

SW 02351A-08

0609



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ORIGINAL

ARIZONA CORPORATION COMMISS
UTILITY COMPLAINT FORM

Investigator: Brad Morton

Phone: ([REDACTED])

Fax: ([REDACTED])

Priority: Respond Within Five Days

Opinion No. 2009 81945 Date: 9/21/2009

Complaint Description: 08A Rate Case Items - Opposed
N/A Not Applicable

Complaint By: First: Arthur Last: Gimson

Account Name: Arthur Gimson Home: [REDACTED]

Street: Canyon Creek Homeowners Assoc 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:

CANYON CREEK ESTATES HOMEOWNERS ASSOCIATION
P.O. Box 1190 CAREFREE, AZ 85377 - 1190

Sent via e-mail to: mailmaster@azcc.gov

September 9, 2009
Arizona Corporation Commission
Consumer Services Division
1200 West Washington
Phoenix, AZ 85007

RE: BLACK MOUNTAIN SEWER CORPORATION
DOCKET NO. SW-02351A-08-0609

Arizona Corporation Commission

DOCKETED

SEP 24 2009

DOCKETED BY [Signature]

AZ CORP COMMISSION
DOCKET CONTROL

2009 SEP 24 A 9:02

RECEIVED

Dear Commissioners:

This letter of public comment is submitted on behalf of the home owners of Canyon Creek Estates in Carefree, Arizona, to object to the rate increase requested by Black Mountain Sewer Corporation ("BMSC") in its application dated December 19, 2008. There are twenty-two homes within this subdivision all of which are hooked up to BMSC's services. Attached, as Exhibit A, is a listing of the home owners and the physical street addresses of their respective properties.

On December 5, 2006 (less than three years ago), the Arizona Corporation Commission issued its decision (No. 69164) authorizing a 20.1% increase in sewer charges for residential users. This rate increase was to be effective on the issuance of refund checks for hook-up fees. This increase changed the residential sewer rate, as follows:

From \$38.00 to \$45.64 per month

Above rates, do not include the ACC Assessment

Approximately two years after the above decision, BMSC submitted another application to change the residential

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sewer charges as follows:

From \$45.64 to \$71.08 per month. This is an increase of 55.7%

Above rates, do not include the ACC Assessment

This application for a rate increase is exorbitant under today's current economic circumstances. Further, it is unwarranted and should be denied in its entirety for the reasons outlined below.

Black Mountain Sewer Corporation is one of many waste-water and water distribution entities owned, or controlled by Algonquin Water Resources of America, Inc. In turn, Algonquin Power Income Fund owns Algonquin Water.

While BMSC and its parents may claim to operate as a utility, Algonquin Power is an "investment trust" established under the laws of Ontario, Canada. The fund's mission is "to provide unit holders with sustainable, highly stable and growing cash flows..." Algonquin Power Income Fund was established in 1997 and its units (shares) are traded on the Toronto Stock Exchange under the symbol APF.UN.

According to financial investment information, as of September 4, 2009, APF.UN has a dividend yield of 11.42%. Over the past 5-years or longer, Algonquin has distributed the majority of its earnings to its unit holders. In fiscal year 2005, Algonquin distributed 92 per unit from its available cash of 934 per unit. This is nearly 99%, leaving nothing of any significance for retained earnings, as would be practiced by companies that are not in the "investment trust" business.

In 2006, 924 was distributed from the available cash of 93. In 2007, another 92cr was distributed from 95 of available cash. In 2008, as the global economy started to move into a recession, and energy consumption was reduced, Algonquin's available cash was reduced to 864 per unit, but is still paid out 75 to its unit holders. [Please note: distribution information provided by Algonquin Power's website.]

In its 2008 Financial Report, (the section entitled "Utility Services") Algonquin Power reflects that its waste-water customer base is basically unchanged from the previous year. (32,893 customers in 2008, which is 311 more than 2007, an increase of less than 1%.)

While the customer base was flat, the quantity of waste-water actually treated decreased by 100 million gallons. (1,850 million gallons in 2008, down 5.1% from 2007.)

While the financial report breaks out its line item revenues between waste-water and water distribution, it does not show a breakdown of the operating expenses for these categories, but, instead, lumps them together. However, since the number of water distribution customers, quantity of water sold, and revenues for water distribution, are similar, it can be assumed that operating expenses are also proportionate.

