

**ORIGINAL**

**COMMISSIONERS**  
BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH



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**ARIZONA CORPORATION COMMISSION**

REC  
AZ CORP COM  
DOCKET CONTROL

**OPEN MEETING ITEM**

DATE: FEBRUARY 21, 2013

DOCKET NO.: S-20790A-11-0104

2013 FEB 21 80 9 45

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

**DAVID SHOREY AND MARY JANE SHOREY AND  
WESTCAP ENERGY, INC.  
(NOTICE OF OPPORTUNITY)**

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:

MARCH 4, 2013

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:

MARCH 12, 2013 AND MARCH 13, 2013

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.

Arizona Corporation Commission

**DOCKETED**

FEB 21 2013

DOCKETED BY *JM*

*Jodi A. Jerich*  
JODI JERICH  
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail [SABernal@azcc.gov](mailto:SABernal@azcc.gov).

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 BOB STUMP - Chairman  
4 GARY PIERCE  
5 BRENDA BURNS  
6 BOB BURNS  
7 SUSAN BITTER SMITH

8 IN THE MATTER OF:

9 DAVID SHOREY AND MARY JANE SHOREY,  
10 husband and wife,

11 WESTCAP ENERGY, INC., an Arizona  
12 corporation, dba Westcap Solar,

13 **RESPONDENTS.**

DOCKET NO. S-20790A-11-0104

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

14 DATES OF PRE-HEARING  
15 CONFERENCES:

May 5, July 28, and October 25, 2011

16 DATES OF HEARING:

January 23 and 24, 2012

17 PLACE OF HEARING:

Phoenix, Arizona

18 ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

19 APPEARANCES:

Mr. Bruce R. Heurlin, HEURLIN SHERLOCK  
PANAH, on behalf of Mr. and Mrs. David Shorey and  
Westcap Energy, Inc.; and

Mr. Phong (Paul) Huynh, Staff Attorney, on behalf of  
the Securities Division of the Arizona Corporation  
Commission.

20 **BY THE COMMISSION:**

21 On March 8, 2011, the Securities Division ("Division") of the Arizona Corporation  
22 Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against David  
23 Shorey and Mary Jane Shorey, husband and wife, and Westcap Energy, Inc., an Arizona corporation  
24 dba Westcap Solar (collectively "Respondents") ("WEI"), in which the Division alleged multiple  
25 violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in  
26 the form of stock. The spouse ("Respondent Spouse") of Respondent David Shorey was joined in the  
27 action pursuant to A.R.S. § 44-2031(C) solely for the purpose of determining the liability of the  
28

1 marital community.

2 On March 11, 2011, the Division filed an amended Notice.

3 The Respondents were duly served with copies of the amended Notice.

4 On March 25, 2011, a request for hearing was filed on behalf of David and Mary Jane Shorey  
5 and WEI.

6 On April 7, 2011, by Procedural Order, a pre-hearing conference was scheduled on May 5, 2011.

7 On May 5, 2011, at the pre-hearing conference, the Division and Respondents appeared  
8 through counsel. The parties were discussing a possible resolution of the issues raised by the Notice,  
9 but in the interim agreed to a status conference being scheduled in approximately 60 days.

10 On May 13, 2011, a status conference was scheduled on July 28, 2011.

11 On July 28, 2011, at the status conference, the Division appeared with counsel and counsel for  
12 the Respondents appeared telephonically. Although the parties were continuing to discuss a  
13 resolution of the proceeding, the Division requested that a hearing be scheduled in approximately 120  
14 days in the event a Consent Order was not approved by the Commission.

15 On August 3, 2011, by Procedural Order, a hearing was scheduled to commence on December  
16 5, 2011.

17 On October 19, 2011, Respondents filed a Motion to Accelerate the hearing due to the  
18 subsequent scheduling of matters in federal court in California.

19 On October 20, 2011, the Division filed its response which raised conflicts with Respondents'  
20 proposed schedule.

21 On October 25, 2011, during a teleconference with counsel for the Division and the  
22 Respondents, the parties agreed that the proceeding should be continued to avoid potential conflicts.  
23 Subsequently, the hearing was continued to January 23, 2012.

24 On January 23, 2012, a full public hearing was commenced before a duly authorized  
25 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division and  
26 Respondents appeared with counsel. During the course of the proceeding, Respondents' Exhibit RS-  
27 10, signature pages for 8% Series A-Convertible Preferred Stock Secured Agreement, was admitted  
28 into evidence. However, other investors' signature pages which were not provided with Exhibit RS-

1 10 were to be submitted as a late-filed exhibit, and captioned as Exhibit RS-11 either by stipulation of  
2 counsel or by subsequent Procedural Order.

3 On February 21, 2012, Respondents filed "Motion to Admit RS-11" stating that the  
4 Division's counsel had not signed the stipulation.

5 On February 22, 2012, the Division filed a response to the Respondent's Motion to Admit  
6 RS-11, and objected to its admission. The Division requested, at a minimum, an affidavit by the  
7 person who gathered the documents confirming that each document submitted by Respondents was  
8 received by mail, email and/or fax by Respondents in response to the WEI preferred stock offering.

9 On February 27, 2012, Respondents filed a reply to the Division's response.

10 On March 14, 2012, the Respondents filed their closing brief.

11 On March 16, 2012, the Division filed its closing brief.

12 On March 22, 2012, by Procedural Order, Exhibit RS-11 was admitted into evidence subject  
13 to Respondents filing by April 16, 2012, an affidavit which conforms to the minimal requirements as  
14 set forth in the Division's response filed on February 22, 2012.

