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Arizona Corporation Commission
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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

7 IN THE MATTER OF THE
8 APPLICATION OF BLACK MOUNTAIN
9 SEWER CORPORATION, AN ARIZONA
10 CORPORATION, FOR A
11 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
MOTION TO STRIKE

12 Black Mountain Sewer Corporation (“BMSC”) hereby moves to strike from the
13 record the Second Public Comment of Robert B. Marshall (“Marshall”) docketed on
14 June 29, 2012 (“Second Public Comment”). There are several good reasons to strike this
15 filing from the record in this case.

16 First, it isn’t public comment. The Second Public Comment filing is captioned for
17 and was written and signed by Marshall’s attorney, who included 22 separate footnotes on
18 his way to making legal argument and requesting affirmative relief. In fact, one of those
19 footnotes indicates that Marshall himself was to add information, further evidencing that
20 he is not the author of his own so-called “public comment.” See Marshall’s Second Public
21 Comments at 5, n. 22. If Marshall wanted to participate in this proceeding and be
22 represented by counsel, he had an opportunity to move to intervene, as the Resort did.

23 Second, Marshall attempts to offer substantive expert testimony on technical and
24 regulatory matters, some of which are not even before the Commission in this docket. If
25 Marshall wanted to present expert testimony, he should have moved to intervene and
26 presented the so-called expert testimony in Phase 2 of this docket.

1 Third, Marshall offers legal argument. It's axiomatic – public comment does not
2 include legal argument with citation to multiple statutes and published judicial decisions
3 that allegedly support the relief sought.

4 Fourth, Marshall is seeking affirmative relief. See Second Public Comment at 6.
5 While Marshall is certainly free to offer public comment on why the relief sought by any
6 party should or should not be granted, as he did in his first public comment, he is not free
7 to seek all-together different relief. If Marshall wanted to seek affirmative relief, he
8 should have moved to intervene. As a party, Marshall could have sought relief and offer
9 legal argument in support. He didn't, and should not be heard to do so now.

10 In sum, Marshall's Second Public Comment is improper. Consequently, the
11 Administrative Law Judge should strike it from the record in this docket in its entirety in
12 order to ensure it has no place in the consideration of this matter by the Commission.

13 RESPECTFULLY SUBMITTED this 5th day of July, 2012.

14 FENNEMORE CRAIG, P.C.

15
16 By _____

17 Jay V. Shapiro
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21 **ORIGINAL** and thirteen (13) copies
22 of the foregoing were filed
23 this 5th day of July, 2012, with:

24 Docket Control
25 Arizona Corporation Commission
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Phoenix, AZ 85007

1 **Copy of the foregoing hand-delivered**
this 5th day of July, 2012, to:

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