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BEFORE THE ARIZONA CORPORATION COMMISSION
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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

Arizona Corporation Commission
DOCKETED

FEB 2 2011

DOCKETED BY

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

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
RESPONSE TO REQUEST FOR
CLARIFICATION**

9 The City of Litchfield Park (the "City") hereby responds to Litchfield Park
10 Service Company's ("LPSCO" or "Company") Request for Clarification filed January 28,
11 2011 and requests the Commission afford all parties a reasonable opportunity to present
12 relevant evidence on the issues, arguments and facts raised by the pleadings, including the
13 presentation of new witnesses.

14 After presenting the Commission with facts and arguments outside the record in
15 both its Bench Brief (filed while the Commission was considering the Recommended Order)
16 and its Application for Rehearing,¹ LPSCO now requests the rehearing be limited to "further
17 discussion and evaluation of the ROE and rate base issues based on the existing record and
18 existing witnesses." Motion for Clarification, p. 3, lines 22- 24. Stated more accurately, the
19 Company seeks a Commission directive barring the City and RUCO from presenting
20 additional expert evidence on the very issues the Commission has decided to rehear and
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22
23

24 ¹ For example, both pleadings contained charts supposedly representing recent decisions by the
25 Commission. The Application for Reconsideration also included updated information on sample
water companies as Exhibit A, a rate case summary as Exhibit B and information on a potential IPO
of Global Water as Exhibits C, D and E.

1 reconsider. In other words, LPSCO asks the Commission to preclude the parties, other than
2 LPSCO, a reasonable opportunity to meaningfully supplement the evidentiary record on
3 rehearing. Such a process is patently unfair and should be summarily rejected by the
4 Commission. An informed decision on rehearing and reconsideration can only be made if all
5 parties are afforded a fair and full opportunity to address the issues raised by the pleadings,
6 including presenting evidence of additional witnesses.²

8 The Hearing Division understands its role is to “to issue a procedural order
9 scheduling a procedural conference for the purpose of setting a procedural schedule for the
10 rehearing proceeding, to conduct a hearing on the issues raised by the Company and RUCO,
11 and to prepare a Recommended Order on Rehearing for the Commission’s consideration.”
12 *See Procedural Order Setting Procedural Conference for Scheduling Rehearing of Decision*
13 *No. 72026.* The scope of the issues presented by the pleadings is clear. The Hearing
14 Division has initiated the process to conduct further hearings on the limited issues on which
15 the Commission granted rehearing and reconsideration. The Commission should allow the
16 hearing process to continue.
17

21
22 ² Even the Superior Court can hear additional evidence upon judicial review of a Commission
23 decision. “The difference between traditional judicial review of administrative decisions and review
24 of Corporation Commission rate decisions by the Superior Court is that in rate cases, the Superior
25 Court may take additional evidence to determine if the Commission's rate decision should be
upheld.” *Tucson Elec. Power Co. v. Arizona Corp. Comm'n*, 132 Ariz. 240, 243, 645 P.2d 231, 234
(1982).

1 LPSCO discusses all the foregoing factors in its Application for
2 Reconsideration, claiming they do not individually or cumulatively support the Commission's
3 determination. In its Bench Brief and its Request for Rehearing LPSCO relies on facts not
4 established at hearing. For example, it presents incomplete references to Commission
5 decisions (Request, p. 5-6), includes summaries of the ROEs for certain water utilities (*see*
6 Exhibit A to Application for Rehearing) and submits a rate case survey (*see* Exhibit B to
7 Application for Rehearing). Yet LPSCO seeks to preclude the City from a meaningful
8 opportunity to defend against these claims by depriving the City of the ability to present a
9 witness to address them.
10

11 RUCO's Request for Reconsideration demonstrates LPSCO is presenting
12 incomplete "facts" in an effort to secure a favorable amendment to the Decision. LPSCO
13 focuses solely on the returns on equity authorized in other Commission decisions, ignoring
14 the overall WACC and return on rate base. The 7.72 WACC and return on FVRB reflected in
15 Decision No. 72026 is consistent with the rates of return granted other water companies (non-
16 LPSCO affiliates) of between 6.7 and 8.06%. RUCO Request for Reconsideration, p.4, lines
17 7-20.
18

