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April 4, 2013

Re: Black Mountain Sewer Corporation (Rates / Phase 2)
Docket No. SW-02361A-08-0609

To the Chairman and fellow Commissioners and Parties to the Docket:

I am writing to express my thoughts related to the Recommended Opinion and Order ("ROO") filed on February 6, 2013 in this matter. The ROO grants Boulders Homeowners Association's ("Homeowners") motion and orders Black Mountain Sewer Corporation ("Black Mountain") to move forward with the closure of the Boulders Wastewater Treatment Plant ("Treatment Plant") in accordance with the findings set out in the ROO and in Decision No. 71865.

Although I have not reached any final conclusions in this case, I have reviewed the exceptions filed by Wind P1 Mortgage Borrower, LLC, dba The Boulders Resort ("Resort") and have some concerns. While the ROO may have resolved the issues presented between Black Mountain and the Homeowners, the Resort's exceptions indicate that at least from its perspective, the lack of sufficient and economical effluent for its golf courses remains a critical unresolved issue. While I do not necessarily agree with the Resort's legal arguments as to its continued entitlement to the Treatment Plant's effluent, it occurs to me that there are three parties in this matter: Black Mountain, which is being kept whole by the surcharge, the Homeowners, who are getting what they want through the closure of the Treatment Plant, and the Resort, which may be left without the water it needs or be faced with higher costs to replace the effluent.

Before voting on the ROO, I would prefer to see the parties reconvene at the settlement table one last time and attempt to negotiate an agreement that addresses the concerns of all three stakeholders. Therefore, by this letter, I am requesting that this matter be pulled from the April Open Meeting next week and instead be set over to the May Open Meeting to provide an opportunity for the parties to fashion a resolution of the case that more satisfactorily addresses the three interests.

I look forward to a filing in the docket from the parties indicating that they have met and the status of any discussions, including the possibility of an agreement. Such a filing would be helpful in my future full consideration of this case. I thank the parties in advance for their timely consideration of my request.

Sincerely,

Commissioner Gary Pierce

Arizona Corporation Commission
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