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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE) No. SW -02361A-05-0657
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.)
_____)

THE BOULDERS HOMEOWNERS ASSOCIATION CLOSING BRIEF

Arizona Corporation Commission
DOCKETED

AUG 18 2006

DOCKETED BY *MR*

Judge Dwight Nodes
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

August 21, 2006

Subject: BRIEF for Docket No. SW-02361A-05-0657
Black Mountain Sewer Co. Request for Rate Increase
Submitted By
The Boulders Homeowners Association

I. INTRODUCTION

In the matter of the Black Mountain Sewer Company ("BMSC")'s request for a rate increase, the Boulders Homeowners Association ("BHOA"), an intervener in the case, respectfully requests that the Arizona Corporation Commission ("Commission") for the reasons stated herein:

- a. deny the rate increase in its entirety
- b. if a rate increase is granted, condition it upon BMSC's fixing the sewer problems by taking the steps identified herein
- c. if the rate increase is denied, order BMSC to fix the sewer problems as stated above

BHOA also joins in the Town of Carefree ("Town")'s Closing Brief which is incorporated by reference with respect to Section I.b above (if a rate increase is granted, condition it upon BMSC's fixing the sewer problems by taking the steps identified herein.)

II. ARGUMENT

A. DENY THE RATE INCREASE IN ITS ENTIRETY

BMSC's poor performance, including its failure to fix the sewer odor, raw sewage spillage and sewer noise, is well documented in the record (See Exhibit 1, Percentage

Breakdown of Homeowner Issues) and is summarized and described herein. This poor performance compels the conclusion that regardless of BMSC's proffered financial information and/or rate of return arguments, no rate increase¹ should be granted.

1. Poor Performance and Incompetence in Managing the System.

Hallmarks of good service by a sewer company are quiet operation and absence of offensive odor. This is taken for granted in most urban communities across the United States. Rather than giving good service and being a positive factor within the Carefree and North Scottsdale communities, the operational performance of BMSC, since its purchase in 2001 by Algonquin Water Resources, has sunk to such a low level that the BHOA, and many Carefree residents, regard BMSC as a public nuisance.

To reward poor performance with a rate increase of any kind would be a violation of all that is right and fair to the public. If granted the increase, a regulated monopoly would be rewarded for unacceptable performance, where given a choice, in a free market, their customers would leave them based on that performance.

Poor management has led to the following specific problems:

a. Odor Problems are Pervasive, Chronic, and Unacceptable.

The presence of odors has been well documented by Public Comment entered into the record in this case. (Transcript of Proceedings ("TR") at 30-80).

BMSC has attempted to mask the problem by using an odor canceling chemical called Thiogard, which works well under certain circumstances. However, Thiogard is rendered ineffective under other circumstances, such as too much turbulence and/or leaks in the sewer lines. (Lamb Technical Services ("LTS") Report at 5 ll. 18-19, submitted by the Town as Exhibit B).

The operational problems causing bad sewer odors are due to BMSC's failure to make major changes to its system that have been recommended by either the Town's experts, Carter

Burgess ("CB") Engineering, Inc., or by BMSC's own experts, LTS. These changes include:

- the replacement or elimination of the C.I.E. Lift Station
- the redesign of the gravity flow line and discharge manhole at Ironwood Rd. and Boulder Dr. to prevent surcharging and positive pressure.

(CB Report submitted as Exhibit A by the Town, at 14; LTS Report submitted as Exhibit B by the Town).

In March, 2004, BMSC hired LTS to review the sewer's current condition, relevant to odor control of the sewage collection and conveyance system and the associated waste water treatment plant located in the Boulders.

In the Executive Summary, LTS cites a 1979 study performed by the California Air Resources Board ("CARB"), which found that 87% of people could detect a rotten egg odor from hydrogen sulfide at 0.008 PPM. CARB also stated that at 0.040 PPM, or five times the odor threshold, most people considered the odor a nuisance. (Id. Exhibit B at 7, 11.16-20).

- At the CIE Lift Station, LTS monitored four locations, and got the following results: the wetwell locations measured 8 PPM. The incoming local gravity line had peaks up to 21 PPM. The force main discharge saw peaks of 101 PPM without chemical addition, and 24 PPM with chemical addition. (Id. at 4, 11. 6-10).
- The force main discharge at the Century Dr. and Boulder Dr. location had concentrations over 100 PPM, and the Quartz Valley and Boulder Dr. location had concentrations up to 700 PPM. (Id. at 5, 11. 2-4).

LTS recommended that BMSC set a goal of keeping the fence line (outer perimeter of the plant and/or lift stations) concentrations under 0.008 PPM in the future to prevent odor complaints. (Id. at 7, 11. 16-17).

Obviously, the goal has eluded BMSC, and no matter how much Thiogard they pour into the system, the results do not pass the "nose test" with their captive users. Since January, 2006, Docket Control (DC) has recorded more than 35 Letters

of Complaint from BMSC customers. The Town has also received complaints.

b. Raw Sewage Backups into Homes and Streets.

Raw sewage has backed up into at least **five** Carefree homes **in the past six months alone**. (Comments by consumers, TR at 45-80; Carefree residents' Letters to the Commissioners, sent to DC and placed in the record).

Charles Marsh, a resident of the Boulders, who lives next to a lift station, experienced an incident in April, which necessitated Desert Foothills Plumbing and another contractor to work in excess of thirty hours cleaning the back up out of the drains in his home and guest house. Since the incident, the area surrounding the pump facility near the Marsh home has not been cleaned up or re-landscaped. (Id. Letter, DC; See attached Exhibit 2, Letters).

Paul Power, also of the Boulders, had sewage backup that started in his bathroom and flowed into an adjacent room. (Id.)

Robin Austin, President of the Las Torres Homeowners **Association**, in her Complaint stated that clean-up crews had to be called out to Las Torres condominiums (located near the Carefree Town Center), as sewage had backed up in two of their units, as well as the exterior length of their western boundary. (Id.)

The **Buel Wetmore family**, whose home is close to the CIE Lift Station, experienced a major disaster inside their home and in their back yard over the Memorial Day Weekend. It took four days to clean up the mess with tanker trucks making multiple trips transferring the sewage from their back yard to the El Pedregal Lift Station. (Id. TR at 45-47; See attached Exhibit 3, Photos).

c. Health Related Issues.

Health issues are created when raw sewage and/or effluent backs up into individual homes as described above. Health issues are also caused by raw sewage and/or effluent overflowing from the sewer lift stations, manhole covers,

and other aspects of the system into the streets and/or desert.

d. Quality of Life Issues

Quality of life issues are created by odors emanating from areas that include:

- Manhole covers, sealed and unsealed
- Processing plant
- Lift stations
- Chemicals
- Backup of raw sewage from lift stations and manhole covers into the streets and washes

Quality of life issues are created by noise emanating from BMSC's deteriorating sewer system. These include:

- Tanker trucks pump raw sewage from one blocked section of the system, transport it to another section and dump it into a manhole, while leaving a series of unsealed manholes in their wake. This maneuver is conducted in densely populated neighborhoods, and at all hours of the day and night. (TR at 54, ll. 10-25; See attached Exhibit 3, Photos.)
- Worn machinery at the sewage plant and the CIE Lift Station causes loud noises and window shaking vibrations, depriving neighbors of sleep, and denying them full use and enjoyment of their homes. (Id. at 45 l. 21 through 46 l. 1).

A quality of life issue is created when residents are required to spend an inordinate amount of time to repeatedly notify BMSC, and various regulatory agencies, about the odor, noise, backups, or spills that occur in their homes and/or neighborhood.

2. BMSC Discriminates Between Users of its System.

A.R.S. § 40-334(B) states:

Discrimination between persons, localities or classes of service as to rates, charges, service or facilities.

B. No public service corporation shall establish or maintain any reasonable difference as to service, facilities or in any other respect, either between localities or between classes of service.

While some users of the BMSC sewer system are unaffected by the operational problems noted herein, other users who pay the same rates and are entitled to the same performance, are severely and negatively impacted by the noted problems.

In BMSC's opening statement, its attorney stated: "it's the Company's position we don't have a problem with odors; we have a problem with odor complaints." (TR at 15 11.18-20). This statement reflects BMSC's negligent attitude toward those customers who complain, and its subsequent lack of meaningful action to remedy the situation.

3. BMSC has a Long and Consistent History of Delay and Denial.

BMSC has a long and consistent history of delay and denial. As stated on page 3 herein, BMSC contracted LTS to provide an odor study of the BMSC collection and treatment system. On August 10, 2004, BMSC submitted to the Town, an Action Plan (Plan) based on the LTS Report. The Plan included conferences, studies, repairs and improvements that BMSC planned to do within twelve months. (Submitted for the Record March 9, 2006, by the Town).

The Town had concerns that the LTS recommendations and subsequent BMSC Plan did not represent a definitive solution to the Town's odor problems. Carter Burgess Engineering, Inc. was engaged by the Town to conduct a review of the LTS study and recommendations, and the BMSC Plan. (CB at 1).