15 On March 30, 2012, Respondents filed a declaration with respect to Exhibit RS-11.

16 \* \* \* \* \*

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

19 **FINDINGS OF FACT**

20 1. David Shorey is an individual who, at all relevant times herein, was a resident of  
21 Arizona and was married to Mary Jane Shorey. (Ex. S-54: EUO 8: 16-23)

22 2. WEI was an Arizona corporation with its principal place of business in Tucson,  
23 Arizona. (Ex. S-11)

24 3. At all relevant times herein, David Shorey was a director of and chief executive officer  
25 of WEI.

26 4. In support of the allegations raised in the Notice with respect to Respondents'  
27 alleged violations of the Act with the sale of WEI preferred stock, the Division called two  
28 witnesses. Mr. Michael Brokaw, a special investigator with the Division, testified concerning the

1 facts revealed by his investigation. Ms. Denise Fritz, a forensic accountant with the Division,  
2 testified regarding her analysis of the financial activities of WEI and Mr. Shorey, which resulted in  
3 a report describing the receipts and disbursements from WEI's Wells Fargo account from January  
4 25 through August 31, 2010. (Ex. S-56) (Tr. 152-153: 1-9)

5 5. According to Mr. Brokaw's investigation of the sale of preferred stock by WEI, its  
6 promotional materials state that it is a licensed sales and installation company with experienced  
7 installers, engineers and electricians to install solar hot water systems for residential, commercial and  
8 industrial customers, and to determine the proper financing and tax incentive information. (Tr. 31: 5-  
9 15)

10 6. Mr. Brokaw testified that another entity, Westcap Solar ("Solar") is a trade name  
11 owned by WEI. (Ex. S-5) (Tr. 31-32: 19-15)

12 7. Based on Commission records for the period March 2, 2010 to October 28, 2011, Mr.  
13 Brokaw indicated that Mr. Shorey was not registered with the Commission as a securities salesman  
14 or dealer and was not licensed as an investment advisor or an investment advisor representative  
15 pursuant to the Investment Management Act ("IM Act"). (Ex. S-55) (Tr. 33-34: 15-1)

16 8. Mr. Brokaw testified that from March 2, 2010 to October 28, 2011, neither WEI nor  
17 Solar had filed with the Commission the necessary documentation required by the Act or the IM Act.  
18 Additionally, the shares of stock sold by Respondents had not been registered as securities pursuant  
19 to the Act. Further, WEI had not registered with the Commission as either a dealer pursuant to the  
20 Act or as an investment advisor pursuant to the IM Act. (Ex. S-55) (Tr. 34: 10-24)

21 9. Additionally, Mr. Brokaw stated that neither WEI nor Solar had become registered under  
22 any of the relevant sections of law between October 28, 2011, and January 23, 2012. (Tr. 35: 1-5)

23 10. Mr. Brokaw also testified about two other companies involved in his investigation,  
24 Litchfield Enterprises, Inc. ("Litchfield") and Intuition Capital Corporation ("Intuition"). He stated  
25 that from 2009 to the present date, neither entity was registered as either a securities dealer or  
26 salesman within the State of Arizona.<sup>1</sup> (Tr. 35-36: 6-2)

27 \_\_\_\_\_  
28 <sup>1</sup> These companies were subsequently identified as the organizations that were actively involved in the sale of WEI's  
stock to investors.

1           11. Mr. Brokaw testified that during the course of his investigation he reviewed the  
2 records of both the Federal Securities and Exchange Commission and those of the Commission with  
3 respect to any notice filings of WEI's offering. Mr. Brokaw stated that he found no filings with  
4 either agency. (Tr. 36: 12-23)

5           12. Mr. Brokaw testified that he had received a document dated August 31, 2010, from  
6 Mr. Shorey that is captioned "All Investor Contact List." (Ex. S-6) (Tr. 37: 2-7)

7           13. According to Mr. Brokaw, the document contains a page captioned "WEI, List of Funds  
8 Raised Litchfield Enterprises" regarding funds raised and shows the name, date, amount of deposits and  
9 the amount of expenses paid by a list of people who invested in WEI. (Tr. 38: 1-21)

10           14. Based on WEI's records, Mr. Brokaw stated that the funds list reflected a period of  
11 time from March 2, 2010 to August 31, 2010. (Tr. 38-39: 22-2)

12           15. Mr. Brokaw further testified that WEI's funds list reflected \$388,570 from investors  
13 deposited in its bank account and \$281,714 in total expenses paid. (Tr. 39: 3-12)

14           16. According to Mr. Brokaw, the Division began its investigation of WEI and Mr. Shorey  
15 after receiving an email from Mr. Ravinder Randhawa. (Tr. 182: 4-11)

16           17. Mr. Brokaw further testified concerning e-mails between himself and Mr. Randhawa,  
17 which appeared as part of Exhibit S-1. Mr. Brokaw described an e-mail from Mr. Shorey to Mr.  
18 Randhawa thanking him for his interest in WEI and promoting an investment in the company's  
19 preferred stock. (Tr. 53: 1-14)

20           18. Mr. Brokaw further testified that he received copies of WEI's 8% Series A  
21 Convertible Preferred Stock Subscription Agreement from Mr. Randhawa (Tr. 54-55: 21-2) as well as  
22 an accompanying cover letter dated July 1, 2010, about the offering that was addressed to Mr.  
23 Randhawa. The letter was from Mr. Shorey as Chairman and CEO of WEI. (Tr. 55: 3-8)

