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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

DOCKETED

DEC 24 2014

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AZ CORP COMMISSION  
DOCKET CONTROL

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1 **BOB STUMP, CHAIRMAN**  
 2 **GARY PIERCE**  
 3 **BRENDA BURNS**  
 4 **BOB BURNS**  
 5 **SUSAN BITTER SMITH**

|   |  |
|---|--|
| <p>6 IN THE MATTER OF CAREFREE<br/>       7 34, INC./OFFICE ON EASY<br/>       8 STREET INC., dba VENUES CAFÉ,<br/> <br/>       9 COMPLAINANT.<br/>       vs.<br/> <br/>       10 LIBERTY UTILITIES<br/>       11 CORPORATION f/k/a BLACK<br/>       12 MOUNTAIN SEWER<br/>       13 CORPORATION,<br/> <br/>       14 RESPONDENT.</p> | <p>DOCKET NO. SW-02361A-13-0359</p> <p>MOTION TO RECONSIDER THE<br/>       DENIAL OF THE TOWN OF<br/>       CAREFREE'S MOTION TO<br/>       INTERVENE AND TO RE-OPEN<br/>       EVIDENCE REGARDING SELECTION<br/>       OF DISCRIMINATORY SEWER RATES<br/>       IMPOSED UPON RESTAURANTS IN<br/>       CAREFREE ARIZONA</p> |
|---|--|

16 Complainant, Carefree 34, Inc. and Office on Easy Street, Inc., dba Venues Café  
 17 (the "Café") respectfully requests Administrative Law Judge Stern reconsider the (December 9,  
 18 2014) decision to deny the Town of Carefree's MOTION TO INTEREVENE AND RE-OPEN  
 19 EVIDENCE pursuant to Rule 24(A)(2), Arizona Rules of Civil Procedure and R14-3-105, Rules  
 20 of Practice and Procedure of the Arizona Corporation UNLESS this tribunal has concluded a  
 21 "fair and reasonable" Sewer Rate shall be based upon provisions in Engineering Bulletin 12 "per  
 22 meal served" in accordance with Decision No. 71865 (September 8, 2010).

23 The Café asks the commission to consider:

- 24
- 25 1. The Café cannot afford the extraordinary expense of representation by a "Utility"  
 26 attorney qualified to represent its interests before the Commission and believes their  
 27 self-representation was inadequate may have been counterproductive/destructive in  
 28 representing themselves, prejudicing this tribunal by their naivety.  
 29

- 1           2. The Café Stakeholders do not understand (unless the outcome to the Formal  
2           Complaint has already been determined to the benefit of the Town of Carefree) how  
3           Rule 24(a)(2) by Federal Statute does not apply beyond the considerations of a  
4           “timely” motion. The “process” imposed upon the Complainant (by the system) is  
5           now approaching two years; with due respect to the vast resources of our government  
6           and the awesome resources of a \$1.8B USD Canadian Company—the Café is  
7           shouldering the “burden” spending hundreds of hours researching “process” and  
8           “Rules” and “Precedent” to (poorly) conform to a bureaucratic process.
- 9           3. To even suggest the “Process” is burdensome on any party other than the Café is  
10          confusing: The Arizona Corporation Commission regulates the process and the  
11          timing; Liberty Utilities has the option (as requested by the Town of Carefree) of  
12          opening a “Rate Case” if they are concerned about meeting revenue requirements.
- 13          4. Staff Robin Mitchell was seemingly apologetic (during settlement discussions  
14          conducted during the procedural conference on November 4, 2013) in explaining  
15          there was “no one” representing the Commercial Ratepayers during the last “Rate  
16          Case” and “sometimes” mistakes are made that are not apparent until after the Rate  
17          Increase is implemented; further, seemingly sympathetically opined to the affect  
18          “nothing can be done” to appeal the decision at this late date.
- 19          5. Clearly if none of the Restaurants in Carefree were aware of the potential (now  
20          reality) of a 900% increase until they were billed another increase (more than 3 years  
21          after a 43% increase was imposed) it seems ludicrous that “nothing can be done” to  
22          rectify a discriminatory (toward restaurants) rate inadvertently endorsed by Staff.
- 23          6. The Town of Carefree has expressed in their MOTION TO INTERVENE “the  
24          disposition of this action may have a direct adverse effect on the continued viability of  
25          Carefree”; the complainant is not qualified to represent themselves adequately, much  
26          less assume the responsibility of the economic viability of a small town and, logically,  
27          it is in the “Public Interest” to allow Carefree to intervene.
- 28          7. It is our understanding the Town of Carefree motioned to Intervene only after seeing  
29          firsthand, during the hearing, the inadequate representation by the Café.

