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Attorneys for the Town of Carefree

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 SERVICE
BASED THEREON.

No. SW-02361A-08-0609

INTERVENOR TOWN OF CAREFREE'S
NOTICE OF FILING DIRECT
TESTIMONY

Intervenor Town of Carefree hereby files the Direct Testimony of Brian Kincaid
of the Carefree Estates Homeowners Association in the above-referenced matter.

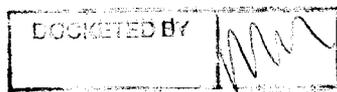
RESPECTFULLY SUBMITTED THIS 18 day of September, 2009.

SHERMAN & HOWARD L.L.C.

Arizona Corporation Commission

DOCKETED

SEP 18 2009



By

Thomas K. Chenal
Thomas K. Chenal

David W. Garbarino

7047 East Greenway Parkway, Suite 155

Scottsdale, AZ 85254-8110

Attorneys for Town of Carefree

///

1 **ORIGINAL AND 13 COPIES** of
2 the foregoing filed September 18, 2009
3 with:

4 **ARIZONA CORPORATION COMMISSION**
5 Docket Control
6 1200 W. Washington St.
7 Phoenix, AZ 85007

8 **COPIES** of the foregoing mailed this
9 same date to:

10 Dwight D. Nodes
11 Asst. Chief Administrative Law Judge
12 Hearing Division
13 Arizona Corporation Commission
14 1200 W. Washington St.
15 Phoenix, AZ 85007

16 Janice Alward
17 Chief Counsel, Legal Division
18 Arizona Corporation Commission
19 1200 W. Washington St.
20 Phoenix, AZ 85007

21 Ernest Johnson
22 Director, Utilities Division
23 Arizona Corporation Commission
24 1200 W. Washington St.
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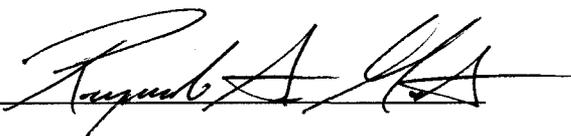
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15 Director
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20 Roger Strassburg
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BEFORE THE ARIZONA CORPORATION COMMISSION

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 SERVICE
BASED THEREON.

No. SW-02361A-08-0609

DIRECT TESTIMONY OF
BRIAN KINCAID

410369.2\16701-087 (9/17/2009)

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME.

A. Brian Kincaid.

Q. WHERE DO YOU LIVE?

A. I live in the development known as the Carefree Estates, formerly known as the Carefree Inn Estates (the "Carefree Estates Development"), located within the Town of Carefree (the "Town"), Arizona. My address is 7801 E. Carefree Dr, Carefree, Arizona 85377.

Q. HOW MANY RESIDENCES ARE LOCATED WITHIN THE CAREFREE ESTATES DEVELOPMENT?

A. There are thirty-three residences located within the Carefree Estates Development.

Q. IS THERE A HOMEOWNERS' ASSOCIATION RELATED TO THE CAREFREE ESTATES DEVELOPMENT?

A. Yes, the Carefree Estates Homeowners Association (the "Association") is a homeowners' association created through a Declaration of Covenants, Conditions and Restrictions and Grant of Easements recorded in 1978 (the "Declaration"). Each owner of a residence located within the Carefree Estates Development is a member of the Association.

Q. WHAT IS YOUR RELATIONSHIP WITH THE ASSOCIATION?

A. I am a member of the Association by virtue of my ownership of a residence

1 located within the Carefree Estates Development, and I am the President of the
2 Association.

3
4 Q. HOW LONG HAVE YOU HELD THE POSITION OF PRESIDENT OF THE
5 ASSOCIATION?

6 A. Since January 2009.

7 **II. BACKGROUND**

8
9 Q. WHAT IS THE RELATIONSHIP BETWEEN BLACK MOUNTAIN SEWER
10 CORPORATION (“BLACK MOUNTAIN”) AND THE ASSOCIATION?

11 A. Black Mountain considers the Association to be a “customer” of Black
12 Mountain. In fact, however, the Association itself receives no sewer services from
13 Black Mountain. Instead, the residences of the Carefree Estates Development, i.e. the
14 members of the Association, receive sewer services directly from Black Mountain.

