at 66: 15 -17) see a 79.87% increase,
8 but this is \$36.22 more each month (from the present \$45.35 to \$81.57) and \$434.64 per year.
9
10 *Id.* This represents a 357% greater dollar outlay than placed on the 1" meter customer using
11 4,000 gallons a month (\$36.22 vs. \$9.64). *Id.* When larger water users are examined, like the
12 City's parks, the difference becomes astronomical. A 1" meter customer using 100,000
13 gallons monthly will see their water bill increase from \$162.97 to \$307.32 - or \$17,322 per
14 year (\$144.35 each month x 12).

15
16 **A 7.5% Cap on LPSCO's Rate of Return is Appropriate**

17 LPSCO's current rates went into effect January 1, 2003 based upon a 2001 test
18 year. Significant plant additions have been placed in service in the interim. The City believes
19 the Company is entitled to a "fair" return on that investment, but believes that return should
20 be capped at 7.5% and certainly should not exceed the 8.54% return computed when the
21 Residential Utility Consumer Office's ("RUCO") recommended 9.0 % cost of equity is
22 inserted into the mathematical weighted average cost of capital formula approach for
23 establishing a return. Therefore, the City takes exception to the 8.7% return contained in the
24 ROO (and proposed by Staff).
25

1 While “the return investors expect given the risk of the enterprise” is always a
2 relevant consideration, *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 314 (1989), as
3 explained in *Litchfield Park Service Company v. Arizona Corp. Comm’n*, 178 Ariz. 431, 435,
4 874 P.2d 988, 992, fn 3 (1994), there is no required formula for this determination:

5
6 The Commission simply considers all relevant factors, including:
7 (1) comparisons with other companies having corresponding
8 risks, (2) the attraction of capital, (3) current financial and
9 economic conditions, (4) the cost of capital, (5) the risks of the
10 enterprise, (6) the financial policy and capital structure of the
11 utility, (7) the competence of management, and (8) the
12 company's financial history. *C.F. Phillips, Jr., The Regulation of
13 Public Utilities* at 377 (3d ed. 1993), discussing *Bluefield
14 Waterworks*, 262 U.S. 679, 43 S.Ct. 675, and *Smyth v. Ames*, 169
15 U.S. 466, 18 S.Ct. 418, 42 L.Ed. 819 (1898).

16 In *Arizona Community Action Assoc. v. Arizona Corp. Comm’n*, 123 Ariz. 228,
17 231, 599 P.2d 184, 187 (1979) the court instructed:

18 In determining what is a reasonable price to be charged for
19 services by a public-service corporation, an examination must be
20 made not only from the point of view of the corporation, but from
21 that of the one served, also. A reasonable rate is not one
22 ascertained solely from considering the bearing of the facts upon
23 the profits of the corporation. The effect of the rate upon persons
24 to whom services are rendered is as deep a concern in the fixing
25 thereof as is the effect upon the stockholders or bondholders. A
reasonable rate is one which is as fair as possible to all whose
interests are involved. (Emphasis added.)

26 Our territorial Supreme Court in *Salt River Valley Canal Co. v. Nelszen*, 10
27 Ariz. 9, 13, 85 P. 117, 119 (1906) upheld the lower court’s authority to invalidate rates that
28 were unfair to the ratepayer relying on the following pronouncement of the United States
29 Supreme Court in *Covington & L. Turnpike Road Co. v. Sandford*, 164 U.S. 578, 596, 17 S.
30 Ct. 198, 205 (1896):

1 It cannot be said that a corporation is entitled, as of right, and
2 without reference to the interests of the public, to realize a given per
3 cent upon its capital stock. When the question arises whether the
4 Legislature has exceeded its constitutional power in prescribing rates
5 to be charged by a corporation controlling a public highway,
6 stockholders are not the only persons whose rights or interests are to
7 be considered. The rights of the public are not to be ignored. * * *
8 The public cannot properly be subjected to unreasonable rates in
9 order simply that stockholders may earn dividends. * * * If a
10 corporation cannot maintain such a highway and earn dividends for
11 stockholders, it is a misfortune for it and them which the
12 Constitution does not require to be remedied by imposing unjust
13 burdens upon the public. [* * *] In using the expression 'value of the
14 service rendered' we must understand that the word 'value' means
15 value to the person to whom the service is rendered.

16 Thus, the courts have long recognized that a ratepayers' right to be free of rates
17 that pose unjust burdens on the public outweigh the right of a utility to provide dividends to
18 its stockholders. Certainly the *Arizona Community Action* Court, in recognizing the utility
19 has the right to assure its investors a reasonable return, did not hold, or even infer, that such
20 assurance could impose unjust burdens upon the public or rates that otherwise fail to reflect
21 an appropriate balancing of the interests of shareholders and ratepayers.

