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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

**THE TOWN OF CAREFREE'S CLOSING BRIEF**

Arizona Corporation Commission  
**DOCKETED**  
AUG 21 2006

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26  
27  
28

**TABLE OF CONTENTS**

**TABLE OF LEGAL AUTHORITIES** ..... ii

**TABLE OF CITES TO THE RECORD** ..... iii

**I. INTRODUCTION** ..... 1

**II. EXISTENCE AND CAUSES OF ODOR PROBLEMS AND PROPOSED SOLUTIONS**..... 2

**A. CIE Lift Station**..... 3

        1. *Sewer odors emitted by BMSC’s operation of the CIE Lift Station*... 3

        2. *Resolving the odor problems caused by the CIE Lift Station*..... 5

**B. The Boulders community**..... 6

        1. *Sewer odors within the Boulders community*..... 6

        2. *Resolving the odor problems within the Boulders community*..... 8

**C. BMSC’s response to the odors**..... 12

        1. *Testimony of Scott*..... 16

        2. *The LTS reports*..... 19

**III. RESOLUTION OF THE ODOR PROBLEMS**..... 19

**IV. CONCLUSION**..... 23

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
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27  
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**TABLE OF LEGAL AUTHORITIES**

**Cases**

*Ariz. Corp. Comm'n v. Palm Springs Util. Co.*,  
24 Ariz. App. 124, 536 P.2d 245 (1975) .....20

**Statutes**

A.R.S. § 40-331(A).....20, 21, 22  
A.R.S. § 40-334(B) .....13, 14, 16, 17, 20, 21  
A.R.S. § 40-361(B).....13, 14, 16, 17, 20, 21

**Other**

Ariz. Const. art. 15, § 3.....17  
Maricopa County Air Pollution Control Regs. R. 100, § 200.10.....15  
Maricopa County Air Pollution Control Regs. R. 320, § 300.....15  
Maricopa County Air Pollution Control Regs. R. 320 § 304.....14, 19  
Maricopa County Health Code Chapter II, § 2 Reg. 3(e).....14

1  
2  
3  
4  
5  
6  
7  
8  
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10  
11  
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14  
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24  
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**TABLE OF CITES TO THE RECORD**

**Transcript of Proceedings**.....1-9, 11-13, 16-20, 22, 23

**Exhibit No. A-6 –  
Redacted Rebuttal Testimony of Joel Wade**.....1, 10-12

**Exhibit No. A-7 –  
Redacted Rejoinder Testimony of Joel Wade**.....1, 12

**Exhibit No. T-3 –  
Carter Burgess Report**.....6, 8, 11

**Exhibit No. T-1 –  
The LTS Report**.....9-11

**Town of Carefree’s Response to Staff’s Alternative  
Recommendations for Use of the Funds in the Hook-Up Fee Account**.....22

1 **I. INTRODUCTION**

2 The Town of Carefree (the "Town") intervened in this rate proceeding of the  
3 applicant Black Mountain Sewer Corporation ("BMSC") to raise concerns regarding  
4 odors emitted from BMSC's operations. The Town's positions in this matter are as  
5 follows: (1) odor problems exist as a result of BMSC's operation; and (2) any rate  
6 increase granted to BMSC should take into account the need to resolve the odor  
7 problems. Simply put, the Town does not oppose a rate increase as long as it includes  
8 conditions to address the odor problems caused by BMSC's operations.  
9

10  
11 In response to the Town's intervention, BMSC initially took the position that  
12 odors did not exist, (*Ex. A-6 at 2 ll. 24-26 (Redacted Rebuttal Testimony of Joel Wade)*),  
13 and that BMSC's problem was actually an "odor complaint problem" rather than an  
14 odor problem, (*Ex. A-7 at 1 ll. 13-14 (Redacted Rejoinder Testimony of Joel Wade)*).  
15 BMSC's attorney actually stated in his opening statement that "[i]t's the Company's  
16 position we don't have a problem with odors; we have a problem with odor  
17 complaints." (*Transcript of Proceedings ("TR") at 15 ll. 18-20*). BMSC's attorney  
18 further explained that "[t]he Company does not believe there is a presence of undue or  
19 unexpected odors coming from its system." (*Id. at 17 ll. 16-17*).  
20  
21

22 Despite its initial hard-line position, BMSC's position evolved as the proceeding  
23 continued and the public comment and testimony of the Town's witnesses demonstrated  
24 the existence of severe odor problems from BMSC's operations. In response, to a  
25 question posed by Administrative Law Judge Dwight D. Nodes ("ALJ Nodes")  
26 regarding the odor issues, Robert Dodds ("Dodds") of BMSC stated that "I certainly  
27  
28

1 believe there is an issue” and that “customers are smelling odors.” (*Id. at 481 l. 21*  
2 *through 482 l. 12*). Dodds further represented to the Arizona Corporation Commission  
3 (the “Commission”) that BMSC anticipated resolving the odor problems in the near  
4 future. (*Id. at 477 l. 18 through 480 l. 2*).

6 The Town is optimistic that BMSC will resolve the odor problems in the near  
7 future. (*Id. at 357 l. 3 through l. 6*). Nevertheless, in the absence of an enforceable  
8 commitment from BMSC to complete needed repairs/replacements of plant and  
9 equipment, the Town will continue to seek a legal remedy to solve the odor problems  
10 based on the fear that in the absence of an enforceable commitment from BMSC or  
11 conditions from the Commission, BMSC may not be motivated to resolve the odor  
12 problems. (*Id. at 356 l. 23 through 357 l. 2*). As such, the Town hereby requests the  
13 Commission to impose conditions upon any rate increase granted to BMSC that require  
14 BMSC to resolve the odor problems caused by the Carefree Inn Estates Lift Station (the  
15 “CIE Lift Station”) and the sewer infrastructure within the Boulders community.

