



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ARIZONA CORPORATION CC

Arizona Corporation Commission

COMMISSIONERS

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

DOCKETED

NOV 17 2011

DOCKETED BY ne

IN THE MATTER OF THE APPLICATION
OF LITTLE PARK WATER COMPANY, INC.
FOR APPROVAL TO INCUR LONG-TERM
DEBT FROM JPMORGAN CHASE & CO.

DOCKET NO. W-02192A-10-0395

DECISION NO. 72667

ORDER

Open Meeting
November 8 and 9, 2011
Phoenix, Arizona

BY THE COMMISSION:

This case involves a financing application filed with the Arizona Corporation Commission ("Commission") by Little Park Water Company, Inc. ("Little Park") requesting authority to incur \$140,000 in long-term debt in the form of a loan from JPMorgan Chase & Co. ("Chase"), which Little Park asserts will be used to repay a loan from its parent company that was used to fund arsenic treatment facilities. The Commission's Utilities Division ("Staff") has recommended denial or, in the event that the Commission desires to grant approval, approval with a notice that future violations may result in substantial sanctions and/or fines.

* * * * *

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

FINDINGS OF FACT

Background

1. Little Park is a for-profit subchapter "C" corporation providing water utility service to approximately 72 customers in a service area located near the City of Sedona, in Yavapai County, pursuant to a Certificate of Convenience and Necessity ("CC&N") granted by the Commission. Little Park has been classified as a Class E water utility.

1 2. Little Park is a wholly owned subsidiary of Big Park Water Company, Inc. (“Big
2 Park”), another for-profit corporation, CC&N holder, and public service corporation. Big Park
3 provides water utility service to approximately 3,000 customers in Yavapai County. Little Park’s
4 system is interconnected with Big Park’s system.

5 3. Without treatment, the water from Little Park’s wells exceeds the maximum
6 contaminant level (“MCL”) for arsenic (10 parts per billion (“ppb”))¹ established by the
7 Environmental Protection Agency (“EPA”) and enforced in Arizona by the Arizona Department of
8 Environmental Quality (“ADEQ”). In 2009, Little Park completed construction of, and received
9 ADEQ approval for, arsenic treatment facilities to treat the water from two of its wells. Little Park’s
10 water now meets ADEQ’s water quality standards, including the MCL for arsenic.

11 **Recent Prior Commission Decisions**²

12 4. In Decision No. 67886 (June 1, 2005), the Commission authorized Little Park to
13 assess an arsenic impact hook-up fee (“AHUF”) for each new service connection established after the
14 effective date of its AHUF tariff. The AHUFs were intended to enable Little Park to apportion the
15 costs of constructing arsenic treatment facilities for Little Park’s wells, which were at that time
16 expected to total \$223,400.

17 5. In Decision No. 70208 (March 20, 2008), the Commission granted Little Park an
18 Order Preliminary to a CC&N Extension to serve the Verde Valley School (“School”),³ a boarding
19 school that was in negotiations to have a portion of its land be used for a summer camp for children
20 (“Camp”). The Commission found that Little Park intended to install arsenic treatment facilities for
21 only one of its wells and to pay for the arsenic treatment facilities with AHUFs⁴ and, if the AHUFs
22 were not sufficient, with either company equity or debt from a local bank. The Commission
23 determined that Little Park needed to construct arsenic treatment facilities for two wells and ordered
24

25 ¹ In Decision No. 67886 (June 1, 2005), the Commission found that Little Park’s wells provide water with an arsenic
level of 25 ppb.

26 ² Official notice is taken of the following Commission Decisions: Decision No. 67886 (June 1, 2005); Decision No.
70208 (March 20, 2008); Decision No. 70612 (November 19, 2008); Decision No. 71172 (June 30, 2009); Decision No.
71190 (June 30, 2009); Decision No. 71840 (August 10, 2010); and Decision No. 72185 (February 11, 2011).

27 ³ The School had been providing its own water service from an existing well, the water from which also exceeded the
arsenic MCL.

28 ⁴ Little Park anticipated receiving an AHUF of \$66,000 from the School.

1 Little Park to demonstrate how it intended to fund such construction for both wells by filing with
2 Docket Control, by May 1, 2008, either an application for Commission approval of financing (along
3 with evidence of having applied for a Water Infrastructure Finance Authority of Arizona ("WIFA")
4 loan or other form of financing) or a document evidencing an equity infusion by Little Park's owner.