Carter Burgess found that permanent solutions to stop the creation of odors at the source were not incorporated in the LTS Report or the BMSC Plan. In fact, the BMSC Plan did not include major items in the LTS Report. (Id. at 1).

In its report, Carter Burgess made several important, specific recommendations which BMSC has not implemented. These include:

- Evaluation of the collection system capacity.

- Redesign the Commercial and CIE Lift Stations.
- Demolish the Commercial and CIE septic tanks.

(Id. at 14-15)

The Town and members of BHOA were told many times by Mike Weber, General Manager of BMSC, that improvements were scheduled, and lists of intended projects were handed out to regulatory agencies, council members, the BHOA and residents. However, BMSC implemented these improvements only partially, if at all. Meetings were held, reports were filed, chemicals were poured into trouble areas, but no major changes were made for several years. BMSC finally realigned the pipes in front of the sewer plant because the sewer odor in that area had become unbearable and permanent.

BMSC's attitude toward complaints from customers is one of **denial**. Letters to Commissioners from frustrated citizens are replete with accounts of BMSC denying that reported odor, leaks, and backups are caused by its poorly functioning system. BMSC's approach is to blame the customer's plumbing, vandalism, or tree roots. Many times, as in the Las Torres HOA incident, BMSC management disputed the fact that the broken pipe that caused the backups in two Las Torres units even belonged to BMSC. It took four months, calls to the Town Hall, a complaint filed with John La Porta of the Arizona Corporation Commission, and a threat to call the Maricopa County Health Department, before BMSC management sent out a crew which determined that the broken pipe was indeed in their utility easement. (See attached Exhibit 2, Letters)

4. Black Mountain Sewer Company Management Has Been a Major Stumbling Block in Achieving Progress.

The Town stated on the record in this case that it had presented an offer to BMSC to install some equipment, on a test basis, to determine whether or not the application of negative pressure in the gravity flow pipe would reduce odors. This improvement had been suggested by BMSC's own experts, LTS, in the LTS Report to BMSC. BMSC refused the Town's offer. (Surrebuttal Testimony of Town's Stan Francom, Affidavit of Town's Jonathon Pearson, submitted for the record May 4, 2006.)

During the year 2004, when the Town and BMSC were negotiating an Operating Agreement ("OA") necessary for the expansion of BMSC's infrastructure into new development), BMSC Management refused to make any improvements to the system until the Town signed the OA. BMSC Management even asked the Town not to entertain any more complaints from residents concerning odor as a further condition. Letter to Ernest Johnson, Dir. Of Utilities Div., ACC, from Town Mayor Ed Morgan, dated Dec. 17, 2004. When the Town stated it would sign the OA after BMSC made meaningful repairs, BMSC Management accused the Town of extortion. (Surrebuttal Testimony by Jon Pearson at 3, submitted for the Record by the Town, May 4, 2006.)

The BHOA made good faith efforts to work with BMSC management, but BMSC's response has been unpredictable both in terms of timing and quality of results. BMSC rebuffed BHOA's attempts to hold joint monthly meetings after BMSC Management learned that BHOA filed a Motion to Intervene in BMSC's application for a rate raise. (Comment by Robert Williams, Intervener for BHOA, June 7, 2006, DC June 13, 2006).

5. Costs and Profits of BMSC's Controlled Affiliates should be Disallowed.

BMSC has failed to present any evidence that the costs and profits its affiliates charge BMSC for operating the sewer system bear any reasonable relationship to market value. (TR at 25-29). Thus, even apart from the sewer odor problems, no rate increase should be granted.

BMSC itself has virtually no employees in place to operate and/or maintain the sewage and wastewater treatment system in Carefree. It has no capabilities to service the sewer system, and a corporate and financial structure which appears to be purposely designed to obfuscate any reasonable or customary analysis of its business performance and results. We assume that the hoped for result of this approach is to maximize the returns to the shareholders of Algonquin Power Income Fund, the ultimate owner of BMSC. Such a structure and approach, in our view, suggests that BMSC has been designed to extract the maximum profit from homeowners, while providing the minimum of service.

Specifically, BMSC has structured its corporate "family" so that any and all sewer operating functions are performed by its controlled affiliates. These controlled affiliates charge BMSC their costs and profits for the operating functions they perform. However, there is no evidence that these costs and profits meet any arms length or market test.

B. IF ANY PORTION OF RATE INCREASE IS GRANTED, IT SHOULD BE CONDITIONED UPON SPECIFIC STEPS BY BLACK MOUNTAIN SEWER COMPANY.

As noted above, the BHOA opposes any rate increase for BMSC due to the reasons stated. However, if Commission Staff, by using specific accounting formulas justifies a rate increase, the rate increase should be at least in part performance based. BHOA joins the Town in respectfully requesting that any rate increase be expressly conditioned on BMSC complying with specific steps. These steps should include requiring BMSC to:

1. Pay For a Competent Sewer Engineering Firm to Perform an Audit of the BMSC System.

This firm, to be chosen by the Town and BMSC, should make recommendations to solve the current operational problems and develop an engineering plan that allows for projected growth in the area.

The problem of broken and leaking pipes has been reported by residents in Letters to the Commission above, and amplified by Les Peterson, a Boulders resident, in Section C.2, page 16 herein. The infrastructure needs a thorough examination so breaks can be detected and repaired.

BMSC's wastewater treatment facility, located within the Boulders, services most of Carefree and is operating at or near capacity. Town officials state that although Carefree is only 50% built-out at this time, the Town is currently experiencing significant growth. See attached Exhibit 4, detailing some of the concerns the Carefree Planning and Zoning Commission has regarding the BMSC system as it relates to business and residential growth.

Given these two points, and the obvious implications of the further strains on the sewage and wastewater treatment system for Carefree, we request the Commission require as part of

this settlement that within a reasonable period of time, the Town, BMSC, and all other interested parties including BHOA develop an adequate and appropriate long-term plan to fully address how the Town will handle the additional sewage and wastewater capacity requirements given the already severely taxed sewage and wastewater system in Carefree.

2. Pay For an Independent Audit of BMSC's Management Structure.

Testimony indicates it would be constructive to get answers to the following questions:

- Is the structure for revenue sharing between BMSC and Algonquin Water Company in the best interests of the public served by BMSC?
- What is the relationship between Algonquin shareholders and revenues shared with Algonquin by ratepayers of BMSC?
- How do ratepayers of BMSC benefit from current revenue flows and cost efficiencies claimed by the current structure?

These questions relate to statements made by Keith Layton during Commission Staff's Opening Statements, June 7, 2006. (TR at 25-29. See also, Direct Testimony of Crystal Brown for Staff, March 9, 2006, at 11-16.) The questions become even more relevant with Staff's recommendation of a 20.42% increase for BMSC. Complete answers to the above questions need to be provided and the basis for any requested rate increase by BMSC fully justified before any rate increase can be reasonably contemplated or approved.

3. Direct BMSC to Use the \$833,000 Hookup Fees Exclusively for Fixing the Problems.

BMSC should be directed to use the \$833,000 Hookup Fees (fees) exclusively for fixing the sewer problems identified in this matter, not as an upper limit but as an initial funding source. Commission Staff ultimately withdrew this recommendation. However, for the following reasons, we continue to believe it is a viable and excellent mechanism to ensure at least some of the odor, spillage and noise problems are fixed.

a. Track Record

First, without an order to use the \$833,000 for repairs, it is unlikely BMSC will fund the repairs. BMSC's history of unmet promises to fix the problems is reflected by the testimony and letters of Carefree and Scottsdale residents which is part of the record in this case. BMSC's customers have waited nearly four years for BMSC to make meaningful improvements. Given this poor track record, BMSC's spending funds necessary to repair the problems in the future is speculative at best.

b. Magnitude of Problem

Second, the severity and magnitude of the sewer problems call for a solution that will increase the likelihood the repairs will actually be done. Residents have described in the record of this case sewage backups into their homes, sickening "rotten egg" odor pervading homes and neighborhoods, sewage backups into manholes and surrounding areas and noise levels that eliminate their ability to sleep and use their homes. (Consumer Comments, DC, and TR at 30-80. Also, LTS Report regarding hydrogen sulfide PPM numbers stated on page 2 of this brief).

c. Boulders Area Problems Still Unaddressed

Third, funds are needed to fix the Boulders area problems. BMSC's Bob Dodds testified BMSC may replace or bypass the CIE lift station. (TR at 466 1.23 through 467 1.5). However, assuming this may actually become a reality, it does nothing to address the extensive and unrelenting Boulders sewage problems. Funds need to be available to ensure these problems are addressed and that BMSC does not leave the job half done. As noted above, several Boulders residents stated that when there is either a break, or increased pressure in the line, raw sewage backs up into their homes and onto the streets in the Boulders. Despite these statements, the **record contains no commitment by BMSC** to address the Boulders problems.

d. Accomplish the Legislature's Intent

Fourth, an order to use the fees for repair will accomplish the purpose of the statute that authorizes the Arizona Corporation Commission (ACC) to order public service corporations such as BMSC to make changes that "ought reasonably to be made". A.R.S. §40-331(A) states:

A.R.S. §40-331(A) Power of commission to order additions, improvements or changes in plant of public service corporations; additions or changes made jointly

A. When the commission finds that additions or improvements to or changes in the existing plant or physical properties of a public service corporation ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, the commission shall make and serve an order directing that such changes be made or such structure be erected in the manner and within the time specified in the order. If the commission orders erection of a new structure, it may also fix the site thereof.