24           19. The WEI cover letter spelled out the fact that an investor was promised an 8 percent  
25 return for a year, after which each share of preferred stock could be converted to ten shares of  
26 common stock when the company became publicly traded. (Tr. 55: 10-21)

27           20. Mr. Brokaw further testified that, according to the terms of the attached Subscription  
28 Agreement sent to Mr. Randhawa, the price per share of WEI preferred stock was \$5. (Tr. 56: 10-16)

1 21. A portion of the Subscription Agreement sent to Mr. Randhawa stated that “this  
2 agreement shall be enforced, governed, and construed in accordance with the laws of the State of  
3 Arizona,” and was read into the record by Mr. Brokaw during the proceeding. (Tr. 57: 1-3)

4 22. Mr. Brokaw stated further that the wire transfer instructions appearing at the end of the  
5 Subscription Agreement stated WEI’s bank as Wells Fargo on Sunrise Drive in Tucson.<sup>2</sup> (Tr. 57: 6-10)

6 23. The Subscription Agreement also contained instructions for an investor to scan and  
7 e-mail the document to “[dshorey@westcapenergy.com](mailto:dshorey@westcapenergy.com).” (Ex. S-1)

8 24. According to WEI’s Private Placement Memorandum (“PPM”), it states that the  
9 company reserved the right to pay commissions to registered brokers or dealers registered with the  
10 National Association of Securities Dealers (“NASD”) in connection with the sale of shares, in which  
11 case the proceeds to the company will be reduced. The document also states that the company may  
12 also pay finder’s fees for introductions to persons or entities that purchase preferred stock in the  
13 offering and states further that these fees would be within the range of amounts normally paid in  
14 similar situations and in which case the proceeds to the company will be reduced. (Ex. S-1)

15 25. Mr. Brokaw further testified that with reference to Litchfield and Intuition, neither  
16 was registered with the NASD or Financial Industry Regulatory Authority (“FINRA”) as a  
17 registered dealer or broker. Additionally, Mr. Brokaw testified that an individual name Daniel  
18 Thomas Kerrigan<sup>3</sup> was not registered with either the NASD or FINRA as a registered dealer or  
19 salesman. (Tr. 59: 9-23)

20 26. Mr. Brokaw further testified that there was no reference in the PPM to Litchfield,  
21 Intuition or Mr. Kerrigan. (Tr. 60: 18-24)

22 27. Mr. Brokaw testified about an e-mail dated July 29, 2010, that he had received from  
23 Mr. Randhawa that describes how he was contacted by means of a “cold call” from a lady with  
24 Intuition and that another individual told him about WEI and the returns that he could expect if he  
25 decided to invest. Afterwards, an e-mail was sent to Mr. Randhawa by Mr. Shorey with all the  
26 paperwork and the full details for a wire transfer to Mr. Shorey’s bank account for WEI. (Tr. 62-64:

27 \_\_\_\_\_  
28 <sup>2</sup> The account name for this account was that of WEI and reflected Mr. Shorey as the CEO.

<sup>3</sup> Mr. Kerrigan was subsequently identified as Intuition’s owner.

1 10-17)

2 28. Mr. Brokaw testified that the Division sent out letters to WEI investors. On December  
3 16, 2010, Mr. Brokaw received a telephone call from an investor by the name of Roy Connel who  
4 resided in the United Kingdom. (Tr. 40-41: 20-6) (Tr. 118:10-23)

5 29. Mr. Brokaw referred to Exhibit S-7 and in a document Bates stamped ACC000475  
6 identified a letter sent by Mr. Shorey as the Chairman/CEO of WEI dated August 6, 2010, to Mr.  
7 Connel in Lancashire, United Kingdom. The letter welcomed Mr. Connel and thanked him for his  
8 investment in WEI in the private placement 8% Series A Convertible Preferred Stock and stated that  
9 he was "getting in on the ground floor of the business expansion." (Tr. 43: 12-23)

10 30. Mr. Brokaw testified that the following page of the letter to Mr. Connel was titled "8%  
11 Series A Convertible Preferred Stock Subscription Agreement" and showed Mr. Roy Connel as the  
12 buyer. (Tr. 44: 2-6)

13 31. According to Mr. Brokaw, the purchase price represented in the Subscription  
14 Agreement was \$5 per share and Mr. Connel purchased 2,000 shares, for a total cost of \$10,000 on  
15 August 13, 2010. (Tr. 44: 7-15)

16 32. Mr. Brokaw read into the record the return promised in the Subscription Agreement of  
17 8 percent per annum<sup>4</sup> and that each preferred share was convertible into 10 shares of the Company's  
18 common stock for a period of 12 months from the purchase date. (Tr. 44: 16-25)

19 33. According to Mr. Brokaw, Mr. Connel believed that his invested funds would be used  
20 for the manufacturing and promotion of solar equipment and panels. Mr. Connel told him that he had  
21 learned about the investment opportunity in WEI as the result of a "cold call" from an individual  
22 known as Danny Morgan of Intuition. Mr. Connel stated that he had no prior relationship with  
23 Intuition. (Tr. 47-48: 24-13)

24 34. According to Mr. Brokaw, Mr. Connel stated that the main selling point of the WEI  
25 investment was that it was going to go public "real soon." (Tr. 48: 14-18)

26 35. Mr. Brokaw testified that based on his conversation with Mr. Connel, Mr. Connel  
27