5 6. In Decision No. 70612 (November 19, 2008),⁵ the Commission found that Little Park
6 had filed with the Commission an affidavit regarding financing for its arsenic treatment facilities, in
7 which Little Park had stated that it expected to execute a line extension agreement ("LXA") with the
8 Camp that would require the Camp's developer to provide Little Park approximately \$234,300 in
9 AHUFs and, further, that any shortfall would be funded through paid-in-capital by Little Park's
10 owner. Specifically, Stevan Gudovic asserted the following in the affidavit, as President and owner
11 of Little Park:

12 I hereby commit that in the unlikely event the Company has not collected
13 sufficient funds under the Arsenic Hook-Up Fee Tariff that are necessary
14 to fund the required arsenic treatment facilities by June 30, 2009, I, as
15 owner of the Company, am financially able to, and will, make Paid-In-
16 Capital Additions to the Company for the purpose of funding any shortfall
in the required capital for construction of the arsenic treatment facilities.
No Commission approved financing will be required for construction of
the arsenic treatment facilities.⁶

17 7. On June 30, 2009, the Commission issued both Decision No. 71172 and Decision No.
18 71190. In Decision No. 71172, the Commission found that Little Park had collected \$82,500 in
19 AHUFs to date; that Little Park sought approval to amend the LXA with the Camp to allow an AHUF
20 of \$118,800 instead of \$234,300; that Little Park sought termination of its AHUF tariff because the
21 arsenic treatment facilities for both wells had already been completed; that the balance of the cost of
22 the arsenic treatment facilities⁷ was proposed to be funded via a short-term loan from Big Park; that
23 Staff believed Little Park should request that any short-term loan be approved by the Commission;
24 that Staff recommended approval of the LXA amendment and the termination of the AHUF tariff;
25 and that Staff recommended that Little Park seek Commission approval before entering into any

26 ⁵ In this Decision, the Commission amended Decision No. 70208 by eliminating two filing requirements unrelated to
the arsenic treatment facilities.

27 ⁶ Affidavit filed by Little Park on May 1, 2008, in Docket No. W-02192A-07-0326. Official notice is taken of the
affidavit.

28 ⁷ The balance was \$26,358 (\$227,658 less \$82,500 and \$118,800).

1 long- or short-term financing arrangements. The Commission approved the LXA amendment and the
 2 termination of the AHUFs and ordered Little Park to seek Commission approval before entering into
 3 any long- or short-term financing arrangements. In Decision No. 71190, the Commission granted
 4 Little Park the CC&N extension for which the Order Preliminary had been issued, after finding that
 5 Little Park had complied with the requirements of Decision No. 70208, as amended by Decision No.
 6 70612.

7 8. In Decision No. 71840 (August 10, 2010), the Commission granted Little Park a
 8 permanent rate increase, which was projected to increase Little Park's total operating revenue by
 9 \$17,215, or 26.61 percent, over its adjusted test year operating revenue of \$64,700.⁸

10 9. In Decision No. 72185 (February 11, 2011), the Commission ordered that Little Park's
 11 AHUF tariff be reinstated. The Commission found that Little Park would not be receiving any
 12 AHUF from the Camp due to the Camp's cancellation of its project in the area, that Little Park had
 13 financed the funding deficit for the arsenic treatment facilities by obtaining a loan from Big Park,⁹
 14 and that Little Park was in the process of obtaining a seven-year bridge loan from Chase.¹⁰ The
 15 Commission found that Little Park desired to reinstate the AHUF tariff to generate additional funds to
 16 repay the long-term debt Little Park anticipated receiving through the financing application under
 17 consideration in this docket.

18 **Procedural History**

19 10. On September 27, 2010, in this docket, Little Park filed with the Commission a
 20 financing application requesting approval to obtain up to \$140,000 in debt not previously approved
 21 by the Commission in the form of a new long-term loan from Chase ("Chase loan") to repay Big Park

22 ⁸ Little Park's rate application had been filed on November 18, 2009.

23 ⁹ The Decision did not speak to whether Little Park had requested or received Commission authority for this loan from
 Big Park.

24 ¹⁰ Little Park filed its application to reinstate its AHUF tariff on October 4, 2010, after having filed its financing
 application in this docket. In its application to reinstate its AHUF tariff, of which official notice is taken, Little Park
 25 stated:

26 Little Park expected to be able to fund construction of the Arsenic Treatment Facilities with the
 funds received from the Verde Valley School, the expected \$118,800 payment from Camp Soaring
 Eagle, and internally generated funds. Based on these expectations, Little Park obtained a bridge
 27 loan from its corporate parent, Big Park Water Company, which it expected to largely repay when
 it received the Camp Soaring Eagle payment.

28 (Little Park's Application to Reinstate Arsenic Hook-up Fee Tariff, filed in Docket No. W-02192A-10-0404 on October
 4, 2010.)

1 for a "bridge loan" used to construct arsenic treatment facilities for two of Little Park's wells. Little
2 Park stated that the arsenic treatment facilities for the wells were completed in March 2009 using
3 AHUFs and a bridge loan from Big Park, which Little Park expected to repay using the AHUF from
4 the Camp. Little Park stated that it has made diligent efforts to collect the AHUF from the Camp, but
5 has been and will be unable to collect the AHUF, as the Camp project has been canceled. Little Park
6 further explained that WIFA denied its application for a WIFA loan because WIFA does not approve
7 refinancing of loans for investor-owned water systems.

