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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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JAN 26 2012

COMMISSIONERS

GARY PIERCE – Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

2012 JAN 26 P 2: 26

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY [Signature]

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

PROCEDURAL ORDER

BY THE COMMISSION:

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

On September 1, 2010, the Commission issued Decision No. 71865 in this matter which granted the Company an increase in rates and, among other things, found that a Closure Agreement between BMSC and the Boulders Homeowners Association (“BHOA”) concerning the Boulders treatment plant provided “an appropriate and creative solution” to address ongoing odor issues related to the plant. (Decision No. 71865, at 53.) The Closure Agreement between BMSC and BHOA provided that the Company would be permitted to implement a surcharge to recover capital expenditures for closure of the plant. BMSC’s obligations under the Agreement were subject to a number of conditions including “[s]uccessful renegotiation of the Effluent Agreement with the Boulders Resort to allow termination of the agreement with little or no cost to BMSC upon closure of the treatment plant.” (*Id.* at 42.)

Since issuance of Decision No. 71865, a number of customers have submitted public comments generally expressing concern with ongoing plant odors and requesting that the Boulders treatment plant be closed.

On June 15, 2011, BHOA filed a Motion for Plant Closure Order requesting that the Commission order BMSC to close the treatment plant to “thereby [relieve] BMSC of its contractual

1 obligation to provide effluent to the Resort and [allow] BMSC to expeditiously close the Treatment
2 Plant.” (BHOA Motion, at 1.)

3 On July 6, 2011, Wind P1 Mortgage Borrower, LLC, dba The Boulders Resort (“Bolders
4 Resort”) filed a Motion to Intervene and requested a hearing to present evidence and legal arguments
5 regarding issues related to the treatment plant and an Effluent Agreement between the Boulders
6 Resort and BMSC.

7 On July 18, 2011, BHOA filed a Response to the Motion to Intervene opposing the Boulders
8 Resort’s request for intervention.

9 On July 25, 2011, intervenor M.M. Schirtzinger filed a letter expressing his opinion regarding
10 the treatment plant.

11 On November 9, 2011, the Town of Carefree (“Town”) filed a copy of a Resolution adopted
12 by the Town Council on November 1, 2011, urging the Commission to take appropriate steps to close
13 the treatment plant.

14 On November 22, 2011, BHOA filed a full copy of the same Resolution including a final page
15 that was omitted from the Town’s November 9, 2011 filing.

16 On January 24, 2012, the Commission voted during a Staff Open Meeting to reopen this
17 matter pursuant to A.R.S. § 40-252, and directed the Hearing Division to conduct proceedings to
18 address the treatment plant closing issue and to issue a Recommended Opinion and Order.

19 IT IS THEREFORE ORDERED that a **procedural conference shall be scheduled for**
20 **February 7, 2012, at 10:00 a.m., at the Commission’s offices, Hearing Room No. 1, 1200 West**
21 **Washington, Phoenix, Arizona 85007.** The purpose of the procedural conference is to discuss
22 procedural matters concerning the reopening of this proceeding.

23 IT IS FURTHER ORDERED that the **Boulders Resort’s Motion to Intervene is hereby**
24 **granted.**

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1 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
2 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
3 hearing.

4 DATED this 26th day of January, 2012.

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7 

8 DWIGHT D. NODES
9 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

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11
12 Copies of the foregoing mailed/delivered
13 this 26th day of January, 2012 to:

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