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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

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AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

IN THE MATTER OF THE APPLICATION
OF THE LINKS AT COYOTE WASH
UTILITIES, LLC FOR APPROVAL OF A
RATE INCREASE.

DOCKET NO. SW-04210A-10-0392

PROCEDURAL ORDER

BY THE COMMISSION:

On September 23, 2010, The Links at Coyote Wash Utilities, LLC ("Links") filed with the Arizona Corporation Commission ("Commission") an application for a permanent rate increase, stating that it was required to file the rate application pursuant to Decision No. 67157 (August 10, 2004), in which its Certificate of Convenience and Necessity ("CC&N") to provide wastewater service was granted. Links further stated that the rate increase is needed because Links' growth and revenues have stalled while its operating expenses have increased. Links' application used a calendar year 2009 test year ("TY"); reported TY gross revenues of \$154,928 and effluent sales of \$19,563.86;¹ reported total TY operating expenses of \$161,134; and reflected a TY net operating loss of \$6,206. Links requested an increase in revenues of \$60,000, for total annual gross revenues of \$204,928,² and proposed an increase in its residential flat rate from \$30.00 to \$41.60 per month and an increase in the commodity rate for effluent sales from \$2.00 to \$2.77 per 1,000 gallons. For its commercial customers, Links stated that the current rate is actual flow (based on water meter) divided by one single family equivalent (262 gallons per day), multiplied by the residential flat rate. Links proposed to keep the same formula, but to incorporate the new residential rate into the calculation. Links also proposed to increase several of its service charges. Links stated that its customers would be provided notice of the application in their billings sent on October 1, 2010.

¹ In the application, it is difficult to determine how Links has included this effluent sales revenue in its TY gross revenues, if it has been included.

² It is unclear how Links arrived at the total gross revenue of \$204,928 based on the TY revenue figure included in the application and the requested increase of \$60,000.

1 On September 29, 2010, Links filed a supplement to its application, a letter issued by the
2 Arizona Department of Environmental Quality (“ADEQ”) on September 28, 2010, stating that Links’
3 wastewater treatment plant (“WWTP”) is in compliance with ADEQ requirements.

4 On October 7, 2010, Links filed the Affidavit of Jason P. Williamson, Links’ manager, stating
5 that Links had mailed its customers notice of its rate application on October 1 and 5, 2010.

6 From October 4 through November 19, 2010, the Commission received comments
7 representing 39 customer accounts, all in opposition to the proposed rate increase. A number of
8 commenters complained of severe odor problems in the area caused by Links’ WWTP. Concern was
9 also expressed about free dumping of waste by recreational vehicles (“RVs”) at a local gas station,
10 about having been told upon purchase of their lots that the sewer rates would not increase, and about
11 being required to pay the same amount for sewer service during months when homes are not
12 occupied. Some commenters expressed a desire for the rate increase to be discussed in a public
13 forum or hearing.

14 On October 22, 2010, the Commission’s Utilities Division (“Staff”) issued a Letter of
15 Insufficiency, informing Links that its application had not met the sufficiency requirements outlined
16 in Arizona Administrative Code (“A.A.C.”) R14-2-103 and requesting additional information.

17 On December 3, 2010, Links filed an Amended Rate Application (“amended application”) to
18 address Staff’s Letter of Insufficiency and information request. In its amended application, Links
19 stated that its current commercial rate is calculated by dividing one single family equivalent (262
20 gpd) into the average daily flow rate of the commercial customer and then multiplying the resulting
21 factor by the approved residential flat fee. Links modified its proposed commercial rate by stating
22 that the average daily flow rate for a commercial customer is to be determined by multiplying
23 metered water use times a factor of 0.85. Links also proposed to eliminate its approved flow meter
24 installation charge. Links did not change its TY income and expense figures or its requested revenue
25 increase.

26 On December 9, 2010, Staff issued a Letter of Sufficiency as to the amended application,
27 stating that Links’ amended application had met the sufficiency requirements outlined in A.A.C.
28 R14-2-103 and that Links had been classified as a Class D utility.