8 11. On October 8, 2010, Little Park filed an Affidavit of Publication showing that notice
9 of its financing application was published on October 6, 2010, in the *Sedona Red Rock News*, a
10 newspaper of general circulation published in Yavapai County.

11 12. On April 21, 2011, Staff filed a Staff Report recommending approval of Little Park's
12 financing application. The Staff Report did not discuss Little Park's prior commitment to fund any
13 shortfall through owner equity and did not discuss whether Little Park's obtaining the loan from Big
14 Park had been consistent with A.R.S. § 40-301 and prior Commission Decisions.

15 13. On May 2, 2011, Little Park filed a Response to the Staff Report, stating that it had no
16 comments or objections thereto.

17 14. On May 13, 2011, a Procedural Order was issued ("May Procedural Order") requiring
18 Little Park to file a document explaining, *inter alia*, why Little Park obtained a loan from Big Park
19 rather than having its owner provide paid-in capital to fund the shortfall for construction of the
20 arsenic treatment facilities and how, if at all, Little Park had received Commission approval for the
21 loan from Big Park or had otherwise complied with the requirement in Decision No. 71172 for Little
22 Park to seek approval from the Commission before entering into any long- or short-term financing
23 arrangements. The May Procedural Order further required Staff to file a response to Little Park's
24 filing and provided a deadline for Little Park to file any response to Staff's filing.

25 15. On June 10, 2011, Little Park filed a Verified Response to Procedural Order, in which
26 it responded to each of the issues raised in the May Procedural Order and asserted that the Chase loan
27 should be approved.

28 16. On July 8, 2011, Staff filed a Supplemental Staff Report in which Staff recommended

1 that the Chase loan be denied or, if the Commission desires to approve the financing, that the Chase
2 loan be approved and Little Park be put on notice that future violations of Commission rules,
3 requirements, or orders may result in substantial sanctions and/or fines.

4 17. On July 19, 2011, Little Park filed a Response to Revised Staff Report, reiterating that
5 the Chase loan "is desperately needed" and should be approved and characterizing Staff's position as
6 "needlessly punitive."

7 **The Proposed Financing**

8 18. Per Little Park's application herein, the Chase loan will result in a secured debt in the
9 amount of \$140,000, with a term of seven years, 20-year amortization, an interest rate between 4
10 percent and 7 percent, and a balloon payment at the end of the seventh year with the right to renew
11 the loan. Little Park has not specified what is to serve as security for the loan.

12 19. Little Park asserts that the purpose of the Chase loan is to refinance a "bridge loan"
13 received from Big Park, the funds from which were used to fund construction of the arsenic treatment
14 facilities for its system. Little Park began construction of the arsenic treatment facilities towards the
15 end of June 2008, shortly after receiving Approvals to Construct from ADEQ. At the time, Little
16 Park had received approximately \$81,582 in AHUFs and expected to receive a \$234,300 AHUF from
17 the Camp.

18 20. On August 18, 2008, in anticipation of receiving the AHUF from the Camp, Little
19 Park executed a Promissory Note for the loan from Big Park. In the Promissory Note, Little Park
20 promised to pay Big Park the principal sum of \$118,000, with 6-percent interest, with interest
21 payments to be made monthly beginning on October 1, 2008, and the entire outstanding principal
22 balance and all accrued and unpaid interest to be due and payable in full on or before September 16,
23 2009. The Promissory Note states that if there is a default in payment of any amount, such amount
24 shall bear interest at a rate of 10 percent.

25 21. Little Park asserts that the loan from Big Park did not require Commission approval
26 under A.R.S. § 40-301 because the term of the loan was for less than one year, and the loan would be
27 paid off in less than one year.

28 22. Little Park's arsenic treatment facilities were completed by January 2009 at a total cost

1 of \$264,559.44.¹¹

2 23. In March 2009, Little Park applied to the Commission to amend the LXA to reduce
3 the Camp's AHUF from \$234,300 to \$118,800, which Little Park stated was the amount necessary to
4 pay off the loan from Big Park, and to terminate the AHUF tariff. The Commission approved the
5 AHUF reduction and the termination of the AHUF tariff in Decision No. 71172 (June 20, 2009).

6 24. Little Park attempted to obtain payment of the Camp's reduced AHUF through direct
7 communication and then through an attorney, but has been unable to collect any funds from the
8 Camp. Little Park reports that the Camp has cancelled its project.

