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BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

BOB STUMP, CHAIRMAN
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

Arizona Corporation Commission

DOCKETED

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2014 APR 21 P 4 04

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DOCKETED BY

IN THE MATTER OF THE APPLICATION) DOCKET NO. SW-02361A-08-0609
OF BLACK MOUNTAIN SEWER)
CORPORATION FOR APPROVAL TO) PETITION AND REQUEST PURSUANT
INCREASE THEIR RATES.) TO A.R.S. § 40-252 FOR COMMISSION
) ORDER ALTERING OR AMENDING
) DECISION NO. 71865

Carefree 34, Inc. and Office on Easy Street, Inc., doing business as Venues Café (Petitioner), hereby petition and request that the Commission exercise its jurisdiction and authority under A.R.S. § 40-252 and alter or amend the Commission's Decision No. 71865 in such a manner as to address and resolve the grievous rate situation discussed below. In that regard, it is Petitioner's understanding that on previous occasions the Commission has exercised its jurisdiction and authority under A.R.S. § 40-252 in response to petitions and requests that it do so filed by individual members of the public, such as Petitioner.

I.

BACKGROUND

On September 1, 2010 the Commission issued Decision No. 71865 in the above-captioned and docketed proceeding granting Black Mountain Sewer Corporation ("BMSC") an increase in rates and charges for sewer services. One of the authorized increases was for sewer service provided to commercial restaurant establishments, such as the one owned and operated by Petitioner. In that regard, Petitioner did not purchase the restaurant business which it operates as Venues Café until August of 2010. Thus, Petitioner was not a party to the proceedings before the Commission in Docket No. SW-02361A-08-0609, including the hearings held in November of 2009, which resulted in the Commission's issuance of Decision No. 71865.

Following the issuance of Decision No. 71865, Petitioner was billed a flat monthly rate of \$87.06 for wastewater service provided to the Venues Café by BMSC until April 2013.

1 However, in January of 2013, Petitioner received a "courtesy letter" from Liberty Utilities
2 ("Liberty"), which apparently had acquired BMSC in the interim, advising Petitioner that
3 Petitioner was going to be switched from the aforesaid flat monthly rate for wastewater service to
4 a monthly per gallon/per day flow rate of to \$805.90, or an increase on the order of
5 approximately 925%! Stated differently, the annual rate to which the Venues Café is now subject
6 for wastewater service exceeds the annual property tax rate for the premises in which the
7 restaurant is located by approximately 350%! A copy of the aforesaid "courtesy letter" is
8 attached hereto as Appendix "A."

9 Subsequent to receipt of the "courtesy letter," representatives of Petitioner contacted the
10 Commission, attended a mediation session arranged by the Commission's Staff and participated
11 in a least three (3) meetings with representatives of Liberty in an effort to reach a mutually
12 acceptable resolution of the above egregious situation. Unfortunately, despite the efforts of all
13 concerned, such a resolution was not forthcoming.

14 Accordingly, on October 22, 2013, Petitioner filed a Formal Complaint with the
15 Commission. A copy of that Formal Complaint is attached as Appendix "B," and the substance
16 of the same is incorporated herein as additional background to the extent relevant to Petitioner's
17 instant petition and request in the above-captioned and docketed proceeding. In that regard,
18 Petitioner's Formal Complaint was assigned Docket No. SW-02361A-13-0359. Thereafter, on
19 October 30, 2013, Liberty filed a Response to Petitioner's Formal Complaint, a copy of which is
20 attached as Appendix "C" as further background information.

21 On November 4, 2013, the Commission issued a Procedural Order scheduling a
22 Procedural Conference in Docket No. SW-02361A-13-0359 "to explore the issues involved in
23 the proceeding." The Procedural Conference was conducted on November 19, 2013; and,
24 representatives of Petitioner, Liberty and the Commission's Staff were in attendance. On January
25 14, 2014, Administrative Law Judge Marc E. Stern issued a Procedural Order setting a hearing
26 for April 24, 2014, further clarifying that "in the event the Complainant files a request for action
27 by the Commission in Docket No. SW-02361A-08-0609 pursuant to A.R.S. § 40-252 than this
28 hearing will be continued pending the outcome of Complainant's request to reopen the rate case.

29 During the November 19, 2013 Procedural Conference, it was suggested that Petitioner
might want to consider also filing a petition and request asking the Commission to exercise its

1 jurisdiction and authority pursuant to A.R.S. § 40-252 so as to address the rate situation which is
2 of concern to Petitioner. This petition and request reflects Petitioner's decision to pursue that
3 course of action as well.