## 18 **II. EXISTENCE AND CAUSES OF ODORS AND PROPOSED SOLUTIONS.**

19 The public comment received in this matter and evidence presented by the Town  
20 demonstrates that BMSC’s operations cause odor problems. After the opening  
21 statements of the Town and Robert Williams, seven members of the public offered their  
22 comments regarding the existence of offensive odors. In addition to the public  
23 comment offered during the rate hearing, more than seventeen individual ratepayers  
24 filed public comments with the Commission regarding odors emitted by BMSC’s  
25 operations. The Town offered testimonial evidence that odor problems existed and  
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28

1 explanations as to the causes of the odor problems. Even Dodds acknowledged that  
2 “customers are smelling odors.” (*Id. at 481 l. 21 through 482 l. 12*.)” As ALJ Nodes  
3 commented, “it seems . . . that given the level of concern expressed through various  
4 communications as well as the public comment, it seems . . . unlikely that customers  
5 would take the time out of their lives to go to the lengths of complaining if there was  
6 not, in fact, an issue with which they were concerned.” (*Id. at 482 ll. 4-9*). The two  
7 locations within the Town experiencing the brunt of the odor problems are the  
8 residential areas near the CIE Lift Station and within the Boulders community.  
9

10  
11 **A. CIE Lift Station.**

12 *1. Sewer odors emitted by BMSC’s operation of the CIE Lift Station.*

13  
14 Buel and Melody Wetmore live adjacent to the CIE Lift Station. (*Id. at 44 ll. 17-*  
15 *23*). During public comments, Mr. Wetmore described the CIE Lift Station as a source  
16 of “constant odor with intermittent total breakdowns” occurring as recently as the 2006  
17 Memorial Day weekend (the “Memorial Day weekend”). (*Id. at 45 ll. 9-21*).  
18 According to Mr. Wetmore, the breakdown over the Memorial Day weekend required  
19 BMSC to haul sewage from the CIE Lift Station to other locations using trucks. (*Id. ll.*  
20 *21-24*). In fact, Mr. Wetmore stated that over the Memorial Day weekend the CIE Lift  
21 Station was “pumped for hours, three times in six days,” and “[t]he noise was just like  
22 being next to a jet engine, and the odor was terrible.” (*Id. at 45 l. 21 through 46 l. 1*).  
23 In conclusion, Mr. Wetmore summarized BMSC’s service as follows: “[t]he result over  
24 the last three and a half years has been, one, raw sewage running down the street when  
25 the system stops; two, raw sewage exploding from my toilet when the system is  
26  
27  
28

1 pressurized; number three, daily odor punctuated by overwhelming stench when the  
2 system finally fails.” (*Id. at 46 ll. 20-25*). Besides the odors caused when the CIE Lift  
3 Station fails, Mr. Wetmore described a daily pattern of persistent odors from 7:00 am to  
4 9:00 am and 4:00 pm to 7:00 pm. (*Id. at 49 ll. 18-23*).

6 Patty Schiano, president of the Carefree Estates Homeowners Association, lives  
7 approximately 400 feet from the CIE Lift Station. (*Id. at 57 ll. 8-11*). Ms. Schiano  
8 observed that the CIE Lift Station has “caus[ed] people to become ill and forc[ed] them  
9 to remain inside their homes due to the stench it emits.” (*Id. at 58 ll. 2-3*). “[L]and  
10 values will eventually be compromised,” according to Ms. Schiano. (*Id. at ll. 11-12*).  
11 Ms. Schiano recalled, at least on one occasion, that she “witnessed raw sewage coming  
12 out of the lift station and rolling down Carefree Estates Circle.” (*Id. at 60 ll. 18-20*).

15 Stanley Francom (“Francom”), the public works superintendent of the Town,  
16 testified on behalf of the Town about the causes of odors, the CIE Lift Station, and  
17 sewer infrastructure within the Boulder community. Francom is a unique witness with  
18 respect to the operation of BMSC as he operated the same system for approximately 5  
19 years before BMSC purchased the system. (*Id. at 278 ll. 10-14*). Francom is certified  
20 by the State of Arizona as a grade 4 operator and a grade 3 collection operator. (*Id. ll.*  
21 *6-8*).

23 Francom testified that he has personally experienced the odor problems caused  
24 by the CIE Lift Station as recently as April 20, 2006. (*Id. at 277 ll. 7-23*). On that day  
25 Francom “encountered a raw sewage odor, which odor [he] described as the smell of  
26 just common sewage. It was not a hydrogen sulfide smell. It wasn’t that objectionable  
27  
28

1 as compared to hydrogen sulfide, but there was a pervasive smell of raw sewage.” (*Id.*  
2 *ll. 12-16*). The odor was noticeable next to a residence some 50-60 feet away from the  
3 CIE Lift Station. (*Id. ll. 17-20*). In short, there is no doubt that the CIE lift station is  
4 causing odor problems that have had a significant detrimental affect upon near by  
5 properties and the use and enjoyment of the property owners.

7                   2.       *Resolving the odor problems caused by the CIE Lift Station.*

8  
9                   According to Francom, the CIE Lift Station “is very old, has been in a state of  
10 rerepair since [he] operated [the] system.” (*Id. at 292 ll. 10-12*). The prior owners of  
11 the BMSC sewer system had initiated a project to replace all of the old lift stations. (*Id.*  
12 *ll. 12-19, 303 l. 24 through 304 l. 16*). The only lift station that was not replaced was  
13 the CIE Lift Station. (*Id.*). In other words, “the CIE lift station is the only remaining  
14 outdated portion . . . of the system that still needs some kind of comprehensive upgrade  
15 or replacement.” (*Id. at 292 l. 23 through 293 l. 2*). Francom testified that band-aid  
16 repairs are no longer effective to resolve the problems of the CIE Lift Station. (*Id. at*  
17 *292 ll. 19-22, 293 ll. 5-9, 294 ll. 5-6*).

