

ORIGINAL

BEFORE THE ARIZONA CORPORATION



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AZ CORP COMMISSION  
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2 COMMISSIONERS

- 3 KRISTIN K. MAYES - Chairman
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- 6 SANDRA D. KENNEDY
- 7 BOB STUMP

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

DOCKET NO. SW-02361A-08-0609

**NOTICE OF FILING  
STAFF'S OPENING BRIEF**

11 The Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff")  
12 hereby provides its opening brief in the above-referenced matter.

13 RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of December, 2009.

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 17 Legal Division  
 18 Arizona Corporation Commission  
 19 1200 W. Washington St.  
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 21 (602) 542-3402

22 Original and 13 copies of the  
23 foregoing were filed this 14th day  
24 of December, 2009, with:

25 Docket Control  
 26 Arizona Corporation Commission  
 27 1200 W. Washington Street  
 28 Phoenix, AZ 85007

Arizona Corporation Commission  
**DOCKETED**  
 DEC 14 2009

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**ABBREVIATIONS USED IN CITATIONS  
TO THE RECORD**

**COMMISSION STAFF'S  
PRE-FILED TESTIMONY AND EXHIBITS**

<b>Pre-Filed Testimony</b>	<b>Hearing Exhibit</b>	<b>Abbreviation</b>
1. Dorothy Hains Direct	S-1	Hains Dir.
2. Dorothy Hains Surrebuttal	S-2	Hains Sur.
3. Juan Manrique Direct	S-3	Manrique Dir.
4. Juan Manrique Surrebuttal	S-4	Manrique Sur.
5. Crystal Brown Direct	S-5	Brown Dir.
6. Crystal Brown Surrebuttal	S-6	Brown Sur.
7. Crystal Brown Supplemental Surrebuttal	S-7	Brown Sup.

**BLACK MOUNTAIN SEWER'S  
PRE-FILED TESTIMONY AND EXHIBITS**

<b>Pre-Filed Testimony</b>	<b>Hearing Exhibit</b>	<b>Abbreviation</b>
1. Gregory Sorenson Direct	A-1	Sorenson Dir.
2. Gregory Sorenson Rebuttal	A-2	Sorenson Reb.
3. Gregory Sorenson Rejoinder	A-3	Sorenson Rej.
4. Thomas Bourassa Rate Base Direct	A-4	Bourassa RBDir.
5. Thomas Bourassa Cost of Capital Direct	A-5	Bourassa CoCDir.
6. Thomas Bourassa Rate Base Rebuttal	A-6	Bourassa RBReb.
7. Thomas Bourassa Cost of Capital Rebuttal	A-7	Bourassa CoCReb.
8. Thomas Bourassa Rate Base Rejoinder	A-8	Bourassa RBRej.
9. Thomas Bourassa Cost of Capital Rejoinder	A-9	Bourassa CocRej.

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**RESIDENTIAL UTILITY CONSUMER OFFICE'S  
PRE-FILED TESTIMONY AND EXHIBITS**

<b>Pre-Filed Testimony</b>	<b>Hearing Exhibit</b>	<b>Abbreviation</b>
1. Rodney Moore Direct	R-3	Moore Dir.
2. Rodney Moore Surrebuttal	R-4	Moore Sur.
3. William Rigsby Direct	R-6	Rigsby Dir.
4. William Rigsby Surrebuttal	R-7	Rigsby Sur.

**BOULDERS HOMEOWNERS' ASSOCIATION'S  
PRE-FILED TESTIMONY AND EXHIBITS**

<b>Pre-Filed Testimony</b>	<b>Hearing Exhibit</b>	<b>Abbreviation</b>
1. Les Peterson Direct	BHOA-4	Peterson Dir.
2. Les Peterson Surrebuttal	BHOA-5	Peterson Sur.

**DR. DENNIS DOELLE'S  
PRE-FILED TESTIMONY AND EXHIBITS**

<b>Pre-Filed Testimony</b>	<b>Hearing Exhibit</b>	<b>Abbreviation</b>
1. Dennis Doelle Direct	Doelle-2	Doelle Dir.
2. Dennis Doelle Surrebuttal	Doelle-3	Doelle Sur.

1 **I. INTRODUCTION.**

2 On December 19, 2008, Black Mountain Sewer Corporation (“BMSC” or “Company”) filed  
3 before the Arizona Corporation Commission (“Commission”) an application for a rate increase.

4 The application was filed using a test year ending June 30, 2008.<sup>1</sup> The Company reported  
5 adjusted gross revenues of \$1,580,170.<sup>2</sup> These revenues produced an overall loss in operating  
6 income of \$84,485.<sup>3</sup> The Company claimed a fair value rate base of \$3,723,245<sup>4</sup> and a rate of return  
7 of negative 2.27%.<sup>5</sup> As a result, Black Mountain requested a 57.83% increase in revenues, equal to  
8 \$913,762.<sup>6</sup> The proposed increase would result in a rate of return on fair value rate base of 12.8%.<sup>7</sup>

9 Commission Utilities Division Staff (“Staff”) recommended a revenue increase of \$610,375,  
10 or 38.63%.<sup>8</sup> Staff’s proposed increase would produce an operating income of \$320,611, a 9.40% rate  
11 of return on an original cost rate base of \$3,410,758.<sup>9</sup>

12 On September 18, 2009, the Residential Utility Consumer Office (“RUCO”) filed Direct  
13 Testimony recommending that the Commission authorize a revenue increase of 30.98%,<sup>10</sup> producing  
14 an operating income of \$278,281<sup>11</sup> on a fair value rate base of \$3,745,364.<sup>12</sup>

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23 <sup>1</sup> App. at 3:8-10.

24 <sup>2</sup> *Id.* at 3: 14-15.

25 <sup>3</sup> *Id.* at 3: 15-16.

26 <sup>4</sup> A-4 at 3: 8 (Bourassa Dir.).

27 <sup>5</sup> App., 3: 17-18.

28 <sup>6</sup> A-4 at 3: 10 (Bourassa Dir.).

<sup>7</sup> *Id.* at 4: 2.

<sup>8</sup> S-7 at 2: 2 (Brown Supp.Surr.).

<sup>9</sup> *Id.* at 2: 3-5.

<sup>10</sup> R-3 at 7: 1-4 (Moore Dir.).

<sup>11</sup> *Id.* at 6: 15-18.

<sup>12</sup> *Id.* at 6: 9-13.

