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AZ CORP 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 MOTION FOR
CONTINUANCE OF RESCHEDULED
HEARING**

AND

**MOTION FOR ORDER DIRECTING
COMPLAINANT TO PAY ITS BILL OR
FACE DISCONNECTION**

(Expedited Ruling Requested)

Liberty Utilities (Black Mountain Sewer) Corp. ("Liberty") hereby responds to Complainant Carefree 34 Inc./Office on Easy Street, Inc. dba Venues Café's ("Complainant" or the "Café") Motion for Continuance of Rescheduled Hearing. Additionally, Liberty moves for an order directing the Café to pay its bill or face disconnection pursuant to A.A.C. R14-2-609.

In summary, the Café's motion is frivolous. This is the Café's case, it has been pending for one year, and the Café just filed an "urgent" request for a hearing. The hearing date was set with more than one month's notice to Complainant, and Liberty was directed not to terminate service. Thus, the Café is the beneficiary of a monthly, no interest, and involuntary line of credit from Liberty, a situation the Café is obviously looking to continue as long as possible. By not paying its bill in full every month, however, the Café is in violation of the Commission's rules and regulations. As such,

1 Liberty has the right to terminate service upon proper notice and must be allowed to do so
2 as a matter of law if the Café does not bring its account current.

3 As a consequence, and for the reasons explained herein, this matter should not be
4 continued. If the Café is unwilling to proceed, then its case should be dismissed.¹
5 Furthermore, under any circumstances, the Commission should require the Café to pay its
6 delinquent bill or face termination of service after the hearing in this matter, or
7 October 31, 2014, whichever date comes first.

8 **A. RESPONSE TO THE CAFÉ'S MOTION TO CONTINUE.**

9 On September 19, 2014, the Café filed an "urgent" motion requesting, in part,
10 rescheduling of the hearing previously set for April 24, 2014, and an order directing
11 Liberty not to disconnect service to the Café. A Procedural Order, dated September 23,
12 2014, (1) reset the hearing to October 28, 2014, and (2) ordered that Liberty not
13 disconnect service until a Decision in this proceeding is issued.² Now, a few days before
14 the hearing, the Café seeks a continuance claiming little more than "we are not ready."
15 None of the Café's reasons supports further delay in this matter, especially given that the
16 Café refuses to pay its bills and now owes Liberty more than \$10,000 with additional
17 unpaid amounts accruing on a monthly basis.

18 1. **"Waiting for Advice of Counsel."** The Café's first reason for delaying this
19 matter at Liberty's expense is that its "legal advisor" is "seriously unavailable" because he
20 is "trail riding in Australia."³ For one thing, no attorney has made an appearance on
21 behalf of the Café in this docket, therefore, Mr. Robertson's personal vacation schedule is
22 of no consequence to these proceedings. Moreover, the Café has had a year to seek the

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24 ¹ The Café has also refused to answer discovery, including the identification of witnesses
25 and exhibits. See Liberty's Motion to Compel Responses to Data Requests filed
26 October 17, 2014.

² Procedural Order at 3:1-6.

³ Motion for Continuance of Rescheduled Hearing at 1:21-23.

1 advice of legal counsel, and knew or should have known before the 11th hour that
2 Mr. Robertson would be on a planned vacation out of the country. The Café's first reason
3 for a continuance is without merit and should be rejected.

4 2. "Ms. Marr is too busy running another business in Connecticut." The
5 Café's second excuse is that the co-owner, Ms. Marr, is too busy with another restaurant
6 in another state to prepare to prosecute the Café's case.⁴ Again, this is the Café's case, it
7 has had a year to prepare, and it "urgently" sought a hearing just one month ago. If the
8 Café chooses to make other matters a priority over this complaint proceeding, Liberty
9 should not be held responsible. Liberty is running a business too, and it expects to be paid
10 for the services rendered when it bills for those services per the Commission-approved
11 tariff. The fact that a customer is away on business is hardly an excuse to delay this
12 matter or the Café's attempt to extend the use of Liberty for a monthly credit line to fund
13 the owner's Arizona business so she can run another one in Connecticut.

14 3. "Rate case was complex and required a lot of effort by the Company."⁵
15 The Café is correct that rate cases are complex and require a lot of effort and expense on
16 the part of the utility, but the claim is of no consequence. Decision No. 71865 is a final
17 and non-appealable decision of the Commission, the tariff of rates and charges is on file
18 with the Commission, and neither is subject to collateral attack, as the Café is clearly
19 attempting to do.⁶ The only issues in this proceeding are whether Liberty has billed the
20 Café per the Commission approved tariff and whether the Café has paid those bills in full.
21 How the rates were reached in Decision No. 71865 is, by law, not before the Commission

22 ⁴ Motion for Continuance of Rescheduled Hearing at 1:24-27.

23 ⁵ See Motion for Continuance of Rescheduled Hearing at 1:28 – 2:10.

