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BEFORE THE ARIZONA CORPORATION COMMISSION

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ARIZONA CORP COMMISSION
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ORIGINAL

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

DOCKET NO. SW-02361A-13-0359

COMPLAINANT.
vs.

**RATEPAYER'S POST-HEARING
POSITION STATEMENT**

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

Arizona Corporation Commission
DOCKETED

NOV 12 2014

RESPONDENT.

DOCKETED BY

Complainant, Carefree 34, Inc. and Office on Easy Street, Inc., dba Venues Café (the "Café"), sincerely appreciates the time and expense spent in Hearing the Complainants' concerns; especially the kind considerations shown by Administrative Law Judge Stern in patiently allowing opportunities for the Café to present their case, over the vociferous objections of attorney Jay Shapiro. The Café understands Liberty Utilities f/k/a Black Mountain Sewer Corporation (the "Utility" and/or "BMSC") wants to meet (*or exceed*) the Revenue Requirement heretofore Approved by the Commission and the clearly stated observation, by Judge Stern; if all the restaurants and/or merchants close their doors, there is no revenue.

The Café clearly understands that according to the Arizona State Constitution, the Arizona Corporation Commission (ACC) has the full power to "prescribe just and reasonable classification to be used and just and reasonable rates". The Complainants duly respect the challenges facing the Commission and the Administrative Law Judge(s) in balancing what is "fair and reasonable" with Arizona Constitutional law(s) as well as the Arizona Revised Statutes,

1 public policy, and the public interests without upsetting Commission approved revenue
2 requirements for a \$1.8 USD billion dollar multi-national utility is a delicate (if not impossible)
3 balancing act requiring the “wisdom of Solomon” in these difficult economic times, especially
4 considering the economic health and well-being of the core business district in a small town
5 (3,300+/- residents) and its very survival is at stake, therefore:

- 6
7 1. It may be appropriate to think about why no other jurisdiction in Arizona (or the
8 United States) uses ADEO Engineering Bulletin 12 (or similar type of Bulletin) to
9 base Sewer Fees, EXCEPT BMSC in its small service area surrounding Carefree,
10 Arizona, serving only about 2,100 total customers. Judge Stern, undoubtedly, did not
11 miss the incongruity of Liberty Utilities/BMSC’s Greg Sorenson’s sworn testimony
12 that quarterly (proven to be inaccurate) “chair counts” were implemented to “help
13 the Town of Carefree” (at the request of Town Officials) to relieve economic pressure
14 on struggling restaurants. Mr. Sorenson, after questioning, admitted the Utility (in
15 fact) increased the sewer fees (*by enforcing the “chair count” via audits*) for most
16 restaurants in 2013, nearly 5 years after its Rate Case; resulting in an unanticipated
17 windfall opportunity of revenue for the Utility.
18
- 19 2. The basics of the Utility’s argument was highlighted when attorney, Jay Shapiro,
20 exceedingly criticized Ms. Marr’s decision to only pay (an average of \$177.00
21 monthly) what she felt (in accordance with Bulletin 12 “per meal served”) an amount
22 that was fair and reasonable” rather than the (unbelievable) \$800+/- invoice(s) billed
23 by the Utility—*on the advice of the Utility*. Mr. Shapiro trumpeted “the restaurant
24 does not allow a customer to pay only 10% of their bill” with words to the affect the
25 restaurant customer had no choice, but to pay. Unspoken is the reality all restaurant
26 customers choose what they eat—prices are clearly understandable and posted on the
27 menu. In fact, customers of all restaurants have a choice on whether to pick a
28 higher/lower priced option—not “forced” to pay for the most expensive alternative or
29 forced to pay for the option that generates the most revenue for the Utility...

1
2 3. The Utility applied to the Arizona Corporation Commission (and received approval)
3 to use ADEQ Engineering Bulletin 12 as their method to calculate their Sewer Fees.
4 The bulletin provides two (2) options. Now the Utility demands ratification it can
5 continue to choose only (“because we can”) the most profitable method to bill the
6 Ratepayers. The Complainant has proven, **beyond a reasonable doubt**, to have
7 accurate customer counts and itemized computerized records of every meal (or drink)
8 served for many years. In light of the computerized records of today’s world, any
9 perspective that restaurants cannot be “relied upon” to provide accurate records
10 simply does not hold water—in fact computerized records of tens of thousands
11 meals, served by the Café, were demonstrated in the hearing to be more accurate
12 than the current “chair count” by Utility employees—highlighted by the fact an
13 entire Wine Bar’s “chair count” (that serves meals) was “missed” by Utility
14 employees, in spite of the fact Utility employees obviously must drive by this Wine
15 Bar to “count chairs” in adjacent restaurants and to get to their office.
16

