Transcript Exhibit(s)

Docket #(s): SW-02361A-15-0206

SW-02361A-15-0207

Arizona Corporation Commission
DOCKETED

FEB 10 2016

DOCKETED BY

Exhibit #: A-14 - A-17

S-1 - S6

RUCO 1-4

Resort 1 and 2

Carefree 1 & 2

AZ CORP COMMISSION
DOCKET CONTROL
2016 FEB 10 P 3:39
RECEIVED

Part 2 of 2

SHAPIRO LAW FIRM, P.C.
Jay L. Shapiro (No. 014650)
1819 E. Morten Avenue, Suite 280
Phoenix, Arizona 85020
Telephone (602) 559-9575
jay@shapslawaz.com

LIBERTY UTILITIES
Todd C. Wiley (No. 015358)
12725 W. Indian School Road, Suite D-101
Avondale, Arizona 85392
Todd.Wiley@libertyutilities.com

Attorneys for Liberty Utilities (Black Mountain Sewer) Corp.

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR AUTHORITY TO ISSUE EVIDENCE OF INDEBTEDNESS IN AN AMOUNT NOT TO EXCEED $3,400,000.	DOCKET NO: SW-02361A-15-0206
IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY AND FOR INCREASES IN ITS WASTEWATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.	DOCKET NO: SW-02361A-15-0207

REBUTTAL TESTIMONY OF

WILLIAM R. KILLEEN

January 6, 2016

EXHIBIT
A-14
ADMITTED

TABLE OF CONTENTS

I. INTRODUCTION 1

II. THE APUC COST ALLOCATION 2

A. The APUC Cost Allocation is a Necessary and Reasonable Cost of Service 2

B. The Story of the APUC Cost Allocation Since Decision No. 71865 12

III. REBUTTAL TO STAFF AND RUCO ON APUC COST ALLOCATION 17

I. INTRODUCTION.

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is William R. Killeen. My business address is 345 Davis Road, Oakville, Ontario, Canada, L6J ZX1.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

A. I am providing this testimony on behalf of the applicant Liberty Utilities (Black Mountain Sewer) Corp. (hereafter "Liberty Black Mountain" or the "Company").

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am the Director of Regulatory Operations for Liberty Utilities (Canada) Corp. ("Liberty Utilities Canada"). Liberty Utilities Canada is the parent company of Liberty Utilities Co. ("Liberty Utilities").

Q. DID YOU PREVIOUSLY PROVIDE TESTIMONY ON BEHALF OF LIBERTY BLACK MOUNTAIN IN THIS CASE?

A. Yes. My direct testimony was filed on June 22, 2015 with the Company's application. My testimony explained the APUC and Liberty Utilities' corporate Cost Allocation Manual ("CAM") and the benefits of our shared service model to Liberty Black Mountain and the other regulated utilities operated by Liberty Utilities, including the various Arizona water and wastewater utilities. My testimony supported the request to include $37,815 of corporate cost allocations in the Company's operating expenses, which amount represents the Company's proportionate share of the total costs incurred by APUC for the benefit of its subsidiaries. This amount is in addition to the allocation from Liberty Utilities in the amount of $84,858.65

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. To respond to the recommendations by Staff and RUCO to disallow most of the APUC cost allocation to Liberty Black Mountain. There does not appear to be any

dispute over the costs allocated to the Company by Liberty Utilities in this case; the dispute appears limited to the APUC costs.

Q. SO THE COMPANY DISAGREES WITH STAFF'S AND RUCO'S RECOMMENDED ADJUSTMENTS TO THE CORPORATE COST ALLOCATION FROM APUC TO LIBERTY BLACK MOUNTAIN?

A. Yes, strongly. Staff and RUCO have reversed the clock back several years, ignoring that the Commission has continued to revisit our cost allocation subsequent to Decision No. 71865. As a result, Staff and RUCO recommend the elimination of costs that are critical to Liberty Black Mountain's efficient operations, including access to capital. Incredibly, Staff and RUCO have gone so far as to recommend denial of costs relating to legal requirements for APUC to be listed on the Toronto Stock Exchange ("TSX"), which is where capital for improvements is raised.

II. THE APUC COST ALLOCATION.

A. The APUC Cost Allocation is a Necessary and Reasonable Cost of Service.

Q. WHAT EXACTLY DO THE COSTS STAFF AND RUCO ELIMINATED PAY FOR, MR. KILLEEN?

A. The specific amounts allocated to Liberty Black Mountain during the test year are illustrated in the Table below, which Table was included in the Company's response to Staff Data Request CSB 6.1:

Description of APUC Expense	Total APUC Expense	Allocation Percent	APUC Amount Allocated to Affiliate	Allocation Percent	APUC Amount Allocated to Black Mountain	NARUC Account Number
Legal Costs	$389,618.02	16.17%	$63,001.23	3.86%	$2,431.85	734
Tax Services	$637,075.68	16.17%	$103,015.14	3.86%	$3,976.38	734
Audit	$687,211.34	16.17%	$111,122.07	3.86%	$4,289.31	734
Investor Relations	$87,327,97	16.17%	$14,120.93	3.86%	$545.07	734
Director Fees and Insurance	$728,234.51	16.17%	$117,755.52	3.86%	$4,545.36	734
Licenses, Fees and Permits	$211,229.89	16.17%	$34,155.87	3.86%	$1,318.42	734
Escrow and Transfer Agent Fees	$55,605.20	16.17%	$8,991.36	3.86%	$347.07	734
Other Professional Services	$443,302.95	16.17%	$71,682.09	3.86%	$2,766.93	734
Office Administration	$2,823,698.31	16.17%	$456,592.02	3.86%	$17,624.45	734
Total	**$6,063,303.87**		**$980,436.23**		$37,844.84	

Q. WHY ARE THESE COSTS REASONABLE AND NECESSARY FOR LIBERTY BLACK MOUNTAIN TO PROVIDE WASTEWATER UTILITY SERVICE TO ITS CUSTOMERS?

A. There are a number of reasons. First and foremost, many of the costs at issue are legal requirements of the TSX. These costs are the same types of costs that entities traded on the New York Stock Exchange (NYSE) are required to incur. They are a necessary and unavoidable part of a publicly traded entity's cost of doing business. APUC's presence on the TSX is the means by which Liberty Utilities obtains capital for investment from APUC, and I do not think anyone disputes that APUC's access to capital is a benefit to Liberty and its customers in Arizona.[1] If we need

[1] *E.g., Liberty Utilities (Rio Rico Water & Sewer) Corp. (formerly Rio Rico Utilities, Inc.)*, Decision No. 72059, at 21:19-21; *Liberty Utilities (Bella Vista Water) Corp. (formerly Bella Vista Water Co, Inc.)*, Decision No. 72251(April 7, 2011) at 27:20-25; *see also*

access to capital and this is how we do it, then the associated costs should be included if we show they are required, which we have done in this case.

Q. OKAY, LET'S DISCUSS "THESE COSTS" IN MORE DETAIL. WHAT ARE INVESTOR RELATIONS EXPENSES?

A. Investor relations costs are incurred to comply with filing and regulatory requirements of the TSX and to meet the expectations of unitholders.[2] These costs include items such as news releases and investor conference calls. In the absence of unitholder communication costs, investors would not invest in APUC and, in turn, APUC would not have capital to invest in its subsidiaries. Without such communications services, the subsidiaries would not have a readily available source of capital funding. That includes Liberty Black Mountain.

Even more compelling is that investor communications expenses are an important aspect of APUC being publicly traded, and are therefore critical to services provided by Liberty Black Mountain. APUC, a publicly traded entity, must issue certain communications subject to the TSX's rules and regulations. Examples include Section 714 of the TSX Company Manual stating that "TSX may delist the securities of a listed issuer that has failed to comply with TSX's Timely Disclosure policy..."[3] Additionally, Section 406 of the TSX Company Manual in part states "Companies whose securities are listed on the [TSX] are legally obligated to comply with the provisions on timely disclosure...."[4] Finally, the Canadian National Policy 51-201 Disclosure Standards states in Section 4.5 that "Companies who do not comply with an exchange's requirements could find

---

pages 14 – 16, *infra*.

[2] APUC investors hold units and not shares.

[3] **Exhibit WRK-RB1** (excerpt from Company response to Staff Data Request CSB 6.1).

[4] **Exhibit WRK-RB2** (excerpt from Company response to Staff Data Request CSB 6.1).

themselves subject to an administrative proceeding before a provincial securities regulator."[5] These requirements are no different than publicly traded companies on the NYSE whose Listed Company Manual, Section 202.05 states "A listed company is expected to release quickly to the public any news or information which might reasonably be expected to materially affect the market for its securities. This is one of the most important and fundamental purposes of the listing agreement that the public company enters into with the [TSX]."[6]

Boiled down, these investor relations expenses are necessary for APUC to raise capital and provide capital to its regulated utility subsidiaries. As a publicly traded entity, APUC risks being delisted if it does not comply, and if delisted APUC could not provide capital to Liberty Utilities for Liberty Black Mountain. This is likely why the Commission has approved these costs for recovery in recent rate cases for affiliated entities, as I discuss further below in this testimony.

Q. DO LIBERTY BLACK MOUNTAIN AND ITS CUSTOMERS BENEFIT FROM THESE COSTS?

A. Of course. Liberty Black Mountain is seeking recovery of corporate costs incurred by APUC and Liberty Utilities in order for them to continue providing Liberty Black Mountain with access to capital. Those costs are required in order to maintain listing on the TSX. Those costs do not solely benefit unitholders or investors; they are necessary and legally required costs of being listed on the TSX. Liberty Black Mountain and its customers are the prime beneficiaries of those costs because capital would not be available from APUC or Liberty Utilities unless those costs were incurred. If the Commission wants Liberty Black Mountain to continue having steady and guaranteed access to capital funding from the TSX, then Liberty

[5] **Exhibit WRK-RB3** (excerpt from Company response to Staff Data Request CSB 6.1).
[6] **Exhibit WRK-RB4** (excerpt from Company response to Staff Data Request CSB 6.1).

Black Mountain must pay its fair share of those costs.

Any reasonable investor certainly would expect a subsidiary receiving capital from the TSX to pay its fair share of the costs required to obtain that capital in the first place. Unfortunately, it is clear that neither Ms. Brown nor Mr. Coley has any real understanding of the legal requirements of the TSX or investor expectations on these corporate cost issues despite the information they were given in the discovery phase of this case.

Q. IF LIBERTY BLACK MOUNTAIN WAS A STAND-ALONE, PUBLICLY TRADED COMPANY, WOULD IT INCUR INVESTOR COMMUNICATIONS EXPENSES?

A. Yes, if it was a publicly traded entity listed on a stock exchange and that was where it raised its capital. The rules apply to all entities on the exchanges, not just to APUC.

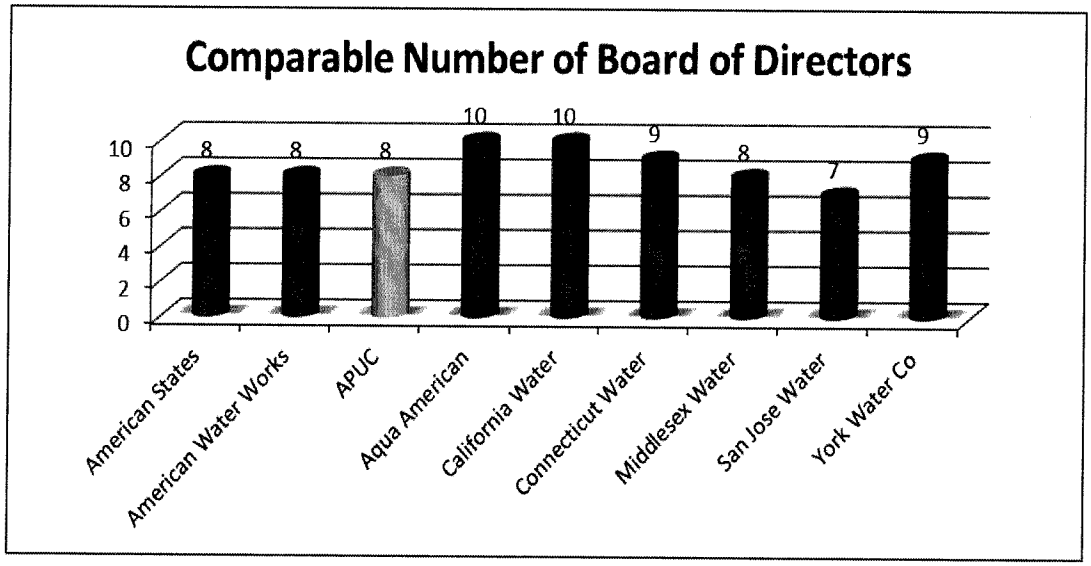
Q. OKAY. WHAT ARE DIRECTOR FEES AND INSURANCE?

A. Trustee/Director fees are also known as Board of Directors Fees. These fees are fees provided to the APUC's Board of Directors in return for providing services to the entity in the form of things like strategic oversight, corporate governance and budget reviews, among other duties. All publicly traded companies on the TSX or NYSE are required to have a Board of Directors. APUC's Board of Directors has eight members.

Trustee Fees, also known as Board of Directors Fees, are an important aspect of being publicly traded. APUC incurred this expense out of compliance with law and to adhere to sound corporate governance practices. The TSX's Guide to Listing states that "Management, including board of directors, should have adequate experience and technical expertise relevant to the company's business and industry as well as adequate public company experience. Companies are required

to have at least two independent directors."[7] The NYSE has a similar requirement in Section 303A.01 "Listed companies must have a majority of independent directors. . . . Effective boards of directors exercise independent judgment in carrying out their responsibilities. Requiring a majority of independent directors will increase the quality of board oversight and lessen the possibility of damaging conflicts of interest."[8]

Additionally, as shown in the graph below, APUC's Board of Directors is smaller than or similar in size to comparable boards of directors (taken from a sample cost of capital proxy group).



Put simply, Board of Director fees are an accepted and necessary cost of operations for publicly traded companies, including APUC and its subsidiaries.

In conjunction with having a Board of Directors, APUC also has Directors' Insurance. Similar to attracting talented employees, attracting a talented Board of Directors is important to a publicly traded company. Insurance covering the Board

[7] **Exhibit WRK-RB5** (excerpt from Company response to Staff Data Request 6.1).
[8] **Exhibit WRK-RB6** (excerpt from Company response to Staff Data Request 6.1).

of Directors is critical, and other publicly traded utilities have similar insurance. Liberty Black Mountain provided Staff with examples of other utilities incurring similar insurance costs in a data request response.[9] As discussed further below, it is my understanding that the Commission has approved these costs for recovery in recent rate cases for affiliated entities.

Q. WHY IS IT REASONABLE TO ALLOW LIBERTY BLACK MOUNTAIN TO RECOVER AN ALLOCATED SHARE OF DIRECTOR FEES AND INSURANCE?

A. As I just explained, maintaining a board of directors by APUC, especially an independent board not otherwise employed by the entity, is a requirement of the TSX and NYSE. "Requiring a majority of independent directors will increase the quality of board oversight and lessen the possibility of damaging conflicts of interest."[10] What's more, Liberty Black Mountain and its customers clearly benefit from services provided by APUC's Board of Directors, including corporate oversight, financial controls and other beneficial services. Again, the simple fact is that Liberty Black Mountain would not have access to capital from APUC unless APUC incurred these Board of Directors fees and insurance. These fees and costs are necessary for APUC to be able to provide the benefit of access to capital. Without these costs, APUC cannot operate as a publicly traded entity on the TSX. These are similar costs authorized for other publicly traded utilities providing service in Arizona.

Q. DO OTHER PUBLICLY TRADED COMPANIES COMPENSATE THEIR BOARD OF DIRECTORS?

A. Yes. This compensation is no different than compensating employees; entities

[9] *See* Company response to Staff Data Request CSB 6.1(e) and attached documents.

[10] **Exhibit WRK-RB6.**

need to compensate members of the board to attract qualified individuals to the position.

Q. NEXT, WHAT ARE ESCROW AND TRANSFER AGENT FEES?

A. Escrow and Transfer Agent fees are expenses incurred in connection with tracking all of APUC'S unitholders. This is another legal requirement of the TSX and NYSE. In connection with payment of dividends to unitholders, APUC incurs escrow fees. Escrow fees are incurred to ensure continued access to capital, and continuing and ongoing investments by unitholders. Without such escrow fees, APUC's subsidiaries would not have a readily available source of capital funding. TSX Policy 3-1, Section 7, requires that APUC maintain a transfer agent. In particular, Section 7.1 provides that "[e]ach Issuer must maintain a record of its current registered unitholders, a record of each allotment or issuance and a record of each transfer in the registered ownership of its securities."[11] Additionally, Section 7.2 requires that "[w]hile its securities are listed on the [TSX], an Issuer must appoint and maintain a transfer agent and registrar..."[12] Not maintaining an Escrow Agent would risk putting Liberty Black Mountain's parent company in violation of TSX rules, and, in turn, if APUC did not have access to the capital markets, then neither would Liberty Black Mountain, depriving Liberty Black Mountain's customers of this important benefit. Finally, this requirement appears materially identical to the NYSE's requirements in Section 6 of the Listed Company Manual: "[t]he company must also maintain registrar facilities for all stock of the company listed on the [NYSE]."[13] As with the insurance costs I discussed earlier, it is my understanding that the Commission has approved these

[11] **Exhibit WRK-RB7** (excerpt from Company response to Staff Data Request CSB 6.1).
[12] *Id.*
[13] **Exhibit WRK-RB8** (excerpt from Company response to Staff Data Request CSB 6.1).

costs for recovery in recent rate cases for affiliated entities in the rate cases I discuss in further detail below in this testimony.

Q. WHY ARE ESCROW AND TRANSFER AGENT FEES REASONABLE TO RECOVER IN RATES?

A. Again, this is a requirement of being a publicly traded entity on the TSX, and therefore necessary for APUC to have access to capital, and these costs would be incurred if Liberty Black Mountain were a stand-alone entity on a stock exchange. Liberty Black Mountain would not have access to capital from APUC unless APUC incurred those costs as required by the TSX.

Q. WHAT ABOUT PROFESSIONAL SERVICES FEES, MR. KILLEEN?

A. Professional Services including strategic plan reviews, capital market advisory services, ERP System maintenance, benefits consulting, and other similar professional services. Unlike the costs I have already discussed, these costs do not arise directly from legal requirements of the TSX. Nevertheless, these are important functions of our operations and, by providing these services at the parent level, the subsidiaries are able to benefit from economies of scale. Therefore, these costs on the whole improve APUC's access to and use of capital, which benefits all of its subsidiaries, including Liberty Black Mountain. It follows that an allocated share of these costs should also be recovered in rates. These services provided by APUC specifically optimize the performance of the utilities, while ensuring access to capital is available and quality service is provided. If the utilities did not have access to the professional services provided by APUC, then they would be forced to incur associated costs for financing, capital investment, audits, taxes and other similar services on a stand-alone basis, which would substantially increase such costs. Simply put, without incurring these costs, APUC would not be able to invest capital in its subsidiaries, including the regulated utilities. Like other items in the

allocated cost pool, it is also my understanding that the Commission has approved these costs for recovery in recent rate cases for affiliated entities. These cases are discussed further later in this testimony.

Q. HAS LIBERTY BLACK MOUNTAIN PROVIDED SUPPORT IN THIS CASE TO SHOW THAT THE COSTS IN THE APUC ALLOCATION ARE REASONABLE AND NECESSARY?

A. Yes. First, Liberty Black Mountain provided a revised breakdown of corporate allocations and direct cost line items that roll up into the operating expense categories on the C Schedules.[14] The transaction detail included amounts removed from the pool of corporate costs. Invoice or journal entry backup for expenses over $1,000 were also provided.[15] Later, we provided detailed information demonstrating that many of the costs that Staff and RUCO propose to disallow are requirements of being a publicly traded entity on the TSX.[16] Additional information on the APUC allocation was provided in response to RUCO data requests.[17] Finally, the Company provided the Liberty Utilities CAM, which summarizes the APUC and Liberty Utilities cost allocation methodology. Inexplicably, neither Ms. Brown nor Mr. Coley appear to have reviewed the CAM. They did not address the CAM in their rebuttal testimony. The CAM fully supports the reasonable corporate cost allocations here. Ms. Brown's and Mr. Coley's failure to even address the CAM should illustrate the flawed corporate cost analysis used and applied by Staff and RUCO in this case.

---

[14] *See* Company's revised narrative response to Staff Data Request BAB 1.18 attached as **Exhibit WRK-RB9**.

[15] *Id.*

[16] *See* the Company's narrative response to Staff Data Request CSB 6.1, which is attached as **Exhibit WRK-RB10**.

[17] The Company's narrative responses to RUCO Data Requests 1.20, 6.11, 6.12, 8.01, 10.01 and 10.03 are attached as **Exhibit WRK-RB11**.

All told, the Company provided very detailed documentation to support the underlying costs, including substantial evidence to show that the costs are not only required, but necessary and reasonable. This is virtually the same evidence that was satisfactory to Staff in the last rate cases for Liberty Utilities (Litchfield Park Water & Sewer) Corp. ("Liberty Litchfield Park") and Liberty Utilities (Rio Rico Water & Sewer) Corp. ("Liberty Rio Rico"), as discussed further below.

B. <u>The Story of the APUC Cost Allocation Since Decision No. 71865.</u>

Q. YOU MENTIONED SEVERAL TIMES THAT THE COMMISSION HAS INCLUDED SIMILAR COSTS IN THE REVENUE REQUIREMENT FOR OTHER LIBERTY UTILITIES?

A. Yes, for Liberty Rio Rico and Liberty Litchfield Park. That was my point about Staff and RUCO turning back the clock. Mr. Coley and Ms. Brown present their positions on this issue as if Decision No. 71865 was the last word of the Commission on the matter. This does a disservice to the Commission and the Company. There have been four other Commission decisions for Liberty Utilities since the Liberty Black Mountain rate order that these witnesses rely on primarily for their recommendations to disallow these costs.[18] These subsequent rate cases show a clear progression in the Commission's understanding of Liberty's cost allocation, including the development of the CAM, based on Liberty showing that these costs are necessary and inure to the benefit of the customers.

Q. WHAT WAS THE FIRST RATE CASE AFTER DECISION NO. 71865 WHERE THE COST ALLOCATION METHODOLOGY WAS ADDRESSED?

A. Decision No. 72059, for Liberty Rio Rico. Mr. Coley discusses and relies on this

[18] As noted, Mr. Coley also relies on Decision No. 72059 (January 6, 2011). However, Mr. Coley also ignored the latter decisions in which the same costs were allowed.

case, and includes a lengthy passage from the decision.[19] But he leaves out the most important part of the Commission's resolution of the corporate cost allocation in that case for purposes of this rate case:

> In a future rate case, with additional evidence, the Company may be able to meet its burden to demonstrate that the APT[20] management fees costs provide real, non-duplicative benefits to [Liberty Rio Rico] ratepayers, but we find that [Liberty Rio Rico] has not met its burden in this case." (Emphasis added.)[21]

Q. OKAY, THANK YOU. WHAT WAS THE NEXT RATE CASE AFTER DECISION NO. 72059 IN WHICH THE COST ALLOCATION WAS ADDRESSED?

A. The Liberty Utilities (Bella Vista Water) Corp. rate case, Decision No. 72251 (April 7, 2011), was just a few months after Decision No. 72059, and less than a year after the last decision for Liberty Black Mountain. In that case the Commission also addressed the APUC cost allocation, writing that

> The APT Cost Pool allocation to the Liberty [Utilities] affiliates has been at issue in every Liberty [Utilities] rate case. As the parties have reviewed the costs that have been included in the Central Cost Pool, they have identified certain expenses that should have been directly billed to one or another of APUC'S facilities, as well as expenses which were not adequately documented or not appropriate to be recovered from utility ratepayers. Each rate case has refined the process.[22]

Q. WHAT WAS THE NEXT RATE CASE WHERE THE COMMISSION ALLOWED RECOVERY OF THE CORPORATE COST ALLOCATION?

---

[19] Direct Testimony of Timothy Coley ("Coley Dt.") at 47:1 – 48:18.

[20] APT stands for Algonquin Power Trust, a predecessor name to Algonquin Power & Utilities Corporation.

[21] Decision No. 72059 at 22:4-6.

[22] Decision No. 72251 at 27:9-13.

A. The next rate case for Liberty Rio Rico was Decision No. 73996 (July 20, 2013). However, a great deal of effort and collaboration occurred in the interval between the two Liberty Rio Rico rate decisions in 2011 and 2013. Liberty's prior rates manager, Chris Krygier, had numerous meetings with Staff, explaining the APUC CAM and the cost allocation methodology. The Staff involved in those cases worked with Liberty and Mr. Krygier relating to the corporate costs, and applied an open-minded and fair approach. That's why we are so disappointed with Ms. Brown's testimony, which leaves the Commission with the impression that nothing happened since the last Liberty Black Mountain rate case in 2010. Ultimately, Staff and RUCO agreed with Liberty Rio Rico on the level of corporate costs to be included in the determination of the revenue requirement as of an agreement by all parties to the total level of operating expenses.[23]

Q. SO THE ISSUE WASN'T LITIGATED IN THAT RATE CASE, MR. KILLEEN?

A. No. It appears it did not need to be. In that rate case, Liberty Rio Rico included test year APUC cost allocations equal to $133,975 and $59,282 for Liberty Rio Rico's water and wastewater divisions, respectively. Staff recommended adjustments equal to $38,083 and $27,931 to the two divisions, respectively.[24] In direct, Staff's witness testified that Staff's adjustment was based on Liberty Rio Rico's inability to segregate the items it is requesting to recover from those it is not requesting to recover.[25]

---

[23] Decision No. 73996 at 17 – 20.

[24] *See* Direct Testimony of Mary J. Rimback (filed December 31, 2012 in Docket No. WS-02676A-12-0196) ("Rimback RR Dt.") at 26 – 28, 32 – 34.

[25] *See* Rimback RR Dt. at 26 – 28, 33:17-23 & 27:21-26. *See also* Surrebuttal Testimony of Mary J. Rimback (filed February 19, 2013 in Docket No. WS-02676A-12-0196) at 15:1 – 16:7 (Liberty Rio Rico did not identify the components of the total pool of costs that the Company is requesting to recover).

Q. WHAT WAS RUCO'S POSITION IN THE LAST LIBERTY RIO RICO RATE CASE?

A. RUCO recommended adjustments of $31,266 and $10,225 to the amounts allocated to the water and wastewater divisions, respectively. RUCO relied exclusively on the previous Liberty Rio Rico decision, Decision No. 72059, and argued that some of the expense pool should be borne by the utility's shareholders and by the other unregulated utilities of APUC, and RUCO made an adjustment to remove some corporate allocations that RUCO felt were unnecessary in the provision of water and wastewater service.[26]

In the end, Liberty Rio Rico, Staff and RUCO agreed to cost allocation amounts of approximately $101,000 and $37,000 for the water and wastewater divisions, respectively, reductions of approximately $32,000 and $22,000 relative to the amount originally requested. No mention was made of Decision No. 71865. Presumably, had Staff and RUCO not come to the final conclusion that the allocated APUC corporate costs were supported, reasonable, necessary and beneficial to utility customers, they would not have recommended Commission approval of those expense levels, which both parties did.

Q. WAS THE LIBERTY LITCHFIELD PARK DECISION THE NEXT ONE AFTER DECISION NO. 73996 FOR LIBERTY RIO RICO?

A. Yes. In Decision No. 74437 (April 14, 2014) the Commission adopted the parties' agreement on a level of operating expenses that included Corporate Cost allocation expenses.[27] In that rate case for Liberty Litchfield Park, there was no dispute between Staff and Liberty Litchfield Park on the corporate cost allocation, which

[26] Direct Testimony of Timothy J. Coley (filed December 31, 2012 in Docket No. WS-02676A-12-0196) at 11 – 12.

[27] Decision No. 74437 at 7:18 – 8:2.

included more than just the minimal legal, tax and audit expenses that Staff recommends be allowed in this rate case.[28] Again, Staff did not apply or revert to the prior Liberty Black Mountain Decision No. 71865. Rather, Staff seems to have justly recognized that Decision No. 71865 was no longer applicable given the additional evidence and proof offered by Liberty Litchfield Park subsequent to that rate case.

Q. WHAT ABOUT RUCO'S POSITION IN THE LIBERTY LITCHFIELD PARK RATE CASE?

A. RUCO's witness initially went back to Decision No. 72059 and argued for a lower corporate cost allocation expense than was being advocated by Liberty Litchfield Park and Staff.[29] RUCO's positions softened in surrebuttal as RUCO seemed to finally accept that customers benefit from the access to capital, which would not be possible without the costs included in the cost pool, and recommended a considerable reduction to its own decrease in this expense.[30] RUCO did not take the same overly narrow position it does is in this rate case, and again, RUCO ultimately agreed to the level of operating expenses, including the corporate cost allocation, for Liberty Litchfield Park as reflected in the decision of the Commission adopting the joint recommendation by RUCO, Staff and Liberty Litchfield Park.

---

[28] *See* Direct Testimony of Darron W. Carlson (filed September 26, 2013 in Docket Nos. SW-01427A-13-0042 and W-01428A-13-0043 (consolidated)) ("Carlson LP Dt.") at 22:11 – 25:4.

[29] Direct Testimony of Robert B. Mease (filed September 27, 2013 in Docket Nos. SW-01427A-13-0042 and W-01428A-13-0043 (consolidated)) at 27 – 31.

[30] Surrebuttal Testimony of Robert B. Mease (filed November 12, 2013 in Docket Nos. SW-01427A-13-0042 and W-01428A-13-0043 (consolidated)) at 21 – 23.

Q. WHY DO YOU THINK THE SITUATION WAS SO DIFFERENT IN THE LAST RATE CASE FOR LIBERTY RIO RICO AND THE LAST RATE CASE FOR LIBERTY LITCHFIELD PARK COMPARED TO THE LAST LIBERTY BLACK MOUNTAIN RATE CASE?

A. We presented new evidence that had not been provided in any prior Liberty rate cases. This new information overwhelmingly demonstrates that many of the costs included in the APUC cost allocation pool are legal requirements of the TSX. Additionally, we spent significant time with Staff, and later RUCO, working through the details of the corporate cost process and how the Liberty utilities in Arizona benefit from the shared services model. These cooperative efforts resulted in the development of the CAM, which was attached to my direct testimony as Exhibit WRK-DT3. The CAM details how the parent company allocates expenses and the processes and controls surrounding them. It was to Liberty's own detriment that it took us a few rate cases to do a better job supporting the corporate cost allocation. But Staff and RUCO are the reason that we are now going backwards in this rate case and rendering all that effort null and void.

III. <u>REBUTTAL TO STAFF AND RUCO ON APUC COST ALLOCATION</u>.

Q. HAVE YOU REVIEWED THE TESTIMONY ON THE CORPORATE COST ALLOCATION FILED BY STAFF AND RUCO?

A. Yes.

Q. AND BASED ON YOUR REBUTTAL TESTIMONY SO FAR, YOU OBVIOUSLY DO NOT AGREE WITH THEIR RECOMMENDED ADJUSTMENTS TO THE CORPORATE COST ALLOCATION FROM APUC TO LIBERTY BLACK MOUNTAIN.

A. No. As I have tried to explain above, Staff and RUCO have reversed the clock back several years, ignoring that the Commission has continued to revisit our cost

allocation subsequent to Decision No. 71865. As a result, Staff and RUCO recommend the elimination of costs that are critical to Liberty Black Mountain's efficient operations, including access to capital.

Q. WHAT SPECIFICALLY DOES RUCO RECOMMEND ON CORPORATE COSTS, MR. KILLEEN?

A. RUCO recommends reducing the corporate cost allocation by $27,147, which is reduction of over 70 percent from the amount requested, in order to align more closely with Decision No. 71865, the last rate case for Liberty Black Mountain, and Decision No. 72059, the rate case for Liberty Rio Rico before its most recent rate case.[31]

Q. WHAT SPECIFICALLY DOES STAFF RECOMMEND ON CORPORATE COSTS?

A. Staff recommends reducing the corporate cost allocation to only $7,742, a reduction of more than $31,000, or nearly 80 percent of the total amount requested for the APUC allocation to the Company.[32] Staff relies solely on the prior decision for Liberty Black Mountain in reaching its recommendation. In fact, Ms. Brown recalculates the allocation using the methodology approved in that rate case.[33] Ms. Brown also complains that the Company did not support its request because it failed to provide the total number of companies that APUC owns or operates or the corporate depreciation rate.[34] Ms. Brown does not explain,

[31] Coley Dt. at 46:13 – 48:18. Notably, RUCO's adjustments are to the number for the APUC allocation included in the initial filing. As Mr. Bourassa explains in his rebuttal, the number has been revised in this rebuttal filing. Rebuttal Testimony of Thomas J. Bourassa at 44:2-5.

[32] Direct Testimony of Crystal S. Brown ("Brown Dt.") at 30:13 – 33:12. As with RUCO's adjustment, Staff's is based on the initial requested allocation expense level, not the revised rebuttal level of this expense.

[33] Brown Dt. at 32:13-22.

[34] Brown Dt. at 33:1-6.

however, how this impacted her recommendation. Again, it is alarming that Ms. Brown did not bother to even address the Liberty Utilities CAM filed with the Company's application in this case. Ms. Brown's failure to review the CAM is not a justification for going back five years to different circumstances, different evidence and different cost allocation methodologies.

Q. HOW DOES LIBERTY BLACK MOUNTAIN RESPOND TO THESE RECOMMENDATIONS BY STAFF AND RUCO?

A. The recommendations by Staff and RUCO are severely flawed. Both parties have (1) ignored the progression of Commission decisions addressing this issue since the last rate order for Liberty Black Mountain; (2) missed the evidence demonstrating that the costs being disallowed are necessary and required costs of service; and (3) failed to recognize the benefits realized by customers.

Q. DID STAFF OR RUCO ADDRESS THE COMMISSION'S STATEMENT IN DECISION NO. 72059 THAT THE COMMISSION WOULD CONTINUE TO EVALUATE THE COMPANY'S COST ALLOCATION?

A. No, and Mr. Coley even claims to rely on Decision No. 72059. I believe it is inappropriate and unfair for Ms. Brown and Mr. Coley to rely solely on the early Liberty rate cases where the costs at issue were also disallowed. By trying to narrow the focus, Staff and RUCO are negating several years of effort by Liberty to work with Staff and RUCO to explain, refine and improve the cost allocation model, including the development of CAM. Neither witness makes any mention of the CAM. Staff and RUCO know, and should have informed the Commission, that after those two early cases they reference Liberty and its utilities have continued to try to show the necessity and benefit of the expenses, and that the Commission has not only authorized an increasing percentage of these costs, but explicitly left open the door for the Company to attempt to recover more of the costs than were

authorized in the last Liberty Black Mountain rate case several years ago.

Q. BUT MR. KILLEEN, ISN'T IT POSSIBLE THAT STAFF AND RUCO JUST CONCLUDED AGAIN THAT LIBERTY BLACK MOUNTAIN FAILED TO MEET ITS BURDEN OF PROOF?

A. That's not what Mr. Coley testified. He said their disallowance is necessary to align this case with Decision Nos. 71865 and 72059.[35] He does not discuss any of the changes that have been made since Decision No. 72059, including the development of the CAM. Ms. Brown relies exclusively on the reasoning in Decision No. 71865, and does not discuss the CAM or any of the supporting evidence the Company provided. She ignored everything we provided in support of the allocation. I find this arbitrary when compared to Staff's positon in the more recent Liberty Litchfield Park rate case. In that case, Staff agreed from the start that more than limited legal, audit and tax costs Ms. Brown allows here were reasonable and should be recovered.[36] I do not understand how Ms. Brown could simply ignore Mr. Carlson's recent testimony for Staff addressing the same costs she disallows in this case, or the two Commission decisions more recent than Decision No. 71865 adopting, with Staff support, far more costs than Ms. Brown would recommend.

Q. SO YOU DO NOT AGREE WITH MS. BROWN'S TESTIMONY THAT THE COMPANY FAILED TO PROVIDE SUFFICIENT SUPPORT FOR THE ALLOCATION?

A. Yes. This is just an excuse raised by Ms. Brown for her failure to review the CAM and supporting evidence provided by the Company. It appears that Ms. Brown took the path of least resistance and reverted to the prior Liberty Black Mountain

[35] Coley Dt. at 48:12-13.

[36] Carlson LP Dt. at 22:11 – 25:4.

rate case without any further review of the evidence provided. Here, the Company provided copies of all invoices in the cost pool, along with the CAM, which gives a detailed summary of the benefits and needs for such corporate costs. The Company did not have a CAM when Decision No. 71865 was decided, and it is completely arbitrary for Ms. Brown to act as if a CAM does not exist now. Even further, the Company provided detailed support for all of the costs excluded by Ms. Brown in data responses, including providing the relevant sections of the TSX and NYSE rules, along with supporting information regarding Board of Directors for other publicly traded utilities and insurance costs. It doesn't appear as if Ms. Brown reviewed any of that information.

Any competent and objective review would illustrate that the cost allocations incurred by Liberty Black Mountain for investor communications, board of director fees and insurance, escrow fees and other professional services are legally required by rules of the TSX and/or directly relate to costs of providing capital from the TSX. The evidence in this case clearly illustrates that Liberty Black Mountain's access to capital from the TSX is directly and inextricably linked to those costs as a condition of APUC being publicly traded on the TSX.

Q. ON THAT SAME NOTE, MR. KILLEEN, COULDN'T LIBERTY BLACK MOUNTAIN HAVE CHOSEN NOT TO CONTEST STAFF'S AND RUCO'S RECOMMENDATIONS THEREBY DECREASING RATE CASE EXPENSE?

A. No. As can be seen from this case, what happens in one case for a Liberty utility impacts other subsequent rate cases. We simply cannot allow Staff and RUCO to try to reestablish a precedent that the APUC cost allocation is not a necessary and reasonable cost of service that benefits customers through APUC's access to capital and the other services APUC provides. We have worked for the past

several years to reverse this impression because it simply is not accurate.

Q. PLEASE SUMMARIZE THE BENEFITS CUSTOMERS RECEIVE FROM THE ALLOCATED COSTS THAT STAFF AND RUCO DISALLOW.

A. Again, the fundamental truth is that Liberty Black Mountain would not have access to capital from APUC unless APUC incurred those costs as required by the TSX, and as required by a publicly traded entity to properly conduct its business. Ms. Brown and Mr. Coley simply can't overcome that undeniable fact that the costs in the APUC cost allocation include costs that are necessary for Liberty Utilities to have access to the capital Liberty Black Mountain and the other affiliates need for capital investment in infrastructure. Neither Staff nor RUCO questions the Company's obligation to spend millions of dollars to remove a used and useful, fully compliant wastewater treatment plant because the customers wish it. Yet both recommend disallowing the costs the shareholder incurs to raise that capital. That begs the question, why would APUC want to pay all of the costs to raise capital so it can invest another $3.8 million dollars in Liberty Black Mountain? It can invest just about anywhere else and get a better return.

Q. ANYTHING ELSE?

A. Two points. First, it is very frustrating to have to continue to litigate over the issue when other similarly situated utilities do not have those hurdles to overcome. While the amount at issue in this case may not be substantial, the six Liberty utilities operating in Arizona do incur a significant portion of the allocated costs. If the Commission were to start to again disallow these costs, it would make Arizona an even less attractive environment for investment. There are costs to obtain capital and operate properly, and those costs are part of the cost of service.

Second, both Staff and RUCO recommend lower rate case expense. Yet both make issues of an expense that is not a significant portion of the

Company's actual cost structure and despite recent cases where both know full well the landscape for these costs changed. If Staff and RUCO choose to relitigate issues, that is their right. But in doing so, they should accept that they are increasing the cost of rate cases because that cost is part of rate case expense. Staff and RUCO also shouldn't complain if capital is not available to Liberty Black Mountain for the plant closing or future projects given that Staff and RUCO both deny recovery of the underlying costs to obtain that capital.

Q. WILL THERE BE PRACTICAL IMPACTS IF THE STAFF AND/OR RUCO RECOMMENDATIONS REGARDING APUC COST ALLOCATIONS WERE TO BE ADOPTED BY THE COMMISSION?

A. If the Commission is going to say that the costs of raising capital to invest in projects that benefit the customers are not recoverable, then we have to think very hard about putting more money into Arizona. The current plant closure project for Liberty Black Mountain is a good example. What if we financed the whole project with debt? Would Staff and RUCO argue that the loan closing costs only benefit the shareholder and should not be recovered through rates? If they did, I believe the Commission would reject that argument as specious. It should do the same with Staff and RUCO's argument that costs absolutely necessary to raise capital, including costs related to APUC being listed on the TSX, are unreasonable and should not be recovered from customers. This argument is also specious.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

EXHIBIT WRK-RB1

Part VII Halting of Trading, Suspension and Delisting of Securities

(4) Failure To Comply With TSX Requirements & Policies

Listing Agreement

Sec. 713.

TSX may delist the securities of a listed issuer that fails to comply with its Listing Agreement or other agreements with TSX, or fails to comply with TSX requirements and policies. Examples of failure to comply with the Listing Agreement include, but are not limited to, failure to obtain the prior consent of TSX to issue additional equity securities; failure to obtain the consent of TSX before undergoing a material change in the business if the listed issuer is subject to Section 501; and failure to comply with TSX's requirements for stock options and security based compensation arrangements.

Disclosure Policies

Sec. 714.

TSX may delist the securities of a listed issuer that has failed to comply with TSX's Timely Disclosure policy (see Sections 406 to 423.8 and 472 to 475) or with disclosure requirements under any securities law to which the listed issuer is subject. In addition, TSX may delist the securities of a listed issuer that is engaged in the business of mineral exploration, development or production if such listed issuer has failed to comply with TSX's "Disclosure Standards for Companies Engaged in Mineral Exploration, Development & Production" (see Appendix B).

EXHIBIT WRK-RB2

TMX | Toronto Stock Exchange

Print

Sec. 406.

It is a cornerstone policy of the Exchange that all persons investing in securities listed on the Exchange have equal access to information that may affect their investment decisions. Public confidence in the integrity of the Exchange as a securities market requires timely disclosure of material information concerning the business and affairs of companies listed on the Exchange, thereby placing all participants in the market on an equal footing.

The timely disclosure policy of the Exchange is the primary timely disclosure standard for all TSX listed issuers. National Policy 51-201 *Disclosure Standards* of the CSA, "Disclosure Standards", assists issuers in meeting their legislative disclosure requirements. While the legislative and Exchange timely disclosure requirements differ somewhat, the CSA clearly state in National Policy 51-201 *Disclosure Standards* that they expect listed issuers to comply with the requirements of the Exchange.

To minimize the number of authorities that must be consulted in a particular matter, in the case of securities listed on the Exchange, the Exchange is the relevant contact. The issuer may, of course, consult with the government securities administrator of the particular jurisdiction. In the case of securities listed on more than one stock market, the issuer should deal with each market.

The requirements of the Exchange and National Policy 51-201 *Disclosure Standards* are in addition to any applicable statutory requirements. The Exchange enforces its own policy. Companies whose securities are listed on the Exchange are legally obligated to comply with the provisions on timely disclosure set out in section 75 of the OSA and the Regulation under the Act. Reference should also be made to National Instrument 71-102 *continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, National Instrument 55-102 *System for Electronic Disclosure by Insiders*, and National Instrument 62-103 *The Early Warning System and Related Take-Over bid and Insider Reporting Issues*.

In addition to the foregoing requirements, companies whose securities are listed on the Exchange and who engage in mineral exploration, development and/or production, must follow the "Disclosure Standards for Companies Engaged in Mineral Exploration, Development and Production" as outlined in Appendix B of this Manual for both their timely and continuous disclosure.

The Market Surveillance Division monitors the timely disclosure policy on behalf of the Exchange.

© TSX Inc. All rights reserved. Do not copy, distribute, sell or modify this document without TSX Inc.'s prior written consent. TSX materials, including manuals, trading rules, policies and forms, are reproduced by Complinet with the permission of TSX Inc. and TSX Venture Exchange Inc. under a non-exclusive license. Neither TSX Inc. nor any of its affiliated companies guarantees the accuracy, adequacy, completeness or availability of any information and nor shall they be responsible for any errors or omissions or otherwise.

EXHIBIT WRK-RB3

5.1.4 National Policy 51-201 Disclosure Standards

NATIONAL POLICY 51-201 DISCLOSURE STANDARDS

Table of Contents

Part I - Introduction
1.1 Purpose

Part II - Timely Disclosure
2.1 Timely Disclosure
2.2 Confidentiality
2.3 Maintaining Confidentiality

Part III - Overview of the Statutory Prohibitions Against Selective Disclosure
3.1 Tipping and Insider Trading
3.2 Persons Subject to Tipping Provisions
3.3 Necessary Course of Business
3.4 Necessary Course of Business Disclosures and Confidentiality
3.5 Generally Disclosed
3.6 Unintentional Disclosure
3.7 Administrative Proceedings

Part IV - Materiality
4.1 Materiality Standard
4.2 Materiality Determinations
4.3 Examples of Potentially Material Information
4.4 External Political, Economic and Social Developments
4.5 Exchange Policies

Part V - Risks Associated with Certain Disclosures
5.1 Private Briefings with Analysts, Institutional Investors and other Market Professionals
5.2 Analyst Reports
5.3 Confidentiality Agreements with Analysts
5.4 Analysts as "Tippees"
5.5 Earnings Guidance
5.6 Application of National Policy Statement 48
5.7 Selective Disclosure Violations Can Occur in a Variety of Settings

Part VI - Best Disclosure Practices
6.1 General
6.2 Establishing a Corporate Disclosure Policy
6.3 Overseeing and Coordinating Disclosure
6.4 Board and Audit Committee Review of Certain Disclosure
6.5 Authorizing Company Spokespersons
6.6 Recommended Disclosure Model
6.7 Analyst Conference Calls and Industry Conferences
6.8 Analyst Reports
6.9 Updating Forward-Looking Information
6.10 Quiet Periods
6.11 Insider Trading Policies and Blackout Periods
6.12 Electronic Communications
6.13 Chat Rooms, Bulletin Boards and e-mails
6.14 Handling Rumours

Acquisitions and Dispositions

- significant acquisitions or dispositions of assets, property or joint venture interests
- acquisitions of other companies, including a take-over bid for, or merger with, another company

Changes in Credit Arrangements

- the borrowing or lending of a significant amount of money
- any mortgaging or encumbering of the company's assets
- defaults under debt obligations, agreements to restructure debt, or planned enforcement procedures by a bank or any other creditors
- changes in rating agency decisions
- significant new credit arrangements

4.4 External Political, Economic and Social Developments

Companies are not generally required to interpret the impact of external political, economic and social developments on their affairs. However, if an external development will have or has had a direct effect on the business and affairs of a company that is both material and uncharacteristic of the effect generally experienced by other companies engaged in the same business or industry, the company is urged to explain, where practical, the particular impact on them. For example, a change in government policy that affects most companies in a particular industry does not require an announcement, but if it affects only one or a few companies in a material way, such companies should make an announcement.

4.5 Exchange Policies

(1) The Toronto Stock Exchange Inc. (the "TSX") and the TSX Venture Exchange Inc. ("TSX Venture") each have adopted timely disclosure policy statements which include many examples of the types of events or information which may be material. Companies should also refer to the guidance provided in these policies when trying to assess the materiality of a particular fact, change or piece of information.

(2) The TSX and TSX Venture policies require the timely disclosure of "material information". Material information includes both material facts and material changes relating to the business and affairs of a company. The timely disclosure obligations in the exchanges' policies exceed those found in securities legislation. It is not uncommon, or inappropriate, for exchanges to impose requirements on their listed companies which go beyond those imposed by securities legislation.[31] We expect listed companies to comply with the requirements of the exchange they are listed on. Companies who do not comply with an exchange's requirements could find themselves subject to an administrative proceeding before a provincial securities regulator.[32]

Part V - Risks Associated with Certain Disclosures

5.1 Private Briefings with Analysts, Institutional Investors and other Market Professionals

(1) The role that analysts play in seeking out information, analyzing and interpreting it and making recommendations can contribute to a more efficient marketplace. Companies should be sensitive though to the risks involved in private meetings with analysts. We are not suggesting that companies should stop having private briefings with analysts or that these private meetings are somehow illegal. Companies should have a firm policy of providing only non-material information and publicly disclosed information to analysts.

---

31 For example, securities legislation provides that a recognized stock exchange may impose additional requirements within its jurisdiction.

32 See *In the Matter of Air Canada, supra*, note 16. In this case, the parties to the settlement agreed that by disclosing earnings information to 13 analysts and not generally disclosing the information, the company failed to comply with the provisions of the TSX Company Manual and thereby acted contrary to the public interest. In the Excerpt from the Settlement Hearing Containing the Oral Reasons for Decision, the Ontario Securities Commission said, "[w]e feel that it will help foster confidence in the financial markets to know that the law requires, and that good corporations will comply with the requirement for, full disclosure of all material information on a timely basis as required by ... the Toronto Stock Exchange's listing agreement and listing requirements."

EXHIBIT WRK-RB4

Special Initial Margin and Capital Requirements—

Occasionally, a listed issue may be placed under special initial margin and capital requirements. Such a restriction in no way reflects upon the quality of corporate management, but, rather indicates a determination by the Floor Officials of the Exchange that the market in the issue has assumed a speculative tenor and has become volatile due to the influence of credit, which, if ignored, may lead to unfair and disorderly trading.

The determination to impose restrictions is based on a careful inspection of the trading for the latest one week period, defined as the previous Friday through subsequent Thursday, matched against various criteria. Other factors, such as the capitalization turnover, the ratio of last year's average weekly volume to the volume for the period considered, arbitrage, stop order bans, short position, earnings and recent corporate news are also reviewed.

The restriction itself is aimed primarily at eliminating the extension of credit to those who buy a security and sell it the same day seeking a short term profit. Such customers must have the full purchase value in the account prior to the entry of an order. Concomitantly, a broader requirement is usually imposed on all other margin customers in that they must put up the full purchase price within five business days, rather than only the percentage required by the Federal Reserve Board. Cash customers, of course, must in all instances put up 100% of the cost in seven days.

Amended: September 2, 2015 (NYSE-2015-38).

202.05 Timely Disclosure of Material News Developments

A listed company is expected to release quickly to the public any news or information which might reasonably be expected to materially affect the market for its securities. This is one of the most important and fundamental purposes of the listing agreement which the company enters into with the Exchange.

A listed company should also act promptly to dispel unfounded rumors which result in unusual market activity or price variations.

The issuer of income deposit securities traded as a unit shall publicize any change in the terms of the unit, such as changes to the terms and conditions of any of the components (including changes with respect to any original issue discount or other significant tax attributes of any component), or to the ratio of the components within the unit. Such publication shall be made as soon as practicable in relation to the effective date of the change, and should otherwise be made in accordance with the procedures specified in Section 202.06 below. In addition, the issuer must provide information regarding the terms and conditions of the components of the unit (including information with respect to any original issue discount or other significant tax attributes of any component), and the ratio of the components comprising the unit on its website.

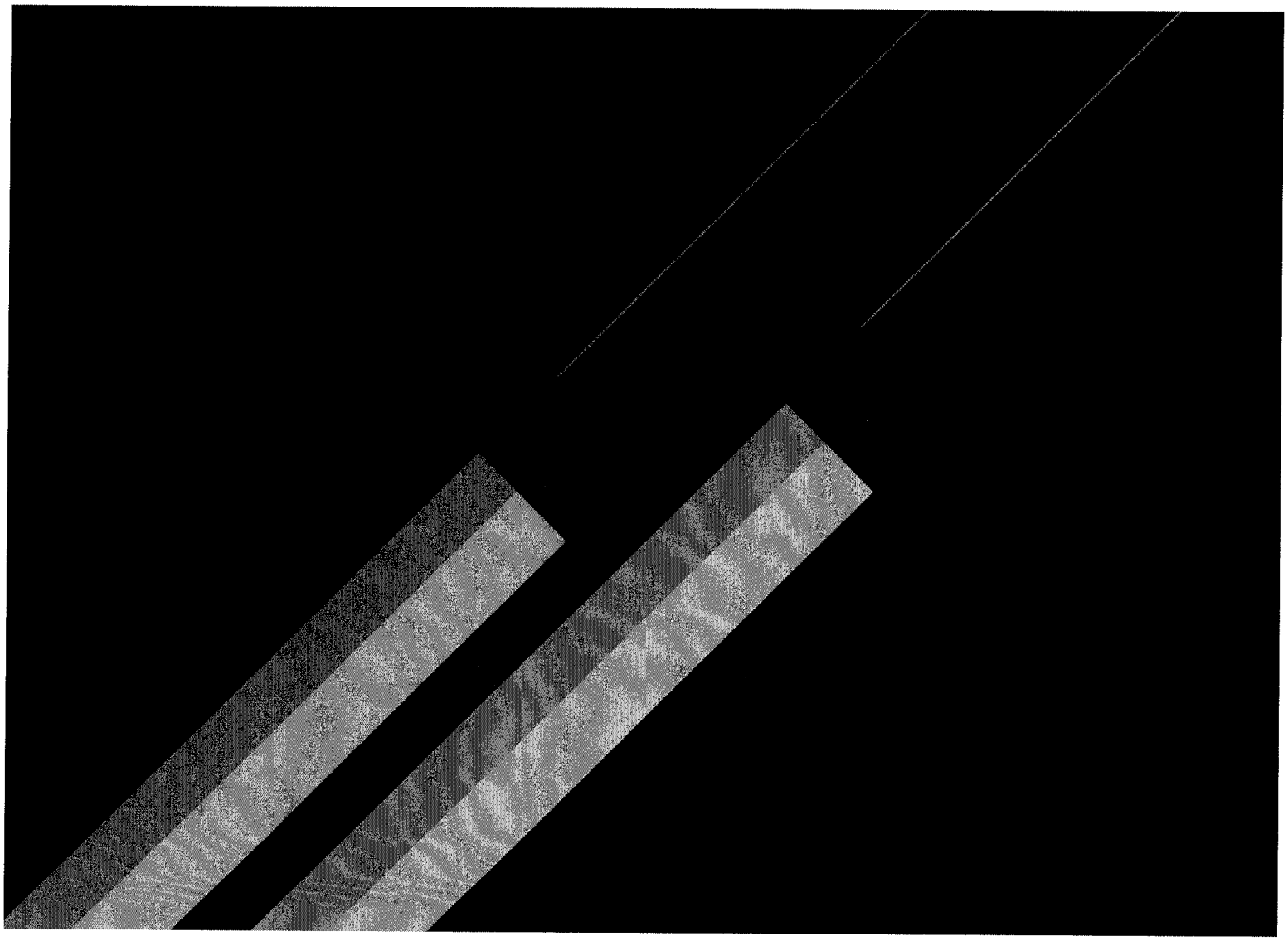
202.06 Procedure for Public Release of Information; Trading Halts

(A) Immediate Release Policy

Information required to be released quickly to the public under Section 202.05 above should be disclosed by means of any Regulation FD compliant method (or

EXHIBIT WRK-RB5

GUIDE TO LISTING



TMX | Toronto Stock Exchange | TSX Venture Exchange

TMX | TSX Venture Exchange

LISTING REQUIREMENTS FOR INDUSTRIAL, TECHNOLOGY AND REAL ESTATE COMPANIES

INITIAL LISTING REQUIREMENTS	TSXV TIER 1 INDUSTRIAL TECHNOLOGY LIFE SCIENCES	TSXV TIER 2 INDUSTRIAL TECHNOLOGY LIFE SCIENCES	TSXV TIER 1 REAL ESTATE OR INVESTMENT	TSXV TIER 2 REAL ESTATE OR INVESTMENT
NET TANGIBLE ASSETS, REVENUE OR ARM'S LENGTH FINANCING (AS APPLICABLE)	$5,000,000 net tangible assets or $5,000,000 revenue If no revenue, two-year management plan demonstrating reasonable likelihood of revenue within 24 months	$750,000 net tangible assets or $500,000 in revenue or $2,000,000 Arm's Length Financing If no revenue, two-year management plan demonstrating reasonable likelihood of revenue within 24 months	**Real Estate:** $5,000,000 net tangible assets **Investment:** $10,000,000 net tangible assets	$2,000,000 net tangible assets or $3,000,000 Arm's Length Financing
ADEQUATE WORKING CAPITAL AND CAPITAL STRUCTURE	Adequate working capital and financial resources to carry out stated work program or execute business plan for 18 months following listing; $200,000 unallocated funds	Adequate working capital and financial resources to carry out stated work program or execute business plan for 12 months following listing; $100,000 unallocated funds	Adequate working capital and financial resources to carry out stated work program or execute business plan for 18 months following listing; $200,000 unallocated funds	Adequate working capital and financial resources to carry out stated work program or execute business plan for 12 months following listing; $100,000 unallocated funds
PROPERTY	Issuer has significant interest in business or primary asset used to carry on business		**Real Estate:** Issuer has significant interest in real property **Investment:** No requirement	
PRIOR EXPENDITURES AND WORK PROGRAM	History of operations or validation of business		**Real Estate:** No requirement **Investment:** Disclosed investment policy	**Real Estate:** No requirement **Investment:** (i) disclosed investment policy and (ii) 50% of available funds must be allocated to at least 2 specific investments
MANAGEMENT AND BOARD OF DIRECTORS	Management, including board of directors, should have adequate experience and technical expertise relevant to the company's business and industry as well as adequate public company experience. Companies are required to have at least two independent directors.			
DISTRIBUTION, MARKET CAPITALIZATION AND PUBLIC FLOAT	Public float of 1,000,000 shares; 250 Public Shareholders each holding a Board Lot and having no Resale Restrictions on their shares; 20% of issued and outstanding shares in the hands of Public Shareholders	Public float of 500,000 shares; 200 Public Shareholders each holding a Board Lot and having no Resale Restrictions on their shares; 20% of issued and outstanding shares in the hands of Public Shareholders	Public float of 1,000,000 shares; 250 Public Shareholders each holding a Board Lot and having no Resale Restrictions on their shares; 20% of issued and outstanding shares in the hands of Public Shareholders	Public float of 500,000 shares; 200 Public Shareholders each holding a Board Lot and having no Resale Restrictions on their shares; 20% of issued and outstanding shares in the hands of Public Shareholders
SPONSORSHIP	Sponsor Report may be required			

The foregoing is a summary of the applicable listing requirements only. For detailed listing requirements, refer to the TSX Venture Exchange Corporate Finance Manual and the Toronto Stock Exchange Company Manual, both of which are available at www.tsx.com.

EXHIBIT WRK-RB6

with prompt notice to the Exchange and only so long as a majority of the members of the compensation committee continue to be independent, may remain a member of the compensation committee until the earlier of the next annual shareholders' meeting of the listed company or one year from the occurrence of the event that caused the member to be no longer independent.

Disclosure Requirements

If a listed company makes a required Section 303A disclosure in its annual proxy statement, or if the company does not file an annual proxy statement, in its annual report filed with the SEC, it may incorporate such disclosure by reference from another document that is filed with the SEC to the extent permitted by applicable SEC rules. If a listed company is not a company required to file a Form 10-K, then any provision in this Section 303A permitting a company to make a required disclosure in its annual report on Form 10-K filed with the SEC shall be interpreted to mean the annual periodic disclosure form that the listed company does file with the SEC. For example, for a closed-end management investment company, the appropriate form would be the annual Form N-CSR.

Amended: November 25, 2009 (NYSE-2009-89); January 11, 2013 (NYSE-2012-49); August 22, 2013 (NYSE-2013-40).

303A.01 Independent Directors

Listed companies must have a majority of independent directors.

Commentary: Effective boards of directors exercise independent judgment in carrying out their responsibilities. Requiring a majority of independent directors will increase the quality of board oversight and lessen the possibility of damaging conflicts of interest.

Amended: November 25, 2009 (NYSE-2009-89).

303A.02 Independence Tests

In order to tighten the definition of "independent director" for purposes of these standards:

(a)(i) No director qualifies as "independent" unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company).

(ii) In addition, in affirmatively determining the independence of any director who will serve on the compensation committee of the listed company's board of directors, the board of directors must consider all factors specifically relevant to determining whether a director has a relationship to the listed company which is material to that director's ability to be independent from management in connection with the duties of a compensation committee member, including, but not limited to:

(A) the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the listed company to such director; and

(B) whether such director is affiliated with the listed company, a subsidiary of the listed company or an affiliate of a subsidiary of the listed company.

Commentary: It is not possible to anticipate, or explicitly to provide for, all circumstances that might signal potential conflicts of interest, or that might bear on the materiality of a director's relationship to a listed company (references to "listed company" would include any parent or subsidiary in a consolidated group with the listed company). Accordingly, it is best that boards making "independence" determinations broadly consider all relevant facts and

EXHIBIT WRK-RB7

POLICY 3.1

DIRECTORS, OFFICERS, OTHER INSIDERS & PERSONNEL AND CORPORATE GOVERNANCE

Scope of Policy

This Policy describes the qualifications that Directors, Officers and other Insiders, as well as certain personnel, of an Issuer must meet in order for the Issuer to be listed and remain listed on the Exchange, as well as corporate governance standards and policies required to be implemented by all Issuers. This Policy is not an exhaustive statement of corporate governance requirements applicable to Issuers. Nothing in this Policy limits the obligations and responsibilities imposed on Issuers by applicable corporate and Securities Laws. This Policy must be read in conjunction with applicable corporate and Securities Laws, including National Instrument 58-101 - *Disclosure of Corporate Governance Practices* ("NI 58-101"), National Policy 58-201 - *Corporate Governance Guidelines* ("NP 58-201") and National Instrument 52-110 - *Audit Committees* ("NI 52-110").

The main headings in this Policy are:

1. Definitions
2. Exchange Review of Directors, Officers, Other Insiders & Personnel
3. Initial Listing Requirements
4. Continued Listing Requirements
5. Qualifications and Duties of Directors and Officers
6. Disclosure of Insider Interests
7. Transfer Agent, Registrar and Escrow Agent
8. Security Certificates
9. Dissemination of Information and Insider Trading
10. Unacceptable Trading
11. Corporate Power and Authority
12. Auditors
13. Financial Statements, MD & A and Certification
14. Shareholders' Meetings and Proxies
15. Shareholder Rights Plans
16. Proceeds from Distributions
17. Issuers with Head Office Outside Canada
18. Assessment of a Significant Connection to Ontario
19. Corporate Governance Guidelines
20. Disclosure of Corporate Governance Practices
21. Audit Committees

(a) every Director and Officer must disclose to the board of Directors either in writing or in person at the next Directors' meeting, the nature and extent of any material interest, directly or indirectly, that they have in any material contract or proposed contract with the Issuer. The Director or Officer must make this disclosure as soon as they become aware of the agreement or the intention of the Issuer to consider or enter into the proposed agreement;

(b) the board of Directors must implement procedures so that each material agreement or proposed agreement between the Issuer and any Director or Officer, directly or indirectly, will be considered and approved by a majority of the disinterested Directors; and

(c) the board of Directors must implement procedures to ensure proper public dissemination is made of the material interest of any Officer or Director of the Issuer in any material agreement or proposed agreement between the Issuer and that Director or Officer. The majority of disinterested Directors must consider the proper scope and nature of the disclosure.

7. Transfer Agent, Registrar and Escrow Agent

7.1 Each Issuer must maintain a record of its current registered shareholders, a record of each allotment or issuance and a record of each transfer in the registered ownership of its securities. As these records are complex for a publicly traded company, an Issuer must appoint a registrar and transfer agent to perform these services. In making such appointment, an Issuer must comply with the corporate laws of its incorporating or continuing jurisdiction, which may impose specific requirements for transfer agents and registrars.

7.2 While its securities are listed on the Exchange, an Issuer must appoint and maintain a transfer agent and registrar with a principal office in one or more of Vancouver, British Columbia; Calgary, Alberta; Toronto, Ontario; Montreal, Quebec; or Halifax, Nova Scotia.

7.3 Except for those transfer agents that are listed in Appendix 3A, which have been previously approved as acceptable transfer agents by the Exchange, an applicant seeking to become an acceptable transfer agent under Appendix 3A must be a trust company in good standing under applicable legislation.

7.4 Each class of Listed Shares must be directly transferable at the Issuer's registrar and transfer agent.

EXHIBIT WRK-RB8

Section 6 Agencies, Depositories, Trustees

601.00 Services to be Provided by Transfer Agents and Registrars

(A) For Listed Stock

A company having stock listed on the Exchange is required to maintain transfer facilities where:

•All stock of the company listed on the Exchange will be accepted for the purpose of transfer.

•All such stock which is convertible or called for redemption will be accepted for such conversion or redemption.

•All subscription rights issued to holders of listed stock of the company will be accepted for transfer or payment and securities subscribed for will be deliverable; and where all other rights or benefits pertaining to ownership of listed stock of the company, which may be issued, granted or allotted by the company, shall be accepted for transfer, exercise, payment and delivery.

•All dividends declared on stock of the company listed on the Exchange will be payable.

•The company must also maintain registrar facilities for all stock of the company listed on the Exchange. The registrar must be located in close proximity to the location at which the transfer of such securities is serviced directly.

(B) For Listed Bonds

The term "bond" includes any security evidencing indebtedness.

A company having bonds listed on the Exchange is required to maintain facilities where:

•All bonds of the company listed on the Exchange which may be registered as to principal and interest, or as to principal only, may be accepted for registration.

•All such bonds which are convertible or called for redemption will be accepted for such conversion or redemption.

•All rights or benefits pertaining to ownership of listed bonds of the company, and issued, granted or allotted by the company, will be accepted for transfer, payment or exercise.

•Principal of, and interest on, all bonds of the company listed on the Exchange will be payable.

Note: Transfer agents need not notify the Exchange of each issuance of shares, nor is it necessary for registrars to obtain a release from the Exchange before registering additional shares. It is necessary only for transfer agents to notify the Exchange of the number of shares outstanding at the end of each calendar

EXHIBIT WRK-RB9

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO STAFF'S FIRST SET OF DATA REQUESTS

October 6, 2015

Respondent: Crystal L Greene

Title: Senior Manager of Finance and Accounting

Company: Liberty Utilities

Address: 12725 W Indian School Rd, Suite D101, Phoenix, AZ 85392

Company Response Number: BAB 1.18 **REVISED**

Q. Allocations – Please provide a schedule that identifies for each operating expense line item on the Income Statement (Schedule C-1), how much of the test year expenses are Company direct, and from each level of allocation as discussed in the application.

RESPONSE: The attached file Allocation BAB 1.18 Revised.xlsx includes a revised breakdown of corporate allocations and direct cost line items that roll up into the operating expense categories on Schedule C-1. Furthermore, the detailed transactions are listed on each tab as APUC Detail, LABS Detail, LUC Detail, and LU 8020 Detail. The following tabs are the amounts removed from the pool of corporate costs: APUC Remove, LABS Remove, LUC Remove, and LU 8020 Remove. Additionally, the company has included all invoice or journal entry backup over $1K in the appropriate pdf documents listed below. Note that any invoices for legal services are not being provided because they contain information that is subject to and protected by the attorney-client privilege, as well as information that is confidential and/or proprietary. However, Staff may arrange to review an unredacted statement of legal fees related to this rate case by contacting the Company's legal counsel, attn: Whitney Birk at 602-559-9576. The proposed manner of review of legal invoices is the same as used by Staff and counsel for the Company in other rate cases for the past several years. The Company reserves, and in no way intends to waive the attorney-client privilege with respect to production of these documents, which are being made available on a limited basis to allow Staff to verify amounts incurred by the Company on matters that may be included in operating expenses.

ATTACHMENT: Allocation BAB 1.18 Revised.xlsx
APUC Allocations 2014.pdf

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO STAFF'S FIRST SET OF DATA REQUESTS

October 6, 2015

Respondent: Crystal L Greene

Title: Senior Manager of Finance and Accounting

Company: Liberty Utilities

Address: 12725 W Indian School Rd, Suite D101, Phoenix, AZ 85392

LUC Allocations 2014.pdf
LABS Allocations 2014.pdf
LU 8020 Allocations 2014.pdf

EXHIBIT WRK-RB10

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO STAFF'S SIXTH SET OF DATA REQUESTS

October 30, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School, Suite D-101
Avondale, AZ 85392

Company Response Number: CSB 6.1

Q. **Allocation of Costs from Algonquin Power & Utilities "APUC" to Liberty Utilities (Black Mountain Sewer) ("Black Mountain")** – This is a follow-up to data request BAB 1.18. On page 5 of the Cost Allocation Manual provided in the testimony of Mr. Killeen, it indicates that APUC incurs the expenses shown in the table below. In regards to these expenses, please provide the total expense amount (i.e. total expense to be allocated), allocation percent and the amount ultimately allocated to Black Mountain (i.e. allocated directly from APUC to Black Mountain or allocated to an affiliate which, in turn, allocates to Black Mountain):

Description of APUC Expense	**Total APUC Expense**	**Allocation Percent**	**APUC Amount Allocated to Affiliate**	**Allocation Percent**	**APUC Amount Allocated to Black Mountain**	**NARUC Account Number**
Legal Costs	$	%	$	%		
Tax Services	$	%	$	%		
Audit	$	%	$	%		
Investor Relations	$	%	$	%		
Director Fees and Insurance	$	%	$	%		
Licenses, Fees and Permits	$	%	$	%		
Escrow and Transfer Agent Fees	$	%	$	%		
Other Professional Services	$	%	$	%		
Office Administration	$	%	$	%		
Total	**$**		$			

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School, Suite D-101
Avondale, AZ 85392

Also, please provide the following information:

a. **Legal, General** - Please provide or make available for inspection a schedule listing all the underlying invoices and any other cost documentation to support this expense. Also, as part of your response, please answer or provide the following:

(1) Describe the various types of legal matters and the total cost incurred for each type of matter included in the expense amount.

(2) State whether or not each matter is routine or extraordinary.

(3) If it is a routine item, please explain why and provide examples with supporting invoices.

(4) If it is an extraordinary item, please provide the number of years you believe the cost would benefit Black Mountain.

b. **Tax Services** - Please provide underlying invoices and any other cost documentation to support this expense.

c. **Audit** - Please provide underlying invoices and any other cost documentation to support this expense. Please state the type of audit performed.

d. **Investor Relations** - Please provide underlying invoices and any other cost documentation to support this expense. Please provide an explanation of the expense, such as but not limited to, what types of activities are performed. Also state how the expense is used in the provision of service for Black Mountain's ratepayers.

e. **Director Fees and Insurance** - Please provide underlying invoices and any other cost documentation to support this expense. Please provide a schedule listing each director, his/her annual salary, and the primary job duties. Also state how the expense for each employee is used in the provision of service for Black Mountain's ratepayers.

f. **Licenses/Fees and Permits** - Please provide underlying invoices and any other cost documentation to support this expense. Please provide a schedule listing each component of the amount and identify all of the licenses, fees, and permits that are included in this cost. Also state how each expense is used in the provision of service for Black Mountain's ratepayers.

g. **Escrow and Transfer Agent Fees** - Please provide underlying invoices and any other cost documentation to support this expense. Please provide an explanation of the expense, such as but not limited to, what types of activities are performed. Also state how the expense is used in the provision of service for Black Mountain's ratepayers.

h. **Other Professional Services** – Please provide underlying invoices and any other cost documentation to support this expense. Please provide a schedule listing each component of the amount and identify all of the professional services that are included in this cost. Also state how each expense is used in the provision of service for Black Mountain's ratepayers.

i. **Office Administration** - Please provide underlying invoices and any other cost documentation to support this expense. Please provide a schedule listing each component of the amount. Also state how each expense is used in the provision of service for Black Mountain's ratepayers.

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO STAFF'S SIXTH SET OF DATA REQUESTS

October 30, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School, Suite D-101
Avondale, AZ 85392

j. **Allocation Percentages** – Please provide a calculation for the allocation percentages

OBJECTION: Invoices for legal services are not being provided because they contain information that is subject to and protected by the attorney-client privilege, as well as information that is confidential and/or proprietary. However, Staff may arrange to review an unredacted statement of legal fees related to this rate case by contacting the Company's legal counsel, attn: Whitney Birk at 602-559-9576. The proposed manner of review of legal invoices is the same as used by Staff and counsel for the Company in other rate cases for the past several years. The Company reserves, and in no way intends to waive the attorney-client privilege with respect to production of these documents, which are being made available on a limited basis to allow Staff to verify amounts incurred by the Company on matters that may be included in operating expenses.

RESPONSE: Without waiving its objection, Liberty Black Mountain responds as follows. For each of the items listed in the chart below, Liberty Black Mountain provides the total expense amount (i.e. total expense to be allocated), allocation percent and the amount ultimately allocated to Black Mountain (i.e. allocated directly from APUC to Liberty Black Mountain or allocated to an affiliate which, in turn, allocates to Liberty Black Mountain).

One of APUC's primary functions is to ensure its subsidiaries, including Liberty Black Mountain, have access to capital. APUC is listed on the Toronto Stock Exchange, a leading financial market. In order to allow its subsidiaries to have continued access to those capital markets, APUC incurs certain legal and other costs. These services and costs are a prerequisite to the subsidiaries, including Liberty Black Mountain, having continued access to those capital markets.

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO STAFF'S SIXTH SET OF DATA REQUESTS

October 30, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School, Suite D-101
Avondale, AZ 85392

Description of APUC Expense	Total APUC Expense	Allocation Percent	APUC Amount Allocated to Affiliate	Allocation Percent	APUC Amount Allocated to Black Mountain	NARUC Account Number
Legal Costs	$389,618.02	16.17%	$63,001.23	3.86%	$2,431.85	734
Tax Services	$637,075.68	16.17%	$103,015.14	3.86%	$3,976.38	734
Audit	$687,211.34	16.17%	$111,122.07	3.86%	$4,289.31	734
Investor Relations	$87,327,97	16.17%	$14,120.93	3.86%	$545.07	734
Director Fees and Insurance	$728,234.51	16.17%	$117,755.52	3.86%	$4,545.36	734
Licenses, Fees and Permits	$211,229.89	16.17%	$34,155.87	3.86%	$1,318.42	734
Escrow and Transfer Agent Fees	$55,605.20	16.17%	$8,991.36	3.86%	$347.07	734
Other Professional Services	$443,302.95	16.17%	$71,682.09	3.86%	$2,766/93	734
Office Administration	$2,823,698.31	16.17%	$456,592.02	3.86%	$17,624.45	734
Total	**$6,063,303.87**		**$980,436.23**		$37,844.84	

a. In subpart (a), Commission Staff requests that the Company provide or make available for inspection a schedule listing all the underlying invoices and any other cost documentation to support relating to legal costs incurred by APUC and allocated to Liberty Black Mountain.

(1) Describe the various types of legal matters and the total cost incurred for each type of matter included in the expense amount.

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO STAFF'S SIXTH SET OF DATA REQUESTS

October 30, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School, Suite D-101
Avondale, AZ 85392

RESPONSE: See chart below.

	Total APUC Expense	Allocation %	APUC Allocated to Affiliate	Allocation %	APUC Amount Allocated to Black Mountain
Review of Contracts/Projects	$ 178,284.60	16.17%	$ 28,828.62	3.86%	$ 1,112.78
Compliance Filing Review	$ 7,279.99	16.17%	$ 1,177.17	3.86%	$ 45.44
Shareholder Questions/Review	$ 21,465.21	16.17%	$ 3,470.92	3.86%	$ 133.98
General Issues (HR/IT/Finance/Tax)	$ 182,588.21	16.17%	$ 29,524.51	3.86%	$ 1,139.65
Total	$ 389,618.02		$ 63,001.23		$ 2,431.85

General legal services and costs incurred by APUC involve legal matters not specific to any single facility, including review of audited financial statements, annual information filings, SEDAR filings,[1] review of contracts

[1] The System for Electronic Document Analysis and Retrieval (SEDAR) is a mandatory document filing and retrieval system for Canadian publicly traded companies. SEDAR is administered by the Canadian Securities Administrators, a coordinating body comprised of 13 Canadian provincial and territorial securities commissions. SEDAR is similar to EDGAR, the filing system operated by the United States Securities and Exchange Commission. Through registered filing agents, Canadian public companies file documents such as prospectuses, financial statements, material change reports and other similar documents through SEDAR. As stated on the SEDAR website, www.sedar.com is the official site that provides access to most public securities documents and information filed by public companies and investment funds with the thirteen provincial and territorial regulatory authorities . . . in the SEDAR filing system. The statutory

with credit facilities, incorporation, tax issues of a legal nature, market compliance, and other similar legal costs. These legal services are required in order for APUC to provide capital funding to individual utilities, including Liberty Black Mountain. Additionally, these legal services ensure that APUC's subsidiaries remain compliant in all aspects of operations and prevent those entities from being exposed to unnecessary risks.

(2) State whether or not each matter is routine or extraordinary.

RESPONSE: See response to CSB 6.1(a)(1) above. These general legal expenses are routine and recurring operating expenses relating to the legal services and items set forth above. These general legal expenses are necessary expenses incurred in relation to operation, financing and management, human resource issues, and other issues of the regulated entities under APUC, which is why the Commission has approved these costs for recovery in recent rate cases for affiliated entities.

(3) If it is a routine item, please explain why and provide examples with supporting invoices.

RESPONSE: See response to CSB 6.1(a)(1) and 6.1(a)(2) above. Legal invoices are subject to the attorney-client privilege. Invoices for legal services are not being provided with this response because they contain information that is subject to and protected by the attorney-client privilege, as well as information that is confidential and/or proprietary.

---

objective in making public this filed information is to enhance investor awareness of the business and affairs of public companies and investment funds and to promote confidence in the transparent operation of capital markets in Canada." See www.sedar.com/homepage_en.htm.

Examples of general legal services allocated to the Company include updating of the SEDAR filings and profile of APUC, legal services relating to TSX requirements, human resource issues, dealing with Canadian securities commissions, quarterly reports through SEDAR and Annual Information Form filings with Canadian securities agencies, and other similar matters.

(4) If it is an extraordinary item, please provide the number of years you believe the cost would benefit Black Mountain.

RESPONSE: These general legal expenses are routine and recurring operating expenses relating to the legal services and items set forth above. As noted above, general legal services incurred by APUC involve legal matters not specific to any single facility, including review of audited financial statements, annual information filings, SEDAR filings, review of contracts with credit facilities, incorporation, tax issues of a legal nature, market compliance, and other similar legal costs. These legal services are required in order for APUC to provide capital funding to individual utilities. Additionally, the services ensure that APUC's subsidiaries, including Liberty Black Mountain, remain compliant in all aspects of operations and prevent those entities from being exposed to unnecessary risks. Liberty Black Mountain benefits from these legal services as a necessary expense for access to capital and compliance with operational and legal requirements, which is why the Commission in recent rate cases for affiliated entities has allowed these expenses for recovery.

b. **Tax Services** - Please provide underlying invoices and any other cost documentation to support this expense.

RESPONSE: See attached Allocations.xlsx, tabs APUC Detail, LABS Detail, and LUC Detail. All of the corporate allocation general ledger detail is listed and can

be filtered by "Account Description." Commission Staff may refer to the specific "Item #" to determine the invoice/backup documentation in the pdf files named APUC Allocations, LABS Allocations, and LUC Allocations.

The services provided by APUC specifically optimize the performance of the utilities, keeping rates low for customers while ensuring access to capital is available. If the utilities did not have access to the services provided by APUC, then they would be forced to incur associated costs for financing, capital investment, audits, taxes and other similar services on a stand-alone basis, which would substantially increase such costs. Simply put, without incurring these costs, APUC would not be able to invest capital in its subsidiaries, including the regulated utilities.

In connection with the provision of Financing Services, APUC incurs the following types of costs: (i) strategic management costs (board of director, third-party legal services, accounting services, tax planning and filings, insurance, and required auditing); (ii) capital access costs (communications, investor relations, trustee fees, escrow and transfer agent fees); (iii) financial control costs (audit and tax expenses); and (iv) administrative (rent, depreciation, general office costs).

Tax services are part of the financial control costs incurred by APUC including costs for audit services and tax services. These costs are necessary to ensure that the subsidiaries are operating in a manner that meets audit standards and regulatory requirements, which have strong financial and operational controls, and financial transactions are recorded accurately and prudently. Without these services, the regulated utilities would not have a readily available source of capital funding from APUC, and the Commission in recent has approved these costs for recovery in recent rate cases for affiliated entities.

Taxes are paid on behalf of the regulated utilities at the parent level as part of a consolidated United States tax return. Third parties provide tax services such as

planning and filing. Filing tax returns on a consolidated basis benefits each regulated utility by reducing the costs that otherwise would be incurred by such utility in filing its own separate tax return.

c. **Audit** - Please provide underlying invoices and any other cost documentation to support this expense. Please state the type of audit performed.

RESPONSE: See attached Allocations.xlsx, tabs APUC Detail, LABS Detail, and LUC Detail. All of the corporate allocation general ledger detail is listed and can be filtered by "Account Description." Commission Staff may refer to the specific "Item #" to determine the invoice/backup documentation in the pdf files named APUC Allocations, LABS Allocations, and LUC Allocations

The services provided by APUC specifically optimize the performance of the utilities, keeping rates low for customers while ensuring access to capital is available. If the utilities did not have access to the services provided by APUC, then they would be forced to incur associated costs for financing, capital investment, audits, taxes and other similar services on a stand-alone basis, which would substantially increase such costs. Simply put, without incurring these costs, APUC would not be able to invest capital in its subsidiaries, including the regulated utilities.

In connection with the provision of Financing Services, APUC incurs the following types of costs: (i) strategic management costs (board of director, third-party legal services, accounting services, tax planning and filings, insurance, and required auditing); (ii) capital access costs (communications, investor relations, trustee fees, escrow and transfer agent fees); (iii) financial control costs (audit and tax expenses); and (iv) administrative (rent, depreciation, general office costs).

Audits are done on a yearly basis and reviews are performed quarterly on all facilities owned by APUC on an aggregate level. These corporate parent level

audits reduce the cost of the stand-alone audits significantly for utilities, which must perform its own separate audits. Where stand-alone audits are not required, ratepayers receive benefits of additional financial rigor, as well as access to capital, and financial soundness checks by third parties. Finally, during rate cases, the existence of audits provides Commission Staff and intervenors additional reliance on the company records, thus reducing overall rate case costs. The aggregate audit is necessary for the regulated utilities to have continued access to capital markets and unit holders.

APUC incurred audit fees for several reasons. First, audits are required of APUC as a publicly traded company on the Toronto Stock Exchange. This legal requirement is very similar to being traded on the New York Stock Exchange. Canadian National Policy 51-102, Section 4.1, requires audited financial statements to be issued each year by publicly listed companies: "Annual financial statements filed under subsection (1) must be audited."[2] Not performing this audit would risk putting Liberty Black Mountain's ultimate parent company in violation of Toronto Stock Exchange rules. Second, corporate parent level audits reduce the cost of standalone audits significantly for utilities such as Liberty Black Mountain, which must perform its own separate audits. Where standalone audits are not required, ratepayers receive benefits of additional financial rigor, as well as access to capital, and financial soundness checks by third parties. Third, during rate cases, the existence of audits provides Staff and intervenors additional reliance on the company records, thus reducing overall rate case costs. Finally, the aggregate audit is necessary for the regulated utilities to have continued access to capital markets from APUC and its subsidiaries, which ultimately benefits customers and the Commission has approved these costs for recovery in recent rate cases for affiliated entities.

[2] Please see attached "National Policy 51-201.pdf," § 4.1.

d. **Investor Relations** - Please provide underlying invoices and any other cost documentation to support this expense. Please provide an explanation of the expense, such as but not limited to, what types of activities are performed. Also state how the expense is used in the provision of service for Black Mountain's ratepayers.

RESPONSE: See attached Allocations.xlsx, tabs APUC Detail, LABS Detail, and LUC Detail. All of the corporate allocation general ledger detail is listed and can be filtered by "Account Description." Commission Staff may refer to the specific "Item #" to determine the invoice/backup documentation in the pdf files named APUC Allocations, LABS Allocations, and LUC Allocations.

Unit holder and investor communication costs are incurred to comply with filing and regulatory requirements of the Toronto Stock Exchange and meet the expectations of shareholders. These costs include items such as news releases and unit holder conference calls. In the absence of shareholder communication costs, investors would not invest in the units of APUC, and in turn, APUC would not have capital to invest in its subsidiaries. Without such communications services, the subsidiaries would not have a readily available source of capital funding.

Investor relations and unitholder communications expenses are an important aspect of being publicly traded, and are critical to services provided by Liberty Black Mountain. APUC, a publicly traded entity, must issue certain communications subject to the Toronto Stock Exchange's (TSX) rules and regulations. Examples include 714[3] of the Toronto Stock Exchange Company Manuel stating that "TSX may delist securities of a listed issuer that has failed to comply with TSX's Timely Disclosure policy…" Additionally, Section 406 of the Toronto Stock Exchange Company Manuel in part states "Companies whose securities are listed on the Exchange are legally obligated to comply with the provisions on timely

[3] Please see attached file "TMX Section 714 timely disclosure requirements."

disclosure..."[4] Finally, the Canadian National Policy 51-201 Disclosure Standards[5] states in § 4.5 that "Companies who do not comply with an exchange's requirements could find themselves subject to an administrative proceeding before a provincial securities regulator."

These requirements are no different than publicly traded companies on the New York Stock Exchange (NYSE) whose Listed Company Manual, § 202.05 states "A listed company is expected to release quickly to the public any news or information which might reasonably be expected to materially affect the market for its securities. This is one of the most important and fundamental purposes of the listing agreement which the company enters into with the Exchange."[6]

These investor relation expenses are necessary for APUC to raise capital and provide capital to its regulated utility subsidiaries. As a publicly traded entity, APUC could not provide capital to Liberty Black Mountain without complying with the investor communication requirements of the Toronto Stock Exchange, and the Commission has approved these costs for recovery in recent rate cases for affiliated entities.

e. **Director Fees and Insurance** - Please provide underlying invoices and any other cost documentation to support this expense. Please provide a schedule listing each director, his/her annual salary, and the primary job duties. Also state how the expense for each employee is used in the provision of service for Black Mountain's ratepayers.

RESPONSE: See attached Allocations.xlsx, tabs APUC Detail, LABS Detail, and LUC Detail. All of the corporate allocation general ledger detail is listed and can be filtered by "Account Description." Commission Staff may refer to the

[4] Please see attached file "TMX Section 406 - timely disclosure requirements."
[5] Please see attached file "National Policy 51-201."
[6] Please see attached file "NYSE Listed Company Manual, Sec 2."

specific "Item #" to determine the invoice/backup documentation in the pdf files named APUC Allocations, LABS Allocations, and LUC Allocations.

Trustee Fees, also known as Board of Directors Fees, are an important aspect of being publicly traded. The Company incurred this expense out of compliance with law and to adhere to sound corporate governance practices.

The Toronto Stock Exchange's Guide to Listing states that "Management, including board of directors, should have adequate experience and technical expertise relevant to the company's business and industry as well as adequate public company experience. Companies are required to have at least two independent directors."[7] The NYSE has a similar requirement in Section 303A.01 "Listed companies must have a majority of independent directors. Effective boards of directors exercise independent judgment in carrying out their responsibilities. Requiring a majority of independent directors will increase the quality of board oversight and lessen the possibility of damaging conflicts of interest."[8]

Additionally, as shown in the graph below,[9] APUC's Board of Directors is smaller than or similar size to comparable boards of directors (taken from a sample cost of capital proxy group).

---

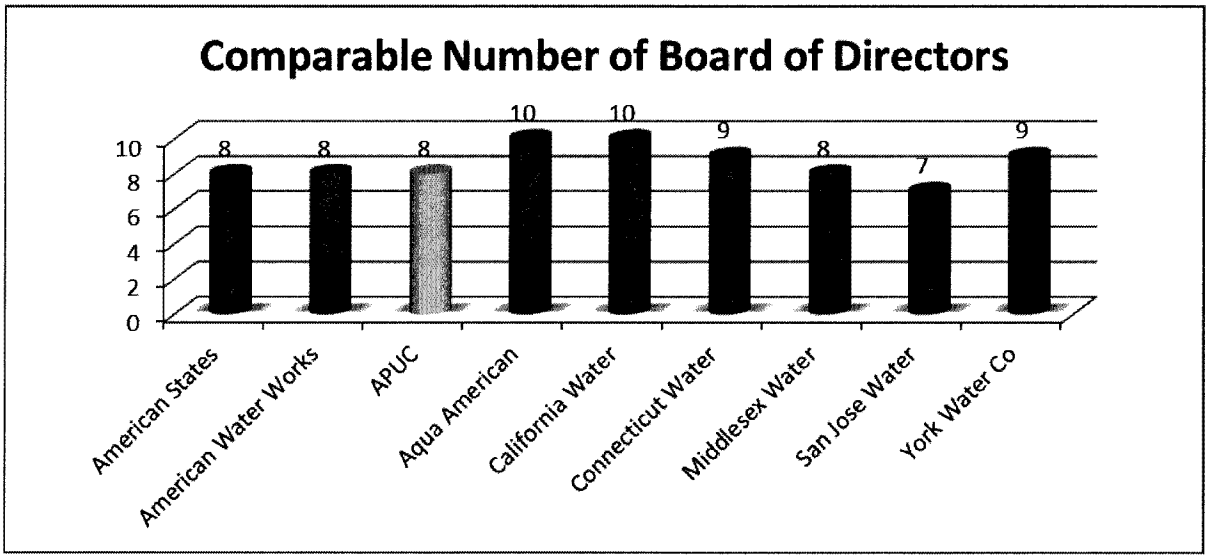
[7] Please see attached file "TMX Guide to Listing (Capital Opportunity)," at page 26 of the PDF.

[8] Please see attached file "NYSE Listing Requirements for BOD."

[9] The support can be found in each listed company's SEC 14A filing, which are included as attachments to this data request, see the 8 files containing the phrase "Proxy."

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School, Suite D-101
Avondale, AZ 85392



In conjunction with having a Board of Directors, APUC also has Board of Directors Insurance. Similar to attracting talented employees, attracting talented Board of Directors is important as a publicly traded company. Insurance covering the Board of Directors is critical as evidenced by the numerous other publicly traded utilities that have similar insurance. Please see the attached files labeled with "D&O Ins" which are examples of other utilities having similar insurance. The Commission has approved these costs for recovery in recent rate cases for affiliated entities.

f. **Licenses/Fees and Permits** - Please provide underlying invoices and any other cost documentation to support this expense. Please provide a schedule listing each component of the amount and identify all of the licenses, fees, and permits that are included in this cost. Also state how each expense is used in the provision of service for Black Mountain's ratepayers.

RESPONSE: See attached Allocations.xlsx, tabs APUC Detail, LABS Detail, and LUC Detail. All of the corporate allocation general ledger detail is listed and can be filtered by "Account Description." Commission Staff may refer to the specific "Item #" to determine the invoice/backup documentation in the pdf files named APUC Allocations, LABS Allocations, and LUC Allocations.

In connection with APUC's participation in the Toronto Stock Exchange, APUC incurs certain license and permit fees such as SEDAR fees, annual filing fees, licensing fees, etc. These licensing and permit fees are required in order to sell units on the Toronto Stock Exchange, which in turn provides funding for utility operations. Incurring these expenses are important for Liberty Black Mountain's parent company to continue being listed on the Toronto Stock Exchange and are necessary for Liberty Black Mountain to have access to the capital markets. Not paying fees such as SEDAR filings (similar to SEC filings) or licensing fees could create potential fines or risk delisting of APUC. The Commission has approved these costs for recovery in recent rate cases for affiliated entities.

g. **Escrow and Transfer Agent Fees** - Please provide underlying invoices and any other cost documentation to support this expense. Please provide an explanation of the expense, such as but not limited to, what types of activities are performed. Also state how the expense is used in the provision of service for Black Mountain's ratepayers.

RESPONSE: See attached Allocations.xlsx, tabs APUC Detail, LABS Detail, and LUC Detail. All of the corporate allocation general ledger detail is listed and can be filtered by "Account Description." Commission Staff may refer to the specific "Item #" to determine the invoice/backup documentation in the pdf files named APUC Allocations, LABS Allocations, and LUC Allocations.

In connection with payment of dividends to unit holders, APUC incurs escrow fees. Escrow fees are incurred to ensure continued access to capital and ensure

continuing and ongoing investments by shareholders. Without such escrow fees, APUC's subsidiaries would not have a readily available source of capital funding.

Toronto Stock Exchange Policy 3-1, Section 7 requires that APUC maintain a transfer agent. In particular, section 7.1[10] provides that "[e]ach Issuer must maintain a record of its current registered shareholders, a record of each allotment or issuance and a record of each transfer in the registered ownership of its securities." Additionally, section 7.2 requires that "[w]hile its securities are listed on the Exchange, an Issuer must appoint and maintain a transfer agent and registrar…" Not maintaining an Escrow Agent would risk putting Liberty Black Mountain's parent company in violation of Toronto Stock Exchange rules, and, in turn, if APUC did not have access to the capital markets, then neither would Liberty Black Mountain, depriving Liberty Black Mountain's customers of this important benefit. Finally, this requirement appears materially identical to the NYSE's requirements in Section 6[11] of the Listed Company Manual: "[t]he company must also maintain registrar facilities for all stock of the company listed on the Exchange." The Commission has approved these costs for recovery in recent rate cases for affiliated entities.

h. **Other Professional Services** – Please provide underlying invoices and any other cost documentation to support this expense. Please provide a schedule listing each component of the amount and identify all of the professional services that are included in this cost. Also state how each expense is used in the provision of service for Black Mountain's ratepayers.

RESPONSE: See attached Allocations.xlsx, tabs APUC Detail, LABS Detail, and LUC Detail. All of the corporate allocation general ledger detail is listed and can be filtered by "Account Description." Commission Staff may refer to the

[10] Please see attached file "TMX Policy 3-1."
[11] Please see attached file "NYSE Section 6 (Agencies, Depositories, Trustees)".

specific "Item #" to determine the invoice/backup documentation in the pdf files named APUC Allocations, LABS Allocations, and LUC Allocations.

APUC incurs Other Professional Services including strategic plan reviews, capital market advisory services, ERP System maintenance, benefits consulting, and other similar professional services. By providing these services at a parent level, the subsidiaries are able to benefit from economies of scale. Additionally, some of these services improve APUC's access to capital, which benefits all of its subsidiaries.

These services provided by APUC specifically optimize the performance of the utilities, keeping rates low for customers while ensuring access to capital is available and quality service is provided. If the utilities did not have access to the professional services provided by APUC, then they would be forced to incur associated costs for financing, capital investment, audits, taxes and other similar services on a stand-alone basis, which would substantially increase such costs. Simply put, without incurring these costs, APUC would not be able to invest capital in its subsidiaries, including the regulated utilities. The Commission has approved these costs for recovery in recent rate cases for affiliated entities.

i. **Office Administration** - Please provide underlying invoices and any other cost documentation to support this expense. Please provide a schedule listing each component of the amount. Also state how each expense is used in the provision of service for Black Mountain's ratepayers.

RESPONSE: See attached Allocations.xlsx, tabs APUC Detail, LABS Detail, and LUC Detail. All of the corporate allocation general ledger detail is listed and can be filtered by "Account Description." Commission Staff may refer to the specific "Item #" to determine the invoice/backup documentation in the pdf files named APUC Allocations, LABS Allocations, and LUC Allocations.

Administrative costs incurred by APUC such as rent, depreciation of office furniture, depreciation of computers, and general office costs are required to house all of the services mentioned above. Without these administrative costs, APUC could not perform these services and provide the necessary services to the regulated utilities, including Liberty Black Mountain. These administrative costs also include training for corporate employees. Put simply, APUC incurs these administrative costs in providing services to its subsidiaries, including Liberty Black Mountain. The Commission has approved these costs for recovery in recent rate cases for affiliated entities.

j. **Allocation Percentages** – Please provide a calculation for the allocation percentages.

RESPONSE: See attached Allocations.xslx on tab 4factor Main-lw for the allocation percentages.

EXHIBIT WRK-RB11

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S FIRST SET OF DATA REQUESTS

August 10, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School Rd., Ste D-101
Avondale, AZ 85392

Company Response Number: 1.20

Q. Shared Facilities Allocations - Please describe in detail any operating or administrative facilities which the Company shares with other entities, affiliated or not, and the basis for quantification and allocation of the related capital costs.

RESPONSE: The Company does not share any of its operating or administrative facilities with other entities. Liberty Black Mountain, however, benefits from various functions and services that are provided by Liberty Utilities employees in the Avondale office. Those personnel perform shared services for the Company such as accounting, customer service, construction management, engineering, IT support, human resources, legal and general management, among other functions. The costs for the Avondale facility are allocated to Liberty Black Mountain based upon an industry utilized allocation methodology (i.e., a four-factor type methodology). The Avondale office is not owned by Liberty Utilities or any affiliate. Further, Liberty Black Mountain derives substantial benefit from services provided by Liberty Utilities employees located in the Oakville office building in Canada. As set forth in the Company's application and testimony, a portion of the capital cost of the Oakville building is allocated to Liberty Black Mountain. Also, the costs and expenses of the Oakville building are allocated to Liberty Black Mountain in accordance with the January 1, 2014, Cost Allocation Manual. That Cost Allocation Manual and the direct testimony of William Killeen set forth the basis for such allocation.

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S SIXTH SET OF DATA REQUESTS

November 19, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School Rd., Suite D-101
Avondale, AZ 85392

Company Response Number: 6.11

Q. Corporate Allocations – Please identify each rate base and operating income account that includes any corporate allocations shown on the Company's respective B-2 and C-2 Schedules. The Company's response should clearly delineate each account and the amount of any corporate allocation(s).

RESPONSE: For the respective B-2 rate base account, please see attached "RUCO 6.11-B-2 Allocation Totals v1.xlsx."

For the respective C-1 allocations, the accounts are shown in the original application schedule C-1 under Salaries and Wages and Contractual Service Professional.

a. For Salaries and Wages, $7,031 was included in the unadjusted balance of $228,309.

b. For Contractual Services Professional, $165,389 was included in the unadjusted balance of $316,663. That amount was then reduced by a proforma amount of $3,152 for a test year adjusted amount of $162,237. As noted in the Company's revised response to BAB 1.18, the test year amount for Contractual Services Professional amount was reduced by $3,152 which was recalculated to a revised reduction of $28,302. The revised amount on the C-1 schedule for Contractual Services Professional is $288,361.

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S SIXTH SET OF DATA REQUESTS

November 18, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School Rd., Suite D-101
Avondale, AZ 85392

Company Response Number: 6.12

Q. Total Corporate Cost Allocations Pool – Please provide the total corporate cost allocation pool beginning with the parent company and continuing down the corporate organizational chart to the allocations being charged to Liberty Black Mountain Sewer. Please provide this information in an Excel format similar to Attachment A as provided, which has been used by the Company in prior rate Application proceedings.

RESPONSE: The Company provided this chart in response to Staff Data Request CSB 6.1. The Company provided the excel detail along with the invoices with reference numbers in its revised response to Staff Data Request BAB 1.18.

Description of APUC Expense	**Total APUC Expense**	**Allocation Percent**	**APUC Amount Allocated to Affiliate**	**Allocation Percent**	**APUC Amount Allocated to Black Mountain**	**NARUC Account Number**
Legal Costs	$389,618.02	16.17%	$63,001.23	3.86%	$2,431.85	734
Tax Services	$637,075.68	16.17%	$103,015.14	3.86%	$3,976.38	734
Audit	$687,211.34	16.17%	$111,122.07	3.86%	$4,289.31	734
Investor Relations	$87,327,97	16.17%	$14,120.93	3.86%	$545.07	734
Director Fees and Insurance	$728,234.51	16.17%	$117,755.52	3.86%	$4,545.36	734
Licenses, Fees and Permits	$211,229.89	16.17%	$34,155.87	3.86%	$1,318.42	734

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S SIXTH SET OF DATA REQUESTS

November 18, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School Rd., Suite D-101
Avondale, AZ 85392

Escrow and Transfer Agent Fees	$55,605.20	16.17%	$8,991.36	3.86%	$347.07	734
Other Professional Services	$443,302.95	16.17%	$71,682.09	3.86%	$2,766/93	734
Office Administration	$2,823,698.31	16.17%	$456,592.02	3.86%	$17,624.45	734
Total	**$6,063,303.87**		**$980,436.23**		$37,844.84	

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S EIGHTH SET OF DATA REQUESTS

November 18, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School Rd., Suite D-101
Avondale, AZ 85392

Company Response Number: 8.01

Q. Total Corporate Cost Allocations Pool – In addition to RUCO DR 6.12, please provide the following:

1. Any and all corporate allocations related to any expense account on Schedule C-1 that contain labor and wages charged, direct and allocable billings, to Black Mountain Sewer from the ultimate-parent Company – Algonquin Power & Utilities ("APUC"), parent Company – Liberty Utilities Corp. ("LUC"), and/or any other of its affiliates such as Algonquin Power Company ("APCO");

RESPONSE: The Company provided a revised response to Staff Data Request BAB 1.18 that includes all the detail and invoices for the cost pool for the corporate allocations. See the detailed schedule and referenced invoices for labor and/or consulting labor. Liberty Black Mountain does not have any labor charges from APCO.

2. For any related labor and wages billings to Black Mountain Sewer, please provide an individual listing showing each employees name, title, employee's entity location (i.e., Algonquin Power & Utilities Corp. ("APUC"), Liberty Utilities Canada ("LUC"), APCO and/or Liberty Utilities etc.), salary and/or hourly rate, and any and all vacant positions to which Black Mountain Sewer is being billed;

RESPONSE: The Company had $337,252.00 in local salaries which includes Accounting, Customer Service, Human Resources, Operations, and Admin professionals. Information regarding employee names and salaries are personal and confidential. Liberty

Black Mountain was not billed for any vacant positions in the test year. Any salary or consulting labor for Corporate Allocations in the test year were included in the cost pool. Reference the Company's revised response to Staff Data Request BAB 1.18.

3. Identify the amounts identified in 2. above and to which operating income accounts those labor and wage charges are being directly charged and/or allocated to. This response should also clearly identify any and all vacant positions to which are included in the Company's rate Application;

RESPONSE: The labor amounts for Sewer Operations was included in NARUC account 701. The labor amounts for Customer Service, Accounting, Human Resources, and Administrative personnel was included in NARUC account 734. Any labor and/or consultant labor for APUC allocations was included in NARUC account 734. The Company did not charge Liberty Black Mountain for any vacant positions.

4. Please identify the payroll taxes, pension and other benefits that are being charged to Black Mountain Sewer as identified in 1 through 3 above;

RESPONSE: The Company is charging an average rate of 32.5% for labor burden on all direct labor costs which includes payroll taxes, pension, employee insurance, and 401K.

5. Please identify any and all incentive compensation by amount, employee name, employee location in reference to affiliate employed by, and to which accounts these charges are recorded for Black Mountain Sewer;

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S EIGHTH SET OF DATA REQUESTS

November 18, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School Rd., Suite D-101
Avondale, AZ 85392

RESPONSE: The Company is charging an average allocation for the incentive program per each month of $53K. This amount is allocated directly to Liberty Black Mountain by the allocation factor of 3.86%. Information regarding employee names, compensation and salaries are personal and confidential.

6. Please identify the incentive program type (i.e., performance, financial, and/or customer service etc.) to which the charges apply as identified in 5. above; and

RESPONSE: See the Company's response to RUCO 1.64 for information regarding the incentive program.

7. Please identify which of the charges identified in 5. and 6. above are allocated from either LUC and/or APUC..

RESPONSE: The charges referenced in question 5 are not from LUC or APUC.

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S TENTH SET OF DATA REQUESTS

November 18, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School Rd., Suite D-101
Avondale, AZ 85392

Company Response Number: 10.01

Q. Corporate Cost Allocations – Please provide responses and all accounting documentation to these the requests as they pertain to Liberty Black Mountain Sewer's corporate cost allocations as follows:

1. If not already provided, please identify each operating income account on Schedule C-1 that contains any corporate cost allocation from any and all affiliated companies within Algonquin Power & Utilities Corporation ("APUC") including APUC itself. If this information was provided in a previous data response ("DR") to any party and in the format requested here, please identify in which DR this information was provided. The last statement applies to all of the following requests to RUCO DR 10.01.

2. Please identify the amounts of any cost allocations contained in each Liberty Black Mountain Sewer operating income account on Schedule C-1 identified in response to 1. above.

3. Please identify the method utilized to allocate the cost allocations in 1. and 2. above to Liberty Black Mountain Sewer in this case.

4. Please provide each account and amount of corporate costs with supporting accounting documentation that were **directly** charged by any parent/affiliate company to Liberty Black Mountain Sewer. The response should clearly identify which parent/ affiliate company (i.e. APUC, Algonquin Power Company ("APCo"), Liberty Utilities (Canada) Corp. ("LUC"), and Liberty Utilities Service Corp.

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S TENTH SET OF DATA REQUESTS

November 18, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School Rd., Suite D-101
Avondale, AZ 85392

("LUSC")) that the costs are allocated from to the regulated utilities such as Liberty Black Mountain Sewer in this case.[1]

5. Please provide the same information as requested in 4. above that were **indirectly** charged (i.e allocated costs) by any parent/affiliate company to Liberty Black Mountain Sewer in this case.

6. Please identify each affiliate company that APUC currently owns in any state (i.e. USA), province (i.e. Canada), and/or country (i.e. worldwide). Indicate the state, province, and/or country of each entities location and whether each company identified above is either a regulated or non-regualted entity and by what regulatory body the entity is regulated by, if it is a regulated entity. The response should clearly identify which entities identified above are non-regulated too.

RESPONSE:

1. See the Company's revised response to Staff Data Request BAB 1.18 for Corporate Allocations for a detailed listing. Corporate Allocations are charged to account 734 on the income statement.

2. See the Company's revised response to Staff Data Request BAB 1.18.

3. See the Company's revised response to Staff Data Request BAB 1.18.

4. See the Company's revised response to Staff Data Request BAB 1.18.

5. See the Company's revised response to Staff Data Request BAB 1.18.

[1] These responses should tie to each operating income account that contains either direct and indirect charges in 10.01 (1.) and (2.) above.

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S TENTH SET OF DATA REQUESTS

November 18, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School Rd., Suite D-101
Avondale, AZ 85392

6. Algonquin Power & Utilities Corp. (APUC) is a renewable energy and utility company with assets across North America. Through its two operating subsidiaries, Algonquin Power Company (APCo) and Liberty Utilities Co., APUC acquires and operates energy generation assets including hydroelectric, wind, thermal, and solar power facilities, as well as utility distribution businesses (including water, wastewater, electricity and natural gas distribution utilities). In addition, APUC now has a footprint in transmission assets. Below is a list of utilities and subsidiaries owned by Liberty Utilities Co.

Name:	Address:	Specific Utility Service
Liberty Energy Utilities (New Hampshire) Corp.	15 Buttrick Road, Londonderry, NH 03053	n/a
Liberty Utilities Service Corp.	12725 W. Indian School Road, Suite D-101, Avondale, AZ	n/a
Liberty Utilities (Midstates Natural Gas) Corp.	2751 North High Street, Jackson, MO 63755	Natural Gas service in Illinois, Iowa and Missouri
Liberty Utilities (CalPeco Electric) LLC	1125 Muscat Ave. Sanger, CA 93657	Electric service in California
Liberty Utilities (Pine Bluff Water) Inc.	1100 State Street P.O. Box 6070 Pine Bluff, AR 71611	Water distribution service in Arkansas
Liberty Utilities (Peach State Natural Gas) Corp.	2300 Victory Dr. Columbus, GA 31901-3455	Natural Gas service in Georgia
Liberty Utilities (Granite State Electric) Corp.	15 Buttrick Road, Londonderry, NH 03053	Electric service in New Hampshire
Liberty Utilities (EnergyNorth Natural Gas) Corp.	15 Buttrick Road, Londonderry, NH 03053	Natural Gas service in New Hampshire
Liberty Utilities Energy Solutions Corp.	12725 W. Indian School Road, Suite D-101, Avondale, AZ	n/a
Liberty Utilities Energy Solutions (Appliance) Corp.	12725 W. Indian School Road, Suite D-101, Avondale, AZ	n/a

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S TENTH SET OF DATA REQUESTS

November 18, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School Rd., Suite D-101
Avondale, AZ 85392

Name:	Address:	Specific Utility Service
Liberty Utilities Energy Solutions (CNG) Corp.	12725 W. Indian School Road, Suite D-101, Avondale, AZ	n/a
Liberty Utilities Energy Solutions (LNG) Corp.	12725 W. Indian School Road, Suite D-101, Avondale, AZ	n/a
Liberty Utilities Energy Solutions (Solar) Corp.	15 Buttrick Road, Londonberry, NH	n/a
Liberty Utilities Energy Solutions (Solar1) Corp.	15 Buttrick Road, Londonberry, NH	n/a
Liberty WWH Inc.	15 Buttrick Road, Londonberry, NH	n/a
Liberty Utilities (New England Natural Gas Company) Corp.	12725 W. Indian School Road, Suite D-101, Avondale, AZ 85392	Natural Gas service in Massachusetts
Liberty Utilities (Pipeline & Transmission) Corp.	12725 W. Indian School Road, Suite D-101, Avondale, AZ 85392	n/a
Liberty Utilities (Black Mountain Sewer) Corp.	12725 W. Indian School Road, Suite D-101, Avondale, AZ 85392	Sewer service in Arizona
Liberty Utilities (Environmental Services) LLC	12725 W. Indian School Road, Suite D-101, Avondale, AZ 85392	n/a
Liberty Utilities (Gold Canyon Sewer) Corp.	12725 W. Indian School Road, Suite D-101, Avondale, AZ 85392	Sewer service in Arizona
Liberty Utilities (Litchfield Park Water & Sewer) Corp.	12725 W. Indian School Road, Suite D-101, Avondale, AZ 85392	Water and Sewer service in Arizona
Liberty Utilities (Woodmark Sewer) Corp.	16623 FM 2493 Tyler, TX 75703	Sewer service in Texas
Liberty Utilities (Tall Timbers Sewer) Corp.	16623 FM 2493 Tyler, TX 75703	Sewer Service in Texas
Liberty Utilities (Bella Vista Water) Corp.	12725 W. Indian School Road, Suite D-101, Avondale, AZ 85392	Water distribution service in Arizona
Liberty Utilities (Entrada Del Oro Sewer) Corp.	12725 W. Indian School Road, Suite D-101, Avondale, AZ 85392	Sewer service in Arizona
Liberty Utilities (Rio Rico Water & Sewer) Corp.	12725 W. Indian School Road, Suite D-101, Avondale, AZ 85392	Water distribution and sewer service in Arizona

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S TENTH SET OF DATA REQUESTS

November 18, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School Rd., Suite D-101
Avondale, AZ 85392

Name:	Address:	Specific Utility Service
Liberty Utilities (Northwest Sewer) Corp.	12725 W. Indian School Road, Suite D-101, Avondale, AZ 85392	n/a
Liberty Utilities (Sub) Corp.	12725 West Indian School Road, Suite D-101, Avondale, AZ 85392	n/a
Liberty Utilities (Silverleaf Water) LLC	16623 FM 2493 Tyler, TX 75703	Water distribution service in Texas
Liberty Utilities (Seaside Water) LLC	16623 FM 2493 Tyler, TX 75703	Water distribution service in Texas
Liberty Utilities (Fox River Water) LLC	16623 FM 2493 Tyler, TX 75703	Water distribution service in Illinois
Liberty Utilities (Missouri Water) LLC	16623 FM 2493 Tyler, TX 75703	Water distribution service in Missouri
Liberty Utilities (White Hall Water) Corp.	101 Parkway Drive Whitehall, AR 71602	Water distribution service in Arkansas
Liberty Utilities (White Hall Sewer) Corp.	101 Parkway Drive Whitehall, AR 71602	Sewer service in Arkansas

The following Liberty Utilities entities are regulated by the regulatory commissions set forth below:

Utility	Commission / Address
Liberty Utilities (Calpeco Electric) LLC	California Public Service Commission 505 Van Ness Avenue San Francisco, CA 94102
Liberty Utilities (New England Natural Gas Company) Corp.	Massachusetts Department of Public Utilities One South Station Boston, MA 02110
Liberty Utilities (Peach State Natural Gas) Corp.	Georgia Public Service Commission 244 Washington St Atlanta, GA 30334-5701
Liberty Utilities (Pine Bluff Water) Inc.	Arkansas Public Service Commission 1000 Center Street PO Box 400 Little Rock, AR 72203-0400

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S TENTH SET OF DATA REQUESTS

November 18, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School Rd., Suite D-101
Avondale, AZ 85392

Utility	Commission / Address
Lilberty Utilities (Midstates Natural Gas) Corp.	Illinois Commerce Commission 527 East Capitol Avenue Springfield, Illinois 62701
Lilberty Utilities (Midstates Natural Gas) Corp.	Missouri Public Service Commission 200 Madison Street, PO Box 360 Jefferson City, MO 65102-0360
Lilberty Utilities (Midstates Natural Gas) Corp.	Iowa Utilities Board 1375 East Court Avenue Des Moines, Iowa 50319
Liberty Utilities (Granite State Electric) Corp.	New Hampshire Public Service Commission 21 South Fruit Street, Suite 10, Concord, N.H. 03301-2429
Liberty Utilities (EnergyNorth Natural Gas) Corp.	New Hampshire Public Service Commission 21 South Fruit Street, Suite 10, Concord, N.H. 03301-2429
Liberty Utilities (Black Mountain Sewer) Corp.	Arizona Corporation Commission 1200 W. Washington Phoenix, AZ 85007-2996
Liberty Utilities (Gold Canyon Sewer) Corp.	Arizona Corporation Commission 1200 W. Washington Phoenix, AZ 85007-2996
Liberty Utilities (Litchfield Park Water & Sewer) Corp.	Arizona Corporation Commission 1200 W. Washington Phoenix, AZ 85007-2996
Liberty Utilities (Woodmark Sewer) Corp.	Public Utility Commission of Texas 1701 N. Congress Avenue PO Box 13326 Austin, TX 78711-3326
Liberty Utilities (Tall Timbers Sewer) Corp.	Public Utility Commission of Texas 1701 N. Congress Avenue PO Box 13326 Austin, TX 78711-3326
Liberty Utilities (Bella Vista Water) Corp.	Arizona Corporation Commission 1200 W. Washington Phoenix, AZ 85007-2996
Liberty Utilities (Entrada Del Oro Sewer) Corp.	Arizona Corporation Commission

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S TENTH SET OF DATA REQUESTS

November 18, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School Rd., Suite D-101
Avondale, AZ 85392

Utility	Commission / Address
	1200 W. Washington Phoenix, AZ 85007-2996
Liberty Utilities (Rio Rico Water & Sewer) Corp.	Arizona Corporation Commission 1200 W. Washington Phoenix, AZ 85007-2996
Liberty Utilities (Silverleaf Water) LLC	Public Utility Commission of Texas 1701 N. Congress Avenue PO Box 13326 Austin, TX 78711-3326
Liberty Utilities (Seaside Water) LLC	Public Utility Commission of Texas 1701 N. Congress Avenue PO Box 13326 Austin, TX 78711-3326
Liberty Utilities (Missouri Water) LLC	Missouri Public Service Commission 200 Madison Street, PO Box 360 Jefferson City, MO 65102-0360
Liberty Utilities (White Hall Water) Corp.	City of White Hall, 101 Parkway Dr. White Hall, AR 71612; Not regulated by the APSC
Liberty Utilities (White Hall Sewer) Corp.	City of White Hall, 101 Parkway Dr. White Hall, AR 71612; Not regulated by the APSC

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S TENTH SET OF DATA REQUESTS

November 16, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School Rd., Suite D-101
Avondale, AZ 85392

Company Response Number: 10.03

Q. Direct Labor Distribution/Expenses – For each of the industries identified in response to RUCO DR 10.02 above, please provide the Direct Labor expenses (i.e. dollar amount) that were directly charged and associated with each industry separately for the twelve-months ending on December 31, 2014.[2]

RESPONSE: See the attached file labeled "APUC Direct Charges Summary 2014 for AZ.xlsx."

---

[2] Please state the dollars in US dollars.

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ended December 31, 2014
Reconciliation of Plant Additions, Retirements and Accumulated Depreciation

Exhibit
Settlement Schedule B-2
Page 3.6
Witness: Bourassa

						Per Decision No. 71865, September 1, 2010						Current Books		
Line No.	NARUC Account No.	Description	Vintage Year	Previous Allowed Deprec. Rate	Allowed Deprec. Rate	[1] Book Plant at 6/30/2008	[2] Direct Adjust	[3] RC Adjust-ments	[4] Adjusted Plant at 6/30/2008 [1]+[2]+[3]	[5] Accum Depr 6/30/2008	[6] Net Plant 6/30/2008 [4]-[5]	[7] Book Plant at 6/30/2008	[8] Accum Depr 6/30/2008	[9] Net Plant 6/30/2008 [7]-[8]
1	351	Organization		0.00%	0.00%	-	-	-	-	-	-	-	-	-
2	352	Franchises		0.00%	0.00%	-	-	-	-	-	-	-	-	-
3	353	Land and Land Rights		0.00%	0.00%	461,446	(146)	-	461,300	-	461,300	461,300	-	461,300
4	354	Structures and Improvements		3.33%	3.33%	2,597,197	(39,277)	2,300	2,560,220	1,089,269	1,470,950	2,560,220	1,089,269	1,470,950
5	355	Power Generation Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	-
8	362	Special Collecting Structures		2.00%	2.00%	-	-	-	-	-	-	-	-	-
9	363	Services to Customers		2.00%	2.00%	200,306	(1,583)	-	198,723	151,259	47,464	198,723	151,259	47,464
10	364	Flow Measuring Devices		10.00%	10.00%	39,878	(8,366)	-	31,512	31,230	282	31,512	31,230	282
11	365	Flow Measuring Installations		10.00%	10.00%	181,502	(1,880)	-	179,622	48,777	130,845	179,622	48,777	130,845
12	366	Reuse Services		2.00%	2.00%	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation		8.33%	8.33%	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells		3.33%	3.33%	699,191	(8,563)	242,243	932,871	285,616	647,255	932,871	285,616	647,255
	371	Effluent Pumping Equipment	<=Jun 2008	12.50%	12.50%	661,125	(6,281)	2,803	657,647	401,703	255,944	657,647	401,703	255,944
	371	Effluent Pumping Equipment	>=Jul 2008	12.50%	12.50%				-	-	-	-	-	-
	371	Effluent Pumping Equipment	2009	12.50%	12.50%				-	-	-	-	-	-
	371	Effluent Pumping Equipment	2010	12.50%	12.50%				-	-	-	-	-	-
	371	Effluent Pumping Equipment	2011	12.50%	12.50%				-	-	-	-	-	-
	371	Effluent Pumping Equipment	2012	12.50%	12.50%				-	-	-	-	-	-
	371	Effluent Pumping Equipment	2013	12.50%	12.50%				-	-	-	-	-	-
	371	Effluent Pumping Equipment	2014	12.50%	12.50%				-	-	-	-	-	-
15	371	Effluent Pumping Equipment		12.50%	12.50%	661,125	(6,281)	2,803	657,647	401,703	255,944	657,647	401,703	255,944
16	374	Reuse Distribution Reservoirs		2.50%	2.50%	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System		2.50%	2.50%	-	-	-	-	-	-	-	-	-
18	380	Treatment and Disposal Equipment		5.00%	5.00%	152,796	(9,218)	38,250	181,828	14,930	166,898	181,828	14,930	166,898
19	381	Plant Sewers		5.00%	5.00%	121,651	1,638	1,238	124,527	105,608	18,919	124,527	105,608	18,919
20	382	Outfall Sewer Lines		3.33%	3.33%	-	-	-	-	-	-	-	-	-
21	389	Other Plant and Misc. Equipment		6.67%	6.67%	970,499	(31,067)	-	939,432	249,600	689,832	939,432	249,600	689,832
22	390	Office Furniture and Equipment		6.67%	6.67%	369,739	(145,152)	-	224,587	71,997	152,590	224,587	71,997	152,590
23	390.1	Computers and Software		20.00%	20.00%	-	-	-	-	-	-	-	-	-
24	391	Transportation Equipment		20.00%	20.00%	107,368	(1)	-	107,367	47,775	59,592	107,367	47,775	59,592
25	392	Stores Equipment		4.00%	4.00%	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop and Garage Equipment.		5.00%	5.00%	6,276	(522)	-	5,754	203	5,552	5,754	203	5,552
27	394	Laboratory Equipment		10.00%	10.00%	7,488	0	-	7,488	2,250	5,239	7,488	2,250	5,239
28	395	Power Operated Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment		10.00%	10.00%	40,451	0	-	40,451	1,011	39,440	40,451	1,011	39,440
30	397	Miscellaneous Equip.		10.00%	10.00%	-	-	-	-	-	-	-	-	-
31	398	Other TangiblePlant - Scottsdale Capacity		10.00%	10.00%	486,294	-	-	486,294	97,259	389,035	486,294	97,259	389,035
		TOTAL				11,828,501	15,528	288,434	12,132,463	5,822,426	6,310,037	12,132,463	5,822,426	6,310,037

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ended December 31, 2014
Reconciliation of Plant Additions, Retirements and Accumulated Depreciation

Exhibit
Settlement Schedule B-2
Page 3.7
Witness: Bourassa

Line No.	NARUC Account No.	Description	Vintage Year	Previous Allowed Deprec. Rate	Allowed Deprec. Rate	July-December 2008 Plant Additions	Plant Adjustments[1]	Plant Reclass	Adjusted Plant Additions	Plant Retirements[2]	Plant Retirement Adjustments	Adjusted Plant Retirements	Salvage A/D Only	Deprecation (Calculated)	Plant Balance	Accum. Deprec.
1	351	Organization		0.00%	0.00%		-		-	-		-		-	-	-
2	352	Franchises		0.00%	0.00%		-		-	-		-		-	-	-
3	353	Land and Land Rights		0.00%	0.00%		-		-	-		-		-	461,300	-
4	354	Structures and Improvements		3.33%	3.33%	-	(12,085)	-	(12,085)	-	-	-	-	42,527	2,548,135	1,131,797
5	355	Power Generation Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	-	-	-
8	362	Special Collecting Structures		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers		2.00%	2.00%	-	-	-	-	-	-	-	-	1,987	198,723	153,246
10	364	Flow Measuring Devices		10.00%	10.00%	-	156	-	156	-	-	-	-	438	31,668	31,668
11	365	Flow Measuring Installations		10.00%	10.00%	-	-	-	-	-	-	-	-	8,981	179,622	57,758
12	366	Reuse Services		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation		8.33%	8.33%	-	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells		3.33%	3.33%	-	311	-	311	-	-	-	-	15,535	933,182	301,151
	371	Effluent Pumping Equipment	<=Jun 2008	12.50%	12.50%		1,641		1,641	4,461		4,461		41,015	654,827	438,257
	371	Effluent Pumping Equipment	>=Jul 2008	12.50%	12.50%		-		-	-		-		-	-	-
	371	Effluent Pumping Equipment	2009	12.50%	12.50%		-		-	-		-		-	-	-
	371	Effluent Pumping Equipment	2010	12.50%	12.50%		-		-	-		-		-	-	-
	371	Effluent Pumping Equipment	2011	12.50%	12.50%		-		-	-		-		-	-	-
	371	Effluent Pumping Equipment	2012	12.50%	12.50%		-		-	-		-		-	-	-
	371	Effluent Pumping Equipment	2013	12.50%	12.50%		-		-	-		-		-	-	-
	371	Effluent Pumping Equipment	2014	12.50%	12.50%		-		-	-		-		-	-	-
15	371	Effluent Pumping Equipment		12.50%	12.50%	-	1,641	-	1,641	4,461	-	4,461	-	41,015	654,827	438,257
16	374	Reuse Distribution Reservoirs		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-	-
18	380	Treatment and Disposal Equipment		5.00%	5.00%	-	(33,499)	-	(33,499)	-	-	-	-	4,127	148,329	19,057
19	381	Plant Sewers		5.00%	5.00%	-	-	-	-	-	-	-	-	3,113	124,527	108,721
20	382	Outfall Sewer Lines		3.33%	3.33%	-	-	-	-	-	-	-	-	-	-	-
21	389	Other Plant and Misc. Equipment		6.67%	6.67%	-	3,138	-	3,138	-	-	-	-	31,382	942,570	280,983
22	390	Office Furniture and Equipment		6.67%	6.67%	-	-	-	-	-	-	-	-	7,490	224,587	79,487
23	390.1	Computers and Software		20.00%	20.00%	-	-	-	-	-	-	-	-	-	-	-
24	391	Transportation Equipment		20.00%	20.00%	-	203	-	203	-	-	-	-	10,747	107,570	58,522
25	392	Stores Equipment		4.00%	4.00%	-	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop and Garage Equipment.		5.00%	5.00%	-	3,420	-	3,420	-	-	-	-	187	9,174	390
27	394	Laboratory Equipment		10.00%	10.00%	-	-	-	-	-	-	-	-	374	7,488	2,624
28	395	Power Operated Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment		10.00%	10.00%	-	275	-	275	-	-	-	-	2,029	40,726	3,041
30	397	Miscellaneous Equip.		10.00%	10.00%	-	-	-	-	-	-	-	-	-	-	-
31	398	Other TangiblePlant - Scottsdale Capacity		10.00%	10.00%	-	-	-	-	-	-	-	-	24,315	486,294	121,574
		TOTAL				-	(36,526)	-	(36,526)	4,461	-	4,461	-	244,175	12,091,476	6,062,140

[1] True-up
[2] Retirements Not Recorded

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ended December 31, 2014
Reconciliation of Plant Additions, Retirements and Accumulated Depreciation

Exhibit
Settlement Schedule B-2
Page 3.8
Witness: Bourassa

Line No.	NARUC Account No.	Description	Vintage Year	Previous Allowed Deprec. Rate	Allowed Deprec. Rate	2009 Plant Additions	Plant Adjustments[1]	Plant Reclass	Adjusted Plant Additions	Plant Retirements[2]	Plant Retirement Adjustments	Adjusted Plant Retirements	Salvage A/D Only	Deprecation (Calculated)	Plant Balance	Accum. Deprec.
1	351	Organization		0.00%	0.00%		-		-	-		-		-	-	-
2	352	Franchises		0.00%	0.00%		-		-	-		-		-	-	-
3	353	Land and Land Rights		0.00%	0.00%		-		-	-		-		-	461,300	-
4	354	Structures and Improvements		3.33%	3.33%	36,874	(311)	-	36,563	2,504	-	2,504	-	85,420	2,582,194	1,214,712
5	355	Power Generation Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	-	-	-
8	362	Special Collecting Structures		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers		2.00%	2.00%	3,400	-	-	3,400	-	-	-	-	4,008	202,123	157,255
10	364	Flow Measuring Devices		10.00%	10.00%	-	-	-	-	-	-	-	-	-	31,668	31,668
11	365	Flow Measuring Installations		10.00%	10.00%	-	-	-	-	-	-	-	-	17,962	179,622	75,720
12	366	Reuse Services		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation		8.33%	8.33%	-	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells		3.33%	3.33%	95,000	-	-	95,000	-	-	-	-	32,657	1,028,182	333,807
	371	Effluent Pumping Equipment	<=Jun 2008	12.50%	12.50%		-		-	4,841		4,841		81,551	649,986	514,966
	371	Effluent Pumping Equipment	>=Jul 2008	12.50%	12.50%		-		-	-		-		-	-	-
	371	Effluent Pumping Equipment	2009	12.50%	12.50%	10,132	-		10,132	-		-		633	10,132	633
	371	Effluent Pumping Equipment	2010	12.50%	12.50%		-		-	-		-		-	-	-
	371	Effluent Pumping Equipment	2011	12.50%	12.50%		-		-	-		-		-	-	-
	371	Effluent Pumping Equipment	2012	12.50%	12.50%		-		-	-		-		-	-	-
	371	Effluent Pumping Equipment	2013	12.50%	12.50%		-		-	-		-		-	-	-
	371	Effluent Pumping Equipment	2014	12.50%	12.50%		-		-	-		-		-	-	-
15	371	Effluent Pumping Equipment		12.50%	12.50%	10,132	-	-	10,132	4,841	-	4,841	-	82,184	660,118	515,600
16	374	Reuse Distribution Reservoirs		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-	-
18	380	Treatment and Disposal Equipment		5.00%	5.00%	503	-	-	503	-	-	-	-	7,429	148,632	26,486
19	381	Plant Sewers		5.00%	5.00%	-	-	-	-	-	-	-	-	6,226	124,527	114,947
20	382	Outfall Sewer Lines		3.33%	3.33%	-	-	-	-	-	-	-	-	-	-	-
21	389	Other Plant and Misc. Equipment		6.67%	6.67%	987	-	-	987	-	-	-	-	62,902	943,557	343,885
22	390	Office Furniture and Equipment		6.67%	6.67%	-	-	-	-	-	-	-	-	14,980	224,587	94,467
23	390.1	Computers and Software		20.00%	20.00%	-	-	-	-	-	-	-	-	-	-	-
24	391	Transportation Equipment		20.00%	20.00%	-	-	-	-	-	-	-	-	21,514	107,570	80,036
25	392	Stores Equipment		4.00%	4.00%	-	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop and Garage Equipment.		5.00%	5.00%	351	-	-	351	-	-	-	-	467	9,525	857
27	394	Laboratory Equipment		10.00%	10.00%	-	-	-	-	-	-	-	-	749	7,488	3,373
28	395	Power Operated Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment		10.00%	10.00%	-	-	-	-	-	-	-	-	4,073	40,726	7,113
30	397	Miscellaneous Equip.		10.00%	10.00%	-	-	-	-	-	-	-	-	-	-	-
31	398	Other TangiblePlant - Scottsdale Capacity		10.00%	10.00%	-	-	-	-	-	-	-	-	48,629	486,294	170,203
		TOTAL				324,280	(5,708)	-	318,572	7,346	-	7,346	-	490,773	12,402,703	6,545,567

[1] Affiliate Profit
[2] Retirements Not Recorded

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ended December 31, 2014
Reconciliation of Plant Additions, Retirements and Accumulated Depreciation

Exhibit
Settlement Schedule B-2
Page 3.9
Witness: Bourassa

Line No.	NARUC Account No.	Description	Vintage Year	Previous Allowed Deprec. Rate	Allowed Deprec. Rate	2010 Plant Additions	Plant Adjustments[1]	Plant Reclass	Adjusted Plant Additions	Plant Retirements[2]	Plant Retirement Adjustments	Adjusted Plant Retirements	Salvage A/D Only	Deprecation (Calculated)	Plant Balance	Accum. Deprec.
1	351	Organization		0.00%	0.00%		-		-			-		-	-	-
2	352	Franchises		0.00%	0.00%		-		-			-		-	-	-
3	353	Land and Land Rights		0.00%	0.00%		-	1,500	1,500			-		-	462,800	-
4	354	Structures and Improvements		3.33%	3.33%	105,916	(1,282)	(29,825)	74,809	-	-	-	-	87,233	2,657,003	1,301,945
5	355	Power Generation Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	-	-	-
8	362	Special Collecting Structures		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers		2.00%	2.00%	-	-	-	-	-	-	-	-	4,042	202,123	161,297
10	364	Flow Measuring Devices		10.00%	10.00%	-	-	-	-	-	-	-	-	-	31,668	31,668
11	365	Flow Measuring Installations		10.00%	10.00%	-	-	-	-	-	-	-	-	17,962	179,622	93,682
12	366	Reuse Services		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation		8.33%	8.33%	-	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells		3.33%	3.33%	-	-	-	-	-	-	-	-	34,238	1,028,182	368,046
	371	Effluent Pumping Equipment	<=Jun 2008	12.50%	12.50%		-		-			-		81,248	649,986	596,215
	371	Effluent Pumping Equipment	>=Jul 2008	12.50%	12.50%		-		-			-		-	-	-
	371	Effluent Pumping Equipment	2009	12.50%	12.50%		-		-			-		1,267	10,132	1,900
	371	Effluent Pumping Equipment	2010	12.50%	12.50%	107,891	(189)	27,135	134,837			-		8,427	134,837	8,427
	371	Effluent Pumping Equipment	2011	12.50%	12.50%		-		-			-		-	-	-
	371	Effluent Pumping Equipment	2012	12.50%	12.50%		-		-			-		-	-	-
	371	Effluent Pumping Equipment	2013	12.50%	12.50%		-		-			-		-	-	-
	371	Effluent Pumping Equipment	2014	12.50%	12.50%		-		-			-		-	-	-
15	371	Effluent Pumping Equipment		12.50%	12.50%	107,891	(189)	27,135	134,837	-	-	-	-	90,942	794,956	606,542
16	374	Reuse Distribution Reservoirs		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-	-
18	380	Treatment and Disposal Equipment		5.00%	5.00%	186,041	(24)	-	186,017	-	-	-	-	12,092	334,849	38,578
19	381	Plant Sewers		5.00%	5.00%	-	-	-	-	-	-	-	-	6,226	124,527	121,174
20	382	Outfall Sewer Lines		3.33%	3.33%	-	-	-	-	-	-	-	-	-	-	-
21	389	Other Plant and Misc. Equipment		6.67%	6.67%	500	-	-	500	-	-	-	-	62,952	944,057	406,837
22	390	Office Furniture and Equipment		6.67%	6.67%	-	-	-	-	-	-	-	-	14,980	224,587	109,447
23	390.1	Computers and Software		20.00%	20.00%	-	-	-	-	-	-	-	-	-	-	-
24	391	Transportation Equipment		20.00%	20.00%	-	-	-	-	-	-	-	-	21,514	107,570	101,550
25	392	Stores Equipment		4.00%	4.00%	-	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop and Garage Equipment.		5.00%	5.00%	1,759	(6)	-	1,753	-	-	-	-	520	11,278	1,377
27	394	Laboratory Equipment		10.00%	10.00%	-	-	-	-	-	-	-	-	749	7,488	4,122
28	395	Power Operated Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment		10.00%	10.00%	-	-	-	-	-	-	-	-	4,073	40,726	11,186
30	397	Miscellaneous Equip.		10.00%	10.00%	-	-	-	-	-	-	-	-	-	-	-
31	398	Other TangiblePlant - Scottsdale Capacity		10.00%	10.00%	-	-	-	-	-	-	-	-	48,629	486,294	218,833
		TOTAL				646,979	(1,902)	(1,190)	643,888	-	-	-	-	511,886	13,046,591	7,057,453

[1] Affiliate Profit
[2] Retirements Not Recorded

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ended December 31, 2014
Reconciliation of Plant Additions, Retirements and Accumulated Depreciation

Exhibit
Settlement Schedule B-2
Page 3.10
Witness: Bourassa

Line No.	NARUC Account No.	Description	Vintage Year	Previous Allowed Deprec. Rate	Allowed Deprec. Rate	2011 Plant Additions	Plant Adjustments[1]	Plant Reclass	Adjusted Plant Additions	Plant Retirements[2]	Plant Retirement Adjustments	Adjusted Plant Retirements	Salvage A/D Only	Deprecation (Calculated)	Plant Balance	Accum. Deprec.
1	351	Organization		0.00%	0.00%		-		-	-		-		-	-	-
2	352	Franchises		0.00%	0.00%		-		-	-		-		-	-	-
3	353	Land and Land Rights		0.00%	0.00%		-		-	-		-		-	462,800	-
4	354	Structures and Improvements		3.33%	3.33%	109,394	(1,491)	(50,642)	57,260	8,614	-	8,614	-	89,288	2,705,649	1,382,619
5	355	Power Generation Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	-	-	-
8	362	Special Collecting Structures		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers		2.00%	2.00%	-	-	-	-	-	-	-	-	4,042	202,123	165,339
10	364	Flow Measuring Devices		10.00%	10.00%	-	-	-	-	-	-	-	-	-	31,668	31,668
11	365	Flow Measuring Installations		10.00%	10.00%	-	-	-	-	-	-	-	-	17,962	179,622	111,644
12	366	Reuse Services		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation		8.33%	8.33%	-	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells		3.33%	3.33%	-	-	-	-	-	-	-	-	34,238	1,028,182	402,284
	371	Effluent Pumping Equipment	<=Jun 2008	12.50%	12.50%		-		-	6,482		6,482		53,771	643,504	643,504
	371	Effluent Pumping Equipment	>=Jul 2008	12.50%	12.50%		-		-	-		-		-	-	-
	371	Effluent Pumping Equipment	2009	12.50%	12.50%		-		-	-		-		1,267	10,132	3,166
	371	Effluent Pumping Equipment	2010	12.50%	12.50%		-		-	-		-		16,855	134,837	25,282
	371	Effluent Pumping Equipment	2011	12.50%	12.50%	76,164	(553)	31,563	107,174	-		-		6,698	107,174	6,698
	371	Effluent Pumping Equipment	2012	12.50%	12.50%		-		-	-		-		-	-	-
	371	Effluent Pumping Equipment	2013	12.50%	12.50%		-		-	-		-		-	-	-
	371	Effluent Pumping Equipment	2014	12.50%	12.50%		-		-	-		-		-	-	-
15	371	Effluent Pumping Equipment		12.50%	12.50%	76,164	(553)	31,563	107,174	6,482	-	6,482	-	78,591	895,647	678,650
16	374	Reuse Distribution Reservoirs		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-	-
18	380	Treatment and Disposal Equipment		5.00%	5.00%	33,223	(267)	(7,143)	25,813	-	-	-	-	17,388	360,662	55,966
19	381	Plant Sewers		5.00%	5.00%	-	-	-	-	-	-	-	-	3,353	124,527	124,527
20	382	Outfall Sewer Lines		3.33%	3.33%	-	-	-	-	-	-	-	-	-	-	-
21	389	Other Plant and Misc. Equipment		6.67%	6.67%	3,463	(11)	(3,150)	302	-	-	-	-	62,979	944,359	469,816
22	390	Office Furniture and Equipment		6.67%	6.67%	-	-	-	-	-	-	-	-	14,980	224,587	124,427
23	390.1	Computers and Software		20.00%	20.00%	-	-	-	-	-	-	-	-	-	-	-
24	391	Transportation Equipment		20.00%	20.00%	-	-	-	-	-	-	-	-	6,020	107,570	107,570
25	392	Stores Equipment		4.00%	4.00%	-	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop and Garage Equipment.		5.00%	5.00%	3,386	(30)	-	3,356	-	-	-	-	648	14,634	2,025
27	394	Laboratory Equipment		10.00%	10.00%	-	-	-	-	-	-	-	-	749	7,488	4,871
28	395	Power Operated Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment		10.00%	10.00%	-	-	20,308	20,308	-	-	-	-	5,088	61,034	16,274
30	397	Miscellaneous Equip.		10.00%	10.00%	-	-	-	-	-	-	-	-	-	-	-
31	398	Other TangiblePlant - Scottsdale Capacity		10.00%	10.00%	-	-	-	-	-	-	-	-	48,629	486,294	267,462
		TOTAL				393,707	(3,664)	(9,085)	380,978	28,549	-	28,549	-	493,666	13,399,021	7,522,570

[1] Affiliate Profit
[2] Retirements Not Recorded

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ended December 31, 2014
Reconciliation of Plant Additions, Retirements and Accumulated Depreciation

Exhibit
Settlement Schedule B-2
Page 3.11
Witness: Bourassa

Line No.	NARUC Account No.	Description	Vintage Year	Previous Allowed Deprec. Rate	Allowed Deprec. Rate	2012 Plant Additions	Plant Adjustments[1]	Plant Reclass	Adjusted Plant Additions	Plant Retirements[2]	Plant Retirement Adjustments	Adjusted Plant Retirements	Salvage A/D Only	Deprecation (Calculated)	Plant Balance	Accum. Deprec.
1	351	Organization		0.00%	0.00%		-		-	-		-		-	-	-
2	352	Franchises		0.00%	0.00%		-		-	-		-		-	-	-
3	353	Land and Land Rights		0.00%	0.00%	9,740	(16)		9,724	-		-		-	472,524	-
4	354	Structures and Improvements		3.33%	3.33%	237,042	(1,140)	(41,192)	194,710	11,217	-	11,217	-	93,153	2,889,143	1,464,556
5	355	Power Generation Equipment		5.00%	5.00%	-	-	3,839	3,839	-	-	-	-	96	3,839	96
8	362	Special Collecting Structures		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers		2.00%	2.00%	-	-	-	-	-	-	-	-	4,042	202,123	169,382
10	364	Flow Measuring Devices		10.00%	10.00%	-	-	-	-	-	-	-	-	-	31,668	31,668
11	365	Flow Measuring Installations		10.00%	10.00%	430	-	-	430	-	-	-	-	17,984	180,051	129,628
12	366	Reuse Services		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation		8.33%	8.33%	-	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells		3.33%	3.33%	-	-	-	-	-	-	-	-	34,238	1,028,182	436,523
	371	Effluent Pumping Equipment	<=Jun 2008	12.50%	12.50%		-		-	13,118		13,118		-	630,386	630,386
	371	Effluent Pumping Equipment	>=Jul 2008	12.50%	12.50%		-		-	-		-		-	-	-
	371	Effluent Pumping Equipment	2009	12.50%	12.50%		-		-	-		-		1,267	10,132	4,433
	371	Effluent Pumping Equipment	2010	12.50%	12.50%		-		-	-		-		16,855	134,837	42,137
	371	Effluent Pumping Equipment	2011	12.50%	12.50%		-		-	-		-		13,397	107,174	20,095
	371	Effluent Pumping Equipment	2012	12.50%	12.50%	59,529	(432)	7,480	66,577	-		-		4,161	66,577	4,161
	371	Effluent Pumping Equipment	2013	12.50%	12.50%		-		-	-		-		-	-	-
	371	Effluent Pumping Equipment	2014	12.50%	12.50%		-		-	-		-		-	-	-
15	371	Effluent Pumping Equipment		12.50%	12.50%	59,529	(432)	7,480	66,577	13,118	-	13,118	-	35,679	949,107	701,212
16	374	Reuse Distribution Reservoirs		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-	-
18	380	Treatment and Disposal Equipment		5.00%	5.00%	2,231	(19)	2,100	4,312	-	-	-	-	18,141	364,974	74,107
19	381	Plant Sewers		5.00%	5.00%	-	-	-	-	-	-	-	-	-	124,527	124,527
20	382	Outfall Sewer Lines		3.33%	3.33%	-	-	-	-	-	-	-	-	-	-	-
21	389	Other Plant and Misc. Equipment		6.67%	6.67%	683	-	-	683	-	-	-	-	63,012	945,042	532,827
22	390	Office Furniture and Equipment		6.67%	6.67%	-	-	-	-	-	-	-	-	14,980	224,587	139,407
23	390.1	Computers and Software		20.00%	20.00%	-	-	-	-	-	-	-	-	-	-	-
24	391	Transportation Equipment		20.00%	20.00%	5,228	(7)	-	5,221	-	33,699	33,699	-	522	79,092	74,393
25	392	Stores Equipment		4.00%	4.00%	-	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop and Garage Equipment.		5.00%	5.00%	-	(24)	-	(24)	-	-	-	-	731	14,610	2,756
27	394	Laboratory Equipment		10.00%	10.00%	-	(2)	-	(2)	-	-	-	-	749	7,486	5,619
28	395	Power Operated Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment		10.00%	10.00%	-	-	27,773	27,773	-	-	-	-	7,492	88,807	23,766
30	397	Miscellaneous Equip.		10.00%	10.00%	-	-	-	-	-	-	-	-	-	-	-
31	398	Other TangiblePlant - Scottsdale Capacity		10.00%	10.00%	-	-	-	-	-	-	-	-	48,629	486,294	316,091
		TOTAL				406,006	(2,187)	0	403,819	25,847	33,699	59,546	-	451,583	13,743,293	7,914,807

[1] Affiliate Profit
[2] Retirements Not Recorded

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ended December 31, 2014
Reconciliation of Plant Additions, Retirements and Accumulated Depreciation

Exhibit
Settlement Schedule B-2
Page 3.12
Witness: Bourassa

Line No.	NARUC Account No.	Description	Vintage Year	Previous Allowed Deprec. Rate	Allowed Deprec. Rate	2013 Plant Additions	Plant Adjustments[1]	Plant Reclass	Adjusted Plant Additions	Plant Retirements[2]	Plant Retirement Adjustments	Adjusted Plant Retirements	Salvage A/D Only	Deprecation (Calculated)	Plant Balance	Accum. Deprec.
1	351	Organization		0.00%	0.00%				-	-		-		-	-	-
2	352	Franchises		0.00%	0.00%				-	-		-		-	-	-
3	353	Land and Land Rights		0.00%	0.00%				-	-		-		-	472,524	-
4	354	Structures and Improvements		3.33%	3.33%	62,428	-	(21,589)	40,839	3,676	452	4,128	-	96,820	2,925,854	1,557,247
5	355	Power Generation Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	192	3,839	288
6	362	Special Collecting Structures		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers		2.00%	2.00%	15,611	-	-	15,611	-	-	-	-	4,199	217,733	173,580
10	364	Flow Measuring Devices		10.00%	10.00%	-	-	-	-	-	-	-	-	-	31,668	31,668
11	365	Flow Measuring Installations		10.00%	10.00%	-	-	-	-	-	-	-	-	18,005	180,051	147,633
12	366	Reuse Services		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation		8.33%	8.33%	-	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells		3.33%	3.33%	-	-	-	-	-	-	-	-	34,238	1,028,182	470,761
	371	Effluent Pumping Equipment	<=Jun 2008	12.50%	12.50%				-	31,863	5,096	36,960		-	593,426	593,426
	371	Effluent Pumping Equipment	>=Jul 2008	12.50%	12.50%				-	-		-		-	-	-
	371	Effluent Pumping Equipment	2009	12.50%	12.50%				-	-		-		1,267	10,132	5,700
	371	Effluent Pumping Equipment	2010	12.50%	12.50%				-	-		-		16,855	134,837	58,991
	371	Effluent Pumping Equipment	2011	12.50%	12.50%				-	-		-		13,397	107,174	33,492
	371	Effluent Pumping Equipment	2012	12.50%	12.50%				-	-		-		8,322	66,577	12,483
	371	Effluent Pumping Equipment	2013	12.50%	12.50%	84,467		15,589	100,056	-		-		6,254	100,056	6,254
	371	Effluent Pumping Equipment	2014	12.50%	12.50%				-	-		-		-	-	-
15	371	Effluent Pumping Equipment		12.50%	12.50%	84,467	-	15,589	100,056	31,863	5,096	36,960	-	46,094	1,012,203	710,346
16	374	Reuse Distribution Reservoirs		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-	-
18	380	Treatment and Disposal Equipment		5.00%	5.00%	7,270	-	1,519	8,789	-	-	-	-	18,468	373,763	92,575
19	381	Plant Sewers		5.00%	5.00%	-	-	-	-	-	-	-	-	-	124,527	124,527
20	382	Outfall Sewer Lines		3.33%	3.33%	-	-	-	-	-	-	-	-	-	-	-
21	389	Other Plant and Misc. Equipment		6.67%	6.67%	-	-	-	-	-	-	-	-	63,034	945,042	595,861
22	390	Office Furniture and Equipment		6.67%	6.67%	62,224	-	(62,224)	-	-	-	-	-	14,980	224,587	154,387
23	390.1	Computers and Software		20.00%	20.00%	-	-	62,224	62,224	-	-	-	-	6,222	62,224	6,222
24	391	Transportation Equipment		20.00%	20.00%	-	-	-	-	-	-	-	-	1,044	79,092	75,438
25	392	Stores Equipment		4.00%	4.00%	-	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop and Garage Equipment.		5.00%	5.00%	1,573	-	-	1,573	-	-	-	-	770	16,184	3,526
27	394	Laboratory Equipment		10.00%	10.00%	-	-	-	-	-	-	-	-	749	7,486	6,368
28	395	Power Operated Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment		10.00%	10.00%	-	-	4,482	4,482	-	-	-	-	9,105	93,289	32,871
30	397	Miscellaneous Equip.		10.00%	10.00%	-	-	-	-	-	-	-	-	-	-	-
31	398	Other TangiblePlant - Scottsdale Capacity		10.00%	10.00%	-	-	-	-	-	-	-	-	48,629	486,294	364,721
		TOTAL				309,159	-	(0)	309,159	35,540	7,253	42,793	-	476,313	14,009,660	8,348,127

[1] Affiliate Profit
[2] Retirements Not Recorded

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ended December 31, 2014
Reconciliation of Plant Additions, Retirements and Accumulated Depreciation

Exhibit
Settlement Schedule B-2
Page 3.13
Witness: Bourassa

Line No.	NARUC Account No.	Description	Vintage Year	Previous Allowed Deprec. Rate	Allowed Deprec. Rate	2014 Plant Additions	Plant Adjustments[1]	Plant Reclass and AFUDC	Adjusted Plant Additions	Plant Retirements[2]	Plant Retirement Adjustments	Adjusted Plant Retirements	Salvage A/D Only	Deprecation (Calculated)	Plant Balance	Accum. Deprec.
1	351	Organization		0.00%	0.00%				-	-		-		-	-	-
2	352	Franchises		0.00%	0.00%				-	-		-		-	-	-
3	353	Land and Land Rights		0.00%	0.00%				-	-		-		-	472,524	-
4	354	Structures and Improvements		3.33%	3.33%	49,937	(13,255)	(9,307)	27,375	13,970	-	13,970	-	97,654	2,939,259	1,640,932
5	355	Power Generation Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	192	3,839	480
8	362	Special Collecting Structures		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers		2.00%	2.00%	48,419	-	(7)	48,413	5,711	-	5,711	-	4,782	260,435	172,651
10	364	Flow Measuring Devices		10.00%	10.00%	-	-	-	-	-	-	-	-	-	31,668	31,668
11	365	Flow Measuring Installations		10.00%	10.00%	-	-	-	-	-	-	-	-	18,005	180,051	165,638
12	366	Reuse Services		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation		8.33%	8.33%	-	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells		3.33%	3.33%	-	-	-	-	-	-	-	-	34,238	1,028,182	505,000
	371	Effluent Pumping Equipment	<=Jun 2008	12.50%	12.50%				-	41,033		41,033		-	552,393	552,393
	371	Effluent Pumping Equipment	>=Jul 2008	12.50%	12.50%				-	-		-		-	-	-
	371	Effluent Pumping Equipment	2009	12.50%	12.50%				-	-		-		1,267	10,132	6,966
	371	Effluent Pumping Equipment	2010	12.50%	12.50%				-	-		-		16,855	134,837	75,846
	371	Effluent Pumping Equipment	2011	12.50%	12.50%				-	-		-		13,397	107,174	46,888
	371	Effluent Pumping Equipment	2012	12.50%	12.50%				-	-		-		8,322	66,577	20,805
	371	Effluent Pumping Equipment	2013	12.50%	12.50%				-	-		-		12,507	100,056	18,761
	371	Effluent Pumping Equipment	2014	12.50%	12.50%	38,455	9,634	4,227	52,316	-		-		3,270	52,316	3,270
15	371	Effluent Pumping Equipment		12.50%	12.50%	38,455	9,634	4,227	52,316	41,033	-	41,033	-	55,617	1,023,485	724,929
16	374	Reuse Distribution Reservoirs		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-	-
18	380	Treatment and Disposal Equipment		5.00%	5.00%	20,759	(71,979)	(2,258)	(53,478)	-	-	-	-	17,351	320,285	109,926
19	381	Plant Sewers		5.00%	5.00%	-	-	-	-	-	-	-	-	-	124,527	124,527
20	382	Outfall Sewer Lines		3.33%	3.33%	-	-	-	-	-	-	-	-	-	-	-
21	389	Other Plant and Misc. Equipment		6.67%	6.67%	20,988	(6,198)	-	14,790	-	-	-	-	63,528	959,832	659,389
22	390	Office Furniture and Equipment		6.67%	6.67%	2,724	-	(21)	2,703	-	-	-	-	15,070	227,290	169,457
23	390.1	Computers and Software		20.00%	20.00%	-	-	-	-	-	-	-	-	12,445	62,224	18,667
24	391	Transportation Equipment		20.00%	20.00%	22,930	-	-	22,930	21,808	-	21,808	-	3,337	80,215	56,957
25	392	Stores Equipment		4.00%	4.00%	-	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop and Garage Equipment.		5.00%	5.00%	12,758	-	(0)	12,758	-	-	-	-	1,128	28,942	4,654
27	394	Laboratory Equipment		10.00%	10.00%	3,196	-	-	3,196	-	-	-	-	908	10,683	7,277
28	395	Power Operated Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment		10.00%	10.00%	3,242	-	6,760	10,002	-	-	-	-	9,829	103,290	42,700
30	397	Miscellaneous Equip.		10.00%	10.00%	-	-	-	-	-	-	-	-	-	-	-
31	398	Other TangiblePlant - Scottsdale Capacity		10.00%	10.00%	-	-	-	-	-	-	-	-	48,629	486,294	413,350
		TOTAL				440,466	(330,849)	(317)	109,300	90,322	-	90,322	-	496,821	14,028,638	8,754,626

[1] Affiliate Profit
[2] Retirements Not Recorded

SHAPIRO LAW FIRM, P.C.
Jay L. Shapiro (No. 014650)
1819 E. Morten Avenue, Suite 280
Phoenix, Arizona 85020
Telephone (602) 559-9575

LIBERTY UTILITIES
Todd C. Wiley (No. 015358)
12725 W. Indian School Road, Suite D-101
Avondale, Arizona 85392

Attorneys for Liberty Utilities (Black Mountain Sewer) Corp.

