

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

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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 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

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 \$1,170,000 IN CONNECTION WITH (A) THE CONSTRUCTION OF ONE 200 KW ROOF MOUNTED SOLAR GENERATOR INFRASTRUCTURE IMPROVEMENTS AND (2) TO ENCUMBER ITS REAL PROPERTY AND PLANT AS SECURITY FOR SUCH INDEBTEDNESS.

Docket No. W-01427A-09-0120

Arizona Corporation Commission

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FEB 24 2011

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1 **RESIDENTIAL UTILITY CONSUMER OFFICE'S**
2 **RESPONSE TO COMMISSIONER NEWMAN'S FEBRUARY 16, 2011 CORRESPONDENCE**
3 **AND THE COMPANY'S REQUEST FOR CLARIFICATION**

4 The Residential Utility Consumer Office ("RUCO") hereby responds to the February 16,
5 2011 letter filed by Commissioner Newman and the Request for Clarification ("Request") filed
6 by Litchfield Park Service Company ("LPSCO" or "Company"). In its Request, the Company
7 seeks to limit the scope of the rehearing solely to the issue of a return on equity and seeks to
8 prevent consideration of testimony from new witnesses.

9 RUCO believes that Decision No. 72026 results in just and reasonable rates and is fair,
10 well-balanced and supported by the evidence in the record. RUCO concurs with
11 Commissioner Newman that the Commission should reconsider its decision to rehear the
12 matter. The record is replete with evidence to support the Commission's prior decision.
13 However, if the Commission finds rehearing to be appropriate, then the issues for rehearing
14 should include:

- 15 a) the appropriate overall weighted average cost of capital ("WACC") for
16 LPSCO given the Company's current capital structure, cost of debt and cost
17 of equity and including consideration of the most recent known and
18 measurable facts relevant to evaluation of the same;
- 19 b) whether the \$7 million in upgrades should be included in rate base; and
- 20 c) whether the phase-in of current rates is appropriate.¹

21 The Commission should also allow the parties to submit evidence and testimony on the
22 issues waived in favor of Mayes Amendment No. 3, such as the appropriateness of including
23 \$7 million in upgrades in rate base. RUCO believes that reconsideration the \$7 million in
24 upgrades is an integral issue to the rehearing.

¹ Transcript of Procedural Conference at pp. 10-11, ll. 8-4. Issues a and b are the same issues identified by RUCO in its original Request for Reconsideration which was granted by the Commission on January 18, 2011.

1 The Company asserts that the Commission should only reconsider whether its return on
2 equity ("ROE") is fair and reasonable without regard to the fairness of its overall return or
3 weighted average cost of capital ("WACC"). All of the parties, including the Company,
4 acknowledge that to examine the fairness of a ROE, the Commission must examine it in
5 relationship to the overall WACC.² In the procedural conference, the Company's counsel
6 stated:

7
8 "It wasn't my intent to imply that somehow we can do reconsideration on the ROE
9 without considering how it was reached, which involves capital structure, weighted
10 average cost of capital."³

11 A WACC is derived from application of a cost of debt and cost of equity to a capital
12 structure. In RUCO's Request for Reconsideration RUCO argued that the fairness of the
13 Company's overall return requires consideration of its WACC, not just its ROE.⁴ If rehearing
14 proceeds, RUCO requests that the Commission reexamine the Company's overall rate of
15 return, not just its ROE.

16 The Company asserts that RUCO and the City of Litchfield Park ("City") should not be
17 able to retain experts to offer new testimony or evidence on the WACC.⁵ On December 13,
18 2010, the Company announced its acquisition of unsecured debt financing of \$50 million at
19 5.76 percent.⁶ The City filed a response to the Company's Request ("Request") pointing out
20 that if the Commission were to reconsider LPSCO's authorized overall return in light of the its
21 recent financing and a more diverse capital structure, the Company's return would be

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23 ² Transcript of Procedural Conference at 14.

³ Id.

⁴ RUCO's Request at 3-4.

⁵ Company's Motion at 4-5.

