

ORIGINAL OPEN MEETING AGENDA ITEM
EXCEPTION



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Arizona Corporation Commission
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10 **BEFORE THE ARIZONA CORPORATION COMMISSION**

11 IN THE MATTER OF THE
12 APPLICATION OF LIBERTY UTILITIES
(LITCHFIELD PARK WATER & SEWER)
13 CORP. FOR AN ACCOUNTING ORDER
AUTHORIZING THE DEFERRAL OF
14 COSTS ASSOCIATED WITH EFFORTS
TO ADDRESS THE POTENTIAL
15 CONTAMINATION OF WATER SUPPLY
LOCATED IN MARICOPA COUNTY,
16 ARIZONA.

DOCKET NO. W-01427A-16-0200

**RESPONSE TO STAFF'S
MEMORANDUM AND EXCEPTIONS
TO RECOMMENDED ORDER**

17 Liberty Utilities (Litchfield Park Water & Sewer) Corp.'s ("Liberty Litchfield
18 Park" or "Company") hereby responds to Staff's Memorandum and asserts the following
19 exceptions to Staff's proposed Order, both docketed on August 2, 2016. The Company's
20 exceptions contain proposed ordering language to be included in the Commission order in
21 this docket to replace the ordering language offered by Staff. The Company believes its
22 language adequately reflects the specific relief being sought in this proceeding.

23 Liberty Litchfield Park appreciates Staff's prompt review and analysis of the
24 Company's request for Commission authorization to remediate contamination and
25 potential contamination of the Company's water supplies from Perfluorooctanoic Acid
26 ("PFOA") and Perflurooctane Sulfonate ("PFOS"). Both Staff and the Company

1 recognize the necessity that the Company address the PFOA/PFOS issues. But this is a
2 unique situation that warrants prompt action to facilitate remediation of the PFOA/PFOS
3 contamination, and Staff's recommendations do not go far enough.

4 Towards that end, it is critical for the Commission to approve the Company's
5 proposed remediation project as just, reasonable and prudent in this proceeding. Now is
6 the time and place for the Commission to find that it is reasonable and prudent for Liberty
7 Litchfield Park to take action to address PFOS/PFOA and that the costs the Company
8 plans to spend to do so are going to be recovered from customers. Staff suggestions that a
9 prudency review be deferred until a future rate case doesn't work.¹ Again, while the
10 Company appreciates Staff' efforts in this docket, the Company can't proceed with the
11 remediation project under those circumstances.

12 For that reason, the Company requests that the Commission issue an order
13 directing the Company to undertake any and all necessary measures to remediate PFOA
14 and PFOS potentially impacting the Company's water supply and recognizing those
15 measures and costs as necessary, prudent and reasonable for rate making purposes. Put
16 frankly, Liberty Litchfield Park does not believe it can fund the necessary remediation
17 costs absent the relief it requested from the Commission in this docket.

18 **I. RESPONSE TO STAFF MEMORANDUM.**

19 **A. Liberty Litchfield Park's Application.**

20 On May 17, 2016, the United States Environmental Protection Agency ("EPA")
21 established new Health Advisories lowering the levels of PFOA and PFOS from 400 parts
22 per trillion for PFOA and 200 parts per trillion for PFOS to 70 parts per trillion for PFOA

23 ¹ See Staff Memorandum at 5 ("In light of this near term cost and remedial action review
24 opportunity, it is not necessary, or reasonable, for the Commission to issue a Decision that
25 pre-authorizes, without limit, the deferrals of possible incurred costs that cannot be
26 identified or estimated... While it is reasonable to expect that permanent steps will need to
be taken, Staff believes that the time to review and address these secondary steps and
possible cost deferrals will be a part of the Company's upcoming general rate case filing."
See also Staff proposed Order at ¶¶24-25.

1 and PFOS combined. This was done to provide drinking water system operators, and
2 state, tribal and local officials who have the primary responsibility for overseeing these
3 systems, with information on the health risks of these chemicals, so they can take the
4 appropriate actions to protect their residents.