Sadly, while revenues remained flat, operating expenses surged by 22%, from \$17.4 million in 2007 to \$21.2 million in 2008. This is an increase of \$3.8 million.

The narrative section of the financial report partially explains the increases as follows:

- \$1.0 million for additional field personnel, contract and other operational expenses.
- \$0.6 million for increased power and chemical expenses
- \$1.0 million for increased billing and administrative expenses

The above reflects \$2.6 million, but no additional information to account for the remaining \$1.2 million of increased operating expenses.

Today's economy mandates that all businesses operate efficiently. This requires good management committed to fiscal restraint. Why would Algonquin Power increase its workforce, contract and chemical expenses, administration, and billing expenses when its revenues are flat?

Is this a case of bad management? Or is it a case of "It doesn't really matter" since we can file applications for

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rate increases to cover our costs while we still pay out dividends to our unit holders!"

Algonquin Power, through its subsidiary entities, has either filed, or is about to file, five applications for rate increases in Arizona alone. These applications will cover the following utilities:

- Black Mountain Sewer Corporation
- LPSCO (Litchfield Park Service Company)
- Rio Rica
- Bella Vista Northern Sunrise
- Bella Vista Southern Sunrise

In addition, Algonquin Power is preparing to file rate increase applications for five Texas utilities.

Arizona is fortunate to have its Corporation Commission, with its members elected by the voters, while the majority of other states have appointed positions. The spirit and intent of the regulatory authority is to allow utilities doing business in the state to appropriately recover operating expenses, while allowing a fair rate of return on its capital investment.

Algonquin Power should first undertake fiscal responsibility to better manage its utility operations before making applications for rate increases. While it is important that utilities are permitted to recover costs of doing business, it is more important that recoverable costs are minimized. It is also reasonable that investors, be they shareholders, or unit holders be rewarded for their investment. But should these rewards be in excess of 10%?

Commissioners, with respect, you are urged and encouraged to read a short section of the Algonquin Power Income Fund "Annual Financial Results" for the year 2008. Starting on page 20, under "Management's Discussion & Analysis", is information relating to "Utility Services" division, which includes the operations of BMSC. Starting on page 21, under the sub-heading of "Outlook", are five paragraphs, which outline the company's rate increase activities. For your convenience, copies of these pages are attached.

Included on page 22, is the following: ".....over the course of fiscal 2010, [the resolution of the rate cases] is expected to potentially result in an annualized increase in revenue of more than U.S. \$10 million." While it is not clear which entities will produce these increases in revenue, the table, (on page 22) reflects that rate increases have been filed for only two entities (Black Mountain and Litchfield Park).

For the year 2008, the entire Utility Services division of Algonquin Power produced revenues of \$35.2 million. An increase of \$10 million would equate to an additional 28% in revenues. Page 21 of the report states that no material growth is expected in fiscal 2009 "due to the slowdown in the U.S. housing market". This means that revenues projected are from the companies' existing customers and from rate increases.

Local newspapers have recently written stories that Salt River Project, at its Board meeting, voted not to submit a rate increase application to the Commission, citing that this was not the time. Instead, SRP elected to review its own operations to see where efficiency and productivity can be enhanced before passing costs on to its customers.

Black Mountain Sewer has a negative history in the Town of Carefree. As the Commission's records will reflect, orders were issued in 2006 for BMSC to remedy odor problems within the Boulders community. It was very disappointing that BMSC had previously ignored repeated requests from its customers and from Carefree Town Council, before the matter was brought before the Commission for action.

As of August 26, 2009, a news release states that Liberty Water is the new name for Black Mountain Sewer Company. Similar news releases, of the same date, reflected the same name changes for Rio Rico, LPSCO, Gold Canyon and other Algonquin entities. Perhaps, if the name is changed, the negativity will disappear!

The news release also states that it is introducing new employee programs "designed to reinforce the company's commitment to community." Perhaps a better method of reinforcing its commitment to the community would be to follow the footsteps of SRP and forgo any rate increases at this time.

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The residents of Carefree, customers of BMSC, are not willing to subsidize poor management, nor are they willing to pay investors higher-than-reasonable returns on their investments. We respectfully urge the Commission to reject the application in its entirety. Further, the Commission should advise BMSC to provide supporting documentation with any future applications for rate increases, with such documentation to reflect steps taken to reduce and/or minimize operating expenses.