1 On February 23, 2011, Staff filed its Staff Report, recommending approval of Staff's
2 recommended rate increase and charges and recommending that Links be fined \$10,227 for billing
3 practices that were not in compliance with its existing tariff. Specifically, Staff stated that Links has
4 been using its proposed commercial rate, rather than the authorized rate in its tariff, to charge most of
5 its commercial customers. Staff also asserted that Links has been charging one commercial customer
6 a flat rate of \$125.00 per month pursuant to an agreement between Links and the customer, which
7 rate also is not authorized in Links' approved tariff. Staff recommends that Links' proposed
8 commercial rate be adopted on a going-forward basis, but that Links be fined \$10,277 for its
9 unauthorized billing practices, with the fine representing the amount in excess of \$30.00 charged per
10 commercial customer per month during the TY, as \$30.00 was the only authorized non-volumetric
11 rate per Links' current tariff. Staff further noted that Links was required by Decision No. 67157 to
12 file its rate application by November 10, 2009, which it failed to do, and that Decision No. 67157
13 required Links to pay financial penalties because it had connected customers to its system before
14 receiving its CC&N. Staff stated that Links' history of noncompliance bolsters Staff's position that
15 Links should be fined. The Staff Report did not discuss the presence or absence of noxious odors
16 from Links' WWTP, free dumping of waste by RVs, or any assurances that customers may have been
17 provided regarding the constancy of their rates. Staff also revealed that Links has two outstanding
18 compliance issues related to filing deadlines in Docket No. SW-04210A-06-0220.

19 On March 7, 2011, Links filed its Response to the Staff Report, asserting that it agrees with
20 all of the recommendations in the Staff Report except the recommendation that Links be fined. Links
21 asserted "confusion" regarding its current tariff, which requires that each commercial customer have
22 its own flow meter, but does not specify whether the meter is to be a water flow meter or a sewer
23 flow meter. Links asserted that it could be inferred that the required flow meter is a water meter
24 rather than a sewer meter and further asserted that sewer meters cost several thousands of dollars
25 each. Links did not deny that its billing practices have been "not entirely consistent with [its] tariff,"
26 but also asserted that its methodology was designed to ensure that commercial customer bills
27 accurately reflect the cost of service. Links asserted that it did not have the resources to pursue a
28 revision to its tariff earlier. Links also stated, however, that it does not believe that a hearing is

1 necessary in this matter. Links suggested that a reduced penalty amount with an extended payment
2 period might be appropriate and asked that Staff reconsider its fine recommendation.

3 Although neither Staff nor Links appears to believe that a hearing is necessary in this matter,
4 it is necessary to hold an evidentiary hearing in order to entertain Staff's recommendation to fine
5 Links. In addition, it is reasonable and appropriate to hold an evidentiary hearing to obtain evidence
6 regarding several issues raised by customers, including the allegations of noxious odors in the Links
7 service area due to Links' WWTP, of free dumping of waste from RVs at a commercial customer
8 location (which may have some bearing on the reasonableness of Links' proposed and Staff's
9 recommended commercial rate methodology), and of assurances to residential customers that their
10 rates would not increase. It is also reasonable and appropriate to obtain additional information
11 regarding how the proposed and recommended commercial rate methodology works in practice and
12 what monthly rates result therefrom and regarding the agreement that Links apparently made to
13 provide service to a commercial customer for a flat \$125.00 monthly rate.

14 IT IS THEREFORE ORDERED that **Links and Staff each shall, by April 5, 2011, file**
15 **direct testimony and any associated exhibits to be presented at hearing, which shall present the**
16 **party's position in this matter and address in detail the following issues/subject areas:** (1)
17 Staff's recommended fine, (2) the alleged noxious odors from Links' WWTP; (3) the alleged free
18 dumping of waste from RVs at a commercial customer location and how any demand placed on the
19 sewer system by such a practice would/should be reflected in the rates paid by the commercial
20 customer, (4) the alleged assurances made to residential customers that their rates would not increase,
21 (5) how the proposed and recommended commercial rate methodology works in practice and what
22 monthly rates result from it, and (6) the alleged agreement by Links to provide service to a
23 commercial customer for a flat \$125.00 monthly rate. In addressing each issue/subject area, each
24 party shall set forth all pertinent facts related thereto; any background or explanation for the facts; the
25 party's position as to how the issue/subject matter should be addressed by the Commission, if at all;
26 and the reasoning behind the party's position.