19  
20                   Francom testified regarding two potential alternatives to resolve the CIE Lift  
21 Station odor problems: (1) replace the CIE Lift Station; or (2) bypass the CIE Lift  
22 Station. (*Id. at 334 l. 2-17*). Dodds of BMSC even confirmed that these two  
23 alternatives are under consideration by BMSC to resolve the odor problems:

24  
25                   Well, I was very aware of the sensitivity of [the CIE Lift Station]. And I  
26 just recently commissioned our engineering group, our rebuilt engineering  
27 group, to look at either relocating it or eliminating it or repairing it.

28                   We know now we definitely have to repair it, and instead of just repairing  
it, we are going to look at ways to see if we can move it out of there or even

1 eliminate it.  
2 (*Id. at 466 l. 23 through 467 l.5*). The first alternative, replacing the lift station, was also  
3 recommended by Carter Burgess in a report commissioned by the Town. (*Ex. T-3 Ex. A*  
4 *at 14*). The Town would be pleased if BMSC undertakes either of the two proposed  
5 alternatives as the Town believes that either has a strong potential to resolve the odor  
6 problems. (*TR at 334 l. 2- 27*).

7  
8 BMSC acknowledges that something must be done with the CIE Lift Station to  
9 resolve the ongoing operational problems that result in excess odor emissions from the  
10 CIE Lift Station, and the Town requests that the Commission condition any rate  
11 increase granted to BMSC upon the complete replacement or bypass of the CIE Lift  
12 Station.  
13

14  
15 **B. The Boulders community.**

16 *1. Sewer odors within the Boulders community.*

17 Intervenor Robert E. Williams (“Williams”), vice president of the North  
18 Boulders Homeowners Association, described the problem as “an unpredictable and  
19 offensive odor that emanates from the sewer system,” (*id. at 30 ll. 10-11, 31 ll. 16-17*),  
20 “a frequent and unpredictable nuisance,” (*id. at 32 ll. 11-12*), which “has become such a  
21 nuisance at times that residents in parts of the Boulders and other communities served  
22 by [BMSC] cannot entertain their guests, serve their customers effectively, as in the  
23 case of the Boulders Resort, or enjoy their home environment and fear for the valuation  
24 of their property,” (*id. at 32 l. 21 through 32 l. 1*).

25  
26  
27 Marilyn Courier, a resident of the Boulders community, stated that the “terrible  
28

1 sewer odor” was the *only* reason why she objected the rate increase. (*Id. at 51 ll. 17-18,*  
2 21-22). Mrs. Courier noted that the odor made it “impossible to work in the yard or  
3 enjoy our patios because the stench was intolerable.” (*Id. at 52 ll. 13-14*). At a lift  
4 station located near Boulder Drive, Mrs. Courier described the odor she encountered on  
5 a recent visit as “spectacular.” (*Id. at 53 ll. 6-9*). Mrs. Courier also mentioned that  
6 although BMSC has attempted to resolve the odor problems within the Boulders  
7 community by sealing manholes, each time BMSC has a problem elsewhere in its  
8 system, BMSC uses trucks to haul sewage from the problem spot, such as at the CIE  
9 Lift Station, to another location in the BMSC sewer system, typically within the  
10 Boulders community. (*Id. at 54 ll. 10-25*). BMSC dumps sewage into the manholes of  
11 the Boulders community because of the manhole’s proximity to the Boulders  
12 Wastewater Treatment Plant (“BWTP”). When it uses the manholes within the  
13 Boulders’ community to drop off the sewage in the trucks, it often fails to reseal the  
14 manholes for several days thereby allowing the sewer odors to escape the BMSC system  
15 within the Boulders community. (*Id. at 54 ll. 10-25*).

16  
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19  
20 Gordon Zucker, former member of the Town Council and former director of the  
21 Boulders Homeowners Association, described the odors in the Boulders community as  
22 “intense.” (*Id. at 62 ll. 15-18, 64 ll. 8-10*). Mr. Zucker confirmed Mrs. Courier’s  
23 observation that BMSC’s failure to reseal the manhole covers in the Boulders  
24 community when the manhole covers are removed to dump sewage from other locations  
25 in the BMSC system causes odor problems within the Boulders community. (*Id. at 64 l.*  
26 *10 through 65 l. 14*).

1 Tom McCahan, director of the Boulders Resort and Golden Door Spa, stated that  
2 “the golden Door Spa, Club, Resort and various locations around the golf course have  
3 experienced intermittent smells and odors.” (*Id. at 65 ll. 20-22, 66 ll. 3-5*). Mr.  
4 McCahan noted that complaints had been received from customers regarding the odors,  
5 but that the Resort does its “best to mask” the odors. (*Id. at 67 l. 17 through 68 l. 2*).

7 2. *Resolving the odor problems within the Boulders community.*

8 According to Francom, the odors in the Boulders are mainly caused by two  
9 conditions in the present BMSC system. The first condition is a long retention time  
10 between the CIE Lift station and the discharge manholes in the Boulders that allows the  
11 sewage to become septic, a condition that causes hydrogen sulfide odors. (*Id. at 283 l. 9*  
12 *though 284 l. 21*). The long retention time was confirmed by Carter Burgess in a report  
13 addressing the odor problems communicated by the Town. (*Ex. T-3 Ex. A at 6 (“At*  
14 *least 17,640 gallons . . . must be pumped from the CIE lift station prior to exiting the*  
15 *force mains; resulting in a mean residence time in excess of 2 hours.”)*). Furthermore,  
16 as noted by Francom, BMSC has recognized the existence of septic conditions as  
17 evidenced by its introduction of Thioguard into the BMSC system to prevent the  
18 reaction that creates hydrogen sulfide. (*TR at 284 l. 22 through 285 l. 9*). Nevertheless,  
19 because the sewage contains other odors besides hydrogen sulfide, (*id. at 285 ll. 10 -*  
20 *20*), the Thioguard alone cannot solve the problem of the odor problems.