9 25. On September 27, 2010, Little Park's stockholders (Stevan and Mary Lynn Gudovic
10 on behalf of Big Park) adopted a resolution authorizing Little Park to borrow from Chase the
11 principal sum of \$140,000. According to Little Park, the amount of the Chase loan is greater than the
12 amount of the Big Park loan because it is intended to cover the \$118,000 loan from Big Park plus a
13 \$27,000 shortfall. It is unclear what source provided the funding to cover this "shortfall" during
14 construction of the arsenic treatment facilities (and since that time) and, in addition, why Little Park's
15 application herein does not request authority for a Chase loan for the total amount of \$145,000.

16 26. Little Park asserted in its application that it will fund a total of \$41,237.69 of the
17 arsenic treatment facility costs with owner's equity, which amount was asserted to be the balance
18 after deducting the total AHUFs and the \$140,000 to be covered by the Chase loan.¹² Little Park
19 asserts that it has no additional funds available and that failure to refinance the Big Park loan would
20 result in Big Park's soon needing to obtain additional financing approval. Little Park asserts that the
21 Chase loan financing is desperately needed because Little Park cannot repay the loan from Big Park
22 without the Chase loan.

23 27. Several documents provided by Little Park in its Response to the May Procedural
24 Order appear to indicate that Little Park has already obtained a loan from Chase and that the loan
25 from Chase was obtained in 2009. Specifically, in an e-mail sent by Mr. Gudovic to an attorney for
26

27 ¹¹ Little Park originally asserted in its application herein that the total cost was \$267,091.11. It appears that the slight
28 reduction in costs results from elimination of \$2,531.67 for "Capitalize[d] LOC Interest." It is unclear to what "LOC"
Little Park refers.

¹² With the current figures provided by Little Park, that balance is now \$32,105.96.

1 the Camp on October 22, 2009, in which Mr. Gudovic proposed that the Camp make interest-only
2 payments each month until the Camp was ready to install the water main line, Mr. Gudovic stated:
3 “We borrowed money from Chase Bank to finish installation of the arsenic treatment facility. As of
4 July 30, 2009 our loan amount with Chase Bank was \$117,642 with an interest rate of 4.9%.” (Little
5 Park’s Verified Response to Procedural Order, June 10, 2011, at Ex. B.) In the same e-mail, Mr.
6 Gudovic further stated: “From this point forward, we will bill you on a monthly basis the same
7 amount which we pay to Chase Bank as interest on the principal.” (*Id.*) Little Park also included a
8 December 10, 2009, letter sent by Little Park to the Camp Soaring Eagle Foundation in which Little
9 Park requested payment of the full \$118,800 due under the LXA, “without the interest payment
10 which we are incurring since September 2009.” (*Id.*) Little Park also included a January 14, 2010,
11 Invoice sent by Little Park to the Camp Soaring Eagle Foundation in which Little Park showed a total
12 amount due of \$120,745.35, which included \$1,945.35 in “[i]nterest from August 1, 2009 to
13 December 31, 2009” and the following explanation of the interest: “Little Park Water Company is
14 paying the interest on a monthly basis to our lender (Chase Bank).” (*Id.*) Finally, Little Park
15 provided a January 25, 2010, letter to its own attorney¹³ in which it explained the history of the LXA
16 situation with the Camp and stated: “We did collect the Arsenic Hook-up Fee from Verde Valley
17 School in the amount of \$68,000 and the balance we financed with equity and borrowed money from
18 the local bank with the understanding that Camp Soaring Eagle would fulfill their obligation as
19 dictated by the ACC.” (*Id.*) It is unclear what loan from Chase Mr. Gudovic was referencing in this
20 e-mail, as Little Park has not revealed that it obtained a loan from Chase before or during this period
21 and has instead asserted that it is currently seeking approval to refinance the Big Park loan
22 represented by the Promissory Note.

23 **Staff Analysis and Recommendations**

24 28. Staff calculated pro forma operating income of \$12,944, based on the operating
25 income authorized in Decision No. 71840 and the increased operating expenses caused by operation
26 of the arsenic treatment facilities. We find that this calculation of operating income is reasonable,
27

28 ¹³ Little Park apparently retained an attorney from Gallagher & Kennedy to pursue collection of the AHUF from the Camp.

1 and we adopt it. Using this operating income and assuming issuance of the Chase loan for \$140,000
 2 with 20-year amortization and a 7.0 percent interest rate, Staff calculated a pro forma debt service
 3 coverage ratio (“DSC”)¹⁴ of 3.59. Staff stated that a lower interest rate would result in a higher DSC.
 4 We adopt Staff’s DSC calculation and find that Little Park’s DSC (3.59 or higher) indicates that Little
 5 Park would generate sufficient cash flow from operations to meet all of its obligations, including the
 6 debt service on the requested Chase loan.

