



BEFORE THE ARIZONA CORPORATION RECEIVED

COMMISSIONERS

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2014 SEP 23 P 12: 51

ARIZONA CORP COMMISSION DOCKET CONTROL

ORIGINAL

IN THE MATTER OF CAREFREE 34, INC./ OFFICE ON EASY STREET, INC. dba VENUES CAFE,

DOCKET NO. SW-02361A-13-0359 Arizona Corporation Commission

DOCKETED

SEP 23 2014

vs.

COMPLAINANT,

DOCKETED BY [Signature]

LIBERTY UTILITIES CORPORATION f/k/a BLACK MOUNTAIN SEWER CORPORATION,

RESPONDENT.

PROCEDURAL ORDER (Schedules Hearing)

BY THE COMMISSION:

On October 22, 2013, Carefree 34, Inc./Office on Easy Street, Inc. dba Venues Café ("Café" or "Complainant") filed with the Arizona Corporation Commission ("Commission") a Complaint against Liberty Utilities Corporation f/k/a Black Mountain Sewer Corporation ("Company" or "Respondent") alleging rate discrimination in its charges for sewer service. Complainant further alleges that the increase is unaffordable and unreasonable.

On October 30, 2013, Respondent filed an Answer to the Complaint stating that the Company is charging the rate authorized by Decision No. 71865 (September 8, 2010).

On November 4, 2013, by Procedural Order, a Procedural Conference was scheduled on November 19, 2013, to discuss the issues presented in the Complaint arising from Decision No. 71865.

On November 19, 2013, Ms. Catherine Marr who owns the Café appeared and the Company and the Commission's Utilities Division ("Staff") appeared with counsel. The Café's owner and the Company's counsel indicated that they had previously tried to reach a resolution of the issues and had gone through mediation with Staff without a successful resolution of the issues raised in the Complaint. Further, the attorney for the Company stated that it is charging the approved tariff rate

1 which was established for a particular type of commercial establishment, such as the Café, based on
2 the then current Arizona Department of Environmental Quality (“ADEQ”) Engineering Bulletin No.
3 12 (“Bulletin”) pursuant to Decision No. 71865.¹ Staff counsel added that it is very difficult to
4 change an approved rate absent a rate case.

5 It was further discussed that the Complainant could file a request with the Commission
6 pursuant to A.R.S. § 40-252, to reopen the rate case proceeding in order to reconsider and/or modify
7 the rates established in Decision No. 71865 in Docket No. SW-02361A-08-0609. Subsequently,
8 after further discussions, the Complainant and the Company were unable to resolve the Complaint
9 and since an action had not yet been filed by the Complainant pursuant to A.R.S. § 40-252, a hearing
10 was scheduled.

11 On January 14, 2014, by Procedural Order, a hearing was scheduled on April 24, 2014.

12 On April 21, 2014, the Complainant filed a petition and request for action by the Commission
13 in Docket No. SW-02361A-08-0609 pursuant to A.R.S. § 40-252.

14 On April 23, 2014, by Procedural Order, this proceeding was continued pending the outcome
15 of Complainant’s request to reopen the rate case pursuant to A.R.S. § 40-252.

16 On September 19, 2014, the Complainant filed a Motion to Reschedule Hearing (“Motion”)
17 because there had been no action taken on the Complainant’s petition to reopen the rate case pursuant
18 to A.R.S. § 40-252. Attached to the Complainant’s Motion as an exhibit was a copy of a letter to the
19 Company that announced a “Notice of Termination” based on the disputed billing charges
20 (\$9,197.84) which have arisen from sewerage service under the tariff established in Decision No.
21 71865.

22 Under the circumstances, a hearing should be scheduled and if there is to be a disconnection
23 of service, it should not be effectuated until after a Commission Decision is rendered in this
24 proceeding. Further, Staff should be present at the proceeding and be prepared to participate if
25 required.

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28 ¹ The Bulletin established sewerage rates for restaurants based on either the “chair count” of the establishment or the
number of meals served per day.

1 IT IS THEREFORE ORDERED that a hearing shall be held on **October 28, 2014, at 9:30**
2 **a.m., at the Commission's Offices, 1200 West Washington Street, Hearing Room No. 1,**
3 **Phoenix, Arizona.**

4 IT IS FURTHER ORDERED that, pursuant to A.A.C. R14-2-609(A), that Liberty Utilities
5 Corporation f/k/a Black Mountain Sewer Corporation shall not terminate service to the Complainant
6 until a Decision by the Commission in this proceeding.

7 IT IS FURTHER ORDERED that the Utilities Division be present at the proceeding and be
8 prepared to participate if required.

9 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
10 Communications) continues to apply to this proceeding as the matter is set for public hearing, and
11 shall remain in effect until the Commission's Decision in this matter is final and non-appealable.

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

15 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
16 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
17 Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation
18 to appear at all hearings, procedural conferences, Open Meetings for which the matter is scheduled
19 for discussion, unless counsel has previously been granted permission to withdraw by the
20 Administrative Law Judge or Commission.

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

24 DATED this 23rd day of September, 2014.

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MARC E. STERN
ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed/delivered
2 this 23rd day of September, 2014 to:

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