24 ⁶ The Café's motion readily illustrates Liberty's point. Following the six reasons for a
25 continuance, the motion contains nearly 10 pages of "legal briefing" regarding the rates
26 approved in Decision No. 71865. In other words, the Café is trying to challenge the tariff
of rates and charges approved by the Commission in 2010. As a matter of law, the Café
cannot challenge the rates in this manner.

1 in this docket.⁷

2 Additionally, the Café has had more than a year to prepare for hearing, and a mere
3 month ago it urgently sought a hearing date. It has no excuse for not being ready.
4 Certainly the Café cannot be allowed to rely on the repeated excuse that Liberty and its
5 counsel are seeking “onerous” discovery.⁸ As Liberty’s pending motion to compel clearly
6 illustrates, all Liberty sought was the identity of the Café’s witnesses and exhibits, and an
7 admission that the Café has not paid the amount it has been billed.⁹ There is nothing
8 onerous about these questions and if the Café cannot answer them, its case must be
9 dismissed. It clearly should not be further delayed.

10 4. **“Liberty seems willing to agree to a continuance.”**¹⁰ To be clear, Liberty
11 would like this matter decided as soon as possible. It has been pending for more than a
12 year and needs to be completed. As noted, the Café’s delinquency is now over \$10,000
13 and growing at several hundred dollars every month as the Café continues its refusal to
14 pay its bills in violation of the Commission’s rules and regulations. This is why counsel
15 informed the Café that Liberty would not even consider a continuance until the Café
16 brought its account current. Since nothing in the Café’s 13-page motion offers any
17 assurance that Liberty will be paid, Liberty’s statement is immaterial to the question of
18 whether a continuance should be granted. Clearly, Liberty is injured every day it provides
19 utility service and the Café does not pay its bill.

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22 ⁷ The Café mentions its request that the Commission reopen Decision No. 71865, filed
23 April 21, 2014. Had the Commission wished to revisit the rate decision, it could have
24 granted the Café’s request subject to Liberty’s legal and other objections.
The Commission did not, furthering Liberty’s assertion that this docket cannot be used by
the Café to challenge any aspect of Decision No. 71865.

25 ⁸ Motion for Continuance of Rescheduled Hearing at 1:26-27, 2:1-3.

26 ⁹ Motion to Compel Responses to Data Requests, Exhibit A.

¹⁰ Motion for Continuance of Rescheduled Hearing at 2:11-14.

1 5. “Liberty’s parent company doesn’t need the money.”¹¹ The Café’s
2 assertions are ludicrous. The market value of Liberty’s parent company is entirely
3 irrelevant to the questions of whether Liberty is charging per its approved tariff or whether
4 the Café is paying the bills for utility service. Liberty is entitled to payment for utility
5 service by all of its customers at the rates approved by the Commission.

6 6. “Liberty’s attorney refuses to answer discovery requests from the
7 Café.”¹² This is another frivolous allegation by the Café. To begin with, the Café has not
8 identified any of the allegedly inadequate responses to data requests by Liberty, nor filed a
9 motion to compel. Furthermore, Liberty’s answers to the Café’s data request have been
10 timely provided and they are not inadequate.¹³

11 The remaining roughly seven pages of the Café’s motion is nothing more than legal
12 argument supporting the Café’s challenge to the rates approved in Decision No. 71865.
13 Again, as discussed above, the rates set by the Commission in Decision No. 71865 are
14 final and non-appealable and cannot be challenged in this docket. The questions before
15 the Commission are whether the Complainant has been billed for utility service per the
16 tariff currently on file at the Commission and whether Complainant has failed to pay for
17 wastewater service rendered by Liberty. As such, the Café’s legal arguments are
18 immaterial and certainly provide no support or basis for a continuance.

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¹¹ See Motion for Continuance of Rescheduled Hearing at 2:15-21.

¹² See Motion for Continuance of Rescheduled Hearing at 2:22-29.

¹³ Liberty’s responses (excluding attachments) are attached as **Exhibit 1**.

1 **B. LIBERTY'S REQUEST FOR AN ORDER THAT THE CAFÉ PAY ITS**
2 **BILL IN FULL OR FACE TERMINATION OF WASTEWATER UTILITY**
3 **SERVICE.**

4 Under the Commission's rules, a utility may disconnect service for failure to pay
5 for services rendered in a timely manner.¹⁴ Liberty provided proper notice of termination
6 to the Café on September 10, 2014, explaining that the Café then owed Liberty more than
7 \$9,000.00 for wastewater utility service provided since April 2013.¹⁵ The September 23
8 order prohibiting Liberty from disconnecting service until the Commission issues a
9 decision in this docket preempts Liberty from exercising its right to be paid for service at
10 the rates approved by the Commission. Put simply, it is confiscatory and patently unfair.
11 In no uncertain terms, Complainant has failed to pay its bills for utility service provided
12 by Liberty, and is now using this complaint proceeding to delay its payment obligation
13 even further.