19 RUCO's Request also explains that "LPSCO affiliates have far less debt in their
20 capital structure and therefore far less financial risk. Because the LPSCO affiliates have less
21 financial risk, they should not be entitled to a higher return than other utilities with more
22 balance capital structures." RUCO Request for Reconsideration, p.5, lines 6 1/2 – 8 1/2.
23 LPSCO elected to rely on 100% equity to finance significant new infrastructure since it
24 acquired the company in 2003. Since the last rate case (decided in 2002 based upon a
25

1 12/31/2000 test year), the wastewater FVRB increased \$19,203,404 from \$8,691,827 to
2 \$27,895,231 (including \$7 million in wastewater plant upgrades disputed by RUCO) and the
3 water FVRB increased \$31,558,364 from \$5,909,975 to \$37,468,339. *Compare* Decision No.
4 65436 and Decision No. 72026. LPSCO's capital structure consists of 82.4% equity and
5 17.6% long-term debt. Had LPSCO's capital structure contained 40% debt at the 5.6%
6 interest rate it's holding company, Algonquin Power & Utilities Corp. ("APUC"), recently
7 obtained on \$50 million dollars of unsecured private placement debt financing for Liberty
8 Water to repay intercompany debt to APUC (see Exhibit A), its WACC would be 7.76, even
9 assuming a 9.2% ROE. The 7.71% rate of return on FVRB authorized by the Decision is fair
10 and reasonable under the totality of the circumstances and the parties should be afforded a
11 reasonable opportunity to support the Decision by further evidence during the rehearing
12 process.

13
14
15 LPSCO intends to retain the services of a cost of capital witness for the purpose
16 of evaluating whether the Commission acted reasonably in adopting a WACC and return on
17 FVRB of 7.76, under the totality of the circumstances. This directly responds to LPSCO's
18 contention in its Application that the Commission acted unfairly on this issue.

19
20 The City did not have the resources to present both a cost of capital witness and
21 a rate design witness during the hearing and focused on the rate design issue. However, it
22 did, to the extent possible on its limited budget, create a record that allowed the Commission
23 to determine that, based upon the totality of the circumstances, that none of the experts
24 recommendations presented during the hearing as to WACC or return on FVRB was
25 reasonable. The City is now able and willing to expend more of its limited financial

1 resources on rehearing in an effort to supplement the record in support of the Commission's
2 decision. The City submits the Commission will benefit from such additional evidence and
3 should allow it.

4 **PHASING OF RATE INCREASE**

5
6 LPSCO's Application for Rehearing contends "The Commission should grant
7 rehearing on the phase-in proposal adopted in the Decision." Application, p.19, lines 1-2. As
8 recognized by the Decision, the phase-in proposals were presented primarily through final
9 schedules and post-hearing briefs. Decision, p.74, lines10-11. This is an area the
10 Commission clearly wanted additional evidence and deferred consideration of the phase-in
11 surcharge mechanism to Phase 2 of this proceeding. The City respectfully suggests that
12 efficiencies can be obtained by joining this issue with the rehearing and reconsideration of the
13 Decision rather than awaiting the hearing on LPSCO's hook-up fee ("HUF").

14 **\$7 MILLION EXPENDITURE ON WASTEWATER PLANT**

15
16 RUCO's Request for Reconsideration unambiguously seeks reconsideration of
17 whether some of the \$7 million in repairs/upgrades to LPSCO's wastewater treatment plant
18 should be removed from rate base. RUCO Request, pp. 2-4. LPSCO, by its Request for
19 Clarification, seeks to preclude RUCO from offering an engineering witness on this issue
20 although it argued at hearing the adjustment should be rejected because it "is premised on a
21 lay person's supposition and interpretation" who is "unqualified to offer testimony on design
22 and engineering issues." Decision at p. 29, lines 5-7. Upon reconsideration RUCO seeks to
23 address this alleged deficiency by presenting the testimony of an engineering witness. It is
24 reasonable and fair to afford RUCO such an opportunity.
25

1 territory to afford the community an opportunity to express its view on the issues being
2 reconsidered.

3 DATED this 2nd day of February, 2011.

4
5 CURTIS, GOODWIN, SULLIVAN,
6 UDALL & SCHWAB, P.L.C.

