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BEFORE THE ARIZONA CORPORATION

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.)

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

At: Phoenix, Arizona
Date: November 17, 2009
Filed: **DEC 02 2009**

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 1 of
4 said Commission, 1200 West Washington Street, Phoenix,
5 Arizona, commencing at 10:02 a.m. on the 17th of
6 November, 2009.

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BEFORE: DWIGHT D. NODES, Assistant Chief
9 Administrative Law Judge

10

APPEARANCES:

11

12 For the Applicant:

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20 For Intervenor Boulders Homeowners Association:

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1 APPEARANCES:

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RUCO

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By Ms. Michelle Wood

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COLETTE E. ROSS

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Certified Reporter

Certificate No. 50658

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1 ACALJ NODES: Good morning. Welcome to the
2 Arizona Corporation Commission. Scheduled for a
3 prehearing conference in the Black Mountain Sewer
4 Corporation, Case 08-0609. My name is Dwight Nodes. I
5 am the administrative law judge assigned to the case.

6 And let me first take appearances on behalf of
7 the applicant.

8 MR. SHAPIRO: Good morning, Judge Nodes. Jay
9 Shapiro from the law firm of Fennemore Craig on behalf
10 of the applicant Black Mountain Sewer Corporation. With
11 me today on behalf of the company is Mr. Greg Sorensen.

12 ACALJ NODES: All right. And on behalf of Town
13 of Carefree.

14 MR. GARBARINO: Your Honor, David Garbarino with
15 the law firm Sherman & Howard on behalf of the Town of
16 Carefree.

17 ACALJ NODES: Okay. You came. You had called
18 last night about calling in, I guess, for this morning,
19 but you showed up in person instead.

20 MR. GARBARINO: Yes, Your Honor. I made a
21 tactical decision it is probably better to be here in
22 person.

23 ACALJ NODES: All right. Anyone here on behalf
24 of the Boulders HOA?

25 MR. WAKEFIELD: Judge, Scott Wakefield of

1 Ridenour, Hienton & Lewis on behalf of the Boulders
2 Homeowners Association.

3 ACALJ NODES: Okay. On behalf of RUCO.

4 MS. WOOD: Michelle Wood on behalf of RUCO.
5 With me is Director Jodi Jerich and William Rigsby.

6 ACALJ NODES: And is it Dr. Doelle? Doelle?

7 MR. DOELLE: Present.

8 ACALJ NODES: How do you pronounce your name?

9 MR. DOELLE: Doelle.

10 ACALJ NODES: Just like --

11 MR. DOELLE: Doelle, yes.

12 ACALJ NODES: Okay. Thank you.

13 Mr. M. M. Schirtzinger, is he here in
14 attendance?

15 (No response.)

16 ACALJ NODES: Okay. And on behalf of Staff.

17 MR. TORREY: Your Honor, Kevin Torrey on behalf
18 of Commission Staff.

19 ACALJ NODES: Okay. Well, as I think most
20 people know, we typically just use this for scheduling
21 witnesses and talking about other procedural issues that
22 need to be discussed.

23 Mr. Shapiro, I guess I will turn to you first.
24 You have two witnesses, Mr. Bourassa and Mr. Sorensen?

25 MR. SHAPIRO: Correct, Your Honor.

1 ACALJ NODES: And not that it probably matters a
2 whole lot, what is your proposal?

3 MR. SHAPIRO: We will call Mr. Sorensen first
4 and then Mr. Bourassa.

5 ACALJ NODES: Okay. Let me ask if any of the
6 intervenors have scheduling issues that would limit them
7 to any particular days. Mr. Garbarino.

8 MR. GARBARINO: Your Honor, I have no scheduling
9 issues that would limit me to any particular days. And
10 we only have submitted testimony of one witness. There
11 hasn't been any objection to what we have submitted thus
12 far, any question about it. I think we have reached at
13 least informal agreement the way our issues should be
14 handled.