7 29. Staff calculated Little Park’s pro forma capital structure, with issuance of a \$140,000
 8 loan at 7.0 percent interest and 20-year amortization, to be the following: 1.6 percent short-term debt,
 9 65.0 percent long-term debt, and 33.4 percent equity. When Advances in Aid of Construction
 10 (“AIAC”) and Contributions in Aid of Construction (“CIAC”) are considered, Staff calculated Little
 11 Park’s pro forma capital structure to be the following: 0.3 percent short-term debt, 13.5 percent long-
 12 term debt, 6.9 percent equity, 66.2 percent AIAC, and 13.1 percent CIAC. We adopt Staff’s
 13 calculations.

14 30. In the initial Staff Report, Staff stated the following regarding Little Park’s capital
 15 structure:

16 Staff considers an investor-owned utility, with a capital structure
 17 composed of less than 40 percent equity, to be excessively leveraged, a
 18 state inconsistent with sound financial principals. Among other concerns,
 19 an excessively-leveraged capital structure restricts a utility’s ability to
 20 obtain additional debt financing, places upward pressure on rates and may
 result in less favorable terms for future financing. However, Little Park
 has limited financial alternatives to borrowing to obtain funding for
 necessary capital improvements, and provision of adequate service should
 take priority over the anticipated leverage concerns in this instance.

21 (April 21, 2011, Staff Report at 3.) In spite of Staff’s expressed concerns, Staff also concluded that
 22 “the financing requested in the application is within Little Park’s corporate powers, is compatible
 23 with the public interest, is consistent with sound financial practices and would not impair its ability to
 24 provide services” and that it should be approved. (*Id.*)

25 31. In the Supplemental Staff Report, Staff provided the following analysis, conclusions,
 26

27 ¹⁴ DSC represents the number of times internally generated cash will cover required principal and interest payments on
 28 short-term and long-term debt. A DSC greater than 1.0 indicates that cash flow from operations is sufficient to cover debt
 obligations. A DSC less than 1.0 means that debt service obligations cannot be met by cash generated from operations
 and that another source of funds is needed to avoid default.

1 and recommendations:

2 Staff analyzed the Company's June 10, 2011, filing and
3 concludes/recommends:

- 4 • That the Company's filing addresses each of the issues required by the
5 Procedural Order. In summary, on August 18, 2008, Little Park issued
6 a promissory note to its sole owner Big Park in the amount of
7 \$118,000 at a 6.00 percent annual interest rate payable monthly with
8 the entire balance due on or before September 16, 2009.
- 9 • The Company claims that since the expected term of the loan was less
10 than one year, A.R.S. § 40-301 did not require Commission approval
11 of the loan. Further, the Company asserts that since the loan pre-dated
12 Decision No. 71172, the approvals specified in that Decision were not
13 required. The Company also explained that the owner's commitment
14 to provide paid-in-capital to fund any shortfall for the construction of
15 the arsenic treatment facilities was made in the context of a
16 preliminary construction cost estimate of \$200,000 and anticipated
17 Arsenic Hook-up Fees of \$336,000. The Company's updated
18 information reports the total construction cost at \$264,559 and Arsenic
19 Hook-up Fee collections of \$92,453. According to the Company, Mr.
20 Gudovic provided \$26,358 of additional paid-in-capital, and he has no
21 more funds available.
- 22 • That, although Little Park correctly identifies that the promissory note
23 issued to Big Park on August 18, 2008, pre-dates Decision No. 71172,
24 dated June 30, 2009, and therefore, the approvals specified in that
25 Decision were not required, Little Park is not in compliance with
26 A.R.S. § 40-301 with respect to the promissory note issued to Big
27 Park. A.R.S. § 40-301(B) states, "A public service corporation may
28 issue stocks and stock certificates, bonds, notes and other evidences of
indebtedness payable at periods of more than twelve months after the
date thereof, only when authorized by an order of the commission." Little
Park did not file its request for authorization to refinance the promissory
note until September 27, 2010, more than two years subsequent to its
issuance and more than a year subsequent to its conversion from short-term
to long-term debt.
- That the Company's explanation for not using paid-in-capital to fund
the shortfall in hook-up fee collections for the arsenic treatment
facilities is unsatisfactory. The Company's owner was remiss by not
disclosing any necessary qualifications to his declaration that he was
financially able to, and would, fund any shortfall with paid-in-capital.
The absence in the owner's affidavit of any applicable qualifying
conditions resulted in a communication that could be misconstrued and
misrepresented the facts.
- That the Company's disclosure that no additional funds are available
for infusion by its owner means that current debt issuance should be
limited in recognition that debt is likely to be the only source for
funding future capital improvements. A proforma capital structure that
recognizes the proposed debt reflects a high degree of leverage, as
shown in Schedule GTM-1 of the Staff Report.
- That the Chase loan is not necessary since Little Park has already
found a source of funds for and constructed the arsenic treatment
facilities.