17 The Ratepayers walked away from the Hearing held November 6, 2014, feeling
18 that while the they were “heard” in the hearing and appreciate their perspective that, without one
19 doubt, Judge Stern “got it” (*that Utility revenue requirements were based upon the base year*
20 *[2008] classifications, without calculating increased revenue from the [2013] Utility*
21 *orchestrated [inaccurate] “quarterly chair counts” that no doubt created unanticipated windfall*
22 *revenue for the Utility*) there was more focus (**by Staff**) on why the (923% increase) billings
23 were not paid by the Complainant and whether the restaurant owners who testified paid their
24 Sewer bill (**after hiding chairs**) to the Utility. The clear intent of Staff (Robin Mitchell) seemed
25 focused on increasing revenue for the Utility and not upon solving an untenable (to the Town of
26 Carefree, the Chamber of Commerce and the restaurateurs) situation created by the Staff’s
27 recommendation for an approval of ADEQ Engineering Bulletin 12. Regardless, ADEQ
28 Engineering Bulletin 12 clearly provides an (interim) alternative resolution, without the necessity
29 of resorting to a costly Rate Case.

1
2 At the risk of “cementing in stone” what the Complainants believe (based upon
3 the obvious/envious [seemingly] “congratulatory” camaraderie between Ms. Mitchell and the
4 cadre of Utility employees/lobbyists appearing to be celebrating another “win” for the utility
5 immediately following the Hearing) to be a foregone conclusion Ms. Mitchell or Staff will
6 recommend a “decision” to continue to utilize the “bizarre” (Robin Mitchell’s stated
7 perception during the procedural conference) Bulletin 12 methodology of basing a Sewer Fee
8 on (empty) a “chair count” and incurring the (perceivable) wraith of Judge Stern; the following
9 observations are put into perspective and respectfully provided for consideration:

- 10
- 11 • “Chair Counts” by Utility employees proved to be grossly inaccurate.
 - 12 • Restaurateurs freely admit “hiding” (as many as) 50% of chairs to reduce Sewer Fees.
 - 13 • Forty percent (40%) of the full service restaurant owners in Town of Carefree testified to
14 erratic billings by the Utility.
 - 15 • One of Carefree’s largest property owners, Rod de Szendeffy, testified to leasing (&
16 paying the Sewer bills) for at least six (6) restaurants over the last 30 years and **not**
17 **knowing about the “chair count” methodology** and never being billed by this method.
 - 18 • Mr. Rod de Szendeffy testified to Liberty Utilities/BMSC’s history of “deals” and/or
19 erratic/inconsistent billings (and de Szendeffy owns about ½ of all the vacant space in
20 the Town of Carefree).
 - 21 • Property Owners/Realtors and a Developer highlighted the negative effects of the Sewer
22 Fee Rate Structure on Economic Development
 - 23 • Liberty Utilities makes “deals” to not bill some customers over the summer months.
 - 24 • Resort restaurants are not considered restaurants or by billed by chair count—why?
 - 25 • Liberty/BMSC counted only 10 restaurants/bars still open in Carefree.
 - 26 • Alberto’s, Pizzafaro’s, Café Bink, China Joy, Sweet Blessings, English Tea Room,
27 Carefree Bistro, Sundial Café, Venues Café, Basha’s (serves a buffet providing more than
28 a handful of tables to “eat in”), Brixx Wine Bar, Cellar 13 Wine Bar, AZ Wine, Black
29 Mountain Coffee Shop and Brugo’s (16 total) are all establishments in the Service area

1 that were functioning establishments on the September 4, 2014 “chair count” and **not**
2 **part of any “Resort”**; all establishments have “seats” and serve food and/or alcohol.

- 3 • **The Carefree Town Council unanimously** approved Resolution 2014-05 (Section 1)
4 **requested “the Arizona Corporation take appropriate action to require that liberty**
5 **Utilities immediately initiate a Rate Case” on May 6, 2014.**
- 6 • **Liberty Utilities/BMSC ignored** the Town of Carefree’s request for a new “Rate Case”
7 provided in Resolution 2014-05.
- 8 • Mayor David Schwan spoke and requested assistance for the Town’s businesses.
- 9 • Vice-Mayor Les Peters explained why rates were egregious to restaurants in Carefree.
- 10 • Councilman Mike Farrar spoke in support of the Restaurant’s position.
- 11 • Carefree/Cave Creek Chamber of Commerce Director, Patty Villeneuve, spoke to support
12 the Café position to base rates on more just and reasonable method and of the importance
13 of successful restaurants to **all** businesses and retailers in Carefree.
- 14 • Carefree is mostly a Seasonal Town; about a 3 month (real) season; all the restaurants
15 need all their “seats” during season to economically survive the slower months.
- 16 • “Chair Count” permits the Utility to charge **more than** ONE MILLION GALLONS of
17 sewer processing, per year, significantly more sewage processing than the total amount of
18 water the Café purchases; it is not possible to have more outflow than inflow.
- 19 • Sewer Fee(s) based upon a “per meal served” customer count closely mirrors Café water
20 purchases of 360,000+/- gallons per year.
- 21 • Mr. Sorenson expressed concerns about meeting “revenue requirements” at the same
22 time, incongruently, appearing seemingly unconcerned about restaurants “hiding chairs”
23 or “roping off” (recommended by the Utility during mediation) areas of the restaurant to
24 reduce Sewer Fees.
- 25 • Sewer Fees based upon “per meal served” will generate more revenue than “snapshot”