14 While the Commission's rules outline instances where the utility may not
15 disconnect service, those situations are not present here:

16 **A.A.C. R14-2-609. Termination of service**

17 **A. Nonpermissible reasons to disconnect service.** A utility may not disconnect service
18 for any of the reasons stated below:

- 19 1. Delinquency in payment for services rendered to a prior customer at the
20 premises where service is being provided, except in the instance where the
21 prior customer continues to reside on the premises.
- 22 2. Failure of the customer to pay for services or equipment which are not
23 regulated by the Commission.

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25 ¹⁴ See A.A.C. R14-2-609.C.1.b.

26 ¹⁵ See Exhibit 2.

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3. Nonpayment of a bill related to another class of service.
 4. Failure to pay for a bill to correct a previous underbilling due to a billing error if the customer agrees to pay over a reasonable period of time.
 5. Disputed bills where the customer has complied with the Commission's rules and regulations.

7 In this case, Complainant challenges the amount the utility is authorized to charge;¹⁶
8 in other words, the actual rate approved by the Commission. The complaint doesn't
9 revolve around a billing dispute, but is a complaint relating to Complainant's unhappiness
10 with Liberty's applicable tariff. Additionally, a customer can only avoid disconnection in
11 the event of a "billing dispute" when the customer "has complied with the Commission's
12 rules and regulations."¹⁷ Such compliance undoubtedly includes paying the bill for
13 services rendered, which the Café has steadfastly refused to do. Therefore, there is no
14 lawful basis to preclude Liberty from disconnecting service to a delinquent customer.

15 Liberty further asserts that ordering it not to disconnect service to a delinquent
16 customer is unfair and poor public policy. The Café has not paid its bills for services
17 rendered for roughly 18 months and owes the utility approximately \$10,000 as of this
18 date. The Café's complaint has been pending for a year, and Liberty has no idea when it
19 will be decided. Furthermore, Liberty has no assurances that the Café will ever pay the
20 past due bill. Given its attempt to delay these proceedings while not paying its bill,
21 Liberty is now concerned that the Café is attempting to prolong Liberty's subsidized
22 wastewater service through the upcoming busy winter season, in turn allowing the Café to
23 maximize its winter revenue before closing the business sometime thereafter without ever
24

25 ¹⁶ See Complaint filed October 22, 2013; Motion for Continuance of Rescheduled Hearing
at 3-11.

26 ¹⁷ A.A.C. R14-2-609.A.

1 paying Liberty the overdue amounts. Putting that risk on Liberty is patently unfair and is
2 exactly why the Commission rules allow utilities to terminate service unless customers
3 comply with the Commission rules, including payment for utility service in accordance
4 with the Commission approved tariff. In this case, the Café must pay its bills until the
5 complaint is resolved.

6 This is not unfair to the customer. For one thing, Liberty has tried to work out
7 some form of payment plan but the Café refuses. Instead, the Café is only paying
8 approximately \$80-100 each month on monthly bills ranging from \$400-800. Liberty is
9 not a bank, but it is being used as one by the Café to fund its business operations. If such
10 conduct is permitted, it will encourage customers of all utilities to stop paying their bills
11 and file complaints. This cannot be the intent and spirit of the Commission's rules.

12 In summary, under the facts alleged by the Café's complaint, Liberty is charging
13 for sewer service per the Commission approved tariff. The customer must be required to
14 pay for that service at the rate billed, or it must face the consequence of termination of that
15 service. This is both fundamental economics and equitable public policy.

16 **RELIEF REQUESTED**

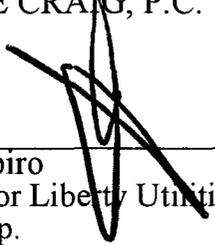
17 The hearing in this matter is currently scheduled for October 28, 2014.¹⁸
18 The hearing should take place on that date as scheduled. Although Liberty is legally
19 entitled to disconnect service for lack of payment, Liberty is willing to wait until after
20 hearing in this matter to terminate service to the Café. As a matter of law, Liberty must be
21 allowed to disconnect the Café from wastewater utility services after that date unless the
22 Café pays the amounts it owes for services rendered. Absent such relief, the Commission

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24 ¹⁸ On October 17, 2014, Liberty was forced to file a motion to compel discovery
25 responses after the Café claimed it was too busy to answer them and asked Liberty for a
26 continuance. Liberty will not agree to any delay in this matter until the order precluding it
from terminating services is vacated, or the Café takes some other means of ensuring
payment for services rendered such as placing the full amount owed in escrow.

1 leaves Liberty at risk of forfeiting more than \$10,000 (and growing) for services that have
2 already been (or will be) provided and billed under the Commission-approved tariff of
3 rates and charges for service. The Café should not be rewarded with a windfall when it
4 has knowingly ignored the Commission's rules and regulations.

