



0000126646

ORIGINAL



COMMISSIONERS
GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ARIZONA CORPORATION COMMISSION

RECEIVED

2011 JUN 27 P 3:44

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

JUN 27 2011

DATE: JUNE 27, 2011
DOCKET NO.: SW-04210A-10-0392
TO ALL PARTIES:

DOCKETED BY

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

THE LINKS AT COYOTE WASH UTILITIES, L.L.C.
(RATES)

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:

JULY 6, 2011

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 Open Meeting to be held on:

JULY 12, 2011 and JULY 13, 2011

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.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE - Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION OF
9 THE LINKS AT COYOTE WASH UTILITIES,
10 L.L.C. FOR APPROVAL OF A RATE INCREASE.

DOCKET NO. SW-04210A-10-0392

11 DECISION NO. _____

12 OPINION AND ORDER

13 DATE OF HEARING: May 9, 2011

14 PLACE OF HEARING: Phoenix, Arizona

15 ADMINISTRATIVE LAW JUDGE: Sarah N. Harpring

16 APPEARANCES: Mr. Patrick Black, FENNEMORE CRAIG, on behalf of
17 Applicant; and

18 Ms. Ayesha Vohra, Staff Attorney, Legal Division, on
19 behalf of the Utilities Division of the Arizona
20 Corporation Commission.

21 **BY THE COMMISSION:**

22 This case involves a permanent rate case application filed with the Arizona Corporation
23 Commission by The Links at Coyote Wash Utilities, L.L.C., a Class D wastewater utility providing
24 service to approximately 277 customer accounts in the Town of Wellton, in Yuma County, Arizona.

25 * * * * *

26 Having considered the entire record herein and being fully advised in the premises, the
27 Commission finds, concludes, and orders that:

28 FINDINGS OF FACT

Background

1. The Links at Coyote Wash Utilities, L.L.C. ("Links") is an Arizona limited liability
company providing wastewater utility service to approximately 277 customer accounts in the Town
of Wellton ("Town"), approximately 25 miles east of the City of Yuma, in Yuma County, Arizona.
(Ex. S-1.) Links was granted its Certificate of Convenience and Necessity ("CC&N") in Decision

1 No. 67157 (August 10, 2004), the Decision in which the Commission set Links' currently authorized
2 rates.¹ (*Id.*)

3 2. Links is owned by G-12, LLC ("G12"), which is the developer for the residential and
4 golf course development known as The Links at Coyote Wash. (Tr. at 12; Decision No. 67157 at 2.)
5 G12 is owned by Spike Curtis. (Tr. at 12.) Links was created to provide wastewater treatment
6 service to the development because although the Town provides municipal water service to the area,
7 the Town does not have a sewage system. (Decision No. 67157 at 2.) G12 also owns the local
8 Chevron station that is a Links customer. (Tr. at 12.)

9 3. In Decision No. 67157, in addition to granting Links a CC&N and establishing rates,
10 the Commission required Links to post a performance bond in the amount of \$30,000 and to maintain
11 it for 10 years or until further Order of the Commission,² whichever came sooner, and required Links
12 to pay a penalty of \$500 per active service connection because Links had connected several
13 customers before receiving its CC&N.³ (Decision No. 67157 at 7-8.) The Commission also required
14 Links to file a permanent rate case application no later than three months following the fifth year
15 anniversary of the effective date of the Decision (by November 10, 2009). (*Id.*)

16 4. In Decision No. 69209 (December 21, 2006),⁴ the Commission granted a CC&N
17 extension to Links, adding approximately 320 acres to its certificated area. (Decision No. 69209 at 2,
18 6.) The Commission imposed several compliance filing requirements as conditions to the issuance of
19 the CC&N extension. (*Id.* at 4, 6.) The development associated with the CC&N extension area has
20 been delayed as a result of economic conditions, and Links has twice been granted extensions of the
21 compliance filing deadlines.⁵ As a result of the most recent extension, Staff's Compliance database
22 now shows no delinquent compliance items for Links. (Tr. at 55-56.)

23 5. During the period of 2008 through 2010, the Commission received no customer

24 ¹ Official notice is taken of Decision No. 67157 (August 10, 2004).

25 ² The Decision required Links to file a copy of the performance bond annually, on the anniversary date of the initial
26 filing, until further Order of the Commission or the passage of 10 years, whichever came first, at which time the bonding
27 requirement could be terminated upon application to the Commission. (*Id.* at 8.)

³ The Commission found that Links had made connections and provided sewer service at no charge to the golf course
28 clubhouse and a limited number of residential customers because demand for lots had greatly exceeded expectation.
(Decision No. 67157 at 3.)

⁴ Official notice is taken of Decision No. 69209 (December 21, 2006).

⁵ Official notice is taken of Decision No. 71189 (June 30, 2009) and of Decision No. 72249 (April 7, 2011).

1 complaints or inquiries concerning Links. Since Links' rate application was filed, however, the
2 Commission has received 45 customer comments, representing approximately 42 separate accounts,
3 all in opposition to the proposed rate increase.

