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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAR - 7 2012

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 (“Boulders  
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       On January 26, 2012, a Procedural Order was issued scheduling a procedural conference for  
20 February 7, 2012, and granting the Boulders Resort’s Motion to Intervene.

21       On February 7, 2012, the procedural conference was held, as scheduled, during which various  
22 procedural issues were discussed regarding the need for a hearing and the scope of the A.R.S. § 40-  
23 252 proceeding. At the conclusion of the procedural conference, the parties were directed to discuss  
24 a mutually agreeable procedural schedule and to file the proposed schedule.

25       On March 1, 2012, the Town filed a Notice of Substitution of Counsel.

26       On March 6, 2012, BMSC, BHOA, Boulders Resort and Staff filed a Joint Proposed  
27 Procedural Schedule as follows:

28       Direct Testimony

March 9, 2012

1	Response Testimony	March 30, 2012
2	Staff Testimony (if any)	April 13, 2012
3	Response to Staff (if any)	April 20, 2012

4 The parties also submitted a number of possible hearing dates in April, May, and June, 2012,  
5 and stated that they expected the hearing would take no more than three days to complete.

6 On March 6, 2012, BMSC and BHOA filed a Stipulation of Facts that they indicate are being  
7 offered in lieu of testimony by BHOA. BMSC and BHOA state that although the Boulders Resort  
8 and Staff did not join in the Stipulation of Facts, they do not object to it being offered in lieu of direct  
9 testimony being filed by BHOA.

10 Because the proposed procedural schedule was not submitted until March 6, 2012, it may not  
11 be possible for parties to complete the preparation and filing of direct testimony by March 9, 2012.  
12 Therefore, the modified testimony filing dates set forth in the following ordering paragraphs should  
13 be observed by the parties.

14 IT IS THEREFORE ORDERED that a **hearing** in this A.R.S. § 40-252 proceeding **shall be**  
15 **scheduled to commence on May 8, 2012, at 9:30 a.m., at the Commission's offices, Hearing**  
16 **Room No. 1, 1200 West Washington, Phoenix, Arizona 85007.** Additional hearing days will be held  
17 on May 9 and 10, 2012, as necessary.

18 IT IS FURTHER ORDERED that **direct testimony**, except for Staff, shall be filed on or  
19 before **March 16, 2012.**

20 IT IS FURTHER ORDERED that **Staff shall file its testimony** no later than **April 20, 2012.**

21 IT IS FURTHER ORDERED that any **testimony in response to Staff's testimony** should be  
22 filed no later than **April 27, 2012.**

23 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules  
24 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission  
25 *pro hac vice.*

26 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
27 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
28 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances

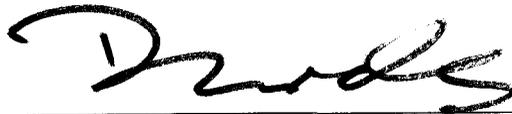
1 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is  
2 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the  
3 Administrative Law Judge or the Commission.

4 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized  
5 Communications) applies to this proceeding and shall remain in effect until the Commission's  
6 Decision in this matter is final and non-appealable.

7 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended  
8 pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

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

12 DATED this 7<sup>th</sup> day of March, 2012.

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14  
15 

16 DWIGHT D. NODES  
17 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

18 Copies of the foregoing mailed/delivered  
19 this 7<sup>th</sup> day of March, 2012 to:

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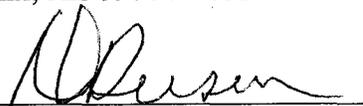
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