5 RESPECTFULLY SUBMITTED this 22nd day of October, 2014.

6 FENNEMORE CRAIG, P.C.

7
8 By  _____
9 Jay L. Shapiro
10 Attorneys for Liberty Utilities (Black Mountain
Sewer) Corp.

11 **ORIGINAL** and thirteen (13) copies
12 of the foregoing were filed
this 22nd day of October, 2014, with:

13 Docket Control
14 Arizona Corporation Commission
1200 W. Washington Street
15 Phoenix, AZ 85007

16 **Copy of the foregoing was hand delivered**
this 22nd day of October, 2014, with:

17 Marc Stern, ALJ
18 Hearing Division
Arizona Corporation Commission
1200 W. Washington Street
19 Phoenix, AZ 85007

20 Robin Mitchell, Esq.
21 Legal Division
Arizona Corporation Commission
1200 W. Washington Street
22 Phoenix, AZ 85007

1 **Copy of the foregoing mailed/e-mailed**
2 this 22nd day of October, 2014, to:

3 Al Swanson
4 Catherine Marr
5 Venues Café
6 34 Easy Street
7 Carefree, AZ 85377-2000

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By: Lula Robertson

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EXHIBIT 1

**LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
F/K/A BLACK MOUNTAIN SEWER CORPORATION
DOCKET NOS. SW-02361A-13-0359
RESPONSES TO CAREFREE 34 INC./OFFICE ON EASY STREET, INC.
DBA VENUES CAFÉ'S DATA REQUESTS DATED OCTOBER 12, 2014**

October 17, 2014

Company: Liberty Utilities f/k/a Black Mountain Sewer Corporation

Address: 12725 W Indian School Road, Suite D101
Avondale, AZ 85392

Company Response Number: I.

Q. Please identify the names of any and all witnesses the Utility plans to call at the hearing in this matter.

RESPONSE: Because the Complainant has the burden of proof, the Company may not call any witnesses in this matter. The final decision on what witnesses need to be called, if any, will be made after the Complainant rests its case. If the Company does elect to call witnesses, those witnesses will likely be Greg Sorensen, Matthew Garlick and/or Thomas J. Bourassa.

**LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
F/K/A BLACK MOUNTAIN SEWER CORPORATION
DOCKET NOS. SW-02361A-13-0359
RESPONSES TO CAREFREE 34 INC./OFFICE ON EASY STREET, INC.
DBA VENUES CAFÉ'S DATA REQUESTS DATED OCTOBER 12, 2014**

October 17, 2014

Company: Liberty Utilities f/k/a Black Mountain Sewer Corporation

Address: 12725 W Indian School Road, Suite D101
Avondale, AZ 85392

Company Response Number: II.

Q. For any and all witnesses identified in response to Data Request I., please identify the subject matter of their testimonies.

RESPONSE: If Mr. Sorensen or Mr. Garlick testifies, they will respond to testimony presented by the Complainant, and they will address Liberty's wastewater tariff, dealings with Venues and cover any and all such subject matters. If Mr. Bourassa testifies, his testimony will cover rate making and rate design to the extent necessary to respond to the complaint and any issues raised by Complainant. As a matter of law, Liberty asserts that issues relating to ratemaking and rate design cannot be decided in this complaint proceeding. This follows from the fact that rates set by the Commission in Decision No. 71865 are final and non-appealable and cannot be challenged in this docket.

**LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
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DOCKET NOS. SW-02361A-13-0359
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DBA VENUES CAFÉ'S DATA REQUESTS DATED OCTOBER 12, 2014**

October 17, 2014

Company: Liberty Utilities f/k/a Black Mountain Sewer Corporation

Address: 12725 W Indian School Road, Suite D101
Avondale, AZ 85392

Company Response Number: III.

Q. For any and all expert witnesses identified in response to Data Request I, please provide a copy of each witness' resume and/or curriculum vitae, and a copy of any and all reports prepared by such witness.

RESPONSE: Mr. Bourassa's resume was provided on April 17, 2014. Another copy is attached.

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October 17, 2014

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Address: 12725 W Indian School Road, Suite D101
Avondale, AZ 85392

Company Response Number: IV.

Q. Please provide a listing of any and all exhibits that the Utility intends to use at hearing.

RESPONSE: Because the Complainant has the burden of proof, the Company may not present any exhibits in this matter. The decision whether and what exhibits are needed, if any, will be made after the Complainant rests its case. Exhibits the Company is likely to use are matters of public record (i.e., tariffs, ACC decisions and rules) of which the Complainant has or has access to already, including the Company's rates and charges tariff page, and Engineering Bulletin No. 12. Additional exhibits that may be used on cross-examination include Complainant's billing history as of August 19, 2014, the Company's Notice of Termination dated September 10, 2014, and e-mail communications between the Company and Complainant dated September 17, 2014 and September 24, 2014. Copies are attached. The Company will seasonably supplement this response as necessary.

**LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
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DBA VENUES CAFÉ'S DATA REQUESTS DATED OCTOBER 12, 2014**

October 17, 2014

Company: Liberty Utilities f/k/a Black Mountain Sewer Corporation

Address: 12725 W Indian School Road, Suite D101
Avondale, AZ 85392

Company Response Number: V.

Q. Admit that LIBERTY UTILITIES/BMSC has been inconsistent in its billings to restaurants, and other commercial ratepayers in the Service Area, contrary to the tariff approved by the Commission in Decision No. 71865 (September 1, 2010). If the Utility denies this data request, in whole or in part, please state the basis for such denial with specificity.

RESPONSE: Deny. Liberty is unaware of any inconsistent billing of restaurants and other commercial customers in its certificated service area. Liberty bills all of its customers in accordance with the rates and charges set forth in the tariff approved by the Commission.

**LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
F/K/A BLACK MOUNTAIN SEWER CORPORATION
DOCKET NOS. SW-02361A-13-0359
RESPONSES TO CAREFREE 34 INC./OFFICE ON EASY STREET, INC.
DBA VENUES CAFÉ'S DATA REQUESTS DATED OCTOBER 12, 2014**

October 17, 2014

Company: Liberty Utilities f/k/a Black Mountain Sewer Corporation

Address: 12725 W Indian School Road, Suite D101
Avondale, AZ 85392

Company Response Number: VI.

Q. Admit that all Restaurants served by LIBERTY UTILITIES/BMSC have **NOT ALWAYS** billed based on the number of chairs in the establishment, contrary to the tariff approved by the Commission in Decision No. 71865 (September 1, 2010). If the Utility denies this data request, in whole or in part, please state the basis for such denial with specificity.

RESPONSE: Deny. The Company bills restaurants based on its tariff of rates and charges approved by the Commission, which includes use of the number of chairs. This includes billings to Complainant since April 8, 2013 when Liberty informed Complainant that Liberty had the business incorrectly listed as an office, not a restaurant.

**LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
F/K/A BLACK MOUNTAIN SEWER CORPORATION
DOCKET NOS. SW-02361A-13-0359
RESPONSES TO CAREFREE 34 INC./OFFICE ON EASY STREET, INC.
DBA VENUES CAFÉ'S DATA REQUESTS DATED OCTOBER 12, 2014**

October 17, 2014

Company: Liberty Utilities f/k/a Black Mountain Sewer Corporation

Address: 12725 W Indian School Road, Suite D101
Avondale, AZ 85392

Company Response Number: VII.

Q. Admit that the Utility did not include in its revenue forecast, in the most recent rate case leading to Decision No. 71865, a computation of additional monies in excess of the historical billings to the 34 Easy Street, Carefree Arizona address, beyond. If the Utility denies this data request/admission, in whole or in part, please state the basis for such denial with specificity.

OBJECTION: This data request is not reasonably calculated to lead to the discovery of admissible evidence in this complaint proceeding. This follows from the fact that rates set by the Commission in Decision No. 71865 are final and non-appealable and cannot be challenged in this docket. The questions before the Commission are whether the Complainant has been billed for utility service per the tariff currently on file at the Commission and whether Complainant has failed to pay for wastewater service rendered by Liberty.

**LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
F/K/A BLACK MOUNTAIN SEWER CORPORATION
DOCKET NOS. SW-02361A-13-0359
RESPONSES TO CAREFREE 34 INC./OFFICE ON EASY STREET, INC.
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October 17, 2014

Company: Liberty Utilities f/k/a Black Mountain Sewer Corporation

Address: 12725 W Indian School Road, Suite D101
Avondale, AZ 85392

Company Response Number: VIII.

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- Q. Please provide a listing (with identifying information redacted as necessary to protect privacy concerns) of all restaurants and the number of chairs in each restaurant billed by the utility, in the service area, for each month since Decision No. 71865 became effective. If the Utility denies this data request, in whole or in part, please state the basis for such denial with specificity.

OBJECTION: This data request is not reasonably calculated to lead to the discovery of admissible evidence in this complaint proceeding. This follows from the fact that the questions before the Commission are whether the Complainant has been billed for utility service per the tariff currently on file at the Commission and whether Complainant has failed to pay for wastewater service rendered by Liberty. Additionally, the information requested is of a customer-sensitive nature and should not be divulged to another customer by Liberty, even in the redacted form requested by the Complainant.

**LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
F/K/A BLACK MOUNTAIN SEWER CORPORATION
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DBA VENUES CAFÉ'S DATA REQUESTS DATED OCTOBER 12, 2014**

October 17, 2014

Company: Liberty Utilities f/k/a Black Mountain Sewer Corporation

Address: 12725 W Indian School Road, Suite D101
Avondale, AZ 85392

Company Response Number: IX.

