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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

SUSAN BITTER SMITH, Chairperson  
BOB STUMP  
BOB BURNS  
DOUG LITTLE  
TOM FORESE

Arizona Corporation Commission  
**DOCKETED**  
JAN 08 2015

DOCKETED BY

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

**EXCEPTIONS FILED ON BEHALF OF VALLEY UTILITIES WATER COMPANY, INC.**

Pursuant to A.A.C. R14-3-110(B) and the December 30, 2014 Memorandum from the Commission's Executive Director transmitting Administrative Law Judge Sasha Paternoster's Recommended Opinion and Order ("ROO") in the above-captioned and above-docketed proceeding ("Instant Proceeding"), Valley Utilities Water Company, Inc. ("Valley") hereby submits its Exceptions to the ROO.

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**I. Introduction**

Liberty Utilities (Litchfield Park Water and Sewer), Corp. ("Liberty") and Valley are requesting Commission approval to extend their water CC&Ns to serve a 365 acre property (approximately  $\frac{3}{4}$  of a square mile) in Maricopa County, of which approximately 248 acres will be Marbella Ranch Subdivision and approximately 117 acres will be restricted use land. (ROO, ¶ 6). Valley is a family-owned, closely held Arizona "C" corporation. Valley provides water utility service, pursuant to a CC&N granted by the Commission in 1954, to approximately 1,450 connections in an approximately five-square-mile unincorporated area of Maricopa County located east of Luke Air Force Base. (ROO, ¶ 3). Liberty is an Arizona "C" corporation that provides water and wastewater utility service to the public in communities within the cities of Litchfield Park, Goodyear, and Avondale, and in adjacent unincorporated areas of Maricopa County in the west Phoenix valley, west of the Agua Fria River and north of Interstate Highway 10. Liberty is a Class A public service corporation pursuant to the A.A.C. Liberty has approximately 18,400 water customers and approximately 20,500 wastewater customers. (ROO, ¶ 2). The proposed extension area is located on El Mirage Road alignment between Glendale Avenue and Northern Avenue, in Section 2 of Township 2 North, Range 1 West, in an unincorporated area of Maricopa County east of Luke Air Force Base. Liberty's current CC&N is not contiguous with the proposed extension area, while Valley's existing CC&N is contiguous on the east and south sides of the proposed extension area. (ROO, ¶ 7).

On July 1, 1998, Valley entered into a Franchise Agreement with Maricopa County to serve portions of Maricopa County including the proposed extension area. (Exhibit V-2). In addition, Valley entered into a Main Extension Agreement, approved by the Commission, with the City of Glendale ("City") on a 16-inch water main that extends from Glendale Avenue north to Northern Avenue in Dysart Road. (Exhibit V-3 at 3). This main extension was entered into with the City to provide water service to assist in the development of the new Northern Parkway and contemplates, as part of the reimbursement, additional development and growth on both the

1 east and west side of Dysart Road. (*Id.*). Currently, Valley has water mains to the south and to  
2 the west of the proposed extension area. (Exhibit V-3 at 4). In addition, Valley has 8-inch and  
3 12-inch water mains that are 1,490 feet and 1,100 feet, respectively, south of the extension area.  
4 (*Id.*). Valley also has a 16-inch water main just west of the extension area which provides water to  
5 the City of Glendale. (*Id.*). Liberty and Valley have an existing working relationship as Liberty  
6 provides wastewater utility services to approximately 49 percent of Valley's current water  
7 customers. (ROO, ¶ 12). Additionally, Valley has offered to enter into a water shut off agreement  
8 (with Liberty) to abate concerns over the non-payment of sewer bills in a bifurcated system.  
9 ROO, ¶ 62).

## 10 II. Discussion

### 11 a. The Continued Commission Policy to Support and Promote Small Water 12 Companies in Arizona is in the Public Interest.