4 **II.**

5 **DISCUSSION**

6 **A. Role of Engineering Bulletin No. 12 and Rate Design in Decision No. 71865.**

7 Accepting for purposes of discussion Liberty's representation in its October 30, 2013
8 Response to Formal Complaint that Petitioner was not billed at the aforementioned per gallon/per
9 day monthly flow rate until April 2013, because Liberty (and/or BMSC) had erroneously
10 classified Petitioner's business as an office rather than a restaurant, the underlying rate and flow
11 rate assumption(s) and methodology upon which monthly bills for wastewater service are
12 calculated under that rate are suspect when applied to a business such as Petitioner. Accordingly,
13 the Commission should exercise its jurisdiction and authority under A.R.S. § 40-252 and address
14 and resolve the situation at this time.

15 More specifically, as the following excerpt from Decision No. 71865 clearly
16 demonstrates, the per gallon/per day flow rate of Liberty (and previously BMSC) under which
17 Petitioner has been billed for wastewater service since April of 2013 is predicated upon what was
18 then believed to be a regulation of the Arizona Department of Environmental quality ("ADEQ"):

19 "Mr. Sorenson testified that because wastewater flows
20 cannot be metered efficiently, except at high volumes, BMSC's
21 current tariff for commercial customers uses ADEQ Engineering
22 Bulletin No. 12 ("Bulletin No. 12") to determine flow levels for
23 various types of commercial establishments. (Ex. A-2, at 5-6.) The
24 Company argues that although it is unclear why this approach was
25 initially used, absent a viable alternative proposal Bulletin No. 12
26 should continue to be the basis for determining rates charged to the
27 more than 130 commercial customers in BMSC's service area.
28 (*Id.* at 6.)" [Decision No. 71865 at page 57, lines 3-8.]

29 However, an individual intervenor (Dr. Dennis Doelle, D.D.S.) successfully challenged
the proposed application of a rate and rate design predicated upon Bulletin No. 12 to his
wastewater service situation, as may be noted from the following:

"Dr. Dennis Doelle, D.D.S., requested intervention in this
case to express his concern with the significant increase that he
believes would be imposed on his dental practice as a result of

1 BMSC's rate application and proposed rate design. Dr. Doelle
2 submitted pre-filed testimony and testified at the hearing regarding
3 his concerns with BMSC's use of Bulletin No. 12 as the basis for
4 establishing rates for his practice. (Doelle Exs. 1, 2, and 3.)

5 "Dr. Doelle stated that Bulletin No. 12 is based on
6 assumptions from the 1970s regarding water usage, and thus
7 sewage flows, that are no longer applicable in a modern dental
8 practice. He testified that ADEQ's Bulletin No. 12 established
9 sewage flows at 500 gpd, per dental chair, based on the assumption
10 that each chair had a "cuspidor" (*ie.*, a chair-side sink) with
11 continuously circulating water. Dr. Doelle added that modern
12 dental practices use no more water than any other health care
13 provider because in addition to discontinuance of the use of
14 continuous flow cuspidors, x-ray technology is digitized rather than
15 using circulating water tanks, and dentists now use sterile gloves
16 and waterless hand sanitizer rather than constantly washing their
17 hands with harsh soaps. (Tr. 94-95.)

18 "Dr. Doelle produced exhibits that were introduced in his
19 prior complaint case, including a 1997 affidavit by one of the
20 authors of Bulletin No. 12 and a 1996 letter from a hydrologist at
21 ADEQ. In the affidavit, the affiant states that the sewage flow rate
22 for dental practices was based on his incorrect assumption that
23 dental chairs had constantly running cuspidors. The letter from the
24 ADEQ hydrologist, dated August 30, 1996, stated that "Bulletin
25 No. 12 is being rewritten because of some existing technical
26 problems within the document," and suggested that Dr. Doelle's
27 wastewater discharge amounts should be calculated based on water
28 usage. Dr. Doelle attached to his testimony one of his water bills
29 from Carefree Water Company showing actual water usage at his
office of 11,650 gallons for the month. (Doelle Ex. 2.) This
compares to the 60,000 gallons of sewage flows that would be
assumed for a dental practice with 4 dental chairs, using Bulletin
No. 12 as a guideline." [Decision No. 71865 at page 57, line 15 –
page 58, line 12] [emphasis added]