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY AND FOR INCREASES IN ITS WASTEWATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.	DOCKET NO: SW-02361A-15-____ **APPLICATION**

Liberty Utilities (Black Mountain Sewer) Corp., an Arizona public service corporation ("Liberty Black Mountain" or "Company"), formerly known as Black Mountain Sewer Corporation, hereby applies for an order establishing the fair value of its plant and property used for the provision of public wastewater utility service and, based on such finding, approving permanent rates and charges for utility service designed to produce a fair return thereon. In support thereof, Company states as follows:

1. Liberty Black Mountain is an Arizona public service corporation engaged in providing wastewater utility services in portions of Maricopa County, Arizona, pursuant to certificates of convenience and necessity granted by the Arizona Corporation Commission. During the Test Year, Liberty Black Mountain served approximately 2,053 customers.

EXHIBIT
tabbies
A-16
ADMITTED

2. Liberty Black Mountain's business office is located at 12725 W. Indian School Road, Suite D-101, Avondale, Arizona 85392 and its telephone number is (623) 935-9367. The primary management contact is Matthew Garlick. Mr. Garlick is employed by Liberty Utilities ("Liberty") as President – AZ/TX.

3. The person responsible for overseeing and directing the conduct of this rate application is Tom Krepitch, Liberty's Utility Rates and Regulatory Manager. Mr. Krepitch was assisted by the Company's rate case consultant, Thomas Bourassa and undersigned legal counsel. Mr. Krepitch's mailing address is 12725 W. Indian School Road, Suite D-101, Avondale, Arizona 85392; his telephone number is (623) 298-3769; and his e-mail address is Tom.Krepitch@libertyutilities.com. Mr. Bourassa's mailing address is 139 W. Wood Drive, Phoenix, Arizona 85029; his telephone number is (602) 246-7150; and his e-mail address is tjb114@cox.net. **All discovery, data requests and other requests for information concerning this Application should be directed to Mr. Krepitch, including copies by e-mail, as well as to Matthew Garlick by e-mail at Matthew.Garlick@libertyutilities.com, and to Mr. Bourassa, with a copy by e-mail to undersigned counsel at jay@shapslawaz.com and whitney@shapslawaz.com, and to Liberty's Assistant General Counsel at todd.wiley@libertyutilities.com.**

4. Liberty Black Mountain's present rates and charges for utility service were approved by the Commission in Decision No. 71865 (September 1, 2010) using a test year ending June 30, 2008. There have been no other changes to the Company's rates since the current rates went into effect on or after September 1, 2010.

5. The Company's revenues from its utility operations are presently inadequate to provide a fair rate of return on the fair value of its utility plant and property devoted to public service. Operating expenses have caused the revenues produced by the current rates and charges for service to become inadequate to meet operating expenses and provide a reasonable rate of return. Therefore, the Company requests that certain

adjustments to its rates and charges for utility service be approved by the Commission so that the Company may recover its operating expenses and be given an opportunity to earn a just and reasonable rate of return on the fair value of its property. The Company agrees to use its original cost rate base as its fair value rate base in this proceeding to minimize disputes and reduce rate case expense.

6. Filed concurrently herewith are the schedules required pursuant to A.A.C. R14-2-103 for rate applications by Class "B" utilities. The test year utilized by Liberty Black Mountain in connection with the preparation of such schedules is the 12-month period that ended December 31, 2014. Liberty Black Mountain requests that the Commission utilize such test year in connection with this Application, with appropriate adjustments to obtain a normal or more realistic relationship between revenues, rate base and expenses during the period in which the rates established in this proceeding are in effect.

7. During the test year, Liberty Black Mountain's adjusted gross revenues were $2,239,848. The adjusted operating income was $258,613, leading to an operating income deficiency of $35,469. The adjusted fair value rate base was $3,412,024. Thus, the rate of return during the test year was 7.58 percent.

8. Liberty Black Mountain submits that these rates of return are inadequate to allow it to obtain debt, pay a reasonable return to its stockholder, maintain a sound credit rating, and/or enable the Company to attract additional capital on reasonable and acceptable terms in order to continue the investment in utility plant necessary to adequately serve customers.

9. Liberty Black Mountain is seeking total revenues of $2,659,788. The Company seeks an increase in total revenues of $417,940, an increase of approximately 18.75 percent over the adjusted and annualized test year revenues of $2,239,848. The revenue amount is *inclusive* of the revenues required to recover

(1) operating expenses; (2) a return on rate base; (3) plant closure cost surcharge revenues; and (4) rate case expense surcharge revenues. Specifically, the increase in annual revenues to provide for recovery of operating expenses and an 8.62 percent return on rate base is approximately $56,929. The increase in annual revenues to provide for recovery of plant closure costs is $211,011. The increase in annual revenues to provide for recovery of rate case expense is $150,000.

10. Filed concurrently in support of this Application is the Direct Testimony of Greg Sorensen, which provides an overview of Liberty Black Mountain and its parent, Liberty Utilities Co., details Liberty Black Mountain's improvements since the last rate decision, Liberty Black Mountain's new proposed rate design for commercial customers, and discusses closure of the Boulders Wastewater Treatment Plant.

11. Liberty Black Mountain also submits the Direct Testimony of Matthew Garlick. In his testimony, Mr. Garlick discusses the Purchased Power Adjuster Mechanism (PPAM) and Property Tax Adjuster Mechanism (PTAM), for which the Company is seeking approval, the proposed modifications to the Company's tariff of rates and charges, and the Company's request for financing.

12. Liberty Black Mountain also submits the direct testimony of William Killeen. Mr. Killeen's testimony provides an overview of Liberty Utilities' business model, cost allocation manual, and corporate cost allocation process.

13. Finally, Liberty Black Mountain submits the Direct Testimony of Thomas Bourassa, in two separate volumes that collectively provide an overview of the Company's rate filing, discussion of the revenue requirement, including the "A" through "F" schedules, and the "G" schedules, development of the rate base and income statement adjustments, cost of equity capital and related issues, proposed rates, including the "H" schedules, and discussion of the effects of the proposed rates on customers' bills. The Company's "D" Schedules, which concern the cost of capital, are attached to the

volume of Mr. Bourassa's testimony addressing cost of capital. The remaining schedules are separately bound and filed concurrently with the Application. In his testimony, Mr. Bourassa also explains the Company's new proposed rate design for commercial customers.

14. Attached hereto as **Attachment 1** are wastewater plant descriptions, and wastewater flows for January 2014-December 2014.

15. Attached hereto as **Attachment 2** is Liberty Black Mountain's proposed tariff of rates and charges.

16. Attached hereto as **Attachment 3** is Liberty Black Mountain's proposed PPAM; and

17. Attached hereto as **Attachment 4** is Liberty Black Mountain's proposed PTAM.

WHEREFORE, Liberty Black Mountain requests the following relief:

A. That the Commission, upon proper notice and at the earliest possible time, conduct a hearing in accordance with A.R.S. § 40-251 and determine the fair value of Liberty Black Mountain's utility plants and property devoted to providing wastewater utility service;

B. Based upon such determination, that the Commission approve permanent adjustments to the rates and charges for wastewater utility service provided by Liberty Black Mountain, as proposed herein, or approve such other rates and charges as will produce a just and reasonable rate of return on the fair value of Liberty Black Mountain's utility plant and property;

C. That the Commission approve Liberty Black Mountain's request for a PPAM and PTAM;

D. That the Commission rely on A.R.S. § 40-252 to the extent the Commission believes it necessary to amend past Commission decisions in order to grant the relief

requested herein or any other relief the Commission deems just and reasonable under the circumstances; and

E. That the Commission authorize such other and further relief as may be appropriate to ensure that Liberty Black Mountain has an opportunity to earn a just and reasonable return on the fair value of their utility plant and property and as may otherwise be required under Arizona law.

RESPECTFULLY SUBMITTED this 22nd day of June, 2015.

SHAPIRO LAW FIRM, P.C.

By: _____
Jay L. Shapiro
1819 E. Morten Avenue, Suite 280
Phoenix, Arizona 85020

and

LIBERTY UTILITIES

Todd C. Wiley
Assistant General Counsel
12725 W. Indian School Road, Suite D-101
Avondale, Arizona 85392

Attorneys for Liberty Utilities
(Black Mountain Sewer) Corp.

ORIGINAL and fifteen (15) copies of the foregoing, together with the direct testimonies and schedules supporting this application were delivered this 22nd day of June, 2015, to:

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

By: _____

LIBERTY UTILITIES

(BLACK MOUNTAIN SEWER) CORP.

APPLICATION ATTACHMENT 1

BLACK MOUNTAIN SEWER CORPORATION	
Name of System:	Wastewater Inventory Number (if applicable):

WASTEWATER UTILITY PLANT DESCRIPTION
TREATMENT FACILITY

TYPE OF TREATMENT (Extended Aeration, Step Aeration, Oxidation Ditch, Aerobic Lagoon, Anaerobic Lagoon, Trickling Filter, Septic Tank, Wetland, Etc.)	Extended Aeration
DESIGN CAPACITY OF PLANT (Gallons Per Day)	160,000 GPD BMSC Treatment Facility 318,000 GPD Scottsdale

LIFT STATION FACILITIES

Location	Quantity of Pumps	Horsepower Per Pump	Capacity Per Pump (GPM)	Wet Well Capacity (gals)
Commercial	2	23	200	1,130
CIE-No Longer Exists	N/A	N/A	N/A	N/A
Indian Rock	2	6.5	100	470
Sage Brush	2	3	N/A	470
Trade Center	2	10	N/A	200
Sentinel Rock	2	15	370	1,500
Carefree Highway	2	20	350	1,525
Stagecoach Pass	2	5	50	470
Peaceful Place	2	3	15	470
Sunset Trails	2	20	290	2,600
El Pedregal	2	10	185	2,000
Ridgeview	2	7.5	100	470
Canyon Crossings-New River	2	2	85	300
Carefree Village	2	2.7	85	1,760
Indian Basket	2	1	11	150

FORCE MAINS

Size	Material	Length (Feet)
3"	ACP	915
4"	ACP	9,366
6"	ACP	7,460
1.25"	PVC	725
1.5"	PVC	5,384
2"	PVC	5,155
4"	PVC	2,390
6"	PVC	10,353
8"	PVC	10,426
4"	DIP	3,000
6"	DIP	1,135

MANHOLES		CLEANOUTS
Type	Quantity	Quantity
Standard	1,028	30
Drop	14	

Note: If you are filing for more than one system, please provide separate sheets for each system.

BLACK MOUNTAIN SEWER CORPORATION	
Name of System:	Wastewater Inventory Number (if applicable):

WASTEWATER UTILITY PLANT DESCRIPTION (CONTINUED)

COLLECTION MAINS

Size (in inches)	Material	Length (in feet)
4	ABS	1263
12	ABS	9,343
6	VCP	12,760
8	VCP	71,673
10	VCP	7,675
15	VCP	1,900
6	PVC	3,046
8	PVC	90,912
10	PVC	3,455
12	PVC	565
15	PVC	6,735
6	DIP	85
8	DIP	1,320
15	DIP	165
18	CIP	130
21	CIP	74

SERVICES

Size (in inches)	Material	Quantity
4		2002
6		131

FOR THE FOLLOWING FIVE ITEMS, LIST THE UTILITY OWNED ASSETS IN EACH CATEGORY PER WASTEWATER SYSTEM

SOLIDS PROCESSING AND HANDLING FACILITIES	N/A
DISINFECTION EQUIPMENT (Chlorinator, Ultra-Violet, Etc.)	Sodium Hypo-Chlorite (Bleach)
FILTRATION EQUIPMENT (Rapid Sand, Slow Sand, Activated Carbon, Etc.)	Rapid Sand Filter
STRUCTURES (Buildings, Fences, Etc.)	Main blower building Chlorine building Headworks building Concrete block wall (plant)
OTHER (Laboratory Equipment, Tools, Vehicles, Standby Power Generators, Etc.	Odor control scrubber (plant); Stand-by generator (portable); Lifting crane assembly; Chevy pickup (x1); Ford Pick Up (x2)Stand- Generator- (Carefree Village, Commercial, New Trade Center)

Note: If you are filing for more than one system, please provide separate sheets for each system.

BLACK MOUNTAIN SEWER CORPORATION	
Name of System:	Wastewater Inventory Number (if applicable):

WASTEWATER FLOWS

MONTH/YEAR (Most Recent 12 Months)	NUMBER OF SERVICES	TOTAL MONTHLY SEWAGE FLOW	SEWAGE FLOW ON PEAK DAY
January	2056	11,869,000	138,000-WWTP 397,000-COS METER
February	2069	10,988,000	149,000-WWTP 329,000-COS METER
March	2061	13,357,000	171,000-WWTP 369,000-COS METER
April	2072	12,513,000	163,000-WWTP 344,000-COS METER
May	2083	10,774,000	147,000-WWTP 289,000-COS METER
June	2077	10,013,000	158,000-WWTP 253,000-COS METER
July	2084	10,061,000	146,000-WWTP 242,000-COS METER
August	2080	10,331,000	193,000-WWTP 331,000-COS METER
September	2085	11,176,000	217,000-WWTP 349,000-COS METER
October	2094	11,890,000	165,000-WWTP 300,000-COS METER
November	2094	11,421,000	130,000-WWTP 330,000-COS METER
December	2098	11,349,000	124,000-WWTP 326,000-COS METER

PROVIDE THE FOLLOWING INFORMATION AS APPLICABLE PER WASTEWATER SYSTEM

Method of Effluent Disposal (leach field, surface water discharge, reuse, injection wells, groundwater recharge, evaporation ponds, etc.)	Reuse
Groundwater Permit Number	100351
ADEQ Aquifer Protection Permit Number	N/A
ADEQ Reuse Permit Number	APP100351
EPA NPDES Permit Number	N/A

Note: If you are filing for more than one system, please provide separate sheets for each system.

LIBERTY UTILITIES

(BLACK MOUNTAIN SEWER) CORP.

APPLICATION ATTACHMENT 2

TABLE OF CONTENTS

Part One – Statement of Charges ..... Sheet No. 1

I. Rates ..... Sheet No. 1

II. Taxes and Assessments ..... Sheet No. 2

III. Additional Charges ..... Sheet No. 3

IV. Permitted Costs ..... Sheet No. 4

Part Two – Statement of Terms and Conditions ..... Sheet No. 5

I. Customer Discharge to System ..... Sheet No. 5

II. Rules and Regulations ..... Sheet No. 7

Part Three – Off-Site Facilities Hook-Up Fee ..... Sheet No. 8

I. Purpose and Availability ..... Sheet No. 8

II. Definitions ..... Sheet No. 8

III. Wastewater Hook-up Fee ..... Sheet No. 9

IV. Terms and Conditions ..... Sheet No. 9

Applies to all **WASTEWATER** service areas

PART ONE
STATEMENT OF CHARGES

I. RATES

In Decision No. _____, issued _____, 2016, the Commission approved the following rates and charges to become effective _____:

MONTHLY CHARGE

Description	**Rate**
Residential Service	$79.20
Commercial Service	$85.00
Commercial – Per 1,000 gallons used[1]	$5.13
Effluent Sales - Per 1,000 gallons	$0.460510

[1] Company shall bill non-residential customers based on actual water usage data provided by the Town of Carefree, the City of Scottsdale and Cave Creek Water Company. If, at any point, Company is unable to obtain actual water usage data for non-residential customers, Company shall bill non-residential customers based on the last known, most recent usage data as a proxy. Billing shall be trued up when actual data is obtained.

Issued: _____ Effective: _____

ISSUED BY:
Matthew Garlick, President
Liberty Utilities (Black Mountain Sewer) Corp.
12725 W. Indian School Road, Suite D-101
Avondale, AZ 85392

Applies to all **WASTEWATER** service areas

PART ONE
STATEMENT OF CHARGES

II. TAXES AND ASSESSMENTS

In addition to all other rates and charges authorized herein, the Company shall collect from its customers all applicable sales, transaction, privilege, regulatory or other taxes and assessments as may apply now or in the future, per Rule R14-2-608(D)(5).

Applies to all **WASTEWATER** service areas

PART ONE

STATEMENT OF CHARGES

III. ADDITIONAL CHARGES

A.	Establishment—Regular Hours	$25.00
B.	Re-Establishment (within 12 months)	(1)
C.	Reconnection—Delinquent	(2)
D.	After-Hours Service Charge	$50.00; (3)
E.	Minimum Deposit—Residential	Two times average bill
F.	Minimum Deposit—Non-Residential	Two and one-half times average bill
G.	Deposit Interest	6.00%
H.	NSF Check Charge	$10.00
I.	Deferred Payment Finance Charge	1.50% per month
J.	Late Charge	Greater of $5.00 or 1.50% per month on unpaid balance
K.	Main Extension Tariff Per A.A.C. R14-2-606(B)	Cost
L.	Off-Site Facilities Hook-Up Fee	Per Hook-Up Fee Tariff

(1) Per A.A.C. R14-2-603(D), residential and non-residential customers shall pay applicable minimum monthly charge times number of months disconnected.

(2) A delinquent customer who has been disconnected from the utility and desires to be reconnected shall pay the actual cost of disconnection and the actual cost of reconnection. There shall be no charge for disconnection if no physical work was performed.

(3) The after-hours service charge shall apply to any service requested by Customer that is performed by Company after regular business hours and shall be in addition to the regular business hours service charge.

Applies to all **WASTEWATER** service areas
PART ONE
STATEMENT OF CHARGES

IV. PERMITTED COSTS

A. Costs shall be verified by invoice.

B. For services that are provided by Company at cost, costs shall include labor, materials, other charges incurred, and overhead. However, prior to any such service being provided, the estimated cost of such service will be provided by Company to the customer. After review of the cost estimate, the customer will pay the amount of the estimated cost to Company.

C. In the event that the actual cost is less than the estimated cost, Company will refund the excess to the customer within 30 days after completion of the provision of the service or after Company's receipt of invoices, timesheets or other related documents, whichever is later.

D. In the event the actual cost is more than the estimated cost, Company will bill the customer for the amount due within 30 days after completion of the invoices, timesheets or other related documents, whichever is later. The amount so billed will be due and payable 30 days after the invoice date.

E. At the customer's request, Company shall make available to the customer all invoices, timesheets or related documents that support the cost for providing such service.

F. Permitted costs shall include any Federal, State or local taxes that are or may be payable by Company as a result of any tariff or contract for wastewater facilities under which the Customer advances or contributes funds or facilities to Company.

Applies to all **WASTEWATER** service areas

PART TWO
STATEMENT OF TERMS AND CONDITIONS

I. CUSTOMER DISCHARGE TO SYSTEM

A. Service Subject to Regulation

Company provides wastewater service using treatment and collection facilities that are regulated by numerous county, state and federal statutes and regulations. Those regulations include limitations as to domestic strength wastewater and the type of wastewater that may be discharged into the system by any person directly or indirectly connected to the plant.

B. Waste Limitations

Company has established the permissible limits of concentration as domestic strength wastewater and will limit concentration for various specific substances, materials, waters, or wastes that can be accepted in the sewer system, and to specify those substances, materials, waters, or wastes that are prohibited from entering the sewer system. Each permissible limit so established shall be placed on file in the business office of Company, with a copy filed with the Commission. No person shall discharge, or cause to be discharged, any new sources of inflow including, but not limited to, storm water, surface water, groundwater, roof runoffs, subsurface drainage, cooling water, or polluted industrial process waters into the sanitary sewer. Company will require an affidavit from all non-residential customers, and their professional engineer, stating that the wastewater discharged to the system does not exceed domestic strength or applicable pre-treatment standards.

Applies to all **WASTEWATER** service areas

PART TWO
STATEMENT OF TERMS AND CONDITIONS

I. CUSTOMER DISCHARGE TO SYSTEM (cont.)

C. Inspection and Right of Entry

Every facility that is involved directly or indirectly with the discharge of wastewater to the Treatment Plant may be inspected by Company as it deems necessary. These facilities shall include but not be limited to sewer; sewage pumping plants; all processes; devices and connection sewer; and all similar sewerage facilities. Inspections may be made to determine that such facilities are maintained and operated properly and are adequate to meet the provisions of these rules and this tariff. Inspections may include the collection of samples. Authorized personnel of Company shall be provided immediate access to all of the above facilities or to other facilities directly or indirectly connected to the Treatment Plant at all reasonable times including those occasioned by emergency conditions. Any permanent or temporary obstruction to easy access to the user's facility to be inspected shall promptly be removed by the facility user or owner at the written or verbal request of Company and shall not be replaced. No person shall interfere with, delay, resist or refuse entrance to an authorized Company representative attempting to inspect any facility involved directly or indirectly with a discharge of wastewater to the Treatment Plant. Adequate identification shall be provided by Company for all inspectors and other authorized personnel and these persons shall identify themselves when entering any property for inspection purposes or when inspecting the work of any contractor.

All transient motor homes, travel trailers and other units containing holding tanks must arrive at the Company's service area in an empty condition. Inspection will be required of said units prior to their being allowed to hookup to the wastewater system.

Applies to all **WASTEWATER** service areas

PART TWO
STATEMENT OF TERMS AND CONDITIONS

II. RULES AND REGULATIONS

Company 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.

Applies to all **WASTEWATER** service areas

PART THREE
OFF-SITE FACILITIES HOOK-UP FEE

I. Purpose and Availability

The purpose of the off-site facilities hook-up fees payable to **Liberty Utilities (Black Mountain Sewer) Corp.** ("Company") pursuant to this tariff is to equitably apportion the costs of constructing additional off-site facilities to provide wastewater treatment and disposal facilities among all new service laterals. These charges are applicable to all new service laterals undertaken via Collection Main Extension Agreements, or requests for service not requiring a Collection Main Extension Agreement, entered into after the effective date of this tariff. The charges are one-time charges and are payable as a condition to Company's establishment of service, as more particularly provided below.

II. Definitions

Unless the context otherwise requires, the definitions set forth in R-14-2-601 of the Arizona Corporation Commission's ("Commission") rules and regulations governing sewer utilities shall apply interpreting this tariff schedule.

"Applicant" means any party entering into an agreement with Company for the installation of wastewater facilities to serve new service laterals, and may include developers and/or builders of new residential subdivisions, and non-residential properties.

"Company" means Liberty Utilities (Black Mountain Sewer) Corp..

"Collection Main Extension Agreement" means an agreement whereby an Applicant, Developer and/or Builder agrees to advance the costs of the installation of wastewater facilities necessary to serve new service laterals, or install wastewater facilities to serve new service laterals and transfer ownership of such wastewater facilities to Company, which agreement does not require the approval of the Commission pursuant to A.A.C. R-14-2-606, and shall have the same meaning as "Wastewater Facilities Agreement."

"Off-Site Facilities" means the wastewater treatment plant, sludge disposal facilities, effluent disposal facilities and related appurtenances necessary for proper operation, including engineering and design costs. Off-site facilities may also include lift stations, force mains,

transportation mains and related appurtenances necessary for proper operation if these facilities are not for the exclusive use of the Applicant and benefit the entire wastewater system.

"Service Lateral" means and includes all service laterals for single-family residential, commercial, industrial or other uses.

III. Wastewater Hook-up Fee

For each new residential service lateral, Company shall collect a Hook-Up Fee of $1,800 based on the Equivalent Residential Unit ("ERU") of 320 gallons per day. Non-residential applicants shall pay based on the total ERUs of their development calculated by dividing the estimated total daily wastewater capacity usage needed for service using standard engineering standards and criteria by the ERU factor of 320 gallons per day.

IV. Terms and Conditions

(A) Assessment of One Time Off-Site Facilities Hook-up Fee: The off-site facilities hook-up fee may be assessed only once per parcel, service lateral, or lot within a subdivision (similar to a service lateral installation charge). If a development or subdivision is upsized or expanded by Applicant, Builder and/or Developer after assessment of Hook-Up Fees by Company, Company may charge additional Hook-Up Fees for such upsizing or expansion by Applicant based on the calculation set forth above.

(B) Use of Off-Site Facilities Hook-up Fee: Off-site facilities hook-up fees may only be used to pay for capital items of off-site facilities or for repayment of loans obtained to fund the cost of installation of off-site facilities. Off-site hook-up fees shall not be used to cover repairs, maintenance, the cost of closing wastewater treatment plant, including lift stations, or other operational purposes. Company shall record amounts collected under the tariff as CIAC; however, such amounts shall not be deducted from rate base until such amounts have been expended for plant.

(C) Time of Payment:

(1) In the event that the person or entity that will be constructing improvements ("Applicant," "Developer," or "Builder") is otherwise required to enter into a Collection Main Extension Agreement, payment of the fees required hereunder shall be made by the Applicant, Developer or Builder within 15 days of execution of a Main Extension Agreement or as otherwise mutually agreed between Applicant and Company. .

(2) In the event that the Applicant, Developer or Builder for service is not required to enter into a Collection Main Extension Agreement, the hook-up fee charges hereunder shall be due and payable at the time wastewater service is requested for the property.

(D) Off-Site Facilities Construction by Developer: Company and Applicant, Developer, or Builder may agree to construction of off-site facilities necessary to serve a particular development by Applicant, Developer or Builder, which facilities are then conveyed to Company. In that event, Company shall credit the total cost of such off-site facilities as an offset to off-site hook-up fees due under this Tariff. If the total cost of the off-site facilities constructed by Applicant, Developer or Builder and conveyed to Company is less than the applicable off-site hook-up fees under this Tariff, Applicant, Developer or Builder shall pay the remaining amount of off-site hook-up fees owed hereunder. If the total cost of the off-site facilities contributed by Applicant, Developer or Builder and conveyed to Company is more than the applicable off-site hook-up fees under this Tariff, Developer or Builder shall be refunded the difference upon acceptance of the off-site facilities by the Company.

(E) Failure to Pay Charges; Delinquent Payments: Company will not be obligated to make an advance commitment to provide or actually provide wastewater service to any Developer, Builder or other applicant for service in the event that the Developer, Builder or other applicant for service has not paid in full all charges hereunder. Under no circumstances will Company connect service or otherwise allow service to be established if the entire amount of any payment has not been paid.

(F) Off-Site Hook-Up Fees Non-refundable: The amounts collected by Company pursuant to the off-site hook-up fee tariff shall be non-refundable contributions in aid of construction ("CIAC").

(G) Use of Off-Site Hook-Up Fees Received: All funds collected by Company as off-site facilities hook-up fees shall be deposited into a separate account and bear interest and shall be used solely for the purposes of paying for the costs of installation of off-site facilities, including repayment of loans obtained for the installation of off-site facilities.

(H) Off-Site Facilities Hook-Up Fee in Addition to On-site Facilities: The off-site facilities hook-up fee shall be in addition to any costs associated with the construction of on-site facilities under a Collection Main Extension Agreement.

(I) Disposition of Excess Funds: After all necessary and desirable off-site facilities are constructed utilizing funds collected pursuant to the off-site facilities hook-up fees, or if the off-site facilities hook-up fee has been terminated by order of the Arizona Corporation Commission,

any funds remaining in the trust account shall be refunded. The manner of the refund shall be determined by the Commission at the time a refund becomes necessary.

(J) Status Reporting Requirements to the Commission: Company shall submit a calendar year Off-Site Facilities Hook-Up Fee status report each January to Docket Control for the prior twelve (12) month period, beginning January 201_, until the hook-up fee tariff is no longer in effect. This status report shall contain a list of all customers that have paid the hook-up fee tariff, the amount each has paid, the physical location/address of the property in respect of which such fee was paid, the amount of money spent from the account, the amount of interest earned on the funds within the tariff account, and an itemization of all facilities that have been installed using the tariff funds during the 12 month period.

LIBERTY UTILITIES

(BLACK MOUNTAIN SEWER) CORP.

APPLICATION ATTACHMENT 3

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.

PLAN OF ADMINISTRATION FOR PURCHASED POWER ADJUSTMENT MECHANISM

JUNE 22, 2015

I. GENERAL DESCRIPTION.

This document is the Plan of Administration ("POA") for the Purchased Power Adjustment Mechanism ("PPAM") for Liberty Utilities (Black Mountain Sewer) Corp. ("Liberty Black Mountain" or "Company") approved by the Arizona Corporation Commission ("Commission") in Decision No. _____ on _____, 2016. The PPAM allows Liberty Black Mountain to pass through to its customers the increase or decrease in purchased power costs that result from a rate change for any Commission-regulated electric service provider supplying retail electric service to the Company.

II. PPAM RELATED FILINGS.

A. Within 60 days of the effective date of a Commission Decision authorizing a rate change in the approved tariffs for any Commission-regulated electric service provider supplying retail electric service to the Company, the Company shall file with Docket Control an analysis of the actual impact on the energy portion of the Company's electric service costs.

B. The Company will provide the Commission with spreadsheets detailing exactly how the Company's purchased power expenses were calculated in the time period prior to a change in the rate that the Company must pay for purchased power. These calculations will include basic service charges and rate and volume figures. That is, the Company will break down its total purchased power bill into the amount due to fixed fees, volume of electricity used, and the rates paid per unit of electricity. For the period following the rate change, the Company will provide the same information, then compare the two periods, isolating any change in purchased power cost that is due exclusively to a rate change. The specific intent is to show exactly how much of any increase or decrease is due to changes in rates beyond the Company's control and how much is due to a change in the amount of power that the Company consumes. The Company will only recover increases or refund decreases that are due to changes in rates.

C. All revised schedules filed with the Commission pursuant to the provisions of this PPAM will be accompanied by documentation prepared by the Company in a format approved by Utilities Division Staff of the Commission and will contain sufficient detail to enable the Commission to verify accuracy of the Company's calculations.

D. The surcharges will not become effective until approved by the Commission.

E. The Company will file annually with the Commission a report detailing the Company's purchased power costs and any conservation or power-shifting measures employed by the Company.

F. The Company shall provide notice (in a form acceptable to Staff) of the rate increases to customers with the bill where the rate increase first appears.

III. APPLICATION TO SEWER CUSTOMERS.

A. The increase or decrease in purchased power costs that are due to changes in rates at the Company's sewer facilities will be allocated on a per capita basis.

B. See the following example:

Test Year	
Purchased Power Rate	**$0.0800**
Kilowatt Hours Used	1,250,000
Purchased Power Expense	$100,000

→

Current Year	
Purchased Power Rate	**$0.1000**
Kilowatt Hours Used	1,250,000
Purchased Power Expense	$125,000

Pass Through Calculation	
Current Year Purchased Power Expense	$125,000
Test Year Purchased Power Expense	$100,000
Increase in Purchased Power Expense Due to Rate Increase	$25,000

PPAM Charge on Sample Customer Bill	
Increase in Purchased Power Expense Due to Rate Increase	$25,000
Number of Sewer Customers	20,000
PPAM Charge on Sample Customer Bill	$1.25

LIBERTY UTILITIES

(BLACK MOUNTAIN SEWER) CORP.

APPLICATION ATTACHMENT 4

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.

PLAN OF ADMINISTRATION FOR
PROPERTY TAX ADJUSTMENT MECHANISM

JUNE 22, 2015

I. GENERAL DESCRIPTION.

This document is the Plan of Administration ("POA") for the Property Tax Adjustment Mechanism ("PTAM") for Liberty Utilities (Black Mountain Sewer) Corp. ("Liberty Black Mountain" or "Company") approved by the Arizona Corporation Commission ("Commission") in Decision No. _____ on _____, 2016. The PTAM allows Liberty Black Mountain to pass through to its customers the increase or decrease in property taxes that results from a change in the applicable assessment ratio and/or property tax rates.

II. PTAM RELATED FILINGS.

A. Within 60 days of the effective date of a change in the assessment ratio and/or property tax rates applicable to the Company, the Company shall file with Docket Control an analysis of the actual impact on the Company's property tax expenses.

B. The Company will provide the Commission with spreadsheets detailing exactly how the Company's property tax expenses were calculated in the time period prior to a change in the assessment ratio and/or property tax rate that affects the Company's property tax expenses. These calculations will include the assessment ratio, the property tax rates, and the value of the property that was taxed. For the period following the change(s), the Company will provide the same information, then compare the two periods, isolating any change in property tax expense that is due exclusively to changes in the assessment ratio and/or property tax rates. The specific intent is to show exactly how much of any increase or decrease in property tax expense is due to changes in the assessment ratio and tax rates beyond the Company's control and how much is due to changes in the value of the property the Company owns. The Company will only recover increases or refund decreases that are due to changes in the assessment ratio and tax rates.

C. All revised schedules filed with the Commission pursuant to the provisions of this PTAM will be accompanied by documentation prepared by the Company in a format approved by Utilities Division Staff of the Commission and will contain sufficient detail to enable the Commission to verify accuracy of the Company's calculations.

D. The surcharges will not become effective until approved by the Commission.

E. The Company will file annually with the Commission a report detailing the Company's property tax expenses.

F. The Company shall provide notice (in a form acceptable to Staff) of the rate increases to customers with the bill where the rate increase first appears.

III. APPLICATION TO SEWER CUSTOMERS.

A. The increase or decrease in property tax expenses that are due to changes in the assessment ratio and/or property tax rates at the Company's sewer facilities will be allocated on a per capita basis.

B. See the examples on the next page:

Change in Assessment Ratio Example

Test Year	
Assessment Ratio	**20.00%**
Property Full Cash Value	$10,000,000
Assessed Valuation	$2,000,000

Current Year	
Assessment Ratio	**21.00%**
Property Full Cash Value	$10,000,000
Assessed Valuation	$2,100,000

Change in Assessed Valuation	
Current Year Assessed Valuation	$2,100,000
Test Year Assessed Valuation	$2,000,000
Increase in Assessed Valuation Due to Increase in Assessment Ratio	$100,000

Test Year	
Total Property Tax Rate	10.00%
Assessed Valuation	$2,000,000
Property Tax Expense	$200,000

Current Year	
Total Property Tax Rate	10.00%
Assessed Valuation	$2,100,000
Property Tax Expense	$210,000

PTAM Charge on Sample Customer Bill	
Increase in Property Tax Expense Due to Increase in Assessment Ratio	$10,000
Number of Sewer Customers	20,000
PTAM Charge on Sample Customer Bill	$0.50

Change in Total Property Tax Rate Example

Test Year	
Total Property Tax Rate	**10.00%**
Assessed Valuation	$2,000,000
Property Tax Expense	$200,000

Current Year	
Total Property Tax Rate	**11.00%**
Assessed Valuation	$2,000,000
Property Tax Expense	$220,000

Pass Through Calculation	
Current Year Property Tax Expense	$220,000
Test Year Property Tax Expense	$200,000
Increase in Property Tax Expense Due to Rate Increase	$20,000

PTAM Charge on Sample Customer Bill	
Increase in Property Tax Expense Due to Rate Increase	$20,000
Number of Sewer Customers	20,000
PTAM Charge on Sample Customer Bill	$1.00

Arizona Corporation Commission
DOCKETED
JUN 22 2015
DOCKETED BY BTU

NEW APPLICATION

RECEIVED
2015 JUN 22 A 10:34
AZ CORP COMMISSION
DOCKET CONTROL

SHAPIRO LAW FIRM, P.C.
Jay L. Shapiro (No. 014650)
1819 E. Morten Avenue, Suite 280
Phoenix, Arizona 85020
Telephone (602) 559-9575

LIBERTY UTILITIES
Todd C. Wiley (No. 015358)
12725 W. Indian School Road, Suite D-101
Avondale, Arizona 85392

Attorneys for Liberty Utilities (Black Mountain Sewer) Corp.

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR AUTHORITY TO ISSUE EVIDENCE OF INDEBTEDNESS IN AN AMOUNT NOT TO EXCEED $3,400,000.	DOCKET NO: SW-02361A-15-0206 **APPLICATION (FINANCING)**

Pursuant to A.R.S. §§ 40-301 and 40-302, Liberty Utilities (Black Mountain Sewer) Corp. ("Liberty Black Mountain)" or the "Company"), an Arizona public service corporation, hereby applies for authority from the Arizona Corporation Commission ("Commission") to issue evidence of indebtedness in a total amount not to exceed $3,400,000 on the terms and conditions set forth below. In support of this Application, Liberty Black Mountain states as follows:

A. <u>General Background</u>.

1. Liberty Black Mountain is a public service corporation providing wastewater service to approximately 2,214 customers in Maricopa County, Arizona.

2. Liberty Black Mountain's present rates and charges for utility service were approved by the Commission in Decision No. 71865 (September 1, 2010) using a test year ending June 30, 2008. Liberty Black Mountain is filing a rate case seeking new rates

EXHIBIT
A-17
ADMITTED

simultaneous with this Application using a test year ending December 31, 2014.

3. Liberty Black Mountain's business office is located at 12725 W. Indian School Road, Suite D-101, Avondale, Arizona 85392 and its telephone number is (623) 935-9367. The Company's primary management contact is its President Matthew Garlick.

4. Mr. Garlick is the person responsible for overseeing and directing the conduct of this Application. His mailing address is 12725 W. Indian School Road, Suite D-101, Avondale, Arizona 85392; his telephone number is (623) 298-3763; and his email address is matthew.garlick@libertyutilities.com. **All discovery, data requests and other requests for information concerning this Application should be directed to Mr. Garlick, with a copy by e-mail to undersigned counsel at jay@shapslawaz.com and whitney@shapslawaz.com, and to Liberty's Assistant General Counsel at todd.wiley@libertyutilities.com.**

5. Financial statements for the twelve-month period ending December 31, 2014, are attached as **Exhibit 1**.

6. Statements projecting Liberty Black Mountain's estimated financial performance, for the next five years, are attached as **Exhibit 2**.

B. Purposes of Financing.

7. Liberty Black Mountain seeks Commission approval of long-term debt financing contemplated herein for the purpose of rebalancing the Company's capital structure from its present 100 percent equity structure to a capital structure of 70 percent equity and 30 percent debt.

8. Liberty Black Mountain's capital structure is presently 100 percent equity. If this application is approved, Liberty Black Mountain will borrow the amount necessary to achieve a capital structure consisting of 70 percent equity and 30 percent debt. This amount is currently estimated to be $2.0 million. In addition, Liberty Black

Mountain will enter into additional loan agreements every six months as necessary to maintain a capital structure consisting of 70 percent equity and 30 percent debt. However, at no time will the total debt amount exceed $3,400,000.

C. Terms and Conditions of Financial Transactions.

9. The lender will be Liberty Utilities Co. ("Liberty Utilities"). Liberty Utilities is an affiliate of Liberty Black Mountain. The term sheet for the proposed debt financing is attached hereto as **Exhibit 3**. Liberty Utilities will provide the subject financing at an interest rate equal to the United States 10 Year Treasury bond rate plus 130 basis points. The maturity date for the debt financing from Liberty Utilities shall be ten (10) years after closing. Liberty Utilities will not earn a profit or return on loans made to Liberty Black Mountain under the authority sought in this Application.

D. Effects of Financial Transactions.

10. Liberty Black Mountain's pro forma balance sheet for the period ending December 31, 2014 is attached as **Exhibit 4.** The pro forma balance sheet reflects the impact of the debt infusion that is the subject of this Application. As noted above, the Company's pro forma capital structure will be 30 percent debt and 70 percent common equity.

11. The Company will have a Debt Service Coverage Ratio (DSCR) of 8.11 and a Times Interest Earned Ratio (TIER) of 6.59 if the maximum requested indebtedness were incurred. The ratios will be higher as long as the amount of debt incurred remains less than the maximum value requested. The DSCR and TIER calculations, as shown on **Exhibit 5**, were calculated using the current US 10 Year Treasury bond rate of 2.23% plus 130 basis points.

12. The loan proceeds will be issued for lawful purposes, as discussed herein, and the execution of loan agreements with Liberty Utilities and the undertaking of the obligations set forth therein are within the Company's corporate powers. A Corporate

Resolution authorizing the contemplated transaction is attached as **Exhibit 6**.

13. Liberty Black Mountain will file true and correct copies of all debt instruments issued with Docket Control within thirty (30) days from the date of issuance.

14. The approvals sought herein are compatible with the public interest and with the proper performance of Liberty Black Mountain's duties as a public service corporation.

15. The financing contemplated herein will not impair Liberty Black Mountain's ability to perform its duties as a public service corporation providing wastewater utility service.

16. Liberty Black Mountain intends to consolidate this financing application with the Company's rate application filed on the same date. As such, Liberty Black Mountain will seek permission to notify its customers of both applications at the same time if consolidation is granted. Proof of publication and a true copy of the notice will be filed with the Commission as necessary.

Based on the foregoing, Liberty Black Mountain respectfully requests the following:

A. That the Commission consider this application at the same time and in the same proceedings as the Company's concurrently filed rate application; and

B. That the Commission enter an order approving this Application and authorizing Liberty Black Mountain to incur indebtedness in an amount not to exceed $3,400,000 for the purposes described above; and

C. That the Commission authorize Liberty Black Mountain to take such other and further action as may be necessary to effectuate the purposes of this Application, as may be appropriate under the circumstances herein.

RESPECTFULLY SUBMITTED this 22nd day of June, 2015.

SHAPIRO LAW FIRM, P.C.

By: _____
Jay L. Shapiro
1819 E. Morten Avenue, Suite 280
Phoenix, AZ 85020

and

LIBERTY UTILITIES

Todd C. Wiley
Assistant General Counsel
12725 W. Indian School Road, Suite D-101
Avondale, AZ 85392

Attorneys for Liberty Utilities
(Black Mountain Sewer) Corp.

ORIGINAL and fifteen (15) copies of the foregoing were delivered this 22nd day of June, 2015, to:

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

By: Courtney Brick

LIBERTY UTILITIES
(BLACK MOUNTAIN SEWER) CORP.

EXHIBIT 1

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ended December 31, 2014
Comparative Balance Sheets

Exhibit
Schedule E-1
Page 1
Witness: Bourassa

Line No.		Test Year Ended 12/31/2014	Year Ended 12/31/2013	Year Ended 12/31/2012
1	**ASSETS**			
2	Plant In Service	$ 16,165,880	$ 16,051,706	$ 15,737,360
3	Non-Utility Plant	-	-	-
4	Construction Work in Progress	1,483,674	940,405	401,441
5	Property Held for Future Use		-	-
6	Less: Accumulated Depreciation	(8,073,682)	(7,886,164)	(7,444,634)
7	Net Plant	$ 9,575,872	$ 9,105,946	$ 8,694,167
8				
9	CURRENT ASSETS			
10	Cash and Equivalents	$ (130,301)	$ (24,074)	$ (6,602)
11	Restricted Cash	-	-	-
12	Accounts Receivable, Net	43,669	52,928	54,810
13	Inter-Company Receivable	-	-	-
14	Notes Receivable	-	-	-
15	Materials and Supplies	-	-	-
16	Prepayments	9,493	9,493	7,917
17	Other Current Assets	-	-	-
18	Total Current Assets	$ (77,138)	$ 38,347	$ 56,126
19				
20	OTHER ASSETS			
21	Deferred Finance Costs	$ -	$ -	$ -
22	Other Deferred Debits	-	-	-
23	Other Non-Current Assets	-	-	-
24	Deferred Debits	$ -	$ -	$ -
25				
26	TOTAL ASSETS	$ 9,498,734	$ 9,144,294	$ 8,750,293
27				
28				
29	LIABILITIES AND STOCKHOLDER EQUITY			
30				
31	Stockholder's Equity	$ 6,276,158	$ 5,493,008	$ 4,955,087
32				
33	Long-Term Debt	$ -	$ -	$ -
34				
35	CURRENT LIABILITIES			
36	Accounts Payable	$ -	$ -	$ 1,152,437
37	Current Portion of Long-Term Debt	-	-	-
38	Payables to Associated Companies	385,190	816,701	-
39	Security Deposits	-	-	-
40	Customer Meter Deposits, Current	8,570	-	-
41	Current Portion of AIAC	-	-	-
42	Accrued Taxes	-	-	15,387
43	Accrued Interest	-	-	-
44	Other Current Liabilities	391,018	469,848	395,833
45	Total Current Liabilities	$ 784,778	$ 1,286,549	$ 1,563,657
46	DEFERRED CREDITS			
47	Customer Meter Deposits, less current	$ -	$ -	$ -
48	Advances in Aid of Construction	1,891,086	2,211,453	2,208,139
49	Accumulated Deferred Investment Tax Credits	-	-	-
50	Accumulated Deferred Income Taxes	-	-	-
51	Contributions In Aid of Construction	5,461,736	5,258,149	5,239,075
52	Accumulated Amortization	(5,073,246)	(5,070,648)	(5,070,456)
53	Other Deferred Credits	158,222	(34,217)	(145,209)
54	Total Deferred Credits	$ 2,437,798	$ 2,364,738	$ 2,231,548
55				
56	Total Liabilities & Common Equity	$ 9,498,734	$ 9,144,294	$ 8,750,293
57				
58				
59				
60	SUPPORTING SCHEDULES:			
61				
62				
63				
64				

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ended December 31, 2014
Comparative Income Statements

Exhibit
Schedule E-2
Page 1
Witness: Bourassa

Line No.		Test Year Ended 12/31/2014	Prior Year Ended 12/31/2013	Prior Year Ended 12/31/2012
1	**Revenues**			
2	Flat Rate Revehnue	$ 2,202,898	$ 2,217,617	$ 2,180,095
3	Reclaimed Water Revenues	16,067	-	-
4	Other Water Revenues	11,098	9,126	12,115
5	**Total Revenues**	$ 2,230,062	$ 2,226,742	$ 2,192,209
6	**Operating Expenses**			
7	Salaries and Wages	$ 228,309	$ -	$ -
8	Purchased Water	5,647	5,684	5,779
9	Sludge Removal	-	-	-
10	Purchased Power	65,112	62,914	64,718
11	Fuel for Power Production	-	-	-
12	Chemicals	19,215	17,410	36,248
13	Materials and Supplies	23,875	35,361	35,722
14	Contractual Services - Professional	316,663	11,964	17,956
15	Contractual Services - Testing	8,117	16,833	9,514
16	Contractual Services - Other	361,855	874,476	931,746
17	Rents	23,807	35,596	34,603
18	Transportation	15,371	13,415	20,959
19	Insurance	11,720	16,755	13,794
20	Regulatory Commission Expense	-	62,249	56,059
21	Miscellaneous	58,742	36,897	99,989
22	Depreciation and Amortization	229,669	448,450	353,152
23	Taxes Other Than Income	-	-	-
24	Property Taxes	47,904	43,908	35,509
25	Income Taxes	-	-	-
26				
27	**Total Operating Expenses**	$ 1,416,004	$ 1,681,910	$ 1,715,748
28	**Operating Income**	$ 814,058	$ 544,832	$ 476,461
29	**Other Income (Expense)**			
30	Interest and Dividend Income	-	-	-
31	AFUDC Income	8,893	43,944	-
32	Miscellaneous Non-Utility Expenses	-	64	-
33	Interest Expense	(39,801)	(50,921)	(130,463)
34				
35	**Total Other Income (Expense)**	$ (30,908)	$ (6,913)	$ (130,463)
36	**Net Profit (Loss)**	$ 783,150	$ 537,919	$ 345,999
37				
38				
39				
40	SUPPORTING SCHEDULES:		RECAP SCHEDULES:	
41			A-2	
42				

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ended December 31, 2014
Comparative Statements of Cash Flows

Exhibit
Schedule E-3
Page 1
Witness: Bourassa

Line No.		Test Year Ended 12/31/2014	Prior Year Ended 12/31/2013	Prior Year Ended 12/31/2012
1				
2				
3	Cash Flows from Operating Activities			
4	Net Income	$ 783,150	$ 537,919	$ 345,999
5	Adjustments to reconcile net income to net cash			
6	provided by operating activities:			
7	Depreciation and Amortization	229,669	448,450	353,152
8	Depreciation and Amortization Adjustments	(44,749)	(7,112)	(39,088)
9	Changes in Certain Assets and Liabilities:			
10	Accounts Receivable	9,259	1,882	(11,457)
11	Restricted Cash			
12	Materials and Supplies Inventory			
13	Prepaid Expenses		(1,576)	488
14	Deferred Charges			
15	Receivables/Payables to Associated Co.	(431,511)	816,701	(1,480,433)
16	Accounts Payable		(1,152,437)	1,152,437
17	Interest Payable			
18	Customer Meter and Security Deposits	8,570		
19	Taxes Payable		15,387	
20	Other assets and liabilities	113,609	154,233	21,614
21	Rounding	(1)	3	(1)
22	Net Cash Flow provided by Operating Activities	$ 667,996	$ 813,451	$ 342,711
23	Cash Flow From Investing Activities:			
24	Capital Expenditures	(657,443)	(853,310)	(350,952)
25	Plant Held for Future Use	-	-	-
26	Changes in Special Funds	-	-	-
27	Net Cash Flows from Investing Activities	$ (657,443)	$ (853,310)	$ (350,952)
28	Cash Flow From Financing Activities			
29	Change in Restricted Cash			
30	Proceeds from Long-Term Debt			
31	Net receipt of contributions in aid of construction	203,587	19,074	
32	Net receipts of advances in aid of construction	(320,367)	3,314	970
33	Repayments of Long-Term Debt			
34	Distributions			
35	Deferred Financing Costs			
36	Paid in Capital			
37	Net Cash Flows Provided by Financing Activities	$ (116,780)	$ 22,388	$ 970
38	Increase(decrease) in Cash and Cash Equivalents	(106,227)	(17,471)	(7,271)
39	Cash and Cash Equivalents at Beginning of Year	(24,074)	(6,602)	669
40	Cash and Cash Equivalents at End of Year	$ (130,301)	$ (24,074)	$ (6,602)
41				
42				
43	SUPPORTING SCHEDULES:		RECAP SCHEDULES:	
44	Workpapers		A-5	
45				

LIBERTY UTILITIES
(BLACK MOUNTAIN SEWER) CORP.

EXHIBIT 2

Balance Sheet	2015	2016	2017	2018	2019	2020
Cash	($198,855)	($198,855)	($198,855)	($198,855)	($198,855)	($198,855)
Short Term Investments	$0	$0	$0	$0	$0	$0
Accounts Receivables	$45,066	$45,066	$45,066	$45,066	$45,066	$45,066
Prepaid Expenses	$9,140	$9,140	$9,140	$9,140	$9,140	$9,140
Supplies and Consumables Inventory	$0	$0	$0	$0	$0	$0
Current Portion of Notes Receivables	$0	$0	$0	$0	$0	$0
Income Tax Receivable	$0	$0	$0	$0	$0	$0
Current Portion of Regulatory Assets	$0	$0	$0	$0	$0	$0
Current Portion of Derivative Assets	$0	$0	$0	$0	$0	$0
Current Assets	**($144,649)**	**($144,649)**	**($144,649)**	**($144,649)**	**($144,649)**	**($144,649)**
Utility Plant	$12,631,654	$13,806,304	$15,495,954	$17,618,554	$17,769,704	$17,833,354
Accumulated Depreciation	($3,427,697)	($3,851,264)	($4,330,605)	($4,891,598)	($5,480,880)	($6,074,002)
Construction Work In Progress	$0	$0	$0	$0	$0	$0
Cost of Removal	$0	$0	$0	$0	$0	$0
Net Plant	**$9,203,957**	**$9,955,040**	**$11,165,349**	**$12,726,956**	**$12,288,824**	**$11,759,352**
Intangible Assets Cost	$0	$0	$0	$0	$0	$0
Accumulated Depreciation-Intangible	$0	$0	$0	$0	$0	$0
Other Intangibles						
Net Intangible Assets	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**
Restricted Cash	$0	$0	$0	$0	$0	$0
Intercompany Accounts	($75,644)	($75,644)	($75,644)	($75,644)	($75,644)	($75,644)
Long Term Assets	$0	$0	$0	$0	$0	$0
Goodwill	$0	$0	$0	$0	$0	$0
Future non-current income tax asset	$0	$0	$0	$0	$0	$0
Deferred Financing Costs	$0	$0	$0	$0	$0	$0
Regulatory Assets	($97,466)	($97,466)	($97,466)	($97,466)	($97,466)	($97,466)
Derivative Assets	$0	$0	$0	$0	$0	$0
Other Assets	$0	$0	$0	$0	$0	$0
Other Non Current Assets	**($173,110)**	**($173,110)**	**($173,110)**	**($173,110)**	**($173,110)**	**($173,110)**
Assets	**$8,886,197**	**$9,637,280**	**$10,847,589**	**$12,409,196**	**$11,971,064**	**$11,441,592**
Accounts Payable	$16,459	$16,459	$16,459	$16,459	$16,459	$16,459
Accrued Liabilities	$380,361	$380,361	$380,361	$380,361	$380,361	$380,361
Distributions Payable	$0	$0	$0	$0	$0	$0
Dividends Payable	$0	$0	$0	$0	$0	$0
Current portion of long term debt	$0	$0	$0	$0	$0	$0
Current Portion of Derivative Liabilities	$0	$0	$0	$0	$0	$0
Current Portion of Other Long-term Liabilities	$0	$0	$0	$0	$0	$0
Deferred Revenue	$0	$0	$0	$0	$0	$0
Current Portion of AIAC	$307,000	$307,000	$307,000	$307,000	$307,000	$307,000
Current Portion Preferred Series C	$0	$0	$0	$0	$0	$0
Current Liabilities	**$703,821**	**$703,821**	**$703,821**	**$703,821**	**$703,821**	**$703,821**
Long Term Liabilities	$0	$893,464	$1,082,949	$1,752,423	$426,639	$0
Convertible Debentures	$0	$0	$0	$0	$0	$0
Other Long Term Liabilities	$0	$0	$0	$0	$0	$0
Advances in Aid of Construction	$1,550,506	$1,550,506	$1,550,506	$1,550,506	$1,550,506	$1,550,506
Long Term Meter Deposits	$51,281	$51,281	$51,281	$51,281	$51,281	$51,281
Pension Obligation	$0	$0	$0	$0	$0	$0
Contingent Consideration	$0	$0	$0	$0	$0	$0
Regulatory Liabilities	$0	$0	$0	$0	$0	$0
Future non-current income tax liability	$0	$0	$0	$0	$0	$0
Derivative Liabilities	$0	$0	$0	$0	$0	$0
Deferred Credits	$171,666	$171,666	$171,666	$171,666	$171,666	$171,666
Preferred Series C	$0	$0	$0	$0	$0	$0
Non Current Liabilities	**$1,773,454**	**$2,666,918**	**$2,856,403**	**$3,525,877**	**$2,200,092**	**$1,773,454**
Liabilities	**$2,477,275**	**$3,370,739**	**$3,560,224**	**$4,229,698**	**$2,903,913**	**$2,477,275**
Contributed Capital	$0	$0	$0	$0	$0	$0
Common Shares	$2,955,687	$2,955,687	$2,955,687	$2,955,687	$2,955,687	$2,955,687
Partnership Contributions	$0	$0	$0	$0	$0	$0
Partnership Equity	$0	$0	$0	$0	$0	$0
Trust Units	$0	$0	$0	$0	$0	$0
Retained Earnings	$3,082,148	$3,703,228	$4,724,052	$5,616,184	$6,503,837	$7,861,178
Partnership Distributions	$0	$0	$0	$0	$0	$0
Offering Costs	$0	$0	$0	$0	$0	$0
Cash Distributions	($246,511)	($1,009,972)	($1,009,972)	($1,009,972)	($1,009,972)	($2,470,147)
Dividends Paid	$617,599	$617,599	$617,599	$617,599	$617,599	$617,599
Other Comprehensive Income	$0	$0	$0	$0	$0	$0
Shareholders Equity	**$6,408,923**	**$6,266,542**	**$7,287,366**	**$8,179,498**	**$9,067,151**	**$8,964,317**
Non Controlling interest	$0	$0	$0	$0	$0	$0
Total Equity	**$6,408,923**	**$6,266,542**	**$7,287,366**	**$8,179,498**	**$9,067,151**	**$8,964,317**
Total Liabilities and Equity	**$8,886,197**	**$9,637,280**	**$10,847,590**	**$12,409,196**	**$11,971,064**	**$11,441,592**

Income Statement	2015	2016	2017	2018	2019	2020
Energy/Steam Sales	$0	$0	$0	$0	$0	$0
Waste Disposal Fees	$0	$0	$0	$0	$0	$0
Utility Sales and Distribution - Water and Wastewater	$2,264,877	$2,414,367	$2,910,482	$2,910,482	$2,910,482	$3,340,058
Utility Sales and Distribution - Energy	$0	$0	$0	$0	$0	$0
Utility Sales and Distribution - Gas	$0	$0	$0	$0	$0	$0
Other Revenue	$52	$0	$0	$0	$0	$0
Revenue - Gross	**$2,264,929**	**$2,414,367**	**$2,910,482**	**$2,910,482**	**$2,910,482**	**$3,340,058**
Regulated Electricity Purchased	$0	$0	$0	$0	$0	$0
Regulated Gas Purchased	$0	$0	$0	$0	$0	$0
Non Regulated Fuel for Generation	$0	$0	$0	$0	$0	$0
Energy Cost	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**
Revenue - Net	**$2,264,929**	**$2,414,367**	**$2,910,482**	**$2,910,482**	**$2,910,482**	**$3,340,058**
Liberty - Operations - Non Labour	$701,977	$695,614	$695,614	$695,614	$695,614	$695,614
Operating Costs	$574,638	$559,614	$559,614	$559,614	$559,614	$559,614
Repair and Maintenance	$47,454	$50,400	$50,400	$50,400	$50,400	$50,400
Utility/Consumable Costs	$13,137	$15,892	$15,892	$15,892	$15,892	$15,892
Administration-Site	$66,749	$69,709	$69,709	$69,709	$69,709	$69,709
Administration-Corporate (Includes Test Year Inflation)	$0	$0	$0	$0	$0	$0
Liberty - Operations - Labour	$350,068	$373,700	$384,911	$396,459	$408,352	$420,603
Liberty - Customer Care - Non Labour	$9,695	$14,284	$14,284	$14,284	$14,284	$14,284
Liberty - Customer Care - Labour	$55,962	$58,636	$60,395	$62,207	$64,073	$65,995
Liberty - Admin - Non Labour	$41,529	$42,519	$42,519	$42,519	$42,519	$42,519
Liberty - Admin - Labour	$74,029	$81,026	$83,457	$85,961	$88,540	$91,196
Expenses (Excluding Admin)	**$1,233,260**	**$1,265,779**	**$1,281,180**	**$1,297,043**	**$1,313,382**	**$1,330,211**
Other Income Before EBITDA	**$10,710**	**$14,280**	**$14,280**	**$14,280**	**$14,280**	**$14,280**
Operating Profit	**$1,042,379**	**$1,162,867**	**$1,643,582**	**$1,627,719**	**$1,611,380**	**$2,024,127**
Business Group Admin	$31,546	$28,703	$28,783	$29,359	$29,946	$30,695
Business Services Admin	$36,525	$35,242	$39,372	$40,450	$41,569	$42,731
Business Group Profit	**$974,308**	**$1,098,923**	**$1,575,427**	**$1,557,910**	**$1,539,865**	**$1,950,701**
Executive Admin	$20,798	$25,830	$26,864	$28,001	$29,228	$30,613
Corporate Services Admin	$12,645	$16,727	$17,205	$17,786	$18,393	$19,040
Other Admin	**$33,443**	**$42,556**	**$44,070**	**$45,786**	**$47,621**	**$49,652**
Expenses (Including Admin)	**$1,334,774**	**$1,372,280**	**$1,393,405**	**$1,412,639**	**$1,432,518**	**$1,453,289**
EBITDA	**$940,865**	**$1,056,367**	**$1,531,357**	**$1,512,123**	**$1,492,244**	**$1,901,049**
Depreciation	$427,261	$423,567	$479,341	$560,993	$589,282	$593,122
Amortization	$106,227	$0	$0	$0	$0	$0
Depreciation & Amortization	**$533,488**	**$423,567**	**$479,341**	**$560,993**	**$589,282**	**$593,122**
EBIT	**$407,377**	**$632,800**	**$1,052,017**	**$951,130**	**$902,962**	**$1,307,926**
Interest Expense	$30,621	$30,032	$64,906	$108,573	$81,224	$33,329
AFUDC - Debt (Gain) / Loss	-$2,520	-$3,360	-$3,360	-$3,360	-$3,360	-$3,360
Acquisition Costs	$0	$0	$0	$0	$0	$0
(Gain) / Loss on Foreign Exchange	$0	$0	$0	$0	$0	$0
(Gain) / Loss on Derivative Financial Instrument	$0	$0	$0	$0	$0	$0
(Gain) / Loss on Fixed Asset Disposal	$0	$0	$0	$0	$0	$0
Other (Income) and Expenses	**$28,101**	**$26,672**	**$61,546**	**$105,213**	**$77,864**	**$29,969**
Earnings Before Tax	**$379,276**	**$606,127**	**$990,471**	**$845,917**	**$825,098**	**$1,277,957**
Current Income Taxes	$0	$0	$0	$0	$0	$0
Future Income Taxes	$0	$0	$0	$0	$0	$0
Income Taxes	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**
Net Income	**$379,276**	**$606,127**	**$990,471**	**$845,917**	**$825,098**	**$1,277,957**

Cash Flow	2015	2016	2017	2018	2019	2020
Net Income	$379,276	$606,127	$990,471	$845,917	$825,098	$1,277,957
Deprecation	$427,261	$423,567	$479,341	$560,993	$589,282	$593,122
Amortization	$106,227	$0	$0	$0	$0	$0
Pension	$0	$0	$0	$0	$0	$0
Deferred Taxes	$0	$0	$0	$0	$0	$0
Increase / (Decrease) in Current Liabilities	$5,803	$0	$0	$0	$0	$0
(Increase) / Decrease in Current Assets	-$1,043	$0	$0	$0	$0	$0
Cash From Operating Activities	**$917,523**	**$1,029,694**	**$1,469,812**	**$1,406,910**	**$1,414,380**	**$1,871,079**
Increase / (Decrease) in Line of Credit		$893,464	$189,485	$669,474	-$1,325,785	-$426,639
Increase / (Decrease) In 3rd Party Debt		$0	$0	$0	$0	$0
Increase / (Decrease) in InterCo Debt		$0	$0	$0	$0	$0
Cash Distributions		-$763,461	$0	$0	$0	-$1,460,175
Dividends		$0	$0	$0	$0	$0
Contributions		$0	$0	$0	$0	$0
(Decrease) / Increase in Other Long Term Liabilities		$0	$0	$0	$0	$0
Environmental Remediation		$0	$0	$0	$0	$0
Cash From Financing Activities		**$130,003**	**$189,485**	**$669,474**	**-$1,325,785**	**-$1,886,813**
CapEx		-$1,174,650	-$1,689,650	-$2,122,600	-$151,150	-$63,650
(Increase) / Decrease in Other Long Term Assets		$0	$0	$0	$0	$0
Acquisitions						
Other						
Other						
Other						
Cash From Investing Activities		**-$1,174,650**	**-$1,689,650**	**-$2,122,600**	**-$151,150**	**-$63,650**
Cash Flow		-$14,952	-$30,353	-$46,216	-$62,555	-$79,384

LIBERTY UTILITIES
(BLACK MOUNTAIN SEWER) CORP.

EXHIBIT 3

Liberty Utilities Co. to Liberty Utilities (Black Mountain Sewer) Corp. Term Sheet

Lender	Liberty Utilities Co.
Borrower	Liberty (Black Mountain Sewer) Corp.
Guarantor(s)	None
Type of Credit	Term Loan
Purpose	Any lawful purpose including, without limitation, achieving and maintaining a capital structure with a preferred blend of debt and equity.
Loan Amount	Maximum of US$3.4 million
Maturity Date	Ten Years after Closing Date
Collateral	None
Interest Rate	Ten Year US Treasury plus 130 basis points. The rate shall be determined using the Treasury rate applicable 15 business days before the closing date.
Repayment Terms	Interest payments shall be made monthly. *[Given interest rates current at the time of application, the payment would be approximately $9500.]* The principal balance shall be due and payable on or before the maturity date.
Prepayment	Ten Year US Treasury plus 50 basis points make whole on early repayment. Lender acknowledges, and the parties hereto agree, that the loan holder has the right to maintain its investment in the loan free from repayment by Lender and that the provision for payment of a make-whole amount by Lender in the event that the loan is redeemed is intended to provide compensation for the deprivation of such right under such circumstances. "Make-whole amount" means, with respect to the loan, an amount equal to the excess, if any, of the discounted value of the remaining scheduled payments with respect to the called principal of such loan over the amount of such called principal, provided that the make-whole amount may in no event be less than zero.
Indicative Covenants	Borrower shall maintain a debt to capital ratio of no more than 65%.
Other Covenants	Standard and customary for transactions of this nature.
Expenses	Borrower and Lender to incur their own reasonable out-of-pocket costs and expenses incurred in connection with initiating and administering the loan, including, but not limited to, closing, legal, and administrative costs.

LIBERTY UTILITIES
(BLACK MOUNTAIN SEWER) CORP.

EXHIBIT 4

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ended December 31, 2014
Comparative Balance Sheets

Exhibit
Schedule E-1
Page 1
Witness: Bourassa

Line No.		*Pro Forma* Test Year Ended 12/31/2014	Year Ended 12/31/2013	Year Ended 12/31/2012
1	**ASSETS**			
2	Plant In Service	$ 16,165,880	$ 16,051,706	$ 15,737,360
3	Non-Utility Plant	-	-	-
4	Construction Work in Progress	1,483,674	940,405	401,441
5	Property Held for Future Use		-	-
6	Less: Accumulated Depreciation	(8,073,682)	(7,886,164)	(7,444,634)
7	Net Plant	$ 9,575,872	$ 9,105,946	$ 8,694,167
8				
9	CURRENT ASSETS			
10	Cash and Equivalents	$ (130,301)	$ (24,074)	$ (6,602)
11	Restricted Cash	-	-	-
12	Accounts Receivable, Net	43,669	52,928	54,810
13	Inter-Company Receivable	-	-	-
14	Notes Receivable	-	-	-
15	Materials and Supplies	-	-	-
16	Prepayments	9,493	9,493	7,917
17	Other Current Assets	-	-	-
18	Total Current Assets	$ (77,138)	$ 38,347	$ 56,126
19				
20	OTHER ASSETS			
21	Deferred Finance Costs	$ -	$ -	$ -
22	Other Deferred Debits	-	-	-
23	Other Non-Current Assets	-	-	-
24	Deferred Debits	$ -	$ -	$ -
25				
26	TOTAL ASSETS	$ 9,498,734	$ 9,144,294	$ 8,750,293
27				
28				
29	**LIABILITIES AND STOCKHOLDER EQUITY**			
30				
31	Stockholder's Equity	$ 4,393,310	$ 5,493,008	$ 4,955,087
32				
33	Long-Term Debt	$ 1,882,847	$ -	$ -
34				
35	CURRENT LIABILITIES			
36	Accounts Payable	$ -	$ -	$ 1,152,437
37	Current Portion of Long-Term Debt	-	-	-
38	Payables to Associated Companies	385,190	816,701	-
39	Security Deposits	-	-	-
40	Customer Meter Deposits, Current	8,570	-	-
41	Current Portion of AIAC	-	-	-
42	Accrued Taxes	-	-	15,387
43	Accrued Interest	-	-	-
44	Other Current Liabilities	391,018	469,848	395,833
45	Total Current Liabilities	$ 784,778	$ 1,286,549	$ 1,563,657
46	DEFERRED CREDITS			
47	Customer Meter Deposits, less current	$ -	$ -	$ -
48	Advances in Aid of Construction	1,891,086	2,211,453	2,208,139
49	Accumulated Deferred Investment Tax Credits	-	-	-
50	Accumulated Deferred Income Taxes	-	-	-
51	Contributions In Aid of Construction	5,461,736	5,258,149	5,239,075
52	Accumulated Amortization	(5,073,246)	(5,070,648)	(5,070,456)
53	Other Deferred Credits	158,222	(34,217)	(145,209)
54	Total Deferred Credits	$ 2,437,798	$ 2,364,738	$ 2,231,548
55				
56	Total Liabilities & Common Equity	$ 9,498,734	$ 9,144,294	$ 8,750,293
57				
58				
59				
60	SUPPORTING SCHEDULES:			
61				
62				
63				
64				

LIBERTY UTILITIES
(BLACK MOUNTAIN SEWER) CORP.

EXHIBIT 5

Liberty Utilities (Black Mountain Sewer) Corp. Pro Forma Ratios

Debt Service Coverage Ratio	***Pro Forma 2014***
Annual Net Income	$783,150
Interest Expense	-$39,801
Depreciation and Amortization	$229,669
Net Operating Income	**$973,018**
Estimated Monthly Interest Payment	*$10,000*
Estimated Annual Interest Payments	*$120,000*
Total Debt Service	**$120,000**
Debt Service Coverage Ratio	***8.11***

Times Interest Earned Ratio	***Pro Forma 2014***
Annual Net Income	$783,150
Interest Expense	-$39,801
Taxes	$47,904
Earnings Before Interest and Taxes	**$791,253**
Estimated Monthly Interest Payment	*$10,000*
Estimated Annual Interest Payments	*$120,000*
Total Interest Expense	**$120,000**
Times Interest Earned Ratio	***6.59***

LIBERTY UTILITIES
(BLACK MOUNTAIN SEWER) CORP.

EXHIBIT 6

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.

STATEMENT OF UNANIMOUS WRITTEN CONSENT TO ACTION TAKEN IN LIEU OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS

June 2, 2015

In lieu of a special meeting of the Board of Directors of Liberty Utilities (Black Mountain Sewer) Corp., an Arizona corporation (the "Corporation"), the undersigned, being all of the duly elected directors of the Corporation (the "Board"), acting in accordance with the authority contained in Arizona Revised Statutes §10-821, hereby adopt the following resolutions as actions of the Board, with the same force and effect as if such resolutions had been duly adopted at a meeting of the Board.

DEBT FINANCING

RESOLVED THAT the Corporation is authorized to apply to the Arizona Corporation Commission seeking approval of the debt financing contemplated in the Corporation's Financing Application ("Application") to be filed with the Arizona Corporation Commission, in an amount necessary to rebalance and maintain the Corporation's capital structure at 30 percent debt to 70 percent equity;

RESOLVED THAT the Corporation may obtain debt financing from Liberty Utilities Co. in an amount not to exceed $3,400,000, at an interest rate equal to the ten year United States Treasury bond rate plus an appropriate credit spread (at the time of this resolution, the estimated interest rate is approximately 2.05% and the estimated credit spread is approximately 130 basis points);

RESOLVED THAT the maturity date for the debt financing from Liberty Utilities Co. shall be ten (10) years after closing date;

RESOLVED THAT that Liberty Utilities Co. will not earn a profit or return on such debt financing to the Corporation as sought in the Financing Application;

RESOLVED THAT the Corporation is authorized to execute, prepare and submit all proper filings and disclosures, and seek and obtain any and all necessary approvals in connection with the processing of the Financing Application; and

FURTHER RESOLVED THAT any two officers of the Corporation be, and each of them hereby is, authorized to sign such documents on behalf of the Corporation and to otherwise carry out the purposes and intent of the foregoing resolutions.

IN WITNESS WHEREOF, the undersigned, being all of the Directors of the Corporation, have executed this Statement of Unanimous Written Consent as of the date first written above.

LIBERTY UTLIITIES (BLACK MOUNTAIN SEWER) CORP.

By: _____
Name: Ian Robertson
Title: Director

By: _____
Name: Gregory Sorensen
Title: Director

By: _____
Name: Richard Leehr
Title: Director

IN WITNESS WHEREOF, the undersigned, being all of the Directors of the Corporation, have executed this Statement of Unanimous Written Consent as of the date first written above.

LIBERTY UTLIITIES (BLACK MOUNTAIN SEWER) CORP.

By: _____
Name: Ian Robertson
Title: Director

By: _____
Name: Gregory Sorensen
Title: Director

By: _____
Name: Richard Leehr
Title: Director

IN WITNESS WHEREOF, the undersigned, being all of the Directors of the Corporation, have executed this Statement of Unanimous Written Consent as of the date first written above.

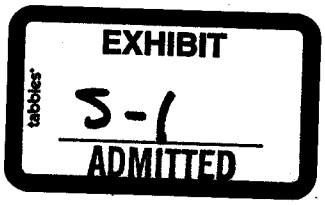
LIBERTY UTLIITIES (BLACK MOUNTAIN SEWER) CORP.

By: _____
Name: Ian Robertson
Title: Director

By: _____
Name: Gregory Sorensen
Title: Director

By: _____
Name: Richard Leehr
Title: Director

BEFORE THE ARIZONA CORPORATION COMMISSION



SUSAN BITTER SMITH
Chairman
BOB STUMP
Commissioner
BOB BURNS
Commissioner
DOUG LITTLE
Commissioner
TOM FORESE
Commissioner

IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR AUTHORITY TO ISSUE EVIDENCE OF INDEBTEDNESS IN AN AMOUNT NOT TO EXCEED $3,400,000.	DOCKET NO. SW-02361A-15-0206
IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY AND FOR INCREASES IN ITS WASTEWATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.	DOCKET NO. SW-02361A-15-0207

DIRECT TESTIMONY OF

CRYSTAL S. BROWN

EXECUTIVE CONSULTANT III

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

DECEMBER 2, 2015

TABLE OF CONTENTS

Page

INTRODUCTION 1

BACKGROUND 2

CONSUMER SERVICE 4

COMPLIANCE 5

REVENUE REQUIREMENT 7

SUMMARY OF PROPOSED REVENUES 7

RATE BASE 10

Fair Value Rate Base 10
Rate Base Summary 10
Rate Base Adjustment No. 1 – Allocated Corporate Plant 10
Rate Base Adjustment No. 2 – Reclassified Plant and Not Used and Useful Plant 11
Accumulated Depreciation – Background 12
Rate Base Adjustment No. 3 – Accumulated Depreciation 19
Rate Base Adjustment No. 4 – Advances In Aid of Construction ("AIAC") 20
Rate Base Adjustment No. 5 – Contributions In Aid of Construction ("CIAC") and Amortization of CIAC 22
Rate Base Adjustment No. 6 – Accumulated Deferred Income Taxes 22
Rate Base Adjustment No. 7 – Cash Working Capital 28

OPERATING INCOME 28

Operating Income Summary 28
Operating Income Adjustment No. 1 – Reclassification and Affiliate Expected 2015 and 2016 Affiliate Labor Increase 29
Operating Income Adjustment No. 2 – Contractual Services, Testing 30
Operating Income Adjustment No. 3 – Corporate Expense Allocation 30
Operating Income Adjustment No. 4 – Rate Case Expense 33
Operating Income Adjustment No. 5 – Depreciation Expense 34
Plant Documentation 36

FINANCING 39

COST OF CAPITAL 43

Summary of Testimony and Recommendations 43
Black Mountain's Proposed Overall Rate of Return 44

II. THE WEIGHTED AVERAGE COST OF CAPITAL 44

III. CAPITAL STRUCTURE 46

Background 46
Black Mountain's Capital Structure 47
Staff's Capital Structure 47

IV. RETURN ON EQUITY 47

Background 47
Risk 50

V. ESTIMATING THE COST OF EQUITY 53

Introduction 53
Discounted Cash Flow Model Analysis 54
The Constant-Growth DCF 54
The Multi-Stage DCF 64
Capital Asset Pricing Model 66

VI. SUMMARY OF STAFF'S COST OF EQUITY ANALYSIS 70

VII. FINANCIAL RISK AND ECONOMIC ASSESSMENT ADJUSTMENTS 73

VIII. RATE OF RETURN RECOMMENDATION 80

SCHEDULES

Revenue Requirement

Revenue Requirement CSB-1
Gross Revenue Conversion Factor CSB-2
Rate Base – Original Cost CSB-3
Rate Base – Summary of Original Cost Rate Base Adjustments CSB-4
Rate Base Adjustment No. 1 – Allocated Corporate Plant CSB-5
Rate Base Adjustment No. 2 – Reclassified Plant and Not Used & Useful Plant CSB-6
Rate Base Adjustment No. 3 – Accumulated Depreciation CSB-7
Rate Base Adjustment No. 4 – AIAC CSB-8
Rate Base Adjustment No. 5 – CIAC & Amortization of CIAC CSB-9
Rate Base Adjustment No. 6 – Accumulated Deferred Income Taxes CSB-10
Rate Base Adjustment No. 7 – Cash Working Capital CSB-11
Operating Income Statement – Test Year and Staff Recommended CSB-12
Summary of Operating Income Adjustments – Test Year CSB-13
Operating Income Adjustment No. 1 – Reclassification and Expected 2015 & 2016 Affiliate Labor Increase CSB-14
Operating Income Adjustment No. 2 – Testing Expense CSB-15
Operating Income Adjustment No. 3 – Corporate Expense Allocation CSB-16
Operating Income Adjustment No. 4 – Rate Case Expense CSB-17
Operating Income Adjustment No. 5 – Depreciation Expense CSB-18
Operating Income Adjustment No. 6 – Income Tax Expense CSB-19
Property Tax CSB-20

Financing

Financial Analysis CSB-1
Loan Amortization Schedule CSB-2

Cost of Capital

Capital Structure and Weighted Cost of Capital CSB-1
Intentionally Left Blank CSB-2
Final Cost of Equity Estimates for Sample Water Utilities CSB-3
Average Capital Structure of Sample Water Utilities CSB-4
Growth in Earnings & Dividends of Sample Water Utilities CSB-5

Sustainable Growth for Sample Water Utilities CSB-6
Selected Financial Data of Sample Water Utilities CSB-7
Calculation of Expected Infinite Annual Growth in Dividends CSB-8
Multi-Stage DCF Estimates CSB-9
Cost of Capital Calculation Capitalization CSB-10

EXECUTIVE SUMMARY
LIBERTY UTILITIES (BLACK MOUNTAIN SEWER), CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207

Revenue Requirement

Liberty Utilities (Black Mountain Sewer), Corporation ("Black Mountain" or "Company") is a certificated Arizona public service corporation that provides wastewater utility service to approximately 2,100 customers primarily in the Town of Carefree, in unincorporated portions of Maricopa County and in portions of the City of Scottsdale. The current rates for Black Mountain were approved in Decision No. 71865, dated August 31, 2010.

On June 22, 2015, Black Mountain filed applications for a permanent rate increase and financing approval with the Arizona Corporation Commission ("Commission"). A Procedural Order, dated July 6, 2015, granted the Company's request to consolidate the permanent rate increase and financing applications.

Black Mountain proposed a $56,929, or 2.54 percent, revenue increase from $2,239,848 to $2,296,777. The proposed revenue increase would produce an operating income of $294,082 for an 8.62 percent rate of return on an original cost rate base ("OCRB") of $3,412,024.

Staff recommends a $171,514, or 7.66 percent, revenue decrease from $2,239,848 to $2,068,334. Staff's proposed revenue decrease would produce an operating income of $212,719 for a 7.08 percent rate of return on an OCRB of $3,004,503.

Staff's typical bill analysis information will be filed with Staff's rate design testimony.

Financing

Black Mountain is requesting approval to borrow an amount not to exceed $3,400,000 from Liberty Utilities Company ("Liberty Utilities") to rebalance its capital structure by replacing equity with debt. Staff recommends approval with conditions.

Cost of Capital

Black Mountain proposed an 8.62 percent rate of return. Black Mountain's proposed rate of return was calculated using a 10.8 percent cost of equity, a 3.53 percent cost of debt, and a capital structure consisting of 30 percent debt and 70 percent equity.

Staff recommends a 7.08 percent rate of return. Staff's recommended rate of return was calculated using an 8.60 percent cost of equity, a 3.53 percent cost of debt, and a capital structure consisting of 30 percent debt and 70 percent equity.

INTRODUCTION

Q. Please state your name, occupation, and business address.

A. My name is Crystal S. Brown. I am an Executive Consultant III employed by the Arizona Corporation Commission ("Commission") in the Utilities Division ("Staff"). My business address is 1200 West Washington Street, Phoenix, Arizona 85007.

Q. Briefly describe your responsibilities as an Executive Consultant III.

A. I am responsible for the examination and verification of financial and statistical information included in utility rate applications and other financial matters, including performing studies to estimate the cost of capital component in rate filings and developing revenue requirements. In addition, I prepare written reports, testimonies, and schedules that include Staff recommendations to the Commission. I am also responsible for testifying at formal hearings on these matters.

Q. Please describe your educational background and professional experience.

A. I received a Bachelor of Science Degree in Business Administration from the University of Arizona and a Bachelor of Science Degree in Accounting from Arizona State University.

Since joining the Commission in August 1996, I have participated in numerous rate cases and other regulatory proceedings involving electric, gas, water, and wastewater utilities. I have testified on matters involving regulatory accounting and auditing. Additionally, I have attended utility-related seminars sponsored by the National Association of Regulatory Utility Commissioners ("NARUC") on ratemaking and accounting designed to provide continuing and updated education in these areas.

Q. What is the scope of your testimony in this case?

A. I am presenting Staff's analysis and recommendations in the areas of rate base, operating revenues, expenses, a financing request, and cost of capital regarding the Liberty Utility's (Black Mountain) Sewer, Corp. ("Black Mountain" or "Company") application for a permanent rate increase. I will present Staff's testimony regarding Staff's recommended rate design in a separate filing. Staff witness, Dorothy Hains, is presenting Staff's engineering analysis and recommendations.

Q. What is the basis of your recommendations?

A. I performed a regulatory audit of the Company's application to determine whether sufficient, relevant, and reliable evidence exists to support the Company's requested rate increase. The regulatory audit consisted of examining and testing the financial information, accounting records, and other supporting documentation and verifying that the accounting principles applied were in accordance with the Commission-adopted NARUC Uniform System of Accounts ("USoA").

BACKGROUND

Q. Please provide a brief description of Black Mountain and the service it provides.

A. Black Mountain is an Arizona Class C utility engaged in the business of providing wastewater service in portions of Maricopa County, Arizona. Black Mountain provided wastewater service to approximately 2,100 customers during the test year. The current rates for Black Mountain were approved in Decision No. 71865, dated August 31, 2010.

Q. What are the primary reasons for Black Mountain's requested permanent rate increase?

A. According to the Company, the primary reasons are to recover increased operating expenses and to earn its authorized rate of return. Further, in Decision No. 71865, the Commission ordered that Black Mountain, in its next rate case:

> "present evidence regarding alternative methods for calculating sewage flow assumptions used for billing commercial customers. The Company shall consider, at a minimum: contacting ADEQ regarding plans for revising Bulletin No. 12; other sewage flow data based on technological improvements and conservation assumptions; and whether it is possible to obtain actual water usage data from the water utilities in the Company's service area for purposes of calculating more accurate wastewater flows on its system."[1]

The Commission also made it to clear to the Company in a complaint proceeding involving the Venues Café that the Company should file a rate case and propose a new rate design, preferably based on actual water usage as soon as possible. Staff will address the Company's proposed rate design in its rate design testimony.

Black Mountain is ultimately owned by Algonquin Power & Utilities Corp. ("APUC"). Liberty Utilities Co. ("Liberty Utilities") is a Delaware corporation that operates regulated gas, water, sewer and electric utilities in ten states-Arizona, Arkansas, California, Iowa, Illinois, Missouri, Georgia, Massachusetts, New Hampshire and Texas. Liberty Utilities Co. is a subsidiary of Liberty Utilities (Canada) Corp. ("Liberty Utilities Canada"). The Arizona

[1] Decision No. 71865 at 67.

utilities are wholly owned subsidiaries of Liberty Utilities (Sub) Corp., which is a wholly owned subsidiary of Liberty Utilities.[2] APUC, a publicly traded member of the Toronto Stock Exchange and is a registrant with the U.S. Security and Exchange Commission.

APUC is a $4.1 billion electric generation, transmission and distribution utility company based in Oakville, Ontario. APUC subsidiaries own and operate regulated utilities in the United States, and own non-regulated generation facilities and regulated electric transmission and natural gas pipelines throughout the United States and Canada. The distribution business group operates in the United States as Liberty Utilities and provides rate regulated water, electricity and natural gas utility services to over 488,000 customers. The electric generation business group operates as Algonquin Power Co. and owns or has interests in a portfolio of North American based contracted wind, solar, hydroelectric and natural gas powered generating facilities representing more than 1,150 MW of installed capacity. The transmission business group invests in rate regulated electric transmission and natural gas pipeline systems in the United States and Canada.

CONSUMER SERVICE

Q. Please provide a brief history of customer complaints received by the Commission regarding Black Mountain.

A. Staff reviewed the history of customer complaints for Black Mountain for the period January 1, 2012 to November 3, 2015 is as follows:

2015 - Three complaints (three billing).

2014 - One complaint (billing)

2013 - Two complaints (two billing)

[2] The other Liberty utilities in Arizona are: Liberty Utilities (Bella Vista Water), Liberty Utilities (Litchfield Park Water and Sewer) Corp., Liberty Utilities (Rio Rico Water and Sewer) Corp, Gold Canyon Sewer Company, Entrada del Oro Sewer Company.

2012 - One complaint (billing)

One complaint remains open pending investigation; all others were resolved and closed.

COMPLIANCE

Q. Please provide a summary of the compliance status of Black Mountain.

A. A check of the Commission's Compliance database indicates that Black Mountain is currently in compliance.

ORDER OF TESTIMONY

Q. What is the order of your testimony?

A. I will first discuss my analysis, recommendations, and supporting schedules for the revenue requirement followed by Staff's financing and cost of capital recommendations. Staff's recommended rate design will be presented in a separate filing.

REVENUE REQUIREMENT

REVENUE REQUIREMENT

SUMMARY OF PROPOSED REVENUES

Q. Please summarize Black Mountain's filing.

A. The Company proposes total annual operating revenue of $2,296,777. This represents an increase of $56,929, or 2.54 percent, over test year revenue of $2,239,848. The proposed revenue increase would produce an operating income of $294,082 for an 8.62 percent rate of return on an original cost rate base of $3,412,024.

Q. Please summarize Staff's recommended revenue.

A. Staff recommends a $171,514, or 7.66 percent, revenue decrease from $2,239,848 to $2,068,334. Staff's proposed revenue decrease would produce an operating income of $212,719 for a 7.08 percent rate of return on an OCRB of $3,004,503.

Q. What test year did Black Mountain utilize in this filing?

A. Black Mountain's test year is based on the twelve months ended December 31, 2014.

Q. Please summarize Staff's rate base and operating income adjustments for Black Mountain.

A. Staff's adjustments to rate base and operating expenses address the following:

Rate Base Adjustments

Allocated Corporate Plant – This adjustment decreases plant in service by $97,465 to remove plant that the Company does not directly own.

Reclassified Plant and Not Used and Useful Plant – This adjustment decreases plant in service by $34,819 to reclassify plant assets to the proper plant accounts and to remove plant that is not used and useful.

Accumulated Depreciation – This adjustment increases accumulated depreciation by $92,332. The adjustment reflects Staff's calculation of accumulated depreciation based on Staff's adjustments to plant.

Advances In Aid of Construction ("AIAC") – This adjustment decreases AIAC by $1,574,594 to reflect Staff's reclassification of AIAC that was not fully refunded after ten years to CIAC, consistent with Company's tariff.

Contributions in Aid of Construction ("CIAC") and Accumulated Amortization of CIAC – This adjustment increases gross CIAC by $1,574,594 and accumulated amortization of CIAC by $31,131 as the result of transferring AIAC that was not fully refunded after ten years to the CIAC account.

Accumulated Deferred Income Taxes ("ADIT") – This adjustment increases the ADIT balance by $137,259 as the result of reflecting Staff's calculation of the ADIT using the Staff recommended plant, accumulated depreciation, CIAC, and AIAC balances as well as the Staff recommended income tax rates.

Cash Working Capital ("CWC") – This adjustment decreases cash working capital by $76,776 to reflect the inclusion of interest expense and the removal of rate case expense in the lead-lag study consistent with the Commission's treatment in the Company's last rate case.

Operating Income Adjustments

Reclassification and Expected 2015 & 2016 Affiliate Labor Increase – This adjustment decreases Salaries and Wages by $242,213 by (1) reclassifying $220,598 in expenses from the Salaries and Wages account to Contractual Services to reflect that the Company has no employees and (2) removing $21,615 in unsupported salary increases that were expected to occur in 2015 and 2016.

Contractual Services, Testing – This adjustment increases Contractual Services - Testing expense by $3,334 to reflect Staff's recommended annual testing costs.

Corporate Expense Allocation – This adjustment decreases the Company's proposed corporate expense allocation by $30,103 to reflect the calculation consistent with Decision No. 71865.

Depreciation Expense – This adjustment decreases depreciation expense by $97,831 to reflect Staff's calculation of depreciation expense using Staff's recommended depreciation rates and Staff's recommended plant and CIAC balances. This adjustment is in part based upon a Company acknowledgement that specific elements of its plant in service was fully depreciated as of the end of the test year.

Income Tax Expense – This adjustment increases income tax expense by $39,222 to reflect the income tax calculation on Staff's adjusted test year operating income.

RATE BASE

Fair Value Rate Base

Q. Did the Company prepare schedules showing the elements of Reconstruction Cost New Rate Base?

A. No, the Company did not. The Company's filing treats the OCRB the same as the fair value rate base.

Rate Base Summary

Q. Please summarize Staff's adjustments to Black Mountain's rate base shown on Schedules CSB-3 and CSB-4.

A. Staff's adjustments to Black Mountain's rate base resulted in a net decrease of $407,521 from $3,412,024 to a $3,004,503. This decrease was primarily due to (1) Staff's removal of plant that the Company does not own, (2) Staff's removal of not used and useful plant, (3) increases to the ADIT, and (4) decreases to cash working capital.

Rate Base Adjustment No. 1 – Allocated Corporate Plant

Q. What is the definition of a plant asset?

A. In general, it is an item of plant that a company directly owns or that it has acquired through a capital lease.

Q. Has Black Mountain made a pro forma adjustment to include plant allocated from its parent company?

A. Yes, Black Mountain has proposed to include $97,465 in plant allocated from its parent company.

Q. Does Black Mountain directly own the plant that has been allocated from its parent company?

A. No, the parent company owns the plant and utilizes a portion of the plant for Black Mountain's operations and for the operations of the 21 other regulated utilities that the parent company owns.

Q. How should the cost of the parent company's plant that is used to serve Black Mountain's customers be reflected in the revenue requirement?

A. Staff believes that the appropriate treatment for this operational support facilities cost is to include a reasonable portion of the related depreciation expense as an allocation in operating expense. Staff will address this issue in "Operating Income Adjustment No. 3, Corporate Expense Allocation."

Q. What is Staff recommending?

A. Staff recommends decreasing plant in service by $97,465 to remove plant that the Company does not directly own as shown on Schedules CSB-4 and CSB-5.

Rate Base Adjustment No. 2 – Reclassified Plant and Not Used and Useful Plant

Q. During the course of the audit, did Staff identify any plant that was not used and useful and/or incorrectly classified?

A. Yes.

Q. What was the basis of Staff's determination?

A. Dorothy Hains, Staff's Engineer, inspected the entire system and identified certain individual plant items that were not serving customers during the test year and/or that were improperly classified. Further, the NARUC USoA requires that plant costs be placed in the correct plant

account. Proper classification will ensure that depreciation expense will be calculated using the correct depreciation rates.

Q. What is Staff recommending?

A. Staff recommends decreasing plant in service by $34,819 as shown on Schedules CSB-4 and CSB-6.

Accumulated Depreciation – Background

Purpose of Recording Depreciation Expense

Q. What is the primary purpose of calculating and recording depreciation expense?

A. The primary purpose of calculating and recording depreciation expense is to allocate the cost of a plant asset over the asset's service (i.e. useful) life, so that by the time an asset is fully depreciated[3] it should have reached the end of its service life. This is consistent with the accounting matching principle.

Q. Is Staff's statement concerning the purpose of calculating and recording depreciation expense supported by the NARUC USoA and the Arizona Administrative Code?

A. Yes, it is supported by both. Definition 15 of the NARUC USoA for Class C Utilities defines depreciation as follows:

> "Straight-line method" as applied to depreciation accounting, means the plan under which **the service value of property is charged to operating expenses** (and to clearing accounts if used), and credited to the accumulated depreciation account **through equal annual charges during its *service life*** . . . (Emphasis added).

[3] The term "fully depreciated" as used here means the amount of accumulated depreciation for a plant assets equals its original costs less salvage value.

Where ***service life*** is defined as "**the period between the time of installation of utility plant and the time of its retirement.**[4]" Emphasis and footnote added.

Further, R14-2-102, paragraph (A) (3) of the Arizona Administrative Code defines depreciation as follows:

> "Depreciation " means an accounting process which will permit **the recovery of the original cost of an asset less its net salvage over the *service life***. (Emphasis added).

Where ***service life*** is defined as "**the period between the date an asset is first devoted to public service and the date of its retirement from service.**"[5]

The Importance of Estimating and Using an Accurate Service Life

Q. How is the service life of an asset related to the calculation of the depreciation rate?

A. The depreciation rate is calculated by dividing one by the service life determined for that particular plant account. For example, if the service life of the pumping equipment account is determined to be eight years, then the **depreciation rate** for pumping equipment would be calculated as follows: 1 ÷ 8 years = 12.5%.

Q. Are there numerous methods of estimating the service life of a plant group?

A. Yes. However, not all methods will result in plant being fully depreciated by the time the underlying asset is to be retired.

Q. Can a retirement or survivor curve be used to obtain the service life of a plant group?

A. Yes. On page 67 of the NARUC's *Public Utility Depreciation Practices* publication, it states:

[4]Definition 12 of the NARUC USOA for Class C utilities
[5]R14-2-102, paragraph (A) (9)

> The survivor curve may be used to obtain an indication of the average of the lives of all the units, or dollars, in the group, i.e., the ***average life*** of the property

Q. What is the most reliable approach to determining a service life that is accurate and results in a depreciation rate that allows an asset to be fully depreciated at approximately the same time the asset is retired?

A. The most reliable approach is to periodically conduct a depreciation study because depreciation studies:

- Are company specific
- Have retirement rates, and hence, service lives, that vary by company due to the quality of plant materials used to construct plant assets, wear and tear and the regularity of maintenance performed on plant assets, and the environment in which the assets are operated.
- Are based upon the best information available
- Use survivor (Iowa) curves to plot data to determine survival rates and average service lives

Q. After an estimated service life has been determined and a depreciation rate has been calculated, is there a requirement to periodically review the rate?

A. Yes, Accounting Instruction No. 5 (c) of the NARUC USOA for Class C Utilities states:

> When the straight-line method is used, the rates **shall be reviewed periodically and adjusted as required**, so that the depreciation accrual **will bear a reasonable relationship to the service life**, the estimated net salvage, and the cost of the plant in service. (Emphasis added).

Q. Are depreciation studies expensive?

A. Yes, they can be relatively expensive to undertake, which is why most Class C, D, and E utility companies do not perform a new depreciation study to support their depreciation rates. However, without undertaking periodic depreciation studies to establish, or affirm, accurate service lives for a specific company's plant, companies will oftentimes have plant that is fully depreciated on its books but remains in service. Evidence of such plant remaining in service significantly past the point where the utility's original cost has been fully recovered through the recognition depreciation expense clearly indicates that the depreciation rate being used was **not** set to align with the actual service life of the asset. This situation violates the accounting matching principle and is inconsistent with the objectives of the NARUC USoA and the Administrative Code and results in numerous problems as discussed later.

Q. Did Black Mountain perform a depreciation study or similar type review to support its proposed depreciation rates in the instant case?

A. No, it did not. Black Mountain is proposing the same rates that Staff recommended in its prior rate case and were approved by the Commission.

Broad Group Depreciation – When and How It Is An Acceptable Approach To Calculating Depreciation

Q. What is the Broad Group approach to depreciation?

A. Under the Broad Group Method of depreciation, plant is not considered fully depreciated until it is retired.

Q. What is the underlying assumption in the Broad Group approach?

A. The underlying assumption, of course, is that the service lives used to depreciate the plant are accurate. Accurate services lives will result in the cost of the plant assets being allocated over the assets' useful life such that when the plant is fully depreciated, it is also retired because it is no longer working or providing service economically.

Q. Is the Broad Group Method an acceptable method to use if a company does not establish accurate service lives for the underlying assets?

A. No. As the Commission has seen in several recent rate cases, use of the Broad Group method without periodic review of the remaining service life of the asset group through a depreciation study results in excess depreciation expense being recovered, harms customers, and results in numerous other problems as will be discussed later in my testimony.

Q. Is the Broad Group Method an acceptable method to use if a company does not periodically review and request Commission authorization to change its depreciation rates when necessary?

A. As just noted, the Broad Group approach is not an acceptable approach when companies do not periodically review the estimated service lives used to determine their depreciation rates and request Commission authorization to change its depreciation rates when necessary. While Staff recognizes that the Broad Group Method is a generally accepted approach to recording depreciation expense for groups of homogeneous assets that could become administratively burdensome to depreciate as individual property units; it should <u>not</u> be used by companies that do not conduct periodic reviews of depreciation rates as required by the NARUC USoA.

Q. Ms. Brown, returning to the earlier question about it being expensive to undertake periodic depreciation studies. Would you agree that a regulated utility could ask that the cost of conducting such depreciation studies be normalized or otherwise amortized into its cost of service over a number of years?

A. Yes.

Q. What problems can occur when companies do not periodically review and obtain Commission authorization to update depreciation rates when necessary?

A. Under the broad group depreciation procedure, plant is not considered fully depreciated until it is retired. Therefore, an inaccurate estimated service life can result in plant that is fully depreciated but still remains in service. Keep in mind that the existence of plant still in service after the original cost has been passed through rates before the asset is scheduled for retirement, indicates that the matching principle has not been properly followed in the past. This situation can cause the following problems:

1. Excess depreciation – The calculation of excess depreciation caused by the continued depreciation of plant items that have been fully depreciated but remain in service. For example, consider a $10,000 pump with an estimated service life of eight years that actually stays in service for 11 years. The pump would be fully depreciated after eight years (i.e. there would be $10,000 in the accumulated depreciation account). However, for each year the pump remained in service, an additional $1,250 in depreciation expense per year totaling $3,750 would be added to the accumulated depreciation account. Total accumulated depreciation would be $13,750 ($10,000 + $3,750). Excess depreciation is inconsistent with the intent of the NARUC USOA and the Administrative Code.

2. Negative Net Plant Balances - Excess depreciation can cause negative net plant balances. Net plant can be defined as original cost less accumulated depreciation. Using the example above, net plant would be negative because the original cost of the asset has been over depreciated: $10,000 - $13,750 = ($3,750). Negative net plant balances are not consistent with the NARUC USoA.

3. Captive Customers Over Pay for Plant – Excess depreciation causes captive customers to pay more for the plant than what the company actually paid for it.

4. Questionable Financial Statements – Excess depreciation can cause financial statements to be inaccurate; jeopardizing the quality of the statements by providing a presentation of the financial position of the utility that is questionable.

Again Items No.3 and No. 4 suggest a past short coming in the Company's efforts to follow the accounting matching principle.

Q. Does Black Mountain use the Broad Group depreciation procedure?

A. Yes. However, the Company has modified the procedure such that the Company has stopped depreciation on some of its fully depreciated plant balances.

Q. Has the Company stopped depreciating all of its fully depreciated plant balances?

A. No, it has not. Therefore, excess depreciation continues to be calculated on fully depreciated plant.

Q. Has Staff found evidence of excess depreciation in Black Mountain's accumulated depreciation account?

A. Yes, Staff has found that Account No. 354, Structures and Improvements and Account No. 363, Services to Customers has fully depreciated plant that the Company continues to depreciate.

Q. What is Staff's recommendation concerning this plant?

A. Staff recommends that the Company discontinue calculating depreciation on the fully depreciated plant on a going forward basis.

Q. Has Staff addressed the issue in its depreciation expense adjustment?

A. Yes. Staff has made a prospective adjustment to address the problem which is discussed in the "Operating Expense Adj. No. 5, - Depreciation Expense" section of my testimony.

Q. Does Staff have another recommendation in this area?

A. Yes. Staff believes the Company should be directed to select an independent depreciation study expert to assess the reasonableness of its depreciation rates as part of its next full rate case filing.

Rate Base Adjustment No. 3 – Accumulated Depreciation

Q. What did the Company propose for Accumulated Depreciation?

A. The Company proposed accumulated depreciation in the amount $8,654,682.

Q. What adjustments did Staff make to Accumulated Depreciation?

A. Staff increased accumulated depreciation by $92,332 as shown on Schedule CSB-7. This adjustment is composed of (1) a $94,276 increase to reflect the change in accumulated

depreciation due to Staff's reclassification and removal of not used and useful plant as discussed in "Rate Base Adjustment No. 2" and (2) a $1,944 decrease related to the removal of plant that is owned by an affiliate as discussed in "Rate Base Adjustment No. 1."

Q. What is Staff recommending?

A. Staff recommends increasing accumulated depreciation by $92,332 as shown on Schedules CSB-4 and CSB-7.

Rate Base Adjustment No. 4 – Advances In Aid of Construction ("AIAC")

Q. What did the Company propose for AIAC?

A. The Company proposed $1,743,922 for AIAC.

Q. Did Staff make any adjustments to the Company proposed $1,743,922 amount?

A. Yes, Staff made two adjustments totaling $1,574,594. Staff removed $239,736 in unsupported AIAC and transferred $1,334,809 in AIAC to CIAC.

Q. Please discuss Staff's first adjustment to remove $239,736 in unsupported AIAC.

A. Staff asked the Company to provide all contracts in support of its proposed $1,743,922 in AIAC. The Company could only support $1,504,136 of the $1,743,922; a difference of $239,786 as shown on Schedule CSB-8, lines 1 through 3. Further, on the summary schedule provided in response to Staff data request BAB 1.15, the Company indicated that an AIAC contract was likely recorded twice.

Q. Please discuss the second adjustment to transfer $1,334,809 in AIAC to CIAC.

A. The $1,334,809 adjustment consists of two components ($1,343,824 - $9,015 = $1,334,809). It transfers $1,343,824 to AIAC and reflects $9,015 in pro forma refunds made on AIAC contracts that will expire within six months after the test year as shown on Schedule CSB-8.

In determining the $1,343,824 amount, Staff reviewed the contract dates and found that all of the contracts except the contract dated June 19, 2007 would expire in 2014 or within six months thereafter. Consequently, for ratemaking purposes, these contracts should be transferred to CIAC in accordance with the Company's AIAC tariff provided in response to Staff's data request 11.5. Staff's adjustment is consistent with the Arizona Administrative Code's (R14-2-103 A 3 i) definition of a pro forma adjustment which states:

> "Pro forma adjustments" – Adjustments to actual test year results and balances **to obtain a normal or more realistic relationship between revenues, expenses and rate base**. Emphasis added.

In determining the $9,015 amount, Staff reviewed the refund history of the Company and noted that for the years 2008 through 2014, the Company reported making only one refund for each of the AIAC contracts identified on Schedule CSB-8, Columns J, K, and L. For ratemaking purposes, Staff assumed that the Company would pay a refund, though based on its history, less than the amount paid during the test year. Therefore, Staff averaged the test year refund of $18,030 using two years and reflected $9,015 as refunds paid during 2015.

Q. What is Staff recommending?

A. Staff recommends decreasing AIAC by $1,574,594 as shown on Schedules CSB-4 and CSB-8.

Rate Base Adjustment No. 5 – Contributions In Aid of Construction ("CIAC") and Amortization of CIAC

Q. What did the Company propose for CIAC and Amortization of CIAC?

A. The Company proposed $5,461,736 for CIAC and $5,240,717 for Amortization of CIAC.

Q. What adjustment did Staff make to CIAC and Amortization of CIAC?

A. Consistent with Staff's Rate Base Adjustment No. 4, Staff transferred $1,574,594 from AIAC to CIAC and increased Amortization of CIAC to recognize the related $31,131 amortization expense as shown on Schedule CSB-9.

Q. What is Staff recommending?

A. Staff recommends increasing CIAC by $1,574,594 and amortization of CIAC by $31,131 as shown on Schedules CSB-4 and CSB-9.

Rate Base Adjustment No. 6 – Accumulated Deferred Income Taxes

Q. What are accumulated deferred income taxes ("ADITs")?

A. ADITs are the accumulated computed tax differences between income taxes calculated for book purposes and the actual income taxes that a company pays to the United States Treasury and the State of Arizona. By definition, these differences are temporary and reverse over time. The primary cause of the income tax difference is the straight line depreciation method used for rate-making purposes and accelerated depreciation method used for Federal and State income tax reporting purposes.

Q. What ADIT balance is the Company proposing to include in rate base?

A. Black Mountain proposes to include a $75,116 ADIT liability (i.e., a reduction) to rate base as shown on Schedules CSB-4 and CSB-10. This net ADIT liability is composed of a $308,931 ADIT liability resulting from federal taxes; a $36,113 ADIT asset resulting from state taxes;

and a $197,991 asset resulting from AIAC. The net result of these three amounts is a negative $75,000 (-$308,931 + $36,113 + $197,999 = -$75,116). Staff will discuss each separately.

Federal ADIT Component

Q. What amount is the Company proposing for the federal component of the ADIT?

A. For the federal component, the Company is proposing an ADIT liability of $308,931.

Q. What adjustments did Staff make?

A. Staff reflected the Staff recommended plant, accumulated depreciation, and CIAC balances as well as Staff's recommended federal tax rate. Staff also reflected the Company's updated tax plant cost and accumulated depreciation with the new information provided in response to Staff's data request DH 10.2

Q. What is Staff's recommendation for the federal ADIT component?

A. Staff recommends a federal ADIT of $222,160.

State ADIT Component

Q. Did Staff have any concerns about the state component of the ADIT?

A. Yes, Staff noted that the net plant calculated for *tax* purposes was **higher** than the net tax calculated for *book* purposes. However, the reverse is typically seen for an ADIT caused by using straight line depreciation for book purposes and accelerated depreciation for tax purposes.

Q. Can you provide an example?

A. Yes. The example below shows that accelerated depreciation (or a difference in plant lives) causes the accumulated depreciation balance to grow faster which results in a lower net plant for tax purposes.

Example

$3,000 Asset

Tax Life (Accelerated depreciation) = 3 Years ($1,000 per year depreciation expense)

Book Life (Straight Line Depr.) = 5 Years ($600 per year depreciation expense)

	Year 1		Year 2		Year 3	
	Tax	Book	Tax	Book	**Tax**	**Book**
Plant	$3,000	$3,000	$3,000	$3,000	$3,000	$3,000
Accu Depr	($1,000)	($ 600)	($2,000)	($1,200)	($3,000)	($1,800)
Net Plant	$2,000	$2,400	$1,000	$1,800	**$ 0**	**$1,200**

Q. What was the Company's net plant calculated for tax and for book?

A. The Company's net plant for tax is $4,240,435[6] and the net tax for book is $3,503,443 as shown on the Company's Schedule B-2, page 7, line 11.

Q. Did Staff ask the Company why the tax net plant was higher than the book net plant?

A. Yes. The Company, in response to Staff data request DH 10.3, provided two reasons. The first reason is that the average depreciation rate for book was 4.6 whereas for tax it was 4.0 percent. The second reason was that the Company has a tax basis in some CIAC funded plant received from 1987 to 1996. The Company states:

> The net state tax balance is higher than the net book balance primary for two reasons. First, plant for book purposes has been depreciating

[6] In response to Staff Data Request DH 10.4, the Company updated the amount to $4,015,348.

at an average rate of about 4.6 percent (or about 22-year useful life on average) but for tax purposes the plant has been depreciating at around a 4% rate (about 25 years). Second, the Company has a tax basis in plant for some CIAC funded plant. CIAC received from 1987 to 1996 was treated as taxable income and therefore the Company has a tax basis in the plant and does not have a basis for book purposes.

Q. Does Staff have a basis for agreeing with the Company's first reason (i.e., that the average depreciation rate used for book purposes was 4.6 percent whereas for tax purposes it was 4.0)?

A. No, Staff does not. The Company provided no documentation showing that plant for book purposes has been depreciating at 4.6 percent whereas plant for tax purposes has been depreciating at 4 percent. Further, Staff notes that excessive depreciation caused by continuing to depreciate fully depreciated book plant could also cause the net plant for book purposes to be lower than the net plant for tax. Staff has found evidence of excess depreciation included in book accumulated depreciation as discussed in "Operating Income Adjustment No. 5 – Depreciation Expense."

Q. Does Staff agree with the Company's second reason (i.e., that the company has a tax basis in the CIAC received between 1987 to 1996)?

A. No, the tax basis difference that the Company refers to is a *permanent* difference which by definition is not an ADIT. ADIT's are *temporary* differences that reverse over time.

Q. Can you provide an example?

A. Yes. The following example, taken from page 24 of the NARUC's "Rate Case and Audit Manual" prepared by the NARUC Staff Subcommittee on Accounting and Finance, shows how the ADIT caused by the timing difference between using accelerated depreciation for book purposes and straight line depreciation for book purposes reverses over time:

Example

$3,000 Asset

Tax Life (Accelerated depreciation) = 3 Years ($1,000 per year depreciation expense)

Book Life (Straight Line Depr.) = 5 Years ($600 per year depreciation expense)

INCOME TAX EFFECT OF DEPRECIATION EXPENSE[7]			
[A]	[B]	[C]	[D]
IRS TAXES	BOOK TAXES	CURRENT YR. ADIT	ADIT BALANCE
$1,000 x 40% = $400	$600 x 40% = $240	$400 - $240 = $160	**$160**
$1,000 x 40% = $400	$600 x 40% = $240	$400 - $240 = $160	**$160 + $160 = $320**
$1,000 x 40% = $400	$600 x 40% = $240	$400 - $240 = $160	**$320 + $160 = $480**
$ 0 x 40% = $ 0	$600 x 40% = $240	$ 0 - $240 = ($240)	**$480 - $240 = $240**
$ 0 x 40% = $ 0	$600 x 40% = $240	$ 0 - $240 = ($240)	**$240 - $240 = $ 0**

Q. Does APUC, Black Mountain's ultimate parent company, include Black Mountain in its consolidated income tax return along with its approximately 70 other regulated and unregulated companies?

A. Yes, it does. Therefore, the state ADIT that the company estimated from the consolidated income tax return could include items that are not generally recognized by the Commission.

Q. Did the Company include a state component for the ADIT in its last rate case (Docket No. SW-02361A-08-0609)?

A. No, it did not.

Q. Is Staff recommending that the state component of the Company's ADIT be set to zero?

A. Yes. The Company's accumulated depreciation balance includes excess depreciation and could be a major factor that explains why the net plant for book purposes is higher than the net plant for tax purposes. Further, the Company admitted that it had included a *permanent*

[7] In this table, credits are shown as positive amounts, and debits are shown in parentheses.

timing difference in the calculation of the state component of the ADIT (ADIT's by definition are *temporary* timing differences that reverse). Moreover, the Company's income is included in the consolidated income tax return of the approximately 71 companies of its ultimate parent, APUC which may include items in the ADIT that are unallowable. Also, the state component of the ADIT was not included in the Company's last rate case. For all of the aforementioned reasons, Staff recommends that the state component of the ADIT be set to zero.

AIAC Component of the ADIT

Q. What amount is the Company proposing for the AIAC component of the ADIT?

A. For the AIAC component, the Company is proposing an ADIT asset of $197,991.

Q. What adjustments did Staff make?

A. Staff reflected the Staff recommended AIAC balance as well as Staff's recommended federal tax rate.

Q. What is Staff's AIAC component of the ADIT?

A. Staff recommended AIAC component of the ADIT is $9,784 as shown on Schedule CSB-10 page 2 of 2, line 17.

Staff's Recommended Overall ADIT

Q. What is Staff's recommendation for the ADIT balance?

A. Staff recommends an ADIT liability of $212,375.

Rate Base Adjustment No. 7 – Cash Working Capital

Q. What amount of cash working capital is Black Mountain proposing to include in rate base?

A. Black Mountain is proposing to include a negative $60,594 cash working capital in rate base.

Q. What adjustments did Staff make?

A. As shown on Schedule CSB-11, page 2, Staff reflected $60,012 in interest [Per Company's response to Residential Utility Consumer's Office ("RUCO") data request No. 2.01] on the Company proposed and Staff recommended with conditions $1,973,939 financing. Staff also removed rate case expense consistent with the removal of rate case expense in the lead lag study proposed in the Company's last rate case (Decision No. 71865, page 9, lines 24-25).

Q. What is Staff recommending for Cash Working Capital?

A. Staff recommends a negative $137,370 cash working capital, as shown on Schedules CSB-4 and CSB-11.

OPERATING INCOME

Operating Income Summary

Q. What are the results of Staff's analysis of test year operating income?

A. Staff's analysis resulted in test year revenues of $2,239,848, expenses of $1,924,241 and an operating income of $315,607 as shown on Schedules CSB-12 and CSB-13.

Operating Income Adjustment No. 1 – Reclassification and Affiliate Expected 2015 and 2016 Affiliate Labor Increase

Q. Did the Company make a pro forma adjustment to Salaries and Wages?

A. Yes, the Company made pro forma adjustments to increase Salaries and Wages expense by $242,213. This adjustment is composed of a $220,598 to reflect the actual test year labor expense of its unregulated affiliate and a $21,615 to reflect the post-test year affiliate labor increase expected in 2015 and 2016.

Q. Does Staff agree with the adjustments?

A. No, Staff does not agree as Black Mountain has no employees. The Company uses contract services for all operations and maintenance. Therefore, according to the NARUC USoA, the appropriate account to record the $220,598 expense is in Contract Services. The Company has changed its position on this issue (BAB 1.19) and is in agreement with Staff that the expense should be reclassified to Contract Services. Further, Staff does not agree with the $21,615 affiliate labor increase expected in 2015 and 2016. The 2016 expected increase is not known and measurable, and is too far past the test year to be considered an appropriate pro forma adjustment as the adjustment would not provide "a more realistic relationship between revenues, expenses, and rate base." Moreover, the Company has not provided any support evidencing the amount of the expected 2015 labor increase that has actually taken effect.

Q. What is Staff's recommendation?

A. Staff recommends decreasing Salaries and Wages expense by $242,213 and increasing the Contract Services – Other account by $220,598 as shown on Schedules CSB-12 and CSB-14.

Operating Income Adjustment No. 2 – Contractual Services, Testing

Q. What did the Company propose for Contractual Services, Testing?

A. The company is proposing $8,117.

Q. What adjustment did Staff make?

A. Staff increased the account by $3,334 to reflect Staff's recommended testing expense as discussed in greater detail in the direct testimony of Staff witness Dorothy Hains.

Q. What is Staff's recommendation?

A. Staff recommends increasing testing expense by $3,333 as shown on Schedules CSB-12 and CSB-15.

Operating Income Adjustment No. 3 – Corporate Expense Allocation

What is the Algonquin Power & Utilities Corp. ("APUC")?

A. The 2014 annual report for APUC, on page 85 of the Notes to the Consolidated Financial Statement, states:

> Algonquin Power & Utilities Corp. ("APUC" or the "Company") is an incorporated entity under the Canada Business Corporations Act. APUC is a diversified generation, transmission and distribution utility company. The distribution business group operates in the United States under the name of Liberty Utilities Co. ("Distribution Group") and provides rate regulated water, electricity and natural gas utility services. The non-regulated generation business group operates under the name Algonquin Power Co. ("Generation Group") and owns or has interests in a portfolio of North American based contracted wind, solar, hydroelectric and natural gas powered generating facilities. The transmission business group operates under the name Liberty Utilities (Pipeline & Transmission) ("Transmission Group") and invests in rate regulated electric transmission and natural gas pipeline systems in the United States and Canada.

Q. Please describe the position of Black Mountain within APUC's organizational structure.

A. According to the organizational chart provided in response to Staff data request CSB 6.2, Algonquin Power & Utilities Corp owns Liberty Utilities (Canada) Corp, who in turn, owns Liberty Utilities (America) Corp, who in turn, owns Liberty Utilities (America) Holdings, LLC, who in turn, owns Liberty Utilities Co., who in turn, owns Liberty Utilities (Sub) Corp., who in turn, owns Black Mountain Sewer Company.

Q. What is the primary goal of cost allocation between an unregulated affiliate and a regulated affiliate?

A. The primary goal is the fair distribution of costs between the unregulated and regulated affiliate through proper allocations.

Q. What effect could improperly allocated costs have on rate payers?

A. When costs incurred primarily for the benefit of an unregulated affiliate's business are allocated as overhead/common costs, then costs of the unregulated affiliate are shifted to the captive customers of the regulated utility. This cost shifting results in the captive customers of the regulated utility subsidizing the business operations of the unregulated affiliate. This harms customers by creating artificially higher rates.

Q. What amount was allocated from APUC to various companies that APUC owns during the test year?

A. The amount is $6,063,304.

Q. What portion of this $6,063,304 total was allocated from the APUC unregulated business operations to Black Mountain during the test year?

A. According to the Company's response to data request CSB 6.1, Black Mountain was allocated $37,844.84 during the test year.

Q. Does Staff agree with the Company's calculation of the methodology used to allocate the corporate costs?

A. No, Staff does not. The Commission, in Decision No. 71865, disallowed certain costs that were directly caused by APUC unregulated business activities and for which APUC would have continued to incur even if APUC did not own Black Mountain consistent with the NARUC Guidelines for Affiliate Transactions.

Q. Did Staff use the same methodology that was used in Decision No. 71865?

A. Yes. As shown on Schedule CSB-16, that methodology first allocates a portion of the allowable indirect corporate costs (i.e. $1,896,682 of the $6,063,304) to the regulated water and wastewater companies by calculating the ratio of the number of regulated water and wastewater companies that APUC owns (i.e. 13) to the total number of all companies that APUC owns (i.e. 71). For this proceeding, the ratio is 18.31 percent (i.e. 13 ÷ 71). The 18.31 percent is multiplied by $1,896,682 resulting in $347,280. A portion of this amount is then allocated to Black Mountain based upon the ratio of Black Mountain's customers (i.e., 2,121) to the total number of APUC's regulated water and wastewater customers (i.e. 95,145) which results in 2.23 percent (2,121 ÷ 95,145). This 2.23 percent is then multiplied by the $347,280 which results in a corporate allocation to Black Mountain of $7,741.66.

Q. Did Staff obtain support for all of the current information needed to evaluate the calculation?

A. No. Staff requested the Company to provide (1) the total number of companies that APUC owns or operates and (2) corporate depreciation expense but the Company did not provide the information. Due to time constraints, Staff utilized the information used in the last rate proceeding.

Q. Did Staff adjust any of the corporate amounts?

A. Yes, Staff removed $21,465 for general legal expense as it related to APUC's shareholders.

Q. What is Staff's recommendation for the corporate allocation?

A. Staff recommends corporate expense allocation of $7,742.

Operating Income Adjustment No. 4 – Rate Case Expense

Q. What did the Company propose for rate case expense?

A. The company is proposing $450,000 in total rate case expense. It proposes to recover $150,000 each year for approximately three years. The Company proposes to recover the rate case expense through a surcharge. Therefore, since the Company has proposed a separate surcharge it did not include any provision for rate case expense in operating expenses.

Q. Is Staff supporting the approval of a surcharge mechanism for recovery of rate case expense?

A. No, as discussed in greater detail in Staff's rate design testimony.

Q. What adjustment did Staff make to the Company's proposed level of rate case expense?

A. Staff compared the $450,000 in rate case expense to the $180,000 in rate case expense authorized in the Company's last rate case (which also included plant closure issues) and to the rate case expense of other companies and found that the proposed $450,000 was not reasonable. Based upon Staff's analysis, Staff decreased the $450,000 amount to $250,000. The test years used in the Company's past rate cases were 2004, 2008, and 2014. The average interval between rate cases was approximately five years. Therefore Staff normalized rate case expense using the average; five years as shown on Schedule CSB-17.

Q. What is Staff's recommendation?

A. Staff recommends increasing rate case expense by $50,000 as shown on Schedules CSB-12 and CSB-17.

Operating Income Adjustment No. 5 – Depreciation Expense

Background

Q. What is the Company proposing for depreciation expense?

A. The Company is proposing $484,271.

Q. **Does the Company use a modified version of the Group Depreciation Procedure?**

A. Yes, the Company has stopped depreciating most of its plant that has been fully depreciated.

Q. So, did the Company remove fully depreciated plant in its calculation of depreciation expense?

A. Yes, as shown on the Company's Schedule C-2, page 2, the Company removed $552,393 in fully depreciated pumping equipment; $124,527 in fully depreciated plant sewers; and $52,063

in fully transportation equipment. Also, in response to RUCO data request 3.12, the Company has agreed that $31,668 in fully depreciated flow measuring devices should be removed.

Q. Did Staff identify any other plant elements that were fully depreciated at the end of the test year?

A. Yes. Staff identified the following plant that has been in service since the end of 2004, but that the Company states continues to be in service at the end of the test year wherein more than the full original cost of the plant (i.e. excess cost recovery) has been recovered from customers through depreciation expense included in rates:

Calculation of Excess Depreciation on Fully Depreciated 2004 Plant

(A)	(B)	(C)	(D)	(E)	(F)	(G)
Acct No	Plant Description	2004 Plant Balance Less Retirements	2004 Accumulated Depreciation Balance	Depreciation Accumulated from 2005 to 2014 Less Retirements	Total Accumulated Depreciation from 2004 to 2014 **Col D + Col E**	**Excess Cost Recovery of Plant** **Col C - Col F**
354	Structures and Improvements	$1,187,387	$888,015	$375,626	$1,263,641	($76,254)
363	Services to Customers	$151,507	$128,612	$30,392	$159,004	($7,497)

Q. What adjustment did Staff make to depreciation expense?

A. Staff adjusted depreciation expense to reflect Staff's calculation of depreciation expense using Staff's recommended depreciation rates, plant balances, fully depreciated plant balances (CSB 11.7), and CIAC balances. Staff's calculation is shown on Schedule CSB-18.

Q. What is Staff's recommendation?

A. Staff recommends decreasing pro forma depreciation expense by $97,831 as shown on Schedules CSB-12 and CSB-18.

Operating Income Adjustment No. 6 – Income Taxes

Q. What is the Company proposing for test year Income Tax Expense?

A. The Company is proposing $131,980.

Q. Did Staff make any adjustments to test year Income Tax Expense?

A. Yes. Staff's adjustment reflects Staff's calculation of the income tax expense based upon Staff's adjusted test year taxable income.

Q. What is Staff's recommendation?

A. Staff recommends increasing test year Income Tax Expense of by $39,222 as shown on Schedules CSB-12 and CSB-19.

Plant Documentation

Q. What type of auditable evidence is required to determine the existence of a plant asset?

A. In order to readily determine the existence of a plant asset, a company must document the physical location of each plant asset (with the exception of small tools). Documenting the location of each asset allows a physical inventory to be conducted of actual assets that can be reconciled to the assets recorded on the general ledger to help ensure that plant balances will not be over or under stated.

Q. Does the Company document the location of each plant asset (with the exception of small tools)?

A. No, according to its response to Staff data request CSB-6.20(b), it does not.

Q. As a result, can the Company provide reliable evidence that all of the plant recorded in its general ledger exists?

A. No, it cannot.

Q. Could the Company's inability to track and otherwise document the location of its plant assets (with the exception of small tools) potentially harm customers or otherwise expose them to risk?

A. Yes, as Staff, nor anyone else, can readily verify that the plant actually exists and that the plant balances reflected in rate base are not over-stated.

Q. What is Staff's recommendation?

A. Staff recommends that the Company perform a physical inventory which identifies the location of its plant assets. Staff also recommends that the Company file a plan that explains how it will update this inventory as plant is added and retired and how it will periodically reconcile the amounts on the inventory list to the general ledger. Staff also recommends that the inventory showing the actual location of plant assets along with the plan just noted be filed with Staff one year after the date of a decision resulting from this proceeding.

Q. Does this conclude Staff's direct testimony regarding the revenue requirement?

A. Yes, it does.

FINANCING

FINANCING

Q. Would you please provide a brief background of the Company's financing application?

A. On June 22, 2015, Black Mountain filed a financing application to incur long term debt, requesting Commission approval to borrow an amount not to exceed $3,400,000 from its parent company Liberty Utilities Co. ("Liberty Utilities). On September 22, 2015, the certification of publication and proof of mailing was filed.

Q. What is the purpose of the loan?

A. Black Mountain states that the purpose of the loan is to rebalance its capital structure from 100 percent equity capital structure to a 70 percent equity and 30 percent debt capital structure.

Q. What is the initial amount and terms of the loan?

A. The initial amount of the loan is currently estimated to be $1,973,939. In addition, the Company will enter into additional loan agreements every six months as necessary to maintain a capital structure consisting of 70 percent equity and 30 percent debt. However, at no time will the total debt amount exceed $3,400,000. The interest rate is equal to the United States 10 year Treasury bond rate plus 130 basis points. The length of the loan is 10 years after closing on the loan

Q. Did Staff perform a financial analysis?

A. Yes. Staff performed a general financial analysis to ensure that the Company will have the funds to make the required loan payments.

Staff's analysis is based on the Staff adjusted test year ending December 31, 2014. The financial analysis shown on Schedule CSB-1 presents selected financial information from the financial statements and the pro forma effect of the proposed debt amount.

Q. Did Staff examine the effects of the proposed financing on the Company's TIER and DSC?

A. Yes, Schedule CSB-1 also shows the debt service coverage ("DSC") and the times interest earned ("TIER") ratio. DSC represents the number of times internally generated cash (i.e. earnings before interest, income tax, depreciation and amortization expenses) cover required principle and interest payments on debt. A DSC greater than 1.0 means operating cash flow is sufficient to cover debt obligations.

TIER represents the number of times earnings before income tax expense covers interest expense on debt. A TIER greater than 1.0 means that operating income is greater than interest expense. A TIER less than 1.0 is not sustainable in the long term but does not necessarily mean that debt obligations cannot be met in the short term.

The Company's TIER and DSC resulting from Staff's recommended revenue requirement and fully drawing the loan in the amount of $3,400,000, taken over 10 years at 3.53 percent interest, results in a pro forma TIER and DSC of 2.88 and 1.76, respectively. The pro forma TIER and DSC show that Black Mountain would have adequate cash flows to meet all obligations including the proposed debt. Therefore, Staff concludes that the debt service on any authorized loan amounts should be funded via a loan surcharge mechanism.

Staff further concludes that issuance of the debt financing under the conditions recommended by Staff for the purposes stated in the application is within Black Mountain's

corporate powers, is compatible with the public interest, will not impair its ability to provide services and is consistent with sound financial practices provided Staff's recommended operating income and surcharge amounts are adopted.

Q. What are Staff's recommendations?

A. Staff recommends:

- That the Commission authorize Black Mountain to incur a 10-year loan in an amount not to exceed $3,400,000 and at an interest rate not to exceed that which is equal to the United States 10 year Treasury bond rate plus 130 basis points.
- That the Commission authorize Black Mountain to engage in any transaction and to execute any documents necessary to effectuate the authorizations granted.
- That Black Mountain be ordered to file with Docket Control, as a compliance item in this matter, copies of the loan documents within 60 days of the execution of any financing transaction authorized herein.

Q. Does this conclude Staff's direct testimony regarding the Company's requested financing approval?

A. Yes, it does.

COST OF CAPITAL

COST OF CAPITAL

Summary of Testimony and Recommendations

Q. Briefly summarize how Staff's cost of capital testimony is organized.

A. Staff's cost of capital testimony is presented in eight sections. Section I is this introduction. Section II discusses the concept of weighted average cost of capital ("WACC"). Section III presents Staff's cost of debt for Black Mountain. Section IV discusses the concepts of ROE and risk. Section V presents the methods employed by Staff to estimate Black Mountain's ROE. Section VI presents the findings of Staff's ROE analysis. Section VII discusses the financial risk and economic assessment adjustments. Section VIII presents Staff's ROR recommendation.

Q. Have you prepared any exhibits to accompany your testimony?

A. Yes. I prepared nine schedules (CSB-1 to CSB-9) in support Staff's cost of capital analysis.

Q. What is Staff's recommended rate of return for Black Mountain?

A. Staff recommends a 7.08 percent overall ROR, as shown in Schedule CSB-1. The ROR is calculated from the capital structure, ROE and cost of debt. Staff's capital structure is composed of 70 percent equity and 30 percent debt. Staff's estimated ROE for the Company is based on the results of its DCF and CAPM cost of equity methodology estimates for the sample companies of 8.6 percent for the capital asset pricing model ("CAPM") and 8.6 percent for the discounted cash flow method ("DCF").

Black Mountain's Proposed Overall Rate of Return

Q. Briefly summarize Black Mountain's proposed capital structure, cost of debt, ROE and overall ROR for this proceeding.

A. Table 1 summarizes the Company's proposed capital structure, cost of debt, ROE and overall ROR in this proceeding:

Table 1

	Weight	Cost	Weighted Cost
Long-term Debt	30.0%	3.53%	1.06%
Common Equity	70.0%	10.80%	7.56%
Cost of Capital/ROR			**8.62%**

Black Mountain is proposing an overall rate of return of 8.62 percent.

II. THE WEIGHTED AVERAGE COST OF CAPITAL

Q. Briefly explain the cost of capital concept.

A. The cost of capital is the opportunity cost of choosing one investment over others with comparable equivalent risk. In other words, the cost of capital is the return that stakeholders expect for investing their financial resources in a determined business venture over another alternative business venture.

Q. What is the overall cost of capital?

A. The overall cost of capital for a firm issuing a variety of securities (i.e., stock and indebtedness) represents an average of the various cost rates on all securities issued by the firm adjusted to reflect the relative weighting of each security within the firm's capital structure. Thus, for any given firm, the overall cost of capital is the firm's weighted average cost of capital ("WACC").

Q. How is the WACC calculated?

A. The WACC is calculated by adding the weighted expected returns of a firm's securities. The WACC formula is:

Equation 1.

$$WACC = \sum_{i=1}^{n} W_i * r_i$$

In this equation, W_i is the weight given to the i^{th} security (the proportion of the i^{th} security relative to the portfolio) and r_i is the expected return on the i^{th} security.