4 6. Links is current in its property and sales tax payments.

5 7. Links is in good standing with the Commission's Corporations Division.

6 8. Links is in full compliance with Arizona Department of Environmental Quality
7 ("ADEQ") requirements.

8 9. Links owns and operates a 69,300 gallon per day ("GPD") package wastewater
9 treatment plant equipped with equalization chamber, aeration/anoxic basins, secondary clarifier, and
10 chlorination/dechlorination devices. (Ex. S-1 at Ex. A at 1.) Staff determined that Links' wastewater
11 treatment plant has adequate treatment capacity to serve its existing customer base and reasonable
12 growth. (Ex. S-1 at Ex. A at 3.) Links estimates that its service area will experience little or no
13 growth for the next two years due to the economic climate. (*Id.*)

14 **Procedural History**

15 10. On September 23, 2010, Links filed with the Commission an application requesting a
16 permanent rate increase, stating that it was required to file the rate application pursuant to Decision
17 No. 67157. Links stated that the rate increase is needed because Links' growth and revenues have
18 stalled while its operating expenses have increased. Links' application used a calendar year 2009 test
19 year ("TY"); reflected a TY net operating loss of \$6,206; and requested an increase in revenues of
20 \$60,000. Links stated that its customers would be provided notice of the rate application in their
21 October 1, 2010, billings.

22 11. On September 29, 2010, Links filed a supplement to its application, a letter issued by
23 ADEQ on September 28, 2010, stating that Links' wastewater treatment plant ("WWTP") is in
24 compliance with ADEQ rules and regulations.

25 12. On October 7, 2010, Links filed the Affidavit of Jason P. Williamson, Links' manager,
26 stating that Links' customers had been mailed notice of the rate application on October 1 and 5, 2010.

27 13. On October 22, 2010, Staff issued a Letter of Insufficiency informing Links that its
28 application had not met the sufficiency requirements outlined in Arizona Administrative Code

1 (“A.A.C.”) R14-2-103 and requesting additional information.

2 14. From October 4 through November 19, 2010, the Commission received comments
3 representing approximately 38 customer accounts, all expressing opposition to the proposed rate
4 increase, and some filing comments more than once. A number of commenters complained of odor
5 problems from the WWTP, and concern was also expressed about free dumping of waste by
6 recreational vehicles (“RVs”) at a local gas station, about having been told upon purchase of their lots
7 that sewer rates would not increase, and about being required to pay the same amount for sewer
8 service during months when homes are not occupied. Some commenters expressed a desire for the
9 rate increase to be discussed in a public forum or hearing.

10 15. On December 3, 2010, Links filed an amended application to address Staff’s Letter of
11 Insufficiency and information request. In its amended application, Links explained its current
12 commercial rate calculation and proposed to eliminate its approved flow meter installation charge,
13 but did not alter its TY income and expense figures or its requested revenue increase.

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

17 17. On February 23, 2011, Staff filed its Staff Report, recommending approval of Staff’s
18 recommended rates and charges and that Links be fined \$10,227 for billing practices that were not in
19 compliance with its existing tariff, specifically as to its commercial customers. The Staff Report did
20 not discuss the concerns expressed by customers in their comments.

21 18. On March 7, 2011, Links filed its Response to the Staff Report, asserting that it agrees
22 with all of Staff’s recommendations except the recommendation that Links be fined. Links also
23 stated that it did not believe a hearing was necessary in this matter and suggested imposition of a
24 reduced penalty amount with an extended period and that Staff reconsider its fine recommendation.

25 19. On March 9, 2011, a Procedural Order was issued scheduling a hearing in this matter
26 so that Staff’s fine recommendation could be entertained and to obtain evidence regarding several
27 issues raised by customers, including allegations of noxious odors from the WWTP, of free dumping
28 of waste by RVs, and of assurances to residential customers that their rates would not increase and

1 concerning the rates charged to commercial customers. The Procedural Order required Links and
2 Staff to file direct and responsive testimony; scheduled a hearing to be held on May 9, 2011, at the
3 Commission's offices in Phoenix, Arizona; and established other procedural requirements and
4 deadlines. The Procedural Order also extended the timeframe for a Decision in this matter by 79
5 days.

6 20. On April 1, 2011, Links filed an Affidavit of Publication showing that notice of the
7 hearing had been published on March 30, 2011, in the *Yuma Sun*, a daily newspaper of general
8 circulation published in Yuma, Arizona, and an Affidavit of Kay Reynolds stating that notice of the
9 hearing had been mailed to customers on March 29 and 30, 2011.

10 21. On April 5, 2011, Links and Staff filed Direct Testimony.

11 22. From April 7 through May 11, 2011, comments were filed representing approximately
12 four customer accounts that had not previously filed comments and two accounts that had, all
13 expressing opposition to the proposed rate increase.

14 23. On April 19, 2011, Staff filed a Notice of Filing in Lieu of Responsive Testimony,
15 stating that Staff had no additional testimony to provide in the form of responsive testimony.