An order to repair, combined with an order to use the fees for the repairs, would accomplish the legislature's intent in enacting this statute.

4. If the Hookup Fee Refund Plan is Rejected, then the commission should mandate:

- any rate increase be placed in an escrow account, and
- the monies in the account be used only for sewer system improvements.

The improvements include those identified and described above and should be made with the best materials available so the system will last. In addition, designs of new lift stations and infrastructure must anticipate the future growth described in Section B.1.3 herein.

5. Monitor and Publicize on Quarterly Basis Town of Carefree Grease Trap Ordinance Inspection and Compliance Reports.

BMSC's lack of proper management of the sewer's operational problems is not the only culprit contributing to odor in the sewer system. The numerous problems are exacerbated by the fact that not all local food service establishments have or utilize grease traps. In October, 2005, the Carefree Town Council passed a Grease Trap Ordinance, which needs to be strictly enforced.

We request that BMSC read, monitor, and publish in a local newspaper the Town's quarterly reports regarding grease trap inspections of local food service establishments. These reports will include notice of all inspections, violations and penalties imposed for non-compliance of the Town Grease Trap Ordinance.

6. Permit BHOA and/or Town of Carefree an Expedited Hearing if BMSC Fails to Comply With Conditions.

If BMSC or its management continue to show the indifference to acceptable operation of their sewage and wastewater treatment operating system in Carefree that they have in the past, Town officials and/or the BHOA should be granted an expedited right to a hearing. They should also be allowed to require BMSC to hire an experienced independent management firm to assume full operating control of BMSC.

If the Commissioners receive such a petition from either the Town and/or the BHOA, we urge that it be granted quickly. If the Commission hears evidence during the hearing of ongoing failure by BMSC to fix the problems, the Commission should order that BMSC's increase be retroactively returned to the ratepayers and should order BMSC to repair the system at its own, not the ratepayers', expense.

C. Related Problems Concerning Governmental Regulatory Agencies.

1. Inspections by Government Agencies.

BHOA believes the call-ahead nature of the inspections by the Arizona Department of Environmental Quality (ADEQ) result in less than accurate findings.

The fact that ADEQ arranged call-ahead inspections for the convenience of the inspector and BMSC personnel gave BMSC time to clean up its act at the pre-announced site and

assured an "in compliance" rating by the agency. This "call ahead" inspection approach is flawed. Marilyn Courier, a resident of the Boulders stated that an official at ADEQ told her, "I don't have the resources to drive all over and not find people there", when questioned as to whether or not he had called ahead when making an inspection. (Public Comments, June 7, 2006, filed DC June 16, 2006). Because prior notice of inspection is given, BMSC can use Thiogard and other temporary means to "band-aid" and neutralize the sickening odors that cause distress for ratepayers. Such temporary approaches give the appearance BMSC is in compliance, but in truth serve only to mask the real problem: an antiquated and overstressed sewage system that requires repair and/or replacement.

Given the number of odor complaints, ADEQ should perform unannounced inspections of the BMSC system on a quarterly basis. To continue to claim BMSC is in compliance with Arizona State standards of performance is to ignore one or more of the following:

- BMSC is merely masking the problems
- The standards themselves are not stringent enough given the impact of population growth in the area and the inadequacies of the BMSC sewage treatment system. (See local newspaper articles, Exhibit 4 herein.)
- the state inspectors are not doing their job. (Homeowner Marilyn Courier's statement regarding ADEQ official's comments, Public Comments, June 7, 2006, filed DC June 16, 2006. See also testimony of Marlin Scott Jr., below).

The testimony of Marlin Scott Jr., the Commission Utilities Division engineer assigned to this rate case, reveals the casual approach he demonstrated in his duties as a State inspector.

With respect to Mr. Scott's inspection of the BMSC system on January 11, 2006, he:

- Did not inspect the CIE Lift Station. (TR at 626 ll. 16-17).

- Did not use any equipment to try to detect odors. (Id. at 626 ll. 22-24).
- Did not inspect the BMSC infrastructure, (Id. at 626 ll. 18-21).
- Did not know the location of Boulder Dr., the site of one of the major problem areas. (Id. at 626 ll. 18-21).
- Did not speak with any of the ratepayers, even when he had the opportunity to do so during a conference with Charles Hernandez at the plant. (Id. at 626 ll. 25 through 627 l. 8)
- Was unaware of relevant statutes that pertain to his inspection of BMSC. (Id. at 629 ll.11-22).
- Did not know when either ADEQ or the county last inspected BMSC's facilities. (Id. at 632 ll. 1-5).
- At no place in his engineering report stated that BMSC is in total compliance with all laws and regulations. (Id. at 628 ll. 19-22).

Whatever the "reasons" and excuses given for the woefully inadequate inspections, they result in the public trust being violated, ratepayers being underserved and the possibility that rate increases will be given due to erroneous information.

2. Deficiencies in the Regulatory Structure.

One of the deficiencies in the current regulatory structure is the lack of oversight in the totality of sewer infrastructures. In his testimony, Stan Francom, Public Works Superintendent for the Town, stated that regulatory agencies are limited in their authority, particularly when it comes to the collection system. (TR at 352, ll.4-6.)

Although it is possible to drive through the Boulders Community and not smell any sewer odor on some days, it should be understood that sewer odor moves around. When manhole covers are sealed on one street, the odor travels to another street where it will escape if the manhole covers on the second street are not sealed. In the meantime, BMSC is

pouring Thiogard into every odorous nook and cranny to mask the odor. The continued use of chemicals to temporarily mask odors is not environmentally sound and sealing manholes is not cost effective.

Letters to the Commissioners cite numerous reports of leaking and broken pipes and the attendant headaches associated with dealing with BMSC management in reporting them. Les Peterson, a Boulders resident, stated a subcontractor driving a sewer tanker truck told him that sewer lines upstream from their neighborhood lift station were old and leaking, and rainwater had entered them through cracks, causing the lift station to overflow. (TR at 70 11.19-24; See Exhibit 3, Photos). Inspecting only part of a dysfunctional system and then declaring it to be in compliance is a novel approach and one with little merit.

In short, BMSC customers live with a poorly designed, antiquated, overloaded, dysfunctional sewer system that has been deemed as "compliant" after inadequate inspections and lax regulations, in spite of hundreds of complaint calls made to the offending utility, and dozens of letters sent to various government agencies.

Management of the Boulders Resort, a major taxpayer of this state, has testified that it continues to experience odors in various areas around the Resort, and is concerned about the implications for their business and the risk it poses to its Five Diamond. (TR at 65 through 67).

III. CONCLUSION

1. BMSC Opposes any Rate Increase.

BHOA, which represents approximately 300 homeowners in the Town of Carefree, strongly opposes any rate increase for BMSC. We especially take exception to the 20.42% increase proposed by Staff, and regard it ill-informed and ill-advised for the following reasons:

- The increase is based on new information given to Staff after the closing of the hearings. Consideration of this information would constitute a violation of our due process rights to cross examination. BMSC's excuse for requesting the late submittal of new information is that Staff had not requested it of BMSC.

The burden is on BMSC to justify their request. We find it puzzling that BMSC's attorney, Mr. Jay Shapiro, would not have knowledge of and/or could not anticipate what information Staff would require, since his law firm, Fennemore Craig, P.C., represented The Boulders Carefree Sewer Company, former owner of BMSC, in the 1995 Boulders Carefree Sewer Co. rate case before the Commission.

- Any indication by ADEQ and County (Maricopa County Department of Environmental Services) to Staff that BMSC was in full compliance with Arizona State Regulations must be viewed in the context of the following: BMSC cleaned up and masked odor with chemicals at the prearranged sites shortly before the call-ahead inspections as stated in Section C.1 herein. Moreover, the inspections made by ADEQ and the Commission Utilities engineer were cursory at best. Any "in compliance" rating for BMSC should be disregarded.

2. If Any Portion of Rate Increase is Granted, it Should be Conditioned Upon the Steps stated in Section B, 1 through 6.

If the Commission grants BMSC any increase, the BHOA respectfully requests that Judge Dwight D. Nodes recommend, and the Commissioners require, BMSC to take the steps stated in Section B 1 through 6 stated herein.