22 In its Opening Post Hearing Brief, the City explained that, based upon the
23 record, the Commission must cap the Company's return at 7.5% based upon the combination
24 of: 1) the magnitude of the rate relief being requested (which is similar in magnitude to rate
25 increases requested by other Algonquin Water Resources of America ("AWRA") owned
Arizona utilities), 2) the Company's decision to delay filing for rate relief for eight (8) years,
thereby pancaking the inclusion of the significant cost of several new plant additions with the
seven (7) million dollars in repairs, upgrades and/or modifications at the Palm Valley

1 Wastewater Reclamation Facility ("PVWRF"),¹ 3) the Company's decision to forego seeking
2 any additional debt financing since being acquired by AWRA resulting in an equity rich
3 capital structure in excess of 80%, 4) RUCO's and Staff's recognition that their estimates of
4 the cost of common equity do not fully adjust for the equity rich capital structure, 5) the
5 Company's decision to develop an extremely complex management and operational structure
6 that interlaces affiliate upon affiliate making regulatory oversight and review more difficult
7 and its failure to fully substantiate the reasonableness of its allocation methodology down to
8 LPSCO, 6) the Company's decision to classify expenditures such as contributions and
9 sporting event tickets as "licenses and fees" and initially seeking to recover them as prudent
10 expenditures, 7) the Company's failure to allocate even \$1.00 of the costs of its holding
11 company to the holding company Algonquin Power Trust, including costs of stockholder
12 communications and compliance costs associated with being listed on the Toronto Stock
13 Exchange, 8) the Company's lack of a written policy regarding capitalizing versus expensing
14 expenditures on plant, 9) the dire economic condition facing the State of Arizona and 10) the
15 general need to consider the customers interests in setting rates that will provide the
16 shareholders a reasonable return on their investment in property devoted to serving the
17 public.

18 For these reasons as more fully set forth in the City's post hearing briefs, the
19 Commission should amend the ROO to cap the allowed return at 7.5% before adopting a final
20

21
22 ¹ Unlike RUCO, the City does not question the original design of the plant or the Company's actions in
23 addressing the odor and operational issues at the PVWRF. The issue here is to what degree the need for these
24 actions so quickly after the initial plant was installed, coupled with the other factors listed herein, warrant the
25 Commission authorizing a return below the weighted average cost of capital (the sole measure used by RUCO,
Staff and the Company to establish the rate of return) in this rate proceeding. Rather than permanently
removing a portion of the value of the plant modifications from rate base as suggested by RUCO, the City's
recommendation reaches a reasonable balance between the needs of the Company and ratepayers - minimizing
the adverse impacts of the adverse pancaking impacts of seeking inclusion of the base plant and the
modifications in a single rate case by lowering the return allowed for the period these rates are in place.

1 decision in this matter. At a minimum it should reduce the return to 8.54% - based upon
2 RUCO's 9.0% cost of equity.

3 **The Water Rate Design Jointly Proposed by the City and LPSCO**
4 **Should be Adopted**

5 As noted, the City also takes exception to the ROO's rejection of the water rate
6 design jointly proposed by the City and LPSCO. Admittedly, there is no rate design that will
7 avoid the significant impact of a 72.6% rate increase. The rate design jointly proposed by the
8 City and the Company reflects a compromise that "most equitably balances the competing
9 interests in designing rates." LPSCO Initial Closing Brief, p. 80.

10
11 Instead of accepting a rate design actively supported by two parties (the
12 Company and the City), the ROO adopts a rate design that was supported by no party. Even
13 Staff, who prepared it at the request of the ALJ, did not support the alternative being adopted
14 by the ROO.

15
16 The ROO criticizes the joint rate design proposal on the basis that the first tier
17 (0 to 15,000 gallons) would provide the vast majority of the customers no chance to reduce
18 their overall bills through conservation efforts ROO at 68: 23-24. That statement is just
19 wrong. The joint proposal provides all these users an incentive of approximately \$1.65 per
20 1,000 gallons to conserve. As both the Company and the City testified the joint rate design
21 much more closely tracks the cost of service than do any of the other rate designs offered in
22 the case. The alternative chosen by the ROO, was not substantively addressed by any party
23 on brief because no party advocated adopting it.
24
25

1 Both the Staff and the ROO criticize the break points in the joint rate. However,
2 they have not demonstrated that the joint proposal will not promote conservation, better track
3 the cost of service and provide the Company better revenue stability.

4 The City and its residents use water to provide a jewel in the desert. They
5 understand that there is a cost to maintaining their current lifestyle. They understand that
6 traditionally larger users tend to subsidize smaller users. However, as noted previously, it is
7 inappropriate to have their cash outlay go up 357% more than their neighbors, when the cost
8 of service study shows the smaller user is not coming close to covering the cost of serving
9 them.
10

11 The City agrees that the 1" meters can benefit from a third tier because it
12 provides an opportunity to spread the burden of the rate increase more equitably among water
13 users. However, by making the second and third break points so low, and by having the rate
14 jump from \$1.97 to \$3.01 at 9,000 gallons, the ROO is penalizing the City of Litchfield Park
15 and its residents. The City respectfully requests the Commissioners to reject this aspect of the
16 ROO and either adopt the joint proposal or order that the parties submit a compromise rate
17 design between the joint rate design proposed by the City and the Company and the rates
18 proposed in the ROO.
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1 DATED this 14th day of October, 2010.

2
3 CURTIS, GOODWIN, SULLIVAN,
4 UDALL & SCHWAB, P.L.C.

5
6 By: 

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13 **PROOF OF AND CERTIFICATE OF MAILING**

14 I hereby certify that on this 14th day of October, 2010, I caused the foregoing document
15 to be served on the Arizona Corporation Commission by delivering the original and thirteen (13)
16 copies of the above to:

17 Docket Control
18 Arizona Corporation Commission
19 1200 West Washington
20 Phoenix, Arizona 85007

21 COPY of the foregoing e-mailed
22 this 14th day of October, 2010 to:

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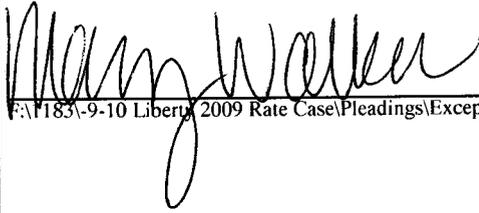
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