13 This is a classic case of David versus Goliath. The paramount question that this  
14 Commission needs to address in this case is whether it is in the public interest to continue the  
15 policy of this Commission to support and promote the growth of small water companies in  
16 Arizona, in order that they may continue to be economically viable through expansion. There is  
17 no dispute that Liberty, through its parent, Algonquin Power & Utilities Corp., is a significantly  
18 larger, better-financed, integrated, publically traded, multinational corporation. Liberty's existing  
19 water system (in Arizona) consists of 12 wells, three arsenic treatment facilities, two storage  
20 tanks, three booster systems, and a distribution system that serves approximately 18,500  
21 customers. (ROO, ¶ 16). In contrast, Valley is a closely held Arizona C corporation, owned by a  
22 family. (Exhibit V-1 at 1). Valley's existing water system consists of seven active wells, two  
23 arsenic treatment facilities, six storage tanks, and a distribution system that serves approximately  
24 1,450 customers. (ROO, ¶ 39). It is the current economies of scale of these two companies that  
25 allows Liberty to offer water rates significantly lower than that offered by Valley.  
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**b. Valley is Fit and Proper to Serve Marbella Ranch**

Although Staff recommends approval of Liberty's application to extend its water CC&N, Staff sees Valley as a "viable alternative" given the close proximity of Valley's existing CC&N to the extension area, the economies of scale the proposed increase would create for Valley, and that this is the last contiguous parcel of land to which Valley could expand its service area. (ROO, ¶ 57). Throughout this case, Staff acknowledged that both Liberty and Valley are fit and proper and both companies have the capabilities and qualifications to serve water in the extension area. (Exhibit S-1 at 6; *see also* Transcript ("Tr.") at 182, lines 13-19 [Chukwu]). Staff also acknowledged that both companies have demonstrated the ability to formulate, develop and operate water utilities in Arizona. (Exhibit S-1 at 6; *see also* Tr. at 182, lines 21-25 [Chukwu]). Yet the financial effects of granting the CC&N extension to one over the other will be significant to Valley as described below. In addition, Liberty would be amenable to providing wastewater service to Marbella Ranch even if Valley was granted the water CC&N. (Tr. at 22, lines 1-2 [Carlson], *see also* Tr. at 38, line 12 [Carlson]).

**c. Benefits of Granting CC&N Extension to Valley.**

The addition of the Marbella Ranch development would increase Valley's customer base by 87% and its rate base by 421 %, which would allow Valley to benefit from economies of scale and assist in a healthier financial structure. (ROO, ¶ 61). Valley was compelled to file for this extension application because Marbella Ranch is located in the last large piece of land available to Valley for expansion and the development will almost double the size of the utility. (Tr. at 88-89, lines 19-25, 1-2 [Prince]). This would result in an improved debt to equity ratio, allowing Valley to achieve a better balance of financial resources. (Exhibit V-3 at 6.). Valley would be able to allocate its expenses over a much larger customer base resulting in stabilized rates which benefits current and future customers. (Exhibit V-3 at 4; *see also* Tr. at 89, lines 7-12 [Prince]).

1           **d.     No Party has provided any Evidence that a Consolidated Utility Providing**  
2           **both Water and Wastewater is More Efficient.**

3           Staff has acknowledged that although not required, neither party has provided calculations  
4 and/or information which would allow Staff to determine which company would be the most  
5 efficient provider. (Exhibit S-1 at 5; *see also* Tr. at 184, lines 6-11 [Chukwu]). In addition, Staff  
6 also acknowledged that Liberty has not demonstrated that the provision of water and wastewater  
7 by a utility or affiliated company is more efficient than the water/wastewater combination of  
8 Valley and Liberty. (Exhibit S-1 at 5; *see also* Tr. at 184, lines 12-18 [Chukwu]). In fact, Liberty  
9 and Staff both confirmed at hearing that they have not done any monetary analysis or independent  
10 financial analysis to compute such efficiencies. (Tr. at 39, line 11 [Carlson]; *see also* Tr. at 184,  
11 lines 19-21 [Chukwu]).