30 * * *

31 "We agree with Dr. Doelle that, at least with respect to
32 dental offices, the assumptions contained in ADEQ's Engineering
33 Bulletin No. 12 are outdated and do not reflect modern practices
34 that are in effect due to improvements in technology and
35 conservation efforts. Therefore, BMSC should bill Dr. Doelle, and
36 any other similarly situated dental offices, at the standard
37 commercial rate established in this Decision under the category of

1 a health care provider for purposes of wastewater flow levels.”
2 [Decision No. 71865 at page 58, line 22 - page 59, line 1]
3 [emphasis added]

4 In addition, while Decision No. 71865 allowed BMSC to continue to rely on Bulletin No.
5 12 for wastewater flow assumptions in connection with the design of wastewater service rates,
6 the Commission expressed reservations about the contemporaneous nature of its assumptions vis-
7 à-vis current customer practices and/or the appropriateness of exclusive reliance upon that
8 regulation for rate design purposes:

9 “With the exception discussed above, the Company may, for now,
10 continue to rely on Bulletin No. 12 for flow assumptions. However, the evidence presented by Dr. Doelle shows that the
11 assumptions made in Bulletin No. 12 regarding dental offices is extremely outdated and needs to be revised. The obvious
12 inaccuracy of the assumptions made in that document raises the
13 concern that other assumptions in Bulletin No. 12, on which the
14 Company relies for billing all of its commercial customers, may
15 also be outdated.

16 “Although we understand that BMSC does not currently
17 have access to actual water usage data from the unaffiliated water
18 utilities in its service area, it is not clear why Bulletin No. 12 has
19 not been revised for more than 20 years. Therefore, in its next rate
20 application, we direct BMSC to present evidence regarding
21 alternative methods for calculating sewage flow assumptions used
22 for billing its commercial customers. The Company should
23 consider, at a minimum: contacting ADEQ regarding plans for
24 revising Bulletin No. 12; other sewage flow data based on
25 technological improvements and conservation assumptions; and
26 whether it is possible to obtain actual water usage data from the
27 water utilities in BMSC’s service area for purposes of calculating
28 more accurate wastewater flows on its system.” [Decision No.
29 71865 at page 59, lines 9-23] [emphasis added]

26 **B. ADEQ Replacement of Engineering Bulletin No. 12 Prior to Issuance of Decision**
27 **No. 71865.**

28 The Commission’s aforementioned reservations with respect to the usefulness of Bulletin
29 No. 12 for rate design purpose were well-founded.

1 First, Bulletin No. 12 was not in existence at either the time evidentiary hearings were
2 held in Docket No. SW-02361A-08-0609 in November 2009, or when Decision No. 71865 was
3 issued on September 1, 2010 in that docket. Rather, ADEQ had issued a replacement regulation,
4 which became initially effective on January 1, 2001 and effective in amended form on November
5 12, 2005 . . . or a number of years in advance of when Decision No 71865 was issued and the
6 underlying evidentiary hearings conducted! Why BMSC and its witness relied upon Bulletin No.
7 12 at that time to support BMSC's proposed rate design, in light of this earlier regulatory change,
8 is puzzling. In any event, attached as Appendix "D" is a copy of Table 1 to A.A.C. R18-9-
9 323(H), as promulgated by ADEQ in 2005, which replaced Table 1 of Engineering Bulletin No.
10 12. A copy of that latter document is attached as Appendix "E."

11 Second, as Decision No. 71865 correctly observed, a comprehensive analysis of the
12 design of rates for wastewater service should include consideration of

13 ". . . sewage flow data based on technological improvements and
14 conservation assumptions. . ." [Decision No. 71865 at page 59,
lines 19-20]

15 In that regard, the "Note" appearing immediately below the aforesaid replacement Table 1
16 (Appendix "D") suggests the willingness of ADEQ to consider such data, as the same pertains to
17 both utility industry and user practices, in connection with the design and permitting of
18 wastewater facilities. Further, that is precisely what the Commission did in Decision No. 71865
19 in connection with Dr. Doelle and other similarly situated dental practices serviced by BMSC.

