

**ORIGINAL**

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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- 7 PAUL NEWMAN
- 8 COMMISSIONER
- 9 BOB STUMP
- 10 COMMISSIONER

11 IN THE MATTER OF THE APPLICATION OF  
 12 BLACK MOUNTAIN SEWER  
 CORPORATION, AN ARIZONA  
 CORPORATION, FOR A DETERMINATION  
 OF THE FAIR VALUE OF ITS UTILITY  
 PLANT AND PROPERTY, AND FOR  
 ADJUSTMENTS TO ITS RATES AND  
 CHARGES FOR UTILITY SERVICE AND  
 FOR CERTAIN RELATED APPROVALS  
 BASED THEREON.

**Docket No. SW-02361A-08-0609**

**NOTICE OF ERRATA**

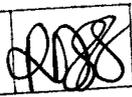
13  
 14  
 15 The Residential Utility Consumer Office ("RUCO") hereby provides filing this notice of  
 16 errata in the above-referenced matter, to correct typographical errors and the service list to  
 17 RUCO's Exceptions. A corrected copy of RUCO's Exceptions is attached.

18  
 19 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of August, 2010.

20  
 21 Arizona Corporation Commission  
 22 **DOCKETED**

23 **AUG 13 2010**

24  
  
 Michelle L. Wood  
 Counsel

DOCKETED BY 

1 AN ORIGINAL AND THIRTEEN COPIES  
of the foregoing filed this 13th day  
2 of August 2010 with:

3 Docket Control  
Arizona Corporation Commission  
4 1200 West Washington  
Phoenix, Arizona 85007

5 COPIES of the foregoing hand delivered/  
6 mailed this 13<sup>th</sup> day of August 2010 to:

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1                                   **BEFORE THE ARIZONA CORPORATION COMMISSION**

2   KRISTIN K. MAYES  
   CHAIRMAN  
3   GARY PIERCE  
   COMMISSIONER  
4   SANDRA D. KENNEDY  
   COMMISSIONER  
5   PAUL NEWMAN  
   COMMISSIONER  
6   BOB STUMP  
   COMMISSIONER

7  
8   IN THE MATTER OF THE APPLICATION OF  
9   BLACK MOUNTAIN SEWER  
10  CORPORATION, AN ARIZONA  
11  CORPORATION, FOR A DETERMINATION  
12  OF THE FAIR VALUE OF ITS UTILITY  
   PLANT AND PROPERTY, AND FOR  
   ADJUSTMENTS TO ITS RATES AND  
   CHARGES FOR UTILITY SERVICE AND  
   FOR CERTAIN RELATED APPROVALS  
   BASED THEREON.

**Docket No. SW-02361A-08-0609**

13  
14                                   **EXCEPTIONS OF THE RESIDENTIAL UTILITY CONSUMER OFFICE**

15                   The Residential Utility Consumer Office ("RUCO") makes the following Exceptions to  
16 the Recommended Opinion and Order ("ROO") on Black Mountain Sewer Corporation's  
17 ("Black Mountain" or "Company") application for a rate increase.

- 18  
19                   **1. The Commission should reject the Surcharge Proposed by BHOA and the  
   Company as a means of effectuating the Closure.**

20                   Under the terms of the settlement agreement with the Boulder's Homeowner  
21 Association ("BHOA"), the Company says it will close the wastewater treatment plant if the  
22 Commission authorizes a surcharge to cover their costs. No surcharge, no closure. All the  
23 homeowners want is for the bad odor to go away. The method of cost recovery doesn't matter  
24

1 to the homeowners. If the Company insists it will only close the plant if it gets a surcharge,  
2 then the homeowners want the surcharge.

3 The two questions for RUCO are:

4 Will closing the wastewater treatment plant solve the odor problem?

5 Why can't Black Mountain close the plant and seek traditional rate relief  
6 instead of the extraordinary relief of a surcharge?

7  
8 **A. Evidence in the record shows that closure of the wastewater treatment  
9 plant may not solve the odor problem.**

10 RUCO supports the elimination of the odor and noise. If the decommissioning of the  
11 plant would eliminate the odor and the noise issue RUCO would support the decommissioning  
12 of the plant. RUCO, however, does not have engineers on its staff and relies on other  
13 engineering reports to ascertain whether decommissioning the plant would solve the odor  
14 problem. RUCO relied on the Staff's engineering report submitted in this record. And that  
15 report indicates that there is some question as to whether decommissioning the plant will result  
16 in the elimination of the odor and noise problem. Staff's engineer testified that the wastewater  
17 treatment plant itself may not be the source of all odors.<sup>1</sup> Ms. Hains testified that the odor  
18 issues arose not just from the wastewater treatment plant, but also from the multiple lift  
19 stations which are located throughout the subdivision.<sup>2</sup> In closing, Staff argued *inter alia*, it is  
20 difficult to justify removal of plant which is currently used and useful and functioning properly  
21 when the problems of the plant are related to its proximity to homes rather than mechanical

