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Intervention Hearing – SW-02361A-05-0657, June 7, 2006

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Black Mountain Sewer Company

AZ CORP COMMISSION
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Thank you for the opportunity to speak with you today. As the vice president of the North Boulders Homeowners Association, I represent the citizens of Carefree that reside in the Boulders Community. They have asked me to voice their opposition to the request of Black Mountain Sewer Co. for a 13.5% increase in their residential sewer rates.

We ask that you refuse this rate increase, not based just on the financials submitted for the increase. Instead we ask that you refuse this request based on past and current performance of the BMSC (Black Mountain Sewer Company) in satisfying their customers' need for odor free sewer performance. This failure is well documented by our citizens and communities surrounding the Boulders, including some customers of The Boulders Resort.

Before detailing some of the reasons for this request, a brief statement as to my background may be of help in putting my remarks in the proper context. I was a VP for DuPont. During my 25 years with that company, utilities were my customers for three and a half years. I was also a VP for San Diego Gas and Electric Co. So, I feel I know something about how utilities operate. I teach and have taught courses in Management and Marketing at ASU.

For over eight years, citizens in Carefree and the Boulders community, including customers that use the services of The Boulders Resort, a major taxpayer in this state, have endured an unpredictable and offensive odor that emanates from the sewer system that serves our community. In spite of repeated attempts to mask or correct the odor by BMSC, it continues. We are aware and accept that there is always a risk in any system that given atmospheric conditions, occasional odor is a possibility in any wastewater or sewer treatment facility. The BMSC has pointed this out repeatedly to us, but our belief is that the frequency and intensity of these odors makes our situation a continuing and unusual circumstance that requires correction.

Additionally, we have been told that BMSC is within state guidelines for sewer treatment. That being the case, then we submit that these guidelines are either not stringent enough and/or have not kept up with the explosive development of our community. We conclude this because in spite of compliance with the guidelines, the BMSC does not pass the nose test. The odor is a frequent and an unpredictable nuisance. It makes one think that the residential and business growth that continues in our part of the metropolitan area has made existing guidelines both antiquated and ineffective. What other explanation is there for pervasive odors existing in spite of compliance with

guidelines? Unless, of course, the Black Mountain Sewer System itself is compromised in some way, and if that is the case, there must be an engineering solution.

Whatever the reasons, the odors become such a nuisance at times that residents in the parts of the Boulders and other communities served by the BMSC cannot entertain guests, serve their customers effectively as in the case of the Boulders, enjoy their home environment, and fear for the valuation of their property. **This problem needs to be fixed.**

We have a number of instances documenting the odor problems and you will hear (or have heard) from some members of our community about those experiences. Our position is this. For the BMSC to be rewarded with a 13.5% rate increase while their performance remains deficient sends the wrong message to our citizens and ratepayers. It would say that unacceptable performance by BMSC is acceptable. This should not be permitted. Adding insult to injury, this rate increase, if passed, would be added to sewer rates that we currently pay that are some of the highest in the state. This would be a reward for non performance.

Before reaching the point of standing before you today what has the Boulders Homeowners Association, working with the BMSC, done to try and correct the problem? Over the years, the relationship between BMSC, members of the Boulders and Carefree communities and the Town of Carefree has become contentious over the odor issue. In the past six to eight months those relationships had begun to improve, but still the odor problem persists. In spite of the improved relationships and communication between the parties, communication between BMSC and its customers have once again become very spotty at best. For example, we have no explanation as to why there is a need for this 13.5% increase. Are we to accept an increase of this magnitude on faith and non performance? If so, something is very wrong minded about this. Rate increases then become 'pass throughs' by the utility to justify further investment without explanation as to why to their customer base.

The Town of Carefree has funded independent engineering firms that are respected in their fields e.g. Carter Burgess Co. to name one. BMSC has funded the Lamb Company to assess what is wrong. Their findings have been given little if any credibility by BMSC.