20 **C. Availability of Actual Water Usage Data for Purpose of Calculating More Accurate**
21 **Wastewater Flows.**

22 In Decision No. 71865, the Commission also directed BMSC to prospectively ascertain

23 ". . . whether it is possible to obtain actual water usage data from
24 the water utilities in BMSC's service area for purposes of
25 calculating more accurate wastewater flows on its system."
[Decision No. 71865 at page 59, lines 21-23]

26 In that regard, it is Petitioner's understanding that Liberty (as successor to BMSC) could have
27 access to such actual water usage data for its wastewater service customers located within
28 Carefree.
29

1 More specifically, the Town of Carefree owns and operates Carefree Water Company,
2 and it is Petitioner's understanding that the Town of Carefree is willing to provide Liberty with
3 metered inflows of water to its various water customers, such as Petitioners, upon request of such
4 customer(s). This information, in turn, would enable Liberty (and the Commission) to calculate
5 imputed wastewater outflows which more accurately reflected the wastewater customer's actual
6 water consumption and usage practices. In that regard, according to Petitioner's calculation,
7 Bulletin No. 12 imputed a sewage outflow of 30 gallons per day per chair in a restaurant, which
8 is unreasonable by any stretch of imagination; and, under its current tariff, Liberty would be
9 allowed to charge Petitioner for almost 1,000,000 gallons more of imputed wastewater outflow
10 than the amount of water actually purchased and used by Petitioner during the last 12 months.
11 The unreasonableness of this situation is demonstrated by Petitioner's estimate of wastewater
12 services charges, for restaurants with assumed waster consumption equal to Petitioner's average
13 of 29,253 gallons per month, when calculated on the basis of published rates and charges in the
14 following localities:

- 15 • Carefree: \$808.27 (based upon the number of chairs counted by Liberty Utilities)
- 16 • Cave Creek: \$102.75 (\$45.00, plus \$3.00 per 1,000 gallons over 10,000 gallons)
- 17 • Scottsdale: \$134.55 (\$4.60 per 1,000 gallons)
- 18 • Phoenix: \$189.11 (4.8352 x 39.11 per hundred cubic feet actual usage)

19 **D. Fairness and Rational Ratemaking Require that the Commission Not Wait Until**
20 **Liberty Files its Next Rate Application to Address the Rate Design Situation Which**
21 **is the Subject of this Petition and Request.**

22 While the rate situation which is the subject of this petition and request conceivably could
23 be addressed in a future rate case involving Liberty's wastewater customers, there is great
24 uncertainty as to when such a rate proceeding and corrective decision by the Commission might
25 be forthcoming. In the interim, Petitioner and other similarly situated restaurants in Carefree will
26 continue to be subject to the economic burden(s) imposed on them by Liberty's existing rate for
27 wastewater service to restaurants, absent ameliorative action by the Commission in response to
28 this petition and request.
29

1 More specifically, in Decision No. 71865, in connection with its discussion and approval
2 of a rate surcharge related to the then contemplated closure of The Boulders Wastewater
3 Treatment Plant, the Commission ordered that

4 "BMSC will be required to file a full rate application no later than
5 12 months after completion of the closure project. The treatment
6 plant closure project shall be considered to have reached
7 completion upon issuance of a Commission Order approving
8 Staff's recommendation for implementation of a closure
surcharge." [Decision No. 71865 at page 54, line 25 – page 55,
line 1]

9 However, 3 years and 4 months following the issuance of Decision No. 71865, the closure of The
10 Boulders Wastewater Treatment Plant has yet to occur. To the contrary, it is Petitioner's
11 understanding that litigation is currently pending in Maricopa County Superior Court challenging
12 the legality of the Commission's order that the plant be closed; and, it is conceivable that a
13 decision by the Superior Court could be appealed. Thus, the issuance of that Commission order
14 contemplated by Decision No. 71865, which would "trigger" a subsequent filing of a rate
15 application by Liberty may be years into the future.

16 Against the above background, petitioner respectfully submits that fairness and rational
17 ratemaking require that the Commission not wait until Liberty files its next rate application to
18 address the rate design situation which is the subject of this petition and request. Rather, the
19 Commission should adopt that course of action requested of it by Petitioner in Section III below.

20 III.

21 CONCLUSION

22 Based upon the preceding discussion, Petitioner believes that Decision No. 71865 has
23 resulted in charges for wastewater service for users, such as Petitioner and other restaurants in
24 Carefree, which are (i) not "just and reasonable," and thus in violation of Arizona law, and (ii)
25 financially onerous, and thus threatening to the ability of Petitioner and similarly impacted other
restaurants in Carefree to be viable business enterprises.

26 WHEREFORE, Petitioner requests that the Commission (i) reopen Docket No. SW-
27 02361A-08-0609 for the purpose of considering and acting upon this petition and request, (ii)
28 conduct such further fact-finding proceeding as may be necessary or appropriate in the docket for
29 such purpose, and (iii) thereafter, pursuant to its jurisdiction and authority under A.R.S. § 40-

1 252, issue an opinion and order altering or amending Decision No. 71865 so as to address and
2 resolve the concerns of Petitioner and similarly situated Carefree restaurants discussed above.