16 24. On April 26, 2011, Links filed a Notice of Filing in Lieu of Responsive Testimony,
17 stating that Links had no additional testimony to provide in the form of responsive testimony.

18 25. On May 9, 2011, a full evidentiary hearing was held before a duly authorized
19 Administrative Law Judge of the Commission at the Commission's offices in Phoenix, Arizona.
20 Links and Staff appeared through counsel and provided testimony and documentary evidence. Links
21 provided the testimony of Jason Williamson, Manager of Pivotal Utility Management. Staff
22 presented the testimony of Jian Liu, Staff Water/Wastewater Engineer, and Gerald Becker, Staff
23 Public Utilities Analyst V. No members of the public appeared to provide comment. At the
24 conclusion of the hearing, Staff was directed to file final schedules as a late-filed exhibit ("LFE")
25 after first obtaining Link's agreement as to the numbers therein.

26 26. On May 12, 2011, Staff filed the LFE after having conferred with Links and obtained
27 its agreement with the schedules.

28 ...

1 **Ratemaking**

2 27. In its amended application, Links reported TY total revenues of \$154,928 and total
3 operating expenses of \$161,134, for a TY operating loss of \$6,206. (Ex. A-1.) Links requested to
4 increase its annual revenues by \$60,000 through increasing its residential flat rate from \$30.00 to
5 \$41.60, by factoring the increased residential flat rate into its commercial rate calculation, and by
6 increasing its effluent sales commodity rate from \$2.00 to \$2.77 per thousand gallons. (*Id.*) Links
7 also proposed to eliminate its flow meter installation charge and to increase its establishment and
8 reconnection charges. (*Id.*)

9 28. In the Staff Report, Staff calculated adjusted TY revenue of \$163,448 and total
10 operating expenses of \$162,155, for TY operating income of \$1,293. (Ex. S-1.) Staff recommended
11 an increase in annual revenue of \$51,271, which would result in operating income of \$52,564 and a
12 10 percent rate of return on Staff's recommended original cost rate base ("OCRB") of \$525,640.
13 (*Id.*) Staff recommended increasing Links' residential flat rate to \$38.99, retaining Links'
14 commercial calculation methodology but incorporating the increased residential flat rate into the
15 calculation, increasing the effluent sales commodity rate to \$2.66, and modifying the service charges
16 as proposed by Links. (*Id.*)

17 29. At hearing, Mr. Becker testified that Links' TY revenues should be adjusted upward
18 by an additional \$652.76 not included in the Staff Report figures because Links had back-billed and
19 received payment of that amount from the golf course, which had been charged differently during the
20 TY. (Tr. at 47, 19, 32.) In its LFE, Staff provided slightly revised rate recommendations to reflect
21 inclusion of the \$652.76 in TY revenue. (LFE S-3.) Links has accepted Staff's recommended rates
22 and charges. (Tr. at 11; LFE S-3.)

23 30. Links' current authorized rates⁶ and the rates and charges recommended by Staff and
24 agreed upon by Links are as follows:

25 ...

26 ...

27 _____

28 ⁶ The rates shown are those authorized in Decision No. 67157. As discussed below, Links has not been charging its commercial customers in accordance with these rates.

	<u>Current</u>	<u>Staff</u>
	<u>Authorized</u>	<u>Recommended</u>
		<u>/Links Agreed</u>
<u>Monthly Rate</u>		
Residential	\$ 30.00	\$ 38.87
Commercial	*	**
<u>Effluent Sales</u>		
Per 1,000 gallons	\$ 2.00	\$ 2.59
<u>Service Charges</u>		
Flow Meter Installation Charge	\$100.00	None
Establishment (R14-2-603(D))	\$ 25.00	\$ 30.00
Reconnection (Delinquent)	\$ 30.00	Cost***
NSF Check	\$ 25.00	\$ 25.00
Deposit	(a)	(a)
Deposit Interest	(a)	(a)
Re-Establishment (Within 12 Months)	(b)	(b)
Late Payment Penalty	None	(c)
Deferred Payment (Per Month)	None	1.5%

* Each commercial customer will be required to have its own flow meter. The commercial rate will be calculated for each commercial customer by dividing one single family equivalent (SFE) into the average daily flow rate of the commercial customer. One SFE is equal to 262 gallons per day (the approved design flow rate per single family unit by ADEQ). The resulting factor will be multiplied by the approved residential flat rate to create the custom commercial rate.

** The commercial rate will be calculated for each commercial customer by dividing one single family equivalent (SFE) into the average daily flow rate of the commercial customer (as determined by the metered water use times a factor of 0.85). One SFE is equal to 262 gallons per day. The resulting factor will be multiplied by the approved residential flat fee to create the custom commercial rate.

*** Actual cost of physical disconnection and reconnection (if same customer) and there shall be no charge if there is no physical work performed.

