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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE
APPLICATION OF BLACK
MOUNTAIN SEWER
CORPORATION, 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 SERVICES
BASED THEREON.

No. SW-02361A-05-0657

**TOWN OF CAREFREE'S RESPONSE
TO STAFF'S ALTERNATIVE
RECOMMENDATIONS FOR USE OF
FUNDS IN THE HOOK-UP FEE
ACCOUNT**

The Town of Carefree (the "Town") hereby responds to Staff's Alternative Recommendation for Use of Funds in the Hook-up Fee Account. During the hearing in the above-referenced matter the Arizona Corporation Commission Staff ("Staff") suggested, through the testimony of Marlin Scott, Jr. ("Scott"), that it had an alternative recommendation that was not included in Staff's pre-filed testimony (the "Alternative Recommendation"). The Alternative Recommendation related to the hook-up fee account. Based on the testimony of Scott, the Alternative Recommendation was that instead of refunding existing hook-up fees collected by Black Mountain Sewer Corporation ("BMSC") as originally recommended by Staff, the hook-up fee monies could be used to fund needed improvements to the BMSC sewer system. Staff has now

1 withdrawn the Alternative Recommendation because, in part, “[t]he Town . . . did not
2 ask Mr. Scott any questions on cross examination” and therefore does “not appear to
3 have a position on the Alternative Recommendation.” The Town disagrees with Staff’s
4 characterization of the Town’s position on the Alternative Recommendation and
5 stresses that the Town considers the Alternative Recommendation a viable solution to
6 the odor problems raised by the Town.
7

8 The Town vigorously disputes Staff’s suggestion that the Town does “not appear
9 to have a position on the Alternative Recommendation.” First, Staff’s position that the
10 Town needed to indicate its approval of the Alternative Recommendation through cross-
11 examination of Scott is unreasonable. Scott was Staff’s witness. There is no way Scott
12 could testify regarding the Town’s position on the Alternative Recommendation.
13 Second, the Town understood that it would have an opportunity to evaluate the
14 Alternative Recommendation once Staff provided the Alternative Recommendation in
15 writing as directed by Administrative Law Judge Dwight D. Nodes. The Staff’s
16 Alternative Recommendation was presented for the first time during Scott’s testimony.
17 Based on questions posed by Judge Nodes and BMSC it was clear that Scott could not
18 testify to the details of the Alternative Recommendation. As such, the Town understood
19 that Judge Nodes directed Staff to provide the Alternative Recommendation to the
20 parties for evaluation. The Town did not cross-examine Scott on the Alternative
21 Recommendation as he appeared to only know its overall concept and Staff would be
22 providing the parties a written description of the Alternative Recommendation.
23 Contrary to Staff’s perception, the Town considers the Alternative Recommendation a
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1 viable solution to a serious problem.

2 The Alternative Recommendation may resolve the issues raised by the Town,
3 other intervenors, and public comment. The Town's position in this matter is twofold:
4 (1) there is an odor problem caused by BMSC's operations, and (2) any rate increase
5 granted to BMSC should include provisions for the resolution of the odor problems.
6 The Town does not oppose a rate increase as long as BMSC is required and able to
7 resolve the odor problems. Contrary to Staff's assertion, the improvements necessary to
8 resolve the odor problems are not "discretionary improvements." BMSC is prohibited
9 from "establish[ing] or maintain[ing] any unreasonable difference as to . . . service,
10 facilities or in any other respect, either between localities or between classes of service."
11 A.R.S. § 40-334(B). BMSC is also obligated to "furnish and maintain such service,
12 equipment and facilities as will promote the safety, health, comfort and convenience of
13 its patrons, employees and the public, and as will be in all respects adequate, efficient
14 and reasonable." *Id.* § 40-361(B). Testimony of Stan Francom, Town's Public Works
15 Superintendent, Bob Dodds from BMSC, and public comment demonstrated that
16 substantial odor problems exist, that not all of BMSC's customers are receiving the
17 same level of service from BMSC, and that there is significant customer dissatisfaction
18 among BMSC's customers, especially with respect to customers living near the CIE Lift
19 Station and near Boulders Drive. Scott's testimony of his drive-by examination of the
20 BMSC system was not persuasive in demonstrating that no significant odor problems
21 exists or that BMSC is in compliance with either A.R.S. §§ 40-334(B) or 40-361(B). In
22 light of BMSC's obligations under A.R.S. §§ 40-334(B) and 40-361(B), and the
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1 considerable evidence presented in the above-referenced matter, Staff's comment that
2 improvements are discretionary is incorrect.

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4 The Arizona Corporation Commission (the "Commission") has the authority to
5 order "additions or improvements to or changes in the existing plant or physical
6 properties of a public service corporation" when such additions, improvements, or
7 changes "ought reasonably to be made, or that a new structure or structures should be
8 erected, to promote the security or convenience of its employees or the public," which
9 includes BMSC's customers. *Id.* § 40-331(A). The Alternative Recommendation
10 offered by Staff is a practical means for the Commission to order BMSC to resolve the
11 odor problems and the Town is genuinely interested in the Alternative
12 Recommendation.
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15 Withdrawal of the Alternative Recommendation deprives the Commission of a
16 meaningful opportunity to evaluate a practical solution to address the odor problems.
17 The Town believes that the Alternative Recommendation is a promising idea that
18 addresses the odor issues raised by the Town. The Town stresses that it was and is
19 genuinely interested in the Alternative Recommendation and would support the
20 Alternative Recommendation if given the opportunity to do so.
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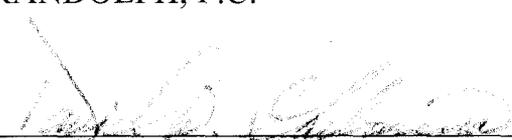
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1 RESPECTFULLY SUBMITTED June 19, 2006.

2 MOHR, HACKETT, PEDERSON, BLAKLEY
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