- 1 • That since the arsenic treatment plant has been funded and constructed
2 and the Chase loan would result in a highly-leveraged capital structure,
3 granting the request for authorization of the Chase loan is not the
4 optimal alternative.
- 5 • That the \$118,000 proceeds received by Little Park from its parent Big
6 Park should be recognized as Other Paid-in-Capital.
- 7 • That the request for authorization to incur \$140,000 of long-term debt
8 from Chase to refinance a short-term bridge loan from its affiliate Big
9 Park should be denied.

10 However, if the Commission wishes to approve this financing Staff
11 recommends:¹⁵

- 12 • Authorizing the Company to obtain a 7-year loan based on a 20-year
13 amortization schedule in an amount not to exceed \$140,000 to
14 refinance the existing outstanding balance and any previously-repaid
15 portions of the bridge loan from Big Park.
- 16 • Authorizing the Company to engage in any transaction and to execute
17 any documents necessary to effectuate the authorizations granted.
- 18 • Requiring the Company to file with Docket Control, as a compliance
19 item in this case, within 60 days of the execution of any transaction
20 authorized herein, copies of the loan agreement.
- 21 • Requiring that any authorization to incur long-term debt that is granted
22 in this proceeding and that remains unused at December 31, 2011,
23 shall terminate on that date.
- 24 • That the Company be put on notice that any future violations of
25 Commission rules, requirements, or orders may result in substantial
26 sanctions and/or fines.

27 (July 8, 2011, Supplemental Staff Report at 2-3.)

28 32. In its Response to the Supplemental Staff Report, Little Park asserts that it has an
outstanding record of customer service and delivers water that satisfies every public health standard,
that it fulfilled its obligation to comply with the federal arsenic standards promptly and cost
effectively, that it is not requesting an arsenic cost recovery mechanism to fund the arsenic treatment
facilities and has even contributed \$26,358 in additional paid-in capital, that there was no violation of
A.R.S. § 40-301 because Little Park expected for the Big Park loan to be a short-term loan that would
be paid off in less than one year, that a short-term loan cannot be converted to a long-term loan by
passage of time such that approval under A.R.S. § 40-301 is required, that Little Park immediately
applied for authority to obtain the Chase loan for \$140,000 when it became certain that the Camp
would not pay the AHUF, that most public service corporations carry short-term debt balances from

¹⁵ With the exception of the final bulleted item, these recommendations for approval are the same as those made in the initial Staff Report.

1 lines of credit and other financing instruments throughout the year and should not be required to
2 apply for approval annually to carry that debt for another year, that Mr. Gudovic was not remiss in
3 any way in making his affidavit under the circumstances at the time, that Staff originally had no
4 objection to Little Park's leveraged capital structure, that Big Park cannot afford to permanently
5 contribute \$140,000 to Little Park as paid-in capital and would be forced to come to the Commission
6 for authority to borrow funds to replace those it expected to receive back from Little Park, that Staff
7 has not suggested an optimal alternative to replace Little Park's requested financing approval, and
8 that the requested financing should be approved.

9 **Discussion and Resolution**

10 33. Little Park's efforts have resulted in the construction and operation of arsenic
11 treatment facilities that have brought its system's water into compliance with the MCL for arsenic,
12 and that has benefited and will continue to benefit Little Park's customers and anyone else consuming
13 water from its system. Little Park has characterized itself as praise-worthy for making that happen
14 when it did and seems to argue that its failure to obtain authorization for the Big Park loan should be
15 disregarded in light of the accomplishment. While the value of the arsenic treatment facilities to
16 Little Park's customers should not be minimized, and we acknowledge that some small water
17 companies continue to struggle with arsenic MCL compliance to this date, we also remind Little Park
18 that Decision No. 70208 required Little Park to construct and install the arsenic treatment facilities
19 for two wells, rather than for one well as Little Park intended, and further required Little Park to do so
20 by June 30, 2009, rather than by whatever date ADEQ allowed in any arsenic MCL compliance
21 deadline extension as Little Park intended. Thus, while we acknowledge and appreciate Little Park's
22 accomplishment of arsenic MCL compliance for its system, we are aware that the Commission helped
23 prompt Little Park toward that accomplishment and believe that the accomplishment should not be
24 used to shield any questionable behavior.