26
27 The Café proved it maintains irrefutable/accurate records of meal/customer counts
28 and is willing (rather than argue what is a meal) to stipulate the computerized customer count in
29 the dining/patio/bar areas are subject to the “per meal served” calculation for Sewer Fee (in

1 accordance with Engineering Bulletin 12) which will increase the Sewer Fee(s) to the Utility and
2 more than (fair share) contribute to the Utility's Revenue Requirement. The Café can easily
3 provide the Utility with computerized records of "customer counts" and average each calendar
4 year's number of customers served (if necessary with an increased % for growth calculated
5 therein) and pay the Utility ratably, monthly, to ensure cash flow to the Utility. Annually, an
6 adjustment debit/credit can be made to ensure the Utility receives every dime it deserves.

7 A Decision requiring the Utility to allow a "per meal served" basis, in
8 Accordance with Bulletin 12, will seemingly allow the Utility to comply with (1) the Arizona
9 Constitution, Article 15, Section 12, mandating that service rendered by public service
10 corporations "shall be "just and reasonable" in their charges to the restaurants and their service
11 areas and (2) comply with A.R.S §40-334. (B) which mandates (in part) "No public service
12 corporation" shall establish or maintain any unreasonable difference as to rates, charges
13 service, etc., by directing the Utility to bill restaurants "per meal served" when the restaurant can
14 provide the Utility records and an accurate number of meals the restaurant served; which is an
15 option provided in the Commission's Decision No. 71865.

16 While Carefree may be considered by the Commission, and/or by Ms. Mitchell, to
17 be just a "Podunk" town (*our population is small*) not worthy of the Commission's (or Ms.
18 Mitchell's) time; **very real people have invested their retirements and life savings in the**
19 **Town**. As evidenced by appearance 40% of the "full service" Restaurateurs who
20 testified/attended the Hearing, in addition to the Mayor, Vice-Mayor, Councilmember and the
21 Chamber of Commerce Director (*imagine the proportionate effect of a huge number (40%*
22 *showed up for the Hearing) of the affected restaurateurs in Phoenix, as well as Mayor Greg*
23 *Stanton, City Manager Ed Zuercher and 3 Council Members of the City Council [armed with*
24 *a unanimous "Resolution" for a new Rate Case] all attending a Hearing at the ACC*
25 *regarding egregious billings by any Utility affect the Commission) who all testified that, in*
26 *essence, it is vital to the very survival of the business district in Carefree that the Commission*
27 *immediately resolve this matter.*

1 While the Stakeholders in the Café can somewhat believe the Utilities paradigm
2 the Commission's Decision No. 31865 is not appealable; Stakeholders sincerely believe the
3 Commission's Decision No. 31865 plainly gives the Utility a methodology of computing Sewer
4 Fees (*while not perfect*) that are, at least, a little more "just and reasonable" than a Sewer Fee
5 based upon (an empty) "chair count" and Stakeholders can rationalize "per meal served" to be
6 more closely aligned to water purchases.

7
8 With due respect to the Commission's contemplation all of the many challenges
9 involved in balancing Revenue Requirements concerns (by the Utility) about placing an undue
10 burden on the Utility; providing the Utility with the "easiest" method (counting chairs) to
11 calculate Sewer Fees would/could/should be trumped by the most "fair and reasonable" basis; **all**
12 **restaurants track "covers" aka "meals served" daily.** ADEQ Engineering Bulletin 12
13 unquestionably provides the Utility with an unmistakable option to comply with A.R.S §40-334
14 and Article 15. Section 12 of Arizona's Constitution and apparently requires the Commission's
15 approval to "do the right thing" to use the most "fair and reasonable" option.

16 At the risk of being redundant, the Café sincerely appreciates the time and
17 expense invested in attempting to find a solution to the unintended consequences imposed on
18 Restaurants as a result of their "service classification" the Town of Carefree. The Café pleads for
19 the Commission to employ the "wisdom of Solomon" to resolve this matter to allow Sewer Fees
20 to be based upon "per meal served", in accordance with ADEQ Engineering Bulletin 12 and
21 Decision No. 31865.

22
23 RESPECTFULLY SUBMITTED this 12th day of November, 2014.

24 VENUES CAFÉ

25
26 By:


Catherine Marr

27
28 By:


Al Swanson

1 **ORIGINAL** and thirteen (13) copies
2 Of the foregoing were filed
3 this 12th day of November, 2014, with:

4 Docket Control
5 Arizona Corporation Commission
6 1200 W. Washington Street
7 Phoenix, AZ 85007

8 **COPIES emailed**

9 This 12th day of November, 2014, to:

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14 AND

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19 Attorneys for Liberty Utilities f/k/a Black Mountain Sewer Corp.

20 By: 