- (a) As per Commission Rules (R14-2-603(B))
- (b) Months off system times the minimum (R14-2-603(D))
- (c) Per Commission Rules (R14-2-608(F))

In addition to the collection of its regular rates and charges, the company will collect from customers their proportionate share of any privilege, sales or use tax in accordance with R14-2-608(D)(5).

31. Staff's final schedules show adjusted TY operating revenue of \$164,101 and total operating expenses of \$162,155, for TY operating income of \$1,946 and a rate of return of 0.37 percent on Staff's recommended OCRB of \$525,640. Staff retained its recommended revenue requirement of \$214,719 and now recommends a revenue increase of \$50,618, which would result in

1 operating income of \$52,564 and a 10 percent rate of return on Staff's recommended OCRB.

2 32. Links has accepted all of Staff's recommended adjustments to rate base, which in
3 aggregate increased OCRB by \$10,909, from \$514,731 to 525,640. (Ex. S-1; LFE S-3; Tr. at 11.)
4 Staff reduced plant in service to eliminate inappropriately capitalized expenses and paid in capital
5 and to eliminate unsupported costs, reclassified advances in aid of construction ("AIAC") to
6 contributions in aid of construction ("CIAC") for a cancelled development project, adjusted
7 depreciation and accumulated amortization of CIAC to be consistent with Staff's plant in service and
8 CIAC adjustments and Staff's recommended depreciation rates, and allowed a working capital
9 allowance calculated using the formula method. (Ex. S-1; LFE S-3.) We find that Staff's
10 adjustments to rate base are reasonable and appropriate and should be adopted, and we find that
11 Links' fair value rate base ("FVRB") is equivalent to its OCRB and is \$525,640.

12 33. Links has also accepted all of Staff's recommended adjustments to operating revenues
13 and expenses, which in aggregate increased operating revenues by \$9,173 and increased operating
14 expenses by \$1,021. (LFE S-3; Tr. at 11.) Staff increased operating revenues by \$8,520 to annualize
15 for customer growth during the TY, to reverse a \$1,320 reduction recorded by Links for activity that
16 occurred partially outside the TY and that is not expected to recur, and to reflect the approximately
17 \$653 Links back-billed the golf course clubhouse to make its TY billings conform to the commercial
18 rate used for other customers. (Ex. S-1; LFE S-3.) Staff adjusted operating expenses to normalize
19 outside services expense for the three-year period ending with the TY; to reflect Staff's calculation of
20 annual water testing costs; to include in operating expenses the unusually high level of bad debt
21 expense (\$8,347) experienced by Links because it does not have a cooperative agreement with the
22 Town that would cause the Town to cut water service if a customer's sewer bill is not paid; and to
23 conform depreciation to Staff's calculation of plant balances minus fully depreciated and non-
24 depreciable plant and minus amortization of CIAC. (Ex. S-1; LFE S-3.) We find that Staff's
25 adjustments to TY operating revenues and operating expenses are reasonable and appropriate and
26 should be adopted, and we find that during the TY, Links had total operating revenue of \$164,101,
27 total operating expenses of \$162,155, and operating income of \$1,946, which reflects a rate of return
28 on FVRB of 0.37 percent.

1 34. The rates recommended by Staff and agreed upon by Links would result in total
 2 operating revenue of \$214,719 and operating income of \$52,564, which reflects a 10 percent rate of
 3 return on FVRB. (Ex. S-1; LFE S-3.) For a residential customer, the monthly bill for service will
 4 increase from \$30.00 to \$38.87, for an increase of \$8.87 or 29.56 percent. (See LFE S-3.) For a
 5 commercial customer, the specific monthly increase will depend on the customer's water
 6 consumption, but will result from using the increased residential flat rate rather than the current
 7 residential flat rate in the calculation each month. (LFE S-3.) For example, the monthly bill for a
 8 commercial customer with monthly water consumption of 18,000 gallons will increase from \$58.40
 9 to \$75.66, for an increase of \$17.26 or 29.55 percent. (See LFE S-3.)

10 35. We find that the rates and charges recommended by Staff and agreed upon by Links
 11 are just and reasonable and should be adopted.

12 **Staff's Recommendations**

13 36. Staff recommends:

- 14 a. Approval of Staff's recommended rates and charges as set forth above;
 15 b. That Links be ordered to file with Docket Control, within 30 days after the
 16 effective date of the Decision in this matter, as a compliance item in this
 17 docket, a tariff schedule of its new rates and charges;
 18 c. That Links be required to adopt the typical and customary depreciation rates
 19 delineated in Table H-1 of the Engineering Report portion of the Staff Report;
 20 and
 21 d. That Links be fined \$10,227 for billing practices that were not in compliance
 22 with its existing tariff. (Ex. S-1.)

23 37. We find that Staff's recommendations set forth in Findings of Fact No. 36(a)-(c) are
 24 reasonable and appropriate and should be adopted. Staff's recommendation set forth in Findings of
 25 Fact No. 36(d) is discussed further below.