3
4 RESPECTFULLY SUBMITTED this 21st day of April, 2014.

5 VENUES CAFÉ

6 

7 By: Catherine Marr

8 

9 By: Al Swanson

10
11
12 **ORIGINAL** and thirteen (13) copies
13 Of the foregoing were filed
14 this 21st day of April, 2014, with:

15 Docket Control
16 Arizona Corporation Commission
17 1200 W. Washington Street
18 Phoenix, AZ 85007

19 **COPY of the foregoing was mailed**
20 This 21st day of April, 2014, to:

21 Greg Sorenson
22 Liberty Utilities
23 12725 W. Indian School Road, Suite D-101
24 Avondale, Arizona 85392-9524

25 Jay L. Shapiro
26 Norman D. James
27 Fennemore Craig, PC
28 2394 East Camelback Road, Suite 600
29 Phoenix, AZ 85016-3429
Attorneys for Liberty Utilities f/k/a Black Mountain Sewer Corp.

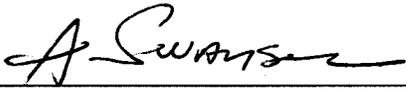
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16 Carefree, Arizona 85377-2506
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19 Sherman & Howard, LLC
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21 Scottsdale, Arizona 85254-8 110
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By: 

Appendix “A”



Liberty Utilities

Phone: 480-488-4152
Fax 623-935-1020

12725 W Indian School Road
Suite D101
Avondale, AZ 85392
www.LibertyUtilities.com

January 8, 2013

Carefree 34, Inc.
PO BOX 2000
Carefree AZ 85377

Account: 1000847-143484

This is a courtesy letter to inform you of a change to your account.

Adhering to the rules and regulations set and approved by the ACC (Arizona Corporate Commission) and in accordance to the Engineering Bulletin No.12; the monthly sewer service charges for a "restaurant" are calculated on a *per gallon / per day flow rate*.

We routinely audit the establishments within our service area and during this past December it was verified that your restaurant had 108 chairs available for service.

We have revised the number of chairs on your account from 12 to 108; this does means that your billing will also be changing accordingly.

Your current monthly flat fee for service was \$87.06. Your new monthly flat rate for wastewater service fees is as follows:

Your restaurant has 108 seats available for service; the *per gallon / per day flow rate* is 30 days (x) the commercial rate of \$0.248734 (x) 108 seats = \$805.90 a month

If you have any questions we can be reached at 480-488-4152 Monday through Friday 7:30am to 4:30pm.

Best Regards

Liberty Utilities
Customer Service

Liberty Utilities
12725 W. Indian School Rd, Suite D101
Avondale, AZ 85392

Ph: 480-488-4152
Fax: 623-935-1020

Appendix “B”

ORIGINAL



Executive Director

COMMISSIONERS
BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH



ARIZONA CORPORATION COMMISSION

October 22, 2013

Certified Mail No. 7105 4522 6440 0004 0888

Black Mountain Sewer Company
Peter Kampian
12725 W. Indian School Rd. - D101
Avondale AZ 85392

Arizona Corporation Commission

DOCKETED

OCT 22 2013

RE: Docket No. SW-02361A-13-0359

DOCKETED BY

Dear Mr. Kampian,

Enclosed is a copy of a Formal Complaint filed with the Arizona Corporation Commission by Al Swanson and Catherine Marr. In keeping with the Arizona Administrative Code (R14-3-106.H), a copy is being forwarded for your action. Please respond within 20 days of the date that you acknowledge the return receipt with an original and thirteen (13) copies with the docket number on the first page of the original and each copy.

Thank you for your immediate attention.

Sincerely,

Kay Mecca
Docket Administrator
Docket Control

Enclosure

cc: Lyn Farmer, Chief Hearing Officer
Janice Alward, Legal Division
Docket (2 copies)

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WWW.AZCC.GOV

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SBernal@azcc.gov

ORIGINAL

FORMAL COMPLAINT FOR
FORMAL COMPLAINT



0000148348

COMPLAINT Carefree 34 Inc./Office on Easy Street Inc., dba Venues Café		COMPLAINT NUMBER	
ADDRESS 34 Easy Street, Carefree, Arizona 85377-2000		PHONE(HOME) 480-488-5555	
NAME OF RESPONSIBLE PARTY Al Swanson and/or Catherine Marr		PHONE(WORK) 480-560-7700	
NAME OF UTILITY Liberty Utilities aka Black Mountain Sewer Co		ACCOUNT NUMBER 1000847-143484	SW-02361A-13-0359

GROUND(S) FOR COMPLAINT: (COMPLETE STATEMENT OF THE GROUNDS FOR COMPLAINT, INDICATING DATE(S)
OF COMMISSION/OMISSION OR ACTS OR THINGS COMPLAINED OF.) (USE ADDITIONAL PAGE IF NECESSARY.)