15 ACALJ NODES: Well, the question is -- and it is
16 Mr. Kincaid, correct?

17 MR. GARBARINO: That's correct, Your Honor.

18 ACALJ NODES: Does he have any scheduling
19 conflicts? That's the issue.

20 MR. GARBARINO: Your Honor, I will be honest
21 with you, we didn't believe there would be a need for
22 him to come down. I am trying to work on getting
23 stipulations from Staff and RUCO that his testimony can
24 simply be admitted.

25 ACALJ NODES: Well --

1 MR. GARBARINO: If there is any questions from
2 the court or Commissioners, we will certainly make every
3 effort to have him here tomorrow, certainly leave here,
4 call him and find out.

5 ACALJ NODES: Well, tomorrow, you know, I guess
6 a lot depends how much public comment we have. And we
7 have the company witnesses that will be going first. If
8 you want, you can just, say, have him available, say,
9 Monday first thing.

10 MR. GARBARINO: Monday.

11 ACALJ NODES: And that way, if there are any
12 questions, he would be available and we could, you know,
13 say he would start at, say, 9:30. Even if we haven't
14 finished the company witnesses, we could take him out of
15 order. I mean I am just trying to accommodate everybody
16 and their witnesses to the extent we can --

17 MR. GARBARINO: I understand, Your Honor.

18 ACALJ NODES: -- with the understanding it
19 doesn't always work out the way that we had mapped out
20 in the first place. So we will save Mr. Kincaid Monday
21 and kind of play it by ear depending on what happens
22 with the company's witnesses.

23 MR. GARBARINO: Thank you, Your Honor.

24 ACALJ NODES: Mr. Wakefield, your witness is
25 Mr. Peterson?

1 MR. WAKEFIELD: That's correct. And he is
2 available tomorrow or any time early next week. Any of
3 the days we expect to be holding hearing, he can be
4 here.

5 ACALJ NODES: Okay. And, Dr. Doelle, what
6 is -- do you have a preference for a date certain? Can
7 you pull the microphone over, please.

8 MR. DOELLE: I have arranged to have both today
9 and tomorrow off, but obviously I have a dental practice
10 to run. And it doesn't appear as though my issue is
11 going to take up the predominance of the hearing so it
12 would be helpful to me if I had more of a time frame.

13 ACALJ NODES: Okay. Well, today is not, I mean
14 today --

15 MR. DOELLE: As far as today, it was clarified
16 by Staff that it was going to be short. Tomorrow it
17 could be helpful.

18 ACALJ NODES: Okay. Mr. Shapiro, do you have
19 any objection, say, if Dr. Doelle is taken out of order
20 tomorrow after public comment?

21 MR. SHAPIRO: None at all.

22 ACALJ NODES: Any other party have an issue with
23 that?

24 (No response.)

25 ACALJ NODES: Okay. Well, then I think what we

1 will do, Dr. Doelle, is, once we finish public comment,
2 we will just, even though it is kind of unusual, we will
3 just put you on after opening statements as the first
4 witness. You can then get your testimony finished and,
5 you know, feel free then after that point to do as you
6 need to tend to your practice.

7 MR. DOELLE: Okay.

8 ACALJ NODES: Okay.

9 MR. DOELLE: That would be helpful.

10 ACALJ NODES: Okay. And, Ms. Wood, you have
11 Mr. Rigsby and Mr. Moore. Do you have any scheduling
12 issues with either of those witnesses?

13 MS. WOOD: No, we don't, Your Honor.

14 ACALJ NODES: Okay, very well. I think what we
15 will do is we will shoot for getting all the nonRUCO
16 intervenor witnesses done after the company's witnesses
17 are done and then we will go to RUCO and then finally
18 Staff. That brings us to Mr. Torrey.

19 Do any of the Staff witnesses have conflict
20 issues?

21 MR. TORREY: Your Honor, none of our witnesses
22 have conflict issues.

23 ACALJ NODES: Okay.

24 MR. SHAPIRO: Judge, can Mr. Torrey and Ms. Wood
25 just let us know what order they will be calling their

1 witnesses in?