It is BHOA's position that although all the steps set forth in Section B are important, we place particular emphasis on the need for:

- a complete audit of the BMSC sewer audit by a competent, and mutually agreed upon engineering firm.
- monies from any increase to be escrowed in an account to be used only for improvements to the system.
- A solution to the operational problems in the Boulders part of the system, which includes the Boulders infrastructure and odor and noise emanating from the plant.

BMSC would have the Commission believe there is near elimination of odor due to its efforts and cites the LTS Phase III through VI analysis. (Summary of Prefiled Testimony to be Adopted by Bob Dodds, filed June 6, 2006 for BMSC). However, the BHOA, residents, Boulders Club members, and Resort and Spa personnel continue to experience intermittent foul sewer odor.

Our quality of life has been and continues to be negatively affected, business is threatened by BMSC incompetence, and the potential exists if the problems escalate that public health will be put at risk.

When BMSC has thoroughly addressed its operational problems, and Carefree residents can enjoy an environment as odor free as normal communities enjoy, then the BHOA will endorse a reasonable rate increase for BMSC.

We thank you Judge Nodes, and the Commissioners, for your time and attention in this matter.

ⁱ On September 16, 2005, BMSC filed an application with the Commission for a 13.52% raise in its rates. On June 7, 2006, the first day of the rate hearing, BMSC requested a 22.28% raise, which will be offset by a refund to its customers in the amount of approximately \$450. (Transcript of Proceedings ("TR") at 11 ll. 2-6). After the hearing was closed, BMSC was allowed to submit new information into the record to justify their June 7, request. On July 26, 2006, the Commission's Utilities Division Staff ("Staff") submitted into the record Staff Surrebuttal Recommendations which state the following:

- Current rate: \$38.00 Residential customers
- BMSC Proposes: \$43.19 @ 13.66%
- **Staff Proposes: \$45.76 @ 20.42%**

On July 31, 2006, Staff, BMSC, the Town, the Residential Utility Consumer Office and the BHOA, jointly filed a stipulation and Request for Procedural Order to Extend the Briefing Schedule. While the BHOA agreed to the continuance, BHOA stated for the record that we did **not**

agree to Administrative Law Judge Dwight Nodes considering any financial information BMSC offered after the close of the hearing. Consideration of such information would constitute a violation of BHOA's due process rights to cross examination.

The BHOA intervened in this case because we thought a 13.52% increase was objectionable. In our opinion, a 20.42% increase is unsupportable based on performance, and is an insult to the public and ratepayers. While duties require Staff to use accounting formulas to determine Return on Investment and thereby a reasonable residential rate for BMSC, they are also duty bound to consider the quality of service BMSC is giving its customers.

A.R.S. 40-361. Charges by public Service corporations required to be just and reasonable; service and facilities required to be adequate, efficient and reasonable; rules and regulations relating to charges or service rendered required to be just and:

A. Charges demanded or received by a public service corporation for any commodity or service shall be just and reasonable. Every unjust or unreasonable charge demanded or received is prohibited by law.

When BMSC corrects the operating problems, identifies a coherent management structure and implements appropriate accounting practices, we would no longer oppose a reasonable and justified rate increase.

RESPECTFULLY SUBMITTED, August ^{18th}, 2006



Robert E. Williams

Intervener for the Boulders Homeowners Association in the Black Mountain Sewer Co. case.



Les Peterson

Vice President, Boulders Homeowners Association

ORIGINAL and 13 COPIES
of the foregoing filed August 18,
2006 with:

Arizona Corporation Commission
Docket Control
1200 West Washington Street
Phoenix, AZ 85007

COPIES of the foregoing hand-delivered
August 18, 2006 to:

The Honorable Dwight D. Nodes
Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Keith Layton
Staff Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

COPIES of the foregoing emailed
and mailed August 18, 2006 to:

Thomas K. Chenal
David W. Garbarino
Suite 155
7047 East Greenway Parkway
Scottsdale, Arizona 85254
Attorneys for the Town of Carefree

Jay Shapiro
Patrick J. Black
FENNEMORE CRAIG

3003 North Central Avenue
Suite 2600
Phoenix, AZ 85012
jshapiro@fclaw.com
Attorneys for Black Mountain Sewer Company

Daniel W. Poszefsky
Residential Utility Consumer Office
1100 West Washington Street
Suite 220
Phoenix, AZ 85007
Dan P@azruco.gov

M.M. Shirtzinger
34773 N. Indian Camp Trail
Scottsdale, AZ 85262

EXHIBIT 1

Percentage Breakdown

of

Homeowners Issues

Percentage Breakdown of Homeowners Issues

BMSC operating system and management problem areas have all been well documented during the Public Hearing before Judge Dwight D. Nodes and in letters sent to Docket Control.

In total, 38 such statements were provided by Carefree and North Scottsdale residents (seven oral statements during the Public Hearing accompanied by written statements, and thirty-one letters sent to Docket Control) to the Commissioners relative to the problems they have been and are experiencing from BMSC. These can be summarized as follows:

<u>Comments Made in Statement</u>	<u># and % of Residents Mentioning</u>	
Opposed rate increase for BMSC	38 of 38	100%
Raised Quality of Life Issues	37 of 38	97%
Mentioned Odor Problems	34 of 38	89%
Poor Handling of issues	24 of 38	63%
Raw sewage or effluent back-up	10 of 38	26%
Health related issues	10 of 38	26%

We urge Judge Nodes and the Commissioners to read the letters in Exhibit 2 to gain a sense of the anger and frustration ratepayers have with the BMSC operational problems.

EXHIBIT 2

Letters to Commissioners

Jane

From: <bhoa@cox.net>
To: <mhcourier@cox.net>; <spurgroup@cox.net>; <janie8@cox.net>
Sent: Friday, June 30, 2006 7:06 AM
Subject: Fwd: Black Mountain Sewer request for Rate Increase

> Date: Mon, 26 Jun 2006 17:48:28 -0400
 > Subject: Black Mountain Sewer request for Rate Increase
 > From: Charles Marsh <cmarsh@farrellmarsh.com>
 > To: BHOA <bhoa@cox.net>
 >
 >
 > ----- Forwarded Message
 > From: Charlie Marsh <cmarsh@farrellmarsh.com>
 > Date: Mon, 26 Jun 2006 17:30:34 -0400
 > To: <mailmaster@cc.state.az.us>, <mailmaster@azcc.gov>
 > Subject: Black Mountain Sewer request for Rate Increase
 >
 > Consumer Services Division
 > Attn: Carmen Madrid
 > Arizona Corporation Commission
 > Utilities Division
 > 1200 West Washington St.
 > Phoenix, AZ 85007
 > Fax 602-542-2129
 > Docket # SW 02361A 05 0657
 >
 > Dear Members of the Commission:
 >
 > My name is Charles A Marsh. I am the owner of 1509 Indian Rock in the
 > Boulders Community. I purchased the property in January 2006. When we moved
 > into the home on January 10th I noticed that BMSC was working on a pump
 > station near the entrance to our property. The reason I noticed the work was
 > that there was a distinct odor and a very noticeable amount of debris and
 > damage to the landscaping around the pump station. (I will be glad to
 > provide pictures of the area and debris.) For the next 4 months and well
 > into May the people working came back and forth. Many times 2, 3 or 4
 > individuals from BMSC would be observed by me and other neighbors standing
 > around for long periods of time, eating lunch and leaving trash with no
 > visible sign of making progress. If any member of the commission ever went
 > to the sight of that project and asked for an explanation of what went on
 > and why it took 4 months, I think the explanation would be a sad testament
 > to the efficiency of BMSC's operation. As a customer of BMSC I do not think
 > my responsibility is to pay for costs associated with poor management,
 > wasted time and repairs to my home necessitated because of careless work on
 > the part of the BMSC employees. Any discussion on the part of the commission
 > to grant a rate increase will only encourage BMSC to continue inefficient
 > wasteful and risky behavior. If BMSC is not granted this increase then
 > perhaps the shareholders of BMSC will force management to focus on improving
 > operating standards and achieving cost efficiency. BMSC knew the situation
 > when they bought this sewer system in 2001. I can't believe that a
 > reasonable business plan at that time did not include a rate structure that
 > allowed for necessary upkeep of the system while making a good return in a
 > high growth area.
 >
 > A serious problem occurred on or about April 12th when BMSC started the pump
 > near our property with out taking the proper precautions to prevent sewage
 > from backing up into our home. Dessert Foothills Plumbing and another
 > contractor working on the house spent in excess of 30 hours cleaning the
 > backup out of the drains in our home and guest house. I intend to bill BMSC
 > for the damage to the plumbing in our house since I believe the damage was
 > due to their carelessness. Since then the area surrounding the pump
 > facility was never cleaned up and re landscaped.
 >

6/30/2006

> My conclusion from observing these activities is that for a number of
> reasons, (improper planning, bad attitude, weak supervision,, etc. etc.)
> this situation made clear that BMSC has put the neighborhood at significant
> risk. Given the quality of service being delivered their request for any
> rate increase is ludicrous. I have rarely called their phone and gotten a
> person to answer and have only received return calls at best half of the
> time. They should be placed on a monitoring program for a period of time to
> insure that they can show evidence of running their business in a way that
> shows some signs of reversing the current inefficient and very
> unsatisfactory situation. As I said above they are basically asking the
> commission and their customers to bail out their incompetence.
>
> I will be glad to send photos and discuss my experience further and can be
> reached at 610-220-2102. Thank you for your attention to this situation.