1 **II. REVENUE REQUIREMENT.**

2 **A. Central Office Allocation.**

3 Algonquin Power Income Fund (“APIF”) is the ultimate parent company of approximately 71  
4 companies,<sup>13</sup> including BMSC,<sup>14</sup> some of which are regulated utilities and some that are not.<sup>15</sup> Under  
5 a “shared services model,” APIF acts as a sort of “central office” for its subsidiaries, providing  
6 “budget support, financial support, financial planning, budget planning, management assistance,  
7 those sorts of costs.”<sup>16</sup> The subsidiaries are broken down into two subgroups – the power generation  
8 infrastructure group and the utility infrastructure group.<sup>17</sup> In exchange for the services it provides,  
9 APIF allocates to the subgroups a share of the costs it incurs to employ its personnel which is based  
10 upon the number of entities allocated to each subgroup.<sup>18</sup> In this matter, BMSC has calculated that  
11 26.98 percent of the total central office services are attributable to the utility infrastructure group.<sup>19</sup>

12 Unlike many Arizona utilities, BMSC has no employees of its own. Instead it is managed by  
13 its immediate parent company Liberty Water, formerly known as Algonquin Water Services. It is  
14 Liberty Water that “hires the operators, that directly employs the customer service reps, the  
15 accounting people, the accounts payable, the accounts receivable individuals, operations manager.”<sup>20</sup>  
16 Liberty retains these employees to conduct the day-to-day operations of all of its subordinate utilities,  
17 none of which have employees of their own.<sup>21</sup> The Liberty Water employees allocate their time  
18 among the individual utilities under Liberty’s responsibility, and their time is accounted for in Liberty  
19 Water’s records.<sup>22</sup> The central office costs of the utility infrastructure group are ultimately divided  
20 equally among the utilities managed by Liberty Water.  
21  
22  
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24 <sup>13</sup> Tr. at 300: 18-22 (Vol II).

25 <sup>14</sup> *Id.* at 294: 21-23.

26 <sup>15</sup> *Id.* at 300: 23 – 301: 2.

27 <sup>16</sup> *Id.* at 296: 11-14.

28 <sup>17</sup> *Id.* at 301: 3-8.

<sup>18</sup> *Id.* at 301: 9-13.

<sup>19</sup> *Id.* at 301: 19-21.

<sup>20</sup> *Id.* at 302: 11-17.

<sup>21</sup> *Id.* at 302: 19.

<sup>22</sup> Tr. at 303: 7-11 (Vol II).

1 Staff chose an alternative approach.

2 Staff recommends that the year-end information per the Algonquin  
3 Power annual report be used to determine the total number of facilities.  
4 For test year purposes, the allocations made during the first six months  
5 of the test year ... should be based upon the year-end 2006 data and  
6 the allocations made during the last six months of the test year ...  
7 should be based upon the 2007 year-end data.<sup>23</sup>

8 Using this approach, Staff allocated 1.28% of APIF's operating costs to BMSC.<sup>24</sup> Any  
9 greater amount is unfair to ratepayers because "the managers at the central office are directly  
10 responsible for the management of the income fund and not Black Mountain."<sup>25</sup> To complicate  
11 matters, the Company was unable to provide any kind of documentation showing that the managers  
12 from APIF spent any time at all working directly for Black Mountain.<sup>26</sup> Without timesheets or some  
13 other accounting method to provide actual figures by which to determine the appropriate allocation of  
14 costs to BMSC, the Commission is simply left to evaluate the strengths of the opposing estimation  
15 methodologies. However, the Company readily concedes that it doesn't disagree with the method by  
16 which Staff arrived at its allocation, but instead takes issue with the specific costs Staff chose to  
17 exclude from the allocation pool.<sup>27</sup>

18 The Company believes that the costs it has selected to be allocated to the subsidiaries is a  
19 more accurate reflection of the costs for which the subsidiaries are the cost drivers.<sup>28</sup> Whether this is  
20 true, however, depends upon the amounts of the various APIF management services that each utility  
21 was likely to require. As an example, when asked about specific categories of professional expenses,  
22 the Company readily admitted that any audit of Black Mountain would have been conducted by "an  
23 outside CPA firm,"<sup>29</sup> tax services would have been provided by "an outside service,"<sup>30</sup> and for legal  
24 representation "legal is outside."<sup>31</sup> This begs the question, "what services does APIF actually  
25 provide?"

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25 <sup>23</sup> S-5 at 17: 10-14 (Brown Dir).

26 <sup>24</sup> *Id.* at 17: 7 (table, line 8).

27 <sup>25</sup> S-6 at 29: 4-5 (Brown Surr.).

28 <sup>26</sup> *Id.* at 29: 5-7.

29 <sup>27</sup> Tr. at 309: 14-18 (Vol. II).

30 <sup>28</sup> *Id.* at 309: 18-22.

31 <sup>29</sup> Tr. at 321: 16-18 (Vol. II).

<sup>30</sup> Tr. at 321:19-23 (Vol. II).

<sup>31</sup> *Id.* at 321:24-25.

1 As Judge Nodes pointed out in hearing on this matter, the Commission previously expressed a  
2 desire that the reasonableness of the affiliate structure was to be carefully scrutinized to avoid  
3 potential abuses. The Company readily acknowledged that it had made changes in order to eliminate  
4 the affiliate profits that had been present in the previous rate case. In the instant matter, the manner  
5 in which APIF allocates costs to its subsidiaries under its latest central office cost sharing model must  
6 be examined.

7 APIF seems to provide strictly administrative assignment of these duties to specific agencies.  
8 However, all billing for the various types of services seems to be aggregated and spread across all  
9 subsidiaries, regardless of whether or not they actually used a particular type of service or of how  
10 much of a service the company used. In that manner, a company that needed no legal services during  
11 a particular allocation period would nonetheless be assessed a portion of the legal expenses from any  
12 and all of its affiliate companies that did require those services.

13 To determine whether this type of cost spreading in fact benefits any one company, one would  
14 perform an analysis similar to that undertaken by an insurance actuary. A healthy utility with few  
15 management issues, few legal issues, and a strong financial profile would seem to need fewer of  
16 APIF's expert services or at least need them to a lesser degree than a utility that is perhaps facing  
17 lawsuits, financial penalties for regulatory violations, and maintains a poor capital structure.  
18 Insurance companies understand that the infirm place a higher demand on services than the healthy,  
19 but the statistically larger number of healthy individuals makes the provision of service feasible. The  
20 insurer receives the benefit of being able to spread the financial risk. The infirm receive the benefit  
21 of medical services they might not otherwise be able to afford. And the healthy bear most of the cost  
22 while receiving the least in terms of services. The question that must be answered is whether or not  
23 this system is an appropriate allocation method within the realm of regulated utilities.

24 Staff does not believe that the Company's central office cost allocation system is in and of  
25 itself unreasonable. However, Staff does believe that in order for allocation transactions to be fully  
26 analyzed, the Company must provide a more detailed record of the transactions themselves and the  
27 personnel and man-hours required to resolve these issues.<sup>32</sup>

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<sup>32</sup> S-6 at 29-30 (Brown Surr.).