26 **Links' Noncompliance and Staff's Recommended Fine**

27 38. Links has not been charging its commercial customers in accordance with the
 28 commercial rate authorized in Decision No. 67157. (Ex. S-1; Tr. at 9.) Decision No. 67157 required

1 that each commercial customer have its own flow meter and that Links assess each commercial
2 customer a monthly rate calculated based on the customer's monthly flow. (Decision No. 67157 at
3 Ex. B.) No sewer flow meters have been installed for any of Links' commercial customers. (Tr. at
4 12.) Mr. Williamson testified that the flow meter requirement was unclear because the tariff did not
5 specify the type of flow meter (*i.e.*, sewer versus water) and only included a \$100.00 flow meter
6 installation charge, which would cover only a small portion of the cost of a sewer flow meter⁷ and
7 thus suggested to him that it was intended for a water flow meter. (Tr. at 8-9, 13-14.) Mr.
8 Williamson acknowledged that he believes the intent was for sewer flow meters to be used, however,
9 and that a sewer utility would not have had occasion to install water flow meters. (Tr. at 13-14.) Mr.
10 Williamson also testified that Links did the best that it could under the circumstances because the
11 tariff was unclear and Links had very little money and could not afford to buy sewer flow meters or
12 to pursue a change in its tariff. (Tr. at 15-18, 21.) Mr. Williamson believed that a rate case would be
13 necessary to get a revision of the tariff and asserted that Links "simply did not have the resources to
14 pay for a rate case." (Tr. at 15.)

15 39. Rather than following the tariff, which would have necessitated collecting and using
16 actual monthly sewer flow data for each commercial customer, Links established a rate methodology
17 using actual monthly water consumption data, provided by the Town, for each commercial customer
18 and using 85 percent of that monthly water consumption as a proxy for the customer's sewer flow.
19 (Tr. at 15-16.) Links has proposed to continue using the same methodology, and Staff has
20 recommended that the methodology be continued. (Ex. S-1; LFE S-3.) Staff does not assert that the
21 methodology led to unreasonable results, just that it was a violation of Links' tariff.⁸ (See Tr. at 42,
22 51.) Staff also agrees with Links that installation of sewer flow meters would not be cost-effective at
23 this time. (Ex. S-1 at 8.)

24

25 ⁷ Mr. Williamson testified, and Mr. Liu agreed, that a single sewer flow meter costs between \$5,000 and \$15,000. (Tr.
26 at 13, 41.) Mr. Liu also testified that sewer flow meters can be inaccurate if the flow is low. (Tr. at 41.) Mr. Becker
27 testified that installing sewer flow meters for Links' commercial customers would cost \$50,000 to \$150,000 and that it
28 could result in higher residential rates, depending on how costs were allocated. (Tr. at 52-53.)

⁸ Mr. Liu testified that 85 percent of water consumption provides a good proxy for sewer flow. (Tr. at 42.) Mr.
Becker testified that while it is impossible to determine, without having actual sewer flow data, whether Links collected
more than it would have had actual sewer flow data been used to calculate monthly charges, the amounts actually charged
to commercial customers during the TY appear to be reasonable in an economic sense. (Tr. at 48-51.)

1 40. Pursuant to an agreement with the customer, Links also has been charging one
2 commercial customer, the golf course clubhouse, a flat rate of \$125 per month rather than a rate
3 based on either water or sewer flow. (Ex. S-1 at 7.) Mr. Williamson explained that this flat rate was
4 used because Links felt that basing the clubhouse's sewer rate on water consumption would not
5 accurately reflect the demand on the sewer system from the clubhouse because the clubhouse shared
6 a water meter with the golf course, and the golf course uses water for irrigation. (Ex. A-3 at 8.) After
7 learning that the golf course had, at the end of 2009, substantially reduced its use of irrigation water
8 from this shared meter, Links changed the rate for the golf course to the rate methodology used for
9 every other commercial customer. (*Id.*) Links also back-billed the golf course clubhouse for the
10 difference between the flat rate and the standard commercial rate methodology, a total of \$652.76,
11 and the golf course has paid Links the back-billed amount. (Tr. at 19, 32.)

12 41. Staff based the recommended \$10,227 fine on the amount by which Links billed its
13 commercial customers during the TY in excess of the only non-volumetric rate approved for Links in
14 Decision No. 67157, which is the \$30 residential flat rate. (Ex. S-2, Becker at 3-4; Tr. at 49) Mr.
15 Becker acknowledged that Links would not have been authorized to charge its commercial customers
16 the residential flat rate, but explained that the alternative, in Staff's view, would have been to
17 recommend a fine amounting to all of the revenue collected from commercial customers during the
18 TY,⁹ as there was no non-volumetric rate approved for commercial customers. (*See* Tr. at 50-51.)
19 Staff's rationale, essentially, is that Links was only authorized by its tariff to bill its commercial
20 customers based on actual monthly sewer flow data and, because Links failed to collect such data,
21 could only have fallen back on its only other approved and tariffed rate, the \$30 residential flat rate.