Yours sincerely,
Arthur Gimson,
President
Canyon Creek Estates Homeowners Association
Enclosure: Exhibit A
Pages 20, 21 and 22, Algonquin Power Income Fund report
Exhibit A
Canyon Creek Estates, Carefree, Arizona
LIST OF HOMEOWNERS, as of September 9, 2009
Lot
Number
Street Address
Homeowner

- 1 35453 N Canyon Creek Circle ROSKOS Dr. Thomas
- 2 35413 N Canyon Creek Circle MINDEL Mr. and Mrs. N
- 3 35373 N Canyon Creek Circle OKAGAWA Dr. and Mrs. R
- 4 35333 N Canyon Creek Circle SHAFFER Mr. and Mrs. F.
- 5 35293 N Canyon Creek Circle NOHRE Mr. and Mrs. A.
- 6 35253 N Canyon Creek Circle JONES Mr. and Mrs. T.
- 7 35213 N Canyon Creek Circle KEMP Mr. and Mrs. J.
- 8 5761 E Canyon Creek Circle MURRAY Mr. and Mrs. D
- 9 5731 E Canyon Creek Circle CAIRNS Mr. and Mrs. C.
- 10 5701 E Canyon Creek Circle GIEBELHAUSEN Mr. and Mrs. D.
- 11 5671 E Canyon Creek Circle ROCHE Mr. R.
- 12 5641 E Canyon Creek Circle TINKEY Mr. and Mrs. L.
- 13 5658 E Canyon Creek Circle WALSH Mr. J.
- 14 5690 E Canyon Creek Circle GIMSON Mr. and Mrs. A.
- 16 35345 N Canyon Creek Court RODRIGUEZ Mr. M. and Mr. L.
- 17 35321 N Canyon Creek Court SWINGLER Mr. and Mrs. M.
- 18 5722 N Canyon Creek Circle DEAN Mr. and Mrs. B.
- 19 35226 N Canyon Creek Circle SPIVAK Mr. and Mrs. K.
- 20 35280 N Canyon Creek Circle GUERRERO Dr. A.
- 21 35334 N Canyon Creek Circle KEMP Mr. and Mrs. M.
- 22 35388 N Canyon Creek Circle COLLINS Mr. and Mrs. T.
- 23 35442 N Canyon Creek Circle CUTTING Mr. and Mrs. M.

Algonquin Power Income Fund – Management's Discussion & Analysis
support independent power producers are being supported by virtually every Canadian province and a significant number of U.S. states. The Obama-Biden New Energy for America Plan supports 10% of electricity in the United States being generated from renewable sources by 2012 and 25% by 2025. The demand for additional renewable power is also expected to benefit from the desire by various government entities to increase infrastructure spending.

Three months ended Year ended
December 31 December 31
2008 2007 08 2007
32,893 32,582 32,893 32,582
450 500 1,850 1,950

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Water distribution customers 36,297 35,755 36,297 35,755

Water sold (millions of gallons) 1,400 1,400 5,750 5,650

Revenue

Waste-water treatment

Water distribution

Other Revenue

\$

\$

\$

\$

UTILITY SERVICES

Number of

Waste-water customers

Waste-water treated (millions of gallons)

\$ 5,279

4,336

221

9,836

4,270

3,464

257

7,991

\$ 18,745

15,609

879

35,233

17,455

15,232

33,699

Business Unit operating profit \$ 3,726 \$ 4,915 \$ 17,574 \$ 19,627

(including other income)

2008 Annual Operating Results

Utility Services had 32,893 waste-water customers as at December 31 2008, as compared to 32,582 as at December 31, 2007, an increase of 311 customers year over year or 1.0%. The business unit's water distribution customers were 36,297 as at December 31, 2008, as compared to 35,755 as at December 31, 2007, representing a year over year increase of 542 customers or 1.5%.

During the year ended December 31, 2008, Utility Services provided approximately 5.8 billion U.S. gallons of water to its customers, treated approximately 1.9 billion U.S. gallons of waste-water, and sold approximately 530 million U.S. gallons of effluent.