1 In the absence of paperwork demonstrating the involvement of APIF managers in projects for  
2 which BMSC is the primary or singular beneficiary, the Commission is simply left to choose between  
3 the two alternative estimation processes recommended by the Company and Staff. And in the  
4 absence of documentation showing involvement of APIF managers in specific Black Mountain  
5 projects, there is no basis for saddling BMSC ratepayers with the higher allocation BMSC is seeking  
6 in this matter. As a result, Staff recommends decreasing the Company's operating expenses by  
7 \$24,492 as shown in Schedules CSB-11 and CSB-12.<sup>33</sup>

8 **B. Hook-up Fee Tariff.**

9 The Company has proposed an offsite facilities Hook-up Fee ("HUF") for "new connections  
10 of \$8.00 per gpd per day."<sup>34</sup> The Company currently leases wastewater treatment capacity under an  
11 agreement with the City of Scottsdale ("Scottsdale"). The HUF request is based on the fact that the  
12 agreement with Scottsdale will expire in 2016.<sup>35</sup> Before that occurs, the Company will be faced with  
13 renewing its contract . . . or constructing additional facilities of its own.<sup>36</sup> Under either scenario, the  
14 Company will eventually be forced to spend money to expand its treatment capacity and has  
15 requested the HUF in an effort to spread some of the cost to future developers<sup>37</sup> and to help minimize  
16 the need for future rate increases.<sup>38</sup>

17 Staff has recommended denial of the HUF tariff. Under Staff's calculations, the Company  
18 has sufficient treatment capacity to accommodate current customer counts and provide for reasonable  
19 growth.<sup>39</sup> A HUF is therefore unnecessary.<sup>40</sup>

20 However, in the event the Commission decides that a HUF tariff would be appropriate, Staff  
21 has calculated that "the Company will purchase an additional 78,050 GPD with a cost of \$468,300 to  
22  
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24

25 <sup>33</sup> *Id.* at 18: 6-8.

26 <sup>34</sup> A-4 at 20:16-17 (Bourassa RB Dir.).

27 <sup>35</sup> *Id.* at 20:23-24.

28 <sup>36</sup> A-4 at 20:24-26 (Bourassa RB Dir.).

<sup>37</sup> A-1 at 13:12-13 (Sorenson Dir.).

<sup>38</sup> A-4 at 21:5-7.

<sup>39</sup> S-1 at 7 (Hains Dir.).

<sup>40</sup> *Id.*, S-5 at 28:18-22 (Brown Dir.).

1 serve 270 new customers”<sup>41</sup> and under these circumstances the HUF of “\$1,734 per 4-inch service  
2 lateral equivalent would be appropriate.”<sup>42</sup>

3 **C. Water Testing Expense.**

4 The Company currently has an agreement with the City of Scottsdale under which the City  
5 provides up to 400,000 gpd in wastewater treatment capacity. Recently, the Company was “notified  
6 by the City of Scottsdale that [its] testing requirements will increase”<sup>43</sup> in conjunction with a new  
7 pre-treatment tariff the City is instigating. The additional testing “requirements will cost the  
8 Company an additional \$13,360 in annual testing costs.”<sup>44</sup> The Company believes it will be obligated  
9 to pay these increased costs as soon as Scottsdale’s new pre-treatment tariff goes into effect.  
10

11 Staff disagrees.

12 The City only suggested that the Company monitor additional  
13 parameters and increase the monitoring frequencies in it September 29,  
14 2009 letter. The City did not say that the suggested monitoring  
15 requirements would replace the monitoring requirements in Contract  
16 No. 960058 ... which requires the Company to only monitor and report  
the levels of BOD and TSS in the wastewater flow to the City on a  
quarterly basis.<sup>45</sup>

17 The current contract states that the City may request additional monitoring parameters if the  
18 wastewater flows to the City’s treatment plant exceeds 1,000,000 GPD prior to 2027.<sup>46</sup> According to  
19 Staff calculations, the additional testing requirements will not go into effect until the current contract  
20 expires in 2016.<sup>47</sup>

21 Therefore, Staff has recommended that “a water testing expense of \$15,222”<sup>48</sup> be authorized.  
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24

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25 <sup>41</sup> S-2 at 2:6-7 (Hains Surr.).

26 <sup>42</sup> *Id.* at 2:7-8.

27 <sup>43</sup> A-2 at 14:18-19 (Sorenson Reb.).

28 <sup>44</sup> *Id.* at 14:23.

<sup>45</sup> S-2 at 4:13-17 (Hains Surr.).

<sup>46</sup> *Id.* at 4:18-21.

<sup>47</sup> *Id.* at 4:21-23.

<sup>48</sup> *Id.* at 4:7.

1           **D.     Incentive Pay.**

2           Staff has recommended a reduction in the Company's Contractual Services – Other account,  
3 to remove the expenses associated with, among other expenditures, employee incentive pay and  
4 bonuses.<sup>49</sup> It is Staff's position that "[i]ncluding bonuses in operating expenses harms customers  
5 because the customers would be required to pay for an expense that is not needed in the provision of  
6 service."<sup>50</sup>

7           Further, bonus pay, by definition, is not part of an employee's base salary. As such, there is  
8 simply no guarantee that the money will actually to be paid to any employee. In the event the  
9 Company decides that no employee has earned this incentive pay, the money flows directly through  
10 to shareholders, who are thus unjustly enriched.<sup>51</sup>

11           By including incentive pay in the Company's revenue requirement, the Company is  
12 "guaranteed" enough money to pay employees who are not guaranteed to receive it. This is unfair to  
13 ratepayers and should not be allowed. Staff recommends that the Commission remove \$14,945 from  
14 the Contractual Services – Other account.<sup>52</sup>

15           **E.     Transportation Expense.**

16           The Company proposed an increase of \$34,445 for transportation expenses.<sup>53</sup> The primary  
17 component of the increase was the lease of a new Chevy Silverado truck.<sup>54</sup> Staff notes that the lease  
18 for the vehicle was signed by Gold Canyon, an affiliate of BMSC.<sup>55</sup> Since the Company does not  
19 maintain usage logs for the vehicle, there is no way for Staff to verify whether the vehicle was  
20 actually used to provide service to BMSC. In the absence of the proper documentation, Staff believes  
21 the expenses associated with the lease of the vehicle should simply be removed from the Company's  
22 operating expenses. The Company's operating expenses, therefore, should be decreased by \$5,375.<sup>56</sup>

25 <sup>49</sup> S-6 at 25:1-3 (Brown Surr.).

26 <sup>50</sup> *Id.* at 24:16-17.