15
16 Q. IF THE RESIDENTS OF THE CAREFREE ESTATES DEVELOPMENT
17 ACTUALLY RECEIVE THE SEWER SERVICES FROM BLACK MOUNTAIN,
18 WHY IS THE ASSOCIATION CONSIDERED BLACK MOUNTAIN’S CUSTOMER
19 WHEN IT RECEIVES NO SERVICES FROM BLACK MOUNTAIN?
20

21 A. I do not have an answer to that question.

22
23 Q. WHO DOES BLACK MOUNTAIN BILL FOR THE SERVICES PROVIDED
24 TO THE THIRTY-THREE RESIDENCES OF THE CAREFREE ESTATES
25 DEVELOPMENT?

26 A. Black Mountain bills the Association, and the Association pays Black Mountain
27 directly for the sewer services provided to the thirty-three residents of the Carefree
28

1 Estates Development.

2 Q. IS THE BILL RECEIVED BY THE ASSOCIATION FROM BLACK
3 MOUNTAIN BROKEN OUT BY RESIDENCE?
4

5 A. The bill the Association receives from Black Mountain for its sewer services
6 provided to the residences of the Carefree Estates Development charges the Association
7 for thirty-three units.

8 Q. HOW DOES THE ASSOCIATION HAVE THE MONEY TO PAY BLACK
9 MOUNTAIN?
10

11 A. The Association assesses its members for the amounts it pays to Black Mountain.
12 In other words, the thirty-three residents of the Carefree Estates Development pay for
13 the sewer services they receive from Black Mountain through assessments paid to the
14 Association.
15

16 Q. CAN YOU EXPLAIN WHY YOUR DIRECT TESTIMONY IS BEING
17 OFFERED BY THE TOWN IN THIS MATTER?

18 A. Sure. In the decision of the Arizona Corporation Commission (the
19 "Commission") in the previous rate proceeding of Black Mountain, Decision No. 69164
20 in Docket No. SW-02361A-05-0657, the Commission ordered Black Mountain to
21 refund \$833,367.00 to its customers related to hook-up fees charged to customers in the
22 past. Black Mountain refunded \$412.15 to each of its customers, including the
23 Association. Because Black Mountain recognized the Association as only one
24 customer, and did not recognize the individual thirty-three residents within the Carefree
25 Estates Development as customers, Black Mountain only refunded the Association
26
27
28

1 \$412.15. Not one of the residents of the Carefree Estates Development, however,
2 received a refund from Black Mountain even though Black Mountain serves the thirty-
3 three customers within the Carefree Estates.
4

5 After Black Mountain refunded \$412.15 to each of its customers, the Town, at
6 the request of then President of the Association, Thomas Van Dyke, sought to compel
7 Black Mountain to issue refunds with respect to each residence of the Carefree Estates.
8 Black Mountain stipulated to make refunds to the thirty-three residents of Carefree
9 Estates as long as it could also assess its other customers to equalize the amount of the
10 refunds to each of Black Mountain's customers. A stipulation and proposed order
11 between the Town, Black Mountain, and the Residential Utility Consumer Office was
12 filed with Administrative Law Judge Dwight D. Nodes on December 7, 2007 (the
13 "Stipulation"). The parties learned through informal means that Judge Nodes did not
14 believe he had the authority to enter the proposed order stipulated to by the parties, and
15 that the Stipulation and proposed order should be filed with the Commission.
16
17

18 The Town then requested the parties to agree that the Stipulation and related
19 proposed order could be submitted to the Commission, but Black Mountain would no
20 longer agree to the Stipulation given its upcoming rate proceeding, i.e. this rate
21 proceeding, and instead suggested that the matter be raised in this proceeding.
22
23

24 Accordingly, it is my understanding that the Town has intervened in this matter,
25 in part, to assist the Association with respect to the refund issue. Through my testimony
26 contained herein, the Association simply requests that the Commission enter an order in
27 conformity with the Stipulation previously submitted to Judge Nodes in the prior rate
28

1 proceeding.