2 ACALJ NODES: Oh, yes.

3 MS. WOOD: Mr. Moore followed by Mr. Rigsby.

4 ACALJ NODES: Okay. Staff.

5 MR. TORREY: Your Honor, we had intended to call
6 Mr. Manrique first and Ms. Hains second and Ms. Brown
7 third.

8 ACALJ NODES: Okay.

9 MR. SHAPIRO: Thank you.

10 ACALJ NODES: I think we have that pretty well
11 taken care of then.

12 Other procedural issues? Mr. Shapiro first.

13 MR. SHAPIRO: Yes. We actually have two that we
14 wanted to speak to about today.

15 First off, the first question, Your Honor,
16 involves RUCO's surrebuttal filing Mr. Moore's
17 testimony. In RUCO's direct filing it took no position
18 and did not mention the company's request for a certain
19 level of rate case expense. In Mr. Moore's surrebuttal,
20 RUCO makes the statement that it will provide a final
21 recommended level of rate case expense when it files its
22 final schedules after the evidentiary hearing. That
23 makes it impossible for the company to cross-examine
24 RUCO regarding a position. We think RUCO should either
25 be required to take a position and present evidence if

1 it has it or be precluded from taking such a position.

2 ACALJ NODES: Well, I don't know why you can't
3 just cross-examine him and make that very point.

4 MR. SHAPIRO: Okay.

5 ACALJ NODES: And to the extent that you believe
6 that they haven't met their burden of showing what their
7 recommend -- or supporting their recommendation, then
8 you can make that argument on brief.

9 MR. SHAPIRO: Okay, fair enough.

10 The second issue was just we wanted to see if
11 the parties could discuss a briefing schedule, because,
12 if it required transcript orders, then we would need to
13 make arrangements for that ahead of time.

14 ACALJ NODES: Okay. And how did you propose --
15 I mean, do you just want to do it after we finish here
16 today?

17 MR. SHAPIRO: Sure, we can talk with counsel for
18 the parties and discuss that.

19 ACALJ NODES: Okay. That would probably be
20 best. That way it is easier to get everybody's
21 agreement rather than trying to do it live.

22 MR. SHAPIRO: Sure. Then we will give you some
23 proposed dates tomorrow.

24 ACALJ NODES: Sounds good.

25 MR. SHAPIRO: Thank you.

1 ACALJ NODES: Mr. Wakefield.

2 MR. WAKEFIELD: Thank you. I just wanted to
3 bring to your attention that the homeowners association
4 is bringing a couple buses of residents to make public
5 comment tomorrow. So I just thought that you might
6 appreciate knowing that in advance. Looks like there
7 will be a large number of people, maybe two bus loads.

8 ACALJ NODES: I assumed there would be a fair
9 number of people given the amount of written comment
10 that we received to this point.

11 Any other procedural issues?

12 Mr. Torrey.

13 MR. TORREY: Your Honor, if I could, originally
14 when the case was filed, there was no lead/lag study
15 that had been done regarding cash requirements, things
16 like that. Staff had responded in its testimony and
17 then at some point thereafter the company did produce
18 this particular study. Staff had a chance to look over
19 that study, produced some preliminary testimony.

20 Staff has had a chance to take a look at those
21 numbers a little deeper since the time that their
22 testimony was filed and would like to make a few minor
23 changes to what the recommendations have been, nothing
24 major. But Staff would like to get something in writing
25 here.

1 I believe the proposed time frame was by
2 tomorrow, close of business for the information for the
3 lead/lag study. With your permission or with no
4 objection from the parties, we would hope to get just
5 the minor details sort of fleshed out before the end of
6 the day tomorrow.

7 ACALJ NODES: Let me see if I understand. What
8 you want is the opportunity to file some supplemental
9 testimony regarding the company's lead/lag study that
10 was presented in the company's rebuttal testimony, I
11 guess?