28 <sup>4</sup> When Mr. Brokaw spoke with Mr. Connel, Mr. Connel indicated that he had received his 8 percent dividend. (Tr. 122: 2-6)

1 believed that every penny of his investment was going to WEI, (Tr. 50: 14-21) and that Mr. Connel  
2 was not aware of how much commission was paid to any organization when he purchased his stock.  
3 (Tr. 49-50: 23-8) Mr. Brokaw stated that Mr. Connel was unaware of any commission paid to  
4 Litchfield for his investment in WEI. (Tr. 49: 19-22)

5 36. Mr. Connel indicated to Mr. Brokaw that he felt "a little pressured" to proceed with  
6 the investment because Mr. Morgan called him on a continual basis and that no one from Intuition  
7 ever asked him if he could afford to lose his investment. (Tr. 50-51: 22-8)

8 37. Mr. Brokaw read into the record a letter from WEI addressed to Mrs. Brenda M.  
9 Walker in Cheshire, U.K. The letter was from Mr. Shorey as Chairman and CEO of WEI. (Ex. S-7)  
10 (Tr. 65: 13-21)

11 38. The letter to Mrs. Walker from WEI references the funds which she invested in WEI  
12 and the fact that they have been received by the company and cleared its account. (Tr. 66: 8-13)

13 39. Mr. Brokaw further testified that the documents contained in the Division's Exhibit S-7  
14 were documents which were obtained from Mr. Shorey. (Tr. 66: 16-20)

15 40. A Subscription Agreement for Mrs. Walker dated June 2, 2010, was attached to the  
16 cover letter from Mr. Shorey and reflects an investment for 4,000 shares of the WEI offering at \$5 a  
17 share for a total investment of \$20,000. (Ex. S-7: ACC000460)

18 41. Further testifying concerning the WEI offering, Mr. Brokaw read into the record  
19 responses from Mr. Shorey from his Examination Under Oath ("EUO") concerning his e-mail  
20 addresses with respect to WEI. One was [dshorey@westcapenergy.com](mailto:dshorey@westcapenergy.com), and his other e-mail address  
21 was [shorey@comcast.net](mailto:shorey@comcast.net) and both required a password. Mr. Brokaw testified that he viewed the  
22 latter address on multiple e-mail communications to individual investors. (Ex. S-54) (Tr. 69-70: 14-  
23 24)

24 42. Mr. Brokaw testified concerning a letter addressed to Mr. Shorey from Litchfield  
25 dated October 9, 2009, which contains in its second paragraph the following statement: "As we  
26 discussed, Litchfield will consult with Westcap and devise a program whereby Westcap will be able  
27 to raise capital of up to \$1 million." (Ex. S-9) (Tr. 71: 3-18)

28 43. The Litchfield letter to Mr. Shorey and WEI spells out an agreement whereby

1 Litchfield would provide services to raise funds for WEI. In return, Litchfield would receive a  
2 consulting fee equivalent to 10 percent of the total funds invested in WEI, and restricted stock in the  
3 publicly traded entity, together with additional rights in the public offering. (Ex. S-9)

4 44. Mr. Brokaw referenced a letter from Litchfield to an investigator with the Colorado  
5 Division of Securities concerning WEI. In the letter, Mr. Daniel Thomas Kerrigan was described as  
6 the president of Intuition which might be in a position to locate investors in Europe for small private  
7 companies that were attempting to find investors. (Ex. S-12)

8 45. Mr. Brokaw testified that he sent complaint forms to all the 24 European investors in  
9 WEI, but only one responded. (Tr. 81-82: 17-14)

10 46. Mr. Brokaw is not aware of any United States investor in WEI. (Tr. 82: 15-16)

11 47. Mr. Brokaw testified that Litchfield charged a 7.5 percent fee for commissions on  
12 funds which were raised on behalf of WEI, but he did not have any documentation as to how much  
13 was charged by Intuition "other than the money that was sent to them." (Tr. 112: 1-4)

14 48. Mr. Brokaw stated that he never saw any written documentation between WEI  
15 and Litchfield wherein a reduction of the 10 percent commission to 7.5 percent was set forth.  
16 (Tr. 133-134: 22-1)

17 49. During Mr. Shorey's EUO, he testified that he had used certain letters and/or  
18 documents that had been sent to potential overseas investors on behalf of WEI by e-mail, mail and  
19 Federal Express. (Ex. S-54)

20 50. According to Mr. Shorey during his EUO, when he paid out dividend payments on  
21 behalf of WEI, he either sent a check directly by mail to the U.K. investor or wire transferred the  
22 funds directly from WEI's account. (Ex. S-54)

23 51. Mr. Brokaw further testified that he was unaware of whether any business was  
24 actually being conducted by WEI at the time he testified. (Tr. 144-145: 23-2)

25 52. Mr. Brokaw further testified that at the time of his investigation of the Respondents  
26 when he received copies of investor Subscription Agreements from Mr. Shorey, none of them had  
27 been signed. (Tr. 291: 17-21)

28 53. Ms. Denise Fritz, the Division's forensic accountant, testified that as part of the

1 Division's investigation of the Respondents she reviewed financial records and bank statements and  
2 other information provided by the banks. (Tr. 151: 20-24)

3 54. Ms. Fritz also stated that during the course of her investigation of the Respondents she  
4 looked at the PPM and Subscription Agreement and also WEI's engagement letter with Litchfield.  
5 (Tr. 152: 15-21)

6 55. The balance of Ms. Fritz's testimony concerned her analysis of receipts and  
7 disbursements of the investors' funds for the period January 25, 2010 through August 31, 2010.  
8 (Ex. S-56)