21 The second condition that causes odor problems within the Boulders community  
22 is the positive pressure created within the system between the CIE Lift Station and the  
23 Boulders Wastewater Treatment Plant (“BWTP”). The sewer lines between the CIE  
24

1 Lift Station and the discharge manholes within the Boulders community are pressure  
2 lines, but the sewer lines between the discharge manholes in the Boulders community  
3 and the BWTP are gravity lines. (*Id. at 283 ll. 11-13, 285 ll. 24-25*). The sewer lines  
4 travel from the CIE Lift Station to the BWTP, but before the sewer lines travel from the  
5 CIE Lift Station to the manholes within the Boulders community, BMSC accumulates  
6 and holds approximately 18,000 to 20,000 gallons of sewage in the pressurized lines  
7 between the CIE Lift Station and the discharge manholes in the Boulders community.  
8 (*Id. at 283 ll. 11-22*). Once released into the discharge manholes in the Boulders  
9 community, the 18,000 to 20,000 gallons of sewage rush down the gravity sewer pipe  
10 filling it to its capacity, filling the manholes, and also creating turbulence. (*Id. at 286 l.*  
11 *4 through 287 l. 12; Ex. T-1 at 2-3 ¶¶ 6-8*). The sudden increase in the sewage between  
12 the discharge manhole in the Boulders community and the BWTP displaces any gasses  
13 within the system including those created between the CIE Lift Station and the  
14 discharge manhole and causes air pressures within the system to increase beyond that of  
15 the outside air. (*TR at 286 l. 4 through 287 l. 12; Ex. T-1 at 2-3 ¶¶ 6-8*) As such, if  
16 there are open airways to the outside, such as an unsealed manhole or residential  
17 connection, the sewer gas will escape from the sewer system and into the outside air of  
18 the Boulders community. (*TR at 286 l. 4 through 287 l. 12; Ex. T-1 at 2-3 ¶¶ 6-8*).

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22  
23 Francom's assessment of the Boulders community is confirmed by BMSC's own  
24 engineering studies performed by Lamb Technical Services, Inc. ("LTS"):

25  
26 At the two locations that the force mains discharge into the gravity lines,  
27 just upstream of the wastewater facility, both locations have extremely high  
28 hydrogen sulfide concentrations. The force main location discharge at  
Quartz and Boulder Drive had concentrations up to 700 PPM, and the

1 Century and Boulder location had concentrations over 100 PPM. Both  
2 locations *also had positive pressures that tend to drive the odors and*  
3 *hydrogen sulfide concentrations out through the manhole cover*  
4 *pickholes.*

5 ...

6 At the Quartz and Boulder Drive location, the odor and hydrogen sulfide  
7 concentrations are being contained using a sealing manhole cover. This is  
8 preventing virtually all of the odors from being released into the ambient  
9 air, but the downside to this approach is that the location has *significant*  
10 *positive pressures*, up to 0.04 in./WC, and sealing the covers will force the  
11 air out to some other location, like resident vent stacks. Also, sealing the  
12 covers will create high corrosion rates due to the turbulence and high  
13 sulfide levels, and trying to contain all of the hydrogen sulfide releases.  
14 Even when Thioguard is added upstream, the turbulence can still strip the  
15 hydrogen sulfide out of solution. The Thioguard is working fairly well in  
16 reducing the releases at this location with approximately a 50% reduction,  
17 but with initial concentrations over 700 PPM, a 50% reduction is of little  
18 help in controlling the risk of odor emissions. *With the significant positive*  
19 *pressures at this location, it is likely that these odors will be driven out of*  
20 *the surrounding homes' vent stacks.* Due to this possibility, a meter was  
21 placed in a home vent stack just upstream of the Boulder and Quartz force  
22 main discharge location to determine if any odor was being emitted out of  
23 the local residences vent stacks. Concentrations of 5 PPM were recorded at  
24 the vent stack when no Thioguard was being added to the system. The  
25 levels dropped to under 1 PPM when the Thioguard was being added and  
26 no concentrations were recorded after the first day or two, but even with  
27 low concentrations of less than 1 PPM, they could still be an added odor  
28 source for the area. When the Thioguard feed pump was not operating,  
values up to 5 PPM were recorded out of the surrounding homes vent  
stacks. These concentrations could be a significant odor for the entire area.

*A redesign at this structure is recommended if turbulence could be  
reduced. Reduced turbulence would keep the sulfides in solution to be  
treated by the waste treatment facility. Even with reduced concentrations  
due to less turbulence a fan generating negative pressures will still most  
likely be needed at the Quartz and Boulder Drive location to prevent  
odors from being forced out the local vent stacks.*

(Ex. A-6 Ex. 1 attachment F at 5 (emphasis added); also admitted as Ex. T-1 Ex. B at 5  
(emphasis added)).

1 Francom testified to two potential alternatives to resolve the odor problems  
2 within the Boulders community: (1) replace the gravity flow lines with pressure lines; or  
3 (2) install fans and carbon filters to create a negative pressure filtration system within  
4 the sewer system between the discharge manhole and the BWTP. With respect to the  
5 first alternative, Francom testified as follows:  
6

7 In addition, in my opinion, the way to resolve this problem is to put the  
8 pressure line all the way to the pump, all the way to the wastewater  
9 treatment plant and eliminate the discharge into the gravity flow line which  
10 seems to be causing the majority of the problems at the current time.

11 ...

12 What that would do, it would take the pressure system out of the gravity  
13 flow line on Boulder Drive and you would thereby eliminate the pressure  
14 problems on the manholes and the pipeline. It would be totally sealed and  
15 self contained. The only place that you probably would have any creation  
16 of odor is when it dumped into the sewer plant headworks. And they have  
17 a blower and a blower house filtration system already there.