25 34. The evidence establishes that Little Park obtained a loan for \$118,000 from Big Park
26 in August 2008, which loan was by the terms of the Promissory Note due to be paid in full by mid-
27 September 2009, with the first payment due in October 2008. Little Park asserts that it intended to
28 pay off the Big Park loan much sooner, which we do not doubt, and that the loan thus was not a long-

1 term loan that required approval under A.R.S. § 40-301. A.R.S. § 40-301(B) states: “A public
2 service corporation may issue stocks and stock certificates, bonds, notes and other evidences of
3 indebtedness payable at periods of more than twelve months after the date thereof, only when
4 authorized by an order of the commission.” While one could perhaps argue that the October 1, 2008,
5 due date for the first payment under the Promissory Note makes the “payable” term of the Promissory
6 Note run from only October 2008 to September 2009, which is 11 months, we interpret A.R.S. § 40-
7 301(B) to require Commission approval for the issuance of evidence of indebtedness that has a
8 deadline for full payment that is more than 12 months after the date of issuance (*i.e.*, evidence of
9 indebtedness that by its own terms creates an outstanding debt obligation that will exist for more than
10 12 months if full payment of the debt is not completed until the ultimate deadline allowed). The
11 statute does not speak to the intent of the debtor or to the effect of early pay-off of a debt, and we find
12 that the intent of the debtor and the occurrence of an early pay-off of a debt are not relevant in
13 determining whether a debt requires Commission approval under A.R.S. § 40-301. We instead find
14 that it is the express terms of the instrument creating the indebtedness that govern whether a debt is a
15 long-term debt that requires Commission approval under A.R.S. § 40-301 or a short-term debt that
16 does not. We also find that the period from August 2008 to September 2009 is 13 months long and
17 that Little Park thus obtained a long-term loan from Big Park that necessitated Commission approval
18 under A.R.S. § 40-301, regardless of whether Little Park was required to make payments on the debt
19 for only 11 months or intended to pay the debt in full much sooner.

20 35. Little Park argues that Mr. Gudovic was not remiss when he did not cover the shortfall
21 in funding of the arsenic treatment facilities with paid-in capital, although Mr. Gudovic had
22 committed to do so in his April 2008 affidavit, because of the changed circumstances resulting from
23 the unavailability of the AHUF to be paid by the Camp. While we do not intend to pursue any
24 adverse action against Little Park as a result of Mr. Gudovic’s failure to provide paid-in capital to
25 fund the shortfall, we do find it necessary to remind Mr. Gudovic that such commitments should not
26 be made lightly. We remind Little Park that as a public service corporation, it should make the
27 Commission aware whenever Little Park determines that it has provided erroneous or misleading
28 information to the Commission, for whatever reason, particularly when that information was provided

1 as a compliance item pursuant to a Commission decision.

2 36. We are concerned that in its filings in this case, Little Park may not have provided the
3 Commission with full and accurate information regarding the current state of its long-term debt.
4 Although Little Park asserts that it desires approval of the Chase loan so that it can use the proceeds
5 from the Chase loan to pay off the Big Park loan, Little Park has also inexplicably provided the
6 Commission with evidence that Little Park already has a loan from Chase for approximately
7 \$118,000. While it is possible that Little Park mischaracterized the Big Park loan as a loan from
8 Chase when communicating with the Camp and its representatives, perhaps because Little Park
9 thought that the existence of a bank loan would be more compelling to the Camp than would be the
10 existence of a loan from Big Park, that would not explain why Little Park would have
11 mischaracterized the Big Park loan when communicating with its own attorney. We find it far more
12 likely that Little Park referred to a loan from Chase because Little Park had obtained a loan from
13 Chase, which suggests that the refinancing of the Big Park loan may have already occurred. We are
14 troubled by the evidence suggesting an existing loan from Chase and will require Little Park to
15 explain it, in a sworn affidavit filed as a compliance item in this docket, which shall be accompanied
16 by any attachments necessary to fully understand the facts. We will also require Staff to review the
17 sworn affidavit; to make any follow-up inquiries necessary to determine definitively whether such a
18 loan from Chase was obtained and, if so, the facts surrounding the loan and whether Little Park had
19 authority to obtain such a loan; and to file a Staff Report including Staff's findings and
20 recommendations concerning whether additional proceedings should be held to explore what has
21 occurred and to explore the possibility of taking adverse action against Little Park if Little Park has
22 already obtained a loan from Chase without Commission approval.

23 37. Staff's primary recommendation is that Little Park's application be denied. In support
24 of this, Staff reasons (1) that debt issuance should be limited as Little Park's owner has stated that no
25 additional funds are available for equity infusion, (2) that the Chase loan is not necessary because
26 Little Park has already found a source of funds for and constructed the arsenic treatment facilities, (3)
27 that the Chase loan would result in a highly leveraged capital structure, and (4) that the \$118,000
28 provided to Little Park by Big Park without Commission authorization should be recognized as paid-

1 IT IS FURTHER ORDERED that Little Park Water Company, Inc. shall, within 60 days of
2 the execution of any financing transaction authorized herein, file with Docket Control, as a
3 compliance item in this docket, copies of all executed financing documents related to the
4 authorizations granted herein.