22  
23  
24 <sup>1</sup> T: 640-641

<sup>2</sup> *Id.*

1 problems.<sup>3</sup> Further, Staff opined, as RUCO does here, that "where reliability and compliance  
2 are being met, it is difficult to justify such an exorbitant price tag [estimated at \$1.5 and \$2.5  
3 million] as a simple gesture of good will."<sup>4</sup>

4 Staff's and RUCO's position is further supported by the communications between BHOA  
5 and BMSC. Correspondence with attorneys representing ACC Staff, BMSC and BHOA  
6 indicates that there is no firm determination as to the actual source of the odor problem.<sup>5</sup> Nor  
7 is there any firm determination as to whether or not the removal of the treatment plant, as  
8 provided for in the Agreement, would solve the odor problem cited in Mr. Peterson's testimony.  
9 RUCO cannot simply ignore this testimony.

10 **B The Commission can order the closure of the plant without authorizing**  
11 **a surcharge.**

12 Should the Commission decide that the closure of the plant is in the ratepayer's best  
13 interests, RUCO disagrees that an adjustor mechanism which will add up to \$15.00 per month  
14 to the rates of all ratepayers is the proper cost recovery method to effectuate the closure. The  
15 surcharge proposed by the Company is an adjustor mechanism. Adjustor mechanisms are  
16 extraordinary rate recovery devices that are permitted for certain narrow circumstances and  
17 should not be implemented in lieu of a full rate case proceeding that allows for a proper  
18 analysis of all the ratemaking elements that need to be considered before implementing new  
19 rates.

20 The surcharge would isolate costs associated with the retirement of BMSC's treatment  
21 facility, without providing an idea of what the full impact of the proposed retirement will have on  
22 other system operating costs such as labor, purchased power, line maintenance, etc. While

23 \_\_\_\_\_  
24 <sup>3</sup> Staff's Initial Brief at 25-26.

<sup>4</sup> *Id.*

1 the Company can recover these costs, there is no corresponding deduction for these  
2 associated savings. In other words, the costs authorized in the surcharge may not “match” the  
3 savings realized by the Company.

4 RUCO believes that cost recovery mechanisms should be given the same weight as the  
5 Commission has given adjustor mechanisms in the past.<sup>6</sup> In Decision No. 68302 the  
6 Commission denied Arizona Water’s request for an adjustor stating:

7  
8 There is a danger of piecemeal regulation inherent in adjustment  
9 mechanisms. Because they allow automatic increases in rates without a  
10 simultaneous review of a utility’s unrelated costs, adjustment mechanisms  
11 have a built-in potential of allowing a utility to increase rates based on certain  
12 isolated costs when its other costs are declining, or when overall revenues  
13 are increasing faster than costs due to customer growth. Adjustment  
14 mechanisms should therefore be used only in extraordinary circumstances to  
15 mitigate the effect of uncontrollable price volatility or uncertainty in the  
16 marketplace.<sup>7</sup>

17 RUCO recommends that the Commission reject the cost recovery mechanism proposal.  
18 A better alternative would be to allow BMSC to retire the treatment facility and require the  
19 Company to file a general rate case application twelve months after the retirement. This would  
20 provide ACC Staff, RUCO and any other intervenors the opportunity to conduct a full analysis  
21 of all of the ratemaking elements associated with BMSC’s system, and to see what impact the  
22 retirement of the treatment facility has had on BMSC’s cost of providing service. It would also  
23 give ACC Staff, RUCO and other intervenors the ability to provide the Commission with the  
24 information that is needed to set just and reasonable rates for all of the Company’s ratepayers.

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23 <sup>5</sup> Surrebuttal Testimony of William Rigsby at 4.

24 <sup>6</sup> Id. at 5.

<sup>7</sup> See Exhibit R-7 Rigsby’s Surrebuttal Testimony at 5-6, citing *In the Matter of Arizona Water*, Docket No.W-01445A-04-0650, Decision No. 68302 dated September 8, 2004.

1 Another important consideration is that although 500 hundred people have voiced their  
2 support for the Agreement, there are 2,100 customers in the Company's service area.<sup>8</sup> Of  
3 those 2,100 customers, 332 customers live in the BHOA. The remainder of the customers live  
4 outside of BHOA and ostensibly are not affected by the odor issues, but will be required to pay  
5 for the plant closure. There are 1,600 customers who will be paying for the decommissioning  
6 of the plant who will receive no benefit.

7 If the Commission believes that closure of the plant is warranted, but adoption of the  
8 surcharge mechanism is not, RUCO requests the Commission adopt Amendment 1, attached  
9 hereto.

10 **2. A cost of equity ("COE") between 9.0 and 10.0 should be adopted.**

11 The ROO adopts the Staff's cost of equity of 10.2 percent. RUCO believes a lower cost  
12 of equity is just and reasonable and recommends an 8.2 percent cost of equity. In what  
13 appears to be the Commission's recognition of the current "financial crisis" the Commission  
14 has started to reduce the cost of equity awards from the Commission's usual 10 percent.