22 42. Mr. Becker testified that Links should be fined because Links initiated the tariff in
23 Decision No. 67157, filed the tariff, and decided for practical reasons to bill its commercial
24 customers in a manner that was not in compliance with the tariff. (Tr. at 57-58.) Additionally, Links
25 was fined by the Commission in Decision No. 67157 for connecting customers to its system before its
26 CC&N was obtained, and Links was almost a year late in filing its rate application in this matter. (Tr.

27 _____
28 ⁹ Measured revenue during the TY was \$12,638. (Ex. S-1 at Sched. GWB-3.) When the back-billed amount for the
golf course clubhouse is included, TY measured revenue is \$13,291. (LFE S-3 at Sched. GWB-3.)

1 at 57-58, Ex. S-1 at 7.) Staff believes that these actions represent a pattern of noncompliance and that
2 there should be a consequence from that. (Tr. at 58.)

3 43. Links asserts that the fine is excessive in light of its actions and that paying the
4 recommended fine would be a hardship. (Ex. A-2.) Links points out that the methodology used was
5 not unreasonable and asserts that its customers were not harmed by its actions. (*Id.*) In addition,
6 Links asserts that it did not have any malicious intent to ignore the Commission. (*Id.*) Links
7 essentially argues that it could not make sense of its “confusing” tariff and that it made the best of a
8 bad situation. (*See id.*)

9 44. Links does not have sufficient funds to pay the penalty recommended by Staff. Links
10 had only \$1,151 in cash at the end of the TY. (Tr. at 59.) Mr. Becker testified that G12 would need
11 to provide the penalty money to Links through an equity infusion because Links lacks the resources
12 to pay it. (*Id.*) G12 may not have sufficient funds to pay the Staff-recommended penalty either,
13 however, as the development is struggling financially, with few home sales and a number of
14 foreclosures. (*Id.* at 33.)

15 Customer Allegations

16 45. A number of Links’ customers have complained in their comments filed with the
17 Commission that there are noxious odors caused by Links’ wastewater facilities. Mr. Williamson
18 testified that he has never detected an odor issue when he has visited the wastewater treatment plant,
19 (Ex. A-3 at 3), which he does two or three times each year and at different times of the year, (Tr. at
20 22-23). Mr. Williamson acknowledged, however, that that does not mean that there are not odors and
21 asserted that he believes it possible that odors are coming from the long sewer lines connecting
22 remote portions of the service area, from manhole covers, or from a nearby feed operation. (Tr. at
23 23.) Mr. Williamson testified that Links has responded to each customer who made an odor
24 complaint and has asked each customer to document the time of day the odor is detected so that Links
25 can try to figure out a pattern and be proactive. (*Id.* at 23-24.) Mr. Williamson further testified that
26 Links has odor control devices out in the service area and that it could move them around or add
27 more of them, but has not had enough detail upon which to base such action. (*Id.* at 24.) Mr.
28 Williamson also testified that he has told customers to contact him directly if they do not get

1 sufficient response from on-site personnel. (*Id.*) Links' on-site personnel have received occasional
2 odor complaints, and have responded, but have not detected the odor when responding to the scene.
3 (*Id.*) Mr. Williamson estimated that Links had been getting approximately three or four odor
4 complaints a year until the rate case was filed. (*Id.* at 25.) After its new rates go into effect, Links
5 plans to enhance its on-site odor control by adding a couple more carbon filters onto the treatment
6 plant. (*Id.*)

7 46. When Mr. Liu visited Links' service area, he did not detect any noxious odors. (Tr. at
8 42.) Mr. Liu testified that he was on site for approximately two hours, and was not there to check for
9 odors, but that he did not notice any odors. (*Id.*) Mr. Liu testified that he discussed the odor issues
10 with the certified operator, that Links has been trying to improve the quality of the effluent water
11 used on the golf course to address odor complaints, and that right now he is not sure that there is an
12 odor issue. (*Id.* at 42-43.) Mr. Liu testified that Links should keep good records of odor complaints
13 and should do something about it if Links discovers that there is an odor issue. (*Id.* at 43.)

14 47. Links customers also complained about free dumping of waste by RVs at a local gas
15 station. Mr. Williamson explained that the local Chevron station, which is owned by G12, advertises
16 free waste disposal and free water fill-ups for RVs as a means to generate business. (Ex. A-3 at 4-5.)
17 Mr. Williamson testified that hundreds of outdoor enthusiasts visit the Yuma area each year,
18 particularly during the months between November and March. (Ex. A-3 at 4-5; Tr. at 27.) Mr.
19 Williamson estimated, based on information provided by the operator of the Chevron station, that
20 there are 1,000 RV dumps per year, most of which occur during the winter months. (Tr. at 27.) The
21 RV waste tanks range from 18 to 45 gallons in size, and the RV water tanks range from 20 to 50
22 gallons in size. (*Id.*) Based on this information, Mr. Williamson and Mr. Becker determined that
23 using the commercial customer volumetric rate methodology based on water consumption results in
24 the Chevron station's paying its fair share, as the Chevron station pays slightly more, on a percentage
25 basis, than its water consumption represents when considering commercial customers' aggregate
26 consumption. (*Id.* at 27-28.)