18 (TR at 334 l. 18 through 335 l. 11). Carter Burgess also endorsed this solution. (Ex. T-  
19 3 Ex. A at 15).

20 The second alternative, a negative pressure filtration system, was recognized by  
21 the Carter Burgess and LTS reports:

22 Even with reduced concentrations due to less turbulence a fan generating  
23 negative pressures will still most likely be needed at the Quartz and  
24 Boulder Drive location to prevent odors from being forced out the local  
25 vent stacks.

26 (Ex. A-6 Ex. 1 attachment F at 5 (emphasis added); also admitted as Ex. T-1 Ex. B at 5  
27 (emphasis added)). The negative pressure created by the fan combined with carbon  
28 filters has the potential to resolve the odor problems within the Boulders community.  
The Town actually offered to install such improvements in the Boulders community on

1 a test basis to assess the effectiveness of the potential solution, but BMSC rejected the  
2 Town's offer based on its position that no odor problem existed. (*TR at 287 l. 13*  
3 *through 288 l. 2; 315 l. 21 through 317 l. 18*). Nevertheless, BMSC has begun to  
4 recognize the positive pressure problems, (*id. at 288 l. 2 through 289 l. 20*), which only  
5 aggravate the odor problems when the manhole covers are unsealed to dump sewage  
6 from other locations within the BMSC system.

7  
8 BMSC should be required to undertake one of the two proposed alternatives to  
9 resolve the odor problems. (*Id. at 334 ll. 2-23*). And while BMSC acknowledges that  
10 something must be done to resolve the ongoing operational problems that result in  
11 excess odor emissions within the Boulders community, the Town requests that the  
12 Commission condition any rate increase granted to BMSC upon the completed  
13 replacement of the gravity pipe with forced mains and/or the installation of a negative  
14 filtration system consisting of a several fans to create negative pressure between the  
15 discharge manholes within the Boulders and the BWTP and also strategically placed  
16 carbon filters.

17  
18  
19  
20 **C. BMSC's response to the odors.**

21 BMSC initially took the position that odors did not exist, (*Ex. A-6 at 2 ll. 24-26*),  
22 and that the problem was an "odor complaint problem," not an odor problem, (*Ex. A-7*  
23 *at 1 ll. 13-14*). Even in his opening statement on behalf of BMSC, attorney Jay L.  
24 Shapiro claimed that "[i]t's the Company's position we don't have a problem with  
25 odors; we have a problem with odor complaints." (*TR at 15 ll. 18-20*). Mr. Shapiro  
26 explained that "[t]he Company does not believe there is a presence of undue or  
27  
28

1 unexpected odors coming from its system.” (*Id. at 17 ll. 16-17*).

2 BMSC’s hard-line position on the odor issues evolved as the proceeding  
3 continued to a conciliatory position. After public comment and the Town’s witnesses,  
4 Dodds of BMSC acknowledged that “I certainly believe there is an issue” and that  
5 “customers are smelling odors.” (*Id. at 481 l. 21 through 482 l. 12*). Dodds also  
6 represented to the Commission that BMSC anticipated resolving the odor problems in  
7 the near future. (*Id. at 477 l. 18 through 480 l. 2*).

8  
9  
10 More importantly, BMSC offered little evidence to rebut the public comment or  
11 testimony of Francom regarding the existence of odors. Not a single witness testified of  
12 first hand experience of a completely odor free CIE Lift Station or Boulders community.  
13 Nor did BMSC offer evidence to rebut Francom’s testimony regarding the cause of the  
14 odor problems or the validity of the proposed solutions even though ALJ Nodes  
15 expressly offered BMSC the opportunity to rebut Francom’s testimony—“If that’s the  
16 case, and you want to dispute whatever Mr. Francom has to say on an issue such as this,  
17 you want to present some additional testimony in that regard, I will certainly permit you  
18 to do that.” (*Id. at 281 l. 17 through 283 l. 11*). BMSC never took the opportunity to  
19 offer additional evidence beyond its redacted testimony and related exhibits to rebut the  
20 evidence that odors exist and are negatively affecting “the safety, health, comfort and  
21 convenience of its patrons” (A.R.S. § 40-361(B)), or that BMSC provides services with  
22 “unreasonable difference[s] as to . . . service . . . between localities” (*id.* § 40-334(B)).  
23 At a minimum, the Town anticipated that BMSC would call its own operating  
24 personnel, Dan Schanama, BMSC Lead Operator, and/or Charles Hernandez, BMSC  
25  
26  
27  
28

1 Operator, to testify in an attempt to offer BMSC's side of the story on the odor  
2 problems or discuss proposed solutions, but BMSC did not do so.

3  
4 Instead, BMSC appears to rely on its purported compliance with an objective  
5 regulation that prohibits emissions of hydrogen sulfide in excess of 0.03 parts per  
6 million, Maricopa County Air Pollution Control Regulation R. 320, § 304, while  
7 completely ignoring other statutes, rules, and regulations applicable to its operations.  
8 For example, BMSC ignores A.R.S. §§ 40-361(B) which requires BMSC to "furnish  
9 and maintain such service, equipment and facilities as will promote the safety, health,  
10 comfort and convenience of its patrons, employees and the public, and as will be in all  
11 respects adequate, efficient and reasonable." BMSC offered no evidence that rebuts the  
12 public comments of ratepayers regarding the detrimental effects of BMSC's operations  
13 on their comfort and convenience.  
14

15  
16 Similarly, BMSC ignores A.R.S. § 40-334(B) which prohibits BMSC from  
17 "establish[ing] or maintain[ing] any unreasonable difference as to . . . service, facilities  
18 or in any other respect, either between localities or between classes of service." BMSC  
19 offered no evidence demonstrating that all of its ratepayers experience the same odor  
20 problems in their neighborhoods as the odor problems experienced by residents near the  
21 CIE Lift Station and within the Boulders community.  
22

23  
24 BMSC also ignores Maricopa County (the "County") regulations dealing  
25 specifically with sewer operations and air pollution. For example, Maricopa County  
26 Health Code Chapter II, § 2 Reg. 3(e) provides that

27 [a]ll sewage and industrial waste treatment works shall be operated at their  
28 highest practical efficiency at all times. If, after investigation by the

1 Department it is determined that any treatment or disposal works . . . is  
2 creating a *nuisance or a menace to public health*, the owner shall make  
3 such changes in the plant or its operation as are necessary to produce  
satisfactory results.