Rate discrimination/unreasonable difference in rate between classes of service: In April, 2013, Liberty Utilities increased Ratepayers sewer rates in an unreasonable sum of \$8,651.40 per year. This increase is unaffordable and unreasonable. Based upon extensive research of ACC decisions, Ratepayer ardently believes the ACC never intended to violate the Arizona Constitution or any Arizona Revised Statute by imposing an unreasonable and unaffordable rate which would cause any Ratepayer to pay for processing outflow of nearly one million gallons more than water purchased annually. Utility management requested, and the ACC approved a tariff based upon an obsolete ADEQ Engineering Bulletin 12, which seems contrary to Arizona law:

1. The Arizona Constitution, Article 15, Section 12, mandates in part "charges made for service rendered, or to be rendered, by public service corporations with this state shall be just and reasonable, and no discrimination in charges, service, or facilities shall be made between persons or places for rendering a like and contemporaneous service".
2. The Arizona State Legislature addresses discrimination between persons, localities or classes of services: "A.R.S §40-334. B. No public service corporation shall establish or maintain any unreasonable difference as to rates, charges service, facilities or in any other respect, either between localities or between classes of service."

Arizona Corporation Commission

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NATURE OF RELIEF SOUGHT: (USE ADDITIONAL PAGE IF NECESSARY.)

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1. Stipulation by Liberty Utilities/BMSC, with approval by The Arizona Corporate Commission, permits charging Ratepayer a fee equating to the average Water Purchases, in direct correlation with ratios charged other classifications of Service. For example: Residential Ratepayers are charged a flat rate of \$60.00 per month, with average monthly water purchases of 14,051 gallons per month, Restaurants using twice the average monthly consumption (during peak season) should pay not more than twice the average residential rate monthly, Ceteris Paribus.
2. Stipulation the Utility shall not request unreasonable charges on Business Ratepayers in future rate increases.

SIGNATURE OF COMPLAINANT OR ATTORNEY

Catherine Marr & Joe A. Swanson

ARIZONA CORPORATION COMMISSION FORMAL COMPLAINT FORM

GROUND FOR COMPLAINT: (CONTINUED)

Liberty Utilities/BMSC has proven, beyond a reasonable doubt, to be inconsistent in its billing practices, evidenced by the fact this Ratepayer's business has been an operating restaurant for at least 6 years; the Utility now claims Ratepayer was "undercharged". Ratepayer has added exactly zero additional chairs since the business was purchased in August of 2010. Further comparisons from other business Owners, and Landlords, reflect a perspective that rate charges are arbitrary, for instance: A local multi-tenant center, housing 11 separate businesses (including a hair salon) and a restaurant with more chairs than this Ratepayer, claims having been paying about \$500 per month; recently raised to \$900 monthly. A nearby restaurant with 370 chairs recently closed; problems with the Sewer played an irrevocable role in the closing. Another Property Owner (16 year personal friend) claims a building he owns is being classified as an Office Building—although a restaurant has occupied the space for at least four years. One local Restaurant Owner refused to discuss Sewer Rates, not wanting to become a "target". Requests made to Utility Employees for a listing of the chairs of each restaurant being serviced by BMSC/Liberty Utility, to document arbitrary billing practices, have been stonewalled and refused by BMSC employees under the auspicious of customer "confidentiality".

BMSC charges Residential Classification Ratepayers approximately \$60.00 month and households serviced by Carefree Water Company purchase an average of 168,612 gallons of water per year according to the Company (www.CarefreeWaterCo.com) website. Ratepayer alleges it is unreasonable and impossible for BMSC to process more outflow than the amount of water purchased.