1 8. The attorney retained by the Café to “coach” the Complainant (and advise in the  
2 process) refused to provide further legal advice—communicating concerns the Café  
3 (unintentionally) “attacked” staff (while the attorney unavailable in Australia) by the  
4 Café highlighting concerns of what they perceived to be inappropriate collegiality  
5 between Robin Mitchell, the CEO of Liberty Utilities and Liberty’s attorneys. The  
6 Café has been advised attorneys specializing in “Utility” law are a very small  
7 community and no attorney wants to take the risk of aligning themselves with a Client  
8 who may have antagonized the Commission Staff.  
9

10 The Café did not foresee the implications or understand the necessity of responding to  
11 Liberty’s RESPONSE IN OPPOSITION TO THE TOWN OF CAREFREE’S MOTION TO  
12 INTERVENE filed December 3, 2014, or the Utilities Response to the most recent “MOTION  
13 TO STRIKE” filed by the attorney for Liberty Utilities f/k/a Black Mountain Sewer Corporation  
14 (the “Utility” and/or “BMSC”) on November 18, 2014. The Ratepayer(s) never seriously  
15 considered the possibility of a Denial to the Town’s motion to intervene and while the Café and  
16 appreciates the copious amounts of time spent on this Hearing by Administrative Law Judge  
17 Stern and Staff, this Ratepayer (wrongfully) assumed the Arizona Corporation Commission Staff  
18 would want to know the economic well being of the entire Town may hinge on this ruling.

19 From the Complainant’s perspective, the referenced ”Motion to Strike” appeared to be  
20 simply a sub-rosa effort for the Utility to make a “closing brief” despite clearly stating, during the  
21 hearing, the Utility’s CEO felt there was “no need”. The Café felt Liberty’s attempts to “spin” the  
22 record were not credible.

23 Examples of Liberty’s “spin” include:

- 24 • (Page 1, lines 16-17) False accusations that “Mr. Swanson is engaged in the  
25 unauthorized practice of law” and highlight the Utility’s relentless attempts to  
26 distract/mislead/obfuscate the basics of the Formal Complaint: Mr. Swanson is an  
27 investor in the restaurant. (a) Further, Mr. Shapiro (as the Commission knows) should  
28 have carefully read Page 1, line 23-26 of “Complainant’s Response to second set Data  
29

1 Requests” which clearly states “Al Swanson is an equal Partner/Stakeholder” and is  
2 hereby ratified as authorized to speak on behalf of the Café in whatever capacity  
3 necessary to comply with all Rules and Regulations of the Commission and Arizona  
4 Law.” (b) Mr. Shapiro should have also taken the time to notice Mr. Swanson and  
5 Ms. Marr filed the “Formal” Complaint” jointly. (c) As an attorney specializing in  
6 Utility Law, Mr. Shapiro should know, and the ACC website reveals: “*Effective July*  
7 *1, 2003, a legal entity, such as a corporation or limited liability company, may be*  
8 *represented by a full-time officer, partner, member or manager of a limited liability*  
9 *company, or employee, provided that: the legal entity has specifically authorized*  
10 *such person to represent it in the particular matter”*. (d) While it is doubtful any  
11 business person can be expected to know the various “ins and outs” of participating in  
12 an ACC Hearing, the Café’s Owners want to ensure the Commission knows, well  
13 beyond a reasonable doubt, Complainants would never knowingly mislead the  
14 Commission or the Utility for any reason.

- 15 • (Page 2, lines 1-10) Procedural Infirmities: Café Owners were unaware a “Closing  
16 Brief” was allowed and, while Ms. Marr did state she “did not want” to file a Closing  
17 Brief, the question/procedure was not anticipated. The Café Owners sincerely  
18 apologizes for any inconvenience; there was never any intent to mislead anyone,  
19 whatsoever, nor was there any attempt to waive procedural norms—if the Café had  
20 known, in advance of the question, that it was normal to file a closing brief the  
21 response would have not have been to waive any “right” or expectation of the  
22 Commission to file a Closing Brief.
- 23 • (Page 3, lines 1-2) While neither Ms. Marr or Mr. Swanson are attorneys and unlike  
24 attorneys who (by law) cannot be held liable for their misstatements; the Café is  
25 unaware of any unsupported or misstated views by its Owners other than vague  
26 accusations (harmful) by an attorney for the Utility who cannot be held personally  
27 liable for misstatements, by law.  
28  
29

- 1 • (Page 3, lines 1-10) Again, the Utility’s Attorney attempts to discredit the truths  
2 and/spin by misrepresentation of the Record: Greg Sorenson’s sworn Testimony  
3 revealed Liberty’s rate design was based upon the total (historical) revenue stream in  
4 the 2008 “Test Year” from the commercial and residential Ratepayers and was  
5 awarded a 43% rate INCREASE; the Utility obfuscates about its “second bite of the  
6 apple” increasing the Sewer Fees (allegedly by audit) as much as 920% MORE in the  
7 first quarter of 2013.
- 8
- 9 • (Page(s) 3/4, lines 12-23/) Ms. Marr testified to the effect the POS system is  
10 intertwined with Credit Card processing and cannot be altered once credit card are  
11 processed for payment each and every day. Meal counts may be inherently vague and  
12 ambiguous; nevertheless, the Café has stipulated (regardless of the obvious  
13 inaccuracy) that each customer served (including customers who only have a drink)  
14 will be counted in the “per meal served” computation, which can easily be  
15 “independently verified” by the Utility by computerized (not alterable) POS records,  
16 whenever they choose.
- 17 • The Utility is stripped of any argument contemplated on “what counts as a meal?”  
18 when every customer is counted, regardless of whether they order a meal or a salad, or  
19 a bottle of water. Logically, not every customer orders a meal and stipulating the total  
20 “customer count” will be counted as a “per meal served” will generate more revenue  
21 for the utility than wasting time (and money) arguing over “split meals”; in-house  
22 staff/owner meals are discounted to all employees and all meals are included in the  
23 customer count; there is zero ambiguity over customer count. (a) In calendar year  
24 2012 the Café served exactly 42,264 customers; (b) in calendar year 2013 the Café  
25 served exactly 46,163 total customers (c) YTD in 2014 the Café has served 42,920  
26 customers.