9 56. The WEI account analyzed by Ms. Fritz was at Wachovia Bank/Wells Fargo, NA and  
10 its authorized signatory was Mr. Shorey. (Ex. S-56) (Tr. 153: 15-23)

11 57. According to Ms. Fritz, the information in her report was prepared primarily from  
12 WEI's Wells Fargo bank statements or her analysis of the statements. (Tr. 154-155: 44-3)

13 58. Ms. Fritz testified that she noted individual investor names as their funds were wired  
14 to WEI, and, with a list of the investors Mr. Shorey had provided, matched investor names and the  
15 amount invested. (Tr. 155: 4-23)

16 59. During the relevant time frame, WEI's investment accounts were held by Wells Fargo  
17 in Tucson. (Tr. 156: 9-12)

18 60. Ms. Fritz determined from her investigation that the total amount of invested funds  
19 received by WEI was \$388,495. (Tr. 157: 10-13)

20 61. Ms. Fritz testified that with respect to disbursements from the WEI account they were  
21 either wires or check payments which were made to Litchfield. Payments to Daniel Kerrigan were by  
22 wire with his name on them. (Tr. 158: 10-23)

23 62. Based on Ms. Fritz's analysis, Litchfield received \$214,882, which represents  
24 approximately 55 percent of the invested funds. (Tr. 163: 10-21)

25 63. Ms. Fritz testified that of the WEI disbursements of \$48,749.99 which were made to  
26 Daniel Thomas Kerrigan, they represent 12.5 percent of the money disbursed from the investor funds.  
27 (Tr. 163-164: 25-6)

28 64. Referencing the agreement between Litchfield and WEI, Ms. Fritz testified that

1 according to its terms, Litchfield was to receive 10 percent of funds raised. (Ex. S-9) (Tr. 164: 7-17)

2 65. However, Ms. Fritz further testified that the disbursements to Litchfield represented 55  
3 percent of investor funds. She said it was her understanding that Litchfield had then paid Mr.  
4 Kerrigan of Intuition. (Tr. 164-165: 18-1)

5 66. According to Ms. Fritz's analysis, the total amount paid to Litchfield and Intuition/Mr.  
6 Kerrigan actually totaled \$281,714. This amount is based on a later payment outside the time frame  
7 analyzed in Exhibit S-56 and matches WEI's expense amount shown on Exhibit S-6.<sup>5</sup> (Tr. 165-166:  
8 22-7)

9 67. Based on Ms. Fritz's analysis of the transactions involving Mr. Kerrigan, she  
10 determined that his bank account was in Barcelona, Spain. (Tr. 166: 9-14)

11 68. Ms. Fritz further testified that she traced disbursements to investors which were made  
12 by either wires to their accounts or cashier's checks sent with their names on them. (Tr. 167: 3-9)

13 69. Ms. Fritz stated that based on her analysis the funds paid to investors originated from  
14 other investor money. (Tr. 167: 15-20)

15 70. Ms. Fritz stated that a portion of her analysis of WEI and Mr. Shorey consisted of a  
16 report concerning investor deposits and disbursements relative to Litchfield and Mr. Kerrigan for the  
17 time frame January 25, 2010 through March 31, 2010, and illustrates that after an investor's money  
18 was deposited, commissions would be disbursed to either Litchfield or Mr. Kerrigan. She stated that  
19 of the \$388,495 invested, 72.5 percent was disbursed to either Litchfield or Mr. Kerrigan. (Tr. 169-  
20 170: 6-10)

21 71. Mr. Brokaw testified that as an investigator with the Division he has investigated  
22 approximately 40 to 50 cases, and with respect to commission payments to third parties or other  
23 individuals he has not seen cases when commissions paid out to these individuals exceeded 65  
24 percent. (Tr. 141-142: 18-10)

25 72. Mr. Shorey testified on behalf of himself and WEI stating that he has been married for  
26 20 years and was a licensed Certified Public Accountant for over 40 years. (Tr. 187-188: 12-24)

27  
28 <sup>5</sup> This is approximately 72.5 percent of all funds invested in WEI.

1           73.     Mr. Shorey stated that he had been involved with another company in Tucson which  
2 was sold in 2009, but had previously been involved in the power business in wind, solar and LED  
3 lighting. (Tr. 190: 14-18)

4           74.     Mr. Shorey described WEI as a solar systems installer for residential, commercial and  
5 non-profit organizations and that it had been licensed with the Arizona Registrar of Contractors since  
6 2009. (Tr. 191: 3-9)

7           75.     Mr. Shorey testified that WEI was engaged in the business of installing solar panels on  
8 the roofs of homes and stated that the business is operated in Tucson, Phoenix, Flagstaff and Newark,  
9 New Jersey. (Tr. 191: 18-21)

10          76.     WEI's headquarters is in Tucson on Fort Lowell Road and at the time of hearing had  
11 13 employees. (Tr. 191-192: 24-8)

12          77.     Mr. Shorey stated that after selling his other business in 2009, he invested his funds in  
13 WEI and paid its bills using his credit cards and personal guarantees to operate the company. (Tr.  
14 192: 17-20)

15          78.     According to Mr. Shorey, he began seeking ways to get money into the business and  
16 applied for 11 SBA loans in an attempt to develop working capital and to seek money from other  
17 sources. (Tr. 193: 3-13)