Further:

The cost estimated for Sewer charges, for restaurants, based upon the published rates for surrounding municipalities, with equal water consumption of 29,253.25 gallons per month are as follows:

- Carefree: \$808.27 (based upon the number of chairs counted by Liberty Utilities)
- Cave Creek: \$102.75 (\$45.00, plus \$3.00 per 1,000 gallons over 10,000 gallons)
- Scottsdale: \$134.55 (\$4.60 per 1000 gallons)
- Phoenix: \$189.11 (4.8352 x 39.11 per hundred cubic feet actual usage)

Ratepayer contacted the ACC and attended mediation and participated in at least three (3) meetings with the Utility and requested an interim Agreement, based upon number of meals served to comply with the existing Tariff. While the Utility employees initially agreed the rate was unreasonable and proposed basing the rate on meal count, they were apparently advised by their attorneys to not explore this option. ACC staff claims there is "nothing" they can do to resolve this problem.

It is apparent the Restaurants in Carefree are being targeted and unreasonably charged, in comparison to the other restaurants in the area. The Carefree Water Company has agreed to provide water usage to Liberty Utilities/BMSC upon the request of the consumer.

ATTACHMENTS:

1. Liberty Utilities correspondence dated January 8, 2013, courtesy letter of rate increase
 2. Carefree Water Company report of monthly water usage (2 pages) for 2010, 2011, 2012 and 2013
 3. Cave Creek published Sewer Rates
 4. City of Scottsdale Sewer Rates Schedule
 5. City of Phoenix Sewer Service Charges
-

Appendix “C”

ORIGINAL



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Arizona Corporation Commission

2013 OCT 30 P 3:36

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OCT 30 2013

FENNEMORE CRAIG, P.C.
Jay L. Shapiro (No. 014650)
2394 East Camelback Road
Suite 600
Phoenix, Arizona 85016
Attorneys for Liberty Utilities (Black Mountain Sewer) Corp.

ORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO: SW-02361A-13-0359

RESPONSE TO FORMAL
COMPLAINT

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

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

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

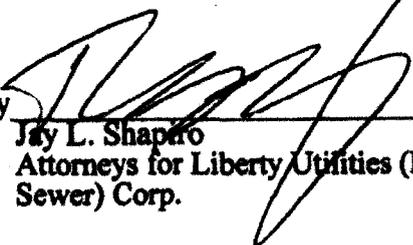
24 For these reasons, the Formal Complaint brought by Venue's Café should be
25 dismissed, or, in the alternative, denied on its merits.

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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.

ORIGINAL and thirteen (13) copies
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this 30th day of October, 2013, with:

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Arizona Corporation Commission
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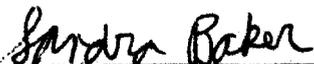
Copy of the foregoing was hand delivered
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Copy of the foregoing mailed
this 30th day of October, 2013, to:

Al Swanson
Catherine Marr
Venues Café
34 Easy Street
Carefree, AZ 85377-2000

By: 
8621128.1/016040.0001

Appendix “D”

Hotel/motel Without kitchen	Bed (2 person)	50
With kitchen	Bed (2 person)	60
Industrial facility Without showers	Employee	25
With showers	Employee	35
Cafeteria, add	Employee	5
Institutions Resident	Person	75
Nursing home	Person	125
Rest home	Person	125
Laundry Self service	Wash cycle	50
Commercial	Washing machine	Per manufacturer, if consistent with this Chapter
Office Building	Employee	20
Park (temporary use) Picnic, with showers, flush toilets	Parking space	40
Picnic, with flush toilets only	Parking space	20
Recreational vehicle, no water or sewer connections	Vehicle space	75
Recreational vehicle, with water and sewer connections	Vehicle space	100
Mobile home/Trailer	Space	250
Restaurant/Cafeteria	Employee	20
With toilet, add	Customer	7
Kitchen waste, add	Meal	6
Garbage disposal, add	Meal	1
Cocktail lounge, add	Customer	2
Kitchen waste disposal service, add	Meal	2
Restroom, public	Toilet	200
School Staff and office	Person	20
Elementary, add	Student	15
Middle and High, add	Student	20
with gym & showers, add	Student	5
with cafeteria, add	Student	3
Boarding, total flow	Person	100
Service Station with toilets	First bay	1000
	Each additional bay	500
Shopping Center, no food or laundry	Square foot of retail space	0.1
Store	Employee	20
Public restroom, add	Square foot of retail space	0.1
Swimming Pool, Public	Person	10
Theater Indoor	Seat	5
Drive-in	Car space	10

Note: Unit flow rates published in standard texts, literature sources, or relevant area or regional studies are considered by the Department, if appropriate to the project.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

ARTICLE 4. NITROGEN MANAGEMENT GENERAL PERMITS

R18-9-401. Definitions

In addition to the definitions established in A.R.S. §§ 49-101 and 49-201 and A.A.C. R18-9-101, the following terms apply to this Article:

1. "Application of nitrogen fertilizer" means any use of a substance containing nitrogen for the commercial production of a crop or plant. The commercial production of a

crop or plant includes commercial sod farms and nurseries.