27 IT IS FURTHER ORDERED that **Links and Staff each shall, by April 26, 2011, file**
28 **responsive testimony** and any associated exhibits to be presented at hearing.

1 IT IS FURTHER ORDERED that the **hearing** in this matter shall commence on **May 9,**
2 **2011, at 10:00 a.m.,** or as soon thereafter as is practicable, at the Commission's offices, Hearing
3 Room #1, 1200 West Washington, Phoenix, Arizona 85007. If an additional day of hearing is
4 needed, the second day of hearing shall proceed on **May 13, 2011,** at 10:00 a.m., in the same
5 location.

6 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
7 105, except that all motions to intervene must be filed on or before **April 20, 2011.**

8 IT IS FURTHER ORDERED that any **objections to intervention** shall be filed on or before
9 **April 26, 2011.**

10 IT IS FURTHER ORDERED that each **intervenor or prospective intervenor shall, by May**
11 **2, 2011, file direct testimony** and any associated exhibits to be presented at hearing, to which the
12 other parties will be permitted to respond at hearing.

13 IT IS FURTHER ORDERED that any motion filed in this matter, other than a motion to
14 intervene, that is not ruled upon by the Commission within 20 calendar days of the filing date of the
15 motion shall be deemed denied.

16 IT IS FURTHER ORDERED that any response to a motion, other than a motion to intervene,
17 shall be filed within five calendar days of the filing date of the motion.

18 IT IS FURTHER ORDERED that any reply related to a motion shall be filed within five
19 calendar days of the filing date of the response to the motion.

20 IT IS FURTHER ORDERED that **Links shall provide public notice** of the hearing in this
21 matter, in the following form and style, with the heading in no less than 12-point bold type and the
22 body in no less than 10-point regular type:

23
24 **PUBLIC NOTICE OF HEARING ON**
THE APPLICATION OF THE LINKS AT COYOTE WASH UTILITIES, LLC
25 **FOR APPROVAL OF A RATE INCREASE.**
(Docket No. SW-04210A-10-0392)

26 **Summary**

27 The Links at Coyote Wash Utilities, LLC ("Links") has filed with the Arizona
28 Corporation Commission ("Commission") an application for a permanent rate
increase, using a calendar year 2009 test year ("TY"). In its application, Links reports
TY gross revenues of \$154,928 and total TY operating expenses of \$161,134. Links

1 requests an increase in revenues of \$60,000 and proposes to increase its residential flat
 2 rate from \$30.00 to \$41.60 per month and to increase the commodity rate for effluent
 3 sales from \$2.00 to \$2.77 per 1,000 gallons. Links also proposes to increase the rate
 4 for its commercial customers and to increase several of its service charges.

5 The Commission's Utilities Division ("Staff") has issued a Staff Report
 6 recommending that Links' residential rate be increased from \$30.00 to \$38.99 per
 7 month, that its commercial rate be increased using the formula proposed by Links but
 8 incorporating Staff's recommended residential rate, and that Links be assessed a fine
 9 of \$10,277 for billing practices not in compliance with its current Commission-
 10 approved tariff.

11 The Commission will determine the appropriate relief to be granted based on the
 12 evidence of record obtained through a hearing. The Commission is not bound by the
 13 proposals made by Links, Staff, or any intervenors. The final rates approved by the
 14 Commission may be higher or lower than those proposed by Links or recommended
 15 by Staff.

16 **How You Can View or Obtain a Copy of the Rate Proposal**

17 Copies of the application and proposed rates are available at Links' offices
 18 [COMPANY INSERT ADDRESS HERE] and at the Commission's Docket Control
 19 Center at 1200 West Washington, Phoenix, Arizona, for public inspection during
 20 regular business hours, and on the Internet via the Commission's website
 21 (www.azcc.gov) using the e-Docket function.

22 **Arizona Corporation Commission Public Hearing Information**

23 The Commission will hold a hearing on this matter beginning **May 9, 2011, at 10:00**
 24 **a.m.**, at the Commission's offices, Hearing Room #1, 1200 West Washington,
 25 Phoenix, Arizona. Public comments will be taken on the first day of the hearing.
 26 Written public comments may be submitted by mailing a letter referencing Docket No.
 27 SW-04210A-10-0392 to Arizona Corporation Commission, Consumer Services
 28 Section, 1200 West Washington, Phoenix, AZ 85007, or by e-mail. For a form to use
 and instructions on how to e-mail comments to the Commission, go to
<http://www.azcc.gov/Divisions/Utilities/consumerservices.asp>. If you require
 assistance, you may contact the Consumer Services Section at 1-800-222-7000 or 602-
 542-4251.