27 <sup>51</sup> *Id.* at 24:17-20.

28 <sup>52</sup> S-6 at 25:1-3 (Brown Surr.).

<sup>53</sup> S-5 at 22:2-3 (Brown Dir.).

<sup>54</sup> *Id.* at 22:7-8.

<sup>55</sup> *Id.* at 22:10-11.

<sup>56</sup> *Id.* at 22:21-23.

1           **F.       Rate Case Expense.**

2           In BMSC's previous rate case, the Commission approved \$150,000 in rate case expense.<sup>57</sup> In  
3 the instant matter, the Company originally requested \$180,000, despite its assertion that such an  
4 amount is likely to be significantly less than its actual expenses.<sup>58</sup> Thereafter, the Company revised  
5 its figure to \$220,000.<sup>59</sup> The Company attributes its increase in rate case expense to the intervention  
6 of the BHOA and the issues associated with the request to decommission the BWTP.<sup>60</sup>

7           While Staff does not dispute that the odor and noise issues have required a great deal of effort  
8 in order to reach resolution, Staff does not believe that these efforts justify such a dramatic increase  
9 in the amount of rate case expense. Staff concedes that the intervention of the BHOA and its  
10 subsequent request to have the plant decommissioned mandated that the issue be discussed within the  
11 context of this rate proceeding. Staff is simply disputing that the level of requested expense is  
12 commensurate with the amount of effort directly tied to this rate proceeding. Staff would note that  
13 the parties have been engaged in discussions regarding the odor issues and potential resolutions since  
14 the time of the last rate proceeding in 2005. It is inconceivable that the parties began their discussion  
15 of the potential decommissioning of the BWTP only after the filing of this rate application. It  
16 therefore stands to reason that not all of the expenses in that regard should be considered directly tied  
17 to this rate proceeding.

18           Staff agreed with the amount the Company initially requested, \$180,000, which Staff then  
19 annualized over a period of three years. Staff continues to support this amount. Therefore, Staff  
20 recommends the authorization of \$60,000 in rate case expense.

21           **G.       Contractual Services For Spill Cleanup.**

22           "During the course of the Company responding to Staff data request CSB 10.5, it was  
23 discovered that the charges from a temporary labor/services company, Aerotek, for certain of their  
24 temporary operators, were mistakenly charged to LPSCO, and affiliate of BMSC, instead of to  
25

26  
27           <sup>57</sup> A-4 at 12:23-24 (Bourassa Dir.).

28           <sup>58</sup> *Id.* at 13:4-6.

<sup>59</sup> Tr. at 241:13-22 (Vol. II).

<sup>60</sup> S-5 at 23 (Brown Dir.).

1 BMSC.”<sup>61</sup> As a result, BMSC understated its operating expenses by \$42,200 – the amount paid for  
2 the services.

3 Initially, Staff was not given sufficient documentation to confirm that the services had in fact  
4 been provided to BMSC, as opposed to LPSCO. The documents have since been provided, and Staff  
5 is now in agreement with the Company that the amount of the Aerotek services may be included in  
6 the Company’s operating expenses.

7 **H. Bad Debt Expense.**

8 Initially, Staff was not provided with documentation showing that \$6,479 in bad debt expense  
9 that the Company claimed had been written off in a subsequent year actually related to test year  
10 revenues.<sup>62</sup> The documentation was subsequently provided and Staff now agrees with the Company.  
11 As a result, Staff recommends increasing bad debt expense by \$2,412, from \$11,965 to \$14,377.<sup>63</sup>

12 **I. Special Rate Classes.**

13 Presently, BMSC’s residential customers pay \$45.61 monthly and pay no commodity  
14 charge.<sup>64</sup> Regular commercial customers pay \$0.18298 per gallon per day of sewer flow and no  
15 monthly service charge.<sup>65</sup> In addition to its general rate, BMSC’s current tariff has several special  
16 commercial customers who pay only a monthly customer charge that varies by customer based on an  
17 estimate for each customer’s sewer volume flow.<sup>66</sup>

18 The Company has proposed discontinuing these special rates, claiming that “other customers  
19 on the system are subsidizing these ‘special rate’ customers”<sup>67</sup> and stating that the Company has “no  
20 idea how they originated.”<sup>68</sup> Thus, the Company has proposed eliminating these special rates.

21 Dr. Dennis Doelle intervened in the instant matter and on September 18, 2009, provided  
22 Direct Testimony.<sup>69</sup> Dr. Doelle does not object to the existence of special rate classes, as long as his  
23 practice is so designated. Dr. Doelle points out that in setting rates for dental practices, the

24 \_\_\_\_\_  
<sup>61</sup> A-2 at 16:8-11 (Sorenson Reb.).

25 <sup>62</sup> S-7 at 5:22-25 (Brown Supp. Surr.).

26 <sup>63</sup> *Id.* at 6:4-5.

27 <sup>64</sup> S-5 at 27:19-20 (Brown Dir.).

28 <sup>65</sup> *Id.* at 27:20 – 28: 1.

<sup>66</sup> *Id.* at 28:1-3.

<sup>67</sup> A-3 at 4:5-6 (Sorenson Rj.).

<sup>68</sup> *Id.* at 4:6.

<sup>69</sup> Doelle-2.

1 Commission has previously relied upon Engineering Bulletin #12 (“EB #12”) in estimating the  
2 customer’s sewer volume flow.<sup>70</sup> Dr. Doelle points out that EB #12 is out of date and is based upon  
3 assumptions regarding dental practice and technology that are no longer valid. Specifically, EB #12  
4 provides an estimate of sewage flow for a ‘dental office’ of 500 gallons per each dental chair per  
5 day.<sup>71</sup> Applied to Dr. Doelle’s practice, EB #12 would estimate that the amount of water Dr. Doelle  
6 received and potentially released to the sewer system would exceed 60,000 gallons every month.<sup>72</sup>  
7 Dr. Doelle states that his most recent water usage figure is approximately 11,650 gallons.<sup>73</sup>  
8 Obviously, EB #12 struggles to maintain pace with modern dental technology. In fact, Dr. Doelle  
9 points out that the Commission acknowledged as much in Decision No. 60258, stating, “As a result  
10 of this case, it is obvious that engineering Bulletin #12 may need to be updated.”

11 Staff’s position is that the special rate classes currently incorporated into BMSC’s tariff  
12 should remain in place. Regarding Dr. Doelle’s concerns, Staff believes that the Commission should  
13 adopt a rate for his practice that is fair and equitable. It would appear that EB #12 may not be the  
14 proper tool for that job.

