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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AUG 07 2014

ARIZONA CORPORATION COMMISSION
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IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (LITCHFIELD PARK WATER AND SEWER), CORP. FOR APPROVAL OF AN EXTENSION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE WATER UTILITY SERVICE IN MARICOPA COUNTY, ARIZONA.

DOCKET NO. W-01427A-14-0134

IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (LITCHFIELD PARK WATER AND SEWER), CORP FOR APPROVAL OF AN EXTENSION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE WASTEWATER UTILITY SERVICE IN MARICOPA COUNTY, ARIZONA.

DOCKET NO. SW-01428A-14-0180

IN THE MATTER OF THE APPLICATION OF VALLEY UTILITIES WATER COMPANY, INC. FOR AN EXTENSION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE WATER UTILITY SERVICE IN MARICOPA COUNTY, ARIZONA.

DOCKET NO. W-01412A-14-0262

PROCEDURAL ORDER
(Consolidates Cases & Resets A Hearing)

BY THE COMMISSION:

On April 17, 2014, Liberty Utilities (Litchfield Park Water and Sewer), Corp. ("Liberty" or "Company")¹ filed with the Arizona Corporation Commission ("Commission"), in Docket No. W-01427A-14-0134, an application requesting that the Commission approve an extension of its current Certificate of Convenience and Necessity ("CC&N") to provide water utility service to a new area known as Marbella Ranch development in Maricopa County, Arizona ("Water Docket").

On May 2, 2014, Liberty filed, in the Water Docket, a Notice of Filing that included copies of the written notice provided to all municipal managers within five (5) miles of the proposed extension area regarding Liberty's water CC&N extension application on file with the Commission.

¹In 2013, Liberty changed its name from Litchfield Park Service Company dba Liberty Utilities to Liberty Utilities (Litchfield Park Water & Sewer) Corp. See Decision No. 74437 (April 18, 2014).

1 On May 13, 2014, Liberty caused a letter to be docketed, in the Water Docket, stating Liberty
2 agreed with the Commission's Utilities Division ("Staff") to suspend the sufficiency review to allow
3 the Company to file its related application for an extension of its current wastewater CC&N, and
4 indicating that a joint review by Staff of both the water and wastewater applications would be more
5 expeditious.

6 On May 19, 2014, Liberty filed, in the Water Docket, a Notice of Errata correcting errors in
7 its Legal Description and Master Water Report.

8 On June 3, 2014, Liberty filed with the Commission, in Docket No. SW-01428A-14-0180, an
9 application requesting that the Commission approve an extension of its current wastewater CC&N to
10 provide wastewater utility service to the same general area requested in its Water Docket
11 ("Wastewater Docket").

12 On June 4, 2014, Liberty filed, in the Wastewater Docket, an Amended Application For
13 Extension of its wastewater CC&N.

14 On June 5, 2014, Liberty filed, in both the Water and Wastewater Dockets, a motion to
15 consolidate both dockets. Liberty stated that, by consolidating both proceedings, resources would be
16 better utilized as both dockets involve the extension of both the Company's water and wastewater
17 CC&Ns to serve the same area known as Marbella Ranch development.

18 On June 13, 2014, by Procedural Order, the Water and Wastewater Dockets were
19 consolidated ("Consolidated Docket").

20 On June 18, 2014, Valley Utilities Water Company, Inc. ("Valley") filed an Application for
21 Leave to Intervene and Notice of Intent, stating it intended to file a competing Application for
22 extension of its CC&N to serve the Marbella Ranch development. No objections were filed in
23 opposition to Valley's request for intervention.

24 On June 30, 2014, by Procedural Order, Valley was granted intervention in these consolidated
25 dockets.

26 On July 3, 2014, Staff filed a Sufficiency Letter in the consolidated docket, stating that
27 Liberty's applications for extensions of its water and wastewater CC&Ns had met the sufficiency
28 requirements as outlined in the Arizona Administrative Code ("A.A.C.").