27 48. Mr. Becker also testified that the Chevron station is paying an appropriate amount for
28 the demand that it places on the system. (Tr. at 57.)

1 49. Customers also complained about having their rates increase when they had allegedly
2 been told upon buying their properties that the rates would not increase. Links provided affidavits
3 from several salespeople for the developer, G12, all of whom stated that they have told prospective
4 buyers that water and electric utility rates¹⁰ in the service area are lower than those of surrounding
5 communities, but not that the rates would never increase. (Ex. A-3 at 6, Ex. 2.) Mr. Williamson
6 believes that the buyers likely misconstrued the information that was provided by the salespeople.
7 (Ex. A-3 at 7.)

8 50. Mr. Becker observed that the Decision granting Links a CC&N ordered that a rate
9 application be filed by a date certain. (Ex. S-2, Becker at 7.)

10 Resolution

11 51. The evidence shows that Links consciously decided to violate its duty to bill only in
12 conformance with its tariff, and to ask for forgiveness later, rather than to communicate with the
13 Commission or Staff regarding Links' determination that the tariff was unreasonable and unworkable.
14 While Links employed a billing methodology for most of its commercial customers that appears to
15 have resulted in reasonable bills (in an economic sense), Links' actions demonstrate a lack of candor
16 and a lack of knowledge of Commission statutes, rules, and policies,¹¹ and that is very troubling. We
17 do not give credence to Links' protestations that the tariff was confusing. The tariff may have been
18 unreasonable under the circumstances,¹² but it was not unclear. We also note that Links' failure to
19 comply with the tariff also extended to its creating a new flat rate of \$125.00 for the golf course
20 clubhouse. Links had no reason to believe that such a non-volumetric rate was authorized, and it
21 again created the rate because it thought the rate more appropriate under the circumstances. It is clear
22 to us that Links has felt free to create its own rates when it determines that its Commission-approved
23 rates are somehow impracticable or unfair. While Links' commercial customers likely were not
24 harmed in an economic sense by Links' violations (although we cannot know for certain in the
25 absence of actual sewer flow data), we find that Links' willingness to consciously violate its

26 _____
27 ¹⁰ We note that the affidavits did not speak to assertions made as to sewer rates, which is curious under the
circumstances.

28 ¹¹ For example, Links apparently was unaware of both A.R.S. § 40-252 and A.R.S. § 40-367.

¹² We note that the tariff originated with Links.

1 obligations as a regulated public service corporation when the violation suits its needs or desires
2 makes it reasonable and appropriate to penalize Links. However, because we are conscious of Links'
3 current economic condition, and because we desire to ensure that the penalty does not harm Links'
4 ability to provide adequate and reliable service to its customers, we will not impose the \$10,227
5 penalty recommended by Staff. Instead, we find that it is reasonable and appropriate to require Links
6 to pay a total penalty of \$2,500 for the following three violations: (1) charging all of its commercial
7 customers other than the golf course clubhouse using a volumetric rate methodology other than that
8 approved in its tariff; (2) charging the golf course clubhouse using a non-volumetric flat rate that was
9 not approved in its tariff; and (3) failing to file its rate application by November 10, 2009, as required
10 by Decision No. 67157. Links has acknowledged all of these violations. Links should be aware that
11 any future violations may result in higher penalties.

12 52. A number of Links' customers have complained about noxious odors in the service
13 area, and Links has acknowledged that there may be an odor problem, although it has been unable to
14 determine the precise locations or causes. We find that it is appropriate to require Links to be more
15 proactive in determining the locations affected and the probable causes of the noxious odors detected
16 by customers. Thus, we will require Links, within 60 days after the effective date of this decision, to
17 provide its customers written notice, sent with their regular billings, that Links is investigating
18 whether and to what extent noxious odors caused by its wastewater facilities exist within its service
19 area and providing the customers instructions on how to make complaints to Links concerning such
20 noxious odors detected by the customers. The notice must include the types of information that the
21 customers are to include with a complaint (e.g., customer contact information, location of odor, date
22 and time detected, etc.) and centralized contact information for where complaints may be submitted
23 (whether electronically via e-mail, by telephone, or by mail). Links will also be required to file a
24 copy of the notice as a compliance item in this docket, along with an affidavit stating that the notice
25 has been mailed to Links' customers. In addition, Links will be required to file in this docket, for
26 Staff's review, every six months until the filing of its next general rate case, a biannual report
27 detailing all odor complaints received, along with a description of the actions that Links has taken or
28 intends to take to remedy any odor problems that are determined to exist.

1 require Links to pay a total penalty of \$2,500 for those three violations.

2 10. It is reasonable and appropriate and in the public interest for the Commission to
3 require Links to take the actions described in Findings of Fact No. 52 to determine whether its system
4 has an odor problem and what actions should be taken to address any odor problem that exists, and
5 further to keep the Commission informed as to both.

