

ORIGINAL



0000103285

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2009 DEC 23 A 10: 58

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

COMMISSIONERS
KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

DEC 23 2009

DOCKETED BY

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. DOCKET NO. SW-02361A-08-0609

**BOULDERS HOMEOWNERS'
ASSOCIATION'S RESPONSIVE
CLOSING BRIEF**

The Boulders Homeowners' Association ("BHOA"), by and through undersigned counsel, submits this Responsive Closing Brief.

RESPONSE TO STAFF

Staff concludes that there are no "down sides" to closing the Boulders Wastewater Treatment Plant but for the price tag and the fact that the collection system may still on occasion produce odors in the community. Staff Brief at 26. Staff makes no recommendation regarding approving closure of the plant, or approving the Settlement Agreement and the cost recovery mechanism. Staff has apparently abandoned any position it may have had that resolution of the odor issue is not appropriate in this rate case, as its Opening Brief is silent on that issue.

RESPONSE TO RUCO

The Residential Utility Consumer Office's ("RUCO") Initial Closing Brief reiterates its standard objection that "adjustor mechanisms and cost recovery mechanisms

1 because they often represent extraordinary ratemaking.” RUCO Brief at 16. BHOA does
2 not deny that the cost recovery mechanism envisioned by the Settlement Agreement is an
3 extraordinary mechanism, but this is an extraordinary situation. Black Mountain Sewer
4 Corporation’s (“BMSC” or “Company”) Boulders Wastewater Treatment Plant is
5 operational and in compliance with Arizona Department of Environmental Quality and
6 Maricopa County regulations, but it is located unusually close to homes. Tr. at 125, Exh.
7 BHOA-4 at 4,6. The odors that customers experience are extremely offensive and
8 interrupt their enjoyment of their properties. Tr. at 10-34 (public comments). The
9 Commission has previously stated that odors in the community should be remediated and
10 that all customers should be able to fully enjoy their homes without enduring offensive
11 odors. Decision No. 69164 at 37. Customers recognize the likely cost of closing the
12 Plant, and are willing to pay increased rates that will result. Tr. at 10-34 (public
13 comments), 367. This is an exceptional situation, and it merits an exceptional resolution.

14

15 **CONCLUSION**

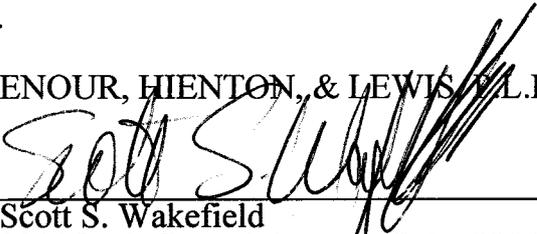
16 The Commission has already ordered the Company to resolve the odor issue in the
17 Boulders community. The Settlement Agreement is a way to accomplish that goal within
18 bounds of the various constraints that prevent the Company from just shutting the
19 treatment plant on its own.

20 No party is opposed to closing the wastewater treatment plant *per se*. The only
21 objection to the Settlement Agreement is RUCO’s philosophical objection to the cost
22 recovery mechanism because RUCO repeatedly opposes such “extraordinary” measures.
23 But in these extraordinary circumstances, the Commission should approve the Settlement
24 Agreement and allow the Company to finish addressing the odor problem the
25 Commission previously recognized need to be solved.

26

1 Dated this 23rd day of December, 2009.

2 RIDENOUR, HIENTON, & LEWIS P.L.L.C.

3 By 
4 Scott S. Wakefield
5 201 North Central Avenue, Suite 3300
6 Phoenix, Arizona 85004-1052
7 Attorneys for Boulders Homeowners'
8 Association

9 ORIGINAL and 13 copies filed
10 This 23rd day of December, 2009 with:

11 Docket Control
12 Arizona Corporation Commission
13 1200 W. Washington Street
14 Phoenix, AZ 85007

15 COPY of the foregoing HAND-DELIVERED
16 This 23rd day of December, 2009 to:

17 Janice Alward, Chief Counsel
18 Legal Division
19 ARIZONA CORP. COMMISSION
20 1200 W. Washington Street
21 Phoenix, Arizona 85007

22 Steve Olea, Director
23 Utilities Division
24 ARIZONA CORP. COMMISSION
25 1200 W. Washington Street
26 Phoenix, Arizona 85007

Lyn Farmer
Utilities Division
ARIZONA CORP. COMMISSION
1200 W. Washington Street
Phoenix, Arizona 85007

COPY of the foregoing
MAILED/EMAILED this 23rd
day of December, 2009 to:

Greg Sorenson
ALGONQUIN WATER SERVICES

1 12725 W. Indian School Rd., Suite D-101
2 Avondale, Arizona 85392

3 Jay L. Shapiro (jshapiro@fclaw.com)
4 Norman D. James (njames@fclaw.com)
5 FENNEMORE CRAIG, PC
6 3003 N. Central Avenue, Suite 2600
7 Phoenix, Arizona 85012
8 Attorneys for Black Mountain Sewer
9 Corporation

10 Jodi Jerich
11 Director
12 RUCO
13 1110 W. Washington Street, Suite 220
14 Phoenix, Arizona 85004-1481

15 Michelle L. Wood (mwood@azruco.gov)
16 Residential Utility Consumer Office
17 1110 W. Washington, Suite 220
18 Phoenix, AZ 85007

19 Roger Strassburg
20 Roger Strassburg, PLLC
21 9117 East Los Gatos Drive
22 Scottsdale, Arizona 85255
23 Attorneys for D.E. Doelle, D.D.S.

24 Dennis E. Doelle, D.D.S.
25 7223 E. Carefree Drive
26 P.O. Box 2506
Carefree, Arizona 85377

M.M. Schirtziner
34773 N. Indian Camp Trail
Scottsdale, Arizona 85266

Thomas K. Chenal (tchenal@ShermanHoward.com)
David W. Barbarino
SHERMAN & HOWARD, LLC
7047 E. Greenway Parkway, Suite 155
Scottsdale, Arizona 85254-8110
Attorneys for Town of Carefree

23 
24 _____
25
26