15 The Commission has approved or has ROO's pending before it recommending the  
16 following cost of equity percentages in recent rate cases:

17			
18	Arizona Water	9.5%	(ROO in Docket No. W-01445A-08-0440) <sup>9</sup>
19	Global Water	9.8%	(ROO in Docket No. SW-02445A-09-0077 et al.)
20	UNS Gas	9.5%	(Decision No. 71623)
21	Arizona-American	9.9%	(Decision No. 71410)
22			

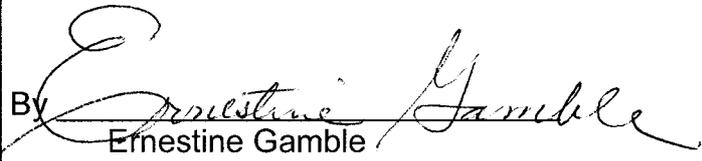
23 <sup>8</sup> Testimony of Les Peterson at 2, line 5

24 <sup>9</sup> The Commission approved the 9.5 percent COE recommended by the ROO at its meeting on August 11, 2010, but a Decision No. has not yet been assigned.



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20

21 By   
Ernestine Gamble

22

23

24

Black Mountain Sewer Corporation  
SW-02361A-08-0609  
Proposed RUCO Amendment No. 1  
Closure Agreement

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INSERT

Although plant closure is appropriate given the abundance of complaints filed by BHOA homeowners, the surcharge mechanism proposed by the Company is not. The surcharge proposed by the Company is an adjustor mechanism. Adjustor mechanisms are extraordinary rate recovery devices that are permitted for certain narrow circumstances and should not be implemented in lieu of a full rate case proceeding that allows for a proper analysis of all the ratemaking elements that need to be considered before implementing new rates.

The surcharge would isolate costs associated with the retirement of BMSC's treatment facility, without providing an idea of what the full impact of the proposed retirement will have on other system operating costs such as labor, purchased power, line maintenance, etc. While the Company can recover these costs, there is no corresponding deduction for these associated savings. In other words, the costs authorized in the surcharge may not "match" the savings realized by the Company.

We believe that cost recovery mechanisms should be given the same weight as the Commission has given adjustor mechanisms in the past.<sup>2</sup> In Decision No. 68302 the Commission denied Arizona Water's request for an adjustor stating:

There is a danger of piecemeal regulation inherent in adjustment mechanisms. Because they allow automatic increases in rates without a simultaneous review of a utility's unrelated costs, adjustment mechanisms have a built-in potential of allowing a utility to increase rates based on certain isolated costs when its other costs are declining, or when overall revenues are increasing faster than costs due to customer growth. Adjustment mechanisms should therefore be used only in extraordinary circumstances to mitigate the effect of uncontrollable price volatility or uncertainty in the marketplace.<sup>3</sup>

We approve the closure agreement excluding the cost recovery mechanism proposal. In making this determination, we consider that 500 hundred people have voiced their support for the plant closure, but also consider that there are 2,100 customers in the Company's service area.<sup>4</sup> Of those 2,100 customers, 332 customers live in the BHOA. The remainder of the customers live outside of BHOA and ostensibly are not affected by the odor issues, but if we approved the surcharge agreement would be required to pay for the plant closure. There are 1,600 customers who will be paying for the decommissioning of the plant who will receive no benefit.

BMSC is ordered to retire the treatment facility and required to file a general rate case application twelve months after the retirement. This will

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<sup>2</sup> Id. at 5.

<sup>3</sup> See Exhibit R-7 Rigsby's Surrebuttal Testimony at 5-6, citing *In the Matter of Arizona Water*, Docket No. Docket No.W-01445A-04-0650, Decision No. 68302 dated September 8, 2004.

<sup>4</sup> Testimony of Les Peterson at 2 line 5

provide ACC Staff, RUCO and any other intervenors the opportunity to conduct a full analysis of all of the ratemaking elements associated with BMSC's system, and to see what impact the retirement of the treatment facility has had on BMSC's cost of providing service. It will also give ACC Staff, RUCO and other intervenors the ability to provide the Commission with the information that is needed to set just and reasonable rates for all of the Company's ratepayers.

Make all necessary conforming changes.

Black Mountain Sewer Corporation  
SW-02361A-08-0609  
Proposed RUCO Amendment No. 2  
Cost of Equity

DELETE page 51, lines 15-21

INSERT

The cost of equity recommendations from parties range from 8.22 percent to 12.4 percent. In consideration of the current economic environment, we adopt a cost of equity of 9.5 percent. This is consistent with our decisions in Arizona Water (9.5%) Docket No. W-01445A-08-0440);<sup>1</sup> UNS Gas (9.5%), Decision No. 71623; and Arizona-American (9.9%) Decision No. 71410. There are no circumstances in this case, or nothing unique or unusual to the Company, which persuade us to change course here.

Make all necessary conforming changes.

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<sup>1</sup> The Commission approved the 9.5 percent COE recommended by the ROO at its meeting on August 11, 2010, but a Decision No. has not yet been assigned.