5 On or about April 11, 2016, EPA notified Liberty Litchfield Park that studies
6 showed elevated levels of PFOA and PFOS in two of the Company's wells located in the
7 Airline ("AL") well field, specifically wells 2AL and 10AL. In response to that notice
8 from EPA, on April 20, 2016, Liberty Litchfield Park had sampling done on Company
9 wells and sampling results were received on May 10, 2016 showing levels of PFOA/PFOS
10 in wells 4AL, 5AL, 9AL and 10AL. Additional test results also showed elevated levels of
11 PFOA and PFOS in well 2AL. At that time, the Liberty Utilities engineering department
12 began exploring and evaluating treatment options for perfluorinated compounds.

13 Liberty Litchfield Park has already taken steps to begin remediating possible
14 PFOA/PFOS contamination. The Company has leased and installed a temporary Evoqua
15 Granular Activated Carbon ("GAC") unit for well 2AL. The cost for that temporary unit
16 is \$276,893.00, including \$166,218 for mobilization, \$80,675 for demobilization and
17 \$30,000 for month rentals (\$10,000 per month for a minimum of three months). The
18 Evoqua unit was the only GAC unit available to the Company at that time. Unfortunately,
19 Evoqua is not willing to sell that GAC unit to the Company for permanent installation.²
20 In turn, the Company is in the process of obtaining bids from vendors to purchase new
21 GAC units for permanent installation at wells 2AL and 4AL.

22
23
24 ² The Evoqua GAC unit installed at well 2AL is a rental unit owned by Evoqua. Evoqua
25 is unwilling to sell that rental unit to the Company, but is willing to sell new GAC units to
26 the Company. For that reason, the Company has obtained bids from Evoqua and Calgon
Carbon Corporation for purchase and installation of two new GAC units at wells 2AL and
4AL. Based on initial bids, the Company estimates that the cost for those two new GAC
units will be in the range of \$550,000 to \$650,000.

1 The Company also came to the Commission with a plan to take permanent steps to
2 prevent PFOA/PFOS contamination of its water supplies. Presently, the Company is
3 proposing to purchase and install two new GAC units at wells 2AL and 4AL as the
4 permanent treatment option. The Company's consulting engineers have determined that
5 installation of GAC units is the best and most cost effective options for remediating PFOA
6 and PFOS. The Company intends to purchase and install a permanent GAC unit for well
7 2AL. The Company is further evaluating whether to purchase a permanent GAC unit for
8 well 4AL or whether to purchase a permanent GAC unit that would provide treatment to
9 wells 4AL, 5AL and 9AL. The Company's consulting engineers are exploring which of
10 those two options is the proper solution. If that analysis determines that a GAC unit
11 should be installed to serve wells 4AL, 5AL and 9AL, the Company anticipates additional
12 costs for a GAC units sized for all three of those wells.

13 In its application, Liberty Litchfield Park sought very specific relief from the
14 Commission as a necessary prerequisite to proceed with the PFOA/PFOS remediation:

15 28. Under these circumstances, the Company requests that
16 the Commission direct the Company to make any and all
17 additions and improvements to or changes in the existing
18 plant necessary to protect the Company's customers and the
19 public from the transmission of high levels of PFOS or PFOA
20 through the Company's water supplies. Such additions and
21 improvements shall include but not be limited to the mobile
22 GAC treatment measures for wells 2AL and 4AL as
necessary and prudent remediation of the PFOA/PFOS levels
in those wells. *Consistent with such order, the Commission
should authorize the Company to recover, through rates to be
approved in a general rate case, any and all costs of
additions and improvements for remediation of PFOA/PFOS
to protect the Company's customers and the public from
contamination by PFOS and PFOA.*

23 32. Under these circumstances, the Company requests that
24 the Commission approve permanent GAC treatment of wells
25 2AL and 4AL *as necessary and prudent remediation of the
PFOA/PFOS levels in those wells and authorizing the
Company to recover any and all costs for additions and
improvements relating to such permanent GAC treatment in
the Company's next general rate case. (Emphasis added.)*

