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BEFORE THE ARIZONA CORPORATION COMMISSION

2 COMMISSIONERS  
3 BOB STUMP - Chairman  
4 GARY PIERCE  
5 BRENDA BURNS  
6 BOB BURNS  
7 SUSAN BITTER SMITH

RECEIVED  
AZ CORP COMMISSION  
DOCKET CONTROL

ORIGINAL

2014 OCT 20 PM 2 28

7 IN THE MATTER OF CAREFREE 34, INC./  
8 OFFICE ON EASY STREET, INC. dba VENUES  
9 CAFÉ,

DOCKET NO. SW-02361A-13-0359

Arizona Corporation Commission

DOCKETED

OCT 20 2014

9 vs.

COMPLAINANT,

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

DOCKETED BY

**PROCEDURAL ORDER**

**(Schedules Procedural Conference)**

12 RESPONDENT.

13 **BY THE COMMISSION:**

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

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

21 On November 4, 2013, by Procedural Order, a Procedural Conference was scheduled on  
22 November 19, 2013, to discuss the issues presented in the Complaint arising from Decision No.  
23 71865.

24 On November 19, 2013, Ms. Catherine Marr who owns the Café appeared and the Company  
25 and the Commission's Utilities Division ("Staff") appeared with counsel. The Café's owner and the  
26 Company's counsel indicated that they had previously tried to reach a resolution of the issues and had  
27 gone through mediation with Staff without a successful resolution of the issues raised in the  
28 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.<sup>1</sup> 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 On September 23, 2014, by Procedural Order, a hearing was scheduled on October 28, 2014.  
23 It was further ordered that no disconnection of service be effectuated, if at all, until after a  
24 Commission Decision is rendered in this proceeding. Further, Staff was directed to be present at the  
25 proceeding and to be prepared to participate if required.

26 ...

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28 <sup>1</sup> 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 On October 17, 2014, Respondent filed a Motion to Compel Response to Data Requests  
2 (“Motion to Compel”). The Respondent requested on expedited ruling based on the upcoming  
3 hearing date.

4 Under the circumstances, a procedural conference should be scheduled to address the Motion  
5 to Compel.

6 IT IS THEREFORE ORDERED that a telephonic procedural conference shall be held on  
7 **October 23, 2014, at 9:30 a.m.**

8 IT IS FURTHER ORDERED that **on the date of and at least five minutes before the time**  
9 **set for the procedural conference, Complainant or Representative, Respondents and/or**  
10 **Respondent’s counsel shall call 1 (800) 689-9374, passcode 415962#, from a landline telephone,**  
11 **to participate telephonically in the procedural conference.** Staff shall appear telephonically in the  
12 same manner.

13 IT IS FURTHER ORDERED that a hearing shall be held on **October 28, 2014, at 9:30 a.m.,**  
14 **at the Commission’s Offices, 1200 West Washington Street, Hearing Room No. 1, Phoenix,**  
15 **Arizona,** as previously ordered.

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

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

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

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

27 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
28 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the

1 Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation  
2 to appear at all hearings, procedural conferences, Open Meetings for which the matter is scheduled  
3 for discussion, unless counsel has previously been granted permission to withdraw by the  
4 Administrative Law Judge or Commission.

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

8 DATED this 20<sup>th</sup> day of October, 2014.

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11   
12 MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

13 Copies of the foregoing emailed/mailed/delivered  
14 this 20<sup>th</sup> day of October, 2014 to:

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