18          79.     Mr. Shorey testified that after looking for other sources of funds, he encountered  
19 Litchfield and entered into an agreement with Litchfield to seek investors. Litchfield was to charge  
20 him 10 percent of funds raised for its fee. (Tr. 195: 1-13)

21          80.     According to Mr. Shorey, after negotiations, Litchfield subsequently agreed to reduce  
22 its rate of compensation to 7.5 percent because he had been told that foreign agents (Intuition) wanted  
23 65 percent for raising funds and Mr. Shorey was trying to keep the total commissions below 70  
24 percent. (Tr. 195: 17-22)

25          81.     Mr. Shorey stated that although he signed an agreement with Litchfield in 2009, it was  
26 nearly six months before Litchfield raised any money for WEI. Mr. Shorey testified that it was  
27 during this time frame that Litchfield informed him that they could not get the foreign firm to lower  
28 their rates, so Litchfield agreed to lower their own rates by 2.5 percent. (Tr. 196: 4-12)

1           82.     According to Mr. Shorey, Litchfield prepared the offering documents that were presented  
2 to prospective investors, consisting of the PPM and the Subscription Agreement. (Tr. 197: 11-17)

3           83.     Mr. Shorey stated that the PPM was prepared by Litchfield's attorney, Mr. Kenneth  
4 Bart. (Tr. 196: 18-23)

5           84.     Mr. Shorey stated that neither he nor WEI had any contacts with Intuition or Mr.  
6 Kerrigan and that Litchfield had retained Intuition. (Tr. 197-198: 20-10)

7           85.     Mr. Shorey stated that at the time the PPM was prepared, the amount of commissions  
8 to be paid to individuals unrelated to WEI was not yet determined. (Tr. 200: 5-15)

9           86.     Mr. Shorey further testified that he understood that Litchfield was going to contact  
10 someone overseas that would raise money utilizing overseas investors. (Tr. 200: 20-23)

11           87.     According to Mr. Shorey, the stock offering for WEI was never offered in the United  
12 States and was targeted only for foreign investors under what he termed was a "Regulation S  
13 offering," which meant that it was not offered, advertised, solicited or delivered to anyone in the  
14 United States. (Tr. 201: 1-8)

15           88.     Mr. Shorey stated that all of the investors in WEI were in Europe and that he had  
16 never spoken to any of them. (Tr. 201: 14-19)

17           89.     Mr. Shorey testified that he believed that all 24 investors in the WEI offering were  
18 accredited investors.<sup>6</sup> (Tr. 202: 6-9)

19           90.     Mr. Shorey testified that he relied on Litchfield, which had informed him that  
20 investors solicited by Intuition had a level of sophistication because of the amount of their  
21 investments made in five or six different companies previously. (Tr. 202-203: 24-12)

22           91.     Mr. Shorey insisted that he sent signature pages for all 24 investors to the Division as  
23 requested. (Tr. 206: 11-14)

24           92.     According to Mr. Shorey, after Intuition located a prospective investor who wished to  
25 invest in WEI, he was sent an e-mail from Intuition giving him the name, address, phone number,  
26 amount of the proposed investment and the e-mail address of the prospective investor. (Tr. 209: 4-9)

27           93.     Mr. Shorey testified that he would then respond by e-mail or mail or Federal Express by

28 <sup>6</sup> There was no documented evidence of this fact submitted in the proceeding.

1 sending the four following documents consisting of approximately 16 pages: an initial letter; a  
2 corporate profile; a Subscription Agreement; and the PPM. (Tr. 209: 10-16)

3 94. Mr. Shorey testified that with respect to the 24 investors from Europe who invested in  
4 WEI, 100 percent of their investments were made by wire transfers. (Tr. 210: 6-8)

5 95. Mr. Shorey further stated that since the investments were made, he has not received  
6 any complaints. (Tr. 210: 19-25)

7 96. According to Mr. Shorey, of the original 24 investors, approximately 75 percent of  
8 them reinvested using the same process as described earlier. (Tr. 211: 1-8)

9 97. Mr. Shorey also testified that invested funds were also transferred to another account  
10 at Compass Bank utilized by WEI for its operating expenses. (Tr. 212: 19-24)

11 98. Mr. Shorey described changes in WEI's structure as follows: changed its name to  
12 Westcap Solar Incorporated; a Nevada corporation named Westcap Energy was formed where the  
13 public offering in the name of Westcap Energy continued; and this company purchased a public  
14 company known as Energy Conservation Technologies, Inc. in Boulder, Colorado. (Tr. 217-218: 17-  
15 4).

16 99. Mr. Shorey stated that, prior to these changes, all of the assets and shareholders of  
17 WEI/Westcap Solar were transferred to Westcap Energy Nevada, which became the so-called parent  
18 or holding company. (Tr. 218: 10-13)

19 100. To complete the transformation, Mr. Shorey testified that Westcap Energy Nevada  
20 merged with Energy Conservation Technologies, Inc., the public company, and shortly thereafter, the  
21 name of the public company was changed to Abco Energy, Inc. He stated that this company became  
22 the parent company and owner of Abco Solar Arizona and still owns it. (Tr. 218: 17-23)

23 101. Mr. Shorey stated as a result of these changes the status of WEI is that it is dissolved  
24 and no longer exists. (Tr. 219: 20-23)

25 102. Mr. Shorey testified the end result of these corporate transformations is that the  
26 shareholders of WEI are now the shareholders of what is known as Abco Energy, Inc., a Nevada  
27 corporation. (Tr. 220: 7-11)

28 103. According to Mr. Shorey, all of the promises in the PPM have been met with the