6 **ORDER**

7 IT IS THEREFORE ORDERED that The Links at Coyote Wash Utilities, L.L.C. is hereby
8 authorized and directed to file with the Commission's Docket Control, as a compliance item in this
9 docket, on or before August 1, 2011, a revised tariff setting forth the following rates and charges:

10 **Monthly Rate**

11 Residential \$ 38.87
12 Commercial *

13 **Effluent Sales**

Per 1,000 gallons \$ 2.59

14 **Service Charges**

15 Flow Meter Installation Charge None
16 Establishment (R14-2-603(D)) \$ 30.00
17 Reconnection (Delinquent) Cost**
18 NSF Check \$ 25.00
19 Deposit (a)
20 Deposit Interest (a)
21 Re-Establishment (Within 12 Months) (b)
22 Late Payment Penalty (c)
23 Deferred Payment (Per Month) 1.5%

24 * The commercial rate will be calculated for each commercial customer by dividing one single
25 family equivalent (SFE) into the average daily flow rate of the commercial customer (as
26 determined by the customer's metered water use times a factor of 0.85). One SFE is equal to
27 262 gallons per day. The resulting factor will be multiplied by the approved residential flat fee
28 to create the custom commercial rate.

** Actual cost of physical disconnection and reconnection (if same customer) and there shall be no
charge if there is no physical work performed.

- (a) As per Commission Rules (R14-2-603(B))
(b) Months off system times the minimum (R14-2-603(D))
(c) Per Commission Rules (R14-2-608(F))

In addition to the collection of its regular rates and charges, the company will collect from customers
their proportionate share of any privilege, sales or use tax in accordance with R14-2-608(D)(5).

1 IT IS FURTHER ORDERED that the rates and charges set forth above shall be effective for
2 all services rendered by The Links at Coyote Wash Utilities, L.L.C. on and after August 1, 2011.

3 IT IS FURTHER ORDERED that The Links at Coyote Wash Utilities, L.L.C. shall adopt the
4 typical and customary depreciation rates, by individual National Association of Regulatory Utility
5 Commissioners category, delineated in Table H-1 of the Engineering Report portion of the Staff
6 Report filed in this matter.

7 IT IS FURTHER ORDERED that The Links at Coyote Wash Utilities, L.L.C. shall, within 60
8 days after the effective date of this decision, pay a total penalty of \$2,500 to the Commission in the
9 form of a cashier's check or money order made payable to the Arizona Corporation Commission and
10 delivered to the Commission's Business Office.

11 IT IS FURTHER ORDERED that The Links at Coyote Wash Utilities, L.L.C. shall, within 60
12 days after the effective date of this decision, provide its customers written notice, sent with their
13 regular billings, that The Links at Coyote Wash Utilities, L.L.C. is investigating whether and to what
14 extent noxious odors caused by its wastewater facilities exist within its service area and providing the
15 customers instructions on how to make complaints to The Links at Coyote Wash Utilities, L.L.C.
16 concerning such noxious odors detected by the customers. The notice shall include the types of
17 information the customers are to include with a complaint and centralized contact information for
18 how and where complaints may be submitted to The Links at Coyote Wash Utilities, L.L.C.

19 IT IS FURTHER ORDERED that The Links at Coyote Wash Utilities, L.L.C. shall, within 90
20 days after the effective date of this decision, file with the Commission's Docket Control, as a
21 compliance item in this docket, a copy of the notice sent to its customers along with an affidavit
22 stating that the notice has been mailed to its customers.

23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

1 IT IS FURTHER ORDERED that The Links at Coyote Wash Utilities, L.L.C. shall, every six
2 months until the filing of its next general rate case, file with the Commission's Docket Control, as a
3 compliance item in this docket, for Staff's review, a biannual report detailing all odor complaints
4 received from its customers, along with a description of the actions that The Links at Coyote Wash
5 Utilities, L.L.C. has taken or intends to take to remedy any odor problems that are determined to
6 exist.

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

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9
10
11 CHAIRMAN

COMMISSIONER

12
13 COMMISSIONER

COMMISSIONER

COMMISSIONER

14
15 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
16 Executive Director of the Arizona Corporation Commission,
17 have hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this _____ day of _____, 2011.

20 _____
ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

21 DISSENT _____

22
23 DISSENT _____

1 SERVICE LIST FOR: THE LINKS AT COYOTE WASH UTILITIES, L.L.C.

2 DOCKET NO.: SW-04210A-10-0392

3

4 Patrick Black
4 FENNEMORE CRAIG
3003 North Central Avenue, Suite 2600
5 Phoenix, AZ 85012
Attorney for The Links at Coyote Wash Utilities, L.L.C.

6

7 Janice Alward, Chief Counsel
Legal Division
7 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
8 Phoenix, AZ 85007

9

10 Steven M. Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
11 Phoenix, AZ 85007

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28