15 **J. Affiliate Increase.**

16 The Company has proposed to include in its operating expenses \$50,302 for increases to  
17 affiliate expenses that were not incurred during the test year.<sup>74</sup> The Company provided payroll and  
18 other relevant data to support its claim, but Staff continues to recommend disallowance because the  
19 affiliate contract employees are not directly employed by Black Mountain, can work for any one of  
20 its five other utilities, and the Company’s adjustment to increase cost is based upon speculative  
21 data.<sup>75</sup>

22 Staff therefore recommends decreasing operating expenses by \$50,302 as a result.<sup>76</sup> The  
23 adjustment is reflected in Staff Schedules CSB-11 and CSB-13.

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26 <sup>70</sup> Doelle-2 at 2.

27 <sup>71</sup> Doelle-2 at 3.

28 <sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> S-5 at 18:11-14 (Brown Dir.).

<sup>75</sup> S-6. at 31:20-22.

<sup>76</sup> *Id.* at 18:21-24.

1 **III. RATE BASE ISSUES.**

2 **A. Adjustments To Original Cost Rate Base.**

3 BMSC has requested that its original cost rate base (“OCRB”) be used as its fair value rate  
4 base (“FVRB”). Staff agrees.

5 **1. Plant in service.**

6 The Company used the Commission-determined plant from its last rate case as the foundation  
7 for its plant in service.<sup>77</sup> The Company then made adjustments for plant additions and retirements that  
8 occurred since the last rate case.

9 The Company has proposed to include an odor control unit that previously belonged to an  
10 affiliated company, Litchfield Park Service Company (“LPSCO”).<sup>78</sup> The unit carries a value of  
11 \$38,625.<sup>79</sup> Staff initially opposed placing the item in BMSC’s rate base because the item was being  
12 claimed in LPSCO’s rate base in a currently-pending LPSCO rate proceeding.<sup>80</sup> After discussion  
13 with Staff, the Company agreed to remove the item from LPSCO’s filing.<sup>81</sup> Staff then verified that  
14 the item had been removed from rate base in LPSCO’s rebuttal testimony. Because the unit was  
15 verified to be used and useful in the service to BMSC’s ratepayers, Staff agrees that the unit should  
16 now be included in BMSC’s rate base in the instant matter.

17 **2. Accumulated depreciation.**

18 BMSC further requested that the accumulated depreciation associated with the odor control  
19 unit transferred from LPSCO be included in BMSC’s rate base. Once Staff agreed that the unit itself  
20 should be included in BMSC’s rate base, the accumulated depreciation associated with it was also  
21 properly accounted for in BMSC’s rate base.

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26 \_\_\_\_\_  
27 <sup>77</sup> A-4 at 6:18-19 (Bourassa RB Dir.).

28 <sup>78</sup> S-6 at 3 (Brown Surr.).

<sup>79</sup> *Id.*

<sup>80</sup> S-7 at 3 (Brown Supp. Surr.).

<sup>81</sup> Tr. at 265:8-266:2 (Vol. II).

1           **B.     Cash Working Capital.**

2           Because BMSC is a small sewer utility, it used the “formula method” of computing the  
3 working capital allowance.<sup>82</sup> Based upon its calculations, “[t]he Company is not requesting a working  
4 capital allowance.”<sup>83</sup> Staff initially recommended a cash working capital allowance of negative  
5 \$127,713.<sup>84</sup>

6           Later, in response to Staff’s cash working capital recommendation, the Company performed  
7 “a lead-lag analysis that showed a small, positive amount of working capital.”<sup>85</sup> Nonetheless, the  
8 Company continues to recommend a zero working capital allowance.<sup>86</sup> After the Company filed its  
9 lead-lag study, Staff reviewed the results and modified its recommendations slightly.

10          The error the Company made in determining revenue lag is illustrative. “A customer’s  
11 service period usually begins on the 1<sup>st</sup> of each month and ends on the last day of each month.”<sup>87</sup>  
12 However, BMSC sends out its bills on the 4<sup>th</sup> day of the month and the customer’s payment becomes  
13 due on the 26<sup>th</sup> day of the month.<sup>88</sup> “A revenue lead is the number of days before the provision of  
14 service that a customer pays for his bill. A revenue lag is the number of days ... after the provision of  
15 service that a customer pays for that service.”<sup>89</sup> A typical BMSC customer must pay his or her bill  
16 approximately four to five days before the end of the service period.<sup>90</sup> The Company proposed a  
17 revenue lag of 11.4 days. Based on its calculations, Staff recommended a revenue lag of 9.6 days.<sup>91</sup>

18          Staff similarly disagreed with the Company’s computation of expense lags for its lease of  
19 capacity with the City of Scottsdale,<sup>92</sup> rate case expense,<sup>93</sup> insurance expense,<sup>94</sup> property tax  
20 expense,<sup>95</sup> income tax expense,<sup>96</sup> and interest expense.<sup>97</sup>

21 \_\_\_\_\_  
22 <sup>82</sup> S-7 at 5:20-21.  
<sup>83</sup> *Id.* at 5:21-22.  
<sup>84</sup> S-5 at 11:24 (Brown Dir.).  
23 <sup>85</sup> A-8 at 11:3-4 (Bourassa RB Rj.).  
<sup>86</sup> *Id.* at 11:5-6.  
24 <sup>87</sup> S-5 at 11:17-18 (Brown Surr.).  
<sup>88</sup> *Id.* at 11:18-19.  
25 <sup>89</sup> *Id.* at 12:2-4.  
<sup>90</sup> *Id.* at 12:15-16.  
26 <sup>91</sup> *Id.* at 15:7.  
<sup>92</sup> *Id.* at 15:23-25.  
27 <sup>93</sup> *Id.* at 16:5-6.  
<sup>94</sup> *Id.* at 16:12-15.  
28 <sup>95</sup> *Id.* at 19-22.  
<sup>96</sup> *Id.* at 17:6-9.

1           Ultimately, Staff increased its total cash working capital recommendation to negative  
2 \$83,132.<sup>98</sup>

3           **C.     Accumulated Deferred Income Taxes (“ADIT”).**

4           After making several adjustments to accumulated depreciation, the Company finally proposed  
5 that the Commission recognize accumulated deferred income taxes (“ADIT”) in the amount of  
6 \$195,906.<sup>99</sup> In arriving at its figure, the Company states that it has adhered to the principles dictated  
7 in Financial Accounting Standards No. 109 – Accounting for Income Taxes (“FAS 109”). The  
8 Company then states that it provided Staff with “tax depreciation report from the 2007 tax return and  
9 ... information to bring the tax basis of assets to the end of the test year.”<sup>100</sup>

10           The Company points out its disagreement with Staff’s methodology for making the ADIT  
11 calculations, pointing specifically to the issues created by the ways in which Advances In Aid of  
12 Construction (“AIAC”) may be recognized and its effect on book-tax timing.<sup>101</sup>

13           The Company makes a well-crafted, skilled argument, for which Staff has no response. While  
14 Staff is anxious to engage in the academic fray, it is simply unable to do so in the absence of  
15 documentation it can use to verify or refute the Company’s assertions. Staff does not dispute the  
16 claims the Company has made regarding the documentation it provided in response to Staff’s data  
17 requests. The documents provided, however, were of no use in resolving the matter.