4 (Emphasis added). Maricopa County also prohibits air pollution, *see* Maricopa County  
5 Air Pollution Control Regs. R. 320, § 300 (“No person shall emit gaseous or odorous air  
6 contaminants from equipment, operations or premises under his control in such  
7 quantities or concentrations as to cause air pollution”), and defines air pollution as  
8 follows:  
9

10 The presence in the outdoor atmosphere of one or more air contaminants, or  
11 combinations thereof, in sufficient quantities, which either alone or in  
12 connection with other substances, by reason of their concentration and  
13 duration, are or tend to be injurious to human, plant, or animal life, *or*  
14 *causes damage to property, or unreasonably interferes with the*  
15 *comfortable enjoyment of life or property of a substantial part of a*  
16 *community*, or obscures visibility, or which in any way degrades the  
quality of the ambient air below the standards established by the Board of  
Supervisors.

17 *Id.* R. 100, § 200.10 (emphasis added). Again, despite the public comment that  
18 BMSC’s operations are effectively “creating a nuisance,” damaging the property, and  
19 “unreasonably interfere[ing] with the comfortable enjoyment of life or property of a  
20 substantial part of [the] community,” BMSC offered no evidence to rebut such claims.

21  
22 BMSC will likely point to the testimony of Marlin Scott Jr. (“Scott”) and the  
23 LTS reports to support its purported compliance with each of these statutes, rules,  
24 and/or regulations. Scott is the utility engineer of the Commission that performed an  
25 evaluation of the BMSC system for this rate proceeding. The LTS reports are a series  
26 of reports commissioned by BMSC to evaluate the odor emissions of its operations.  
27  
28 Neither the testimony of Scott, the LTS reports, or even the combination thereof

1 compels the conclusion that BMSC is in total compliance with all applicable statutes,  
2 rules, and regulations in light of the public comment and the testimony of the Town's  
3 witnesses.  
4

5 *1. Testimony of Scott.*

6 Scott's testimony regarding BMSC's compliance with applicable statutes, rules,  
7 and regulations should be given little weight, if any. Scott's basis for his testimony was  
8 his independent inspection of the BMSC that occurred on January 11, 2006. (*TR at 626*  
9 *ll. 7-8*). That inspection consisted of (1) discussions with Charles Hernandez, (2) a tour  
10 of the plant, (3) evaluation of a schematic of the BMSC system, and a (4) drive by  
11 inspection of the "sites and homes." (*Id. ll. 11-15*). In addition to his limited  
12 independent inspection, Scott discussed BMSC's compliance with applicable laws and  
13 regulations with ADEQ and County employees. (*Id. at 611 ll. 14-19, 615 ll. 14-16*).  
14  
15

16 The Town recognizes that Scott is a highly experienced utilities engineer,  
17 applauds his nearly twenty years of service to the Commission, and means no disrespect  
18 to Scott or the Commission with the forgoing analysis of Scott's evaluation and  
19 conclusions. Nevertheless, Scott's evaluation of the BMSC system can be described  
20 only as cursory or incomplete as it completely disregards the Commission's statutory  
21 mandates (i.e. A.R.S. §§ 40-361(B) and 40-334(B)), the actual service BMSC provides  
22 to its ratepayers, the reports of engineers commissioned to evaluate the odor issues, and  
23 even the complaints of ratepayers overhead during Scott's onsite inspection.  
24  
25

26 Scott's inspection of BMSC could not have uncovered the issues raised by the  
27 public comment and the Town. For example, Scott did not even inspect the CIE Lift  
28

1 Station. (TR at 626 ll. 16-17). When asked whether he inspected the sewer  
2 infrastructure on Boulder Drive, Scott stated that "I may have drove on it, but I may not  
3 have been aware if it was Boulders Drive itself." (Id. ll. 18-21). In addition, Scott was  
4 asked whether he spoke with any ratepayers living near the CIE Lift Station or in the  
5 Boulders community and he responded that "[d]uring that inspection Mr. Hernandez  
6 was called over by a customer and he went over. We took a break . . . for about five  
7 minutes. And I just heard that the odor - - there was odor going over that wall, and Mr.  
8 Hernandez stated he would look into the complaint." (Id. at 626 l. 25 through 672 l. 8).  
9  
10 Scott did not indicate that he spoke with the complaining ratepayer or any other  
11 ratepayer. (See id.). Moreover, Scott's report does not mention the complaining  
12 ratepayer. The Town would submit, that part of Commission's duty in this case is to  
13 promote "the convenience, comfort, and safety, and the preservation of the health" of  
14 BMSC ratepayers, see Ariz. Const. art. 15, § 3 and A.R.S. § 40-361(B).  
15

16  
17 Scott's inspection woefully failed to consider the effect of emissions of BMSC's  
18 operations upon ratepayers' convenience, comfort, and safety despite direct knowledge  
19 of a complaining ratepayer. Instead, Scott relied on other regulatory bodies that have no  
20 obligation to consider the application of Commission statutes including A.R.S. §§ 40-  
21 334(B) and 40-361(B). When asked about the statutory obligation imposed by A.R.S. §  
22 40-361(B), Scott testified that "[i]f it's a rule, I can't recall if it's a DEQ or County or an  
23 ACC Rule. I don't remember reading that rule." (TR at 629 ll. 11-22). As to whether  
24 Scott evaluated BMSC's compliance with A.R.S. § 40-361(B), Scott stated the "I've  
25 never inspected a system or tried to implement a rule like that toward a utility, so I don't  
26  
27  
28