29 **About Intervention**

30 The law provides for an open public hearing at which, under appropriate
 31 circumstances, interested parties may intervene. Any person or entity entitled by law
 32 to intervene and having a direct and substantial interest in the matter will be permitted
 33 to intervene. If you desire to intervene, you must file a written motion to intervene
 34 with the Commission no later than **April 20, 2011**. You must send a copy of the
 35 motion to intervene to Links or its counsel and to all parties of record. Your motion to
 36 intervene must contain the following:

- 37 1. Your name, address, and telephone number and the name, address, and
 38 telephone number of any person upon whom service of documents is to be
 made, if not yourself;
- 39 2. A short statement of your interest in the proceeding (e.g., a customer of Links,
 40 etc.); and
- 41 3. A statement certifying that you have mailed a copy of the motion to intervene
 42 to Links or its counsel and to all parties of record in the case.

1 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
2 that all motions to intervene must be filed on or before April 20, 2011. If
3 representation by counsel is required by Arizona Supreme Court Rule 31, intervention
4 will be conditioned upon the intervenor's obtaining counsel to represent the
5 intervenor. For information about requesting intervention, visit the Commission's
6 website at <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>. The
7 granting of intervention, among other things, entitles a party to present sworn evidence
8 at the hearing and to cross-examine other witnesses. However, failure to intervene
9 will not preclude any interested person or entity from appearing at the hearing and
10 providing public comment on the application or from filing written comments in the
11 record of the case.

12 **ADA/Equal Access Information**

13 The Commission does not discriminate on the basis of disability in admission to its
14 public meetings. Persons with a disability may request a reasonable accommodation
15 such as a sign language interpreter, as well as request this document in an alternative
16 format, by contacting the ADA Coordinator, Shaylin Bernal, at sabernal@azcc.gov,
17 voice phone number (602) 542-3931. Requests should be made as early as possible to
18 allow time to arrange the accommodation.

19 IT IS FURTHER ORDERED that, **by March 30, 2011, Links shall mail** a copy of the above
20 notice to each current customer and cause the above notice to be **published in a newspaper(s) of**
21 **general circulation** in its service territory.

22 IT IS FURTHER ORDERED that **Links shall file certification of mailing and publication**
23 as soon as practicable after the mailing and publication has been completed, but **no later than April**
24 **20, 2011.**

25 IT IS FURTHER ORDERED that the **timeframe** for the Commission's Decision in this
26 matter is hereby **extended by 79 days.**

27 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing/publication
28 of same, notwithstanding the failure of an individual to read or receive the notice.

IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

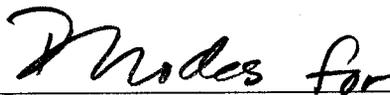
IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
Communications) applies to this proceeding and shall remain in effect until the Commission's
Decision in this matter is final and non-appealable.

IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
pursuant to Civil Procedure Rule 6(a) or (e).

...

1 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
2 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
3 hearing.

4 DATED this 9th day of March, 2011.

5
6 
7 SARAH N. HARPRING
8 ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered
10 this 9th day of March, 2011, to:

11 Patrick J. Black
12 FENNEMORE CRAIG, P.C.
13 3003 North Central Avenue, Suite 2600
14 Phoenix, AZ 85012
15 Attorney for The Links at Coyote Wash Utilities, LLC

16 Jason Williamson
17 THE LINKS AT COYOTE WASH UTILITIES, LLC
18 C/O PIVOTAL UTILITY MANAGEMENT
19 6825 East Tennessee Avenue, Suite 547
20 Denver, CO 80224

21 Janice Alward, Chief Counsel
22 Legal Division
23 ARIZONA CORPORATION COMMISSION
24 1200 West Washington Street
25 Phoenix, AZ 85007

26 Steven M. Olea, Director
27 Utilities Division
28 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
Phoenix, AZ 85004-1481

23 By: 
24 Debra Broyles
25 Secretary to Sarah N. Harpring