18           As Staff stated at hearing, in order to verify the Company’s ADIT calculations, Staff required  
19 tax information through the end of the test year.<sup>102</sup> Staff does not dispute that it was provided with  
20 year-end 2007 tax depreciation schedules and other exhibits the Company claims Staff could have  
21 used to calculate year-end balances.<sup>103</sup> But as Staff has stated previously, the relevant document  
22 would be the 2008 tax depreciation schedule, a document the Company does not dispute that it did  
23 not provide.

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26 <sup>97</sup> *Id.* at 17:16-17.

27 <sup>98</sup> S-7 at 5:13-14 (Brown Supp. Surr.).

28 <sup>99</sup> A-8 at 6:19-20 (Bourassa RB Rj.).

<sup>100</sup> *Id.* at 8:13-14.

<sup>101</sup> *Id.* at 8:18 – 9:2.

<sup>102</sup> Tr. at 744:12-14 (Vol. IV).

<sup>103</sup> *Id.* at 745:10-15.

1           Once the Company came to understand that Staff needed the 2008 tax depreciation, not just  
2 the 2007 depreciation and tools to make the needed extrapolations, the Company then provided the  
3 2008 documents to Staff. At this time, however, Staff is still unable to use the information. In  
4 beginning its calculations, Staff has noted many inconsistencies between the tax information and the  
5 supporting documents. In fact, until those documents are properly reconciled – a process only the  
6 Company can accomplish - Staff is unable to evaluate the proposed tax asset. And Staff should not  
7 have to. These are documents that the Company is required to provide in support of its position. If  
8 the Company does not provide evidence to support its case, the issue is simply unresolved. The  
9 Company should not be granted relief for which it has not provided proper support.

10           Further, the Company is not harmed because Staff is recommending dollar for dollar recovery  
11 of depreciation expense on plant that the Company has no investment in (i.e., plant fund with  
12 advances in aid of construction). Mr. Bourassa states:

13                   The book-tax timing difference exists because depreciation on AIAC  
14 funded plant is recognized for book purposes, but not recognized for  
15 tax purposes. In other words, for book purposes, a lower taxable  
16 income is recognized because of the depreciation expense on AIAC  
17 funded. But because the Company cannot recognize a depreciation  
18 deduction for tax purposes, it pays higher income taxes as a result.  
19 Thus a deferred tax asset is created by this book-tax timing  
20 difference.<sup>104</sup>

21           By allowing the Company to take depreciation expense on the AIAC funded plant, the  
22 Company is receiving a dollar for dollar recovery of depreciation expense on plant that the Company  
23 has no investment in. Further, allowing inclusion of the ADIT asset in rate base provides the  
24 Company with an additional windfall because it would enable the Company to earn a rate of return on  
25 the ADIT asset which, in turn, is the book-tax timing difference caused by the Company's being  
26 allowed to recover depreciation expense on the AIAC plant.

27           Staff recommends that the Commission not recognize the Company's claimed tax asset.

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<sup>104</sup> A-8 at 9:5-11 (Bourassa RB Rj.).

1 **IV. BOULDERS LIFT STATION.**

2 The Boulders Wastewater Treatment Plant (“BWTP”) was constructed approximately in  
3 1971,<sup>105</sup> prior to the existence of a Certificate of Convenience and Necessity (“CC&N”) for any  
4 wastewater utility to provide service. In 1980, the Commission issued a CC&N to the Boulders  
5 Carefree Sewer Corporation (“BCSC”), the predecessor of BMSC.<sup>106</sup> At the time of the application,  
6 BCSC sought approval to move the BWTP to a new site,<sup>107</sup> but the Commission did not immediately  
7 grant approval to use a substitute treatment site.<sup>108</sup> As a result, over the next thirty years, residential  
8 development continued to grow within the Town of Carefree, encroaching on the immediate vicinity  
9 of the BWTP.<sup>109</sup>

10 At least partially in consideration of potential odor issues,<sup>110</sup> Arizona’s current regulatory  
11 climate would typically require a setback of “somewhere between 500 and 1,000 feet” for a  
12 wastewater treatment plant.<sup>111</sup> However, because so much of the early development within the area  
13 took place in the absence of formal planning, today

14 three homes are within less than 100 feet from the plant, and 10 homes  
15 are within approximately 300 feet of the Plant. Within approximately  
16 500 feet of the Wastewater Plant there are 17 homes, and within  
17 approximately 1,000 feet there are between approximately 200 to 300  
homes plus primary dining and conference facilities of the Boulders  
Resort.<sup>112</sup>

18 Due to the close proximity of so many residences to the BWTP, “[o]ver the years, particularly  
19 on occasions during the colder weather and heavier BMSC system usage during the winter months,  
20 strong odors have permeated throughout the Boulders.”<sup>113</sup> By the time of BMSC’s last rate case in  
21 2005, the odor issue became “so frequent and so pervasive that the BHOA intervened in the case to  
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25 <sup>105</sup> BHOA-4 at 2:14 (Peterson Dir.).

<sup>106</sup> *Id.* at 2:19-21.

<sup>107</sup> *Id.* at 2:21-23.

<sup>108</sup> *Id.* at 2:23 – 3:2.

<sup>109</sup> *Id.* at 3:8-9.

<sup>110</sup> Tr. at 162:17-23 (Vol. I).

<sup>111</sup> *Id.* at 162:1.

<sup>112</sup> BHOA-4 at 4:6-10.

<sup>113</sup> BHOA-4 at 4:11-13 (Peterson Dir.).