For the year ended December 31, 2008, Utility Services' revenue totalled \$35.2 million, as compared to \$33.7 million during the same period in 2007. Revenue from waste-water treatment totalled \$18.7 million, as compared to \$17.5 million during the same period in 2007, an increase of \$1.2 million. Revenue from water distribution totalled \$15.6 million, as compared to \$15.2 million during the same period in 2007, an increase of \$0.4 million. Waste-water treatment revenue for the year ended December 31, 2008 was impacted by increased revenue at ten facilities, totaling \$1.1 million. The increase was primarily the result of increased rates at the Gold Canyon facility, organic growth and increased customer demand at the Litchfield Park Service Company (LPSCo) waste-water treatment facility. Water distribution revenue for the year ended December 31, 2008 was impacted by increased revenue at eight facilities, totaling \$0.4 million. The increase was primarily the result of increased customer demand at the LPSCo's water distribution facility. The increase was partially offset by decreased water distribution revenue of \$0.1 million at five water distribution facilities during the year as compared to the same period in 2007.

For the year ended December 31, 2008, operating expenses totalled \$21.2 million, as compared to \$17.4 million

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during the same period in 2007. Operating expenses increased by \$1.8 million as a result of additional field personnel, contract and other operational expenses, \$0.6 million as a result of increased power and chemical expenses, and \$1.0 million as a result of increased billing and administrative expenses, as compared to the same period in 2007. The rate cases initiated by Utility Services will factor these increased operating expenses into the new rates and tariffs that the facilities are allowed to charge after the rate cases are complete. See Utility Services - Outlook section for more details on the rate cases initiated.

Expenses

Operating expenses \$(6,041) \$(4,210) \$(21,243) \$(17,401)

Other income \$55 \$- \$102 \$33

Realized gain on derivative financial instruments \$(124) \$1,134 \$3,482 \$3,296

Algonquin Power Income Fund – Managements Discussion & Analysis

The realized portion of gain on derivative financial instruments consists of any realized gains on the foreign exchange forward contracts and interest rate swaps settled in the period.

For the year ended December 31, 2008, operating profit totalled \$17.6 million as compared to \$19.6 million during the same period in 2007 representing a decrease of 10.5%. Utility Services' operating profit did not meet the Company's expectations for the twelve months ended December 31, 2008 due to slower organic growth and higher operating costs experienced in the period.

2008 Fourth Quarter Operating Results

2008 Fourth Quarter Operating Results

Utility Services had 32,893 waste-water customers as at December 31, 2008, as compared to 32,704 as at September 30, 2008, an increase of 190 in the quarter or 0.6%. Utility Services had 36,297 water distribution customers as at December 31, 2008, as compared to 36,108 as at September 30, 2008, an increase of 189 in the quarter or 0.5%. Utility Services' marginal increase in water distribution and waste-water treatment customer base during the quarter primarily relates to limited organic growth at the division's facilities, partially offset by an increase in vacant houses and the slow down in U.S. new residential home sales, primarily in the area serviced by LPSCO.

During the quarter ended December 31, 2008, Utility Services provided approximately 1.4 billion U.S. gallons of water to its customers, treated approximately 450 million U.S. gallons of waste-water, and sold approximately 130 million U.S. gallons of effluent.

For the quarter ended December 31, 2008, Utility Services' revenue totalled \$9.8 million as compared to \$8.0 million during the same period in 2007. Revenue from waste-water treatment totalled \$5.3 million, as compared to \$4.3 million during the same period in 2007, an increase of \$1.0 million. Revenue from water distribution totalled \$4.3 million, as compared to \$3.5 million during the same period in 2007, an increase of \$0.8 million. The fourth quarter water distribution revenue was impacted by increased revenue of \$0.1 million resulting from organic growth and increased customer demand at six water distribution facilities. The fourth quarter waste-water treatment revenue was impacted by lower revenue of \$0.1 million, due to decreased customer demand at six waste-water treatment facilities as compared to the same period in 2007. Utility Services reported increased revenue from operations of \$1.9 million in the fourth quarter of 2008 as a result of the weaker Canadian dollar as compared to the same period in 2007.

For the quarter ended December 31, 2008, operating expenses totalled \$6.0 million, as compared to \$4.2 million during the same period in 2007. Operating expenses increased by \$0.2 million as a result of additional field personnel, contract and other operational expenses, \$0.2 million as a result of increased power and chemical expenses, and \$0.4 million as a result of increased billing and administrative expenses, as compared to the same period in 2007. These increases were partially offset by \$0.2 million of decreased property taxes expensed in the quarter ended December 31, 2008, as compared to the same period in 2007. Utility Services reported higher expenses from operations of \$1.1 million as a result of the weaker Canadian dollar, as compared to the same period in 2007.