1 On July 10, 2014, Valley filed its competing application in Docket No. W-01412A-14-0262,
2 requesting an extension of Valley's water CC&N to provide service to the Marbella Ranch
3 development ("Valley Docket").

4 Also on July 10, 2014, a Procedural Order was issued scheduling a hearing on the
5 consolidated dockets for September 3, 2014, and setting other procedural deadlines.

6 On July 15, 2014, Valley filed a Request for Procedural Conference to discuss potential
7 scheduling issues given the filing of its competing application.

8 On July 17, 2014, by Procedural Order, a Procedural Conference was scheduled for July 24,
9 2014.

10 On July 18, 2014, Liberty filed a Notice of Filing that included copies of the written notice
11 provided to all municipal managers within five (5) miles of the proposed extension area regarding
12 Liberty's wastewater CC&N extension application on file with the Commission.

13 Also on July 18, 2014, Valley filed a Motion to Appear Telephonically for the July 24, 2014
14 procedural conference stating that its counsel would be out of the state from July 23-25, 2014. By
15 Procedural Order dated July 21, 2014, the Motion was granted.

16 On July 23, 2014, TRS 8, LLC ("TRS 8"), who is the developer for Marbella Ranch, filed
17 public comment indicating that TRS 8 requests water and sewer services from Liberty and that TRS 8
18 did not request water services from Valley.

19 On July 24, 2014, a Procedural Conference was held as scheduled to address potential
20 scheduling conflicts as a result of Valley's filing its competing application to serve the proposed
21 extension area. At the conference, Staff indicated consolidation of the matters was preferred so as
22 not to strain Staff's finite resources. Valley also sought to have the matters consolidated, but
23 believed it was premature to consolidate the dockets prior to its application being found sufficient.

24 On July 31, 2014, Staff filed a Sufficiency Letter in the Valley Docket, stating Valley's
25 application for an extension of its CC&N to provide water service had met the A.A.C. sufficiency
26 requirements.

27 On August 5, 2014, Valley filed, in the Consolidated Docket and the Valley Docket, a motion
28 to consolidate. Valley stated that the issues raised in each of the dockets are substantially the same

1 and no party would be prejudiced by consolidation.

2 During the procedural conference, Liberty argued against consolidating Valley's competing
3 application with Liberty's Water and Wastewater Dockets, stating that a prior Commission decision²
4 restricts the issuance of a CC&N to an area where the utility seeking to expand lacks a request for
5 service from the landowner. However, Liberty later stated it would not oppose consolidation as long
6 as the procedural schedule was not unduly delayed as a result.

7 Consolidation is proper under this circumstance because the subject matter and the relief
8 requested are the same. Consolidation will make it expedient for the court to determine all of the
9 issues involved and to adjudicate the rights of the parties by hearing the matters together. Therefore,
10 these dockets will be consolidated.

11 Further, because Valley's application has been deemed sufficient, it is appropriate to vacate
12 the procedural schedule set forth in the July 10, 2014 Procedural Order, and reset the procedural
13 schedule on these consolidated matters.³ The hearing scheduled for September 3, 2014 shall be for
14 public comment only. The evidentiary hearing for the consolidated proceedings shall be reset.

15 Pursuant to A.A.C. R14-3-101, the Commission now issues this Procedural Order to govern
16 the preparation and conduct of these consolidated proceedings.

17 IT IS THEREFORE ORDERED that the **procedural schedule** set forth in the Procedural
18 Order issued on July 10, 2014 is hereby **vacated**.

19 IT IS FURTHER ORDERED that Docket Nos. W-01427A-14-0134, SW-01428A-14-0180,
20 and W-01412A-14-0262 are **hereby consolidated**.

21 IT IS FURTHER ORDERED the **hearing** in these consolidated matters shall commence on
22 **September 24, 2014, at 10:00 am**, or as soon thereafter as is practicable, at the Commission's
23 offices, 1200 West Washington, Hearing Room No. 1, Phoenix, Arizona 85007.

24 ...

25 ...

26 _____
27 ² Judicial Notice is taken of Decision No. 68453 (February 2, 2006).