1 bring the problem to the Commission's attention and seek its assistance in getting the 'odor' issues  
2 resolved."<sup>114</sup>

3 The rate case culminated in Decision No. 69164, dated December 5, 2006, (Hearing Exhibit  
4 BHOA-1). In addition to setting BMSC's rates, the final ordering paragraph of the Decision directs  
5 Black Mountain to "pursue one of the remedies proposed by the Town of Carefree in order to  
6 mitigate the odor problems that currently exist in the boulders community."<sup>115</sup> However, "[t]he  
7 Company's consultants concluded that neither of these two recommendations was practical."<sup>116</sup>

8 Instead, the BMSC consultants proposed an alternative remedy<sup>117</sup> involving the installation of  
9 air jumpers between manholes along Boulder Drive and the correction of the slope of the collection  
10 system line on Quartz Valley Drive.<sup>118</sup> The alternative proposal was "unanimously accepted by all the  
11 parties,"<sup>119</sup> and both projects were completed by approximately June 2007.<sup>120</sup>

12 Despite the Company's efforts, however, the odor issues remain "very noticeable by and  
13 objectionable to Boulders residents, though at a lesser frequency"<sup>121</sup> than they were before the  
14 completion of the projects. Recently, however, residents have begun to complain about the noise that  
15 results from the routine operation of the plant, which has been described as "very noticeable from  
16 nearby homes and homes as far away as 400 feet."<sup>122</sup> The Company has investigated the noise claims  
17 and has acknowledged the existence of the noise problem.<sup>123</sup> However, since the BWTP is currently  
18 "in total compliance with the requirements of the Commission, ADEQ and Maricopa County,"<sup>124</sup> it  
19 appears that the noise issue arises from the unfortunate physical proximity of the homes to the plant  
20 and is therefore "a problem of geography."<sup>125</sup>

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23 <sup>114</sup> *Id.* at 4:20-22.

24 <sup>115</sup> A.C.C. Decision No. 69164 at 43:1-3.

24 <sup>116</sup> A-1 at 9:11 (Sorenson Dir.).

25 <sup>117</sup> BHOA-4 at 5:4 (Peterson Dir.).

25 <sup>118</sup> *Id.* at 5:8-9.

26 <sup>119</sup> A-1 at 4:24-25.

26 <sup>120</sup> BHOA-4 at 5:9-11.

27 <sup>121</sup> *Id.* at 5:14-16.

27 <sup>122</sup> BHOA-4 at 5:17-18 (Peterson Dir.).

28 <sup>123</sup> Tr. at 24:21-23 (Vol. I).

28 <sup>124</sup> A-1 at 11:12-13 (Sorenson Dir.).

28 <sup>125</sup> BHOA-4 at 6:2-4.

1           **A.     The Proposal.**

2           The various parties have come to believe that the only true solution to the odor and noise  
3 issues generated by the BWTP is the outright removal of the plant<sup>126</sup> and the diversion of the flows  
4 the plant currently treats to the Scottsdale Wastewater Treatment Facility. To that end, the Company  
5 entered into discussions with the Boulders Homeowners' Association ("BHOA") in the hopes of  
6 arriving at a plan of action that would result in the closure of the plant under terms acceptable to both  
7 parties. The parties reached a formal Settlement Agreement (Ex. BHOA-2), "under which BMSC  
8 would cease operations of the Wastewater Plant within 15 months of the Commission's Order in this  
9 case approving the agreement,"<sup>127</sup> and on April 7, 2009, the BHOA filed an application requesting  
10 intervention in this matter "in an attempt to shut down the Boulders Wastewater Plant as soon as  
11 possible, either voluntarily or pursuant to Commission order."<sup>128</sup>

12           The Settlement Agreement calls for the removal of the BWTP and the associated lift station,  
13 followed by the establishment of a new connection that would be used to divert the flows to those  
14 facilities to a new connection point that eventually leads to the Scottsdale Wastewater Treatment  
15 Plant. Once the Company received the appropriate regulatory permits, the construction process  
16 would begin immediately and be completed in approximately 12 to 15 months,<sup>129</sup> and would reach a  
17 total cost of approximately \$1.5 - 2 million.<sup>130</sup> Initially, the Company would pay for the projects  
18 "either through equity, possibly debt, or some combination thereof."<sup>131</sup> Thereafter, the parties have  
19 contemplated that BMSC ratepayers would reimburse the Company for the expenses.<sup>132</sup>

20           **B.     Cost recovery mechanism.**

21           To facilitate ratepayer reimbursement, the Company is proposing a "surcharge, not unlike the  
22 arsenic recovery mechanisms the Commission has approved" which would be "designed to  
23 accomplish the 'rate relief' goals of the settlement agreement."<sup>133</sup> The Company has proposed a  
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25 <sup>126</sup> Tr. at 157:10-15 (Vol. I).

26 <sup>127</sup> BHOA-4 at 6:22-24.

27 <sup>128</sup> *Id.* at 6:12-14.

28 <sup>129</sup> Tr. at 163:22-23 (Vol. I).

<sup>130</sup> Tr. at 244:22-25 (Vol. II).

<sup>131</sup> *Id.* at 166:18-22.

<sup>132</sup> *Id.* at 167:17-24.

<sup>133</sup> A-7 at 30:5-8 (Bourassa COC Reb.).

1 surcharge similar to the example illustrated in Hearing Exhibit A-11, which would be spread across  
2 the entire BMSC customer base, regardless of their proximity to the odor and noise issues.  
3 Specifically, the surcharge mechanism would be used to recover only capital costs, and the “O&M  
4 expenses, the . . . charges to treat the water from the City of Scottsdale would not be in this surcharge  
5 mechanism.”<sup>134</sup>

6 If approved, the surcharge would remain in effect “[u]ntil the next rate proceeding,”<sup>135</sup> and in  
7 the interim, the Company believes “as with all cost recovery mechanisms that an annual true-up has  
8 to be an essential element of that tariff.”<sup>136</sup> At the time of the next rate proceeding there would be “a  
9 true-up of the full amount of the capital costs associated with the decommissioning,”<sup>137</sup> and “all those  
10 capital costs would be presumably included within the Company’s rate base, and the surcharge  
11 mechanism would then disappear.”<sup>138</sup>

12 The Company was asked regarding a potential cap on the amount of the surcharge that might  
13 serve to protect the ratepayers until the next rate filing.<sup>139</sup> The Company agreed that “perhaps  
14 having an upper limit . . . would provide some level of assurance to the ratepayers that this will be the  
15 maximum until the next rate case.”<sup>140</sup>

16 **C. The Down Side.**

17 While decommissioning and removal of the plant would certainly eliminate the odor issues  
18 associated directly with the infrastructure removed, it is not certain that removal of the BWTP and the  
19 associated lift station will resolve all of the potential odor issues. Odor is simply an unavoidable part  
20 of the sewer business. The odor issues arise not just from the BWTP and *its* associated lift station, but  
21 from *all* plant and *all* lift stations. The Company admits that it operates “14 other lift stations  
22 throughout [its] service territory collection system.”<sup>141</sup>

25 <sup>134</sup> Tr. at 254:15-18 (Vol. II).

26 <sup>135</sup> *Id.* at 249:17-21.

27 <sup>136</sup> *Id.* at 249:7-9.

28 <sup>137</sup> *Id.* at 256:23 – 257:5.

<sup>138</sup> *Id.* at 255:23-25.

<sup>139</sup> Tr. at 257:6-14 (Vol. II).

