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ARIZONA CORPORATION COMMISSION
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5 **BEFORE THE ARIZONA CORPORATION COMMISSION**

6
7 IN THE MATTER OF THE FORMAL
8 COMPLAINT AGAINST BLACK
9 MOUNTAIN SEWER CORPORATION
10 FILED BY CAREFREE 34 INC. / OFFICE
ON EASY STREET, INC. dba VENUES
CAFE.

DOCKET NO: SW-02361A-13-0359

**RESPONSE TO FORMAL
COMPLAINT**

11 Liberty Utilities (Black Mountain Sewer) Corp. f/k/a Black Mountain Sewer
12 Corporation ("BMSC" or the "Company") hereby responds to the formal complaint filed
13 by Venues Café. In summary, the customer is being charged the rate authorized by the
14 Commission in Decision No. 71865 effective September 1, 2010. The customer does not
15 claim a mathematical error or other source of overcharge, therefore, the customer's
16 complaint is really just an impermissible collateral attack on the Commission's approved
17 rates for service by BMSC. The complaint should be dismissed.

18 In support of this response and request for dismissal, BMSC states as follows.

19 First, Venues Café has not experienced a rate increase in 2013 as alleged. Rather,
20 the Company discovered in November 2012 that the customer was being billed as an
21 office, and not as a restaurant. In January 2013, a notice was mailed to the customer,
22 explaining that the monthly rates would be corrected and the customer would be billed as
23 a restaurant. A second letter was mailed in February 2013 notifying the customer that a
24 chair count audit would occur prior to March 15, 2013. The customer was billed as a
25 restaurant beginning April 2013. The Company made no effort to recover amounts that
26 were under billed.

1 Second, the rates charged by the Company for restaurants are based on the number
2 of chairs in the establishment. The Company conducted an audit to determine the number
3 of chairs in Venues Café in November 2012, and then again in March 2013, and will
4 continue to do so each quarter. Since the customer was switched from an office to a
5 restaurant, the charges have been based on the chair count. All restaurants served by the
6 Company are charged in this manner per the Company's current Commission-approved
7 tariff.

8 Third, the customer's claims that the rates are excessive, discriminatory unjust
9 and/or unreasonable challenge the Commission-approved rates. The customer does not
10 and cannot claim that the Company is not implementing the rates approved by the
11 Commission. Decision No. 71865 is final and non-appealable. As a consequence, the
12 customer's challenge to the rates approved by the Commission is an impermissible
13 collateral attack. *See* Ariz. Rev. Stat. § 40-252.

14 Fourth, the relief customer seeks—new rates or special rates or some other change
15 in the rates—can and should only be addressed in a rate case. Again, this follows from
16 the fact that the customer is not complaining that the Company has charged it incorrectly.
17 The customer simply does not like the rates and rate design approved in Decision No.
18 71865. This customer, like others with similar concerns, is free to intervene in the next
19 rate case and advance such concerns. The Company is required to file a rate case within
20 12 months of the closure of the East Boulders Wastewater Treatment Plant pursuant to
21 Decision No. 71865. But the Commission cannot, as a matter of law, change the rates for
22 restaurants or other customers outside a rate case. *See Scates v. Ariz. Corp. Comm'n*,
23 118 Ariz. 531, 534, 578 P.2d 612, 615 (App. 1978).

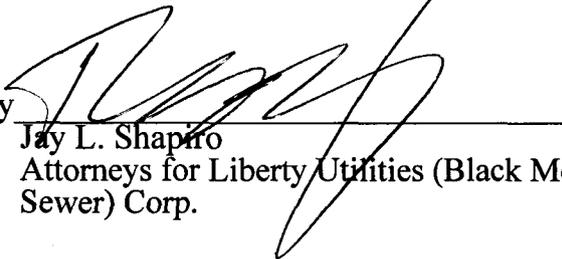
24 For these reasons, the Formal Complaint brought by Venue's Café should be
25 dismissed, or, in the alternative, denied on its merits.

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RESPECTFULLY SUBMITTED this 30th day of October, 2013.

FENNEMORE CRAIG, P.C.

By 
Jay L. Shapiro
Attorneys for Liberty Utilities (Black Mountain
Sewer) Corp.

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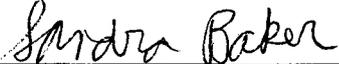
Copy of the foregoing was hand delivered
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Copy of the foregoing mailed
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