> Sincerely,

> Charles A. Marsh
> 610-220-2102

> ----- End of Forwarded Message

SW-02361A-05-0657



0000051137

RECEIVED ARIZONA CORPORATION COMMISS
UTILITY COMPLAINT FORM

4700

2006 JUN 13 P 4:42

Investigator: Carmen Madrid

Phone: [REDACTED]

Fax: [REDACTED]

AZ CORP COMMISSION
DOCUMENT RESPONSE

Respond Within Five Days

Opinion No. 2006 - 52875

Date: 6/12/2006

Complaint Description: 08A Rate Case Items - Opposed

First:

Last:

Complaint By: Robin

Austin

Account Name: Robin Austin

Home: [REDACTED]

Street: n/a

Work: (000) 000-0000

City: n/a

CBR:

State: AZ Zip: 00000

is:

Utility Company: Black Mountain Sewer Corporation

Division: sewer

Contact Name: n/a

Contact Phone: n/a

Nature of Complaint:

Hi Bob,

I read the concerns from the community regarding Black Mountain Sewer. Last January, we at the Las Torres HOA in Carefree had a 'back-up' situation on our property. Of course, we had an emergency situation and our property manager, Lois O'Neill had to call in clean-up crews (the sewage had backed up in two of our units as well as the exterior length of our western boundary) and a specialist with a camera to find the source of the leak. The IIOA paid all the bills which amounted to over 2,000.00 dollars.

When we were informed that the source of the leak was due to a break in the sewer line in the utility easement area on Sundance Trail, I (at that time was chairperson for the architectural committee) started the calling process with BMS to find out when they were going to repair the connection. Needless to say, I was given the run-a-round at every turn. They repeatedly tried to claim that the breakage was on our property and it was our responsibility as our oleander roots were the culprit.

I called Jon Pearson at the town and explained the situation and asked if he would have someone come out to determine if indeed we were correct, That was accomplished and yes, we were correct, the damage was in BMS's utility area on the street.

Well, to make a long story short I had to finally phone the AZCC and file complaints with John La Porta. That finally got their attention (I was now dealing directly with the general manager of BMS, Mike Weber) but they still made the claim that it was not in their area. I told him I was going to the County Health Dept and further if necessary. At last, they sent their crew out one more time and finally determined that, lo and behold, they had made a mistake in their calculations. Eventually, the line was repaired but it took four months for them to accept responsibility and correct it.

Now, we have sent the bills for the clean-up to them and two weeks have gone by and we have not heard a

SW-02301A-05-0657

ORIGINAL



0000059357

ARIZONA CORPORATION COMMISSION

UTILITY COMPLAINT FORM

4700

Investigator: Carmen Madrid

Phone: [REDACTED]

Fax: [REDACTED]

Priority: Respond Within Five Days

Opinion No. 2006 - 53356

Date: 6/29/2006

Complaint Description: 08A Rate Case Items - Opposed

First:

Last:

Complaint By: Paul

Power

Account Name: Paul Power

Home: (000) 000-0000

Street: [REDACTED]

Work: (000) 000-0000

City: [REDACTED]

CBR: [REDACTED]

State: AZ Zip: [REDACTED]

is: E-Mail

Utility Company: Black Mountain Sewer Corporation

Division: sewer

Contact Name: n/a

Contact Phone: n/a

Nature of Complaint:

From: [REDACTED]
Sent: Tuesday, June 20, 2006 8:47 AM
To: mailmaster@azcc.gov; passagesazearthlink.net
Subject:

I material live at [REDACTED] at the boulders, a week ago last Friday our backed up feces and other odious material ran out of our bathroom and onto our carpet which will have to be replaced. This is in addition to as plumbers bill of \$400 plus manhole covers have been in repair on our street for over 30 days. This in addition to manifestly continuous odors coming from the sewage plant. I respectfully request you deny any rate increases. These people are abrupt and discourteous when you call like our reporting the sewer backup.

thank you
Paul Power
End of Complaint

Utilities' Response:

Investigator's Comments and Disposition:

June 29, 2006

Paul Power
[REDACTED]

Dear Sir:

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SW-02361A-05-0657

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Investigator: Carmen Madrid

Phone: [REDACTED]

Fax: [REDACTED]

Priority: Respond Within Five Days

Opinion No. 2006 - 53118

Date: 6/20/2006

Complaint Description: 08A Rate Case Items - Opposed

First:

Last:

Complaint By: John

Roberson

Account Name: John Roberson

Home: (000) 000-0000

Street: [REDACTED]

Work: (000) 000-0000

City: [REDACTED]

CBR:

State:

AZ

Zip: [REDACTED]

is:

Utility Company: Black Mountain Sewer Corporation

Division: sewer

Contact Name: n/a

Contact Phone: n/a

Nature of Complaint:

John Roberson
[REDACTED]

June 14, 2006

Consumer Services Division
Arizona Corporation Commission
Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

re: Docket Control # 02361A-05-0657

Dear Ms. Madrid:

Have you ever been to Cairo, in Egypt? If so, you will know how parts of the Boulders subdivision in Carefree smells. The reek of open drains is unmistakable.

Black Mountain Sewer has refused for years to correct this problem. Our timid Homeowners Association should have sued them long ago. That BMS has filed for an enormous rate increase is simply ridiculous in the light of their horrible performance. How can BMS be in compliance with state regulations if their parts of the Boulders stink? Apparently they say they are too broke to fix the smell; if so, aren't they too broke to operate the utility? When you run out of things to do drive out and get a whiff of our supposedly high end subdivision. It will take your breath a way.

End of Complaint

Utilities' Response:

Investigator's Comments and Disposition:

SW-02361A-05-0657

ORIGINAL



0000051081

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

4700

Investigator: Carmen Madrid

Phone: [REDACTED]

Fax: [REDACTED]

Priority: Respond Within Five Days

Opinion No. 2006 - 52819

Date: 6/9/2006

Complaint Description: 08A Rate Case Items - Opposed

First:

Last:

Complaint By: Michael Terry

Denton

Account Name: Michael Terry Denton

Home: (000) 000-0000

Street: [REDACTED]

Work: (000) 000-0000

City: [REDACTED]

CBR: [REDACTED]

State: AZ Zip [REDACTED]

is: [REDACTED]

Utility Company: Black Mountain Sewer Corporation

Division: sewer

Contact Name: Mike Weber

Contact Phone: (623) 935-9367

Nature of Complaint:

From: [REDACTED]
Sent: Thursday, June 08, 2006 3:10 PM
To: Utilities Div - Mailbox
Subject: Arizona Corp. Commission. Black Mountain Sewer Co. Rate Increase Request

6/8/2006

Consumer Services Division
Arizona Corporation Division
Utilities Division
1200 West Washington St.
Phoenix, AZ. 85007

Attn: Commissioners

C/o Carmen Madrid, Customer Service

Subject: Objection to Black Mountain Sewer (BMSC) requested rate increase

I have owned a home in the Boulders since 1990, first as a vacation home for 10 years and then a permanent residence starting in 2000. We failed to discover a channel to express our frustrations with periodic sewer odors during our vacation years. However, we took the issue seriously once we became full time residents.

We request that the commissioners understand we have experienced many different responses from BMSC in their attempt to placate us over the past six years including:

"You can add charcoal filters to your roof vent pipes"

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2006 JUN 12 A 9:33
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DOCUMENT CONTROL

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

"We have placed charcoal filters under certain manhole covers"

"You will always have odors with certain weather conditions"

"We will apply more chemical to eliminate the development of septic gas at the lift stations"

"Our measurement equipment shows there is no odor"

"We are making improvements that will overcome the problem"

"Help us find the problem!"

My career as president of a manufacturers representative company with offices in Washington and Oregon primarily focused my attention on major companies requiring our electronic products such as Boeing, Hewlett Packard, and Microsoft, but our customer list included waste water treatment centers including the King County center which serves 17 cities. During on site visits to various sewer treatment facilities odor was never an experienced condition.

The majority of Carefree property owners have lived in odor free communities all over this country and fail to understand why this utility cannot or will not get their system under control.

The fact that BMSC has undergone three complete management changes in their brief five year history of ownership fails to convince us that any promise will be carried to full implementation without conditions being applied by you our commissioners.

Our further concern is that the application of chemicals to mask odor is of such a temporary nature that it fails to insure against reoccurring problems when the delivery of chemicals is late, in short supply or does not meet system flow factors. Simply, this approach does not get to the root of the problem and results in high operating costs.