Q. Can you provide an example demonstrating application of Equation 1?

A. Yes. For this example, assume that an entity has a capital structure composed of 60 percent debt and 40 percent equity. Also, assume that the embedded cost of debt is 6.0 percent and the expected return on equity, i.e., the cost of equity, is 10.5 percent. Calculation of the WACC is as follows:

$$WACC = (60\% * 6.0\%) + (40\% * 10.5\%)$$

$$WACC = 3.60\% + 4.20\%$$

$$WACC = 7.80\%$$

The weighted average cost of capital in this example is 7.80 percent. The entity in this example would need to earn an overall rate of return of 7.80 percent to cover its cost of capital.

III. CAPITAL STRUCTURE

Background

Q. Please explain the capital structure concept.

A. The capital structure of a firm is the relative proportions of each type of security:--short-term debt, long-term debt (including capital leases), preferred stock and common stock--that are used to finance the firm's assets.

Q. How is the capital structure expressed?

A. The capital structure of a company is expressed as the percentage of each component of the capital structure (capital leases, short-term debt, long-term debt, preferred stock and common stock) relative to the entire capital structure.

As an example, the capital structure for an entity that is financed by $20,000 of short-term debt, $85,000 of long-term debt (including capital leases), $15,000 of preferred stock and $80,000 of common stock is shown in Table 2.

Table 2

Component			Percent
Short-Term Debt	$20,000	($20,000/$200,000)	10.0%
Long-Term Debt	$85,000	($85,000/$200,000)	42.5%
Preferred Stock	$15,000	($15,000/$200,000)	7.5%
Common Stock	$80,000	($80,000/$200,000)	40.0%
	$200,000		100.0%

The capital structure in this example is composed of 10.0 percent short-term debt, 42.5 percent long-term debt, 7.5 percent preferred stock and 40.0 percent common stock.

Black Mountain's Capital Structure

Q. What capital structure does Black Mountain propose?

A. The Company proposes a capital structure composed of 30 percent long-term debt and 70 percent common equity. Black Mountain's proposed capital structure reflects projected long-term debt and common equity balances as of December 31, 2014.

Q. How does Black Mountain's proposed capital structure compare to capital structures of publicly-traded water utilities?

A. Schedule CSB-4 shows the capital structures of six publicly-traded water companies ("sample water companies" or "sample water utilities") as of December 2014. The average capital structure for the sample water utilities is comprised of approximately 46.1 percent debt and 53.9 percent equity.

Staff's Capital Structure

Q. What is Staff's recommended capital structure for Black Mountain?

A. Staff recommends a pro forma capital structure composed of 30 percent debt and 70 percent equity. Effectively, Staff's recommended capital structure consists of $1,973,939 long-term debt and $4,605,858 common equity. Staff's long-term debt balance as of December 31, 2014, reflects Black Mountain's initial debt principal of $1,973,939.

IV. RETURN ON EQUITY

Background

Q. Please define the term "cost of equity capital."

A. The cost of equity is the rate of return that investors expect to earn on their investment in a business entity given its risk. In other words, the cost of equity to the entity is the investors' expected rate of return on other investments of similar risk. As investors have a wide

selection of investments to choose from, they will generally choose from investments with similar risks and similar returns. Therefore, the market determines the entity's cost of equity.

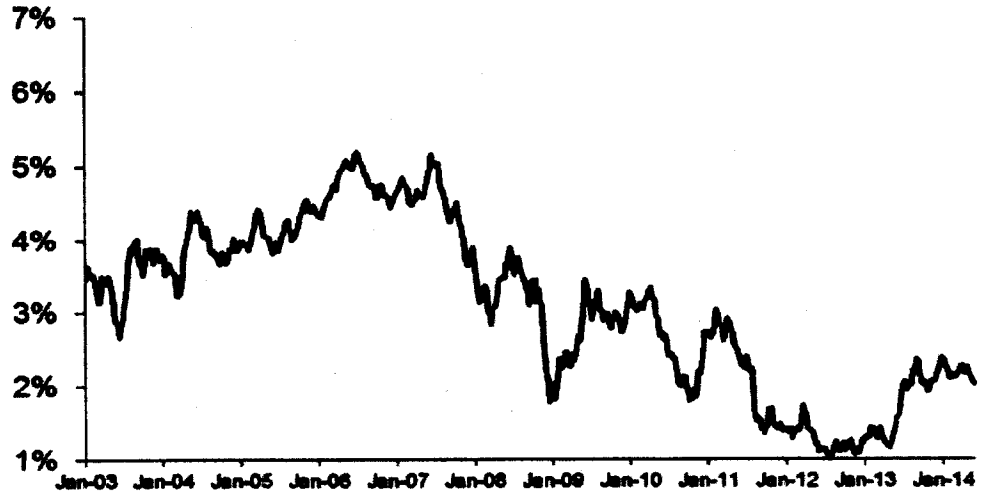
Q. Is there a correlation between interest rates and the cost of equity?

A. Yes, there is a positive correlation between interest rates and the cost of equity, as the two tend to move in the same direction. This relationship is reflected in the CAPM formula. The CAPM is a market-based model employed by Staff for estimating the cost of equity. The CAPM is further discussed in Section VI of this testimony.

Q. What has been the general trend of interest rates in recent years?

A. A chronological chart of interest rates is a good tool to show interest rate history and identify trends. Chart 1 graphs intermediate U.S. treasury rates from January 3, 2003, to May 30, 2014.

Chart 1: Average Yield on 5-, 7-, & 10-Year Treasuries



As shown in Chart 1, intermediate-term interest rates generally trended upward from 2003 to mid-2007, trended downward until late-2012, and have trended upward since that time.

Q. What has been the general trend in interest rates longer term?

A. U.S. Treasury rates from January 1964- May 2014 are shown in Chart 2. The chart shows that interest rates trended upward through the mid-1980s and have trended downward since that time.

Source: Federal Reserve

Q. Do these trends suggest anything in terms of cost of equity?

A. Yes. As previously noted, interest rates and the cost of equity tend to move in the same direction; therefore, the cost of equity has declined in the past 30 years.

Q. Do actual returns represent the cost of equity?

A. No. The cost of equity represents investors' *expected* returns and not realized returns.

Q. Is there any information available that leads to an understanding of the relationship between the equity returns required for a regulated water utility and those required in the market as a whole?

A. Yes. A comparison of betas, a component of the CAPM discussed in Section V, for the water utility industry and the market provide insight into this relationship. In theory, the overall market has a beta value of 1.0, with stocks bearing greater risk (less risk) than the market having beta values higher than (lower than) 1.0, respectively. Furthermore, in accordance with the CAPM, the cost of equity capital moves in the same direction as beta. Therefore, because the average beta value (0.73)[8] for a water utility is less than 1.0, the required return on equity for a regulated water utility is below that of the market as a whole.

Risk

Q. Please define risk in relation to cost of capital.

A. Risk, as it relates to an investment, is the variability or uncertainty of the returns on a particular security. Investors are risk averse and require a greater potential return to invest in opportunities with relatively greater risk, i.e., investors require compensation for taking on additional risk. Risk is generally separated into two components. Those components are market risk (systematic risk) and non-market risk (unsystematic risk, diversifiable risk or firm-specific risk).

[8] See Schedule CSB-7.

Q. What is market risk?

A. Market risk, or systematic risk, is the risk associated with an investment that cannot be reduced through diversification. Market risk stems from factors that affect all securities, such as possibilities of recession, war, inflation and high interest rates. Since these factors affect the entire market they cannot be eliminated through diversification. Market risk does not impact each security to the same degree. The degree to which a given security's return is affected by market fluctuations can be measured using Beta. Beta reflects the business risk and the financial risk of a security.

Q. Please define business risk.

A. Business risk is the potential fluctuation of earnings inherent in a firm's operations and environment, such as competition and adverse economic conditions that may impair its ability to provide returns on investment. Companies in the same industry or similar lines of business tend to experience the same fluctuations in business cycles.

Q. Please define financial risk.

A. Financial risk is the potential fluctuation of earnings, inherent in the use of debt financing, that may impair a firm's ability to provide adequate return; the higher the percentage of debt in a firm's capital structure, the greater its exposure to financial risk.

Q. Do business risk and financial risk affect the cost of equity?

A. Yes.

Q. Is a firm subject to any other risk?

A. Yes. Firms may also be subject to unsystematic or firm-specific risk. Examples of unsystematic risk include losses caused by labor problems, nationalization of assets, loss of a

big client or weather conditions. Investors can eliminate firm-specific risk by holding a diverse portfolio; thus, it is not of concern to diversified investors.

Q. How does Black Mountain's financial risk exposure compare to that of Staff's sample group of water companies?

A. CSB-4 shows the capital structures of Staff's six sample water companies as of December 30, 2014, and Black Mountain's adjusted capital structure as of the end of the test year, December 31, 2014. As shown, the sample water utilities were capitalized with approximately 46.1 percent debt and 53.9 percent equity, while Black Mountain's capital structure consists of approximately 30 percent debt and 70 percent equity. Thus, Black Mountain bears significantly less financial risk than does Staff's sample companies.

Q. Is firm-specific risk measured by beta?

A. No. Firm-specific risk is not measured by beta.

Q. Is the cost of equity affected by firm-specific risk?

A. No. Since firm-specific risk can be eliminated through diversification, it does not affect the determination of a reasonable cost of equity.

Q. Should investors expect additional returns for firm-specific risk?

A. No. Investors who hold diversified portfolios can eliminate firm-specific risk and, consequently, do not require any additional return. Since investors who choose to be less than fully-diversified must compete in the market with fully-diversified investors, the former cannot expect to be compensated for unique risk.

V. ESTIMATING THE COST OF EQUITY

Introduction

Q. Did Staff directly estimate the cost of equity for Black Mountain?

A. No. Black Mountain is not a publicly-traded company, and as such Staff is unable to directly estimate its market cost of equity due to the lack of firm-specific market data. Instead, Staff must estimate the Company's cost of equity indirectly, using a representative sample group of publicly traded water utilities as a proxy for Black Mountain. Use of a sample is appropriate, as it reduces the sample error resulting from random fluctuations in the market at the time the information is gathered.

Q. What water utilities did Staff select for its proxy group of sample companies?

A. Staff's sample consists of the following six publicly-traded water utilities: American States Water, California Water, Aqua America, Connecticut Water Services, Middlesex Water and SJW Corp. Staff chose these companies because they are publicly-traded and receive the majority of their earnings from regulated operations.

Q. What models did Staff implement to estimate Black Mountain's cost of equity?

A. Staff used two market-based models to estimate the cost of equity for Black Mountain: the DCF model and the CAPM.

Q. Please explain why Staff chose the DCF and CAPM models.

A. Staff chose to use the DCF and CAPM models because they are widely-recognized market-based models and have been used extensively to estimate the cost of equity. An explanation of the DCF and CAPM models follows.

Discounted Cash Flow Model Analysis

Q. Please provide a brief summary of the theory upon which the DCF method of estimating the cost of equity is based.

A. The DCF method of stock valuation is based on the theory that the value of an investment is equal to the sum of the future cash flows generated from the aforementioned investment discounted to the present time. This method uses expected dividends, market price and dividend growth rate to calculate the cost of capital. Professor Myron Gordon pioneered the DCF method in the 1960s. The DCF method has become widely used to estimate the cost of equity for public utilities due to its theoretical merit and its simplicity. Staff used the financial information for the relevant six sample companies in the DCF model and averaged the results to determine an estimated cost of equity for the sample companies.

Q. Does Staff use more than one version of the DCF?

A. Yes. Staff uses two versions of the DCF model: the constant-growth DCF and the multi-stage or non-constant growth DCF. The constant-growth DCF assumes that an entity's dividends will grow indefinitely at the same rate. The multi-stage growth DCF model assumes the dividend growth rate will change at some point in the future.

The Constant-Growth DCF

Q. What is the mathematical formula used in Staff's constant-growth DCF analysis?

A. The constant-growth DCF formula used in Staff's analysis is:

Equation 2 :

$$K = \frac{D_1}{P_0} + g$$

where : K = the cost of equity
D_1 = the expected annual dividend
P_0 = the current stock price
g = the expected infinite annual growth rate of dividends

Equation 2 assumes that the entity has a constant earnings retention rate and that its earnings are expected to grow at a constant rate. According to Equation 2, a stock with a current market price of $10 per share, an expected annual dividend of $0.45 per share and an expected dividend growth rate of 3.0 percent per year has a cost of equity to the entity of 7.5 percent reflected by the sum of the dividend yield ($0.45/ $10 = 4.5 percent) and the 3.0 percent annual dividend growth rate.

Q. How did Staff calculate the expected dividend yield (D_1/P_0) component of the constant-growth DCF formula?

A. Staff calculated the expected yield component of the DCF formula by dividing the expected annual dividend (D_1) by the spot stock price (P_0) after the close of market on November 4, 2015, as reported by *Yahoo Finance*.

Q. Why did Staff use the November 4, 2015, spot price rather than a historical average stock price to calculate the dividend yield component of the DCF formula?

A. The current, rather than historic, market price is used in order to be consistent with financial theory. In accordance with the Efficient Market Hypothesis, the current stock price is reflective of all available information relating to the stock, and as such reveals investors' expectations of future returns. Use of historical average stock prices illogically discounts the

most recent information in favor of less recent information. The latter is obviously stale and is representative of underlying conditions that may have changed.

Q. How did Staff estimate the dividend growth (g) component of the constant-growth DCF model represented by Equation 2?

A. The dividend growth component used by Staff is determined by the average of six different estimation methods, as shown in Schedule CSB-8. Staff calculated historical and projected growth estimates on dividend-per-share ("DPS"),[9] earnings-per-share ("EPS")[10] and sustainable growth bases.

Q. Why did Staff examine EPS growth to estimate the dividend growth component of the constant-growth DCF model?

A. Historic and projected EPS growth are used because dividends are related to earnings. Dividend distributions may exceed earnings in the short run, but cannot continue indefinitely. In the long term, dividend distributions are dependent on earnings.

Q. How did Staff estimate historical DPS growth?

A. Staff estimated historical DPS growth by calculating a compound annual DPS growth rate for each of its sample companies over the 10-year period, 2005-2014. As shown in Schedule CSB-5, the average historical DPS growth rate for the sample was 3.8 percent.

Q. How did Staff estimate projected DPS growth?

A. Staff calculated an average of the projected DPS growth rates for the sample water utilities from *Value Line* through the period, 2018-2020. The average projected DPS growth rate is 5.7 percent, as shown in Schedule CSB-5.

[9] Derived from information provided by *Value Line.*
[10] Derived from information provided by *Value Line.*

Q. How did Staff estimate historical EPS growth rate?

A. Staff estimated historical EPS growth by calculating a compound annual EPS growth rate for each of its sample companies over the 10-year period, 2005-2014. As shown in Schedule CSB-5, the average historical EPS growth rate for the sample was 7.1 percent.

Q. How did Staff estimate projected EPS growth?

A. Staff calculated an average of the projected EPS growth rates for the sample water utilities from *Value Line* through the period, 2018-2020. The average projected EPS growth rate is 5.1 percent, as shown in Schedule CSB-5.

Q. How does Staff calculate its historical and projected sustainable growth rates?

A. Historical and projected sustainable growth rates are calculated by adding their respective retention growth rate terms (br) to their respective stock financing growth rate terms (vs), as shown in Schedule CSB-6.

Q. What is retention growth?

A. Retention growth is the growth in dividends due to the retention of earnings. The retention growth concept is based on the theory that dividend growth cannot be achieved unless the company retains and reinvests some of its earnings. The retention growth is used in Staff's calculation of sustainable growth shown in Schedule CSB-6.

Q. What is the formula for the retention growth rate?

A. The retention growth rate is the product of the retention ratio and the book/accounting return on equity. The retention growth rate formula is:

Equation 3 :

$$\text{Retention Growth Rate} = br$$

where : b = the retention ratio (1 – dividend payout ratio)
r = the accounting/book return on common equity

Q. How did Staff calculate the average historical retention growth rate (br) for the sample water utilities?

A. Staff calculated the mean of the 10-year average historical retention rate for each sample company over the period, 2005-2014. As shown in Schedule CSB-6, the historical average retention (br) growth rate for the sample is 3.1 percent.

Q. How did Staff estimate its projected retention growth rate (br) for the sample water utilities?

A. Staff used the retention growth projections for the sample water utilities for the period, 2018-2020, from *Value Line.* As shown in Schedule CSB-6, the projected average retention growth rate for the sample companies is 4.6 percent.

Q. When can retention growth provide a reasonable estimate of future dividend growth?

A. The retention growth rate is a reasonable estimate of future dividend growth when the retention ratio is reasonably constant and the entity's market price to book value ("market-to-book ratio") is expected to be 1.0. The average retention ratio has been reasonably constant in recent years. However, the market-to-book ratio for the sample water utilities is 2.3, notably higher than 1.0, as shown in Schedule CSB-7.

Q. Is there any financial implication of a market-to-book ratio greater than 1.0?

A. Yes. A market-to-book ratio greater than 1.0 implies that investors expect an entity to earn an accounting/book return on its equity that exceeds its cost of equity. The relationship between required returns and expected cash flows is readily observed in the fixed securities market. For example, assume an entity contemplating issuance of bonds with a face value of $10 million at either 6 percent or 8 percent and, thus, paying annual interest of $600,000 or $800,000, respectively. Regardless of investors' required return on similar bonds, investors will be willing to pay more for the bonds if issued at 8 percent than if the bonds are issued at 6 percent. For example, if the current interest rate required by investors is 6 percent, then they would bid $10 million for the 6 percent bonds and more than $10 million for the 8 percent bonds. Similarly, if equity investors require a 9 percent return and expect an entity to earn accounting/book returns of 13 percent, the market will bid up the price of the entity's stock to provide the required return of 9 percent.

Q. How has Staff generally recognized a market-to-book ratio exceeding 1.0 in its cost of equity analyses in recent years?

A. Staff has assumed that investors expect the market-to-book ratio to remain greater than 1.0. Given that assumption, Staff has added a stock financing growth rate (vs) term to the retention ratio (br) term to calculate its historical and projected sustainable growth rates.

Q. Do the historical and projected sustainable growth rates Staff uses to develop its DCF cost of equity in this case continue to include a stock financing growth rate term?

A. Yes.

Q. What is stock financing growth?

A. Stock financing growth is the growth in an entity's dividends due to the sale of stock by that entity. Stock financing growth is a concept derived by Myron Gordon and discussed in his book *The Cost of Capital to a Public Utility.*[11] Stock financing growth is the product of the fraction of the funds raised from the sale of stock that accrues to existing shareholders (v) and the fraction resulting from dividing the funds raised from the sale of stock by the existing common equity (s).

Q. What is the mathematical formula for the stock financing growth rate?

A. The mathematical formula for stock financing growth is:

Equation 4:

$$\text{Stock Financing Growth} = vs$$

where: v = Fraction of the funds raised from the sale of stock that accrues to existing shareholders

s = Funds raised from the sale of stock as a fraction of the existing common equity

[11] Gordon, Myron J. *The Cost of Capital to a Public Utility.* MSU Public Utilities Studies, Michigan, 1974. pp 31-35.

Q. How is the variable *v* presented above calculated?

A. Variable *v* is calculated as follows:

Equation 5:

$$v = 1 - \left(\frac{book\ value}{market\ value} \right)$$

For example, assume that a share of stock has a $30 book value and is selling for $45. Then, to find the value of *v*, the formula is applied:

$$v = 1 - \left(\frac{30}{45} \right)$$

In this example, *v* is equal to 0.33.

Q. How is the variable *s* presented above calculated?

A. Variable *s* is calculated as follows:

Equation 6:

$$s = \frac{\text{Funds raised from the issuance of stock}}{\text{Total existing common equity before the issuance}}$$

For example, assume that an entity has $150 in existing equity, and it sells $30 of stock. Then, to find the value of *s*, the formula is applied:

$$s = \left(\frac{30}{150} \right)$$

In this example, *s* is equal to 20.0 percent.

Q. What is the *vs* term when the market-to-book ratio is equal to 1.0?

A. A market-to-book ratio of 1.0 reflects that investors expect an entity to earn a book/accounting return on their equity investment equal to the cost of equity. When the market-to-book ratio is equal to 1.0, none of the funds raised from the sale of stock by the entity accrues to the benefit of existing shareholders, i.e., the term *v* is equal to zero (0.0). Consequently, the *vs* term is also equal to zero (0.0). When stock financing growth is zero, dividend growth depends solely on the *br* term.

Q. What is the effect of the *vs* term when the market-to-book ratio is greater than 1.0?

A. A market-to-book ratio greater than 1.0 reflects that investors expect an entity to earn a book/accounting return on their equity investment greater than the cost of equity. Equation 5 shows that, when the market-to-book ratio is greater than 1.0, the *v* term is also greater than zero. The excess by which new shares are issued and sold over book value per share of outstanding stock is a contribution that accrues to existing stockholders in the form of a higher book value. The resulting higher book value leads to higher expected earnings and dividends. Continued growth from the *vs* term is dependent upon the continued issuance and sale of additional shares at a price that exceeds book value per share.

Q. What *vs* estimate did Staff calculate from its analysis of the sample water utilities?

A. Staff estimated an average stock financing growth of 1.7 percent for the sample water utilities, as shown in Schedule CSB-6.

Q. What would occur if an entity had a market-to-book ratio greater than 1.0 as a result of investors expecting earnings to exceed its cost of equity, and subsequently experienced newly-authorized rates equal only to its cost of equity?

A. Holding all other factors constant, one would expect market forces to move the company's stock price lower, closer to a market-to-book ratio of 1.0, to reflect investor expectations of reduced expected future cash flows.

Q. If the average market-to-book ratio of Staff's sample water utilities were to fall to 1.0 due to authorized ROEs equaling their cost of equity, would inclusion of the vs term be necessary to Staff's constant-growth DCF analysis?

A. No. As discussed above, when the market-to-book ratio is equal to 1.0, no portion of the funds raised from the sale of stock by the entity accrues to the benefit of existing shareholders because the *v* term is equal to zero; thus, the *vs* term is also equal to zero. When the market-to-book ratio equals 1.0, dividend growth depends solely on the *br* term. Staff's inclusion of the *vs* term assumes that the market-to-book ratio continues to exceed 1.0, and that the sample water utilities will continue to issue and sell stock at prices above book value with the effect of benefitting existing shareholders.

Q. What are Staff's historical and projected sustainable growth rates?

A. Staff's estimated historical sustainable growth rate is 4.9 percent based on an analysis of earnings retention for the sample water companies. Staff's projected sustainable growth rate is 6.3 percent based on retention growth projected by *Value Line*. Schedule CSB-6 presents Staff's estimates of the sustainable growth rate.

Q. What is Staff's expected infinite annual growth rate in dividends?

A. Staff's expected dividend growth rate (g) is 5.5 percent, which is the average of historical and projected DPS, EPS, and sustainable growth estimates. Staff's calculation of the expected infinite annual growth rate in dividends is shown in Schedule CSB-8.

Q. What is Staff's constant-growth DCF estimate for the sample utilities?

A. Staff's constant-growth DCF estimate is 8.2 percent, as shown in Schedule CSB-3.

The Multi-Stage DCF

Q. Why did Staff implement the multi-stage DCF model to estimate Black Mountain's cost of equity?

A. Staff generally uses the multi-stage DCF model to consider the assumption that dividends may not grow at a constant rate. The multi-stage DCF uses two stages of growth, the first stage (near-term) having a four-year duration, followed by the second stage (long-term) of constant growth.

Q. What is the mathematical formula for the multi-stage DCF?

A. The multi-stage DCF formula is shown in the following equation:

Equation 7 :

$$P_0 = \sum_{t=1}^{n} \frac{D_t}{(1+K)^t} + \frac{D_n(1+g_n)}{K-g_n}\left[\frac{1}{(1+K)}\right]^n$$

Where : P_0 = current stock price
D_t = dividends expected during stage 1
K = cost of equity
n = years of non – constant growth
D_n = dividend expected in year n
g_n = constant rate of growth expected after year n

Q. What steps did Staff take to implement its multi-stage DCF cost of equity model?

A. First, Staff projected future dividends for each of the sample water utilities using near-term and long-term growth rates. Second, Staff calculated the internal rate of return (cost of equity) which equates the present value of the forecasted dividends to the current stock price for each of the sample water utilities. Lastly, Staff calculated an overall sample average cost of equity estimate.

Q. How did Staff calculate near-term (stage-1) growth?

A. The stage-1 growth rate is based on *Value Lines*'s projected dividends for the next twelve months, when available, and on the average dividend growth (g) rate of 5.5 percent, calculated in Staff's constant DCF analysis for the remainder of the stage.

Q. How did Staff estimate long-term (stage-2) growth?

A. Staff calculated the stage-2 growth rate using the arithmetic mean rate of growth in Gross Domestic Product ("GDP") from 1929 to 2014.[12] Using the GDP growth rate assumes that the water utility industry is expected to grow at the same rate as the overall economy.

Q. What is the historical GDP growth rate that Staff used to estimate stage-2 growth?

A. Staff used 6.4 percent to estimate the stage-2 growth rate as shown on Schedule CSB-9.

Q. What is Staff's multi-stage DCF estimate for the sample utilities?

A. Staff's multi-stage DCF estimate is 9.0 percent, as shown in Schedule CSB-3.

Q. What is Staff's overall DCF estimate for the sample utilities?

A. Staff's overall DCF estimate is 8.6 percent. Staff calculated the overall DCF estimate by averaging the constant growth DCF (8.6 percent) and multi-stage DCF (8.6 percent) estimates, as shown in Schedule CSB-3.

Capital Asset Pricing Model

Q. Please describe the CAPM.

A. The CAPM is used to determine the prices of securities in a competitive market. The CAPM model describes the relationship between a security's investment risk and its market rate of return. Under the CAPM, an investor requires the expected return of a security to equal the rate on a risk-free security plus a risk premium. The model also assumes that investors will sufficiently diversify their investments to eliminate any non-systematic or unique risk.[13] In

[12] www.bea.doc.gov.
[13] The CAPM makes the following assumptions: 1) single holding period; 2) perfect and competitive securities market; 3) no transaction costs; 4) no restrictions on short selling or borrowing; 5) the existence of a risk-free rate; and 6) homogeneous expectations.

1990, Professors Harry Markowitz, William Sharpe, and Merton Miller earned the Nobel Prize in Economic Sciences for their contribution to the development of the CAPM.

Q. Did Staff use the same sample water utilities in its CAPM and DCF cost of equity estimation analyses?

A. Yes. Staff's CAPM cost of equity estimation analysis uses the same sample water companies as did its DCF cost of equity estimation analysis.

Q. What is the mathematical formula for the CAPM?

A. The mathematical formula for the CAPM is:

Equation 8:

$$K = R_f + \beta (R_m - R_f)$$

where:
R_f = risk free rate
R_m = return on market
β = beta
$R_m - R_f$ = market risk premium
K = expected return

The equation shows that the expected return (K) on a risky asset is equal to the risk-free interest rate (R_f) plus the product of the market risk premium ($R_m - R_f$) multiplied by the beta (β) coefficient, where beta represents the riskiness of the investment relative to the market.

Q. What is the risk-free rate?

A. The risk-free rate is the rate of return of an investment free of default risk.

Q. What does Staff use as surrogates to represent estimations of the risk-free rates of interest in its historical and current market risk premium CAPM methods?

A. As previously noted, Staff uses separate parameters as surrogates for the estimations of the risk-free rates of interest for the historical market risk premium CAPM cost of equity estimation and the current market risk premium CAPM cost of equity estimation. Staff uses the average of three (5-, 7-, and 10-year) intermediate-term U.S. Treasury securities' spot rates in its historical market risk premium CAPM cost of equity estimation, and the 30-year U.S. Treasury bond spot rate in its current market risk premium CAPM cost of equity estimation. Rates on U.S. Treasuries are largely verifiable and readily available.

Q. What does beta measure?

A. Beta is a measure of a security's price volatility, or systematic risk, relative to the market as a whole. Since systematic risk cannot be diversified away, it is the only risk that is relevant when estimating a security's required return. Using a baseline market beta of 1.0, a security having a beta value less than 1.0 will be less volatile (i.e., less risky) than the market. A security with a beta value greater than 1.0 will be more volatile (i.e., more risky) than the market.

Q. How did Staff estimate Black Mountain's beta?

A. Staff used the average of the *Value Line* betas for the sample water utilities as a proxy for the Company's beta. Schedule CSB-7 shows the *Value Line* betas for each of the sample water utilities. The 0.73 average beta for the sample water utilities is Staff's estimated beta for Black Mountain. A security having a beta value of 0.73 is less volatile than the market as a whole, and thus requires a lower return on equity than does the overall market.

Q. What is the market risk premium ($R_m - R_f$)?

A. The market risk premium is the expected return on the market, minus the risk-free rate. Simplified, it is the return an investor expects as compensation for market risk.

Q. What did Staff use for the market risk premium?

A. Staff uses separate calculations for the market risk premium in its historical and current market risk premium CAPM methods.

Q. How did Staff calculate an estimate for the market risk premium in its historical market risk premium CAPM method?

A. Staff uses the intermediate-term government bond income returns published in the Ibbotson Associates' *Stocks, Bonds, Bills, and Inflation 2015 Yearbook* to calculate the historical market risk premium. Ibbotson Associates calculates the historical risk premium by averaging the historical arithmetic differences between the S&P 500 and the intermediate-term government bond income returns for the period 1926-2014. Staff's historical market risk premium estimate is 7.6 percent, as shown in Schedule CSB-3.

Q. How did Staff calculate an estimate for the market risk premium in its current market risk premium CAPM method?

A. Staff solves equation 8 above to arrive at a market risk premium using a DCF-derived expected return (K) of 12.03 (2.30 + 9.73[14]) percent using the expected dividend yield (2.3 percent over the next twelve months) and the annual per share growth rate (12.03 percent) that *Value Line* projects for all dividend-paying stocks under its review[15] along with the current long-term risk-free rate (30-year Treasury note at 2.88 percent) and the market's

[14] The three to five year price appreciation is 45 percent. $1.45^{0.25} - 1 = 9.73\%$.
[15] November 4, 2015 issue date.

average beta of 1.0. Staff calculated the current market risk premium as 9.5 percent,[16] as shown in Schedule CSB-3.

Q. What is the result of Staff's historical market risk premium CAPM and current market risk premium CAPM cost of equity estimations for the sample utilities?

A. Staff's cost of equity estimates are 7.6 percent using the historical market risk premium CAPM and 9.5 percent using the current market risk premium CAPM as shown on Schedule CSB-3.

Q. What is Staff's overall CAPM estimate for the sample utilities?

A. Staff's overall CAPM cost of equity estimate is 8.6 percent which is the average of the historical market risk premium CAPM (7.6 percent) and the current market risk premium CAPM (9.2 percent) estimates, as shown in Schedule CSB-3.

VI. SUMMARY OF STAFF'S COST OF EQUITY ANALYSIS

Q. What is the result of Staff's constant-growth DCF analysis to estimate the cost of equity for the sample water utilities?

A. Schedule CSB-3 shows the result of Staff's constant-growth DCF analysis. The result of Staff's constant-growth DCF analysis is as follows:

$$k = 2.7\% + 5.5\%$$

$$k = \mathbf{8.2\%}$$

Staff's constant-growth DCF estimate of the cost of equity for the sample water utilities is 8.2 percent.

[16] 12.03% = 2.88% + (1) (9.15%).

Q. What is the result of Staff's multi-stage DCF analysis to estimate of the cost of equity for the sample utilities?

A. Schedule CSB-9 shows the result of Staff's multi-stage DCF analysis. The result of Staff's multi-stage DCF analysis is:

Company	Equity Cost Estimate (k)
American States Water	8.6%
California Water	9.3%
Aqua America	8.8%
Connecticut Water	9.3%
Middlesex Water	9.4%
SJW Corp	8.9%
York Water	9.0%
Average	**9.0%**

Staff's multi-stage DCF estimate of the cost of equity for the sample water utilities is 9.0 percent.

Q. What is Staff's overall DCF estimate of the cost of equity for the sample utilities?

A. Staff's overall DCF estimate of the cost of equity for the sample utilities is 8.6 percent. Staff calculated an overall DCF cost of equity estimate by averaging Staff's constant growth DCF (8.2 percent) and Staff's multi-stage DCF (9.0 percent) estimates, as shown in Schedule CSB-3.

Q. What is the result of Staff's historical market risk premium CAPM analysis to estimate of the cost of equity for the sample utilities?

A. Schedule CSB-3 shows the result of Staff's CAPM analysis using the historical risk premium estimate. The result is as follows:

$$k = 2.1\% + 0.73 * 7.6\%$$

$$k = 7.6\%$$

Staff's CAPM estimate (using the historical market risk premium) of the cost of equity for the sample water utilities is 7.6 percent.

Q. What is the result of Staff's current market risk premium CAPM analysis to estimate the cost of equity for the sample utilities?

A. Schedule CSB-3 shows the result of Staff's CAPM analysis using the current market risk premium estimate. The result is:

$$k = 2.9\% + 0.73 * 9.2\%$$

$$k = 9.5\%$$

Staff's CAPM estimate (using the current market risk premium) of the cost of equity to the sample water utilities is 9.5 percent.

Q. What is Staff's overall CAPM estimate of the cost of equity for the sample utilities?

A. Staff's overall CAPM estimate for the sample utilities is 8.6 percent. Staff's overall CAPM estimate is the average of the historical market risk premium CAPM (7.6 percent) and the current market risk premium CAPM (9.5 percent) estimates, as shown in Schedule CSB-3.

Q. Please summarize the results of Staff's cost of equity analysis for the sample utilities.

A. The following table shows the results of Staff's cost of equity analysis:

Table 2

Method	Estimate
Average DCF Estimate	8.6%
Average CAPM Estimate	8.6%
Overall Average	**8.6%**

Staff's average estimate of the cost of equity to the sample water utilities is 8.6 percent.

Q. Ms. Brown, in the recent past, Staff chose not to incorporate the results of its CAPM-based ROE in developing its overall ROE recommendation. Would you please explain why Staff has moved away from that previous position?

A. Yes. Staff has always calculated the CAPM Model-driven ROE range but effectively gave this result a zero weighting. The zero weighting approach was followed due to a noted divergence of the CAPM Model-driven results from the DCF Model-driven results.

As noted later in my cost-of-capital testimony, Staff is now analyzing two CAPM Models, giving equal weight to both and the result is a CAPM-driven ROE range that compliments the results of its DCF Model runs.

VII. FINANCIAL RISK AND ECONOMIC ASSESSMENT ADJUSTMENTS

Q. Has Staff discontinued the direct recognition of the financial risk and economic assessment adjustments in its cost of equity analysis?

A. Yes. Staff has moved to an approach to developing its ROE recommendation that it believes is more straight forward, conceptually sound, and simpler to understand.

At the outset, let me say that while Staff's recommended revenue requirement is based upon a specific ROE recommendation, Staff also believes that defining a point-in-time specific fair and reasonable ROE can only realistically be achieved to the point of establishing an ROE range of reasonableness. Therefore, while Staff retains the right to evaluate and/or to argue considerations of relevance that might support a more specifically defined ROE, Staff generally believes that any ROE falling within the ROE range it will discuss in specific rate case dockets would constitute an acceptable Commission decision. I will expand upon this statement as I progress through my explanation of Staff's current approach to developing its ROE recommendations.

Q. Ms. Brown, please continue with your explanation of the structure and conceptual support for Staff's current approach to developing its ROE recommendations.

A. In a very broad sense, there are two general steps to developing an estimate of Staff's recommended ROE. These two steps are the use of acceptable ROE models to establish the currently defined market-driven requirements for ROE, and determining how to appropriately give consideration to more specific risk factors (collectively referred to as "other factors" or "more specific risk factors") not directly given attention in these models.

The ROE models referred to would include the traditionally recognized DCF and CAPM Models and variations of assumptions within the use of these Models. Discussions regarding the results from such Models are placed into evidence in most rate cases for Class A and B utilities, including the pending rate application filed by Liberty Black Mountain Sewer. Parties take differing positions with regards to some of the assumptions to be built into these Model runs, but Staff and Mr. Bourassa on the part of Liberty, have already discussed these Model runs and the assumptions made, so I will not repeat that information here. How to appropriately given consideration to more specific risk factors is really where Staff's current approach to developing its recommended ROE takes a different direction.

Q. Ms. Brown, before discussing the details and reasonableness of Staff's current approach to giving consideration to these more specific risk factors, can you identify the type of factors you are referring to?

A. Yes. The factors would include separate ROE modifiers for such things as financial risk and the previous economic assessment adjustment.

I would note that Mr. Bourassa spends a great deal of time identifying and discussing such risk factors, specifically on page 42 through 44 of the cost-of-capital testimony he sponsors.

Mr. Bourassa then assigns specific ROE modifier to some of these factors, such as his financial risk which results in a 30 basis point reduction in ROE, but in general he recommends an arbitrary 100 basis point ROE upward adjustment to the conglomeration of all such risks he identifies and discusses. For the most part, as can be seen on Mr. Bourassa's Schedule D-4.1, the Model-driven results have all been and individually adjusted upward by 100 basis points.

Q. Does Staff believe that such other factors can exist that may not be addressed in the traditionally utilized ROE Models?

A. Yes.

Q. How does Staff's approach to giving consideration to such other factors differ from the approach taken by Mr. Bourassa?

A. First, let me say that instead of capturing ROE adders (or ROE reductions) related to these factors in an arbitrary manner as Mr. Bourassa does, Staff believes that it is reasonable for the Commission to conclude that by using the mid-point of Staff's ROE Model results, reasonable recognition is already being given to the collective spectrum of such other risks.

To be honest, it is a bit disingenuous to suggest to the Commission, as Mr. Bourassa has done, that an exact 30 basis point ROE modifier is required for Liberty Black Mountain due to financial risk. Arguably this could require a 29 basis point reduction, a 31 basis point reduction, or a 50 basis point reduction.

Staff's point here is really not to take issue with Mr. Bourassa's specific ROE basis point recommendations but to point out that when it comes to developing an ROE recommendation we are not dealing with an exact science and that Staff believes that its

approach is reasonable and will probably eliminate lengthy discussions and cross examination regarding issues without one correct answer.

Q. Ms. Brown, before discussing Staff's specific arguments regarding the reasonableness of accepting the mid-point of the Model-driven ROE range as a fair accommodation of these other risk factors, please explain how Staff believes the Commission should view the results of the ROE range established through use of the traditional ROE Models.

A. Staff believes that any ROE falling within the ROE Model-drive range could be considered to be a reasonable ROE for the underlying utility since this range represents market-defined returns for alternative investments. Or said another way, the lowest ROE resulting from the Model runs is just as valid or reasonable as any other ROE point defined by the Model runs.

Staff believes that its decision NOT to recommend using the lowest ROE defined by its ROE Model, but to recommend that the Commission use the mid-point of its ROE Model results, makes a reasonable acknowledgment of or concession to the other risk factors identified and discussed individually by Mr. Bourassa.

Q. Ms. Brown, just for sake of clarification what was the lowest ROE resulting from the Model runs made by Staff?

A. As can be seen on Staff Schedule, CSB-3, the lowest ROE resulting from Staff's Model runs is 7.6 percent resulting from the CAPM Historic Market Risk Premium run.

Q. And, Ms. Brown, again for clarification how much higher is Staff's overall ROE recommendation (used in Staff's revenue requirement schedules) above this ROE low point?

A. The ROE used in Staff's revenue requirement schedules is 8.6 percent, which in essence represents in a 100 basis point upward adjustment related to the other risk factors.

Q. Ms. Brown, what was the ROE adder recommended by Mr. Bourassa?

A. As seen on Mr. Bourassa's Schedule D-4.1, the ROE adder recommended by Mr. Bourassa was 100 basis points, before factoring in a 30 basis point reduction attributable to Mr. Bourassa's financial risk arguments.

Q. So would you agree that effectively, Staff's much simpler approach to making reasonable accommodation for these other risk factors aligns very closely with the results recommended by Mr. Bourassa?

A. Yes. And again, we do not want to lose sight of the fact that Mr. Bourassa's approach, while involving a lot of detailed analysis, still relies upon some very arbitrary ROE modification recommendations i.e., that required financial risk ROE modifier is exactly minus 30 basis points.

Q. Ms. Brown, are you aware of any other instances where Mr. Bourassa seems to suggest using an approach to giving consideration of these other risk factors that is very close to the manner being recommended by Staff?

A. Yes. In cost-of capital testimony filed in both the pending Liberty Bella Vista rate case (Docket No. 15-0367) and in the pending Liberty Rio Rico Water and Wastewater rate cases (Docket No. 15-0368), page 6 line 14 and going through page 7, line 5, Mr. Bourassa seems to be suggesting that he followed an approach very similar to the approach Staff is now

recommending. In response to a question regarding the "other risk factors" Mr. Bourassa considered in determining the appropriate ROE for these three utility divisions, Mr. Bourassa says.

> I considered explicit adjustments to my ROE estimate for these factors and I did take them into consideration when determining **where, within the reasonableness range of analytical results** from the DCF, CAPM, and RPM models, the required ROE for each of the two utilities rightfully falls.

Q. Ms. Brown, perhaps a question to address at this point would be, how the application of Staff's current approach to establishing a recommended ROE varies from utility to utility, if we assume that two rate filings were docketed, and processed pretty much simultaneously?

A. Staff's ROE recommendations, and the mid-point ROE utilized in Staff' revenue requirement schedules would be the same for both utilities.

Q. So would that suggest that Staff has not recognized that even minor variances in the size, structure and operating characteristics can and do exist?

A. No. Staff understands that minor differences will always exist. But the Commission should be unpersuaded by suggestions that a more detailed analysis (and perhaps more costly analysis) increases to any necessary degree, the precision of the results. Staff's approach is reasonable and is less burdened by unsubstantiated suggestions of preciseness that really do not exist.

Q. Ms. Brown, I would like to return to the initial caveat you expressed on behalf of Staff regarding the fact that:

> **"Staff also believes that defining a point-in-time specific fair and reasonable ROE can only realistically be achieved to the point of establishing an ROE range of reasonableness. Therefore, while Staff retains the right to evaluate and/or to argue considerations of relevance that might support a more specifically defined ROE, Staff generally believes that any ROE falling within the ROE range it will discuss in specific rate case dockets would constitute an acceptable Commission decision."**

Is Staff suggesting that the Commission should accept its approach to establishing an ROE but then continue to encourage parties to interject general arguments regarding the recognition of ROE adders to accommodate other general risk factors?

A. No. Regulated utilities, especially smaller utilities, often raise concerns about the complexities, cost, and lack of transparencies associated with the process employed to define a range of reasonableness for ROE. Staff shares, and understands these concerns and believes that steps to simplification should be given fair consideration. The caveat raised by Staff was really not meant to suggest that Staff was only interested in injecting yet another layer of complexity into the process. Staff's statement was made to acknowledge the broad discretion of the Commission to base its final ROE decision on the full range of evidence before it. On a case-by-case basis, any number of additional considerations, individually and collectively, could impact the Commission's ultimate ROE decision.

Q. Thank you Ms. Brown. Are there other modifications to Staff's development of its ROE recommendations that would like to note?

A. Yes. Staff has incorporated in its analysis two versions of the CAPM (a model which links the COE to risk). As discussed in Section V, the CAPM is composed of a risk free rate and a risk premium. The risk premium is the additional return an investor is paid for assuming all

types of risk above and beyond the risk free rate, which includes financial risk and all other compensation that was previously reflected by the economic assessment adjustment.

As shown on Schedule CSB-1, Staff's COE estimates a range from a low of 7.6 percent to a high of 9.5 percent. Staff believes that any point within this range is reasonable. However Staff believes that the midpoint provides the best balance for all of the various types of risk. Staff's methodology simplifies the COE analysis and recognizes that the Commission could choose to set the ROE anywhere with the Staff recommended range.

VIII. RATE OF RETURN RECOMMENDATION

Q. What overall rate of return did Staff determine for Black Mountain?

A. Staff determined a 7.08 percent ROR for the Company, as shown in Schedule CSB-1 and the following table:

Table 3

	Weight	Cost	Weighted Cost
Long-term Debt	30%	3.53%	1.06%
Common Equity	70%	8.60%	6.02%
Overall ROR			**7.08%**

Q. Does this conclude your direct testimony?

A. Yes, it does.

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule CSB-1

REVENUE REQUIREMENT

LINE NO.	DESCRIPTION	(A) COMPANY FAIR VALUE	(B) STAFF FAIR VALUE
1	Adjusted Rate Base	$ 3,412,024	$ 3,004,503
2	Adjusted Operating Income (Loss)	$ 258,613	$ 315,607
3	Current Rate of Return (L2 / L1)	7.58%	10.50%
4	Required Rate of Return	8.62%	7.08%
5	Required Operating Income (L4 * L1)	$ 294,082	$ 212,719
6	Operating Income Deficiency (L5 - L2)	$ 35,469	$ (102,888)
7	Gross Revenue Conversion Factor	1.6050	1.6670
8	Required Revenue Increase/(Decrease) (L7 * L6)	$ 56,929	**$ (171,514)**
9	Adjusted Test Year Revenue	$ 2,239,848	$ 2,239,848
10	Proposed Annual Revenue (L8 + L9)	$ 2,296,777	$ 2,068,334
11	Required Increase in Revenue (%)	2.54%	-7.66%

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule CSB-2

GROSS REVENUE CONVERSION FACTOR

LINE NO.	DESCRIPTION	(A)	(B)	(C)	(D)
	Calculation of Gross Revenue Conversion Factor:				
1	Revenue	100.0000%			
2	Uncollectible Factor (Line 11)	0.0000%			
3	Revenues (L1 - L2)	100.0000%			
4	Combined Federal and State Income Tax and Property Tax Rate (Line 2	40.0122%			
5	Subtotal (L3 - L4)	59.9878%			
6	**Revenue Conversion Factor (L1 / L5)**	1.667004			
	Calculation of Uncollecttible Factor:				
7	Unity	100.0000%			
8	Combined Federal and State Tax Rate (Line 23)	39.5668%			
9	One Minus Combined Income Tax Rate (L7 - L8)	60.4332%			
10	Uncollectible Rate	0.0000%			
11	Uncollectible Factor (L9 * L10)	0.0000%			
	Calculation of Effective Tax Rate:				
12	Operating Income Before Taxes (Arizona Taxable Income)	100.0000%			
13	Arizona State Income Tax Rate	5.5000%			
14	Federal Taxable Income (L12 - L13)	94.5000%			
15	Applicable Federal Income Tax Rate (Line 55)	36.0495%			
16	Effective Federal Income Tax Rate (L14 x L15)	34.0668%			
17	Combined Federal and State Income Tax Rate (L13 +L16)		39.5668%		
	Calculation of Effective Property Tax Factor				
18	Unity	100.0000%			
19	Combined Federal and State Income Tax Rate (L17)	39.5668%			
20	One Minus Combined Income Tax Rate (L18-L19)	60.4332%			
21	Property Tax Factor (CSB-16, L21)	0.7369%			
22	Effective Property Tax Factor (L20*L21)		0.4453%		
23	Combined Federal and State Income Tax and Property Tax Rate (L17+L22)			40.0122%	
24	Required Operating Income (Schedule CSB-1, Line 5)	$ 212,719			
25	AdjustedTest Year Operating Income (Loss) (Schedule CSB-11, Line 34	315,607			
26	Required Increase in Operating Income (L24 - L25)		$ (102,888)		
27	Income Taxes on Recommended Revenue (Col. [E], L52)	$ 103,839			
28	Income Taxes on Test Year Revenue (Col. [B], L52)	171,202			
29	Required Increase in Revenue to Provide for Income Taxes (L27 - L28)		(67,363)		
30	Recommended Revenue Requirement (Schedule CSB-1, Line 10)	$ 2,068,334			
31	Uncollectible Rate (Line 10)	0.0000%			
32	Uncollectible Expense on Recommended Revenue (L30*L31)	$ -			
33	Adjusted Test Year Uncollectible Expense	$ -			
34	Required Increase in Revenue to Provide for Uncollectible Exp. (L32-L33)		-		
35	Property Tax with Recommended Revenue (CSB-16, Col B, L16)	$ 48,214			
36	Property Tax on Test Year Revenue (CSB-16, Col A, L16)	49,478			
37	Increase in Property Tax Due to Increase in Revenue (L35-L36)		(1,264)		
38	Total Required Increase in Revenue (L26 + L29 + L34 + L37)		$ (171,514)		

	Calculation of Income Tax:	Test Year		Staff Recommended
39	Revenue (Schedule CSB-11, Col. [C], Line 5 & Sch. CSB-1, Col. [D] Line	$ 2,239,848	$ (171,514)	$ 2,068,334
40	Operating Expenses Excluding Income Taxes	$ 1,753,040	$ (1,264)	$ 1,751,776
41	Synchronized Interest (L56)	$ 31,848		$ 31,848
42	Arizona Taxable Income (L39 - L40 - L41)	$ 454,960		$ 284,710
43	Arizona State Income Tax Rate	5.5000%		5.5000%
44	Arizona Income Tax (L42 x L43)	$ 25,023		$ 15,659
45	Federal Taxable Income (L42 - L44)	$ 429,938		$ 269,051
46	Federal Tax on First Income Bracket ($1 - $50,000) @ 15%	$ 7,500		$ 7,500
47	Federal Tax on Second Income Bracket ($51,001 - $75,000) @ 25%	$ 6,250		$ 6,250
48	Federal Tax on Third Income Bracket ($75,001 - $100,000) @ 34%	$ 8,500		$ 8,500
49	Federal Tax on Fourth Income Bracket ($100,001 - $335,000) @ 39%	$ 91,650		$ 65,930
50	Federal Tax on Fifth Income Bracket ($335,001 -$10,000,000) @ 34%	$ 32,279		$ -
51	Total Federal Income Tax	$ 146,179		$ 88,180
52	Combined Federal and State Income Tax (L44 + L51)	$ 171,202		$ 103,839
53	Applicable Federal Income Tax Rate [Col. [E], L51 - Col. [B], L51] / [Col. [E], L45 - Col. [B], L45]			36.0495%
	Calculation of Interest Synchronization:			
54	Rate Base (Schedule CSB-3, Col. (C), Line 17	$ 3,004,503		
55	Weighted Average Cost of Debt (Schedule CSB-17, Col. [F], L1 + L2)	1.0600%		
56	Synchronized Interest (L45 X L46)	$ 31,848		

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule CSB-3

RATE BASE - ORIGINAL COST

LINE NO.		(A) COMPANY AS FILED	(B) STAFF ADJUSTMENTS	Adj. No.	(C) STAFF AS ADJUSTED
1	Plant in Service	$ 14,166,434	$ (132,284)	1,2	$ 14,034,150
2	Less: Accumulated Depreciation	8,654,682	92,332	3	8,747,014
3	Net Plant in Service	$ 5,511,752	$ (224,616)		$ 5,287,136
4					
5	*LESS:*				
6					
7	Contributions in Aid of Construction (CIAC)	$ 5,461,736	$ 1,574,594		$ 7,036,330
8	Less: Accumulated Amortization	5,240,717	31,131		5,271,848
9	Net CIAC	$ 221,019	$ 1,543,463	5	$ 1,764,482
10					
11	Advances in Aid of Construction (AIAC)	1,743,922	(1,574,594)	4	169,328
12					
13	Service Line and Meter Advances (Meter Depo	8570	-		8,570
14					
15	Customer Security Deposits	-	-		-
16					
17	Accumulated Deferred Income Taxes (ADIT)	75,116	137,259	6	212,375
18					
19					
20	*ADD:*				
21					
22	Deferred Regulatory Assets	-	-		-
23	Prepayments	9,493			9,493
24	Cash Working Capital	(60,594)	(76,776)	7	(137,370)
25					
26					
27	**Original Cost Rate Base**	$ 3,412,024	$ (407,521)		$ 3,004,503

References:
Column (A), Company Schedule B-1
Column (B): Schedule CSB-4
Column (C): Column (A) + Column (B)

Liberty Ut[redacted] Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

SUMMARY OF ORIGINAL COST RATE BASE ADJUSTMENTS

LINE NO.	ACCT. NO.		[A] COMPANY AS FILED	[B] ADJ #1 Allocated Corporate Plant Ref: Sch CSB-5	[C] ADJ #2 Reclassified Plant & Not Used & Useful Plant Ref: Sch CSB-6	[D] ADJ #3 Accumulated Depreciation Ref: Sch CSB-7	[E] ADJ #4 AIAC Ref: Sch CSB-8	[F] ADJ #5 CIAC & Amort of CIAC Ref: Sch CSB-9	[G] ADJ #6 Accumulated Deferred Income Taxes Ref: Sch CSB-10	[H] ADJ #7 Cash Working Capital Ref: Sch CSB-11	[I] STAFF ADJUSTED
PLANT IN SERVICE:											
1		DESCRIPTION									
2	351	Organization	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
3	353	Land and Land Rights	471,024	-	1,500	-	-	-	-	-	472,524
4	354	Structures and Improvements	3,091,815	-	(163,446)	-	-	-	-	-	2,928,369
5	355	Power Generation Equipment	-	-	3,839	-	-	-	-	-	3,839
6	360	Collection Services - Force	1,130,090	-	1,602	-	-	-	-	-	1,131,692
7	361	Collection Services - Gravity	4,555,232	-	(2,370)	-	-	-	-	-	4,552,862
8	363	Services to Customers	260,442	-	-	-	-	-	-	-	260,442
9	364	Flow Measuring Devices	31,668	-	-	-	-	-	-	-	31,668
10	365	Flow Measuring Installations	180,051	-	-	-	-	-	-	-	180,051
11	370	Receiving Wells	1,028,182	-	-	-	-	-	-	-	1,028,182
12	371	Effluent Pumping Equipment	937,492	-	113,158	-	-	-	-	-	1,050,650
13	380	Treatment and Disposal Equipment	326,067	-	(5,782)	-	-	-	-	-	320,285
14	381	Plant Sewers	124,527	-	-	-	-	-	-	-	124,527
15	382	Outfall Sewer Lines	-	-	-	-	-	-	-	-	-
16	389	Other Plant & Misc. Equipment	992,742	-	(31,610)	-	-	-	-	-	961,132
17	390	Office Furniture & Equipment	289,536	-	-	-	-	-	-	-	289,536
18	391	Transportation Equipment	80,215	-	-	-	-	-	-	-	80,215
19	393	Tools, Shop & Garage Equipment	28,942	-	-	-	-	-	-	-	28,942
20	394	Labratory Equipment	10,683	-	-	-	-	-	-	-	10,683
21	395	Power Operated Equipment	-	-	-	-	-	-	-	-	-
22	396	Communication Equipment	43,968	-	48,289	-	-	-	-	-	92,256
23	398	Other Tangible Plant	486,294	-	-	-	-	-	-	-	486,294
24		Total Plant in Service	$ 14,068,969	$ -	$ (34,819)	$ -	$ -	$ -	$ -	$ -	$ 14,034,150
25	903	Allocated Corporate Plant - Land and Land Rights	8,429	(8,429)	-	-	-	-	-	-	-
26	904	Allocated Corporate Plant - Structures and Improvement	75,829	(75,829)	-	-	-	-	-	-	-
27	940.1	Allocated Corporate Plant - Computers and Software	13,207	(13,207)	-	-	-	-	-	-	-
28		Total Plant in Service Including Allocated Corporate Plant	14,166,434	$ (97,465)	$ (34,819)	$ -	$ -	$ -	$ -	$ -	$ 14,034,150
29		Less: Accumulated Depreciation	8,654,682	-	-	92,332	-	-	-	-	8,747,014
31		Net Plant in Service (L 28 - L 29)	$ 5,511,752	$ (97,465)	$ (34,819)	$ (92,332)	$ -	$ -	$ -	$ -	$ 5,287,136
32											
33		*LESS:*									
34		Contributions in Aid of Construction (CIAC)	$ 5,461,736	$ -	$ -	$ -	$ -	$ 1,574,594	$ -	$ -	7,036,330
35		Less: Accumulated Amortization	5,240,717	-	-	-	-	31,131	-	-	5,271,848
36		Net CIAC (L34 - L35)	221,019	-	-	-	-	1,543,463	-	-	1,764,482
37		Advances in Aid of Construction (AIAC)	1,743,922	-	-	-	(1,574,594)	-	-	-	169,328
38		Service Line and Meter Advances (Meter Deposits)	8,570	-	-	-	-	-	-	-	8,570
39		Customer Security Deposits	-	-	-	-	-	-	-	-	-
40		Deferred Income Taxes	75,116	-	-	-	-	-	137,259	-	212,375
41											
42		*ADD:*									
43											9,493
44		Prepayments	9,493	-	-	-	-	-	-	(76,776)	(137,370)
45		Cash Working Capital	(60,594)	-	-	-	-	-	-		
46		**Original Cost Rate Base**	$ 3,412,024	$ (97,465)	$ (34,819)	$ (92,332)	$ 1,574,594	$ (1,543,463)	$ (137,259)	$ (76,776)	$ 3,004,503

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule CSB-5

RATE BASE ADJUSTMENT NO. 1 - ALLOCATED CORPORATE PLANT

Line No.	Acct No.	Description	[A] COMPANY AS FILED	[B] ADJUSTMENTS	[C] STAFF AS ADJUSTED Col A - Col B
1	903	Allocated Corporate Plant - Land and Land Rights	$ 8,429	$ (8,429)	$ -
2	904	Allocated Corporate Plant - Structures and Improvements	75,829	(75,829)	-
3	940.1	Allocated Corporate Plant - Computers and Software	13,207	$ (13,207)	-
4		Total	$ 97,465	$ (97,465)	$ -

References:

Column A: Company Schedule B-2, Page 3
Column B: Testimony, CSB
Column C: Column [A] + Column [B]

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule CSB-6

RATE BASE ADJUSTMENT NO. 2 - RECLASSIFIED PLANT AND NOT USED & USEFUL PLANT

LINE NO.	Plant Account Number	Description	[A] COMPANY AS FILED	[B] STAFF ADJUSTMENTS	[C] STAFF AS ADJUSTED (Col A + Col B)
1	353	Land and Land Rights	$ 471,024	$ 1,500	$ 472,524
2	354	Structures and Improvements	$ 3,091,815	$ (163,446)	$ 2,928,369
3	355	Power Generation Equipment	$ -	$ 3,839	$ 3,839
4	360	Collection Sewers - Force	$ 1,130,090	$ 1,602	$ 1,131,692
5	361	Collection Sewers - Gravity	$ 4,555,232	$ (2,370)	$ 4,552,862
6	371	Effluent Pumping Equipment	$ 937,492	$ 113,158	$ 1,050,651
7	380	Treatment and Disposal Equipmen	$ 326,067	$ (5,782)	$ 320,285
9	389	Other Plant and Misc. Equipment	$ 992,742	$ (31,610)	$ 961,132
10	396	Communication Equipment	$ 43,968	$ 48,289	$ 92,256
11					
12		Total	$ 11,548,430	**$ (34,819)**	$ 11,513,611

References:

Column A: Company Schedule B-2, Page 3
Column B: Testimony, CSB
Column C: Column [A] + Column [B]

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule CSB-7

RATE BASE ADJUSTMENT NO. 3 - ACCUMULATED DEPRECIATION

LINE NO.	DESCRIPTION	[A] COMPANY AS FILED	[B] STAFF ADJUSTMENTS	[C] STAFF AS ADJUSTED
1	Accumulated Depreciation	$8,654,682	$ -	$ 8,654,682
2	Adjustment Due to Reclass & Removal of Not Used & Useful Plant	-	94,276	94,276
3	Subtotal	$8,654,682	$ 94,276	$ 8,748,958
4	Adjustment Due to Removal of Allocated Corporate Plant	-	(1,944)	(1,944)
5	Total	$8,654,682	$ 92,332	$ 8,747,014

References:

Column A: Company Schedule B-2, Page 3
Column B: Testimony, CSB
Column C: Column [A] + Column [B]

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule CSB-8

RATE BASE ADJUSTMENT NO. 4 - ADVANCES IN AID OF CONSTRUCTION ("AIAC")

LINE NO.	DESCRIPTION	[A] COMPANY AS FILED	[B] STAFF ADJUSTMENTS	[C] STAFF AS ADJUSTED
1	Advances in Aid of Construction	$ 1,743,922	$ -	$ 1,743,922
2	Unsupported AIAC		$ (239,786)	$ (239,786)
3	Amount Per Company Provided AIAC Agreements	$ 1,743,922	$ (239,786)	$ 1,504,136
4	Transfer to CIAC	$ -	$ (1,334,809)	$ (1,334,809)
5	**Net AIAC**	**$ 1,743,922**	**$ (1,574,594)**	**$ 169,328**

[D] AIAC Contract Date	[E] Expiration Date	[F] Development	[G] 2014 Ending Balance	[H] AIAC Transferred to CIAC
01/21/05	**2015**	**Studios at Carefree**	**$ 244,639**	**$ 244,639**
06/19/07	2017	Lowe's	$ 160,442	
11/10/04	**2015**	**Heritage Healthcare**	**$ 101,048**	**$ 101,048**
06/23/05	**2015**	**Carefree Ironwood Estates**	**$ 115,668**	**$ 115,668**
09/01/97	2009	Ridgeview Estates	$ 154,558	$ 154,558
11/17/97	2014	Winfield	$ 504,936	$ 504,936
	2014	Eckerd Drug Store	$ 222,975	$ 222,975
			$ 1,504,266	$ 1,343,824

Less: Estimated 2015 Refunds (From Line 36)	**$ (9,015)**
Net AIAC Transferred to CIAC (Line 18 - Line 20)	**$ 1,334,809**

	[I] Year of Refund	[J] Refunds: Studios at Carefree	[K] Refunds: Heritage Healthcare	[L] Refunds: Carefree Ironwood Estates	[M] Total Refunds
1	2009	0	0	0	$ -
2	2010	0	0	0	$ -
3	2011	0	0	0	$ -
4	2012	0	0	0	$ -
5	2013	0	0	0	$ -
6	2014	9612.36	$ 7,902.28	$ 10,128.19	$ 18,030
					$ 18,030
				Divided by 2 years	2
					$ 9,015.24

References:

Column A: Company Schedule B-2, Page 3
Column B: Testimony, CSB,
Column C: Column [A] + Column [B]

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule CSB-9

RATE BASE ADJUSTMENT NO. 5 - CONTRIBUTIONS IN AID OF CONSTRUCTION ("CIAC") & AMORTIZATION OF CIAC

LINE NO.	DESCRIPTION	[A] COMPANY AS FILED	[B] STAFF ADJUSTMENTS	[C] STAFF AS ADJUSTED
1	CIAC	$ 5,461,736	$ -	$ 5,461,736
2	AIAC Converted to CIAC	$ -	$ 1,574,594	$ 1,574,594
3	Total CIAC	$ 5,461,736	$ 1,574,594	$ 7,036,330
4				
5				
6	Amortization of CIAC	$ 5,240,717	$ -	$ 5,240,717
7	Amortization of AIAC Converted to CIAC	$ -	$ 31,131	$ 31,131
8	Total Amortization of CIAC	$ 5,240,717	$ 31,131	$ 5,271,848
9				
10				
11	Net CIAC	$ 221,019	$ 1,543,463	$ 1,764,482
12				
13				
14			$ 1,574,594	
15			0.50	Half-year Convention
16			$ 787,297	
17		Amortization Rate	3.95%	
18			$ 31,131	

References:

Column A: Company Schedule B-1, Page 1
Column B: Testimony, CSB
Column C: Column [A] + Column [B]

RATE BASE ADJUSTMENT NO. 6 - ACCUMULATED DEFERRED INCOME TAXES

LINE NO.	DESCRIPTION	[A] COMPANY AS FILED	[B] STAFF ADJUSTMENTS	[C] STAFF AS ADJUSTED
1	Accumulated Deferred Income Taxes	$ 75,116	$ 137,259	$ 212,375

References:

Column A: Company Schedule B-2
Column B: Testimony, CSB
Column C: Column [A] + Column [B]

Deferred Income Tax as of December 31, 2014

Line No.			Water & Sewer Adjusted Book Value	Water & Sewer Tax Value	Probability of Realization of Future Tax Benefit	Deductible TD (Taxable TD) Expected to be Realized	Effective Tax Rate	Future Tax Asset Current	Future Tax Asset Non Current	Future Tax Liability Current	Future Tax Liability Non Current
6		Plant-in-Service	$ 14,034,150								
7		Land & Land Rights	$ (472,524)								
8		Subtotal	$ 13,561,626								
9		Accum. Deprec.	(8,747,014)								
10		CIAC	(1,764,482)								
11	Fed.	Fixed Assets	$ 3,050,130	$ 2,433,867	100.0%	$ (616,263)	36.05%		-		(222,160)
12											
13	State	Fixed Assets	$ 3,050,130	$ 4,015,348							
14		Staff Adjustment	$ -	(965,218)							
15			$ 3,050,130	$ 3,050,130	100.0%	$ 0	5.500%		0		-
16											
17	Fed &State	AIAC	$ -	177,898	100.0%	$ 177,898	36.05%		9,784		
18											
19								$ -	$ 9,784	$ -	$ (222,160)
20											
21		Net Asset (Liability)						$ (212,375)			
22											
23		Allocated Corporate ADIT						-			
24											
25		Net Asset (Liability)						$ (212,375)			
26											
27		Allocation Factor						1.0000			
28											
29		Net Asset (Liability)						$ (212,375)			
30											
31		DIT Asset (Liability) per Books						$ -			
32											
33		Adjustment to DIT						$ 212,375			
34											
35											
36											
37											
38											
39											
40											
41											
42											
43											
44											
45											
46											
47											
48											

RATE BASE ADJUSTMENT NO. 7 - CASH WORKING CAPITAL

LINE NO.	DESCRIPTION	[A] COMPANY AS FILED	[B] STAFF ADJUSTMENTS	[C] STAFF AS ADJUSTED	
1	Cash Working Capital	$ (60,594)	$ (76,776)	$ (137,370)	Sch CSB-11, p. 2

References:

Column A: Company Schedule B-1
Column B: Testimony, CSB; Schedule CSB-11, Page 2 of 2
Column C: Column [A] + Column [B]

Lead-Lag Study

Line No.	Description	Proforma Test Year Amount[1]	Revenue Lag (Lead) Days	Expense Lag (Lead) Days	Net Lag (Lead) Days Col. C - Col. D	Lead/Lag Factor Col. E/365	Cash Working Capital Required Col. B * Col. F
	(A)	(B)	(C)	(D)	(E)	(F)	(G)
7	OPERATING EXPENSES						
8	Salaries and Wages	$ -	0.56	20.00	(19.44)	(0.05326515)	$ -
9	Purchased Wastewater Treatment	5,647	0.56	28.22	(27.66)	(0.07578569)	(428)
10	Sludge Removal	-	0.56	-	0.56	0.00152937	-
11	Purchased Power	65,112	0.56	34.37	(33.81)	(0.09263501)	(6,032)
12	Fuel for Power Production	-	0.56	-	0.56	0.00152937	-
13	Chemicals	19,215	0.56	4.94	(4.38)	(0.01200487)	(231)
14	Materials and Supplies	23,875	0.56	(20.42)	20.98	0.05747458	1,372
15	Contractual Services - Professional	313,511	0.56	20.05	(19.49)	(0.05340213)	(16,742)
16	Contractual Services - Testing	11,451	0.56	27.61	(27.05)	(0.07411446)	(849)
17	Contractual Services - Other	552,350	0.56	46.68	(46.12)	(0.12636104)	(69,795)
18	Rents	23,807	0.56	27.28	(26.72)	(0.07321035)	(1,743)
19	Transportation	15,370	0.56	24.75	(24.19)	(0.06627884)	(1,019)
20	Insurance	11,720	0.56	(182.50)	183.06	0.50152937	5,878
21	Scottsdale Capacity (Operating Lease)	164,522	0.56	(15.00)	15.56	0.04262527	7,013
22	Miscellaneous	60,542	0.56	8.56	(8.00)	(0.02192268)	(1,327)
23	Interest Expense	60,012	0.56	91.25	(90.69)	(0.24847063)	(14,911)
24		1,327,134					
25							
26	TAXES						
27	General Taxes-Property[1]	$ 48,214	0.56	213.96	(213.40)	(0.58466241)	$ (28,189)
28	General Taxes-Other	-	0.56	-	0.56	0.00152937	-
29	Income Tax[1]	103,839	0.56	37.00	(36.44)	(0.09984049)	(10,367)
30							
31	OTHER						
32	Regulatory Commission Expense	-	0.56	-	0.56	0.00152937	-
33							
34	TOTAL	$ 1,479,187		WORKING CASH REQUIREMENT			$ (137,370)
35							
36							
37							
38	[1]At proposed rates.						
39							
40							

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule CSB-12

OPERATING INCOME STATEMENT - ADJUSTED TEST YEAR AND STAFF RECOMMENDED

LINE NO.	DESCRIPTION	[A] COMPANY ADJUSTED TEST YEAR AS FILED	[B] STAFF TEST YEAR ADJUSTMENTS	Adj. No.	[C] STAFF TEST YEAR AS ADJUSTED	[D] STAFF PROPOSED CHANGES	[E] STAFF RECOMMENDED
1	*REVENUES:*						
2	Flat Rate Revenues	$ 2,212,684	$ -		$ 2,212,684	$ (171,514)	$ 2,041,170
3	Measured Revenues	16,067	-		16,067	-	16,067
4	Other Wastewater Revenues	11,098	-		11,098	-	11,098
5		-	-		-	-	-
6	**Total Operating Revenues**	$ 2,239,848	$ -		$ 2,239,848	$ (171,514)	$ 2,068,334
7							
8	*OPERATING EXPENSES:*						
9	Salaries and Wages	$ 242,213	$ (242,213)	1	$ -	$ -	$ -
10	Purchased Wastewater Treatment	5,647	-		5,647	-	5,647
11	Sludge Removal Expense	-	-		-	-	-
12	Purchased Power	65,112	-		65,112	-	65,112
13	Fuel for Power Production	-	-		-	-	-
14	Chemicals	19,215	-		19,215	-	19,215
15	Materials & Supplies	23,875	-		23,875	-	23,875
16	Contractural Services, Professional	313,511	-		313,511	-	313,511
17	Contractural Services - Testing	8,117	3,334	2	11,451	-	11,451
18	Contractural Services - Other	361,855	190,495	1, 3	552,350	-	552,350
19	Rents	23,807	-		23,807	-	23,807
20	Transportation	15,370	-		15,370	-	15,370
21	Insurance	11,720	-		11,720	-	11,720
22	Reg Comm/Rate Case Expense	-	50,000	4	50,000	-	50,000
23	Scottsdale Cap (Operating Lease)	164,522	-		164,522	-	164,522
24	Miscellaneous Expense	60,542	-		60,542	-	60,542
25	Depreciation and Amortization	484,271	(97,831)	5	386,440	-	386,440
26	Taxes other than Income	-	-		-	-	-
27	Property Taxes	49,478	-		49,478	(1,264)	48,214
28	Income Taxes	131,980	39,222	6	171,202	(67,363)	103,839
29		-	-		-	-	-
30	**Total Operating Expenses**	$ 1,981,235	$ (56,994)		$ 1,924,241	$ (68,627)	$ 1,855,615
31	**Operating Income (Loss)**	$ 258,613	$ 56,994		$ 315,607	$ (102,888)	$ 212,719

References:
Column (A): Company Schedule C-1
Column (B): Schedule CSB-13
Column (C): Column (A) + Column (B)
Column (D): Schedules CSB-1 and CSB-2
Column (E): Column (C) + Column (D)

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule CSB-13

SUMMARY OF OPERATING INCOME STATEMENT ADJUSTMENTS - TEST YEAR

LINE NO.	DESCRIPTION	[A] COMPANY AS FILED	[B] Reclassification and Expected 2015 & 2016 Affiliate Labor Increase ADJ No. 1	[C] Testing Expense ADJ No. 2	[D] Corporate Expense Allocation ADJ No. 3	[E] Rate Case Expense ADJ No. 4	[F] Depreciation Expense ADJ No. 5	[G] Income Tax Expense ADJ No. 6	[H] STAFF ADJUSTED
			Ref: Sch CSB-14	Ref: Sch CSB-15	Ref: Sch CSB-16	Ref: Sch CSB-17	Ref: Sch CSB-18	Ref: Sch CSB-19	
1	*REVENUES:*								
2	Flat Rate Revenues	$2,212,684	$ -	$ -	$ -	$ -	$ -	$ -	$2,212,684
3	Measured Revenues	16,067	-	-	-	-	-	-	16,067
4	Other Wastewater Revenues	11,098	-	-	-	-	-	-	11,098
5		-	-	-	-	-	-	-	-
6	**Total Operating Revenues**	$2,239,848	$ -	$ -	$ -	$ -	$ -	$ -	$2,239,848
7									
8	*OPERATING EXPENSES:*								
9	Salaries and Wages	$ 242,213	$ (242,213)	$ -	$ -	$ -	$ -	$ -	$ -
10	Purchased Wastewater Treatment	5,647	-	-	-	-	-	-	5,647
11	Sludge Removal Expense	-	-	-	-	-	-	-	-
12	Purchased Power	65,112	-	-	-	-	-	-	65,112
13	Fuel for Power Production	-	-	-	-	-	-	-	-
14	Chemicals	19,215	-	-	-	-	-	-	19,215
15	Materials & Supplies	23,875	-	-	-	-	-	-	23,875
16	Contractural Services, Professional	313,511	-	-	-	-	-	-	313,511
17	Contractural Services - Testing	8,117	-	3,334	-	-	-	-	11,451
18	Contractural Services - Other	361,855	220,598	-	(30,103)	-	-	-	552,350
19	Rents	23,807	-	-	-	-	-	-	23,807
20	Transportation	15,370	-	-	-	-	-	-	15,370
21	Insurance	11,720	-	-	-	-	-	-	11,720
22	Reg Comm/Rate Case Expense	-	-	-	-	50,000	-	-	50,000
23	Scottsdale Cap (Operating Lease)	164,522	-	-	-	-	-	-	164,522
24	Miscellaneous Expense	60,542	-	-	-	-	-	-	60,542
25	Depreciation and Amortization	484,271	-	-	-	-	(97,831)	-	386,440
26	Taxes other than Income	-	-	-	-	-	-	-	-
27	Property Taxes	49,478	-	-	-	-	-	-	49,478
28	Income Taxes	131,980	-	-	-	-	-	39,222	171,202
29									
30	**Total Operating Expenses**	$1,981,235	$ (21,615)	$ 3,334	$ (30,103)	$ 50,000	$ (97,831)	$ 39,222	$1,924,241
31	**Operating Income (Loss)**	$ 258,613	$ 21,615	$ (3,334)	$ 30,103	$ (50,000)	$ 97,831	$ (39,222)	$ 315,607

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule CSB-14

OPERATING INCOME ADJUSTMENT NO. 1 - RECLASSIFICATION AND EXPECTED 2015 & 2016 AFFILIATE LABOR INCREASE

LINE NO.	DESCRIPTION	[A] COMPANY AS FILED	[B] STAFF ADJUSTMENTS (Col C - Col A)	[C] STAFF AS ADJUSTED
1	Salaries & Wages	$ 220,598	$ -	$ 220,598
2	To Transfer Salaries & Wages to Contr. Srvcs	-	(220,598)	(220,598)
3	To Remove Post Test Year Affiliate Increase	21,615	(21,615)	-
4	Total Salaries & Wages Transferred to Contr. Srvcs	$ 242,213	$ (242,213)	$ -
5				
6				
7	Contractural Services - Other	$ 361,855	$ -	$ 361,855
8	To Transfer Salaries & Wages to Contr. Srvcs	-	220,598	220,598
9		-	-	-
10	Total Contractural Services - Other	$ 361,855	$ 220,598	$ 582,453

References:
Column A: Company Schedule C-2, Page 8; RUCO Data Request Response 2.01
Column B: Testimony, CSB
Column C: Column [A] + Column [B]

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule CSB-15

OPERATING INCOME ADJUSTMENT NO. 2 - TESTING EXPENSE

LINE NO.	DESCRIPTION	[A] COMPANY PROPOSED	[B] STAFF ADJUSTMENTS	[C] STAFF RECOMMENDED
1	Testing Expense	$ 8,117	$ 3,334	$ 11,451

References:
Column A: Company Schedule C-1
Column B: Testimony, CSB, Staff Engineering Report Executive Summary
Column C: Column [A] + Column [B]

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule CSB-16

OPERATING INCOME ADJUSTMENT NO. 3 - CORPORATE EXPENSE ALLOCATION

		[A]	[B]	[C]
LINE NO.	DESCRIPTION	COMPANY AS FILED	STAFF ADJUSTMENTS (Col C - Col A)	STAFF AS ADJUSTED
1	Corporate Expense Allocation	$ 37,845	$ (30,103)	$ 7,742

	[D]	[E]	[F]	[G]	[H]	[I]	[J]
	COSTS TO BE ALLOCATED TO BLACK MOUNTAIN						
	Description		Amount	Allocation Percentage (13 Regulated Wtr & WWtr Co. ÷ 71 Total Companies)	Indirect Costs Allocated to Liberty Utilities	Allocation Percentage (2,121 Black Mtn Customers ÷ 95,145 Regulated Wtr & WW Cust	Costs to be Allocated to Black Mtn (Col H x Col I)
11	Audit		$ 687,211	18.31%	$ 125,827	2.23%	$ 2,804.98
12	Tax Services		$ 637,076	18.31%	$ 116,648	2.23%	$ 2,600.34
13	Legal-General[1]		$ 368,153	18.31%	$ 67,408	2.23%	$ 1,502.68
14	Depreciation Expense[2]		$ 204,242	18.31%	$ 37,396	2.23%	$ 833.65
15			$ 1,896,682		$ 347,280		$ 7,741.66

Foot Note 1: Legal,General Expense - The Company proposed to allocated $389,618 in general legal costs.
Staff removed $21,465 in expenses related to APUC's shareholders ($389,618-$21,465=4368,153)

Foot Note 2: Depreciation - Staff utilized the depreciation expense for the last rate proceeding as the company did not provide it.

References:

Column A: Company Schedule C-1

Column B: Testimony, CSB, Company Data Request Responses CSB 6.1

Column C: Column [A] + Column [B]

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule CSB-17

OPERATING INCOME ADJUSTMENT NO. 4 - RATE CASE EXPENSE

LINE NO.		[A] COMPANY AS FILED	[B] STAFF ADJUSTMENTS	[C] STAFF AS ADJUSTED
1	Rate Case Expense	$ -	$ 50,000	$ 50,000
2				
3				
4				
5				
6				
11	Rate Case Expense-Per Staff	$ 250,000		
12	Divided by	5		
13	**Normalized Rate Case Expense**	$ 50,000		
14				
15				

References:

Column A: Company Schedule C-1
Column B: Testimony, CSB
Column C: Column [A] + Column [B]

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule CSB-18

OPERATING INCOME ADJUSTMENT NO. 5 - DEPRECIATION EXPENSE ON TEST YEAR PLANT

LINE NO.	ACCT NO.	DESCRIPTION	[A] PLANT In SERVICE Per Staff	[B] NonDepreciable or Fully Depreciated PLANT	[C] DEPRECIABLE PLANT (Col A - Col B)	[D] DEPRECIATION RATE	[E] DEPRECIATION EXPENSE (Col C x Col D)
1	351	Organization	$ -	$ -	$ -	0.00%	$ -
2	353	Land and Land Rights	$ 472,524	$ 471,024	$ 1,500	0.00%	$ -
3	354	Structures and Improvements	$ 2,928,369	$ 1,073,762	$ 1,854,607	3.33%	$ 61,758
4	355	Power Generation Equipment	$ 3,839	$ -	$ 3,839	5.00%	$ 192
5	360	Collection Services - Force	$ 1,131,692	$ -	$ 1,131,692	2.00%	$ 22,634
6	361	Collection Services - Gravity	$ 4,552,862	$ -	$ 4,552,862	2.00%	$ 91,057
7	363	Services to Customers	$ 260,442	$ 151,507	$ 108,935	2.00%	$ 2,179
8	364	Flow Measuring Devices	$ 31,668	$ 31,668	$ -	10.00%	$ -
9	365	Flow Measuring Installations	$ 180,051	$ -	$ 180,051	10.00%	$ 18,005
10	370	Receiving Wells	$ 1,028,182	$ -	$ 1,028,182	3.33%	$ 34,238
11	371	Effluent Pumping Equipment	$ 1,050,650	$ 552,393	$ 498,257	12.50%	$ 62,282
12	380	Treatment and Disposal Equipment	$ 320,285	$ -	$ 320,285	5.00%	$ 16,014
13	381	Plant Sewers	$ 124,527	$ 124,527	$ -	5.00%	$ -
14	382	Outfall Sewer Lines	$ -	$ -	$ -	3.33%	$ -
15	389	Other Plant & Misc. Equipment	$ 961,132	$ -	$ 961,132	6.67%	$ 64,108
16	390	Office Furniture & Equipment	$ 289,536	$ -	$ 289,536	6.67%	$ 19,312
17	391	Transportation Equipment	$ 80,215	$ 52,063	$ 28,152	20.00%	$ 5,630
18	393	Tools, Shop & Garage Equipment	$ 28,942	$ -	$ 28,942	5.00%	$ 1,447
19	394	Labratory Equipment	$ 10,683	$ -	$ 10,683	10.00%	$ 1,068
20	395	Power Operated Equipment	$ -	$ -	$ -	5.00%	$ -
21	396	Communication Equipment	$ 92,256	$ -	$ 92,256	10.00%	$ 9,226
22	398	Other Tangible Plant	$ 486,294	$ -	$ 486,294	10.00%	$ 48,629
23		Total Plant	$ 14,034,150	$ 2,456,944	$ 11,577,206		$ 457,780
24							
25							
26		Gross CIAC:	$ 7,036,330				
27		Less: Fully Amortized CIAC	$ 5,232,139	From Company's Sch C-2, Page 2, Line 41			
28			$ 1,804,191				
29		Composite Depreciation Rate (Depr Exp / Depreciable Plant):	3.95%				
30		Amortization of CIAC (Line 28 x Line 29):	$ 71,340				
31							
32		Depreciation Expense Before Amortization of CIAC:	$ 457,780				
33		Less Amortization of CIAC:	$ 71,340				
34		**Test Year Depreciation Expense - Staff:**	**$ 386,440**				
35		Depreciation Expense - Company:	$ 484,271				
36		**Staff's Total Adjustment:**	**$ (97,831)**				

References:
Column [A]: Schedule CSB-4
Column [B]: From Column [A]
Column [C]: Column [A] - Column [B]
Column [D]: Engineering Staff Report
Column [E]: Column [C] x Column [D]

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02519A-06-0015
Test Year Ended October 31, 2005

Schedule CSB-19

OPERATING INCOME ADJUSTMENT NO. 6 - TEST YEAR INCOME TAXES

LINE NO.	DESCRIPTION	Test Year
	Calculation of Income Tax:	
1	Revenue (Schedule CSB-11)	$ 2,239,848
2	Operating Expenses Excluding Income Taxes	$ 1,753,040
3	Synchronized Interest (L17)	$ 31,848
4	Arizona Taxable Income (L1 - L2 - L3)	$ 454,960
5	Arizona State Income Tax Rate	5.5000%
6	Arizona Income Tax (L4 x L5)	$ 25,023
7	Federal Taxable Income (L4 - L6)	$ 429,938
8	Federal Tax on First Income Bracket ($1 - $50,000) @ 15%	$ 7,500
9	Federal Tax on Second Income Bracket ($51,001 - $75,000) @ 25%	$ 6,250
10	Federal Tax on Third Income Bracket ($75,001 - $100,000) @ 34%	$ 8,500
11	Federal Tax on Fourth Income Bracket ($100,001 - $335,000) @ 39%	$ 91,650
12	Federal Tax on Fifth Income Bracket ($335,001 -$10,000,000) @ 34%	$ 32,279
13	Total Federal Income Tax	$ 146,179
14	Combined Federal and State Income Tax (L44 + L51)	$ 171,202
	Calculation of Interest Synchronization:	
15	Rate Base (Schedule CSB-13, Col. (C), Line 16)	$ 3,004,503
16	Weighted Average Cost of Debt	1.06%
17	Synchronized Interest (L16 x L17)	$ 31,848
18	Income Tax - Per Staff	$ 171,202
19	Income Tax - Per Company	$ 131,980
20	**Staff Adjustment**	**$ 39,222**

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule CSB-20

Property Tax Expense

LINE NO.	Property Tax Calculation	STAFF AS ADJUSTED	STAFF RECOMMENDED
1	Staff Adjusted Test Year Revenues	$ 2,239,848	$ 2,239,848
2	Weight Factor	2	2
3	Subtotal (Line 1 * Line 2)	4,479,696	$ 4,479,696
4	Staff Recommended Revenue, Per Schedule CSB-1	2,239,848	$ 2,068,334
5	Subtotal (Line 4 + Line 5)	6,719,544	6,548,030
6	Number of Years	3	3
7	Three Year Average (Line 5 / Line 6)	2,239,848	$ 2,182,677
8	Department of Revenue Mutilplier	2	2
9	Revenue Base Value (Line 7 * Line 8)	4,479,696	$ 4,365,353
10	Plus: 10% of CWIP -	-	-
11	Less: Net Book Value of Licensed Vehicles	3,531	$ 3,531
12	Full Cash Value (Line 9 + Line 10 - Line 11)	4,476,165	$ 4,361,822
13	Assessment Ratio	18.0%	18.0%
14	Assessment Value (Line 12 * Line 13)	805,710	$ 785,128
15	Composite Property Tax Rate (Per Company Schedule C-2, P	6.1409%	6.1409%
			$ -
16	Staff Test Year Adjusted Property Tax (Line 14 * Line 15)	$ 49,478	
17	Company Proposed Property Tax	49,478	
18	Staff Test Year Adjustment (Line 16-Line 17)	$ (0)	
19	Property Tax - Staff Recommended Revenue (Line 14 * Line 15)		$ 48,214
20	Staff Test Year Adjusted Property Tax Expense (Line 16)		$ 49,478
21	Increase in Property Tax Expense Due to Increase in Revenue Requirement		$ (1,264)
22	Increase to Property Tax Expense		$ (1,264)
23	Increase in Revenue Requirement		(171,514)
24	Increase to Property Tax per Dollar Increase in Revenue (Line22/Line 23)		0.736908%

BEFORE THE ARIZONA CORPORATION COMMISSION

SUSAN BITTER SMITH
Chairman
BOB STUMP
Commissioner
BOB BURNS
Commissioner
DOUG LITTLE
Commissioner
TOM FORESE
Commissioner

IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN ITS WASTEWATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON	DOCKET NO. SW-02361A-15-0207
IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION FOR AUTHORITY TO ISSUE EVIDENCE OF INDEBTEDNESS IN AN AMOUNT NOT TO EXCEED $3,400,000	DOCKET NO. SW-02361A-15-0206

DIRECT

TESTIMONY

OF

DOROTHY HAINS, P. E.

UTILITIES ENGINEER

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

DECEMBER 2, 2015

Direct Testimony for Crystal Brown

Financing Schedules

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Application For Financing

Schedule CSB-1

FINANCIAL ANALYSIS

Selected Financial Information
Pro forma Includes Immediate Effects of the Proposed Long-term Debt

		[A]	[B]
		12/31/2014	*12/31/2014*
		Staff Recommended Revenue	*Staff Recommended Revenue*
		Without Loan	*Full Amount of Proposed Loan*
1	Operating Income	$ 222,309	$ 222,309
2	Depreciation & Amortization Expens	$ 377,132	$ 377,132
3	Income Tax Expense	$ 109,830	$ 109,830
4	Interest Expense on Debt	$ -	$ 115,380
5	Repayment of Principal	$ -	$ 288,648
	TIER		
6	[1+3] ÷ [4]	Non Applicable	2.88
	DSC		
7	[1+2+3] ÷ [4+5]	Non Applicable	1.76

8	Short-term Debt	$	3,628	1.61%	$ 292,276 (a)	8.06%
9	Long-term Debt	$	89,535	39.61%	$3,200,886	88.28%
10	Equity	$	132,861	58.78%	$ 132,861	3.66%
11	Total Capital	$	226,024	100.00%	$3,626,024	100.00%

(a) Includes $0 in short-term debt and $292,276 in current maturities on long-term debt and first year principal repayment on the full amount of the proposed loan.

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Application For Financing

Schedule CSB-2

Loan Amount Requested	$3,400,000		
Down Payment:	$0		
Amount Financed:	$3,400,000		
Number of years:	10	**Compounding Periods:**	12
Interest rate (r):	3.53%	**APR:**	3.59%

LOAN AMORTIZATION SCHEDULE

Period	Loan payment (1)	Beginning-of-month principal (2)	Payments: Interest [r * (2)] (3)	Payments: Principal [(1) - (3)] (4)	End-of-month principal [(2) - (4)] (5)	Annual Interest (6)	Annual Principal (7)	Annual Debt Payment (8)
1	$33,669.00	$3,400,000.00	$10,001.67	$23,667.33	$3,376,332.67			
2	33,669.00	3,376,332.67	9,932.05	23,736.95	3,352,595.72			
3	33,669.00	3,352,595.72	9,862.22	23,806.78	3,328,788.94			
4	33,669.00	3,328,788.94	9,792.19	23,876.81	3,304,912.13			
5	33,669.00	3,304,912.13	9,721.95	23,947.05	3,280,965.08			
6	33,669.00	3,280,965.08	9,651.51	24,017.49	3,256,947.59			
7	33,669.00	3,256,947.59	9,580.85	24,088.14	3,232,859.45			
8	33,669.00	3,232,859.45	9,509.99	24,159.00	3,208,700.45			
9	33,669.00	3,208,700.45	9,438.93	24,230.07	3,184,470.38			
10	33,669.00	3,184,470.38	9,367.65	24,301.35	3,160,169.03			
11	33,669.00	3,160,169.03	9,296.16	24,372.83	3,135,796.20			
12	33,669.00	3,135,796.20	9,224.47	24,444.53	3,111,351.67	115,379.63	288,648.33	404,027.96

Direct Testimony for Crystal Brown

Cost of Capital Schedules

Liberty Utilities (Black Mountain Sewer), Corp. Cost of Capital Calculation
Capital Structure
And Weighted Average Cost of Capital
Staff Recommended and Company Proposed

[A]	[B]	[C]	[D]
Description	Weight (%)	Cost	Weighted Cost
Staff Recommended Capital Structure			
Debt	30.0%	3.53%	1.06%
Common Equity	70.0%	8.60%	6.02%
Weighted Average Cost of Capital			**7.08%**
Company Proposed Capital Structure			
Debt	30.00%	3.53%	1.06%
Common Equity	70.00%	10.80%	7.56%
Weighted Average Cost of Capital			**8.62%**

[D] : [B] x [C]
Supporting Schedules: CSB-3 and CSB-4.

Intentionally left blank

Liberty Utilities (Black Mountain Sewer), Corp. Cost of Capital Calculation
Final Cost of Equity Estimates
Sample Water Utilities

[A]	[B]		[C]		[D]		[E]
DCF Method			D_1/P_0 [1]	+	g [2]	=	**k**
Constant Growth DCF Estimate			2.7%	+	5.5%	=	8.2%
Multi-Stage DCF Estimate						=	9.0%
Average DCF Estimate							**8.6%**
CAPM Method	**Rf**	+	β [5]	x	**(Rp)**	=	**k**
Historical Market Risk Premium [3]	2.1%	+	0.73	x	7.6% [6]	=	7.6%
Current Market Risk Premium [4]	2.9%	+	0.73	x	9.2% [7]	=	9.5%
Average CAPM Estimate							**8.6%**
					Staff's Estimated Cost of Equity		**8.6%**
					Economic Assessment Adjustment		0.0%
					Sub-Total		**8.6%**
					Financial Risk Adjustment		0.0%
					Total		**8.6%**

1 MSN Money and Value Line
2 Schedule JAC-8
3 Risk-free rate (Rf) for 5, 7, and 10 year Treasury rates from the U.S. Treasury Department at www.ustreas.gov
4 Risk-free rate (Rf) for 30 Year Treasury bond rate from the U.S. Treasury Department at www.ustreas.gov
5 Value Line
6 Historical Market Risk Premium (Rp) calculated from 2015 Ibbotson SBBI Classic Yearbook data
7 Testimony

Liberty Utilities (Black Mountain Sewer), Corp. Cost of Capital Calculation
Average Capital Structure of Sample Water Utilities

[A]	[B]	[C]	[D]
Company	Debt	Common Equity	Total
American States Water	38.7%	61.3%	100.0%
California Water	45.9%	54.1%	100.0%
Aqua America	50.3%	49.7%	100.0%
Connecticut Water	45.6%	54.4%	100.0%
Middlesex Water	44.3%	55.7%	100.0%
SJW Corp	54.7%	45.3%	100.0%
York Water	43.4%	56.6%	100.0%
Average Sample Water Utilities	**46.1%**	**53.9%**	**100.0%**
Black Mountain	**30.00%**	**70.00%**	**100.0%**

Source:
Sample Water Companies from Value Line

Liberty Utilities (Black Mountain Sewer), Corp. Cost of Capital Calculation
Growth in Earnings and Dividends
Sample Water Utilities

[A]	[B]	[C]	[D]	[E]
Company	Dividends Per Share 2005 to 2014 DPS[1]	Dividends Per Share Projected DPS[1]	Earnings Per Share 2005 to 2014 EPS[1]	Earnings Per Share Projected EPS[1]
American States Water	6.4%	6.7%	11.6%	6.5%
California Water	1.4%	8.3%	5.0%	5.4%
Aqua America	7.8%	9.7%	8.9%	6.6%
Connecticut Water	1.9%	5.2%	5.2%	3.2%
Middlesex Water	1.4%	2.3%	4.5%	3.6%
SJW Corp	3.9%	1.3%	8.5%	NA
York Water	3.9%	6.7%	6.1%	5.3%
Average Sample Water Utilities	**3.8%**	**5.7%**	**7.1%**	**5.1%**

1 Value Line

Liberty Utilities (Black Mountain Sewer), Corp. Cost of Capital Calculation
Sustainable Growth
Sample Water Utilities

[A]	[B]	[C]	[D]	[E]	[F]
Company	Retention Growth 2005 to 2014 br	Retention Growth Projected br	Stock Financing Growth vs	Sustainable Growth 2005 to 2014 br + vs	Sustainable Growth Projected br + vs
American States Water	4.6%	7.0%	1.6%	6.3%	8.6%
California Water	2.9%	3.6%	1.2%	4.0%	4.8%
Aqua America	4.3%	5.7%	1.2%	5.5%	6.8%
Connecticut Water	2.3%	4.1%	2.9%	5.2%	7.0%
Middlesex Water	1.6%	3.6%	1.7%	3.3%	5.3%
SJW Corp	4.0%	4.2%	0.9%	4.9%	5.1%
York Water	2.4%	3.8%	2.6%	5.0%	6.5%
Average Sample Water Utilities	**3.1%**	**4.6%**	**1.7%**	**4.9%**	**6.3%**

[B]: Value Line
[C]: Value Line
[D]: Value Line, Yahoo Finance, and Form 10-Ks filed with the Securities and Exchange Commission (http://www.sec.gov/)
[E]: [B]+[D]
[F]: [C]+[D]

Liberty Utilities (Black Mountain Sewer), Corp. Cost of Capital Calculation
Selected Financial Data of Sample Water Utilities

[A]	[B]	[C]	[D]	[E]	[F]	[G]
Company	Symbol	Spot Price 11/4/2015	Book Value	Mkt To Book	*Value Line* Beta *b*	Raw Beta *braw*
American States Water	AWR	**40.89**	13.72	3.0	**0.70**	0.52
California Water	CWT	**22.67**	13.28	1.7	**0.75**	0.60
Aqua America	WTR	**29.26**	9.39	3.1	**0.75**	0.60
Connecticut Water	CTWS	**36.76**	20.87	1.8	**0.65**	0.45
Middlesex Water	MSEX	**25.24**	12.48	2.0	**0.75**	0.60
SJW Corp	SJW	**31.21**	17.05	1.8	**0.75**	0.60
York Water	YORW	**23.04**	8.59	2.7	**0.75**	0.60
Average				**2.3**	**0.73**	**0.57**

[C]: Msn Money
[D]: Value Line
[E]: [C] / [D]
[F]: Value Line
[G]: (-0.35 + [F]) / 0.67

Liberty Utilities (Black Mountain Sewer), Corp. Cost of Capital Calculation
Calculation of Expected Infinite Annual Growth in Dividends
Sample Water Utilities

[A]	[B]
Description	g
DPS Growth - Historical[1]	3.8%
DPS Growth - Projected[1]	5.7%
EPS Growth - Historical[1]	7.1%
EPS Growth - Projected[1]	5.1%
Sustainable Growth - Historical[2]	4.9%
Sustainable Growth - Projected[2]	6.3%
Average	**5.5%**

1 Schedule CSB-5
2 Schedule CSB-6

Liberty Utilities (Black Mountain Sewer), Corp. Cost of Capital Calculation
Multi-Stage DCF Estimates
Sample Water Utilities

[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]
Company	Current Mkt. Price (P_o)[1] 11/4/2015	Projected Dividends[2] (Stage 1 growth) (D_t) d_1	d_2	d_3	d_4	Stage 2 growth[3] (g_n)	Equity Cost Estimate (K)[4]
American States Water	40.9	0.90	0.95	1.00	1.05	6.4%	8.6%
California Water	22.7	0.67	0.71	0.75	0.79	6.4%	9.3%
Aqua America	29.3	0.70	0.74	0.78	0.82	6.4%	8.8%
Connecticut Water	36.8	1.08	1.14	1.20	1.27	6.4%	9.3%
Middlesex Water	25.2	0.77	0.81	0.86	0.90	6.4%	9.4%
SJW Corp	31.2	0.78	0.83	0.87	0.92	6.4%	8.9%
York Water	23.0	0.60	0.63	0.67	0.70	6.4%	9.0%

Average 9.0%

$$P_0 = \sum_{t=1}^{n} \frac{D_t}{(1+K)^t} + \frac{D_n(1+g_n)}{K-g_n}\left[\frac{1}{(1+K)}\right]^n$$

Where : P_0 = current stock price
D_t = dividends expected during stage 1
K = cost of equity
n = years of non – constant growth
D_n = dividend expected in year n
g_n = constant rate of growth expected after year n

1 [B] see Schedule CSB-7
2 Derived from Value Line information
3 Average annual growth in GDP 1929 - 2012 in current dollars.
4 Internal Rate of Return of Projected Dividends

Liberty Utilities (Black Mountain Sewer), Corp. Cost of Capital Calculation
Capitalization

	Interest Rate	Annual Interest	Amount outstanding as of 12/31/2013	Percentage of Capital Structure
Long-Term Debt				
Liberty Utilities Company	3.53%	$ 69,680	$ 1,973,939	
Long-Term Debt		$ 69,680	$ 1,973,939	30.00%
Short-Term Debt		$ -		0.00%
Total Debt	3.53%	$ 69,680	$ 1,973,939	30.00%
Common Equity			$ 4,605,858	
Common Shares Outstanding				
Paid in Capital				
Retained Earnings				
Total Common Equity			$ 4,605,858	70.00%
Total Capitalization			$ 6,579,797	100.00%

BEFORE THE ARIZONA CORPORATION COMMISSION

SUSAN BITTER SMITH
Chairman
BOB STUMP
Commissioner
BOB BURNS
Commissioner
DOUG LITTLE
Commissioner
TOM FORESE
Commissioner

IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN ITS WASTEWATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON	DOCKET NO. SW-02361A-15-0207
IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION FOR AUTHORITY TO ISSUE EVIDENCE OF INDEBTEDNESS IN AN AMOUNT NOT TO EXCEED $3,400,000	DOCKET NO. SW-02361A-15-0206

DIRECT

TESTIMONY

OF

DOROTHY HAINS, P. E.

UTILITIES ENGINEER

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

DECEMBER 2, 2015

TABLE OF CONTENTS

	Page
INTRODUCTION	1
PURPOSE OF TESTIMONY	2
ENGINEERING REPORT	3
CONCLUSIONS AND RECOMMENDATIONS	3

EXHIBITS

Engineering Report for Liberty Utilities (Black Mountain Sewer) Corp. (Part I) DMH-1

INTRODUCTION

Q. Please state your name and business address.

A. My name is Dorothy Hains. My business address is 1200 West Washington Street, Phoenix, Arizona 85007.

Q. By whom and in what position are you employed?

A. I am employed by the Arizona Corporation Commission ("Commission" or "ACC") as a Utilities Engineer - Water/Wastewater in the Utilities Division.

Q. How long have you been employed by the Commission?

A. I have been employed by the Commission since January 1998.

Q. What are your responsibilities as a Utilities Engineer - Water/Wastewater?

A. My main responsibilities are to inspect, investigate and evaluate water and wastewater systems. This includes obtaining data, preparing reconstruction cost new and/or original cost studies, investigative reports, interpreting rules and regulations, and to suggest corrective action and provide technical recommendations on water and wastewater system deficiencies. I also provide written and oral testimony in rate cases and other cases before the Commission.

Q. How many companies have you analyzed for the Utilities Division?

A. I have analyzed more than 90 companies fulfilling these various responsibilities for Commission Utilities Division Staff ("Staff").

Q. Have you previously testified before this Commission?

A. Yes, I have testified on numerous occasions before this Commission.

Q. What is your educational background?

A. I graduated from the University of Alabama in Birmingham in 1987 with a Bachelor of Science degree in Civil Engineering.

Q. Briefly describe your pertinent work experience.

A. Before my employment with the Commission, I was an Environmental Engineer for the Arizona Department of Environmental Quality ("ADEQ") for ten years. Prior to that time, I was an Engineering Technician with C. F. Hains, Hydrology in Northport, Alabama for approximately five years.

Q. Please state your professional membership, registrations, and licenses.

A. I have been a registered Civil Engineer in Arizona since 1990. I am a member of the American Society of Civil Engineering, American Water Works Association and Arizona Water Association.

PURPOSE OF TESTIMONY

Q. What was your assignment in this rate proceeding?

A. My assignment was to provide Staff's engineering evaluations for the subject Liberty Utilities Black Mountain Sewer Corp. ("BMSC" or "Company") rate and financing proceedings.

Q. What is the purpose of your testimony in this proceeding?

A. To present the findings of Staff's engineering evaluation of the operations for BMSC. The findings are contained in the Engineering Report that I have prepared for this proceeding. The report is included as Exhibit DMH-1 in this pre-filed testimony.

ENGINEERING REPORT

Q. Would you briefly describe what was involved in preparing your Engineering Report for this rate proceeding?

A. After reviewing the application, I physically inspected the BMSC wastewater system to evaluate their operation and to determine if any plant items were not used and useful. I contacted ADEQ to determine if the wastewater system was in compliance with the monitoring and reporting requirements for the Aquifer Protection Permit. After I obtained information from BMSC regarding wastewater plant improvements, permits, chemical testing expenses, inflow/effluent discharge flow data, and tariff modifications, I analyzed that information. Based on all the above, I prepared the attached Engineering Report for BMSC.

Q. Please describe the information contained in your Engineering Report.

A. The Report is divided into three general sections: 1) *Executive Summary*, 2) *Engineering Report Discussion*, and 3) *Engineering Report Exhibits. The Engineering Report Discussion* can be further divided into eleven subsections: A) Location of the Company, B) Description of The Wastewater System; C) Wastewater Flow; D) Growth; E) ADEQ Compliance; F) ACC compliance; G) Depreciation Rates; H) Chemical Testing Expense; I) Financing Application (Docket NO. SW-02361A-15-0207), and J) Other Issues. These subsections provide information about the wastewater system serving BMSC.

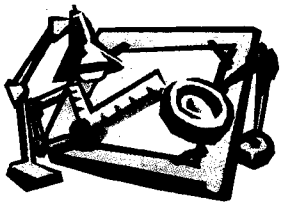
CONCLUSIONS AND RECOMMENDATIONS

Q. What are Staff's conclusions and recommendations regarding the operations of the wastewater systems?

A. Staff's conclusions and recommendations for the wastewater system are contained in the Executive Summary of the respective engineering report.

Q. Does this conclude your direct testimony?

A. Yes, it does.



Engineering Report for Liberty Utilities
Black Mountain Sewer
Docket No. SW-02361A-15-0207 (Rates)
Docket No. SW-02361A-15-0206 (Financing)
By Dorothy Hains, P. E. December 2, 2015

EXECUTIVE SUMMARY

CONCLUSIONS

1. Liberty Utilities Black Mountain Sewer Corp. ("BMSC", "Black Mountain" or "Company") is in full compliance with the Arizona Department of Environmental Quality ("ADEQ") for operation and maintenance, operator certification and discharge permit limit. (See §E of the report for discussion and details.)

2. Staff concludes that the Company has adequate capacity to serve its existing customers and projected growth through 2019. (See § C of the report for discussion and details.)

3. The Company currently is in compliance with the Arizona Corporation Commission ("ACC"); a check with the Utilities Division Compliance Section showed no delinquent compliance items. (See § F of the report for discussion and details.)

4. On June 22, 2015, BMSC filed a financing application requesting Commission authorization to borrow the amount necessary to achieve a capital structure consisting of 70 percent equity 30 percent debt. The total debt will not exceed $3,400,000. This application does not include any capital improvement; therefore, no engineering evaluation was needed.

RECOMMENDATIONS

1. It is recommended that Black Mountain use the depreciation rates as delineated in Figure 6. (See § G and Figure 6 of the report for discussion and details.)

2. Staff recommends 400 gallons per day (GPD) per Equivalent Residential Unit (ERU) and $1,700 per ERU be used in lieu of the numbers proposed by the Company. Further, Staff recommends approval of the Offsite Hookup Fee Tariff attached and labeled Figure 7. (See § H of the report for discussion and details.)

3. Staff recommends an annual testing expense of $11,452 be used for purposes of this proceeding. (See § H of the report for discussion and details.)

TABLE OF CONTENTS

PAGE

ENGINEERING REPORT FOR BLACK MOUNTAIN SEWER CORPORATION (RATES & FINANCING) 1

CONCLUSIONS 1
RECOMMENDATIONS 1

A. LOCATION OF COMPANY 1

B. DESCRIPTION OF THE WASTEWATER SYSTEM 1

SYSTEM DESCRIPTION 4
SYSTEM ANALYSIS 5

C. WASTEWATER FLOW 8

D. GROWTH 5

E. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY ("ADEQ") COMPLIANCE 6

F. ARIZONA CORPORATION COMMISSION COMPLIANCE 10

G. DEPRECIATION RATES 6

H. CHEMICAL TESTING EXPENSE 6

I. FINANCING APPLICATION (DOCKET NO. SW-02361A-15-0207) 12

J. OTHER ISSUES 12

OFF-SITE FACILITIES HOOKUP FEE ("OFHF") TARIFF 12
DISALLOWED PLANT ITEMS 13
RECLASSIFIED PLANT ITEMS 13

FIGURES 20

FIGURE 1 BLACK MOUNTAIN SEWER CERTIFICATED AREA 21
FIGURE 2 LOCATION OF BLACK MOUNTAIN SEWER COMPANY 22
FIGURE 3A BLACK MOUNTAIN SEWER SYSTEMATIC FLOW DIAGRAM 23
FIGURE 3B BLACK MOUNTAIN SEWER FLOW DIAGRAM 24
FIGURE 3C BLACK MOUNTAIN SEWER FLOW DIAGRAM 25
FIGURE 3D BLACK MOUNTAIN SEWER FLOW DIAGRAM 26
FIGURE 3E BLACK MOUNTAIN SEWER FLOW DIAGRAM 27
FIGURE 3F BLACK MOUNTAIN SEWER FLOW DIAGRAM 28
FIGURE 4 WASTEWATER FLOW IN BLACK MOUNTAIN SEWER SERVICE AREA 29
FIGURE 5 PROJECTED AND ACURATE GROWTH IN BLACK MOUNTAIN SEWER SERVICE AREA ... 30
FIGURE 6 DEPRECIATION RATES FOR BLACK MOUNTAIN SEWER CO, ... 31
FIGURE 7 OFFSITE HOOKUP FEE TARIFF FOR BLACK MOUNTAIN SEWER CO, ... 32

A. LOCATION OF COMPANY

Liberty Utilities ("Liberty") Black Mountain Sewer Corp. ("BMSC", "Black Mountain" or "Company") provides service to an area of land approximately five square miles in size. The area is located within the vicinity of the Town of Cave Creek ("Cave Creek"), the Town of Carefree ("Carefree") and the City of Scottsdale ("Scottsdale") in Maricopa County. Figure 1 describes the CC&N area of Black Mountain, and Figure 2 describes the location of the Company within Maricopa County.

B. DESCRIPTION OF THE WASTEWATER SYSTEM

BMSC owns and operates Boulders Carefree ("Boulders") wastewater treatment plant ("WWTP"), and a sewer collection system that delivers raw sewage to both the Boulders WWTP and to a Scottsdale Measuring Station ("SMS") which connects to Scottsdale WWTP for treatment (further discussion follows). The BMSC sewer facilities were visited on September 18, 2015, by Dorothy Hains, Utilities Engineer, accompanied by Liberty's representative, Clint Arndt (Director for Operations in Arizona/Texas), Michelle Thompson (Boulders' On-site Operator) and Gilbert Grajeda (East Arizona Operation Manager for Liberty).

I. System Description

Boulders WWTP and North/West Collection System

The North/West Collection System consists of seven lift stations ("LS")[1] and the Boulders WWTP. Boulders WWTP is a 120,000 gallon per day ("GPD") extended aeration WWTP, which contains bar screen, four parallel trains of extended aeration basins, sand filter, disinfection device and effluent lift station. Final treated effluent is disposed in a golf course pond for irrigation use. When wastewater flow exceeds 120,000 GPD, excess wastewater capacity is diverted through a bypass line and discharges into a collection line that connects to the SMS. The wet sludge is disposed of in the SMS via a bypass line.

Scottsdale WWTP[2] and South Collection System[3]

The South System consists of seven lift stations[4] and the SMS.

On January 21, 1996, Scottsdale and BMSC signed a service agreement ("Scottsdale Agreement") that expires on December 31, 2016. In this agreement Scottsdale agrees to treat and to dispose of the wastewater from BMSC's CC&N area. In 1996 BMSC purchased 600,000 GPD of treatment capacity in the Scottsdale WWTP system. At present, Scottsdale agrees to treat a total maximum of 1,000,000 GPD for BMSC.

---

[1] The names of eight LS are Indian Rock LS, Sage Brush LS, Indian Basket LS, Peaceful Place LS, Commercial LS, Ridgeview LS and Trade Center LS.
[2] The City of Scottsdale owns and operates the Scottsdale WWTP.
[3] BMSC owns and operates the South Collection System.
[4] The names of the seven lift stations are New River (aka Canyon Crossings) LS, Sentinel Rock LS, Carefree Village LS, Sunset Trail LS, Stagecoach Pass LS, and El Pedregal LS.

II. System Analysis

BMS has experienced inflow/infiltration ("I/I") problems. BMSC made some repairs and replacements for its collection system during the test year in order to resolve the I/I issue, however, there is no data to demonstrate how much I/I reduction improvement has resulted.

In Decision No. 71865, the Commission ordered BMSC to close its Boulder Wastewater Treatment plant. BMSC does not know at this time when it will be able to close the Boulders plant and comply with Decision No. 71865.

A total of 2,098 Black Mountain customers were served by the Company during the 2014 test year. Staff concludes that Black Mountain has adequate capacity to serve existing customers and reasonable growth. Figures 3A through 3F are system schematic drawings of the BMSC system with detailed plant facility descriptions as follows:

Table 1 Wastewater Treatment Plant and Scottsdale Connection

Wastewater Treatment Plant

Name or Description	Plant Items	Location
Boulders WWTP	160,000 GPD extended aeration (designed). Operating at 120,000 GPD (permitted)	1038 Boulder Dr., Carefree
Scottsdale Measuring Station (Scottsdale WWTP)	Metered – could purchase up to 1.0 Million GPD	Scottsdale Road & Dove Valley Road

Active Lift Stations ("LS") Connects to Boulder Treatment Plant

Location	No. Pumps	Pump (in HP)	Capacity (in gallons per minute per pump)	Wet Well Capacity (in gallons)
Quartz Valley LS (@Quartz Valley & 1308 Boulder Dr., Carefree)	2	3	100	705
Indian Rock LS (@1508 Indian Rock 10950 W Union Hills)	2	6.5	100	470
Sage Brush LS (@2122 Sage Brush Ln, Carefree)	2	3	45	470
Indian Basket LS (@1256 E Indian Basket)	2	1	11	150
Peaceful Place LS (@36209 Peaceful Place, Carefree)	2	3	15	470
Commercial LS (@Spanish Village Tom Darlington Dr/E Cave Creek Rd,	2	23	200	1,130

Carefree)				
Ridgeview LS (@7044 Ridgeview, Carefree)	2	7.5	100	470
Trade Center LS (@7155 E Cave Creek Rd, Cave Creek)	2	10	174	200

Active LS Connects to Scottsdale Measuring Station

Location	No. Pumps	Pump (in HP)	Capacity (in gallons per minute per pump)	Wet Well Capacity (in gallons)
New River (Canyon Crossings) LS (@35798 N Cave Creek Rd, Cave Creek)	2	2	85	300
Sentinel Rock LS (@35425 N Cave Creek Rd, Cave Creek)	2	15	370	1,500
Carefree Village LS (@34802 N Cave Creek Rd, Cave Creek)	2	3	85	1,760
Sunset Trail LS (@35029 Sunset Trail, Cave Creek)	2	30	290	2,600
Carefree HWY LS (@6332 E Carefree HWY, Cave Creek)	2	20	350	1,525
Stagecoach Pass LS (@6800 E Stagecoach Pass, Carefree)	2	5	50	470
El Pedregal LS (@34217 N Scottsdale Rd, Scottsdale)	2	10	185	2,000

Other Plant

Name	No. Pumps	Flow metering device
Scottsdale Rd Metering Station (33295 N Scottsdale Rd., Scottsdale, AZ)	no	yes

Force Mains

Size (in inches)	Material	Length (in feet)
1¼	polyvinyl chloride ("PVC")	443
1½	PVC	5,384
2	PVC	5,155
3	Asbestos Cement Pipe ("ACP"),	915
4	PVC	2,390
4	ACP	9,366
4	Ductile Iron pipe ("DIP")	3,000
6	ACP	7,460
6	PVC	10,353
6	DIP	1,135
8	PVC	10,426

Collection Mains

Size (in inches)	Material	Length (in feet)
4	Acrylonitrile Butandiene Styrene ("ABS")	1,263
6	Vitrified Clay pipe ("VCP")	12,760
6	PVC	3,046
6	DIP	85
8	VCP	71,673
8	PVC	90,912
8	DIP	1,320
10	VCP	7,675
10	PVC	3,455
12	ABS	9,346
12	PVC	565
15	VCP	1,900
15	PVC	6,735
15	DIP	165
18	Cast Iron Pipe ("CIP")	130
21	CIP	74

Manholes ("MH") & Cleanouts

Type	Quantity
Standard MH	1,028
Drop MH	14
Cleanouts	30

Service Laterals

Diameter	Material	Length (Feet)
4-inch		2,002
6-inch	:	131
	Total	2,133

C. WASTEWATER FLOW

Table 2 below summarizes the BMSC wastewater flow data during the test year of 2014 (from January to December), and Figure 4 is a graphic illustration of the same flow data. The daily average flow for the peak month was 430,871 GPD in March and the peak day flow occurred in January when 397,000 GPD flow was recorded.

Table 2 Wastewater Flow (in BMSC service area)

Month	Number of Customers (C)	Treated by Boulder WWTP (1,000 gallons/month)	Treated by City of Scottsdale WWTP (1,000 gallons/month)	Daily Average Flow (GPD)	Peak Day flow (GPD)*	Daily Average Flow (GPD/C)	Peak Day flow (GPD/C)
Jan 14	2,056	3,440	8,429	382,871	397,000	186	193
Feb 14	2,069	3,163	7,825	392,429	329,000	190	159
Mar 14	2,061	3,720	9,637	430,871	369,000	209	179
Apr 14	2,072	3,600	8,913	417,100	344,000	200	166
May 14	2,083	3,462	7,312	347,548	289,000	167	139
Jun 14	2,077	3,451	6,562	333,767	253,000	160	122
Jul 14	2,084	3,663	6,393	324,548	242,000	156	116
Aug 14	2,080	3,234	7,097	333,258	331,000	160	159
Sep 14	2,085	3,586	7,590	372,538	349,000	178	167
Oct 14	2,094	3,691	8,199	383,548	300,000	183	143
Nov 14	2,094	3,282	8,139	380,700	330,000	181	158
Dec 14	2,098	3,270	8,079	366,097	326,000	180	155
Avg				372,106		179	

Note: 1. Staff recognizes that daily average flow was higher than peak day flow in several months. However, data is provided by the Company, Staff just makes an observation note here.

Staff concludes that the Company has adequate capacity to serve its existing customers and projected growth through 2019.

D. GROWTH

Based on the service connection data in the Company's annual reports, the number of customers served by BMSC increased from 1,295 to 2,176 between December 1999 and December 2011, afterward negative growth occurred until 2014 with an average growth rate of 5 customers per year from 1999 through 2014. The following table summarizes actual and projected growth in the Company's existing certificated service area.

Table 4 Actual and Projected Growth in BMSC Service Area

Year	Nos. of Customers	
1999	1,295	Reported
2000	1,429	Reported
2001	1,672	Reported
2002	1,730	Reported
2003	1,794	Reported
2004	1,923	Reported
2005	2,043	Reported
2006	2,020	Reported
2007	2,111	Reported
2008	2,130	Reported
2009	2,138	Reported
2010	2,173	Reported
2011	2,176	Reported

2012	2,176	Reported
2013	2,061	Reported
2014	2,098	Reported
2015	2,135	Estimated
2016	2,140	Estimated
2017	2,145	Estimated
2018	2,150	Estimated
2019	2,154	Estimated

E. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY ("ADEQ") COMPLIANCE

Black Mountain Sewer Systems

ADEQ regulates the BMSC system under Aquifer Protection Permit ("APP") No. 11175. Per the July 2, 2015, Compliance Status Report issued by ADEQ, the Boulders WWTP is in full compliance with agency requirements for operation and maintenance, operator certification and discharge permit limits.

Scottsdale WWTP

ADEQ regulates the Scottsdale WWTP under APP Permit No. 102633. Per the July 2, 2015, Compliance Status Report issued by ADEQ, the Scottsdale WWTP was not in violation at a level at which ADEQ will take an action or issue a Notice of Opportunity to Correct or Notice of Violation and/or is in compliance with the Order/Judgment for the review period of January 1, 2014 to January 31, 2015.

F. ARIZONA CORPORATION COMMISSION ("ACC") COMPLIANCE

A check with the Utilities Division Compliance Section dated October 27, 2015, showed no delinquent compliance items.

G. DEPRECIATION RATES

Staff recommends that the depreciation rates presented in Figure 6 by individual National Association of Regulatory Utility Commissioners category be used on a going forward basis.

H. ANNUAL TESTING EXPENSES

Tables 5 and 6 below are Staff's calculation of annual test expenses excluding wet sludge testing cost[5] on the basis of the Company's APP monitoring requirements and the monitoring requirements in the Scottsdale Agreement. Staff's total estimated testing expense is $11,452.

[5] All wet sludge had been disposed of in the SMS; no sludge testing has been required.

Table 5 Wastewater Testing Cost for Boulders WWTP (per Permit Monitoring Requirement in APP No. P11175)

	Cost per test	No. of tests per year	Annual Cost
Fecal Coliform – daily	$15	365	$5,475
Enteric Virus[1] – monthly	$460	12	$0[2]
Turbidity	$0	365	$0[3]
BOD_5 - 7 samples	$32	36	$1,152
TSS - 7 samples	$12	36	$432
Chemical Oxygen Demand	$38.4	14	$537.6
Total Nitrogen (effluent) - monthly	$48	12	$576
Fluoride (effluent) - quarterly	$15	4	$60
Cyanide (effluent) – quarterly	$44	4	$176
Antimony (effluent) – quarterly	$14	4	$56
Arsenic (effluent) – quarterly	$14	4	$56
Turbidity - daily	$0[4]	365	$0
Barium (effluent) – quarterly	$9	4	$36
Beryllium (effluent) – quarterly	$9	4	$36
Cadmium (effluent) – quarterly	$14	4	$56
Chromium (effluent) – quarterly	$9	4	$36
Lead (effluent) – quarterly	$14	4	$56
Mercury (effluent) – quarterly	$32	4	$128
Nickel (effluent) – quarterly	$9	4	$36
Selenium (effluent) – quarterly	$14	4	$64
Thallium (effluent) – quarterly	$14	4	$64
VOCs	$160	2	$320
Chlorinated Herbicides/acids	$175	2	$175
SOC	$290	2	$290
ICP digestion	$16	1	$16
ICP-MS digestion	$0	1	$0
Total			**$10,298**

Note: 1. Enteric virus sampling only required when two consecutive turbidity limits are exceeded.
2. Historically, the Company has not been required to perform this test. Therefore, Staff adjusted this cost to zero.

3. The Company uses on-site auto turbidity meter to measure this parameter.
4. The Company uses on-site auto turbidity meter to measure this parameter.

Table 6 Wastewater Testing Cost per Service Agreement Monitoring Requirement (Scottsdale – Agreement No.960058)

	Cost per test	No. of tests per year	Annual Cost
BOD_5 - 7 samples/quarterly	$32	14	$448
TSS - 7 samples/quarterly	$12	14	$168
Chemical Oxygen Demand	$38.40	14	$537.6
Total			**$1,153.6**

Staff recommends water quality testing expenses be adjusted for purposes of this rate case to Staff's estimated annual expense amount of $11,452.

I. FINANCING APPLICATION (DOCKET NO. SW-02361A-15-0207)

On June 22, 2015, BMSC filed a financing application requesting Commission authorization to borrow the amount necessary to achieve a capital structure consisting of 70 percent equity 30 percent debt. The total debt will not exceed $3,400,000. This application does not include any capital improvement; therefore, no engineering evaluation was needed.

J. OTHER ISSUES

1. Offsite Hookup Fee Tariff ("HUF Tariff")

BMSC seeks to standardize all of the tariffs for Liberty Utilities' operating subsidiaries in Arizona. In order to do so, BMSC requests that the Commissions approve its proposed changing existing HUF modification. BMSC requests to use water usage of 320 GPD as one Equivalent Residential Unit ("ERU") and cost of one ERU is $1,800 for each new residential service lateral.

Based on the definition, ERU is determined by actual daily average water usage from one single family residence with a 5/8" x 3/4" meter. It is important to recognize that the quantity of water associated with an ERU is system specific, ERU level for one system may not apply to another system due to different demographics or water use patterns in each system. The "level of service" for ERU may change yearly as water use patterns change for various reasons such as demographics, conservation activities, etc. Therefore, Staff disagrees with Liberty Utilities' approach to standardize its tariffs in Arizona. However, Staff does not object to use ERU calculation method to determine the HUF Tariff charge fees.

Via the Response to Staff Data Request ("DR") No. DH2.1, BMSC assumes 3.2 persons averaging 100 gallons of water use per day and derives 320 GPD/ERU. In the Response to DR No. DH4.3, BMSC states:

Scottsdale (GPD/dwelling house)	Carefree (GPD/dwelling house)	Cave Creek (GPD/dwelling house)
250	446	472

There are three water providers, Scottsdale, Carefree and Cave Creek in BMSC's service area. However, BMSC did not use water usage data from these water providers, Staff disagrees with the Company's standardized approach and believes that the ERU should be typical of the entire area served. The service area map shows that Carefree covers approximately 73 percent of BMSC's service area, and Scottsdale covers approximately 27 percent of BMSC's service area[6]. Based on its analysis Staff recommends 400 [7]GPD/ERU in lieu of the numbers proposed by the Company.

BMSC provided no supporting documentation that indicates how it calculated the $1,800. Because 6-inch service laterals are usually used for most commercial customers and the Commissions approved $3,901 for 6-inch service laterals for BMSC, Staff used the known data to calculate the cost of 1 ERU. According to the 2014 EQUIVALENT RESIDENTIAL UNIT FACTORS by Florida State Broward County's Water and Wastewater Engineering Division, fast food service has 2.375 ERU/1,000 square feet. Therefore, Staff recommends $1,700[8] as the estimated cost for one ERU.

Staff recommends BMSC's HUF's Tariff is in Figure 7.

2. Disallowed Plant Items

BMSC agrees with Staff that the plant items listed in the Table below were not for BMSC. Therefore, they should be disallowed for purposes of this application.

Acct #	date	description	Amount ($)	Vendor	Invoice #
361	10-26-11	A 5'-Di Manhole for Gold Canyon Sewer ("Gold Canyon")	2,577.68	JPCI Services ("JPCI")	PO0010017
354	7-29-11	88-HP pump service for Peralta Lift Station in Gold Canyon	360	James, Cooke & Hobson ("JCH")	340693

3. Reclassified Plant Items

BMSC agrees with Staff that the plant items listed in the Table blow should be reclassified to the recommended accounts shown in right column of the Table.

Date	Acct #	Vendor	Amount ($)	Item object	Invoice #	Reclassified to Acct #
7-20-11	380 (Treatment	Siemens	7,142.78	Replace 2,500 lbs active carbon in vessel in	900272509	O&M expense

[6] Cave Creek covers less than 1% of BMSC's service area.
[7] 250 GPD x 27% + 446 GPD x 73 % = 393 GPD, round up to 400 GPD.
[8] $3,901/2.375 ERU = $1,643/ERU, round up to $1,700/ERU.

	Plant & Disposal)			Boulder WWTP		
9-22-10[3]	354	Cummins Rocky Mountain	1,202.09	Cooling system (Coolant leakage in engine) for emergency generator	600-20615	O&M expense
8-17-10	354 (structure and improvement	Consulting Land Surveyors	1,500	Survey for APN #211-28-099	6123	353 (land and land right)
4-16-14	396	Freeman Transportation	454.50	Fuel surcharge & rip rocks	n/a	354
9-29-14	380	GAD	1,238.13	Insulation on exterior wall and door at scrubber building at Boulder WWTP	2014616	354
9-26-14	380	GAD	1,020.00	Insulation a 4'x4'x8' tool shed at Boulder WWTP	2014613	354
12-8-14	371	GAD	1,755.00	Insulation, sliding door at scrubber building at Boulder WWTP	2014639	354
2-25-12	354	Rocky Mtn	824.15	Portable emergency generator	600-26995	355
2-23-12	354	Rocky Mtn	743.25	Portable emergency generator	600-26917	355
2-23-12	354	Rocky Mtn	744.28	Portable emergency generator (40 KW) at Commercial LS	600-26990	355
2-23-12	354	Rocky Mtn	743.25	Portable emergency generator (25 KW) at new Trade Center LS	600-26963	355
2-23-12	354	Rocky Mtn	784.37	100 gallons diesel	600-27329	355
2-10-14	371	J & H	1,601.96	Remove and replace check valve in dry well at Sunset LS	7-14	360
2-18-14	371	J & H	567.84	Remove air relief valve, inspect rolling seal at Carefree Village LS	9-14	361 (Sewer Collection)

5-7-10	354	Grainger	672.48	3/10 HP pump & blower	9254364434	371
7-1-10	354	Grainger	623.66	3/10 HP pump & blower	9289909559	371
9-1-10	354	Grainger	184.20	blower	9332518217	371
5-20-10	354	JCH	135.04	gasket	338192	371
5-6-10	354	JPCI	5,152.56	Pump replacement in Peaceful Place LS	10-046-AWS	371
5-6-10	354	JPCI	11,300.07	Valves replacement & spool work in Carefree HWY LS	10-048-AWS	371
7-15-10[2]	354	GHD	19,747.19	Replacing wires, control panel, transformers in Sunset LS	865787	371
10-15-10	354	GHD	15,700	Install control panel & connection box	8606826	371
12-10-10	354	GHD	2,850	Install 2 relays/alternators at Peaceful Place LS	8607492	371
11-19-10	354	GHD	742	Install 2 timer/alternators at El Patragal LS	8607258	371
1-20-11	354	GHD	1,505	Install disconnect for control power for pump at El Patragal LS	8607890	371
3-1-11	354	J & H	566.28	Pump removal at New River	n/a	371
3-6-11	354	J & H	566.28	Install new pump at New River	n/a	371
2-27-11	354	J & H	849.42	Install temp pump, auto dialer and relay	n/a	371
4-17-11	354	J & H	1,105.34	Install new alternator at New River	n/a	371
5-1-13	354	J & H	1,274.13	Install new pump at Commercial LS and Indian Rock LS	n/a	371
6-4-11	354	J & H	424.71	Install transfer pump at Boulder WWTP	n/a	371
6-18-11	354	J & H	833.09	Install new panel at New River LS	n/a	371
6-18-11	354	J & H	775.37	Starter replacement at New River LS	n/a	371
7-16-11	354	J & H	871.20	Install amp meter in panel at Carefree HWY LS	n/a	371
6-24-12	354	JCH	3,448	Omnisite crystal ball w	342345	371

				120 vac & NEMA 4x enclosure, currental clamps to monitor pump amperage w crystal ball		
9-28-12	354	JCH	5,726.72	Control panel , alarm , motor, circuit breaker at El Pedregal LS	342896	371
4-15-12	354	J & H	1,492.22	New pump at 3 LSs, check pumps at Peaceful Place LSs	n/a	371
7-28-12	354	J & H	978.41	Starters at Ridge View LS	n/a	371
9-16-12	354	J & H	9,485	Install new pump control panel	n/a	371
1-18-13	354	GAD Constructing ("GAD")	1,080	Outdoor GFCI connections, indoor junction box, rewire	2013386	371
5-9-13	354	J & H	1,111.87	New contact for pump at Ridge View LS	25-13	371
4-14-13	354	J & H	1,135.68	Motor, impellor, amp rings at Ridge View LS & Indian Rock LS	20-13	371
7-14-13	354	J & H	780.78	New pump at Sentinal Rock LS	32-13	371
9-16-13	354	J & H	2,175.91	pump motor removal at Ridge View LS	41-13	371
10-18-13	354	J & H	390	alarm at Carefree HWY LS	43-13	371
10-25-13	354	J & H	13,015.23	2" Conduit for control panel at Carefree HWY LS	44-13	371
10-26-14	396	J & H	851.76	Replace contact chamber pump	14-63	371
11-9-14	354	Bastel Cox Industries	2,060.00	Install new pump panel in LS	221	371
8-4-14	354	JCH	4,627.67	Control duplex, paint control panel, motor starter, alarm systems, circuit in Sagebrush LS	347486	371
11-30-14[4]	354	Bastel Cox Industries	2,262.21	Install j box, panel, din rail, terminal blocks, wires in LS	228	371
2-14-12[1]	371	Sound Solutions Acoustical	2,100	Noise control, field inspection	12002-01	380

		Consulting				
2-8-13	371	J & H	1,518.97	Replace probes on sand filter at Boulder WWTP	10-13	380
10-12-10	354	GHD	4,200	Installed & programed alarm systems	8606791	396
11-19-10	354	GHD	742	Install Bluetooth Device	8607259	396
12-10-10	354	GHD	975	Install antenna at Indian Rock LS	8607493	396
2-10-11	354	JCH	3,246	Omnisite crystal ball for monitoring pump amps at Commercial LS	339666	396
2-2-11	354	JCH	2,886	Omnisite crystal ball at Indian Rock LS	339661	396
7-29-11	354	JCH	3,344	Omnisite crystal ball at Carefree LS	340693	396
3-1-11	354	OmniSite	727.30	3 years wireless service (2/9/11-12/31/14)	29463	396
1-6-11	354	J & H	1,796.85	Auto dialer (Omnisite crystal ball, electric hookup, relay)	n/a	396
7-31-11	354	J & H	952.88	Install crystal ball & program at Carefree HWY LS	n/a	396
8-5-11	354	J & H	566.28	Replace micro tell for omini site monitoring at Carefree LS	n/a	396
4-25-12	354	JCH	3,448	Omnisite crystal ball at Peaceful Place LS	339661	396
9-27-12	354	JCH	3,448	Omnisite crystal ball, current clamps at El Pedregal LS	342889	396
2-6-12	354	J & H	707.85	Auto dialer phone replacement in 5 LSs	n/a	396
2-7-12	354	J & H	1,796.85	New Omni Site system and 2 new amp meters at Sunset LSs	n/a	396
2-11-12	354	J & H	1,350.36	New auto dialer, new Microtell at Peaceful Place LSs	n/a	396
4-29-12	354	J & H	3,607.56	New Omni Site & program at Sentinal Rock LS & Peaceful Place LSs	n/a	396
5-25-12	354	J & H	639.52	New program phone,	n/a	396

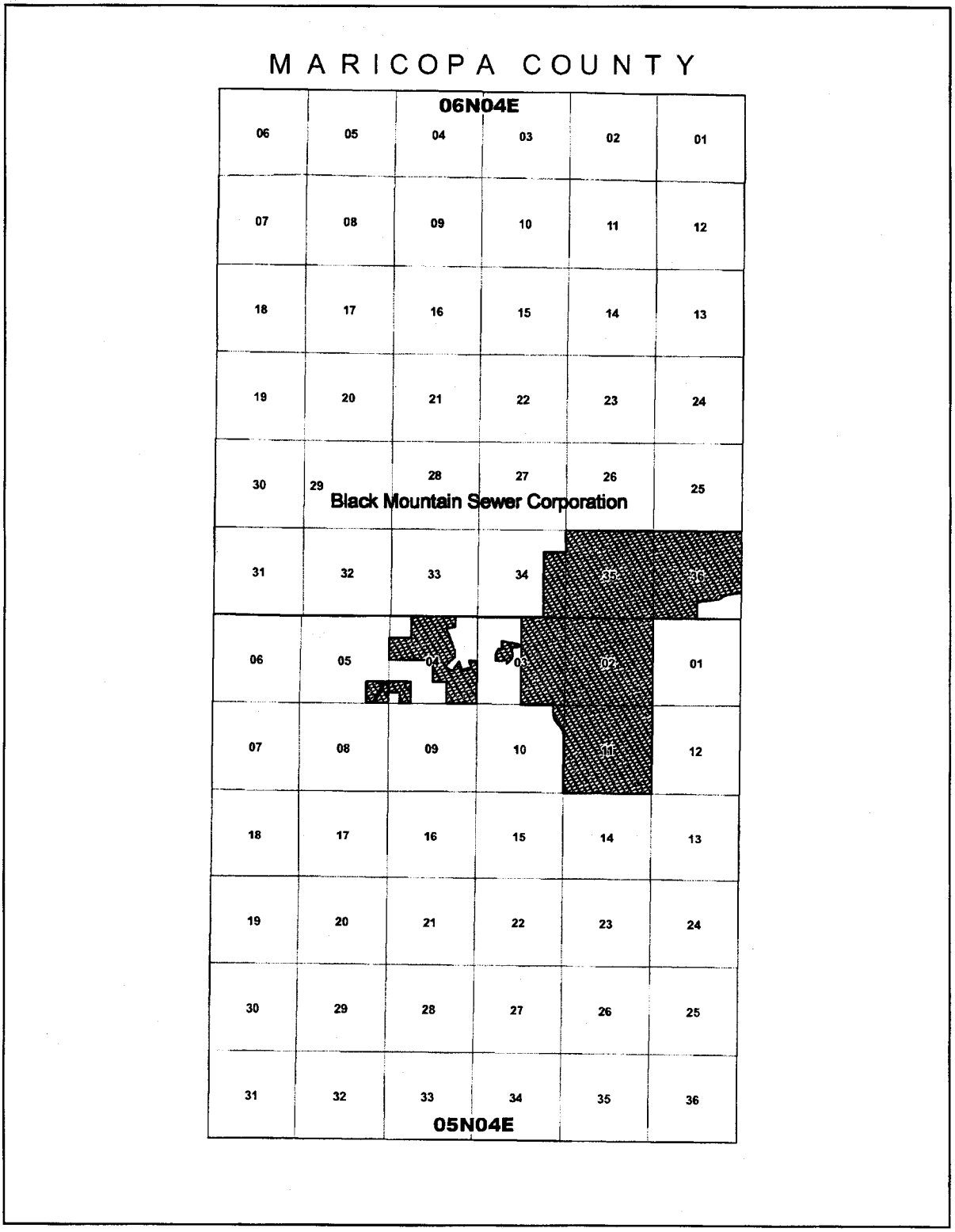
				rewire Omni, starter, check pumps at El Pedregal LS, Sentinal Rock LS & Peaceful Place LSs		
7-21-12	354	J & H	710.58	Wire, program alarm, control New program phone, rewire Omni, starter, Sentinal Rock LS	n/a	396
4-8-13	354	JCH	950	Omnisite CDMA radio	344362	396
8-8-13	354	JCH	950	Omnisite CDMA radio, upgrade firmware	345159	396
9-16-14	371	JCH	3,249.00	Upgrade radio, replace batteries in LS	347887	396
10-31-14	371	J & H	718.54	Replace alternating relay/selector switch at Sentinal Rock LS	14-66	396
4-27-14	371	J & H	1,201.20	Install new alternating relays in LS	14-21	396
9-16-14	354	JCH	4,061.25	Omnisite crystal ball, NEMA 4x enclosure in Sagebrush LS	347604	396
12-23-14	354	JCH	756	Omnisite service in Sagebrush LS	n/a	396
11-07-14	354	JCH	1,306.62	Metal data plate	348067	396
8-13-10	354	JPCI	4,405.44	Replace alarms, float controls, auto dialers in Carefree LS, Peaceful Place LS, Stage Coach LS, Sagebrush LS, Carefree Village LS, Sentinel Rock LS, Petragel LS, New River LS	10-089-AWS	396 (communications)
1-19-11[1]	389	Grainger	1,300	N/A	8607787	371
11-26-10[2]	389	GHD	1,850	preparing bottom of dry well	8607467	354

Notes: 1. Based on the Response to Staff DR #3.5.
2. Based on the Response to Staff DR #3.6.
3. Based on the Response to Staff DR #3.10.
4. Based on the Response to Staff DR #3.31.