1 payment of the 8 percent dividend and the investors' stock being split on a ten- to-one going forward  
2 basis. He said that the company is currently working on completing the registration of all the shares  
3 so that they may be freely traded and registered with the Securities and Exchange Commission and  
4 all the Blue Sky rules in all the states necessary in order to get an additional number of shares offered  
5 to the public to raise additional funding. (Tr. 222: 5-23)

6 104. Mr. Shorey testified that he is presently the chief financial officer of Abco Energy and  
7 its president is Mr. Charles O'Dowd, who is from Tucson. However, Mr. Shorey is the largest  
8 shareholder in the corporation. (Tr. 223: 10-21)

9 105. Mr. Shorey stated that the corporation's stock was to become free trading in February  
10 2012 at a \$1 per share and he expected that the initial investors would double their money and earn  
11 more as trading moved forward. (Tr. 224: 11-25)

12 106. Mr. Shorey estimated that he has invested well over \$360,000 into the corporation if  
13 his salary is considered, but his initial cash investment was approximately \$50,000. (Tr. 226: 1-5)

14 107. According to Mr. Shorey, the company has no long-term debt, but exists on \$250,000  
15 in loans which all have been personally guaranteed by Mr. Shorey. (Tr. 226: 10-19)

16 108. According to Abco Energy's consolidated statement of operations for the year ending  
17 December 31, 2011, it realized a gross profit of \$443,709 and had net income of \$67,679 with in  
18 excess of 18 million shares outstanding. (Ex. RS-8) (Tr. 232: 1-24)

19 109. According to Mr. Shorey, the payment of a 65 percent commission to Intuition, a  
20 finder of funding for a company such as WEI in the European market, based on both Litchfield's and  
21 his own experience, was within the normal range. (Tr. 279: 2-6)

22 110. Mr. Shorey testified further that Intuition did not provide WEI or himself with any  
23 information regarding whether a prospective investor was accredited. (Tr. 253: 8-12)

24 111. Mr. Shorey testified that he believed that the 24 investors in WEI were accredited;  
25 however, the individual Subscription Agreements of the investors do not confirm that fact and only  
26 make reference to an investor's knowledge and experience in financial and business matters without a  
27 specific financial standard. (Tr. 286-287: 19-5)

28

1           112. Based on the record, it is established by a preponderance of the evidence that the  
2 offering by WEI which was effected by Mr. Shorey utilizing Litchfield and in turn which utilized  
3 Intuition to sell the unregistered stock in WEI to investors located outside of the United States did not  
4 constitute an exempt transaction under Arizona law. Neither WEI nor Mr. Shorey were registered as  
5 a dealer and/or a salesman of securities in this instance. As cited by the Division, the burden of proof  
6 to establish an exemption of any offering is upon the party raising that defense pursuant to A.R.S. §  
7 44-2033. In this instance, the Respondents failed to meet that burden and therefore must be held  
8 liable for violating the Act.

9           113. The PPM reserved the right to pay commissions to NASD registered broker/dealers  
10 for the sale of stock, however it limited the amount to be within the range of amounts normally paid.  
11 Although Mr. Shorey testified that 72.5% was within the "normal range," Mr. Brokaw testified that,  
12 in his experience, he had never seen such commissions in excess of 65%. We find that commissions  
13 were paid to non-registered broker/dealers and that 72.5% is outside the normal range of amounts,  
14 and such deviation from the information disclosed in the PPM is a material fact.

15           114. With respect to the issue of whether fraud was involved in the sale of WEI's stock, the  
16 evidence established that Respondents failed to disclose the excessive level of commissions paid to  
17 those individuals who sold the investors their WEI stock. This was a material fact that should have  
18 been disclosed to investors. Under the facts disclosed during the hearing, there is sufficient evidence  
19 to establish the fact that such commissions paid to non-registered broker/dealers at the time were  
20 unreasonable based on the lack of disclosures made to the investors in the PPM.

21           115. With respect to the issue of the marital community, there was no evidence submitted  
22 that the marital community did not benefit from the violations of the Act herein, and it must be held  
23 liable.

24           116. Under the circumstances in this proceeding, including the fact that only one investor  
25 responded to the Division's complaint forms, we believe that an offer of rescission is in order in this  
26 instance, together with the appropriate penalty, rather than an order of restitution. The record  
27 established that Respondents are operating a solar installation business whose success could be  
28 endangered if restitution is ordered.

CONCLUSIONS OF LAW

1  
2 1. The Commission has jurisdiction of this matter pursuant to Article XV of the Arizona  
3 Constitution and A.R.S. § 44-1801, *et seq.*

4 2. The investment offerings as described herein and sold by Respondents David Shorey  
5 and WEI constitute securities within the meaning of A.R.S. § 44-1801.

6 3. Respondents David Shorey and WEI acted as a dealer and/or a salesman within the  
7 meaning of A.R.S. § 44-1801(9) and (22).

8 4. The actions and conduct of Respondents David Shorey and WEI constitute the offer  
9 and sale of securities within the meaning of A.R.S. § 44-1801(21).

10 5. The securities were neither registered nor exempt from registration, in violation of  
11 A.R.S. § 44-1841.

12 6. Respondents David Shorey and WEI offered and sold unregistered securities from  
13 Arizona in violation of A.R.S. § 44-1841.

14 7. Respondents David Shorey and WEI offered and sold securities from Arizona without  
15 being registered as a dealer and/or salesman in violation of A.R.S. 44-1842.