27  
28 PROPOSED RESOLUTION IN ACCORDANCE WITH THE DECISION AND  
29 ENGINEERING BULLETIN 12;

1 The Café recognizes the inherent difficulties created by Liberty's request to use  
2 Engineering Bulletin 12 and proposes itself as a typical example of how revenue would actually  
3 increase (more than the 43% heretofore imposed in December 2010) if the Commission decides  
4 to allow provisions included in Bulletin 12, based upon the premise every customer is stipulated  
5 to be included in a "per meal served" count, the average monthly revenue to the Utility paid by  
6 Venues Café would have been calculated:

7  
8 (a) For calendar year 2012 ( $42,264 \text{ customers} / 364.25 = 115.71$  average total number of  
9 *customers per day, multiplied by 7 gallons per customer per day*  $115.71 \times 7 = 809.97$  gallons per  
10 *day*  $\times \$0.248734 = \$201.47$ ) an average monthly Sewer Fee of \$201.47. This revenue to the Utility  
11 can be justified by any reasonable person and would certainly be more "fair and reasonable" than  
12 charging a discriminatory rate for nearly 1 million gallons of processing per year.

13 (b) Using the same formula ( $46,163 \text{ customers} / 364.25 = 126.73$  average total number of  
14 *customers per day, multiplied by 7 gallons per customer per day; 126.73*  $\times 7 = 887.11$  gallons per  
15 *day*  $\times \$0.248734 = \$220.65$ ) the average revenue to the Utility, paid by Venues Café in 2013 would  
16 be \$220.65 monthly.

17  
18 Examples included in the Venues Café example for both 2012 and 2013 illustrated herein  
19 would still be significantly higher than revenue anticipated in the decision during the 2010 Rate  
20 Case foreshadowed during base "test year" 2008 and may be the most "fair and reasonable"  
21 temporary solution, until such time as Liberty Utility chooses to initiate another "Rate Case".

22 A Decision requiring the Utility to allow a "per meal served" basis, in Accordance with  
23 Bulletin 12, will seemingly allow the Utility to comply with (1) the Arizona Constitution, Article  
24 15, Section 12, mandating that service rendered by public service corporations "shall be "just and  
25 reasonable" in their charges to the restaurants and their service areas and (2) comply with A.R.S  
26 §40-334. (B) which mandates (in part) "No public service corporation" *shall establish or*  
27 *maintain any unreasonable difference as to rates, charges* service, etc., by directing the Utility to  
28 bill restaurants "per meal served" when the restaurant can provide the Utility records and an  
29

1 accurate number of meals the restaurant served; which is an option provided in the Commission's  
2 Decision No. 71865.

3 While The Town of Carefree may be considered by the Commission, and/or by  
4 Ms. Mitchell, to be just a "Podunk" town (*our population is small*) not worthy of staff time;  
5 given the perspective the economic viability of the Town of Carefree will be affected by the  
6 Commission's Decision in this matter and the Town should have the opportunity to be heard, in  
7 accordance with Rule 24(A)(2), Arizona Rules of Civil Procedure and the Café humbly requests  
8 the Decision to Deny the Town of Carefree's Motion to intervene be allowed, unless the  
9 Commission Staff will employ the "wisdom of Solomon" to (at least temporarily) resolve this  
10 matter to allow Sewer Fees to be based upon "per meal served", in accordance with ADEQ  
11 Engineering Bulletin 12 and Decision No. 31865.

12  
13 RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of December, 2014.

14 VENUES CAFÉ

15  
16 By:

  
Catherine Marr

17  
18  
19 By:

  
Al Swanson

20 **ORIGINAL** and thirteen (13) copies  
21 Of the foregoing were filed  
22 this 12th day of November, 2014, with:

23 Docket Control  
24 Arizona Corporation Commission  
25 1200 W. Washington Street  
26 Phoenix, AZ 85007  
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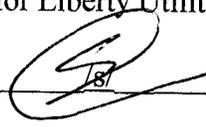
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This 24<sup>th</sup> day of December, 2014, to:

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

AND

Jay L. Shapiro  
Fennemore Craig, PC  
2394 East Camelback Road, Suite 600  
Phoenix, AZ 85016-3429  
Attorney for Liberty Utilities f/k/a Black Mountain Sewer Corp.

By:  \_\_\_\_\_