1 think Staff can,” (*id. at 638 ll. 8-14*), “I just evaluate systems on the operation to help  
2 me in writing my report. And we count on DEQ and the County to gave [sic] us their  
3 evaluation to see if the system is working in compliance with the regulations,” (*id. at*  
4 *629 l. 24 through 630 l. 6*). Scott was unaware of when the last time either ADEQ or  
5 the County inspected the BMSC system. (*Id. at 632 ll. 1-5*). The culmination of these  
6 deficiencies in Scott’s evaluation and conclusions regarding the odor issues demonstrate  
7 that Scott’s testimony should be given little, if any, weight.  
8  
9

10 Lastly, despite Scott’s evaluation of the BMSC system, Commission Staff,  
11 through Scott, proposed a means of funding capital improvements necessary to resolve  
12 the odor problems with unused hook-up fees collected by BMSC (the “Alternative  
13 Proposal”). (*TR at 617 ll. 1-7*). Scott testified that “[i]t is Staff’s belief that it should be  
14 tagged just for the two projects mainly, the CIE lift station replacement and also the  
15 Boulders’ improvement main.” (*Id. ll. 14-19*). In essence, the Alternative Proposal  
16 would have earmarked approximately \$853,000.00 for the necessary improvements  
17 instead of refunding that amount to ratepayers. If Commission Staff truly believed that  
18 no basis existed for the Commission to impose such a condition upon BMSC for  
19 improvements to resolve the odor problems, or that there were no odor problems  
20 requiring the attention of the Commission, the Alternative Proposal would not have  
21 been offered by Scott during his testimony. Clearly, however, taking the time to offer  
22 the Alternative Proposal after hearing the public comments, testimony of the Town’s  
23 witnesses, and cross-examination testimony of Dodds, demonstrates that Staff also  
24 recognized both the existence of odor problems and the Commission’s authority to  
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27  
28

1 address the problem, even though Staff ultimately withdrew the Alternative Proposal.

2                   2.       *The LTS reports.*

3  
4           The Town anticipates that BMSC will take the position that because LTS argues  
5 BMSC complies with the laws and regulations pertaining to odors, the need and urgency  
6 to address the odor problems are lessened. The LTS reports focused upon sulfur-based  
7 odors and the Maricopa County Air Pollution Control Regulation R. 320, § 304 which  
8 prohibits emission of hydrogen sulfide in excess of 0.03 parts per million. As noted  
9 *supra* at 13-15, there are other statutes, rules, and regulations that are applicable to  
10 BMSC's operations. Furthermore, hydrogen sulfide emission is only part of the odor  
11 problems as demonstrated *supra* at 5, 8: "[T]here are other odors involved besides  
12 hydrogen sulfide . . . ." (*TR at 341 l. 14 through 342 l. 6*). According to Francom,  
13 "sewer has different types of gases. Not only does it have hydrogen sulfide, but it has  
14 Mercaptans [sic] and other things that are odor causing and that people recognize as  
15 odors . . . ." (*Id. at 285 ll. 12-15*). Finally, even the LTS reports acknowledge the  
16 inherent problems with the designs of the CIE Lift Station and the sewer infrastructure  
17 in the Boulders community that will undoubtedly continue to cause odors despite the  
18 introduction of chemicals into the BMSC sewer system. (*See supra* at 9-10.)  
19 Therefore, the LTS reports actually tend to support the Town's position in this matter.

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22  
23 **III. RESOLUTION OF THE ODOR PROBLEMS**

24           There is no question that given the severity of the odor problems demonstrated  
25 by the public comment and the testimony of the Town's witnesses, BMSC is legally  
26 obligated to remedy the causes of the odor problems. BMSC cannot deny that it is  
27  
28

1 obligated to “furnish and maintain such service, equipment and facilities as will  
2 promote the safety, health, comfort and convenience of its patrons, employees and the  
3 public, and as will be in all respects adequate, efficient and reasonable.” A.R.S. § 40-  
4 361(B). Nor can BMSC deny that it is prohibited from “establish[ing] or maintain[ing]  
5 any unreasonable difference as to rates, charges, service, facilities or in any other  
6 respect, either between localities or between classes of service.” A.R.S. § 40-334(B).

7  
8 The Commission has the authority to order BMSC to comply with A.R.S. §§ 40-  
9 334(B) and 40-361(B):

10  
11 When the commission finds that additions or improvements to or changes  
12 in the existing plant or physical properties of a public service corporation  
13 ought reasonably to be made, or that a new structure or structures should be  
14 erected, to promote the security or convenience of its employees or the  
15 public, the commission shall make and serve an order directing that such  
16 changes be made or such structure be erected in the manner and within the  
17 time specified in the order. If the commission orders erection of a new  
18 structure, it may also fix the site thereof.

19 A.R.S. § 40-331(A). “[T]he regulatory powers of the Commission are not limited to  
20 making orders respecting the health and safety, but also include the power to make  
21 orders respecting comfort, convenience, adequacy and reasonableness of service . . . .”

22 *Ariz. Corp. Comm’n v. Palm Springs Util. Co.*, 24 Ariz. App. 124, 128, 536 P.2d 245,  
23 249 (1975). Therefore, the Town requests that any rate increase granted to BMSC be  
24 conditioned upon the resolution of the odor problems.

