



0000099320

RECEIVED

Arizona Corporation Commission

DOCKETED

1 FENNEMORE CRAIG, P.C.
 Jay L. Shapiro (No. 014650)
 2 Norman D. James (No. 006901)
 3003 N. Central Ave.
 3 Suite 2600
 Phoenix, Arizona 85012
 4 Attorneys for Black Mountain Sewer Corporation

ADDED TO DOCKET CONTROL

DOCKETED BY	
-------------	--

BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO: SW-02361A-08-0609

RESPONSE TO STAFF'S MOTION FOR EXTENSION OF TIME

14 Black Mountain Sewer Corporation ("BMSC" or "Company") hereby submits this
 15 Response to Staff's June 12, 2009 Motion for Extension of Time ("Extension Request").
 16 While the Company is sympathetic to Staff's dilemma, it must oppose Staff's request,
 17 which is contrary to the Commission's procedural rules governing the processing of rate
 18 case, A.A.C. R14-2-103.

19 First, Staff's reason – a change of rate analyst – is insufficient to justify a
 20 significant change in the procedural schedule and a delay in setting new rates. Staff has
 21 provided no explanation of its efforts to replace the analyst on this case, and thus makes
 22 no showing that it has acted reasonably to minimize delay and the resulting adverse
 23 impact on the Company. For example, how long did Staff delay in replacing the prior
 24 analyst after he announced he was leaving the Commission, and why didn't Staff select a
 25 different replacement analyst, one that was able to meet the deadlines imposed by the
 26 Commission's rules? The Company has done nothing wrong, and it should not be made

1 to shoulder the burden of another party's personnel changes.

2 Second, the Extension Request is improper because Staff has not only failed to
3 recognize the harm to the utility (a two-month delay at proposed rates is equal to roughly
4 \$150,000 in lost revenue), but has also failed to offer any remedy to ameliorate that harm.
5 Indeed, Staff seems to regard this injury as irrelevant. If Staff requires more time, then
6 the Commission should grant an extension only in conjunction with a remedy that will
7 allow the Company to recover its lost revenue. Possible remedies include an order
8 authorizing interim rates or a surcharge to recover the revenue that will be lost. In the
9 alternative, the existing procedural schedule could be altered to eliminate filing surrebuttal
10 and rejoinder testimony. This would give Staff additional time without losing the current
11 hearing dates. Any of these remedies would minimize the harm the Company will suffer
12 if the procedural schedule is altered. Staff has proposed nothing, however, to protect the
13 Company's right to earn a fair return on its investment.

14 Finally, in addition to ignoring the prejudice to BMSC, Staff has ignored the
15 possible impact on all parties and the Commission. Staff simply presumes a 60 day delay
16 is possible. No effort appears to have been made to determine whether the ALJ could
17 conduct the hearing in this matter 60 days later, or whether any other scheduling conflicts
18 would be created by the Extension Request. Staff's justification for an extension does not
19 warrant the disruption of all of these schedules, nor does it warrant creating the risk that
20 this case could be delayed beyond 60 days.

21 For these reasons, Staff's Extension Request should be denied. If Staff wishes
22 more time, then such extension must take into account the impact on the Company, and
23 include an appropriate remedy to offset the impact of such delay on the Company's
24 earnings.

25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this 15th day of June, 2009.

FENNEMORE CRAIG, P.C.

By 

Jay L. Shapiro
Norman D. James
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012
Attorneys for Black Mountain Sewer Corporation.

ORIGINAL and thirteen (13) copies of the foregoing were filed this 15th day of June, 2009, with:

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

Copy of the foregoing was hand delivered this 15th day of June, 2009, to:

Dwight D. Nodes,
Assistant Chief Administrative Law Judge
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Amanda Ho, Esq.
Kevin Torrey, Esq.
Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Alfonzo Amezcua
Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Copy of the foregoing was mailed
this 15th day of June, 2009, to:

Michelle Wood, Esq.
Residential Utility Consumer Office
1110 W. Washington Street
Suite 220
Phoenix, AZ 85007

Scott S. Wakefield
Ridenour, Hinton & Lewis
201 N. Central Ave., Suite 3300
Phoenix, AZ 85004-1052

By: *Maria San Jose*

2206915.2