The realized portion of gain on derivative financial instruments consists of any realized gains on the foreign exchange forward contracts and interest rate swaps settled in the period.

For the quarter ended December 31, 2008, operating profit totalled \$3.7 million as compared to \$4.9 million

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during the same period in 2007, representing a decrease of 24.5%. Utility Services' operating profit did not meet the Company's expectations for the three months ended December 31, 2008 due to slower organic growth and higher operating costs experienced in the period.

Outlook – Utility Services

Utility Services is not expecting any material organic growth in fiscal 2009 due to the slowdown in the U.S. housing market. However, Utility Services continues to provide water distribution and waste-water treatment

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Algonquin Power Income Fund – Management's Discussion & Analysis

services, primarily in the southern and southwestern United States, focusing on attractive historically-growing communities which provide opportunity for organic growth over the long term.

Utility Services is preparing to initiate rate cases at a number of its facilities. Black Mountain Sewer Company filed a rate case in December 2008 using a June 2008 test year. LPSCo will file a rate case in the first quarter of 2009, using a September 2008 test year. The Rio Rico facility is preparing to initiate a rate case during the first quarter or early second quarter of 2009, using a test year ended December 31, 2008. The Bella Vista, Northern Sunrise and Southern Sunrise facilities are preparing to initiate rate cases in 2009. All of these facilities are located in Arizona. Five Texas utilities are preparing to initiate rate cases in early 2009, with a test year ended December 31, 2008. The following table summarizes the larger rate cases that are being initiated:

Status of Estimated Estimated Timing

Rate Revenue Increase of Rate Increase

•U•t Ycii:, Increase - - as Filed

Facility

Black Mountain Q2 2009 Filed \$ 0.9 million Q1. 2010

LPSCo Q3 2008 Filed \$ 12.5 million Q3 2010

Rio Rico Q4 2008 In progress Q3 2010

Bella Vista Q1 2009 In progress Q3 2010

Texas Utilities Q1 2009 In progress Q2 2009

It is anticipated that regulatory review of the rates and tariffs for the Arizona facilities would be completed in the second half of 2009, with the new rates and tariffs going into effect in the second and third quarters of 2010. Due to differences in the regulatory approach between Arizona and Texas, it is anticipated that changes in the rates and tariffs for the Texas facilities would be in effect in mid 2009. While a firm forecast of rate increases at these facilities is not possible as the rate case processes are in the early stages and are subject to regulatory approval, the resolution of the rate cases noted above, over the course of fiscal 2010, is expected to potentially result in an annualized increase in revenue of more than U.S. \$10 million. Rate cases ensure that a particular facility appropriately recovers its operating costs and earns the rate of return on its capital investment as allowed by the regulatory authority under which the facility operates. Algonquin monitors the rates of return on each of its utility investments to determine the appropriate time to file rate cases in order to ensure it earns the full regulatory approved rate of return on its investments.

As part of normal rate case review procedures, existing customers and other interested parties are allowed to become involved and comment on a rate case review, generally when there is a requested increase in existing water distribution and waste-water treatment rates. As a result of a request by the Residential Utility Consumer Office ("RUCO"), the Arizona Corporation Commission ("ACC") agreed to re-hear the Gold Canyon rate case, originally decided in June 2007, which granted Gold Canyon a U.S. \$1.8 million annualized increase in its rates. The rehearing focussed on two aspects of the original decision: Capital Structure and Excess Plant Capacity. This rehearing process concluded in December 2008, resulting in a reduction in the approved rates for Gold Canyon. This is anticipated to reduce annual revenue by approximately U.S. \$0.6 million versus the initial rates granted in June 2007. Algonquin believes that this decision is not consistent with current legislation, existing precedents and is substantially without merit. The rate case review procedures provide the waste-water treatment provider with a number of options, including filing an appeal of this decision to the Arizona State Court of Appeals. Gold Canyon intends to exercise its rights as provided in the ratemaking process in Arizona and challenge the results of the rehearing process. As this process in the early stages, Algonquin is not able to estimate the likelihood of this decision being reversed.

Various capital projects in several utilities have achieved substantial completion during 2008 or will achieve

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completion during the first quarter of 2009. All of these investments will be included in the rate case applications previously noted.

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End of Complaint

Utilities' Response:

Investigator's Comments and Disposition:

Opinion docketed

End of Comments

Date Completed: 9/21/2009

Opinion No. 2009 - 81945