28 ³ Pursuant to the July 10, 2014 Procedural Order, Liberty should have published and mailed notice as of July 31, 2014. As this Procedural Order has been issued subsequent to that date, it is expected that Liberty has complied with that order and notice has been completed.

1 IT IS FURTHER ORDERED that Valley Utilities Water Company, Inc. shall provide public
2 notice of the hearing in this matter, in the following form and style with the heading in no less than
3 12-point bold type and the body in no less than 10-point regular type:

4 **PUBLIC NOTICE OF HEARING ON THE APPLICATION OF VALLEY**
5 **UTILITIES WATER COMPANY, INC. FOR APPROVAL OF AN EXTENSION**
6 **OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE**
7 **WATER SERVICE IN MARICOPA COUNTY, ARIZONA.**
8 **DOCKET NO. W-01412A-14-0262**

9 On April 17, 2014, Liberty Utilities (Litchfield Park Water and Sewer), Corp.
10 (“Liberty” or “Company”) filed with the Arizona Corporation Commission
11 (“Commission”), in Docket No. W-01427A-14-0134, an application requesting
12 Commission approval of an extension of its current Certificate of Convenience and
13 Necessity (“CC&N”) to provide water utility service to an area known as Marbella
14 Ranch in Maricopa County, Arizona (“Water Docket”). On June 3, 2014, Liberty filed
15 with the Commission, in Docket No. SW-01428A-14-0180, an application requesting
16 Commission approval of an extension of its current wastewater CC&N to provide
17 wastewater utility service to Marbella Ranch (“Wastewater Docket”).

18 On July 10, 2014, Valley Utilities Water Company, Inc. (“Valley”) filed a competing
19 application in Docket No. W-01412A-14-0262, which requests an extension of
20 Valley’s water CC&N to provide service to the Marbella Ranch (“Valley Docket”).

21 Subsequently, all three dockets were consolidated for purposes of resolving the
22 matters.

23 The Commission’s Utilities Division Staff (“Staff”) has not yet made a
24 recommendation regarding the applications, and the Commission is not bound by the
25 proposals made by Valley, Staff, or any intervenors. The Commission will issue a
26 Decision regarding the applications following consideration of testimony and evidence
27 presented at an evidentiary hearing. A copy of the Valley application is available at
28 Valley’s offices [insert addresses] and at the Commission’s offices at 1200 West
Washington Street, Phoenix, Arizona, for public inspection during regular business
hours, and on the internet via the Commission website (www.azcc.gov) using the e-
docket function.

The Commission will hold a hearing on the consolidated matters on **September 24, 2014, at 10:00 a.m.**, at the Commission’s offices, in Hearing Room No. 1, 1200 West Washington Street, Phoenix, Arizona. Public comments will be taken **on the first day** of the hearing. You may also file written comments electronically by going to the Commission’s homepage at www.azcc.gov and clicking on the “Submit a Public Comment” button or by mailing a letter referencing Docket Nos. W-01427A-14-0134, et al, to: Arizona Corporation Commission, Consumer Services Section, 1200 West Washington, Phoenix, AZ 85007.

1 The law provides for an open public hearing at which, under appropriate
 2 circumstances, interested parties may intervene. Any person or entity entitled by law
 3 to intervene and having a direct and substantial interest in the matter will be permitted
 4 to intervene. If you wish to intervene, you must file an original and 13 copies of a
 written motion to intervene with the Commission no later than **September 3, 2014**,
 and send a copy of the motion to Valley or their counsel and to all parties of record.
 Your motion to intervene must contain the following:

- 5 1. The name, address, and telephone number and the name, address,
 6 and telephone number of any party upon whom service of
 documents is to be made, if not yourself;
- 7 2. A short statement of your interest in the proceeding (e.g., a
 customer of the Company etc.);
- 8 3. A statement certifying that you have mailed a copy of the motion to
 9 intervene to Valley or its counsel and to all parties of record in the
 case; and
- 10 4. If the proposed intervenor is not represented by an attorney who is
 11 an active member of the Arizona State Bar, and is not an individual
 representing himself or herself, information and any appropriate
 12 documentation demonstrating the intervenor's compliance with
 Arizona Supreme Court Rules 31, 38, and 42, as applicable.