FIGURES

Figure 1

BLACK MOUNTAIN SEWER CERTIFICATED AREA



LOCATION OF BLACK MOUNTAIN SEWER COMPANY

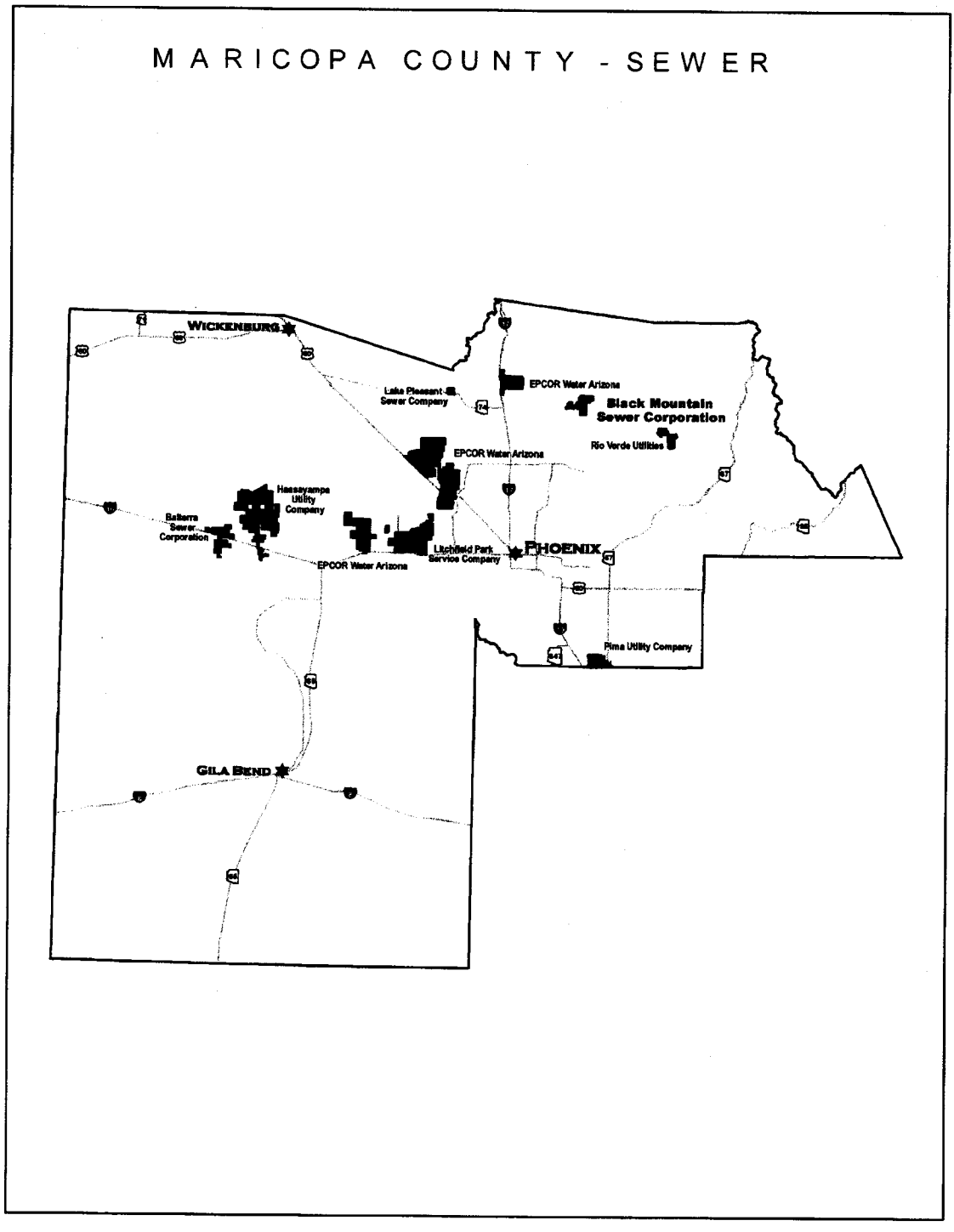


FIGURE 3A

BLACK MOUNTAIN SEWER SYSTEMATIC FLOW DIAGRAM

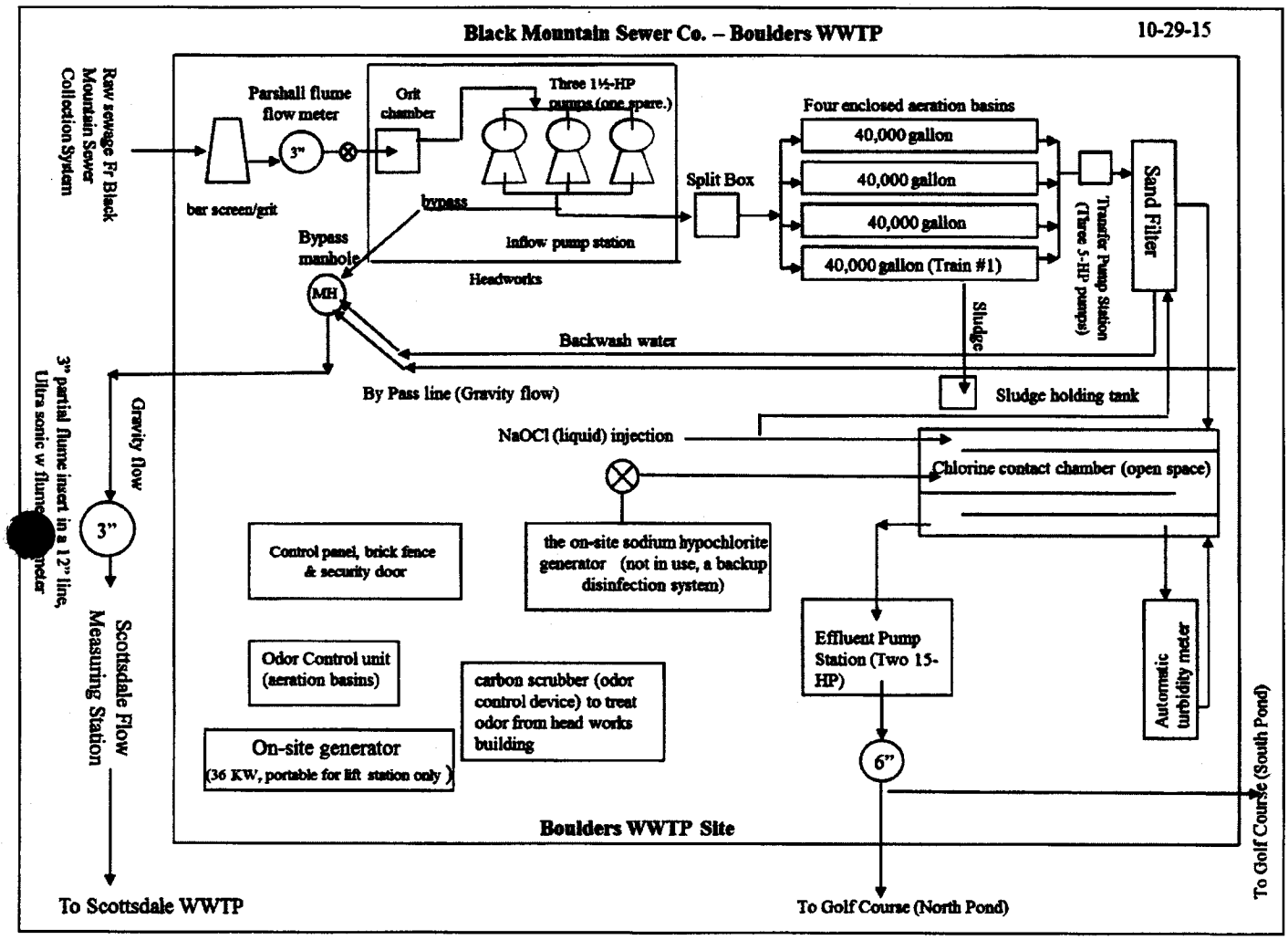
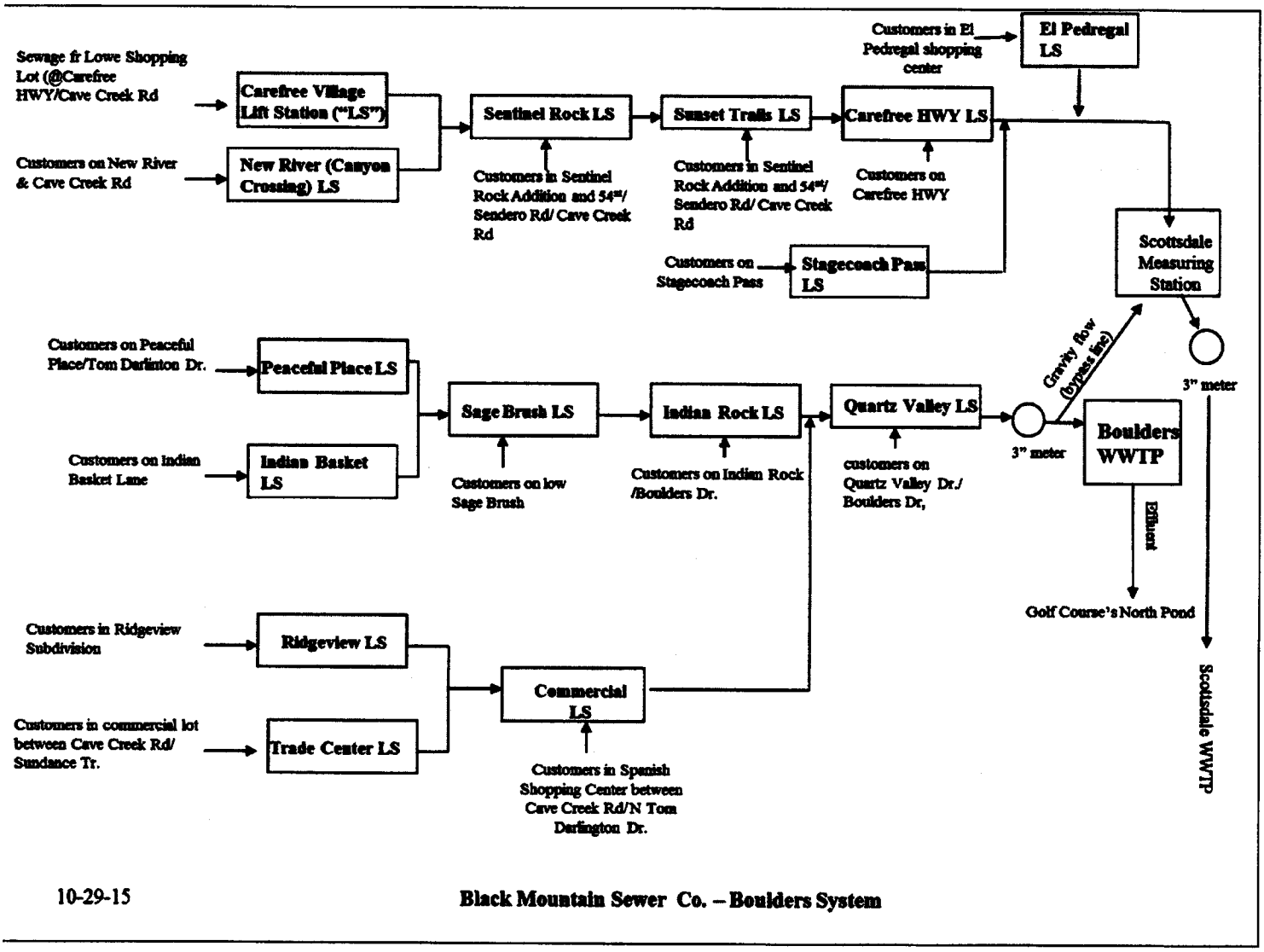


FIGURE 3B

BLACK MOUNTAIN SEWER SYSTEMATIC FLOW DIAGRAM



10-29-15

Black Mountain Sewer Co. – Boulders System

FIGURE 3C

BLACK MOUNTAIN SEWER SYSTEMATIC FLOW DIAGRAM

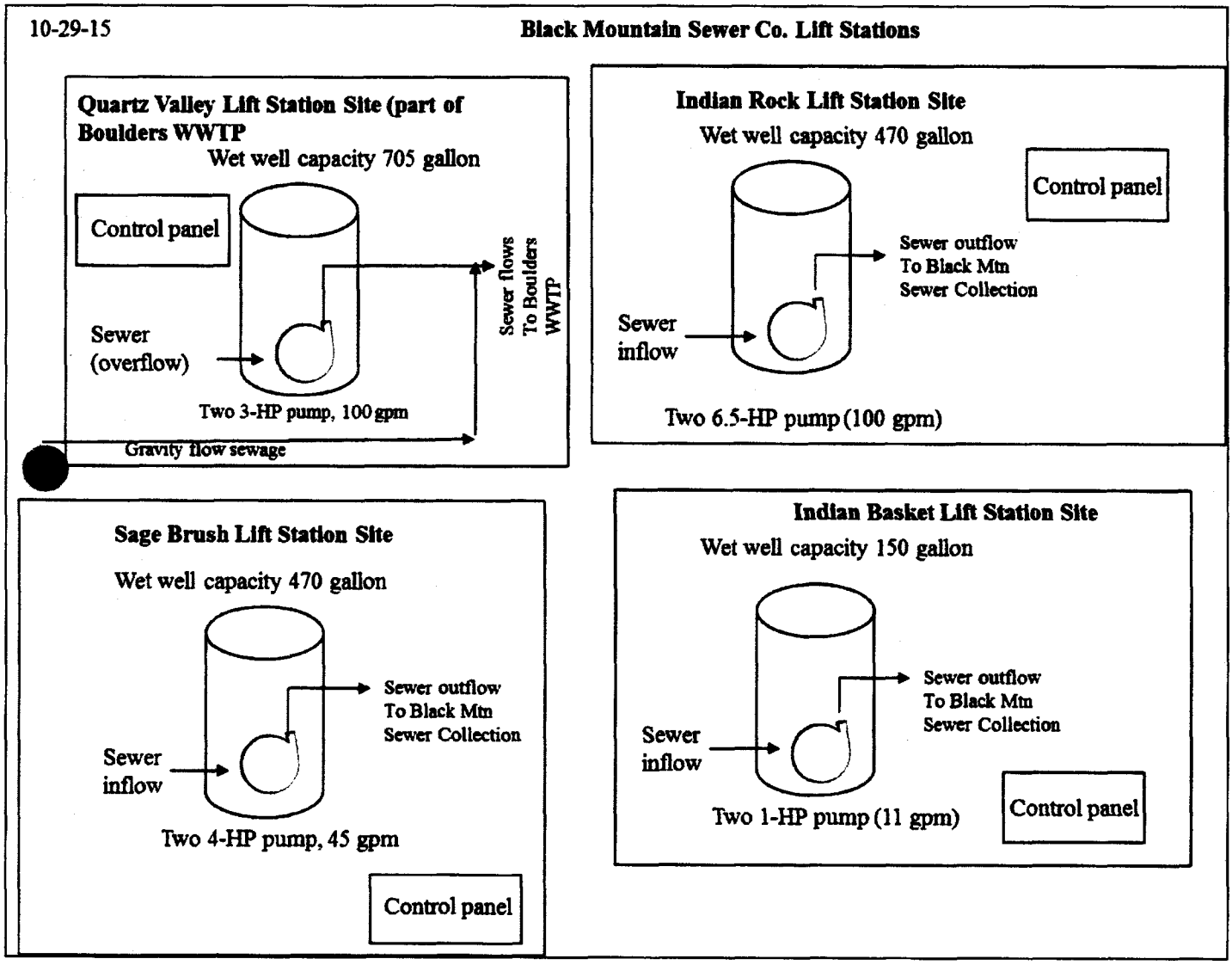


FIGURE 3 D

BLACK MOUNTAIN SEWER SYSTEMATIC FLOW DIAGRAM

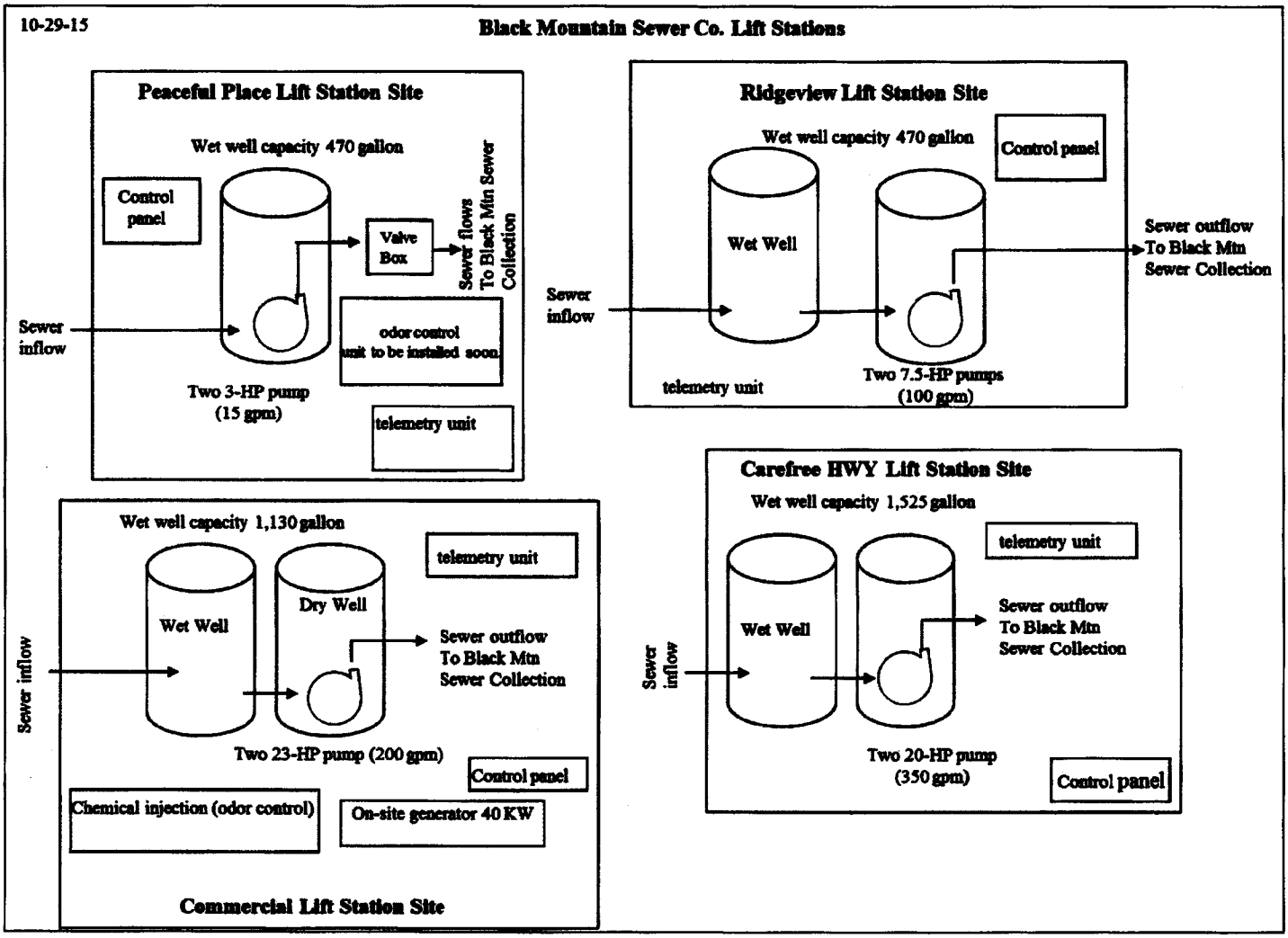


FIGURE 3 E

BLACK MOUNTAIN SEWER SYSTEMATIC FLOW DIAGRAM

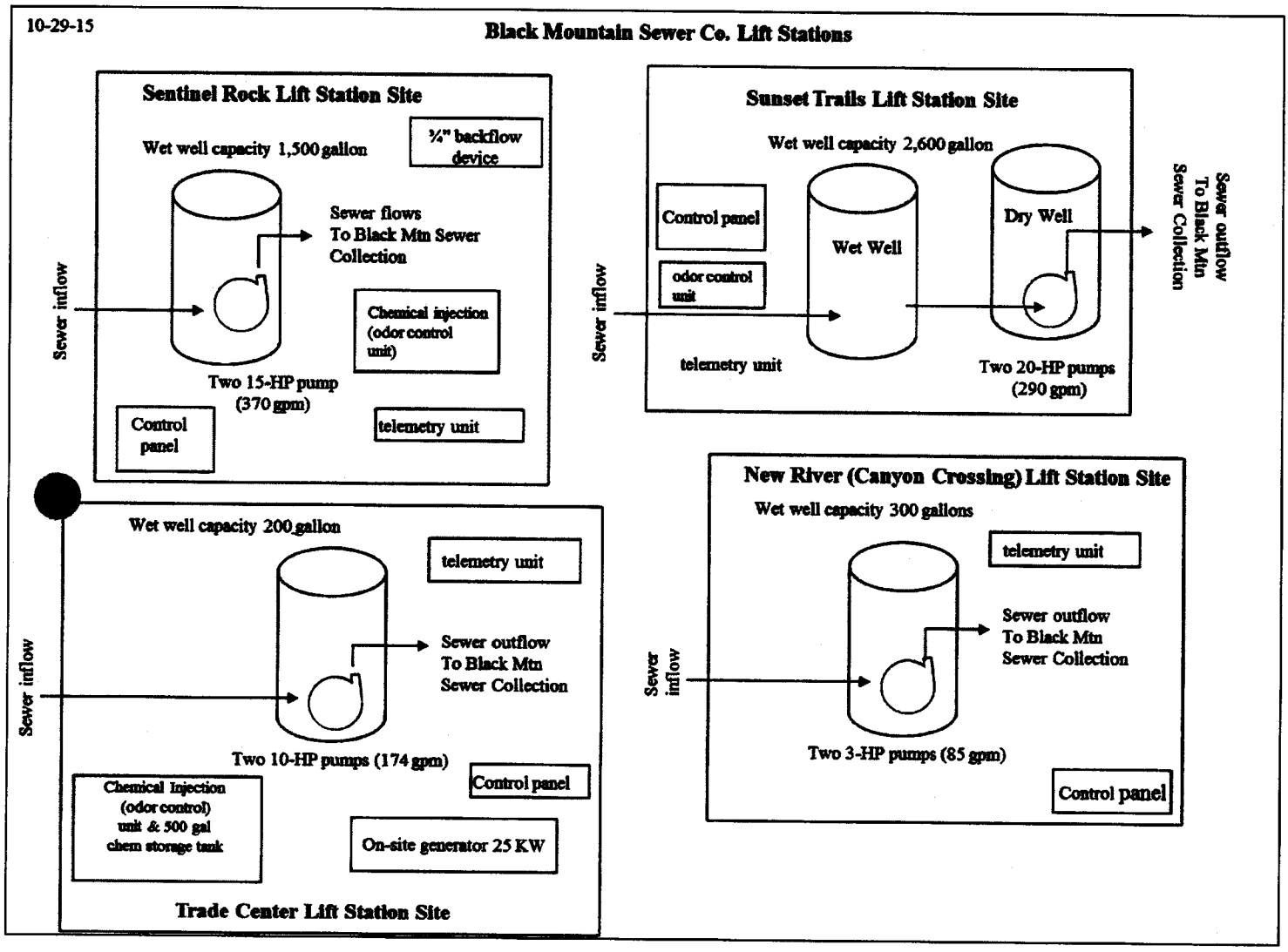


FIGURE 3 F

BLACK MOUNTAIN SEWER SYSTEMATIC FLOW DIAGRAM

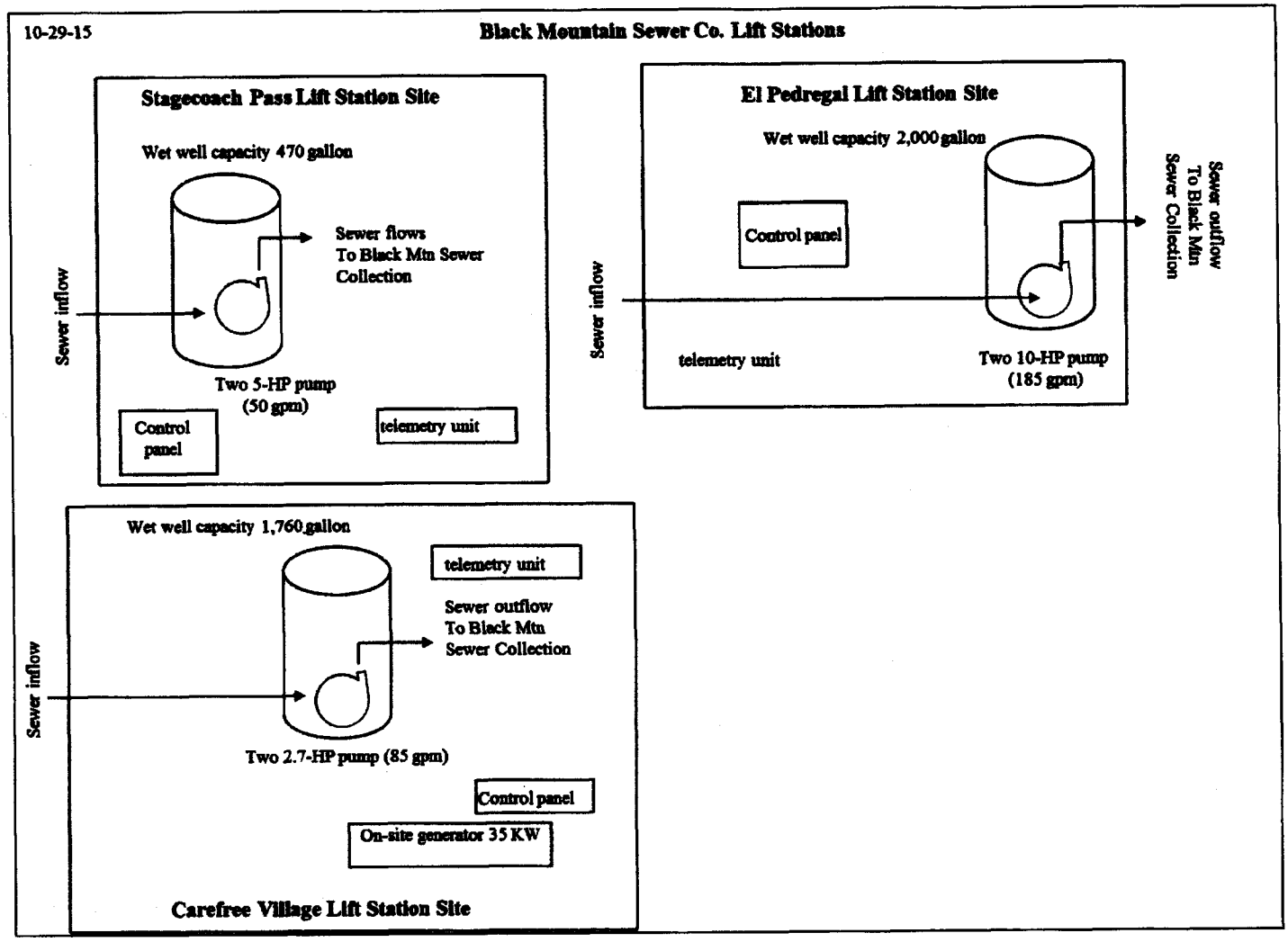


FIGURE 4

WASTEWATER FLOW IN BLACK MOUNTAIN SEWER SERVICE AREA

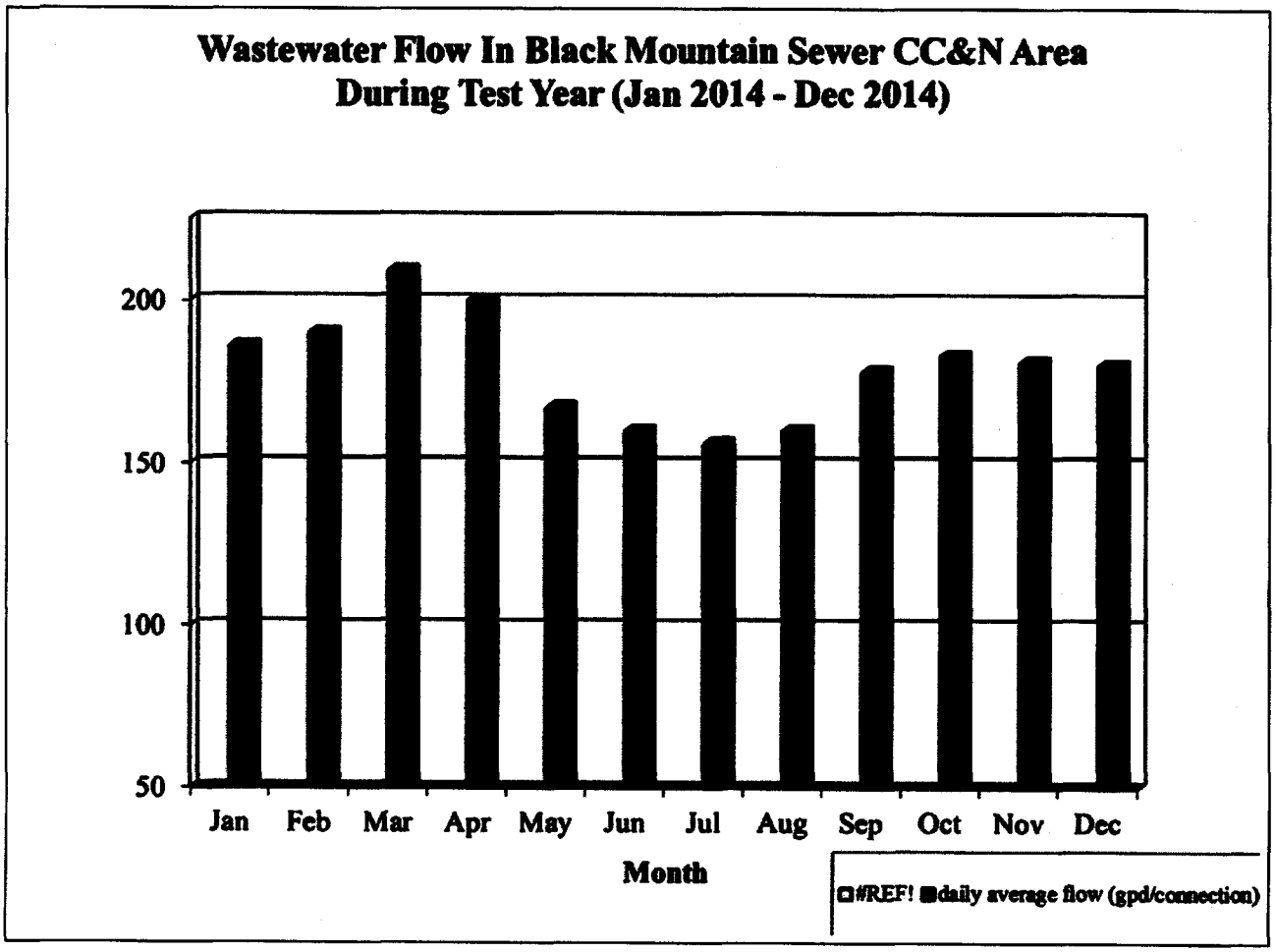


FIGURE 5

PROJECTED AND ACURATE GROWTH IN BLACK MOUNTAIN SEWER SERVICE AREA

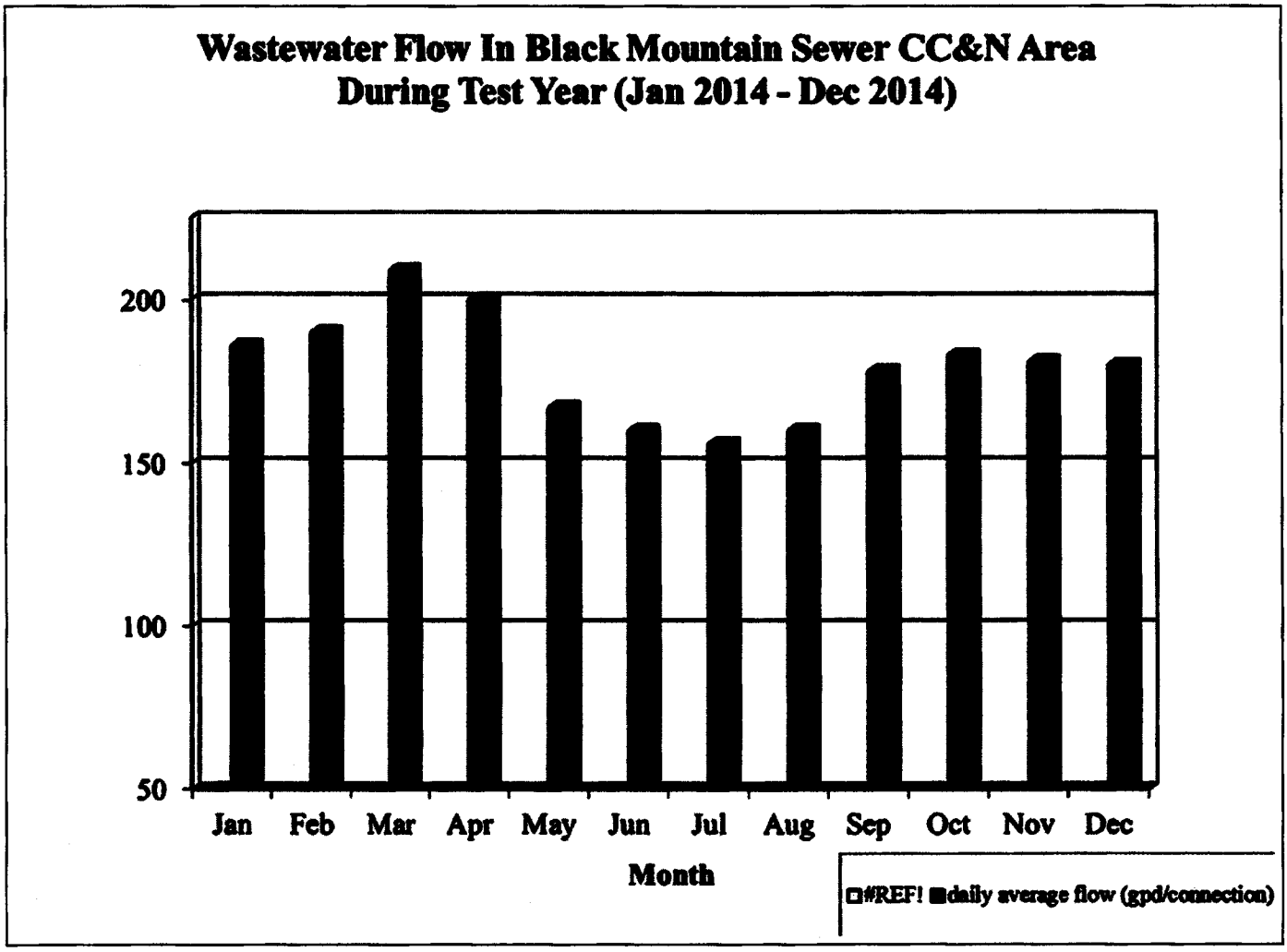


Figure 6 Depreciation Rates for Black Mountain Sewer Co.

NARUC Acct #	Depreciable Plant	Decision #71865	Co. Proposed Rate (%)	**Staff Recommended Rate (%)**
351	**Organization**	0	0	0
352	**Franchises**	0	0	0
353	**Land & Land Rights**	0	0	0
354	**Structure & Improvements**	3.33	3.33	3.33
355	**Power Generation Equipment**	5.00	5.00	5.00
360	**Collection Sewers – Force**	2.00	2.00	2.00
361	**Collection Sewers – Gravity**	2.00	2.00	2.00
362	**Special Collection Structures**	2.00	2.00	2.00
363	**Service to Connections**	2.00	2.00	2.00
364	**Flow Measuring Devices**	10.00	10.00	10.00
365	**Flow Measuring Installations**	10.00	10.00	10.00
366	**Reuse Services**	2.00	2.00	2.00
367	**Reuse Meters & Meter Installations**	8.33	8.33	8.33
370	**Receiving Wells**	3.33	3.33	3.33
371	**Pump Equipment**	12.50	12.50	12.50
374	**Reuse Distribution Reservoirs**	2.50	2.50	2.50
375	**Reuse Transmission and Distribution System**	2.00	2.50	2.00
380	**Treatment & Disposal Equipment**	5.00	5.00	5.00
381	**Plant Sewers**	5.00	5.00	5.00
382	**Outfall Sewer Lines**	3.33	3.33	3.33
389	**Other Plant & Misc Equipments**	6.67	6.67	6.67
390	**Office Furniture & Equipments**	6.67	6.67	6.67
390.1	**Computer & Software**	20.00	20.00	20.00
391	**Transportation Equipments**	20.00	20.00	20.00
392	**Store Equipment**	4.00	4.00	4.00
393	**Tools, Shop, Garage Equipments**	5.00	5.00	5.00
394	**Lab Equipments**	10.00	10.00	10.00
395	**Power Operated Equipment**	5.00	5.00	5.00
396	**Communication Equipment**	10.00	10.00	10.00
397	**Miscellaneous Equipment**	10.00	10.00	10.00
398	**Other plants (related to the City of Scottsdale connection only)**	10.00	10.00	10.00

Figure 7 Offsite Hookup Fee Tariff (Revised)

TARIFF SCHEDULE

UTILITY: Liberty Utilities (Black Mountain Sewer) Corp DECISION NO._____
DOCKET NO.:SW-02361A-15-0207 EFFECTIVE DATE: _____

OFF-SITE FACILITIES HOOK-UP FEE

I. Purpose and Availability

The purpose of the off-site facilities hook-up fees payable to **Liberty Utilities (Black Mountain Sewer) Corp.** ("Company") pursuant to this tariff is to equitably apportion the costs of constructing additional off-site facilities to provide wastewater treatment and disposal facilities among all new service laterals. These charges are applicable to all new service laterals undertaken via Collection Main Extension Agreements, or requests for service not requiring a Collection Main Extension Agreement, entered into after the effective date of this tariff. The charges are one-time charges and are payable as a condition to Company's establishment of service, as more particularly provided below.

II. Definitions

Unless the context otherwise requires, the definitions set forth in R-14-2-601 of the Arizona Corporation Commission's ("Commission") rules and regulations governing sewer utilities shall apply interpreting this tariff schedule.

"Applicant" means any party entering into an agreement with Company for the installation of wastewater facilities to serve new service laterals, and may include Developers and/or Builders of new residential subdivisions, and industrial or commercial properties.

"Company" means Liberty Utilities (Black Mountain Sewer) Corp.

"Collection Main Extension Agreement" means an agreement whereby an Applicant, Developer and/or Builder agrees to advance the costs of the installation of wastewater facilities necessary to serve new service laterals, or install wastewater facilities to serve new service laterals and transfer ownership of such wastewater facilities to Company, which agreement does not require the approval of the Commission pursuant to A.A.C. R-14-2-606, and shall have the same meaning as "Wastewater Facilities Agreement."

"Off-Site Facilities" means the wastewater treatment plant, sludge disposal facilities, effluent disposal facilities and related appurtenances necessary for proper operation, including engineering and design costs. Off-site facilities may also include lift stations, force mains, transportation mains and related appurtenances necessary for proper operation if these facilities are not for the exclusive use of the Applicant and benefit the entire wastewater system.

"Service Lateral" means and includes all service laterals for single-family residential, commercial, industrial or other uses.

III. Wastewater Hook-up Fee

For each new residential service lateral, Company shall collect a Hook-Up Fee of $1,700 based on the Equivalent Residential Unit ("ERU") of 400 gallons per day. Non-residential applicants shall pay based on the total ERUs of their development calculated by dividing the

estimated total daily wastewater capacity usage needed for service using standard engineering standards and criteria by the ERU factor of 400 gallons per day.

IV. Terms and Conditions

(A) Assessment of One Time Off-Site Facilities Hook-up Fee: The off-site facilities hook-up fee may be assessed only once per parcel, service lateral, or lot within a subdivision (similar to a service lateral installation charge). If a development or subdivision is upsized or expanded by Applicant, Builder and/or Developer after assessment of Hook-Up Fees by Company, Company may charge additional Hook-Up Fees for such upsizing or expansion by Applicant based on the calculation set forth above.

(B) Use of Off-Site Facilities Hook-up Fee: Off-site facilities hook-up fees may only be used to pay for capital items of off-site facilities, or for repayment of loans obtained to fund the cost of installation of off-site facilities. Off-site hook-up fees shall not be used to cover repairs, maintenance, the cost of closing wastewater treatment plant, including lift stations, or other operational purposes. Company shall record amounts collected under the tariff as CIAC; however, such amounts shall not be deducted from rate base until such amounts have been expended for plant.

(C) Time of Payment:

(1) For those requiring a Collection Main Extension Agreement: In the event that the Applicant is required to enter into a Collection Main Extension Agreement, whereby Applicant agrees to advance the costs of on-site improvements or construct such improvements, payment of the fees required hereunder shall be made by the Applicant when payment is made for the on-site improvements or 30 days after the Collection Main Extension Agreement is executed, whichever is later.

(2) For those connecting to an existing main: In the event that the Applicant, Developer or Builder for service is not required to enter into a Collection Main Extension Agreement, the hook-up fee charges hereunder shall be due and payable at the time wastewater service is requested for the property.

(D) Off-Site Facilities Construction by Developer: Company and Applicant, Developer, or Builder may agree to construction of off-site facilities necessary to serve a particular development by Applicant, Developer or Builder, which facilities are then conveyed to Company. In that event, Company shall credit the total cost of such off-site facilities as an offset to off-site hook-up fees due under this Tariff. If the total cost of the off-site facilities constructed by Applicant, Developer or Builder and conveyed to Company is less than the applicable off-site hook-up fees under this Tariff, Applicant, Developer or Builder shall pay the remaining amount of off-site hook-up fees owed hereunder. If the total cost of the off-site facilities contributed by Applicant, Developer or Builder and conveyed to Company is more than the applicable off-site hook-up fees under this Tariff,

Developer or Builder shall be refunded the difference upon acceptance of the off-site facilities by the Company.

(E) Failure to Pay Charges; Delinquent Payments: Company will not be obligated to make an advance commitment to provide or actually provide wastewater service to any Applicant, Developer or Builder has not paid in full all charges hereunder. Under no circumstances will Company connect service or otherwise allow service to be established if the entire amount of any payment has not been paid.

(F) Large Subdivision and/or Development Projects: In the event that the Applicant is engaged in the development of a residential subdivision and/or development containing more than 150 lots, the Company may, in its discretion, agree to payment of off-site hook-up fees in installments. Such installments may be based on the residential subdivision and/or development's phasing, and should attempt to equitably apportion the payment of charges hereunder based on the Applicant's construction schedule and wastewater service requirements. In the alternative, the Applicant shall post an irrevocable letter of credit in favor of the Company in a commercially reasonable form, which may be drawn by the Company consistent with the actual or planned construction and hook up schedule for the subdivision and/or development.

(G) Off-Site Hook-Up Fees Non-refundable: The amounts collected by Company as hook-up fees pursuant to the off-site facilities hook-up fee tariff shall be non-refundable contributions in aid of construction ("CIAC").

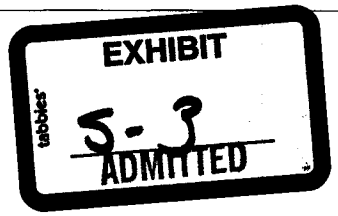
(H) Use of Off-Site Hook-Up Fees Received: All funds collected by Company as off-site facilities hook-up fees shall be deposited into a separate account and bear interest and shall be used solely for the purposes of paying for the costs of installation of off-site facilities, including repayment of loans obtained for the installation of off-site facilities.

(I) Off-Site Facilities Hook-Up Fee in Addition to On-site Facilities: The off-site facilities hook-up fee shall be in addition to any costs associated with the construction of on-site facilities under a Collection Main Extension Agreement.

(J) Disposition of Excess Funds: After all necessary and desirable off-site facilities are constructed utilizing funds collected pursuant to the off-site facilities hook-up fees, or if the off-site facilities hook-up fee has been terminated by order of the Arizona Corporation Commission, any funds remaining in the bank account shall be refunded. The manner of the refund shall be determined by the Commission at the time a refund becomes necessary.

(K) Status Reporting Requirements to the Commission: Company shall submit a calendar year Off-Site Facilities Hook-Up Fee status report each January 31st to Docket Control for the prior twelve (12) month period, beginning January 31, 2017, until the hook-up fee tariff is no longer in effect. This status report shall contain a list of all customers that have paid the hook-up fee tariff, the amount each has paid, the physical location/address of the property in respect of which such fee was paid, the amount of money spent from the account, the amount of interest earned on the funds

within the tariff account, and a list of all facilities that have been installed using the tariff funds during the 12 month period.



BEFORE THE ARIZONA CORPORATION COMMISSION

SUSAN BITTER SMITH
Chairman
BOB STUMP
Commissioner
BOB BURNS
Commissioner
DOUG LITTLE
Commissioner
TOM FORESE
Commissioner

IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR AUTHORITY TO ISSUE EVIDENCE OF INDEBTEDNESS IN AN AMOUNT NOT TO EXCEED $3,400,000.	DOCKET NO. SW-02361A-15-0206
IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY AND FOR INCREASES IN ITS WASTEWATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.	DOCKET NO. SW-02361A-15-0207

TESTIMONY OF

JAMES R. ARMSTRONG

CHIEF ACCOUNTANT

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

DECEMBER 16, 2015

TABLE OF CONTENTS

Page

INTRODUCTION 1

SCOPE OF TESTIMONY 1

LIBERTY BLACK MOUNTAIN SEWER – PLANT CLOSURE SURCHARGE PROPOSAL. 2

STAFF RECOMMENDATIONS REGARDING THE COMPANY'S STEP ONE SURCHARGE PROPOSAL 5

STAFF RECOMMENDATIONS REGARDING THE STRUCTURE OF THE STEP TWO SURCHARGE RECOVERIES 9

STAFF COMMENTS REGARDING THE FUTURE STEP THREE SURCHARGE 10

EXHIBITS

SCHEDULE JRA-1

SCHEDULE JRA-2

EXECUTIVE SUMMARY
LIBERTY UTILITIES (BLACK MOUNTAIN SEWER), CORP.
DOCKET NOS. SW-02361A-15-0206 SW-02361A-15-0207

This testimony supports Staff's recommendations regarding the East Boulders Wastewater Treatment Plant (the "Plant") Closure Step Surcharges advocated by Liberty Black Mountain Sewer Corp. ("Liberty" or the "Company"), and the other parties to a Proposed Settlement Agreement (the "Settlement Agreement") filed with the Commission on November 17, 2015 in Liberty Docket Nos. SW-02361A-15-0206 and SW-02361A-15-0207.

The Settlement Agreement addresses three separate plant closure cost-related surcharges, as well as several other plant closure considerations that will require future Commission action. Staff's specific recommendations relate to the Step One and Step Two plant closure cost recoveries.

Although Staff was not a party to the Settlement Agreement, Staff is supportive of the Settlement Agreement. However, Staff is recommending an alternative approach to recovering the plant closure costs related to the Company's proposed Step One surcharge. Staff's approach would provide for full recovery of the underlying costs, plus appropriate carrying costs, but recoveries would occur over a four year period. In addition, Staff recommends the frame work for recovery of the Step Two surcharge.

INTRODUCTION

Q. Please state your name, occupation, and business address.

A. My name is James R. Armstrong. I am employed as the Chief Accountant of the Finance & Regulatory Analysis Section of the Utilities Division ("Staff"), of the Arizona Corporation Commission (the "ACC"). My business address is 1200 West Washington Street, Phoenix, Arizona 85007.

Q. Mr. Armstrong, please provide an overview of your education and work experience.

A. I hold a Master Degree with a concentration in Accounting and a Bachelor Degree with a concentration in Finance, both received from Kansas State University. I have earned the distinction of being a Certified Public Accountant ("CPA"), though I do not practice as a CPA. I have worked in the area of utility regulation for over 30 years. Approximately 12 years of this time was spent as the Rate Manager and/or as the Manager of Financial Planning for Oklahoma Natural Gas Company. I've also served in various capacities for the Kansas Corporation Commission, the Oklahoma Corporation Commission, and the Residential Utility Consumer Office in Arizona. I began my current employment with the ACC in September of 2012.

SCOPE OF TESTIMONY

Q. What is the purpose of Staff's testimony?

A. This testimony supports Staff's recommendations regarding the East Boulders Wastewater Treatment Plant (the "Plant") Closure Step One Surcharge (the "Step One Surcharge") advocated by Liberty Black Mountain Sewer Corp. ("Liberty" or the "Company"), and the other parties[1] to a Proposed Settlement Agreement (the "Settlement Agreement") filed with the Commission on November 17, 2015 in Liberty Docket Nos. 15-0206 and 15-0207.

[1] The other parties to this Proposed Settlement agreement are the Town of Carefree, CP Boulders, LLC dba Boulders Resort, Wind P1 Mortgage Borrower, LLC, and the Boulders Homeowners Association.

Staff's testimony also addresses the general framework for the Company's Plant Closure Step Two Surcharge, which will be implemented at a future date based on the general framework outlined in this testimony. Staff will address the Company's proposed Step 3 Surcharge once the Company provides detailed support for this in its rebuttal testimony.

Q. Does Staff support the Settlement Agreement?

A. Yes, Staff supports the Proposed Settlement Agreement and believes it is in the public interest. Staff does have recommendations regarding the structure of the Step One surcharge and also regarding the level of plant closure costs to be targeted for recovery under the Step One Surcharge.

LIBERTY BLACK MOUNTAIN SEWER – PLANT CLOSURE SURCHARGE PROPOSAL

Q. Please provide an overview of the Liberty Black Mountain Sewer plant closure surcharge proposal as discussed in the Company's rate application.

A. Very briefly, the Company broke down the aggregate plant closure cost estimates into three elements, and proposed separate cost recovery surcharges as the means of facilitating the plant closure cost recoveries from ratepayers. The first element of plant closure costs totaled $1,120,403 and represented costs already incurred. The second and third cost elements total $1,200,000 and $2,699,700 respectively and these elements represent cost expected to be incurred in the future.

Q. Since filing the rate application, has the Company entered into a Settlement Agreement that has changed the Plant Closure Cost recovery requested by the Company in its direct testimony?

A. Yes. On November 16, 2015, Liberty filed a Proposed Settlement Agreement (the "Settlement Agreement") with the Commission that reflects the intent of Liberty Black Mountain, the Town of Carefree, CP Boulders, LLC, Wind P1 Mortgage Brower LLC, and the Boulders Homeowners Association to settle and compromise: (1) litigation arising out of the Commission's Phase 2 Decision, (2) potential claims related to the Phase 1 and Phase 2 decisions, and (3) relief sought by Liberty Black Mountain in the instant case related to the closure of the East Boulders Wastewater Treatment Plant and recovery of closure costs.

Within, or otherwise accompanying this Settlement Agreement, the Company revised its original Step One closure cost element to reflect and capture $12,677 in additional costs, and to eliminate $308,000 in litigation costs that the signatories to the Settlement Agreement now propose **not** to include in the Step One surcharge billing rate calculation.

Q. Have you had an opportunity to review the Settlement Agreement?

A. Yes.

Q. Has the Company filed testimony in support of the Settlement Agreement?

A. No. However, it is Staff's understanding the Company will file testimony addressing the Settlement Agreement as part of its rebuttal testimony.

Q. Will Staff revisit its proposal once it has had an opportunity to review the Company's rebuttal testimony?

A. Yes.

Q. Is there a section in the Settlement Agreement that addresses recovery of the plant closure costs?

A. Yes. Section 2.2 addresses recovery of plant closure costs.

Q. Can you briefly discuss sections 2.2.1 etc.?

A. Yes.

2.2 **Recovery of Plant Closure Costs.**

2.2.1 The Signatories acknowledge that the Commission approved a Plant closure cost surcharge mechanism in the Phase 1 Decision, however, the Signatories further acknowledge and agree that certain modifications to the prior relief approved by the Commission are necessary and reasonable as some circumstances have changed beyond Liberty Black Mountain's control since the Phase 1 and Phase 2 Decisions were issued.

2.2.2 The Signatories agree that the Plant closure costs should be recovered using a staged surcharge approach as follows:

2.2.2.1 **Stage 1 Surcharge.** A Stage 1 Surcharge estimated at $6.31 per customer per month for recovery of Liberty Black Mountain's $825.080.51 of closure costs already incurred pursuant to Section 2.1.4 herein, subject to the provisions above and as requested in the 2015 Rate Case. The first stage of the Plant recovery cost surcharge will go into effect with the new rates approved in the pending Rate Case.

2.2.2.2 **Stage 2 Surcharge.** A Stage 2 Surcharge of $7.96 per month, brings the total estimated Stage 1 and Stage 2 surcharge cost to $14.27 per customer per month. The Stage 2 Surcharge will go into effect within 90 days of Liberty Black Mountain's payment of up to $1,200,000 to the City of Scottsdale.

2.2.2.3 **Stage 3 Surcharge.** A Stage 3 Surcharge estimated to be an additional $16.70 per month, bringing the total of the estimated Stage 1-3 surcharges to $30.97. That Stage 3 Surcharge is based on estimated costs of closure of the Plant, exclusive of the replacement capacity cost, equal to $2,699,700 as discussed above in Section 2.1.6. The Stage 3 surcharge would go into effect within 90 days of the Plant being closed on November 30, 2018.

Q. Is Staff recommending approval of the surcharges as proposed in the Settlement Agreement?

A. No. Staff is recommending an alternative approach to recovering the plant closure costs related to the Company's proposed Step One Surcharge.

STAFF RECOMMENDATIONS REGARDING THE COMPANY'S STEP ONE SURCHARGE PROPOSAL

Q. Does Staff agree with the use of 3 steps for recovery of plant closure costs?

A. Yes, Staff agrees with the use of 3 steps, but Staff recommendations differ in some respects regarding the dollar amounts recovered, and the period of time for recovery for Step One.

Q. Please explain the differences between the Company's proposed costs and Staff's recommendations.

A. The Company's original request was to seek recovery of $1,122,403.31 in Stage One plant closure costs. The following is a breakdown of these costs:

Description	Amounts
Capitalized Overheads	$ 105,017.80
Capitalized AFUDC	$ 75,459.26

Capitalized Direct Labor	$ 2,496.08
Engineering	$ 267,446.02
Legal	$ 669,984.15
Total	$ 1,120,403.31

At the time of the filing of the Settlement Agreement, the targeted level of Step One recoveries was modified to reflect recognition of $12,266.20 in additional costs and also to recognize the removal of $308,000 in costs that, pursuant to the provisions of the Settlement Agreement, are not now going to be addressed through the Step One surcharge. The total currently being targeted for recovery through the Company's proposed Step One surcharge is $825,081.

Staff believes that the $308,000 reduction in Step One closure cost recoveries, discussed immediately above, reflects the earnestness of the efforts undertaken by the Signatories in reaching the terms of the Settlement Agreement. However, Staff believes that recognition of further reductions is reasonable. The further reductions recommended by Staff total $56,857 and would bring targeted plant closure costs for the Step One surcharge down to $768,224 from the $825,081 in such costs advocated for recovery by the Company.

Q. Please explain the basis for the $56,857 in cost reductions recommended by Staff.

A. As previously noted, the Company accrued both an Allowance for Funds Used During Construction ("AFUDC) element of $75,459, and Capitalized Overheads of $105,018, within its Step One plant closure cost figure of $1,133,081. Staff recommends reducing both of these cost elements by approximately 31.5 percent (each) to effectively "step down" the level of such costs so as to align with the $308,000 in other cost reductions agreed to by the Signatories to the Settlement Agreement. As a result, Staff's Step One closure cost recovery

recommendation is designed around a net closure cost to be recovered of $768,224, as previously noted.

Q. So are the recorded AFUDC and Construction Overheads generally a function of underlying construction expenditures?

A. Yes. So reductions in these underlying costs (as agreed to by the Settlement Agreement signatories) should also drive a reduction in the level of previously recorded AFUDC and Construction Overheads.

Q. Is it unusual to make adjustments to the level of AFUDC and Capitalized overheads previously recorded?

A. No it is not. In fact, in response to an informal Staff Data Request, the Company acknowledges that it had recorded such adjustments within its own calculations.

Q. Did Staff undertake a detailed assessment of the Company's initial AFUDC and Capitalized Overhead calculations?

A. No. However, for sake of issue processing efficiency, Staff is accepting the reasonableness of the Company's initial calculations, but for the specific modifications being made in my testimony.

Q. Please continue explaining the structure of Staff's Step One surcharge recommendation, using the assumption that the level of plant closure costs to be recovered is $768,224.

A. Staff recommends that the Liberty plant closure Step One surcharge be **calculated assuming a four year recovery period**. Using the ROR of 7.08 percent advocated by Staff in the underlying Liberty rate case, capturing the applicable tax gross-up factor, and assuming

that the surcharge will be billed to 2,052 ratepayers, Staff's recommended Step One surcharge would be **$9.74 per month for all four years of the Step One surcharge.**[2]

Staff's recommended approach to calculating the Step One surcharge would result in very favorable benefits for ratepayers and the public in general. The total carrying cost[3] associated with Staff's recommendation is reduced to $191,323 from the estimate of $1,198,569 derived from the proposal advocated by the Company.

Q. Why was a four year surcharge period selected?

A. Assuming that the East Boulders Wastewater Treatment Plant closes in November of 2018 as currently expected, a four year period would take us through that date and also through the processing of the rate case expected to be filed by Liberty at the time the Plant is closed.

Q. Setting aside for a moment the differences in the level of Step One Plant closure costs advocated by Staff and by the Company, can you provide a general overview of the difference in the approaches being taken by Staff and the Company to address recovery of the Step One costs?

A. Yes. The Company's approach to the Step One cost recoveries would be to use a surcharge with monthly billing rates that would change each year the surcharge was in use, and while the Company has suggested that at some point these recoveries would be built into base rates, the general recovery timeframe for the Step One cost recoveries would be 20-years. Staff's recommended approach would be to set a billing rate that would remain constant for the full four year recovery period[4], much like the way a home mortgage payment is structured. At the end of the four year billing period, the underlying costs would be fully recovered and billing related to the Step One closure costs would cease.

---

[2] To the extent that the Commission's final Decision in the pending rate case identifies a different ROR, customer count, or net Step One plant closure cost, the Step One surcharge calculation would need to be updated accordingly.
[3] Carrying cost means the aggregate of the ROR as well as the tax gross-up recoveries.
[4] Final cost-recovery true-up would need to be incorporated.

STAFF RECOMMENDATIONS REGARDING THE STRUCTURE OF THE STEP TWO SURCHARGE RECOVERIES

Q. Please summarize the Step Two surcharge proposal identified in the Settlement Agreement.

A. As previously noted, the Step Two surcharge is discussed briefly in paragraph 2.2.2.2 of the Settlement Agreement. Basically, the Company's Step Two surcharge proposal is structured around an embedded cost of $1,200,000, a 20-year recovery period, and the same general ROR, tax gross up factor, and customer count used for the Step One surcharge rate calculation. As previously noted the estimated monthly billing rate calculated by the Company would be $7.96 for the first six months, with the rate increasing to $9.01 per month for the next 12 month billing period, and then the rate would be lowered slightly every 12 months thereafter.

It is Staff's understanding that the Surcharges would only remain in effect until the next rate case decision, and the Company is required to file a rate application in 2019 with a 2018 test year and be addressed in that case appropriately.

Q. What is Staff's recommendation regarding the Step Two plant closure proposal requested by the Company?

A. Staff reserves the right to make further recommendations at the proper time regarding whether or not the Step Two cost recoveries should be included in rates or continue to be billed to customers in a transparent separate surcharge. However, Staff believes that Commission authorization in this docket for Liberty to utilize a second plant closure surcharge would be reasonable, while also assuring that the Step Two cost recoveries can start with only limited delay once the Plant has actually been closed. I will discuss the Staff

recommended accelerated review of the Step Two surcharge rate calculation later in my surrebuttal testimony.

Q. Is Staff recommending that all recoveries from all authorized plant closure surcharges be subject to true-up?

A. Yes.

STAFF COMMENTS REGARDING THE FUTURE STEP THREE SURCHARGE

Q. Does Staff wish to share any preliminary comments regarding the eventual recovery of the Step Three plant closure recoveries?

A. Yes. First, Staff acknowledges that Liberty will be incurring additional plant closure costs that will need to be passed through to customers in a reasonable manner and over a reasonable time period. Staff will evaluate closely the Company's ultimate cost recovery proposal and make specific recommendations at the appropriate time.

Staff will be making its recommendations regarding the Step Three Surcharge after the Company files detailed support for this third surcharge as a part of its rebuttal case.

Q. Are the other sections in the Settlement Agreement that Staff would like to address?

A. Yes, section 2.4.4 address sale of the plant site. Staff understands and recommends that sales proceeds from the plant site shall be split 50/50 between the ratepayers and the Company.

Q. Does this conclude your Liberty Black Mountain Plant Closure Cost direct testimony?

A. Yes, however Staff reserves the right to modify its recommendations based on future filings by the other parties.

Armstrong

Liberty Black Mountain Step One Surcharge

Schedules JRA-1 – Description of Contents

Page 1 of 3

Development of Staff recommended Step One plant closure cost recoveries amounting to $768,224.

Page 2 of 3

Development of Staff's Step One Surcharge Monthly Billing Rate of $9.74.

Column A – shows financial results using the Company's Step One surcharge calculation approach, but assuming that the Commission accept Staff's Step One cost recoveries of $768,224, and Staff's advocated ROR of 7.08%. The resulting initial surcharge billing rate would be $5.10 per month, whereas the Company's proposed initial monthly billing rate is $6.31, as shown in Staff Schedules JRA-2. Total recoveries under the Company's approach would occur over a 20-year period.

Line 15, column G, shows Staff advocated monthly billing rate of $9.74 using a four year recovery period. Columns C, D, E, F, and H show monthly billing rates over the time periods shown on line 8 of these same columns.

Page 3 of 3

Shows development of Staff's recommended 7.08% ROR.

Liberty - Black Mountain Sewer
Docket Nos 15-0206 and 15-0207

Boulders WWTP Closure Costs

Line No.	Description		Amount
1	Capitalized Overhead	$	105,018
2	Capitalized AFUDC	$	75,459
3	Capitalized Direct Labor	$	2,496
4	Engineering	$	267,446
5	Legal	$	669,984
6	**Total**	$	**1,120,403**
7	Other Additional	$	12,677
8	Other Reductions - Legal	$	(108,000)
9	AFUDC	$	(23,772)
10	Overheads	$	(33,084)
11	Direct Labor	$	-
12		$	968,224
13	Other Reductions - Legal	$	(200,000)
14	**Staff Plant Closure Costs**	$	768,224

Liberty - Black Mountain Sewer
Docket Nos 15-0206 and 15-0207

Staff Surcharge Step One
Schedule JRA-1
Page 2 of 3

Step One Surcharge Rate Calculation

Line		A	B	C	D	E	F	G	H
1	Plant Closure Costs to date	[redacted]							
	Less:								
2	Gain on Sale of Land (assume land not sold at time of implementation)	0							
3	Share %	50%							
4	Net Plant Closure Costs	0							
5		$768,224	w/tax						
6	Cost of Capital	7.08%	11.36%						
	Step 1 Compute the Annual Amortization			Alternative Surcharge Period Alternatives					
7	Net Plant Closure costs (from Step 1)	$768,224	years			years			years
8	(*) Amortization rate (assuming 20 years)	5%	20	$768,224	15	10	5	[redacted]	20
9	(=) Equals Annual Amortization	$38,411							
	Step 2 Compute the Annual Return on Investment								
10	Net Plant Closure costs (from Step 1)	$768,224							
11	Less: Prior Years Amortization	0							
12	Total Cost	$768,224							
13	(*) Cost of Capital	7.08%							Company
14	(=) Equals Annual Return on Investment	$54,383		Indicated - Monthly Surcharge	$ 4.34	$ 5.23	$ 8.21	[redacted]	$ 3.96
15									
	Step 3 Compute the Gross Revenue Conversion Factor (GRCF)								
16	GRFC (from most recent rate case)	1.6051							
17	Step 4 Find the Incremental Income Tax Factor			Total Paid	$ 1,603,284	$ 1,288,849	$ 1,010,529	$ 959,547	$ 1,948,741
18	Incremental Income Tax Factor (GRCF - 1)	0.6051		Original Investment	768,224	768,224	768,224	768,224	768,224
19									
20	Step 5 Find the Annual Income Tax Component of the Cost Recovery Surcharge			Staff Approac ROR w/tax	$ 835,060	$ 520,625	$ 242,305	$ 191,323	$ 1,180,517
21	Revenue								
22	Incremental Income Tax Conversion	0.6051							
23	(*) Times Annual Return on Investment	$54,383							
24	(=) Equals Annual Income Tax Component of Annual Cost Recovery Surcharge	$32,905							
	Step 6 Find the Amortization and Return on Investment of the Annual Surcharge Revenue (before Income Taxes)								
25	Annual Return on Investment (from Step 2)	$54,383							
26	(+) Plus Annual Amortization (from Step 1)	$38,411							
27	(=) Equals Annual Cost Recovery Surcharge Revenue before income taxes	$92,794							
	Step 7 Find the Total Annual Cost Recovery Surcharge Revenue Requirement (with Income Taxes)								
28	Annual Income Tax Component of the Surcharge Revenue (from Step 5)	$32,905							
29	(+) Plus Annual Amortization and Return on Investment Component of the Surcharge	$92,794							
30	Revenue (from Step 6)	$125,698							
31	(=) Equals the Total Annual Surcharge Revenue Requirement								
32									
33	Step 8 Find the Monthly Surcharge per Customer								
34	Total Annual Cost Recovery Surcharge Revenue Requirement (from Step 7)	$125,698							
35	(/) Divide by 12	12							
36	(=) Equals Total Monthly Surcharge Revenue Requirement	$10,475							
37	(/) Divided by Number of Customers at time of filing (assumes test year end number	2,052							
38	of customers)								
39	(=) Equals the Monthly Surcharge per Customer	[redacted]							
40									

Line	ROR Development	A	B	C
	Company			
1	Long-Term Debt	30.00%	3.53%	1.06%
2	Equity	70.00%	10.80%	7.56%
3	Total Cost-of Capital/ROR	100.00%		8.62%
	Staff - Cost-of-Capital Recommendation			
4	Long-Term Debt	30.00%	3.53%	1.06%
5	Equity	70.00%	8.60%	6.02%
6	Total Cost-of Capital/ROR	100.00%		7.08%

Armstrong

Liberty Black Mountain

Schedules JRA-2

For general reference purposes, this attachment contains a copy of the Company supplied workpapers for its proposed Step One, Step Two, and Step Three plant closure cost surcharges.

Liberty Utilities (Black Mountain Sewer) Corp.
Modified Plant Closure Surcharge Computation - Stage 1
Year 1

Exhibit
Page 1

Schedule JRA-2
Copy of Company
Provided Workpapers

	Plant Close Cost to be Recovered per Jay		$ 825,081
Step 1	Compute the Annual Amortization		
	Net Plant Closure Costs (from Step 1)		$ 825,081
	(*) Amortization rate (assuming 20 years)		5%
	(=) Equals Annual Amortization		$ 41,254
Step 2	Compute the Annual Return on Investment		
	Net Plant Closure Costs (from Step 1)		$ 825,081
	Less: Prior Years Amortization		-
	Total Cost		$ 825,081
	(*) Cost of Capital		8.62%
	(=) Equals Annual Return on Investment		$ 71,114
Step 3	Compute the Gross Revenue Conversion Factor (GRCF)		
	GRCF (from most recent rate case)	= 1 / (1 - 0.37697) =	1.6050
Step 4	Find the Incremental Income Tax Factor		
	Incremental Income Tax Factor	= GRCF - 1	
		= 1.6050 - 1	
		= 0.6050	
Step 5	Find the Annual Income Tax Component of the Cost Recovery Surcharge Revenue		
	Incremental Income Tax Conversion Factor		0.6050
	(*) Times Annual Return on Investment		$ 71,114
	(=) Equals Annual Income Tax Component of Annual Cost Recovery Surcharge		$ 43,024
Step 6	Find the Amortization and Return on Investment of the Annual Surcharge Revenue (before Income Taxes)		
	Annual Return on Investment (from Step 2)		$ 71,114
	(+) Plus Annual Amortization (from Step 1)		$ 41,254
	(=) Equals Annual Cost Recovery Surcharge Revenue before Income taxes		$ 112,368
Step 7	Find the Total Annual Cost Recovery Surcharge Revenue Requirement (with Income Taxes)		
	Annual Income Tax Component of the Surcharge Revenue (from Step 5)		$ 43,024
	(+) Plus Annual Amortization and Return on Investment Component of the Surcharge Revenue (from Step 6)		$ 112,368
	(=) Equals the Total Annual Surcharge Revenue Requirement		$ 155,391
Step 8	Find the Monthly Surcharge per Customer		
	Total Annual Cost Recovery Surcharge Revenue Requirement (from Step 7)		$ 155,391
	(/) Divided by 12		12
	(=) Equals Total Monthly Surcharge Revenue Requirement		$ 12,949
	(/) Divided by Number of Customers at time of filing (assumes test year end nuber of customers)		2,052
	(=) Equals the Monthly Surcharge per Customer		$ 6.31

Liberty Utilities (Black Mountain Sewer) Corp.
Schedule of Modified Plant Closure Surcharge - Stage 1 for Years 1 through 21

Exhibit
Page 2

Line No.		1	2	3	4	5	6	7	8	9	10
1	Beg Balance	$ 825,081	$ 825,081	$ 825,081	$ 825,081	$ 825,081	$ 825,081	$ 825,081	$ 825,081	$ 825,081	$ 825,081
2	Accumulated Amortization		$ (41,254)	$ (82,508)	$ (123,762)	$ (165,016)	$ (206,270)	$ (247,524)	$ (288,778)	$ (330,032)	$ (371,286)
3	Ending Balance (ln. 1 + Ln. 2)	$ 825,081	$ 783,826	$ 742,572	$ 701,318	$ 660,064	$ 618,810	$ 577,556	$ 536,302	$ 495,048	$ 453,794
4	Return %	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%
5	Return $'s (ln. 3 x ln. 4)	$ 71,114	$ 67,586	$ 64,010	$ 60,454	$ 56,898	$ 53,341	$ 49,785	$ 46,229	$ 42,673	$ 39,117
6	Incremental Income Tax Conversion Factor	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605
7	Annual Income Tax Component of Annual Cost Recovery Surcharge (ln. 5 x ln. 6)	$ 43,024	$ 40,877	$ 38,726	$ 36,574	$ 34,423	$ 32,272	$ 30,120	$ 27,969	$ 25,817	$ 23,666
8	Annual Amortization	$ 41,254	$ 41,254	$ 41,254	$ 41,254	$ 41,254	$ 41,254	$ 41,254	$ 41,254	$ 41,254	$ 41,254
9	Total Annual Cost Recovery (ln. 5 + ln. 7 + ln. 8)	$ 155,391	$ 149,697	$ 143,990	$ 138,282	$ 132,575	$ 126,867	$ 121,160	$ 115,452	$ 109,744	$ 104,037
10	Number of YE Customers	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052
11	Annual Surcharge per Customer (ln. 9 / ln. 10)	$ 75.73	$ 72.95	$ 70.17	$ 67.39	$ 64.61	$ 61.83	$ 59.04	$ 56.26	$ 53.48	$ 50.70
12	Monthly Surcharge per Customer (ln. 11 / 12)	$ 6.31	$ 6.08	$ 5.85	$ 5.62	$ 5.38	$ 5.15	$ 4.92	$ 4.69	$ 4.46	$ 4.23

Line No.		11	12	13	14	15	16	17	18	19	20	21
1	Beg Balance	$ 825,081	$ 825,081	$ 825,081	$ 825,081	$ 825,081	$ 825,081	$ 825,081	$ 825,081	$ 825,081	$ 825,081	$ 825,081
2	Accumulated Amortization	$ (412,540)	$ (453,794)	$ (495,048)	$ (536,302)	$ (577,556)	$ (618,810)	$ (660,064)	$ (701,318)	$ (742,572)	$ (783,826)	$ (825,081)
3	Ending Balance (ln. 1 + Ln. 2)	$ 412,540	$ 371,286	$ 330,032	$ 288,778	$ 247,524	$ 206,270	$ 165,016	$ 123,762	$ 82,508	$ 41,254	$ -
4	Return %	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%
5	Return $'s (ln. 3 x ln. 4)	$ 35,561	$ 32,005	$ 28,449	$ 24,893	$ 21,337	$ 17,780	$ 14,224	$ 10,668	$ 7,112	$ 3,556	$ -
6	Incremental Income Tax Conversion Factor	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605
7	Annual Income Tax Component of Annual Cost Recovery Surcharge (ln. 5 x ln. 6)	$ 21,514	$ 19,363	$ 17,212	$ 15,060	$ 12,909	$ 10,757	$ 8,606	$ 6,454	$ 4,303	$ 2,151	$ -
8	Annual Amortization	$ 41,254	$ 41,254	$ 41,254	$ 41,254	$ 41,254	$ 41,254	$ 41,254	$ 41,254	$ 41,254	$ 41,254	$ 41,254
9	Total Annual Cost Recovery (ln. 5 + ln. 7 + ln. 8)	$ 96,329	$ 92,622	$ 86,914	$ 81,207	$ 75,499	$ 69,792	$ 64,084	$ 58,377	$ 52,669	$ 46,962	$ 41,254
10	Number of YE Customers	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052
11	Annual Surcharge per Customer (ln. 9 / ln. 10)	$ 47.92	$ 45.14	$ 42.36	$ 39.57	$ 36.79	$ 34.01	$ 31.23	$ 28.45	$ 25.67	$ 22.89	$ 20.10
12	Monthly Surcharge per Customer (ln. 11 / 12)	$ 3.99	$ 3.76	$ 3.53	$ 3.30	$ 3.07	$ 2.83	$ 2.60	$ 2.37	$ 2.14	$ 1.91	$ 1.68

Liberty Utilities (Black Mountain Sewer) Corp.
Computation of Required Change in Effluent Rate

Exhibit
Page 3

Line No.			
1	Total Amount to be Recovered from Effluent Sales (Boulders Resort Legal Challenge)	$	-
2	Estimated Number of Full Months to Recover (Estimated Recovery Period From June 1, 2018 to Nov. 20, 2018)		30
3	Average Amount Outsanding Over Recovery Period	$	-
4	Annual Rate of Return		0.00%
5	Monthly Rate of Return (ln. 4 / 12)		0.00%
6	Monthly Revenues to Recover Cost (ln. 1 / ln. 2)	$	-
7	Total Return Component Over Recovery Period (ln. 2 x ln. 3 x ln. 5)	$	-
8	Monthly Return Component (ln. 7 / ln. 2)	$	-
9	Incremental Income Tax Conversion Factor		0.6050
10	Monthly Income Tax Component (ln. 8 x ln. 9)	$	-
11	Required Increase in Monthly Revenues (ln. 6 + ln. 8 + ln. 10))	$	-
12	Test Year Monthly Average Revenues from Effluent Sales	$	1,339
13	Total Monthly Revenues to be Recovered from Effluent Sales (ln. 11 + ln. 12)	$	1,339
14	Test Year Gallons Sold (ln 1,000s)		34,889
15	Average Monthly Gallons Sold (in 1,000s) (ln. 8 / 12)		2,907
16	Computed Rate Rate per 1,000 gallons (ln. 7 / ln. 9)	$	0.460512
17	Proposed Effluent Rate per 1,000 gallons in Current Rate Case	$	0.460512
18	Required Increase in Effluent Rate per 1,000 gallons (ln. 10 - ln. 11)	$	-
19	% Increase in Effluent Rate (ln. 12 / ln. 11 - 1)		-100%
20	Computed Rate Rate per Acre Foot (ln. 10 * 325.581)	$	150.00
21	Proposed Effluent Rate per Acre foot in Current Rate Case	$	150.00
22	Required Increase in Effluent Rate per Acre Foot (ln. 10 - ln. 11)	$	-
23	% Increase in Effluent Rate (ln. 16 / ln. 15 - 1)		-100%

Liberty Utilities (Black Mountain Sewer) Corp.
Computation of Required Change in Effluent Rate

Exhibit
Page 3

Line No.				
1	Total Amount to be Recovered from Effluent Sales (Boulders Resort Legal Challenge)	$	-	
2	Estimated Number of Full Months to Recover (Estimated Recovery Period From June 1, 2016 to Nov. 20, 2018)		20	25
3	Average Amount Outsanding Over Recovery Period	$	-	
4	Annual Rate of Return		0.00%	
5	Monthly Rate of Return (ln. 4 / 12)		0.00%	
6	Monthly Revenues to Recover Cost (ln. 1 / ln. 2)	$	-	
7	Total Return Component Over Recovery Period (ln. 2 x ln. 3 x ln. 5)	$	-	
8	Monthly Return Component (ln. 7 / ln. 2)	$	-	
9	Incremental Income Tax Conversion Factor		0.6050	
10	Monthly Income Tax Component (ln. 8 x ln. 9)	$	-	
11	Required Increase in Monthly Revenues (ln. 6 + ln. 8 + ln. 10))	$	-	
12	Test Year Monthly Average Revenues from Effluent Sales	$	1,339	
13	Total Monthly Revenues to be Recovered from Effluent Sales (ln. 11 + ln. 12)	$	1,339	
14	Test Year Gallons Sold (in 1,000s)		34,889	
15	Average Monthly Gallons Sold (in 1,000s) (ln. 8 / 12)		2,907	
16	Computed Rate Rate per 1,000 gallons (ln. 7 / ln. 9)	$	0.460512	
17	Proposed Effluent Rate per 1,000 gallons in Current Rate Case	$	0.460512	
18	Required Increase in Effluent Rate per 1,000 gallons (ln. 10 - ln. 11)	$	-	
19	% Increase in Effluent Rate (ln. 12 / ln. 11 - 1)		-100%	
20	Computed Rate Rate per Acre Foot (ln. 10 * 325.581)	$	150.00	
21	Proposed Effluent Rate per Acre foot in Current Rate Case	$	150.00	
22	Required Increase in Effluent Rate per Acre Foot (ln. 10 - ln. 11)	$	-	
23	% Increase in Effluent Rate (ln. 16 / ln. 15 - 1)		-100%	

Liberty Utilities (Black Mountain Sewer) Corp.
Additional Plant Capacity Surcharge Computation (Option 4)
Year 1

Exhibit
Page 4

Step 1 Compute the Annual Depreciation /Amortization Expense

Description	Plant Category	Cost	Depr/Amort Rate	Annual Depr Exp[1]
Capital Costs for New Capacity	Treament Plant	1,200,000	5.00%	30,000
Estimated Total Additional Plant Closure Costs		$ 1,200,000		$ 30,000

[1] Half-year Convention

Step 2 Compute the Annual Return on Investment

Estimated Total Additional Plant Closure Costs (from Step 1)	$ 1,200,000
Less: Prior Years Depreication/Amortization	-
Total Cost	$ 1,200,000
(*) Cost of Capital	8.62%
(=) Equals Annual Return on Investment	$ 103,428

Step 3 Compute the Gross Revenue Conversion Factor (GRCF)

GRCF (from most recent rate case) $= \frac{1}{1 - 0.37697} = 1.6050$

Step 4 Find the Incremental Income Tax Factor

Incremental Income Tax Factor

= GRCF - 1

= 1.6050 - 1

= 0.6050

Step 5 Find the Annual Income Tax Component of the Cost Recovery Surcharge Revenue

Incremental Income Tax Conversion	0.6050
(*) Times Annual Return on Investment	$ 103,428
(=) Equals Annual Income Tax Component of Annual Cost Recovery Surcharge	$ 62,574

Step 6 Find the Amortization and Return on Investment of the Annual Surcharge Revenue (before Income Taxes)

Annual Return on Investment (from Step 2)	$ 103,428
(+) Plus Annual Depreciation/Amortization (from Step 1)	$ 30,000
(=) Equals Annual Cost Recovery Surcharge Revenue before income taxes	$ 133,428

Step 7 Find the Total Annual Cost Recovery Surcharge Revenue Requirement (with Income Taxes)

Annual Income Tax Component of the Surcharge Revenue (from Step 5)	$ 62,574
(+) Plus Annual Amortization and Return on Investment Component of the Surcharge Revenue (from Step 6)	$ 133,428
(=) Equals the Total Annual Surcharge Revenue Requirement	$ 196,002

Step 8 Find the Monthly Surcharge per Customer

Total Annual Cost Recovery Surcharge Revenue Requirement (from Step 7)	$ 196,002
(/) Divided by 12	12
(=) Equals Total Monthly Surcharge Revenue Requirement	$ 16,333
(/) Divided by Number of Customers at time of filing (assumes test year end nuber of customers)	2,052
(=) Equals the Monthly Surcharge per Customer	$ 7.96

Liberty Utilities (Black Mountain Sewer) Corp.
Schedule of Capacity Surcharge - Stage 2 for Years 1 through 22

Line No.		1	2	3	4	5	6	7	8	9	10
1	Beg Balance	$ 1,200,000	$ 1,200,000	$ 1,200,000	$ 1,200,000	$ 1,200,000	$ 1,200,000	$ 1,200,000	$ 1,200,000	$ 1,200,000	$ 1,200,000
2	Accumulated Amortization	$ -	$ (30,000)	$ (90,000)	$ (150,000)	$ (210,000)	$ (270,000)	$ (330,000)	$ (390,000)	$ (450,000)	$ (510,000)
3	Ending Balance (ln. 1 + Ln. 2)	$ 1,200,000	$ 1,170,000	$ 1,110,000	$ 1,050,000	$ 990,000	$ 930,000	$ 870,000	$ 810,000	$ 750,000	$ 690,000
4	Return %	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%
5	Return $'s (ln. 3 x ln. 4)	$ 103,428	$ 100,854	$ 95,682	$ 90,510	$ 85,338	$ 80,166	$ 74,994	$ 69,822	$ 64,650	$ 59,478
6	Incremental Income Tax Conversion Factor	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605
7	Annual Income Tax Component of Annual Cost Recovery Surcharge (ln. 5 x ln. 6)	$ 62,574	$ 61,017	$ 57,888	$ 54,759	$ 51,629	$ 48,500	$ 45,371	$ 42,242	$ 39,113	$ 35,984
8	Annual Amortization	$ 30,000	$ 60,000	$ 60,000	$ 60,000	$ 60,000	$ 60,000	$ 60,000	$ 60,000	$ 60,000	$ 60,000
9	Total Annual Cost Recovery (ln. 5 + ln. 7 + ln. 8)	$ 196,002	$ 221,871	$ 213,570	$ 205,269	$ 196,967	$ 188,666	$ 180,365	$ 172,064	$ 163,763	$ 155,462
10	Number of YE Customers	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052
11	Annual Surcharge per Customer (ln. 9 / ln. 10)	$ 95.52	$ 108.12	$ 104.06	$ 100.03	$ 95.99	$ 91.94	$ 87.90	$ 83.85	$ 79.81	$ 75.76
12	Monthly Surcharge per Customer (ln. 11 / 12)	$ 7.96	$ 9.01	$ 8.67	$ 8.34	$ 8.00	$ 7.66	$ 7.32	$ 6.99	$ 6.65	$ 6.31

Line No.		12	13	14	15	16	17	18	19	20	21
1	Beg Balance	$ 1,200,000	$ 1,200,000	$ 1,200,000	$ 1,200,000	$ 1,200,000	$ 1,200,000	$ 1,200,000	$ 1,200,000	$ 1,200,000	$ 1,200,000
2	Accumulated Amortization	$ (630,000)	$ (690,000)	$ (750,000)	$ (810,000)	$ (870,000)	$ (930,000)	$ (990,000)	$ (1,050,000)	$ (1,110,000)	$ (1,170,000)
3	Ending Balance (ln. 1 + Ln. 2)	$ 570,000	$ 510,000	$ 450,000	$ 390,000	$ 330,000	$ 270,000	$ 210,000	$ 150,000	$ 90,000	$ 30,000
4	Return %	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%
5	Return $'s (ln. 3 x ln. 4)	$ 49,134	$ 43,962	$ 38,790	$ 33,618	$ 28,446	$ 23,274	$ 18,102	$ 12,930	$ 7,758	$ 2,586
6	Incremental Income Tax Conversion Factor	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605
7	Annual Income Tax Component of Annual Cost Recovery Surcharge (ln. 5 x ln. 6)	$ 29,726	$ 26,597	$ 23,468	$ 20,339	$ 17,210	$ 14,081	$ 10,952	$ 7,823	$ 4,694	$ 1,565
8	Annual Amortization	$ 60,000	$ 60,000	$ 60,000	$ 60,000	$ 60,000	$ 60,000	$ 60,000	$ 60,000	$ 60,000	$ 60,000
9	Total Annual Cost Recovery (ln. 5 + ln. 7 + ln. 8)	$ 138,860	$ 130,559	$ 122,258	$ 113,957	$ 105,656	$ 97,355	$ 89,054	$ 80,753	$ 72,452	$ 64,151
10	Number of YE Customers	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052
11	Annual Surcharge per Customer (ln. 9 / ln. 10)	$ 67.67	$ 63.63	$ 59.58	$ 55.53	$ 51.49	$ 47.44	$ 43.40	$ 39.35	$ 35.31	$ 31.26
12	Monthly Surcharge per Customer (ln. 11 / 12)	$ 5.64	$ 5.30	$ 4.96	$ 4.63	$ 4.29	$ 3.95	$ 3.62	$ 3.28	$ 2.94	$ 2.61

Liberty Utilities (Black Mountain Sewer) Corp.
Additional Plant Costs Surcharge Computation - Stage 3
Year 1

Exhibit
Page 6

Step 1 Compute the Annual Depreciation /Amortization Expense

Description	Plant Category	Cost	Depr/Amort Rate	Annual Depr Exp[1]
Bypass sewers at WRF	Collection Mains	$ 240,600	2.00%	$ 2,408
Decommission and Remove WRF	Treament Plant	439,300	5.00%	10,983
Commercial LS Upgrading	Special Collecting Structures	411,700	2.00%	4,117
New Force Mains	Collection Mains	990,900	2.00%	9,909
Pavement Replacement	Structures & Improvements	817,000	3.33%	10,273
Estimated Total Additional Plant Closure Costs		$ 2,699,700		$ 37,690

[1] Half-year Convention

Step 2 Compute the Annual Return on Investment

Estimated Total Additional Plant Closure Costs (from Step 1)	$ 2,699,700
Less: Prior Years Depreication/Amortization	-
Total Cost	$ 2,699,700
(*) Cost of Capital	8.62%
(=) Equals Annual Return on Investment	$ 232,687

Step 3 Compute the Gross Revenue Conversion Factor (GRCF)

GRCF (from most recent rate case) $= \frac{1}{1 - 0.37697} = 1.6050$

Step 4 Find the Incremental Income Tax Factor

Incremental Income Tax Factor	=	GRCF - 1
	=	1.6050 - 1
	=	0.6050

Step 5 Find the Annual Income Tax Component of the Cost Recovery Surcharge Revenue

Incremental Income Tax Conversion	0.6050
(*) Times Annual Return on Investment	$ 232,687
(=) Equals Annual Income Tax Component of Annual Cost Recovery Surcharge	$ 140,776

Step 6 Find the Amortization and Return on Investment of the Annual Surcharge Revenue (before Income Taxes)

Annual Return on Investment (from Step 2)	$ 232,687
(+) Plus Annual Depreciation/Amortization (from Step 1)	$ 37,690
(=) Equals Annual Cost Recovery Surcharge Revenue before income taxes	$ 270,377

Step 7 Find the Total Annual Cost Recovery Surcharge Revenue Requirement (with Income Taxes)

Annual Income Tax Component of the Surcharge Revenue (from Step 5)	$ 140,776
(+) Plus Annual Amortization and Return on Investment Component of the Surcharge Revenue (from Step 6)	$ 270,377
(=) Equals the Total Annual Surcharge Revenue Requirement	$ 411,152

Step 8 Find the Monthly Surcharge per Customer

Total Annual Cost Recovery Surcharge Revenue Requirement (from Step 7)	$ 411,152
(/) Divided by 12	12
(=) Equals Total Monthly Surcharge Revenue Requirement	$ 34,263
(/) Divided by Number of Customers at time of filing (assumes test year end nuber of customers)	2,052
(=) Equals the Monthly Surcharge per Customer	$ 16.70

Liberty Utilities (Black Mountain Sewer) Corp.
Schedule of Additional Plant Costs Surcharge - Stage 3 for Years 1 through 30

Exhibit
Page 7

Line No.		1	2	3	4	5	6	7	8	9	10
1	Beg Balance	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700
2	Accumulated Amortization	$ -	$ (37,690)	$ (113,069)	$ (188,448)	$ (263,827)	$ (339,206)	$ (414,585)	$ (489,964)	$ (565,343)	$ (640,722)
3	Ending Balance (ln. 1 + Ln. 2)	$ 2,699,700	$ 2,662,010	$ 2,586,631	$ 2,511,252	$ 2,435,873	$ 2,360,494	$ 2,285,115	$ 2,209,736	$ 2,134,357	$ 2,058,978
4	Return %	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%
5	Return $'s (ln. 3 x ln. 4)	$ 232,687	$ 229,465	$ 222,968	$ 216,470	$ 209,972	$ 203,475	$ 196,977	$ 190,479	$ 183,982	$ 177,484
6	Incremental Income Tax Conversion Factor	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605
7	Annual Income Tax Component of Annual Cost Recovery Surcharge (ln. 5 x ln. 6)	$ 140,776	$ 138,827	$ 134,885	$ 130,964	$ 127,033	$ 123,102	$ 119,171	$ 115,240	$ 111,309	$ 107,378
8	Annual Amortization	$ 37,690	$ 75,379	$ 75,379	$ 75,379	$ 75,379	$ 75,379	$ 75,379	$ 75,379	$ 75,379	$ 75,379
9	Total Annual Cost Recovery (ln. 5 + ln. 7 + ln. 8)	$ 411,152	$ 443,671	$ 433,242	$ 422,813	$ 412,385	$ 401,956	$ 391,527	$ 381,098	$ 370,669	$ 360,241
10	Number of YE Customers	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052
11	Annual Surcharge per Customer (ln. 9 / ln. 10)	$ 200.37	$ 216.21	$ 211.13	$ 206.05	$ 200.97	$ 195.88	$ 190.80	$ 185.72	$ 180.64	$ 175.56
12	Monthly Surcharge per Customer (ln. 11 / 12)	$ 16.70	$ 18.02	$ 17.59	$ 17.17	$ 16.75	$ 16.32	$ 15.90	$ 15.48	$ 15.05	$ 14.63

Line No.		11	12	13	14	15	16	17	18	19	20
1	Beg Balance	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700
2	Accumulated Amortization	$ (716,101)	$ (791,481)	$ (866,860)	$ (942,239)	$ (1,017,618)	$ (1,092,997)	$ (1,168,376)	$ (1,243,755)	$ (1,319,134)	$ (1,394,513)
3	Ending Balance (ln. 1 + Ln. 2)	$ 1,983,599	$ 1,908,219	$ 1,832,840	$ 1,757,461	$ 1,682,082	$ 1,606,703	$ 1,531,324	$ 1,455,945	$ 1,380,566	$ 1,305,187
4	Return %	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%
5	Return $'s (ln. 3 x ln. 4)	$ 170,986	$ 164,489	$ 157,991	$ 151,493	$ 144,995	$ 138,498	$ 132,000	$ 125,502	$ 119,005	$ 112,507
6	Incremental Income Tax Conversion Factor	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605
7	Annual Income Tax Component of Annual Cost Recovery Surcharge (ln. 5 x ln. 6)	$ 103,447	$ 99,516	$ 95,584	$ 91,653	$ 87,722	$ 83,791	$ 79,860	$ 75,929	$ 71,998	$ 68,067
8	Annual Amortization	$ 75,379	$ 75,379	$ 75,379	$ 75,379	$ 75,379	$ 75,379	$ 75,379	$ 75,379	$ 75,379	$ 75,379
9	Total Annual Cost Recovery (ln. 5 + ln. 7 + ln. 8)	$ 349,812	$ 339,383	$ 328,954	$ 318,526	$ 308,097	$ 297,668	$ 287,239	$ 276,811	$ 266,382	$ 255,953
10	Number of YE Customers	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052
11	Annual Surcharge per Customer (ln. 9 / ln. 10)	$ 170.47	$ 165.39	$ 160.31	$ 155.23	$ 150.14	$ 145.06	$ 139.98	$ 134.90	$ 129.82	$ 124.73
12	Monthly Surcharge per Customer (ln. 11 / 12)	$ 14.21	$ 13.78	$ 13.36	$ 12.94	$ 12.51	$ 12.09	$ 11.67	$ 11.24	$ 10.82	$ 10.39

Line No.		21	22	23	24	25	26	27	28	29	30
1	Beg Balance	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700	$ 2,699,700
2	Accumulated Amortization	$ (1,499,892)	$ (1,534,289)	$ (1,587,703)	$ (1,641,117)	$ (1,694,531)	$ (1,747,945)	$ (1,801,360)	$ (1,854,774)	$ (1,908,188)	$ (1,961,602)
3	Ending Balance (ln. 1 + Ln. 2)	$ 1,229,808	$ 1,165,411	$ 1,111,997	$ 1,058,583	$ 1,005,169	$ 951,755	$ 898,340	$ 844,926	$ 791,512	$ 738,098
4	Return %	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%	8.62%
5	Return $'s (ln. 3 x ln. 4)	$ 106,009	$ 100,458	$ 95,854	$ 91,250	$ 86,646	$ 82,041	$ 77,437	$ 72,833	$ 68,228	$ 63,624
6	Incremental Income Tax Conversion Factor	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605	0.605
7	Annual Income Tax Component of Annual Cost Recovery Surcharge (ln. 5 x ln. 6)	$ 64,136	$ 60,777	$ 57,992	$ 55,206	$ 52,421	$ 49,635	$ 46,849	$ 44,064	$ 41,278	$ 38,493
8	Annual Amortization	$ 64,397	$ 53,414	$ 53,414	$ 53,414	$ 53,414	$ 53,414	$ 53,414	$ 53,414	$ 53,414	$ 53,414
9	Total Annual Cost Recovery (ln. 5 + ln. 7 + ln. 8)	$ 234,542	$ 214,650	$ 207,260	$ 199,870	$ 192,480	$ 185,090	$ 177,700	$ 170,311	$ 162,921	$ 155,531
10	Number of YE Customers	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052	2,052
11	Annual Surcharge per Customer (ln. 9 / ln. 10)	$ 114.30	$ 104.61	$ 101.00	$ 97.40	$ 93.80	$ 90.20	$ 86.60	$ 83.00	$ 79.40	$ 75.79
12	Monthly Surcharge per Customer (ln. 11 / 12)	$ 9.52	$ 8.72	$ 8.42	$ 8.12	$ 7.82	$ 7.52	$ 7.22	$ 6.92	$ 6.62	$ 6.32

BEFORE THE ARIZONA CORPORATION COMMISSION

SUSAN BITTER SMITH
Chairman
BOB STUMP
Commissioner
BOB BURNS
Commissioner
DOUG LITTLE
Commissioner
TOM FORESE
Commissioner

IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR AUTHORITY TO ISSUE EVIDENCE OF INDEBTEDNESS IN AN AMOUNT NOT TO EXCEED $3,400,000.	DOCKET NO. SW-02361A-15-0206
IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY AND FOR INCREASES IN ITS WASTEWATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.	DOCKET NO. SW-02361A-15-0207

DIRECT TESTIMONY OF

CRYSTAL S. BROWN

EXECUTIVE CONSULTANT III

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

DECEMBER 16, 2015

TABLE OF CONTENTS

	Page
INTRODUCTION	1
COST OF SERVICE STUDY	1
RATE DESIGN	3
MISCELLANEOUS SERVICE CHARGES	5
HOOK-UP FEE	7
PLANT CLOSURE SURCHARGE MECHANISM	7
PURCHASED POWER ADJUSTOR MECHANISM	8
RATE CASE EXPENSE SURCHARGE	9
PROPERTY TAX ADJUSTOR MECHANISM	9

SCHEDULES

Rate Design	CSB-1
Typical Bill Analysis	CSB-2

EXECUTIVE SUMMARY
LIBERTY UTILITIES (BLACK MOUNTAIN SEWER), CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207

Rate Design

Liberty Utilities (Black Mountain Sewer), Corporation ("Black Mountain" or "Company") is a certificated Arizona public service corporation that provides wastewater utility service to approximately 2,100 customers during 2014 primarily in the Town of Carefree, in unincorporated portions of Maricopa County and in portions of the City of Scottsdale. The current rates for Black Mountain were approved in Decision No. 71865, dated August 31, 2010.

Monthly Customer Charge & Volumetric Rates

The Company proposes a monthly customer charge (flat rate) of $79.20 for residential customers with no volumetric rate. The Company proposes an $85.00 monthly customer charge for each commercial customer with a volumetric rate of $5.13 per 1,000 gallons for all monthly water usage. The Company proposes no change to the current commodity rate for effluent of $0.46051 per thousand gallons.

Staff recommends a $75.00 residential monthly customer charge with no volumetric rate as shown on Schedule CSB-1. Staff recommends a $85.00 monthly customer charge for each commercial customer with a volumetric rate of $1.78 per 1,000 gallons for all water usage. Staff recommends no change to the current commodity rate for effluent of $0.46051 per thousand gallons.

Typical Bill Analysis

The typical residential customers with a current flat rate of $65.24 per month would experience a $13.96 or a 21.40 percent increase in their monthly bill to $79.20 under the Company's proposed rates. These same customers would experience a $9.76 or a 14.96 percent increase in their monthly bill to $75.00 under Staff's recommended rates, as shown on Schedule CSB-2.

INTRODUCTION

Q. Please state your name, occupation, and business address.

A. My name is Crystal S. Brown. I am an Executive Consultant III employed by the Arizona Corporation Commission ("ACC" or "Commission") in the Utilities Division ("Staff"). My business address is 1200 West Washington Street, Phoenix, Arizona 85007.

Q. Are you the same Crystal S. Brown who filed direct testimony on revenue requirement in this case?

A. Yes.

COST OF SERVICE STUDY

Q. Did Black Mountain prepare a Cost of Service Study ("COSS")?

A. Yes, Black Mountain prepared a COSS.

Q. What is a COSS?

A. In very simple terms, a COSS is an estimation of cost-causation by customer class, i.e. how much it costs the utility to provide its service to each specific customer class. A COSS allocates a portion of a company's total expenses and rate base to each customer class. The reason for determining the costs incurred by the utility to serve each customer class is to assist in allocating the revenue requirement for each customer class.

Q. Can the result of a COSS be widely divergent based upon the subjective judgement used for the allocation factors?

A. Yes. The use of arbitrary allocation factors in a COSS can lead to widely divergent results based upon the judgments involved. I believe this fact is one of many reasons why formal COSS are not required when developing the rate design for small wastewater systems.

Q. Is a COSS synonymous to rate design?

A. No, it is not. Rate design should not be confused with a COSS. A COSS is the allocation of costs to each customer class. Rate design involves the allocation of required revenues to each customer.

Q. Should COSS results be the sole factor used in rate design?

A. No, it should not. The results from a COSS are not definitive because, absent formal system demand studies, a large degree of subjectivity is used in allocating costs. Consequently, a COSS should not be used as the sole factor in rate design.

Q. How did Staff use Black Mountain's COSS in its rate design?

A. Staff utilized the COSS as a guideline or starting point for its rate design. However, Staff did not rely solely on the Company's COSS but used other factors to develop its rate design.

Q. What other factors did Staff consider in developing its rate design?

A. In addition to using the results of the COSS at the outset of Staff's analysis, Staff also considered factors such as revenue stability, gradualism, and fair apportionment of revenue among customer classes.

Q. Has Staff recommended an overall revenue decrease?

A. Yes, Staff has recommended a 7.66 percent revenue decrease.

Q. Why then are the residential customers experiencing a rate increase?

A. There are two primary reasons for the increase. First, some costs were shifted to the residential class from the commercial class due to the efforts to move the return level generated by the various customer classes closer. Second, the change in the commercial commodity rate from "per gallon per day" of wastewater flow to "per thousand gallons" of

water usage further reduced the revenue generated from the commercial class that was again shifted to the residential class.

RATE DESIGN

Q. Has Staff prepared a schedule summarizing the present, Company proposed, and Staff recommended rates and service charges?

A. Yes. Schedule CSB-1 provides a summary of the Company's present, Company's proposed, and Staff's recommended rates.

Q. What changes has the Company proposed for the commercial customer class?

A. The Company has proposed to change its current rate design of "gallons per day of wastewater flow" which is based upon Engineering Bulletin No. 12 published by the Arizona Department of Environmental Quality to "per 1,000 gallons of actual monthly water usage." The Company stated that it received the actual commercial customer water usage data from the Town of Carefree Water Company, Cave Creek Water Company and City of Scottsdale, the water providers in Liberty Black Mountain's service area. The Company further stated that it will continue to get monthly water use data if the Commission approves a rate design based on water usage.

Q. Why has the Company proposed this change?

A. According to the Company the reasons are to: (1) eliminate the reliance on ADEQ Bulletin 12 and address concerns over its use for setting a customer's wastewater charges; (2) keep it as simple as possible; (3) provide for a design that better reflects the demand each commercial customer places on the system; and (4) continue to provide a reasonable level of revenue stability.

Q. Does Staff concur with the Company's proposed change?

A. Yes. The Company's proposal to use a commercial customer's actual usage to estimate wastewater flow will provide a more realistic estimation of wastewater flow.

Q. Please summarize the present rate design.

A. The present monthly customer charge for the residential customers is $65.24 with no commodity charge. Regular commercial customers pay $0.24873 per gallon per day of sewer flow[1] and no monthly service charge. Effluent customers pay $0.46051 per thousand gallons.

Q. Please summarize the Company's proposed rate design.

A. The Company proposes a monthly customer charge (flat rate) of $79.20 for residential customers with no volumetric rate. The Company proposes an $85.00 monthly customer charge for each commercial customer with a volumetric rate of $5.13 per 1,000 gallons for all monthly water usage. The Company proposes no change to the current commodity rate for effluent of $0.46051 per thousand gallons.

Q. Please summarize Staff's recommended rate design.

A. Staff recommends a $75.00 residential monthly customer charge with no volumetric rate as shown on Schedule CSB-1. Staff recommends a $85.00 monthly customer charge for each commercial customer with a volumetric rate of $1.78 per 1,000 gallons for all water usage. Staff recommends no change to the current commodity rate for effluent of $0.46051 per thousand gallons.

[1] Flow volume is based on the average daily flows set forth in the *Engineering Bulletin No. 12*, Table 1, published by the Arizona Department of Environmental Quality (June 1989).

Q. What is the rate impact on a typical residential customer?

A. The typical residential customer with a current flat rate of $65.24 per month would experience a $13.96 or a 21.40 percent increase in their monthly bill to $79.20 under the Company's proposed rates. This same customer would experience a $9.76 or a 14.96 percent increase in their monthly bill to $75.00 under Staff's recommended rates, as shown on Schedule CSB-2.

Q. What is the rate impact on a typical commercial customer?

A. Using the data provided by Mr. Bourassa on page 31 of his direct testimony, the typical commercial customer with an average gallons per day ("gpd") rating of 1,612 gpd of wastewater flow would be $401.00 under current rates. Under the Company's proposed rates, a typical commercial customer with an average monthly water usage of 35,009 gallons would experience a $136.70 or a 34.09 percent decrease in their monthly bill to $264.30. This same customer would experience a $253.68 or a 63.26 percent decrease in their monthly bill to $147.32 under Staff's recommended rates, as shown on Schedule CSB-2.

MISCELLANEOUS SERVICE CHARGES

Q. Did the Company propose any changes to the service charges?

A. Yes. The Company proposes the following:

1. To change the Re-establishment charge from a flat rate of $25 to months off the system times the monthly minimum;
2. To remove the Reconnection Charge;
3. To add a Reconnection, Delinquent Charge at cost;
4. To add an After Hours Charge of $50; and
5. To change the Late Payment- Per Month charge from 1.50 percent per month to the greater of $5.00 or 1.50 percent per month on unpaid balance.

Q. Does Staff agree with the Company's proposal to change the Re-establishment charge from a flat rate of $25 to months off the system times the monthly minimum?

A. Yes, as the Company's proposal is consistent with Arizona Administrative Code ("A.A.C.")R14-2-603 D.

Q. Does Staff agree with the Company's proposal to remove the Reconnection Charge and to add a Reconnection, Delinquent Charge at cost?

A. Yes, the Company currently provides the reconnection service at no cost. The addition of a Reconnection, Delinquent Charge at cost is reasonable and consistent with the cost causation principle. In addition, Staff recommends the following language be added to the Company's tariff for the Reconnection, Delinquent Charge:

> **Reconnection – Delinquent** at **COST** which is reasonable and customary.
>
> A delinquent customer who has been disconnected from the utility and desires to be reconnected shall pay the actual cost of disconnection and the actual cost of reconnection. There shall be no charge for disconnection if no physical work was performed.

Q. Does Staff agree with the Company's proposal to add an After Hours Service Charge?

A. Yes, Staff agrees that the proposed After Hours Service Charge of $50.00 is reasonable and customary. Such a tariff compensates the utility for additional expenses incurred from providing after-hours service when this type of service is at the customer's request or for the customer's convenience.

For example, under the Company's proposal, a customer would be subject to a $25.00 Establishment fee if it is done during normal business hours, but would pay an additional $50.00 After-Hours fee **if the customer requested** that the establishment be done after

normal business hours. Staff recommends that the following language be added to the Company's tariff for the After Hours Service Charge:

> The after-hours service charge shall apply to any service requested by Customer or for the customer's convenience that is performed by Company after regular business hours and shall be in addition to the regular business hours service charge.

Q. Does Staff agree with the Company's proposed changes to its Late Payment Charge?

A. Yes, Staff agrees that the Company's proposal to change the Late Payment-Per Month charge from 1.50 percent per month, to the greater of $5.00 or 1.50 percent per month on unpaid balance is reasonable and would be more effective in encouraging timely payment than the current 1.5 percent.

HOOK-UP FEE

Q. Did Black Mountain propose an off-site facilities hook-up fee ("HUF")?

A. Yes.

Q. What does Staff recommend?

A. Staff recommends approval of the HUF as discussed in greater detail in the testimony of Staff witness, Dorothy Hains.

PLANT CLOSURE SURCHARGE MECHANISM

Q. What are Staff's recommendations concerning Black Mountain's proposed Plant Closure Surcharge mechanisms?

A. Staff witness, James R. Armstrong, the Chief of the Financial and Regulatory Analysis section, will provide Staff's analysis and recommendations concerning the Plant Closure Surcharge mechanisms.

PURCHASED POWER ADJUSTOR MECHANISM

Q. In its Application, does Black Mountain propose the adoption of a cost recovery adjustment mechanism for purchased power?

A. Yes, the Company has proposed the adoption of a purchased power adjustment mechanism ("PPAM") in rates. As proposed, the PPAM will serve as a cost recovery adjustment mechanism for recovery of only the increase (decrease) in purchased power expense caused by an increase (decrease) in power rates charged to Black Mountain by the Company's electric utility provider, Arizona Public Service ("APS"). The purchased power expense included in operating expenses will serve as the base figure against which the amounts to be recovered or refunded when increases or decreases in purchased power costs per kwh are incurred in future years. Increases (decreases) to purchased power costs expense resulting from changes in the volume of water pumped will not affect the amount to be recovered (refunded) by the proposed PPAM.

Q. Why has the Company proposed the adoption of a PPAM in rates?

A. Because Black Mountain has no control over the rate it is charged for electric power by APS, the Company's proposed PPAM is intended as a mechanism to pass along any cost increase, or decrease, in purchased power to customers. The Company believes that a closer match between costs and customer bills will reduce regulatory lag, and create a more efficient price signal. Additionally, Black Mountain believes that the presence of a PPAM will help ensure that the Company has the opportunity to earn its authorized rate of return.

Q. What is Staff's recommendation with regard to Black Mountain's request for a PPAM?

A. Staff recommends approval of the PPAM and that the Company file a PPAM tariff and a Plan of Administration for Staff's review and approval.

RATE CASE EXPENSE SURCHARGE

Q. Is Black Mountain proposing a surcharge for rate case expense?

A. Yes.

Q. Does Staff support the recovery of rate case expense through a surcharge?

A. No. Staff does not support the recovery of rate case expense through a surcharge for the following reasons:

1. Just as with every expense item in a monopolistic environment, the purpose of regulation and rate setting is to give the company the opportunity to recover its expenses, and not guarantee recovery. This helps to ensure that the company vigilantly looks for and implements ways to reduce costs.
2. Regulated utilities are rewarded for taking risks in the same manner as unregulated companies that must compete and stay afloat by continued improvement, efficiency, and good management. The use of a surcharge may diminish the incentives for companies to operate efficiently.
3. Further, normalization is a reasonable and widely used method of recovering rate case expense. The Commission used this method in the Company's last rate case (SW-02361A-08-0609) normalizing rate case expense using three years and allowing the Company to recover its full cost without a surcharge.

Q. What is Staff's recommendation?

A. Staff recommends that the Company's proposed surcharge for rate case expense be denied.

PROPERTY TAX ADJUSTOR MECHANISM

Q. Did Black Mountain propose an adjustor mechanism for property taxes?

A. Yes.

Q. Does Staff have any concerns about the Company having both a forward-looking method of calculating property taxes and a property tax adjustor mechanism?

A. Yes. The Company proposed and Staff recommended forward-looking property tax calculation typically provides more revenue for property taxes through rates than the amount that is actually due and payable to the Arizona Department of Revenue ("ADOR").

Q. What is the main cause of this difference in property taxes?

A. The ADOR determines the property taxes of a utility using a formula that is based on a utility's historical revenues. Under the ADOR methodology, the full cash value is based on twice the average of the company's three previous years of *actual revenues.* Under the forward-looking approach, the full cash value is based on twice the average of the Staff adjusted test year revenue and the Staff recommended revenue (which includes the increase).

Q. Staff has recommended a rate decrease, how will property taxes be impacted?

A. Even with a rate decrease, Staff's recommended forward-looking property tax calculation produces a property tax of $48,214 (based on a three year average revenue of approximately $2,182,677) which is more than the Company's actual property tax expense of $47,904 (based on a historical three year average revenue of $2,199,522)[2].

Q. What is Staff's recommendation?

A. Staff recommends that the Company be provided the option to choose either (1) a property tax adjustor mechanism with only the actual test year property tax expense of $47,904 included in operating expenses or (2) the pro forma property tax expense of $48,214 derived using the forward-looking property tax calculation with no property tax adjustor mechanism.

[2] Revenues per Utilities Annual Reports: 2011, $2,179,616; 2012, $2,192,209; 2013, $2,226,742.

Q. Does this conclude your direct testimony for rate design?

A. Yes, it does.

Liberty Utilities (Black Mountain Sewer) Corp. Schedule CSB-1
Docket Nos. SW-02631A-15-0206 & SW-02631A-15-0207
Test Year Ended December 31, 2014

RATE DESIGN

Monthly Service Charge:	Present Rates	Company Proposed	Staff Recommended
Residential Service - Per single family unit	$65.24	$ 79.20	$ 75.00
Commercial - Per month	No Tariff	$ 85.00	$ 85.00
Commodity Rate			
Commercial - Per gallon per day **(a)**	$ 0.28473	Remove	Remove
Commercial - Per 1,000 gallons **(b)**	No Tariff	$ 5.13	$ 1.78
Effluent Sales			
Per thousand gallons	$ 0.46051	$ 0.46051	$ 0.46051
Per Acre Feet	$150.00	$150.00	$150.00

(a) Per Gallon per Day of wastewater flow. Wastewater flows are based on Engineering Bulletin 12, Table 1 published by ADEQ.
(b) Monthly water usage provided by the Town of Carefree and City of Scottsdale.

Service Charges:	Present Rates	Company Proposed	Staff Recommended
Establishment	$ 25.00	$ 25.00	$ 25.00
Re-establishment	$ 25.00	[1]	[1]
Re-connection	No Charge	Remove	Remove
Re-connection, Delinquent	No Tariff	[2]	[5]
After Hours Charge	No Tariff	$ 50.00	$ 50.00
Minimum Deposit (Residential)	[3]	[3]	[3]
Minimum Deposit (Non-Residential)	[3]	[3]	[3]
Deposit Interest	6.00%	6.00%	6.00%
NSF Check Charge	$ 10.00	$ 10.00	$ 10.00
Deferred Paymnt Finance Charge, per month	1.50%	1.50%	1.50%
Late Charge, per month	1.50%	1.50%	1.50%
Main Extension Tariff	Cost	Cost	Cost
Hook-Up Fee	Per Tariff	Per Tariff	Per Tariff

[1] Per A.A.C. R14-2-603D: Within 12 months. Residential and non-residential customers shall pay the applicable minimum charge times the number of months disconnected.

[2] Customer shall pay the actual cost of physical disconnection and establishment (if same customer) and there shall be no charge for disconnection if no physical work is performed.

[3] Per A.A.C. R14-2-603B: Residential - two times average bill, Non-residential - two and one-half times average bill

[4] After Hours Service Charge applies to all services performed after regular business hours and is in addition to the service charge during regular business hours.

[5] Cost shall be reasonable and customary. A delinquent customer who has been disconnected from the utility and desires to be reconnected shall pay the actual cost of disconnection and the actual cost of reconnection. There shall be no charge for disconnection if no physical work was performed.

[6] The after-hours service charge shall apply to any service requested by Customer or for the customer's convenience that is performed by Company after regular business hours and shall be in addition to the regular business hours service charge.

Liberty Utilities (Black Mountain Sewer) Corp.
Docket Nos. SW-02631A-15-0206 & SW-02631A-15-0207
Test Year Ended December 31, 2014

Schedule CSB

TYPICAL BILL ANALYSIS

	Per Company - Residential				Per Staff - Residential			
	Present Rates	Company Proposed	Dollar Increase	Percent Increase	Present Rates	Staff Recommended	Dollar Increase	Percent Increase
Residential Service - Per single family unit	$65.24	$ 79.20	$ 13.96	21.40%	$65.24	$ 75.00	$ 9.76	14.96%

	Per Company - Commercial				Per Staff - Commercial			
	Present Rates	Company Proposed	Dollar Increase	Percent Increase	Present Rates	Staff Recommended	Dollar Increase	Percent Increase
Commercial	$401.00	$ 264.30	$ (136.70)	-34.09%	$401.00	$ 147.32	$ (253.68)	-63.26%

BEFORE THE ARIZONA CORPORATION COMMISSION

SUSAN BITTER SMITH
Chairman
BOB STUMP
Commissioner
BOB BURNS
Commissioner
DOUG LITTLE
Commissioner
TOM FORESE
Commissioner

IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANT AND PROPERTY AND FOR INCREASES IN IT'S WASTEWATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON	DOCKET NO. SW-02361A-15-0207
IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION FOR AUTHORITY TO ISSUE EVIDENCE OF INDEBTEDNESS IN AN AMOUNT NOT TO EXCEED $3,400,000	DOCKET NO. SW-02361A-15-0206

DIRECT

TESTIMONY

OF

DOROTHY HAINS, P. E.

UTILITIES ENGINEER

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

DECEMBER 16, 2015

TABLE OF CONTENTS

		Page
I.	INTRODUCTION	1
II.	COST OF SERVICE STUDY – REVIEW PROCESS	2
III.	CONCLUSIONS	3

EXECUTIVE SUMMARY
LIBERTY UTILITIES BLACK MOUNTAIN SEWER CORP
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207

Dorothy Hains' testimony discusses Utilities Division Staff's ("Staff") review of Liberty Utilities Black Mountain Sewer Corp ("BMSC" or "Company") Cost of Service Study ("COSS") for the rate case filed with the Arizona Corporation Commission ("Commission"), and presents the results of Staff's analysis.

Based on its review of BMSC's COSS, Staff's conclusions are as follows:

1. It is Staff's conclusion that BMSC developed the COSS and allocation factors appropriately.

2. Staff further concludes that, based on the evaluation of the COSS model utilized by BMSC, the results of the COSS are satisfactory.

I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Dorothy Hains. My business address is 1200 West Washington Street, Phoenix, Arizona 85007.

Q. Are you the same Dorothy Hains who has previously filed testimony in this Liberty Utilities Black Mountain Sewer Corporation ("BMSC", "Black Mountain" or "Company") rate proceeding?

A. Yes.

Q. Did Staff perform an analysis of the application that is the subject of this proceeding?

A. Yes, Staff reviewed the Company's Cost of Service Study ("COSS").

Q. What is the purpose of this Direct Testimony?

A. The purpose is to discuss Staff's review of BMSC's COSS for the rate case, and present the results of this review along with Staff's recommendations.

Q. Was rate design part of your assignment and what is a COSS?

A. No. A COSS is the allocation of only costs to each customer class. Rate design is basically the allocation of revenues within each customer class. The COSS is only one of many factors that is considered when allocating revenues. Once the revenue allocation is completed, the specific rates are designed to collect those revenues. Staff's rate design witness for this rate case is Ms. Crystal Brown.

II. COST OF SERVICE STUDY – REVIEW PROCESS

Q. What does the COSS signify?

A. There are three steps in performing the COSS. They are: 1) Functionalization; 2) Classification; and 3) Allocation. First, the COSS enables us to determine the system cost of service by classifying the utility's costs (investments and expenses) by function, such as commodity-related, demand-related, and customer-related functions. Customer-related functions are further broken down into customers and customer services. Second, the study breaks down these costs by customer classes to reflect as closely as possible the cost causation by respective customer classes. Third, the results of the COSS provide a benchmark for the revenues needed from each customer category by allocating the revenue requirement for each customer class.

Q. Is there a standard COSS Model?

A. There is no standard methodology for designing a COSS, but it is generally advisable to follow a range of alternatives to identify which allocations are more reasonable than others. For that reason, the COSS should be used as a general guide only and as one of many considerations in designing rates.

Q. Did Staff conduct a separate independent COSS?

A. No, Staff did not conduct a separate independent COSS.

Q. What was the process Staff used in reviewing BMSC's COSS?

A. Staff reviewed BMSC's overall COSS methodology, which is the Commodity-Demand method as outlined in the American Water Works Association Manual M1, "Principles of Water Rates, Fees, and Charges". The Commodity-Demand Method breaks down the costs of providing wastewater service into three primary cost components: commodity costs (costs

that tend to vary with the amount of wastewater discharged by the customers), demand costs (costs associated with peak flow/demand), and customers costs (costs not associated with wastewater treatment, such as billing costs). Staff finds that BMSC's Commodity-Demand Method is appropriate.

III. CONCLUSIONS

Q. Based upon your testimony, what are Staff's conclusions regarding the Cost of Service Study?

A. Based on the review of BMSC's COSS, Staff's conclusions are as follows:

1. It is Staff's conclusion that BMSC performed the COSS consistent with the methodology generally accepted in the industry, and developed the allocation factors appropriately in accordance with the Staff recommended and Commission approved allocation factors in prior COSS studies filed with this Commission.

2. Staff further concludes that, based on the evaluation of the COSS model utilized by BMSC, the results of the COSS are satisfactory.

Staff's conclusions are limited to the specific facts of this case and do not create any precedent regarding Cost of Service Studies generally.

Q. Does this conclude your Direct Testimony?

A. Yes, it does.

BEFORE THE ARIZONA CORPORATION COMMISSION

SUSAN BITTER SMITH
Chairman
BOB STUMP
Commissioner
BOB BURNS
Commissioner
DOUG LITTLE
Commissioner
TOM FORESE
Commissioner

IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR AUTHORITY TO ISSUE EVIDENCE OF INDEBTEDNESS IN AN AMOUNT NOT TO EXCEED $3,400,000.	DOCKET NO. SW-02361A-15-0206
IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY AND FOR INCREASES IN ITS WASTEWATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.	DOCKET NO. SW-02361A-15-0207

DIRECT TESTIMONY OF

CRYSTAL S. BROWN

EXECUTIVE CONSULTANT III

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

DECEMBER 16, 2015

TABLE OF CONTENTS

	Page
INTRODUCTION	1
COST OF SERVICE STUDY	1
RATE DESIGN	3
MISCELLANEOUS SERVICE CHARGES	5
HOOK-UP FEE	7
PLANT CLOSURE SURCHARGE MECHANISM	7
PURCHASED POWER ADJUSTOR MECHANISM	8
RATE CASE EXPENSE SURCHARGE	9
PROPERTY TAX ADJUSTOR MECHANISM	9

SCHEDULES

Rate Design	CSB-1
Typical Bill Analysis	CSB-2

EXECUTIVE SUMMARY
LIBERTY UTILITIES (BLACK MOUNTAIN SEWER), CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207

Rate Design

Liberty Utilities (Black Mountain Sewer), Corporation ("Black Mountain" or "Company") is a certificated Arizona public service corporation that provides wastewater utility service to approximately 2,100 customers during 2014 primarily in the Town of Carefree, in unincorporated portions of Maricopa County and in portions of the City of Scottsdale. The current rates for Black Mountain were approved in Decision No. 71865, dated August 31, 2010.

Monthly Customer Charge & Volumetric Rates

The Company proposes a monthly customer charge (flat rate) of $79.20 for residential customers with no volumetric rate. The Company proposes an $85.00 monthly customer charge for each commercial customer with a volumetric rate of $5.13 per 1,000 gallons for all monthly water usage. The Company proposes no change to the current commodity rate for effluent of $0.46051 per thousand gallons.

Staff recommends a $75.00 residential monthly customer charge with no volumetric rate as shown on Schedule CSB-1. Staff recommends a $85.00 monthly customer charge for each commercial customer with a volumetric rate of $1.78 per 1,000 gallons for all water usage. Staff recommends no change to the current commodity rate for effluent of $0.46051 per thousand gallons.

Typical Bill Analysis

The typical residential customers with a current flat rate of $65.24 per month would experience a $13.96 or a 21.40 percent increase in their monthly bill to $79.20 under the Company's proposed rates. These same customers would experience a $9.76 or a 14.96 percent increase in their monthly bill to $75.00 under Staff's recommended rates, as shown on Schedule CSB-2.

INTRODUCTION

Q. Please state your name, occupation, and business address.

A. My name is Crystal S. Brown. I am an Executive Consultant III employed by the Arizona Corporation Commission ("ACC" or "Commission") in the Utilities Division ("Staff"). My business address is 1200 West Washington Street, Phoenix, Arizona 85007.

Q. Are you the same Crystal S. Brown who filed direct testimony on revenue requirement in this case?

A. Yes.

COST OF SERVICE STUDY

Q. Did Black Mountain prepare a Cost of Service Study ("COSS")?

A. Yes, Black Mountain prepared a COSS.

Q. What is a COSS?

A. In very simple terms, a COSS is an estimation of cost-causation by customer class, i.e. how much it costs the utility to provide its service to each specific customer class. A COSS allocates a portion of a company's total expenses and rate base to each customer class. The reason for determining the costs incurred by the utility to serve each customer class is to assist in allocating the revenue requirement for each customer class.

Q. Can the result of a COSS be widely divergent based upon the subjective judgement used for the allocation factors?

A. Yes. The use of arbitrary allocation factors in a COSS can lead to widely divergent results based upon the judgments involved. I believe this fact is one of many reasons why formal COSS are not required when developing the rate design for small wastewater systems.

Q. Is a COSS synonymous to rate design?

A. No, it is not. Rate design should not be confused with a COSS. A COSS is the allocation of costs to each customer class. Rate design involves the allocation of required revenues to each customer.

Q. Should COSS results be the sole factor used in rate design?

A. No, it should not. The results from a COSS are not definitive because, absent formal system demand studies, a large degree of subjectivity is used in allocating costs. Consequently, a COSS should not be used as the sole factor in rate design.

Q. How did Staff use Black Mountain's COSS in its rate design?

A. Staff utilized the COSS as a guideline or starting point for its rate design. However, Staff did not rely solely on the Company's COSS but used other factors to develop its rate design.

Q. What other factors did Staff consider in developing its rate design?

A. In addition to using the results of the COSS at the outset of Staff's analysis, Staff also considered factors such as revenue stability, gradualism, and fair apportionment of revenue among customer classes.

Q. Has Staff recommended an overall revenue decrease?

A. Yes, Staff has recommended a 7.66 percent revenue decrease.

Q. Why then are the residential customers experiencing a rate increase?

A. There are two primary reasons for the increase. First, some costs were shifted to the residential class from the commercial class due to the efforts to move the return level generated by the various customer classes closer. Second, the change in the commercial commodity rate from "per gallon per day" of wastewater flow to "per thousand gallons" of

water usage further reduced the revenue generated from the commercial class that was again shifted to the residential class.

RATE DESIGN

Q. Has Staff prepared a schedule summarizing the present, Company proposed, and Staff recommended rates and service charges?

A. Yes. Schedule CSB-1 provides a summary of the Company's present, Company's proposed, and Staff's recommended rates.

Q. What changes has the Company proposed for the commercial customer class?

A. The Company has proposed to change its current rate design of "gallons per day of wastewater flow" which is based upon Engineering Bulletin No. 12 published by the Arizona Department of Environmental Quality to "per 1,000 gallons of actual monthly water usage." The Company stated that it received the actual commercial customer water usage data from the Town of Carefree Water Company, Cave Creek Water Company and City of Scottsdale, the water providers in Liberty Black Mountain's service area. The Company further stated that it will continue to get monthly water use data if the Commission approves a rate design based on water usage.

Q. Why has the Company proposed this change?

A. According to the Company the reasons are to: (1) eliminate the reliance on ADEQ Bulletin 12 and address concerns over its use for setting a customer's wastewater charges; (2) keep it as simple as possible; (3) provide for a design that better reflects the demand each commercial customer places on the system; and (4) continue to provide a reasonable level of revenue stability.

Q. Does Staff concur with the Company's proposed change?

A. Yes. The Company's proposal to use a commercial customer's actual usage to estimate wastewater flow will provide a more realistic estimation of wastewater flow.

Q. Please summarize the present rate design.

A. The present monthly customer charge for the residential customers is $65.24 with no commodity charge. Regular commercial customers pay $0.24873 per gallon per day of sewer flow[1] and no monthly service charge. Effluent customers pay $0.46051 per thousand gallons.

Q. Please summarize the Company's proposed rate design.

A. The Company proposes a monthly customer charge (flat rate) of $79.20 for residential customers with no volumetric rate. The Company proposes an $85.00 monthly customer charge for each commercial customer with a volumetric rate of $5.13 per 1,000 gallons for all monthly water usage. The Company proposes no change to the current commodity rate for effluent of $0.46051 per thousand gallons.

Q. Please summarize Staff's recommended rate design.

A. Staff recommends a $75.00 residential monthly customer charge with no volumetric rate as shown on Schedule CSB-1. Staff recommends a $85.00 monthly customer charge for each commercial customer with a volumetric rate of $1.78 per 1,000 gallons for all water usage. Staff recommends no change to the current commodity rate for effluent of $0.46051 per thousand gallons.

[1] Flow volume is based on the average daily flows set forth in the *Engineering Bulletin No. 12*, Table 1, published by the Arizona Department of Environmental Quality (June 1989).

Q. What is the rate impact on a typical residential customer?

A. The typical residential customer with a current flat rate of $65.24 per month would experience a $13.96 or a 21.40 percent increase in their monthly bill to $79.20 under the Company's proposed rates. This same customer would experience a $9.76 or a 14.96 percent increase in their monthly bill to $75.00 under Staff's recommended rates, as shown on Schedule CSB-2.

Q. What is the rate impact on a typical commercial customer?

A. Using the data provided by Mr. Bourassa on page 31 of his direct testimony, the typical commercial customer with an average gallons per day ("gpd") rating of 1,612 gpd of wastewater flow would be $401.00 under current rates. Under the Company's proposed rates, a typical commercial customer with an average monthly water usage of 35,009 gallons would experience a $136.70 or a 34.09 percent decrease in their monthly bill to $264.30. This same customer would experience a $253.68 or a 63.26 percent decrease in their monthly bill to $147.32 under Staff's recommended rates, as shown on Schedule CSB-2.

MISCELLANEOUS SERVICE CHARGES

Q. Did the Company propose any changes to the service charges?

A. Yes. The Company proposes the following:

1. To change the Re-establishment charge from a flat rate of $25 to months off the system times the monthly minimum;
2. To remove the Reconnection Charge;
3. To add a Reconnection, Delinquent Charge at cost;
4. To add an After Hours Charge of $50; and
5. To change the Late Payment- Per Month charge from 1.50 percent per month to the greater of $5.00 or 1.50 percent per month on unpaid balance.

Q. Does Staff agree with the Company's proposal to change the Re-establishment charge from a flat rate of $25 to months off the system times the monthly minimum?

A. Yes, as the Company's proposal is consistent with Arizona Administrative Code ("A.A.C.")R14-2-603 D.

Q. Does Staff agree with the Company's proposal to remove the Reconnection Charge and to add a Reconnection, Delinquent Charge at cost?

A. Yes, the Company currently provides the reconnection service at no cost. The addition of a Reconnection, Delinquent Charge at cost is reasonable and consistent with the cost causation principle. In addition, Staff recommends the following language be added to the Company's tariff for the Reconnection, Delinquent Charge:

> **Reconnection – Delinquent** at **COST** which is reasonable and customary.
>
> A delinquent customer who has been disconnected from the utility and desires to be reconnected shall pay the actual cost of disconnection and the actual cost of reconnection. There shall be no charge for disconnection if no physical work was performed.

Q. Does Staff agree with the Company's proposal to add an After Hours Service Charge?

A. Yes, Staff agrees that the proposed After Hours Service Charge of $50.00 is reasonable and customary. Such a tariff compensates the utility for additional expenses incurred from providing after-hours service when this type of service is at the customer's request or for the customer's convenience.

For example, under the Company's proposal, a customer would be subject to a $25.00 Establishment fee if it is done during normal business hours, but would pay an additional $50.00 After-Hours fee **if the customer requested** that the establishment be done after

normal business hours. Staff recommends that the following language be added to the Company's tariff for the After Hours Service Charge:

> The after-hours service charge shall apply to any service requested by Customer or for the customer's convenience that is performed by Company after regular business hours and shall be in addition to the regular business hours service charge.

Q. Does Staff agree with the Company's proposed changes to its Late Payment Charge?

A. Yes, Staff agrees that the Company's proposal to change the Late Payment-Per Month charge from 1.50 percent per month, to the greater of $5.00 or 1.50 percent per month on unpaid balance is reasonable and would be more effective in encouraging timely payment than the current 1.5 percent.

HOOK-UP FEE

Q. Did Black Mountain propose an off-site facilities hook-up fee ("HUF")?

A. Yes.

Q. What does Staff recommend?

A. Staff recommends approval of the HUF as discussed in greater detail in the testimony of Staff witness, Dorothy Hains.

PLANT CLOSURE SURCHARGE MECHANISM

Q. What are Staff's recommendations concerning Black Mountain's proposed Plant Closure Surcharge mechanisms?

A. Staff witness, James R. Armstrong, the Chief of the Financial and Regulatory Analysis section, will provide Staff's analysis and recommendations concerning the Plant Closure Surcharge mechanisms.

PURCHASED POWER ADJUSTOR MECHANISM

Q. In its Application, does Black Mountain propose the adoption of a cost recovery adjustment mechanism for purchased power?

A. Yes, the Company has proposed the adoption of a purchased power adjustment mechanism ("PPAM") in rates. As proposed, the PPAM will serve as a cost recovery adjustment mechanism for recovery of only the increase (decrease) in purchased power expense caused by an increase (decrease) in power rates charged to Black Mountain by the Company's electric utility provider, Arizona Public Service ("APS"). The purchased power expense included in operating expenses will serve as the base figure against which the amounts to be recovered or refunded when increases or decreases in purchased power costs per kwh are incurred in future years. Increases (decreases) to purchased power costs expense resulting from changes in the volume of water pumped will not affect the amount to be recovered (refunded) by the proposed PPAM.

Q. Why has the Company proposed the adoption of a PPAM in rates?

A. Because Black Mountain has no control over the rate it is charged for electric power by APS, the Company's proposed PPAM is intended as a mechanism to pass along any cost increase, or decrease, in purchased power to customers. The Company believes that a closer match between costs and customer bills will reduce regulatory lag, and create a more efficient price signal. Additionally, Black Mountain believes that the presence of a PPAM will help ensure that the Company has the opportunity to earn its authorized rate of return.

Q. What is Staff's recommendation with regard to Black Mountain's request for a PPAM?

A. Staff recommends approval of the PPAM and that the Company file a PPAM tariff and a Plan of Administration for Staff's review and approval.

RATE CASE EXPENSE SURCHARGE

Q. Is Black Mountain proposing a surcharge for rate case expense?

A. Yes.

Q. Does Staff support the recovery of rate case expense through a surcharge?

A. No. Staff does not support the recovery of rate case expense through a surcharge for the following reasons:

1. Just as with every expense item in a monopolistic environment, the purpose of regulation and rate setting is to give the company the opportunity to recover its expenses, and not guarantee recovery. This helps to ensure that the company vigilantly looks for and implements ways to reduce costs.
2. Regulated utilities are rewarded for taking risks in the same manner as unregulated companies that must compete and stay afloat by continued improvement, efficiency, and good management. The use of a surcharge may diminish the incentives for companies to operate efficiently.
3. Further, normalization is a reasonable and widely used method of recovering rate case expense. The Commission used this method in the Company's last rate case (SW-02361A-08-0609) normalizing rate case expense using three years and allowing the Company to recover its full cost without a surcharge.

Q. What is Staff's recommendation?

A. Staff recommends that the Company's proposed surcharge for rate case expense be denied.

PROPERTY TAX ADJUSTOR MECHANISM

Q. Did Black Mountain propose an adjustor mechanism for property taxes?

A. Yes.

Q. Does Staff have any concerns about the Company having both a forward-looking method of calculating property taxes and a property tax adjustor mechanism?

A. Yes. The Company proposed and Staff recommended forward-looking property tax calculation typically provides more revenue for property taxes through rates than the amount that is actually due and payable to the Arizona Department of Revenue ("ADOR").

Q. What is the main cause of this difference in property taxes?

A. The ADOR determines the property taxes of a utility using a formula that is based on a utility's historical revenues. Under the ADOR methodology, the full cash value is based on twice the average of the company's three previous years of *actual revenues.* Under the forward-looking approach, the full cash value is based on twice the average of the Staff adjusted test year revenue and the Staff recommended revenue (which includes the increase).

Q. Staff has recommended a rate decrease, how will property taxes be impacted?

A. Even with a rate decrease, Staff's recommended forward-looking property tax calculation produces a property tax of $48,214 (based on a three year average revenue of approximately $2,182,677) which is more than the Company's actual property tax expense of $47,904 (based on a historical three year average revenue of $2,199,522)[2].

Q. What is Staff's recommendation?

A. Staff recommends that the Company be provided the option to choose either (1) a property tax adjustor mechanism with only the actual test year property tax expense of $47,904 included in operating expenses or (2) the pro forma property tax expense of $48,214 derived using the forward-looking property tax calculation with no property tax adjustor mechanism.

[2] Revenues per Utilities Annual Reports: 2011, $2,179,616; 2012, $2,192,209; 2013, $2,226,742.

Q. Does this conclude your direct testimony for rate design?

A. Yes, it does.

Liberty Utilities (Black Mountain Sewer) Corp. Schedule CSB-1
Docket Nos. SW-02631A-15-0206 & SW-02631A-15-0207
Test Year Ended December 31, 2014

RATE DESIGN

Monthly Service Charge:	Present Rates	Company Proposed	Staff Recommended
Residential Service - Per single family unit	$65.24	$ 79.20	$ 75.00
Commercial - Per month	No Tariff	$ 85.00	$ 85.00
Commodity Rate			
Commercial - Per gallon per day **(a)**	$ 0.28473	Remove	Remove
Commercial - Per 1,000 gallons **(b)**	No Tariff	$ 5.13	$ 1.78
Effluent Sales			
Per thousand gallons	$ 0.46051	$ 0.46051	$ 0.46051
Per Acre Feet	$150.00	$150.00	$150.00

(a) Per Gallon per Day of wastewater flow. Wastewater flows are based on Engineering Bulletin 12, Table 1 published by ADEQ.
(b) Monthly water usage provided by the Town of Carefree and City of Scottsdale.

Service Charges:	Present Rates	Company Proposed	Staff Recommended
Establishment	$ 25.00	$ 25.00	$ 25.00
Re-establishment	$ 25.00	[1]	[1]
Re-connection	No Charge	Remove	Remove
Re-connection, Delinquent	No Tariff	[2]	[5]
After Hours Charge	No Tariff	$ 50.00	$ 50.00
Minimum Deposit (Residential)	[3]	[3]	[3]
Minimum Deposit (Non-Residential)	[3]	[3]	[3]
Deposit Interest	6.00%	6.00%	6.00%
NSF Check Charge	$ 10.00	$ 10.00	$ 10.00
Deferred Paymnt Finance Charge, per month	1.50%	1.50%	1.50%
Late Charge, per month	1.50%	1.50%	1.50%
Main Extension Tariff	Cost	Cost	Cost
Hook-Up Fee	Per Tariff	Per Tariff	Per Tariff

[1] Per A.A.C. R14-2-603D: Within 12 months. Residential and non-residential customers shall pay the applicable minimum charge times the number of months disconnected.

[2] Customer shall pay the actual cost of physical disconnection and establishment (if same customer) and there shall be no charge for disconnection if no physical work is performed.

[3] Per A.A.C. R14-2-603B: Residential - two times average bill, Non-residential - two and one-half times average bill

[4] After Hours Service Charge applies to all services performed after regular business hours and is in addition to the service charge during regular business hours.

[5] Cost shall be reasonable and customary. A delinquent customer who has been disconnected from the utility and desires to be reconnected shall pay the actual cost of disconnection and the actual cost of reconnection. There shall be no charge for disconnection if no physical work was performed.

[6] The after-hours service charge shall apply to any service requested by Customer or for the customer's convenience that is performed by Company after regular business hours and shall be in addition to the regular business hours service charge.

Liberty Utilities (Black Mountain Sewer) Corp.
Docket Nos. SW-02631A-15-0206 & SW-02631A-15-0207
Test Year Ended December 31, 2014

Schedule CSB

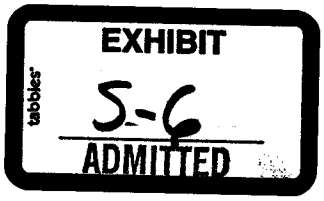
TYPICAL BILL ANALYSIS

	Per Company - Residential				Per Staff - Residential			
	Present Rates	Company Proposed	Dollar Increase	Percent Increase	Present Rates	Staff Recommended	Dollar Increase	Percent Increase
Residential Service - Per single family unit	$65.24	$ 79.20	$ 13.96	21.40%	$65.24	$ 75.00	$ 9.76	14.96%

	Per Company - Commercial				Per Staff - Commercial			
	Present Rates	Company Proposed	Dollar Increase	Percent Increase	Present Rates	Staff Recommended	Dollar Increase	Percent Increase
Commercial	$401.00	$ 264.30	$ (136.70)	-34.09%	$401.00	$ 147.32	$ (253.68)	-63.26%

BEFORE THE ARIZONA CORPORATION COMMISSION

DOUG LITTLE
Interim Chairman
BOB STUMP
Commissioner
BOB BURNS
Commissioner
TOM FORESE
Commissioner



IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR AUTHORITY TO ISSUE EVIDENCE OF INDEBTEDNESS IN AN AMOUNT NOT TO EXCEED $3,400,000.	DOCKET NO. SW-02361A-15-0206
IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY AND FOR INCREASES IN ITS WASTEWATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.	DOCKET NO. SW-02361A-15-0207

DIRECT

TESTIMONY

OF

ELIJAH O. ABINAH

ASSISTANT DIRECTOR

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

JANUARY 27, 2016

EXECUTIVE SUMMARY
LIBERTY UTILITIES (BLACK MOUNTAIN SEWER), CORP.
DOCKET NOS. SW-02361A-15-0206 SW-02361A-15-0207

Mr. Abinah's testimony supports the adoption of the Settlement Agreement ("Agreement") as proposed by the Signatories in this case. This testimony describes the settlement process as open, candid, transparent and inclusive of all Signatories to this case. Mr. Abinah explains why Staff believes this Agreement is in the public interest.

Mr. Abinah's testimony recommends that the Commission adopt the Agreement as proposed.

INTRODUCTION

Q. Please state your name and business address.

A. My name is Elijah O. Abinah. My business address is 1200 West Washington Street, Phoenix, Arizona 85007.

Q. Where are you employed and in what capacity?

A. I am employed by the Arizona Corporation Commission ("ACC" or "Commission") of the Utilities Division ("Staff") as Assistant Director.

Q. How long have you been employed with the Utilities Division?

A. I have been employed with the Utilities Division since January 2003.

Q. Please describe your educational background and professional experience.

A. I received a Bachelor of Science degree in Accounting from the University of Central Oklahoma in Edmond, Oklahoma. I also received a Master of Management degree from Southern Nazarene University in Bethany, Oklahoma. Prior to my employment with the ACC, I was employed by the Oklahoma Corporation Commission for approximately eight and a half years in various capacities in the Telecommunications Division.

Q. What are your current responsibilities?

A. As an Assistant Director, I review submissions that are filed with the Commission and make policy recommendations to the Director regarding those filings.

Q. Have you previously submitted testimony before the Commission?

A. Yes.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to support the Proposed Comprehensive Settlement Agreement ("Agreement"). I will also provide testimony which addresses the settlement process, public interest benefits and general policy considerations.

Q. Did you participate in the negotiations that led to the execution of the Agreement?

A. Yes, I did.

Q. How is your testimony being presented?

A. My testimony is organized into three sections. Section I is this introduction, Section II provides a brief background, Section III provides discussion of the settlement process, Section IV discusses the various parts of the Agreement and discusses the reasons why the Agreement is in the public interest.

SECTION II - BACKGROUND

Q. Please provide a brief background of this proceeding.

A. In 2008, Liberty (Black Mountain) Sewer Corp. ("Black Mountain" or "Company") filed a rate application. One of the issues in that case was the odors that emanated from the Boulders Wastewater Treatment Plant ("WWTP"). Black Mountain and the Boulders Homeowners Association ("BHOA") entered into a Plant Closure Agreement. The Town of Carefree ("Town") was also a party to the rate case and supported the Plant Closure Agreement. The Commission issued Decision No. 71865 and stated that the Plant Closure Agreement was a reasonable resolution to the odor concerns raised by the Black Mountain customers. Decision No. 71865 approved a surcharge to collect certain cost related to the closure of the WWPT. The Plant Closure Agreement conditioned the closure of the WWTP on ending an Effluent Delivery Agreement with Wind P1 Mortgage Borrowers L.L.C. (now CP Boulders, L.L.C. hereinafter referred to as the "Resort") which operated the Boulders Resort. An agreement

could not be reached on the termination of the Effluent Delivery Agreement and the BHOA requested that the Commission reopen Decision No. 71865 and order the closure of the WWTP. The Commission, in Decision No. 73885 (May 8, 2013), ordered the Company to close the WWTP. The Resort appealed the Commission's decision. The Commission's decision was upheld by the Maricopa County Superior Court. The Resort then appealed the court's decision.

Q. Please provide a brief overview of the Company's rate application.

A. Black Mountain filed a rate application and a financing application on June 22, 2015, and the two matters were consolidated on July 6, 2015. Among the reasons for the Company's application was the change in plans and estimated costs related to the closure of the WWTP and the need for a new commercial rate design.

Q. What is the revenue increase and cost of equity requested by the Company?

A. Black Mountain proposed a base rate increase of $56,929, or 2.54 percent, revenue increase from $2,239,848 to $2,296,777, which included a requested cost of equity of 10.8 percent. The Company also proposed to recover certain plant closure costs through a surcharge which would be designed to recover $211,000 annually. The Company's proposal also included a request to recovery $150,000 annually through a separate surcharge to recover rate case expense.

Q. What is the revenue increase and cost of equity recommended by the Parties?

A. The Parties agree to a total revenue requirement of $2,415,080, which results in an increase in revenues equal to $175,232 over test year revenues, an increase of 7.82 percent with a 9.5 percent cost of equity. The increase over the Company's initial request is the result of the inclusion of $825,083 of costs in rate base. This rate base addition represents plant closure costs incurred as of September 30, 2015. Such deferred costs will be recorded as a regulatory asset

and the annualized amortization of this regulatory asset over a 20 year period, is also included in the Company's proposed Settlement rates.

Q. Is there anything you would like to point out?

A. Prior to entering into settlement negotiations, the Company, the Town, the Resort and the BHOA entered into a settlement agreement ("Town/Resort Agreement"). The Town/Resort Agreement filed in the docket on November 16 2015. Staff was not involved in the negotiation nor was Staff a party to the Town/Resort Agreement. The Settlement Agreement provides that as to the parties to the Town/Resort Agreement, is still in effect as to those parties that executed it, except as the Town/Resort Agreement is specifically modified by the terms of the Settlement Agreement. The Town/Resort Agreement provides for the proposed dismissal of the Resort's Appeal of Decision No. 73885 (May 13, 2013) and the release of all claims related to the closure of the Boulders WWTP.