5 IT IS FURTHER ORDERED that any unused authorization to incur long-term debt that is
6 granted in this proceeding and that remains unused at December 31, 2011, shall terminate on that
7 date.

8 IT IS FURTHER ORDERED that Little Park Water Company, Inc. is hereby put on notice
9 that any future violation of Commission rules, requirements, or orders may result in substantial
10 sanctions and/or fines.

11 IT IS FURTHER ORDERED that Little Park Water Company, Inc. shall file the following
12 documents with Docket Control, as compliance items in this matter, by the following deadlines:

13 i. By November 30, 2011, a sworn affidavit, with any attachments necessary for a full
14 understanding, explaining each reference to a loan from Chase Bank or any bank (and the interest
15 thereon) described in Findings of Fact No. 27; and

16 ii. By January 6, 2012, a document describing in detail the actions necessary for Little
17 Park Water Company, Inc. and Big Park Water Company, Inc. to merge into and operate as one
18 public service corporation and, further, analyzing the positives and negatives of combining Little Park
19 Water Company, Inc. and Big Park Water Company, Inc. into one public service corporation.

20 IT IS FURTHER ORDERED that the Commission's Utilities Division shall review the sworn
21 affidavit and any attachments filed by Little Park Water Company, Inc. as required by the
22 immediately preceding ordering paragraph; make any follow-up inquiries necessary to determine
23 definitively whether a loan from Chase Bank had already been obtained by Little Park Water
24 Company, Inc. prior to this Decision and, if so, the facts surrounding the loan and whether Little Park
25 Water Company, Inc. had authority to obtain such a loan; and file, by January 30, 2012, a Staff
26 Report including Staff's findings and Staff's recommendations concerning whether additional
27 proceedings should be held to explore what has occurred and to explore the possibility of taking
28 adverse action against Little Park Water Company, Inc. if Little Park Water Company, Inc. has

1 already obtained a loan from Chase Bank prior to this Decision without Commission approval.

2 IT IS FURTHER ORDERED that the Commission's Utilities Division shall review and
3 analyze the filing made by Little Park Water Company, Inc. concerning the actions necessary for
4 Little Park Water Company, Inc. and Big Park Water Company, Inc. to merge into and operate as one
5 public service corporation and shall, by March 6, 2012, file a Staff Report including Staff's findings
6 and recommendations concerning whether Little Park Water Company, Inc. and Big Park Water
7 Company, Inc. should be combined into one public service corporation and what actions would be
8 necessary to make that happen.

9 ...

10 ...

11 ...

12 ...

13 ...

14 ...

15 ...

16 ...

17 ...

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25

26

27

28

1 IT IS FURTHER ORDERED that approval of the financing set forth herein does not
2 constitute or imply approval or disapproval by the Commission of any particular expenditure of the
3 proceeds derived thereby for purposes of establishing just and reasonable rates.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

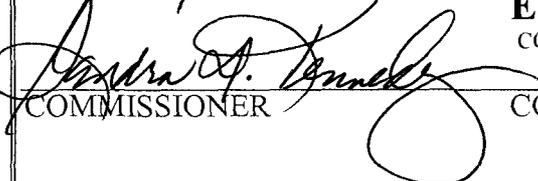
6
7 

8 CHAIRMAN



COMMISSIONER

EXCUSED
COMM. NEWMAN

9 

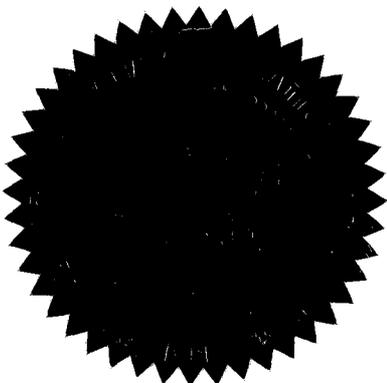
10 COMMISSIONER

COMMISSIONER



COMMISSIONER

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





ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

18
19 DISSENT _____

20
21 DISSENT _____

22
23
24
25
26
27
28

1 SERVICE LIST FOR: LITTLE PARK WATER COMPANY, INC.

2
3 DOCKET NO.: W-02192A-10-0395

4 Craig A. Marks
5 CRAIG A. MARKS, PLC
6 10645 North Tatum Boulevard, Suite 200-676
7 Phoenix, AZ 85028
8 Attorney for Little Park Water Company, Inc.

9 Stevan Gudovic, President
10 LITTLE PARK WATER COMPANY, INC.
11 45 Castle Rock Road, Suite 4
12 Sedona, AZ 86351

13 Janice Alward, Chief Counsel
14 Legal Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, AZ 85007

18 Steve Olea, Director
19 Utilities Division
20 ARIZONA CORPORATION COMMISSION
21 1200 West Washington Street
22 Phoenix, AZ 85007

23
24
25
26
27
28