1 That type of relief is critical for the Company to proceed with remediation of the
2 PFOA/PFOS issues.

3 Staff, however, treats the Company's applications like a typical accounting order
4 where the utility goes out and spends some money, records it, and in a rate case, the
5 prudence and necessity of those costs are determined. The Company can't proceed with
6 the PFOA/PFOS project subject to such uncertainty of recovery in a future rate case. That
7 is not what Liberty Litchfield Park sought in this docket. If the Commission agrees that
8 the public interest calls for remediation of PFOS/PFOA contamination based on the
9 currently available information, then the Commission should order the Company to take
10 reasonable steps to remediate the contamination and further order that such investment is
11 necessary, prudent, and will be recovered from rate payers once the plant is in service and
12 the costs have been verified in a rate case.

13 The Company recognizes that this situation is a unique and unusual circumstance
14 warranting such relief from the Commission. But real world problems do not always fit
15 neatly into regulatory boxes. The additions and improvements subject to this approval are
16 necessary to protect the Company's customers and the public from PFOS/PFOA
17 contamination, yet, there is no clear regulatory requirement that the Company take steps
18 to remediate PFOA/PFOS. Under these highly unusual circumstances, the Commission
19 should direct the Company to take all necessary steps to remediate the PFOA/PFOS
20 contamination, both preliminary and permanent, and the Commission should provide the
21 Company with assurance that its decision to act in the interest of its customers and the
22 general public will not be subject to post-hoc second-guessing in a rate case over the costs
23 to remedy of situation in which the Company finds itself through absolutely no fault of its
24 own.

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1 **B. Specific Concerns with Staff's Analysis and Recommendations.**

2 The Company has several concerns with Staff's recommendations in this case.
3 Although each is discussed further below, along with the Company's recommended
4 remedies, a brief summary of these areas of disagreement is helpful.

5 To start, Liberty Litchfield Park disagrees with Staff's recommendation for a
6 deferred cost cap of \$1,027,435.³ On that issue, Staff has excluded demobilization costs
7 and proposed a sharing of consulting fees for a fate and transport model relating to the
8 PFOA/PFOS contamination. To be clear, Liberty Litchfield Park did not propose a cap in
9 its application and the Company doesn't believe a cap is necessary or appropriate. Based
10 on discussions with Staff, however, the Company agreed to a deferral cap of \$1.2 million.
11 The Company did so in an effort to work with Staff and because the Company was
12 hopeful that the possible permanent solution as noted above could be done for \$1.2
13 million. The \$1,027,435 figure proposed by Staff is simply too low. Those deductions
14 also are unsupported.

15 As of right now, the Company has incurred \$276,893 in costs for the Evoqua GAC
16 unit along with \$350,000 of additional costs for engineering and ancillary improvements.
17 The Company anticipates an additional \$550,000 to \$650,000 for purchase and
18 installation of permanent GAC units for 2AL and 4AL. As noted above, if the engineers
19 determine that a second GAC unit serving wells 4AL, 5AL and 9AL is necessary, then the
20 costs would increase due to sizing of that second GAC unit. As such, the \$1,027,435
21 deferral cap proposed by Staff is too low. As stated above, the Company is willing to
22 agree to a deferral cap of \$1,200,000 at this time.

23 Moreover, an order specifying a cap on costs also needs clarifying language that
24 the cap is not on what will be spent (i.e., it will cost what it costs), rather the cap is on an
25

26 ³ Staff Memorandum at 4; Staff proposed Order at 7-8.