The homeowners association used the findings of these engineering firms as the basis for a draft operating agreement between the BHOA and BMSC. Mr. Mike Weber, past director of BMSC, has characterized these professional engineering findings as "a fairy tale". He has defended his position of rejecting the Carter Burgess Report on the basis that its recommendations will cost \$2 million dollars in investment and \$300,000 in operating expenses each year. His other comments have included that he doesn't want to answer to another regulatory body. We submit that the "regulatory body" he refers to are also known as his customers. We also submit that investments made to satisfy customers in a high growth market like Carefree may be a good investment rather than simply a cost. The added benefit is you could well solve our problems as your current customers.

Members of our community have been accused of being overreactive. Engineering data has been cited time and again by Black Mountain that we are imagining the odors. Ladies and gentlemen, we are not irrational. We do not have "an odor complaint problem"; WE HAVE AN ODOR PROBLEM!! We can smell and it smells! There is a very real concern that as growth continues, this system will be further strained and the odor problems will intensify for our communities. The odor problem needs fixing now and for the future.

Now, in fairness, we recognize that BMSC has taken some steps to correct the problem e.g. increased maintenance schedules, cleaned lift stations, begun a process to insert new sewer lines, sealed manholes and pumped Thiogard, a chemical that is supposed to neutralize odors into the system in great quantity. Still the unpredictable odors persist. These are bandaid patches it appears, or the problem would have been solved or greatly reduced. Some of us are convinced that BMSC may not know what the problems really are or will not admit to them. They have stated that they have spent "more than \$600,000 since December of 2003. That may be the case. But throwing money at a problem doesn't solve it and our noses don't lie.

On January 20 of this year, the first of what the BHOA had hoped would be a series of constructive meetings with the BMSC was held. We addressed the poor communication issues, the odor problem and pledged full and continuing cooperation to help resolve these issues with BMSC. These meetings were initiated because members of our community were so upset by the past performance of Black Mountain that a litigation fund of \$250,000 had been initiated to pursue a remedy by legal means to the odor problems. We wanted to resolve these issues before they intensified.

In an effort to continue the dialog between BMSC, the BHOA (Boulders Homeowners Association) and the Town of Carefree, the BHOA contacted Mike Weber (past Director of BMSC) on several occasions to seek a date for another meeting to attempt to solve our problems together and to update one another on progress. We have had only one meeting at this point, and that was the one that took place on January 20 of this year. We want to continue this dialog. The Mayor of Carefree and his staff had joined our group and we wanted to expand the group in search of a permanent solution.

Mr. Weber finally responded to our repeated attempts to contact him for dates for our next monthly meeting, but not until March 15! Two months had passed! He indicated that the meetings would be terminated because the BHOA had intervened on the BMSC rate increase. We said that if he didn't want to continue these meetings because he had been ordered not to for legal reasons given this intervention hearing, we respected that. But if he didn't want to continue these meetings because he was simply upset at the intervention, then we urged him to rethink that position because we felt we were making progress. We explained to him that the filing of the intervention was based on the fact that the increase was substantial and that it was important for us as a homeowners association to object based on the unresolved odor issue. I further suggested that if the odor issue was resolved, we would certainly consider withdrawing our

intervention. He said he would think about resuming the meetings. We received no response. We then later learned he no longer worked for BMSC. Insensitivity had reached new heights.

In addition, Mr. Joel Wade, chief engineer for the BMSC has also moved on to another company. Mr. Wade consistently cited his numbers on PPM as reason for denial that there was an odor problem. But Mr. Wade doesn't live where we live! The Commission would do well to ask Mr. Charles Hernandez, head of operations for BMSC if he thinks we have odor problems, or Mr. Dan Shanaman who works for BMSC if he experienced these odor problems; they are the people that are on the front lines of hearing the customers complaints and attempting to take corrective actions for Black Mountain Sewer.

Most recently, we have met with Mr. Bob Dodds, Mike Weber's replacement. We have been informed he wants to continue our monthly meetings; that's good. We welcome that.

