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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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JEFF HATCH-MILLER Chairman
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2005 OCT 28 P 1:21
AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF
BLACK MOUNTAIN SEWER COMPANY, AN
ARIZONA CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE OF ITS
UTILITY PLANT AND PROPERTY AND FOR
INCREASES IN ITS RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

DOCKET NO. SW-02361A-05-0657

PROCEDURAL ORDER

BY THE COMMISSION:

On September 16, 2005, Black Mountain Sewer Company ("Company") filed an application with the Arizona Corporation Commission for a rate increase.

On September 26, 2005, the Residential Utility Consumer Office ("RUCO") filed an Application to Intervene, which was granted by Procedural Order of October 7, 2005.

On October 14, 2005, the Commission's Utilities Division Staff ("Staff") docketed a letter informing the Company that its application had not met the sufficiency requirements outlined in A.A.C. R14-2-103 because a cost of service study was not filed with the application ("Deficiency Letter"). The Deficiency Letter stated that Staff will not require a cost of service study if the Company instead provides information delineated in an attachment to the Deficiency Letter. The Deficiency Letter informed the Company that it had 15 calendar days, or until October 31, 2005, to correct the deficiencies or make other arrangements with Staff to remedy the rate application, and that if corrections or other arrangements are not made by that date, that Staff will request administrative closure of the docket.

On October 17, 2005, the Company contacted the Hearing Division and requested an emergency procedural conference. On October 18, 2005, the Company informed the Hearing Division that it had contacted Staff and RUCO, and that the parties were all available for a telephonic procedural conference on October 19, 2005 at 2:00 p.m.

By Procedural Order issued October 18, 2005, a Procedural Conference was set for October

1 19, 2005, commencing at 2:00 p.m., or as soon thereafter as practicable. Due to an Open Meeting,
2 the Procedural Conference was not held as scheduled. The parties subsequently informed the
3 Hearing Division that a Procedural Conference was no longer needed, and the Procedural Conference
4 was therefore not rescheduled.

5 On October 25, 2005, the Company and Staff filed a "Stipulation" in this docket and
6 requested a Procedural Order approving the Stipulation. RUCO was not a signatory to the filing.
7 According to the joint filing, Staff and the Company reached an agreement as follows:

8 "The Company and Staff hereby stipulate and agree that Staff will issue a
9 Letter of Sufficiency subject to the following condition:

10 If the Company does not provide the information listed in
11 Attachment 1 within 60 calendar days of a Procedural Order
12 approving this Stipulation, the time clock in the above captioned
13 matter will be suspended until the Company provides such
14 information.

15 Thus, the Company and Staff agree to treat Staff's request for additional
16 information in the nature of a data request. In the event of any dispute between
17 the Company and Staff over the sufficiency of the Company's response, either
18 party may request intervention by the Hearing Division.

19 The Company and Staff further stipulate and agree that Staff will docket
20 the Letter of Sufficiency within two business days of a Procedural Order
21 approving this Stipulation, and that the time clock will commence when the letter
22 is docketed. Finally, the Company and Staff request that this Stipulation be
23 approved in a Procedural Order."

24 Parties to matters before the Commission are free to make agreements regarding procedural
25 matters related to Commission proceedings as long as such agreements do not contravene
26 Commission rules. Parties may also request approval of such agreements, but approval is not always
27 necessary, required, or proper. A.A.C. R14-2-103.B.7 authorizes and requires Staff to review filings
28

1 and file a sufficiency or deficiency notice.¹ An agreement between parties to move for suspension of
2 the time clock rules under agreed-upon circumstances is not improper. However, the terms of the
3 above-described agreement contemplate future filings, which are not yet available for review.
4 Sufficient factual information regarding the requested information contemplated by the agreement
5 therefore does not, and cannot, yet exist to justify pre-approval of a time clock suspension. The
6 issuance of a Procedural Order approving the above-described agreement would entail advance
7 approval of suspension of the Commission's time clock rule in the absence of a factual justification
8 for such action, and would be improper.

9 Because the approval requested by two of the three parties to this case would entail advance
10 approval of suspension of the Commission's time clock rule in the absence of a factual justification
11 for such action, the Stipulation should not be approved as requested. Following Staff's finding of
12 sufficiency or deficiency pursuant to A.A.C. R14-2-103.B.7, the parties are free to request resolution
13 of discovery disputes, and may also request suspension of the time clock to allow time to address the
14 disputes.

15 IT IS THEREFORE ORDERED that for the reasons articulated herein, approval of the
16 agreement between the Commission's Utilities Division Staff and Black Mountain Sewer Company
17 filed on October 25, 2005 shall not be granted.

18 Dated this 27th day of October, 2005

19
20 
21 TEENA WOLFE
22 ADMINISTRATIVE LAW JUDGE

23 ...
24 ...

25 ¹ A.A.C. R14-2-103.B.7 provides as follows:

26 Notice of sufficiency of a utility's filing: The staff will review each filing to ascertain whether it is in
27 compliance with the provisions of this Section, including the instructions contained in subsection
28 (B)(9) or in forms prescribed by the Commission. Within 30 days after receipt of the utility's filing,
the staff shall file with Docket Control and serve on the utility a notice that the filing either is in
compliance with the Commission's requirements or is deficient. A notice of deficiency must include
an explanation of the defect found. If the staff fails to file any notice within the 30-day period, the
utility's filing shall be deemed accepted as of the 31st day.

1 Copies of the foregoing mailed/faxed/delivered
this 28 day of October, 2005 to:

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3 Patrick J. Black
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By:


Molly Johnson
Secretary to Teena Wolfe