1 amount subject to deferral of depreciation and accrual of post in service AFUDC, both
2 requests Staff ignores. The Company has already proposed such language:

3 Unless otherwise approved by the Commission, the
4 authorization to defer costs in Account No. 8600-2-0100-10-
5 1910-0000 (NARUC Account No. 186.2 – Other Deferred
6 Debits) for recovery as capital costs in a future general rate
case set forth in this Order shall not apply to any deferred
debts above \$1.2 million.⁴

7 Staff excludes the Evoqua demobilization costs of \$152,195 on the reasoning that
8 Liberty Litchfield Park could use the temporary Evoqua removal system as its permanent
9 solution and, therefore, demobilization would not occur.⁵ As stated above, however, the
10 Company now knows that it cannot buy the Evoqua rental unit, which means that the
11 Company will, in fact, pay the demobilization fee. For that reason, Staff's exclusion of
12 those costs from the cap should be rejected.

13 Next, Staff concludes that the costs of the Montgomery & Associates modeling
14 work be split between the PFOA/PFOS project and the Liberty Aquifer Replenishment
15 Facility ("LARF").⁶ Staff misunderstands the underlying facts on this issue. The
16 estimated cost of \$80,000 for the Montgomery modeling relates solely to fate and
17 transport modeling for PFOA/PFOS. The scope of work involves Montgomery taking the
18 existing groundwater modeling data compiled for the LARF project and then compiling a
19 fate and transport model for PFOA/PFOA. The work performed by Montgomery relates
20 solely to PFOA/PFOS. It has nothing to do with the LARF. The estimated cost of
21 \$80,000 already includes a price reduction because Montgomery did not have to create the
22 groundwater model from scratch. Under these circumstances, there simply is not
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25 ⁴ Notice of Filing (proposed ordering language), ¶ 5 (C).

26 ⁵ Staff Memorandum at 5.

⁶ Staff Memorandum at 6.

1 justification for reducing the costs of the fate and transporting modeling work by
2 Montgomery.

3 Again, the Company has done its best to estimate the costs it will incur. But it isn't
4 fair to use these estimates in an effort to cap the Company's spending or ultimate
5 recovery. This is not the relief being sought, nor would it be adequate. Liberty Litchfield
6 Park needs assurance it should take remedial action now and assurance that it will recover
7 the costs of doing so. Staff's approach is to apply traditional ratemaking to a situation that
8 calls for something different as requested by the Company.

9 **C. EXCEPTIONS TO PROPOSED ORDER.**

10 Based on the foregoing and the facts set forth in its application, Liberty Litchfield
11 Park requests that the Commission modify the proposed Order contained in the Staff
12 Memorandum as follows:

- 13 1. Insert the following at the end of paragraph 22 of the proposed Order:

14 **The Company opposes the deferral cap recommended by**
15 **Staff based on anticipated remediation costs and because**
16 **Staff's exclusions of costs for water modeling and**
17 **demobilization costs are unsupported. The Commission**
18 **agrees with the Company and finds that the Company's**
19 **proposed cap of \$1,200,000 on costs that would be subject**
20 **to deferral of depreciation and accrual of post-in-service**
21 **AFUDC is appropriate.**

- 22 2. Insert the following language at the end of paragraph 23 of the proposed
23 Order:

24 Staff believes that it is reasonable to conclude that recovery of
25 these deferrals from customers is probable and therefore the
26 establishment of a regulatory asset is warranted, and that such
accounting complies with the requirements of General
Accepted Accounting Principles ("GAAP"), specifically
Accounting Standards Codification No. 980. **The**
Commission hereby directs the Company to remediate the
PFOA and PFOS concentrations in the Company's water
supply in accordance with the EPA Health Advisories and
reduce the contaminant levels to an amount less than 70
parts per trillion, and the Commission finds that the costs

1 Debits) for recovery in a future general rate case with
2 approval for deferral of depreciation and recording of post in
service AFUDC.

3 IT IS FURTHER ORDERED that the orders issued to Liberty
4 Utilities (Litchfield Park Water & Sewer) Corp herein,
5 including the authorization to defer costs, constitute a finding
6 and determination that the capital and operating costs to be
7 incurred and subject to deferral are necessary to comply with
8 this order and are appropriately, reasonably and prudently
9 being incurred to reduce PFOA/PFOS in Liberty Utilities
(Litchfield Park Water & Sewer) Corp's water supplies to
levels that consistently meet or exceed all federal and state
regulations, including, but not limited to, the May 17, 2016
United States Environmental Protection Agency Health
Advisories concerning PFOA/PFOS.