We had suggested to Mr. Dodds as late as last week that the rate increase be postponed until January, '07. The idea was to work with him in his new position to see if we can correct the problems together or at least get a plan to correct them. He refused that request. There is apparently a need to "clean up the financials" at BMSC. We take that to mean they need more money. This raises the question that perhaps failing appropriate in depth due diligence before purchasing BMSC, the management is now trying to make up for deficiencies in the current system they failed to identify and need the new monies to correct them. We don't know. It could also be that the portfolio managers ARE concerned about their fund customers and simply want an increased and guaranteed cash flow base on which to draw for investment purposes. We don't know. But whatever the reasons, we have heard only about the need to "get the financials cleaned up" and protect shareholders. We submit that if a company serves its customers' needs, the financial results follow and shareholders are pleased with their returns. To BMSC we say, Fix the problem and we will support a reasoned rate increase.

Past actions lead us to assume that we are dealing with a company whose for profit mentality does not extend beyond its finance department to the source of their revenue; their customers. We do not have the luxury of withdrawing from their sewer services as we would if in a competitive market where other suppliers are readily available. We need the ACC to help us because we don't have choice. We respectfully request that this commission not reinforce this customer insensitivity by granting a rate increase.

Here is the bottom line. To grant a rate increase at this time is to permit a for profit business and a regulated monopoly to continue to generate shareholder return for some customers, e.g. income fund customers, while their other customers, specifically BMSC customers, are being poorly served. It makes no market sense, even though to BMSC and its Canadian parent Algonquin, it makes financial sense. "Fair Return on

Investment” has more meaning than financial calculation. Somewhere in the definition of “Fair Return” is customer satisfaction, including listening to them.

Finally, having said that, this needs to be said. It goes to the heart of the question that counsel for BMSC asked my during the discovery process; “Do you deny BMSC a fair return on their investment?” For the record, we don’t object to any and all rate increases. That makes no sense either. The system must remain viable to serve us; currently it is not. BMSC must make a fair return on their investment; we clearly understand that. But BMSC needs to fix the odor problems they currently have first!

Already, as noted, management changes have been made and that MAY help. In the meantime, citizens/customers have spent some time talking about what we would suggest be done as next steps to correct the problems. Attached to this document are our suggestions. Let me read them.

We respectfully request this Commission to please send a signal to the BMSC that you can get all the numbers right, but if you fail to satisfy customers’ reasonable needs and expectations, that is not acceptable. As citizens of Arizona we need to hear that message reinforced and so do the companies that we pay to serve us.

Thank you for your time and attention to our needs.

BHOA – Bob Williams, VP, BHOA

Recommendations the ACC Should Consider

Postpone the rate increase of BMSC at least until January 31, 2007 and then:

*Require BMSC, The Town of Carefree and the HOA's to file monthly, cosigned reports to the ACC regarding odors reported and how response was handled by BMSC.

*Require that ADEQ and Maricopa County to retain at their expense (which is really taxpayers expense) a competent engineering firm in waste water and sewage treatment to do the following:

*Completely assess the current adequacy of regulatory compliance standards by ADEQ and Maricopa County, including any compliance requirements as to odor standards. This assessment should evaluate both current and future standards that would be required given the impact of residential and business growth.

* Assess the current adequacy of the BMSC system and make recommendations on how BMSC must reengineer its system to either eliminate or dramatically reduce the odor complaints that residents in the Boulders and Town of Carefree experience from the system. Enforce compliance with these recommendations.

* Working with the town of Carefree, BMSC should put together a five year plan and make the necessary recommendations to maintain an effective sewer and waste water treatment facility. Carefree is currently only 50% built out and development continues at a rapid pace.

*Require ADEQ and Maricopa County to make unannounced assessments of the BMSC sewage and water treatment facilities to be sure they are in compliance with current requirements as to odor and sewage treatment. Do this three times a year in no predictable pattern.