16 8. Respondents David Shorey and WEI committed fraud in the offer of an unregistered  
17 security, engaging in transactions, practices, or a course of business which involved untrue statements  
18 and omissions of material facts in violation of A.R.S § 44-1991.

19 9. The marital community of Respondents David Shorey and Mary Jane Shorey should  
20 be included in any order of rescission and penalties ordered hereinafter.

21 10. Respondents David Shorey and WEI have violated the Act and should cease and desist  
22 pursuant to A.R.S. § 44-2032 from any future violations of A.R.S. §§ 44-1841, 44-1842, 44-1991 and  
23 all other provisions of the Act.

24 11. The actions and conduct of Respondents David Shorey and WEI constitute multiple  
25 violations of the Act and are grounds for an order of rescission pursuant to A.A.C. R14-4-308 and  
26 administrative penalties pursuant to A.R.S. § 44-2036.

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**ORDER**

1  
2 IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission  
3 under A.R.S. § 44-2032, Respondents David Shorey and Westcap Energy, Inc. shall cease and desist  
4 from their actions described hereinabove in violation of A.R.S. §§ 44-184, 44-1842 and 44-1991.

5 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
6 A.R.S. § 44-2036, Respondents David Shorey, Westcap Energy, Inc. and the marital community of  
7 David Shorey and Mary Jane Shorey, pursuant to A.R.S. § 44-2031(C), to the extent allowable by  
8 law pursuant to A.R.S. § 25-215, jointly and severally, shall pay as and for administrative penalties  
9 for the violation of A.R.S. §§ 44-1841 the sum of \$2,500; for the violation of A.R.S. § 44-1842 the  
10 sum of \$2,500; and for the violation of A.R.S. § 44-1991 the sum of \$5,000. The payment obligation  
11 for these administrative penalties shall be subordinate to any rescission obligation and shall become  
12 immediately due and payable only after rescission payments have been paid in full or upon  
13 Respondents' default with respect to Respondents' rescission obligations.

14 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
15 A.R.S. § 44-2036, that Respondents Westcap Energy, Inc. and David and Mary Jane Shorey, husband  
16 and wife, to the extent allowable pursuant to A.R.S. § 25-215, jointly and severally, shall pay the  
17 administrative penalties ordered hereinabove in the amount of \$10,000 payable by either cashier's  
18 check or money order payable to the "State of Arizona" and presented to the Arizona Corporation  
19 Commission for deposit into the general fund for the State of Arizona.

20 IT IS FURTHER ORDERED that if Respondents Westcap Energy, Inc. and David and Mary  
21 Jane Shorey fail to pay the administrative penalties ordered hereinabove, any outstanding balance  
22 plus interest at the rate of the lesser of 10 percent per annum or the rate per annum that is equal to 1  
23 percent plus the prime rate as published by the Board of Governors of the Federal Reserve system in  
24 Statistical Release H.15 or any publication that may supersede it on the date that the judgment is  
25 entered may be deemed in default and shall be immediately due and payable, without further notice.

26 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
27 A.R.S. §§ 44-2031(C) and 44-2032, Respondents Westcap Energy, Inc. and David and Mary Jane  
28 Shorey, husband and wife, to the extent allowable pursuant to A.R.S. § 25-215, jointly and severally,

1 shall make an offer of rescission with respect to the Westcap Energy, Inc. stock sale which offer of  
2 rescission shall be made pursuant to A.A.C. R14-4-308 subject to legal set-offs by the Respondents  
3 and confirmed by the Director of Securities, said offer of rescission to be made within 60 days of the  
4 effective date of this Decision.

5 IT IS FURTHER ORDERED that the offer of rescission ordered hereinabove shall bear  
6 interest at the rate of the lesser of 10 percent per annum or at a rate per annum that is equal to 1  
7 percent plus the prime rate as published by the Board of Governors of the Federal Reserve system in  
8 Statistical Release H.15 or any publication that may supersede it on the date that the judgment is  
9 entered.

10 IT IS FURTHER ORDERED that all rescission payments as ordered hereinabove shall be  
11 deposited into an interest-bearing account (s), if appropriate, until distributions are made.

12 IT IS FURTHER ORDERED that Respondents Westcap Energy, Inc., and David and Mary  
13 Jane Shorey fail to comply with this Order, any outstanding balance shall be in default and shall be  
14 immediately due and payable without notice or demand. The acceptance of any partial or late  
15 payment by the Commission is not a waiver of default by the Commission.

16 IT IS FURTHER ORDERED that default shall render Respondents Westcap Energy, Inc., and  
17 David and Mary Jane Shorey liable to the Commission for its cost of collection and interest at the  
18 maximum legal rate.

19 IT IS FURTHER ORDERED that if Respondents Westcap Energy, Inc., David Shorey and  
20 Mary Jane Shorey fail to comply with this order, the Commission may bring further legal  
21 proceedings against the Respondent(s) including application to the Superior Court for an order of  
22 contempt.

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IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-1974, upon application the Commission may grant a rehearing of this Order. The application must be received by the Commission at its offices within twenty (20) calendar days after entry of this order and, unless otherwise ordered, filing an application for rehearing does not stay this Order. If the Commission does not grant a rehearing within twenty (20) calendar days after filing the application, the application is considered to be denied. No additional notice will be given of such denial.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

\_\_\_\_\_  
JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: DAVID SHOREY AND MARY JANE SHOREY, HUSBAND  
2 AND WIFE, AND WESTCAP ENERGY, INC.,

3 DOCKET NO.: S-20790A-11-0104

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