Please deny any request to increase rates until the city of Carefree and BMSC implement and guarantee a redevelopment plan for the present and future of the Carefree sewer system that meets the anticipated development of the remaining undeveloped land.

Respectfully,

Michael Terry Denton
[REDACTED]

[REDACTED]
"End of Complaint"

Utilities' Response:

Investigator's Comments and Disposition:

6/9/06

Dear Mr. Denton,

SW-02361A-05-0657

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Investigator: Carmen Madrid

Phone: [REDACTED]

Fax: [REDACTED]

Priority: Respond Within Five Days

Opinion No. 2006 - 53126

Date: 6/20/2006

Complaint Description: 08A Rate Case Items - Opposed

First:

Last:

Complaint By: Jane & Warren

Stimpson

Account Name: Jane & Warren Stimpson

Home: (000) 000-0000

Street: [REDACTED]

Work: (000) 000-0000

City: [REDACTED]

CBR:

State: AZ

Zip: [REDACTED]

is:

Utility Company: Black Mountain Sewer Corporation

Division: sewer

Contact Name: n/a

Contact Phone: n/a

Nature of Complaint:

Arizona Corporation Commission
Consumer Services Division
Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

June 15, 2006

Docket Control #SW-02361A-05-0657

RE: Black Mountain Sewer Company Request For increase

Dear Members Arizona Corporation Commission:

The Black Mountain Sewer treatment plant facility is located in the heart of our Boulders Resort residential area. While we are fortunate to have purchased our home a considerable distance from the plant, we are still very much adversely affected by the operation of this antiquated system.

The BMSC vector trucks haul sewage along our private streets, and are sometimes parked along the way as they attempt to alleviate the noxious odors that emanate from their lines. Many times the noise from the equipment is loud, and along with the odors makes it impossible for neighbors to enjoy the outdoor living areas for which Arizona is so proud.

The odors from this system have been described to you in great detail by Boulders residents, but others are also affected by the unpleasant smells. For example, the golfers who pay a great deal of money for the privilege of playing on our courses, and the clients at the Golden Door Spa, where the employees have tried to mask the smells with eucalyptus oils. This is a little like Barry Bonds spraying himself with Chanel #5 instead of taking a shower. Odors permeate the restaurants and the clubhouse as well as the very air outside. The incidences of open areas of raw sewage can only be a major health problem.

We are sure you have heard all about the "band-aid" type approach used by BMSC in an attempt to alleviate the

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

problems we have here at the Boulders. Now BMSC is asking for a large rate increase, while we who have been paying one of the highest rates in the state still have no assurance there will be any improvement in the service we receive for our money.

We urge you to disallow this rate increase until such time that BMSC can prove by their performance that they have the expertise and resources to provide quality odor free service to our rapidly growing community.

JANE STIMPSON
WARREN STIMPSON, President
Boulders Homeowners Association
End of Complaint

Utilities' Response:

Investigator's Comments and Disposition:

6/20/06 Opinion noted and filed in docket no. SW-02361A-05-0657. closed

June 20, 2006.

Jane Stimpson
Warren Stimpson


Dear Mr. and Mrs. Stimpson,

My name is Carmen Madrid and I am a Public Utility Consumer Analyst with the Arizona Corporation Commission.

Your letter regarding the Black Mountain Sewer Company application for a rate increase has been received. Your opinion will be filed in docket no. SW-02361A-05-0657 and made a part of the official docket. The Commissioners and staff members in this matter will all receive a copy of your opinion.

If you should have any questions you may contact Consumer Services at 602-542-4251.

Sincerely,

Carmen Madrid
Public Utility Consumer Analyst
End of Comments

Date Completed: 6/20/2006

Opinion No. 2006 - 53126

SW 02361A-05-0657



0000054832

ORIGINAL
ARIZONA CORPORATION COMMISS
UTILITY COMPLAINT FORM

4100

Investigator: Brad Morton

Phone: [REDACTED]

Fax: [REDACTED]

Priority: Respond Within Five Days

Opinion No. 2006 - 52966

Date: 6/15/2006

Complaint Description: 08A Rate Case Items - Opposed

First:

Last:

Complaint By: Buel

Wetmore

Account Name: Buel & Melody Wetmore

Home: [REDACTED]

Street: [REDACTED]

Work:

City: Carefree

CBR:

State: AZ Zip: 85377

is:

Utility Company: Black Mountain Sewer Corporation

Division: sewer

Contact Name: [REDACTED]

Contact Phone: [REDACTED]

Nature of Complaint:

Docket No. SW 02361A-05-0657

MELODY & BUEL WETMORE
[REDACTED]

PO BOX 775
CAREFREE, AZ 85377

May 30th 2006

Re: Black Mountain Sewer Company - Request for Rate Increase

Dear Commissioner,

We strongly urge you to deny the rate increase requested by Black Mountain Sewer Corporation. In our 3 1/2 year experience as customers we have found them to be careless, unresponsive, untruthful and arrogant.

Our home abuts one of their lift stations and despite a documented history of spills, blockages and failed equipment; they have continued to place profits above their responsibilities to serve the public. Our Association of 33 homes pays over \$15,000 per year in fees to Black Mountain and in return we receive the use of a system that produces almost constant odor with intermittent total breakdowns necessitating the use of pumping trucks to haul percolating sewage to other locations. Even being aware of the potential impact on the impending hearing, the system is now totally shut down again due to faulty equipment and has been pumped for hours three times in the last days, removing an estimated 20,000 gallons of sewage to be deposited somewhere else. The noise and odor are terrible.

It is well known that the lift station is over 40 years old and is actually a series of septic tanks which have been jury-rigged into a makeshift pumping facility. Before he was fired, the BMSC engineer, himself, blew the whistle on the "poor hydraulic design". Instead of committing any serious investment to the replacement of either this relic or to the whole antique infrastructure, the BMSC people continue the "band-aid" approach, blaming the lack of funding from the home office. The result has been (1) raw sewage running down our street when the system

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2006 JUN 15 A 11: 59
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UTILITY COMPLAINT FORM

stops, (2) raw sewage exploding from our toilets as the system is pressurized, and (3) daily odor punctuated by overwhelming stench when the system fails. When pressed for answers or results, the company's public approach has been to ignore, deny, obfuscate or threaten suit.

Please use this opportunity to send a message to this company that no matter how fast Arizona is growing that we still have time to care about the health, safety and rights of our citizens.

Sincerely yours,
End of Complaint

Utilities' Response:

Investigator's Comments and Disposition:

Called consumer and confirmed opinion received, explained docketing and rate case procedure.
End of Comments

Date Completed: 6/15/2006

Opinion No. 2006 - 52966

SW-02361A-05-0657

ARIZONA CORPORATION COMMISSION
UTILITY COMPLAINT FORM

Investigator: Carmen Madrid

Phone: [REDACTED]

Fax: [REDACTED]

Priority: Respond Within Five Days

Opinion No. 2006 - 53063

Date: 6/19/2006

Complaint Description: 08A Rate Case Items - Opposed

First:

Last:

Complaint By: William Bergman

Account Name: William Bergman

Home: (000) 000-0000

Street: n/a

Work: (000) 000-0000

City: n/a

CBR: [REDACTED]

State: AZ Zip: 00000

is: E-Mail

Utility Company: Black Mountain Sewer Corporation

Division: sewer

Contact Name: N/A

Contact Phone: N/A

Nature of Complaint:

-----Original Message-----

From: [REDACTED]

Sent: Monday, June 19, 2006 9:24 AM

To: Utilities Div - Mailbox

Cc: [REDACTED]

Subject: docket # SW-02361A-05-0657 RE:Black Mountain Co.Request for rate increase

Dear Members of the Commission,

My wife and I have had a house in the Boulders North Community since 1987.

For years, the processing plant located within the Boulders caused no major problems. After it was sold to the Black Mountain Sewer Co. and the through-put was greatly increased, the problems with odor began and became much more frequent and of greater intensity.

While many promises were made, and at times there seemed to be some improvement, the recent months have seen the situation worsen significantly. The odors are obnoxious and, I believe, a real quality of life negative and perhaps a health hazzard.

I have no technical knowledge in this area, but from what I have learned over the last few years in talking to many of the sewer company people I strongly believe that the system is antiquated, was never designed for the through-put being processed today and needs major work or replacement.

With this being the situation I feel that any rate increase at this time is inappropriate.