Q. Admit Carefree Water Company has been owned by the Town of Carefree for well over 10 years and the Utility (and/or its employees) misrepresented to the Commission and/or never asked if the Water Company could provide an accurate calculation of water purchased by the commercial customers in the BMSC service area. If the Utility denies this data request/admission, in whole or in part, please state the basis for such denial with specificity.

OBJECTION/RESPONSE: Liberty lacks sufficient information to (1) admit or deny the ownership of Carefree Water Company or (2) admit or deny whether that utility could provide accurate water use data. Liberty specifically denies that it made any misrepresentations to the Commission regarding the availability of water use data for its wastewater utility customers, not all of whom are located in Carefree, AZ. Liberty also asserts that this data request is not reasonably calculated to lead to the discovery of admissible evidence in this complaint proceeding. This follows from the fact that the questions before the Commission are whether the Complainant has been billed for utility service per the tariff currently on file at the Commission and whether Complainant has failed to pay for wastewater service rendered by Liberty. The rates set by the Commission in Decision No. 71865 are final and non-appealable and cannot be challenged in this docket.

**LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
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Company: Liberty Utilities f/k/a Black Mountain Sewer Corporation

Address: 12725 W Indian School Road, Suite D101
Avondale, AZ 85392

Company Response Number: X.

Q. Admit employees/representatives/management of the Utility expressed concerns over the rates imposed by Decision No. 71865 being unreasonable for restaurants and suggested to Carefree elected/appointed an alternative method of billing restaurants be based upon meals served, in accordance with Engineering Bulletin 12, referenced in the Tariff. If the Utility denies this data request/admission, in whole or in part, please state the basis for such denial with specificity.

OBJECTION/RESPONSE: Liberty lacks sufficient information to admit or deny this data request, but denies that the rates approved in Decision No. 71865 are unreasonable. Liberty further alleges that the tariff approved in Decision No. 71865 speaks for itself.

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Avondale, AZ 85392

Company Response Number: XI.

Q. Please provide the detailed financial information/breakdown of anticipated revenues and projected outflow, per rate classification, used by the Utility in requesting the rate increase imposed by Decision No. 71865 and the calculated projected difference in rates per classification. If the Utility denies this data request, in whole or in part, please state the basis for such denial with specificity.

OBJECTION: This data request is not reasonably calculated to lead to the discovery of admissible evidence in this complaint proceeding. This follows from the fact that rates the set by the Commission in Decision No. 71865 are final and non-appealable and cannot be challenged in this docket. The questions before the Commission are whether the Complainant has been billed for utility service per the tariff currently on file at the Commission and whether Complainant has failed to pay for wastewater service rendered by Liberty.

9636942.1/035227.0003

EXHIBIT 2



Liberty Utilities

September 10, 2014

Registered Mail/Return Receipt Requested

Al Swanson/Catherine Marr
Carefree 34, Inc.
P.O. Box 2000
Carefree, AZ 85377

Via Federal Express

Al Swanson/Catherine Marr
Venues' Café
34 Easy Street
Carefree, AZ 85377

Re: **NOTICE OF TERMINATION—Carefree 34, Inc. d/b/a Venues' Café, 34 Easy Street, Carefree, AZ**

Dear Ms. Marr and Mr. Swanson:

By this letter, Liberty Utilities (Black Mountain Sewer) Corp. ("Liberty") hereby notifies Carefree 34, Inc. as the owner/operator of Venues Café (collectively referred to as "Venues' Café") that Liberty intends to terminate wastewater utility service to Venues' Café for failure to pay delinquent bills for utility service in accordance with A.A.C. R14-2-609(C)(1)(b), unless Venues' Café pays all outstanding amounts owed for wastewater service as set forth below or agrees to a payment plan acceptable to Liberty.

In accordance with A.A.C. R14-2-609(D), Liberty provides the following notice information to Venues' Café.

1. **THE NAME OF THE PERSON WHOSE SERVICE IS TO BE TERMINATED AND THE ADDRESS WHERE SERVICE IS BEING RENDERED.** The name of the person whose wastewater service is being terminated is Carefree 34, Inc. as the owner and operator of Venues Café. Wastewater service is being provided to Venues' Café located at 34 Easy Street, Carefree, Arizona.

2. **THE COMMISSION RULE OR REGULATION THAT WAS VIOLATED AND EXPLANATION THEREOF OR THE AMOUNT OF THE BILL WHICH THE CUSTOMER HAS FAILED TO PAY IN ACCORDANCE WITH THE PAYMENT POLICY OF THE UTILITY.** Put simply, Venues' Café has failed to pay its utility bills in full for wastewater service dating back to April 2013. As of today, Venues' Café owes Liberty a



Liberty Utilities

total amount of \$9,197.84 in unpaid bills for wastewater utility service. The August 2014 bill to Venues' Café' is attached as Exhibit A and details the balance owed on the Venues' Café account.