⁶ City's Response, Exhibit A

1 significantly lower than approved by the Commission in Decision 72026.⁷ RUCO agrees with
2 the City that these new facts could impact the prior analysis of the Company's overall return.
3 RUCO believes that all parties should be able to present new evidence to the extent that the
4 information is relevant to the scope of the rehearing. The Company, through its multiple post-
5 hearing briefs, has attempted to influence the Commission with new information which is not
6 evidence in the proceeding. If the Company has no compunction about presenting new
7 information, then RUCO, the City, and any other party should be free to submit new evidence
8 and testimony in opposition. RUCO supports the City and agrees all parties should be able to
9 retain experts and submit testimony as they deem fit. Any limitation on intervenors' rights to
10 submit new evidence or testimony in opposition to the Company on rehearing would be unfair,
11 prejudicial and appealable.

12 The Company also asserts that RUCO should not be allowed to submit new evidence or
13 testimony on the propriety of the \$7 million in plant upgrades. The Company asserts that
14 RUCO already had an opportunity to present testimony about the propriety of \$7 million in
15 upgrades.⁸ RUCO disagrees. The Company's position and Decision No. 72026 relied heavily
16 on the testimony of the Company's surprise witness, Ray Jones. Mr. Jones was allowed to
17 testify late in the proceeding, without adequate prior notice, without submitting pre-filed
18 testimony and over RUCO's strong objection. T: 1089-1092, 1275-1278. The decision
19 mandating cross-examination the next morning after the witness testified did not afford RUCO
20 an opportunity for effective cross-examination. *Id.* Due process requires notice and an
21 opportunity for effective cross-examination. Webb v. State of Arizona Board of Medical
22 Examiners, 202 Ariz 555, 48 P.3d 505 (App.Div.1 2002). RUCO was not provided adequate

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24 ⁷ City's Response at 6.
⁸ Company's Motion at 4-5.

1 notice of Mr. Jones' testimony or a fair opportunity to effectively cross-examine the witness.
2 Given the situation, the Company's argument that RUCO could have hired an expert to
3 controvert Mr. Jones testimony is misplaced. At the time Mr. Jones testified, RUCO had
4 neither the time nor the ability to hire an expert witness to controvert Mr. Jones' testimony. T:
5 1363.

6 On January 18, 2011, the Commission granted RUCO's request for reconsideration
7 which permitted reexamination of the \$7 million in upgrades. RUCO issued an RFP on an
8 expedited basis and expects to select an engineering witness on or about March 15, 2011,
9 less than 15 days from the scheduled Open Meeting. To remedy the deficiencies of the prior
10 proceeding, if the Commission permits rehearing, the Commission should establish the scope
11 of the rehearing in its ruling, using language consistent with the suggested language in the
12 attached Exhibit A.

13 The Company appears to be suggesting that the granting of its Application for
14 Rehearing pursuant to A.R.S. § 40-253 trumps the Commission's ability to expand the scope
15 of the rehearing under A.R.S. §40-252. As succinctly stated by Commission's counsel at the
16 Staff meeting on January 18, 2011, the Commission has broad authority under A.R.S. §40-252
17 to reexamine any issues it deems appropriate. Because A.R.S. §40-252 provides wide
18 latitude to the Commission, the Commission is not limited to examining only those issues the
19 Company raised in its Application pursuant to A.R.S. §40-253.

20 Based on the foregoing, RUCO requests that consistent with Commission Newman's
21 correspondence, the Commission reconsider the grant of rehearing to the Company and deny
22 the same. If the Commission does so, RUCO will also withdraw its Request for
23 Reconsideration. If the Commission decides to grant rehearing, RUCO requests that the
24

1 Commission does so by clarifying the scope of the rehearing to the three (3) issues discussed
2 in this Response.

3 RESPECTFULLY SUBMITTED this 24th day of February, 2011.

4 

5 Michelle L. Wood
6 Counsel

7 AN ORIGINAL AND THIRTEEN COPIES
8 of the foregoing filed this 24th day
9 of February, 2011 with:

10 Docket Control
11 Arizona Corporation Commission
12 1200 West Washington
13 Phoenix, Arizona 85007

14 COPIES of the foregoing hand delivered/
15 e-mailed this 24th day of February, 2011 to:

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EXHIBIT A