SECTION III – SETTLEMENT PROCESS

Q. Please discuss the settlement process.

A. The settlement process was open, transparent and inclusive. All parties received notice of the settlement meeting and were accorded an opportunity to raise, discuss, and propose resolution to any issue that they desired.

Q. Who participated in those meetings?

A. The following parties were participants in the meetings: Black Mountain; the Residential Utility Consumer Office ("RUCO"); the Town of Carefree, Arizona ("Town"); the Resort and Staff (collectively referred to as Parties).

Q. Was there an opportunity for all issues to be discussed and considered?

A. Yes, each party had the opportunity to raise and have its issues considered.

Q. Were the Parties able to resolve all issues?

A. Yes, the Parties were able to resolve and reach agreement on all issues.

Q. How would you describe the negotiations?

A. I believe that all participants zealously advocated and represented their interests. I would characterize the discussions as candid but professional.

Q. Would you describe the process as requiring give and take?

A. Yes, I would. As a result of the varied interests represented in the settlement process, a willingness to compromise was necessary. As evidenced in the Agreement, the Parties compromised on what could be described as vastly different litigation positions.

Q. Because of such compromising, do you believe the public interest was compromised?

A. No. As I will discuss later in this testimony, I believe that the compromises made by the Parties further the public interest.

IV. THE SETTLEMENT AGREEMENT

Q. What are the significant sections in the Settlement Agreement?

A. The Settlement Agreement provides for the deferral of certain costs associated with the closure of the WWTP to be recovered by the Company in rates at a later date. The Settlement Agreement also provides for a new commercial rate design, which includes a monthly minimum and a volumetric charge based on water data to be provided to the Company by the water

providers in the Company's service area. The Settlement Agreement also provides a date certain of November 30, 2018 for the closure of the WWTP.

Q. Please describe the settlement as it relates to the closure of the WWTP.

A. The Settlement Agreement addresses the costs that have been incurred as of September 30, 2015, by Black Mountain relating to the closure, the costs associated with obtaining additional treatment capacity from the City of Scottsdale and the costs associated with the modification and realignment of the Company's collection and transmission system.

Q. Please describe the treatment of the actual costs related to the closure.

A. As of September 30, 2015, Liberty Black Mountain had incurred $1,133,080 in closure costs. The Company has agreed to the recovery of $825,080. This amount is included in the Company's rates under the Settlement Agreement.

Q. Please describe the treatment of the replacement capacity costs.

A. The Company has negotiated with the City of Scottsdale, an Amended and Restated Wastewater Treatment Agreement, and that such agreement is awaiting final approval by the City of Scottsdale. The cost is $1.2 Million for the replacement capacity. For ratemaking purposes, upon payment to the City of Scottsdale, this amount shall be treated as a regulatory asset and the Company will be permitted to defer the cost of the replacement capacity, depreciation expense recorded on the underlying regulatory assets, and post-in service Allowance for Funds Used During Construction ("AFUDC") for later recovery in rates. The post-in service AFUDC rate shall be 7.71 percent, and that the deferred amount shall be depreciated at a rate of 5 percent at such time it is recognized for inclusion in rate base.

Q. Please describe the treatment of the realignment costs.

A. The cost associated with the modification and realignment of the Company's existing collection and transmission system is estimated to be $3,899,700 which amount includes the $1.2 Million for Replacement Capacity. The Parties agree that all costs shall be recorded on the Company's books and records as incurred. AFUDC should be recorded during construction in the ordinary and customary manner for such construction projects. Once the facilities are in service, the Company shall record but defer depreciation on the remaining costs of closure for recovery in rates in the Company's next rate case. Such deferred cost shall be recorded as a regulatory asset. The Company shall be permitted to recover and defer post-in service AFUDC at the rate of 7.71 percent.

The Parties acknowledge that the remaining closure costs can only be estimated at this time, and the final remaining closure costs may be higher than the current estimate. The amounts subject to deferred depreciation and the amount subject to the accrual of post in-service AFUDC shall not exceed $3,299,700 ($2,699,700 plus a maximum of $500,000 for post in-service AFUDC and deferred depreciation), exclusive of the cost of the Replacement Capacity.

Q. Is the Settlement Agreement in the public interest?

A. Yes. There are several reasons why the Settlement Agreement is in the public interest. The terms of the Settlement Agreement produce a revenue requirement that will result in rates that are just and reasonable. Settlement of all contested issues will save time and the expense of a contested hearing. Further the Settlement Agreement:

- Allows the Company the opportunity to earn an overall return of 7.71 percent and a 9.5 percent return on equity, which provides the Company sufficient revenue to provide reliable service.

- Provides for a commercial rate design that will be based upon water usage data from the water service providers in the Company's service, resolving complaints from the commercial customers and complying with a Commission directive.
- Provides that the WWTP will close on or before November 30, 2018, thus removing the source of numerous odor and noise complaints by the Company's customers.
- Replaces the previously Commission ordered surcharge with recovery of the cost of closure by inclusion in rates.
- Upon approval of the Settlement Agreement by the Commission, the Resort will withdraw its appeal of Decision No. 73885, thus ending protracted and costly litigation.

Q. Does this conclude your Direct Testimony?

A. Yes, it does.

EXHIBIT
RUCO-1
ADMITTED

BEFORE THE ARIZONA CORPORATION COMMISSION

DOUG LITTLE
ACTING CHAIRMAN
BOB STUMP
COMMISSIONER
BOB BURNS
COMMISSIONER
TOM FORESE
COMMISSIONER
VACANT
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR AUTHORITY TO ISSUE EVIDENCE OF INDEBTEDNESS IN AN AMOUNT NOT TO EXCEED $3,400,000.	Docket No. SW-02361A-15-0206
IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY AND FOR INCREASES IN ITS WASTEWATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.	Docket No. SW-02361A-15-0207

RUCO'S NOTICE OF FILING

The Residential Utility Consumer Office ("RUCO") hereby provides notice of filing the Direct Testimony of David P. Tenney in support of the Settlement Agreement, in the above-referenced matter.

RESPECTFULLY SUBMITTED this 27th day of January, 2016.

Daniel W. Pozefsky
Chief Counsel

AN ORIGINAL AND THIRTEEN COPIES of the foregoing filed this 27th day of January, 2016 with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

COPIES of the foregoing emailed this 27th day of January, 2016 to:

Robin Mitchell
Wes Van Cleve
Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007
rmitchell@azcc.gov
wvancleve@azcc.gov

Jay L. Shapiro
Shapiro Law Firm, P.C.
1819 E. Morten Avenue, Suite 280
Phoenix, Arizona 85020
jay@shapslawaz.com
whitney@shapslawaz.com

Todd C. Wiley
Liberty Utilities
12725 W. Indian School Rd, Suite D-101
Avondale, Arizona 85392
Todd.wiley@libertyutilities.com

Copies of the foregoing mailed this 27th day of January, 2016 to:

Michele Van Quathem
Ryley Carlock & Applewhite
One N. Central Avenue
Phoenix, Arizona 85004-4417

Scott Wakefield
Hienton & Curry, P.L.L.C
5045 N. 12th Street, Suite 110
Phoenix, Arizona 85014-9900

Michael Wright
Sherman & Howard, LLC
7033 E. Greenway Pkwy, Suite 250
Scottsdale, Arizona 85254

Gary Neiss
Town of Carefree
100 Easy Street
P.O. Box 740
Carefree, Arizona 85377

By Cheryl Fraulob
Cheryl Fraulob

LIBERTY UTILITIES CORP.

(BLACK MOUNTAIN SEWER)

DOCKET NOS. SW-02361A-15-0206 and SW-02361A-15-0207

DIRECT TESTIMONY

OF

DAVID P. TENNEY

IN

SUPPORT OF THE SETTLEMENT AGREEMENT

ON BEHALF OF THE

RESIDENTIAL UTILITY CONSUMER OFFICE

JANUARY 27, 2016

Table of Contents

EXECUTIVE SUMMARY i
INTRODUCTION 1
THE SETTLEMENT PROCESS 2
SUMMARY OF TESTIMONY 3
SETTLEMENT PROVISIONS 4
PUBLIC INTEREST 5

EXECUTIVE SUMMARY

The Arizona Residential Utility Consumer Office ("RUCO") presents the direct testimony of David Tenney, Director of RUCO, in support of the Proposed Settlement Agreement ("Settlement" or "Agreement") on Liberty Utilities (Black Mountain Sewer) Corp. ("Black Mountain") request for a permanent rate increase and sewer plant closure expenses. Mr. Tenney recommends that the Arizona Corporation Commission adopt the Proposed Settlement Agreement for the following reasons:

The Proposed Settlement Agreement reflects an outcome that is fair to both the ratepayer and Black Mountain and is in the public interest.

The Proposed Settlement Agreement is a comprehensive settlement agreement. Its terms settle a wide range of issues that were of interest to the parties.

RUCO supports the Proposed Settlement Agreement in its entirety because it contains numerous benefits to the consumer which will be discussed in Mr. Tenney's testimony.

The Proposed Settlement Agreement resolves a couple areas of importance to RUCO in the underlying rate case including: 1) properly converting advances in aid of construction ("AIAC") to contributions in aid of construction ("CIAC") to account for expired Line Extension Agreements along with related adjustments to the accumulated amortization, 2) requiring a meeting to discuss corporate allocation manual ("CAM") and corporate cost allocation methodologies, 3) Cost of Equity of 9.5%, and 4) all proposed surcharges and adjustor mechanisms were either eliminated or incorporated into Fair Value Rate Base. These issues were addressed satisfactorily in the Proposed Settlement Agreement and will be explained more fully in Mr. Tenney's testimony.

INTRODUCTION

Q. Please state your name, occupation and business address for the record.

A. My name David Tenney. I am Director for the Arizona Residential Utility Consumer Office ("RUCO"). My business address is 1110 W. Washington Street, Suite 220, Phoenix, Arizona 85007.

Q. Please state your background and qualifications for the record.

A. I joined RUCO in March of 2015. I served on the Navajo County Board of Supervisors, representing rural Arizona, from 2004 through 2015. I served as president of the County Supervisors Association of Arizona and was Chairman of the Navajo County Board of Supervisors. In addition, I have served on a number of local, state and national committees, including the Natural Resources Working Group, the Navajo County Regional Development Council, the Silver Creek Watershed Alliance Board, the County Supervisors' Association Legislative Policy Committee, Eastern Arizona Counties Organization, Environmental Economic Communities Organization and the Four Forest Restoration Initiative Steering Committee.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to explain RUCO's support of the Black Mountain Proposed Settlement Agreement ("Agreement").

Q. Have you participated in other settlement negotiations?

A. Yes. I have participated in settlement negotiations in other matters that have come before the Arizona Corporation Commission ("ACC" or "Commission"). These negotiations have resulted in reaching an accord with the utility and the other settling parties, leading to the signing and support of a settlement agreement.

THE SETTLEMENT PROCESS

Q. Was the negotiation process that resulted in the Settlement Agreement a proper and fair process?

A. Yes. The Agreement is the result of numerous hours of negotiation and a willingness among the parties to compromise. The negotiations were conducted in a fair and reasonable way that allowed each party the opportunity to participate. All parties had an opportunity to participate in the negotiation. Furthermore, all parties were allowed to express their positions fully.

Q. Did all the parties sign the Agreement?

A. Yes. All parties in this case have agreed to this Settlement.

Q. Why is a negotiated settlement process an appropriate way to resolve this matter?

A. By its very nature, a settlement finds middle ground that the parties can support. All parties that participated in the settlement talks were sophisticated parties who participated fully in the ACC's regulatory processes.

Settlement negotiations began only after each party had the opportunity to analyze Black Mountain's Application, file its direct testimony, and read the direct testimony of other Interveners. Of course, the Agreement in no way eliminates the ACC's constitutional right and duty to review this matter and to make its own determination whether the Agreement is truly balanced and the rates are just and reasonable.

SUMMARY OF TESTIMONY

Q. Please summarize your testimony.

A. The Agreement reflects an outcome that is fair to both the consumer and Black Mountain and is in the public interest. Furthermore, this is a comprehensive agreement. Its terms settle a wide range of issues that were of interest to the parties.

RUCO supports the Agreement in its entirety because it contains numerous benefits to the consumer. Those benefits include; 1) properly

converting AIAC to CIAC to account for expired Line Extension Agreements along with related adjustments to the accumulated amortization, 2) requiring a future meeting to discuss corporate allocation manual ("CAM") and corporate cost allocation methodologies, 3) Cost of Equity of 9.5%, and 4) all proposed surcharges and adjustment mechanisms were either eliminated or incorporated into Fair Value Rate Base. These benefits are addressed satisfactorily in the Agreement and will be explained later in my testimony

SETTLEMENT PROVISIONS

Q. In summary, what are the benefits to the residential consumer?

A. Among the more significant benefits to the residential consumer:

- Properly convert AIAC to CIAC – Company accounting in initial filing did not properly convert AIAC to CIAC. However, as part of the Settlement, Black Mountain has agreed to correct the oversight. (Section 2.2.4)
- Setting up a meeting between Staff, RUCO and the Company to discuss CAM and corporate cost allocation methodologies - The CAM was established without the benefit of RUCO's participation. The Company sought cost allocations consistent with the CAM in this case which RUCO took issue. As part of the Settlement, RUCO agrees in this case that the CAM and methodology used are acceptable. However, moving forward Black Mountain, RUCO, and Staff agree to

meet to discuss possible changes to the CAM and methodology. (Section 2.3.2.4)

- Cost of Equity of 9.5% - In its initial filing Black Mountain requested a 10.8% Cost of Equity. As per the Settlement, the parties agreed to a 9.5% Cost of Equity. (Section 2.4.3)
- Surcharges and Adjustment Mechanisms eliminated – Black Mountain initially requested a number of different surcharges and adjustor mechanisms in their filing. Through negotiations the Purchase Power Adjuster Mechanism and Property Tax Adjuster Mechanism were eliminated. The surcharge for plant closure costs already incurred has been included in the Fair Value Rate Base. The additional proposed surcharges for future plant closure costs were deferred until the next rate case.

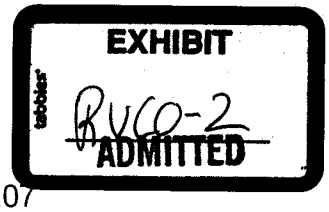
PUBLIC INTEREST

Q. How is the public interest satisfied by the Agreement?

A. At its core, the Agreement satisfies the public interest from RUCO's perspective in that it provides favorable terms and protections for residential consumers as defined above. The Agreement also satisfies the public interest by providing a fair and balanced approach to addressing the Company's concerns on required costs and revenue.

Q. Does this conclude your testimony on the Agreement?

A. Yes it does.



LIBERTY UTILITIES CORP.

(BLACK MOUNTAIN SEWER)

DOCKET NOS. SW-02361A-15-0206 and SW-02361A-15-0207

DIRECT TESTIMONY

OF

TIMOTHY J. COLEY

ON BEHALF OF THE

RESIDENTIAL UTILITY CONSUMER OFFICE

DECEMBER 2, 2015

TABLE OF CONTENTS

EXECUTIVE SUMMARY ii

INTRODUCTION 1

BACKGROUND 3

SUMMARY OF COMPANY FILING AND RUCO OVER-ALL RECOMMENDATIONS 4

SUMMARY OF RUCO RECOMMENDED RATE BASE AND OPERATING INCOME ADJUSTMENTS 8

RUCO RATE BASE ADJUSTMENTS 8

Utility Plant in Service ("UPIS") and Accumulated Depreciation ("A/D") Reconstruction 8
Plant Account Reclassifications 9
Remove Three Allocated Corporate Accounts UPIS & A/D Bala 9
Correct Allowance for Funds Used During Construction ("AFUDC") Rate Approved in Prior Commission Decision No. 71865 9
Advances in Aid of Construction ("AIAC") 10
Contributions in Aid of Construction ("CIAC") & CIAC Accumulated Amortization ("AA") 10
True-up of Scottsdale Capacity Agreement Loan(s) Costs per Loan Notes 10
Intentionally Left Blank 11
Accumulated Deferred Income Taxes ("ADIT") 11
Allowance for Working Capital 11

RUCO OPERATING INCOME ADJUSTMENTS 11

Depreciation Expense 11
Property Tax Expense 12
Intentionally Left Blank 12
Revenue Accrual Fix 12
Miscellaneous Expense 12
Intentionally Left Blank 12
Scottsdale Capacity Expense 12
Intentionally Left Blank 12
Chemicals Expense 12
Intentionally Left Blank 12
Intentionally Left Blank 12
Intentionally Left Blank 12
Algonquin Power Utilities Corporation ("APUC") Allocations 12
Intentionally Left Blank 12
Intentionally Left Blank 12
Rate Case Expense 12
Income Tax Expense 13

SUMMARY OF OTHER ISSUES 13

RUCO RECOMMENDED RATE BASE ADJUSTMENTS 1 - 10 13

RATE BASE ADJUSTMENT #1 – RECONSTRUCTION OF UTILITY PLANT IN SERVICE ("UPIS") AND ACCUMULATED DEPRECIATION ("A/D") BALANCES 14
RATE BASE ADJUSTMENT #2 – PLANT RECLASSIFICATIONS PER STAFF DATA REQUEST ("DR") DH-3, REMOVE DUPLICATE INVOICES, AND REMOVE PLANT ITEMS ERRONEOUSLY CHARGED TO BLACK MOUNTAIN SEWER 14
RATE BASE ADJUSTMENT #3 – REMOVAL OF ALLOCATED CORPORATE PLANT 19
RATE BASE ADJUSTMENT #4 – ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION ("AFUDC") 20
RATE BASE ADJUSTMENT #5 – ADVANCES IN AID OF CONSTRUCTION ("AIAC") 22
RATE BASE ADJUSTMENT #6 – CONTRIBUTIONS IN AID OF CONSTRUCTION ("CIAC") AND ACCUMULATED AMORTIZATION ("A/A") 23
RATE BASE ADJUSTMENT #7 – TRUE-UP OF SCOTTSDALE CAPACITY AGREEMENT LOAN(S) COSTS PER LOAN NOTES 24
..... 25

RATE BASE ADJUSTMENT #8 – INTENTIONALLY LEFT BLANK 28

RATE BASE ADJUSTMENT #9 – ACCUMULATED DEFERRED INCOME TAXES ("ADIT") 28

RATE BASE ADJUSTMENT #10 – ALLOWANCE FOR WORKING CAPITAL 28

RUCO OPERATING INCOME ADJUSTMENTS 1 – 17 30

OPERATING INCOME ADJUSTMENT #1 – DEPRECIATION EXPENSE 30

OPERATING INCOME ADJUSTMENT #2 – PROPERTY TAX EXPENSE 42

OPERATING INCOME ADJUSTMENT #3 – INTENTIONALLY LEFT BLANK 43

OPERATING INCOME ADJUSTMENT #4 – REVENUE ACCRUAL FIX 43

OPERATING INCOME ADJUSTMENT #5 – MISCELLANEOUS EXPENSE 44

OPERATING INCOME ADJUSTMENT #6 – INTENTIONALLY LEFT BLANK 44

OPERATING INCOME ADJUSTMENT #7 – SCOTTSDALE CAPACITY EXPENSE 44

OPERATING INCOME ADJUSTMENT #8 – INTENTIONALLY LEFT BLANK 45

OPERATING INCOME ADJUSTMENT #9 – MEDIA RECLASSIFICATION FROM CAPITALIZED EXPENDITURE TO O&M CHEMICAL EXPENSE 45

OPERATING INCOME ADJUSTMENT #10 – INTENTIONALLY LEFT BLANK 46

OPERATING INCOME ADJUSTMENT #11 – INTENTIONALLY LEFT BLANK 46

OPERATING INCOME ADJUSTMENT #12 – INTENTIONALLY LEFT BLANK 46

OPERATING INCOME ADJUSTMENT #13 – ALGONQUIN POWER & UTILITIES CORPORATION ("APUC") COST ALLOCATIONS 46

OPERATING INCOME ADJUSTMENT #14 – INTENTIONALLY LEFT BLAN 48

OPERATING INCOME ADJUSTMENT #15 – INTENTIONALLY LEFT BLANK 48

OPERATING INCOME ADJUSTMENT #16 – RATE CASE EXPENSE 49

OPERATING INCOME ADJUSTMENT #17 – INCOME TAX EXPENSE 50

RUCO POSITIONS ON THE OTHER COMPANY ISSUES AS REQUESTED 52

PLANT CLOSURE SURCHARGE 52

RATE CASE EXPENSE SURCHARGE 54

PURCHASED POWER ADJUSTMENT MECHANISM ("PPAM") 54

PROPERTY TAX ADJUSTMENT MECHANISM ("PTAM") 56

EXECUTIVE SUMMARY
LIBERTY BLACK MOUNTAIN SEWER
DOCKET NO. SW-02361A-15-0206 ET AL.

Liberty Black Mountain Sewer is an Arizona public service corporation ("Liberty Black Mountain" or "Company"), formerly known as Black Mountain Sewer Corporation. The wastewater utility is engaged in providing wastewater utility services in portions of Maricopa County, Arizona. The Company's system is located in and around the Cities of Cave Creek, Carefree, and Scottsdale, Arizona. The Company served approximately 2,053 customers during the test year ended December 31, 2014. The Company's current rates were approved in Decision No. 71865 (September 1, 2010) using a test year ending June 30, 2008. The Company does not provide water utility service for the area. The Cities of Cave Creek, Carefree, and Scottsdale provide water utility services for the jurisdiction of Liberty Black Mountain Sewer.

Rate Application:

The Company-proposed rates, as filed, produce total operating revenue of $2,296,777, an increase of $56,929 or 2.54 percent, over adjusted test year revenue of $2,239,848. The Company-proposed revenue will provide operating income of $294,082 and an 8.62 percent rate of return on its proposed $3,412,024 fair value rate base ("FVRB"), which is its original cost rate base ("OCRB").

The Residential Utility Consumer Office ("RUCO") recommends rates that produce total operating revenue of $1,956,556, a decrease of $284,244 or a negative 12.68 percent, from the RUCO-adjusted test year revenue of $2,240,800. RUCO's recommended revenue will provide operating income of $236,994 and a 7.32 percent return on the $3,235,735 RUCO-adjusted FVRB / OCRB rate base.

Rate Design:

The Company proposes a substantial change to the commercial customers based on a flat monthly minimum and, in part, on water usage while maintaining the current flat monthly rate for its residential customers. The commercial customers had previously been charged according to Engineering Bulletin 12, which was designed by the Arizona Department of Environmental Quality ("ADEQ") whenever water usage data was not available. The Company has one effluent customer, Boulders Resort, and proposes the same current charge of $150 per acre foot, or .46051 cents per 1,000 gallons of effluent water, produced from the wastewater treatment plant. The base rate's monthly residential bill would experience an increase of $13.96, or 21.40 percent, from $65.24 to $79.20. The reason for a 21.40 percent monthly increase in residential customers' bills is due to eliminating the use of the ADEQ Bulletin 12 and shifting revenues from the commercial to the residential customers.

RUCO recommends the same flat monthly rate design for residential customers, and a monthly minimum charge plus a monthly water usage rate design for the commercial customers. RUCO recommends the present $150 per acre foot for the one effluent customer. The recommended rate structure conforms to those regularly adopted by the Commission in recent years. There is not any current water usage data to express the change that will be experienced by the commercial customers. However, by eliminating the use of Bulletin 12 and introducing water usage as the basis of billing commercial customers, they will see a substantial decrease, based on water usage, as has been the direction given by the Arizona Corporation Commission ("ACC").

RUCO's analyst, John Cassidy, will provide testimony and recommendations filed under separate cover that supports RUCO's recommended cost of capital for this case.

I. INTRODUCTION

Q. Please state your name, occupation, and business address.

A. My name is Timothy J. Coley. I am a Public Utilities Analyst V employed by the Residential Utility Consumer Office ("RUCO"). My business address is 1110 West Washington Street, Suite 220, Phoenix, Arizona 85007.

Q. Briefly describe your responsibilities and capacity as a Public Utilities Analyst V.

A. In my capacity as a Public Utilities Analyst V, I am responsible for analyzing and examining accounting, financial, statistical and other information to prepare reports based on my analyses that present RUCO's recommendations to the Arizona Corporation Commission ("Commission" or "ACC") on utility revenue requirements, rate design and other matters in the interests for fair and reasonable rates for residential utility ratepayers. I also provide expert testimony on these same matters.

Q. Please state your educational background and qualifications in the utility regulatory field.

A. Appendix 1, which is attached to this testimony, describes my educational background and includes a list of the rate cases and regulatory matters in which I have participated.

Q. Please state the purpose of your testimony.

A. The purpose of my testimony is to present RUCO's recommendations regarding Liberty Black Mountain Sewer's ("Liberty Black Mountain" or "Company"), formerly known as Black Mountain Sewer Corporation, rate Application for a determination of the current fair value of its utility plant and property for a determination of a permanent increase or decrease in its rates and charges based thereon for utility service. The test year utilized by the Company in connection with the preparation of this Application is the 12-month period that ended December 31, 2014 ("Test Year" or "TY").

Q. What is the basis of your testimony in this case?

A. I performed a regulatory audit of the Company's application and current and past records. The regulatory audit consisted of examining and testing financial information, accounting records, and other supporting documentation and verifying that the accounting principles applied were in accordance with the Commission-adopted NARUC Uniform System of Accounts ("USOA").

Q. How is your testimony organized?

A. My testimony is presented in eight sections. Section I is this introduction. Section II provides a background of the Company's requested revenue requirements. Section III is a summary of the Company's filing and RUCO's over-all recommendations. Section IV presents the summary of RUCO's recommended rate base and operating income adjustments. Section V presents RUCO's

summary of other issues. Section VI presents RUCO's recommended rate base adjustments 1 -10. Section VII presents RUCO's recommended operating income adjustments 1 – 17. Section VIII presents RUCO's recommended positions on other issues requested by the Company in this proceeding.

II. BACKGROUND

Q. Please provide an overall background as it relates to this Application.

A. Liberty Black Mountain Sewer is an Arizona public service corporation regulated by the Commission. The Company is engaged in providing wastewater utility service in a portion of Maricopa County in and around the Cave Creek, Carefree, and north Scottsdale area. It served approximately 2,053 customers during the TY ended December 31, 2014. The Company's current rates were approved in Commission Decision No. 71865 (September 1, 2010) utilizing a TY ending June 30, 2008. The present rates went into effect on September 1, 2010.

An overwhelming majority of the residential ratepayers have been complaining of odor problems emanating from or around the Company's wastewater treatment plant for the past ten-years. The Company said it has tried everything that is feasibly possible from an engineering perspective to mitigate the odor problems. The Commission ordered the Company to close and decommission the wastewater treatment plant with certain conditions as stated on pages 11-12 in Decision No. 73885 dated May 8, 2013. However, one of the five Commission conditions set

forth in Decision No. 73885 referenced above prior to actual plant closure and diverting the wastewater flows to the City of Scottsdale is as follows:

c. Successful renegotiation of the Effluent Agreement with the Boulders Resort to allow termination of the agreement with little to no cost to BMSC upon closure of the treatment plant;

Over the course of this proceeding, it appears that Liberty Black Mountain Sewer, Boulders Resort, and other interested parties have reached an agreement. The principles of which are incorporated in a "Memorandum of Understanding ("MOU")." RUCO fully supports its constituents - residential ratepayers - desire to close the said wastewater treatment plant and for the Company to move forward in decommissioning the plant and diverting the wastewater flows to the City of Scottsdale for treatment. Although RUCO supports Black Mountain's ratepayers desire to close the plant, it does not change RUCO's revenue requirement recommendations, which will be discussed throughout the remainder of my testimony.

III. SUMMARY OF COMPANY FILING AND RUCO OVER-ALL RECOMMENDATIONS:

Q. Please summarize the Company's proposals in its filing.

A. The Company-proposed rates, as filed, will produce total operating revenue of $2,296,777, an increase of $56,929 in base rates, or 2.54 percent, over adjusted

test year revenue of $2,239,848. The Company-proposed revenue will provide operating income of $294,082 and an 8.62 percent rate of return on its proposed $3,412,024 fair value rate base ("FVRB") which it requested to be its original cost rate base ("OCRB") in this proceeding.

In addition to the Company-proposed $56,929 base rate increase, it is proposing four-surcharge mechanisms as highlighted below:

1. Plant Closure Surcharge - $8.57[1] per month for each customer;
2. Rate Case Expense Surcharge - $6.09[2] per month for each customer;
3. Purchased Power Adjuster Mechanism ("PPAM"); and
4. Property Tax Adjuster Mechanism ("PTAM").

RUCO recommends the Commission deny all four of the Company's proposed surcharges shown above.

Q. Please summarize RUCO's recommendations for Liberty Black Mountain in this filing.

A. RUCO recommends rates for Liberty Black Mountain that produce total operating revenue of $1,956,557, a decrease of $284,244 or (12.68) percent, from the RUCO-adjusted test year revenue of $2,240,800. RUCO's recommended revenue will

[1] The Company-proposed surcharges #1 and #2 are estimated costs and does not represent actual costs.
[2] Ibid.

provide operating income of $236,994 and a 7.32 percent return on the $3,235,735 RUCO-adjusted FVRB and OCRB.

RUCO normalized a fair and reasonable amount of rate case expense in base rates, which will be discussed in detail later in this testimony, and recommends the costs related and found allowable for plant closure be placed in base rates as two separate utility plant in service ("UPIS") accounts and depreciated over 25-years and 20-years respectively. RUCO recommends that the plant closure costs less the additional Scottsdale capacity required to be purchased be depreciated over 25-years or at 4 percent. The additional Scottsdale capacity of 120,000 gallons per day be depreciated over the life of the Scottsdale agreement. At this time, RUCO is not certain of the length of the new agreement between the Company and City of Scottsdale.

RUCO's recommended treatment is similar to the third-allotment of treatment capacity acquired from the City of Scottsdale, which is reflected in Company Schedule B-2 on page 3 at line 31. However, due to the recent MOU reached between the interested parties regarding plant closure costs, RUCO did not rate base any actual costs incurred by the Company for plant closure. The MOU, as previously referenced, shifted costs among the various interested parties. Therefore, it would be premature to include a cost for plant closure at this juncture of the proceeding. However, RUCO estimated the plant closure costs incurred to the most recent available to RUCO and from information shared at a meeting

between the Company and RUCO to determine an approximate impact on the revenue requirements recommended by RUCO at this stage of the proceeding.

The Company informed RUCO that an agreement has been reached between the interested parties to close the plant. RUCO will reflect the plant closure costs derived during the negotiation of the MOU and reflect the amounts in its rebuttal filing. However, Phase II of Commission Decision No. 73885 set forth some parameters of the plant closure surcharge that will require the Commission to reopen that Decision via Section 40-252 of the Arizona Revised Statues. One of those parameters in Decision No. 73885 on page 23 at lines 25-26 stated, "Only a single surcharge filing request will be permitted and no additional "true-ups" will be permitted until the Company's post-completion rate case." Another parameter set forth in that Decision on page 24 at lines 4-6 stated, "The closure surcharge shall not exceed $15 per month, per customer, and shall be discontinued upon issuance of a Decision in the Company's first rate case following completion of the closure project." RUCO does not view the current Company's plant closure meeting either one of those parameters as set forth in Phase II of Decision No. 73885. Therefore, RUCO is not including any amounts in its revenue requirements at this time.

RUCO is also encouraged by discussions with Company representatives that this proceeding can be settled between the parties without any further rate case expense to either the Company or ratepayers. This case begs the question of, "Why did this Company file this rate case to begin with?" From what RUCO can

tell, the Company had to scratch and claw to get its revenue requirement to reflect a positive increase rather than RUCO's recommended decrease to the overall revenue requirement.

Q. What test year did the Company use in this filing?

A. The Company's rate filing is based on the twelve months ended December 31, 2014 ("TY").

IV. SUMMARY OF RUCO RECOMMENDED RATE BASE AND OPERATING INCOME ADJUSTMENTS:

Q. Please briefly summarize the rate base adjustments addressed in your testimony before providing more detail and rationale for each adjustment later in your testimony.

A. RUCO recommends and summarizes its nine recommended rate base adjustments, which decrease rate base by $176,288 below as follows:

RUCO Rate Base Adjustments:

1. Utility Plant in Service ("UPIS") and Accumulated Depreciation ("A/D") Reconstruction - This adjustment reflects RUCO's recommended TY end UPIS and A/D balances since the last rate case for Liberty Black Mountain Sewer. I began with the last Commission approved UPIS and A/D balances per Decision No. 71865 dated August 25, 2010. I then reconstructed all plant additions, retirements, and adjustments at the approved depreciation rates to the instant

case TY end using the half-year depreciation methodology for plant additions, adjustments, and retirements. The adjustment produces a zero affect to UPIS but increases A/D by $58,209 for a net decrease to rate base of $58,209.

2. Plant Account Reclassifications – This adjustment reclassifies plant additions that were originally recorded to one account but at the recommendation of various Commission Staff data requests ("DR") in DH-3 the Company agreed to reclassify certain costs to more appropriate accounts. In addition, there were a few duplicate invoices recorded twice and plant additions that should have been charged to other sister companies (i.e., LPSCO, Gold Canyon, and/or Rio Rico). The adjustment decreases UPIS by $7,683 and increases A/D by $46,245 for a net decrease to rate base of $53,928.
3. Remove Three Allocated Corporate Accounts UPIS & A/D Balances – This adjustment removes three allocated corporate accounts from the Company's UPIS and A/D balances. These are new Company-proposed allocations that should already be included in the corporate allocations being charged down to the subsidiaries like Liberty Black Mountain Sewer. The adjustment decreases UPIS by $97,465 and decreases A/D by $2,208 for a net decrease to rate base of $95,257.
4. Correct Allowance for Funds Used During Construction ("AFUDC") Rate Approved in Prior Commission Decision No. 71865 – This adjustment makes a correction to the AFUDC rate as filed in this proceeding. The adjustment decreases UPIS by $317 and de minimis affect to A/D for a net decrease to rate base of $317 per Company response to RUCO DR 1.33.

5. Advances in Aid of Construction ("AIAC") – This adjustment converts expired AIAC or Line Extension Agreements ("LXA") to CIAC per the Arizona Administrative Code ("AAC") in Section R14-2-606. The adjustment decreases AIAC by $1,129,184 and increases CIAC by the same amount in the period in which it was converted from AIAC to CIAC. The impact to rate base is zero in the period converted from AIAC to CIAC.

6. Contributions in Aid of Construction ("CIAC") & CIAC Accumulated Amortization ("AA") - This adjustment is directly tied to the previous AIAC adjustment briefly explained above and is also per the Arizona Administrative Code ("AAC") in Section R14-2-606. The adjustment increases CIAC by $983,517 and increases CIAC accumulated amortization by $375,838 for a net decrease to rate base of $607,679.

7. True-up of Scottsdale Capacity Agreement Loan(s) Costs per Loan Notes - This adjustment establishes a regulatory liability for the amount ratepayers were overcharged during the Scottsdale Capacity Agreement, which is from January 1, 1997 through June 30, 2016 or 19 ½-years when the new rates are estimated to become effective for the current rate case. The loan notes to acquire the Scottsdale wastewater treatment capacity clearly indicates monthly payments due at the end of each month for the 20-year notes made by the parent Company. The Company has calculated the annual payments as a capitalized lease, which the Company vehemently denies in response to several data requests and RUCO agrees. The adjustment establishes a gross regulatory

liability of $51,451 and amortizes it over 2 ½-years ($20,581) or at a 40 percent per annum rate. The net impact decreases rate base by $30,871.

8. Intentionally Left Blank

9. Accumulated Deferred Income Taxes ("ADIT") – This adjustment is largely driven by the previous AIAC and CIAC adjustments. The previous UPIS, A/D, and AIAC converted to CIAC adjustments produce an increase to the ADIT liability balance by $377,821, which is a reduction to rate base.

10. Allowance for Working Capital – This adjustment reduces rate base by $81,391. It is comprised of two components. The first component is cash working capital or the lead/lag study, which results in a $78,098 decrease to rate base. The second component is prepayments, which reduces rate base by another $3,293 for a total decrease to rate base of $81,391 ($3,293 + $ 78,098 = $81,391).

Q. Please briefly summarize the operating revenue and expense adjustments addressed in your testimony before providing more detail and rationale for each adjustment later in your testimony.

A. RUCO recommends and summarizes its nine recommended operating revenue and expense adjustments, which increase total operating income by $153,968, as shown below:

RUCO Operating Income Adjustments:

1. Depreciation Expense – This adjustment decreases depreciation expense by $253,139.

2. Property Tax Expense – This adjustment decreases property taxes by $311 to adjust property taxes to RUCO's adjusted TY amount.
3. Intentionally Left Blank
4. Revenue Accrual Fix – This adjustment increases revenues by $952 to true-up bill count revenues to the amount the Company accrued in the TY.
5. Miscellaneous Expense – This adjustment removes an expense related to Liberty Utilities Canada and decreases miscellaneous expense by $268.
6. Intentionally Left Blank
7. Scottsdale Capacity Expense – This adjustment decreases the Scottsdale Capacity Agreement loan expense amount by $2,702.
8. Intentionally Left Blank
9. Chemicals Expense – This adjustment increases chemical expense by $4,773, which RUCO partially agrees with. This will be discussed later in this testimony.
10. Intentionally Left Blank
11. Intentionally Left Blank
12. Intentionally Left Blank
13. Algonquin Power Utilities Corporation ("APUC") Allocations – This adjustment decreases the APUC allocations by $27,147 per Decision No. 71865, which was the last Black Mountain Sewer rate case.
14. Intentionally Left Blank
15. Intentionally Left Blank

16. Rate Case Expense – This adjustment decreases the Company's total rate case expense requested by $350,000 and normalizes the expense in base rates rather than a surcharge as proposed by the Company.

17. Income Tax Expense – This adjustment increases income tax expense by $92,444.

V. SUMMARY OF OTHER ISSUES:

Q. Please summarize RUCO's positions on the other issues as requested in the Company's filing.

A. RUCO summarized its positions in the Summary Section III of this testimony earlier on the other issues as requested by the Company in its filing. The other issues pertained to the Company's request of the following four issues:

1. Plant Closure Surcharge - $8.57[3] per month for each customer;
2. Rate Case Expense Surcharge - $6.09[4] per month for each customer;
3. Purchased Power Adjuster Mechanism ("PPAM"); and
4. Property Tax Adjuster Mechanism ("PTAM").

Again, RUCO recommends the Commission deny the Company's four surcharge mechanisms above, which will be discussed in more detail later in this testimony.

[3] The Company-proposed surcharges #1 and #2 are estimated costs and does not represent actual costs.
[4] Ibid.

Q. Does that complete RUCO's summary of the overall revenue requirements, rate base and operating income adjustments, and position on the other issues as filed by the Company in this proceeding?

A. Yes.

Q. Please continue to RUCO's rate base adjustment recommendations.

A. The next section of RUCO's testimony will address each rate base adjustment that RUCO recommends in this proceeding below:

VI. RUCO RECOMMENDED RATE BASE ADJUSTMENTS 1 - 10:

Rate Base Adjustment #1 – Reconstruction of Utility Plant in Service ("UPIS") and Accumulated Depreciation ("A/D") Balances:

Q. Has the Company proposed a new UPIS depreciation methodology in this case?

A. Yes. The Company has proposed the vintage group depreciation methodology in this rate filing. The vintage group depreciation methodology groups assets per NARUC plant accounts by the vintage year that the asset was placed into service. For this particular rate filing, the Company utilizes eight vintage year periods for UPIS and depreciates each group of assets by vintage year period separately. The first of the eight vintage year periods assumes that all UPIS that was approved in the Company's last rate case, which utilized a TY end of June 30, 2008, is placed into the first vintage year group. The second vintage group includes all the plant additions and retirements that took place during the period of July 1, 2008 through

December 31, 2008. The last six vintage periods include all plant additions and retirements that took place in each of the subsequent years of 2009, 2010, 2011, 2012, 2013, and TY end 2014. Once any of the eight vintage asset groups are fully depreciated, the depreciation process ceases for that vintage year group because depreciation is the process of allocating the cost of an asset to depreciation expense "over its useful life in a rational and systematic process."[5]

When the original cost of assets equals the accumulated depreciation balance for the same vintage year group of assets, that group of assets are fully depreciated with a net book value of zero (i.e., Cost of Asset $100 – Accumulated Depreciation Balance $100 = Net Book Value $0.00). Thus, in that example, the Company has recovered its cost of the asset. The depreciation process ceases as defined by the earlier referenced textbook definition of depreciation. The depreciation process is further exemplified in the Arizona Administrative Code ("AAC") in Section R14-2-102 that states, "Depreciation means an accounting process which will permit the recovery of the original cost of an asset less its net salvage over the service life." The depreciation process allows for recovery of the original cost.

[5] Intermediate Accounting, Tenth Edition, D Kieso, J Weygandt, T Warfield; page 81.

Q. Did RUCO utilize the same vintage group depreciation methodology, as proposed by the Company, when reconstructing its UPIS and accumulated depreciation ("A/D") balances since the last approved balances in Decision No. 71865?

A. Yes and no. Yes, RUCO utilized the same eight Company-proposed vintage year groupings as discussed earlier, but no, RUCO did not utilize the Company's depreciation calculation process or formulae to depreciate assets on a going forward basis in reaching its recommended TY end accumulated depreciation balances for each group of assets.

Q. Please explain why RUCO did not use the Company's depreciation calculation process or formulae as utilized by the Company in its filing.

A. As stated earlier from the two sources and references, the Intermediate Accounting text and Arizona Administrative Code, the depreciation process must be a "rational and systematic" process. The Company's formulae for calculating depreciation on a going forward basis produce results that are neither "rational" nor "systematic."

Q. Why aren't the Company's depreciation formulae neither rational nor systematic?

A. The first six-months, July 2008 through December 2008, clearly identifies that a flaw exists in the Company's formulae that fails the "rational" test. Upon RUCO's initial review of the Company's B-2 Plant Schedules on page 3.6, the Company's depreciation expense column for the six-month period of July through December

2008 uses an argument in its formulae of 8/12th's. The 8/12th's supposed to represent the number of months remaining in calendar year 2008 to depreciate the assets. The Company's last TY in 2008 ended on June 30, 2008, which leaves only 6/12th's or six-months of twelve months to depreciate through the end of 2008. Since 8/12 is greater than 6/12, that one revision by itself to correct the errant 8/12th to 6/12th fraction should generate less depreciation. The exact opposite occurs as shown in Exhibit 1 on pages 1 and 2. Page 1 of the exhibit shows the Company's result using the errant 8/12th calculation as filed. Page 2 of the exhibit shows the Company's result using the correct 6/12th calculation as corrected. Once this error was pointed out to the Company's rate consultant, Mr. Bourassa corrected it and sent RUCO a revised schedule reflecting the change. Rather than the accumulated depreciation balance showing a lesser amount for the correction of the 8/12th to 6/12th, the accumulated depreciation balance increased by approximately $61,000 as shown in the exhibit. It is a simple conclusion to reach that the Company's depreciation formulae are producing irrational rather than "rational" results.

The Company's depreciation formula also fails the second and last criteria of depreciation, which is the "systematic" criterion for depreciation. Generally, the Company utilizes the half-year convention for plant additions and retirements. The definition for half-year convention is to "charge one-half year's depreciation in the year of acquisition and in the year of disposal."[6] The half-year year convention

[6] Intermediate Accounting, Tenth Edition, D Kieso, J Weygandt, T Warfield; page 559.

essentially assumes all annual periods' plant additions and retirements are made at the mid-point of the year.

The Company's depreciation expense calculation for plant additions and retirements is predicated on the lesser or minimum of what would have been normally depreciated had the previous vintage year group of assets not been fully depreciated. The Company's depreciation formula often depreciates the full amount of the plant addition in the year acquired. This depreciation method is haphazard at best and fails the "systematic" approach as well as the "rational" criteria defined by depreciation itself.

Q. Does RUCO's recommended depreciation process and expense formula remedy the Company's flawed formula the produces results that are neither "systematic" nor "rational?"

A. Yes. RUCO's recommended depreciation formulae results in both a "systematic" and "rational" depreciation process that is easily quantifiable in all scenarios, when utilizing the half-year convention for depreciation, and eliminates the Company's haphazard depreciation process and results discussed earlier.

Q. What adjustments does RUCO recommend to UPIS and A/D to adhere to the definition and process of depreciation referenced in the Arizona Administrative Code as well as the textbooks?

A. RUCO did not make any adjustments to UPIS in this particular reconstruction exercise. Therefore, RUCO recommends no adjustment here for UPIS. Although, for all the reasons mentioned earlier and flaws inherently found and discussed in the Company's depreciation formulae, RUCO recommends increasing the A/D balance by $58,209 to implement a rational and systematic depreciation process and result.

Rate Base Adjustment #2 – Plant Reclassifications per Staff Data Request ("DR") DH-3, Remove Duplicate Invoices, and Remove Plant Items Erroneously Charged to Black Mountain Sewer:

Q. Please describe RUCO rate base adjustment #2.

A. This is just a conforming adjustment that Staff raised in DR DH-3 that questioned a number of plant classifications the Company had made in its filing. It also identified a few invoices that were either double-counted or erroneously charged to Black Mountain rather than to the appropriate Gold Canyon Sewer system. RUCO made the appropriate adjustments identified in the Company's response to RUCO DR 6.03. That DR response summarized the plant reclassifications to which the Company had agreed with Staff. RUCO made a separate adjustment utilizing a copy of its plant reconstruction schedules in order to obtain an A/D adjustment to

properly account for the different depreciation rates due to reclassifying assets from one account to another.

Q. What adjustments does RUCO recommend to UPIS and A/D to account for this conforming plant reclassifications, double-count of invoices, and assets charged to the wrong Liberty Utilities system?

A. RUCO recommends an adjustment that reduces UPIS by $7,683 and to increase the A/D balance by $46,245 to account for the plant reclassifications, double-count of invoices, and assets charged to the wrong Liberty Utilities system. I will note that RUCO did not accept reclassifying all of the active carbon media previously capitalized by the Company and was recommended to be expensed by Staff in DR 3.7 for $7,143. While on the field inspection with Company representatives on October 16, 2015, RUCO was informed by Company personnel that the active carbon media for the treatment plant had a life of two-years rather than a one-year life, which makes half of the $7,143 expenditure an annual expense while the remaining half should remain as a capitalized item.

Rate Base Adjustment #3 – Removal of Allocated Corporate Plant:

Q. Please explain this adjustment that removes three allocated corporate accounts for land, structures and improvements, and computers and software from Company Schedule B-2 on page 3 at lines 34-36.

A. During my experience working on Liberty Utilities' rate cases, I cannot recall having encountered previous corporate plant allocations being included in the UPIS

accounts. I did not see any accounting support, such as invoices, that supports the plant. Therefore, I removed the plant accordingly.

Q. Did RUCO request accounting support, such as invoices, for the corporate plant?

A. Yes. In RUCO DR 3.11, RUCO asked why there was no A/D recorded on Schedule B-2 on page 4 for the computers and software account. The Company stated it was an "oversight" and that $264 should be recorded for the A/D balance in that account. During the course of getting a formal response to RUCO DR 3 in general, RUCO again asked the Company for the support for the $264 A/D oversight in its filing. RUCO was initially told by the Company that it would send the support with the rest of the responses to RUCO DR 3. Despite numerous requests the Company has not provided the requested support.

Q. What adjustment was necessary to remove the three accounts identified as allocated corporate plant?

A. RUCO decreased UPIS by $97,465 for the three allocated plant accounts. After adding the Company's oversight of the A/D balance for computers and software, it was also necessary to remove $2,208 of A/D that was said to be related to the same plant in question.

Rate Base Adjustment #4 – Allowance for Funds Used During Construction ("AFUDC"):

Q. Please describe RUCO's AFUDC recommended adjustment #4.

A. In response to RUCO DR 1.33, the Company identified that it had "erroneously used a 9.6 percent WACC in its application schedules." The Company further stated, "The Company agrees that this needs to be corrected in the AFUDC calculation to reflect a 9.41 percent WACC," which was the correct overall rate return authorized in the prior Commission Decision No. 71865.

Q. What adjustment was necessary to correct the AFUDC rate, which was authorized in Commission Decision No. 71865, used by the Company in it rate Application from the erroneous 9.6 percent to the authorized rate of 9.41 percent?

A. The necessary adjustment to account for the correct AFUDC rate authorized in Decision No. 71865 decreased the UPIS balance by $317. The impact to A/D is de minimis and was not calculated due to the lack of detailed information provided by the Company to RUCO DR 1.33. If the Company wishes to propose an adjustment to A/D in its rebuttal testimony, RUCO will review the Company's calculation for the A/D at that time for the appropriateness of it and will reflect the appropriate adjustment to A/D in RUCO's surrebuttal testimony.

Rate Base Adjustment #5 – Advances in Aid of Construction ("AIAC"):

Q. Please describe RUCO's Advances in Aid of Construction ("AIAC") adjustment #5.

A. There were four AIAC or Line Extension Agreements ("LXA") that were expired under the contractual terms provided in the Company's response to Staff BAB 1.15 and by the Arizona Administrative Code (hereafter referred to as the "Code") in Section R14-2-606. The Code states the following regarding LXA:

> If after five years from the utility's receipt of the advance, the advance has not been totally refunded, the advance shall be considered a contribution in aid of construction and shall no longer be refundable.

Q. Did RUCO adhere to the five-year rule as stated in the Code and convert the AIAC to CIAC at the end of fifth year?

A. No. RUCO adhered to the actual contractual terms as stated in the LXA's. When the stated contractual period ended, RUCO converted the AIAC to CIAC at that point in time.

Q. What adjustment was necessary to AIAC to appropriately convert the AIAC to CIAC as dictated by the Company's own contractual terms with the developers that is further supported by the Code in Section R14-2-606?

A. It was necessary to decrease the Company's AIAC balance by $1,129,184 for two reasons. The first reason was to properly recognize and account for a $254,251 double-count of a LXA that was originally filed in the Application. The second

reason was to adhere to the expired LXA's contractual terms. The reduction to AIAC simply shifts the same $1,129,184 to CIAC in the same time periods. Thus, there is no rate base impact at the time of converting AIAC to CIAC since both items are a reduction to rate base. However, the conversion of the AIAC to CIAC does impact depreciation expense on a going forward basis at TY end in 2014, which will be discussed in the operating income adjustments' section of this testimony later.

Rate Base Adjustment #6 – Contributions in Aid of Construction ("CIAC") and Accumulated Amortization ("A/A"):

Q. Please explain RUCO's Contributions in Aid of Construction ("CIAC") and Accumulated Amortization ("A/A") adjustments #6.

A. RUCO's CIAC and A/A adjustments are companion adjustments to RUCO's AIAC adjustment #5 previously discussed. The $983,517 of AIAC that RUCO converted to gross CIAC shows up here in this adjustment. The $145,667 difference between RUCO's previous gross AIAC adjustment #5 of $1,129,184 and RUCO's CIAC adjustment #6 here of $983,517 is due to the Company's inclusion of a double count of a LXA. The $145,667 difference is reflected on RUCO Schedule TJC-5 in adjustment #1 on that schedule. Otherwise, the AIAC and gross CIAC adjustments would both reflect a decrease of $983,517 to AIAC and an increase to gross CIAC for the same $983,517.

An additional A/A adjustment is necessary to account for the CIAC amortization between the years of 2008 through 2014 once the AIAC was converted to CIAC.

CIAC is amortized in much the same way that plant is depreciated on an annual basis. To account for the additional amortization, it was necessary to add an additional $375,838 to the CIAC's A/A balance. This CIAC adjustment and the previous AIAC adjustments have no impact to rate base, since both AIAC and CIAC are a reduction to rate base. However, there is a significant impact to depreciation expense as a result of converting AIAC to CIAC, which will be discussed in the operating income section of this testimony later.

Rate Base Adjustment #7 – True-up of Scottsdale Capacity Agreement Loan(s) Costs per Loan Notes:

Q. Please explain RUCO's true-up of costs between the Scottsdale Capacity Agreement acquisition and the parent Company loan(s) that financed the Company's payment to Scottsdale to secure the treatment capacity in adjustment #7.

A. This adjustment establishes a regulatory liability for the amount the ratepayers were overcharged during the time period of the Scottsdale Wastewater Treatment Agreement. The Scottsdale Wastewater Treatment Agreement was entered into and signed by the parties on April 1, 1996. The former owner of Black Mountain Sewer, aka Boulders Carefree Sewer, had to secure a loan to pay the City of Scottsdale for the right to the treatment capacity.

As described in Commission Decision No. 59944 dated December 26, 1996, Boulders Carefree Sewer was granted approval of a loan by CoBank with an

interest rate of prime plus 1 percent. In 1996, the prime rate of interest was extremely high at 8.25 percent. The CoBank interest rate for the loan was set as an adjusting variable interest rate loan at that time as 9.25 percent (Prime 8.25% + 1% = 9.25%) for 20-years. At the eleventh hour prior to signing the CoBank loan, the parent Company of Boulders Carefree Sewer, Boulders Joint Venture, stepped up and offered a loan at a fixed interest rate of 9.40 percent, which equated to the prime rate, 8.25 percent, plus 1.15 percent. The Commission viewed the fixed rate loan as superior to a variable rate loan, which provided the Company more "stability in the Company's cash flow" at such a high-inflationary economic period in time.

Commission Decision No. 59944 granted new rates to be effective January 1, 1997 to cover the cost of the loan among other reasons for the revenue increase authorized. The final terms of the loan with the parent was a fixed interest rate of 9.40 percent over 20-years with payments due "the last day of each calendar month in each year" as shown in Exhibit 2 on page(s) 2. Both loan notes to acquire the Scottsdale wastewater treatment capacity clearly indicates monthly payments are due at "the last day of each calendar month in each year" for the 20-year notes made by the parent Company. However, the Company has calculated the annual payments as a capitalized lease payment due at the last day of each year, which the Company vehemently denies that the Agreement be referred to as either a "capitalized" or "operating" lease in response to several RUCO and Staff data requests. RUCO agrees with the Company that the Agreement is neither a capitalized or operating lease even though the Company calls the Agreement an

"Operating Lease" on both its C-1 and C-2 Schedules but fails to calculate the payments accordingly. Capitalized lease payments are calculated as though there is only one annual payment being made on the last day at the end of the year rather than monthly payments. Thus, the Company's calculation includes additional interest being unfairly charged to ratepayers as a profit over and above the actual costs dictated by the terms of the loan(s). An operating lease is calculated in the same manner that any other loan with monthly payments being made on the last day of each month. In short, the Company has built a profit into the loan(s) to charge ratepayers. The NARUC Cost Allocation Manual Guidelines clearly states that a non-regulated affiliate can pass only the actual cost of an item to a regulated affiliate such as Liberty Black Mountain Sewer.

Q. What adjustment is necessary to remove the non-regulated affiliate profit from the actual cost of the loan(s) and make ratepayers whole?

A. First, there was a second loan with the same terms as just described for the first loan, which an excerpt of that loan is also included in Exhibit 2. The second loan had to be obtained just months after the first loan was obtained due to the Company exceeding its original purchased capacity limit from Scottsdale. RUCO synched the actual costs of the two loans with the revenues received by the Company, which included the profit built into both loans that were charged to ratepayers, to determine the amount of the Company's over-collection from ratepayers. RUCO estimated this rate case to be decided on June 30, 2016 in determining the amount of revenues to have been collected from ratepayers through that June 2016 date.

RUCO established a gross regulatory liability of $51,451, which represents the amount of profit charged to ratepayers over and above the actual costs and terms of the loans. A two and half-year amortization period, $20,581 or 40 percent per annum, was established for a net regulatory liability of $30,871 to remove the profit from the actual loan costs collected over 19 ½- years.

Rate Base Adjustment #8 – Intentionally Left Blank

Rate Base Adjustment #9 – Accumulated Deferred Income Taxes ("ADIT"):

Q. Please explain RUCO's ADIT adjustment #9?

A. This adjustment is driven by the UPIS, A/D, and CIAC balances recommended by RUCO. RUCO's recommended balances for those rate base item were discussed earlier.

Q. What adjustment was necessary to reflect those rate base items in determining RUCO's ADIT adjustment?

A. It was necessary to increase the Company's ADIT balance by $377,821 from $75,116 to $452,937, which is a reduction to rate base.

Rate Base Adjustment #10 – Allowance for Working Capital:

Q. Please explain RUCO's working capital adjustment #10.

A. This adjustment uses RUCO's levels of cash operating expenses, adds the component for interest expense proposed by the Company in its financing

application, and removes the rate case expense included by the Company as an expense that is not on-going in nature. I also removed $3,293 for a rental expense prepayment as the Company no longer occupies that property per response to Staff DR 6.12. Prepayments are a component to working capital and required an adjustment to reflect that fact.

Q. What adjustment to working capital does RUCO recommend?

A. RUCO recommends decreasing working capital by $78,098 and decreasing prepayments by $3,293 for a total adjustment of $81,391, which is a reduction to rate base.

Q. Does that complete RUCO's recommended rate base adjustments in this proceeding?

A. Yes.

Q. Please continue to RUCO's operating income adjustment recommendations.

A. The next section of RUCO's testimony will address each operating income adjustment that RUCO recommends in this proceeding below:

VII. RUCO OPERATING INCOME ADJUSTMENTS 1 – 17:

Operating Income Adjustment #1 – Depreciation Expense:

Q. During RUCO's review of the Company's filing and schedules prepared for this proceeding, did RUCO find any items that raised concerns?

A. Yes.

Q. Please describe what initially raised concerns for RUCO upon reviewing the Company's Application.

A. The Company's Schedules C-1 and C-2 reflected that depreciation expense more than doubled from the test year book results to the adjusted TY end as filed. The 2014 test year book results for depreciation expense was $229,669 while the adjusted TY depreciation expense was $484,271, which increased depreciation expense by $254,602 or a 111 percent increase over the test year book results of only $229,669. The Company's proforma depreciation expense adjustment was $254,602 in addition to the test year book amount of $229,669 for a total adjusted TY depreciation expense of $484,271.

Q. Had Liberty Black Mountain Sewer doubled its UPIS due to some exponential customer growth that required more than twice the amount of investment in plant and thus created a reason for depreciation expense to more than double?

A. No. In fact, customer growth had slightly decreased since the last rate Application, which utilized a TY ending on June 30, 2008. The Company's last rate Application

listed approximately 2,100 customers whereas this current rate Application reflects approximately 2,053 customers. When I reviewed the Company's B Schedules, I did not identify that many plant additions that would warrant depreciation expense more than a doubling. At that point, I continued reviewing the Company's C Schedules before finding a cause for the exponential increase to the depreciation expense. It did not take too long going through the detailed C Schedules to find the cause of the astronomical increase to depreciation expense. Company Schedule C-2 on page 2 provided all the detail necessary to identify the cause of the steep increase for depreciation expense.

Q. What did Company Schedule C-2 on page 2 reflect that gave rise to more than twice the test year book results for depreciation expense?

A. Since the Company was only requesting a base rate increase of $56,929, the Company's entire case resided on Schedule C-2 page 2. That schedule reflected that the CIAC had ultimately been amortized away over the years, which essentially eliminated any deduction to depreciation expense for non-investor supplied capital for UPIS.

Q. Have you as an analyst ever seen this scenario playout and coincide to where there is no longer any CIAC, non-investor supplied capital, to offset the depreciation expense and is it a legitimate scenario?

A. To answer the first question, no, I have never seen or worked on a case before where I have seen depreciation expense more than double the test year book results or where CIAC had become practically amortized away before either. To answer the second question, accounting is often times heavily weighted on timing issues. So, it is fair to say it is possible for CIAC to be zero but highly improbable at the same time. Under normal conditions, new CIAC normally follows the old CIAC. In other words, the CIAC that is amortized away is usually replaced with new developer advancements or older expired AIAC converts to CIAC per the Arizona Administrative Code ("Code") in Section R14-2-606 for sewer utilities specifically. This section of the Code is attached as Exhibit 3 on pages 1 and 2. The next logical question raised in an analysts mind is what is happening with the AIAC that generally converts to CIAC after a point in time because there was approximately $1.7M of AIAC on the Company's books and schedules as filed.

Q. Did RUCO examine the status of the AIAC balances and Line Extension Agreements ("LXA") at that point in time in its audit?

A. Yes.

Q. What was the result of RUCO's analysis regarding the status of the AIAC or LXA as provided by the Company in response to Staff DR BAB 1.15?

A. RUCO's analysis of the LXA's determined clearly that the Company apparently was neither adhering to the rules set forth in the Code, attached as Exhibit 3, for LXAs nor its own contracts with the developers who are signatory parties to the LXAs. To begin providing support for those statements, the following are excerpts from the Code, which is the authoritative source for accounting for LXAs.

R14-2-606. Collection main extension agreements

A. General requirements

1. Each utility entering into a main extension agreement shall comply with the provisions of this rule, which specifically defines the conditions governing collection main extensions.
2.

Q. Did RUCO ask the Company if it was following the rules set forth in the Code in Section R14-2-606 for collection main extension agreements?

A. RUCO did not ask the Company that specific question. However, suffice to say we did ask the Company in RUCO DR 3.01 the following questions ("**Q**") with the Company's responses ("A") provided below:

Q. <u>Main Extension Agreement(s) ("MXA")</u> - For clarity and understanding purposes, when the Company signs a MXA with any party (i.e., Applicant, Developer, or Builder), please provide descriptive

responses beyond a simple yes or no when possible to the following requests:

a. Can the MXA be classified as either an Advance-in-Aid-of-Construction ("AIAC") or a Contribution-in-Aid-of-Construction ("CIAC")?

A. "Main extension agreements are not classified as AIAC or CIAC. Whether a developer contribution or advance is classified as AIAC or CIAC depends on classification of the facilities under the Company's tariffs, NARUC, and/or Commission rules. With this in mind, developer advances or contributions can be classified as AIAC or CIAC, or a combination of each."

b. Does the Company or Developer determine whether it is classified as AIAC or CIAC?

A. "See the Company's response to Data Request 3.01(a). Generally, the Company makes that determination based on Commission rules and the Company's tariffs."

d. If it is classified as AIAC, who determines the percentage (i.e., 10% or 20%) of total gross revenues to be refunded annually?

A. "Currently, the Company refunds developer advances in aid of construction at 20 percent for 5 years. Under prior tariffs, the Company generally refunded developer advances at 10 percent for 10 years."

h. At the expiration of a MXA contractual period that has been classified as AIAC, does the Company convert the non-refunded AIAC amount to CIAC?

A. "Generally, yes."

f. Which party to the MXA determines the contractual period (i.e., number of years) if it is classified as AIAC?

A. "Currently, the Company refunds developer advances in aid of construction at 20 percent for 5 years. Under prior tariffs, the Company generally refunded developer advances at 10 percent for 10 years."

RUCO staff members visited Liberty Utilities home office in Avondale and met with Company representatives from the accounting, engineering, and legal staff to discuss the issues of AIAC, CIAC, hook-up fees, and MXAs raised in RUCO DR 3.01. RUCO's discussion with the Company staff led RUCO that those issues were being accounted for and recorded per the Company's and Commission's tariffs and rules accordingly. RUCO spent approximately 2-3 hours asking questions and receiving answers on those issues. The cited DR responses earlier indicated the Company recorded all MXAs according to its tariffs and Commission rules. RUCO DR 3.01 is attached as Exhibit 4 to this testimony. RUCO DR 12 is being issued to the Company at the time of this writing for it to further clarify time periods associated with the responses to RUCO DR 3.01 (i.e., "currently" and "prior tariffs").

Q. Doesn't the Code specifically state in Article 6 for sewer utilities that any non-refunded AIAC be converted to CIAC at the end of five years?

A. Yes. To be more specific with the language in the Code, I will quote the section and subsection of the Code that addresses that question below:

Arizona Administrative Code

ARTICLE 6. SEWER UTILITIES, Section R14-2-606. Collection main extension agreements, Subsection C. 5 states the following:

> If after five years from the utility's receipt of the advance, the advance has not been totally refunded, the advance shall be considered a contribution in aid of construction and shall no longer be refundable.

Q. Does Liberty Black Mountain Sewer have any main extension agreements or AIAC on its books that exceed the five-year time period after receipt of the advance as stated in the Code above?

A. Yes. To answer that question in another way, the Company does not have any main extension agreements that are less than or equal to five-years old. I have attached a copy of an Excel summary spreadsheet that was provided by the Company in response to Staff DR BAB 1.15 identified as Exhibit 5. The spreadsheet was reformatted to fit on one page. It shows the LXA date, number,

developer, original contract amount, contract / refund %, refund, and balance for each of the thirteen[7] LXAs at TY end in the current proceeding.

As can be seen in Exhibit 5, all of the LXAs should have been converted to CIAC, according to the rules in the Code, before the current TY utilized in this case. After reading each of the twelve LXAs, it became obvious that the Company generally entered into these contractual developer agreements under ten-year refundable agreements[8] rather than the five-year period as stated in the Code for sewer utilities.

Q. Did RUCO convert the expired LXAs per the Code or by each contractual expiration date as identified specifically to each agreement?

A. RUCO converted any non-refunded portion of the LXA or AIAC per the contractual terms of the collection main extension agreement stated in each of the twelve agreements. Those adjustments are reflected in RUCO rate base adjustments #5 and #6. RUCO rate base adjustment #5 removed the non-refunded portion from AIAC and converted (i.e., transferred) them to non-refundable CIAC in rate base adjustment #6. Those two rate base adjustments were discussed earlier in the rate base section of this testimony.

[7] RUCO's testimony earlier indicated there were twelve LXAs. This is due to one of the Company's thirteen LXAs listed in Exhibit 6 being a double-count and thus needed to be removed in its rebuttal filing from the Company's AIAC balance as filed in this case.
[8] There was one LXA agreement that stated it was a 15-year agreement and any remaining non-refunded balance would become non-refundable, which under normal circumstances converts to CIAC at the expiration of the contractual agreement.

Q. Why didn't RUCO convert the non-refunded portion of the collection main extension agreements original cost per the five-year rule in the Code?

A. RUCO found itself stuck between the dichotomy of the rules set forth in the Code and contractual legalities established in the terms of the contracts between the Company and developers themselves, which are the signatory parties to the LXAs. RUCO could have recommended adhering strictly to the rules set forth in the Code that clearly states for sewer utilities, "If after five years from the utility's receipt of the advance, the advance has not been totally refunded, the advance shall be considered a contribution in aid of construction and shall no longer be refundable." RUCO chose to follow the contractual arrangements rather than the rules in the Code. If RUCO had chosen or found that the rules of the Code trumped that of the LXA's contractual terms set forth between the Company and the developers, one could make a valid argument that the rules found in the Code took precedent over the LXA's contractual terms. RUCO chose the contractual terms in the LXAs in this instance. Regardless of which one of the two alternatives one chooses between these dichotomous situations, the Company's treatment of converting the LXAs from AIAC to CIAC appears to violate both the rules of the Code and its own contractual terms established in the LXAs.

Q. What impact does it have in determining fair and reasonable rates if AIAC is not properly converted from AIAC to CIAC in a timely manner since both AIAC and CIAC is a reduction to rate base?

A. Proper timing for conversion of AIAC to CIAC is tremendously important in determining fair and reasonable rates. That is true because of the consequences to depreciation expense, which can easily be seen in either the Company or RUCO's depreciation expense adjustments reflected in the respective operating income schedules. The Company's failure to properly convert AIAC to CIAC in a timely manner changes the Company's proposed approximate **$57,000** revenue increase to an approximate **negative $200,000** rate reduction in base rates in this case.

Q. How does converting AIAC to CIAC in a timely manner alone impact rates more than $250,000 in this case when both AIAC and CIAC reduces rate base?

A. The principles of ratemaking allow the Company to record and collect depreciation expense associated with AIAC when the plant is placed in service. That is the very reason why RUCO said earlier that the origination of the LXA itself establishes the vintage year of plant not when AIAC is converted to CIAC. The Company determined its vintage year of CIAC at the time when AIAC is converted to CIAC in this case. On the other hand, principles of ratemaking do not allow a Company to recover depreciation expense on CIAC in the revenue requirement formula. The

amortization[9] of CIAC is a reduction to depreciation expense, which can easily be seen on RUCO's depreciation expense schedule.

Q. If both AIAC and CIAC are reductions to rate base, why do ratemaking principles allow a utility to recover depreciation expense on AIAC in base rates but not allow recovery of amortization expense of CIAC?

A. AIAC is a refundable element of rate base whereas CIAC is a non-refundable element of rate base. Ratemaking principles allow the utility recovery of depreciation expense for AIAC in order to offset the utility's costs of the refunds made payable to the developer during the time period set forth per the Code and agreements found in LXA. The utility should be in compliance with the rules of the Code and contractual agreements. The LXA agreements should also comply with the Code.

Q. Please explain any other peculiarities that RUCO identified during its analysis of UPIS, AIAC, CIAC, and depreciation expense since those ratemaking elements tend to go hand-in-hand.

A. As RUCO discussed earlier and elaborated quite extensively in RUCO rate base adjustment #1 labeled "UPIS and A/D Reconstruction Adjustment," the Company-proposed vintage year group depreciation methodology. That depreciation methodology is also utilized in accounting for CIAC in the Company's filing.

[9] The accounting terms depreciation and amortization are synonymous in nature. The term "depreciation" is used for tangible assets whereas the term "amortization" is the accounting term used for intangible assets.

However, the Company errs when assigning vintage year 2014 when it converted AIAC to CIAC in 2014.

Q. How does the Company err when assigning the vintage year of 2014 to the CIAC when it converted it from AIAC in 2014?

A. It errs because the Company is using the point in time of the actual conversion of the AIAC to CIAC as the vintage year of the non-investor supplied plant or assets. That isn't the proper vintage year to group the CIAC into once converted from AIAC. The vintage year of the conversion of AIAC to CIAC was determined when the LXA was originally signed between the Company and developer and placed into service. The LXA establishes the vintage year of plant when it is placed into service. Thus, the vintage year of the CIAC was determined when the developers advance was placed into gross utility plant in service and not when AIAC is converted to CIAC as the Company has done in this instance and case.

Q. What adjustment is necessary to properly recognize the appropriate timing and conversion of AIAC to CIAC?

A. That adjustment was already discussed in RUCO rate base adjustments #5 and #6 and has been implemented in those schedules accordingly.

Q. What adjustment is necessary to depreciation expense to recognize that the vintage year of CIAC was already established when the developers advance for plant was originally placed into service?

A. RUCO's recommended adjustment decreases depreciation expense by $253,139 or essentially reverses the Company's $254,602 proforma adjustment that increased depreciation expense.

Q. Since AIAC, CIAC, and depreciation expense are closely related, does RUCO have any additional recommendations regarding the Company's failure to convert AIAC to CIAC in a timely manner per the five-year rule in the Code?

A. Yes. RUCO will recommend in its surrebuttal testimony that the AIAC be converted to CIAC at the end of the five-year period per the rules set forth in the Code. While RUCO has calculated the adjustment based on the contractual terms in its direct testimony, RUCO now understands that the rules in the Code supersede the contractual agreements. Therefore, RUCO's surrebuttal testimony recommendations will adhere to the five-year rule to convert AIAC to CIAC accordingly.

<u>Operating Income Adjustment #2 – Property Tax Expense:</u>

Q. Please explain RUCO's recommended property tax expense adjustment.

A. RUCO's recommended property tax expense adjustment utilizes the same methodology used in the Company's filing. The expense is largely driven by the recommended revenues, assessment ratio, and property tax rate. RUCO has

accepted the Company's inputs with the exception of RUCO's proposed level of revenues and a small revenue accrual fix adjustment that will be discussed in this section in adjustment #4.

Q. What adjustment is necessary to property taxes to account for those two items identified above?

A. RUCO's adjustment reduces the adjusted TY property tax expense by $311. RUCO's recommended decrease in revenues reduces property tax expense by $2,095 on a going forward basis.

Operating Income Adjustment #3 – Intentionally Left Blank

Operating Income Adjustment #4 – Revenue Accrual Fix:

Q. Please explain RUCO's revenue accrual fix adjustment.

A. This adjustment is the difference between the revenues generated using the billing determinates from the bill count and the amount recorded in the general ledger. It simply trues-up any under or over accruing of revenues.

Q. What adjustment is necessary to true-up the revenue accruals with that generated using the billing determinates to proof out revenues?

A. It was necessary to increase revenues by $952, which is also reflected on the Company's Schedule H-1 in the "Present Revenues" column.

Operating Income Adjustment #5 – Miscellaneous Expense:

Q. What adjustment does RUCO recommend to miscellaneous expense?

A. RUCO removed $268 for a Liberty Utilities Canada charge. The Company had included it and credited it back out only to include it again. RUCO does not see a benefit to Arizona ratepayers from a Liberty Utilities Canada miscellaneous charge.

Operating Income Adjustment #6 – Intentionally Left Blank

Operating Income Adjustment #7 – Scottsdale Capacity Expense:

Q. Please explain RUCO's adjustment to reduce the Scottsdale Capacity Agreement expense.

A. This adjustment was discussed in detail in RUCO rate base adjustment #7. The adjustment trues-up the actual expense per the loan documents' terms and properly calculates the resulting annual expense by the same documents as opposed to the Company's calculation as a capitalized lease. The agreement between the Company and City of Scottsdale has nothing to do with determining the true costs associated with the acquisition of the wastewater treatment capacity. The costs are between the Company and its parent or an affiliate, which one party or the other has built a profit component into its calculation. This is easily determinable by reviewing the loan documents.

Q. What adjustment is necessary to remove the profit component embedded in the Company's method of calculating the expense as though it was a capitalized lease as you stated in RUCO rate base adjustment #7?

A. It is necessary to reduce the Scottsdale Capacity expense by $2,702 as the terms of the loans dictate in the loan notes.

Operating Income Adjustment #8 – Intentionally Left Blank

Operating Income Adjustment #9 – Media Reclassification from Capitalized Expenditure to O&M Chemical Expense:

Q. Please explain this adjustment that reclassifies items that the Company initially capitalized and agreed with Staff in various data requests in DR DH 3.

A. This adjustment reclassifies various capitalized expenditures to either other plant accounts or O&M expenses. Specifically, this adjustment reclassifies one-half of the active carbon media expense identified in Staff DR DH 3.7 rather than the entire amount because the Company stated to RUCO during the October 16th field inspection that the active carbon media is replaced once every two-years. RUCO left the other one-half in the capitalized plant account. In addition, Staff recommended in DR DH 3.10 and the Company agreed that the expense identified in that DR should be expensed to O&M rather than capitalized to a plant account.

Q. What adjustment is necessary to charge one-half of the active carbon expense to O&M and to charge the expenditure recorded as a capitalized expense to O&M?

A. RUCO increased the chemical expense by $4,773 to reclassify those two items as discussed above.

Operating Income Adjustment #10 – Intentionally Left Blank

Operating Income Adjustment #11 – Intentionally Left Blank

Operating Income Adjustment #12 – Intentionally Left Blank

Operating Income Adjustment #13 – Algonquin Power & Utilities Corporation ("APUC") Cost Allocations

Q. Please describe RUCO's adjustment to the APUC cost allocations.

A. This adjustment adheres to Commission Decision No. 71865 at page 25 that found four categories of the APUC cost allocations beneficial to Arizona ratepayers. The four categories allowed in that Decision included legal, tax, audit, and depreciation expense. The Commission found those expense categories to have some benefit to Arizona ratepayers. I have included three of the four expense categories and was unable to determine the allowable depreciation expense with the Company's response provided to Staff DR 6.1.

In a Rio Rico rate case, Commission Decision No. 72059 at pages 21-23 reached a similar conclusion regarding the APUC cost allocations. That decision stated the following:

> "Although shared services models can be an efficient method to operate utilities and can provide benefits to utility ratepayers that might not be able to be obtained if the utility were operating on a stand alone basis, it is important that the Commission carefully review the shared costs that are being sought from ratepayers. The utility is a captive of its parent, and may not have recourse to dispute charges incurred at the parental level and allocated to it, just as ratepayers are the captives of the utility. The Commission must scrutinize the common costs and allow only those costs which provide a benefit to the utility ratepayers. As we noted in the Black Mountain Sewer rate case, the standard for what the utility would have incurred as a stand alone entity may not necessarily be the standard for allowing the recovery of common costs. The common costs must be reasonable based on the size of the utility. The entity seeking recovery must show that the type of cost and the amount allocated to the utility are reasonable and reasonably necessary for the provision of utility service. What the utility would need to pay on a stand alone basis may provide a check on the reasonableness of the expense."

Q. Did RUCO intervene and file testimony in the Rio Rico case cited above?

A. Yes. In fact, I was the rate analyst assigned to the revenue requirement portion of the Rio Rico rate case and filed testimony on the APUC cost allocations in that case.

Q. Didn't you file a wages and labor study of various stand-alone utilities in the State of Arizona for comparing a Liberty Utilities utility with those of stand-alone utilities?

A. Yes. The last sentence above written by the Administrative Law Judge ("ALJ") in the Rio Rico rate case somewhat goes to the heart of what the study provided in that case. The study revealed that Liberty Utilities parent's, APUC, cost allocations added another layer of corporate cost allocations excessively above what other stand-alone utility ratepayers had to bear, when the ALJ stated, "What the utility would need to pay on a stand alone basis may provide a check on the reasonableness of the expense."

Q. What adjustment is necessary to pull the costs back in line with other Arizona stand-alone utilities for corporate allocations?

A. It was necessary to reduce the APUC cost allocations by $27,147 to adhere more closely Decision Nos. 71865 and 72059. Those decisions also resemble the results of the wages and salaries study that I presented in the Rio Rico case. This is a fair and reasonable adjustment considering all the facets mentioned earlier in this adjustment.

Operating Income Adjustment #14 – Intentionally Left Blank

Operating Income Adjustment #15 – Intentionally Left Blank

Operating Income Adjustment #16 – Rate Case Expense:

Q. Please discuss the Company's proposed rate case expense treatment in this case.

A. The Company proposes yet another surcharge for the rate case expense in this proceeding. The Company requests a total rate case expense of $450,000 to be recovered over an estimated three-year period or $6.09 per customer a month to be billed as a separate charge enclosed on the ratepayers bill.

Q. What does RUCO recommend for rate case expense in this proceeding?

A. RUCO recommends $100,000 be allowed for total rate case expense in this proceeding. The $100,000 should be normalized over a three-year period or an annual rate case expense of $33,333 per year. Taking several past rate cases and my experience into consideration, this represents a fair and reasonable recommendation after reviewing the Company's financials as filed.

Q. Please expand on RUCO's statement of "taking several past rate cases and my experience into consideration, this represents a fair and reasonable recommendation after reviewing the Company's financials as filed."

A. RUCO's cost of capital adjustment recommendation alone caused the Company's $56,929 base rate revenue increase go negative. In addition, the last Liberty Black Mountain Sewer rate case found $180,000 to be fair and reasonable with many more issues required to be solved. Further, the most recent EPCOR rate case in Decision No. 75268, dated September 8, 2015, authorized $325,000 for five

separate districts that took over a year to complete. The last updated level of actual rate case expense incurred by the Company was approximately $80,000 that RUCO is aware of at this time. RUCO views this case resting on the sole laurels of a rate design issue for its commercial customers.

Q. Wasn't there a recovery issue related to the recoverable plant closure costs incurred by the Company too?

A. Yes, there was the plant closure cost issue too. However, the plant closure costs were largely absolved in Phase I and II of Decision No. 73885. From a practical standpoint, this case revolved around the antiquated Arizona Department of Environmental Quality ("ADEQ") Bulletin 12 rate design issue for its commercial customers. RUCO's rate design testimony to be filed on December 16, 2015 will recommend a more fair[10] set of rates for the commercial customers then.

Operating Income Adjustment #17 – Income Tax Expense:

Q. Have you calculated income tax expense based on RUCO's recommended adjusted operating income?

A. Yes. This adjustment is increases the Company's adjusted TY income taxes by $92,444.

[10] Fair in this context does not imply the Company was charging an unfair rate to commercial customers. It does imply that ADEQ's Bulletin 12 became antiquated with today's technology and rendered Bulletin 12 as an unfair source to set rates for commercial customers.

Q. Have you included an interest synchronization calculation in your computation of income tax expense?

A. Yes. The interest synchronization calculation computes an interest expense deduction for income taxes. The interest synchronization calculation is RUCO's adjusted TY rate base multiplied by the weighted cost of the Company's proposed debt. The income tax gross up revenue conversion factor includes an element for the increase in property taxes due to RUCO's recommended level of decreased revenues.

Q. Are there any other expenses that RUCO wants to address here?

A. Yes. Due to RUCO's time constraints in addition to delays in receiving responses to DR's, RUCO reserves the right to recommend incentive pay adjustments in its surrebuttal testimony. Those adjustments will be reflected in its surrebuttal.

Q. Please continue to RUCO's positions regarding the other issues and surcharges as requested in the Company's filing.

A. The last section, Section VIII, of this testimony will address RUCO's positions regarding the Company's other issues and surcharges as requested.

VIII. RUCO POSITIONS ON THE OTHER COMPANY ISSUES AS REQUESTED:

Plant Closure Surcharge:

Q. Does RUCO support the overwhelming majority of its constituents, residential ratepayers, and desire to close and pay for the expenditures necessary to decommission and close the wastewater treatment plant in this case?

A. Yes.

Q. Is RUCO recommending the surcharge mechanism as proposed in Phase II of Decision No. 73885 and as requested by the Company in its rate filing?

A. No. As stated in other sections of this testimony, RUCO recommends the plant closure costs be rate based in two separate plant accounts. The first account should include all the reasonable and necessary costs that are directly related to the costs to close, remove, and pipe the wastewater flows from the plant to a connection point where the City of Scottsdale can receive the wastewater flows into its system. RUCO recommends that those costs, less the costs filed under a confidentiality agreement, be included and recorded to an account readily recognizable as the "Plant Closure" or "Wastewater Treatment Facility ("WTF") Decommissioning" UPIS account and be depreciated over 25-years or 4 percent per annum. RUCO has not included the costs related to the plant closure at this juncture in its testimony. The total costs related to the plant closure as stated above and reached between the various parties in the instrument termed the

Memorandum of Understanding ("MOU") will be addressed in surrebuttal testimony after reviewing the Company's final costs included in its rebuttal filing.

Q. Did the Company's testimony in this proceeding address the possibility that the said plant closure costs could be directly placed into rate base as RUCO recommends rather than as a surcharge?

A. Yes. In Mr. Bourassa's direct testimony on page 11 at lines 3-4, Mr. Bourassa stated, "Of course, if the Commission believes including the plant closure costs directly in rate base is preferable, it can so direct."

Q. So, is it RUCO's position that the fair and reasonable plant closure costs be placed directly in rate base?

A. Yes. RUCO recommends the costs directly related to the plant closure costs be placed into a separate plant account and depreciated over a 25-year period or at four percent per annum. The four percent depreciation rate approximates the composite rate one would derive if calculating the rate for the various components of plant that are required to be decommissioned.

Rate Case Expense Surcharge:

Q. What is RUCO's recommendation as it pertains to the Company's request that the rate case expense also be placed in a surcharge mechanism and recovered via a surcharge?

A. RUCO's position on the Company's proposed treatment of placing the rate case expense in a surcharge was thoroughly vetted in the rate case expense adjustment section of this testimony. RUCO recommends that the expense be normalized over a three-year period. The amount of total rate case expense that RUCO recommended in that section of testimony was $100,000, which was an estimated amount incurred to date from DR responses that updated the actual rate case expense incurred by the Company. RUCO recommends the Commission deny the Company's rate case expense surcharge mechanism in this case.

Purchased Power Adjustment Mechanism ("PPAM"):

Q. What is RUCO's position and recommendation regarding the Company's requested purchased power adjustment mechanism ("PPAM")?

A. RUCO's position on the Company's proposed PPAM is it constitutes single issue ratemaking and recommends the Commission deny the Company's request for a PPAM.

Q. Please explain what a PPAM is and how it works.

A. The adjustment is being requested so the Company can pass the additional or reduced cost of electric power on to its customers thereby recovering or reducing

the expense. Since overall electric and gas utility rates very rarely or generally never decrease, the Company's request is a one-way proposal that adversely impacts ratepayers to increase utility rates outside of a full rate case. This adjustment mechanism is inappropriate considering the fact that the State of Arizona requires a finding of "Fair Value" in determining fair and reasonable rates. In the past, the price of purchased power has been somewhat volatile with monthly fluctuations that would generally increase and that rarely decrease the cost of either purchased electric or natural gas power. In fact, the Commission eliminated the use of PPAM's and purchased water adjustment mechanisms in an Arizona Water Company ("AWC") rate case for its Eastern Group in Decision No. 66849, dated March 19, 2004. RUCO supports that Commission decision in the Eastern Group case on this issue.

Q. Would you please explain why the PPAM should be denied by the Commission in this case as it was in the AWC rate case?

A. Adjustment mechanisms traditionally have been established to mitigate the regulatory lag for 1) volatile and 2) very large expense items (such as purchased coal, oil, and gas in the case of electric utilities and purchased gas for natural gas distribution companies) that may have a negative impact on the financial health of a utility. In the Liberty Black Mountain Sewer case, purchased power does not qualify as volatile and does not represent an unusually large level of expense to place the Company in financial jeopardy.

Liberty Black Mountain Sewer does not have significantly large purchased power bills and none meet the volatility criteria since increases in purchased power costs do not occur frequently. The Company's percent of purchased power expense to its total operating expense represents only an approximate 3 percent for both its adjusted and proposed levels of total expenses. It is easily seen that the purchased power does not represent a significant component of the Company's operating expense and does not warrant an adjustment mechanism. Such an adjustment mechanism is inherently unfair to ratepayers when other expenses could very well be decreasing with no benefit to the ratepayer whatsoever. Automatic adjustment mechanisms should not be a substitute for a formal rate case and should not be used to preserve the Company's allowed rate of return.

Property Tax Adjustment Mechanism ("PTAM"):

Q. What is RUCO's position and recommendation regarding the Company's requested property tax adjustment mechanism ("PTAM")?

A. RUCO's position on the Company's proposed PTAM is it also constitutes single issue ratemaking and recommends the Commission deny the Company's request for a PTAM. Please see RUCO's previous PPAM regarding its position and recommendation as it applies to the Company's requested PTAM here also. The Company's percent of property tax expense to its total operating expense represents approximately 2.5 percent, which is less than the previous purchased power expense of approximately 3 percent, for both its adjusted and proposed

levels of total expenses. In fact, RUCO's recommended decrease of $284,244 in the Company's revenue in this case resulted in only a $2,095 decrease in property taxes, which represents less than one-percent, .74 percent, per one-dollar of revenue decrease or increase. That is an important fact to consider when measuring volatility of an expense that the Company may incur since property tax expense is revenue driven. When measuring the volatility or materiality of an expense, revenue is often the common denominator used when measuring the volatility or materiality of an item. It is easily seen too that the property tax expense does not represent a significant component of the Company's operating expense and does not warrant an adjustment mechanism for all the previous reasons stated in the PPAM discussion.

Q. Does your silence on any of the issues, matters, findings, or lack of adjustment to and for other ratemaking components addressed or not in your testimony of any of the witnesses for the Company constitute your acceptance of their positions on such issues, matters or findings?

A. No, it does not.

Q. Does that complete RUCO's recommendations for the other issues in this proceeding?

A. Yes.

Q. Does this conclude your direct testimony?

A. Yes, it does.

APPENDIX 1

Qualifications of Timothy J. Coley

WORK HISTORY

July 2000 – Present: **RESIDENTIAL UTILITY CONSUMER OFFICE,** Phoenix, Arizona
Public Utilities Analyst V. The Residential Utility Consumer Office (RUCO) is a consumer advocate group providing residential consumers a voice in utility regulation and backed by a professional staff with legal and financial expertise. Responsibilities include: audited, reviewed and analyzed public utility companies various filings; prepared written testimony, schedules, financial statements, and spreadsheet models and analyses. Testified and stand cross-examination before the Arizona Corporation Commission.

January 2000 - April 2000: **JACKSON HEWITT TAX SERVICE,** Phoenix, Arizona
Tax Preparer. Interviewed clients, determined tax situation, and explained how the tax laws benefited them in their specific situation. Ensured that each customer received every deduction that they were entitled. Prepared individual and business income tax returns, which best utilized each specific situation that minimized their tax obligations.

May 1998 - November 1999: **BENEFITS CONSULTING,** Cypress, Texas
Consultant Assistant. The consulting firm specialized in alleged medical claim charges brought against the government of Harris County in Houston, Texas. Assisted in the review, examination, and analysis of the attested charges. Determined if the purported medical claim charges were prudent, customary, and reasonable for the alleged sustained injuries. The firm analyzed cases for both the County's Risk Department and Attorneys Office.

January 1992 - April 1998: **PHOENIX SERVICES,** Villa Rica, Georgia
Owner. Provided landscaping services primarily in a high growth gated community where the Property Owners' Association approved mandated ordinances to be strictly adhered and abided by. Coordinated and supervised all aspects of projects from inception to completion, from master planning to site design to installation.

May 1989 - October 1991: **GEORGIA PUBLIC SERVICE COMMISSION,** Atlanta, GA
Senior Auditor. The Public Service Commission (PSC) was responsible for regulating many intrastate telecommunications, electric, and gas utility industries operating in Georgia. It was the PSC's job to ensure that consumers received adequate and reliable service at reasonable rates. It must also assure the utility companies and investors an opportunity to earn a fair rate of return on prudent investments. The Commission participated significantly in Georgia's economic health and growth. I was promoted to the PSC's Electric/Gas Division where I examined, verified, and analyzed various financial documents, accounting records, reports, ledgers, and statements. In addition, I was assigned to automate the PSC's Electric Division where I utilized a computer application process that I had developed earlier while with the (PSC) Telecommunication Division. I was later ascribed to work in conjunction with the Engineering Department and established a procedure to track and compare costs of operation and maintenance (O&M) expenses of nuclear electric generating plants. This effort determined a comparative price per kilowatt-hour produced that influenced the awareness for the company to control the O&M costs, which benefited the consumer through lower prices.

- Developed computer application system that streamlined audit procedures by 30 – 40%.
- Various other schedules were implemented to track, maintain, and control costs.

GEORGIA PUBLIC SERVICE COMMISSION (continued)

November 1986 - April 1989: **Georgia Public Service Commission,** Atlanta, Georgia **Auditor.** Regulated telecommunications and also oversaw the deregulation process that was currently under way in that industry. Examined and analyzed accounting records to determine financial status of companies and prepared financial reports concerning audit findings. Reviewed data including payroll, time sheets, purchase vouchers, cash receipt ledgers, financial reports, and disbursements. Verified statewide telephone company transaction classifications and documentation.

- Developed computer application utilizing Lotus to completely automate and streamline the entire telecommunication audit process. The results saved 25% in field audit time and produced a product of professional appearance.
- Created, coordinated, and implemented "Operational Project Training" automated procedure-training program. Trained and supervised staff of five auditors.
- Computerized "Desk Audit Analysis" program that identified 11 independent telephone companies in the state of over-earning and resulted in $4.1M annual savings to the Georgia ratepayers affected.

October 1985 - October 1986: **Georgia Public Service Commission,** Atlanta, Georgia **Junior Auditor.** Assisted in planning and performing telecommunication audit engagements. Examined financial records, internal management control, correspondence, bills, and records of services delivered in order to verify or recommend compliance with company specifications contained in contracts, agreements, regulations, and/or laws.

- As a special project, I was assigned to analyze the results of a survey designed to evaluate "Interest in Organizing a Multi-State Nuclear Management Review Group" by the Director of Utilities. Wrote the draft and findings for the speech that was presented to all participatory commissions.

PROFESSIONAL MEMBERSHIPS

- Elected Member of the National Honor Society for Public Affairs and Administration.
- Active Member of Delta Sigma Pi - Professional Business Fraternity.

SPECIAL TRAINING AND CERTIFICATES

- The Graduate School of Business Administration - Michigan State University; completed the Annual Regulatory Studies Program of the National Association of Regulatory Utility Commissioners.
- Completed Graduate Exit Paper on "Deregulation of the Electric Industry".
- Attended Eastern Utility Rate School in 2000 and 2005.

EDUCATION

- Currently enrolled at Arizona State University - West in the Post Baccalaureate Graduate Certificate Program in Accountancy with two courses remaining.
- Master of Public Administration, State University of West Georgia, 1997, GPA 3.5.
- BS Business Management & Administration, Minor in Economics, Sorrel School of Business, Troy State University, 1985.
- AA Business Administration, Miles Community College, 1981.

RESUME OF PUBLIC UTILITY RATE CASES & AUDITS PARTICIPATION

Residential Utility Consumer Office For Years 2000 To Present

Arizona-American Water Company – Docket No. WS-01303A-05-0405

Arizona Public Service Co. – Docket No. E-01345A-03-0437

Tucson Electric Power Company – Docket No. E-01933A-04-0408

UniSource Merger – Docket No. E-04230A-03-0933

Arizona-American Water Company – Docket No. WS-01303A-02-0867

Arizona Water Company (Eastern Group) – Docket No. W01445A-02-0619

Litchfield Park Service Company – Docket Nos. W-01427A-01-0487 & SW-01428A-01-0487

Arizona Water Company (Northern Group) – Docket No. W-01445A-00-0962

Rio Verde Utilities, Inc. – Docket Nos. W-02156A-00-0321 & SW-02156A-00-0323

Arizona-American Water Company (Paradise Valley) – Docket Nos. W-01303A-05-0405 & W-01303A-05-0910

Arizona-American Water Company (Mohave District) – Docket No. WS-01303A-06-0014

Arizona-American Water Company (Sun City & Sun Cit West Wastewater) – Docket No. WS-01303A-06-0491

Arizona-American Water Company - Docket No. W-01303A-07-0209

Chaparral City Water Company – Docket No. W-02113A-07-0551

Arizona-American Water Company - Docket No. W-01303A-08-0227

Residential Utility Consumer Office For Years 2000 To Present (cont'd)

Arizona Water Company - Docket No. W-01445A-08-0440

Far West Water & Sewer Company – Docket No. WS-03478A-08-0608

Rio Rico Utilities, Inc. – Docket No. WS-02676A-08-09-0257

Bella Vista Water Company – Docket No. W-02465A-09-0411

Goodman Water Company – Docket No. W-02500A-10-0382

Arizona Water Company – Western Group – Docket No. W-01445A-10-0517

Pima Utility Company – Docket No. W-02199A-11-0329 et al.

Arizona Water Company, San Manuel System ACRM – Docket No. W-01445A-11-0310

Rio Rico Utilities, Inc. – Docket No. WS-02676A-12-0196

Tucson Electric Power Company – Docket No. E-01933A-12-0504

Far West Water & Sewer Company – Docket No. WS-03478A-12-0307

Litchfield Park Service Company – Docket No. SW-01428A-13-0042 et al.

Utility Source – Docket No. WS-04235A-13-0331

EPCOR – Docket No. WS-01303A-14-0010

Black Mountain Sewer Company – Docket No. SW-02361A-15-0207 et al.

Georgia Public Service Commission For Years 1985 – 1991

Atlanta Gas Light Company

Georgia Power Company

Atlanta Gas Light Company (Management Audit)

Georgia Power Company

Trenton Telephone Company

Fairmount Telephone Company

Ellijay Telephone Company

GTE, Inc.

ALL-TEL Telephone Company

Citizens Utilities Co.

Ball Ground Telephone Company

Lanett Telephone Company

Brantley Telephone Company

Blue Ridge Telephone Company

Waverly Hall Telephone Company

St. Marys Telephone Company

Darien Telephone Company

Statesboro Telephone Company

Statesboro Telephone Co-op

Wilkes Telephone Company

TABLE OF CONTENTS TO TJC SCHEDULES

SCH. NO.	PAGE NO.	TITLE
TJC-1	1 of 2	REVENUE REQUIREMENT
TJC-1	2 of 2	GROSS REVENUE CONVERSION FACTOR ("GRCF")
TJC-2	1	RATE BASE SUMMARY
TJC-3	1	RATE BASE ADJUSTMENTS
TJC-4(a)	1 of 2	SUMMARY OF UTILITY PLANT IN SERVICE ("UPIS") ADJUSTMENTS
TJC-4(a)	2 of 2	SUMMARY OF UPIS ACCUMULATED DEPRECIATION ("A/D") ADJUSTMENTS
TJC-4(b)	1 - 7	RECONSTRUCTION OF UPIS & A/D SCHEDULES
TJC-4(c)	1 - 2	SUMMARY OF RECLASSIFICATIONS OF UTILITY PLANT IN SERVICE ("UPIS") & ACCUM. DEPRE. ("A/D")
TJC-4(d)	1	CORRECT ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION ("AFUDC")
TJC-5	1 - 2	ADVANCES IN AID OF CONSTRUCTION ("AIAC")
TJC-6	1 - 8	CONTRIBUTIONS IN AID OF CONSTRUCTION ("CIAC")
TJC-7	1	SCOTTSDALE CAPACITY REGULATORY LIABILITY
TJC-8	1	INTENTIONALLY LEFT BLANK
TJC-9	1	ACCUMULATED DEFERRED INCOME TAX ("ADIT")
TJC-10	1	ALLOWANCE FOR WORKING CAPITAL
TJC-11	1	OPERATING INCOME SUMMARY
TJC-12	1 - 2	OPERATING INCOME ADJUSTMENTS
TJC-13	1	DEPRECIATION EXPENSE
TJC-14	1	PROPERTY TAX EXPENSE
TJC-15	1	INTENTIONALLY LEFT BLANK
TJC-16	1	REVENUE ACCRUAL FIX
TJC-17	1	MISCELLANEOUS EXPENSE
TJC-18	1	INTENTIONALLY LEFT BLANK
TJC-19	1	SCOTTSDALE CAPACITY OPERATING LEASE CALCULATION CORRECTION
TJC-20	1	INTENTIONALLY LEFT BLANK
TJC-21	1	RECLASSIFY CAPITALIZED EXPENDITURES TO O&M EXPENSES
TJC-22	1	INTENTIONALLY LEFT BLANK
TJC-23	1	INTENTIONALLY LEFT BLANK
TJC-24	1	INTENTIONALLY LEFT BLANK
TJC-25	1	ALGONQUIN POWER UTILITIES CORPORATION ("APUC") COST ALLOCATIONS
TJC-26	1	INTENTIONALLY LEFT BLANK
TJC-27	1	INTENTIONALLY LEFT BLANK
TJC-28	1	RATE CASE EXPENSE
TJC-29	1	INCOME TAXES
TJC-30	1	COST OF CAPITAL

RUCO RECOMMENDED REVENUE REQUIREMENT

Line No.	Description	[A] Company OCRB/FVRB Cost	[B] RUCO OCRB/FVRB Cost
1	Fair Value Rate Base	$ 3,412,024	$ 3,235,735
2	Adjusted Test Year Operating Income (Loss)	$ 258,613	$ 412,582
3	Current Rate Of Return (L2 / L1)	7.58%	12.75%
4	Required Operating Income (L5 X L1)	$ 294,082	$ 236,994
5	Required Rate Of Return On Fair Value Rate Base	8.62%	7.32%
6	Operating Income Deficiency (L4 - L2)	$ 35,469	$ (175,588)
7	Gross Revenue Conversion Factor (TJC-1, Pg 2)	1.6050	1.6188
8	Increase In Gross Revenue Requirement (L7 X L6)	$ 56,929	$ (284,244)
9	Adjusted Test Year Revenues	$ 2,239,848	$ 2,240,800
10	Proposed Annual Revenue (L8 + L9)	$ 2,296,777	$ 1,956,557
11	Required Percentage Increase In Revenue (L8 / L9)	2.54%	-12.68%
12	Rate Of Return On Common Equity	10.80%	8.95%

References:
Column [A]: Company Schedules A-1, B-1, C-1, and D-1
Column [B]: RUCO Schedule TJC-2, TJC-11 and TJC-30

RUCO GROSS REVENUE CONVERSION FACTOR ("GRCF")

LINE NO.	DESCRIPTION	[A]	[B]	[C]
	Calculation of Gross Revenue Conversion Factor:			
1	Revenue	100.0000%		
2	Uncollecible Factor	0.0000%		
3	Revenues (L1 - L2)	100.0000%		
4	Combined Federal and State Income Tax and Property Tax Rate (Line 23)	38.2263%		
5	Subtotal (L3 - L4)	61.7737%		
6	**Revenue Conversion Factor (L1 / L5)**	1.6188		
	Calculation of Uncollecttible Factor:			
7	Unity	100.0000%		
8	Combined Federal and State Tax Rate (Line 17)	37.7677%		
9	One Minus Combined Income Tax Rate (L7 - L8)	62.2323%		
10	Uncollectible Rate	0.00000		
11	Uncollectible Factor (L9 * L10)		0.0000%	
	Calculation of Effective Tax Rate:			
12	Operating Income Before Taxes (Arizona Taxable Income)	100.0000%		
13	Arizona State Income Tax Rate	4.9000%		
14	Federal Taxable Income (L12 - L13)	95.1000%		
15	Applicable Federal Income Tax Rate (Col. [C], L53)	34.5612%		
16	Effective Federal Income Tax Rate (L14 x L15)	32.8677%		
17	Combined Federal and State Income Tax Rate (L13 + L16)		37.7677%	
	Calculation of Effective Property Tax Factor			
18	Unity	100.0000%		
19	Combined Federal and State Income Tax Rate (Col. [B], L17)	37.7677%		
20	One Minus Combined Income Tax Rate (L18-L19)	62.2323%		
21	Property Tax Factor (Sch. TJC-9, Col. [B], L24)	0.7369%		
22	Effective Property Tax Factor (L20 x L21)		0.4586%	
23	Combined Federal and State Income Tax and Property Tax Rate (Col. [B], L17 + L22)			38.2263%
24	Required Operating Income (Sch. TJC-1, Col. [B] Line 4)	$ 236,994		
25	Adjusted Test Year Operating Income (Loss) (Sch. TJC-1, Col. [B], L2)	412,582		
26	Required Increase in Operating Income (L24 - L25)		$ (175,588)	
27	Income Taxes on Recommended Revenue (Col. [C], L52)	$ 117,863		
28	Income Taxes on Test Year Revenue (Col. [A], L52)	224,424		
29	Required Increase in Revenue to Provide for Income Taxes (L27 - L28)		(106,561)	
30	Recommended Revenue Requirement (Sch. TJC-1, Col. [B], Line 10)	$ 1,956,557		
31	Uncollectible Rate (L10)	0.0000%		
32	Uncolllectible Expense on Recommended Revenue (L30 x L31)	$ -		
33	Adjusted Test Year Uncollectible Expense (Sch. TJC-6, Col. [C], L32)	$ -		
34	Required Increase in Revenue to Provide for Uncollectible Exp. (L32 - L33)		-	
35	Property Tax with Recommended Revenue (Sch. TJC-9, Col. [B], L19)	$ 47,072		
36	Property Tax on Test Year Revenue (Sch. TJC-9, Col. [B], L20)	49,167		
37	Increase in Property Tax Due to Increase in Revenue (L35 - 36)		(2,095)	
38	Total Required Increase in Revenue (Col. [B], L26 + L29 + L34 + L37)		$ (284,244)	

	Calculation of Income Tax:	Test Year		RUCO Recommended
39	Revenue (Sch. TJC-1, Col. [B], Line 9 & Sch. TJC-1, Col. [B], L10)	$ 2,240,800	$ (284,244)	$ 1,956,557
40	Operating Expenses Excluding Income Taxes	$ 1,603,795		$ 1,601,700
41	Synchronized Interest (Col. [C], L57)	$ 34,266		$ 34,266
42	Arizona Taxable Income (L39 - L40 - L41)	$ 602,739		$ 320,590
43	Arizona State Income Tax Rate	4.9000%		4.9000%
44	Arizona Income Tax (L42 x L43)	$ 29,534		$ 15,709
45	Federal Taxable Income (L42 - L44)	$ 573,205		$ 304,881
46	Federal Tax on First Income Bracket ($1 - $50,000) @ 15%	$ 7,500		$ 7,500
47	Federal Tax on Second Income Bracket ($51,001 - $75,000) @ 25%	$ 6,250		$ 6,250
48	Federal Tax on Third Income Bracket ($75,001 - $100,000) @ 34%	$ 8,500		$ 8,500
49	Federal Tax on Fourth Income Bracket ($100,001 - $335,000) @ 39%	$ 91,650		$ 79,904
50	Federal Tax on Fifth Income Bracket ($335,001 -$10,000,000) @ 34%	$ 80,990		$ -
51	Total Federal Income Tax	$ 194,890		$ 102,154
52	Combined Federal and State Income Tax (L44 + L51)	$ 224,424		$ 117,863
53	Applicable Federal Income Tax Rate [Col. [C], L46 - Col. [A], L46] / [Col. [C], L40 - Col. [A], L40]			34.5612%
54	**Synchronized Interest Calculation:**			
55	Rate Base			$ 3,235,735
56	x Weighted Average Cost of Debt			1.0590%
57	Synchronized Interest			$ 34,266

RUCO RATE BASE SUMMARY

Line No.	Description	[A] Company As Filed OCRB/FVRB	[B] RUCO Recommended Adjustments	[C] RUCO As Adjusted OCRB/FVRB
1	Gross Utility Plant In Service	$ 14,166,434	$ (105,465)	$ 14,060,969
2	Accumulated Depreciation	(8,654,682)	(102,246)	(8,756,927)
3	Net Utility Plant In Service (L1 + L2)	$ 5,511,752	$ (207,710)	$ 5,304,042
	Less:			
4	Advances In Aid Of Construction ("AIAC")	$ (1,743,922)	$ 1,129,184	$ (614,739)
5	Contribution In Aid Of Construction ("CIAC")	(5,461,736)	(983,517)	(6,445,253)
6	Accumulated Amortization of CIAC	5,240,717	375,838	5,616,555
7	Net CIAC (L5 + L6)	$ (221,019)	$ (607,679)	$ (828,698)
8	Customer Meter Deposits	$ (8,570)	$ -	$ (8,570)
9	Customer Security Deposits	-	-	-
10	Gross Regulatory Liability - Scottsdale Capacity	-	(51,451)	(51,451)
11	Accumulated Amortization	-	20,581	20,581
12	Net Regulatory Liability	$ -	$ (30,871)	$ (30,871)
13	Accumulated Deferred Income Taxes ("ADIT")	$ (75,116)	$ (377,821)	$ (452,937)
	Plus:			
14	Unamortized Finance Charges	-	-	-
15	Prepayments	9,493	(3,293)	6,200
16	Materials & Supplies	-	-	-
17	Cash Working Capital	(60,594)	(78,098)	(138,692)
18	TOTAL RATE BASE (Sum L's 3, 4, 7, 8, 9, 12 Thru 17	$ 3,412,024	$ (176,288)	$ 3,235,735

References:
Column [A]: Company Schedule B-1
Column [B]: TJC-3, Columns [B] Thru [K]
Column [C]: Column [A] + Column [B]

Liberty Black Mountain Sewer
Docket No. SW-02361A-15-0206 et al.
Test Year Ended December 31, 2014

Wastewater Division
Direct Schedule TJC-3
Page 1 of 1

RATE BASE ADJUSTMENTS

Line No.	Description	[A] Company As Filed OCRB/FVRB	[B] Adjust No. 1 UPIS & A/D Reconstruct Adjustments	[C] Adjust No. 2 Plant Reclassifications Per Staff DR DH 3	[D] Adjust No. 3 Remove Allocated Corp.	[E] Adjust No. 4 Correct AFUDC	[F] Adjust No. 5 AIAC Adjustment	[G] Adjust No. 6 CIAC & Amortization Adjustments	[H] Adjust No. 7 Scottsdale Capacity	[I] Adjust No. 8 Intentionally Left Blank	[J] Adjust No. 9 ADIT Adjustment	[K] Adjust No. 10 Working Capital Adjustments	[L] Total RUCO Adjustments	[M] RUCO Recommended OCRB/FVRB
1	Gross Utility Plant In Service	$ 14,166,434	$ -	$ (7,683)	$ (97,465)	$ (317)	$ -	$ -	$ -	$ -	$ -	$ -	$ (105,465)	$ 14,060,969
2	Accumulated Depreciation	(8,654,682)	(58,209)	(46,245)	2,208	-	-	-	-	-	-	-	(102,246)	(8,756,927)
3	Net Utility Plant In Service (L1 + L2)	$ 5,511,752	$ (58,209)	$ (53,928)	$ (95,257)	$ (317)	$ -	$ -	$ -	$ -	$ -	$ -	$ (207,710)	$ 5,304,042
	Less:													
4	Advances In Aid Of Construction ("AIAC")	$ (1,743,922)	$ -	$ -	$ -	$ -	$ 1,129,184	$ -	$ -	$ -	$ -	$ -	$ 1,129,184	$ (614,739)
5	Contribution In Aid Of Construction ("CIAC")	(5,461,736)	-	-	-	-	-	(983,517)	-	-	-	-	(983,517)	(6,445,253)
6	Accumulated Amortization of CIAC	5,240,717	-	-	-	-	-	375,838	-	-	-	-	375,838	5,616,555
7	Net CIAC (L5 + L6)	$ (221,019)	$ -	$ -	$ -	$ -	$ -	$ (607,679)	$ -	$ -	$ -	$ -	$ (607,679)	$ (828,698)
8	Customer Meter Deposits	$ (8,570)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ (8,570)
9	Customer Security Deposits	-	-	-	-	-	-	-	-	-	-	-	-	-
10	Gross Regulatory Liability - Scottsdale Capacity	-	-	-	-	-	-	-	(51,451)	-	-	-	(51,451)	(51,451)
11	Accumulated Amortization	-	-	-	-	-	-	-	20,581	-	-	-	20,581	20,581
12	Net Regulatory Liability	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ (30,871)	$ -	$ -	$ -	$ (30,871)	$ (30,871)
13	Accumulated Deferred Income Taxes ("ADIT")	$ (75,116)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ (377,821)	$ -	$ (377,821)	$ (452,937)
	Plus:													
14	Unamortized Finance Charges	-	-	-	-	-	-	-	-	-	-	-	-	-
15	Prepayments	9,493	-	-	-	-	-	-	-	-	-	-	-	-
16	Materials & Supplies	-	-	-	-	-	-	-	-	-	-	(3,293)	(3,293)	6,200
17	Cash Working Capital	(60,594)	-	-	-	-	-	-	-	-	-	-	-	-
												(78,098)	(78,098)	(138,692)
18	TOTAL RATE BASE (Sum L's 3, 4, 7, 8, 9, 12 Thru 17)	$ 3,412,024	$ (58,209)	$ (53,928)	$ (95,257)	$ (317)	$ 1,129,184	$ (607,679)	$ (30,871)	$ -	$ (377,821)	$ (81,391)	$ (176,288)	$ 3,235,735

RUCO Adjustments:

Adjustment No. 1: Reconstruct Utility Plant in Service ("UPIS") & Accum. Depre. ("A/D") Balances as Filed by Company - See RUCO Rate Base Adjustment No. 1 on Schedule TJC-4(a) 2012 TY Plant Summary Schedule on pages 1 and 2, Column [B] at line 37;
Adjustment No. 2: UPIS & A/D Reclassifications - See RUCO Adjustment No. 2 on Schedule TJC-4(a) UPIS & A/D Summary Schedule on pages 1 and 2, Column [C] at line 37;
Adjustment No. 3: Remove Allocated Corporate Plant - See RUCO Adjustment No. 3 on Schedule TJC-4(a) on pages 1 and 2, Column [D] at line 37;
Adjustment No. 4: Correct Allowance of Funds Used During Construction (AFUDC) Rate as Filed by Company - See RUCO Schedule TJC-4(a) Adjustment No. 4 on page 1 of 2, Column [F], at line 37;
Adjustment No. 5: Correct Advances in Aid of Construction (AIAC) Balance as Filed by Company - See RUCO Schedule TJC-5 on page 1 of 2 at line 11;
Adjustment No. 6: Correct Contributions in Aid of Construction (CIAC) & Accum. Amort. Balances as Filed by Company - See RUCO Schedule TJC-6 on page 1 of 8 at lines 3 and 6 with Net CIAC Adjustment at line 9;
Adjustment No. 7: Establish Regulatory Liability to Remove Profit and Credit Ratepayers for Company's Erroneous Calculation for Scottsdale Capacity Loan Terms Agreement - See RUCO Schedule TJC-7 on page 1 of 1 at lines 1 and 2 with Net Regulatory Liability at line 3;
Adjustment No. 8: Intentionally Left Blank
Adjustment No. 9: RUCO Recommended 2014 TY End Accumulated Deferred Income Tax ("ADIT") Balance After RUCO Recommended Rate Base Adjustments - See RUCO Schedule TJC-9 ADIT on page 1 of 1 at line 29;
Adjustment No. 10: RUCO Recommended Allowance for Working Capital - See RUCO Schedule TJC-10 on page 1 of 1 at line 27;

References:

Column [A]: Company Schedule B-1
Column [B] Thru Column [K]: RUCO Recommended Rate Base Adjustments
Column [L]: Sum of RUCO Recommended Rate Base Adjustments of Columns [B] through [K]
Column [M]: Column [A] + Column [L]

RATE BASE ADJUSTMENTS NO. 1(a)
SUMMARY OF UTILITY PLANT IN SERVICE ("UPIS") ADJUSTMENTS
TEST YEAR ENDED DECEMBER 31, 2014

Line No.	Acct No		[A] Company Adjusted Plant in Service As Filed	[B] RUCO Adjustment #1 UPIS & A/D Reconstruction	[C] RUCO Adjustment #2 Plant Reclassifications Per Staff DR DH 3	[D] RUCO Adjustment #3 Remove Allocated Corp UPIS	[E] RUCO Adjustment #4 AFUDC Adjustment Per RUCO DR 1.33	[F] RUCO Adjustment #5 Intentionally Left Blank	[G] RUCO Adjustment #6 Intentionally Left Blank	[H] RUCO Adjustment #7 Intentionally Left Blank	[I] RUCO Adjustment #8 Intentionally Left Blank	[J] RUCO Total UPIS Adjustments	[K] RUCO Recommended Plant in Service
		Direct Plant:											
1	351	Organization	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2	352	Franchise	-	-	-	-	-	-	-	-	-	-	-
3	353	Land & Land Rights	471,024	-	1,500	-	-	-	-	-	-	1,500	472,524
4	354	Structures & Improvements	3,091,815	-	(152,909)	-	(8)	-	-	-	-	(152,917)	2,938,899
5	355	Power Generation Equipment	-	-	3,839	-	-	-	-	-	-	3,839	3,839
6	360	Collection Sewers - Forced	1,130,090	-	568	-	(228)	-	-	-	-	340	1,130,430
7	361	Collection Sewers - Gravity	4,555,232	-	-	-	(51)	-	-	-	-	(51)	4,555,182
8	362	Special Collecting Structures	-	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers	260,442	-	-	-	(7)	-	-	-	-	(7)	260,435
10	364	Flow Measuring Devices	31,668	-	-	-	-	-	-	-	-	-	31,668
11	365	Flow Measruring Installations	180,051	-	-	-	-	-	-	-	-	-	180,051
12	366	Reuse Services	-	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation	-	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells	1,028,182	-	-	-	-	-	-	-	-	-	1,028,182
15	371	Effluent Pumping Equipment	937,492	-	85,996	-	(3)	-	-	-	-	85,993	1,023,485
16	374	Reuse Distribution Reservoirs	-	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System	-	-	-	-	-	-	-	-	-	-	-
18	380	Treatment & Disposal Equipment	326,067	-	(2,211)	-	-	-	-	-	-	(2,211)	323,857
19	381	Plant Sewers	124,527	-	-	-	-	-	-	-	-	-	124,527
20	382	Outfall Sewer Lines	-	-	-	-	-	-	-	-	-	-	-
21	389	Other Sewer Plant & Misc. Equipment	992,742	-	(3,150)	-	-	-	-	-	-	(3,150)	989,592
22	390	Office Furniture & Equipment	289,536	-	(62,224)	-	(21)	-	-	-	-	(62,246)	227,290
23	390.1	Computers and Software	-	-	62,224	-	-	-	-	-	-	62,224	62,224
24	391	Transportation Equipment	80,215	-	-	-	-	-	-	-	-	-	80,215
25	392	Stores Equipment	-	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop And Garage Equipment	28,942	-	-	-	(0)	-	-	-	-	(0)	28,942
27	394	Laboratory Equipment	10,683	-	-	-	-	-	-	-	-	-	10,683
28	395	Power Operated Equipment	-	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment	43,968	-	58,683	-	-	-	-	-	-	58,683	102,651
30	397	Miscellaneous Equip.	-	-	-	-	-	-	-	-	-	-	-
31	398	Other Tangible Plant - Scottsdale Capacity	486,294	-	-	-	-	-	-	-	-	-	486,294
32		**Total Direct Plant**	$ 14,066,969	$ -	$ (7,683)	$ -	$ (317)	$ -	$ -	$ -	$ -	$ (8,000)	$ 14,060,969
		Allocated Corporate Plant:											
33	903	Land & Land Rights	$ 8,429	$ -	$ -	$ (8,429)	$ -	$ -	$ -	$ -	$ -	(8,429)	-
34	904	Structures and Improvements	75,829	-	-	(75,829)	-	-	-	-	-	(75,829)	-
35	940.1	Computers and Software	13,207	-	-	(13,207)						(13,207)	0
36		**Total Allocated Corporate Plant**	$ 97,465	$ -	$ -	$ (97,465)	$ -	$ -	$ -	$ -	$ -	$ (97,465)	$ 0
37		**Total Utility Plant in Service (UPIS)**	$ 14,166,434	$ -	$ (7,683)	$ (97,465)	$ (317)	$ -	$ -	$ -	$ -	$ (105,465)	$ 14,060,969

RUCO Adjustments:

Adjustment No. 1: Reconstruct Utility Plant in Service ("UPIS") & Accum. Depre. Balances as Filed by Company - See RUCO Adjustment No. 1 on Schedule TJC-4(b) 2008 thru 2014 TY Plant Schedules on pages 1-7 at page 7 on line 37 and 39;
Adjustment No. 2: Plant Reclassifications - See RUCO Schedule TJC-4(c) on page 1 of 2, Column [B], at line 32;
Adjustment No. 3: Remove Corporate Allocations for UPIS & A/D;
Adjustment No. 4: Correct AFUDC Rate - See RUCO Schedule TJC-10 on page 1 of 1 at line 8;
Adjustment No. 5: Intentionally Left Blank;
Adjustment No. 6: Intentionally Left Blank;
Adjustment No. 7: Intentionally Left Blank;
Adjustment No. 8: Intentionally Left Blank;

References:

Column [A]: Company Schedule B-2 on page 3 Adjusted Test Year UPIS Balances as Filed;
Column [B] Thru [I]: RUCO Recommended UPIS Adjustments;
Column [J]: Sum of Columns [B] Through [I] - RUCO Sum of Total Recommended UPIS Adjustments;

RATE BASE ADJUSTMENT NO. 1(b)
SUMMARY OF ACCUMULATED DEPRECIATION ADJUSTMENTS
TEST YEAR ENDED DECEMBER 31, 2014

Line No.	Acct No		[A] Company Adjusted Accum. Depre. As Filed	[B] RUCO Adjustment #1 Accumulated Depreciation	[C] RUCO Adjustment #2 Plant Reclassifications Per Staff DR DH 3	[D] RUCO Adjustment #3 Remove Allocated Corp A/D	[E] RUCO Adjustment #4 AFUDC Adjustment Per RUCO DR 1.33	[F] RUCO Adjustment #5 Intentionally Left Blank	[G] RUCO Adjustment #6 Intentionally Left Blank	[H] RUCO Adjustment #7 Intentionally Left Blank	[I] RUCO Adjustment #8 Intentionally Left Blank	[J] RUCO Total Accum. Depre. Adjustments	[K] RUCO Total Accum. Depre. Recommended
		Direct Plant Accumulated Depreciation:											
1	351	Organization	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2	352	Franchise	-	-	-	-	-	-	-	-	-	-	-
3	353	Land & Land Rights	-	-	-	-	-	-	-	-	-	-	-
4	354	Structures & Improvements	1,641,790	14,176	(15,076)	-	-	-	-	-	-	(900)	1,640,890
5	355	Power Generation Equipment	-	-	480	-	-	-	-	-	-	480	480
6	360	Collection Sewers - Forced	342,270	2,360	6	-	-	-	-	-	-	2,365	344,635
7	361	Collection Sewers - Gravity	3,547,500	14,283	-	-	-	-	-	-	-	14,283	3,561,783
8	362	Special Collecting Structures	-	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers	171,989	662	-	-	-	-	-	-	-	662	172,651
10	364	Flow Measuring Devices	31,668	0	-	-	-	-	-	-	-	0	31,668
11	365	Flow Measruring Installations	162,645	2,994	-	-	-	-	-	-	-	2,994	165,638
12	366	Reuse Services	-	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation	-	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells	499,821	5,178	-	-	-	-	-	-	-	5,178	505,000
15	371	Effluent Pumping Equipment	690,332	(2,565)	34,597	-	-	-	-	-	-	32,032	722,365
16	374	Reuse Distribution Reservoirs	-	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System	-	-	-	-	-	-	-	-	-	-	-
18	380	Treatment & Disposal Equipment	109,481	1,376	(305)	-	-	-	-	-	-	1,071	110,551
19	381	Plant Sewers	124,527	0	-	-	-	-	-	-	-	0	124,527
20	382	Outfall Sewer Lines	-	-	-	-	-	-	-	-	-	-	-
21	389	Other Sewer Plant & Misc. Equipment	656,611	10,461	(735)	-	-	-	-	-	-	9,725	666,336
22	390	Office Furniture & Equipment	173,186	2,497	(6,226)	-	-	-	-	-	-	(3,729)	169,457
23	390.1	Computers and Software	-	-	18,667	-	-	-	-	-	-	18,667	18,667
24	391	Transportation Equipment	56,967	(2,181)	-	-	-	-	-	-	-	(2,181)	54,786
25	392	Stores Equipment	-	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop And Garage Equipment	4,592	62	-	-	-	-	-	-	-	62	4,654
27	394	Laboratory Equipment	7,152	125	-	-	-	-	-	-	-	125	7,277
28	395	Power Operated Equipment	-	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment	26,962	676	14,837	-	-	-	-	-	-	15,514	42,476
30	397	Miscellaneous Equip.	-	-	-	-	-	-	-	-	-	-	-
31	398	Other Tangible Plant - Scottsdale Capacity	405,245	8,105	-	-	-	-	-	-	-	8,105	413,350
32		**Total Direct Plant**	$ 8,652,737	$ 58,209	$ 46,245	$ -	$ -	$ -	$ -	$ -	$ -	$ 104,454	$ 8,757,191
		Allocated Corporate Plant A/D											
33	903	Land & Land Rights	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
34	904	Structures and Improvements	1,944	-	-	(1,944)	-	-	-	-	-	(1,944)	(0)
35	940.1	Computers and Software	-	-	-	(264)	-	-	-	-	-	(264)	(264)
36		**Total Allocated Plant A/D**	$ 1,944	$ -	$ -	$ (2,208)	$ -	$ -	$ -	$ -	$ -	$ (2,208)	$ (264)
37		**Total Accumulated Depreciation (A/D)**	$ 8,654,682	$ 58,209	$ 46,245	$ (2,208)	$ -	$ -	$ -	$ -	$ -	$ 102,246	$ 8,756,927

RUCO Adjustments:

Adjustment No. 1: Reconstruct Utility Plant in Service ("UPIS") & Accum. Depre. Balances as Filed by Company - See RUCO Adjustment No. 1 on Schedule TJC-4(b) 2008 thru 2014 TY Plant Schedules on pages 1-7 at page 7 on line 37 and 39;
Adjustment No. 2: Plant Reclassifications - See RUCO Schedule TJC-4(c) on page 1 of 2, Column [B], at line 32;
Adjustment No. 3: Remove Corporate Allocations for UPIS & A/D;
Adjustment No. 4: Correct AFUDC Rate - See RUCO Schedule TJC-10 on page 1 of 1 at line 8;
Adjustment No. 5: Intentionally Left Blank;
Adjustment No. 6: Intentionally Left Blank;
Adjustment No. 7: Intentionally Left Blank;
Adjustment No. 8: Intentionally Left Blank;

UTILITY PLANT IN SERVICE ("UPIS") & UPIS ACCUMULATED DEPRECIATION ADJUSTMENT NO. 1
DIRECT PLANT RECONSTRUCTION SCHEDULE
TEST YEAR ENDED DECEMBER 31, 2014

Line No.	NARUC Account No.	Description	Vintage Year	Previously Allowed Deprec. Rate	Allowed Deprec. Rate	Per Decision 71865			2008 (6 Months - July 1 through December 31, 2008)									
						Company Plant at 6/30/2008	Accum. Deprec. At 6/30/2008	Company Net Plant at 6/30/2008	Plant Additions (Per Books)	Plant Adjustments	Adjusted Plant Additions	Plant Retirements	Salvage A/D Only	Depreciation (Calculated)	Company Vintage Depreciation Formula	Plant Balance	Accum. Deprec.	Net Plant
	Direct Plant:																	
1	351	Organization			0.00%	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2	352	Franchise			0.00%	-	-	-	-	-	-	-	-	-	-	-	-	-
3	353	Land & Land Rights			0.00%	461,300	-	461,300	-	-	-	-	-	-	-	-	-	-
4	354	Structures & Improvements			3.33%	2,560,220	1,089,269	1,470,950	-	(12,085)	(12,085)	-	-	42,527	42,527	2,548,135	1,131,797	1,416,339
5	355	Power Generation Equipment			5.00%	-	-	-	-	-	-	-	-	-	-	-	-	-
6	360	Collection Sewers - Forced			2.00%	707,892	237,047	470,845	-	(37)	(37)	-	-	7,079	7,079	707,855	244,126	463,729
7	361	Collection Sewers - Gravity			2.00%	4,284,948	2,986,891	1,298,057	-	(49)	(49)	-	-	42,849	42,849	4,284,899	3,029,740	1,255,159
8	362	Special Collecting Structures			2.00%	-	-	-	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers			2.00%	198,723	151,259	47,464	-	-	-	-	-	1,987	1,987	198,723	153,246	45,476
10	364	Flow Measuring Devices			10.00%	31,512	31,230	282	-	156	156	-	-	285	438	31,668	31,516	152
11	365	Flow Measruring Installations			10.00%	179,622	48,777	130,845	-	-	-	-	-	8,981	8,981	179,622	57,758	121,864
12	366	Reuse Services			2.00%	-	-	-	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation			8.33%	-	-	-	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells			3.33%	932,871	285,616	647,255	-	311	311	-	-	15,535	15,535	933,182	301,151	632,031
15	371	Effluent Pumping Equipment			12.50%	657,647	401,703	255,944	-	1,641	1,641	(4,461)	-	41,015	41,015	654,827	438,257	216,570
16	374	Reuse Distribution Reservoirs			2.50%	-	-	-	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System			2.50%	-	-	-	-	-	-	-	-	-	-	-	-	-
18	380	Treatment & Disposal Equipment			5.00%	181,828	14,930	166,898	-	(33,499)	(33,499)	-	-	4,127	4,127	148,329	19,057	129,272
19	381	Plant Sewers			5.00%	124,527	105,608	18,919	-	-	-	-	-	3,113	3,113	124,527	108,721	15,806
20	382	Outfall Sewer Lines			3.33%	-	-	-	-	-	-	-	-	-	-	-	-	-
21	389	Other Sewer Plant & Misc. Equipment			6.67%	939,432	249,600	689,832	-	3,138	3,138	-	-	31,382	31,382	942,570	280,983	661,587
22	390	Office Furniture & Equipment			6.67%	224,587	71,997	152,590	-	-	-	-	-	7,490	7,490	224,587	79,487	145,100
23	390.1	Computers and Software			20.00%	-	-	-	-	-	-	-	-	-	-	-	-	-
24	391	Transportation Equipment			20.00%	107,367	47,775	59,592	-	203	203	-	-	10,747	10,747	107,570	58,522	49,048
25	392	Stores Equipment			4.00%	-	-	-	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop And Garage Equipment			5.00%	5,754	203	5,552	-	3,420	3,420	-	-	187	187	9,174	390	8,785
27	394	Laboratory Equipment			10.00%	7,488	2,250	5,239	-	-	-	-	-	374	374	7,488	2,624	4,864
28	395	Power Operated Equipment			5.00%	-	-	-	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment			10.00%	40,451	1,011	39,440	-	275	275	-	-	2,029	2,029	40,726	3,041	37,685
30	397	Miscellaneous Equip.			10.00%	-	-	-	-	-	-	-	-	-	-	-	-	-
31	398	Other Tangible Plant - Scottsdale Capacity			10.00%	486,294	97,259	389,035	-	-	-	-	-	24,315	24,315	486,294	121,574	364,720
32		**RUCO Total Direct UPIS & Accum. Depre.**				$ 12,132,463	$ 5,822,426	$ 6,310,037	$ -	$ (36,526)	$ (36,526)	$ (4,461)	$ -	$ 244,023	$ 244,175	$ 12,091,476	$ 6,061,988	$ 6,029,488

UTILITY PLANT IN SERVICE ("UPIS") & UPIS ACCUMULATED DEPRECIATION ADJUSTMENT NO. 1
DIRECT PLANT RECONSTRUCTION SCHEDULE
TEST YEAR ENDED DECEMBER 31, 2014

						December 31, 2008			2009								
Line No.	NARUC Account No.	Description	Vintage Year	Previously Allowed Deprec. Rate	Allowed Deprec. Rate	Company Plant at 12/31/2008	Accum. Deprec. At 12/31/2008	Company Net Plant at 12/31/2008	Plant Additions (Per Books)	Plant Adjustments	Adjusted Plant Additions	Plant Retirements	Salvage A/D Only	Depreciation (Calculated)	Plant Balance	Accum. Deprec.	Net Plant
	Direct Plant:																
1	351	Organization			0.00%	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2	352	Franchise			0.00%	-	-	-		-	-	-	-	-	-	-	-
3	353	Land & Land Rights			0.00%	461,300	-	461,300		-	-	-		-	461,300	-	461,300
4	354	Structures & Improvements			3.33%	2,548,135	1,131,797	1,416,339	36,874	(311)	36,563	(2,504)	-	85,420	2,582,194	1,214,712	1,367,482
5	355	Power Generation Equipment			5.00%	-	-	-	-	-	-	-	-	-	-	-	-
6	360	Collection Sewers - Forced			2.00%	707,855	244,126	463,729	49,900	(5,397)	44,503	-	-	14,602	752,358	258,728	493,630
7	361	Collection Sewers - Gravity			2.00%	4,284,899	3,029,740	1,255,159	127,133	-	127,133	-	-	86,969	4,412,032	3,116,710	1,295,322
8	362	Special Collecting Structures			2.00%	-	-	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers			2.00%	198,723	153,246	45,476	3,400	-	3,400	-	-	4,008	202,123	157,255	44,868
10	364	Flow Measuring Devices			10.00%	31,668	31,516	152	-	-	-	-	-	152	31,668	31,668	-
11	365	Flow Measruring Installations			10.00%	179,622	57,758	121,864	-	-	-	-	-	17,962	179,622	75,720	103,902
12	366	Reuse Services			2.00%	-	-	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation			8.33%	-	-	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells			3.33%	933,182	301,151	632,031	95,000	-	95,000	-	-	32,657	1,028,182	333,807	694,374
15	371	Effluent Pumping Equipment			12.50%	654,827	438,257	216,570	10,132	-	10,132	(4,841)	-	82,184	660,118	515,600	144,519
16	374	Reuse Distribution Reservoirs			2.50%	-	-	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System			2.50%	-	-	-	-	-	-	-	-	-	-	-	-
18	380	Treatment & Disposal Equipment			5.00%	148,329	19,057	129,272	503	-	503	-	-	7,429	148,832	26,486	122,346
19	381	Plant Sewers			5.00%	124,527	108,721	15,806	-	-	-	-	-	6,226	124,527	114,947	9,580
20	382	Outfall Sewer Lines			3.33%	-	-	-	-	-	-	-	-	-	-	-	-
21	389	Other Sewer Plant & Misc. Equipment			6.67%	942,570	280,983	661,587	987	-	987	-	-	62,902	943,557	343,885	599,672
22	390	Office Furniture & Equipment			6.67%	224,587	79,487	145,100	-	-	-	-	-	14,980	224,587	94,467	130,120
23	390.1	Computers and Software			20.00%	-	-	-	-	-	-	-	-	-	-	-	-
24	391	Transportation Equipment			20.00%	107,570	58,522	49,048	-	-	-	-	-	21,514	107,570	80,036	27,534
25	392	Stores Equipment			4.00%	-	-	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop And Garage Equipment			5.00%	9,174	390	8,785	351	-	351	-	-	467	9,525	857	8,668
27	394	Laboratory Equipment			10.00%	7,488	2,624	4,864	-	-	-	-	-	749	7,488	3,373	4,115
28	395	Power Operated Equipment			5.00%	-	-	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment			10.00%	40,726	3,041	37,685	-	-	-	-	-	4,073	40,726	7,113	33,613
30	397	Miscellaneous Equip.			10.00%	-	-	-	-	-	-	-	-	-	-	-	-
31	398	Other Tangible Plant - Scottsdale Capacity			10.00%	486,294	121,574	364,720	-	-	-	-	-	48,629	486,294	170,203	316,091
32		**RUCO Total Direct UPIS & Accum. Depre.**				$ 12,091,476	$ 6,061,988	$ 6,029,488	$ 324,280	$ (5,708)	$ 318,572	$ (7,346)	$ -	$ 490,925	$ 12,402,703	$ 6,545,567	$ 5,857,136

UTILITY PLANT IN SERVICE ("UPIS") & UPIS ACCUMULATED DEPRECIATION ADJUSTMENT NO. 1
DIRECT PLANT RECONSTRUCTION SCHEDULE
TEST YEAR ENDED DECEMBER 31, 2014

Line No.	NARUC Account No.	Description	Vintage Year	Previously Allowed Deprec. Rate	Allowed Deprec. Rate	December 31, 2009 Company Plant at 12/31/2009	Accum. Deprec. At 12/31/2009	Company Net Plant at 12/31/2009	2010 Plant Additions (Per Books)	Plant Adjustments	Adjusted Plant Additions	Plant Retirements	Salvage A/D Only	Depreciation (Calculated)	Plant Balance	Accum. Deprec.	Net Plant
	Direct Plant:																
1	351	Organization			0.00%	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2	352	Franchise			0.00%	-	-	-	-	-	-	-	-	-	-	-	-
3	353	Land & Land Rights			0.00%	461,300	-	461,300	-	-	-	-	-	-	-	-	461,300
4	354	Structures & Improvements			3.33%	2,582,194	1,214,712	1,367,482	105,916	(1,282)	104,634	-	-	87,729	2,686,828	1,302,441	1,384,387
5	355	Power Generation Equipment			5.00%	-	-	-	-	-	-	-	-	-	-	-	-
6	360	Collection Sewers - Forced			2.00%	752,358	258,728	493,630	94,113	(211)	93,901	-	-	15,986	846,259	274,714	571,545
7	361	Collection Sewers - Gravity			2.00%	4,412,032	3,116,710	1,295,322	150,760	(189)	150,571	-	-	89,746	4,562,602	3,206,456	1,356,146
8	362	Special Collecting Structures			2.00%	-	-	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers			2.00%	202,123	157,255	44,868	-	-	-	-	-	4,042	202,123	161,297	40,826
10	364	Flow Measuring Devices			10.00%	31,668	31,668	-	-	-	-	-	-	-	31,668	31,668	-
11	365	Flow Measruring Installations			10.00%	179,622	75,720	103,902	-	-	-	-	-	17,962	179,622	93,682	85,940
12	366	Reuse Services			2.00%	-	-	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation			8.33%	-	-	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells			3.33%	1,028,182	333,807	694,374	-	-	-	-	-	34,238	1,028,182	368,046	660,136
15	371	Effluent Pumping Equipment			12.50%	660,118	515,600	144,519	107,891	(189)	107,702	-	-	89,246	767,820	604,846	162,974
16	374	Reuse Distribution Reservoirs			2.50%	-	-	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System			2.50%	-	-	-	-	-	-	-	-	-	-	-	-
18	380	Treatment & Disposal Equipment			5.00%	148,832	26,486	122,346	186,041	(24)	186,017	-	-	12,092	334,849	38,578	296,271
19	381	Plant Sewers			5.00%	124,527	114,947	9,580	-	-	-	-	-	6,226	124,527	121,174	3,353
20	382	Outfall Sewer Lines			3.33%	-	-	-	-	-	-	-	-	-	-	-	-
21	389	Other Sewer Plant & Misc. Equipment			6.67%	943,557	343,885	599,672	500	-	500	-	-	62,952	944,057	406,837	537,220
22	390	Office Furniture & Equipment			6.67%	224,587	94,467	130,120	-	-	-	-	-	14,980	224,587	109,447	115,140
23	390.1	Computers and Software			20.00%	-	-	-	-	-	-	-	-	-	-	-	-
24	391	Transportation Equipment			20.00%	107,570	80,036	27,534	-	-	-	-	-	21,514	107,570	101,550	6,020
25	392	Stores Equipment			4.00%	-	-	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop And Garage Equipment			5.00%	9,525	857	8,668	1,759	(6)	1,753	-	-	520	11,278	1,377	9,901
27	394	Laboratory Equipment			10.00%	7,488	3,373	4,115	-	-	-	-	-	749	7,488	4,122	3,367
28	395	Power Operated Equipment			5.00%	-	-	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment			10.00%	40,726	7,113	33,613	-	-	-	-	-	4,073	40,726	11,186	29,540
30	397	Miscellaneous Equip.			10.00%	-	-	-	-	-	-	-	-	-	-	-	-
31	398	Other Tangible Plant - Scottsdale Capacity			10.00%	486,294	170,203	316,091	-	-	-	-	-	48,629	486,294	218,833	267,462
32		**RUCO Total Direct UPIS & Accum. Depre.**				$ 12,402,703	$ 6,545,567	$ 5,857,136	$ 646,979	$ (1,902)	$ 645,078	$ -	$ -	$ 510,686	$ 13,047,781	$ 7,056,253	$ 5,991,527

UTILITY PLANT IN SERVICE ("UPIS") & UPIS ACCUMULATED DEPRECIATION ADJUSTMENT NO. 1
DIRECT PLANT RECONSTRUCTION SCHEDULE
TEST YEAR ENDED DECEMBER 31, 2014

Line No.	NARUC Account No.	Description	Vintage Year	Previously Allowed Deprec. Rate	Allowed Deprec. Rate	December 31, 2010 Company Plant at 12/31/2010	Accum. Deprec. At 12/31/2010	Company Net Plant at 12/31/2010	2011 Plant Additions (Per Books)	Plant Adjustments	Adjusted Plant Additions	Plant Retirements	Salvage A/D Only	Depreciation (Calculated)	Plant Balance	Accum. Deprec.	Net Plant
	Direct Plant:																
1	351	Organization			0.00%	$ -	$ -	$ -	$ -	$ -	$ -	$ -		$ -	$ -	$ -	$ -
2	352	Franchise			0.00%	-	-	-		-	-	-		-	-	-	-
3	353	Land & Land Rights			0.00%	461,300	-	461,300		-	-	-		-	461,300	-	461,300
4	354	Structures & Improvements			3.33%	2,686,828	1,302,441	1,384,387	109,394	(1,491)	107,903	(8,614)	-	91,125	2,786,117	1,384,952	1,401,165
5	355	Power Generation Equipment			5.00%	-	-	-	-	-	-	-	-	-	-	-	-
6	360	Collection Sewers - Forced			2.00%	846,259	274,714	571,545	99,047	(612)	98,435	(8,381)	-	17,826	936,313	284,159	652,154
7	361	Collection Sewers - Gravity			2.00%	4,562,602	3,206,456	1,356,146	69,030	(699)	68,331	(5,072)	-	91,885	4,625,861	3,293,269	1,332,592
8	362	Special Collecting Structures			2.00%	-	-	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers			2.00%	202,123	161,297	40,826	-	-	-	-	-	4,042	202,123	165,339	36,783
10	364	Flow Measuring Devices			10.00%	31,668	31,668	-	-	-	-	-	-	-	31,668	31,668	-
11	365	Flow Measruring Installations			10.00%	179,622	93,682	85,940	-	-	-	-	-	17,962	179,622	111,644	67,977
12	366	Reuse Services			2.00%	-	-	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation			8.33%	-	-	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells			3.33%	1,028,182	368,046	660,136	-	-	-	-	-	34,238	1,028,182	402,284	625,897
15	371	Effluent Pumping Equipment			12.50%	767,820	604,846	162,974	76,164	(553)	75,611	(6,482)	-	72,821	836,949	671,185	165,764
16	374	Reuse Distribution Reservoirs			2.50%	-	-	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System			2.50%	-	-	-	-	-	-	-	-	-	-	-	-
18	380	Treatment & Disposal Equipment			5.00%	334,849	38,578	296,271	33,223	(267)	32,956	-	-	17,566	367,805	56,144	311,660
19	381	Plant Sewers			5.00%	124,527	121,174	3,353	-	-	-	-	-	3,353	124,527	124,527	-
20	382	Outfall Sewer Lines			3.33%	-	-	-	-	-	-	-	-	-	-	-	-
21	389	Other Sewer Plant & Misc. Equipment			6.67%	944,057	406,837	537,220	33,223	(11)	33,212	-	-	64,076	977,269	470,913	506,356
22	390	Office Furniture & Equipment			6.67%	224,587	109,447	115,140	-	-	-	-	-	14,980	224,587	124,427	100,160
23	390.1	Computers and Software			20.00%	-	-	-	-	-	-	-	-	-	-	-	-
24	391	Transportation Equipment			20.00%	107,570	101,550	6,020	-	-	-	-	-	6,020	107,570	107,570	-
25	392	Stores Equipment			4.00%	-	-	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop And Garage Equipment			5.00%	11,278	1,377	9,901	3,386	(30)	3,356	-	-	648	14,634	2,025	12,609
27	394	Laboratory Equipment			10.00%	7,488	4,122	3,367	-	-	-	-	-	749	7,488	4,871	2,618
28	395	Power Operated Equipment			5.00%	-	-	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment			10.00%	40,726	11,186	29,540	-	-	-	-	-	4,073	40,726	15,259	25,467
30	397	Miscellaneous Equip.			10.00%	-	-	-	-	-	-	-	-	-	-	-	-
31	398	Other Tangible Plant - Scottsdale Capacity			10.00%	486,294	218,833	267,462	-	-	-	-	-	48,629	486,294	267,462	218,832
32		**RUCO Total Direct UPIS & Accum. Depre.**				$ 13,047,781	$ 7,056,253	$ 5,991,527	$ 423,467	$ (3,664)	$ 419,803	$ (28,549)	$ -	$ 489,994	$ 13,439,035	$ 7,517,698	$ 5,921,337