Unfortunately, Venues' Café has failed and refused to pay the billed amounts for wastewater utility service provided by Liberty. In November 2012, Liberty discovered that Venues' Café was being billed previously as an office, and not as a restaurant. In January 2013, Liberty mailed notice to Venues' Café advising that the applicable monthly rates for wastewater service would be corrected and that Venues' Café would be billed as a restaurant under Liberty's tariff approved by the Arizona Corporation Commission. Liberty mailed a second letter to Venues' Café in February 2013 notifying the customer that a chair count audit would be conducted prior to March 15, 2013. Liberty billed Venues' Café as a restaurant on a per seat basis beginning in April 2013. Venues' Café has failed and refused to pay the full amounts owed for wastewater service provided by Liberty.

In accordance with Decision No. 71865 issued on September 1, 2010, Liberty has billed Venues' Café in accordance with its tariffs as approved by the Arizona Corporation Commission. Under its approved tariff, Liberty charges commercial customers a rate of \$0.248734 per gallon per day (gpd) for wastewater service. As stated in the tariff, "[w]astewater flows are based on ADEQ Engineering Bulletin No. 12, in accordance with the Order." ADEQ Engineering Bulletin No. 12 calculates "sewage flow" based on specified numbers of "gallons per unit per day," which are then multiplied by the approved rate of \$0.248734 to determine the monthly wastewater bill. For restaurants, Engineering Bulletin No. 12 sets sewage flows at 7 gpd per meal or 30 gpd per seat. As approved by the Commission, Liberty is required to use Engineering Bulletin No. 12 when calculating monthly bills and wastewater flows for customers. Based on Liberty's chair count audit, Liberty has billed Venues' Café based on sewage flows under Engineering Bulletin No. 12 per seat (30 gpd).

Under the approved tariff, "bills for utility service are due and payable when rendered. Any payment not received within fifteen (15) days from the date the bill was rendered shall be considered delinquent and subject to the termination policy set forth in the Company's rate tariff." *Liberty Statement of Charges*, Tariff Sheet No. 3, n. 3. Under its tariff, Liberty "has adopted the Rules and Regulations established by the Commission as the basis for its operating procedures. A.A.C. R14-2-601 through A.A.C. R14-2-609 will be controlling of Company procedures, unless specifically approved tariffs or Commission Order(s) provide otherwise." *Liberty Statement of Terms and Conditions*, Tariff Sheet No. 7.

In no uncertain terms, Venues' Café' has refused to pay the authorized amounts for wastewater service for a restaurant under Engineering Bulletin No. 12. On April 21, 2014, Venues' Café filed a petition under A.R.S. § 40-252 requesting that the Commission amend Decision No. 71865 relating to the approved rates for wastewater service to Venues' Café. The Commission refused to act on that petition and Decision No. 71865 remains in full force and



Liberty Utilities

effect, including application of Engineering Bulletin No. 12. As such, Liberty hereby exercises its right to terminate wastewater service to Venues' Café in accordance with the approved tariff and Commission rules and regulations.

3. **THE DATE ON WHICH SERVICE MAY BE TERMINATED.** As noted above, Venues' Café owes Liberty a total amount of \$9,197.84 in unpaid bills for wastewater utility service. Unless that amount is paid in full by Venues' Café on or before September 24, 2014, or Venues' Café and Liberty reach agreement on a payment plan relating to full payment of that amount, Liberty will disconnect Venues' Café and terminate wastewater service to the property on September 25, 2014.

4. **CUSTOMER'S RIGHT TO DISPUTE TERMINATION OF SERVICE.** As required by A.A.C. R14-2-609(D)(2)(d), Venues' Café is hereby advised that it may dispute Liberty's stated reason for termination of service by contacting Todd Wiley, Assistant General Counsel, Liberty Utilities, 12725 W. Indian School Road, Suite D-101, Avondale, AZ, 85392, (623) 240-2087, to discuss the cause for such termination. We are willing and available to meet with you in person or by phone to discuss the cause for termination prior to the scheduled date for termination noted above. We also are willing to discuss arrangements for payment of the outstanding balance owed by Venues' Café, including a payment plan acceptable to Liberty.

Liberty reserves the right to terminate service to Venues' Café after any such discussions with Venues' Café. Venues' Café is also advised that it has the right to file a complaint with the Arizona Corporation Commission relating to this notice of termination.

Respectfully Submitted,

Todd C. Wiley

Assistant General Counsel for Liberty Utilities

cc: Connie Walczak, ACC Consumer Services (w/out encl.)



Liberty Utilities

12725 W Indian School Rd D101
Avondale, AZ 85392
Visit our website at www.LibertyUtilities.com

FOR QUESTIONS REGARDING YOUR BILL CALL (480) 488-4152
FOR EMERGENCIES (After Hours) CALL (623) 935-3395
BUSINESS HOURS M-F 7:30 am - 4:30 pm

CAREFREE 34, INC
PO BOX 2000
CAREFREE, AZ 85377



Statement

ACCOUNT INFORMATION	
Account Number:	1000847-143484
Community Code:	8100
Statement #:	410454
Bill Date:	08/05/2014
Due Date:	08/25/2014
Service Address: 34 Easy ST	
Any previous balances are due immediately.	