10 IT IS FURTHER ORDERED that while no rates are being set
11 in this order, Liberty Utilities (Litchfield Park Water &
12 Sewer) Corp is being assured that its financial investment in
13 protecting its customers and the general public from
14 PFOA/PFOS in accordance with this order and all federal and
15 state regulations, including, but not limited to, the May 17,
2016 United States Environmental Protection Agency Health
Advisories concerning PFOA/PFOS is appropriate,
reasonable and prudent and subject to recovery through rates
to be approved in one or more general rate cases subject to
the following conditions:

- 16 A. Unless otherwise approved by the Commission,
17 the authorization to defer costs in Account No.
18 8600-2-0100-10-1910-0000 (NARUC Account
19 No. 186.2 - Other Deferred Debits) for
20 recovery as capital costs in a future general rate
21 case set forth in this Order shall not apply to
22 any deferred debits above \$1.2 million.
- 23 B. The cost deferral cap associated with this
24 specific accounting order is set at \$1,200,000.
- 25 C. The cut off point for recording such cost
26 deferrals will end on the effective date of rates
in the Company's next rate case.
- D. The Company is directed to file a general rate
case no later than June 30, 2017, utilizing a test
year covering the twelve months ending
December 31, 2016.

1 **II. CONCLUSION.**

2 It is clear that the public interest requires approval of the Company's proposed
3 project to remediate PFOA/PFOS and protect the Company's customers and the public
4 from PFOS/PFOA contamination. This is true despite the lack of a current and clear
5 regulatory requirement that the Company take steps to remediate PFOA/PFOS. Under
6 these highly unusual circumstances, it is necessary for the Commission to direct the
7 Company to take all necessary steps to remediate the PFOA/PFOS contamination, both
8 preliminary and permanent, and the Commission must provide the Company with
9 assurance that its decision to act in the interest of its customers and the general public will
10 not be rejected in the future.

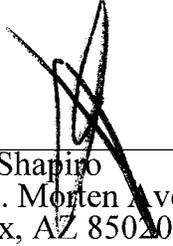
11 To provide such assurance, the Commission should order the Company to proceed
12 with immediate GAC treatment for wells 2AL and 4AL and adopt the exceptions and
13 proposed changes to the proposed Order set forth above. Boiled down, the Company
14 requests that the Commission approve permanent GAC treatment of wells 2AL and 4AL
15 as necessary and prudent remediation of the PFOA/PFOS levels in those wells and
16 authorizing the Company to recover any and all costs for additions and improvements
17 relating to such temporary and permanent GAC treatment in the Company's next general
18 rate case.

19 In addition, the Company requests that the Commission issue an accounting order
20 authorizing the Company to defer any and all capital and operating expenses incurred by
21 the Company in connection with the Company's response to the known and potential
22 PFOA/PFOS levels in the Company's water supply, including, but not limited to: (i) any
23 and all litigation costs incurred by the Company; (ii) any and all litigation costs related to
24 seeking restitution from third parties; (iii) increases in operation and maintenance costs
25 from alternative (replacement) water sources; (iv) capital costs of acquiring and/or
26 constructing alternative (replacement) sources of water; (v) capital costs and/or operating

1 expenses to treat contaminated water supplies, including mobile and permanent GAC
2 treatment facilities; (vi) deferral of depreciation and post in service AFUDC; and (vii) any
3 other associated costs. For these reasons, the Company requests that the Commission
4 adopt the Company's exception and proposed changes to the proposed Order in this case.

5 RESPECTFULLY SUBMITTED this 5th day of August, 2016.

6 SHAPIRO LAW FIRM, P.C.

7
8
9 By: 

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19 foregoing were hand-delivered this
5th day of August, 2016 to:

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23 **COPY** of the foregoing was hand-delivered
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