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BEFORE THE ARIZONA CORPORATION COMMISSION

2010 MAR -8 P 4: 57

Arizona Corporation Commission

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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 AND TOWN OF
CAREFREE'S JOINT RESPONSE TO
MOTION TO SUSPEND
TIMECLOCK**

The Boulders Homeowners' Association ("BHOA"), by and through undersigned counsel, and the Town of Carefree ("Town"), by and through counsel undersigned, submit this Joint Response to Black Mountain Sewer Corporation's ("BMSC" or "Company") Motion to Suspend Timeclock ("Motion"). As discussed herein, residents in the Boulders continue to suffer from odors originating at the Boulders Wastewater Treatment Plant ("Treatment Plant") which the Company has agreed to begin decommissioning under the terms of the Settlement Agreement. Further, residents of the Carefree Inn Estates still have not received the refund of amounts which were previously refunded to all other customers of the Company at the conclusion of the last rate case. BHOA and the Town oppose BMSC's Motion and ask the Commission to continue to process BMSC's rate case ahead of that of BMSC's affiliate Litchfield Park Service Corporation ("LPSCO") so that efforts to close the Treatment Plant can proceed without haste, and so that rebates can be made to the residents of Carefree Inn Estates. This Response is supported by the following Memorandum of Points and Authorities.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 BMSC's Motion asks the Commission to suspend the timeclock rules so that the
3 Commission might process the rate application filed by BMSC's affiliate LPSCO ahead
4 of BMSC's rate application. Normally, customers of a utility company would not object
5 to delaying the implementation of what are likely to be higher rates; however, residents of
6 the Boulders have continued to be subject to odors from the Treatment Plant since the
7 hearing, and they are more interested in expediting the removal of the Treatment Plant
8 than delaying a rate increase so that the rate increase of the utility's affiliate (which is
9 requesting a much larger rate increase) can be accelerated.

10 Based on the schedules on which the two companies' rate applications were
11 processed, BMSC's application should be addressed first. BMSC filed its application
12 nearly 3 months prior to LPSCO (December 19, 2008 vs. March 9, 2009). Sufficiency
13 was found for BMSC's application nearly 4 months before LPSCO's (January 20, 2009
14 vs. May 8, 2009). LPSCO's hearing began approximately 7 weeks after BMSC's hearing
15 began, and final briefs for LPSCO's case were filed two months after final briefs for
16 BMSC's case.

17 The record in the BMSC hearing (and the substantial public comments) evidences
18 that there are ongoing odors related to the operation of the Treatment Plant, and that those
19 odors are particularly noxious in the winter months when the weather is colder and there
20 are more residents creating wastewater. Even at the beginning of the hearing there was
21 passionate public comment about the very recent odors experienced by residents. Not
22 surprisingly, odors have continued since the beginning of the hearing.

23 Additionally, suspension of the timeclock rules would further delay the rebate
24 remedy for residents of the Carefree Inn Estates.

25 The only reason BMSC cites for its unusual request to allow LPSCO's case to
26 leapfrog BMSC's is that the need for rate relief is more pressing for LPSCO than it is for

1 BMSC.¹ However, Liberty Water (the common parent of both BMSC and LPSCO)
2 decided the timing of the filing of the two applications. If LPSCO's rate relief were more
3 pressing, Liberty Water could have filed the LPSCO application first.

4 The Commission's timeclock rules, as a practical matter, require that, but for
5 extraordinary circumstances requiring tolling of the timeclocks, cases of the same class of
6 utility be processed in the order they were deemed sufficient. BMSC's request seeks a
7 fundamental shift that that paradigm, asking the Commission to address two cases in
8 reverse order, merely because the later-filed case is requesting a larger revenue increase.
9 Even without the consideration of customers' odor issues, the Company has not stated a
10 sufficient basis requiring the Commission to depart from its normal practice.

11 BHOA and the Town recognize the unusual resource constraints under which the
12 Commission is currently working. However, BMSC's requested relief does nothing to
13 alleviate those constrains. It merely asks the Commission to utilize its limited resources
14 to process cases in a different order. The Commission's resource constraints are not the
15 cause of the LPSCO case proceeding after BMSC's case – Liberty Water created that
16 situation itself when it filed the applications in that order. There is no reason the
17 Commission should stay its timeclock rules so that Liberty can achieve the larger rate
18 increase for LPSCO first.

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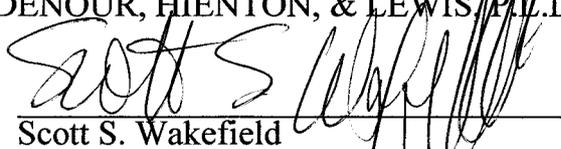
24
25 ¹ BMSC's final schedules request increased revenues of \$952,956; LPSCO's final schedules request total
26 increased revenues from the water and wastewater divisions of \$11,606,425, more than ten times the revenue
increase requested by BMSC.

1 **CONCLUSION**

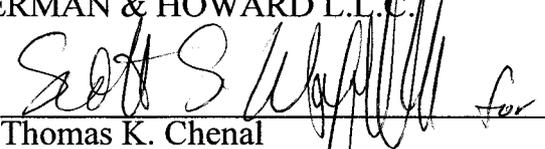
2 BHOA and the Town request that the Commission deny BMSC's Motion and
3 continue to process BMSC's rate application ahead of LPSCO's application.

4 Dated this ^{5th} day of March, 2010.

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

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

10 SHERMAN & HOWARD L.L.C.

11 By 
12 Thomas K. Chenal
13 7047 East Greenway Parkway, Suite 155
14 Scottsdale, Arizona 85254-8110
Attorneys for Town of Carefree

15 ORIGINAL and 13 copies filed
16 This ^{5th} day of March, 2010 with:

17 Docket Control
18 Arizona Corporation Commission
19 1200 W. Washington Street
Phoenix, AZ 85007

20 COPY of the foregoing HAND-DELIVERED
This ^{5th} day of March, 2010 to:

21 Janice Alward, Chief Counsel
22 Legal Division
23 ARIZONA CORP. COMMISSION
24 1200 W. Washington Street
Phoenix, Arizona 85007

1 Steve Olea, Director
2 Utilities Division
3 ARIZONA CORP. COMMISSION
4 1200 W. Washington Street
5 Phoenix, Arizona 85007

6 Lyn Farmer
7 Utilities Division
8 ARIZONA CORP. COMMISSION
9 1200 W. Washington Street
10 Phoenix, Arizona 85007

11 COPY of the foregoing
12 MAILED/EMAILED this 8th
13 day of March, 2010 to:

14 Greg Sorenson
15 ALGONQUIN WATER SERVICES
16 12725 W. Indian School Rd., Suite D-101
17 Avondale, Arizona 85392

18 Jay L. Shapiro (jshapiro@fclaw.com)
19 Norman D. James (njames@fclaw.com)
20 FENNEMORE CRAIG, PC
21 3003 N. Central Avenue, Suite 2600
22 Phoenix, Arizona 85012
23 Attorneys for Black Mountain Sewer
24 Corporation

25 Jodi Jerich
26 Director
RUCO
1110 W. Washington Street, Suite 220
Phoenix, Arizona 85004-1481

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

Roger Strassburg
Roger Strassburg, PLLC
9117 East Los Gatos Drive
Scottsdale, Arizona 85255
Attorneys for D.E. Doelle, D.D.S.

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

1 M.M. Schirtziner
2 34773 N. Indian Camp Trail
3 Scottsdale, Arizona 85266

4 Carl A. Ewing

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6
7
8
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11
12
13
14
15
16
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