12           Currently, 49% of Valley's water customers are provided wastewater services by Liberty.  
13 (ROO, ¶ 12). This relationship has not resulted in any complaints by Liberty or customers nor  
14 have there been any adverse consequences. (Exhibit V-3 at 6); *see also* Tr. at 64, lines 14-16  
15 [Sorensen]). The only potential problem raised by Liberty is the situation when the Company  
16 needs to shut off water service to an integrated customer that does not pay their sewer bill. (Tr. at  
17 27, lines 12-14 [Carlson]. The Company testified that they would need to install a shut off valve  
18 at a cost between \$250 and \$400 per home for those customers that did not obtain water service  
19 from Liberty. (ROO, ¶ 11). As discussed above, Valley has offered to enter into a water shut-off  
20 agreement to abate concerns over the non-payment of sewer bills in a bifurcated system. (ROO,  
21 ¶ 61). In addition, Liberty testified that they would have no objection to entering into some form  
22 of water shut off agreement with Valley. (Tr. at 65, lines 1-2 [Sorensen]). In fact, the two  
23 companies have conducted early discussions regarding such an agreement. (Tr. at 95, lines 3-4  
24 [Prince]). Although there may be small efficiencies by having a single service provider, neither  
25 Staff nor any other party has quantified these efficiencies and it seems to be immaterial in relation  
26 to the size of the Marbella Ranch Project. (Exhibit V-3 at 6).

1           e.       **Requiring Valley to Finance Marbella Ranch with 100% Equity Would put**  
2                   **all of the Financial Risk of Future Development on Utility Company.**

3           Valley is opposed to Staff's recommendation which would require Valley to finance needed  
4           utility infrastructure with 100 percent equity if awarded the water CC&N for Marbella Ranch and  
5           indicated it would be "very difficult" for it to satisfy that recommendation. Valley states that such a  
6           recommendation quashes the ability of smaller water companies to grow, giving larger companies a  
7           considerable advantage. (ROO, ¶ 62).

8           In addition, to require Valley to assume all of the financial risk of construction, typically  
9           the responsibility of the developer is unreasonable and dangerous. (Exhibit V-3 at 5). Public  
10          Service Corporations must not be forced into speculative high risk ventures, irrespective of their  
11          debt to equity position. (*Id.*). This violates the conservative nature of the water utility industry  
12          and unnecessarily jeopardizes the financial well-being of any small utility. (*Id.*). Furthermore, it  
13          is unreasonable to require the shareholders of Valley to make an investment of \$7,450,762,  
14          resulting in an investment which would increase Valley's rate base by 421%, yet only increase  
15          Valley's customer base by 87%. (Exhibit V-3 at 5-6). This places companies the size of Valley  
16          in an untenable position and sets a precedent for growth that only includes larger multinational  
17          companies and excludes smaller companies like Valley. (Exhibit V-3 at 6).

18          In addition, Valley does not agree with the premise that the development risk should be  
19          put onto the public utility, and not the developer. (Tr. 103, lines 5-7 [Prince]). And with good  
20          reason because Valley currently has two developments that it entered into MXAs with that are  
21          sitting idle because they were caught in the bust part of the boom and Valley has no customers on  
22          those yet and the time clock is ticking. (Tr. 103, lines 8-12 [Prince])

23          Even Liberty agreed that Staff's recommendation to proscribe specific equity percentages  
24          to construct Marbella Ranch would force the utility to take on development risk and pass it on to  
25          the customers. (Exhibit L-7 at 3, *see also* Tr. at 54, lines 9-13). Finally, the purpose of AIAC is  
26          to keep the build out risk for new development on the developer, not the utility and its customers.

1 (Exhibit L-7 at 3.)

2 **III. Conclusion**

3 This is an ideal opportunity for the Commission to execute its policy to support and  
4 promote the growth of small water companies in Arizona, in order that they may continue to be  
5 economically viable through expansion. The addition of the Marbella Ranch development would  
6 increase Valley's customer base by 87% and its rate base by 421%. Such growth would allow  
7 Valley to benefit from economies of scale that would include increases to its retained earnings,  
8 improvement to its debt to equity ratio, and allow for allocation of expenses over a much larger  
9 customer base resulting in stabilized rates which benefits current and future customers. Such  
10 expansion will create a financially stronger, larger and more efficient water company, which  
11 would benefit all of Valley's customers and ultimately be in the public interest.

12 For the reasons discussed in these Exceptions, Valley respectfully requests that the  
13 Commission direct its Hearing Division to modify the ROO thereby approving Valley's  
14 application to extend its CC&N.

15 RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of January, 2015.

16 MUNGER CHADWICK, P.L.C.

17 

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23 Original and 13 copies of the foregoing  
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