UTILITY PLANT IN SERVICE ("UPIS") & UPIS ACCUMULATED DEPRECIATION ADJUSTMENT NO. 1
DIRECT PLANT RECONSTRUCTION SCHEDULE
TEST YEAR ENDED DECEMBER 31, 2014

Line No.	NARUC Account No.	Description	Vintage Year	Previously Allowed Deprec. Rate	Allowed Deprec. Rate	December 31, 2011 Company Plant at 12/31/2011	Accum. Deprec. At 12/31/2011	Company Net Plant at 12/31/2011	2012 Plant Additions (Per Books)	Plant Adjustments	Adjusted Plant Additions	Plant Retirements	Salvage A/D Only	Depreciation (Calculated)	Plant Balance	Accum. Deprec.	Net Plant
	Direct Plant:																
1	351	Organization			0.00%	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2	352	Franchise			0.00%	-	-	-		-	-			-	-	-	-
3	353	Land & Land Rights			0.00%	461,300	-	461,300	9,740	(16)	9,724	-		-	471,024	-	471,024
4	354	Structures & Improvements			3.33%	2,786,117	1,384,952	1,401,165	237,042	(1,140)	235,903	(11,217)	-	96,519	3,010,803	1,470,254	1,540,549
5	355	Power Generation Equipment			5.00%	-	-	-	-	-	-	-	-	-	-	-	-
6	360	Collection Sewers - Forced			2.00%	936,313	284,159	652,154	60,446	(407)	60,039	(671)	-	19,320	995,682	302,808	692,873
7	361	Collection Sewers - Gravity			2.00%	4,625,861	3,293,269	1,332,592	30,677	(141)	30,536	(842)	-	92,814	4,655,556	3,385,241	1,270,314
8	362	Special Collecting Structures			2.00%	-	-	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers			2.00%	202,123	165,339	36,783	-	-	-	-	-	4,042	202,123	169,382	32,741
10	364	Flow Measuring Devices			10.00%	31,668	31,668	-	-	-	-	-	-	-	31,668	31,668	-
11	365	Flow Measruring Installations			10.00%	179,622	111,644	67,977	430	-	430	-	-	17,984	180,051	129,628	50,423
12	366	Reuse Services			2.00%	-	-	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation			8.33%	-	-	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells			3.33%	1,028,182	402,284	625,897	-	-	-	-	-	34,238	1,028,182	436,523	591,659
15	371	Effluent Pumping Equipment			12.50%	836,949	671,185	165,764	59,529	(432)	59,098	(13,118)	-	27,460	882,929	685,526	197,402
16	374	Reuse Distribution Reservoirs			2.50%	-	-	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System			2.50%	-	-	-	-	-	-	-	-	-	-	-	-
18	380	Treatment & Disposal Equipment			5.00%	367,805	56,144	311,660	2,231	(19)	2,212	-	-	18,446	370,017	74,590	295,427
19	381	Plant Sewers			5.00%	124,527	124,527	-	-	-	-	-	-	-	124,527	124,527	-
20	382	Outfall Sewer Lines			3.33%	-	-	-	-	-	-	-	-	-	-	-	-
21	389	Other Sewer Plant & Misc. Equipment			6.67%	977,269	470,913	506,356	683	-	683	-	-	65,207	977,952	536,120	441,832
22	390	Office Furniture & Equipment			6.67%	224,587	124,427	100,160	-	-	-	-	-	14,980	224,587	139,407	85,180
23	390.1	Computers and Software			20.00%	-	-	-	-	-	-	-	-	-	-	-	-
24	391	Transportation Equipment			20.00%	107,570	107,570	-	5,228	(7)	5,221	(33,699)	-	(2,848)	79,092	71,023	8,069
25	392	Stores Equipment			4.00%	-	-	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop And Garage Equipment			5.00%	14,634	2,025	12,609	-	(24)	(24)	-	-	731	14,610	2,756	11,854
27	394	Laboratory Equipment			10.00%	7,488	4,871	2,618	-	(2)	(2)	-	-	749	7,486	5,619	1,867
28	395	Power Operated Equipment			5.00%	-	-	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment			10.00%	40,726	15,259	25,467	-	-	-	-	-	4,073	40,726	19,331	21,395
30	397	Miscellaneous Equip.			10.00%	-	-	-	-	-	-	-	-	-	-	-	-
31	398	Other Tangible Plant - Scottsdale Capacity			10.00%	486,294	267,462	218,832	-	-	-	-	-	48,629	486,294	316,091	170,203
32		**RUCO Total Direct UPIS & Accum. Depre.**				$ 13,439,035	$ 7,517,698	$ 5,921,337	$ 406,006	$ (2,187)	$ 403,819	$ (59,546)	$ -	$ 442,343	$ 13,783,308	$ 7,900,495	$ 5,882,813

UTILITY PLANT IN SERVICE ("UPIS") & UPIS ACCUMULATED DEPRECIATION ADJUSTMENT NO. 1
DIRECT PLANT RECONSTRUCTION SCHEDULE
TEST YEAR ENDED DECEMBER 31, 2014

Line No.	NARUC Account No.	Description	Vintage Year	Previously Allowed Deprec. Rate	Allowed Deprec. Rate	December 31, 2012 Company Plant at 12/31/2012	Accum. Deprec. At 12/31/2012	Company Net Plant at 12/31/2012	2013 Plant Additions (Per Books)	Plant Adjustments	Adjusted Plant Additions	Plant Retirements	Salvage A/D Only	Depreciation (Calculated)	Plant Balance	Accum. Deprec.	Net Plant
	Direct Plant:																
1	351	Organization			0.00%	$ -	$ -	$ -			$ -	$ -		$ -	$ -	$ -	$ -
2	352	Franchise			0.00%	-	-	-			-	-		-	-	-	-
3	353	Land & Land Rights			0.00%	471,024	-	471,024			-	-		-	471,024	-	471,024
4	354	Structures & Improvements			3.33%	3,010,803	1,470,254	1,540,549	62,428	-	62,428	(4,128)	-	101,230	3,069,103	1,567,356	1,501,747
5	355	Power Generation Equipment			5.00%	-	-	-	-	-	-	-	-	-	-	-	-
6	360	Collection Sewers - Forced			2.00%	995,682	302,808	692,873	60,461	-	60,461	-	-	20,518	1,056,143	323,326	732,816
7	361	Collection Sewers - Gravity			2.00%	4,655,556	3,385,241	1,270,314	15,123	-	15,123	(1,705)	-	93,245	4,668,974	3,476,782	1,192,192
8	362	Special Collecting Structures			2.00%	-	-	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers			2.00%	202,123	169,382	32,741	15,611	-	15,611	-	-	4,199	217,733	173,580	44,153
10	364	Flow Measuring Devices			10.00%	31,668	31,668	-	-	-	-	-	-	-	31,668	31,668	-
11	365	Flow Measruring Installations			10.00%	180,051	129,628	50,423	-	-	-	-	-	18,005	180,051	147,633	32,418
12	366	Reuse Services			2.00%	-	-	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation			8.33%	-	-	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells			3.33%	1,028,182	436,523	591,659	-	-	-	-	-	34,238	1,028,182	470,761	557,420
15	371	Effluent Pumping Equipment			12.50%	882,929	685,526	197,402	84,467	-	84,467	(36,960)	-	35,357	930,437	683,924	246,513
16	374	Reuse Distribution Reservoirs			2.50%	-	-	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System			2.50%	-	-	-	-	-	-	-	-	-	-	-	-
18	380	Treatment & Disposal Equipment			5.00%	370,017	74,590	295,427	7,270	-	7,270	-	-	18,683	377,287	93,272	284,015
19	381	Plant Sewers			5.00%	124,527	124,527	-	-	-	-	-	-	-	124,527	124,527	-
20	382	Outfall Sewer Lines			3.33%	-	-	-	-	-	-	-	-	-	-	-	-
21	389	Other Sewer Plant & Misc. Equipment			6.67%	977,952	536,120	441,832	-	-	-	-	-	65,229	977,952	601,349	376,603
22	390	Office Furniture & Equipment			6.67%	224,587	139,407	85,180	62,224	-	62,224	-	-	17,055	286,812	156,462	130,350
23	390.1	Computers and Software			20.00%	-	-	-	-	-	-	-	-	-	-	-	-
24	391	Transportation Equipment			20.00%	79,092	71,023	8,069	-	-	-	-	-	4,414	79,092	75,438	3,655
25	392	Stores Equipment			4.00%	-	-	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop And Garage Equipment			5.00%	14,610	2,756	11,854	1,573	-	1,573	-	-	770	16,184	3,526	12,658
27	394	Laboratory Equipment			10.00%	7,486	5,619	1,867	-	-	-	-	-	749	7,486	6,368	1,118
28	395	Power Operated Equipment			5.00%	-	-	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment			10.00%	40,726	19,331	21,395	-	-	-	-	-	4,073	40,726	23,404	17,322
30	397	Miscellaneous Equip.			10.00%	-	-	-	-	-	-	-	-	-	-	-	-
31	398	Other Tangible Plant - Scottsdale Capacity			10.00%	486,294	316,091	170,203	-	-	-	-	-	48,629	486,294	364,721	121,573
32		**RUCO Total Direct UPIS & Accum. Depre.**				$ 13,783,308	$ 7,900,495	$ 5,882,813	$ 309,159	$ -	$ 309,159	$ (42,793)	$ -	$ 466,395	$ 14,049,675	$ 8,324,097	$ 5,725,577

UTILITY PLANT IN SERVICE ("UPIS") & UPIS ACCUMULATED DEPRECIATION ADJUSTMENT NO. 1
DIRECT PLANT RECONSTRUCTION SCHEDULE
TEST YEAR ENDED DECEMBER 31, 2014

Line No.	NARUC Account No.	Description	Vintage Year	Previously Allowed Deprec. Rate	Allowed Deprec. Rate	December 31, 2013 Company Plant at 12/31/2013	Accum. Deprec. At 12/31/2013	Company Net Plant at 12/31/2013	Test Year End December 31, 2014 Plant Additions (Per Books)	Plant Adjustments	Adjusted Plant Additions	Plant Retirements	Salvage A/D Only	Depreciation (Calculated)	Plant Balance	Accum. Deprec.	Net Plant
	Direct Plant:																
1	351	Organization			0.00%	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2	352	Franchise			0.00%	-	-	-			-	-		-	-	-	-
3	353	Land & Land Rights			0.00%	471,024	-	471,024			-	-		-	471,024	-	471,024
4	354	Structures & Improvements			3.33%	3,069,103	1,567,356	1,501,747	49,937	(13,255)	36,682	(13,970)	-	102,579	3,091,815	1,655,966	1,435,849
5	355	Power Generation Equipment			5.00%	-	-	-	-	-	-	-	-	-	-	-	-
6	360	Collection Sewers - Forced			2.00%	1,056,143	323,326	732,816	81,757	(7,251)	74,507	(559)	-	21,862	1,130,090	344,629	785,461
7	361	Collection Sewers - Gravity			2.00%	4,668,974	3,476,782	1,192,192	135,300	(241,801)	(106,501)	(7,241)	-	92,242	4,555,232	3,561,783	993,449
8	362	Special Collecting Structures			2.00%	-	-	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers			2.00%	217,733	173,580	44,153	48,419	-	48,419	(5,711)	-	4,782	260,442	172,651	87,791
10	364	Flow Measuring Devices			10.00%	31,668	31,668	-	-	-	-	-	-	-	31,668	31,668	-
11	365	Flow Measruring Installations			10.00%	180,051	147,633	32,418	-	-	-	-	-	18,005	180,051	165,638	14,413
12	366	Reuse Services			2.00%	-	-	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation			8.33%	-	-	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells			3.33%	1,028,182	470,761	557,420	-	-	-	-	-	34,238	1,028,182	505,000	523,182
15	371	Effluent Pumping Equipment			12.50%	930,437	683,924	246,513	38,455	9,634	48,089	(41,033)	-	44,877	937,492	687,768	249,725
16	374	Reuse Distribution Reservoirs			2.50%	-	-	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System			2.50%	-	-	-	-	-	-	-	-	-	-	-	-
18	380	Treatment & Disposal Equipment			5.00%	377,287	93,272	284,015	20,759	(71,979)	(51,220)	-	-	17,584	326,067	110,856	215,211
19	381	Plant Sewers			5.00%	124,527	124,527	-	-	-	-	-	-	-	124,527	124,527	-
20	382	Outfall Sewer Lines			3.33%	-	-	-	-	-	-	-	-	-	-	-	-
21	389	Other Sewer Plant & Misc. Equipment			6.67%	977,952	601,349	376,603	20,988	(6,198)	14,790	-	-	65,723	992,742	667,072	325,670
22	390	Office Furniture & Equipment			6.67%	286,812	156,462	130,350	2,724	-	2,724	-	-	19,221	289,536	175,683	113,853
23	390.1	Computers and Software			20.00%	-	-	-	-	-	-	-	-	-	-	-	-
24	391	Transportation Equipment			20.00%	79,092	75,438	3,655	22,930	-	22,930	(21,808)	-	1,156	80,215	54,786	25,428
25	392	Stores Equipment			4.00%	-	-	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop And Garage Equipment			5.00%	16,184	3,526	12,658	12,758	-	12,758	-	-	1,128	28,942	4,654	24,288
27	394	Laboratory Equipment			10.00%	7,486	6,368	1,118	3,196	-	3,196	-	-	908	10,683	7,277	3,406
28	395	Power Operated Equipment			5.00%	-	-	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment			10.00%	40,726	23,404	17,322	3,242	-	3,242	-	-	4,235	43,968	27,638	16,329
30	397	Miscellaneous Equip.			10.00%	-	-	-	-	-	-	-	-	-	-	-	-
31	398	Other Tangible Plant - Scottsdale Capacity			10.00%	486,294	364,721	121,573	-	-	-	-	-	48,629	486,294	413,350	72,944
32		**RUCO Total Direct UPIS & Accum. Depre.**				$ 14,049,675	$ 8,324,097	$ 5,725,577	$ 440,466	$ (330,849)	$ 109,617	$ (90,322)	$ -	$ 477,171	$ 14,068,969	$ 8,710,946	$ 5,358,023
36		Direct UPIS Per Company As Filed													14,068,969		
37		RUCO's Direct UPIS Adjustment													$ -		
38		A/D Per Company Direct Plant Reconstruction Schedules														8,652,737	
39		RUCO's (Increase)/Decrease Direct A/D Adjustment														$ 58,209	

UTILITY PLANT IN SERVICE ("UPIS") ADJUSTMENT NO. 2
SUMMARY OF RECLASSIFICATIONS OF UTILITY PLANT IN SERVICE ("UPIS")

Line No.	Acct. No.	Description	[A] RUCO After Recontruction	[B] RUCO UPIS Reclassification Adjustments	[C] RUCO Recommended UPIS Balances
1	351	Organization	$ -	$ -	$ -
2	352	Franchise	-	-	-
3	353	Land & Land Rights	471,024	1,500	472,524
4	354	Structures & Improvements	3,091,815	(152,909)	2,938,906
5	355	Power Generation Equipment	-	3,839	3,839
6	360	Collection Sewers - Forced	1,130,090	568	1,130,658
7	361	Collection Sewers - Gravity	4,555,232	-	4,555,232
8	362	Special Collecting Structures	-	-	-
9	363	Services to Customers	260,442	-	260,442
10	364	Flow Measuring Devices	31,668	-	31,668
11	365	Flow Measruring Installations	180,051	-	180,051
12	366	Reuse Services	-	-	-
13	367	Reuse Meters And Installation	-	-	-
14	370	Receiving Wells	1,028,182	-	1,028,182
15	371	Effluent Pumping Equipment	937,492	85,996	1,023,488
16	374	Reuse Distribution Reservoirs	-	-	-
17	375	Reuse Trans. and Dist. System	-	-	-
18	380	Treatment & Disposal Equipment	326,067	(2,211)	323,857
19	381	Plant Sewers	124,527	-	124,527
20	382	Outfall Sewer Lines	-	-	-
21	389	Other Sewer Plant & Misc. Equipment	992,742	(3,150)	989,592
22	390	Office Furniture & Equipment	289,536	(62,224)	227,311
23	390.1	Computers and Software	-	62,224	62,224
24	391	Transportation Equipment	80,215	-	80,215
25	392	Stores Equipment	-	-	-
26	393	Tools, Shop And Garage Equipment	28,942	-	28,942
27	394	Laboratory Equipment	10,683	-	10,683
28	395	Power Operated Equipment	-	-	-
29	396	Communication Equipment	43,968	58,683	102,651
30	397	Miscellaneous Equip.	-	-	-
31	398	Other Tangible Plant - Scottsdale Capacity	486,294	-	486,294
32		Totals	$ 14,068,969	$ (7,683)	$ 14,061,286

References:

Per Company Responses to Staff DR DH 3

UPIS ACCUMULATED DEPRECIATION ADJUSTMENT NO. 2
SUMMARY OF RECLASSIFICATIONS OF ACCUMULATED DEPRECIATION ("A/D")

Line No.	Acct. No.	Description	[A] RUCO After Recontruction	[B] RUCO Accum. Depre. Reclassification Adjustments	[C] RUCO Recommended Accum. Depre. Balances
1	351	Organization	$ (21,100)	$ -	$ (21,100)
2	352	Franchise	-	-	-
3	353	Land & Land Rights	-	-	-
4	354	Structures & Improvements	(3,036,910)	251,726	(2,785,184)
5	355	Power Generation Equipment	-	-	-
6	360	Collection Sewers - Forced	-	-	-
7	361	Collection Sewers - Gravity	(915,114)	(14,624)	(929,738)
8	362	Special Collecting Structures	-	-	-
9	363	Services to Customers	-	-	-
10	364	Flow Measuring Devices	(87,092)	(681)	(87,773)
11	365	Flow Measruring Installations	(759,242)	43	(759,200)
12	366	Reuse Services	(199,379)	-	(199,379)
13	367	Reuse Meters And Installation	-	(145,981)	(145,981)
14	370	Receiving Wells	-	-	-
15	371	Effluent Pumping Equipment	(205,453)	-	(205,453)
16	374	Reuse Distribution Reservoirs	-	(59,973)	(59,973)
17	375	Reuse Trans. and Dist. System	-	-	-
18	380	Treatment & Disposal Equipment	(5,947,658)	-	(5,947,658)
19	381	Plant Sewers	(1,409,855)	-	(1,409,855)
20	382	Outfall Sewer Lines	(2,960,806)	-	(2,960,806)
21	389	Other Sewer Plant & Misc. Equipment	(335,259)	-	(335,259)
22	390	Office Furniture & Equipment	(15,227)	-	(15,227)
23	390.1	Computers and Software	(85,429)	-	(85,429)
24	391	Transportation Equipment	(239,369)	(1,093)	(240,462)
25	392	Stores Equipment	-	(5,910)	(5,910)
26	393	Tools, Shop And Garage Equipment	(200,543)	-	(200,543)
27	394	Laboratory Equipment	(5,839)	-	(5,839)
28	395	Power Operated Equipment	(11,341)	-	(11,341)
29	396	Communication Equipment	(290)	-	(290)
30	397	Miscellaneous Equip.	-	-	-
31	398	Other Tangible Plant - Scottsdale Capacity	(58,472)	-	(58,472)
32		Totals	$ (16,494,377)	$ 23,507	$ (16,470,870)

References:

Per Company Responses to Staff DR DH 3

RATE BASE ADJUSTMENT NO. 4
CORRECT ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION (AFUDC)

Line No.	Acct. No.	Description	Amount
		AFUDC Adjustments:	
1	354	Structures & Improvements	$ (8)
2	360	Collection Sewers - Forced	(228)
3	361	Collection Sewers - Gravity	(51)
4	363	Services to Customers	(7)
5	371	Effluent Pumping Equipment	(3)
6	390	Office Furniture & Equipment	(21)
7	393	Tools, Shop, and Garage Equipment	(0)
8		**RUCO Total AFUDC Adjustment**	$ (317)
9		**Plant Closure AFUDC Adjustment**	$ (736)

References:
Company Response to RUCO DR 1.33

RATE BASE ADJUSTMENT NO. 5
ADVANCES IN AID OF CONSTRUCTION ("AIAC")

Line No.	Description	Amount
	AIAC Adjustment #1:	
1	Company AIAC as Filed	$ 1,743,922
2	RUCO Recommended AIAC per Company Response to RUCO DR 1.27 to Remove LXA Double-Count	1,598,255
3	RUCO Recommended Increase/(Decrease) Adjustment #1	$ (145,667)
	AIAC Adjustment #2:	
4	Parkview Investors LXA - AIAC Converted to CIAC per Arizona Administrative Code Section R14-2-606	$ 154,558
5	Pulte LXA - AIAC Converted to CIAC per Arizona Administrative Code Section R14-2-606	504,936
6	Heritage Healthcare - AIAC Converted to CIAC per Arizona Administrative Code Section R14-2-606	101,048
7	Ray & Alma School LLC - AIAC Converted to CIAC per Arizona Administrative Code Section R14-2-606	222,975
8	RUCO Recommended Increase/(Decrease) Adjustment #2	$ (983,517)
9	Company Total AIAC as Filed	$ 1,743,922
10	RUCO Total Recommended AIAC Balance	614,739
11	RUCO Total Recommended AIAC Increase /(Decrease) Adjustments #1 & #2 Above	$ (1,129,184)

References:

AIAC Adjustment #1: Per Company Response to RUCO DR 1.27 and Staff DR 1.15.

AIAC Adjustment #2: Per Company Response to RUCO DR 1.27, Staff DR 1.15, and per Arizona Administrative Code Section R14-2-606 and per MXA Contractual Terms.

RATE BASE ADJUSTMENT NO. 5
ADVANCES IN AID OF CONSTRUCTION (AIAC) AND ACCUMULATED AMORTIZATION (AA) RECONSTRUCTION SCHEDULE

Line No.		AIAC Balance Per Decision No. 71865 6/30/2008	July 1 - December 31, 2008 Adds / (Refunds) or (Converted) to CIAC Acitivity	July 1 - December 31, 2008 AIAC Balance 12/31/2008	2009 Adds / (Refunds) or (Converted) to CIAC Acitivity	2009 AIAC Balance 12/31/2009	2010 Adds / (Refunds) or (Converted) to CIAC Acitivity	2010 AIAC Balance 12/31/2010	2011 Adds / (Refunds) or (Converted) to CIAC Acitivity	2011 AIAC Balance 12/31/2011	2012 Adds / (Refunds) or (Converted) to CIAC Acitivity	2012 AIAC Balance 12/31/2012	2013 Adds / (Refunds) or (Converted) to CIAC Acitivity	2013 AIAC Balance 12/31/2013	2014 Adds / (Refunds) or (Converted) to CIAC Acitivity	2014 AIAC Balance 12/31/2014
1	AIAC in Process	$ 32,150	$ -	$ 32,150	$ 18,712	$ 50,863	$ 19,706	$ 70,568	$ -	$ 70,568	$ 2,500	$ 73,068	$ 10,100	$ 83,168	$ 10,951	$ 94,119
2	AIAC	1,679,110	(165,953)	1,513,157	-	1,513,157	164,139	1,677,296	-	1,677,296	(504,936)	1,172,360	-	1,172,360	(651,740)	520,620
3	Total	$ 1,711,260	$ (165,953)	$ 1,545,307	$ 18,712	$ 1,564,020	$ 183,844	$ 1,747,864	$ -	$ 1,747,864	$ (502,436)	$ 1,245,428	$ 10,100	$ 1,255,528	$ (640,790)	$ 614,739

RATE BASE ADJUSTMENT NO. 6
CONTRIBUTIONS IN AID OF CONSTRUCTION (CIAC) & AMORTIZATIONS RECONSTRUCTION SCHEDULE

Line No.	Description	Amount
	Gross CIAC:	
1	Company Gross CIAC as Filed	$ 5,461,736
2	RUCO Recommended Gross CIAC	6,445,253
3	RUCO Recommended Increase/(Decrease) Adjustment	$ 983,517
	Accumulated Amoritization of CIAC:	
4	Company Accumulated Amortization of CIAC as Filed	$ (5,240,717)
5	RUCO Recommended Accumulated Amortization of CIAC	(5,616,555)
6	RUCO Recommended Increase/(Decrease) Adjustment	$ (375,838)
7	Company Net CIAC as Filed	$ 221,019
8	RUCO Recommended Net CIAC	828,698
9	RUCO Net Increase/Decrease Adjustment	$ 607,679

References:

Per Company Response to RUCO DR 1.27 and Staff DR 1.15.
Per Company Response to RUCO DR 1.27, Staff DR 1.15, and per Arizona Administrative Code Section R14-2-606 and per MXA Contractual Terms.

CONTRIBUTIONS IN AID CONSTRUCTION (CIAC) & CIAC ACCUMULATED AMORTIZATION (A/A) ADJUSTMENTS NO. 6
CIAC RECONSTRUCTION SCHEDULES
TEST YEAR ENDED DECEMBER 31, 2014

Line No.	NARUC Account No.	Description	Vintage Year	RUCO Amortization Rate Calculated	Per Decision No. 71865			After Decision No. 71865			2008 (6 Months - July 1 through December 31, 2008)						
					Gross CIAC Balance at 6/30/2008	Accumulated Amortization at 6/30/2008	Net CIAC at 6/30/2008	CIAC Adjustments 7/1/2008	Gross CIAC Balance at 7/1/2008	Net CIAC at 7/1/2008	CIAC Additions (Per Books)	Converted AIAC to CIAC Adjustments	Adjusted CIAC Additions	Amortization Expense (Calculated)	Gross CIAC Balance	Accumulated Amortization	Net CIAC
1	Various	Contributions-in-Aid-of-Construction		2.10%	5,232,139	4,214,384	1,017,755	154,558	5,386,697	1,172,313	-	-	-	113,023	5,386,697	4,327,407	1,059,290
2		**RUCO Total Direct UPIS & Accum. Depre.**			$ 5,232,139	$ 4,214,384	$ 1,017,755	$ 154,558	$ 5,386,697	$ 1,172,313	$ -	$ -	$ -	$ 113,023	$ 5,386,697	$ 4,327,407	$ 1,059,290
3		Company As Filed			$ 5,232,139	$ 4,214,384	$ 1,017,755	$ -	$ 5,232,139	$ 1,017,755	$ -	$ -	$ -	$ 73,200	$ 5,232,139	$ 4,287,583	$ 944,556
4		RUCO Gross CIAC & Accum. Amort. Adjustments			$ -	$ -	$ 0	$ 154,558	$ 154,558	$ 154,558	$ -	$ -	$ -	$ 39,824	$ 154,558	$ 39,824	$ 114,735

CONTRIBUTIONS IN AID CONSTRUCTION (CIAC) & CIAC ACCUMULATED AMORTIZATION (A/A) ADJUSTMENTS NO. 6
CIAC RECONSTRUCTION SCHEDULES
TEST YEAR ENDED DECEMBER 31, 2014

Line No.	NARUC Account No.	Description	Vintage Year	RUCO Amortization Rate Calculated	CIAC Balances from Previous Period End: Gross CIAC Balance at 12/31/2008	Accumulated Amortization at 12/31/2008	Net CIAC at 12/31/2008	Period Ending December 31, 2009: CIAC Additions (Per Books)	Converted AIAC to CIAC Adjustments	Adjusted CIAC Additions	Amortization Expense (Calculated)	Gross CIAC Balance	Accumulated Amortization	Net CIAC
1	Various	Contributions-in-Aid-of-Construction		4.11%	5,386,697	4,327,407	1,059,290	-	-	-	221,453	5,386,697	4,548,860	837,837
2		**RUCO Total Direct UPIS & Accum. Depre.**			$ 5,386,697	$ 4,327,407	$ 1,059,290	$ -	$ -	$ -	$ 221,453	$ 5,386,697	$ 4,548,860	$ 837,837
3		Company As Filed			$ 5,232,139	$ 4,287,583	$ 944,556	$ -	$ -	$ -	$ 215,129	$ 5,232,139	$ 4,502,712	$ 729,427
4		RUCO Gross CIAC & Accum. Amort. Adjustments			$ 154,558	$ 39,824	$ 114,735	$ -	$ -	$ -	$ 6,325	$ 154,558	$ 46,148	$ 108,410

CONTRIBUTIONS IN AID CONSTRUCTION (CIAC) & CIAC ACCUMULATED AMORTIZATION (A/A) ADJUSTMENTS NO. 6
CIAC RECONSTRUCTION SCHEDULES
TEST YEAR ENDED DECEMBER 31, 2014

Line No.	NARUC Account No.	Description	Vintage Year	RUCO Amortization Rate Calculated	CIAC Balances from Previous Period End			Period Ending December 31, 2010						
					Gross CIAC Balance at 12/31/2009	Accumulated Amortization at 12/31/2009	Net CIAC at 12/31/2009	CIAC Additions (Per Books)	Converted AIAC to CIAC Adjustments	Adjusted CIAC Additions	Amortization Expense (Calculated)	Gross CIAC Balance	Accumulated Amortization	Net CIAC
1	Various	Contributions-in-Aid-of-Construction		4.07%	5,386,697	4,548,860	837,837	-	-	-	219,121	5,386,697	4,767,981	618,716
2		**RUCO Total Direct UPIS & Accum. Depre.**			$ 5,386,697	$ 4,548,860	$ 837,837	$ -	$ -	$ -	$ 219,121	$ 5,386,697	$ 4,767,981	$ 618,716
3		Company As Filed			$ 5,232,139	$ 4,502,712	$ 729,427	$ -	$ -	$ -	$ 212,825	$ 5,232,139	$ 4,715,537	$ 516,602
4		RUCO Gross CIAC & Accum. Amort. Adjustments			$ 154,558	$ 46,148	$ 108,410	$ -	$ -	$ -	$ 6,296	$ 154,558	$ 52,444	$ 102,114

CONTRIBUTIONS IN AID CONSTRUCTION (CIAC) & CIAC ACCUMULATED AMORTIZATION (A/A) ADJUSTMENTS NO. 6
CIAC RECONSTRUCTION SCHEDULES
TEST YEAR ENDED DECEMBER 31, 2014

Line No.	NARUC Account No.	Description	Vintage Year	RUCO Amortization Rate Calculated	CIAC Balances from Previous Period End: Gross CIAC Balance at 12/31/2010	Accumulated Amortization at 12/31/2010	Net CIAC at 12/31/2010	Period Ending December 31, 2011: CIAC Additions (Per Books)	Converted AIAC to CIAC Adjustments	Adjusted CIAC Additions	Amortization Expense (Calculated)	Gross CIAC Balance	Accumulated Amortization	Net CIAC
1	Various	Contributions-in-Aid-of-Construction		3.81%	5,386,697	4,767,981	618,716	-	-	-	205,317	5,386,697	4,973,298	413,399
2		**RUCO Total Direct UPIS & Accum. Depre.**			$ 5,386,697	$ 4,767,981	$ 618,716	$ -	$ -	$ -	$ 205,317	$ 5,386,697	$ 4,973,298	$ 413,399
3		Company As Filed			$ 5,232,139	$ 4,715,537	$ 516,602	$ -	$ -	$ -	$ 205,587	$ 5,232,139	$ 4,921,124	$ 311,015
4		RUCO Gross CIAC & Accum. Amort. Adjustments			$ 154,558	$ 52,444	$ 102,114	$ -	$ -	$ -	$ (269)	$ 154,558	$ 52,175	$ 102,383

CONTRIBUTIONS IN AID CONSTRUCTION (CIAC) & CIAC ACCUMULATED AMORTIZATION (A/A) ADJUSTMENTS NO. 6
CIAC RECONSTRUCTION SCHEDULES
TEST YEAR ENDED DECEMBER 31, 2014

Line No.	NARUC Account No.	Description	Vintage Year	RUCO Amortization Rate Calculated	CIAC Balances from Previous Period End			Period Ending December 31, 2012						
					Gross CIAC Balance at 12/31/2011	Accumulated Amortization at 12/31/2011	Net CIAC at 12/31/2011	CIAC Additions (Per Books)	Converted AIAC to CIAC Adjustments	Adjusted CIAC Additions	Amortization Expense (Calculated)	Gross CIAC Balance	Accumulated Amortization	Net CIAC
1	Various	Contributions-in-Aid-of-Construction		3.38%	5,386,697	4,973,298	413,399	-	504,936	504,936	199,244	5,891,633	5,172,542	719,091
2		**RUCO Total Direct UPIS & Accum. Depre.**			$ 5,386,697	$ 4,973,298	$ 413,399	$ -	$ 504,936	$ 504,936	$ 199,244	$ 5,891,633	$ 5,172,542	$ 719,091
3		Company As Filed			$ 5,232,139	$ 4,921,124	$ 311,015	$ -	$ -	$ -	$ 187,459	$ 5,232,139	$ 5,108,582	$ 123,557
4		RUCO Gross CIAC & Accum. Amort. Adjustments			$ 154,558	$ 52,175	$ 102,383	$ -	$ 504,936	$ 504,936	$ 11,785	$ 659,494	$ 63,960	$ 595,534

CONTRIBUTIONS IN AID CONSTRUCTION (CIAC) & CIAC ACCUMULATED AMORTIZATION (A/A) ADJUSTMENTS NO. 6
CIAC RECONSTRUCTION SCHEDULES
TEST YEAR ENDED DECEMBER 31, 2014

					CIAC Balances from Previous Period End			Period Ending December 31, 2013						
Line No.	NARUC Account No.	Description	Vintage Year	RUCO Amortization Rate Calculated	Gross CIAC Balance at 12/31/2012	Accumulated Amortization at 12/31/2012	Net CIAC at 12/31/2012	CIAC Additions (Per Books)	Converted AIAC to CIAC Adjustments	Adjusted CIAC Additions	Amortization Expense (Calculated)	Gross CIAC Balance	Accumulated Amortization	Net CIAC
1	Various	Contributions-in-Aid-of-Construction		3.54%	5,891,633	5,172,542	719,091	-	-	-	208,530	5,891,633	5,381,072	510,561
2		**RUCO Total Direct UPIS & Accum. Depre.**			$ 5,891,633	$ 5,172,542	$ 719,091	$ -	$ -	$ -	$ 208,530	$ 5,891,633	$ 5,381,072	$ 510,561
3		Company As Filed			$ 5,232,139	$ 5,108,582	$ 123,557	$ -	$ -	$ -	$ 123,557	$ 5,232,139	$ 5,232,139	$ (0)
4		RUCO Gross CIAC & Accum. Amort. Adjustments			$ 659,494	$ 63,960	$ 595,534	$ -	$ -	$ -	$ 84,973	$ 659,494	$ 148,933	$ 510,561

CONTRIBUTIONS IN AID CONSTRUCTION (CIAC) & CIAC ACCUMULATED AMORTIZATION (A/A) ADJUSTMENTS NO. 6
CIAC RECONSTRUCTION SCHEDULES
TEST YEAR ENDED DECEMBER 31, 2014

Line No.	NARUC Account No.	Description	Vintage Year	RUCO Amortization Rate Calculated	CIAC Balances from Previous Period End			Period Ending December 31, 2014						
					Gross CIAC Balance at 12/31/2013	Accumulated Amortization at 12/31/2013	Net CIAC at 12/31/2013	CIAC Additions (Per Books)	Converted AIAC to CIAC Adjustments	Adjusted CIAC Additions	Amortization Expense (Calculated)	Gross CIAC Balance	Accumulated Amortization	Net CIAC
1	Various	Contributions-in-Aid-of-Construction		3.65%	5,891,633	5,381,072	510,561	-	553,620	553,620	235,483	6,445,253	5,616,555	828,698
2		**RUCO Total Direct UPIS & Accum. Depre.**			$ 5,891,633	$ 5,381,072	$ 510,561	$ -	$ 553,620	$ 553,620	$ 235,483	$ 6,445,253	$ 5,616,555	$ 828,698
3		Company As Filed			$ 5,232,139	$ 5,232,139	$ (0)	$ -	$ 229,597	$ 229,597	$ 8,578	$ 5,461,736	$ 5,240,717	$ 221,019
4		RUCO Gross CIAC & Accum. Amort. Adjustments			$ 659,494	$ 148,933	$ 510,561	$ -	$ 324,023	$ 324,023	$ 226,905	$ 983,517	$ 375,838	$ 607,679

RATE BASE ADJUSTMENT NO. 7
SCOTTSDALE CAPACITY REGULATORY LIABILITY

Line No.	Description	Amount
1	RUCO Scottsdale Capacity Over-Collection January 1, 1997 thru June 30, 2016 (See Work Paper for Calculation)	$ 51,451
2	Amortization Period - 2 1/2 Years or 40% per Annum	$ 20,581
3	RUCO Net Regulatory Liability	$ 30,871

References:
Company Response to RUCO DR 3.08 and 6.05

RATE BASE ADJUSTMENT NO. 8
INTENTIONALLY LEFT BLANK

Line No.	Description	Amount

References:

RATE BASE ADJUSTMENT NO. 9
ACCUMULATED DEFERRED INCOME TAXES (ADIT)

Deferred Income Tax as of December 31, 2014

Line No.			Water & Sewer Adjusted Book Value	Water & Sewer Tax Value	Probability of Realization of Future Tax Benefit	Deductible TD (Taxable TD) Expected to be Realized	Effective Tax Rate	Future Tax Asset Current	Future Tax Asset Non Current	Future Tax Liability Current	Future Tax Liability Non Current
6		Plant-in-Service	$ 13,588,445 [1]								
7		Accum. Deprec.	(8,756,927) [1]								
8		CIAC	(651,336) [3]								
9	Fed.	Fixed Assets	$ 4,180,182	$ 2,548,005 [2]	100.0%	$ (1,632,177)	32.33%		-		(527,748)
11	State	Fixed Assets	$ 4,180,182	$ 4,240,435 [2]	100.0%	$ 60,253	4.900%		2,952		-
13	Fed &State	AIAC		192,992 [4]	100.0%	$ 192,992 [4]	37.23%		$ 71,858		
16								$ -	$ 74,811	$ -	$ (527,748)
17		Net Asset (Liability)						$ (452,937)			
19		Allocated Corporate ADIT[5]						-			
21		Net Asset (Liability)						$ (452,937)			
23		Allocation Factor						1.0000			
25		Net Asset (Liability)						$ (452,937)			
27		Per Company Filing						$ (75,116)			
29		Adjustment to DIT						$ (377,821)			

Footnotes - See page 7.1

RATE BASE ADJUSTMENT NO. 10
CASH WORKING CAPITAL

Line No.	Description	[A] Company Adjusted Test Year As Filed	[B] RUCO Expense Adjustments	[C] RUCO Recommended Expense	[D] Revenue Lag Days	[E] Expense (Lead)/Lag Days	[F] Net (Lead)/Lag Days Col. [D] - Col. [E]	[G] (Lead)/Lag Factor Col. [F] / 365	[H] Cash Working Capital Requirement Col. [C] x Col. [G]
1	Salaries and Wages	$ 242,213	$ -	$ 242,213	0.56	20.00	(19.44)	(0.05327)	$ (12,901)
2	Purchased WasteWater Treatment	5,647	-	5,647	0.56	28.22	(27.66)	(0.07579)	(428)
3	Sludge Removal	-	-	-	0.56	-	0.56	0.00153	-
4	Purchased Power	65,112	-	65,112	0.56	34.37	(33.81)	(0.09264)	(6,032)
5	Fuel for Power Production	-	-	-	0.56	-	0.56	0.00153	-
6	Chemicals	19,215	4,773	23,988	0.56	4.94	(4.38)	(0.01200)	(288)
7	Materials and Supplies	23,875	-	23,875	0.56	(20.42)	20.98	0.05747	1,372
8	Contractual Services - Professional	313,511	-	313,511	0.56	20.05	(19.49)	(0.05340)	(16,742)
9	Contractual Services - Testing	8,117	-	8,117	0.56	27.61	(27.05)	(0.07411)	(602)
10	Contractual Services - Other	361,855	(27,147)	334,708	0.56	46.68	(46.12)	(0.12636)	(42,294)
11	Rents	23,807	-	23,807	0.56	27.28	(26.72)	(0.07321)	(1,743)
12	Transportation	15,371	-	15,371	0.56	24.75	(24.19)	(0.06628)	(1,019)
13	Insurance	11,720	-	11,720	0.56	(182.50)	183.06	0.50153	5,878
14	Scottsdale Capacity (Operating Lease)	164,522	(2,702)	161,820	0.56	15.00	(14.44)	(0.03957)	(6,403)
15	Miscellaneous	60,542	(268)	60,274	0.56	8.56	(8.00)	(0.02192)	(1,321)
16	Depreciation and Amortization	-	(253,139)	(253,139)	0.56	-	-	-	-
17	Taxes Other Than Income	-	-	-	0.56	-	0.56	0.00153	-
18	Property Taxes[1]	49,897	(311)	49,586	0.56	213.96	(213.40)	(0.58466)	(28,991)
19	Income Taxes[1]	153,021	92,444	245,465	0.56	37.00	(36.44)	(0.09984)	(24,507)
20	**Total Operating Expenses**	$ 1,518,424	$ (186,349)	$ 1,332,075					
21	Interest on Proposed Long-Term Debt	-	68,915	68,915	0.56	14.71	(14.15)	(0.03877)	(2,672)
22	Revenue Taxes and Assessments	-		-	0.56		0.56	0.00153	-
23	Regulatory Commission Expense	150,000	(150,000)	-	0.56	(136.54)	137.10	0.37562	-
24	Total Cash Working Capital Expenses	$ 1,668,424	$ (267,435)	$ 1,400,990					
25	Total RUCO Recommended Cash Working Capital								$ (138,692)
26	Total Company Proposed Cash Working Capital								(60,594)
27	RUCO Cash Working Capital Adjustment								$ (78,098)

[1] At Proposed Rates

OPERATING INCOME SUMMARY

Line No.	Description	[A] Company Adjusted Test Year As Filed	[B] RUCO Recommended Adjustments	[C] RUCO Recommended Adjusted Test Year Amounts	[D] RUCO Recommended Changes	[E] RUCO Recommended Amounts
	Revenues:					
1	Metered Water Revenues	$ 2,212,684	$ 952	$ 2,213,636	$ (284,244)	$ 1,929,392
2	Unmetered Water Revenues	16,067	-	16,067	-	16,067
3	Other Water Revenues	11,098	-	11,098	-	11,098
4	**Total Revenues**	$ 2,239,848	$ 952	$ 2,240,800	$ (284,244)	$ 1,956,557
	Operating Expenses:					
5	Salaries and Wages	$ 242,213	$ -	$ 242,213	$ -	$ 242,213
6	Purchased WasteWater Treatment	5,647	-	5,647	-	5,647
7	Sludge Removal	-	-	-	-	-
8	Purchased Power	65,112	-	65,112	-	65,112
9	Fuel for Power Production	-	-	-	-	-
10	Chemicals	19,215	4,773	23,988	-	23,988
11	Materials and Supplies	23,875	-	23,875	-	23,875
12	Contractual Services - Professional	313,511	-	313,511	-	313,511
13	Contractual Services - Testing	8,117	-	8,117	-	8,117
14	Contractual Services - Other	361,855	(27,147)	334,708	-	334,708
15	Rents	23,807	-	23,807	-	23,807
16	Transportation	15,371	-	15,371	-	15,371
17	Insurance	11,720	-	11,720	-	11,720
18	Regulatory Commission - Rate Case Expense	-	33,333	33,333	-	33,333
19	Scottsdale Capacity (Operating Lease)	164,522	(2,702)	161,820	-	161,820
20	Miscellaneous	60,542	(268)	60,274	-	60,274
21	Depreciation and Amortization	484,271	(253,139)	231,132	-	231,132
22	Taxes Other Than Income	-	-	-	-	-
23	Property Taxes	49,478	(311)	49,167	(2,095)	47,072
24	Income Taxes	131,980	92,444	224,424	(106,561)	117,863
25	**Total Operating Expenses**	$ 1,981,235	$ (153,016)	$ 1,828,219	$ (108,656)	$ 1,719,563
26	**Operating Income**	$ 258,613	$ 153,968	$ 412,582	$ (175,588)	$ 236,994

References:

Column [A]: Company Schedule C-1;
Column [B]: RUCO Recommended Total Adjustments Per Schedule TJC-12 on pages 1-2 at page 2 in Column [S] at line 26;
Column [C]: Column [A] + [B] - RUCO Recommended Adjusted Test Year Amounts Per Schedule TJC-12 on page 2 of 2 in Column [T];
Column [D]: RUCO Recommended Increase/(Decrease) to Revenue Requirement;
Column [E]: Column [C] + [D] - RUCO Recommended Increase/(Decrease) Amounts for Revenue Requirement.

RUCO OPERATING INCOME ADJUSTMENTS

Line No.	Description	[A] Company Adjusted Test Year As Filed	[B] Adj. No. 1 Depreciation Expense	[C] Adj. No. 2 Property Taxes	[D] Adj. No. 3 Intentionally Left Blank	[E] Adj. No. 4 Revenue Accrual Fix	[F] Adj. No. 5 Miscellaneous Expense	[G] Adj. No. 6 Intentionally Left Blank	[H] Adj. No. 7 Scottsdale Capacity Exp.	[I] Adj. No. 8 Intentionally Left Blank	[J] Adj. No. 9 Media Reclass From Capital to Expense
	Revenues:										
1	Metered Water Revenues	$ 2,212,684	$ -	$ -	$ -	$ 952	$ -	$ -	$ -	$ -	$ -
2	Unmetered Water Revenues	16,067	-	-	-	-	-	-	-	-	-
3	Other Water Revenues	11,098	-	-	-	-	-	-	-	-	-
4	**Total Revenues**	$ 2,239,848	$ -	$ -	$ -	$ 952	$ -	$ -	$ -	$ -	$ -
	Operating Expenses:										
5	Salaries and Wages	$ 242,213	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
6	Purchased WasteWater Treatment	5,647	-	-	-	-	-	-	-	-	-
7	Sludge Removal	-	-	-	-	-	-	-	-	-	-
8	Purchased Power	65,112	-	-	-	-	-	-	-	-	-
9	Fuel for Power Production	-	-	-	-	-	-	-	-	-	-
10	Chemicals	19,215	-	-	-	-	-	-	-	-	4,773
11	Materials and Supplies	23,875	-	-	-	-	-	-	-	-	-
12	Contractual Services - Professional	313,511	-	-	-	-	-	-	-	-	-
13	Contractual Services - Testing	8,117	-	-	-	-	-	-	-	-	-
14	Contractual Services - Other	361,855	-	-	-	-	-	-	-	-	-
15	Rents	23,807	-	-	-	-	-	-	-	-	-
16	Transportation	15,371	-	-	-	-	-	-	-	-	-
17	Insurance	11,720	-	-	-	-	-	-	-	-	-
18	Regulatory Commission - Rate Case Expense	-	-	-	-	-	-	-	-	-	-
19	Scottsdale Capacity (Operating Lease)	164,522	-	-	-	-	-	-	(2,702)	-	-
20	Miscellaneous	60,542	-	-	-	-	(268)	-	-	-	-
21	Depreciation and Amortization	484,271	(253,139)	-	-	-	-	-	-	-	-
22	Taxes Other Than Income	-	-	-	-	-	-	-	-	-	-
23	Property Taxes	49,478	-	(311)	-	-	-	-	-	-	-
24	Income Taxes	131,980	-	-	-	-	-	-	-	-	-
25	**Total Operating Expenses**	$ 1,981,235	$ (253,139)	$ (311)	$ -	$ -	$ (268)	$ -	$ (2,702)	$ -	$ 4,773
26	**Operating Income**	$ 258,613	$ 253,139	$ 311	$ -	$ 952	$ 268	$ -	$ 2,702	$ -	$ (4,773)

Adjustments:

Adjustment No. 1: Depreciation Expense - See RUCO Schedule TJC-13 in Column [E] at line 39;
Adjustment No. 2: Property Taxes - See RUCO Schedule TJC-14 in Column [A] at line 18;
Adjustment No. 3: Intentionally Left Blank;
Adjustment No. 4: Revenue Accrual Fix - See RUCO Schedule TJC-16 on page 1 of 1 at line 1;
Adjustment No. 5: Miscellaneous Expense - See RUCO Schedule TJC-17 on page 1 of 1 at line 1;
Adjustment No. 6: Intentionally Left Blank;
Adjustment No. 7: Remove Profit Calculated from Erroneous Scottsdale Capacity Loan Terms;
Adjustment No. 8: Intentionally Left Blank;
Adjustment No. 9: Active Carbon Media Reclassification - See RUCO Schedule TJC-21 at line 4;

References:

Column [A]: Company Schedule C-1 Adjusted Test Year as Filed;
Column [B] through [J]: RUCO Recommended Adjusted Test Year Adjustments;

RUCO OPERATING INCOME ADJUSTMENTS

Line No.	Description	[K] Adj. No. 10 Intentionally Left Blank	[L] Adj. No. 11 Intentionally Left Blank	[M] Adj. No. 12 Intentionally Left Blank	[N] Adj. No. 13 APUC Cost Allocations	[O] Adj. No. 14 Intentionally Left Blank	[P] Adj. No. 15 Intentionally Left Blank	[Q] Adj. No. 16 Rate Case Expense	[R] Adj. No. 17 Income Taxes	[S] Total RUCO Adjustments Recommended	[T] RUCO Adjusted Test Year Recommended
	Revenues:										
1	Metered Water Revenues	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 952	$ 2,213,636
2	Unmetered Water Revenues	-	-	-	-	-	-	-	-	-	16,067
3	Other Water Revenues	-	-	-	-	-	-	-	-	-	11,098
4	**Total Revenues**	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 952	$ 2,240,800
	Operating Expenses:										
5	Salaries and Wages	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 242,213
6	Purchased WasteWater Treatment	-	-	-	-	-	-	-	-	-	5,647
7	Sludge Removal	-	-	-	-	-	-	-	-	-	-
8	Purchased Power	-	-	-	-	-	-	-	-	-	65,112
9	Fuel for Power Production	-	-	-	-	-	-	-	-	-	-
10	Chemicals	-	-	-	-	-	-	-	-	4,773	23,988
11	Materials and Supplies	-	-	-	-	-	-	-	-	-	23,875
12	Contractual Services - Professional	-	-	-	-	-	-	-	-	-	313,511
13	Contractual Services - Testing	-	-	-	-	-	-	-	-	-	8,117
14	Contractual Services - Other	-	-	-	(27,147)	-	-	-	-	(27,147)	334,708
15	Rents	-	-	-	-	-	-	-	-	-	23,807
16	Transportation	-	-	-	-	-	-	-	-	-	15,371
17	Insurance	-	-	-	-	-	-	-	-	-	11,720
18	Regulatory Commission - Rate Case Expense	-	-	-	-	-	-	33,333	-	33,333	33,333
19	Scottsdale Capacity (Operating Lease)	-	-	-	-	-	-	-	-	(2,702)	161,820
20	Miscellaneous	-	-	-	-	-	-	-	-	(268)	60,274
21	Depreciation and Amortization	-	-	-	-	-	-	-	-	(253,139)	231,132
22	Taxes Other Than Income	-	-	-	-	-	-	-	-	-	-
23	Property Taxes	-	-	-	-	-	-	-	-	(311)	49,167
24	Income Taxes	-	-	-	-	-	-	-	92,444	92,444	224,424
25	**Total Operating Expenses**	$ -	$ -	$ -	$ (27,147)	$ -	$ -	$ 33,333	$ 92,444	$ (153,016)	$ 1,828,219
26	**Operating Income**	$ -	$ -	$ -	$ 27,147	$ -	$ -	$ (33,333)	$ (92,444)	$ 153,968	$ 412,582

Adjustments:

Adjustment No. 10: Intentionally Left Blank;
Adjustment No. 11: Intentionally Left Blank;
Adjustment No. 12: Intentionally Left Blank;
Adjustment No. 13: APUC Corporate Cost Allocations - See RUCO Schedule TJC-25 at line 6;
Adjustment No. 14: Achievement/Incentive/Bonus Pay Adjustments - Left Blank;
Adjustment No. 15: Intentionally Left Blank;
Adjustment No. 16: Rate Case Expense - See RUCO Schedule TJC-28 at line 4;
Adjustment No. 17: Income Taxes - See RUCO Schedule TJC-29 in Column [A] at line 3.

References:

Column [K] thru [R]: RUCO Recommended Adjusted Test Year Adjustments;
Column [S]: RUCO Total Adjusted Test Year Adjustments on Schedule TJC-12 page 1 of 2 in Columns [B] thru Schedule TJC-12 page 2 of 2 in Columns [K] thru [R];
Column [T]: Column [A] on Schedule TJC-12 at page 1 of 2 + Column [S] on Schedule TJC-12 page 2 of 2 - RUCO Recommended Adjusted Test Year Balances.

OPERATING INCOME ADJUSTMENT NO. 1
DEPRECIATION EXPENSE

Line No.	NARUC Account	Description	[A] Company As Filed	[B] RUCO Non-Depre. Fully Depre.	[C] RUCO Depreciable UPIS Recommended	[D] Authorized Depreciation Rate	[E] RUCO Depreciation Expense Recommended
		Direct Plant:					
1	351	Organization	$ -	$ -	$ -	0.00%	$ -
2	352	Franchise	-	-	-	0.00%	-
3	353	Land & Land Rights	-	471,024	-	0.00%	-
4	354	Structures & Improvements	3,091,815	(152,917)	2,938,899	3.33%	97,865
5	355	Power Generation Equipment	-	3,839	3,839	5.00%	192
6	360	Collection Sewers - Forced	1,130,090	340	1,130,430	2.00%	22,609
7	361	Collection Sewers - Gravity	4,555,232	(51)	4,555,182	2.00%	91,104
8	362	Special Collecting Structures	-	-	-	2.00%	-
9	363	Services to Customers	260,442	(7)	260,435	2.00%	5,209
10	364	Flow Measuring Devices	31,668	(31,668)	-	10.00%	-
11	365	Flow Measruring Installations	180,051	-	180,051	10.00%	18,005
12	366	Reuse Services	-	-	-	2.00%	-
13	367	Reuse Meters And Installation	-	-	-	8.33%	-
14	370	Receiving Wells	1,028,182	-	1,028,182	3.33%	34,238
15	371	Effluent Pumping Equipment	385,099	88,557	473,657	12.50%	59,207
16	374	Reuse Distribution Reservoirs	-	-	-	2.50%	-
17	375	Reuse Trans. and Dist. System	-	-	-	2.50%	-
18	380	Treatment & Disposal Equipment	326,067	(2,211)	323,857	5.00%	16,193
19	381	Plant Sewers	-	-	-	5.00%	-
20	382	Outfall Sewer Lines	-	-	-	3.33%	-
21	389	Other Sewer Plant & Misc. Equipment	992,742	(3,150)	989,592	6.67%	66,006
22	390	Office Furniture & Equipment	289,536	(62,246)	227,290	6.67%	15,160
23	390.1	Computers and Software	-	62,224	62,224	20.00%	12,445
24	391	Transportation Equipment	28,151	2,181	30,332	20.00%	6,066
25	392	Stores Equipment	-	-	-	4.00%	-
26	393	Tools, Shop And Garage Equipment	28,942	(0)	28,942	5.00%	1,447
27	394	Laboratory Equipment	10,683	-	10,683	10.00%	1,068
28	395	Power Operated Equipment	-	-	-	5.00%	-
29	396	Communication Equipment	43,968	58,683	102,651	10.00%	10,265
30	397	Miscellaneous Equip.	-	-	-	10.00%	-
31	398	Other Tangible Plant - Scottsdale Capacity	486,294	-	486,294	10.00%	48,629
		Allocated Corporate Plant:					
32	903	Land & Land Rights	-	-	-	0.00%	-
33	904	Structures and Improvements	75,829	(75,829)	-	2.56%	-
34	940.1	Computers and Software	13,207	(13,207)	-	20.00%	-
					$ 12,832,539		$ 505,709
			Gross CIAC	Fully Amortized CIAC	Gross CIAC Depre. Deduction		
35		Less: Contributions-in-Aid-of-Construction (CIAC) Amortizations	$ 6,445,253	-	$ 6,445,253	3.94%	$ (253,997)
36		Regulatory Liability - Scottsdale Capacity Erroneous Calculation			51,451	40.00%	(20,581)
37		RUCO Total Depreciation Expense					231,132
38		Company Adjusted Depreciation Expense As Filed					484,271
39		RUCO Increase/(Decrease) Expense Adjustment					$ (253,139)

* Fully Depreciated Per Company Schedule C-2, page 2

References:
Company B-2 and C-1 Schedules, and RUCO Schedule TJC-4(a), pages 1 & 2

OPERATING INCOME ADJUSTMENT NO. 2
PROPERTY TAXES

Line No.	Property Tax Calculation	[A] RUCO AS ADJUSTED	[B] RUCO RECOMMENDED
1	RUCO Adjusted Test Year Gross Revenues	$ 2,240,800	$ 2,240,800
2	Multiplied by 2	2	2
3	Subtotal (Line 1 * Line 2)	$ 4,481,600	$ 4,481,600
4a	RUCO Adjusted Test Year Gross Revenues	2,240,800	
4b	RUCO Recommended Revenue		1,956,557
5	Subtotal (Line 3 + Line 4a)	$ 6,722,400	$ 6,438,157
6	Number of Years	3	3
7	Three Year Average (Line 5 / Line 6)	$ 2,240,800	$ 2,146,052
8	Department of Revenue Mutilplier	2	2
9	Revenue Base Value (Line 7 * Line 8)	$ 4,481,600	$ 4,292,105
10	Plus: 10% of CWIP Per Company Schedule E-1 As Filed	-	-
11	Less: Net Book Value of Licensed Vehicles	33,596	33,596
12	Full Cash Value (Line 9 + Line 10 - Line 11)	$ 4,448,004	$ 4,258,509
13	Assessment Ratio	18.0%	18.0%
14	Assessed Value (Line 12 * Line 13)	$ 800,641	$ 766,532
15	Composite Property Tax Rate (Per RUCO Effective Property Tax Calculation)	6.1409%	6.1409%
16	RUCO Adjusted Test Year Property Tax Expense (Line 14 * Line 15)	$ 49,167	
17	Company Adjusted Test Year Property Tax Expense (Per Company Schedule C-1)	49,478	
18	RUCO Test Year Adjustment (Line 16-Line 17)	$ (311)	
19	Property Tax - RUCO Recommended Revenue (Line 14 * Line 15)		$ 47,072
20	RUCO Test Year Adjusted Property Tax Expense (Line 16)		49,167
21	Increase/(Decrease) to Property Tax Expense		$ (2,095)
22	Increase/(Decrease) to Property Tax Expense		$ (2,095)
23	Increase in Revenue Requirement		(284,244)
24	Increase /(Decrease) to Property Tax per Dollar Increase in Revenue (Line 22 / Line 23)		0.7369%

References:
RUCO Schedule TJC-11
RUCO Schedule TJC-4(a) page 1 of 2

OPERATING INCOME ADJUSTMENT NO. 3
INTENTIONALLY LEFT BLANK

Line No.	Description	Amount

References:

OPERATING INCOME ADJUSTMENT NO. 4
REVENUE ACCRUAL FIX

Line No.	Description	Amount
1	Revenue Accrual Fix per Company Schedule H-1 as Filed	$ 952

References:
Per Company Schedule H-1

OPERATING INCOME ADJUSTMENT NO. 5
MISCELLANEOUS EXPENSE

Line No.	Description	Amount
1	Unreconciliable Difference Between Booked and Bill Count Revenues Per Company Schedule H-1	$ (268)

References:
Per Company Response to RUCO DR 1.46

OPERATING INCOME ADJUSTMENT NO. 6
INTENTIONALLY LEFT BLANK

Line No.	Description	Amount

References:

OPERATING INCOME ADJUSTMENT NO. 7
SCOTTSDALE CAPACITY OPERATING LEASE CALCULATION CORRECTION

Line No.	Description	Amount
1	Per Company Capitalized Lease Methodology Calculation	$ 164,522
2	Per RUCO Operating Lease Methodology Calculation	161,820
3	RUCO Adjustment	$ (2,702)

References:
Per Company Response to RUCO DR 3.08
Per Company Response to RUCO DR 6.05

OPERATING INCOME ADJUSTMENT NO. 8
INTENTIONALLY LEFT BLANK

Line No.	Description	Amount

References:

OPERATING INCOME ADJUSTMENT NO. 9
RECLASSIFY CAPITALIZED EXPENDITURES TO O&M EXPENSES

Line No.	Description	Amount
	Removed from UPIS:	
1	UPIS Account 354	$ (1,202)
2	UPIS Account 380	(3,571)
3	**Total Removed from UPIS**	$ (4,773)
	Reclassed to O&M Expense:	
4	Total Reclassed to O&M Expense Account - Chemicals	$ 4,773

References:
Per Company Response to Staff DR DH 3
Per RUCO Field Inspection with Company Representatives

OPERATING INCOME ADJUSTMENT NO. 10
INTENTIONALLY LEFT BLANK

Line No.	Description	Amount

References:

OPERATING INCOME ADJUSTMENT NO. 11
INTENTIONALLY LEFT BLANK

Line No.	Description	Amount

References:

OPERATING INCOME ADJUSTMENT NO. 12
INTENTIONALLY LEFT BLANK

Line No.	Description	Amount

References:

OPERATING INCOME ADJUSTMENT NO. 13
ALGONQUIN POWER UTILITIES CORPORATION ("APUC") COST ALLOCATIONS

Line No.	Description	Amount
1	Legal Costs	$ 2,432
2	Tax Services	3,976
3	Audit	4,289
4	RUCO Recommended APUC Cost Allocations	$ 10,698
5	Company Requested	37,845
6	RUCO Recommended Adjustment	$ (27,147)

References:

Per Company Response to Staff 6.1
Prior Commission Decision No. 71865 at page 25

OPERATING INCOME ADJUSTMENT NO. 14
INTENTIONALLY LEFT BLANK

Line No.	Description	Amount

References:

OPERATING INCOME ADJUSTMENT NO. 15
INTENTIONALLY LEFT BLANK

Line No.	Description	Amount

References:

RATE BASE ADJUSTMENT NO. 16
RATE CASE EXPENSE

Line No.	Description	Amount
1	Company Rate Case Expense Requested	$ 450,000
2	RUCO Rate Case Expense Recommended	100,000
3	RUCO Adjustment	$ (350,000)
4	Annual Rate Case Expense Normalized Over 3-Years (Line 2 / 3-Years)	$ 33,333

References:
Per Company Response to RUCO DR 1.63

OPERATING INCOME ADJUSTMENT NO. 17
INCOME TAXES

Line No.	Description	[A] Adjusted Test Year Amount	[B] Test Year Recommended Amount
1	RUCO Computed Adjusted Test Year Income Tax	$ 224,424	$ 117,863
2	Company Income Tax As Filed	131,980	153,021
3	RUCO Adjustment to Income Tax Expense	$ 92,444	$ (35,158)

References:
See RUCO Schedule TJC-1 at page 2 of 2;
Company Schedule C-1 Adjusted Test Year as Filed

COST OF CAPITAL

Line No.	Description	[A] DOLLAR AMOUNT	[B] CAPITAL RATIO	[C] COST RATE	[D] WEIGHTED COST RATE
1	Long-Term Debt	$ 1,952,259	30.00%	3.53%	1.06%
2	Common Equity	4,555,272	70.00%	8.95%	6.27%
3	Total Capitalization	$ 6,507,531	100.00%		
4	WEIGHTED AVERAGE COST OF CAPITAL ("WACC")				7.32%

References:
Columns [A] Thru [D]: JAC & JAC Testimony

EXHIBIT 1

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ended December 31, 2014
Reconciliation of Plant Additions, Retirements and Accumulated Depreciation

Exhibit
Schedule B-2
Page 3.7
Witness: Bourassa

Line No.	NARUC Account No.	Description	Vintage Year	Previous Allowed Deprec. Rate	Allowed Deprec. Rate	July-December 2008 Plant Additions	Plant Adjustments[1]	Adjusted Plant Additions	Plant Retirements[2]	Plant Retirement Adjustments	Adjusted Plant Retirements	Salvage A/D Only	Deprecation (Calculated)	Plant Balance	Accum. Deprec.
1	351	Organization		0.00%	0.00%		-	-	-		-		-	-	-
2	352	Franchises		0.00%	0.00%		-	-	-		-		-	-	-
3	353	Land and Land Rights		0.00%	0.00%		-	-	-		-		-	461,300	-
4	354	Structures and Improvements		3.33%	3.33%	-	(12,085)	(12,085)	-	-	-	-	28,351	2,548,135	1,117,621
5	355	Power Generation Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	-	-
6	360	Collection Sewers - Force		2.00%	2.00%	-	(37)	(37)	-	-	-	-	4,719	707,855	241,767
7	361	Collection Sewers - Gravity		2.00%	2.00%	-	(49)	(49)	-	-	-	-	28,566	4,284,899	3,015,457
8	362	Special Collecting Structures		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers		2.00%	2.00%	-	-	-	-	-	-	-	1,325	198,723	152,584
10	364	Flow Measuring Devices		10.00%	10.00%	-	156	156	-	-	-	-	219	31,668	31,449
11	365	Flow Measuring Installations		10.00%	10.00%	-	-	-	-	-	-	-	5,987	179,622	54,764
12	366	Reuse Services		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation		8.33%	8.33%	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells		3.33%	3.33%	-	311	311	-	-	-	-	10,357	933,182	295,972
15	371	Effluent Pumping Equipment		12.50%	12.50%	-	1,641	1,641	4,461	-	4,461	-	27,343	654,827	424,585
16	374	Reuse Distribution Reservoirs		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-
18	380	Treatment and Disposal Equipment		5.00%	5.00%	-	(33,499)	(33,499)	-	-	-	-	2,751	148,329	17,681
19	381	Plant Sewers		5.00%	5.00%	-	-	-	-	-	-	-	2,075	124,527	107,683
20	382	Outfall Sewer Lines		3.33%	3.33%	-	-	-	-	-	-	-	-	-	-
21	389	Other Plant and Misc. Equipment		6.67%	6.67%	-	3,138	3,138	-	-	-	-	20,922	942,570	270,522
22	390	Office Furniture and Equipment		6.67%	6.67%	-	-	-	-	-	-	-	4,993	224,587	76,990
23	390.1	Computers and Software		20.00%	20.00%	-	-	-	-	-	-	-	-	-	-
24	391	Transportation Equipment		20.00%	20.00%	-	203	203	-	-	-	-	7,165	107,570	54,940
25	392	Stores Equipment		4.00%	4.00%	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop and Garage Equipment.		5.00%	5.00%	-	3,420	3,420	-	-	-	-	124	9,174	327
27	394	Laboratory Equipment		10.00%	10.00%	-	-	-	-	-	-	-	250	7,488	2,499
28	395	Power Operated Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment		10.00%	10.00%	-	275	275	-	-	-	-	1,353	40,726	2,364
30	397	Miscellaneous Equip.		10.00%	10.00%	-	-	-	-	-	-	-	-	-	-
31	398	Other TangiblePlant - Scottsdale Capacity		10.00%	10.00%	-	-	-	-	-	-	-	16,210	486,294	113,469
		TOTAL				-	(36,526)	(36,526)	4,461	-	4,461	-	162,710	12,091,476	5,980,675

[1] True-up
[2] Retirements Not Recorded

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ended December 31, 2014
Reconciliation of Plant Additions, Retirements and Accumulated Depreciation

Exhibit
Schedule B-2
Page 3.7
Witness: Bourassa

Line No.	NARUC Account No.	Description	Vintage Year	Previous Allowed Deprec. Rate	Allowed Deprec. Rate	July-December 2008 Plant Additions	Plant Adjustments[1]	Adjusted Plant Additions	Plant Retirements[2]	Plant Retirement Adjustments	Adjusted Plant Retirements	Salvage A/D Only	Deprecation (Calculated)	Plant Balance	Accum. Deprec.
1	351	Organization		0.00%	0.00%		-	-	-		-		-	-	-
2	352	Franchises		0.00%	0.00%		-	-	-		-		-	-	-
3	353	Land and Land Rights		0.00%	0.00%		-	-	-		-		-	461,300	-
4	354	Structures and Improvements		3.33%	3.33%	-	(12,085)	(12,085)	-	-	-	-	42,527	2,548,135	1,131,797
5	355	Power Generation Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	-	-
6	360	Collection Sewers - Force		2.00%	2.00%	-	(37)	(37)	-	-	-	-	7,079	707,855	244,126
7	361	Collection Sewers - Gravity		2.00%	2.00%	-	(49)	(49)	-	-	-	-	42,849	4,284,899	3,029,740
8	362	Special Collecting Structures		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-
9	363	Services to Customers		2.00%	2.00%	-	-	-	-	-	-	-	1,987	198,723	153,246
10	364	Flow Measuring Devices		10.00%	10.00%	-	156	156	-	-	-	-	438	31,668	31,668
11	365	Flow Measuring Installations		10.00%	10.00%	-	-	-	-	-	-	-	8,981	179,622	57,758
12	366	Reuse Services		2.00%	2.00%	-	-	-	-	-	-	-	-	-	-
13	367	Reuse Meters And Installation		8.33%	8.33%	-	-	-	-	-	-	-	-	-	-
14	370	Receiving Wells		3.33%	3.33%	-	311	311	-	-	-	-	15,535	933,182	301,151
15	371	Effluent Pumping Equipment		12.50%	12.50%	-	1,641	1,641	4,461	-	4,461	-	41,015	654,827	438,257
16	374	Reuse Distribution Reservoirs		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-
17	375	Reuse Trans. and Dist. System		2.50%	2.50%	-	-	-	-	-	-	-	-	-	-
18	380	Treatment and Disposal Equipment		5.00%	5.00%	-	(33,499)	(33,499)	-	-	-	-	4,127	148,329	19,057
19	381	Plant Sewers		5.00%	5.00%	-	-	-	-	-	-	-	3,113	124,527	108,721
20	382	Outfall Sewer Lines		3.33%	3.33%	-	-	-	-	-	-	-	-	-	-
21	389	Other Plant and Misc. Equipment		6.67%	6.67%	-	3,138	3,138	-	-	-	-	31,382	942,570	280,983
22	390	Office Furniture and Equipment		6.67%	6.67%	-	-	-	-	-	-	-	7,490	224,587	79,487
23	390.1	Computers and Software		20.00%	20.00%	-	-	-	-	-	-	-	-	-	-
24	391	Transportation Equipment		20.00%	20.00%	-	203	203	-	-	-	-	10,747	107,570	58,522
25	392	Stores Equipment		4.00%	4.00%	-	-	-	-	-	-	-	-	-	-
26	393	Tools, Shop and Garage Equipment.		5.00%	5.00%	-	3,420	3,420	-	-	-	-	187	9,174	390
27	394	Laboratory Equipment		10.00%	10.00%	-	-	-	-	-	-	-	374	7,488	2,624
28	395	Power Operated Equipment		5.00%	5.00%	-	-	-	-	-	-	-	-	-	-
29	396	Communication Equipment		10.00%	10.00%	-	275	275	-	-	-	-	2,029	40,726	3,041
30	397	Miscellaneous Equip.		10.00%	10.00%	-	-	-	-	-	-	-	-	-	-
31	398	Other TangiblePlant - Scottsdale Capacity		10.00%	10.00%	-	-	-	-	-	-	-	24,315	486,294	121,574
		TOTAL				-	(36,526)	(36,526)	4,461	-	4,461	-	244,175	12,091,476	6,062,140

[1] True-up
[2] Retirements Not Recorded

EXHIBIT 2

Black Mountain Sewer Company 2000 Note 2
As Restated March 16, 2001

Principal Balance: $886,650.33

FOR VALUE RECEIVED, the undersigned, **Black Mountain Sewer Company** hereby acknowledges itself indebted to **ALGONQUIN WATER RESOURCES OF AMERICA INC.** (the "Lender") and unconditionally promises to pay to or to the order of at 2845 Bristol Circle, Oakville, Ontario, L6H 7H7, or such other place and/or person as the Lender may by notice in writing to the Debtor direct, the aggregate unpaid principal balance of all advances made to the undersigned (the "Principal Balance") as recorded by the Lender on the Schedule attached hereto on and subject to the terms and conditions of this Note.

The Principal Balance due hereunder may be reduced to zero from time to time without affecting the validity of this note. The Lender may, and is hereby unconditionally and absolutely authorized and directed by the undersigned to, enter on the attached schedule and any addition thereto all advances, all payments made on account of the amounts remaining unpaid and the dates thereof. The aggregate Principal Balance of the advances shown on the attached schedule and any addition thereto shall be rebuttable presumptive evidence of the principal amount owing and unpaid on this Note. The failure to record the date and amount of any advance on the attached schedule shall not limit or otherwise affect the obligation of the undersigned to repay the Principal Balance of the advances actually made by the Lender together with all interest accruing on such Principal Balance.

1. **Definitions.** As used herein, the following terms shall have the following meanings:

"affiliate" has the meaning ascribed to it in the *Securities Act* (Ontario).

"Business Day" means any day except Saturday, Sunday or any day on which Canadian chartered banks are generally not open for business in the City of Toronto.

"Debtor" means Black Mountain Sewer Company and its successors and assigns.

"Encumbrances" means liens, claims, charges, demands, adverse claims, title retention agreements, security interests, pledges, hypothecs, mortgages and encumbrances of every nature and kind whatsoever and also includes any rights or privileges capable of becoming liens, claims, charges, demands, adverse claims, title retention agreements, security interests, pledges, hypothecs, mortgages and encumbrances of any nature and kind whatsoever.

"Event of Default" means any one or more of the events described in Section 6 hereof.

"General Security Agreement" means the agreement between the Debtor and the Lender entered into as security with respect to all future indebtedness.

"Indebtedness" means, at any time, all of the Principal Balance, any interest owing or accrued thereon and all other amounts owing to the Lender pursuant to the terms hereof which have not been paid to the Lender by the Debtor.

"Interest Payment Date" means the last day of each calendar month in each year.

"Lender" means Algonquin Water Resources of (America) Inc. and its successors and assigns.

"Permitted Encumbrances" means:

(a) encumbrances incurred or pledges and deposits made in connection with workers' compensation, unemployment insurance, old age pensions and similar legislation;

(b) rights and remedies of lessors under any realty leases (including distress rights) or under leases of personal property, and rights and remedies of licensors under licences of property;

(c) reversionary rights or other rights of lessors relating to leasehold improvements under any realty leases;

(d) liens securing payment of Taxes, assessments and governmental charges or levies, either (i) not delinquent or (ii) being contested in good faith by appropriate proceedings;

(e) liens of mechanics, materialmen, warehousemen, carriers or other similar liens arising by operation of law or statute securing obligations incurred in the ordinary course of business that are not yet due and payable;

(f) encumbrances on the lessors' or licensors' interest relating to real or personal property leased or licensed to the Debtor;

(g) the exceptions contained in any applicable land titles registration statutes in any jurisdiction where premises owned by the Debtor are located;

(h) permits, rights of way, zoning restrictions, easements, licences, reservations, restrictions on the use of real property or minor irregularities or minor title defects incidental thereto which do not in the aggregate materially detract from the value of the property or assets of the Debtor or materially impair the operation of the business of the Debtor;

(i) capital or operating leases and any Encumbrances created for the purpose of financing the purchase or leasing of equipment and fixtures;

(j) security given in the ordinary course of business securing the performance of bids, tenders or equipment leases;

Black Mountain Sewer Company 2000 Note 3
As Restated March 16, 2001

Principal Balance: $465,761.81

FOR VALUE RECEIVED, the undersigned, **Black Mountain Sewer Company** hereby acknowledges itself indebted to **ALGONQUIN WATER RESOURCES OF AMERICA INC.** (the "Lender") and unconditionally promises to pay to or to the order of at 2845 Bristol Circle, Oakville, Ontario, L6H 7H7, or such other place and/or person as the Lender may by notice in writing to the Debtor direct, the aggregate unpaid principal balance of all advances made to the undersigned (the "Principal Balance") as recorded by the Lender on the Schedule attached hereto on and subject to the terms and conditions of this Note.

The Principal Balance due hereunder may be reduced to zero from time to time without affecting the validity of this note. The Lender may, and is hereby unconditionally and absolutely authorized and directed by the undersigned to, enter on the attached schedule and any addition thereto all advances, all payments made on account of the amounts remaining unpaid and the dates thereof. The aggregate Principal Balance of the advances shown on the attached schedule and any addition thereto shall be rebuttable presumptive evidence of the principal amount owing and unpaid on this Note. The failure to record the date and amount of any advance on the attached schedule shall not limit or otherwise affect the obligation of the undersigned to repay the Principal Balance of the advances actually made by the Lender together with all interest accruing on such Principal Balance.

1. **Definitions.** As used herein, the following terms shall have the following meanings:

"affiliate" has the meaning ascribed to it in the *Securities Act* (Ontario).

"Business Day" means any day except Saturday, Sunday or any day on which Canadian chartered banks are generally not open for business in the City of Toronto.

"Debtor" means Black Mountain Sewer Company and its successors and assigns.

"Encumbrances" means liens, claims, charges, demands, adverse claims, title retention agreements, security interests, pledges, hypothecs, mortgages and encumbrances of every nature and kind whatsoever and also includes any rights or privileges capable of becoming liens, claims, charges, demands, adverse claims, title retention agreements, security interests, pledges, hypothecs, mortgages and encumbrances of any nature and kind whatsoever.

"Event of Default" means any one or more of the events described in Section 6 hereof.

"General Security Agreement" means the agreement between the Debtor and the Lender entered into as security with respect to all future indebtedness.

"Indebtedness" means, at any time, all of the Principal Balance, any interest owing or accrued thereon and all other amounts owing to the Lender pursuant to the terms hereof which have not been paid to the Lender by the Debtor.

"Interest Payment Date" means the last day of each calendar month in each year.

"Lender" means Algonquin Water Resources of (America) Inc. and its successors and assigns.

"Permitted Encumbrances" means:

(a) encumbrances incurred or pledges and deposits made in connection with workers' compensation, unemployment insurance, old age pensions and similar legislation;

(b) rights and remedies of lessors under any realty leases (including distress rights) or under leases of personal property, and rights and remedies of licensors under licences of property;

(c) reversionary rights or other rights of lessors relating to leasehold improvements under any realty leases;

(d) liens securing payment of Taxes, assessments and governmental charges or levies, either (i) not delinquent or (ii) being contested in good faith by appropriate proceedings;

(e) liens of mechanics, materialmen, warehousemen, carriers or other similar liens arising by operation of law or statute securing obligations incurred in the ordinary course of business that are not yet due and payable;

(f) encumbrances on the lessors' or licensors' interest relating to real or personal property leased or licensed to the Debtor;

(g) the exceptions contained in any applicable land titles registration statutes in any jurisdiction where premises owned by the Debtor are located;

(h) permits, rights of way, zoning restrictions, easements, licences, reservations, restrictions on the use of real property or minor irregularities or minor title defects incidental thereto which do not in the aggregate materially detract from the value of the property or assets of the Debtor or materially impair the operation of the business of the Debtor;

(i) capital or operating leases and any Encumbrances created for the purpose of financing the purchase or leasing of equipment and fixtures;

(j) security given in the ordinary course of business securing the performance of bids, tenders or equipment leases;

EXHIBIT 3

D. Service establishments, re-establishments or reconnect charge
   1. A utility may make a charge as approved by the Commission for the establishment, reestablishment, or reconnection of utility service.
   2. For the purpose of this rule, service establishments are where the customer's facilities are ready and acceptable to the utility and do not require construction on the part of the utility.

E. Temporary service
   1. Applicants for temporary service may be required to pay the utility, in advance of service establishment, the estimated cost of installing and removing the facilities necessary for furnishing sewer service.
   2. Where the duration of service is to be less than one month, the applicant may also be required to advance a sum of money equal to the estimated bill for service.
   3. Where the duration of service is to exceed one month, the applicant may also be required to meet the deposit requirements of the utility.
   4. If at any time during the term of the agreement for service the character of a temporary customer's operations changes so that in the opinion of the utility the customer is classified as permanent, the terms of the utility's main extension rules shall apply.

Historical Note

Adopted effective March 2, 1982 (Supp. 82-2). Amended to correct subsection numbering (Supp. 99-4).

R14-2-604. Minimum customer information requirements

A. Information for residential customers
   1. Each utility shall make available upon customer request not later than 60 days from the date of request a concise summary of the rate schedule applied for by such customer. The summary shall include the following:
      a. Monthly minimum or customer charge, identifying the amount of the charge and the specific amount of minimum discharge included in the minimum charge, where applicable.
      b. Rate calculation, including where applicable, computations based upon seasonal or annual water usages.
   2. The utility shall to the extent practical identify the tariff most advantageous to the customer and notify the customer of such prior to service commencement.
   3. In addition, a utility shall make available upon customer request not later than 60 days from the date of request a copy of the Commission's rules and regulations governing:
      a. Deposits
      b. Terminations of service
      c. Billing and collection
      d. Complaint handling.
   4. Each utility shall inform all new customers of their rights to obtain the information specified above.

B. Information required due to changes in tariffs
   1. Each utility shall transmit to affected customers by the most economic means available a concise summary of any change in the utility's tariffs affecting those customers.
   2. This information shall be transmitted to the affected customer within 60 days of the effective date of the change.

Historical Note

Adopted effective March 2, 1982 (Supp. 82-2).

R14-2-605. Service connections

A. Priority and timing
   1. After an applicant has complied with the utility's application and deposit requirements and has been accepted for service by the utility, the utility shall schedule that customer for service connection.
   2. Service connections shall be scheduled for completion within five working days of the date the customer has been accepted for service, except in those instances when the customer requests service connection beyond the five working day limitation.
   3. When the utility has made arrangements to meet with a customer for service establishment purposes and the utility or the customer cannot make the appointment during the prearranged time, the utility shall reschedule the connection to the satisfaction of both parties.
   4. For the purposes of this rule, establishment of service takes place only when the customer's facilities are ready and acceptable to the utility.

B. Customer provided facilities
   1. An applicant for service shall be responsible for the installation of all plumbing up to the applicant's property line. In addition, the applicant is responsible for the proper grade or leveling of the sewer connection so that it conforms with the collection system of the utility.
   2. Funds collected for service connections may be nonrefundable contributions to the utility.

C. Customer provided equipment safety and operation. Each customer shall be responsible for maintaining all equipment and facilities using or used for utility services located on his side of the point of collection in safe operating condition.

D. Easements and rights-of-way
   1. Each customer shall grant adequate easement and right-of-way satisfactory to the utility to ensure that customer's proper service connection. Failure on the part of the customer to grant adequate easement and right-of-way shall be grounds for the utility to refuse service.
   2. When a utility discovers that a customer or his agent is performing work or has constructed facilities adjacent to or within an easement or right-of-way and such work, construction or facility poses a hazard or is in violation of federal, state or local laws, ordinances, statutes, rules or regulations, or significantly interferes with the utility's access to equipment, the utility shall notify the customer or his agent and shall take whatever actions are necessary to eliminate the hazard, obstruction or violation at the customer's expense.

Historical Note

Adopted effective March 2, 1982 (Supp. 82-2). Amended to correct subsection numbering (Supp. 99-4).

R14-2-606. Collection main extension agreements

A. General requirements
   1. Each utility entering into a main extension agreement shall comply with the provisions of this rule, which specifically defines the conditions governing collection main extensions.
   2. Upon request by a potential applicant for a collection main extension, the utility shall prepare, without charge, a preliminary sketch and rough estimate of the cost of installation to be paid by said applicant.
   3. Any applicant for a collection main extension requesting the utility to prepare detailed plans, specifications, or cost estimates may be required to deposit with the utility an amount equal to the estimated cost of preparation. The utility shall, upon request, make available within 90 days after receipt of the deposit referred to above, such plans, specifications, or cost estimates of the proposed collec-

tion main extension. Where the applicant accepts the plans and the utility proceeds with construction of the extension, the deposit shall be credited to the cost of construction; otherwise the deposit shall be nonrefundable. If the extension is to include oversizing of facilities to be done at the utility's expense, appropriate details shall be set forth in the plans, specifications and cost estimates.

4. Where the utility requires an applicant to advance funds for a collection main extension, the utility shall furnish the applicant with a copy of the extension tariff of the appropriate utility prior to the applicant's acceptance of the utility's extension agreement.
5. All collection main extension agreements requiring payment by the applicant shall be in writing and signed by each party before the utility commences construction.
6. In the event the utility's actual cost of construction is different from the amount advanced by the customer, the utility shall make a refund to or collect additional funds from, the applicant within 120 days after the completion of the construction.
7. The provisions of this rule apply only to those applicants who in the utility's judgment will be permanent customers of the utility. Applications for temporary service shall be governed by the Commission's rules concerning temporary service applications.

B. Minimum written agreement requirements
   1. Each collection main extension agreement shall, at a minimum, include the following information:
      a. Name and address of applicant(s)
      b. Proposed service address or location
      c. Description of requested service
      d. Description and sketch of the requested main extension
      e. A cost estimate to include materials, labor, and other costs as necessary
      f. Payment terms
      g. A clear and concise explanation of any refunding provisions, if appropriate
      h. The utility's estimated start date and completion date for construction of the collection main extension
   2. Each applicant shall be provided with a copy of the written collection main extension agreement.

C. Main extension requirements. Each main extension tariff shall include the following provisions:
   1. A maximum footage and/or equipment allowance to be provided by the utility at no charge. The maximum footage and/or equipment allowance may be differentiated by customer class.
   2. An economic feasibility analysis for those main extensions which exceed the maximum footage and/or equipment allowance. Such economic feasibility analysis shall consider the incremental revenues and cost associated with the main extension. In those instances where the requested main extension does not meet the economic feasibility criteria established by the utility, the utility may require the customer to provide funds to the utility, which will make the main extension economically feasible. The methodology employed by the utility in determining economic feasibility shall be applied uniformly and consistently to each applicant requiring a main extension.
   3. The timing and methodology by which the utility will refund any advances in aid of construction as additional customers are served off the main extension. The customer may request an annual survey to determine if additional customers have been connected to and are using service from the main extension. In no case shall the amount of the refund exceed the amount originally advanced.
   4. All advances in aid of construction shall be noninterest bearing.
   5. If after five years from the utility's receipt of the advance, the advance has not been totally refunded, the advance shall be considered a contribution in aid of construction and shall no longer be refundable.

D. Residential subdivision development and permanent mobile home parks. Each utility shall submit as a part of its main extension tariff separate provisions for residential subdivision developments and permanent mobile home parks.

E. Ownership of facilities. Any facilities installed hereunder shall be the sole property of the utility.

Historical Note
Adopted effective March 2, 1982 (Supp. 82-2). Amended to correct subsection numbering (Supp. 99-4).

R14-2-607. Provision of service

A. Utility responsibility
   1. Each utility shall be responsible for the safe conduct and handling of the sewage from the customer's point of collection.
   2. The utility may, at its option, refuse service until the customer has obtained all required permits and/or inspections indicating that the customer's facilities comply with local construction and safety standards.

B. Customer responsibility
   1. Each customer shall be responsible for maintaining all facilities on the customer's premises in safe operating condition and in accordance with the rules of the state Department of Health.
   2. Each customer shall be responsible for safeguarding all utility property installed in or on the customer's premises for the purpose of supplying utility service to that customer.

C. Continuity of service. Each utility shall make reasonable efforts to supply a satisfactory and continuous level of service. However, no utility shall be responsible for any damage or claim of damage attributable to any interruption or discontinuation of service resulting from:
   1. Any cause against which the utility could not have reasonably foreseen or made provision for, i.e., force majeure
   2. Intentional service interruptions to make repairs or perform routine maintenance
   3. Any temporary overloading of the utility's collection or treatment facilities.

D. Service interruption
   1. Each utility shall make reasonable efforts to reestablish service within the shortest possible time when service interruptions occur.
   2. Each utility shall make reasonable provisions to meet emergencies resulting from failure of service, and each utility shall issue instructions to its employees covering procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.
   3. In the event of a national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.

EXHIBIT 4

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S THIRD SET OF DATA REQUESTS

September 10, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School Rd., Suite D-101
Avondale, AZ 85392

Company Response Number: 3.01

Q. Main Extension Agreement(s) ("MXA") – For clarity and understanding purposes, when the Company signs a MXA with any party (i.e., Applicant, Developer, or Builder), please provide descriptive responses beyond a simple yes or no when possible to the following requests:

a. Can the MXA be classified as either an Advance-in-Aid-of-Construction ("AIAC") or a Contribution-in-Aid-of-Construction ("CIAC")?
b. Does the Company or Developer determine whether it is classified as AIAC or CIAC?
c. When is the decision made during the MXA process for determining the proper classification as either AIAC or CIAC?
d. If it is classified as AIAC, who determines the percentage (i.e., 10% or 20%) of total gross revenues to be refunded annually?
e. Is the percentage of refundable revenues the same for water and sewer or different? If different percentages apply to water and sewer, please explain the reasons why the refund percentages are different.
f. Which party to the MXA determines the contractual period (i.e., number of years) if it is classified as AIAC?
g. What is generally the contractual period (i.e., years) for a MXA classified as AIAC? If the MXA contractual period exceeds 10-years, which party determines to extend the contractual period beyond the original expiration date?
h. At the expiration of a MXA contractual period that has been classified as AIAC, does the Company convert the non-refunded AIAC amount to CIAC?
i. Under what circumstances would the Company extend the MXA contractual period that was originally classified as AIAC?
j. When are annual refunds of AIAC made (i.e., month) by the Company to the Developer?

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S THIRD SET OF DATA REQUESTS

September 10, 2015

Respondent: Liberty Utilities (Black Mountain Sewer) Corp.

Address: 12725 W. Indian School Rd., Suite D-101
Avondale, AZ 85392

k. At what time of the year (Jan. – Dec.) does the Company convert an expired MXA from AIAC to CIAC?

RESPONSE:

a. Main extension agreements are not classified as AIAC or CIAC. Whether a developer contribution or advance is classified as AIAC or CIAC depends on classification of the facilities under the Company's tariffs, NARUC, and/or Commission rules. With this in mind, developer advances or contributions can be classified as AIAC or CIAC, or a combination of each.
b. See the Company's response to Data Request 3.01(a). Generally, the Company makes that determination based on Commission rules and the Company's tariffs.
c. See the Company's response to Data Request 3.01(a). That decision is usually made during drafting and negotiation of the main extension agreement.
d. Currently, the Company refunds developer advances in aid of construction at 20 percent for 5 years. Under prior tariffs, the Company generally refunded developer advances at 10 percent for 10 years.
e. Liberty Black Mountain doesn't provide water utility services.
f. Currently, the Company refunds developer advances in aid of construction at 20 percent for 5 years. Under prior tariffs, the Company generally refunded developer advances at 10 percent for 10 years.
g. See the Company's response to Data Request 3.01(d).
h. Generally, yes.
i. See the Company's response to Data Request 3.01(d). The Company can't speculate on what circumstances it may extend the refund period without further detail.
j. Annual refunds are issued in August.
k. The refunding period will depend upon the terms, conditions and schedule set forth in the main extension agreement. The Company has refund periods from January-December and July-June.

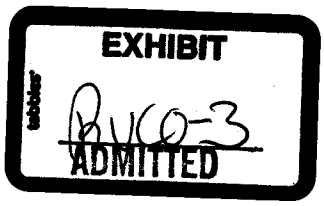
EXHIBIT 5

Black Mountain Sewer Company — Ok to Refund Agreement
Customer Advances for Aid in Construction — Expired Agrrements
8100.2.0000.20.2770.0002
12/31/2014

LXA Date	LXA #	Yr Expire	FWO#	Vendor	Developer	Development	Deposit	Orig Contract Amt	Contract Refund %	2013 Balance	AIAC Added	2014 Refund	Balance
										-			-
10/29/04	3000				Cachet-Boulders, LLC	Boulders Casitas	7,500.00		10/10/Aug	-			-
01/21/05	3001	2015	8100.20004.0006		Montana Vista Capital, I	Studios at Carefree	7,500.00	254,251.00	10/10/Aug	254,251.00		9,612.36	244,638.64
06/23/05	3002				Carefree Ventures	Pima Norte	7,500.00		10/10/Aug	-			-
06/19/07	3009	2017				Lowe's		164,138.75		164,138.75		3,696.95	160,441.80
01/08/99	BM01	2012		8100MONHOM	Montalbano Homes	Canyon Creek Estates	5,000.00	73,577.90	10/10/Mar	67,039.80	(62,665.41)	4,374.39	(0.00)
11/10/04	BM02	2015		8100HERCAR	Heritage Healthcare	Heritage Healthcare	5,000.00	111,961.26	10/10/Mar	108,950.48		7,902.28	101,048.20
06/23/05	BM03	2015		8100MONTER	Monterey Homes	Carefree Ironwood estates	19,997.00	129,933.54	10/10/Aug	125,796.67		10,128.19	115,668.48
09/01/97	BM04	2009		8100PARDEV	Parkview Investors	Ridgeview Estates	10,000.00	158,058.00	10/10/Mar	154,558.20			154,558.20
11/17/97	BM05	2014		8100PULTE	Pulte	Winfield		583,187.78	10/15/Mar	504,935.82			504,935.82
10/16/97	BM06	2012		8100TCCCAR	TCC Carefree LP	Condos @ Carefree Inn		235,836.00	10/15/Mar	229,338.00	(166,931.67)	62,406.33	-
	BM07	2014			Ray & Alma School LLC	Eckerd Drug Store		222,974.56	10/10/Aug	222,974.56			222,974.56
02/12/01					Canyon Crossings Holdi	Canyon Creek Rd & New I	7,500.00		10/10/Mar	(129.20)			(129.20)
						Annette's entry (booked backward)		(3,002.77)		-			-
					Montana Vista Capital, I	Studios at Carefree				254,250.97			254,250.97
						Accrue Refunds				-			-
						Total		1,930,916.02		2,086,105.05	(229,597.08)	98,120.50	1,758,387.47
													1,504,136.50

LIBERTY UTILITIES CORP.

(BLACK MOUNTAIN SEWER)



DIRECT TESTIMONY

OF

TIMOTHY J. COLEY

ON

RATE DESIGN

ON BEHALF OF THE

RESIDENTIAL UTILITY CONSUMER OFFICE

DECEMBER 16, 2015

TABLE OF CONTENTS

EXECUTIVE SUMMARY II
INTRODUCTION 1
PROOF OF RECOMMENDED REVENUE 1
INTRODUCTION 1
RATE DESIGN 2
TYPICAL BILL ANALYSIS 3

EXHIBITS

Company Present Revenues by Customer Classifications TJC-RD1

Company & RUCO Proposed and Recommended Revenues by Customer Class TJC-RD2

Company & RUCO Comparison of Rates by Customer Classification TJC-RD3

Typical Residential Bill TJC-RD4

EXECUTIVE SUMMARY

On December 2, 2015, RUCO filed its direct revenue requirement testimony for Liberty Black Mountain Sewer Corporation ("Black Mountain Sewer" or "Company"). In that filing, RUCO recommended total operating revenue of $1,956,557, a decrease of $284,244 or a negative 12.68 percent, from the RUCO-adjusted test year revenue of $2,240,800. RUCO's recommended revenue will provide operating income of $236,994 and a 7.32 percent return on the $3,235,735 RUCO-adjusted FVRB / OCRB rate base.

For residential customers, both RUCO and the Company recommend that the current flat monthly minimum charge remain in effect for this customer classification going forward. RUCO recommends that the residential customers' flat monthly rate be decreased by 24-cents from the current $65.24 to $65.00. The Company proposed to increase the flat residential rate by $13.96 from $65.24 to $79.20 per month or a 21.40 percent increase.

For commercial customers, the Company's rate Application proposed a substantial change to the commercial customer classification's rate design, which shifts revenues from the commercial to residential ratepayers. The commercial customers had previously been charged according to Arizona Department of Environmental Quality's ("ADEQ") Engineering Bulletin 12, which was designed to be used whenever water usage data was not available. Since water usage data is now available to the Company, ADEQ's Engineering Bulletin 12 will no longer be needed for setting commercial rates going forward. Both RUCO and the Company propose a flat monthly minimum in addition to a commodity charge based on one-thousand gallons of water usage for the commercial customer classification. The Company's proposed commercial rates decrease the commercial revenues by $301,341 whereas RUCO's recommended commercial rates decrease the commercial revenues by $274,507. Both parties' commercial rates represent a significant decrease in the commercial customers' rates going forward.

The Company has one effluent customer, Boulders Resort. Both RUCO and the Company propose the same current charge of $150 per acre foot or $0.4605 per 1,000 gallons of effluent water produced from the wastewater treatment plant.

I. INTRODUCTION

Q. Please state your name, position, employer, and address for the record.

A. My name is Timothy J. Coley. I am a Public Utilities Analyst V employed by the Residential Utility Consumer Office ("RUCO") located at 1110 W. Washington Street, Suite 220, Phoenix, Arizona 85007.

Q. Are you the same Timothy J. Coley that filed direct testimony on revenue requirements for Liberty Black Mountain Sewer on December 2, 2015?

A. Yes.

Q. What is the purpose of your direct testimony on rate design?

A. My direct testimony on rate design will address RUCO's recommended rate design for Liberty Black Mountain Sewer ("Black Mountain Sewer" or "Company") and prove that RUCO's rate design will produce its recommended revenue as shown on Schedule TJC-RD2.

To support RUCO's position in this testimony, I have attached Schedules TJC-RD1 through TJC-RD4 for Black Mountain Sewer.

II. PROOF OF RECOMMENDED REVENUE

Q. Has RUCO prepared a schedule presenting proof of its recommended revenue?

A. Yes. RUCO's proof of recommended revenue is provided on Schedule TJC-RD2.

III. Rate Design

Q. Has RUCO prepared a summary schedule of the Company's present, proposed, and RUCO's recommended rates for the Company?

A. Yes, see RUCO rate design schedules TJC-RD1 through TJC-RD4 as attached to this testimony. Schedule TJC-RD1 shows the Company's total revenues generated by the present rates. Schedule TJC-RD2 shows both the Company and RUCO's total revenues generated by the Company's proposed rates and RUCO's recommended rates. Schedule TJC-RD2 also provides proof that RUCO's rates produce its recommended revenue requirements as previously filed in its direct revenue requirement testimony on December 2, 2015. Schedule TJC-RD3 shows both the Company's present and proposed rates while also reflecting RUCO's recommended rates for both the monthly minimum and commodity rates in reaching the required level of revenue. Schedule TJC-RD4 shows a typical residential bill under the Company's present and proposed rates while also reflecting a typical residential bill using RUCO's recommended rates.

Q. Please explain the elements of RUCO's rate design for a residential customer, commercial customer, and the one effluent customer.

A. For a residential customer, RUCO's rate design mirrors that of the Company's present and proposed rate design. RUCO recommends a flat monthly minimum charge of $65.00 with no commodity charge for water usage. RUCO's recommended $65.00 flat monthly minimum charge represents a 24-cent reduction from the Company's present charge of $65.24.

For a commercial customer, RUCO's rate design mirrors that of the Company's present and proposed rate design. RUCO recommends a combination of a flat monthly minimum charge of $93.50, which is $8.50 or 10 percent more than the Company's proposed monthly minimum of $85.00. RUCO's commodity charge of $5.62 per 1,000 gallons of water usage, which is 49-cents or approximately 10 percent more than the Company's proposed $5.13 per 1,000 gallons of water usage.

For the one effluent customer that receives all the treated wastewater from the wastewater plant, both RUCO and the Company's rate design assigns a $150 per acre-foot of effluent or approximately 46-cents per 1,000 gallons for this customer's classification.

Both the Company and RUCO's proposed and recommended rates for the monthly minimum and commodity charges are shown on Schedule TJC-RD3 for all three customer classifications.

IV. TYPICAL BILL ANALYSIS

Q. Has RUCO prepared a schedule representing the financial impact of its recommended rate design on a typical residential customer?

A. Yes. A typical bill analysis for a residential customer has been provided and is illustrated on schedule TJC-RD4, which reflects RUCO's flat monthly minimum charge of $65.00 per month with no commodity charge for the residential customer.

Q. Did RUCO prepare a typical bill analysis for a residential customer based on its direct testimony?

A. Yes. Please see RUCO Schedule TJC-RD4 for a typical residential customer's bill.

Q. Does this conclude your direct testimony on rate design?

A. Yes, it does.

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule TJC-RD1

Meter Size / Class	Company Current with Annualizations	RUCO Current with Annualizations	Difference	Percentage	
Residential	$ 1,522,310	$ 1,522,310	$ (0)	0.0000%	68.63%
Residential HOA (11 Units)	$ 8,612	$ 8,612	$ 0	0.0037%	0.39%
Residential HOA (12 Units)	$ 9,395	$ 9,395	$ 0	0.0047%	0.42%
Residential HOA (25 Units)	$ 19,572	$ 19,572	$ -	0.0000%	0.88%
Apartment (GPD Rate)	$ 63,950	$ 63,950	$ 0	0.0008%	2.88%
Residential Apartment (8 Units)	$ -	$ -	$ -	#DIV/0!	0.00%
Residential Apartment (10 Units)	$ -	$ -	$ -	#DIV/0!	0.00%
Residential Apartment (74 Units)	$ -	$ -	$ -	#DIV/0!	0.00%
Commercial	$ 578,108	$ 578,108	$ 0	0.0001%	26.06%
					0.00%
Effluent	$ 16,067	$ 16,067	$ 0	0.0000%	0.72%
Total	$ 2,218,014	$ 2,218,012	$ 2	0.0001%	100.00%

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

Schedule TJC-RD2

Meter Size	Class	Company Proposed with Annualizations	RUCO Proposed with Annualizations	Difference	Percentage
Residential		$ 1,848,053	$ 1,516,710	$ 331,343	17.9293%
Residential HOA (11 Units)		$ 10,454	$ 8,580	$ 1,874	17.9262%
Residential HOA (12 Units)		$ 11,405	$ 9,360	$ 2,045	17.9307%
Residential HOA (25 Units)		$ 23,760	$ 19,500	$ 4,260	17.9293%
Apartment (GPD Rate)		$ -	$ -	$ -	#DIV/0!
Residential Apartment (8 Units)		$ 7,603	$ 6,240	$ 1,363	17.9271%
Residential Apartment (10 Units)		$ 9,504	$ 7,800	$ 1,704	17.9293%
Residential Apartment (74 Units)		$ 70,330	$ 57,720	$ 12,610	17.9298%
Commercial		$ 276,766	$ 303,601	$ (26,835)	-9.6959%
Effluent		$ 16,067	$ 16,067	$ 0	0.0000%
Total		$ 2,273,942	$ 1,945,578	$ 328,364	14.4403%

Rate Design

Monthly Usage Charge	Present	Company Proposed Rates	RUCO Recommended Rates
Meter Size (All Classes):			
Residential, per single family unit	$ 65.2400	$ 79.2000	$ 65.0000
Commercial	N/A	85.0000	93.5000
Commodity Charge - Per 1,000 Gallons			
Commercial, per gallon per day	$ 0.2487	N/A	N/A
Commercial, per 1,000 gals.	N/A	$ 5.1300	$ 5.6200
Effluent Sales:			
Per Acre Foot	$ 150.00	$ 150.00	$ 150.00
Per 1,000 Gallons	0.460512	0.460512	0.460512

Liberty Utilities (Black Mountain Sewer) Corp.
Docket No. SW-02361A-15-0207
Test Year Ended December 31, 2014

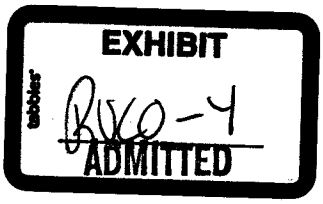
Schedule TJC-RD4

Typical Bill Analysis
Residential

Company Proposed	Gallons	Present Rates	Proposed Rates	Dollar Increase	Percent Increase
Average Usage	1,436	$ 65.24	$ 79.20	$ 13.96	21.40%
Median Usage	N/A	N/A	N/A	N/A	N/A
RUCO Recommended					
Average Usage	1,436	$ 65.24	$ 65.00	$ (0.24)	-0.37%
Median Usage	N/A	N/A	N/A	N/A	N/A

Present & Proposed Rates (Without Taxes)
Residential

Gallons	Present		Company Proposed		%	RUCO Recommended		%
	5/8 x 3/4"		5/8 x 3/4"			5/8 x 3/4"		
	Minimum Charge	$ 65.24	Minimum Charge	$ 79.20		Minimum Charge	$ 65.00	
	1st Tier Rate	-	1st Tier Rate	-		1st Tier Rate	-	
	1st Tier Breakover	-	1st Tier Breakover	-		1st Tier Breakover	-	
	2nd Tier Rate	-	2nd Tier Rate	-		2nd Tier Rate	-	
	Incremental Tier 2 Rate	-	Incremental Tier 2 Rate	-		Incremental Tier 2 Rate	-	
	2nd Tier Breakover	-	2nd Tier Breakover	-		2nd Tier Breakover	-	
	3rd Tier Rate	-	3rd Tier Rate	-		3rd Tier Rate	-	
	Incremental Tier 3 Rate	-	Incremental Tier 3 Rate	-		Incremental Tier 3 Rate	-	
	3rd Tier Breakover	-	3rd Tier Breakover	-		3rd Tier Breakover	-	
	4th Tier Rate	-	4th Tier Rate	-		4th Tier Rate	-	
	Incremental Tier 4 Rate	-	Incremental Tier 4 Rate	-		Incremental Tier 4 Rate	-	
	4th Tier Breakover	-	4th Tier Breakover	-		4th Tier Breakover	-	
	5th Tier Rate	-	5th Tier Rate	-		5th Tier Rate	-	
	Incremental Tier 5 Rate	-	Incremental Tier 5 Rate	-		Incremental Tier 5 Rate	-	
	5th Tier Breakover	-	5th Tier Breakover	-		5th Tier Breakover	-	
	6th Tier Rate	-	6th Tier Rate	-		6th Tier Rate	-	
	Incremental Tier 6 Rate	-	Incremental Tier 6 Rate	-		Incremental Tier 6 Rate	-	
	6th Tier Breakover	-	6th Tier Breakover	-		6th Tier Breakover	-	
Consumption	Rates		Rates	Increase		Rates	Increase	
-	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
1,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
2,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
3,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
4,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
5,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
6,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
7,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
8,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
9,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
10,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
11,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
12,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
13,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
14,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
15,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
16,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
17,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
18,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
19,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
20,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
25,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
30,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
35,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
40,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
45,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
50,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
75,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	
100,000	$ 65.24		$ 79.20	21.40%		$ 65.00	-0.37%	



LIBERTY UTILITIES CORP.

(BLACK MOUNTAIN SEWER)

DOCKET NOS. SW-02361A-15-0206 and SW-02361A-15-0207

DIRECT TESTIMONY

OF

JOHN A. CASSIDY

ON

COST OF CAPITAL

ON BEHALF OF THE

RESIDENTIAL UTILITY CONSUMER OFFICE

DECEMBER 2, 2015

TABLE OF CONTENTS

EXECUTIVE SUMMARY I

INTRODUCTION 1

SUMMARY OF TESTIMONY AND RECOMMENDATIONS 2

ECONOMIC PRINCIPLES APPLICABLE TO ARIZONA 3

GENERAL ECONOMIC CONDITIONS 5

CAPITAL STRUCTURE AND COST OF DEBT 9

SELECTION OF PROXY GROUP 12

DCF ANALYSIS 13

CAPM ANALYSIS 16

CE ANALYSIS 19

RUCO RESPONSE TO COMPANY'S COST OF CAPITAL WITNESS MR. THOMAS J. BOURASSA 21

CONCLUSION AND RECOMMENDATIONS 61

ATTACHMENTS

Attachment 1 JOHN A. CASSIDY – REGULATORY EXPERIENCE
Attachment 2 VALUE LINE INVESTMENT SURVEY
Attachment 3 YAHOO ANALYST ESTIMATES

SCHEDULES

JAC-1 WEIGHTED AVERAGE COST OF CAPITAL
JAC-2 COST OF COMMON EQUITY
JAC-3 DISCOUNTED CASH FLOW MODEL
JAC-4 CAPITAL ASSET PRICING MODEL
JAC-5 COMPARABLE EARNINGS
JAC-6 ECONOMIC INDICATORS

EXHIBITS

JAC-A 5-YEAR COMPARISON – CUMULATIVE TOTAL RETURNS
JAC-B RUCO RESTATEMENT OF BOURASSA SCHEDULE D-4.4
JAC-C RUCO RESTATEMENT OF BOURASSA SCHEDULE D-4.5

JAC-D RUCO RESTATEMENT OF BOURASSA SCHEDULE D-4.7, P. 1
JAC-E RUCO RESTATEMENT OF BOURASSA SCHEDULE D-4.7, P. 2
JAC-F ANNUAL TOTAL RETURNS – BOURASSA as FILED VS. YAHOO FINANCE ADJUSTED CLOSING PRICE
JAC-G COMPARISON OF ANNUAL TOTAL RETURNS, 1999-2014
JAC-H RUCO RESTATEMENT OF BOURASSA SCHEDULE D-4.9
JAC-I RUCO RESTATEMENT OF BOURASSA SCHEDULE D-4.11
JAC-J BOURASSA RESPONSES TO RUCO DATA REQUESTS (NOS. RUCO 4.4, RUCO 4.6, RUCO 5.1 AND RUCO 5.5)

EXECUTIVE SUMMARY

RUCO recommends that the Commission adopt a 7.32 percent overall rate of return for Liberty Utilities (Black Mountain Sewer) Corp. ("Company"), based upon (i) the Company's proposed pro forma capital structure consisting of 30.00 percent long-term debt and 70.00 percent common equity, (ii) the Company's proposed 3.53 percent cost of long-term debt, and (iii) RUCO's recommended 8.95 percent cost of equity, as shown below:

	Weight	Cost	Weighted Cost
Long-Term Debt	30.00 %	3.53 %	1.06 %
Common Equity	70.00 %	8.95 %	6.27 %
Overall Rate of Return			7.32 %

RUCO's 8.95 percent cost of equity is derived from estimates obtained from three cost of equity estimation models, the results of which are as follows:

	Estimated Cost
Discounted Cash Flow	8.85 %
Capital Asset Pricing Model	7.56 %
Comparable Earnings	10.44 %
Average Cost of Equity	8.95 %

I will also demonstrate that the 10.8 percent cost of equity recommendation of Black Mountain witness, Thomas J. Bourassa significantly over-states the Company's actual cost of equity.

I. INTRODUCTION

Q. Please state your name, occupation, and business address.

A. My name is John A. Cassidy. I am a Public Utilities Analyst V with the Residential Utility Consumers Office ("RUCO"). My business address is 1110 W. Washington Street, Suite 220, Phoenix, AZ.

Q. Please describe your educational background and professional experience.

A. I hold a Bachelor of Arts degree in History from Arizona State University, a Master of Library Science degree from the University of Arizona, and a Master of Business Administration degree with an emphasis in Finance from Arizona State University. I am a member of Beta Gamma Sigma, the National Business Honor Society, and have passed the CPA exam, though I opted not to pursue certification. I have worked professionally as a librarian, financial consultant and tax auditor, and have over seven years of regulatory work experience as a Public Utilities Analyst with the Arizona Corporation Commission, where I served as a cost of capital witness on behalf of Staff testifying in numerous rate case proceedings. I have attended utility related seminars sponsored by both the National Association of Regulatory Utility Commissioners (NARUC), and the Society of Utility Regulatory Financial Analysts (SURFA). At present, I am preparing to sit for the Certified Rate of Return Analyst (CRRA) exam. Attachment 1 contains a summary of my prior regulatory work experience.

Q. Please state the purpose of your testimony.

A. The purpose of my testimony is to present RUCO's recommendations for the establishment of a fair value rate of return. For purposes of establishing a fair value rate

of return on its invested capital in this proceeding, the Company has elected to use its original cost rate base (OCRB) as its fair value rate base (FVRB).

Q. Will RUCO provide direct testimony on the rate base, operating income and rate design issues in this proceeding?

A. Yes. RUCO witness, Mr. Tim Coley, will also file direct testimony in this proceeding. Mr. Coley's testimony will address the rate base and operating income issues associated with the case, as well as RUCO's proposed rate design.

II. SUMMARY OF TESTIMONY AND RECOMMENDATIONS

Q. Briefly summarize how your cost of capital testimony is organized.

A. My cost of capital testimony is organized into eleven (11) different sections as identified in my "Table of Contents." In summary I have derived cost of equity estimates obtained from both the Discounted Cash Flow ("DCF") model and the Capital Asset Pricing Model ("CAPM"). The DCF and CAPM are market-based cost of equity estimation models, and both have consistently been employed by RUCO and ACC Staff in prior rate proceedings. Additionally, both the DCF and CAPM are methodologies which the ACC has traditionally given the most weight when establishing authorized rates of return for utilities operating within its Arizona jurisdiction. In addition to the DCF and CAPM models, I have also prepared a Comparable Earnings ("CE") analysis. The Company's witness, Mr. Thomas J. Bourassa, also obtains cost of equity estimates from both the DCF and CAPM models, as well as from a Risk Premium Model ("RPM"). My testimony will conclude with a discussion of Mr. Bourassa's cost of equity estimation methodologies, and I will

demonstrate that his analyses significantly over-states the Company's actual cost of equity.

Q. Please summarize the recommendations and adjustments that you will address in your testimony.

A. Based on the results of my analysis, I am making the following recommendations:

I recommend that the Commission adopt a 7.32 percent overall rate of return for the Company. The components included in my cost of capital calculation include:[1]

	Weight	Cost	Weighted Cost
Long-Term Debt	30.00 %	3.53 %	1.06 %
Common Equity	70.00 %	8.95 %	6.27 %
Overall Rate of Return			7.32 %

The cost of equity estimates included in my calculations are derived from the following three cost of equity models:

	Estimated Cost
Discounted Cash Flow	8.85 %
Capital Asset Pricing Model	7.56 %
Comparable Earnings	10.44 %
Average Cost of Equity	8.95 %

III. ECONOMIC PRINCIPLES APPLICABLE TO ARIZONA

Q. What are the basic economic principles which apply in the determination of a fair rate of return for regulated public utilities in Arizona?

A. For regulated public utilities in Arizona, rates are established in a manner designed to allow for recovery of the utility's costs, including capital costs. This is traditionally referred

[1] See JAC Schedule 1

to as "cost of service" ratemaking. Rates are established using the "rate base – rate of return" concept, wherein utilities are allowed to recover specific operating expenses, taxes and depreciation, and granted an opportunity to earn a fair value rate of return on the assets utilized (i.e., fair value rate base) in providing service to ratepayers. Rate base is derived from the asset side of the utility's balance sheet, while rate of return is developed from the liability/stockholders' equity side of the balance sheet. The revenue impact of the cost of capital in rates is determined by multiplying rate base by rate of return. In the instant docket RUCO is recommending an overall rate of return for Black Mountain of 7.32 percent.

Q. Is the Company proposing that its original cost rate base also be used as its fair value rate base?

A. Yes.

Q. What is the meaning of a "fair rate of return" when analyzing a rate case application?

A. From an economic standpoint, a "fair rate of return" is one which allows an efficient and economically well managed utility the ability to maintain its financial integrity, attract capital, and establish comparable returns for similar risk investments. These concepts are derived from economic and financial theory and are generally implemented using financial models and economic concepts. From a technical perspective, a "fair rate of return" is an ex post (after the fact) earned return on an asset base. Conversely, the cost of capital is an ex ante (before the fact) expected, or required, return on a capital base. In regulatory proceedings, the two terms are often used interchangeably.

Q. As regulated entities granted natural monopoly status, are public utilities guaranteed to earn their authorized rate of return?

A. No. Public utilities are granted an opportunity to earn their authorized rate of return, they are not guaranteed to earn the rate of return authorized in a rate case. Many factors are involved in determining a rate of return. However, investments in new plant assets made subsequent to a rate case and/or increases to operating expenses between rate cases can have a negative impact on a utility's realized rate of return. Conversely, an increase in revenues and/or a decrease in operating expenses can have a positive impact on the earned rate of return. In the former scenario, a public utility will generally file for a rate increase. In the latter scenario, should a public utility earn a rate of return in excess of that approved by a utility commission, then the commission may instruct the utility to file a rate application in order that new rates be established to provide rate relief to ratepayers.

IV. GENERAL ECONOMIC CONDITIONS

Q. Can you please explain how general economic and financial conditions are considered in the determination of the cost of capital for a public utility?

A. Yes. The cost of capital is determined in part by the current and future economic and financial conditions. The level of economic activity; the stage of the business cycle; the trend in interest rates, and the level of inflation or expansion all play an important factor in determining the cost of capital. While there are other factors involved these are the most important and at any point in time each can have an influence on the cost of capital. The general economic indicators which influence the cost of capital are presented in Schedule JAC-6 (Pages 1-8).

Q. Can you describe the recent trends in economic conditions and their impact on capital costs over the past thirty years?

A. Yes. Since the early 1980's through the end of 2007 the United States economy had been relatively stable. This period had been characterized by longer economic expansions, small contractions, low and/or declining inflation, and declining interest rates and other capital costs. However, in 2008 and 2009, the economy declined as a result of the mortgage crisis and had a negative effect on the financial markets both in the US and international financial markets. This decline was described as the worst financial crisis since the Great Depression and has been referred to as the "Great Recession." Since 2008, the U.S. and other governments implemented unprecedented actions to attempt to correct or minimize the scope and effects of this worldwide recession.

The recession bottomed out in mid-2009 and since that time the economy has begun to expand again, initially at a slow pace but at a more rapid rate in recent months. This is evidenced by the national unemployment rate falling from 7.4 percent in 2013 to 5.6 percent at the end of September, 2015. At the State level, however, Arizona's unemployment rate continues to lag that of the nation, and as of October 2015 stood at 6.1 percent.[2] The length of this most recent recession and the slow recovery indicate that the impact may be felt for an extended period of time.

[2] United States Department of Labor, Bureau of Labor Statistics, Arizona Unemployment Rate http://www.bls.gov/eag/eag.az.htm

Q. Please describe how the economic and financial indicators were examined and how they relate generally to the cost of capital.

A. Schedule JAC-6 (Pages 1 and 2) identifies relevant economic data such a Real Gross Domestic Product ("GDP") Growth, Industrial Production Growth, Unemployment, Consumer Price Index ("CPI") and Producer Price Index. As can be seen, 2007 marked the sixth year of economic expansion, but beginning in 2008 the economy entered into a significant decline, as indicated by negative real GDP and industrial production growth as well as an increase in the unemployment rate. Since 2010 the economy has begun to rebound, however, overall economic growth has been slower than that of prior expansions following an economic downturn.

Since 2008 inflation, as measured by the CPI, has been 3 percent or lower. The annual rate of inflation in 2014 was 0.8 percent, and as of the end of the third quarter in 2015, inflation stood at -0.1 percent. The annual rate of inflation has generally been declining over the past several business cycles and continues to do so as evidenced by the low annual inflation rates of the last three years, 2012-2014. At present, inflation is at the lowest level experienced in the past 40 years, and is indicative of lower capital costs.

Q. What have been the trends in interest rates over the four prior business cycles and at the current time?

A. Schedule JAC-6 (Pages 3 – 5) shows that interest rates rose sharply to record levels in 1975-1981, when the inflation rate was high and generally rising. Interest rates declined substantially as did inflation rates during the remainder of the 1980s and throughout the 1990s. Interest rates declined even further from 2000-2005 and for the years 2009

through 2014, interest rates have been the lowest since prior to 1975. Since 2008, the Federal Reserve has lowered the Federal Funds rate, and in 2012, 2013 and 2014, both U.S. and corporate bond yields declined to their lowest levels in more than 40 years. While interest rates have risen slightly from their lows of 2012, both government and corporate lending rates remain at historically low levels through 2014, again reflective of lower capital costs.

Q. What do the economic indicators show for trends of common share prices?

A. As shown in Schedule JAC-6 (Pages 6 and 7), stock prices were essentially stagnant during the high inflation/high interest rate environment of the late 1970s and early 1980s. Beginning in 1983 a significant upward trend in stock prices began. However, the beginning of the recent financial crisis saw stock prices decline significantly and stock prices in 2008 and early 2009 were down significantly from peak 2007 levels, reflecting the financial/economic crisis. Beginning in the third quarter of 2009, prices have recovered substantially and have ultimately reached and exceeded the levels achieved prior to the beginning of the "crash," with the S&P 500 Composite Index, the NASDAQ Composite Index and the DOW Jones Industrial Average reaching all-time highs in the second quarter or 2015.

Q. What conclusions can be reached from your discussion of economic and financial conditions?

A. I believe that the most recent downturn in the economy has resulted in a decline in the investor expectation of returns. This is evident in several ways: 1) lower interest rates on bank deposits; 2) lower interest rates on U.S. Treasury and corporate bonds; and, 3)

lower increases in Social Security cost of living benefits. While unemployment has reduced substantially, the average median income of families has reduced as well. Finally, as noted above, utility bond yields are currently at levels below those prevailing prior to the financial crisis of late 2008 to early 2009 and are at the lowest levels of the past 40 years. While the economy is recovering from this latest recession, it is recovering slower than expected. Slower recovery means that the results of the traditional cost of equity models are lower than prior to the recession.

V. CAPITAL STRUCTURE AND COST OF DEBT

Q. What is the Company's proposed capital structure?

A. Black Mountain proposes a pro forma capital structure of 30 percent long-term debt and 70 percent common equity.

Q. Concurrent to the filing of its rate application, the Company also filed a financing application requesting authority to issue evidence of indebtedness in an amount not to exceed $3.4 million. What is the stated purpose of the Company's request to issue long-term debt?

A. The stated purpose of the proposed financing is to effectuate a rebalancing of the Company's capital structure from its present 100 percent equity structure to one consisting of 30 percent debt and 70 percent equity.

Q. Has the Company's financing docket been consolidated with the rate docket?

A. Yes. Pursuant to a Procedural Order issued on July 6, 2015, the two dockets have been consolidated.

Q. Please describe the Company's proposed long-term debt.

A. The proposed $3.4 million debt will be 10-year term, non-amortizing debt, with interest to be paid monthly,[3] and the principal balance on the Note due and payable ten years from the date of closing. The interest rate on the debt is anticipated to be 3.53 percent per annum, computed as the yield on the 10-year U.S. Treasury debt security plus a 130 basis point credit spread. The actual interest rate on the debt, however, will not be determined until 15 business days before the closing date. The term sheet associated with the proposed financing is attached as Exhibit 3 of the Company's financing application.

Q. What is Black Mountain's proposed cost of debt?

A. As shown in Schedules D-1 and D-2, the Company proposes a cost of debt of 3.53 percent.

Q. Is RUCO supportive of the Company's desire to rebalance its capital structure?

A. Yes, because debt capital is less costly than equity capital, and residential ratepayers will benefit from a lower revenue requirement for Black Mountain. However, RUCO did have several concerns relating to the loan terms, as proposed by the Company, and issued four data requests to the Company relating to those concerns. The data requests issued by RUCO relating to the proposed financing were RUCO 2.01 – 2.04.

[3] Pursuant to the Company's response to RUCO data request 2.01, the Company indicated that it has the option of making interest payments on a semi-annual basis, rather than on a monthly basis as specified in the Term Sheet.

Q. Following receipt of the Company's responses to RUCO's data requests, does RUCO continue to have concerns regarding the Company's financing, as proposed?

A. Yes, but only as it relates to the issue discussed in RUCO data request 2.02. In RUCO 2.02, the Company was asked to explain what factors had been taken into consideration in the determination of the 130 basis point estimated credit spread. In response (See attached Company response to RUCO 2.02), the Company stated that the 130 basis point credit spread was an "estimate" of the credit risk spread related to Liberty Utilities Co. However, within the body of its response to RUCO 2.02, the Company went on to say that it "seeks approval" of a change to the interest terms in the Term Sheet, with the credit spread now contemplated to be "equal to the spread on Liberty Utilities Co.'s most recent private placement financing."

Q. Has the Company amended its financing application to reflect the above noted changes to the interest terms in the Term Sheet?

A. The Company does not appear to have done so, as a check of the ACC E-Docket web site shows no amended filing relating to a change in the interest terms.

Q. Has RUCO issued a follow-up data request to the Company regarding its concerns relating to changes in the interest terms contemplated by the Company?

A. Yes. However, RUCO's latest data request (RUCO 13-01) has just been issued, and the Company has not yet had time to respond. For this reason, RUCO will defer further comment on the matter in direct testimony, but plans to revisit the issue when filing surrebuttal testimony once it has reviewed the Company's response.

Q. In view of the above, for purposes of its direct testimony what is RUCO's recommended cost of debt in this proceeding?

A. RUCO recommends a cost of debt not to exceed 3.53 percent, which is the cost rate proposed by the Company.

VI. SELECTION OF PROXY GROUP

Q. Was RUCO able to directly estimate Black Mountain's cost of common equity?

A. No. Black Mountain's common stock is not publicly-traded, and for this reason it is not possible to directly estimate the cost of the Company's common equity. Thus, RUCO employed a proxy group of publicly-traded water utility companies to indirectly estimate the Company's cost of equity utilizing financial market data available for each sample company.

Q. What publicly-traded water utility companies has RUCO selected for inclusion in its proxy group?

A. RUCO's proxy group consists of the following nine publicly-traded water utility companies: American States Water, American Water Works, Aqua America, Artesian Resources, California Water, Connecticut Water, Middlesex Water, SJW Corp., and York Water. These nine water utilities comprise the entire universe of publicly-traded water utility companies followed by both the Standard Large-Cap and Mid-Cap editions of *The Value Line Investment Survey*. Attachment 2 contains the most recent *Value Line* quarterly update for each of RUCO's nine proxy companies.

Q. For purposes of his analysis, does the Company's cost of capital witness employ the same proxy group as that of RUCO?

A. No. The company's witness, Mr. Bourassa, employs a proxy group of only seven companies. For purposes of his analysis, Mr. Bourassa excludes both American Water Works and Artesian Resources from his proxy group of sample companies.

VII. DCF ANALYSIS

Q. What is the theory and methodological basis of the DCF model?

A. The DCF model is one of the oldest and most commonly used models for estimating the COE for public utilities, and the only one which intrinsically takes into consideration the price investors are willing to pay for a given unit of return. The DCF is based on the "dividend discount model" of financial theory, which maintains that the value (price) of any security or commodity is the discounted present value of all future cash flows.

The most common variant of the DCF model assumes that dividends are expected to grow at a constant rate and the following formula will generate the cost of capital.

$$K = \frac{D}{P} + g$$

Where: K = cost of equity
P = current price
D = current dividend rate
K = discount rate (cost of capital)
g = constant rate of expected growth

This formula essentially recognizes that the return expected, or required, by investors is comprised of two factors: the dividend yield (current income) and expected growth in dividends (future income).

Q. Please explain how RUCO employed the DCF model.

A. For purposes of its analysis, RUCO employed the constant growth DCF model. In doing so, RUCO combined the current dividend yield for each proxy group utility stock with several indicators of expected dividend growth.

Q. How did RUCO derive the dividend yield component of the DCF equation?

A. Several different methods can be used to compute the dividend yield component in the constant growth DCF model. However, for purposes of its analysis RUCO utilized the Gordon quarterly compounding method to compute the dividend yield component, as it gives recognition to the timing of dividend payments and dividend increases. The Gordon quarterly compounding method is expressed as follows:

$$Yield = \frac{D_0(1 + 0.5g)}{P_0}$$

The current (P_o) stock price in my yield calculation represents the average of the high and low stock price for each proxy company for the most recent three month period (August – October, 2015). The current (D_o) dividend is the current annualized dividend rate for each proxy company.

Q. How does RUCO estimate the dividend growth (g) component of the DCF equation?

A. In estimating the dividend growth rate in its DCF analysis, RUCO gives consideration to the following five indicators of growth:

1. Five-year average (2010-2014) earnings retention (i.e., fundamental) growth, as reported by *Value Line*;
2. Five-year average of historic growth in earnings per share (EPS), dividends per share (DPS), and book value per share (BVPS), as reported by *Value Line*;
3. Years 2015, 2016 and 2018-2020 projections of earnings retention growth, as reported by *Value Line*;
4. Years 2012-2014 to 2018-2020 projections of EPS, DPS, and BVPS, as reported by *Value Line*; and,
5. Five - year projections of EPS growth, as reported by Yahoo Finance.

RUCO believes this combination of growth indicators to be a representative and appropriate set with which to estimate investor expectations of dividend growth for its proxy group of sample companies, as each is a determinant of dividend growth. Additionally, these growth indicators are reflective of the types of information that investors normally take into consideration when making an investment decision.

Q. Please describe RUCO's DCF calculations.

A. RUCO's DCF analysis is presented in Schedule JAC-3, Pages 1 through 4. Page 1 presents RUCO's overall DCF cost of equity estimation results for its proxy group of sample companies. As can be seen, "raw" DCF calculations are presented on several bases: mean, median, and high values. Page 2 presents the calculation of the dividend

yield for each proxy company prior to adjustment for growth. Pages 3 and 4 present RUCO's historical and projected growth rate calculations for its proxy group of companies.

Q. What does RUCO conclude from its DCF cost of equity estimation analyses?

A. The DCF cost of equity rates obtained for RUCO's proxy group fall into a range between 7.80 percent and 8.85 percent. The highest DCF rates are 8.85 percent. RUCO concludes that 8.85 percent represents the current DCF-derived cost of equity for the proxy group. Accordingly, RUCO recommends a DCF-derived cost of equity of 8.85 percent for Black Mountain, which is based on the high end of the DCF range.

VIII. CAPM ANALYSIS

Q. Please describe the theory and methodological basis of the CAPM.

A. Developed in the 1960s and 1970s as an extension of modern portfolio theory, the CAPM describes the relationship between a security's investment risk and its market rate of return.[4] This relationship identifies the rate of return which investors expect a security to earn so that its market return is comparable with the market returns earned by other securities that have similar risk. The relationship is specified by the Security Market Line (SLM) that indicates the relationship between each security or portfolio's "beta" and its resulting return. Beta is a measure of relative risk (i.e., volatility) between a given equity security and the market as a whole.

[4] The CAPM makes the following assumptions: 1) single holding period; 2) perfect and competitive securities market; 3) no transaction costs; 4) no restrictions on short selling or borrowing; 5) the existence of a risk-free rate; and 6) homogeneous expectations.

Q. How is the CAPM derived?

A. The general form of the CAPM is:

$$K = R_f + \beta\,(R_m - R_f)$$

Where: K = *cost of equity*

R_f = *risk free rate*

R_m = *return on market*

β = *beta*

$R_m - R_f$ = *market risk premium*

Q. Can you please identify the strengths of using the CAPM model in your analysis?

A. The CAPM is cited as having the following strengths (1) it is based on the concept of risk and return; (2) it is company specific as it relates to the specific beta's within the industry; (3) it has widespread use as it recognizes that investors can and do diversify; (4) it's highly structured and easy to apply when using the assumptions of the model; (5) the model is formulistic and the data used in the computations is readily available; (6) it is a forward looking concept; and (7) it is a method for converting changes in interest rates to the cost of equity.

Q. What risk-free (R_f) rate does RUCO use in its CAPM analysis?

A. For purposes of its CAPM analysis, RUCO uses a risk-free rate of 2.73 percent. RUCO's risk-free rate represents a composite 3-month average yield on the 20- and 30-year long-term U.S. Treasury Bond, measured over the 3-month period, August - October 2015. The calculation of RUCO's risk-free rate is presented in Schedule JAC-4, Page 1.

Q. Is it customary to use the yield on U.S. Treasury securities as the risk-free (R_f) rate in the CAPM?

A. Yes, because debt securities issued by the United States Department of the Treasury are considered to be free of default risk. Two general types of U.S. Treasury securities are most often used as the risk free *(Rf)* component, short-term U.S. Treasury bills and long-term U.S. Treasury bonds. RUCO elected to use the yields on 20- and 30-year U.S. Treasury bonds because yields on long-term Treasury bonds more closely match the long-term investment perspective of a cost of equity analyses.

Q. Did RUCO consider use of a forecasted long-term Treasury bond rate as the risk-free rate to be used in its CAPM analysis?

A. No. The appropriate interest rate to be used in the CAPM is the current rate borne by investors in the market place. Use of a forecasted risk-free rate overstates cost of equity estimates derived from the CAPM. Use of a current long-term Treasury rate is reflective of investor's current expectations, and as such is the appropriate risk-free rate to be used in the CAPM.

Q. What beta coefficients does RUCO employ in its CAPM analysis?

A. RUCO employs the most recent *Value Line* beta reported for each company in its proxy group. Once again, beta[5] is a measure of the relative volatility, or risk, of a particular stock in relation to the overall market. Betas less than 1.0 are considered less risky than the

[5] See Attachment 2 – Individual proxy companies beta's identified

market, whereas betas greater than 1.0 are more risky. Utility stocks traditionally have had betas below 1.0.

Q. How does RUCO estimate the market risk premium (R_m-R_f) component?

A. The market risk premium component (R_m-R_f) represents the investor-expected premium of common stocks over the risk-free rate, or government bonds. For purposes of its analysis, RUCO estimated the market risk premium by comparing annual realized returns on equity for the S&P 500 group with the actual annual yields on 20-year long-term Treasury bonds over the period, 1978-2014. As shown in Schedule JAC-4, Page 2, the market risk premium component used in RUCO's CAPM represents the average of differential returns on equity for the S&P 500 group and the annual yields on 20-year U.S. Treasury bonds over this 1978-2014 period of time. RUCO determined the average ROE on the S&P 500 to be 13.75 percent, and the average 20-year U.S. Treasury bond yield to be 6.89 percent. Thus, based upon these returns RUCO concluded the market risk premium (R_m-R_f) component in its CAPM to be 6.85 percent.

Q. What did RUCO conclude the overall CAPM COE to be?

A. As shown in Schedule JAC-4, Page 1, RUCO determined the CAPM derived cost of equity to be 7.56 percent for its proxy group of sample companies.

IX. CE ANALYSIS

Q. Please describe the basis of the Comparable Earnings (CE) methodology.

A. The CE method is designed to measure returns expected to be earned on the original cost book value of similar risk business enterprises, in this case RUCO's proxy group of

companies. Thus, it provides a direct measure of the fair return, since it translates into practice the competitive principle upon which regulation rests. This is true despite Black Mountain not being a public company, as it provides additional support that the company will be earning a fair rate of return.

Q. How did RUCO apply the CE methodology?

A. RUCO applied the CE methodology by examining realized returns on equity for its proxy group of sample companies over the 10-year period, 2005-2014, as well as projected returns on equity for 2015 and 2016, and 2018-2020.

Q. What cost of equity results were obtained from RUCO's CE analysis?

A. As shown in Schedule 5, RUCO calculated historical returns on equity for its sample companies over both a 5- and 10-year period, and projected returns on equity over the 5-year period, 2015-2019. Based upon its analysis, RUCO generated mean and median CE cost of equity estimates ranging from a low of 8.63 percent to a high of 10.44 percent. The results of RUCO's CE cost of equity analysis based on returns on equity for the proxy group can be summarized as follows:

	Historic ROE's	Projected ROE's
Mean	8.83 % - 9.18 %	10.44 %
Median	8.63 % - 8.74 %	9.83 %

For purposes of its analysis, RUCO adopts the 10.44 percent cost of equity estimate at the high end of the range as its CE-derived cost of equity estimate for the Company.

X. RUCO RESPONSE TO COMPANY'S COST OF CAPITAL WITNESS MR. THOMAS J. BOURASSA

Q. Please summarize Mr. Bourassa's cost of capital analyses and recommendations.

A. Mr. Bourassa recommends a return on equity for the Company of no less than 10.8 percent based on estimates derived from two constant growth DCF models, two CAPM models, and one risk premium model, using a sample group of seven publicly-traded water companies. Based upon his analyses, Mr. Bourassa determined the cost of equity for his sample group fell in the range of 9.8 percent to 10.4 percent, with the mid-point indicated cost of equity being 10.1 percent. However, for purposes of his cost of equity recommendation for Liberty Black Mountain, Mr. Bourassa makes an upward 100 basis point adjustment for small size and business risk, resulting in a range of estimates of 10.8 percent to 11.4 percent and a mid-point indicated cost of equity of 11.1 percent. Mr. Bourassa's recommended 10.8 percent cost of equity reflects a downward 30 basis point adjustment for financial risk (11.1% - 0.3% = 10.8%). Mr. Bourassa recommends an 8.62 percent overall rate of return for the Company, based upon a pro forma capital structure consisting of 30.0 percent debt and 70.0 percent equity, and a cost of debt of 3.53 percent.

In his constant growth DCF analyses, Mr. Bourassa estimates the dividend growth (g) component based upon (i) an average of both historical and forecasted growth and (ii) forecasted growth. The 5- and 10-year historical growth metrics employed by Mr. Bourassa include stock price growth, book value per share (BVPS), earnings per share (EPS), and dividends per share (DPS). Mr. Bourassa justifies use of stock price as a growth metric on grounds that in equilibrium, stock prices should grow at the same rate as BVPS, EPS and DPS (Bourassa Direct, p. 31, lines 12-14). The historical stock price

growth rates in Mr. Bourassa's DCF analysis are obtained from Yahoo Finance adjusted closing prices, while the BVPS, EPS and DPS historical growth rates are obtained from *Value Line*. Mr. Bourassa makes exclusive use of 5-year EPS forecasts from *Value Line* for his forecasted dividend growth estimates. In each of his two constant growth DCF analyses, the current dividend yield (D_0/P_0) component is based upon a May 22, 2015 spot market (P_0) price. For purposes of the 9.41 percent and 9.71 percent constant growth DCF cost of equity estimates he relies upon, Mr. Bourassa adopts historical growth measures obtained over a 5-year period (*See* Bourassa Schedules D-4.4 and D-4.7 (pages 1 and 2)).

In his Risk Premium Analysis Based on Total Returns (RPM), Mr. Bourassa utilizes a 16-year historical period, 1999-2014, over which to estimate the equity risk premium to be used in his RPM. In each year, he obtains a composite average annual total return for his sample companies, subtracts from this value the average annual yield on long-term Treasury Bonds for that year, with the resulting quantity being the annual risk premium for his sample companies in that year. The 6.4 percent risk premium value used by Mr. Bourassa in his RPM analysis represents a 16-year average annual total return. In direct testimony, Mr. Bourassa describes the RPM as a 'bond yield plus risk premium method;' thus, to this 6.4 percent risk premium he adds a 4.2 percent expected long-term Treasury Bond rate. The resulting 10.6 percent projected return on equity is Mr. Bourassa's RPM derived cost of equity. Mr. Bourassa's RPM analysis is presented in Schedule D-4.9.

For purposes of his CAPM analyses, Mr. Bourassa presents estimates based upon both historical and current market risk premia. In both, he employs a 4.2 percent forecasted

risk-free (R_f) rate based, in part, upon estimates from Value Line and Blue Chip Consensus Forecasts for the 30-year long-term Treasury yield covering the period, 2016-2018. Mr. Bourassa's CAPM analysis is presented in Schedule D-4.11.

Q. Turning first to Mr. Bourassa's DCF analysis, column [1] of Bourassa Schedules D-4.4 and D-4.5 present 5- and 10-year historical average annual changes in stock price. Pursuant to information provided in Footnote 1 of those schedules, Mr. Bourassa states that these historical stock price growth rates have been calculated through December 31, 2014. Was RUCO able to confirm if this was true?

A. A review of Mr. Bourassa's work papers revealed that, contrary to the information provided in Footnote 1, the 5- and 10-year historical average stock price growth rates presented in column [1] of Schedules D-4.4 and D-4.5 were calculated through December 31, 2013, and not December 31, 2014, as indicated.

Q. Does RUCO believe historical stock price growth to be an appropriate metric with which to estimate the dividend growth (g) component in the constant growth DCF model?

A. No, because stock price growth is **not** a determinant of dividend growth. In fact, the reverse is true, for without the ability to demonstrate growth in such metrics as earnings per share (EPS), dividends per share (DPS), earnings retention and book value per share (BVPS), investors would be unwilling to bid up the share price of a company's common equity in the market. In this regard, dividend growth is a determinant of stock price growth, not *vice versa*. That Mr. Bourassa purports to use stock price growth as a metric to estimate dividend growth places, figuratively speaking, the cart before the horse.