Sincerely,

EXHIBIT 3

Photos

CIE Lift Station: in Buel Wetmore's Backyard



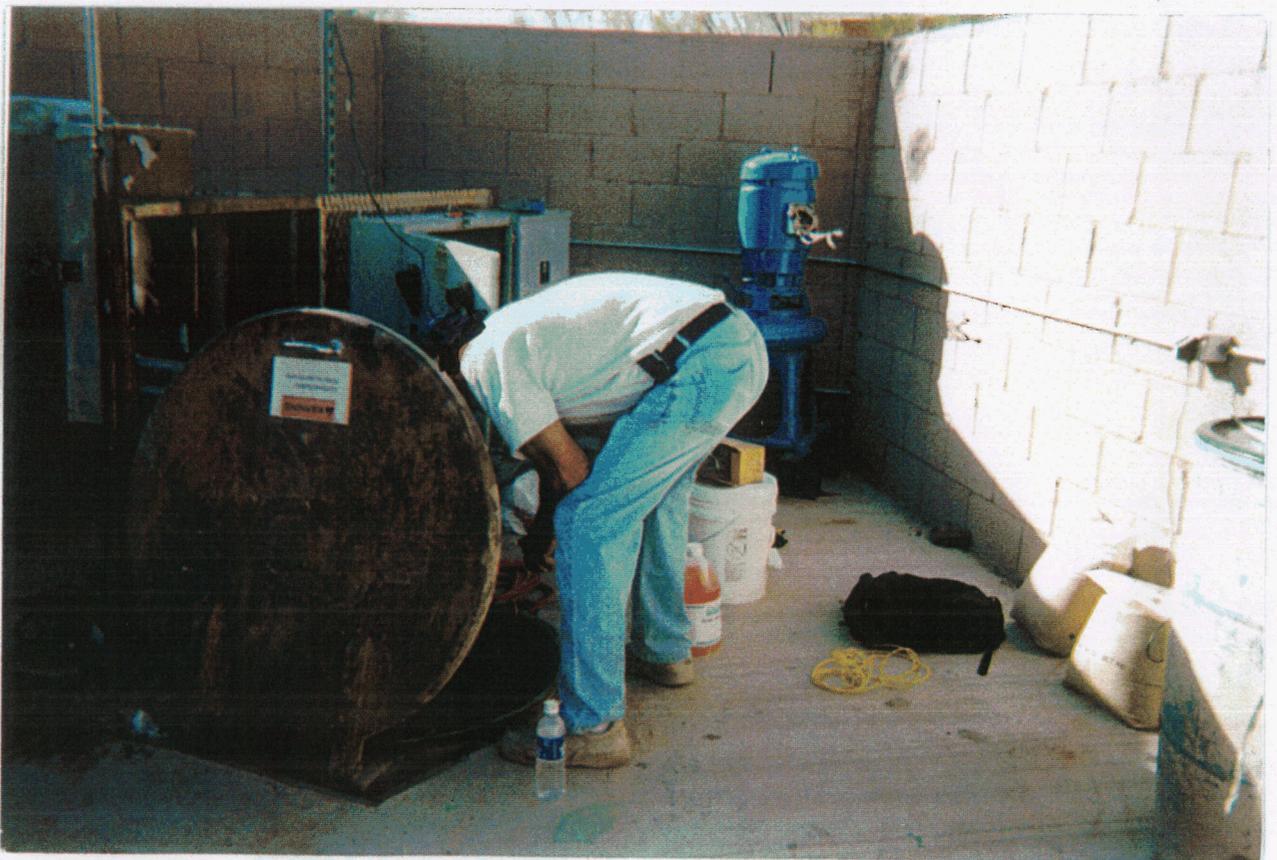


EXHIBIT 3

Photos

Lift Station at Indian Rock and Smoketree Ln.

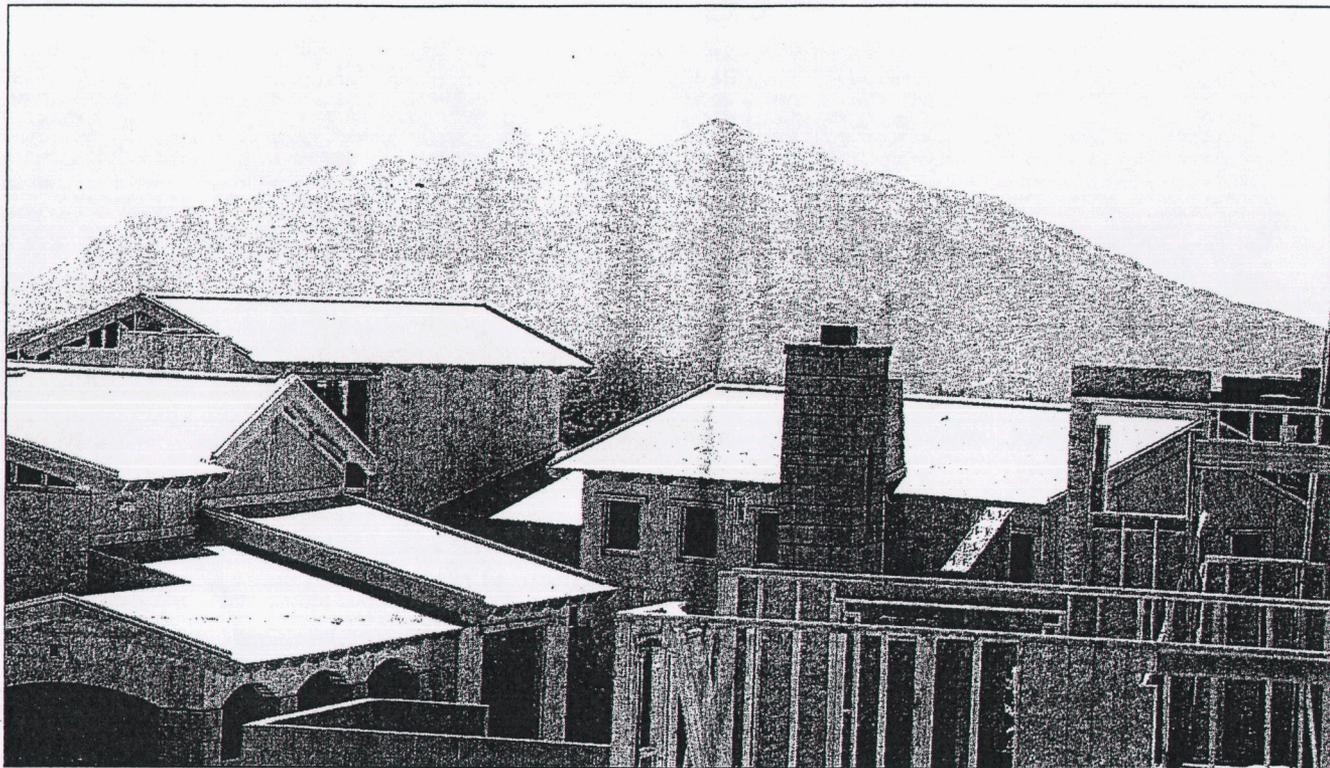




EXHIBIT 4

Articles in Local Newspapers

2 NE Valley towns show fast growth



Suzanne Starr/The Republic

Rooftops are rising as people move to Cavefree and Cave Creek, the fastest-growing communities in the NE Valley.

Cave Creek, Cavefree have highest increases in area

By Thomas Ropp
THOMAS.ROPP@ARIZONAREPUBLIC.COM

NORTHEAST VALLEY — Cave Creek and Cavefree may be the smallest communities in the Northeast Valley, but their populations had the greatest percentage increase over the past year.

Cave Creek's population rose 7.5 percent from 2004 to 2005, the 12th-fastest growth rate in Arizona, according to figures released today by the U.S. Census Bureau. The one-year change for Cavefree was 6.4 percent, 14th in the state.

All five Northeast Valley cities and towns ranked in the top half of population-rate increases among Arizona's 89 incorporated communities.

Northeast Valley population growth

All five cities and towns in the Northeast Valley were in the top half of population growth rates last year among Arizona's 89 incorporated communities.

Rank	Municipality	Population estimate 2004	Population estimate 2005	2004-05 percent growth
12	Cave Creek	4,543	4,884	7.5%
14	Cavefree	3,482	3,706	6.4%
34	Fountain Hills	22,541	23,217	3.0%
40	Scottsdale	221,665	226,013	2.0%
42	Paradise Valley	14,320	14,558	1.7%

Source: 2000 Census

JEANNE HERNÁNDEZ/THE REPUBLIC

communities.

Fountain Hills ranked 34th, with a growth rate of 3 percent; Scottsdale was 40th, with a rate of 2 percent; and Paradise Valley was 42nd, with a rate of 1.7 percent.

Cave Creek and Cavefree

had the Northeast Valley's highest population-rate increase during a five-year stretch from 2000 to 2005, the Census Bureau said. Cave Creek's population rose 31.2 percent during that period, while Cavefree's rose 26.5 percent.

Other Arizona communities

Find out where other Arizona cities and towns rank in the latest census report.

Story and graphics, A1

Cave Creek Town Manager Usama Abujbarah said his town is still only 50 percent built out, which is the reason for the high population percentage gain.

"We still have a lot of room to grow," Abujbarah said, predicting a build-out population of 10,000 during the coming decades.