2 **III. RELIEF SOUGHT/CONCLUSION**

3
4 Q. SO, IN OTHER WORDS, ALL YOU ARE ASKING FOR IS THAT THE
5 COMMISSION ENTER THE ORDER PREVIOUSLY SUBMITTED TO JUDGE
6 NODES IN THE PRIOR RATE PROCEEDING?

7 A. Yes.

8
9 Q. IS EXHIBIT 1 ATTACHED HERETO A TRUE AND CORRECT COPY OF
10 THE STIPULATION AND PROPOSED ORDER SUBMITTED BY THE TOWN,
11 BLACK MOUNTAIN, AND RUCO?

12 A. Yes, which provides as follows:

13
14 On or about October 1, 2007, the Town filed with the
15 Arizona Corporation Commission (the "Commission") a
16 Combined Motion for Clarification and Application for
17 Amendment of Order Pursuant to A.R.S. § 40-252 (the
18 "Motion") regarding the issue of whether thirty-three
19 individuals owning real property within the Carefree Inn
20 Estates subdivision ("Carefree Inn Estates") were entitled to
receive a refund of hook-up fees from Black Mountain in
connection with Decision No. 69164 (Opinion and Order in
Docket No. SW-02361A-05-0657) (the "Decision"). The
Decision concluded in part as follows:

21
22 The record supports a finding that customers
23 should be refunded \$833,367 for hook-up fees
24 that were used to purchase land and that have
25 not been expended. The refunds should be
26 distributed in the manner proposed by the
Company, on a per customer basis irrespective of
customer class. The rates granted in this Decision
should not go into effect until the refunds have
been distributed.

27 Decision No. 69164 at 42. The Decision ordered Black
28 Mountain as follows:

1
2 IT IS FURTHER ORDERED that the revised
3 schedules of rates and charges shall be effective
4 for all service rendered on and after December 1,
5 2006, subject to the requirement that Black
6 Mountain Sewer Corporation has mailed to each
7 customer prior to that date a refund check for the
8 hook-up fee funds, consistent with and in the
9 manner described hereinabove. The new rates
may not go into effect until the Company has
provided, to the satisfaction of the Director of the
Utilities Division, sufficient information to show
that the refunds have been issued in accordance
with the discussion set forth herein.

10 Decision No. 69164 at 40. Black Mountain made refunds of
11 \$412.15 to 2,022 customers.

12 The Motion requested the Commission to clarify or
13 amend the Decision to provide that thirty-three additional
14 refunds were appropriate for parcels of real property located
15 within the Carefree Inn Estates subdivision, owners of which
16 had not individually received a refund of \$412.15, but have and
17 continue to receive sewer service from Black Mountain. Instead,
18 the Carefree Inn Estates Homeowners' Association received one
19 check in the sum of \$412.15 on behalf of the thirty-three
individual parcels of real property located with the Carefree Inn
Estates because Black Mountains bills only the Homeowners
Association and view only the Homeowners Association as a
customer.

20 Without admitting or conceding any position on the
21 relief requested by the Town, the Town, Black Mountain and
22 the Residential Utility Consumer Office ("RUCO") have agreed
23 that an appropriate and revenue neutral means of resolving the
24 issue would be for Black Mountain to (1) refund \$405.73 with
25 respect to each of the thirty-three parcels of real property within
26 Carefree Inn Estates; (2) debit its other customers' accounts for
27 \$6.62. The debit to the other customers' accounts allows Black
28 Mountain to make the thirty-three additional refunds without
paying more than originally ordered by the Commission (i.e.
\$833,367.00 to 2,055 individuals instead of 2,022 individuals).
The parties hereto further stipulate that no finding that the
individual homeowners within Carefree Inn Estates are
"customers" of Black Mountain is being requested of or should

1 be made by the Commission except for the limited purposes of
2 distribution of refunds as stipulated herein.