2. "Contact stormwater" means stormwater that comes in contact with animals or animal wastes within a concentrated animal feeding operation.
3. "Crop or plant needs" means the amount of water and nitrogen required to meet the physiological demands of a crop or plant to achieve a defined yield.
4. "Crop or plant uptake" means the amount of water and nitrogen that can be physiologically absorbed by the roots

Appendix "E"

INDEX OF TABLES

Table 1.	Average daily sewage flow	8
Table 2.	Flow reduction chart for low flow toilets used in individual homes	9
Table 3.	Minimum vertical separations and test hole depths	14
Table 4.	Soil texture classes, composition, and corresponding percolation rates	16
Table 5.	Effective absorption area requirements	22
Table 6.	Effective absorption areas of round seepage pits	23
Table 7.	Minimum setback requirements for on-site disposal systems	32
Table 8.	Minimum setback requirements for on-site disposal systems from canals	33
Table 9.	Comparison of on-site treatment and disposal methods and conditions of use	46
Table 10.	Septic tank capacities	65
Table 11.	Maximum lateral lengths	68
Table 12.	Manifold size	69
Table 13.	Friction loss per 100 ft. of PVC pipe	71
Table 14.	Transport line volumes	74
Table 15.	Selected potential disinfectants for on-site application	81
Table 16.	Chlorine demand of selected domestic wastewaters	82
Table 17.	Halogen dosage design guidelines	83

**TABLE 1
AVERAGE DAILY SEWAGE FLOW**

TYPE OF ESTABLISHMENT (unit basis)	SEWAGE FLOW (gallons per unit per day)
Airport (passenger)	4
Apartments, multiple family (resident)	100
1 bedroom assume 2 residents, 2 bedrooms assume 3 residents, etc.	
Bar (patron)	25
Barber shop (50 per chair over 8)	100
Beauty parlor (100 per chair over 5)	1000
Camp:	
Campground, overnight with flush toilets (camper space)	25
Campground, overnight with flush toilets and shower (camper space)	50
Construction (bed)	50
Day with no meal served (camper space)	15
Lunary (camper)	100-150
Resorts, Day and night, with limited plumbing (camper space)	50
Tourists with central bath and toilet facilities (person)	35
Churches:	
Without kitchens (person)	7
With kitchens (person)	10
Clubs:	
Country (resident member)	100
Country (nonresident member)	25
Cottages with seasonal occupancy (resident)	100
Dental office (chair)	500
Dog Kennel (per animal)	15
Dwellings:	
Boarding of rooming houses (resident)	100
Additional kitchen requirements for nonresidents (boarder)	10
—Dwellings: Residential (resident) (2 residents per bedroom)	100
Factory:	
no showers (person)	25
with showers (person)	35
Highway Rest Area (contact State Department of Transportation)	
Hospital (bed)	250-400
—Hotel	
without kitchen (room)	125
with kitchen (room)	150
Institutions other than hospitals (person)	75-125
Laundries, self service (machine)	400
—Mobile Home Community System for family (space)	250
for adults only community (space)	150
Motel:	
without kitchen (room)	125
with kitchen (room)	150
Office (person)	25
Picnic:	
With bathhouses, showers & flush toilets (picnicker)	20
With toilet facilities only (picnicker)	10
Public Restrooms (toilet)	200
—Recreation Vehicle Park:	
without water or sewer hook-up (vehicle)	75
with water and sewer hook-up (vehicle)	100
Restaurant (seat)	30
per meal served	7
—Schools:	
Boarding (pupil)	100
Day with cafeteria, gymnasiums & showers (pupil)	25
Day with cafeteria, but no gymnasiums or showers (pupil)	20
Day without cafeteria, gymnasiums or showers (pupil)	15
Service Station (bay)	1000
—Shopping Center, (sq. ft. of store area) (no food/laundry)	0.1
Storms	500
Swimming Pool (swimmer)	10
Theaters:	
Drive-in (car space)	5
Movie (seat) (vehicle)	5

For structures and facilities not specifically mentioned in the above table, flow rates available from other standard books and literature are acceptable.