Sewer issues cause 3 P&Z commissioners to oppose plat

Possibility of BMSC expanding service area too much for trio

BY CURTIS RIGGS

CAREFREE – The narrow passage of the preliminary plat for one of last undeveloped large pieces of property in the community was a reflection of the current dissatisfaction with the sewer company that could end up providing service.

Three Planning and Zoning commissioners – Commission Vice-Chairman Ron Clarke and Commissioners Mike Eicher and John Nimsky, all cited uncertainty about the sewer provider when they voted against the preliminary plat for Stagecreek Estates, a 31-lot project planned for the old Pike Grain property at the northeast corner of Windmill Road and Stagecoach Pass. The property where developer Scott Pfeiffer is seeking to build 31 homes on 35 acres is just east of the only other large remaining property in town, the 40 acres of State Trust Land just across Cave Creek Road from SkyRanch Airport.

Carefree Planning and Zoning Director Gary Neiss told the commissioners the State Land Department received no bids for the property when it was put up for auction last month. There was another attempt to auction off the land on Wednesday. Neiss explained that if there again were no bidders the asking price for the 40 acres would be lowered and there would be another attempt to auction off the land.

All three commissioners who voted against the preliminary plat cited the possibility of the Black Mountain Sewer Company needing to expand its service area if Maricopa County environmental officials would not approve permits for the septic tanks that would be needed in lieu of a sewer system. Ironically enough, BMSC officials are in the midst of seeking a 13.52 percent rate hike for Carefree customers despite its terrible record of service in the community. So many Carefree residents testified about odor problems caused by the sewer system last week the Arizona Corporation Commission is going to retake testimony in coming weeks.

Despite the three no votes on the preliminary plat, the plat was approved by a 4 – 3 vote. The town's Subdivision Committee will next review the preliminary plat, then the Carefree Town Council. A final plat must be approved by Carefree officials for the Stagecreek Estates project to be built.

"There is still the problem of sewer versus septic," Clarke told Pfeiffer when casting his no vote.

Eicher said, "The sewer situation is still very uncertain," when voting against the preliminary plat.

Nimsky said, "The concern is on the sewer side."

Despite Pfeiffer's insistence that he had other options on sewer issues – over 30 septic tanks and the Black Mountain Sewer Company getting to serve more of Carefree – there was no getting the dissenting commissioners to change their votes. Pfeiffer mentioned getting sewer service from Scottsdale as one option.

Eicher even suggested the developer consider getting a self-contained wastewater treatment plant at the cost of \$300,000.

“This will be very contentious,” Eicher told Pfeiffer. “There are many neighbors who are very dissatisfied with Black Mountain Sewer and for Black Mountain Sewer to attempt to hook up more homes, there would be major litigation. If you don’t need Black Mountain Sewer then you and your project are better off.”

The commissioners expressed particular concern about the possibility of building a sewer lift station as part of the project. The lift station would be required to help move the sewage if a sewer company was the selected alternative. The C.I.E. sewer lift station at the Carefree Inn Estates development in northeast Carefree has been the source of many of the hard feelings between Carefree citizens and the Black Mountain Sewer Company. The noxious odors that come from it and the loud noises it makes a couple of times an hour is what has caused many of the people to complain about the proposed rate hike.

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AUGUST 2 - 8, 2006

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Sewer problems a factor in three Carefree projects

By Curtis Riggs

CAREFREE - Despite state regulatory officials not yet ruling how the Black Mountain Sewer Company must deal with odor problems in the community the town council paved the way for three new subdivisions on Tuesday.

Sewer issues factor into the planned 56 lot Reserve at Tranquil Trail, the 31 lot Stagecreek Estates development and Carefree Vistas, a 30 acre project high up on the southwest face of Black Mountain.

The town is looking to one developer to help solve an existing sewer problem and hopes the other two projects do not exacerbate problems.

The Reserve at Tranquil Trail is going in on the 40 acres at the southeast corner

of Tranquil Trail and Cave Creek Road where developer Bud Budnick sought to build an assisted-living facility a few years back. The Carefree Inn Estates sewer lift station that causes so many problems for neighbors is just north of the property. Project engineer Peter Vesecky told the council on Tuesday that he has presented a plan to BMSC officials to eliminate the lift station by having effluent gravity flow south toward the Boulders and eventually to Scottsdale.

The council unanimously approved the final plat for phase II of this project on Tuesday, which calls for 20 residential lots.

Most of the concern about

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Sewer problems

the sewer issues was about the Stagecreek Pass, which is planned for the old Pike Grain property that is just south of SkyRanch Airport. At issue with this project is whether the Black Mountain Sewer Company could serve the project if its service area was expanded.

Developer Scott Pfeiffer will install dry sewer lines on the property near Windmill and Stagecoach Pass in hopes of some day hooking into the sewer system.

Carefree Planning and Zoning Commissioner Mike Eicher spoke against expanding the service area to 35 acres on Tuesday. He was

one of the three P&Z commissioners who voted against the preliminary plat for the project a couple of months ago.

Eicher suggested a stipulation that calls for each home in the project to have an individual septic system be included with the approval of the development.

"The Boulders sewer plant can't increase capacity or be allowed to expand," he said. "This could help to solve a big problem down the road."

Planning Director Gary Neiss explained that the effluent would actually bypass the Boulders sewer plant and flow straight to Scottsdale.

Developer Pfeiffer told the

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council that he is now in the middle of the permitting process with Maricopa County to allow septic tanks. Percolation tests have not yet been done on any of the individual lots.

The council unanimously voted to extend the preliminary plat for the Carefree Vistas development because planners there have been working on development of a wastewater management plant on the steep Black Mountain slopes where this development will go. There is also consideration of Black Mountain Sewer expanding its service area to serve this project.

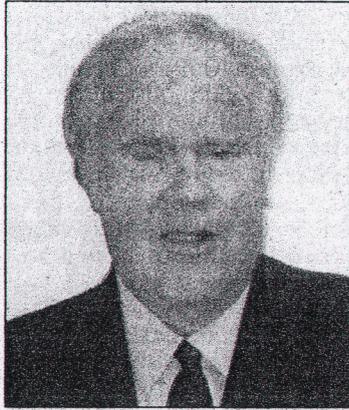
P&Z recommends denial of project over sewer issues

Trying to pressure town council into action

By Curtis Riggs

CAREFREE - By recommending denial of the preliminary plat for another residential project on Monday the Planning and Zoning Commission is trying to pressure the Carefree Town Council into taking swifter action to address sewer problems in the community.

On Monday, the commission voted three to three to deny the preliminary plat for Granada Villas, a 24 unit condominium project that was planned just north of the Town Center. Commission Chairman Ron Clarke and Commissioners Mike Eicher and John Nimisky all brought up current problems the town is having with the operation of the Black Mountain Sewer Company when explaining their no votes. All three admitted they had no real problems with the pre-



Carefree Planning and Zoning Commissioner Mike Eicher said that he will oppose any new residential project in Carefree until sewer issues are resolved.

liminary plat and condominium plan for Granada Villas.

"This has nothing to do with Granada Villas. I will vote no on any future multi-family projects until we see action on the sewer company," said Eicher, who led the opposition against the condominium project as he

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did the StageCreek Estates residential project last month. "I will vote for no more."

Both Eicher and Clarke expressed anger with the town council for its unanimous approval of the plat for StageCreek Estates after P&Z barely recommended approval of the preliminary plat by a four to three vote. The difference between the commission's no vote on StageCreek Estates and the one cast against Granada Villas on Monday is that the motion to approve the condominium project died because a majority of the commissions did not vote to approve the plans. The absence of commission Chairman Bill Meyer set up the three to three deadlocked vote.

"Until the sewer issues are resolved we need to put pressure on the town council," Clarke told Granada Villas developer Marty Swartz. He even encouraged Swartz to make a compelling argument to the town council so they would start listening on sewer issues.

"I voted no last time and I had no objection to the project," Nimisky said. "Until they resolve the sewer issues I will vote no."

Carefree Town Attorney Tom Chenal attempted to warn the commissioners that the denial of the Granada plat could raise legal issues.

"Your recommendation to deny this project based on problems with the sewer company is a legal issue that needs to be looked at," he said.

Eicher took exception with Chenal's recommendation.

"I didn't join P&Z to rubber stamp projects," he said. "If the sewer in Carefree is inadequate then some changes need to take place."

Commissioner Jamie Buchanan asked for a reconsideration of the commission vote because she thought it was not fair to the Granada Villas developer.

"Our job is to look at projects based on the merits of the case. This case had merits. It is unfair to penalize this developer," she said. "Don't penalize this applicant because of the sewer issue."

Commissioner Bob Brenner agreed with Buchanan.

The second vote taken on Monday came out the same as the first one.

Swartz said, "A denial at this point is like a kick between the legs. It creates huge problems on scheduling," when hearing the second vote.

Eicher told Swartz that he did not need to worry about the P&Z recommendation when it gets to the town council.

"The town council is very prodevelopment so be proheartened," he said.