3 Q. DO YOU HAVE ANY THING ELSE TO ADD?

4 A. Not at this time.

5 Q. DOES THIS CONCLUDE YOUR TESTIMONY?
6

7 A. Yes.
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EXHIBIT 1

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Attorneys for the Town of Carefree

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2007 DEC -7 A 11:49

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

DEC -7 2007

BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED BY
ne

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

JOINT STIPULATION REGARDING
HOOK-UP FEE REFUND AND
CAREFREE ESTATES

On or about October 1, 2007, the Town filed with the Arizona Corporation Commission (the "Commission") a Combined Motion for Clarification and Application for Amendment of Order Pursuant to A.R.S. § 40-252 (the "Motion") regarding the issue of whether thirty-three individuals owning real property within the Carefree Inn Estates subdivision ("Carefree Inn Estates") were entitled to receive a refund of hook-up fees from Black Mountain in connection with Decision No. 69164 (Opinion and Order in Docket No. SW-02361A-05-0657) (the "Decision"). The Decision concluded in part as follows:

The record supports a finding that customers should be refunded \$833,367 for hook-up fees that were used to purchase land and that have not been expended. The refunds should be distributed in the manner proposed by the

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Company, on a per customer basis irrespective of customer class. The rates granted in this Decision should not go into effect until the refunds have been distributed.

Decision No. 69164 at 42. The Decision ordered Black Mountain as follows:

IT IS FURTHER ORDERED that the revised schedules of rates and charges shall be effective for all service rendered on and after December 1, 2006, subject to the requirement that Black Mountain Sewer Corporation has mailed to each customer prior to that date a refund check for the hook-up fee funds, consistent with and in the manner described hereinabove. The new rates may not go into effect until the Company has provided, to the satisfaction of the Director of the Utilities Division, sufficient information to show that the refunds have been issued in accordance with the discussion set forth herein.

Decision No. 69164 at 40. Black Mountain made refunds of \$412.15 to 2,022 customers.

The Motion requested the Commission to clarify or amend the Decision to provide that thirty-three additional refunds were appropriate for parcels of real property located within the Carefree Inn Estates subdivision, owners of which had not individually received a refund of \$412.15, but have and continue to receive sewer service from Black Mountain. Instead, the Carefree Inn Estates Homeowners' Association received one check in the sum of \$412.15 on behalf of the thirty-three individual parcels of real property located with the Carefree Inn Estates because Black Mountains bills only the Homeowners Association and view only the Homeowners Association as a customer.

Without admitting or conceding any position on the relief requested by the Town, the Town, Black Mountain and the Residential Utility Consumer Office

1 ("RUCO") have agreed that an appropriate and revenue neutral means of resolving the
2 issue would be for Black Mountain to (1) refund \$405.73 with respect to each of the
3 thirty-three parcels of real property within Carefree Inn Estates; (2) debit its other
4 customers' accounts for \$6.62. The debit to the other customers' accounts allows Black
5 Mountain to make the thirty-three additional refunds without paying more than
6 originally ordered by the Commission (i.e. \$833,367.00 to 2,055 individuals instead of
7 2,022 individuals). The parties hereto further stipulate that no finding that the
8 individual homeowners within Carefree Inn Estates are "customers" of Black Mountain
9 is being requested of or should be made by the Commission except for the limited
10 purposes of distribution of refunds as stipulated herein.
11
12

13 The order attached hereto as Exhibit A reflects the stipulated position of the
14 Town, Black Mountain and RUCO. Commission Staff has taken no position on this
15 issue.
16

17 RESPECTFULLY SUBMITTED: December 5, 2007.

18 MOHR, HACKETT, PEDERSON, BLAKLEY
19 & RANDOLPH, P.C.
20

21
22 By 
23 Thomas K. Chenal
24 David W. Garbarino
25 Suite 155
26 7047 East Greenway Parkway
27 Scottsdale, Arizona 85254
28 Attorneys for the Town of Carefree

26 ///
27 ///

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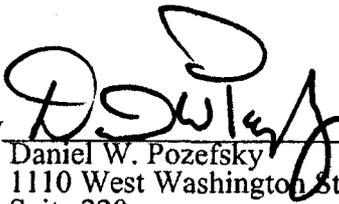
FENNEMORE CRAIG, P.C.