<sup>140</sup> *Id.* at 257:15-18.

<sup>141</sup> *Id.* at 158:24 – 159:1 (Vol I).

1 As Staff witness Dorothy Hains testified, if the Company were to remove the BWTP and the  
2 lift station upstream from the treatment plant, this would “limit the odor from the treatment plant, but  
3 it’s not going to limit the odor in the rest of lift station and collection systems.”<sup>142</sup> In fact, Ms. Hains  
4 identified a specific lift station, not adjacent to the BWTP but located in a shopping center, which  
5 was also a source of several complaints.<sup>143</sup>

6 So although Staff agrees that elimination of the BWTP will eliminate the noise issues  
7 associated with its operation, Staff is not at this time convinced that the residents’ complaints  
8 regarding fugitive odors will entirely desist if the Company decommissions and removes the BWTP  
9 and its lift station.

10 What all parties seem to agree upon is that while decommissioning the BWTP appears  
11 favorable to a majority of those who live within the area affected by the odor issue, and even though  
12 the parties seem to have reached an agreement as to how the costs will be borne, the proposed  
13 decommissioning presents a fairly unique set of circumstances under which the Commission’s  
14 decision must be reached.

15 The BWTP is currently operating<sup>144</sup> and in compliance with the Arizona Department of  
16 Environmental Quality.<sup>145</sup> From a ratemaking standpoint, the plant is currently used and useful in the  
17 service to Black Mountain’s customers.<sup>146</sup> Despite its age, the plant is functioning normally. In fact,  
18 from an operational standpoint, the only reason for removing the plant comes from the complaints  
19 regarding the odors and noise, which are actually a function of geography, as opposed to mechanical  
20 difficulty.<sup>147</sup> It is difficult to justify the removal of plant under those conditions.

21 **D. Staff’s Position.**

22 The case in which plant is used and useful and in regulatory compliance and is nonetheless  
23 being considered for decommissioning is rare, if not completely unique. In fact, Staff is unable to  
24 find a single previous instance that mirrors or even approximates the current facts. As such, Staff  
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26 <sup>142</sup> *Id.* at 618:22 – 619:4 (Vol. IV).

27 <sup>143</sup> *Tr.* at 640:19 – 641:1 (Vol. IV).

28 <sup>144</sup> *Id.* at 291:24-25 (Vol. II).

<sup>145</sup> *Id.* at 291:24.

<sup>146</sup> *Id.* at 291:25.

<sup>147</sup> *Tr.* at 291:6-10 (Vol. II).

1 believes this "case of first impression" presents a situation for which the Commission will establish  
2 policy. In reaching a decision, the Commission must, as always, weigh the needs of the ratepayers  
3 against the needs of the utility.

4 In this case, the ratepayers have made their position clear. They want the plant removed. The  
5 continued operation of the plant detracts from their enjoyment of their own homes. A great many of  
6 Black Mountain's ratepayers participated in the public comment session preceding the hearing in this  
7 matter. Not one expressed a desire to have the plant remain in place and operational. Unanimously,  
8 they relayed their experiences in being forced inside their homes, unable to tolerate the odors long  
9 enough to enjoy their own back yards and patios. Many expressed a reluctance to entertain or even to  
10 invite family to their homes simply because the odor was a source of embarrassment and annoyance.  
11 There is no doubt that the plant has no positive social value for the Boulders residents.

12 Under these circumstances, if the plant were not functioning properly, the Commission  
13 would almost certainly order the facility to be shut down and/or removed. As stated previously,  
14 however, the inconvenience imposed by the plant is not entirely of the utility's making. Since the  
15 development of the community occurred in large part prior to the formal grant of a CC&N to BCSC,  
16 and therefore prior to BMSC's acquisition of the assets from BCSC, the utility is not exclusively at  
17 fault for the current circumstances. In fact, it is difficult to assess blame to either party in this  
18 dispute.

19 If the cost of the project were less, it is unlikely this matter would have been brought before  
20 the Commission at all, but the \$1.5-2 million price tag is significant, especially given current  
21 economic conditions. The Company owes a duty to its shareholders to maximize return on their  
22 investment, and spending millions of dollars might be an acceptable cost of doing business if it were  
23 true that the money would improve service reliability or to achieve regulatory compliance. But no  
24 matter how strong a utility's commitment to ratepayer satisfaction, where reliability and compliance  
25 are being met, it is difficult to justify such an exorbitant price tag as a simple gesture of good will.

26 Fortunately, the ratepayers are sensitive to the utility's position. It is also fortunate that the  
27 ratepayers in this area have largely, with a few exceptions, been able to weather the current financial  
28 storm. They have matched their desire to have the facility relocated with an ability and a willingness

1 to pay for it. The Company has met with the BHOA on many occasions to discuss the cost to BHOA  
2 members, and those members continue to support an increase in utility rates, if that increase will  
3 coincide with an increase in their ability to enjoy their properties. In fact, some have even expressed  
4 the possibility that removal of the plant would even improve the values of their properties.

5 In the end, it seems that there is no “down side” to the project, if not for the price tag and the  
6 possibility that odor issues may nonetheless arise from other sources. The Commission is being  
7 asked to decide who should bear the costs. It is Staff’s position that a consideration of the  
8 circumstances yields no clear choice.

9 **E. Commission Authority To Order Removal.**

10 It has been suggested that the Commission could order the Company to decommission the  
11 plant at its own cost as necessary to comply with the Commission’s previous order in Decision No.  
12 69164 to mitigate the odor issue. However, that argument presents difficulty.

13 Decision No. 69164, in relevant part, directs the Company to “pursue one of the remedies  
14 proposed by the Town of Carefree in order to mitigate the odor problems” that existed at that time.<sup>148</sup>  
15 As stated earlier, after consulting with its engineers, the Company found that neither of the options  
16 suggested by the Town of Carefree were financially viable. The Town agreed. The parties mutually  
17 agreed to an alternative course of action to remedy the odor issues. And while it is arguable that the  
18 Company failed to comply with a Commission order under those circumstances, the fact remains that  
19 decommissioning and removal of the plant was not one of the available options.

20 At the time the Commission issued Decision No. 69164, decommissioning and removal had  
21 not been seriously contemplated and was not considered as an alternative to the issue. It was not until  
22 after the Company attempted its alternative and discovered that the odor issue had not been  
23 eliminated that a complete removal of the plant was suggested. Under those circumstances, it would  
24 be difficult now for the Commission to order removal of the plant as a compliance action to a  
25 decision in which removal had not previously been discussed. Therefore, Staff believes that the  
26 suggestion that the Commission could order removal at Company expense within the framework of  
27 compliance is not likely to be the best option.

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<sup>148</sup> Decision No. 69164, 43:1-3.