12 MR. TORREY: That's correct, Your Honor. Staff
13 had put up the initial testimony regarding that, has had
14 a chance to take a look at the numbers a little closer
15 and needs to modify a few positions, not any major
16 changes but some minor modifications with some
17 schedules.

18 ACALJ NODES: And would this be in Ms. Brown's
19 testimony? Who would be the witness?

20 MR. TORREY: It will, Your Honor.

21 ACALJ NODES: Mr. Shapiro.

22 MR. SHAPIRO: I guess it is hard for me to
23 oppose something until I see it and determine what kind
24 of change it is to Staff's position and what kind of
25 analysis it requires of our consultant. So if I could

1 reserve taking a position until I see what Staff offers,
2 I think that would be appropriate.

3 ACALJ NODES: Okay. Well, obviously to the
4 extent that they can do something in writing as opposed
5 to doing it when they get on the witness stand, it
6 probably is a benefit.

7 MR. SHAPIRO: Much easier, yes.

8 ACALJ NODES: So to that extent, you know, we
9 want everyone to have the opportunity to present their
10 positions based on all the information. Obviously not
11 having seen it, as you say, it is difficult to pose an
12 argument and make a decision, but I guess we will wait
13 and see what happens.

14 MR. SHAPIRO: Yes, I think if Mr. Torrey will
15 agree that Ms. Brown would be made available to chat
16 with Mr. Bourassa, that might short-circuit any need for
17 follow-up or formal discussion. We will let them
18 discuss any questions the company may have and hopefully
19 that will resolve it.

20 ACALJ NODES: Okay.

21 MR. TORREY: That certainly won't be a problem,
22 Your Honor. We want to make sure we are not sitting up
23 on the stand modifying five different numbers on the
24 schedules and producing five different schedules with
25 changes as opposed to post-hearing exhibits.

1 ACALJ NODES: I understand.

2 Ms. Wood.

3 MS. WOOD: From RUCO's perspective, if we could
4 have time enough in advance that we could provide
5 cross-examination, that would be sufficient.

6 ACALJ NODES: You may want to be in on whatever
7 conversation occurs or in addition to the conversation
8 with the Staff witness so that you have an opportunity
9 to see what is going to be presented by Staff and have
10 any input you want to make in that process.

11 MR. TORREY: And, Your Honor, whatever we do
12 file, we will make sure electronically we get it to all
13 the parties as soon as possible so that they can have it
14 available.

15 ACALJ NODES: Okay. Yes, but given that RUCO is
16 the only other revenue requirement party, just include
17 them in, if you are going to have an informal discussion
18 with Mr. Bourassa, to the extent you can include
19 Mr. Rigsby in that same conversation, I think that would
20 be to everyone's advantage.

21 MR. TORREY: We will do that, Your Honor.

22 ACALJ NODES: Okay. Anything else?

23 (No response.)

24 ACALJ NODES: All right. I think we are
25 scheduled for 9:30 tomorrow morning. And, again, as

1 everyone knows, we will start with public comment,
2 followed by opening statements. And you don't have to
3 prepare a lengthy opening statement. It is entirely up
4 to you whether you even present one, but try to make it
5 short, concise, to the points that are most important.
6 And then we will start with Dr. Doelle, go over to the
7 company witnesses and move forward from there.

8 All right. Thank you very much. And we will
9 see everyone tomorrow morning.

10 MR. SHAPIRO: Thank you, Your Honor.

11 MS. WOOD: Thank you, Your Honor.

12 (The proceedings concluded at 10:17 a.m.)

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1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)

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I, COLETTE E. ROSS, Certified Reporter No. 50658 for the State of Arizona, do hereby certify that the foregoing printed pages constitute a full, true and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 25th day of November, 2009.

Colette E. Ross

 COLETTE E. ROSS
 Certified Reporter
 Certificate No. 50658