25 The Town anticipates that BMSC will oppose any such conditions as  
26 demonstrated by the testimony of Dodds. (*TR at 480 l. 8 through 481 l. 9 (expressing*  
27 *dissatisfaction with the idea of a conditional rate increase)*). The core of BMSC’s  
28 opposition to conditions is that there are no reasonable standards that would adequately

1 insure the odor problems are resolved and that the interests of BMSC are protected from  
2 overreaching by ratepayers. The Town submits that although application of the law  
3 may be difficult, that difficulty cannot prevent the Commission from fulfilling its  
4 constitutional and statutory duties. Moreover, even if the standard is not precise, there  
5 is no doubt that the odors experienced by the ratepayers living near the CIE Lift Station  
6 and within the Boulders community are far beyond any reasonable standard; when use  
7 and enjoyment of property is detrimentally effected by odors emitted by a sewer  
8 company, it is clear that such odors are well beyond any reasonable standard which  
9 would trigger a legal obligation for BMSC to act.  
10  
11

12 The Town and ratepayers have raised legitimate concerns that indicate the  
13 current state of the BMSC system is not in compliance with all applicable laws and  
14 regulations including, but not limited to, A.R.S. §§ 40-334(B) and 40-361(B). The  
15 Commission is obligated to apply the laws and should therefore compel BMSC to  
16 achieve compliance. A.R.S. § 40-331(A). The Town requests the Commission to do so.  
17  
18

19 The Town has set forth specific solutions to the odor problems identified by the  
20 public comment and the Town's witnesses, each of which has also been recognized in  
21 either the Carter Burgess and/or LTS reports. With respect to the odors in the  
22 neighborhood where the CIE Lift Station is located, BMSC needs to replace the CIE  
23 Lift Station or bypass the CIE Lift Station, thereby eliminating odor emissions. With  
24 respect to the odor problems in the Boulders community, BMSC needs to replace the  
25 existing gravity flow piping with pressurized piping and/or install the necessary fans  
26 and charcoal filters to create a negative pressure system within the sewer infrastructure  
27  
28

1 within the Boulders community thereby preventing odor emissions. The Commission  
2 has the power to order BMSC to undertake such capital improvements. *See* A.R.S. §  
3 40-331(A). The Town requests the Commission to use its powers to resolve the odor  
4 problems experienced by BMSC ratepayers.  
5

6 As discussed *supra* at 18, Commission Staff proposed a funding solution for the  
7 capital improvements necessary to resolve the odor problems, but Staff ultimately  
8 withdrew the Alternative Proposal before it could be fully evaluated. Scott proposed  
9 that the Commission order BMSC to use retained hook-up fees to fund the necessary  
10 capital improvements to resolve the odor problems. Initially, Commission Staff  
11 recommended that the hook-up fees be refunded to the ratepayers, but under the  
12 Alternative Proposal proposal, suggested that the hook-up fees be used to fund “project  
13 improvements, mainly the CIE lift station and the Boulders pressurized main.” (*TR at*  
14 *617 ll. 1-7*). Scott testified that “[i]t is Staff’s belief that it should be tagged just for the  
15 two projects mainly, the CIE lift station replacement and also the Boulders’  
16 improvement main.” (*Id.* ll. 14-19). In essence, the Alternative Proposal would have  
17 earmarked approximately \$853,000.00 for the necessary improvements instead of  
18 refunding that amount to ratepayers. When Commission Staff inexplicably withdrew its  
19 proposal after being asked by Judge Nodes to provide additional details and analysis  
20 thereof, (*id. at 624 ll. 12-24*), the Town expressed its genuine interest in the Alternative  
21 Recommendation. (*See Town of Carefree’s Response to Staff’s Alternative*  
22 *Recommendations for Use of Funds in the Hook-Up Fee Account*).  
23  
24  
25  
26

27 One of the Town’s concerns is that after a rate increase has been approved, if  
28

1 there are no concrete conditions requiring BMSC to resolve the odor problems, BMSC  
2 will have no incentive or reason to fund capital improvements and may contend that it  
3 lacks the resources to complete the necessary capital improvements. The Alternative  
4 Proposal offered a means to guarantee funding. BMSC's attorney, however, assured the  
5 Commission and the Town that funding would not be a problem:

7           There is no testimony or evidence in this case that that (sic) is the  
8 reason things are not being fixed. In fact, Mr. Dodds made it very clear the  
9 Company is happy to spend the money to address the problem.

10       ....

11           So I'm frankly not concerned about standing before the  
12 commissioners in October or November at this point and debating the use  
13 of hook-up fees to pay for something that by that time will either be  
14 completed or certainly funded.

15       ....

16           Financing is not the issue. If I need to get Mr. Dodds back down  
17 here to testify that the Company will fund replacement or elimination or  
18 repairs of the CIE lift station, we are happy to do that.

19 (*Id. at 663 l. 10 through 664 l. 15*). Based on these representations, the Town agreed  
20 with ALJ Nodes that the Town would not oppose the refunding of the hook-up fees as  
21 initially proposed by Commission Staff as long as any rate increase was conditioned  
22 upon resolution of the odor problems. (*Id. at 667 ll. 1-7*).

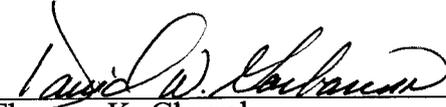
#### 23 **IV. CONCLUSION**

24           The Town intervened in this rate proceeding to raise concerns regarding  
25 customer service, specifically odor problems from the operations of the applicant,  
26 BMSC, and seeks an order from the Commission requiring BMSC to correct the odor  
27 problems. The public comment in this matter and the Town's witnesses demonstrate  
28

1 that an odor problem exists but also that there are solutions to the problem. The Town  
2 requests the Commission to condition any rate increase granted to BMSC on the  
3 resolution of the odor problems as suggested herein. The Town does not oppose a rate  
4 increase as long as it includes conditions requiring BMSC to resolve the odor problems  
5 at the CIE Lift Station and in the Boulders community.  
6

7  
8 RESPECTFULLY SUBMITTED August 21, 2006.

9 MOHR, HACKETT, PEDERSON, BLAKLEY  
10 & RANDOLPH, P.C.

11  
12 By 

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26 August 21, 2006 to:

27 The Honorable Dwight D. Nodes  
28 Administrative Law Judge  
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