SPECIAL MESSAGE

Please visit us at www.libertyutilities.com Our office will be closed on Monday, September the 1st, in observance of Labor Day

SERVICE TYPE	SERVICE DATES	METER NUMBER	CURRENT READ	PREVIOUS READ	UNITS	CHARGE
Commercial Waste Water Fee	08/01/2014 - 08/31/2014				2880.000	\$ 716.34
Current Charges Before Taxes \$						716.34

ACCOUNT ACTIVITY	
Previous Balance	8,451.51
Payment - Thank you!	-87.32
BMSC Late Fee	116.22
Commercial Waste Water Fee	716.34
ACC Assessment	1.09
Total Amount Due	9,197.84

KEEP THIS PORTION FOR YOUR RECORDS

Please include your account number on your check
Make check payable to Black Mountain Sewer Corp

DETACH AND RETURN THIS REMITTANCE PORTION OF THE BILL WITH YOUR PAYMENT

Payment Coupon

PREVIOUS BALANCE	CURRENT CHARGES	TOTAL DUE	AMOUNT ENCLOSED
8364.19	833.65	9197.84	
			Check Number

Please check box and see reverse for: Automatic payment sign up Update phone / address

Service Address: 34 Easy ST

CAREFREE 34, INC
PO BOX 2000
CAREFREE, AZ 85377

LATE PAYMENT FEE:
Payments received after the due date
are subject to 1.5% per month late
fee.

Account Number: 1000847-143484
Community Code: 8100
Statement #: 410454
Bill Date: 08/05/2014
Due Date: 08/25/2014

Liberty Utilities
P.O. Box 52620
Department 8100
Phoenix, AZ 85072

000000004104540000000001434840000000100084700009197846208

Liberty Utilities

Payment Policy

All payments should be mailed in sufficient time to ensure receipt before the printed due date. Do not mail correspondence with your payment. Accounts which remain unpaid after the due date may be subject to a late charge.

Delinquent Policy

Bill is due and payable when rendered and delinquent after the due date. For any previous balance that is overdue a delinquent charge is assessed and this location is subject to disconnect. If delinquent actions are required against your account, the total due plus additional service charges must be paid in full before service can be reinstated. In addition, a deposit may be required. Please contact our office if payment has been mailed to ensure it has been received and posted. To schedule a payment arrangement or dispute charges, you need to contact our office prior to the due date.

Return Check Policy

All returned checks are subject to a return check fee and tax. All past-due amounts and the amount of the check must be paid to avoid interruption of your service.

Green your Blue: Signing up for paperless statements can help reduce clutter, and will also help the environment. When you sign up for paperless statements you will receive an email letting you know your bill is ready. To sign up for paperless statements please go to www.libertyutilities.com

Before you Dig: Contact Arizona Blue Stake at 602-263-1100 or 1-800-782-5348

Utility Regulations and Rates

Water and Sewer regulations and rates are approved by the Arizona Corporation Commission:

Phoenix Office

Tucson Office

1200 W Washington, Phoenix AZ 85007 (602)-542-4251

400 W Congress 2nd Floor, Tucson AZ 85701 (520)-628-6560

Address Change: To update your mailing address you can fill out the form below or go to www.libertyutilities.com

Phone Number: To better serve you please keep us updated with your current phone number.

Surepay Program: Our Surepay Program allows you to have your monthly bill automatically withdrawn from your checking or savings account. Funds will be taken from your bank account and applied to your Liberty Utilities account on the due date printed on your statement. To start the Surepay Program fill out the form below. The application process takes approximately thirty (30) days. Once your enrollment is in effect, "EFT - Do Not Pay" will appear on your bill. You may also sign up for the Surepay Program on our website www.libertyutilities.com.

Address or Phone Number Change

Surepay Program

Last Name _____ First Name _____ M.I. _____

Mailing Address _____

Daytime Phone Number (_____) _____ Email Address _____

----- CONTINUE FOR SUREPAY -----

Name and Address of Financial Institution _____

Bank Transit Number _____ Bank Account Number _____

Surepay Authorization Agreement: I hereby authorize Liberty Utilities and the financial institution designated on this application (until otherwise instructed) to charge the account I have specified for payment of my monthly Liberty Utilities bill. I have the right to stop automatic bill payment by notifying Liberty Utilities 2 business days prior to the payment due date. I understand that a return check fee plus tax will be charged to my account for each payment request returned. If two payment requests are returned, I may be excluded from the plan. In addition, I understand that both the financial institution and Liberty Utilities reserves the right to terminate this payment plan and/or my participation in the plan. I may discontinue at any time by notifying Liberty Utilities.

Signature _____ Date _____