13 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
 14 that all motions to intervene must be filed on or before **September 3, 2014**. For
 15 information about requesting intervention, visit the Commission's website at
 16 <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>. The granting of
 intervention, among other things, entitles a party to present sworn evidence at hearing
 and to cross-examine other witnesses. However, failure to intervene will not preclude
any interested person or entity from appearing at the hearing and providing public
comment on the applications or from filing written comments in the record of the case.

17 If you have any questions concerning Valley's application, you may contact Valley at
 18 **[insert telephone number]**. If you wish to file written comments on the applications
 19 or want further information on intervention, you may contact the Consumer Services
 Section of the Commission at 1200 W. Washington St., Phoenix, AZ 85007, or call 1-
 800-222-7000.

20 The Commission does not discriminate on the basis of disability in admission to its
 21 public meetings. Persons with a disability may request a reasonable accommodation
 22 such as a sign language interpreter, as well as request this document in an alternative
 23 format, by contacting the ADA Coordinator Shaylin Bernal, E-mail
Sbernal@azcc.gov, voice phone number 602/542-3931. Requests should be made as
 early as possible to allow time to arrange the accommodation.

24 IT IS FURTHER ORDERED that Valley shall **mail** to all property owners in the proposed
 25 extension area a copy of the above notice and shall cause the above notice to be published at least
 26 once in a newspaper of general circulation in the proposed extension area, with **publication and**
 27 **mailing** to be completed no later than **August 21, 2014**.
 28

1 IT IS FURTHER ORDERED that Valley shall **file certification of mailing and publication**
2 as soon as practicable after mailing/publication has been completed, but not later than **September 11,**
3 **2014.**

4 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing/publication,
5 notwithstanding the failure of an individual property owner to read or receive the notice.

6 IT IS FURTHER ORDERED that the **Staff Report** and associated exhibits, available at the
7 time the Staff Report is filed, to be presented at hearing shall be reduced to writing and filed on or
8 before **August 29, 2014.**

9 IT IS FURTHER ORDERED that any **objections** to the Staff Report shall be reduced to
10 writing and filed on or before **September 17, 2014.**

11 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
12 105, except that all motions to intervene must be filed on or before **September 3, 2014.**

13 IT IS FURTHER ORDERED that any objections to any Motions to Intervene shall be filed on
14 or before **September 17, 2014.**

15 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
16 Communications) applies to this proceeding as the matter is now set for public hearing, and shall
17 remain in effect until the Commission's Decision in this matter is final and non-appealable.

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

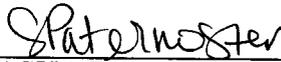
21 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
22 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
23 Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation
24 to appear at all hearings, procedural conferences, Open Meetings for which the matter is scheduled
25 for discussion, unless counsel has previously been granted permission to withdraw by the
26 Administrative Law Judge or Commission.

27 ...

28 ...

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

4 DATED this 7th day of August, 2014.

5
6 
7 _____
8 SASHA PATERNOSTER
ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered
10 this 7th day of August, 2014 to:

11 Patrick Black
12 FENNEMORE CRAIG, PC
13 2394 E. Camelback Road, Suite 600
14 Phoenix, AZ 85016
15 Attorney for Liberty Utilities

16 Robert J. Metli
17 MUNGER CHADWICK, P.L.C.
18 2398 E. Camelback Road, Suite 240
19 Phoenix, AZ 85016
20 Attorneys for Intervenor Valley Utilities Water Company

21 Janice Alward, Chief Counsel
22 Legal Division
23 ARIZONA CORPORATION COMMISSION
24 1200 West Washington Street
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26 Steven M. Olea, Director
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25 By: 
26 _____
27 Rebecca Unquera
28 Assistant to Sasha Paternoster