Q. You state above that Mr. Bourassa "purports" to use stock price growth as a metric to estimate dividend growth. Does RUCO have reason to believe that the 5- and 10-year historical stock price growth rates presented in Bourassa schedules D-4.4 and D-4.5 are something other than 5- and 10-year measures of capital stock price appreciation?

A. Yes. As further indicated in Footnote 1 of Schedules D-4.4 and D-4.5, the data used by Mr. Bourassa to compute his 5- and 10-year stock price growth rates was obtained from the Yahoo Finance website. A review of Mr. Bourassa's work papers, however, indicates that rather than using actual December 31 year-end closing stock prices reported by Yahoo Finance, Mr. Bourassa used December 31 year-end **adjusted closing prices** reported by Yahoo Finance in his calculations. A review of the Yahoo Finance website clearly indicates that the adjusted closing prices reported have been adjusted for both dividend distributions and stock splits.[6] Thus, rather than being a measure of capital stock price appreciation as Mr. Bourassa claims, the stock price growth rates reported in Bourassa schedules D-4.4 and D-4.5 are 5- and 10-year measures of total return.

Q. Please define the term, "total return."

A. As defined by Investopedia, 'total return' accounts for two categories of investment return: income and capital appreciation. Income includes interest paid by fixed-income investments, distributions or dividends. Capital appreciation represents the change in the

[6] When searching for historical stock prices on the Yahoo Finance website, the heading of the column containing Yahoo Finance's adjusted closing prices reads, "Adj Close*." Beneath the historical prices displayed, an asterisk appears with language clarifying what is meant by Adj Close, and reads as follows: "*Close price adjusted for dividends and splits."

market price of an asset.[7] Although measures of total return often assume dividend reinvestment, the above Investopedia definition was silent as to this point.

Q. As per the above definition, is it RUCO's position that the 5- and 10-year stock price growth rates presented in Schedules D-4.4 and D-4.5 contain both (i) an income component and (ii) a capital appreciation component?

A. Yes.

Q. Did RUCO issue a data request to Mr. Bourassa concerning this issue, and if so how did he respond?

A. Yes, two data requests were issued, RUCO Data Requests 4.4 and 5.5. In RUCO 4.4, Mr. Bourassa was asked (i) to acknowledge that Yahoo Finance adjusted closing prices are adjusted for both dividends and stock splits, and as a consequence, (ii) to admit that his computations of 5- and 10-year stock price growth were, instead, measures of total return. In response (See attached Bourassa Response to RUCO 4.4), Mr. Bourassa acknowledged the former, but steadfastly denied the latter. For purposes of its second data request (i.e., RUCO 5.5), RUCO prepared a schedule comparing the sample average annual total return figures used in Mr. Bourassa's Risk Premium analysis for the period 2004-2014, as presented in Bourassa Schedule D-4.9,[8] to sample average annual returns computed using Yahoo Finance adjusted closing prices over this same 2004-2014 period. The annual return figures obtained from Yahoo Finance adjusted closing prices were

---

[7] http://www.investopedia.com/terms/t/totalreturn.asp#ixzz3qSI2j7nj

[8] Footnote 1 of Bourassa Schedule D-4.9 indicates that the annual total return figures presented in Mr. Bourassa's Risk Premium model were obtained using data from *Value Line Analyzer*.

essentially identical to the annual total return figures from Mr. Bourassa's Risk Premium model, and in RUCO 5.5 Mr. Bourassa was asked to (i) provide a plausible explanation as to how this could be, and (ii) once again acknowledge that the stock price growth rates presented in Bourassa Schedules D-4.4 and D-4.5 had been overstated. In response (See attached Response to RUCO 5.5), Mr. Bourassa failed to provide a plausible explanation to the former, and regarding the latter once again steadfastly denied that his stock price growth rates had been overstated.

Q. Since issuing RUCO Data Requests 4.4 and 5.5, has RUCO obtained irrefutable evidence demonstrating that annual returns computed using Yahoo Finance adjusted closing prices contain both an income component as well as a capital appreciation component?

A. Yes. On the internet, RUCO accessed the 2014 Annual Report to Shareholders issued by each of Mr. Bourassa's seven publicly-traded sample companies. RUCO reviewed that document for each sample company, and in the Annual Report for six of the seven companies (i.e., American States Water, Aqua America, Connecticut Water, Middlesex Water, SJW Corporation and York Water) located a presentation showing the 5-year cumulative total return value, as of December 31, 2014, of an assumed $100 investment in the utility company's common equity made as of December 31, 2009, assuming reinvestment of dividends.[9]

[9] The 2014 Annual Report issued by the California Water Service Group included a presentation showing cumulative total returns over a 20-year period, not a 5-year period.

Q. Has RUCO prepared an Exhibit comparing the 5-year cumulative total return figures obtained from the Annual Reports with 5-year investment returns based on Yahoo Finance adjusted closing prices over that same 5-year period of time?

A. Yes. As shown in RUCO Exhibit JAC-A, the 5-year compound average cumulative total returns obtained for each of the six sample companies from the Annual Reports are **identical** to the 5-year compound average returns obtained for these same six sample companies using Yahoo Finance adjusted closing prices. That these investment returns are identical clearly demonstrates that growth rates derived from Yahoo Finance adjusted closing prices contain both an income component and a capital appreciation component, and that the "dividend adjustment" made by Yahoo Finance to a stock's actual closing price is intended to allow for the calculation of a cumulative total return value assuming full reinvestment of dividends. Thus, contrary to Mr. Bourassa's assertions otherwise, the 5- and 10-year historical stock price growth rates presented in Schedules D-4.4 and D-4.5 have been **overstated**, as they are measures of cumulative total return and not measures of stock price growth (i.e., capital appreciation) as he maintains.

Q. Pursuant to a review of his work papers, did RUCO find that Mr. Bourassa had done anything else which further served to overstate the historical 5- and 10-year stock price growth rates shown in column [1] of Schedules D-4.4 and D-4.5 for his sample companies?

A. Yes. A review of Mr. Bourassa's work papers revealed that his historical stock price growth rates were computed as the arithmetic mean of changes in annual stock prices over both a 5- and 10-year period for each of his sample companies. By employing an arithmetic mean Mr. Bourassa gives tacit consideration to stock price volatility, and in so

doing needlessly inflates the computation of actual historical growth over a 5- and 10-year period. To obtain an accurate measure of historical stock price growth, Mr. Bourassa should have employed a geometric mean to allow for the computation of a compound average annual 5- and 10-year growth rate.

Q. Earlier you pointed out that the 5- and 10-year stock price growth rates appearing in Bourassa Schedules D-4.4 and D-4.5 were not computed through December 31, 2014, as indicated. Did RUCO bring this fact to Mr. Bourassa's attention?

A. Yes, RUCO did so when issuing RUCO Data Request 5.1, wherein Mr. Bourassa was asked to (i) prepare amended restatements of Schedules D-4.4 and D-4.5 in order to reflect 5- and 10-year stock price growth rates through December 31, 2014, as indicated, and (ii) to provide RUCO with a copy of Mr. Bourassa's work papers supporting his amended restatements.

Q. In responding to RUCO 5.1, did Mr. Bourassa provide RUCO with the requested restatements of Schedules D-4.4 and D-4.5?

A. No, he did not. Instead, Mr. Bourassa indicated that he would "correct the footnote contained in the original filing."[10] However, in his response (See attached Bourassa Response to RUCO 5.1), Mr. Bourassa did "update" his 5- and 10-year average annual change in stock price calculations, pointing out that were he to update his analysis to reflect stock price growth through December 31, 2014, the 9.43 percent sample average

[10] RUCO infers from this that rather than formally updating his analysis to reflect 5- and 10-year stock price growth rates through December 31, 2014, Mr. Bourassa will continue to rely on stock price growth rates computed through December 31, 2013, as filed.

5-year stock price growth rate reported in column [1] of Schedule D-4.4 would increase 404 basis points to a level of 13.47 percent (.1347 - .0943 = .0404), while the 9.35 percent sample average 10-year stock price growth rate reported in column [1] of Schedule D-4.5 would increase 40 basis points to a level of 9.75 percent (.0975 - .0935 = .0040). Mr. Bourassa concluded his response with the following observation:

> Had Mr. Bourassa used the updated annual averages, the indicated cost of capital based on the DCF would have been higher. Accordingly, the indicated cost of capital for the proxy group would have been higher and Mr. Bourassa's recommendation for the Company would also have been higher."

Q. In view of Mr. Bourassa's stock price growth rates having been overstated by (i) measures of cumulative total return obtained from Yahoo Finance adjusted closing prices and (ii) use of an arithmetic mean growth calculation, how does RUCO respond to the above comments?

A. Mr. Bourassa's use of stock price growth as a metric to estimate the dividend growth (g) rate in his constant growth DCF models should be viewed for what it is: a results oriented means of obtaining an inflated DCF derived estimated cost of equity.

Q. For purposes of estimating the dividend grow (g) rate to be used in his constant growth DCF models, does Mr. Bourassa independently estimate the other growth metrics he incorporates into his DCF methodology?

A. No. The only growth metric incorporated into Mr. Bourassa's DCF cost of equity estimation methodology for which he is personally responsible is the previously discussed stock price growth metric. As noted in Footnote 2 of Bourassa Schedules D-4.4 and D-

4.5, all other growth metrics incorporated into his DCF analysis are inputs obtained from *Value Line*.[11]

Q. In light of the above, has RUCO prepared a restatement of Bourassa Schedules D-4.4 and D-4.5 to show what his 5- and 10-year historical and projected dividend growth (g) rates would be exclusive of stock price as a growth metric and updated with the most recent *Value Line* data?

A. Yes. RUCO Exhibit JAC-B is a restatement of Bourassa Schedule D-4.4 presenting Mr. Bourassa's 5-year historical and projected growth rates, exclusive of stock price growth, with all other growth metrics updated as per the most recent *Value Line* data. As shown, RUCO's restatement indicates that Mr. Bourassa's 5-year sample average historical dividend growth (g) estimate is overstated by 14 basis points, his sample average 5-year *Value Line* projected EPS growth estimate is overstated by 135 basis points, resulting in a 75 basis point overstatement to his average of historical and projected dividend growth estimate. The detail provided in RUCO Exhibit JAC-B is presented in abbreviated fashion in the chart below.

Bourassa Schedule D-4.4	5-Year Average Historical Growth	5-Year Value Line Projected EPS Growth	Average Historical & Projected Growth
Bourassa as Filed	6.14%	6.71%	6.43%
RUCO Adjusted	6.00%	5.36%	5.68%
Bourassa Overstatement	0.14%	1.35%	0.75%

[11] Specifically, *Value Line Analyzer*, weekly as of May 14, 2015.

RUCO Exhibit JAC-C presents a similar restatement of Bourassa Schedule D-4.5, with Mr. Bourassa's 10-year historical and projected growth rates shown exclusive of a stock price growth metric, with all other growth metrics updated with the most recent *Value Line* data. As shown, RUCO's restatement indicates that Mr. Bourassa's 10-year sample average historical dividend growth (g) estimate is overstated by 69 basis points, his sample average 5-year *Value Line* projected EPS growth estimate is overstated by 135 basis points, resulting in a 102 basis point overstatement to his average of historical and projected dividend growth estimate. The detail provided in RUCO Exhibit JAC-C is presented in abbreviated fashion in the chart below.

Bourassa Schedule D-4.5	10-Year Average Historical Growth	5-Year Value Line Projected EPS Growth	Average Historical & Projected Growth
Bourassa As Filed	6.07%	6.71%	6.39%
RUCO Adjusted	5.38%	5.36%	5.37%
Bourassa Overstatement	0.69%	1.35%	1.02%

Q. In making the above restatements to Bourassa Schedules D-4.4 and D-4.5, other than the exclusion of historical stock price growth as a metric to estimate dividend (g) growth, did RUCO alter or change in any way Mr. Bourassa's constant growth DCF methodology?

A. No. Aside from excluding stock price as a growth metric, RUCO's restatements were confined merely to an update of Mr. Bourassa's Schedules D-4.4 and D-4.5, as filed, using the most recent updated *Value Line* data available.

Q. Has RUCO prepared similar restatements of Bourassa Schedules D-4.7 (Page 1) and D-4.7 (Page 2) to reflect how the above noted overstatements to Mr. Bourassa's dividend growth estimates serve to overstate his overall constant growth DCF cost of equity estimates?

A. Yes. As shown in Exhibit JAC-D, RUCO's restatement of Bourassa Schedule D-4.7 (Page 1) indicates that Mr. Bourassa's 9.71 percent indicated cost of equity obtained from use of a Value Line projected EPS growth estimate has been overstated by 139 basis points (9.71% - 8.31% = 1.39%). Similarly, as shown in Exhibit JAC-E, RUCO's restatement of Bourassa Schedule D-4.7 (Page 2) indicates that Mr. Bourassa's 9.41 percent indicated cost of equity obtained from use of average of historical and projected growth estimates has been overstated by 77 basis points (9.41% - 8.64% = 0.77%).

Q. Based upon the above RUCO restatements to Bourassa Schedules D-4.7 (Page 1) and D-4.7 (Page 2), what did RUCO determine Mr. Bourassa's average constant growth DCF indicated cost of equity to be?

A. As shown in the restatements of Bourassa Schedules D-4.7 (Pages 1 and 2), RUCO determined Mr. Bourassa's average constant growth DCF indicated cost of equity to be **8.48 percent**, a figure which represents the average of the 8.31 percent indicated cost of equity shown in Exhibit JAC-D and the 8.64 percent indicated cost of equity shown in Exhibit JAC-E ((8.31% + 8.64%) / 2 = 8.48%).

Q. How does the above 8.48 percent RUCO restatement to Mr. Bourassa's constant growth DCF indicated cost of equity compare to RUCO's DCF derived indicated cost of equity in this proceeding?

A. RUCO's DCF derived indicated cost of equity is 8.85 percent. Thus, RUCO's constant growth DCF cost of equity estimate exceeds by 37 basis points the average indicated cost of equity obtained from RUCO's restatement of Mr. Bourassa's two constant growth DCF models (8.85% - 8.48% = 0.37%).

Q. In closing on a discussion of the DCF, in direct testimony (p. 30, lines 8-12) Mr. Bourassa is critical of the DCF model, stating it will "understate the cost of equity when the market-to-book ratio exceeds 1.0," because "the market-derived return produced by the DCF is often applied to book value rate base by regulators." How does RUCO respond?

A. RUCO would simply point out that pursuant to information provided in the November 2015 issue of *AUS Monthly Utility Reports*, the average authorized ROE for RUCO's proxy group of companies was reported to be **9.65 percent**, while the percentage return on book value common equity for these same nine water utilities was **11.4 percent**; this, despite the fact that the market-to-book ratio for these nine publicly-traded water utilities stood at **2.28**. Thus, assuming regulators relied upon cost of equity estimates obtained from the DCF when setting rates for these nine publicly-traded water utilities, doing so doesn't appear to have hampered their ability to achieve returns on book value common equity **175 basis points** higher than their authorized ROE at a time when their market-to-book ratios exceeded book value by 228%.

Q. Moving on to a discussion of Mr. Bourassa's Risk Premium Analysis Based on Total Returns (RPM), as presented in Schedule D-4.9, what is the source of the data used by Mr. Bourassa in the computation of the annual total returns for his sample companies over the 16-year period, 1999-2014?

A. As noted in Footnote 1 of Schedule D-4.9, the source of the total return data used by Mr. Bourassa in his RPM analysis is *Value Line Analyzer*.

Q. Does RUCO subscribe or otherwise have access to *Value Line Analyzer* as an informational resource?

A. No, it does not.

Q. Does RUCO subscribe to *The Value Line Investment Survey*?

A. Yes, RUCO subscribes to both the Standard Large-Cap edition of *The Value Line Investment Survey* as well as the Mid-Cap edition of *The Value Line Investment Survey*. RUCO maintains subscriptions to both editions in order to have access to the quarterly updates for each of the publicly-traded utility companies included in its water, gas, and electric utility proxy groups.

Q. Mr. Bourassa's proxy group consists of seven publicly-traded water utility companies, all of which are followed by the Standard edition of *The Value Line Investment Survey*. Do the quarterly updates issued by *Value Line* for companies in the Standard edition present historical total return data?

A. Yes, but *Value Line* presents this historical total return data only for periods of 1-, 3- and 5-years, updated as of the most recent quarter.

Q. In light of the above, would it therefore be fair to say that, to date, RUCO has yet to obtain independent confirmation of the annual total return values reported by Mr. Bourassa in Schedule D-4.9 through a *Value Line* informational resource?

A. Yes, that would be a fair statement.

Q. In reviewing Mr. Bourassa's work papers was RUCO able to independently confirm as to accuracy the computation of the annual total returns reported in Schedule D-4.9?

A. No, because the work papers contained **no support** for the total returns reported for the 6-year period, 1999-2004, and the only support found in the work papers for the total returns reported for the 10-year period, 2005-2014, was hard coded into the work papers.

Q. Did RUCO issue a Data Request to Mr. Bourassa concerning this issue?

A. Yes. RUCO issued Data Request 4.6 requesting Mr. Bourassa to provide (a) an explanation why the work papers contained no support for the total returns in years 1999-2004, (b) all data inputs necessary to compute annual total returns for his sample companies over the 16-year period, 1999-2004, and (c) a schedule in Excel format showing the computational methodology employed by Mr. Bourassa to compute the annual total returns for the period, 1999-2014.

Q. How did Mr. Bourassa respond to RUCO 4.6?

A. In response (See Bourassa Response to RUCO Data Request 4.6) to part (a) Mr. Bourassa merely confirmed that *Value Line* was the source of the data used to obtain the total returns reported in Schedule D-4.9, and characterized that information to be,

"**publicly available**." To part (b) Mr. Bourassa provided an additional Excel workbook containing what he referred to as, "*Value Line* data for to the years 1999-2005," all of which, once again, had been **hard coded** into the spreadsheet. Mr. Bourassa's response to part (c) reads as follows:

> "**Mr. Bourassa does not compute total returns** for each utility. **He uses the total returns as reported by *Value Line*** for each utility and then computes a composite average for the proxy group. ***Value Line* defines "Total Return" (a stock's total return) as the percentage increase in the value of a shareholder's investment, assuming reinvestment of all dividends and adjusted for any stock splits**. Total returns are shown for a range of time periods in the *Value Line* Investment Analyzer. Returns for periods longer than a year are annualized. An annualized return shows the yearly gain required to achieve a cumulative return. See also the Company's responses to (a) and (b) above." (emphasis added).

Q. Earlier you discussed at length Mr. Bourassa's use of Yahoo Finance adjusted closing prices to compute the stock price growth rates in his constant growth DCF analyses, and demonstrated that rather than simply providing a measure of capital appreciation, Yahoo Finance adjusted closing prices allowed for the computation of cumulative total returns, assuming reinvestment of dividends, correct?

A. Yes, that is true.

Q. Did RUCO endeavor to independently confirm the accuracy of the annual total returns reported in Bourassa Schedule D-4.9 using Yahoo Finance adjusted closing prices?

A. Yes. Utilizing December 31 year-end Yahoo Finance adjusted closing prices obtained from the Yahoo Finance website for each of Mr. Bourassa's sample companies, RUCO

made an independent calculation of total return values over the same 16-year period (i.e., 1999-2014) as that shown in Schedule D-4.9. In doing so, RUCO found that annual total returns obtained from Yahoo Finance adjusted closing prices were **essentially identical** to those presented in Bourassa Schedule D-4.9 over the 14-year period, 2001-2014. However, annual total returns obtained from Yahoo Finance adjusted closing prices for 1999 and 2000 were noticeably different from those presented in Schedule D-4.9. Specifically, as shown in Schedule D-4.9, the annual total returns reported by Mr. Bourassa in years 1999 and 2000 are **26.28 percent** and **2.70 percent**, respectively. In contrast, the total returns obtained by RUCO using Yahoo Finance adjusted closing prices in these same two years are **30.69 percent** and **9.02 percent**, respectively. Thus, based upon RUCO's analysis the total return values reported in Bourassa Schedule D-4.9 in both 1999 and 2000 appear to be **understated**.

Q. Did RUCO determine the magnitude of the understatement to Mr. Bourassa's reported total returns in 1999 and 2000?

A. Yes. Based upon RUCO's calculations, the 1999 annual total return reported in Bourassa Schedule D-4.9 is **understated by 441 basis points** (30.69% - 26.28% = 4.41%), while the annual total return in 2000 is understated by 632 basis points (9.02% - 2.7% = 6.32%).

Q. Does RUCO have reason to believe that total returns reported by *Value Line* for Mr. Bourassa's sample companies over the 16-year period, 1999-2014, should be materially different from those obtained using Yahoo Finance adjusted closing prices?

A. No. In view of the *Value Line* definition of "total return" provided by Mr. Bourassa, annual measures of total return obtained from Yahoo Finance adjusted closing prices should be essentially identical to those reported by *Value Line*, as both are measures of a stock's total return (i.e., they contain both (i) an income component and (ii) a capital appreciation component), assuming reinvestment of all dividends.

Q. Do Mr. Bourassa's work papers contain the December 31 year–end Yahoo Finance adjusted closing prices used to compute the historical 5- and 10-year stock price growth rates in his constant growth DCF analysis?

A. Yes, they are located in the "Price Growth" tab of Mr. Bourassa's work papers.

Q. Do the year-end Yahoo Finance adjusted closing prices located in the 'Price Growth' tab of Mr. Bourassa's work papers go back far enough in time to allow for the computation of both 1999 and 2000 annual total returns for his sample companies?

A. Yes.[12]

[12] For five of Mr. Bourassa's sample companies, the work papers present December 31 year-end Yahoo Finance adjusted closing prices going back to the year 1990.

Q. So had he elected to do so, Mr. Bourassa could have computed 1999 and 2000 annual total returns for each of his sample companies utilizing the Yahoo Finance adjusted closing prices available to him in the work papers, true?

A. Yes, that is correct.

Q. But as evidenced by his response to RUCO 4.6, rather than computing total returns for his sample companies Mr. Bourassa instead relies on total returns reported by *Value Line*, correct?

A. Yes.

Q. Does RUCO have reason to believe that *Value Line* would incorrectly report (i.e., understate) total returns for Mr. Bourassa's sample companies for the years 1999 and 2000?

A. No.

Q. Based on the Yahoo Finance adjusted closing prices in Mr. Bourassa's work papers, did RUCO compute sample average annual total returns for the years 1999 and 2000, and if so, what were they?

A. Yes. Based upon the Yahoo Finance adjusted closing prices found in the work papers, Mr. Bourassa's sample companies experienced annual total returns of **30.74 percent** in 1999, and **8.99 percent** in 2000. RUCO considers these annual total returns to be identical to those independently obtained by RUCO from Yahoo Finance adjusted closing

prices, discussed earlier, in these same two years (i.e., 30.69 percent in 1999 and 9.02 percent in 2000).

Q. Does RUCO have reason to believe that the total return values obtained from use of Yahoo Finance adjusted closing prices for the years 1999 and 2000 are incorrect?

A. No, because the annual total returns obtained from Yahoo Finance adjusted closing prices for the period, 2001-2014, are essentially identical to those reported by Mr. Bourassa in Schedule D-4.9.

Q. Has RUCO prepared a schedule to demonstrate this?

A. Yes. As presented in RUCO Exhibit JAC-F, the annual total returns reported for the 16-year period, 1999-2014, in Bourassa Schedule D-4.9 are shown in Column [A], with Columns [B] and [C] presenting annual total returns obtained from Yahoo Finance adjusted closing prices; those in Column [B] are independently obtained by RUCO, while those in Column [C] are based on adjusted closing prices from Mr. Bourassa's work papers. As can be seen, the annual total returns in Columns [B] and [C] are **identical**, with the 16-year average for both being **11.72 percent**. Likewise, over the 14-year period, 2001-2014, annual total returns shown in Column [A] are essentially identical to those shown in Columns [B] and [C]. Only the annual total returns in Column [A] reported in years 1999 and 2000 are materially different from those in Columns [B] and [C], and result in an **understated** 16-year average annual return of **10.97 percent**.

Q. RUCO has a mandate to advocate on behalf of the residential utility consumer in evidentiary rate proceedings before the ACC. In view of this fact, why has RUCO gone to such great lengths to point out that Mr. Bourassa appears to have understated the 1999 and 2000 annual total returns in his RPM analysis?

A. Because it appears that Mr. Bourassa may have understated the sample average 1999 annual total return value in his RPM analysis in order to derive a **higher** estimated cost of equity.[13] Specifically, RUCO's concerns relate to the 16-year period, 1999-2014, employed by Mr. Bourassa to obtain the equity risk premium component (i.e., 6.4 percent) in his RPM analysis. As will be demonstrated, the market performance of Mr. Bourassa's sample companies in 1999 is clearly **not** representative of that over the subsequent 15-year period, 2000-2014. For this reason RUCO believes use of annual total returns from 1999 in Mr. Bourassa's RPM analysis to be improper, as it overstates both the equity risk premium component as well as the RPM derived cost of equity. The following discussion will shed further light on RUCO's concerns in this regard.

Q. How does Mr. Bourassa describe the risk premium model (RPM) in direct testimony?

A. In his explanatory discussion of the RPM (See Bourassa Direct, pp. 32-33, 20:5), Mr. Bourassa describes the RPM as a 'bond yield plus risk premium' cost of equity estimation methodology, whose "**general approach**" involves determining the spread between the return on debt and the return on equity, and then adding this spread to "**the current debt yield**" to derive an estimated cost of equity. Mr. Bourassa goes on to say that in

---

[13] RUCO has no explanation as to why Mr. Bourassa may have elected to understate the sample average annual total return for the year 2000 in his RPM analysis.

implementing the RPM, "**it is assumed that the past relationship will continue into the future.**" Mr. Bourassa concludes by stating that the RPM is widely used by both "**analysts and investors**" (emphasis added).

Q. Pursuant to the above description provided by Mr. Bourassa, is it important that the historical period used to obtain the equity risk premium component in the RPM be one which is representative of expected future performance?

A. Yes, and Mr. Bourassa, himself, appears to acknowledge this fact when he states that in implementing the RPM, past relationships are assumed to continue into the future.

Q. Does a cursory review of Schedule D-4.9 provide evidence that, as filed, Mr. Bourassa's RPM analysis serves to violate the assumption that past relationships continue into the future?

A. Yes. A cursory review of Schedule D-4.9 reveals that, as filed, Mr. Bourassa obtained both the **highest** annual total return (26.28%) and **highest** annual risk premium (20.41%) results in 1999, the **first** year of the 16-year period used to obtain the equity risk premium component in his RPM analysis.

Q. Earlier you indicated that the 26.28 percent annual total return reported in Schedule D-4.9 for 1999 was understated by 441 basis points. Would it be fair to say that had Mr. Bourassa not understated this value in his RPM analysis, the 1999 performance of his sample companies would have been far less representative of the subsequent 15-year period, 2000-2014?

A. Yes, as **both** the 1999 annual total return and 1999 annual risk premium values would have been 441 basis points **higher**.

Q. In reviewing Mr. Bourassa's work papers, was RUCO able to determine why the annual total return and annual risk premiums were unusually high for Mr. Bourassa's sample companies in 1999?

A. Yes. A review of Mr. Bourassa's work papers indicated that in 1999, common stock investors in one sample company – SJW Corp. – experienced a total return of 111.35 percent.[14] On average, the other water utilities in Mr. Bourassa's sample experienced total returns of only 14.62 percent in 1999.[15] Thus, Mr. Bourassa's high total return and risk premium results in 1999 were largely attributable to the market performance of SJW common stock.

---

[14] This information appears in the "Price Growth" tab of Mr. Bourassa's work papers.
[15] In 1999, no market data was available for York Water Company. Thus, the RPM results obtained by Mr. Bourassa in that year reflect the market performance of only six of his seven sample companies. Beginning in year 2000, market data became available for all seven sample companies.

Q. Was RUCO able to determine if any of Mr. Bourassa's other sample companies experienced total returns equivalent to that of SJW's in 1999?

A. In reviewing Mr. Bourassa's work papers, RUCO found no instance of any sample company experiencing a gain of that magnitude. In fact, over the 16-year period, 1999-2014, the highest annual total return achieved by another sample company was 60.58 percent, by York Water in 2001.[16] Thus, the stellar market performance achieved by SJW in 1999 appears to be a statistical aberration.

Q. For the reasons noted above, is it RUCO's position that the equity risk premium component of Mr. Bourassa's RPM analysis should have been obtained utilizing annual total return data for his sample companies over the 15-year period, 2000-2014?

A. Yes.

Q. Has RUCO prepared an Exhibit which may help to explain why Mr. Bourassa elected to understate the 1999 annual total return for his sample companies in his RPM analysis?

A. Yes. RUCO Exhibit JAC-G presents the annual total returns reported in Schedule D-4.9 over both a 16-year period (i.e., 1999-2014) and a 15-year period (i.e., 2000-2014), and compares them to annual total returns obtained from Yahoo Finance adjusted closing prices over this same 16-year and 15-year period of time. As shown in Column [A], Mr. Bourassa's 16-year average annual total return is 10.97 percent,[17] while the 15-year

---

[16] This information was obtained in the "Price Growth" tab of Mr. Bourassa's Excel work papers.
[17] This 10.97 percent 16-year average annual total return is a value not presented in Schedule D-4.9.

average (i.e., exclusive of 1999) annual total return is 9.95 percent. As shown in Column [B], the comparable 16-year average annual total return based upon Yahoo Finance adjusted closing prices is 11.72 percent, while the 15-year average (i.e., exclusive of 1999) annual total return is 10.45 percent. Clearly, average annual total returns in Column [B] are higher than those in Column [A]. However, had Mr. Bourassa elected to use the annual total returns in Column [B] in his RPM analysis, the 1999 annual total return (30.69%) would have exceeded by a factor of 1.94x the 15-year average (10.45%) annual total return ((30.69% / 10.45%) – 1 = 1.94x). Clearly, a disparity of that magnitude between performance in the first year and that over the next 15-year period would **not** be representative of performance which continued into the future.

Q. Does it appear that Mr. Bourassa may have understated the 1999 annual total return so as not to call attention to the disparity in the performance of his sample companies in 1999 relative to that of the subsequent 15-year 2000-2014 period?

A. Yes, for as shown in Column [A], the 1999 annual total return (26.28%) exceeds by a factor of only 1.64x the 15-year average (9.95%) annual total return ((26.28% / 9.95%) – 1 = 1.64x). Perhaps more significantly, however, the 10.97 percent 16-year average annual total return obtained in Column [A] **exceeds by 52 basis points** the 10.45 percent 15-year average annual return in Column [B]. Thus, by understating the annual total return for 1999, Mr. Bourassa's methodology allows him to benefit from (i.e., piggy back on) the stellar annual total return performance of his sample companies in that year without calling undue attention to his having done so.

Q. Does RUCO acknowledge that there is a certain degree of supposition contained in the above discussion?

A. Yes, but until such time that Mr. Bourassa provides evidence demonstrating that annual total returns for his sample companies in 1999 were 26.28 percent, as he reports them to be in Schedule D-4.9, RUCO continues to believe that this scenario largely explains his RPM methodology.

Q. Thank you. In describing the RPM, you also point out that Mr. Bourassa states the RPM is "widely used by both analysts and investors." In your judgment, would an investor be inclined to view the 1999 annual total return and equity risk premium levels achieved by Mr. Bourassa's sample group of companies as representative of what to expect in the future?

A. No. Investors are assumed to be rational, and in my judgment a rational investor would view the total return and risk premium levels achieved in 1999 as a statistical aberration and, therefore, not representative of investment returns to be expected in the future. Investors would be much more inclined to view performance measured over the 15-year period, 2000-2014, as representative of expected future returns.

Q. For purposes of his RPM analysis, did Mr. Bourassa employ a compound geometric mean in the computation of the annual total returns presented in Schedule D-4.9?

A. No, he did not. Mr. Bourassa employed exclusive use of an arithmetic mean when computing the annual total returns presented in Schedule D-4.9.

Q. Why is exclusive use of arithmetic returns in the development of Mr. Bourassa's RPM equity risk premium inappropriate?

A. It is inappropriate for two reasons. First, exclusive use of arithmetic returns leads to the development of higher, and potentially excessive, risk premiums. Second, investors have access to both arithmetic and geometric returns, and utilize both when making investment decisions. For example, mutual fund investors rely on geometric returns when evaluating a fund's historic and prospective returns, and *Value Line* reports historic investment returns on a geometric or compound annual growth rate basis. Thus, to exclude geometric returns in the development of an equity risk premium fails to give recognition to their importance in the investment decision-making process.

Q. Are the 5-year cumulative total returns presented in the 2014 Annual Report to Shareholders discussed earlier computed as a geometric mean?

A. Yes, as they are reflective of compound average annual growth over a 5-year period. Perhaps more significantly, however, inclusion of these geometric return investment performance metrics in a publication issued by management and intended for consideration by shareholders is further evidence of their perceived importance to investors.

Q. Has the Arizona Corporation Commission (ACC) previously ruled on the issue of geometric returns and whether they should be considered in the development of an equity risk premium?

A. Yes, and the ACC has consistently ruled that geometric returns **should be considered** in the development of an equity risk premium.[18]

Q. Did RUCO issue a data request asking Mr. Bourassa if he considered use of geometric returns in the development of an equity risk premium to be appropriate, and if so, how did he respond?

A. Yes, this question was asked of Mr. Bourassa in RUCO Data Request 7.02. In response (See Bourassa Response to RUCO 7.02), Mr. Bourassa stated that geometric returns should **not** be considered in the development of an equity risk premium, as they are "ex-post" measures of performance and, as such, "provide no insight into the potential variance of future returns."

Q. Has RUCO prepared a restatement of Bourassa Schedule D-4.9 giving consideration to geometric returns in the development of an equity risk premium in Mr. Bourassa's RPM analysis?

A. Yes. As shown in Exhibit JAC-H, RUCO has prepared a restatement of Schedule D-4.9 incorporating geometric returns into his RPM analysis to obtain an average annual

---

[18] *See* Decision No. 70011 (dated November 27, 2007), in *UNS Gas, Inc.* (Docket No. G-04204A-06-0463); Decision No. 70360 (dated May 27, 2008), in *UNS Electric, Inc.* (Docket No. E-04204A-06-0783); Decision No. 71308 (dated October 21, 2009), in *Chaparral City Water Company* (Docket No. W-02113A-07-0551); Decision No. 71623 (dated April 14, 2010), in *UNS Gas, Inc.* (Docket No. G-04204A-08-0571); Decision No. 71845 (dated August 25, 2010), in *Arizona Water Company* (Docket No. W-01445A-08-0440); Decision No. 71914 (dated September 30, 2010), in *UNS Electric, Inc.* (Docket No. E-04204A-09-0206);

compound total return growth rate over both a 16-year period (i.e., 1999-2014) and a 15-year period (i.e., 2000-2014). Column [A] presents Mr. Bourassa's arithmetic mean returns, as filed, while Column [B] presents RUCO's compound geometric returns. As shown, RUCO determined that Mr. Bourassa's sample companies experienced compound average growth in total return of **9.94 percent** over a 16-year period, and compound average growth of **9.17 percent** when measured over a 15-year period.

Q. How did RUCO compute its 16-year and 15-year compound geometric returns?

A. RUCO computed these 16- and 15-year compound geometric returns utilizing Yahoo Finance adjusted closing prices for Mr. Bourassa's sample companies.

Q. What impact did consideration of the above compound geometric returns have upon Mr. Bourassa's RPM analysis?

A. As shown in Column [C] of RUCO Exhibit JAC-H, when averaging (i.e., simple average) the arithmetic returns in Column [A] with RUCO's geometric returns in Column [B], consideration of compound growth metrics in Mr. Bourassa's RPM analysis results in a 16-year average annual total return of **10.46 percent**, and a 15-year average annual total return of **9.56 percent**. In absolute terms, when measured over the 16-year period, 1999-2014, consideration of geometric returns in Mr. Bourassa's RPM analysis results in a **51 basis points reduction** to the 16-year average annual total return (10.97% - 10.46% = 0.51%). Similarly, when measured over the 15-year period, 2000-2014, consideration of geometric returns results in a **39 basis points reduction** to the 15-year average annual total return (9.95% - 9.56% = 0.39%).

Q. In its restatement of Bourassa Schedule D-4.9, did RUCO make other adjustments to Mr. Bourassa's RPM analysis, as filed?

A. Yes, RUCO made adjustments to the long-term Treasury bond yields employed by Mr. Bourassa in the computation of his annual risk premiums. As shown in Column [D] of Exhibit JAC-H, RUCO determined the 16-year average long-term Treasury bond yield to be **4.65 percent**, a figure 11 basis points higher than the **4.54 percent** 16-year average employed by Mr. Bourassa in his RPM analysis (4.65% - 4.54% = 0.11%). When measured over the 15-year period, 2000-2014, RUCO determined the 15-year average long-term Treasury bond yield to be **4.55 percent**.

Q. Why did RUCO make adjustments to the Treasury bond yields in Mr. Bourassa's RPM?

A. RUCO conducted an independent review of annual average U.S. Treasury rates over the 16-year period, 1999-2014, and found that for the most part the annual Treasury yields reported by Mr. Bourassa in Schedule D-4.9 were those of the 30-year long-term Treasury bond. However, in the 4-year period, 1999-2002, and again during the 4-year period, 2006-2009, RUCO found that annual average yields on the 20-year Treasury bond exceeded those of the 30-year Treasury bond due to an **inverted yield curve**. Accordingly, RUCO made adjustments to reflect the higher 20-year U.S. Treasury bond yield in these years. Additionally, during the 3-year period, 2003-2005, the U.S. Treasury discontinued the 30-year long-term bond, and RUCO made adjustments which reflect use of the 20-year long-term Treasury bond yield in these years. Finally, RUCO made an adjustment to the annual average 30-year Treasury bond yield reported by Mr. Bourassa in 2014, as this value had been understated in his analysis.

Q. After giving consideration to geometric returns and making the above adjustments to Mr. Bourassa's Treasury bond yields, what did RUCO determine the 16-year and 15-year average risk premiums to be?

A. As shown in Column [E] of RUCO Exhibit JAC-H, the RUCO adjusted 16-year (i.e., 1999-2014) average risk premium was determined to be **5.81 percent**, while the RUCO adjusted 15-year (i.e., 2000-2014) average risk premium was determined to be **5.02 percent**. As can be seen, each of these adjusted average risk premiums are **lower** than the 6.4 percent 16-year average annual risk premium employed by Mr. Bourassa in his RPM analysis; the RUCO adjusted 16-year average risk premium is **59 basis points lower** (6.4% - 5.81% = 0.59%), while the RUCO adjusted 15-year average risk premium is **138 basis points lower** (6.4% - 5.02% = 1.38%).

Q. Earlier you pointed out that when describing the RPM, Mr. Bourassa stated that the "general approach" involves adding the "current debt yield" to the equity risk premium component to derive an RPM derived estimated cost of equity. Does RUCO believe the 'general approach' to the RPM as described by Mr. Bourassa to be the appropriate RPM methodology to use for purposes of setting the rates a regulated public utility may charge its customers?

A. Yes, and for two reasons. First, the current debt yield is reflective of the rate borne by investors in the marketplace. To set rates based upon projected measures of long-term U.S. Treasury debt instruments ignores the fact that ratepayers don't have the luxury of obtaining comparable "projected" returns on investments today, here and now. This is particularly true when considering the present low rates paid by banks on passbook

savings accounts. Second, regulated public utilities are granted natural monopoly status to serve customers in their certificated service territory, and as a consequence the ratepayers they serve are held captive to the tariffed rates authorized to be charged. Thus, to set rates based on cost of equity estimates obtained through the use of projected measures of long-term Treasury debt yields is inequitable/unfair to ratepayers.

Q. For purposes of arriving at his overall 10.6 percent RPM derived cost of equity, does Mr. Bourassa employ a current measure of the long-term Treasury bond rate?

A. No, he does not. As shown in Schedule D-4.9, Mr. Bourassa employs a 4.20 percent projected 30-year U.S. Treasury Bond rate, from forecasts obtained from *Value Line* and *Blue Chip Financial Forecasts* covering the period, 2016-2018 (*See* Bourassa Direct, pp. 33-34, and Schedule D-4.8). In this respect, Mr. Bourassa's RPM methodology represents a significant departure from the 'general approach' he describes in direct testimony.

Q. In direct testimony, Mr. Bourassa frequently cites to a book authored by Dr. Roger A. Morin.[19] In reviewing the Morin book, did RUCO find support for use of a current measure of the long-term Treasury bond rate in the RPM?

A. Yes. When discussing the choice of the debt security to be used in the RPM, Dr. Morin states that "the yield [i.e., current yield] on very long-term government bonds is the **best measure** of the risk-free rate for use in the risk premium model (emphasis added)."[20]

---

[19] Morin, Roger A., *New Regulatory Finance*, Public Utilities Reports: Vienna, Virginia (2006).
[20] *See* Morin, p. 112.

Q. Does Mr. Bourassa's use of a 4.2 percent projected 30-year long-term Treasury Bond rate in his RPM analysis serve to overstate his 10.6 percent RPM derived cost of equity?

A. Yes, it significantly overstates the cost of equity in his RPM analysis because the current yield on the 30-year U.S. Treasury Bond is **2.93 percent**,[21] a figure **127 basis points lower** than the projected 4.2 percent rate employed by Mr. Bourassa in his analysis (4.20% - 2.93% = 1.27%).

Q. Does RUCO's restatement of Bourassa Schedule D-4.9 present cost of equity estimates obtained using the current 2.93 percent 30-year Treasury Bond rate?

A. Yes. As shown in Column [E] of RUCO Exhibit JAC-H, when incorporating the current 2.93 percent 30-year Treasury Bond rate into Mr. Bourassa's RPM analysis, over a 16-year (i.e., 1999-2014) period the RUCO adjusted RPM cost of equity estimate falls to **8.74 percent**, a figure **186 basis points lower** than Mr. Bourassa's 10.6 percent RPM estimated cost of equity (10.60% - 8.74% = 1.86%). When measured over a 15-year (i.e., 2000-2014) period, the RUCO adjusted RPM cost of equity estimate falls to **7.95 percent**, a figure **265 basis points lower** than Mr. Bourassa's 10.6 percent RPM estimated cost of equity (10.60% - 7.95% = 2.65%).

[21] This was the closing spot-rate on the 30-year U.S. Treasury Bond on Friday, October 30, 2015.

Q. For the reasons discussed earlier, does RUCO believe the above 7.95 percent figure to be the appropriate RPM derived cost of equity to be obtained from Mr. Bourassa's RPM analysis for his sample companies?

A. Yes, as it (i) reflects the measurement of average annual total returns over the 15-year year period, 2000-2014, exclusive of those from 1999, (ii) gives consideration to geometric returns in the development of the equity risk premium component, (iii) makes appropriate adjustments to long-term Treasury Bond yields used in the computation of the annual risk premiums, and (iv) incorporates a current measure of the 30-year long-term Treasury yield.

Q. Turning now to Mr. Bourassa's CAPM cost of equity analysis, as shown in Schedule D-4.11 he obtains estimates from both a Historical Market Risk Premium (MRP) CAPM as well as a Current MRP CAPM. In both, however, the risk-free (R_f) rate component is the same 4.2 percent forecasted long-term Treasury rate as that used by Mr. Bourassa in his RPM analysis. How does RUCO respond?

A. For the reasons noted earlier in my discussion of Mr. Bourassa's RPM analysis, use of forecasted Treasury yields in the CAPM is inappropriate, and serves to **overstate** cost of equity estimates derived therefrom. The appropriate risk-free (R_f) rate to be used in the CAPM is the current long-term Treasury Bond rate. The current spot-yield on the 30-year U.S. Treasury Bond is **2.93 percent**. Thus, Mr. Bourassa's use of a forecasted 4.2 percent risk-free rate overstates the cost of equity estimates derived from both his Historical MRP and Current MRP CAPM models by **127 basis points** (4.20% - 2.93% = 1.27%).

Q. What is the sample average beta coefficient used by Mr. Bourassa in his CAPM analysis?

A. As shown in Schedule D-4.11, Mr. Bourassa's sample average beta coefficient is 0.74.

Q. Since the filing of Mr. Bourassa's direct testimony, has there been a change to Mr. Bourassa's sample average beta?

A. Yes, based on information obtained from the most recent *Value Line* quarterly update for the water utility industry (dated October 16, 2015), RUCO determined that the beta coefficient for Mr. Bourassa's sample companies has fallen to **0.73**. Thus, relative to other publicly-traded companies, the level of systematic (i.e., market) risk exposure to investors holding common shares in the stock of Mr. Bourassa's sample companies is fractionally lower than it was at the time Mr. Bourassa filed direct testimony.

Q. Does RUCO have concerns regarding the 7.00 percent market risk premium (RP_m) component of Mr. Bourassa's Historical MRP CAPM?

A. No.

Q. Does RUCO have concerns regarding the 9.25 percent market risk premium (MRP) component employed by Mr. Bourassa in his Current MRP CAPM?

A. Yes, as his 9.25 percent MRP is clearly **not** reflective of **current** market conditions and has been significantly overstated.

Q. What evidence does RUCO have to demonstrate that the 9.25 percent market risk (RP_m) premium in Mr. Bourassa's Current MRP CAPM is overstated?

A. Evidence of its overstatement can be found in rebuttal testimony filed by Mr. Bourassa in the recent Quail Creek Water Company rate case.[22] Specifically, in Rebuttal (Page 10, lines 20-22), Mr. Bourassa alludes to a recent *Wall Street Journal* article which reported, as he states, that "estimates of the equity risk premium for the S&P 500 as of the end of April 2015 was one of the highest estimates going back to 1960." A review of the article to which Mr. Bourassa cites[23] reveals that as of the end of April 2015, the equity risk premium on the S&P 500 was 5.8 percent, and was based upon the research findings of Dr. Aswath Damodaran, Professor of Finance at the Stern School of Business at New York University.

Q. Does Dr. Damodaran regularly update his research findings as to the current equity risk premium for the S&P 500?

A. Yes, Dr. Damodaran maintains a website dedicated to that purpose.[24] In visiting the website, RUCO found that he had updated his analysis to November 1, 2015, and as of that date the current equity risk premium on the S&P 500 was estimated to be **6.12 percent**.

---

[22] *Quail Creek Water Company* (Docket No. W-02514A-14-0343), Rebuttal Testimony (Cost of Capital) filed by Thomas J. Bourassa, dated June 3, 2015.
[23] Lahart, Justin, "Lower Yields May be Stocks' Real Threat," *The Wall Street Journal*, Heard on the Street Column, May 17, 2015. (http://www.wsj.com/articles/lower-yields-may-be-stocks-real-threat-1431885420)
[24] http://pages.stern.nyu.edu/~adamodar/

Q. Would an equity risk premium on the S&P 500 of 6.12 percent, measured as of November 1, 2015, be considered an indication of the "current" MRP?

A. Yes, because the S&P 500 is a broad based market index of 500 publicly-traded companies, and the performance of the S&P 500 is often used as a proxy for that of the market as a whole.

Q. In light of the above, please quantify the degree to which Mr. Bourassa's 9.25 percent current market risk premium is overstated.

A. Mr. Bourassa has overstated the current MRP component in his Current MRP CAPM analysis by 313 basis points (9.25% - 6.12% = 3.13%).

Q. Has RUCO prepared a restatement to Bourassa Schedule D-4.11 reflecting corrections to the above noted problems associated with Mr. Bourassa's CAPM analysis?

A. Yes. As shown in Exhibit JAC-I, RUCO has prepared a restatement of Schedule D-4.11 to reflect use of (i) the current 2.93 percent 30-year Treasury Bond yield as the risk-free (R_f) rate, (ii) a reduced 0.73 sample average beta coefficient, and (iii) a reduction to the MRP component in Mr. Bourassa's Current MRP CAPM. As can be seen, as adjusted by RUCO Mr. Bourassa's Historical MRP CAPM estimated cost of equity falls from 9.4 percent to 8.03 percent, a reduction of **137 basis points** (9.4% - 8.03% = 1.37%), while Mr. Bourassa's Current MRP CAPM estimated cost of equity falls from 11.0 percent to 7.39 percent, a reduction of **361 basis points** (11.0% - 7.39% = 3.61%). Overall, Mr.

Bourassa's average CAPM estimate falls from 10.2 percent to 7.71 percent, a reduction of **249 basis points** (10.2% - 7.71% = 2.49%).

Q. For purposes of his 10.8 percent recommended cost of equity for Liberty Black Mountain, Mr. Bourassa makes provision for an upward 100 basis point company-specific risk premium which, as noted in his direct testimony (p. 42, line 12) relates to "small size." How does RUCO respond?

A. Empirical research has demonstrated that a small company risk premium adjustment to the cost of equity is unwarranted for regulated utilities. Annie Wong, of Western Connecticut State University, conducted a study on utility stocks to determine if the so-called size effect exists in the utility industry, and she writes as follows:

> The fact that the two samples show different, though weak, results indicates that utility and industrial stocks do not share the same characteristics. First, given firm size, utility stocks are consistently less risky than industrial stocks. Second, industrial betas tend to decrease with firm size but utility betas do not. These findings may be attributed to the fact that all public utilities operate in an environment with regional monopolistic power and regulated financial structure. As a result, the business and financial risks are very similar among the utilities regardless of their size. Therefore, utility betas would not necessarily be expected to be related to firm size.

The object of this study is to examine if the size effect exists in the utility industry. After controlling for equity values, there is some weak evidence that firm size is a missing factor from the CAPM for the industrial but not for the utility stocks. This implies that although the size phenomenon has been strongly documented for industrials, the findings suggest

that **there is no need to adjust for the firm size in utility regulations.**[25] (emphasis added)

Q. Has the Commission previously ruled on the issue of firm size and whether it warrants a risk premium adjustment to the cost of equity?

A. Yes. In Decision No. 64282,[26] the ACC ruled for Arizona Water that firm size does not warrant recognition of a risk premium stating, "We do not agree with the Company's proposal to assign a risk premium to Arizona Water based on its size relative to other publicly traded water utilities...." The Commission confirmed its previous ruling in Decision No. 64727[27] for Black Mountain Gas agreeing with Staff that "the 'firm size phenomenon' does not exist for regulated utilities, and that therefore there is no need to adjust for risk for small firm size in utility regulation." All companies have firm-specific risks; therefore, the existence of unique risks for a company does not lead to the conclusion that its total risk is greater than other entities. Moreover, as previously discussed, investors cannot expect compensation for firm-specific risk since it can be eliminated through diversification.

---

[25] Annie Wong, "Utility Stock and the Size Effect: An Empirical Analysis," *Journal of the Midwest Finance Association*, (1993), p.98.
[26] Dated December 28, 2001.
[27] Dated April 17, 2002.

Q. Has the ACC issued a more recent decision which reconfirms its prior position regarding firm size?

A. Yes, in the recent EPCOR Water Arizona case.[28] In Decision No. 75268[29], the ACC ruled as follows:

> **Nor are we persuaded** by Ms. Ahern's claim **that EPCOR's "size" should be recognized as a business risk factor**. Although a company's size may sometimes be considered as a business risk factor, **for utilities of substantial size (i.e., those that have access to the equity capital markets) it is a minimal consideration in determining business risk**. Small utilities, (e.g., non-class A utilities) may have additional risk due to the inability to hire employees or contract for sufficient levels of expertise management, technical & financial) to perform effectively and efficiently. Small utilities also have other risks such as information access, greater annual variability in operating expenses, and greater regulatory risk both due to lack of skilled rate case personnel and the percentage of operating expenses and rate base components reviewed by Staff and intervenors. Due to the latter two reasons, for any adopted return on equity the distribution of actual returns is greater for a small utility than for a large utility, and greater variability means greater risk. However, most of the proxy companies used in the cost of capital analyses, including EPCOR, are a conglomeration of many smaller water systems and have the capacity to attract the appropriate level of talent for proficient operation. Thus, the business risk for any of the EPCOR systems parallels that of the sample companies, and **we do not believe a cost of equity adjustment for size is appropriate**. (emphasis added)

Q. Does Liberty Black Mountain have access to the equity capital markets?

A. Yes, through its ultimate parent, Algonquin Power & Utilities Corp., whose common stock is publicly traded on the Toronto Stock Exchange (Ticker: AQN).

---

[28] *EPCOR Water Arizona, Inc.* (Docket No. WS-01303A-14-0010).
[29] Dated September 8, 2015.

Q. Does this suggest that pursuant to Decision No. 75268, Mr. Bourassa's 100 basis point upward adjustment for small size is unwarranted?

A. Yes.

XI. CONCLUSION AND RECOMMENDATIONS

Q. Please summarize RUCO's cost of capital recommendations in this proceeding.

A. RUCO recommends that the Commission adopt the following:

1) A pro forma capital structure composed of 30.0 percent long-term debt and 70.0 percent common equity;

2) A cost of debt not to exceed 3.53 percent;

3) A cost of common equity of 8.95 percent; and

4) An overall rate of return of 7.32 percent.

Q. Does this conclude your direct testimony?

A. Yes, it does.

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ending December 31, 2014
Docket No. SW-02361A-15-0206 et al.

SCHEDULE JAC - 1
Page 1 of 1

WEIGHTED AVERAGE COST OF CAPITAL

Line No	Description	Capitalization Per Company	RUCO Adjustments	RUCO Adjusted Capitalization	Capital Ratio	Cost	Weighed Cost
1	Long Term Debt	$ 1,952,259	$ -	$ 1,952,259	30.00%	3.53%	1.06%
2							
3	Common Equity	$ 4,555,272	$ -	$ 4,555,272	70.00%	8.95%	6.27%
4							
5	TOTAL CAPITALIZATION	$6,507,531	$ -	$6,507,531	100.00%		7.32%
6							
7							
8	In its financing application, the Company seeks authorization to issue long-term (i.e., 10-year maturity) non-amortizing debt						
9	of $1,952,259 of 10-year non-amortizing debt at an interest rate of 3.53 percent per annum.						
10							
11							
12							
13							
14							
15							
16							

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ending December 31, 2014
Docket No. SW-02361A-15-0206 et al.

Cost of Capital -- Common Equity

Line No			
1	Discounted Cash Flow Model ("DCF")	Schedule JAC - 3	8.85%
2			
3	Capital Asset Pricing Model ("CAPM")	Schedule JAC - 4	7.56%
4			
5	Comparable Earning Model ("CE")	Schedule JAC - 5	10.44%
6			
7	Cost of Common Equity		8.95%
8			
9			
10			
11			
12			
13			
14			
15			
16			

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ending December 31, 2014
Docket No. SW-02361A-15-0206 et al.

PROXY GROUP – DCF ANALYSIS

Line No	Proxy Group Companies	(A) Current Dividend Yield (D_0/P_0)	(B) Historic Retention Growth	(C) Projected Retention Growth	(D) Five Year Historic Growth Rate	(E) Projected Per Share Growth Rates	(F) Projected EPS Growth	(G) Average Growth	(H) Expected Dividend Yield (D_1/P_0)	(I) DCF Rates
1	American States Water Co.	2.3%	6.0%	6.0%	9.7%	5.5%	5.0%	6.4%	2.4%	8.8%
2	American Water Works Co., Inc	2.5%	3.8%	4.3%		7.0%	7.34%	5.6%	2.6%	8.2%
3	Aqua America, Inc.	2.7%	5.1%	5.5%	8.8%	7.5%	5.55%	6.5%	2.8%	9.3%
4	Artesian Rtesources Corp.	3.6%	1.5%		3.2%		4.0%	2.9%	3.7%	6.6%
5	California Water Service Group	3.1%	3.2%	3.8%	3.7%	6.0%	5.0%	4.3%	3.1%	7.5%
6	Connecticut Water Service, Inc.	3.0%	2.9%	4.7%	6.8%	4.5%	5.0%	4.8%	3.1%	7.8%
7	Middlesex Water	3.2%	2.0%	3.5%	3.0%	3.3%	2.7%	2.9%	3.2%	6.1%
8	SJW Corporation	2.5%	4.1%	3.5%	5.7%	4.5%	14.0%	6.4%	2.6%	9.0%
9	York Water Company	2.7%	2.8%	3.8%	4.3%	5.3%	4.9%	4.2%	2.8%	7.0%
10										
11										
12										
13	Mean	2.84%	3.49%	4.40%	5.65%	5.46%	5.94%	4.90%	2.91%	**7.80%**
14										
15										
16	Median	2.75%	3.24%	4.08%	5.00%	5.42%	5.00%	4.78%	2.80%	**7.83%**
17										
18										
19	Composite-Mean		6.40%	7.30%	8.55%	8.36%	**8.85%**	7.80%		
20										
21										
22	Composite-Median		6.04%	6.89%	7.80%	**8.22%**	7.80%	7.58%		
23										
24										

References:
Column (A) - Schedule JAC - 3, page 3 of 4
Column (B) - Schedule JAC - 3, page 4 of 4
Column (C) - Schedule JAC - 3, page 4 of 4
Column (D) and Column (E) - Schedule JAC - 3, page 2 of 4
Column (F) See Yahoo Finance, Growth Estimates - Next 5 Years - Attachment 7
Column (G) - Average Columns (B) through (F)
Column (H) - Column (A) * [1 + Column (G)]
Column (I) - Column (G) + Column (H)

PROXY GROUP -- PER SHARE GROWTH RATES

Line No	Proxy Group Companies	5-Year Historic Growth Rates				Est'd '12-'14 to '18-'20 Growth Rates			
		EPS	DPS	BVPS	Average	EPS	DPS	BVPS	Average
1									
2	American States Water Co.	14.0%	8.5%	6.5%	9.7%	6.0%	7.5%	3.0%	5.5%
3	American Water Works Co., Inc					7.0%	8.5%	5.5%	7.0%
4	Aqua America, Inc.	13.0%	7.0%	6.5%	8.8%	7.5%	9.5%	5.5%	7.5%
5	Artesian Rtesources Corp.	3.0%	3.5%	3.0%	3.2%				
6	California Water Service Group	4.0%	2.0%	5.0%	3.7%	6.5%	7.0%	4.5%	6.0%
7	Connecticut Water Service, Inc.	9.0%	2.0%	9.5%	6.8%	4.5%	5.0%	4.0%	4.5%
8	Middlesex Water	4.5%	1.5%	3.0%	3.0%	5.0%	2.0%	3.0%	3.3%
9	SJW Corporation	10.5%	3.0%	3.5%	5.7%	1.5%	6.0%	6.0%	4.5%
10	York Water Company	6.0%	2.5%	4.5%	4.3%	6.5%	6.5%	3.0%	5.3%
9									
10									
11					5.6%				5.5%
12									

13 Reference:
14 Value Line Investment Survey - October 16, 2015 - Attachment 1
15
16
17

PROXY GROUP -- DIVIDEND YIELD

Line No	Proxy Group Companies	(A) DPS	(B) July - September, 2014 High	(C) July - September, 2014 Low	(D) July - September, 2014 Average	(E) Yield
1	American States Water Co.	$0.90	$42.40	$35.80	$39.10	2.3%
2	American Water Works Co., Inc	$1.36	$59.20	$50.16	$54.68	2.5%
3	Aqua America, Inc.	$0.71	$28.79	$24.45	$26.62	2.7%
4	Artesian Rtesources Corp.	$0.87	$26.85	$21.32	$24.09	3.6%
5	California Water Service Group	$0.67	$24.35	$19.55	$21.95	3.1%
6	Connecticut Water Service, Inc.	$1.07	$38.49	$33.15	$35.82	3.0%
7	Middlesex Water	$0.77	$26.65	$22.12	$24.39	3.2%
8	SJW Corporation	$0.78	$33.84	$27.66	$30.75	2.5%
9	York Water Company	$0.60	$23.86	$19.69	$21.78	2.7%
10						
11						
12	Average					**2.84%**
13						
14						
15						
16						
17	References:					
18	Column (A) - Value Line Investment Survey October 16, 2015 - Third Quarter Dividends Annualized					
19	Columns (B), (C), and (D) - Yahoo Finance					
20						

PROXY GROUP -- GROWTH RATES - RETAINED TO COMMON EQUITY

Line No	Proxy Group Companies	(A) 2010	(B) 2011	(C) 2012	(D) 2013	(E) 2014	Average	2015	2016	2018-'20	Average
1	American States Water Co.	5.8%	5.3%	6.6%	6.8%	5.7%	6.0%	6.0%	5.5%	6.5%	6.0%
2	American Water Works Co., Inc	2.8%	3.5%	3.6%	4.7%	4.3%	3.8%	4.5%	4.5%	4.0%	4.3%
3	Aqua America, Inc.	3.7%	4.6%	4.3%	6.7%	6.1%	5.1%	5.5%	5.5%	5.5%	5.5%
4	Artesian Rtesources Corp.	2.0%	0.5%	2.5%	0.9%	1.6%	1.5%				
5	California Water Service Group	3.0%	2.3%	3.4%	3.4%	4.1%	3.2%	3.5%	4.5%	3.5%	3.8%
6	Connecticut Water Service, Inc.	1.6%	1.4%	2.8%	3.8%	4.8%	2.9%	5.0%	5.0%	4.0%	4.7%
7	Middlesex Water	2.1%	1.0%	1.4%	2.4%	3.1%	2.0%	3.5%	3.5%	3.5%	3.5%
8	SJW Corporation	1.2%	3.1%	3.3%	2.8%	10.2%	4.1%	4.0%	3.5%	3.0%	3.5%
9	York Water Company	2.7%	2.5%	2.4%	2.4%	3.9%	2.8%	3.5%	4.5%	3.5%	3.8%
10											
11											
12	Average						3.5%				4.4%
13											
14											
15	Source: Value Line Investment Survey October 16, 2015										
16											
17											
18											
19											
20											

CAPITAL ASSET PRICING MODEL -- HISTORICAL MARKET RISK PREMIUM

Line No	Proxy Group Companies	[A] Risk Free Rate	[B] BETA		[C] Risk Premium		[D] CAPM Rates	[E] CAPM Cost of Equity Capital
1	American States Water Co.	2.73%	0.70	X	6.85%	=	4.80%	7.52%
2	American Water Works Co., Inc	2.73%	0.70	X	6.85%	=	4.80%	7.52%
3	Aqua America, Inc.	2.73%	0.75	X	6.85%	=	5.14%	7.87%
4	Artesian Resources Corp.	2.73%	0.55	X	6.85%	=	3.77%	6.50%
5	California Water Service Group	2.73%	0.75	X	6.85%	=	5.14%	7.87%
6	Connecticut Water Service, Inc.	2.73%	0.65	X	6.85%	=	4.45%	7.18%
7	Middlesex Water	2.73%	0.75	X	6.85%	=	5.14%	7.87%
8	SJW Corporation	2.73%	0.75	X	6.85%	=	5.14%	7.87%
9	York Water Company	2.73%	0.75	X	6.85%	=	5.14%	7.87%
10								
11	Average							7.56%
12								
13								
14								

15	20 year Treasury Bonds		30 year Treasury Bonds
16	August, 2015	2.55%	2.86%
17	September, 2015	2.62%	2.95%
18	October, 2015	2.50%	2.89%
19	Average	2.56%	2.90%
20			
21	3-Month Composite Average	2.73%	
22			

23 REFERENCES

24 Column [A]: Federal Reserve Selected Interest Rates H.15 - Attachment 2

25 Column [B]: Value Line Investment Survey - October 16, 2015 - Attachment 1

26 Column [C]: JAC - 4, Page 2 of 2

27 Column [D]: [B] * [C]

Column [E]: [A] + [D]

STANDARD & POOR'S 500 COMPOSITE
20-YEAR U.S. TREASURY BOND YIELDS
RISK PREMIUMS

Line No.	Year	[A] EPS	[B] BVPS	[C] ROE	[D] 20-YEAR T-BOND	[E] RISK PREMIUM
1	1977		$79.07			
2	1978	$12.33	$85.35	15.00%	7.90%	7.10%
3	1979	$14.86	$94.27	16.55%	8.86%	7.69%
4	1980	$14.82	$102.48	15.06%	9.97%	5.09%
5	1981	$15.36	$109.43	14.50%	11.55%	2.95%
6	1982	$12.64	$112.46	11.39%	13.50%	-2.11%
7	1983	$14.03	$116.93	12.23%	10.38%	1.85%
8	1984	$16.64	$122.47	13.90%	11.74%	2.16%
9	1985	$14.61	$125.20	11.80%	11.25%	0.55%
10	1986	$14.48	$126.82	11.49%	8.98%	2.51%
11	1987	$17.50	$134.04	13.42%	7.92%	5.50%
12	1988	$23.75	$141.32	17.25%	8.97%	8.28%
13	1989	$22.87	$147.26	15.85%	8.81%	7.04%
14	1990	$21.73	$153.01	14.47%	8.19%	6.28%
15	1991	$16.29	$158.85	10.45%	8.22%	2.23%
16	1992	$19.09	$149.74	12.37%	7.26%	5.11%
17	1993	$21.89	$180.88	13.24%	7.17%	6.07%
18	1994	$30.60	$193.06	16.37%	6.59%	9.78%
19	1995	$33.96	$215.51	16.62%	7.60%	9.02%
20	1996	$38.73	$237.08	17.11%	6.18%	10.93%
21	1997	$39.72	$249.52	16.33%	6.64%	9.69%
22	1998	$37.71	$266.40	14.62%	5.83%	8.79%
23	1999	$48.17	$290.68	17.29%	5.57%	11.72%
24	2000	$50.00	$325.80	16.22%	6.50%	9.72%
25	2001	$24.69	$338.37	7.43%	5.53%	1.90%
26	2002	$27.59	$321.72	8.36%	5.59%	2.77%
27	2003	$48.73	$367.17	14.15%	4.80%	9.35%
28	2004	$58.55	$414.75	14.98%	5.02%	9.96%
29	2005	$69.93	$453.06	16.12%	4.69%	11.43%
30	2006	$81.51	$504.39	17.03%	4.68%	12.35%
31	2007	$66.17	$529.59	12.49%	4.86%	7.63%
32	2008	$14.88	$451.37	3.03%	4.45%	-1.42%
33	2009	$50.97	$513.58	10.56%	3.47%	7.09%
34	2010	$77.35	$579.14	14.16%	4.25%	9.91%
35	2011	$86.58	$613.14	14.52%	3.81%	10.71%
36	2012	$86.51	$666.97	13.52%	2.40%	11.12%
37	2013	$100.20	$715.84	14.49%	2.86%	11.63%
38	2014	$103.12	$733.84	14.23%	3.12%	11.11%
39	Average			**13.75%**	**6.89%**	**6.85%**

[A]: Diluted earnings per share on the S&P 500 Composite Index.
[B]: Book value per share on the S&P 500 Composite Index.
[C]: Average of current- and prior year [B] / current year [A].
[D]: Annual income returns on 20-year U.S. Treasury bonds.
[E]: [C] - [D]
Sources for [A] and [B]: Standard & Poor's 2015 Analysts' Handbook.
Source for [D]: Morningstar 2015 Classic Yearbook (Table A-7).

COMPARABLE EARNINGS ANALYSIS

RETURN ON COMMON EQUITY FOR RUCO'S PROXY GROUP OF COMPANIES

Company	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2018 - 2020	10-Year Historical Average 2005-2014	5-Year Historical Average 2010-2014	5-Year Projected Average 2015-2019
American States Water Co.	8.5%	8.1%	9.3%	8.6%	8.2%	11.0%	10.3%	11.9%	12.7%	12.0%	12.5%	13.0%	14.5%	10.1%	11.6%	13.3%
American Water Works					5.2%	6.5%	7.2%	8.4%	7.8%	8.7%	9.0%	9.0%	9.0%	7.3%	7.7%	9.0%
Aqua America, Inc.	11.2%	10.0%	9.7%	9.3%	9.4%	10.6%	11.6%	11.0%	13.4%	12.9%	12.5%	13.0%	14.0%	10.9%	11.9%	13.2%
Artesian Resources			7.4%	7.3%	8.0%	8.0%	6.0%	8.3%	6.8%	7.6%				7.4%	7.3%	
California Water Service Group	9.3%	6.8%	8.1%	9.9%	9.6%	8.6%	8.0%	9.0%	7.9%	9.1%	8.5%	9.5%	9.5%	8.6%	8.5%	9.2%
Connecticut Water Service, Inc.	7.6%	7.0%	8.7%	9.1%	9.4%	8.7%	8.3%	7.3%	9.2%	10.2%	10.5%	10.5%	9.5%	8.6%	8.7%	10.2%
Middlesex Water	8.6%	7.8%	8.7%	8.9%	7.0%	8.2%	7.5%	7.8%	8.7%	9.3%	9.5%	9.5%	9.5%	8.3%	8.3%	9.5%
SJW Corporation	10.6%	9.7%	8.2%	8.0%	6.0%	6.2%	7.9%	8.1%	7.3%	14.4%	8.0%	8.0%	7.5%	8.6%	8.8%	7.8%
York Water	11.6%	9.3%	9.5%	9.2%	8.6%	9.8%	9.5%	9.3%	9.3%	11.0%	10.5%	11.5%	12.0%	9.7%	9.8%	11.3%
Mean	9.6%	8.4%	8.7%	8.8%	7.9%	8.6%	8.5%	9.0%	9.2%	10.6%	10.1%	10.5%	10.7%	8.83%	9.18%	**10.44%**
Median	9.3%	8.1%	8.7%	9.0%	8.2%	8.6%	8.0%	8.4%	8.7%	10.2%	10.0%	10.0%	9.5%	8.63%	8.74%	**9.83%**
Average of Mean and Median																**10.14%**

Source: Value Line Investment Survey (October 16, 2015).

ECONOMIC INDICATORS

Line No	Year	Real GDP Growth	Industrial Production Growth	Unemployment Rate	Consumer Price Index	Producer Price Index
1	1975	-1.1%	-8.9%	8.5%	7.0%	6.6%
2	1976	5.4%	10.8%	7.7%	4.8%	3.7%
3	1977	5.5%	5.9%	7.0%	6.8%	6.9%
4	1978	5.0%	5.7%	6.0%	9.0%	9.2%
5	1979	2.8%	4.4%	5.8%	13.3%	12.8%
6	1980	-0.2%	-1.9%	7.0%	12.4%	11.8%
7	1981	1.8%	1.9%	7.5%	8.9%	7.1%
8	1982	-2.1%	-4.4%	9.5%	3.8%	3.6%
9	1983	4.0%	3.7%	9.5%	3.8%	0.6%
10	1984	6.8%	9.3%	7.5%	3.9%	1.7%
11	1985	3.7%	1.7%	7.2%	3.8%	1.8%
12	1986	3.1%	0.9%	7.0%	1.1%	-2.3%
13	1987	2.9%	4.9%	6.2%	4.4%	2.2%
14	1988	3.8%	4.5%	5.5%	4.4%	4.0%
15	1989	3.5%	1.8%	5.3%	4.6%	4.9%
16	1990	1.8%	-0.2%	5.6%	6.1%	5.7%
17	1991	-0.5%	-2.0%	6.8%	3.1%	-0.1%
18	1992	3.0%	3.1%	7.5%	2.9%	1.6%
19	1993	2.7%	3.4%	6.9%	2.7%	0.2%
20	1994	4.0%	5.5%	6.1%	2.7%	1.7%
21	1995	3.7%	4.8%	5.6%	2.5%	2.3%
22	1996	4.5%	4.3%	5.4%	3.3%	2.8%
23	1997	4.5%	7.3%	4.9%	1.7%	-1.2%
24	1998	4.2%	5.8%	4.5%	1.6%	0.0%
25	1999	3.7%	4.5%	4.2%	2.7%	2.9%
26	2000	4.1%	4.0%	4.0%	3.4%	3.6%
27	2001	1.1%	-3.4%	4.7%	1.6%	-1.6%
28	2002	1.8%	0.2%	5.8%	2.4%	1.2%
29	2003	2.8%	1.2%	6.0%	1.9%	4.0%
30	2004	3.8%	2.3%	5.5%	3.3%	4.2%
31	2005	3.3%	3.3%	5.1%	3.4%	5.4%
32	2006	2.7%	2.2%	4.6%	2.5%	1.1%
33	2007	1.8%	2.5%	4.6%	4.1%	6.2%
34	2008	-0.3%	-3.4%	5.8%	0.1%	-0.9%
35	2009	-2.8%	-11.3%	9.3%	2.7%	4.3%
36	2010	2.5%	5.6%	9.6%	1.5%	4.7%
37	2011	1.6%	3.0%	8.9%	3.0%	4.7%
38	2012	2.2%	2.8%	8.1%	1.7%	1.4%
39	2013	1.5%	1.9%	7.4%	1.5%	0.8%
40	2014	2.4%	3.7%	6.2%	0.8%	-1.2%

Source: Council of Economic Advisors, Economic Indicators, various issues.

ECONOMIC INDICATORS

Line No	Year	Real GDP* Growth	Industrial Production Growth	Unemployment Rate	Consumer Price Index	Producer Price Index
1	**2003**					
2	1st Qtr.	1.2%	1.1%	5.8%	4.8%	5.6%
3	2nd Qtr.	3.5%	-0.9%	6.2%	0.0%	-0.5%
4	3rd Qtr.	7.5%	-0.9%	6.1%	3.2%	3.2%
5	4th Qtr.	2.7%	1.5%	5.9%	-0.3%	2.8%
6	**2004**					
7	1st Qtr.	3.0%	2.8%	5.6%	5.2%	5.2%
8	2nd Qtr.	3.5%	4.9%	5.6%	4.4%	4.4%
9	3rd Qtr.	3.6%	4.6%	5.4%	0.8%	0.8%
10	4th Qtr.	2.5%	4.3%	5.4%	3.6%	7.2%
11	**2005**					
12	1st Qtr.	4.1%	3.8%	5.3%	4.4%	5.6%
13	2nd Qtr.	1.7%	3.0%	5.1%	1.6%	-0.4%
14	3rd Qtr.	3.1%	2.7%	5.0%	8.8%	14.0%
15	4th Qtr.	2.1%	2.9%	4.9%	-2.0%	4.0%
16	**2006**					
17	1st Qtr.	5.4%	3.4%	4.7%	4.8%	-0.2%
18	2nd Qtr.	1.4%	4.5%	4.6%	4.8%	5.6%
19	3rd Qtr.	0.1%	5.2%	4.7%	0.4%	-4.4%
20	4th Qtr.	3.0%	3.5%	4.5%	0.0%	3.6%
21	**2007**					
22	1st Qtr.	0.9%	2.5%	4.5%	4.8%	6.4%
23	2nd Qtr.	3.2%	1.6%	4.5%	5.2%	6.8%
24	3rd Qtr.	2.3%	1.8%	4.6%	1.2%	1.2%
25	4th Qtr.	2.9%	2.1%	4.8%	0.6%	6.5%
26	**2008**					
27	1st Qtr.	-1.8%	1.9%	4.9%	2.8%	9.6%
28	2nd Qtr.	1.3%	0.2%	5.3%	7.6%	14.0%
29	3rd Qtr.	-3.7%	-3.0%	6.0%	2.8%	-0.4%
30	4th Qtr.	-8.9%	6.0%	6.9%	-13.2%	-28.4%
31	**2009**					
32	1st Qtr.	-5.3%	-11.6%	8.1%	2.4%	-0.4%
33	2nd Qtr.	-0.3%	-12.9%	9.3%	3.2%	9.2%
34	3rd Qtr.	1.4%	-9.3%	9.6%	2.0%	-0.8%
35	4th Qtr.	4.0%	-4.5%	10.0%	2.5%	8.8%
36	**2010**					
37	1st Qtr.	1.6%	2.7%	9.7%	0.9%	6.5%
38	2nd Qtr.	3.9%	6.5%	9.7%	-1.2%	-2.4%
39	3rd Qtr.	2.8%	6.9%	9.6%	2.8%	4.0%
40	4th Qtr.	2.8%	6.2%	9.6%	2.8%	9.2%
41	**2011**					
42	1st Qtr.	-1.3%	5.4%	9.0%	4.8%	9.6%
43	2nd Qtr.	3.2%	3.6%	9.0%	3.2%	3.6%
44	3rd Qtr.	1.4%	3.3%	9.1%	2.4%	6.4%
45	4th Qtr.	4.9%	4.0%	8.7%	0.4%	-1.2%
46	**2012**					
47	1st Qtr.	3.7%	4.5%	8.3%	3.2%	2.0%
48	2nd Qtr.	1.2%	4.7%	8.2%	0.0%	-2.8%
49	3rd Qtr.	2.8%	3.4%	8.1%	4.0%	9.6%
50	4th Qtr.	0.1%	2.8%	7.8%	0.0%	-3.6%
51	**2013**					
52	1st Qtr.	1.9%	2.5%	7.7%	2.0%	1.2%
53	2nd Qtr.	1.1%	2.0%	7.6%	0.8%	2.4%
54	3rd Qtr.	3.0%	2.5%	7.3%	2.0%	0.0%
55	4th Qtr.	3.8%	2.6%	7.0%	0.3%	0.3%
56	**2014**					
57	1st Qtr.	-0.9%	3.9%	6.7%	1.6%	0.3%
58	2nd Qtr.	4.6%	4.1%	6.2%	4.0%	0.2%
59	3rd Qtr.	4.3%	4.7%	6.0%	3.9%	0.0%
60	4th Qtr.	2.1%	4.6%	5.7%	-0.2%	-0.8%
61	**2015**					
62	1st Qtr.	0.6%	3.5%	5.6%	-0.1%	-0.7%
63	2nd Qtr.	3.9%	1.4%	5.4%	0.3%	0.5%
64	3rd Qtr.	1.5%	N/A	5.2%	-0.1%	-0.6%
65	4th Qtr.	N/A	N/A	N/A	N/A	N/A

*GDP=Gross Domestic Product

Source: Council of Economic Advisors, Economic Indicators, various issues.

INTEREST RATES

Line No	Year	Prime Rate	US Treasury T Bills 3 Month	US Treasury T Bonds 10 Year	Utility Bonds Aaa		Utility Bonds Aa	Utility Bonds A	Utility Bonds Baa
1	1975	7.86%	5.84%	7.99%	9.03%		9.44%	10.09%	10.96%
2	1976	6.84%	4.99%	7.61%	8.63%		8.92%	9.29%	9.82%
3	1977	6.83%	5.27%	7.42%	8.19%		8.43%	8.61%	9.06%
4	1978	9.06%	7.22%	8.41%	8.87%		9.10%	9.29%	9.62%
5	1979	12.67%	10.04%	9.44%	9.86%		10.22%	10.49%	10.96%
6	1980	15.27%	11.51%	11.46%	12.30%		13.00%	13.34%	13.95%
7	1981	18.89%	14.03%	13.93%	14.64%		15.30%	15.95%	16.60%
8	1982	14.86%	10.69%	13.00%	14.22%		14.79%	15.86%	16.45%
9	1983	10.79%	8.63%	11.10%	12.52%		12.83%	13.66%	14.20%
10	1984	12.04%	9.58%	12.44%	12.72%		13.66%	14.03%	14.53%
11	1985	9.93%	7.48%	10.62%	11.68%		12.06%	12.47%	12.96%
12	1986	8.33%	5.98%	7.68%	8.92%		9.30%	9.58%	10.00%
13	1987	8.21%	5.82%	8.39%	9.52%		9.77%	10.10%	10.53%
14	1988	9.32%	6.69%	8.85%	10.05%		10.26%	10.49%	11.00%
15	1989	10.87%	8.12%	8.49%	9.32%		9.56%	9.77%	9.97%
16	1990	10.01%	7.51%	8.55%	9.45%		9.65%	9.86%	10.06%
17	1991	8.46%	5.42%	7.86%	8.85%		9.09%	9.36%	9.55%
18	1992	6.25%	3.45%	7.01%	8.19%		8.55%	8.69%	8.86%
19	1993	6.00%	3.02%	5.87%	7.29%		7.44%	7.59%	7.91%
20	1994	7.15%	4.29%	7.09%	8.07%		8.21%	8.31%	8.63%
21	1995	8.83%	5.51%	6.57%	7.68%		7.77%	7.89%	8.29%
22	1996	8.27%	5.02%	6.44%	7.48%		7.57%	7.75%	8.16%
23	1997	8.44%	5.07%	6.35%	7.43%		7.54%	7.60%	7.95%
24	1998	8.35%	4.81%	5.26%	6.77%		6.91%	7.04%	7.26%
25	1999	8.00%	4.66%	5.65%	7.21%		7.51%	7.62%	7.88%
26	2000	9.23%	5.85%	6.03%	7.88%		8.06%	8.24%	8.36%
27	2001	6.91%	3.44%	5.02%	7.47%		7.59%	7.78%	8.02%
28	2002	4.67%	1.62%	4.61%		[1]	7.19%	7.37%	8.02%
29	2003	4.12%	1.01%	4.01%			6.40%	6.58%	6.84%
30	2004	4.34%	1.38%	4.27%			6.04%	6.16%	6.40%
31	2005	6.19%	3.16%	4.29%			5.44%	5.65%	5.93%
32	2006	7.96%	4.73%	4.80%			5.84%	6.07%	6.32%
33	2007	8.05%	4.41%	4.63%			5.94%	6.07%	6.33%
34	2008	5.09%	1.48%	3.66%			6.18%	6.53%	7.25%
35	2009	3.25%	0.16%	3.26%			5.75%	6.04%	7.06%
36	2010	3.25%	0.14%	3.22%			5.24%	5.46%	5.96%
37	2011	3.25%	0.06%	2.78%			4.78%	5.04%	5.57%
38	2012	3.25%	0.09%	1.80%			3.83%	4.13%	4.86%
39	2013	3.25%	0.06%	2.35%			4.24%	4.47%	4.98%
40	2014	3.25%	0.03%	2.54%			NA	NA	4.77%

[1] Note: Moody's has not published Aaa utility bond yields since 2001.

Sources: Council of Economic Advisors, Economic Indicators; Moody's Bond Record; Federal Reserve Bulletin; various issues.

INTEREST RATES

Line No		Prime Rate	US Treasury T Bills 3 Month	US Treasury T Bonds 10 Year	Utility Bonds Aa	Utility Bonds A	Utility Bonds Baa
1	**2007**						
2	Jan	8.25%	4.96%	4.76%	5.78%	5.96%	6.16%
3	Feb	8.25%	5.02%	4.72%	5.73%	5.90%	6.10%
4	Mar	8.25%	4.97%	4.56%	5.66%	5.85%	6.10%
5	Apr	8.25%	4.88%	4.69%	5.83%	5.97%	6.24%
6	May	8.25%	4.77%	4.75%	5.86%	5.99%	6.23%
7	June	8.25%	4.63%	5.10%	6.18%	6.30%	6.54%
8	July	8.25%	4.84%	5.00%	6.11%	6.25%	6.49%
9	Aug	8.25%	4.34%	4.67%	6.11%	6.24%	6.51%
10	Sept	7.75%	4.01%	4.52%	6.10%	6.18%	6.45%
11	Oct	7.50%	3.97%	4.53%	6.04%	6.11%	6.36%
12	Nov	7.50%	3.49%	4.15%	5.87%	5.97%	6.27%
13	Dec	7.25%	3.08%	4.10%	6.03%	6.16%	6.51%
14	**2008**						
15	Jan	6.00%	2.86%	3.74%	5.87%	6.02%	6.35%
16	Feb	6.00%	2.21%	3.74%	6.04%	6.21%	6.60%
17	Mar	5.25%	1.38%	3.51%	5.99%	6.21%	6.68%
18	Apr	5.00%	1.32%	3.68%	5.99%	6.29%	6.82%
19	May	5.00%	1.71%	3.88%	6.07%	6.27%	6.79%
20	June	5.00%	1.90%	4.10%	6.19%	6.38%	6.93%
21	July	5.00%	1.72%	4.01%	6.13%	6.40%	6.97%
22	Aug	5.00%	1.79%	3.89%	6.09%	6.37%	6.98%
23	Sept	5.00%	1.46%	3.69%	6.13%	6.49%	7.15%
24	Oct	4.00%	0.84%	3.81%	6.95%	7.56%	8.58%
25	Nov	4.00%	0.30%	3.53%	6.83%	7.60%	8.98%
26	Dec	3.25%	0.04%	2.42%	5.93%	6.54%	8.13%
27	**2009**						
28	Jan	3.25%	0.12%	2.52%	6.01%	6.39%	7.90%
29	Feb	3.25%	0.31%	2.87%	6.11%	6.30%	7.74%
30	Mar	3.25%	0.25%	2.82%	6.14%	6.42%	8.00%
31	Apr	3.25%	0.17%	2.93%	6.20%	6.48%	8.03%
32	May	3.25%	0.15%	3.29%	6.23%	6.49%	7.76%
33	June	3.25%	0.17%	3.72%	6.13%	6.20%	7.30%
34	July	3.25%	0.19%	3.56%	5.63%	5.97%	6.87%
35	Aug	3.25%	0.18%	3.59%	5.33%	5.71%	6.36%
36	Sept	3.25%	0.13%	3.40%	5.15%	5.53%	6.12%
37	Oct	3.25%	0.08%	3.39%	5.23%	5.55%	6.14%
38	Nov	3.25%	0.05%	3.40%	5.33%	5.64%	6.18%
39	Dec	3.25%	0.07%	3.59%	5.52%	5.79%	6.26%
40	**2010**						
41	Jan	3.25%	0.06%	3.73%	5.55%	5.77%	6.16%
42	Feb	3.25%	0.10%	3.69%	5.69%	5.87%	6.25%
43	Mar	3.25%	0.15%	3.73%	5.64%	5.84%	6.22%
44	Apr	3.25%	0.15%	3.85%	5.62%	5.81%	6.19%
45	May	3.25%	0.16%	3.42%	5.29%	5.50%	5.97%
46	June	3.25%	0.12%	3.20%	5.22%	5.46%	6.18%
47	July	3.25%	0.16%	3.01%	4.99%	5.26%	5.98%
48	Aug	3.25%	0.15%	2.70%	4.75%	5.01%	5.55%
49	Sept	3.25%	0.15%	2.65%	4.74%	5.01%	5.53%
50	Oct	3.25%	0.13%	2.54%	4.89%	5.10%	5.62%
51	Nov	3.25%	0.13%	2.76%	5.12%	5.37%	5.85%
52	Dec	3.25%	0.15%	3.29%	5.32%	5.56%	6.04%

INTEREST RATES

Line No		Prime Rate	US Treasury T Bills 3 Month	US Treasury T Bonds 10 Year	Utility Bonds Aa	Utility Bonds A	Utility Bonds Baa
53	**2011**						
54	Jan	3.25%	0.15%	3.39%	5.29%	5.57%	6.06%
55	Feb	3.25%	0.14%	3.58%	5.42%	5.68%	6.10%
56	Mar	3.25%	0.11%	3.41%	5.33%	5.56%	5.97%
57	Apr	3.25%	0.06%	3.46%	5.32%	5.55%	5.98%
58	May	3.25%	0.04%	3.17%	5.08%	5.32%	5.74%
59	June	3.25%	0.04%	3.00%	5.04%	5.26%	5.67%
60	July	3.25%	0.03%	3.00%	5.05%	5.27%	5.70%
61	Aug	3.25%	0.05%	2.30%	4.44%	4.69%	5.22%
62	Sept	3.25%	0.02%	1.98%	4.24%	4.48%	5.11%
63	Oct	3.25%	0.02%	2.15%	4.21%	4.52%	5.24%
64	Nov	3.25%	0.01%	2.01%	3.92%	4.25%	4.93%
65	Dec	3.25%	0.02%	1.98%	4.00%	4.33%	5.07%
66	**2012**						
67	Jan	3.25%	0.02%	1.97%	4.03%	4.34%	5.06%
68	Feb	3.25%	0.08%	1.97%	4.02%	4.36%	5.02%
69	Mar	3.25%	0.09%	2.17%	4.16%	4.48%	5.13%
70	Apr	3.25%	0.08%	2.05%	4.10%	4.40%	5.11%
71	May	3.25%	0.09%	1.80%	3.92%	4.20%	4.97%
72	June	3.25%	0.09%	1.62%	3.79%	4.08%	4.91%
73	July	3.25%	0.10%	1.53%	3.58%	3.93%	4.85%
74	Aug	3.25%	0.11%	1.68%	3.65%	4.00%	4.88%
75	Sept	3.25%	0.10%	1.72%	3.69%	4.02%	4.81%
76	Oct	3.25%	0.10%	1.75%	3.68%	3.91%	4.54%
77	Nov	3.25%	0.11%	1.65%	3.60%	3.84%	4.42%
78	Dec	3.25%	0.08%	1.72%	3.75%	4.00%	4.56%
79	**2013**						
80	Jan	3.25%	0.07%	1.91%	3.90%	4.15%	4.66%
81	Feb	3.25%	0.10%	1.98%	3.95%	4.18%	4.74%
82	Mar	3.25%	0.09%	1.96%	3.90%	4.15%	4.66%
83	Apr	3.25%	0.06%	1.76%	3.74%	4.00%	4.49%
84	May	3.25%	0.05%	1.93%	3.91%	4.17%	4.65%
85	June	3.25%	0.05%	2.30%	4.27%	4.53%	5.08%
86	July	3.25%	0.04%	2.58%	4.44%	4.68%	5.21%
87	Aug	3.25%	0.04%	2.74%	4.53%	4.73%	5.28%
88	Sept	3.25%	0.02%	2.81%	4.58%	4.80%	5.31%
89	Oct	3.25%	0.06%	2.62%	4.48%	4.70%	5.17%
90	Nov	3.25%	0.07%	2.72%	4.56%	4.77%	5.24%
91	Dec	3.25%	0.07%	2.90%	4.90%	4.81%	5.25%
92	**2014**						
93	Jan	3.25%	0.05%	2.86%	4.44%	4.63%	5.09%
94	Feb	3.25%	0.06%	2.71%	4.38%	4.53%	5.01%
95	Mar	3.25%	0.05%	2.72%	4.40%	4.51%	5.00%
96	Apr	3.25%	0.04%	2.71%	4.30%	4.41%	4.85%
97	May	3.25%	0.03%	2.56%	4.16%	4.26%	4.69%
98	June	3.25%	0.03%	2.60%	4.26%	4.29%	4.73%
99	July	3.25%	0.03%	2.54%	4.16%	4.23%	4.66%
100	Aug	3.25%	0.03%	2.50%	4.07%	4.13%	4.65%
101	Sept	3.25%	0.03%	2.50%	4.06%	4.23%	4.55%
102	Oct	3.25%	0.02%	2.49%	4.10%	4.13%	4.55%
103	Nov	3.25%	0.02%	2.33%	NA	NA	4.69%
104	Dec	3.25%	0.03%	2.21%	NA	NA	4.74%

[1] Note: Moody's has not published Aaa utility bond yields since 2001.

Sources: Council of Economic Advisors, Economic Indicators; Moody's Bond Record; Federal Reserve Bulletin; various issues.

STOCK PRICE INDICATORS

Line No	Year	S&P Composite	NASDAQ Composite	DJIA	S&P Dividend/Price Ratio	S&P Earnings/Price Ratio
1	1975			802.49	4.31%	9.15%
2	1976			974.92	3.77%	8.90%
3	1977			894.63	4.62%	10.79%
4	1978			820.23	5.28%	12.03%
5	1979			844.40	5.47%	13.46%
6	1980			891.41	5.26%	12.66%
7	1981			932.92	5.20%	11.96%
8	1982			884.36	5.81%	11.60%
9	1983			1,190.34	4.40%	8.03%
10	1984			1,178.48	4.64%	10.02%
11	1985			1,328.23	4.25%	8.12%
12	1986			1,792.76	3.49%	6.09%
13	1987			2,275.99	3.08%	5.48%
14	1988			2,060.82	3.64%	8.01%
15	1989	322.84		2,508.91	3.45%	7.41%
16	1990	334.59		2,678.94	3.61%	6.47%
17	1991	376.18	491.69	2,929.33	3.24%	4.79%
18	1992	415.74	$599.26	3,284.29	2.99%	4.22%
19	1993	451.21	715.16	3,522.06	2.78%	4.46%
20	1994	460.42	751.65	3,793.77	2.82%	5.83%
21	1995	541.72	925.19	4,493.76	2.56%	6.09%
22	1996	670.50	1,164.96	5,742.89	2.19%	5.24%
23	1997	873.43	1,469.49	7,441.15	1.77%	4.57%
24	1998	1,085.50	1,794.91	8,625.52	1.49%	3.46%
25	1999	1,327.33	2,728.15	10,464.88	1.25%	3.17%
26	2000	1,427.22	2,783.67	10,734.90	1.15%	3.63%
27	2001	1,194.18	2,035.00	10,189.13	1.32%	2.95%
28	2002	993.94	1,539.73	9,226.43	1.61%	2.92%
29	2003	965.23	1,647.17	8,993.59	1.77%	3.84%
30	2004	1,130.65	1,986.53	10,317.39	1.72%	4.89%
31	2005	1,207.06	2,099.03	10,547.67	1.83%	5.36%
32	2006	1,310.67	2,265.17	11,408.67	1.87%	5.78%
33	2007	1,476.66	2,577.12	13,169.98	1.86%	5.29%
34	2008	1,220.89	2,162.46	11,252.61	2.37%	3.54%
35	2009	946.73	1,841.03	8,876.15	2.40%	1.86%
36	2010	1,139.31	2,347.70	10,662.80	1.98%	6.04%
37	2011	1,268.89	2,680.42	11,966.36	2.05%	6.77%
38	2012	1,379.56	2,965.77	12,967.08	2.24%	6.20%
39	2013	1,462.51	3,537.69	14,999.67	2.14%	5.57%
40	2014	1,930.67	4,374.31	16,773.99	2.04%	5.25%

Source: Council of Economic Advisors, Economic Indicators, various issues.

STOCK PRICE INDICATORS

Line No		S&P Composite	NASDAQ Composite	DJIA	S&P Dividends/Price Ratio	S&P Earnings/Price Ratio
1	**2004**					
2	1st Qtr.	1,133.29	2,041.95	10,488.43	1.64%	4.62%
3	2nd Qtr.	1,122.87	1,984.13	10,289.04	1.71%	4.92%
4	3rd Qtr.	1,104.15	1,872.90	10,129.85	1.79%	5.18%
5	4th Qtr.	1,162.07	2,050.22	10,362.25	1.75%	4.83%
6						
7	**2005**					
8	1st Qtr.	1,191.98	2,056.01	10,648.48	1.77%	5.11%
9	2nd Qtr.	1,181.65	2,012.24	10,382.35	1.85%	5.32%
10	3rd Qtr.	1,225.91	2,144.61	10,532.24	1.83%	5.42%
11	4th Qtr.	1,262.07	2,246.09	10,827.79	1.86%	5.60%
12						
13	**2006**					
14	1st Qtr.	1,283.04	2,287.97	10,996.04	1.85%	5.61%
15	2nd Qtr.	1,281.77	2,240.46	11,188.84	1.90%	5.86%
16	3rd Qtr.	1,288.40	2,141.97	11,274.49	1.91%	5.88%
17	4th Qtr.	1,389.48	2,390.26	12,175.30	1.81%	5.75%
18						
19	**2007**					
20	1st Qtr.	1,425.30	2,444.85	12,470.97	1.84%	5.85%
21	2nd Qtr.	1,496.43	2,552.37	13,214.26	1.82%	5.65%
22	3rd Qtr.	1,490.81	2,609.68	13,488.43	1.86%	5.15%
23	4th Qtr.	1,494.09	2,701.59	13,502.95	1.91%	4.51%
24						
25	**2008**					
26	1st Qtr.	1,350.19	2,332.91	12,383.86	2.11%	4.55%
27	2nd Qtr.	1,371.65	2,426.26	12,508.59	2.10%	4.05%
28	3rd Qtr.	1,251.94	2,290.87	11,322.40	2.29%	3.94%
29	4th Qtr.	909.80	1,599.64	8,795.61	2.98%	1.65%
30						
31	**2009**					
32	1st Qtr.	809.31	1,485.14	7,774.06	3.00%	0.86%
33	2nd Qtr.	892.23	1,731.41	8,327.83	2.45%	0.82%
34	3rd Qtr.	996.68	1,985.25	9,229.93	2.16%	1.19%
35	4th Qtr.	1,088.70	2,162.33	10,172.78	1.99%	4.57%
36						
37	**2010**					
38	1st Qtr.	1,121.60	2,274.88	10,454.42	1.94%	5.21%
39	2nd Qtr.	1,135.25	2,343.40	10,570.54	1.97%	6.51%
40	3rd Qtr.	1,096.39	2,237.97	10,390.24	2.09%	6.30%
41	4th Qtr.	1,204.00	2,534.62	11,236.02	1.95%	6.15%
42						
43	**2011**					
44	1st Qtr.	1,302.74	2,741.01	12,024.62	1.85%	6.13%
45	2nd Qtr.	1,319.04	2,766.64	12,370.73	1.97%	6.35%
46	3rd Qtr.	1,237.12	2,613.11	11,671.47	2.15%	7.69%
47	4th Qtr.	1,225.65	2,600.91	11,798.65	2.25%	6.91%
48						
49	**2012**					
50	1st Qtr.	1,347.44	2,902.90	12,839.80	2.12%	6.29%
51	2nd Qtr.	1,350.39	2,928.62	12,765.58	2.30%	6.45%
52	3rd Qtr.	1,402.21	3,029.86	13,118.72	2.27%	6.00%
53	4th Qtr.	1,418.21	3,001.69	13,142.91	2.28%	6.07%
54						
55	**2013**					
56	1st Qtr.	1,514.41	3,177.10	14,000.30	2.21%	5.59%
57	2nd Qtr.	1,609.77	3,369.49	14,961.28	2.15%	5.66%
58	3rd Qtr.	1,675.31	3,643.63	15,255.25	2.14%	5.65%
59	4th Qtr.	1,770.45	3,960.54	15,751.96	2.06%	5.42%
60						
61	**2014**					
62	1st Qtr.	1,834.30	4,210.05	16,170.26	2.04%	5.39%
63	2nd Qtr.	1,900.37	4,195.81	16,603.50	2.06%	5.26%
64	3rd Qtr.	1,975.95	4,483.51	16,953.85	2.02%	5.38%
65	4th Qtr.	2012.04	4607.88	17368.36	2.03%	4.97%
66						
67	**2015**					
68	1st Qtr.	2063.46	4821.99	17806.47	2.02%	4.80%
69	2nd Qtr.	2102.03	5017.47	18007.48	2.05%	4.60%
70	3rd Qtr.	2,026.14	4,921.81	17,065.52	2.16%	N/A
71	4th Qtr.	N/A	N/A	N/A	N/A	N/A

Source: Council of Economic Advisors, Economic Indicators, various issues.

PROXY GROUP EQUITY RATIOS

	Company	2009	2010	2011	2012	2013	2014
1	American States Water Co.	54.1%	55.7%	54.6%	57.8%	60.2%	60.9%
2	American Water Works Co., Inc	43.1%	43.2%	44.2%	46.1%	47.6%	47.4%
3	Aqua America, Inc.	44.4%	43.4%	47.3%	47.3%	51.1%	51.5%
4	Artesian Rtesources Corp.	46.2%	47.5%	51.5%	52.7%	53.6%	54.5%
5	California Water Service Group	52.9%	47.6%	48.3%	52.2%	58.4%	59.9%
6	Connecticut Water Service, Inc.	49.1%	50.2%	46.5%	50.8%	52.9%	54.1%
7	Middlesex Water	52.1%	55.8%	56.6%	57.4%	58.7%	58.8%
8	SJW Corporation	50.6%	46.3%	43.4%	45.0%	48.9%	48.4%
9	York Water Company	54.3%	51.7%	52.9%	54.0%	54.9%	55.2%
10							
11							
12	Average	49.6%	49.0%	49.5%	51.5%	54.0%	54.5%
13							
14							
15							
16	Source: Value Line October 16, 2015						
17							
18							
19							
20							
21							

ATTACHMENT 1

Attachment 1

John A. Cassidy

EDUCATION

Arizona State University -- Master of Business Administration-Finance (May 1987)

University of Arizona -- Master of Library Science (August 1980)

Arizona State University -- B.A. History, Latin American Studies (May 1976)

REGULATORY EXPERIENCE

Public Utilities Analyst V – Residential Utility Consumer Office (RUCO), Phoenix, AZ (July 2015-Present)

Public Utilities Analyst III -- Arizona Corporation Commission, Phoenix, AZ (March 2013-July 2015)

Public Utilities Analyst II -- Arizona Corporation Commission, Phoenix, AZ (May 2012-March 2013)

Public Utility Consultant -- Arizona Corporation Commission, Phoenix, AZ (Jan. 2012-May 2012)

Regulatory Utility Consultant – Self-Employed, Tempe, AZ (2009-2010)

- Assisted in the preparation of testimony filed by the Residential Utility Consumer Office (RUCO) in the Litchfield Park W/WW rate case (Docket No. SW-01428A-09-0103, et al)

Regulatory Utility Consultant – Self-Employed, Tempe, AZ (2007-2008)

- Filed formal cost of capital testimony/schedules on behalf of intervener, Anthem Town Council, and testified at evidentiary hearing in the Arizona-American Water Co., Anthem Water and Anthem/Agua Fria WW rate case (Docket No. WS-01303A-06-0403)

Utilities Auditor II -- Arizona Corporation Commission, Phoenix, AZ (Aug. 1993-Nov. 1997)

PROFESSIONAL DEVELOPMENT

Annual Regulatory Studies Program ("Camp NARUC"), Institute of Public Utilities, Michigan State University, East Lansing, MI (August 4-15, 2014)

Society of Utility and Regulatory Financial Analysts (SURFA), Indianapolis, IN (April 17-19, 2013)

NARUC Utility Rate School, San Diego, CA (May 13-17, 2013)

CRRA Certification – Preparing to sit for the Certified Rate of Return Analyst (CRRA) exam.

HONORS

CPA Candidate - Passed the CPA exam (1997), but opted not to pursue certification

Beta Gamma Sigma - National Honor Society in Business Administration

Rate Dockets Testified - Cost of Capital:

Quail Creek Water Company	(Docket No. W-02514A-14-0343)
EPCOR Water Arizona	(Docket No. WS-01303A-14-0010)
Utility Source, L.L.C.	(Docket No. WS-04235A-13-0331)
Verde Santa Fe Wastewater Company	(Docket No. SW-03437A-13-0292)
Chaparral City Water Company	(Docket No. W-02113A-13-0118)
Payson Water Company	(Docket No. W-03514A-13-0111)
Lago Del Oro Water Company	(Docket No. W-01944A-13-0215)
Las Quintas Serenas Water Company	(Docket No. W-01583A-13-0117)
Litchfield Park Service Company	(Docket No. SW-01428A-13-0042,et al.)
Adaman Mutual Water Company	(Docket No. W-01997A-12-0501)
Global Water Utilities	(Docket No. W-01212A-12-0309, et al.)
New River Utility Company	(Docket No. W-01737A-12-0478)
Arizona Water Company	(Docket No. W-01445A-12-0348)
Far West Water & Sewer, Inc.	(Docket No. WS-03478A-12-0307)
Cordes Lakes Water Company	(Docket No. W-02060A-12-0356)
Rio Rico Utilities, Inc.	(Docket No. WS-02676A-12-0196)
Ray Water Company	(Docket No. W-01380A-12-0254)
Vail Water Company	(Docket No. W-01651B-12-0339)
Valley Water Company	(Docket No. W-01412A-12-0195)
Arizona Water Company	(Docket No. W-01445A-11-0310)
Pima Utility Company	(Docket No. W-02199A-11-0329, et al.)

Rate Dockets Testified - Revenue Requirement/Rate Design:

Quail Creek Water Company	(Docket No. W-02514A-14-0343)
Beaver Dam Water Company	(Docket No. W-03067A-12-0232)
Eden Water Company	(Docket No. W-02068A-11-0471)
Great Prairie Oasis, dba Sunland Water Co.	(Docket No. W-04015A-12-0051)

Financing Dockets - Responsible for ACC Staff Report:

Arizona Public Service Company	(Docket No. E-01345A-11-0423)
Tucson Electric Power Company	(Docket No. E-01933A-12-0176)
Chaparral City Water Company	(Docket No. W-02113A-13-0047)
Payson Water Company	(Docket No. W-03514A-13-0142)
Lago Del Oro Water Company	(Docket No. W-01944A-13-0242)
Duncan Valley Electric Cooperative, Inc.	(Docket No. E-01703A-13-0272)
Sulphur Springs Valley Electric Cooperative, Inc.	(Docket No. E-01575A-12-0457)
Trico Electric Cooperative, Inc.	(Docket No. E-01461A-12-0056)
Great Prairie Oasis, dba Sunland Water Co.	(Docket No. W-04015A-12-0050)
Columbus Electric Cooperative, Inc.	(Docket No. E-01851A-11-0415)
Pima Utility Company	(Docket No. W-02199A-11-0403, et al.)

ATTACHMENT 2

AMER. STATES WATER NYSE-AWR

RECENT PRICE 41.33 | P/E RATIO 26.0 (Trailing: 25.4 Median: 20.0) | RELATIVE P/E RATIO 1.49 | DIV'D YLD 2.2% | VALUE LINE

TIMELINESS 2 Raised 6/5/15
SAFETY 2 Raised 7/20/12
TECHNICAL 4 Raised 10/16/15
BETA .70 (1.00 = Market)

2018-20 PROJECTIONS

	Price	Gain	Ann'l Total Return
High	50	(+20%)	7%
Low	35	(-15%)	-1%

Insider Decisions

	N	D	J	F	M	A	M	J	J
to Buy	0	0	0	0	0	0	0	0	0
Options	1	0	1	0	1	0	1	0	1
to Sell	3	0	1	0	1	0	0	3	1

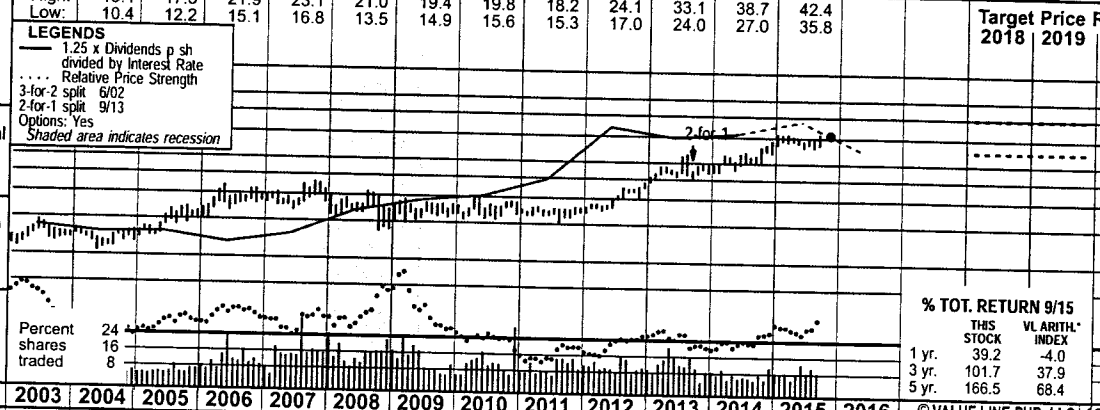
Institutional Decisions

	4Q2014	1Q2015	2Q2015
to Buy	99	86	80
to Sell	87	93	82
Hld's(000)	23380	23637	23707

High:	13.4	17.3	21.9	23.1	21.0	19.4	19.8	18.2	24.1	33.1	38.7	42.4
Low:	10.4	12.2	15.1	16.8	13.5	14.9	15.6	15.3	17.0	24.0	27.0	35.8

LEGENDS
— 1.25 x Dividends p sh divided by Interest Rate
.... Relative Price Strength
3-for-2 split 6/02
2-for-1 split 9/13
Options: Yes
Shaded area indicates recession

Target Price Range 2018 | 2019 | 2020



Percent shares traded 24 16 8

% TOT. RETURN 9/15

	THIS STOCK	VL ARITH.* INDEX
1 yr.	39.2	-4.0
3 yr.	101.7	37.9
5 yr.	166.5	68.4

1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	© VALUE LINE PUB. LLC	18-20
6.45	6.08	6.53	6.89	6.99	6.81	7.03	7.88	8.75	9.21	9.74	10.71	11.12	12.12	12.19	12.17	12.20	12.35	Revenues per sh	14.85
1.13	1.10	1.26	1.27	1.04	1.11	1.32	1.45	1.65	1.69	1.70	2.11	2.13	2.48	2.65	2.67	2.75	2.95	"Cash Flow" per sh	3.50
.60	.64	.67	.67	.39	.53	.66	.67	.81	.78	.81	1.11	1.12	1.41	1.61	1.57	1.60	1.70	Earnings per sh A	2.15
.43	.43	.43	.44	.44	.44	.45	.46	.48	.50	.51	.52	.55	.64	.76	.83	.87	.92	Div'd Decl'd per sh B■	1.15
2.15	1.51	1.59	1.34	1.88	2.51	2.12	1.95	1.45	2.23	2.09	2.12	2.13	1.77	2.52	1.89	2.10	2.15	Cap'l Spending per sh	2.20
5.91	6.37	6.61	7.02	6.98	7.51	7.86	8.32	8.77	8.97	9.70	10.13	10.84	11.80	12.72	13.24	12.70	13.20	Book Value per sh	14.85
26.87	30.24	30.24	30.36	30.42	33.50	33.60	34.10	34.46	34.60	37.06	37.26	37.70	38.53	38.72	38.29	36.90	36.50	Common Shs Outst'g C	37.00
17.1	15.9	16.7	18.3	31.9	23.2	21.9	27.7	24.0	22.6	21.2	15.7	15.4	14.3	17.2	20.1	Bold figures are Value Line estimates		Avg Ann'l P/E Ratio	20.5
.97	1.03	.86	1.00	1.82	1.23	1.17	1.50	1.27	1.36	1.41	1.00	.97	.91	.97	1.06			Relative P/E Ratio	1.30
4.2%	4.2%	3.9%	3.6%	3.5%	3.6%	3.1%	2.5%	2.5%	2.9%	2.9%	3.0%	3.2%	3.1%	2.7%	2.6%			Avg Ann'l Div'd Yield	2.7%
236.2	268.6	301.4	318.7	361.0	398.9	419.3	466.9	472.1	465.8	450	450	Revenues ($mill)	550
22.5	23.1	28.0	26.8	29.5	41.4	42.0	54.1	62.7	61.1	60.0	62.5	Net Profit ($mill)	80.0
47.0%	40.5%	42.6%	37.8%	38.9%	43.2%	41.7%	39.9%	36.3%	38.4%	38.0%	38.0%	Income Tax Rate	38.0%
--	12.2%	8.5%	6.9%	3.2%	5.8%	2.0%	2.5%	2.5%	.5%	.5%	1.0%	AFUDC % to Net Profit	1.0%
50.4%	48.6%	46.9%	46.2%	45.9%	44.3%	45.4%	42.2%	39.8%	39.1%	41.0%	42.0%	Long-Term Debt Ratio	42.0%
49.6%	51.4%	53.1%	53.8%	54.1%	55.7%	54.6%	57.8%	60.2%	60.9%	59.0%	58.0%	Common Equity Ratio	58.0%
532.5	551.6	569.4	577.0	665.0	677.4	749.1	787.0	818.4	832.6	800	830	Total Capital ($mill)	950
713.2	750.6	776.4	825.3	866.4	855.0	896.5	917.8	981.5	1003.5	1050	1100	Net Plant ($mill)	1250
5.4%	6.0%	6.7%	6.4%	5.9%	7.6%	7.1%	8.3%	8.9%	8.6%	9.0%	9.0%	Return on Total Cap'l	9.5%
8.5%	8.1%	9.3%	8.6%	8.2%	11.0%	10.3%	11.9%	12.7%	12.0%	12.5%	13.0%	Return on Shr. Equity	14.5%
8.5%	8.1%	9.3%	8.6%	8.2%	11.0%	10.3%	11.9%	12.7%	12.0%	12.5%	13.0%	Return on Com Equity	14.5%
2.8%	2.7%	3.9%	3.1%	3.2%	5.8%	5.3%	6.6%	6.8%	5.7%	6.0%	5.5%	Retained to Com Eq	6.5%
67%	67%	58%	64%	61%	47%	49%	45%	47%	53%	54%	54%	All Div'ds to Net Prof	53%

CAPITAL STRUCTURE as of 6/30/15
Total Debt $325.9 mill. **Due in 5 Yrs** $41.6 mill.
LT Debt $325.6 mill. **LT Interest** $22.0 mill. (41% of Cap'l)

Leases, Uncapitalized: Annual rentals $0.4 mill.
Pension Assets-12/14 $140.6 mill. **Oblig.** $185.2 mill.
Pfd Stock None.

Common Stock 37,240,678 shs. as of 8/3/15

MARKET CAP: $1.5 billion (Mid Cap)

CURRENT POSITION ($MILL.)	2013	2014	6/30/15
Cash Assets	38.2	76.0	43.9
Accts Receivable	23.8	18.8	19.2
Other	129.6	114.7	87.1
Current Assets	191.6	209.5	150.2
Accts Payable	49.8	41.9	42.3
Debt Due	6.3	.3	.3
Other	44.8	57.1	52.6
Current Liab.	100.9	99.3	95.2

BUSINESS: American States Water Co. operates as a holding company. Through its principal subsidiary, Golden States Water Company, it supplies water to 258,191 customers in 75 communities and 10 counties. Service areas include the greater metropolitan areas of Los Angeles and Orange Counties. The company also provides electric utility services to 23,716 customers in the city of Big Bear Lake and in areas of San Bernardino County. Sold Chaparral City Water of Arizona (6/11). Has 707 employees. Blackrock, Inc., owns 9.8% of out. shares; Vanguard, 8.5%; off. & dir. 1.5%. (4/15 Proxy). Chairman: Lloyd Ross. President & CEO: Robert J. Sprowls. Inc: CA. Addr: 630 East Foothill Boulevard, San Dimas, CA 91773. Tel: 909-394-3600. Internet: www.aswater.com.

ANNUAL RATES of change (per sh)	Past 10 Yrs.	Past 5 Yrs.	Est'd '12-'14 to '18-'20
Revenues	6.0%	5.5%	3.5%
"Cash Flow"	8.5%	9.0%	5.0%
Earnings	11.0%	14.0%	6.0%
Dividends	5.5%	8.5%	7.5%
Book Value	6.0%	6.5%	3.0%

Calendar	QUARTERLY REVENUES ($ mill.) Mar.31	Jun. 30	Sep. 30	Dec. 31	Full Year
2012	107.6	114.3	133.5	111.5	466.9
2013	110.6	120.7	130.9	109.9	472.1
2014	102.0	115.6	138.3	109.9	465.8
2015	100.9	114.6	*129.5*	*105*	*450*
2016	*95.0*	*110*	*135*	*110*	*450*

Calendar	EARNINGS PER SHARE A Mar.31	Jun. 30	Sep. 30	Dec. 31	Full Year
2012	.27	.40	.49	.26	1.41
2013	.35	.43	.53	.30	1.61
2014	.28	.39	.54	.36	1.57
2015	.32	.41	*.55*	*.32*	*1.60*
2016	*.31*	*.46*	*.60*	*.33*	*1.70*

Calendar	QUARTERLY DIVIDENDS PAID B■ Mar.31	Jun.30	Sep.30	Dec.31	Full Year
2011	.13	.14	.14	.14	.55
2012	.14	.14	.1775	.1775	.64
2013	.1775	.1775	.2025	.2025	.76
2014	.2025	.2025	.213	.213	.83
2015	.213	.213	.224		

American States Water's main subsidiary operates in drought-stricken California. Golden State Water is responsible for almost 85% of the company's total business activity. Due to the lack of potable water, state regulators implemented measures in June aimed at reducing water consumption by 25%.

The sharp drop in the demand for water should not have a material impact on the company. In a prescient move, the California Public Utility Commission (CPUC) got out in front of a potential problem by changing the methodology water utilities use to calculate income. In the past, profits were mostly determined by the amount of water sold. In the recent past, utilities' compensation was changed to be more like a service fee. As a result, water companies are joining with the CPUC to aggressively pursue conservation. If the old system had remained in place, Golden State would probably be financially strapped and unable to both provide adequate service to its customers while replacing an aging infrastructure.

The near-term profit outlook is mixed. We only expect American States to earn $1.60 a share in 2015, the second-straight year of flattish bottom-line growth. Income gains are being restrained because the utility is already earning close to the rate established by the CPUC. Next year, earnings should improve due to rate relief and help from nonregulated activities (see below). In sum, we expect share net to increase $0.10, to $1.70, a solid 6% gain.

Nonregulated activities are doing well. The company's ASUS segment provides water services to military installations. For the first half of the year, ASUS was responsible for 15% of the company's net income. With more privatization expected in the future, increased contributions from this sector are likely.

Short-term investors may like these shares. The stock has turned in an excellent performance since our July report, as its value rose 6.5%, compared to the S&P 500's 4.9% decline. Our ranking system believes this good run will continue as it has pegged the stock to outperform the market averages in the year ahead. The equity's recent rally has left AWR with subpar long-term prospects, however.

James A. Flood *October 16, 2015*

(A) Primary earnings. Excludes nonrecurring gains/(losses): '04, 7¢; '05, 13¢; '06, 3¢; '08, (14¢); '10, (23¢) '11, 10¢. Next earnings report due mid-November. Quarterly earnings may not add due to rounding.
(B) Dividends historically paid in early March, June, September, and December. ■ Div'd reinvestment plan available.
(C) In millions, adjusted for splits.

Company's Financial Strength	A
Stock's Price Stability	85
Price Growth Persistence	70
Earnings Predictability	85

© 2015 Value Line, Inc. All rights reserved. Factual material is obtained from sources believed to be reliable and is provided without warranties of any kind. THE PUBLISHER IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS HEREIN. This publication is strictly for subscriber's own, non-commercial, internal use. No part of it may be reproduced, resold, stored or transmitted in any printed, electronic or other form, or used for generating or marketing any printed or electronic publication, service or product.

To subscribe call 1-800-VALUELINE

AMERICAN WATER NYSE-AWK

RECENT PRICE 55.62 | P/E RATIO 21.1 (Trailing: 22.2 Median: NMF) | RELATIVE P/E RATIO 1.21 | DIV'D YLD 2.6% | VALUE LINE

TIMELINESS 2 Lowered 7/10/15
SAFETY 3 New 7/25/08
TECHNICAL 4 Lowered 10/9/15
BETA .70 (1.00 = Market)

2018-20 PROJECTIONS

	Price	Gain	Ann'l Total Return
High	80	(+45%)	11%
Low	50	(-10%)	Nil

Insider Decisions

	N	D	J	F	M	A	M	J	J
to Buy	0	0	0	0	0	0	0	0	0
Options	3	0	0	2	5	0	2	0	0
to Sell	3	0	0	2	5	0	4	0	0

Institutional Decisions

	4Q2014	1Q2015	2Q2015
to Buy	223	213	247
to Sell	201	222	206
Hld's(000)	143322	147193	145636

LEGENDS
— 0.85 x Dividends p sh divided by Interest Rate
.... Relative Price Strength
Options: Yes
Shaded area indicates recession

	High:	Low:
1999	--	--
2000	--	--
2001	--	--
2002	--	--
2003	--	--
2004	--	--
2005	--	--
2006	23.7	16.5
2007E	23.0	16.2
2008	25.8	19.4
2009	32.8	25.2
2010	39.4	31.3
2011	45.1	37.0
2012	56.2	41.1
2013	57.5	48.4
2014		
2015		
2016		

Target Price Range 2018 | 2019 | 2020

128 96 80 64 48 40 32 24 16 12

Percent shares traded 21 14 7

% TOT. RETURN 9/15

	THIS STOCK	VL ARITH.* INDEX
1 yr.	17.0	-4.0
3 yr.	60.6	37.9
5 yr.	172.1	68.4

	1999	2000	2001	2002	2003	2004	2005	2006	2007E	2008	2009	2010	2011	2012	2013	2014	2015	2016	© VALUE LINE PUB. LLC	18-20
	--	--	--	--	--	--	--	13.08	13.84	14.61	13.98	15.49	15.18	16.25	16.28	16.78	*17.20*	*18.00*	Revenues per sh	*21.60*
	--	--	--	--	--	--	--	.65	d.47	2.87	2.89	3.56	3.73	4.27	4.36	4.75	*5.00*	*5.25*	"Cash Flow" per sh	*6.50*
	--	--	--	--	--	--	--	d.97	d2.14	1.10	1.25	1.53	1.72	2.11	2.06	2.39	*2.60*	*2.80*	Earnings per sh A	*3.25*
	--	--	--	--	--	--	--	--	--	.40	.82	.86	.90	1.21	.84	1.21	*1.33*	*1.45*	Div'd Decl'd per sh B■	*1.75*
	--	--	--	--	--	--	--	4.31	4.74	6.31	4.50	4.38	5.27	5.25	5.50	5.33	*5.50*	*6.50*	Cap'l Spending per sh	*6.50*
	--	--	--	--	--	--	--	23.86	28.39	25.64	22.91	23.59	24.11	25.11	26.52	27.39	*28.95*	*30.65*	Book Value per sh D	*36.75*
	--	--	--	--	--	--	--	160.00	160.00	160.00	174.63	175.00	175.66	176.99	178.25	179.46	*181.50*	*183.50*	Common Shs Outst'g C	*185.00*
	--	--	--	--	--	--	--	--	--	18.9	15.6	14.6	16.8	16.7	19.9	20.0	*Bold figures are Value Line estimates*		Avg Ann'l P/E Ratio	*20.0*
	--	--	--	--	--	--	--	--	--	1.14	1.04	.93	1.05	1.06	1.12	1.05			Relative P/E Ratio	*1.25*
	--	--	--	--	--	--	--	--	--	1.9%	4.2%	3.8%	3.1%	3.4%	2.0%	2.5%			Avg Ann'l Div'd Yield	*2.7%*
	--	--	--	--	--	--	--	2093.1	2214.2	2336.9	2440.7	2710.7	2666.2	2876.9	2901.9	3011.3	*3120*	*3300*	Revenues ($mill)	*4000*
	--	--	--	--	--	--	--	d155.8	d342.3	187.2	209.9	267.8	304.9	374.3	369.3	429.8	*470*	*510*	Net Profit ($mill)	*600*
	--	--	--	--	--	--	--	--	--	37.4%	37.9%	40.4%	39.5%	40.7%	39.1%	39.4%	*39.5%*	*38.5%*	Income Tax Rate	*37.5%*
	--	--	--	--	--	--	--	--	--	--	--	--	--	6.2%	5.1%	1.4%	*2.3%*	*2.4%*	AFUDC % to Net Profit	*3.0%*
	--	--	--	--	--	--	--	56.1%	50.9%	53.1%	56.9%	56.8%	55.7%	53.9%	52.4%	52.4%	*52.0%*	*52.0%*	Long-Term Debt Ratio	*53.0%*
	--	--	--	--	--	--	--	43.9%	49.1%	46.9%	43.1%	43.2%	44.2%	46.1%	47.6%	47.4%	*48.0%*	*48.0%*	Common Equity Ratio	*47.0%*
	--	--	--	--	--	--	--	8692.8	9245.7	8750.2	9289.0	9561.3	9580.3	9635.5	9940.7	10364	*10900*	*11650*	Total Capital ($mill)	*14500*
	--	--	--	--	--	--	--	8720.6	9318.0	9991.8	10524	11059	11021	11739	12391	12900	*13600*	*14350*	Net Plant ($mill)	*16000*
	--	--	--	--	--	--	--	NMF	NMF	3.7%	3.8%	4.4%	4.8%	5.4%	5.1%	5.5%	*5.5%*	*5.5%*	Return on Total Cap'l	*5.5%*
	--	--	--	--	--	--	--	NMF	NMF	4.6%	5.2%	6.5%	7.2%	8.4%	7.8%	8.7%	*9.0%*	*9.0%*	Return on Shr. Equity	*9.0%*
	--	--	--	--	--	--	--	NMF	NMF	4.6%	5.2%	6.5%	7.2%	8.4%	7.8%	8.7%	*9.0%*	*9.0%*	Return on Com Equity	*9.0%*
	--	--	--	--	--	--	--	NMF	NMF	3.0%	1.8%	2.8%	3.5%	3.6%	4.7%	4.3%	*4.5%*	*4.5%*	Retained to Com Eq	*4.0%*
	--	--	--	--	--	--	--	--	--	34%	65%	56%	52%	57%	40%	50%	*51%*	*52%*	All Div'ds to Net Prof	*54%*

CAPITAL STRUCTURE as of 6/30/15
Total Debt $6316.1 mil. Due in 5 Yrs $1294.5 mil.
LT Debt $5433.2 mil. LT Interest $298.0 mil. (52% of Cap'l)

Leases, Uncapitalized: Annual rentals $14.0 mill.
Pension Assets 12/14 $1428.2 mill
Oblig. $1746.5 mill.
Pfd Stock $14.3 mill. Pfd Div'd $.5 mill

Common Stock 180,256,635 shs.
as of 7/30/2015

MARKET CAP: $10.0 billion (Large Cap)

CURRENT POSITION ($MILL.)	2013	2014	6/30/15
Cash Assets	27.0	23.1	144.8
Accts Receivable		267.1	281.2
Other	523.3	638.3	464.1
Current Assets	550.3	661.4	890.1
Accts Payable	264.1	285.8	283.6
Debt Due	644.5	511.1	882.9
Other	326.9	444.1	345.7
Current Liab.	1235.5	1241.0	1512.2

ANNUAL RATES of change (per sh)	Past 10 Yrs.	Past 5 Yrs.	Est'd '12-'14 to '18-'20
Revenues	--	3.0%	*4.5%*
"Cash Flow"	--	20.5%	*6.5%*
Earnings	--	NMF	*7.0%*
Dividends	--	21.5%	*8.5%*
Book Value	--	.5%	*5.5%*

Calendar	QUARTERLY REVENUES ($ mill.) Mar.31	Jun. 30	Sep. 30	Dec. 31	Full Year
2012	618.5	745.6	831.8	681.0	2876.9
2013	636.1	724.3	829.2	712.3	2901.9
2014	679.0	754.8	846.1	731.4	3011.3
2015	698.1	782.1	*884.8*	*755*	*3120*
2016	*735*	*830*	*920*	*815*	*3300*

Calendar	EARNINGS PER SHARE A Mar.31	Jun. 30	Sep. 30	Dec. 31	Full Year
2012	.28	.66	.87	.30	2.11
2013	.32	.57	.84	.33	2.06
2014	.39	.62	.86	.52	2.39
2015	.44	.68	*.95*	*.53*	*2.60*
2016	*.48*	*.72*	*1.03*	*.57*	*2.80*

Calendar	QUARTERLY DIVIDENDS PAID B■ Mar.31	Jun.30	Sep.30	Dec.31	Full Year
2011	.22	.23	.23	.23	.91
2012	.23	.23	.25	.50	1.21
2013	--	.28	.28	.28	.84
2014	.28	.31	.31	.31	1.21
2015	.31	.34	.34		

BUSINESS: American Water Works Company, Inc. is the largest investor-owned water and wastewater utility in the U.S., providing services to over 15 million people in over 47 states and Canada. (Regulated presence in 16 states.) Nonregulated business assists municipalities and military bases with the maintenance and upkeep as well. Regulated operations made up 88.8% of 2014 revenues. New Jersey is its largest market accounting for 22.7% of regulated revenues. Has roughly 6,400 employees. BlackRock, Inc., owns 10.0% of outstanding shares; Vanguard, 6.3%; officers & directors, less than 1.0%. (3/15 Proxy). Pres. & CEO: Susan Story. Chairman: George Mackenzie. Addr.: 1025 Laurel Oak Road, Voorhees, NJ 08043. Tel.: 856-346-8200. Internet: www.amwater.com.

The stock of American Water Works Company has been on a roll. Since our last report three months ago, shares of AWK have increased 8.9% in value. That the S&P 500 declined 4.9% during the same period makes the equity's showing all the more impressive.

The utility should continue to benefit from its size. America's water industry is incredibly fragmented. Exclude the small districts and there are still more than 50,000 operating authorities in existence. Because large sums are needed to modernize the long-neglected water infrastructure, small entities are selling themselves to concerns that have the financial wherewithal to make the necessary repairs. Since there are many redundancies in this business, the company is able to modernize the assets of its acquisitions while also cutting costs.

Earning prospects remain bright. We expect the company's share net to increase a healthy 9% this year, to $2.60. The good news should continue into 2016, as an 8% rise in per-share earnings is likely. American Water is atypical in that it has been able to sustain a strong income growth rate even though it is a regulated entity. The top line is aided by purchasing other water districts, while the bottom line benefits from managements focus on cost controls. Indeed, operating expenses as a percentage of revenues have been declining for some time. For the 12-month period ending June 30th, the ratio was 35.9%, compared to 37.7% over the similar time from one year ago.

Construction expenditures are set to increase. Over the past five years, American Water has spent almost $1 billion annually to modernize its water systems. Management expects this amount to jump 20% and average $1.2 billion per annum through late decade. Internally generated funds should finance most of the capital outlays, but a fair amount of additional long-term debt will also be required. Still, the company's balance should remain relatively average for the foreseeable future.

These shares are timely. So, momentum investors seeking a low-volatility stock with a decent yield may find AWK of interest. Longer-term accounts should probably look elsewhere.

James A. Flood *October 16, 2015*

(A) Diluted earnings. Excludes nonrecurring losses: '08, $4.62; '09, $2.63; '11, $0.07. Discontinued operations: '06, ($0.04); '11, $0.03; '12, ($0.10); '13,($0.01). GAAP used as of 2014. Next earnings report due early Nov. Quarterly earnings may not sum due to rounding. (B) Dividends paid in March, June, September, and December. ■ Div. reinvestment available. Two payments made in 4th quarter of 2012. (C) In millions. (D) Includes intangibles. In 2014: $1.21 billion, $6.73/share. (E) Pro forma numbers for '06 & '07.

Company's Financial Strength	B+
Stock's Price Stability	100
Price Growth Persistence	85
Earnings Predictability	30

© 2015 Value Line, Inc. All rights reserved. Factual material is obtained from sources believed to be reliable and is provided without warranties of any kind. THE PUBLISHER IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS HEREIN. This publication is strictly for subscriber's own, non-commercial, internal use. No part of it may be reproduced, resold, stored or transmitted in any printed, electronic or other form, or used for generating or marketing any printed or electronic publication, service or product.

To subscribe call 1-800-VALUELINE

AQUA AMERICA NYSE-WTR

RECENT PRICE 26.83 | P/E RATIO 21.3 (Trailing: 21.5 Median: 23.0) | RELATIVE P/E RATIO 1.22 | DIV'D YLD 2.7% | VALUE LINE

TIMELINESS 3 Lowered 5/24/13
SAFETY 2 Raised 4/20/12
TECHNICAL 4 Lowered 10/9/15
BETA .75 (1.00 = Market)

2018-20 PROJECTIONS

	Price	Gain	Ann'l Total Return
High	45	(+70%)	16%
Low	30	(+10%)	6%

Insider Decisions

	N	D	J	F	M	A	M	J	J
to Buy	0	0	0	0	0	0	0	0	0
Options	2	1	1	0	0	0	1	0	0
to Sell	5	2	2	1	1	1	2	1	0

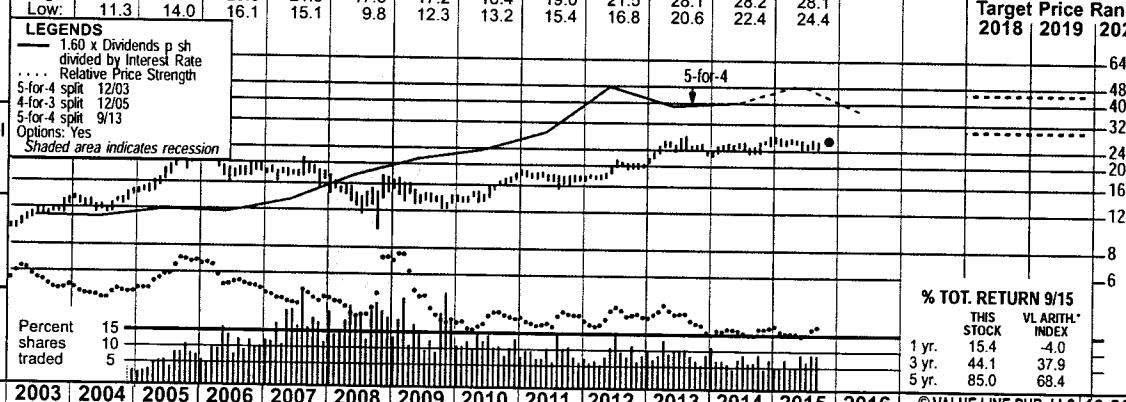
Institutional Decisions

	4Q2014	1Q2015	2Q2015
to Buy	137	153	156
to Sell	140	133	145
Hld's(000)	81382	81133	82530

	2013	2014	2015
High:	23.8	21.3	17.6
Low:	16.1	15.1	9.8

	2016	2017	2018
High:	17.2	18.4	19.0	21.5	28.1	28.2	28.1
Low:	12.3	13.2	15.4	16.8	20.6	22.4	24.4

LEGENDS
— 1.60 x Dividends p sh divided by Interest Rate
.... Relative Price Strength
5-for-4 split 12/03
4-for-3 split 12/05
5-for-4 split 9/13
Options: Yes
Shaded area indicates recession



Target Price Range 2018 | 2019 | 2020
64
48
40
32
24
20
16
12
8
6

% TOT. RETURN 9/15

	THIS STOCK	VL ARITH.* INDEX
1 yr.	15.4	-4.0
3 yr.	44.1	37.9
5 yr.	85.0	68.4

1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	© VALUE LINE PUB. LLC	18-20
1.93	1.97	2.16	2.28	2.38	2.78	3.08	3.23	3.61	3.71	3.93	4.21	4.10	4.32	4.32	4.37	*4.60*	*4.70*	Revenues per sh	*5.70*
.58	.61	.69	.76	.77	.87	.97	1.01	1.10	1.14	1.29	1.42	1.45	1.51	1.82	1.89	*2.00*	*2.10*	"Cash Flow" per sh	*2.55*
.33	.37	.41	.43	.46	.51	.57	.56	.57	.58	.62	.72	.83	.87	1.16	1.20	*1.25*	*1.35*	Earnings per sh [A]	*1.65*
.22	.23	.24	.26	.28	.29	.32	.35	.38	.41	.44	.47	.50	.54	.58	.63	*.69*	*.76*	Div'd Decl'd per sh [B■]	*1.00*
.72	.93	.87	.96	1.06	1.23	1.47	1.64	1.43	1.58	1.66	1.89	1.90	1.98	1.73	1.84	*1.90*	*1.95*	Cap'l Spending per sh	*2.00*
2.74	3.08	3.32	3.49	4.27	4.71	5.04	5.57	5.85	6.26	6.50	6.81	7.21	7.90	8.63	9.27	*9.90*	*10.45*	Book Value per sh	*11.75*
133.50	139.78	142.47	141.49	154.31	158.97	161.21	165.41	166.75	169.21	170.61	172.46	173.60	175.43	177.93	178.59	*176.50*	*175.00*	Common Shs Outst'g [C]	*170.00*
21.2	18.2	23.6	23.6	24.5	25.1	31.8	34.7	32.0	24.9	23.1	21.1	21.3	21.9	21.2	20.8	*Bold figures are Value Line estimates*		Avg Ann'l P/E Ratio	*22.5*
1.21	1.18	1.21	1.29	1.40	1.33	1.69	1.87	1.70	1.50	1.54	1.34	1.34	1.39	1.19	1.10			Relative P/E Ratio	*1.40*
3.0%	3.3%	2.5%	2.5%	2.5%	2.3%	1.8%	1.8%	2.1%	2.8%	3.1%	3.1%	2.8%	2.8%	2.4%	2.5%			Avg Ann'l Div'd Yield	*2.7%*
496.8	533.5	602.5	627.0	670.5	726.1	712.0	757.8	768.6	779.9	*810*	*825*	Revenues ($mill)	*980*
91.2	92.0	95.0	97.9	104.4	124.0	144.8	153.1	205.0	213.9	*220*	*235*	Net Profit ($mill)	*280*
38.4%	39.6%	38.9%	39.7%	39.4%	39.2%	32.9%	39.0%	10.0%	10.5%	*8.0%*	*15.0%*	Income Tax Rate	*25.0%*
--	--	--	--	--	--	--	--	1.1%	2.4%	*2.0%*	*2.5%*	AFUDC % to Net Profit	*3.0%*
52.0%	51.6%	55.4%	54.1%	55.6%	56.6%	52.7%	52.7%	48.9%	48.5%	*49.5%*	*49.0%*	Long-Term Debt Ratio	*50.0%*
48.0%	48.4%	44.6%	45.9%	44.4%	43.4%	47.3%	47.3%	51.1%	51.5%	*50.5%*	*51.0%*	Common Equity Ratio	*50.0%*
1690.4	1904.4	2191.4	2306.6	2495.5	2706.2	2646.8	2929.7	3003.6	3216.0	*3450*	*3605*	Total Capital ($mill)	*4000*
2280.0	2506.0	2792.8	2997.4	3227.3	3469.3	3612.9	3936.2	4167.3	4402.0	*4620*	*4800*	Net Plant ($mill)	*5000*
6.9%	6.4%	5.9%	5.7%	5.6%	5.9%	6.9%	6.6%	8.0%	7.8%	*7.5%*	*7.5%*	Return on Total Cap'l	*8.5%*
11.2%	10.0%	9.7%	9.3%	9.4%	10.6%	11.6%	11.0%	13.4%	12.9%	*12.5%*	*13.0%*	Return on Shr. Equity	*14.0%*
11.2%	10.0%	9.7%	9.3%	9.4%	10.6%	11.6%	11.0%	13.4%	12.9%	*12.5%*	*13.0%*	Return on Com Equity	*14.0%*
4.9%	3.7%	3.2%	2.8%	2.7%	3.7%	4.6%	4.3%	6.7%	6.1%	*5.5%*	*5.5%*	Retained to Com Eq	*5.5%*
56%	63%	67%	70%	72%	65%	60%	61%	50%	52%	*55%*	*56%*	All Div'ds to Net Prof	*61%*

CAPITAL STRUCTURE as of 6/30/15
Total Debt $1735.3 mill. **Due in 5 Yrs** $437.0 mill.
LT Debt $1660.5 mill. **LT Interest** $70.0 mill. (49% of Cap'l)

Pension Assets-12/14 232.4 mill. **Oblig.** $281.2 mill.

Pfd Stock None

Common Stock 176,805,350 shares as of 7/24/15

MARKET CAP: $4.7 billion (Mid Cap)

CURRENT POSITION ($MILL.)	2013	2014	6/30/15
Cash Assets	5.1	4.1	4.6
Receivables	95.4	97.0	109.5
Inventory (AvgCst)	11.4	12.8	13.6
Other	59.8	38.6	47.7
Current Assets	171.7	152.5	175.4
Accts Payable	65.8	60.0	47.5
Debt Due	123.0	70.0	74.8
Other	78.1	95.3	81.1
Current Liab.	266.9	225.3	203.4

BUSINESS: Aqua America, Inc. is the holding company for water and wastewater utilities that serve approximately three million residents in Pennsylvania, Ohio, North Carolina, Illinois, Texas, New Jersey, Florida, Indiana, and five other states. Has 1,617 employees. Acquired AquaSource, 7/03; Consumers Water, 4/99; and others. Water supply revenues '14: residential, 68%; commercial, 17%; industrial & other, 15%. Officers and directors own .8% of the common stock; Vangurad Group, 7.1%; Blackrock, Inc, 6.7%; State Street Capital Corp., 5.7% (3/15 Proxy). Chairman: Nicholas DeBenedictis. CEO: Christopher Franklin. Incorporated: Pennsylvania. Address: 762 West Lancaster Avenue, Bryn Mawr, Pennsylvania 19010. Tel.: 610-525-1400. Internet: www.aquaamerica.com.

ANNUAL RATES of change (per sh)	Past 10 Yrs.	Past 5 Yrs.	Est'd '12-'14 to '18-'20
Revenues	5.5%	3.0%	*4.5%*
"Cash Flow"	8.0%	8.0%	*6.5%*
Earnings	8.5%	13.0%	*7.5%*
Dividends	7.5%	7.0%	*9.5%*
Book Value	7.5%	6.5%	*5.5%*

Cal-endar	QUARTERLY REVENUES ($ mill.) Mar.31	Jun.30	Sep.30	Dec.31	Full Year
2012	164.0	191.7	214.6	187.5	757.8
2013	180.0	195.7	204.3	188.6	768.6
2014	182.7	195.3	210.5	191.4	779.9
2015	190.3	205.8	*220*	*193.9*	*810*
2016	*192*	*208*	*225*	*200*	*825*

Cal-endar	EARNINGS PER SHARE [A] Mar.31	Jun.30	Sep.30	Dec.31	Full Year
2012	.15	.24	.29	.19	.87
2013	.26	.30	.36	.24	1.16
2014	.24	.31	.38	.27	1.20
2015	.27	.32	*.39*	*.27*	*1.25*
2016	*.28*	*.34*	*.42*	*.31*	*1.35*

Cal-endar	QUARTERLY DIVIDENDS PAID [B] ■ Mar.31	Jun.30	Sep.30	Dec.31	Full Year
2011	.124	.124	.124	.132	.50
2012	.132	.132	.132	.14	.54
2013	.14	.14	.152	.152	.58
2014	.152	.152	.165	.165	.63
2015	.165	.165	.178		

Aqua America raised its dividend a hefty 8% in the last quarter. We had anticipated a 7% increase, but the latest hike further enhances the stock's reputation for having much better-than-average dividend growth prospects. Over the next three- to five-year period, we expect the rate to average a generous 9.0%.