By


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jshapiro@fclaw.com
Attorneys for Black Mountain Sewer
Company

RESIDENTIAL UTILITY CONSUMER OFFICE

By


Daniel W. Pozefsky
1110 West Washington Street
Suite 220
Phoenix, AZ 85007
Attorney for Residential Utility Consumer
Office

ORIGINAL and 13 COPIES
of the foregoing filed December 7,
2007 with:

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

COPIES of the foregoing hand-delivered
December 7, 2007 to:

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

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

1 Brian Bozzo
Utilities Division
2 Arizona Corporation Commission
1200 W. Washington St.
3 Phoenix, AZ 85007

4 COPIES of the foregoing mailed
December 7, 2007 to:

5
6 Boulders Homeowners Association
Marilyn H. Courier, Secretary
7 P.O. Box 2956
Carefree, AZ 85377
8 M.M. Shirtzinger
9 34773 N. Indian Camp Trail
Scottsdale, AZ 85262

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EXHIBIT A

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BEFORE THE ARIZONA CORPORATION COMMISSION

MIKE GLEASON
Chairman
JEFF HATCH-MILLER
Commissioner
WILLIAM A. MUNDELL
Commissioner
KRISTIN K. MAYES
Commissioner
GARY PIERCE
Commissioner

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

JOINT STIPULATION REGARDING HOOK-UP FEE REFUND AND CAREFREE ESTATES

BY THE COMMISSION:

On September 16, 2005, Black Mountain Sewer Corporation ("Black Mountain") filed an application with the Arizona Corporation Commission (the "Commission") for a rate increase.

In Decision No. 69164 (December 5, 2006) (the "Decision") arising from the rate proceeding, the Commission concluded as follows:

The record supports a finding that customers should be refunded \$833,367 for hook-up fees that were used to purchase land and that have not been expended. The refunds should be distributed in the manner proposed by the Company, on a per customer basis irrespective of customer class. The rates granted in this Decision should not go into effect until the refunds have been distributed.

1 Decision No. 69164 at 40. The Decision ordered Black Mountain as follows:

2
3 IT IS FURTHER ORDERED that the revised
4 schedules of rates and charges shall be effective for all
5 service rendered on and after December 1, 2006, subject to
6 the requirement that Black Mountain Sewer Corporation has
7 mailed to each customer prior to that date a refund check for
8 the hook-up fee funds, consistent with and in the manner
9 described hereinabove. The new rates may not go into effect
until the Company has provided, to the satisfaction of the
Director of the Utilities Division, sufficient information to
show that the refunds have been issued in accordance with the
discussion set forth herein.

10 *Decision No. 69164 at 42.* Black Mountain made refunds of \$412.15 to 2,022
11 customers, including a single check in the sum of \$412.15 to the Carefree Inn Estates
12 Homeowners' Association, but no refunds to the thirty-three individual real property
13 owners within Carefree Inn Estates.

14
15 The Town of Carefree (the "Town"), an intervening party, filed a Combined
16 Motion for Clarification and Application for Amendment of Order Pursuant to A.R.S. §
17 40-252 (the "Motion"), that requested the Commission to clarify or amend the Decision
18 to address the issue of refunds for the thirty-three parcels of real property within the
19 Carefree Inn Estates subdivision that receive sewer services from Black Mountain, but
20 owners of which did not receive a refund.

21
22 To resolve the issue raised by the Motion, the Town, Black Mountain, the
23 Residential Utility Consumer Office, stipulated as follows:

24
25 1. Black Mountain will refund \$405.73 for each of the thirty-three parcels of
26 real property located within Carefree Inn Estates; and

27
28

1 COPIES of the foregoing
2 mailed this ___ day of
3 _____ to:

4 5 6 7 8	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 3003 North Central Avenue, Suite 2600 Phoenix, AZ 85012 Attorneys for Black Mountain Sewer Company
9 10 11 12 13	Daniel W. Pozefsky 1110 West Washington Street Suite 220 Phoenix, AZ 85007 Attorney for Residential Utility Consumer Office	Brian Bozzo Utilities Division Arizona Corporation Commission 1200 W. Washington St. Phoenix, AZ 85007
14 15 16	Keith Layton Staff Counsel Legal Division Arizona Corporation Commission 1200 Washington Street Phoenix, AZ 85007	Boulders Homeowners Association Marilyn H. Courier, Secretary P.O. Box 2956 Carefree, AZ 85377
17 18 19	M.M. Shirtzinger 34773 N. Indian Camp Trail Scottsdale, AZ 85262	

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