7
8 By: 

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1 **PROOF OF AND CERTIFICATE OF MAILING**

2 I hereby certify that on this 2nd day of February, 2011, I caused the foregoing document
3 to be served on the Arizona Corporation Commission by delivering the original and thirteen (13)
4 copies of the above to:

5 Docket Control
6 Arizona Corporation Commission
7 1200 West Washington
8 Phoenix, Arizona 85007

9 COPY of the foregoing e-mailed or
10 hand delivered this 2nd day of
11 February, 2011 to:

12 Janice Alward, Esq.
13 Legal Division
14 Arizona Corporation Commission
15 1200 West Washington
16 Phoenix, Arizona 85007

17 Dwight D. Nodes
18 Administrative Law Judge
19 Hearing Divisions
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22 Phoenix, Arizona 85007

23 Steve Olea, Director
24 Utilities Division
25 Arizona Corporation Commission
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COPY of the foregoing e-mailed
and mailed this 2nd day of
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9 Copies of the foregoing mailed this
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10 Chad & Jessica Robinson
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12 

13 W:\183\9\9-10 Pleadings\City's Response to LSPCO Request for Clarification 02 02 11.doc

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EXHIBIT A



Algonquin Power & Utilities Corp. Announces Liberty Water Co. Private Placement Debt Financing

OAKVILLE, ON, Dec. 13 /PRNewswire-FirstCall/ - Algonquin Power & Utilities Corp. ("APUC") (TSX: AQN) today announced a \$50 million private placement debt financing commitment for its subsidiary, Liberty Water Co. ("Liberty Water"). The notes are senior unsecured with a ten year final, 8.8 year average life maturity and will bear interest at 5.6%. Liberty Water will apply proceeds from the notes to repay intercompany debt to APUC. APUC intends to utilize such proceeds to reduce outstanding indebtedness under its banking syndicate credit facility. UBS Securities LLC acted as lead bookrunner on the transaction.

"The private placement debt financing demonstrates our continuing ability to arrange attractive debt for our regulated utilities businesses", commented Ian Robertson, Chief Executive Officer. "The completion of this financing introduces longer-term debt and an increase in US dollar denominated debt, consistent with our re-financing strategy to seek a capital structure aligned with our North American power and utilities businesses."

About Algonquin Power & Utilities Corp.

Through its distinct operating subsidiaries, APUC owns and operates a diversified portfolio of approximately \$1 billion of clean renewable electric generation and sustainable utility distribution businesses in North America. Liberty Water Co., APUC's water utility subsidiary, provides regulated utility services to more than 70,000 customers with a portfolio of 19 water distribution and wastewater treatment utility systems. Pursuant to previously announced agreements, APUC, through its electric utility Liberty Energy Utilities Co., is committed to acquiring the California based regulated utility assets of NV Energy, as well as Granite State Electric Company, a New Hampshire electric distribution company, and EnergyNorth Natural Gas Inc., a regulated natural gas distribution utility, which utilities in total serve over 173,000 customers. Algonquin Power Co., APUC's electric generation subsidiary, includes 45 renewable energy facilities and 14 thermal energy facilities representing more than 480 MW of installed capacity. APUC and its operating subsidiaries deliver continuing growth through an expanding pipeline of greenfield and expansion renewable power and clean energy projects, organic growth within its regulated utilities and the pursuit of accretive acquisition opportunities. APUC's common shares and convertible debentures are traded on the Toronto Stock Exchange under the symbols AQN, AQN.DB, AQN.DB.A and AQN.DB.B. Visit Algonquin Power & Utilities Corp. on the web at www.AlgonquinPowerandUtilities.com.

Caution Regarding Forward-Looking Information

Certain statements included in this news release contain information that is forward-looking within the meaning of certain securities laws, including information and statements regarding prospective results of operations, financial position or cash flows. These statements are based on factors or assumptions that were applied in drawing a conclusion or making a forecast or

projection, including assumptions based on historical trends, current conditions and expected future developments. Since forward-looking statements relate to future events and conditions, by their very nature they require making assumptions and involve inherent risks and uncertainties. APUC cautions that although it is believed that the assumptions are reasonable in the circumstances, these risks and uncertainties give rise to the possibility that actual results may differ materially from the expectations set out in the forward-looking statements. Material risk factors include those set out in the management's discussion and analysis section of APUC's 2009 annual report and 2010 third quarter report, and APUC's Annual Information Form dated March 31, 2010. Given these risks, undue reliance should not be placed on these forward-looking statements, which apply only as of their dates. Other than as specifically required by law, APUC undertakes no obligation to update any forward-looking statements or information to reflect new information, subsequent or otherwise.

SOURCE Algonquin Power & Utilities Corp.

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