Earnings will probably be flat for the remainder of this year, than pick up in 2016. Aqua's bottom line benefited from a one-time $0.11 a-share-gain in 2014, making the 2015 profit figure seem less favorable by comparison. Still, we think the company's share net will rise a decent 4%, to $1.25. Next year, due to a combination of rate relief, cost saving from acquisitions (see below), and the ability to earn returns on capital expenditures without much regulatory lag, earnings per share may well climb a healthy 8%, to $1.35.

Aqua should continue to be very active in the M&A markets. As we have pointed out before, the domestic water market is fragmented among over 50,000 major-to-mid-sized water districts. With the nation's long-neglected water infrastructure in desperate need of modernization, large amounts of capital will be required to pay for the repairs. Since many small municipally run water authorities are in a financial bind, it makes sense for them to be purchased by a larger water company. Because there is a tremendous amount of redundancies in the water industry, companies such as Aqua are able to absorb smaller concerns and substantially reduce overhead. This strategy should help fuel profit growth for the foreseeable future.

Long-term, conservative, income-oriented investors should take note of this stock. Though only ranked to perform in-line with the broader market averages in the coming year, WTR has many attractive attributes. For starters, the stock's yield is 2.7%, which is close to the industry average. This is unusual, as utilities with good dividend growth prospects often carry a much lower yield than a typical member of the group. Moreover, the stock has an A Financial Strength rating, and scores extremely high for both Earnings Predictability (100), and Stock Price Stability (95).

James A. Flood *October 16, 2015*

(A) Diluted egs. Excl. nonrec. gains (losses): '99, (9¢); '00, 2¢; '01, 2¢; '02, 4¢; '03, 3¢; '12, 18¢. Excl. gain from disc. operations: '12, 7¢; '13, 9¢; '14, 11¢. May not sum due to rounding.

Next earnings report due mid-November.
(B) Dividends historically paid in early March, June, Sept. & Dec. ■ Div'd. reinvestment plan available (5% discount).

(C) In millions, adjusted for stock splits.

Company's Financial Strength	A
Stock's Price Stability	95
Price Growth Persistence	60
Earnings Predictability	100

© 2015 Value Line, Inc. All rights reserved. Factual material is obtained from sources believed to be reliable and is provided without warranties of any kind. THE PUBLISHER IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS HEREIN. This publication is strictly for subscriber's own, non-commercial, internal use. No part of it may be reproduced, resold, stored or transmitted in any printed, electronic or other form, or used for generating or marketing any printed or electronic publication, service or product.

To subscribe call 1-800-VALUELINE

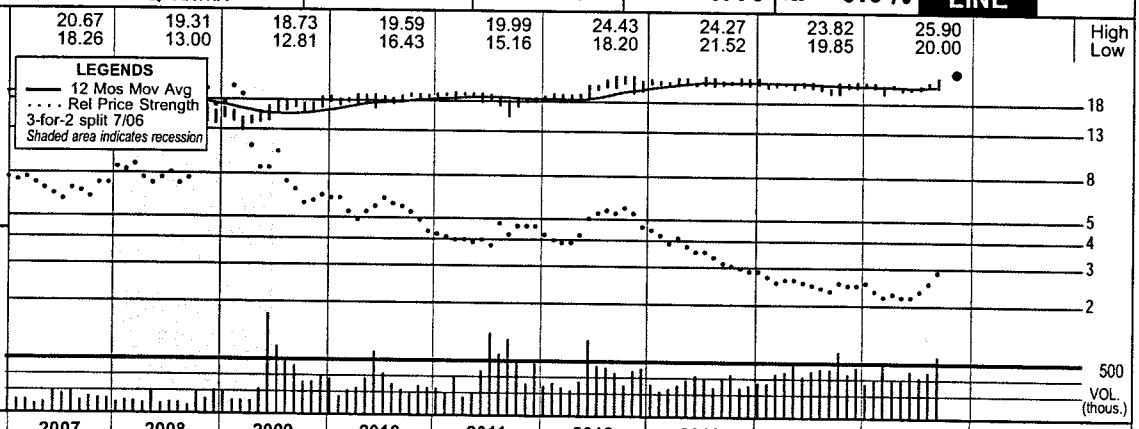
ARTESIAN RES. CORP. NDQ–ARTNA

RECENT PRICE	TRAILING P/E RATIO	RELATIVE P/E RATIO	DIV'D YLD	VALUE LINE
25.17	20.1	1.10	3.5%	

RANKS

PERFORMANCE	2	Above Average
Technical	2	Above Average
SAFETY	3	Average
BETA .55	(1.00 = Market)	

Financial Strength	B
Price Stability	95
Price Growth Persistence	30
Earnings Predictability	80



© VALUE LINE PUBLISHING LLC	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016/2017
SALES PER SH	7.20	7.59	8.11	8.48	7.56	8.10	7.82	8.13	--	
"CASH FLOW" PER SH	1.57	1.65	1.84	1.92	1.64	2.04	1.87	2.04	--	
EARNINGS PER SH	.90	.86	.97	1.00	.83	1.13	.94	1.07	*1.19* [A,B]	*1.30* [C]/NA
DIV'DS DECL'D PER SH	.66	.71	.72	.75	.76	.79	.82	.85	--	
CAP'L SPENDING PER SH	3.66	6.09	2.32	2.57	1.83	2.36	2.40	2.66	--	
BOOK VALUE PER SH	11.66	11.86	12.15	12.44	13.12	13.57	13.80	14.09	--	
COMMON SHS OUTST'G (MILL)	7.30	7.40	7.51	7.65	8.61	8.71	8.83	8.91	--	
AVG ANN'L P/E RATIO	21.5	20.1	16.4	18.2	22.5	18.3	23.9	20.5	*21.2*	*19.4/NA*
RELATIVE P/E RATIO	1.14	1.21	1.09	1.16	1.41	1.17	1.34	1.08	--	
AVG ANN'L DIV'D YIELD	3.4%	4.1%	4.5%	4.1%	4.1%	3.8%	3.7%	3.9%	--	
SALES ($MILL)	52.5	56.2	60.9	64.9	65.1	70.6	69.1	72.5	--	
OPERATING MARGIN	45.6%	45.1%	46.9%	46.5%	45.5%	48.7%	47.0%	48.8%	--	
DEPRECIATION ($MILL)	5.2	5.8	6.6	7.0	7.4	7.9	8.3	8.7	--	
NET PROFIT ($MILL)	6.3	6.4	7.3	7.6	6.7	9.8	8.3	9.5	--	
INCOME TAX RATE	39.8%	40.8%	40.1%	40.0%	40.8%	40.2%	40.2%	40.1%	--	
NET PROFIT MARGIN	11.9%	11.4%	11.9%	11.7%	10.4%	14.0%	12.0%	13.1%	--	
WORKING CAP'L ($MILL)	2.5	d20.9	d23.3	d27.9	d11.4	d11.4	d12.3	d13.5	--	
LONG-TERM DEBT ($MILL)	91.8	107.6	106.0	105.1	106.5	106.3	105.5	105.0	--	
SHR. EQUITY ($MILL)	85.1	87.8	91.2	95.1	113.0	118.2	121.8	125.6	--	
RETURN ON TOTAL CAP'L	5.3%	4.7%	5.2%	5.6%	4.6%	5.9%	5.1%	5.5%	--	
RETURN ON SHR. EQUITY	7.4%	7.3%	8.0%	8.0%	6.0%	8.3%	6.8%	7.6%	--	
RETAINED TO COM EQ	2.1%	1.4%	2.1%	2.0%	.5%	2.5%	.9%	1.6%	--	
ALL DIV'DS TO NET PROF	71%	81%	74%	75%	92%	70%	87%	79%	--	

Bold figures are consensus earnings estimates and, using the recent prices, P/E ratios.

[A] *No. of analysts changing earn. est. in last 24 days: 0 up, 0 down, consensus 5-year earnings growth not available.* [B] *Based upon 2 analysts' estimates.* [C] *Based upon one analyst's estimate.*

ANNUAL RATES

of change (per share)	5 Yrs.	1 Yr.
Sales	1.0%	4.0%
"Cash Flow"	3.5%	9.0%
Earnings	3.0%	14.0%
Dividends	3.5%	3.0%
Book Value	3.0%	2.0%

Fiscal Year	QUARTERLY SALES ($mill.) 1Q	2Q	3Q	4Q	Full Year
12/31/13	16.3	17.8	18.1	16.9	69.1
12/31/14	16.9	17.9	19.6	18.1	72.5
12/31/15	18.0	19.5			
12/31/16					

Fiscal Year	EARNINGS PER SHARE 1Q	2Q	3Q	4Q	Full Year
12/31/12	.28	.32	.33	.20	1.13
12/31/13	.20	.28	.29	.17	.94
12/31/14	.24	.22	.37	.24	1.07
12/31/15	.28	.36			
12/31/16					

Cal-endar	QUARTERLY DIVIDENDS PAID 1Q	2Q	3Q	4Q	Full Year
2012	.193	.198	.198	.203	.79
2013	.203	.206	.206	.209	.82
2014	.209	.212	.212	.215	.85
2015	.215	.218	.218		

INSTITUTIONAL DECISIONS

	4Q'14	1Q'15	2Q'15
to Buy	30	38	33
to Sell	28	21	27
Hld's(000)	3004	3046	2853

ASSETS ($mill.)	2013	2014	6/30/15
Cash Assets	.4	.2	.4
Receivables	8.1	8.4	7.9
Inventory	1.5	1.9	1.8
Other	3.3	6.1	3.7
Current Assets	13.3	16.6	13.8
Property, Plant & Equip, at cost	472.9	496.2	--
Accum Depreciation	89.8	98.4	--
Net Property	383.1	397.8	402.9
Other	7.4	7.8	7.9
Total Assets	403.8	422.2	424.6
LIABILITIES ($mill.)			
Accts Payable	4.1	3.8	2.6
Debt Due	12.2	19.9	15.6
Other	9.3	6.5	7.5
Current Liab	25.6	30.2	25.7

LONG-TERM DEBT AND EQUITY as of 6/30/15

Total Debt $119.9 mill. Due in 5 Yrs. NA
LT Debt $104.3 mill.
Including Cap. Leases NA
(45% of Cap'l)

Leases, Uncapitalized Annual rentals NA

Pension Liability $.3 mill. in '14 vs. $.3 mill. in '13

Pfd Stock None Pfd Div'd Paid None

Common Stock 8,929,033 shares
(55% of Cap'l)

INDUSTRY: Water Utility

BUSINESS: Artesian Resources Corporation, through its subsidiaries, provides water, wastewater, and other services on the Delmarva Peninsula. It distributes and sells water to residential, commercial, industrial, municipal, and utility customers in the states of Delaware, Maryland, and Pennsylvania. The company also offers water for public and private fire protection to customers in its service territories. In addition, it provides contract water and wastewater services, water and sewer service line protection plans, and wastewater management services, as well as design, construction, and engineering services. Artesian supplies over 7.3 billion gallons of water per year through 1,201 miles of water main to approximately 300,000 people. Artesian Water Company, the company's principal subsidiary, is the oldest and largest investor owned public water utility on the Delmarva Peninsula, and has been providing water service since 1905. Has 237 employees. Chairman, C.E.O. & President: Dian C. Taylor. Address: 664 Churchmans Rd., Newark, DE 19702. Tel.: (302) 453-6900. Internet: http://www.artesianwater.com.

J.V.

October 16, 2015

TOTAL SHAREHOLDER RETURN

Dividends plus appreciation as of 9/30/2015

3 Mos.	6 Mos.	1 Yr.	3 Yrs.	5 Yrs.
15.60%	15.16%	24.74%	16.54%	53.78%

© 2015 Value Line, Inc. All rights reserved. Factual material is obtained from sources believed to be reliable and is provided without warranties of any kind. THE PUBLISHER IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS HEREIN. This publication is strictly for subscriber's own, non-commercial, internal use. No part of it may be reproduced, resold, stored or transmitted in any printed, electronic or other form, or used for generating or marketing any printed or electronic publication, service or product.

To subscribe call 1-800-VALUELINE

CALIFORNIA WATER NYSE-CWT

RECENT PRICE 22.48 | P/E RATIO 19.2 (Trailing: 19.1 Median: 20.0) | RELATIVE P/E RATIO 1.10 | DIV'D YLD 3.1% | VALUE LINE

TIMELINESS 4 Lowered 10/2/15
SAFETY 3 Lowered 7/27/07
TECHNICAL 5 Lowered 10/2/15
BETA .75 (1.00 = Market)

2018-20 PROJECTIONS

	Price	Gain	Ann'l Total Return
High	45	(+100%)	22%
Low	25	(+10%)	7%

Insider Decisions

	N	D	J	F	M	A	M	J	J
to Buy	0	0	0	0	0	0	0	0	0
Options	0	0	0	0	3	0	0	0	0
to Sell	3	2	0	0	2	0	1	0	0

Institutional Decisions

	4Q2014	1Q2015	2Q2015
to Buy	81	79	82
to Sell	59	67	66
Hld's(000)	29654	29379	29659

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	©VALUE LINE PUB. LLC	18-20
	7.98	8.08	8.13	8.67	8.18	8.59	8.72	8.10	8.88	9.90	10.82	11.05	12.00	13.34	12.23	12.50	*12.20*	*12.50*	Revenues per sh	*14.50*
	1.37	1.26	1.10	1.32	1.26	1.42	1.52	1.36	1.56	1.86	1.93	1.93	2.07	2.32	2.21	2.47	*2.50*	*2.80*	"Cash Flow" per sh	*3.25*
	.77	.66	.47	.63	.61	.73	.74	.67	.75	.95	.98	.91	.86	1.02	1.02	1.19	*1.15*	*1.35*	Earnings per sh [A]	*1.55*
	.54	.55	.56	.56	.56	.57	.57	.58	.58	.59	.59	.60	.62	.63	.64	.65	*.67*	*.70*	Div'd Decl'd per sh [B] ■	*.97*
	1.72	1.23	2.04	2.91	2.19	1.87	2.01	2.14	1.84	2.41	2.66	2.97	2.83	3.04	2.58	2.76	*3.00*	*2.75*	Cap'l Spending per sh	*3.15*
	6.71	6.45	6.48	6.56	7.22	7.83	7.90	9.07	9.25	9.72	10.13	10.45	10.76	11.28	12.54	13.11	*13.55*	*14.15*	Book Value per sh [C]	*16.00*
	25.87	30.29	30.36	30.36	33.86	36.73	36.78	41.31	41.33	41.45	41.53	41.67	41.82	41.98	47.74	47.81	*48.00*	*48.00*	Common Shs Outst'g [D]	*50.00*
	17.8	19.6	27.1	19.8	22.1	20.1	24.9	29.2	26.1	19.8	19.7	20.3	21.3	17.9	20.1	19.7	*Bold figures are Value Line estimates*		Avg Ann'l P/E Ratio	*23.0*
	1.01	1.27	1.39	1.08	1.26	1.06	1.33	1.58	1.39	1.19	1.31	1.29	1.34	1.14	1.13	1.04			Relative P/E Ratio	*1.45*
	4.0%	4.3%	4.4%	4.5%	4.2%	3.9%	3.1%	2.9%	3.0%	3.1%	3.1%	3.2%	3.4%	3.5%	3.1%	2.8%			Avg Ann'l Div'd Yield	*3.0%*
							320.7	334.7	367.1	410.3	449.4	460.4	501.8	560.0	584.1	597.5	*585*	*600*	Revenues ($mill) [E]	*725*
							27.2	25.6	31.2	39.8	40.6	37.7	36.1	42.6	47.3	56.7	*55.0*	*65.0*	Net Profit ($mill)	*77.5*
							42.4%	37.4%	39.9%	37.7%	40.3%	39.5%	40.5%	37.5%	30.3%	33.0%	*28.0%*	*29.5%*	Income Tax Rate	*36.0%*
							3.3%	10.6%	8.3%	8.6%	7.6%	4.2%	7.6%	8.0%	4.3%	2.7%	*7.0%*	*5.5%*	AFUDC % to Net Profit	*5.0%*
							48.3%	43.5%	42.9%	41.6%	47.1%	52.4%	51.7%	47.8%	41.6%	40.1%	*42.5%*	*43.5%*	Long-Term Debt Ratio	*41.5%*
							51.1%	55.9%	56.6%	58.4%	52.9%	47.6%	48.3%	52.2%	58.4%	59.9%	*57.5%*	*56.5%*	Common Equity Ratio	*58.5%*
							568.1	670.1	674.9	690.4	794.9	914.7	931.5	908.2	1024.9	1045.9	*1135*	*1205*	Total Capital ($mill)	*1370*
							862.7	941.5	1010.2	1112.4	1198.1	1294.3	1381.1	1457.1	1515.8	1590.4	*1680*	*1760*	Net Plant ($mill)	*1820*
							6.3%	5.2%	5.9%	7.1%	6.5%	5.5%	5.5%	6.3%	6.0%	6.3%	*6.0%*	*6.0%*	Return on Total Cap'l	*7.0%*
							9.3%	6.8%	8.1%	9.9%	9.6%	8.6%	8.0%	9.0%	7.9%	9.1%	*8.5%*	*9.5%*	Return on Shr. Equity	*9.5%*
							9.3%	6.8%	8.1%	9.9%	9.6%	8.6%	8.0%	9.0%	7.9%	9.1%	*8.5%*	*9.5%*	Return on Com Equity	*9.5%*
							2.1%	1.0%	1.8%	3.8%	3.8%	3.0%	2.3%	3.4%	3.4%	4.1%	*3.5%*	*4.5%*	Retained to Com Eq	*3.5%*
							78%	86%	77%	61%	60%	66%	71%	62%	56%	55%	*58%*	*51%*	All Div'ds to Net Prof	*63%*

CAPITAL STRUCTURE as of 6/30/15
Total Debt $550.0 mill. Due in 5 Yrs $165.8 mill.
LT Debt $416.8 mill. LT Interest $23.0 mill. (40% of Cap'l)

Pension Assets-12/14 $306.3 mill.
Oblig. $390.6 mill.
Pfd Stock None

Common Stock 47,878,659 shs.
as of 7/22/15

MARKET CAP: $1.1 billion (Mid Cap)

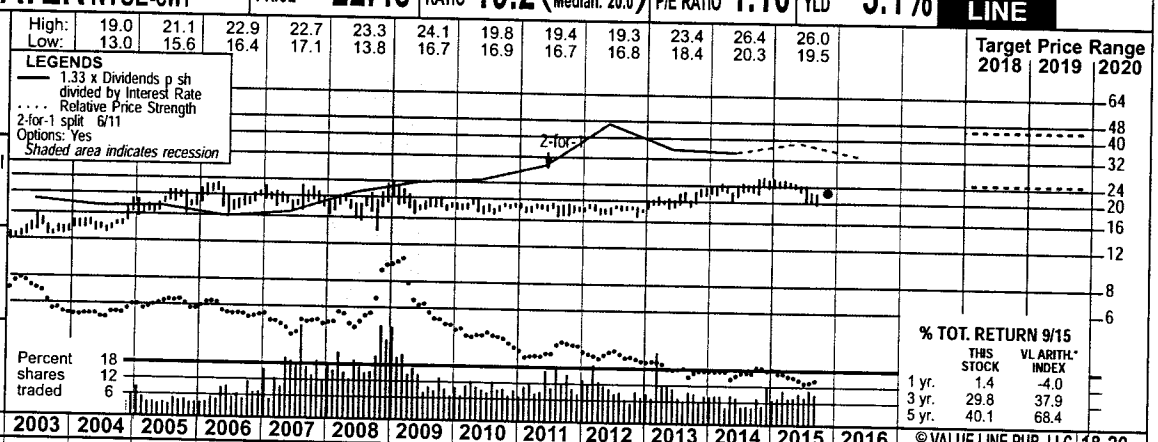
CURRENT POSITION ($MILL.)	2013	2014	6/30/15
Cash Assets	27.5	19.6	24.5
Other	112.0	134.5	125.7
Current Assets	139.5	154.1	150.2
Accts Payable	55.1	59.4	68.7
Debt Due	54.7	85.7	133.2
Other	56.8	72.6	68.5
Current Liab.	166.6	217.7	270.4

ANNUAL RATES of change (per sh)	Past 10 Yrs.	Past 5 Yrs.	Est'd '12-'14 to '18-'20
Revenues	4.0%	5.0%	*4.0%*
"Cash Flow"	6.0%	5.5%	*5.5%*
Earnings	5.0%	4.0%	*6.5%*
Dividends	1.5%	2.0%	*7.0%*
Book Value	5.5%	5.0%	*4.5%*

Calendar	QUARTERLY REVENUES ($ mill.) [E] Mar.31	Jun.30	Sep.30	Dec.31	Full Year
2012	116.8	143.6	178.1	121.5	560.0
2013	111.4	154.6	184.4	133.7	584.1
2014	110.5	158.4	191.2	137.4	597.5
2015	122.0	144.4	*183.6*	*135*	*585*
2016	*120*	*150*	*190*	*140*	*600*

Calendar	EARNINGS PER SHARE [A] Mar.31	Jun.30	Sep.30	Dec.31	Full Year
2012	.03	.31	.56	.12	1.02
2013	.01	.28	.61	.12	1.02
2014	d.11	.36	.70	.24	1.19
2015	.03	.21	*.69*	*.22*	*1.15*
2016	*.05*	*.35*	*.70*	*.25*	*1.35*

Calendar	QUARTERLY DIVIDENDS PAID [B] ■ Mar.31	Jun.30	Sep.30	Dec.31	Full Year
2011	.154	.154	.154	.154	.62
2012	.1575	.1575	.1575	.1575	.63
2013	.16	.16	.16	.16	.64
2014	.1625	.1625	.1625	.1625	.65
2015	.1675	.1675	.1675		



BUSINESS: California Water Service Group provides regulated and nonregulated water service to 477,900 customers in 85 communities in the state of California. Accounts for over 94% of total customers. Also operates in Washington, New Mexico, and Hawaii. Main service areas: San Francisco Bay area, Sacramento Valley, Salinas Valley, San Joaquin Valley & parts of Los Angeles. Acquired Rio Grande Corp; West Hawaii Utilities (9/08). Revenue breakdown, '14: residential, 68%; business, 19%; industrial, 5%; public authorities, 3%; other 5%. '14 reported depreciation rate: 4.0%. Has 1,105 employees. President, Chairman, and CEO: Peter C. Nelson. Inc.: DE. Address: 1720 North First St., San Jose, CA 95112-4598. Tel.: 408-367-8200. Internet: www.calwatergroup.com.

Shares of California Water have done poorly for a water company. The equity of every other regulated water utility we follow recorded positive returns that averaged 5.1% since our July report. This is in sharp contrast to CWT, which has declined 5.1%, basically mirroring the performance of the broader market averages.

Poor second-quarter earnings obviously put downward pressure on the stock. Share net came in at $0.21, versus our $0.35 estimate and last year's $0.36 figure. Due to water restrictions implemented by the California Public Utility Commission (CPUC), demand for water was expected to decrease. However, because the CPUC altered the methodology utilities use to calculate earnings, the large drop in income took the market by surprise. Mechanisms were implemented, so water companies' profits would be derived more from fees and "decoupled" from the amount of water sold.

Despite some confusion among investors, we believe most of the lost profits will eventually be recovered. When water sales drop, the company's accrued unbilled revenue increases. Thus, the timing of California Water's share net is changed. To reflect this, we have lowered 2015's share-net estimate $0.10, to $1.15, while raising 2016's by $0.10, to $1.35.

An important rate case was filed earlier this year. Water utilities are required to file petitions seeking rate relief triennially. California Water asked for $140 million over the period, with the majority of the request front-loaded. Water utilities and the CPUC appear to have reached a balanced relationship, in which the utilities are allowed to earn a fair return on investment in modernizing the water infrastructure, as long as expenses are kept in check. As a result, we expect the CPUC's final decision to be reasonable.

The weak stock price may have presented long-term investors with a nice entry point. Though ranked 4 (Below Average) for year-ahead relative price performance, the equity now has much higher total return potential than almost every other regulated water utility. In addition, CWT has gone from having one of the lowest dividend yields in the industry to one of the highest.

James A. Flood *October 16, 2015*

(A) Basic EPS. Excl. nonrecurring gain (loss): '00, (4¢); '01, 2¢; '02, 4¢; '11, 4¢. Next earnings report due mid-Nov. (B) Dividends historically paid in late Feb., May, Aug., and Nov. ■ Div'd reinvestment plan available. (C) Incl. intangible assets. In '14 : $7.3 mill., $0.15/sh. (D) In millions, adjusted for splits. (E) Excludes non-reg. rev.

Company's Financial Strength	B++
Stock's Price Stability	95
Price Growth Persistence	35
Earnings Predictability	85

© 2015 Value Line, Inc. All rights reserved. Factual material is obtained from sources believed to be reliable and is provided without warranties of any kind. THE PUBLISHER IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS HEREIN. This publication is strictly for subscriber's own, non-commercial, internal use. No part of it may be reproduced, resold, stored or transmitted in any printed, electronic or other form, or used for generating or marketing any printed or electronic publication, service or product.

To subscribe call 1-800-VALUELINE

CONNECTICUT WATER NDQ-CTWS

RECENT PRICE 36.64 | P/E RATIO 17.5 (Trailing: 18.0 Median: 21.0) | RELATIVE P/E RATIO 1.00 | DIV'D YLD 2.9% | VALUE LINE

TIMELINESS 3 Lowered 11/21/14
SAFETY 3 New 1/18/13
TECHNICAL 4 Lowered 10/9/15
BETA .65 (1.00 = Market)

2018-20 PROJECTIONS

	Price	Gain	Ann'l Total Return
High	50	(+35%)	10%
Low	35	(-5%)	2%

Insider Decisions

	N	D	J	F	M	A	M	J	J
to Buy	0	0	0	0	0	0	0	0	0
Options	0	0	0	0	0	0	0	0	0
to Sell	0	0	0	0	0	0	0	0	0

Institutional Decisions

	4Q2014	1Q2015	2Q2015
to Buy	36	37	54
to Sell	46	40	37
Hld's(000)	4296	4289	4391

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
High:	29.8	28.2	27.7	25.6	29.0	26.4	27.9	29.1	32.8	36.4	37.5	38.6						
Low:	23.8	21.9	20.3	22.4	19.3	17.3	20.0	23.3	26.2	27.8	31.0	33.2						
Revenues per sh	5.87	5.70	5.93	5.77	5.91	6.04	5.81	5.68	7.05	7.24	6.93	7.65	7.93	9.47	8.29	8.45	*8.65*	*9.00*
"Cash Flow" per sh	1.65	1.73	1.78	1.78	1.89	1.91	1.62	1.52	1.90	1.95	1.93	2.04	2.11	2.64	2.63	2.97	*3.20*	*3.40*
Earnings per sh A	1.03	1.09	1.13	1.12	1.15	1.16	.88	.81	1.05	1.11	1.19	1.13	1.13	1.53	1.66	1.92	*2.05*	*2.10*
Div'd Decl'd per sh B■	.79	.79	.80	.81	.83	.84	.85	.86	.87	.88	.90	.92	.94	.96	.98	1.01	*1.05*	*1.09*
Cap'l Spending per sh	1.42	1.43	1.86	1.98	1.49	1.58	1.96	1.96	2.24	2.44	3.28	3.06	2.61	2.79	3.02	4.11	*4.60*	*4.15*
Book Value per sh D	8.61	8.92	9.25	10.06	10.46	10.94	11.52	11.60	11.95	12.23	12.67	13.05	13.50	20.95	17.92	18.83	*20.10*	*21.15*
Common Shs Outst'g C	7.26	7.28	7.65	7.94	7.97	8.04	8.17	8.27	8.38	8.46	8.57	8.68	8.76	8.85	11.04	11.12	*11.20*	*11.35*
Avg Ann'l P/E Ratio	18.2	18.2	21.5	24.3	23.5	22.9	28.6	29.0	23.0	22.2	18.4	20.7	23.0	19.4	18.4	17.5		
Relative P/E Ratio	1.04	1.18	1.10	1.33	1.34	1.21	1.52	1.57	1.22	1.34	1.23	1.32	1.44	1.23	1.03	.92		
Avg Ann'l Div'd Yield	4.2%	4.0%	3.3%	3.0%	3.0%	3.1%	3.4%	3.6%	3.6%	3.6%	4.1%	3.9%	3.6%	3.2%	3.2%	3.0%		
Revenues ($mill)							47.5	46.9	59.0	61.3	59.4	66.4	69.4	83.8	91.5	94.0	*97.0*	*102*
Net Profit ($mill)							7.2	6.7	8.8	9.4	10.2	9.8	9.9	13.6	18.3	21.3	*23.0*	*23.5*
Income Tax Rate							--	23.5%	32.4%	27.2%	19.5%	35.2%	41.3%	32.0%	28.0%	14.4%	*9.0%*	*20.0%*
AFUDC % to Net Profit							--	--	--	1.7%	--	--	--	1.7%	2.0%	2.4%	*2.0%*	*2.5%*
Long-Term Debt Ratio							44.9%	44.4%	47.8%	46.9%	50.6%	49.5%	53.2%	49.0%	46.9%	45.7%	*46.0%*	*46.5%*
Common Equity Ratio							54.6%	55.1%	51.8%	52.7%	49.1%	50.2%	46.5%	50.8%	52.9%	54.1%	*54.0%*	*53.5%*
Total Capital ($mill)							172.3	174.1	193.2	196.5	221.3	225.6	254.2	364.6	373.6	386.8	*410*	*425*
Net Plant ($mill)							247.7	268.1	284.3	302.3	325.2	344.2	362.4	447.9	471.9	506.9	*525*	*550*
Return on Total Cap'l							5.0%	4.9%	5.5%	5.9%	5.5%	5.4%	4.9%	4.8%	5.9%	6.4%	*6.5%*	*6.5%*
Return on Shr. Equity							7.5%	6.9%	8.7%	9.0%	9.3%	8.6%	8.3%	7.3%	9.2%	10.1%	*10.5%*	*10.5%*
Return on Com Equity							7.6%	7.0%	8.7%	9.1%	9.4%	8.7%	8.3%	7.3%	9.2%	10.2%	*10.5%*	*10.5%*
Retained to Com Eq							.3%	NMF	1.6%	1.9%	2.3%	1.6%	1.4%	2.8%	3.8%	4.8%	*5.0%*	*5.0%*
All Div'ds to Net Prof							95%	105%	82%	79%	76%	81%	83%	62%	59%	53%	*53%*	*52%*

Bold figures are Value Line estimates

LEGENDS
1.30 x Dividends p sh divided by Interest Rate
Relative Price Strength
Options: No
Shaded area indicates recession

Target Price Range 2018 | 2019 | 2020

80 60 50 40 30 25 20 15 10 7.5

Percent shares traded 12 8 4

% TOT. RETURN 9/15

	THIS STOCK	VL ARITH.* INDEX
1 yr.	15.7	-4.0
3 yr.	25.5	37.9
5 yr.	79.1	68.4

© VALUE LINE PUB. LLC 18-20

	18-20
Revenues per sh	*12.90*
"Cash Flow" per sh	*3.65*
Earnings per sh A	*2.25*
Div'd Decl'd per sh B■	*1.30*
Cap'l Spending per sh	*3.00*
Book Value per sh D	*23.35*
Common Shs Outst'g C	*12.00*
Avg Ann'l P/E Ratio	*19.0*
Relative P/E Ratio	*1.20*
Avg Ann'l Div'd Yield	*3.1%*
Revenues ($mill)	*155*
Net Profit ($mill)	*27.0*
Income Tax Rate	*28.0%*
AFUDC % to Net Profit	*2.0%*
Long-Term Debt Ratio	*47.0%*
Common Equity Ratio	*53.0%*
Total Capital ($mill)	*530*
Net Plant ($mill)	*650*
Return on Total Cap'l	*6.5%*
Return on Shr. Equity	*9.5%*
Return on Com Equity	*9.5%*
Retained to Com Eq	*4.0%*
All Div'ds to Net Prof	*58%*

CAPITAL STRUCTURE as of 6/30/15
Total Debt $183.5 mill. Due in 5 Yrs $19.3 mill.
LT Debt $177.3 mill. LT Interest $7.0 mill. (45% of Cap'l)

Leases, Uncapitalized: Annual rentals $.1 mill.
Pension Assets-12/14 $61.6 mill. Oblig. $79.8 mill.

Pfd Stock $0.8 mill. **Pfd Divd** NMF

Common Stock 11,168,731 shs.
as of 7/31/15
MARKET CAP: $400 million (Small Cap)

CURRENT POSITION ($MILL.)	2013	2014	6/30/15
Cash Assets	18.4	2.5	3.1
Accounts Receivable	12.3	12.0	11.5
Other	16.2	21.7	21.1
Current Assets	46.9	36.2	35.7
Accts Payable	10.8	10.0	9.2
Debt Due	4.1	4.4	6.2
Other	7.8	9.2	9.5
Current Liab.	22.7	23.6	24.9

ANNUAL RATES of change (per sh)	Past 10 Yrs.	Past 5 Yrs.	Est'd '12-'14 to '18-'20
Revenues	4.0%	4.5%	*6.0%*
"Cash Flow"	4.0%	7.5%	*4.5%*
Earnings	4.0%	9.0%	*4.5%*
Dividends	2.0%	2.0%	*5.0%*
Book Value	6.5%	9.5%	*4.0%*

Calendar	QUARTERLY REVENUES ($ mill.) Mar.31	Jun. 30	Sep. 30	Dec. 31	Full Year
2012	18.5	21.3	24.5	19.5	83.8
2013	19.7	22.6	27.6	21.6	91.5
2014	20.3	25.4	27.6	20.7	94.0
2015	20.0	26.6	*28.9*	*21.5*	*97.0*
2016	*22.5*	*27.5*	*30.0*	*22.0*	*102*

Calendar	EARNINGS PER SHARE A Mar.31	Jun. 30	Sep. 30	Dec. 31	Full Year
2012	.22	.47	.67	.17	1.53
2013	.24	.39	.86	.17	1.66
2014	.27	.67	.76	.22	1.92
2015	.28	.77	*.77*	*.23*	*2.05*
2016	*.32*	*.68*	*.85*	*.25*	*2.10*

Calendar	QUARTERLY DIVIDENDS PAID B ■ Mar.31	Jun.30	Sep.30	Dec.31	Full Year
2011	.233	.233	.238	.238	.942
2012	.238	.238	.2425	.2425	.962
2013	.2425	.2425	.2475	.2475	.98
2014	.2475	.2475	.2575	.2575	1.01
2015	.2575	.2575	.2675		

BUSINESS: Connecticut Water Service, Inc. is a non-operating holding company, whose income is derived from earnings of its wholly-owned subsidiary companies (regulated water utilities). In 2014, 93% of net income was derived from these activities. Provides water services to 400,000 people in 77 municipalities throughout Connecticut and Maine. Acquired The Maine Water Company, January, 2012; Biddeford and Saco Water, December, 2012. Incorporated: Connecticut. Has 265 employees. Chairman/President/Chief Executive Officer: Eric W. Thornburg. Officers and directors own 2.3% of the common stock; BlackRock, Inc. 7.0%; (4/15 proxy). Address: 93 West Main Street, Clinton, CT 06413. Telephone: (860) 669-8636. Internet: www.ctwater.com.

Shares of Connecticut Water Service have been strong performers of late. Since our last report in July, the price of the equity has increased 5.0%, compared to the 4.9% decline posted by the S&P 500. Much of the gain is probably due to investors fleeing riskier sectors of the market for stocks, such as Connecticut Water, that carry low Betas, well-defined earnings streams, and higher yields. Also,

The last dividend hike was a start of a new trend, in our opinion. The utility's annual payout growth has been 2% over the past five- and 10-year periods, several hundred basis points lower than that of the typical water utility. Through 2018-2020, we expect the rate to be 5%.

There's a downside to the good news. For starters, most of the company's positive attributes now appear to be factored into the stock price. In the near term, CTWS is pegged to mirror the market averages. Too, the equity's total return potential to late decade is now subpar.

Meanwhile, Connecticut Water's bottom line is poised for a solid showing this year. Second-quarter share net came in at $0.77, versus 2014's $0.67, and the Wall Street consensus of $0.66. A lower-than-expected tax rate and a strong showing by the Maine subsidiary were the primary reasons for the excellent results. In addition, the large gain came despite what we believe was a one-time spike in expenses. All told, earnings per share should rise 4%, despite last year's difficult comparison. We are sticking with our $2.10-a-share estimate in 2016, even though it could prove conservative.

Connecticut Water is expanding its customer base. The company purchased two decent-sized water utilities in the recent past and may add smaller districts in the future. Since there are many redundant expenses in this industry, expenses can be trimmed. Connecticut Water is also building out its existing pipelines infrastructure to serve the University of Connecticut's Storrs campus, as well as the greater Manfield area. This will result in higher capital outlays through 2016. The company currently has the financial wherewithal to handle the construction program, so there shouldn't be an appreciable decline in its financial metrics.

James A. Flood *October 16, 2015*

(A) Diluted earnings. Next earnings report due mid-November. Quarterly earnings do not add in 2012 due to rounding.
(B) Dividends historically paid in mid-March, June, September, and December. ■ Div'd reinvestment plan available.
(C) In millions, adjusted for split.
(D) Includes intangibles. In 2014: $31.7 million/$2.85 a share.

Company's Financial Strength	B+
Stock's Price Stability	85
Price Growth Persistence	50
Earnings Predictability	85

© 2015 Value Line, Inc. All rights reserved. Factual material is obtained from sources believed to be reliable and is provided without warranties of any kind. THE PUBLISHER IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS HEREIN. This publication is strictly for subscriber's own, non-commercial, internal use. No part of it may be reproduced, resold, stored or transmitted in any printed, electronic or other form, or used for generating or marketing any printed or electronic publication, service or product.

To subscribe call 1-800-VALUELINE

MIDDLESEX WATER NDQ-MSEX

RECENT PRICE 24.24 | P/E RATIO 20.0 (Trailing: 20.7 Median: 21.0) | RELATIVE P/E RATIO 1.14 | DIV'D YLD 3.2% | VALUE LINE

TIMELINESS 3 Lowered 4/11/14
SAFETY 2 New 10/21/11
TECHNICAL 4 Lowered 10/9/15
BETA .75 (1.00 = Market)

2018-20 PROJECTIONS

	Price	Gain	Ann'l Total Return
High	30	(+25%)	9%
Low	25	(+5%)	4%

Insider Decisions

	N	D	J	F	M	A	M	J	J
to Buy	1	0	0	0	0	0	0	0	0
Options	0	0	0	0	0	0	0	0	0
to Sell	0	0	1	0	0	0	0	0	0

Institutional Decisions

	4Q2014	1Q2015	2Q2015
to Buy	39	40	43
to Sell	37	38	36
Hld's(000)	6372	6413	6487

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	© VALUE LINE PUB. LLC	18-20
High:	21.8	23.5	20.5	20.2	19.8	17.9	19.3	19.4	19.6	22.5	23.7	25.0								
Low:	16.7	17.1	16.5	16.9	12.0	11.6	14.7	16.5	17.5	18.6	19.1	21.2								
	5.35	5.39	5.87	5.98	6.12	6.25	6.44	6.16	6.50	6.79	6.75	6.60	6.50	6.98	7.19	7.26	*7.65*	*7.80*	Revenues per sh	*9.10*
	1.19	.99	1.18	1.20	1.15	1.28	1.33	1.33	1.49	1.53	1.40	1.55	1.46	1.56	1.72	1.84	*1.95*	*2.05*	"Cash Flow" per sh	*2.25*
	.76	.51	.66	.73	.61	.73	.71	.82	.87	.89	.72	.96	.84	.90	1.03	1.13	*1.20*	*1.25*	Earnings per sh [A]	*1.35*
	.60	.61	.62	.63	.65	.66	.67	.68	.69	.70	.71	.72	.73	.74	.75	.76	*.77*	*.78*	Div'd Decl'd per sh [B]	*.85*
	2.33	1.32	1.25	1.59	1.87	2.54	2.18	2.31	1.66	2.12	1.49	1.90	1.50	1.36	1.26	1.40	*1.50*	*2.00*	Cap'l Spending per sh	*2.00*
	6.95	6.98	7.11	7.39	7.60	8.02	8.26	9.52	10.05	10.03	10.33	11.13	11.27	11.48	11.82	12.24	*12.75*	*13.25*	Book Value per sh	*14.30*
	10.00	10.11	10.17	10.36	10.48	11.36	11.58	13.17	13.25	13.40	13.52	15.57	15.70	15.82	15.96	16.12	*16.25*	*16.25*	Common Shs Outst'g [C]	*17.00*
	17.6	28.7	24.6	23.5	30.0	26.4	27.4	22.7	21.6	19.8	21.0	17.8	21.7	20.8	19.7	18.5	*Bold figures are Value Line estimates*		Avg Ann'l P/E Ratio	*20.5*
	1.00	1.87	1.26	1.28	1.71	1.39	1.46	1.23	1.15	1.19	1.40	1.13	1.36	1.32	1.11	.98			Relative P/E Ratio	*1.30*
	4.4%	4.2%	3.8%	3.7%	3.5%	3.4%	3.5%	3.7%	3.7%	4.0%	4.7%	4.2%	4.0%	4.0%	3.7%	3.7%			Avg Ann'l Div'd Yield	*3.1%*
							74.6	81.1	86.1	91.0	91.2	102.7	102.1	110.4	114.8	117.1	*124*	*127*	Revenues ($mill)	*155*
							8.5	10.0	11.8	12.2	10.0	14.3	13.4	14.4	16.6	18.4	*19.5*	*20.5*	Net Profit ($mill)	*23.0*
							27.6%	33.4%	32.6%	33.2%	34.1%	32.1%	32.7%	33.9%	34.1%	35.0%	*35.0%*	*34.0%*	Income Tax Rate	*34.0%*
							--	--	--	--	--	6.8%	6.1%	3.4%	1.9%	1.7%	*1.0%*	*1.5%*	AFUDC % to Net Profit	*2.5%*
							55.3%	49.5%	49.0%	45.6%	46.6%	43.1%	42.3%	41.5%	40.4%	40.5%	*40.5%*	*41.0%*	Long-Term Debt Ratio	*43.5%*
							41.3%	47.5%	49.6%	51.8%	52.1%	55.8%	56.6%	57.4%	58.7%	58.8%	*58.5%*	*58.5%*	Common Equity Ratio	*56.5%*
							231.7	264.0	268.8	259.4	267.9	310.5	312.5	316.5	321.4	335.8	*345*	*360*	Total Capital ($mill)	*430*
							288.0	317.1	333.9	366.3	376.5	405.9	422.2	435.2	446.5	465.4	*480*	*500*	Net Plant ($mill)	*555*
							5.0%	5.1%	5.6%	5.8%	5.0%	5.7%	5.2%	5.4%	5.9%	6.3%	*6.5%*	*6.5%*	Return on Total Cap'l	*6.5%*
							8.2%	7.5%	8.6%	8.6%	7.0%	8.1%	7.5%	7.8%	8.7%	9.2%	*9.5%*	*9.5%*	Return on Shr. Equity	*9.5%*
							8.6%	7.8%	8.7%	8.9%	7.0%	8.2%	7.5%	7.8%	8.7%	9.3%	*9.5%*	*9.5%*	Return on Com Equity	*9.5%*
							.6%	1.3%	1.8%	2.0%	NMF	2.1%	1.0%	1.4%	2.4%	3.1%	*3.5%*	*3.5%*	Retained to Com Eq	*3.5%*
							94%	84%	79%	78%	98%	75%	87%	83%	73%	67%	*64%*	*63%*	All Div'ds to Net Prof	*63%*

CAPITAL STRUCTURE as of 6/30/15
Total Debt $159.8 mill. Due in 5 Yrs $49.8 mill.
LT Debt $136.1 mill. LT Interest $4.6 mill.

(40% of Cap'l)

Pension Assets-12/14 $51.6 mill.
Oblig. $75.0 mill.
Pfd Stock $2.4 mill. Pfd Div'd: $.1 mill.

Common Stock 16,164,099 shs.
as of 7/31/15

MARKET CAP: $400 million (Small Cap)

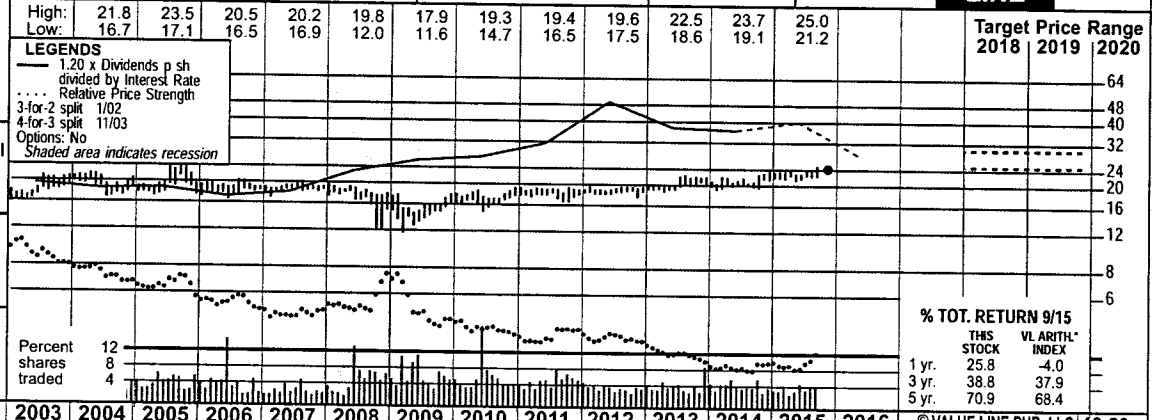
CURRENT POSITION ($MILL.)	2013	2014	6/30/15
Cash Assets	4.8	2.7	5.8
Other	21.0	20.2	17.1
Current Assets	25.8	22.9	22.9
Accts Payable	6.3	6.4	8.9
Debt Due	33.8	24.9	23.7
Other	12.6	12.6	16.8
Current Liab.	52.7	43.9	49.4

ANNUAL RATES of change (per sh)	Past 10 Yrs.	Past 5 Yrs.	Est'd '12-'14 to '18-'20
Revenues	1.5%	1.5%	*4.0%*
"Cash Flow"	3.5%	3.0%	*4.5%*
Earnings	4.0%	4.5%	*5.0%*
Dividends	1.5%	1.5%	*2.0%*
Book Value	4.5%	3.0%	*3.0%*

Calendar	QUARTERLY REVENUES ($ mill.) Mar.31	Jun. 30	Sep. 30	Dec. 31	Full Year
2012	23.5	27.4	32.4	27.1	110.4
2013	27.0	29.1	31.3	27.4	114.8
2014	27.1	29.2	32.7	28.1	117.1
2015	28.8	31.7	*34.0*	*29.5*	*124*
2016	*29.5*	*32.0*	*35.0*	*30.5*	*127*

Calendar	EARNINGS PER SHARE [A] Mar.31	Jun. 30	Sep. 30	Dec. 31	Full Year
2012	.11	.24	.38	.17	.90
2013	.20	.28	.36	.19	1.03
2014	.20	.29	.42	.22	1.13
2015	.22	.31	*.44*	*.23*	*1.20*
2016	*.23*	*.33*	*.46*	*.23*	*1.25*

Calendar	QUARTERLY DIVIDENDS PAID [B] Mar.31	Jun.30	Sep.30	Dec.31	Full Year
2011	.183	.183	.183	.185	.73
2012	.185	.185	.185	.1875	.74
2013	.1875	.1875	.1875	.19	.75
2014	.19	.19	.19	.1925	.76
2015	.1925	.1925	.1925		



BUSINESS: Middlesex Water Company engages in the ownership and operation of regulated water utility systems in New Jersey, Delaware, and Pennsylvania. It also operates water and wastewater systems under contract on behalf of municipal and private clients in NJ and DE. Its Middlesex System provides water services to 60,000 retail customers, primarily in Middlesex County, New Jersey. In 2014, the Middlesex System accounted for 60% of operating revenues. At 12/31/14, the company had 282 employees. Incorporated: NJ. President, CEO, and Chairman: Dennis W. Doll. Officers & directors own 3.5% of the common stock; BlackRock Institutional Trust Co., 6.6% (4/15 proxy). Add.: 1500 Ronson Road, Iselin, NJ 08830. Tel.: 732-634-1500. Internet: www.middlesexwater.com.

Shares of Middlesex Water have turned in an excellent performance over the past quarter. Since our mid-July report, the stock price increased 7.9%, compared to the average return of 5.1% posted by the typical regulated water utility (minus *California Water*), and the 4.9% loss recorded by the S&P 500.

We are modestly raising our earnings estimates. Mostly due to carryover rate relief, Middlesex's second-quarter share earnings came in at a healthy $0.31, versus 2014's $0.29. As a result, we are bumping our full-year forecast $0.05, to $1.20. In 2016, we are also adding another $0.05 a share to our estimate, raising it to $1.25 a share.

A major rate case is pending. In March, Middlesex filed a petition in New Jersey seeking to hike rates by $9.5 million, or 13.5%. As is the case with the entire industry, Middlesex will have to invest heavily to upgrade an aging pipeline system. Because the repairs are needed, we expect the state regulator's final ruling to be reasonable. Also, the percentage increase isn't as onerous as it may sound. Should the full amount sought be granted and implemented, the average residential bill would only go up by about $25 each quarter. A final ruling on the case could take more than a year.

The company may not be big, but it has a strong balance sheet. As of June 30th, the debt-to-total-capital ratio was only 40%, the lowest in the industry. Beginning in 2016 and continuing through the decade, the capital budget will increase by a substantial figure as the water infrastructure is upgraded. Middlesex will not be able to cover all of the outlays with internally generated funds, so external financing will be required. This should result in the company's financial ratios sliding moderately. Nevertheless, finances will remain in good shape.

Middlesex carries the highest yield in the water industry. Investors should not be impressed by this, however. That's because the stock's projected annual dividend growth rate through 2018-2020 is only expected to average a paltry 2%. Indeed, we don't think the current yield is sufficient to compensate shareholders for the below-average future cash flows.

James A. Flood *October 16, 2015*

(A) Diluted earnings. May not sum due to rounding. Next earnings report due mid-November.
(B) Dividends historically paid in mid-Feb., May, Aug., and November. ■ Div'd reinvestment plan available.
(C) In millions, adjusted for splits.

Company's Financial Strength	B++
Stock's Price Stability	95
Price Growth Persistence	35
Earnings Predictability	80

© 2015 Value Line, Inc. All rights reserved. Factual material is obtained from sources believed to be reliable and is provided without warranties of any kind. THE PUBLISHER IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS HEREIN. This publication is strictly for subscriber's own, non-commercial, internal use. No part of it may be reproduced, resold, stored or transmitted in any printed, electronic or other form, or used for generating or marketing any printed or electronic publication, service or product.

To subscribe call 1-800-VALUELINE

SJW CORP. NYSE-SJW

RECENT PRICE 31.07 | P/E RATIO 21.6 (Trailing: 11.3 Median: 24.0) | RELATIVE P/E RATIO 1.23 | DIV'D YLD 2.6% | VALUE LINE

TIMELINESS 4 Lowered 8/7/15
SAFETY 3 New 4/22/11
TECHNICAL 5 Lowered 10/2/15
BETA .75 (1.00 = Market)

2018-20 PROJECTIONS

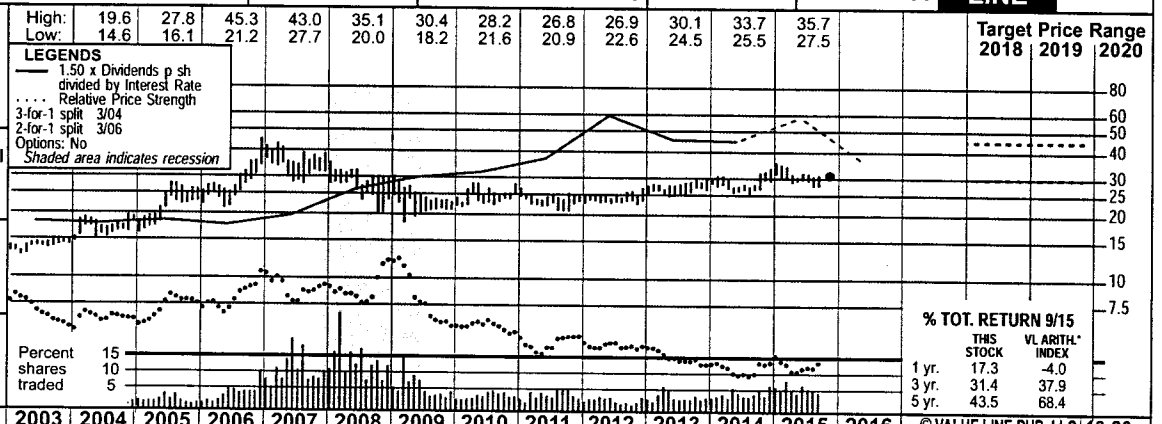
	Price	Gain	Ann'l Total Return
High	45	(+45%)	12%
Low	30	(-5%)	2%

Insider Decisions

	N	D	J	F	M	A	M	J	J
to Buy	0	2	0	1	3	0	0	1	0
Options	1	0	0	0	0	0	0	0	0
to Sell	1	0	0	1	0	0	0	1	0

Institutional Decisions

	4Q2014	1Q2015	2Q2015
to Buy	49	61	63
to Sell	47	47	49
Hld's(000)	10867	10898	10749



% TOT. RETURN 9/15

	THIS STOCK	VL ARITH.* INDEX
1 yr.	17.3	-4.0
3 yr.	31.4	37.9
5 yr.	43.5	68.4

1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	© VALUE LINE PUB. LLC	18-20
6.40	6.74	7.45	7.97	8.20	9.14	9.86	10.35	11.25	12.12	11.68	11.62	12.85	14.01	13.73	15.76	14.40	14.30	Revenues per sh	17.40
1.43	1.23	1.49	1.55	1.75	1.89	2.21	2.38	2.30	2.44	2.21	2.38	2.80	2.97	2.90	4.42	3.60	3.70	"Cash Flow" per sh	4.00
.87	.58	.77	.78	.91	.87	1.12	1.19	1.04	1.08	.81	.84	1.11	1.18	1.12	2.54	1.50	1.60	Earnings per sh A	1.75
.40	.41	.43	.46	.49	.51	.53	.57	.61	.65	.66	.68	.69	.71	.73	.75	.78	.81	Div'd Decl'd per sh B■	1.05
1.77	1.89	2.63	2.06	3.41	2.31	2.83	3.87	6.62	3.79	3.17	5.65	3.75	5.67	4.68	5.02	5.35	5.25	Cap'l Spending per sh	4.95
7.88	7.90	8.17	8.40	9.11	10.11	10.72	12.48	12.90	13.99	13.66	13.75	14.20	14.71	15.92	17.75	18.75	19.75	Book Value per sh	22.60
18.27	18.27	18.27	18.27	18.27	18.27	18.27	18.28	18.36	18.18	18.50	18.55	18.59	18.67	20.17	20.29	20.50	21.00	Common Shs Outst'g C	23.00
15.5	33.1	18.5	17.3	15.4	19.6	19.7	23.5	33.4	26.2	28.7	29.1	21.2	20.4	24.3	11.2	Bold figures are Value Line estimates		Avg Ann'l P/E Ratio	22.0
.88	2.15	.95	.94	.88	1.04	1.05	1.27	1.77	1.58	1.91	1.85	1.33	1.30	1.37	.59			Relative P/E Ratio	1.40
3.0%	2.1%	3.0%	3.4%	3.5%	3.0%	2.4%	2.0%	1.7%	2.3%	2.8%	2.8%	2.9%	3.0%	2.7%	2.6%			Avg Ann'l Div'd Yield	2.8%
180.1	189.2	206.6	220.3	216.1	215.6	239.0	261.5	276.9	319.7	295	300	Revenues ($mill)	400
20.7	22.2	19.3	20.2	15.2	15.8	20.9	22.3	23.5	51.8	30.5	33.5	Net Profit ($mill)	40.0
41.6%	40.8%	39.4%	39.5%	40.4%	38.8%	41.1%	41.1%	38.7%	32.5%	36.5%	36.5%	Income Tax Rate	38.0%
1.6%	2.1%	2.7%	2.3%	2.0%	--	--	--	2.0%	1.0%	1.0%	1.0%	AFUDC % to Net Profit	1.5%
42.6%	41.8%	47.7%	46.0%	49.4%	53.7%	56.6%	55.0%	51.1%	51.6%	52.0%	51.5%	Long-Term Debt Ratio	52.5%
57.4%	58.2%	52.3%	54.0%	50.6%	46.3%	43.4%	45.0%	48.9%	48.4%	48.0%	48.5%	Common Equity Ratio	47.5%
341.2	391.8	453.2	470.9	499.6	550.7	607.9	610.2	656.2	744.5	800	855	Total Capital ($mill)	1100
484.8	541.7	645.5	684.2	718.5	785.5	756.2	831.6	898.7	963.0	1030	1105	Net Plant ($mill)	1300
7.6%	7.0%	5.7%	5.8%	4.4%	4.3%	4.9%	5.0%	5.0%	8.3%	5.0%	5.0%	Return on Total Cap'l	5.5%
10.6%	9.7%	8.2%	8.0%	6.0%	6.2%	7.9%	8.1%	7.3%	14.4%	8.0%	8.0%	Return on Shr. Equity	7.5%
10.6%	9.7%	8.2%	8.0%	6.0%	6.2%	7.9%	8.1%	7.3%	14.4%	8.0%	8.0%	Return on Com Equity	7.5%
5.6%	5.2%	3.5%	3.3%	1.2%	1.2%	3.1%	3.3%	2.8%	10.2%	4.0%	3.5%	Retained to Com Eq	3.0%
47%	46%	57%	59%	80%	80%	61%	59%	62%	29%	52%	51%	All Div'ds to Net Prof	60%

CAPITAL STRUCTURE as of 6/30/15
Total Debt $404.8 mill. Due in 5 Yrs $21.2 mill.
LT Debt $384.0 mill. LT Interest $21.0 mill.
(51% of Cap'l)

Leases, Uncapitalized: Annual rentals $5.5 mill.

Pension Assets-12/14 $91.4 mill.
Oblig. $128.7 mill.

Pfd Stock None.

Common Stock 20,363,574 shs.
as of 7/22/15
MARKET CAP: $625 million (Small Cap)

CURRENT POSITION ($MILL.)	2013	2014	6/30/15
Cash Assets	2.3	2.4	5.2
Accts Receivable	14.5	15.0	17.6
Other	22.9	50.7	47.2
Current Assets	39.7	68.1	70.0
Accts Payable	12.6	7.0	13.0
Debt Due	23.0	13.8	20.8
Other	23.6	23.9	25.2
Current Liab.	59.2	44.7	59.0

ANNUAL RATES of change (per sh)	Past 10 Yrs.	Past 5 Yrs.	Est'd '12-'14 to '18-'20
Revenues	5.5%	4.5%	3.0%
"Cash Flow"	7.0%	8.0%	2.5%
Earnings	6.5%	10.5%	1.5%
Dividends	4.0%	3.0%	6.0%
Book Value	6.0%	3.5%	6.0%

Calendar	QUARTERLY REVENUES ($ mill.) Mar.31	Jun. 30	Sep. 30	Dec. 31	Full Year
2012	51.1	65.6	82.4	62.4	261.5
2013	50.1	74.2	85.2	67.4	276.9
2014	54.6	70.4	125.4	69.3	319.7
2015	62.1	72.4	89.0	71.5	295
2016	60.0	75.0	90.0	75.0	300

Calendar	EARNINGS PER SHARE A Mar.31	Jun. 30	Sep. 30	Dec. 31	Full Year
2012	.06	.28	.53	.31	1.18
2013	.07	.37	.44	.24	1.12
2014	.04	.34	1.88	.28	2.54
2015	.23	.36	.59	.32	1.50
2016	.17	.42	.67	.34	1.60

Calendar	QUARTERLY DIVIDENDS PAID B■ Mar.31	Jun.30	Sep.30	Dec.31	Full Year
2011	.173	.173	.173	.173	.69
2012	.1775	.1775	.1775	.1775	.71
2013	.1825	.1825	.1825	.1825	.73
2014	.1875	.1875	.1875	.1875	.75
2015	.1950	.1950	.1950		

BUSINESS: SJW Corporation engages in the production, purchase, storage, purification, distribution, and retail sale of water. It provides water service to approximately 229,000 connections that serve a population of roughly one million people in the San Jose area and 12,000 connections that serve about 36,000 residents in a service area in the region between San Antonio and Austin, Texas. The company offers nonregulated water-related services. Also owns and operates commercial real estate investments. Has about 395 employees. Officers & directors (including Nancy O. Moss) own 27.9% of outstanding shares. Chairman.: Charles J. Toeniskoetter. Incorporated: CA. Address: 110 West Taylor Street, San Jose, CA 95110. Telephone: (408) 279-7800. Int: www.sjwater.com.

The historic drought in California has not had an impact on SJW's main subsidiary. Thanks to a previous change in the methodology used to determine how water utilities' income is calculated, San Jose Water should be able to do well despite the severe water restrictions instituted by the California State Public Utility Commission. In the past, utilities profitability depended on the amount of water that was sold. Based on the new arrangement, utilities receive a fixed charge for their services.

The company's earnings are much better than they appear. Last year's tally was inflated by a one-time gain as several years of accrued expenses were reimbursed in the third period. In the first half of 2015, SJW's share net was running well ahead of 2014's levels. While comparisons will be negative for the remainder of the year, we think that share net will come in at a healthy $1.50. In 2016, we estimate that the bottom line will increase $0.10 a share, to $1.60. This solid increase will be due in part to a thriving service area, which includes Silicon Valley.

The construction program will remain large, but manageable. San Jose Water has been spending heavily on replacing old pipes and modernizing other facilities. Internally generated funds will not be sufficient to cover all of the capital outlays, so the company will have to depend to some extent on new debt and equity offerings. As a result, some of SJW's financial metrics may deteriorate to some degree, but should remain in an acceptable range.

Shares of SJW have not done as well as other regulated water utilities. Since our July report, volatility in the markets increased and the S&P 500 declined 4.9%. Seeking a safe haven, funds poured into this sector as investors placed a premium on low-Beta equities, with good yields, that had well-defined sources of earnings. Thus, this group (excluding California Water) averaged a positive return of 5.1%, compared to the gain of only 81 basis points, recorded by SJW.

These shares are untimely. But due to the recent poor showing relative to its peers, SJW's long-term appreciation potential is better than that of most other water utilities.

James A. Flood *October 16, 2015*

(A) Diluted earnings. Excludes nonrecurring losses : '03, $1.97; '04, $3.78; '05, $1.09; '06, $16.36; '08, $1.22; '10, $0.46. GAAP accounting as of 2013. Next earnings report due mid-November. Quarterly earnings may not add due to rounding.
(B) Dividends historically paid in early March, June, September, and December. ■ Div'd reinvestment plan available.
(C) In millions, adjusted for stock splits.

Company's Financial Strength	B+
Stock's Price Stability	85
Price Growth Persistence	20
Earnings Predictability	55

© 2015 Value Line, Inc. All rights reserved. Factual material is obtained from sources believed to be reliable and is provided without warranties of any kind. THE PUBLISHER IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS HEREIN. This publication is strictly for subscriber's own, non-commercial, internal use. No part of it may be reproduced, resold, stored or transmitted in any printed, electronic or other form, or used for generating or marketing any printed or electronic publication, service or product.

To subscribe call 1-800-VALUELINE

YORK WATER NDQ-YORW

RECENT PRICE 21.91 | P/E RATIO 24.3 (Trailing: 23.6 Median: 25.0) | RELATIVE P/E RATIO 1.39 | DIV'D YLD 2.9% | VALUE LINE

TIMELINESS 3 Raised 3/27/15
SAFETY 3 Lowered 7/17/15
TECHNICAL 4 Raised 10/16/15
BETA .75 (1.00 = Market)

2018-20 PROJECTIONS

	Price	Gain	Ann'l Total Return
High	30	(+35%)	11%
Low	20	(-10%)	1%

Insider Decisions

	N	D	J	F	M	A	M	J	J
to Buy	0	0	4	0	2	4	1	0	4
Options	0	0	0	0	0	0	0	0	0
to Sell	0	0	0	0	0	0	0	0	0

Institutional Decisions

	4Q2014	1Q2015	2Q2015
to Buy	32	33	34
to Sell	24	29	31
Hld's(000)	3767	3841	3769

High: 14.0 17.9 21.0 18.5 16.5 18.0 18.0 18.1 18.5 22.0 24.3 26.0
Low: 11.0 11.7 15.3 15.5 6.2 9.7 12.8 15.8 16.8 17.6 18.8 19.7

LEGENDS
1.10 x Dividends p sh divided by Interest Rate
.... Relative Price Strength
2-for-1 split 5/02
3-for-2 split 9/06
Options: No
Shaded area indicates recession

Target Price Range 2018 | 2019 | 2020

Percent shares traded 12 8 4

% TOT. RETURN 9/15

	THIS STOCK	VL ARITH.* INDEX
1 yr.	7.9	-4.0
3 yr.	23.7	37.9
5 yr.	50.4	68.4

1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	© VALUE LINE PUB. LLC	18-20
--	--	2.05	2.05	2.17	2.18	2.58	2.56	2.79	2.89	2.95	3.07	3.18	3.21	3.27	3.58	3.75	4.00	Revenues per sh	4.85
--	--	.59	.57	.65	.65	.79	.77	.86	.88	.95	1.07	1.09	1.12	1.19	1.36	1.45	1.50	"Cash Flow" per sh	1.75
--	--	.43	.40	.47	.49	.56	.58	.57	.57	.64	.71	.71	.72	.75	.89	.90	1.00	Earnings per sh A	1.15
--	--	.34	.35	.37	.39	.42	.45	.48	.49	.51	.52	.53	.54	.55	.57	.60	.63	Div'd Decl'd per sh B	.80
--	--	.75	.66	1.07	2.50	1.69	1.85	1.69	2.17	1.18	.83	.74	.94	.76	1.10	.95	1.25	Cap'l Spending per sh	1.10
--	--	3.79	3.90	4.06	4.65	4.85	5.84	5.97	6.14	6.92	7.19	7.45	7.73	7.98	8.15	8.65	8.80	Book Value per sh	9.50
--	--	9.46	9.55	9.63	10.33	10.40	11.20	11.27	11.37	12.56	12.69	12.79	12.92	12.98	12.83	12.75	12.50	Common Shs Outst'g C	12.00
--	--	17.8	26.9	24.5	25.7	26.3	31.2	30.3	24.6	21.9	20.7	23.9	24.4	26.3	23.1	Bold figures are Value Line estimates		Avg Ann'l P/E Ratio	22.5
--	--	.91	1.47	1.40	1.36	1.40	1.68	1.61	1.48	1.46	1.32	1.50	1.55	1.48	1.22			Relative P/E Ratio	1.40
--	--	4.4%	3.3%	3.2%	3.1%	2.9%	2.5%	2.8%	3.5%	3.6%	3.5%	3.1%	3.1%	2.8%	2.8%			Avg Ann'l Div'd Yield	3.2%
						26.8	28.7	31.4	32.8	37.0	39.0	40.6	41.4	42.4	45.9	48.0	50.0	Revenues ($mill)	58.0
						5.8	6.1	6.4	6.4	7.5	8.9	9.1	9.3	9.7	11.5	11.5	12.5	Net Profit ($mill)	14.0
						36.7%	34.4%	36.5%	36.1%	37.9%	38.5%	35.3%	37.6%	37.6%	29.8%	27.5%	24.5%	Income Tax Rate	32.5%
						--	7.2%	3.6%	10.1%	--	1.2%	1.1%	1.1%	.8%	1.8%	1.0%	1.0%	AFUDC % to Net Profit	1.0%
						44.1%	48.3%	46.5%	54.5%	45.7%	48.3%	47.1%	46.0%	45.1%	44.8%	44.0%	46.0%	Long-Term Debt Ratio	48.0%
						55.9%	51.7%	53.5%	45.5%	54.3%	51.7%	52.9%	54.0%	54.9%	55.2%	56.0%	54.0%	Common Equity Ratio	52.0%
						90.3	126.5	125.7	153.4	160.1	176.4	180.2	184.8	188.4	189.4	200	205	Total Capital ($mill)	220
						155.3	174.4	191.6	211.4	222.0	228.4	233.0	240.3	244.2	253.2	260	265	Net Plant ($mill)	280
						8.4%	6.2%	6.7%	5.7%	6.2%	6.5%	6.4%	6.4%	6.5%	7.4%	7.0%	7.5%	Return on Total Cap'l	8.0%
						11.6%	9.3%	9.5%	9.2%	8.6%	9.8%	9.5%	9.3%	9.3%	11.0%	10.5%	11.5%	Return on Shr. Equity	12.0%
						11.6%	9.3%	9.5%	9.2%	8.6%	9.8%	9.5%	9.3%	9.3%	11.0%	10.5%	11.5%	Return on Com Equity	12.0%
						3.0%	2.2%	1.7%	1.4%	1.9%	2.7%	2.5%	2.4%	2.4%	3.9%	3.5%	4.5%	Retained to Com Eq	3.5%
						74%	77%	82%	85%	78%	72%	73%	74%	74%	64%	67%	63%	All Div'ds to Net Prof	69%

CAPITAL STRUCTURE as of 6/30/15
Total Debt $84.8 mill. Due in 5 Yrs $30.5 mill.
LT Debt $84.8 mill. LT Interest $5.1 mill.
(44% of Cap'l)
Pension Assets 12/14 $30.6 mill.
Oblig. $40.9 mill.

Pfd Stock None

Common Stock 12,866,946 shs.
as of 8/4/15
MARKET CAP: $275 million (Small Cap)

CURRENT POSITION ($MILL.)	2013	2014	6/30/15
Cash Assets	7.6	1.5	1.0
Accounts Receivable	3.8	4.0	4.3
Inventory (Avg. Cost)	.7	.8	.8
Other	3.1	4.9	4.0
Current Assets	15.2	11.2	10.1
Accts Payable	1.8	1.6	2.4
Debt Due	--	--	--
Other	6.0	4.3	4.4
Current Liab.	7.8	5.9	6.8

ANNUAL RATES of change (per sh)	Past 10 Yrs.	Past 5 Yrs.	Est'd '12-'14 to '18-'20
Revenues	4.5%	3.0%	6.5%
"Cash Flow"	7.0%	6.5%	6.0%
Earnings	5.5%	6.0%	6.5%
Dividends	4.0%	2.5%	6.5%
Book Value	6.5%	4.5%	3.0%

Calendar	QUARTERLY REVENUES ($ mill.) Mar.31	Jun. 30	Sep. 30	Dec. 31	Full Year
2012	9.6	10.4	11.0	10.4	41.4
2013	10.1	10.7	10.9	10.7	42.4
2014	10.6	11.8	12.0	11.5	45.9
2015	11.2	11.9	*12.4*	*12.5*	*48.0*
2016	*11.5*	*12.5*	*13.0*	*13.0*	*50.0*

Calendar	EARNINGS PER SHARE A Mar.31	Jun. 30	Sep. 30	Dec. 31	Full Year
2012	.15	.17	.22	.18	.72
2013	.17	.18	.19	.21	.75
2014	.16	.22	.23	.28	.89
2015	.20	.22	*.25*	*.23*	*.90*
2016	*.20*	*.26*	*.28*	*.26*	*1.00*

Calendar	QUARTERLY DIVIDENDS PAID B Mar.31	Jun.30	Sep.30	Dec.31	Full Year
2011	.131	.131	.131	.131	.524
2012	.134	.134	.134	.134	.535
2013	.138	.138	.138	.138	.552
2014	.1431	.1431	.1431	.1431	.572
2015	.1495	.1495	.1495		

BUSINESS: The York Water Company is the oldest investor-owned regulated water utility in the United States. It has operated continuously since 1816. As of December 31, 2014, the company's average daily availability was 35.2 million gallons and its service territory had an estimated population of 190,000. Has more than 65,100 customers. Residential customers accounted for 63% of 2014 revenues; commercial and industrial (29%); other (8%). It also provides sewer billing services. Incorporated: PA. York had 106 full-time employees at 12/31/14. President/CEO: Jeffrey R. Hines. Officers/directors own 1.1% of the common stock (4/15 proxy). Address: 130 East Market Street York, Pennsylvania 17401. Telephone: (717) 845-3601. Internet: www.yorkwater.com.

York Water's earnings were flat in the second quarter. This broke a string of four-straight solid earnings comparisons on a year-over-year basis. The positives were higher rates being in effect from last year and a smaller tax bill. These were offset, however, by an increase in costs. For the full year, we reduced our earnings-per-share estimate by $0.05, to $0.90, roughly on par with 2014's strong number.

Earnings should pick up in 2016. York ought to benefit from last year's rate hike and a lower tax bill. Also, we don't think last quarter's spike in expenses was the start of a trend. Actually, the company had been successfully reining in costs, and we think this should continue. All told, the company's share net may jump 11%, or $0.10, to $1.00.

The company has a solid balance sheet. To a certain degree, other water entities would probably like to have York's financial problem. Pennsylvania regulators seem to prefer that water utilities maintain a long-term debt-to-total capitalization percentage between 46% and 50%. Because the company has solid cash generation, this figure was 44% at the end of the second quarter. We think York may buy back 4% of its outstanding shares to raise its the debt ratio.

York is the smallest regulated utility in the water industry. Most institution accounts don't like owning more than 3% to 5% of any one company's stock for diversification reasons. A market cap of around $275 million just isn't large enough to take a position. A drawback of this could be a lack of liquidity. Conversely, when the stock is priced attractively, retail investors won't have to worry about the smart money getting involved before them.

Dividend growth prospects have improved. Over the past five years, the payout has increased 2.5% per annum, subpar for a utility. Earlier this year, the dividend was hiked 4.5%, however. We think this level is sustainable through 2018-2020.

These shares are ranked to perform in line with the broader market averages over the next six- to 12-month period. Due to the equity outperforming the S&P 500 by almost 700 basis points since mid-July, it has below-average long-term total return potential.

James A. Flood *October 16, 2015*

(A) Diluted earnings. Next earnings report due mid-November.
(B) Dividends historically paid in mid-January, April, July, and October.
(C) In millions, adjusted for splits.

Company's Financial Strength	B+
Stock's Price Stability	85
Price Growth Persistence	50
Earnings Predictability	95

© 2015 Value Line, Inc. All rights reserved. Factual material is obtained from sources believed to be reliable and is provided without warranties of any kind. THE PUBLISHER IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS HEREIN. This publication is strictly for subscriber's own, non-commercial, internal use. No part of it may be reproduced, resold, stored or transmitted in any printed, electronic or other form, or used for generating or marketing any printed or electronic publication, service or product.

To subscribe call 1-800-VALUELINE

ATTACHMENT 3

Home Mail Search News Sports Finance Weather Games Answers Screen Flickr Mobile More

Try Yahoo Finance on Fire
Sign In Mail

Finance Home My Portfolio My Quotes News Market Data Yahoo Originals Business & Finance Personal Finance CNBC Contributors

Dow 1.13%

E*TRADE AWR IS DOWN OPEN AN ACCOUNT

AWR 5-DAY TREND Scottrade Go

Wed, Oct 28, 2015, 5:38PM EDT - U.S. Markets closed Report an Issue

AWR

1 YEAR OF COMMISSION-FREE TRADES Fidelity GET DETAILS

American States Water Company (AWR) - NYSE

41.03 0.03(0.07%) 4:02PM EDT

Analyst Estimates

Get Analyst Estimates for: GO

Earnings Est	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Avg. Estimate	0.56	0.31	1.61	1.67
No. of Analysts	3.00	3.00	5.00	5.00
Low Estimate	0.49	0.28	1.47	1.53
High Estimate	0.60	0.32	1.66	1.72
Year Ago EPS	0.54	0.35	1.57	1.61

Next Earnings Date: Nov 3, 2015 - Set a Reminder

Revenue Est	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Avg. Estimate	143.65M	113.56M	474.79M	492.85M
No. of Analysts	2	2	5	5
Low Estimate	141.64M	112.44M	457.00M	468.00M
High Estimate	145.66M	114.69M	493.00M	516.60M
Year Ago Sales	138.33M	109.88M	465.79M	474.79M
Sales Growth (year/est)	3.80%	3.40%	1.90%	3.80%

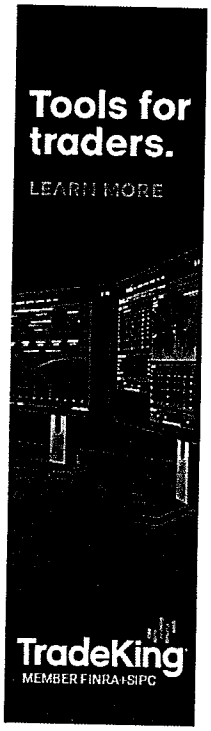
Earnings History	Sep 14	Dec 14	Mar 15	Jun 15
EPS Est	0.49	0.26	0.29	0.41
EPS Actual	0.54	0.35	0.32	0.41
Difference	0.05	0.09	0.03	0.00
Surprise %	10.20%	34.60%	10.30%	0.00%

EPS Trends	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Current Estimate	0.56	0.31	1.61	1.67
7 Days Ago	0.56	0.31	1.61	1.67
30 Days Ago	0.56	0.31	1.61	1.67
60 Days Ago	0.56	0.31	1.61	1.67
90 Days Ago	0.56	0.30	1.60	1.68

EPS Revisions	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Up Last 7 Days	0	0	0	0
Up Last 30 Days	0	0	0	0
Down Last 30 Days	0	0	0	0
Down Last 90 Days	N/A	N/A	N/A	N/A

Growth Est	AWR	Industry	Sector	S&P 500
Current Qtr.	3.70%	-16.00%	-27.10%	3.30%
Next Qtr.	-11.40%	14.40%	90.40%	7.40%
This Year	2.50%	-16.30%	32.60%	-1.40%
Next Year	3.70%	1.20%	22.20%	9.50%
Past 5 Years (per annum)	11.61%	N/A	N/A	N/A
Next 5 Years (per annum)	5.00%	8.27%	6.64%	6.00%
Price/Earnings (avg. for comparison categories)	25.67	20.29	21.35	16.30
PEG Ratio (avg. for comparison categories)	5.13	4.30	6.88	2.94

Currency in USD.



Home Mail Search News Sports Finance Weather Games Answers Screen Flickr Mobile | More

Try Yahoo Finance on Fire
Sign In Mail

Finance HomeMy PortfolioMy Quotes NewsMarket DataYahoo OriginalsBusiness & FinancePersonal Finance CNBC Contributors

Dow 1.13%

AWK
Fidelity GET DETAILS

AWK 5-DAY TREND
Scottrade Go

AWK

E*TRADE
OPEN AN ACCOUNT

Wed, Oct 28, 2015, 5:41PM EDT - U.S. Markets closed **Report an Issue**

American Water Works Company, Inc. (AWK) - NYSE

57.73 0.20(0.35%) 4:01PM EDT

After Hours : **57.73** 0.00 (0.00%) 4:01PM EDT - Nasdaq Real Time Price

Analyst Estimates

Get Analyst Estimates for: GO

Earnings Est	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Avg. Estimate	0.94	0.56	2.61	2.81
No. of Analysts	13.00	12.00	17.00	17.00
Low Estimate	0.91	0.51	2.55	2.70
High Estimate	0.96	0.61	2.65	2.88
Year Ago EPS	0.92	0.52	2.47	2.61

Next Earnings Date: Nov 4, 2015 - Set a Reminder

Revenue Est	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Avg. Estimate	908.82M	808.37M	3.16B	3.32B
No. of Analysts	11	11	15	15
Low Estimate	883.60M	752.62M	3.12B	3.23B
High Estimate	1.03B	1.07B	3.22B	3.40B
Year Ago Sales	846.17M	731.38M	3.01B	3.16B
Sales Growth (year/est)	7.40%	10.50%	5.10%	5.00%

Earnings History	Sep 14	Dec 14	Mar 15	Jun 15
EPS Est	0.91	0.51	0.41	0.67
EPS Actual	0.92	0.52	0.44	0.68
Difference	0.01	0.01	0.03	0.01
Surprise %	1.10%	2.00%	7.30%	1.50%

EPS Trends	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Current Estimate	0.94	0.56	2.61	2.81
7 Days Ago	0.94	0.56	2.61	2.81
30 Days Ago	0.94	0.56	2.61	2.81
60 Days Ago	0.94	0.56	2.61	2.81
90 Days Ago	0.96	0.55	2.61	2.82

EPS Revisions	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Up Last 7 Days	0	0	0	0
Up Last 30 Days	1	0	1	1
Down Last 30 Days	0	1	0	1
Down Last 90 Days	N/A	N/A	N/A	N/A

Growth Est	AWK	Industry	Sector	S&P 500
Current Qtr.	2.20%	-16.00%	-27.10%	3.30%
Next Qtr.	7.70%	14.40%	90.40%	7.40%
This Year	5.70%	-16.30%	32.60%	-1.40%
Next Year	7.70%	1.20%	22.20%	9.50%
Past 5 Years (per annum)	9.40%	N/A	N/A	N/A
Next 5 Years (per annum)	7.34%	8.27%	6.64%	6.00%
Price/Earnings (avg. for comparison categories)	22.20	20.29	21.35	16.30
PEG Ratio (avg. for comparison categories)	3.02	4.30	6.88	2.94

Currency in USD.

Home Mail Search News Sports Finance Weather Games Answers Screen Flickr Mobile More

Try Yahoo Finance on Fire
Sign In Mail

Finance Home My Portfolio My Quotes News Market Data Yahoo Originals Business & Finance Personal Finance CNBC Contributors

Dow 1.13%

E*TRADE
OPEN AN ACCOUNT

WTR

200 COMMISSION-FREE TRADES
Fidelity

WTR 5-DAY TREND
Scottrade Go

Wed, Oct 28, 2015, 5:43PM EDT - U.S. Markets closed **Report an Issue**

Aqua America Inc. (WTR) - NYSE

28.59 0.03(0.11%) 4:03PM EDT

After Hours : **28.59** 0.00 (0.00%) 4:03PM EDT - Nasdaq Real Time Price

Analyst Estimates

Get Analyst Estimates for: GO

Earnings Est	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Avg. Estimate	0.38	0.28	1.27	1.36
No. of Analysts	6.00	6.00	10.00	10.00
Low Estimate	0.37	0.27	1.25	1.33
High Estimate	0.40	0.29	1.30	1.40
Year Ago EPS	0.38	0.28	1.20	1.27

Next Earnings Date: Nov 3, 2015 - Set a Reminder

Revenue Est	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Avg. Estimate	219.28M	198.29M	811.70M	853.96M
No. of Analysts	5	5	9	9
Low Estimate	214.30M	195.10M	779.90M	834.90M
High Estimate	226.33M	201.10M	824.20M	867.19M
Year Ago Sales	210.54M	191.39M	779.90M	811.70M
Sales Growth (year/est)	4.20%	3.60%	4.10%	5.20%

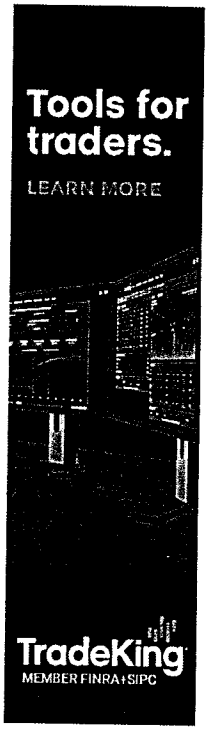
Earnings History	Sep 14	Dec 14	Mar 15	Jun 15
EPS Est	0.37	0.27	0.26	0.32
EPS Actual	0.38	0.28	0.27	0.32
Difference	0.01	0.01	0.01	0.00
Surprise %	2.70%	3.70%	3.80%	0.00%

EPS Trends	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Current Estimate	0.38	0.28	1.27	1.36
7 Days Ago	0.39	0.28	1.27	1.36
30 Days Ago	0.39	0.28	1.27	1.36
60 Days Ago	0.38	0.28	1.27	1.35
90 Days Ago	0.39	0.28	1.27	1.34

EPS Revisions	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Up Last 7 Days	0	0	0	0
Up Last 30 Days	0	0	0	0
Down Last 30 Days	1	0	0	0
Down Last 90 Days	N/A	N/A	N/A	N/A

Growth Est	WTR	Industry	Sector	S&P 500
Current Qtr.	0.00%	-16.00%	-27.10%	3.30%
Next Qtr.	0.00%	14.40%	90.40%	7.40%
This Year	5.80%	-16.30%	32.60%	-1.40%
Next Year	7.10%	1.20%	22.20%	9.50%
Past 5 Years (per annum)	11.93%	N/A	N/A	N/A
Next 5 Years (per annum)	5.55%	8.27%	6.64%	6.00%
Price/Earnings (avg. for comparison categories)	22.46	20.29	21.35	16.30
PEG Ratio (avg. for comparison categories)	4.05	4.30	6.88	2.94

Currency in USD.



Home Mail Search News Sports Finance Weather Games Answers Screen Flickr Mobile More

Try Yahoo Finance on Fire
Sign In Mail

Finance Home My Portfolio My Quotes News Market Data Yahoo Originals Business & Finance Personal Finance CNBC Contributors

Dow 1.13% Nasdaq 1.30%

Wed, Oct 28, 2015, 5:44PM EDT - U.S. Markets closed Report an Issue

Artesian Resources Corp. (ARTNA) - NasdaqGS

24.58 0.44(1.82%) 4:00PM EDT

Analyst Estimates

Get Analyst Estimates for: GO

Earnings Est	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Avg. Estimate	0.35	0.22	1.25	1.23
No. of Analysts	1.00	1.00	2.00	2.00
Low Estimate	0.35	0.22	1.22	1.11
High Estimate	0.35	0.22	1.28	1.35
Year Ago EPS	0.37	0.24	1.07	1.25

Revenue Est	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Avg. Estimate	20.90M	18.70M	77.09M	79.19M
No. of Analysts	1	1	2	2
Low Estimate	20.90M	18.70M	77.07M	77.60M
High Estimate	20.90M	18.70M	77.10M	80.77M
Year Ago Sales	19.60M	18.08M	72.46M	77.09M
Sales Growth (year/est)	6.70%	3.40%	6.40%	2.70%

Earnings History	Sep 14	Dec 14	Mar 15	Jun 15
EPS Est	0.33	0.21	0.30	0.29
EPS Actual	0.37	0.24	0.28	0.36
Difference	0.04	0.03	-0.02	0.07
Surprise %	12.10%	14.30%	-6.70%	24.10%

EPS Trends	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Current Estimate	0.35	0.22	1.25	1.23
7 Days Ago	0.34	0.23	1.25	1.23
30 Days Ago	0.34	0.23	1.25	1.27
60 Days Ago	0.34	0.23	1.25	1.27
90 Days Ago	0.34	0.23	1.17	1.23

EPS Revisions	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Up Last 7 Days	1	0	1	0
Up Last 30 Days	1	0	1	0
Down Last 30 Days	0	1	0	1
Down Last 90 Days	N/A	N/A	N/A	N/A

Growth Est	ARTNA	Industry	Sector	S&P 500
Current Qtr.	-5.40%	-16.00%	-27.10%	3.30%
Next Qtr.	-8.30%	14.40%	90.40%	7.40%
This Year	16.80%	-16.30%	32.60%	-1.40%
Next Year	-1.60%	1.20%	22.20%	9.50%
Past 5 Years (per annum)	4.81%	N/A	N/A	N/A
Next 5 Years (per annum)	4.00%	8.27%	6.64%	6.00%
Price/Earnings (avg. for comparison categories)	19.39	20.29	21.35	16.30
PEG Ratio (avg. for comparison categories)	4.85	4.30	6.88	2.94

Currency in USD.

Home Mail Search News Sports Finance Weather Games Answers Screen Flickr Mobile More

Try Yahoo Finance on Fire
Sign In Mail

Finance Home My Portfolio My Quotes News Market Data Yahoo Originals Business & Finance Personal Finance CNBC Contributors

Dow 1.13%

Fidelity $0 COMMISSION-FREE TRADES

E*TRADE ARTNA ▲ 1.82% TODAY'S CHANGES

GET A TRADER'S TAKE ON THE FED ANNOUNCEMENT. Ameritrade GO

CWT 5-DAY TREND Scottrade Go

Wed, Oct 28, 2015, 5:44PM EDT - U.S. Markets closed **Report an Issue**

California Water Service Group (CWT) - NYSE

24.35 0.41(1.71%) 4:02PM EDT

After Hours : **24.35** 0.00 (0.00%) 4:43PM EDT

Analyst Estimates

Get Analyst Estimates for: GO

Earnings Est	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Avg. Estimate	0.67	0.24	1.17	1.33
No. of Analysts	4.00	4.00	5.00	5.00
Low Estimate	0.64	0.16	1.05	1.18
High Estimate	0.70	0.36	1.30	1.55
Year Ago EPS	0.70	0.24	1.19	1.17

Next Earnings Date: Oct 28, 2015 - Set a Reminder

Revenue Est	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Avg. Estimate	183.36M	139.41M	598.15M	627.97M
No. of Analysts	2	2	3	3
Low Estimate	181.63M	130.52M	578.54M	602.61M
High Estimate	185.10M	148.30M	616.00M	641.30M
Year Ago Sales	191.18M	137.38M	597.50M	598.15M
Sales Growth (year/est)	-4.10%	1.50%	0.10%	5.00%

Earnings History	Sep 14	Dec 14	Mar 15	Jun 15
EPS Est	0.68	0.17	0.01	0.34
EPS Actual	0.70	0.24	0.03	0.21
Difference	0.02	0.07	0.02	-0.13
Surprise %	2.90%	41.20%	200.00%	-38.20%

EPS Trends	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Current Estimate	0.67	0.24	1.17	1.33
7 Days Ago	0.67	0.24	1.17	1.33
30 Days Ago	0.67	0.24	1.17	1.33
60 Days Ago	0.67	0.24	1.17	1.34
90 Days Ago	0.66	0.23	1.20	1.33

EPS Revisions	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Up Last 7 Days	0	0	0	0
Up Last 30 Days	0	0	0	0
Down Last 30 Days	0	0	0	0
Down Last 90 Days	N/A	N/A	N/A	N/A

Growth Est	CWT	Industry	Sector	S&P 500
Current Qtr.	-4.30%	-16.00%	-27.10%	3.30%
Next Qtr.	0.00%	14.40%	90.40%	7.40%
This Year	-1.70%	-16.30%	32.60%	-1.40%
Next Year	13.70%	1.20%	22.20%	9.50%
Past 5 Years (per annum)	5.95%	N/A	N/A	N/A
Next 5 Years (per annum)	5.00%	8.27%	6.64%	6.00%
Price/Earnings (avg. for comparison categories)	20.32	20.29	21.35	16.30
PEG Ratio (avg. for comparison categories)	4.06	4.30	6.88	2.94

Currency in USD.

Home Mail Search News Sports Finance Weather Games Answers Screen Flickr Mobile More

Try Yahoo Finance on Fire
Sign In Mail

Finance Home My Portfolio My Quotes News Market Data Yahoo Originals Business & Finance Personal Finance CNBC Contributors

Dow 1.13% CTWS 5-DAY TREND

Wed, Oct 28, 2015, 5:45PM EDT - U.S. Markets closed Report an Issue

Scottrade Go

GET A TRADER'S TAKE ON THE FED ANNOUNCEMENT. TD Ameritrade GO »

E*TRADE OPEN AN ACCOUNT

1 YEAR OF COMMISSION-FREE TRADES Fidelity

Connecticut Water Service Inc. (CTWS) - NasdaqGS

37.67 1.04(2.84%) 4:00PM EDT

Analyst Estimates

Get Analyst Estimates for: GO

Earnings Est	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Avg. Estimate	0.80	0.25	2.09	2.05
No. of Analysts	2.00	2.00	3.00	3.00
Low Estimate	0.74	0.23	2.02	1.97
High Estimate	0.85	0.27	2.20	2.15
Year Ago EPS	0.76	0.22	1.92	2.09

Revenue Est	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Avg. Estimate	28.70M	21.44M	97.77M	103.04M
No. of Analysts	1	1	3	3
Low Estimate	28.70M	21.44M	96.78M	100.99M
High Estimate	28.70M	21.44M	99.13M	105.32M
Year Ago Sales	27.55M	20.75M	94.02M	97.77M
Sales Growth (year/est)	4.20%	3.30%	4.00%	5.40%

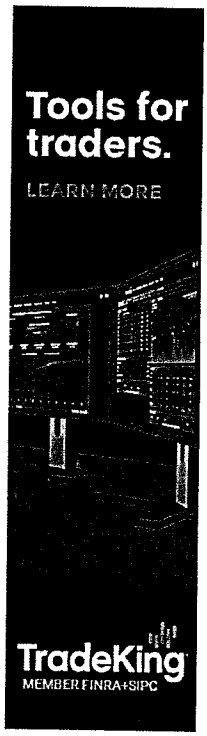
Earnings History	Sep 14	Dec 14	Mar 15	Jun 15
EPS Est	0.77	0.21	0.33	0.69
EPS Actual	0.76	0.22	0.28	0.77
Difference	-0.01	0.01	-0.05	0.08
Surprise %	-1.30%	4.80%	-15.20%	11.60%

EPS Trends	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Current Estimate	0.80	0.25	2.09	2.05
7 Days Ago	0.80	0.25	2.09	2.05
30 Days Ago	0.80	0.25	2.09	2.05
60 Days Ago	0.80	0.25	2.09	2.05
90 Days Ago	0.78	0.25	2.01	2.05

EPS Revisions	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Up Last 7 Days	0	0	0	0
Up Last 30 Days	0	0	0	0
Down Last 30 Days	0	0	0	0
Down Last 90 Days	N/A	N/A	N/A	N/A

Growth Est	CTWS	Industry	Sector	S&P 500
Current Qtr.	5.30%	-16.00%	-27.10%	3.30%
Next Qtr.	13.60%	14.40%	90.40%	7.40%
This Year	8.90%	-16.30%	32.60%	-1.40%
Next Year	-1.90%	1.20%	22.20%	9.50%
Past 5 Years (per annum)	8.61%	N/A	N/A	N/A
Next 5 Years (per annum)	5.00%	8.27%	6.64%	6.00%
Price/Earnings (avg. for comparison categories)	17.98	20.29	21.35	16.30
PEG Ratio (avg. for comparison categories)	3.60	4.30	6.88	2.94

Currency in USD.



Home Mail Search News Sports Finance Weather Games Answers Screen Flickr Mobile | More

Try Yahoo Finance on Fire
Sign In Mail

Finance Home My Portfolio My Quotes News Market Data Yahoo Originals Business & Finance Personal Finance CNBC Contributors

Dow 1.13%

Ameritrade Over 40 years of professional guidance

E*TRADE OPEN AN ACCOUNT

Scottrade MSEX Trade Now

$0 COMMISSION-FREE TRADES Fidelity

Wed, Oct 28, 2015, 5:46PM EDT - U.S. Markets closed **Report an Issue**

Middlesex Water Co. (MSEX) - NasdaqGS

26.02 0.97(3.87%) 4:00PM EDT

Analyst Estimates

Get Analyst Estimates for: GO

Earnings Est	Current Qtr. Dec 14	Next Qtr. Mar 15	Current Year Dec 14	Next Year Dec 15
Avg. Estimate	N/A	N/A	N/A	1.20
No. of Analysts	N/A	N/A	N/A	1.00
Low Estimate	N/A	N/A	N/A	1.20
High Estimate	N/A	N/A	N/A	1.20
Year Ago EPS	0.19	0.20	N/A	N/A

Revenue Est	Current Qtr. Dec 14	Next Qtr. Mar 15	Current Year Dec 14	Next Year Dec 15
Avg. Estimate	NaN	NaN	NaN	122.20M
No. of Analysts	1	1	1	1
Low Estimate	29.62M	29.62M	117.87M	122.20M
High Estimate	29.62M	29.62M	117.87M	122.20M
Year Ago Sales	27.42M	27.17M	114.85M	NaN
Sales Growth (year/est)	N/A	N/A	N/A	N/A

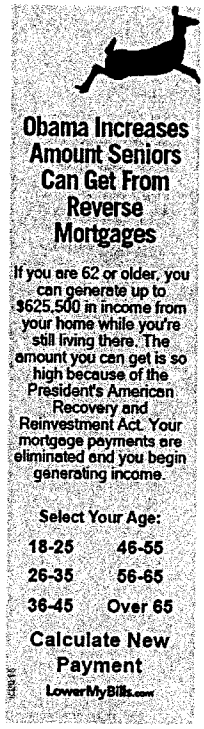
Earnings History	Dec 13	Mar 14	Jun 14	Sep 14
EPS Est	0.15	0.16	0.29	0.39
EPS Actual	0.19	0.20	0.29	0.42
Difference	0.04	0.04	0.00	0.03
Surprise %	26.70%	25.00%	0.00%	7.70%

EPS Trends	Current Qtr. Dec 14	Next Qtr. Mar 15	Current Year Dec 14	Next Year Dec 15
Current Estimate	N/A	N/A	N/A	1.20
7 Days Ago	0.28	0.26	1.09	1.20
30 Days Ago	0.28	0.26	1.09	1.20
60 Days Ago	0.28	0.26	1.09	1.20
90 Days Ago	0.28	0.26	1.09	1.20

EPS Revisions	Current Qtr. Dec 14	Next Qtr. Mar 15	Current Year Dec 14	Next Year Dec 15
Up Last 7 Days	0	0	0	0
Up Last 30 Days	0	0	0	0
Down Last 30 Days	0	0	0	0
Down Last 90 Days	N/A	N/A	N/A	N/A

Growth Est	MSEX	Industry	Sector	S&P 500
Current Qtr.	N/A	-16.00%	-27.10%	3.30%
Next Qtr.	N/A	14.40%	90.40%	7.40%
This Year	N/A	-16.30%	32.60%	-1.40%
Next Year	N/A	1.20%	22.20%	9.50%
Past 5 Years (per annum)	5.73%	N/A	N/A	N/A
Next 5 Years (per annum)	2.70%	8.27%	6.64%	6.00%
Price/Earnings (avg. for comparison categories)	N/A	20.29	21.35	16.30
PEG Ratio (avg. for comparison categories)	N/A	4.30	6.88	2.94

Currency in USD.



Home Mail Search News Sports Finance Weather Games Answers Screen Flickr Mobile | More

Try Yahoo Finance on Fire
Sign In Mail

Finance HomeMy PortfolioMy Quotes NewsMarket DataYahoo OriginalsBusiness & FinancePersonal Finance CNBC Contributors

Dow 1.13% SJW IS TRENDING RESEARCH Fidelity

Wed. Oct 28, 2015, 5:47PM EDT - U.S. Markets closed Report an Issue

Scottrade $7 Online Trades SJW Trade Now

LEARN MORE TD Ameritrade

E*TRADE CTWS 2.84% TODAY'S CHANGES

SJW Corp. (SJW) - NYSE

33.68 0.69(2.09%) 4:02PM EDT

Analyst Estimates

Get Analyst Estimates for: GO

Earnings Est	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Avg. Estimate	0.57	0.29	1.58	1.64
No. of Analysts	1.00	1.00	2.00	2.00
Low Estimate	0.57	0.29	1.45	1.48
High Estimate	0.57	0.29	1.70	1.80
Year Ago EPS	1.88	0.28	2.54	1.58

Next Earnings Date: Oct 28, 2015 - Set a Reminder

Revenue Est	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Avg. Estimate	92.37M	73.70M	308.29M	324.90M
No. of Analysts	1	1	2	2
Low Estimate	92.37M	73.70M	300.58M	313.00M
High Estimate	92.37M	73.70M	316.00M	336.80M
Year Ago Sales	125.43M	69.29M	319.67M	308.29M
Sales Growth (year/est)	-26.40%	6.40%	-3.60%	5.40%

Earnings History	Sep 14	Dec 14	Mar 15	Jun 15
EPS Est	0.52	0.26	0.06	0.42
EPS Actual	1.88	0.28	0.23	0.36
Difference	1.36	0.02	0.17	-0.06
Surprise %	261.50%	7.70%	283.30%	-14.30%

EPS Trends	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Current Estimate	0.57	0.29	1.58	1.64
7 Days Ago	0.57	0.29	1.58	1.64
30 Days Ago	0.57	0.29	1.58	1.64
60 Days Ago	0.57	0.29	1.58	1.64
90 Days Ago	0.57	0.29	1.61	1.64

EPS Revisions	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Up Last 7 Days	0	0	0	0
Up Last 30 Days	0	0	0	0
Down Last 30 Days	0	0	0	0
Down Last 90 Days	N/A	N/A	N/A	N/A

Growth Est	SJW	Industry	Sector	S&P 500
Current Qtr.	-69.70%	-16.00%	-27.10%	3.30%
Next Qtr.	3.60%	14.40%	90.40%	7.40%
This Year	-37.80%	-16.30%	32.60%	-1.40%
Next Year	3.80%	1.20%	22.20%	9.50%
Past 5 Years (per annum)	5.92%	N/A	N/A	N/A
Next 5 Years (per annum)	14.00%	8.27%	6.64%	6.00%
Price/Earnings (avg. for comparison categories)	21.06	20.29	21.35	16.30
PEG Ratio (avg. for comparison categories)	1.50	4.30	6.88	2.94

Currency in USD.

Home Mail Search News Sports Finance Weather Games Answers Screen Flickr Mobile More

Try Yahoo Finance on Fire
Sign In Mail

Finance Home My Portfolio My Quotes News Market Data Yahoo Originals Business & Finance Personal Finance CNBC Contributors

Wed, Oct 28, 2015, 5:48PM EDT - U.S. Markets closed Report an Issue

Dow 1.13% Nasdaq 1.30%

Scottrade $7 Online Trades YORW Trade Now

YORW IS TRENDING RESEARCH Fidelity

GET A TRADER'S TAKE ON THE FED ANNOUNCEMENT. Ameritrade GO

E*TRADE YORW - 52 WK

The York Water Company (YORW) - NasdaqGS

23.73 1.01(4.45%) 4:00PM EDT

Analyst Estimates

Get Analyst Estimates for: GO

Earnings Est	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Avg. Estimate	0.26	0.20	0.92	0.99
No. of Analysts	1.00	1.00	2.00	2.00
Low Estimate	0.26	0.20	0.88	0.97
High Estimate	0.26	0.20	0.95	1.00
Year Ago EPS	0.23	0.28	0.89	0.92

Revenue Est	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Avg. Estimate	12.50M	11.60M	47.24M	48.96M
No. of Analysts	1	1	2	2
Low Estimate	12.50M	11.60M	47.20M	48.80M
High Estimate	12.50M	11.60M	47.29M	49.12M
Year Ago Sales	12.06M	11.50M	45.90M	47.24M
Sales Growth (year/est)	3.60%	0.90%	2.90%	3.60%

Earnings History	Sep 14	Dec 14	Mar 15	Jun 15
EPS Est	0.25	0.23	0.23	0.25
EPS Actual	0.23	0.28	0.20	0.22
Difference	-0.02	0.05	-0.03	-0.03
Surprise %	-8.00%	21.70%	-13.00%	-12.00%

EPS Trends	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Current Estimate	0.26	0.20	0.92	0.99
7 Days Ago	0.26	0.20	0.92	0.99
30 Days Ago	0.26	0.20	0.92	0.99
60 Days Ago	0.26	0.20	0.92	0.99
90 Days Ago	0.26	0.20	0.93	1.00

EPS Revisions	Current Qtr. Sep 15	Next Qtr. Dec 15	Current Year Dec 15	Next Year Dec 16
Up Last 7 Days	0	0	0	0
Up Last 30 Days	0	0	0	0
Down Last 30 Days	0	0	0	0
Down Last 90 Days	N/A	N/A	N/A	N/A

Growth Est	YORW	Industry	Sector	S&P 500
Current Qtr.	13.00%	-16.00%	-27.10%	3.30%
Next Qtr.	-28.60%	14.40%	90.40%	7.40%
This Year	3.40%	-16.30%	32.60%	-1.40%
Next Year	7.60%	1.20%	22.20%	9.50%
Past 5 Years (per annum)	4.98%	N/A	N/A	N/A
Next 5 Years (per annum)	4.90%	8.27%	6.64%	6.00%
Price/Earnings (avg. for comparison categories)	25.49	20.29	21.35	16.30
PEG Ratio (avg. for comparison categories)	5.20	4.30	6.88	2.94

Currency in USD.

ATTACHMENT 4

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S FOURTH SET OF DATA REQUESTS

September 11, 2015

Respondent: Thomas J. Bourassa, CPA

Title: Rate Consultant

Address: 139 W. Wood Drive
Phoenix, AZ 85029

Company Response Number: 4.4

Q. As noted in footnote 1 of Schedules D-4.4 and D-4.5, Mr. Bourassa states that for each of his sample companies the 5- and 10-year historical stock price growth rates shown in column [1] represent the average of "**changes in annual stock prices**" measured as of December 31 for each 5- and 10-year period through 2014. Mr. Bourassa further notes that the data used in his stock price growth calculations was obtained from the Yahoo Finance website. In reviewing the work papers supporting Schedules D-4.4 and D-4.5, RUCO determined that for each of his sample companies Mr. Bourassa's 5- and 10-year stock price growth rates were computed based on **adjusted closing price** as reported by Yahoo Finance, and not **actual closing price**. Please acknowledge that adjusted closing prices provided by Yahoo Finance represent a stock's closing price adjusted for both "**dividends and splits**," thus rendering Mr. Bourassa's computations to be measures of 5- and 10-year total return, not 5- and 10-year measures of stock price growth.

RESPONSE: Mr. Bourassa acknowledges that the adjusted stock prices reported by Yahoo Finance are adjusted for dividends and splits, but he denies his computations are measures of total return. The adjusted closing price is a way to compare the price of a stock before and after a stock split and/or dividend payment. In other words, it is a useful measure of the "real" closing price without being influenced by dividends or splits. As a result, Mr. Bourassa's use of adjusted closing prices and comparing them are not measures of total return, rather they are measures of the real increases in the stock price. Mr. Bourassa suggests that RUCO visit the Yahoo Finance website and review the Help topic "About Historical Prices."

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S THIRD SET OF DATA REQUESTS

September 11, 2015

Respondent: Thomas J. Bourassa, CPA

Title: Rate Consultant

Address: 139 W. Wood Drive
Phoenix, AZ 85029

Company Response Number: 4.6

Q. As noted in Direct (p. 33, lines 12-14), the equity risk premium employed by Mr. Bourassa in his Risk Premium Model (RPM) represents the bond-equity spread difference between the average total realized market return of his proxy group of water companies and the average annual long-term treasury yields over the 16-year historical period, 1999-2014. Mr. Bourassa presents his RPM findings in Schedule D-4.9, and as shown in footnote 1 of that schedule, states that the annual total return figures for his sample companies were computed using data from Value Line Analyzer software. RUCO has reviewed Mr. Bourassa's cost of capital work papers relating to Schedule D-4.9, but is unable to reconcile his total return figure calculations for the following reasons:

(i) With the exception of the total return figure reported for 2014 (i.e., 14.98%), all other total return figures presented in Schedule D-4.9 (i.e., for the 15-year period, 1999-2013) have been hardcoded into the spreadsheet;

(ii) The total return figure presented in Schedule D-4.9 for the year 2014 is linked to a separate tab in the work papers (tab: VL_water; cell FH27); however, a review of the total return values shown in cell range FH5:FQ27 of the "VL_water" tab indicate that total return values are provided only for the 10-year period, 2005-2014, and that these values, likewise, have been hardcoded into the spreadsheet;

(iii) The "VL_water" tab contains no support for Mr. Bourassa's annual total return figures reported for the 6-year period, 1999-2004 (not even hardcoded total return values are provided).

In light of the above, please provide the following:

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S THIRD SET OF DATA REQUESTS

September 11, 2015

Respondent: Thomas J. Bourassa, CPA

Title: Rate Consultant

Address: 139 W. Wood Drive
Phoenix, AZ 85029

(a) An explanation why Mr. Bourassa's work papers supporting Schedule D-4.9 contain no support for the annual total return figures for his proxy group for the 6-year period, 1999-2004,

(b) A spreadsheet containing all data inputs necessary to compute annual total return values for each of his seven sample companies over the 16-year period, 1999-2014, and

(c) A schedule, in Excel format with formulas intact, showing the computational methodology (i.e., arithmetic mean or geometric mean) employed by Mr. Bourassa when arriving at the annual total return values reported in Schedule D-4.9 for the period, 1999-2014.

RESPONSE:

(a) Mr. Bourassa notes on Schedule D-4.9 that the source for the data he used was from *Value Line,* which is publicly available information.

(b) The *Value Line* data for the years 2005-2014 is contained in the Tab "VL Water" in the Excel work book "Cost of Capital BMSC.xls" which was previously provided as part of Mr. Bourassa's work papers in response to RUCO Data Request 1.03. An additional Excel workbook containing the *Value Line* data for the years 1999-2005 is attached. See file "VL Water 12-2008.xls."

(c) Mr. Bourassa does not compute total returns for each utility. He uses the total returns as reported by *Value Line* for each utility and then computes a composite average for the proxy group. *Value Line* defines "Total

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S THIRD SET OF DATA REQUESTS

September 11, 2015

Respondent: Thomas J. Bourassa, CPA

Title: Rate Consultant

Address: 139 W. Wood Drive
Phoenix, AZ 85029

Return" (a stock's total return) as the percentage increase in the value of a shareholder's investment, assuming reinvestment of all dividends and adjusted for any stock splits. Total returns are shown for a range of time periods in the *Value Line* Investment Analyzer. Returns for periods longer than a year are annualized. An annualized return shows the yearly gain required to achieve a cumulative return. See also the Company's responses to (a) and (b) above.

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S FIFTH SET OF DATA REQUESTS

October 16, 2015

Respondent: Thomas J. Bourassa, CPA

Title: Rate Consultant

Address: 139 W. Wood Drive
Phoenix, AZ 85029

Company Response Number: 5.1

Q. Note 1 of Bourassa Schedules D-4.4 and D-4.5 states that the figures appearing in column [1] of those schedules represent "[a]verage of changes in annual stock prices ending on December 31, 2014. Data from Yahoo Finance website." However, a review of the work papers (See "Price Growth" tab) supporting the figures shown in column [1] reveal that both the 5- and 10-year average annual changes in stock price for each of Mr. Bourassa's sample companies are computed based on data ending December 31, 2013, and not through December 31, 2014, as indicated. In light of this fact, please (i) prepare amended restatements of Bourassa Schedules D-4.4 and D-4.5 to reflect 5- and 10-year average changes in stock price through December 31, 2014, in conformity with the information provided in Note 1, and (ii) provide RUCO with a copy of Mr. Bourassa's work papers supporting these amended average changes in annual stock price ending December 31, 2014, in Excel format with formulas intact.

RESPONSE: Mr. Bourassa will correct the footnote contained in the original filing. With respect to both the 5 and 10-year average annual changes in stock prices, below are the 5 and 10-year average annual changes in stock prices ending on December 31, through 2014 with a comparison to the data set-forth on Schedule D-4.4 and D-4.5:

	5-year Annual Change in Stock Price As Originally Filed	5-year Annual Change in Stock Price through 2014	10-year Annual Change in Stock Price As Originally Filed	10-year Annual Change in Stock Price through 2014
American States Water	16.07%	20.90%	12.91%	15.60%
Aqua America	11.70%	17.36%	10.31%	10.53%
California Water	4.27%	9.86%	10.19%	6.87%
Connecticut Water	12.77%	11.97%	6.58%	7.23%

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S FIFTH SET OF DATA REQUESTS

October 16, 2015

Respondent: Thomas J. Bourassa, CPA

Title: Rate Consultant

Address: 139 W. Wood Drive
Phoenix, AZ 85029

Middlesex	8.36%	9.78%	4.38%	6.14%
SJW Corp.	4.38%	10.88%	12.91%	11.36%
York Water Company	8.44%	13.52%	8.21%	10.55%
Average	9.43%	13.47%	9.35%	9.75%

Note that the updated annual averages through the end of 2014 are higher. Had Mr. Bourassa used the updated annual averages, the indicated cost of cost of capital based on the DCF would have been higher. Accordingly, the indicated cost of capital for the proxy group would have been higher and Mr. Bourassa's recommendation for the Company would also have been higher. Attached is an Excel worksheet used to compute the updated annual averages.

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S FIFTH SET OF DATA REQUESTS

October 16, 2015

Respondent: Thomas J. Bourassa, CPA

Title: Rate Consultant

Address: 139 W. Wood Drive
Phoenix, AZ 85029

Company Response Number: 5.5

Q. In response to RUCO Data Request 4.4, Mr. Bourassa acknowledges that adjusted closing prices reported by Yahoo Finance are adjusted for both dividends and splits, but **denies** that his computations of 5- and 10-year "changes in annual stock prices" as presented in column [1] of Schedules D-4.4 and D-4.5 represent measures of total return.

Schedule D-4.9 presents the cost of equity estimates obtained from Mr. Bourassa's Risk Premium Analysis based on Total Returns. In Note 1 of that schedule, Mr. Bourassa indicates that the Annual Total Return figures for his sample companies covering the period, 1999-2014, represent the "[c]omposite of average total returns for water utilities," and that the source of this data was Value Line Analyzer software.

To determine whether computations of share price growth obtained from Yahoo Finance adjusted closing prices represent measures of total return, RUCO has prepared a schedule (see attached) which compares the Annual Total Return figures presented by Mr. Bourassa in Schedule D-4.9 for the period, 2004-2014, to computations of annual returns obtained using adjusted closing prices as of the calendar year end (December 31, or last trading day) reported on the Yahoo Finance website for his sample companies over this same 2004-2014 period. As can be seen, for each year the annual return figures obtained utilizing Yahoo Finance adjusted closing prices are essentially identical to the annual total return figures obtained from Value Line Analyzer software, with the average annual difference between the two being .02% (i.e., two one-hundredths of one percent) over the 2004-2014 period.

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP.
DOCKET NOS. SW-02361A-15-0206 & SW-02361A-15-0207 (CONSOLIDATED)
RESPONSES TO RUCO'S FIFTH SET OF DATA REQUESTS

October 16, 2015

Respondent: Thomas J. Bourassa, CPA

Title: Rate Consultant

Address: 139 W. Wood Drive
Phoenix, AZ 85029

In view of Mr. Bourassa's denial that his computations of 5- and 10-year "changes in annual stock prices" as presented in column [1] of Schedules D-4.4 and D-4.5 are measures of total return, please respond to the following:

a. Provide a plausible explanation as to how the total return figures presented by Mr. Bourassa in Schedule D-4.9 for the years 2004-2014 based upon data obtained from Value Line Analyzer software are essentially identical to annual returns computed using Yahoo Finance adjusted closing prices, and

b. To the extent Mr. Bourassa now has reason to believe that annual returns computed from Yahoo Finance adjusted closing prices represent measures of total return, acknowledge that the stock price growth rates reported in column [1] of Schedules D-4.4 and D-4.5 have been overstated.

RESPONSE:

a. Value Line measure of total return is the capital gain or loss for the stock price *plus* the dividends reinvested at month end for the past 12 months, expressed as a percentage whereas the adjusted closing prices of stocks provided by Yahoo remove the impact of dividends from the stock price. In other words, the impact of dividends on the closing price of the stock is removed so as to provide a useful measure of the "real" closing price without being influenced by dividends or splits. In this way stock price growth and total returns are dissimilar. That said, Mr. Bourassa would expect the growth in the stock price and the total returns to be similar in magnitude because the two measures

share the dominant factor, the increase in the share price (capital appreciation). Mr. Bourassa suggests that RUCO visit the web page https://help.yahoo.com/kb/finance/historical-prices-sln2311.html for an explanation of adjusted closing price.

b. Deny. The average stock price growth rates are not overstated. See the response to part a, above.

EXHIBITS

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ending December 31, 2014
Docket No. SW-02361A-15-0206 et al.

Exhibit JAC-A

5-Year Comparison
Cumulative Total Returns on Investment
December 31, 2009 -- December 31, 2014

		As per 2014 Annual Report to Shareholders			As per Yahoo Finance Adjusted Closing Price		
	Company	Value of Investment as of 12/31/2009	Value of Investment as of 12/31/2014	5-Year Cumulative Total Return With Dividend Reinvestment	5-Year Compound Average Total Return	Adjusted Closing Price as of 12/31/2014	Adjusted Closing Price as of 12/31/2009
1	American States Water	$ 100.00	$ 246.40	19.76%	19.79%	$ 37.03	$ 15.01
2	Aqua America	100.00	218.50	16.92%	16.93%	26.19	11.98
3	California Water		N/A	N/A	9.41%	24.08	15.36
4	Connecticut Water	100.00	173.70	11.68%	11.68%	35.50	20.43
5	Middlesex Water	100.00	158.90	9.70%	9.74%	22.47	14.12
6	SJW Corporation	100.00	164.00	10.40%	10.40%	31.51	19.22
7	York Water	100.00	186.00	13.21%	13.20%	22.75	12.24

N/A: 5-Year information not available in Annual Report

Sources for 2014 Annual Reports:

AWR	American States Water , 2014 Annual Report, p. 19.	http://www.aswater.com/
WTR	Aqua America , 2014 Annual Report, p. 70.	https://www.aquaamerica.com/
CWT		https://www.calwater.com/
CTWS	Connecticut Water , 2014 Annual Report, p. 13.	https://www.ctwater.com/
MSEX	Middlesex Water Company, 2014 Annual Report, p.19.	http://www.middlesexwater.com/
SJW	SJW Corp. , 2014 Annual Report, p. 17.	https://www.sjwcorp.com/
YORW	York Water Company , 2014 Annual Report, p. 6.	https://www.yorkwater.com/index.asp

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ending December 31, 2014
Docket No. SW-02361A-15-0206, et al.

Exhibit JAC-B

Bourassa Schedule D-4.4 – As Filed

		[1]	[2]	[3]	[4]	[5]	[6]	[7]
		Five-year historical average annual changes						
		Price[1]	Book Value[2]	EPS[2]	DPS[2]	Average Col 1-4	Value Line Projected EPS Growth	Average of Historical & Projected Growth
American States Water	AWR	16.07%	6.50%	13.00%	6.50%	10.52%	6.50%	8.51%
Aqua America	WTR	11.70%	6.00%	11.00%	7.00%	8.92%	8.00%	8.46%
California Water	CWT	4.27%	4.50%	4.00%	1.50%	3.57%	7.00%	5.28%
Conn. Water Services	CTWS	12.77%	8.00%	8.00%	2.00%	7.69%	6.50%	7.10%
Middlesex Water	MSEX	8.36%	3.00%	1.50%	1.50%	3.59%	5.50%	4.55%
SJW Corp.	SJW	4.38%	2.50%	NMF	3.50%	3.46%	6.50%	4.98%
York Water Co.	YORW	8.44%	5.00%	5.00%	2.50%	5.23%	7.00%	6.11%
Group Average		9.43%	5.07%	7.08%	3.50%	6.14%	6.71%	6.43%

RUCO Restatement of Bourassa Schedule D-4.4
Exclusive of Change in Stock Price as a Proxy for Dividend Growth, and with
All other Growth Metrics Updated as per Value Line

		[1]	[2]	[3]	[4]	[5]	[6]	[7]
		Five-year historical average annual changes						
		Price[1]	Book Value[2]	EPS[2]	DPS[2]	Average Col 2-4	Value Line Projected EPS Growth	Average of Historical & Projected Growth
American States Water	AWR		6.50%	14.00%	8.50%	9.67%	6.00%	7.83%
Aqua America	WTR		6.50%	13.00%	7.00%	8.83%	7.50%	8.17%
California Water	CWT		5.00%	4.00%	2.00%	3.67%	6.50%	5.08%
Conn. Water Services	CTWS		9.50%	9.00%	2.00%	6.83%	4.50%	5.67%
Middlesex Water	MSEX		3.00%	4.50%	1.50%	3.00%	5.00%	4.00%
SJW Corp.	SJW		3.50%	10.50%	3.00%	5.67%	1.50%	3.58%
York Water Co.	YORW		4.50%	6.00%	2.50%	4.33%	6.50%	5.42%
Group Average			5.50%	8.71%	3.79%	**6.00%**	**5.36%**	**5.68%**
Overstatement to Estimated Growth Rates from Bourassa Schedule 4-4, as filed:						0.14%	1.36%	0.75%

Source: Value Line Investment Survey (October 16, 2015)

Bourassa Schedule D-4.5 -- As Filed

		[1]	[2]	[3]	[4]	[5]	[6]	[7]
		Ten-year historical average annual changes					Value Line	Average of
		Price[1]	Book Value[2]	EPS[2]	DPS[2]	Average Col 1-4	Projected EPS Growth	Historical & Projected Growth
American States Water	AWR	12.91%	5.50%	9.00%	4.00%	7.85%	6.50%	7.18%
Aqua America	WTR	10.31%	8.00%	8.50%	7.50%	8.58%	8.00%	8.29%
California Water	CWT	10.19%	5.50%	5.50%	1.00%	5.55%	7.00%	6.27%
Conn. Water Services	CTWS	6.58%	6.00%	2.50%	1.50%	4.14%	6.50%	5.32%
Middlesex Water	MSEX	4.38%	4.50%	3.50%	1.50%	3.47%	5.50%	4.48%
SJW Corp.	SJW	12.91%	5.50%	3.50%	4.50%	6.60%	6.50%	6.55%
York Water Co.	YORW	8.21%	7.00%	5.50%	4.50%	6.30%	7.00%	6.65%
Group Average		9.35%	6.00%	5.43%	3.50%	6.07%	6.71%	6.39%

RUCO Restatement of Bourassa Schedule D-4.5
Exclusive of Change in Stock Price as a Proxy for Dividend Growth, and with
All other Growth Metrics Updated as per Value Line

		[1]	[2]	[3]	[4]	[5]	[6]	[7]
		Ten-year historical average annual changes					Value Line	Average of
		Price[1]	Book Value[2]	EPS[2]	DPS[2]	Average Col 2-4	Projected EPS Growth	Historical & Projected Growth
American States Water	AWR		6.00%	11.00%	5.50%	7.50%	6.00%	6.75%
Aqua America	WTR		7.50%	8.50%	7.50%	7.83%	7.50%	7.67%
California Water	CWT		5.50%	5.00%	1.50%	4.00%	6.50%	5.25%
Conn. Water Services	CTWS		6.50%	4.00%	2.00%	4.17%	4.50%	4.33%
Middlesex Water	MSEX		4.50%	4.00%	1.50%	3.33%	5.00%	4.17%
SJW Corp.	SJW		6.00%	6.50%	4.00%	5.50%	1.50%	3.50%
York Water Co.	YORW		6.50%	5.50%	4.00%	5.33%	6.50%	5.92%
Group Average			6.07%	6.36%	3.71%	**5.38%**	**5.36%**	**5.37%**
Overstatement to Estimated Growth Rates from Bourassa Schedule 4-5, as filed:						0.69%	1.36%	1.02%

Source: Value Line Investment Survey (October 16, 2015)

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ending December 31, 2014
Docket No. SW-02361A-15-0206 et al.

Exhibit JAC - D

Bourassa Schedule D-4.7 (Page 1) -- As Filed
Discounted Cash Flow Analysis
DCF Constant Growth

Line	Company	Current Dividend Yield (P_0 / D_0)		Expected Dividend Yield (P_1 / D_0)		Value Line Projected EPS Growth (g)		Indicated Cost of Equity (K)
1	American States Water	2.28%		2.42%	+	6.50%	=	8.92%
2	Aqua America	2.64%		2.85%	+	8.00%	=	10.85%
3	California Water	2.79%		2.99%	+	7.00%	=	9.99%
4	Connecticut Water	3.04%		3.24%	+	6.50%	=	9.74%
5	Middlesex Water	3.58%		3.78%	+	5.50%	=	9.28%
6	SJW Corp.	2.62%		2.79%	+	6.50%	=	9.29%
7	York Water	2.68%		2.87%	+	7.00%	=	9.87%
8								
9	GROUP AVERAGE	2.80%		2.99%		6.71%		9.71%

RUCO Restatement of Bourassa Schedule D-4.7 (Page 1)
Discounted Cash Flow Analysis
DCF Constant Growth
With Updated EPS Growth Metrics from Value Line

Line	Company	Current Dividend Yield (P_0 / D_0)		Expected Dividend Yield (P_1 / D_0)		Value Line Projected EPS Growth (g)		Indicated Cost of Equity (K)
1	American States Water	2.28%		2.41%	+	6.00%	=	8.41%
2	Aqua America	2.64%		2.83%	+	7.50%	=	10.33%
3	California Water	2.79%		2.97%	+	6.50%	=	9.47%
4	Connecticut Water	3.04%		3.18%	+	4.50%	=	7.68%
5	Middlesex Water	3.58%		3.76%	+	5.00%	=	8.76%
6	SJW Corp.	2.62%		2.66%	+	1.50%	=	4.16%
7	York Water	2.68%		2.85%	+	6.50%	=	9.35%
8								
9	GROUP AVERAGE	2.80%		2.95%		5.36%		8.31%
9								
9				**Reduction to DCF Indicated Cost of Equity**				**1.39%**

Source: Value Line Investment Survey (October 16, 2015)

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ending December 31, 2014
Docket No. SW-02361A-15-0206 et al.

Exhibit JAC - E

Bourassa Schedule D-4.7 (Page 2) -- As Filed
Discounted Cash Flow Analysis
DCF Constant Growth

Line	Company	Current Dividend Yield (P_0 / D_0)		Expected Dividend Yield (P_1 / D_0)		Average of Historical & Projected Growth (g)		Indicated Cost of Equity (K)
1	American States Water	2.28%		2.47%	+	8.51%	=	10.98%
2	Aqua America	2.64%		2.86%	+	8.46%	=	11.32%
3	California Water	2.79%		2.94%	+	5.28%	=	8.22%
4	Connecticut Water	3.04%		3.26%	+	7.10%	=	10.36%
5	Middlesex Water	3.58%		3.74%	+	4.55%	=	8.29%
6	SJW Corp.	2.62%		2.75%	+	4.98%	=	7.73%
7	York Water	2.68%		2.84%	+	6.12%	=	8.96%
8								
9	GROUP AVERAGE	2.80%		2.98%		6.43%		9.41%

RUCO Restatement of Bourassa Schedule D-4.7 (Page 2)
Discounted Cash Flow Analysis
DCF Constant Growth
With Updated EPS Growth Metrics from Value Line

Line	Company	Current Dividend Yield (P_0 / D_0)		Expected Dividend Yield (P_1 / D_0)		Average of Historical & Projected Growth (g)		Indicated Cost of Equity (K)
1	American States Water	2.28%		2.45%	+	7.83%	=	10.29%
2	Aqua America	2.64%		2.85%	+	8.17%	=	11.02%
3	California Water	2.79%		2.93%	+	5.08%	=	8.02%
4	Connecticut Water	3.04%		3.22%	+	5.67%	=	8.88%
5	Middlesex Water	3.58%		3.72%	+	4.00%	=	7.72%
6	SJW Corp.	2.62%		2.72%	+	3.58%	=	6.30%
7	York Water	2.68%		2.83%	+	5.42%	=	8.24%
8								
9	GROUP AVERAGE	2.80%		2.96%		5.68%		8.64%
9								
9				**Reduction to DCF Indicated Cost of Equity**				**0.77%**

Source: Value Line Investment Survey (October 16, 2015)

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ending December 31, 2014
Docket No. SW-02361A-15-0206 et al.

Exhibit JAC-F

Annual Total Returns
Bourassa as Filed *vs.* Yahoo Finance Adjusted Closing Price

		As Per Yahoo Finance Adjusted Closing Price	
	Bourassa As Filed	RUCO Independently Obtained	From Bourassa Work Papers
Year	Annual Total Return	Annual Total Return	Annual Total Return
1999	26.28%	30.69%	30.74%
2000	2.70%	9.02%	8.99%
2001	16.00%	16.56%	16.59%
2002	-4.16%	-4.05%	-4.05%
2003	23.72%	23.94%	23.96%
2004	13.78%	13.76%	13.76%
2005	19.02%	19.09%	19.06%
2006	15.86%	15.86%	15.87%
2007	-2.71%	-2.73%	-2.72%
2008	-1.87%	-1.81%	-1.82%
2009	-0.20%	-0.20%	-0.19%
2010	15.26%	15.27%	15.27%
2011	1.52%	1.55%	1.55%
2012	15.08%	15.08%	15.08%
2013	20.34%	20.46%	20.44%
2014	14.98%	14.98%	14.98%
16-Year Average	10.97%	11.72%	11.72%

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ending December 31, 2014
Docket No. SW-02361A-15-0206 et al.

Exhibit JAC-G

Comparison of Annual Total Returns, 1999-2014
Bourassa as Filed *vs.* Yahoo Finance Adjusted Closing Price

Line		Year	[A] Bourassa As Filed Annual Total Return	[B] Yahoo Finance Adjusted Closing Price Annual Total Return	[C] Difference
1		1999	26.28%	30.69%	-4.41%
2		2000	2.70%	9.02%	-6.32%
3		2001	16.00%	16.56%	-0.56%
4		2002	-4.16%	-4.05%	-0.11%
5		2003	23.72%	23.94%	-0.22%
6		2004	13.78%	13.76%	0.01%
7		2005	19.02%	19.09%	-0.06%
8		2006	15.86%	15.86%	0.00%
9		2007	-2.71%	-2.73%	0.02%
10		2008	-1.87%	-1.81%	-0.05%
11		2009	-0.20%	-0.20%	0.00%
12		2010	15.26%	15.27%	-0.01%
13		2011	1.52%	1.55%	-0.03%
14		2012	15.08%	15.08%	0.00%
15		2013	20.34%	20.46%	-0.12%
16		2014	14.98%	14.98%	0.00%
17	16-Year Average		10.97%	11.72%	-0.74%
18	15-Year Average		9.95%	10.45%	-0.50%
19	Difference: 16-Year *vs.* 15-Year		1.02%	1.27%	
20	Excess of Bourassa 16-Year average (Column [A], Line 17) over Yahoo Finance Adjusted Closing Price 15-Year average (Column [B], Line 18)				0.52%
21	1999 Total Return Exceeds 15-Year Average by Factor of:		1.64		
22	Factor of:			1.94	

Notes:
Line 20: (Column [A], Line 17) - (Column [B], Line 18)
Line 21: (Column [A], Line 1) / (Column [A], Line 18)
Line 21: (Column [B], Line 1) / (Column [B], Line 18)

Liberty Utilities (Black Mountain Sewer) Corp.
Test Year Ending December 31, 2014
Docket No. SW-02361A-15-0206 et al.

Exhibit JAC-H

Bourassa Schedule D-4.9 – As Filed
Risk Premium Analysis Based on Total Returns

	Year	Annual Total Return	Treasury Bond Yields	Annual Risk Premiums
1	1999	26.28%	5.87%	20.41%
2	2000	2.70%	5.94%	-3.24%
3	2001	16.00%	5.49%	10.51%
4	2002	-4.16%	5.42%	-9.58%
5	2003	23.72%	5.05%	18.67%
6	2004	13.78%	5.12%	8.66%
7	2005	19.02%	4.56%	14.46%
8	2006	15.86%	4.91%	10.95%
9	2007	-2.71%	4.84%	-7.55%
10	2008	-1.87%	4.28%	-6.15%
11	2009	-0.20%	4.08%	-4.28%
12	2010	15.26%	4.25%	11.01%
13	2011	1.52%	3.91%	-2.39%
14	2012	15.08%	2.92%	12.16%
15	2013	20.34%	3.45%	16.89%
16	2014	14.98%	2.59%	12.39%
17	16-Year Average	**10.97%**	**4.54%**	**6.43%**
18	Expected Long-term Treasury Bond Rate			4.20%
19	Projected Returns on Equity for Sample			10.63%

RUCO Restatement of Bourassa Schedule D-4.9
Risk Premium Analysis Based on Total Returns
With Risk Premium Developed using Arithmetic and Geometric Means

Analysis of 16-Year Period 1999 - 2014

		[A]	[B]	[C]	[D]	[E]
		Sample Average Total Returns				
	Year	Bourassa Arithmetic Mean	Compound Geometric Mean	Combined Average Mean	Long-Term Treasury Bond Yields	Adjusted Risk Premiums
1	1999	26.28%	9.94%	18.11%	6.20%	11.91%
2	2000	2.70%	9.94%	6.32%	6.23%	0.09%
3	2001	16.00%	9.94%	12.97%	5.63%	7.34%
4	2002	-4.16%	9.94%	2.89%	5.43%	-2.54%
5	2003	23.72%	9.94%	16.83%	4.96%	11.87%
6	2004	13.78%	9.94%	11.86%	5.04%	6.81%
7	2005	19.02%	9.94%	14.48%	4.64%	9.84%
8	2006	15.86%	9.94%	12.90%	5.00%	7.90%
9	2007	-2.71%	9.94%	3.62%	4.91%	-1.29%
10	2008	-1.87%	9.94%	4.04%	4.36%	-0.32%
11	2009	-0.20%	9.94%	4.87%	4.11%	0.75%
12	2010	15.26%	9.94%	12.60%	4.25%	8.35%
13	2011	1.52%	9.94%	5.73%	3.91%	1.82%
14	2012	15.08%	9.94%	12.51%	2.92%	9.59%
15	2013	20.34%	9.94%	15.14%	3.45%	11.69%
16	2014	14.98%	9.94%	12.46%	3.34%	9.12%
	16-Year Average	**10.97%**	**9.94%**	**10.46%**	**4.65%**	**5.81%**
	Current Yield on 30-Year U.S. Treasury Bond					**2.93%**
	RPM Cost of Equity -- RUCO Adjusted					**8.74%**

Analysis of 15-Year Period 2000 - 2014

	[A]	[B]	[C]	[D]	[E]
	Sample Average Total Returns				
	Bourassa Arithmetic Mean	Compound Geometric Mean	Combined Average Mean	Long-Term Treasury Bond Yields	Adjusted Risk Premiums
	2.70%	9.17%	5.94%	6.23%	-0.30%
	16.00%	9.17%	12.58%	5.63%	6.95%
	-4.16%	9.17%	2.51%	5.43%	-2.93%
	23.72%	9.17%	16.45%	4.96%	11.49%
	13.78%	9.17%	11.47%	5.04%	6.43%
	19.02%	9.17%	14.10%	4.64%	9.45%
	15.86%	9.17%	12.51%	5.00%	7.52%
	-2.71%	9.17%	3.23%	4.91%	-1.68%
	-1.87%	9.17%	3.65%	4.36%	-0.71%
	-0.20%	9.17%	4.48%	4.11%	0.37%
	15.26%	9.17%	12.22%	4.25%	7.96%
	1.52%	9.17%	5.34%	3.91%	1.43%
	15.08%	9.17%	12.12%	2.92%	9.20%
	20.34%	9.17%	14.75%	3.45%	11.31%
	14.98%	9.17%	12.07%	3.34%	8.74%
15-Year Average	**9.95%**	**9.17%**	**9.56%**	**4.55%**	**5.02%**
Current Yield on 30-Year U.S. Treasury Bond					**2.93%**
RPM Cost of Equity -- RUCO Adjusted					**7.95%**

Notes:

[A]: Annual Total Returns, as presented in Bourassa Schdule D-4.9, as filed.

[B]: Computed using Yahoo Finance adjusted closing prices.

[C]: ([A] + [B]) / 2

[D]: Annual average long-term yield on U.S. Treasury Bonds.

1999-2002: Due to an interted yield curve, the yield on the 30-year Bond was lower than the 20 year Bond. RUCO restatement reflects the higher 20-year yield.

2003-2005: 30-Year long-term Treasury Bond discontinued. RUCO restatement reflects the 20-year Treasury Bond yield.

2006-2009: Due to an interted yield curve, the yield on the 30-year Bond was lower than the 20 year Bond. RUCO restatement reflects the higher 20-year yield.

2014: The Treasury Bond yield reported by Mr. Bourassa was understated. RUCO restatement reflects the actual 30-year annual average yield in 2014.

[E]: [C] - [D]

Note: The 2.93 percent current yield on the 30-year U.S. Treasury Bond is the spot rate as of the close of market trading on Friday, October 30, 2015.

Bourassa Schedule D-4.11
– As Filed –

Traditional Capital Asset Pricing Model
Historical and Current Market Risk Premia

		R_f	+	Beta	x	RP_m	=	K
1	Historical Market Risk Premium CAPM	4.2%		0.74		7.00%		9.4%
2	Current Market Risk Premium CAPM	4.2%		0.74		9.25%		11.0%
3	Average CAPM Estimate							10.2%

Bourassa Schedule D-4.11
– As Adjusted by RUCO –

Traditional Capital Asset Pricing Model
Historical and Current Market Risk Premia

		R_f [1]	+	Beta [2]	x	RP_m	=	K
1	Historical Market Risk Premium CAPM	2.93%		0.73		7.00%		8.03%
2	Current Market Risk Premium CAPM	2.93%		0.73		6.12%		7.39%
3	Average CAPM Estimate							7.71%

[1] Adjustment to reflect the current spot yield on the 30-year long-term U.S. Treasury bond as of Friday, October 30, 2015. (Source: U.S. Department of the Treasury)

[2] Adjustment to reflect the updated sample average Beta for Mr. Bourassa's sample group of companies. (Source: Value Line Investment Survey, October 16, 2015).

BEFORE THE ARIZONA CORPORATION COMMISSION

SUSAN BITTER SMITH, CHAIRMAN

BOB STUMP, COMMISSIONER

BOB BURNS, COMMISSIONER

DOUG LITTLE, COMMISSIONER

TOM FORESE, COMMISSIONER

IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR AUTHORITY TO ISSUE EVIDENCE OF INDEBTEDNESS IN AN AMOUNT NOT TO EXCEED $3,400,000.	Docket No.: SW-02361A-15-0206
IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY AND FOR INCREASES IN ITS WASTEWATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.	Docket No.: SW-02361A-15-0207

TESTIMONY

OF

JOSEPH YUNG

December 2, 2015

Executive Summary

Joseph Yung is Vice President of Development for Columbia Sussex Corporation, the Manager of CP Boulders, LLC, an Arizona limited liability company. CP Boulders, LLC acquired ownership of the Boulders Resort and Spa on April 23, 2015. The Boulders Resort offers guest accommodations, a spa, six restaurants and the El Pedregal commercial center. The Boulders Resort is a commercial customer of Liberty Utilities (Black Mountain Sewer Corp.) ("Black Mountain") and purchases treatment plant effluent for use on the Resort's two golf courses.

Mr. Yung testifies on behalf of CP Boulders, LLC, in support of a change in the commercial rate design to be calculated based upon water use.

Mr. Yung further testifies on behalf of CP Boulders, LLC, in support of the multi-party Settlement Agreement resolving contested issues related to the closure of Black Mountain's wastewater treatment plant. Mr. Yung asks the Commission to approve the Settlement Agreement as a fair compromise of disputed issues.

Q. Please state your name, position, and business address.

A. My name is Joseph Yung. I am Vice President of Development for Columbia Sussex Corporation, the Manager of CP Boulders, LLC, an Arizona limited liability company ("CP Boulders"). My business address is 740 Centre View Boulevard, Crestview Hills, Kentucky 41017.

Q. Have you previously testified before the Commission?

A. No.

Q. What is CP Boulders' interest in this case?

A. CP Boulders purchased the Boulders Resort and Spa property (the "Resort") from Wind P1 Mortgage Borrower L.L.C. on April 28, 2015. The Resort is a commercial and effluent customer of Black Mountain. The Resort is a significant commercial customer in that it operates hotel guest accommodations, a spa, six restaurants, two golf courses, and the El Pedregal commercial center. In addition, the Resort purchases effluent from Black Mountain for a portion of the Resort's golf course water supply.

Q. What is the purpose of your testimony?

A. I am testifying as the designated representative of CP Boulders. First, CP Boulders would like to express its support of changes to the existing commercial rate design to more fairly estimate wastewater flows for commercial restaurant users than the current chair-count method. Second, CP Boulders has entered into a Settlement Agreement with Black Mountain, the Town of Carefree, The Boulders Homeowners Association, and Wind P1 Mortgage Borrower L.L.C. regarding closing the wastewater treatment plant. I am testifying in support of that agreement.

Q. Is CP Boulders supporting the new commercial rate design proposed by Black Mountain?

A. It is my understanding the current method used by the company to estimate commercial wastewater flows by chair counts for restaurants is not accurate and can lead to unfairly

high bills, which significantly affects the Resort. CP Boulders agrees it is appropriate in this case to estimate sewer flows for commercial customers based on a more accurate estimate.

Q. Are you familiar generally with the contents of the Commission's prior Decision Nos. 71865 and 73885, issued in Black Mountain's prior rate case?

A. I am familiar generally with the dispute regarding the wastewater treatment plant closure, but I have not studied the details of the prior proceedings in the Commission.

Q. Are you in agreement with the positions taken by Wind P1 Mortgage Borrower L.L.C. in the prior proceedings?

A. In general, yes. I say "in general" because I am generally familiar with what occurred from reviewing various documents since purchasing the Resort, but I have not studied the details. As the successor owner of the Resort, CP Boulders obtained an assignment of the prior owner's rights under the Effluent Delivery Agreement with Black Mountain, and also rights to the ongoing appeal of the Commission's plant closure order. A copy of the Assignment and Assumption of Effluent Delivery Agreement and Related Claims is attached to my testimony as Exhibit A.

Q. Mr. Sorenson, in the testimony submitted with Black Mountain's application in this case, has testified regarding Wind P1 Mortgage Borrower L.L.C.'s prior legal positions and actions regarding the plant closure discussions. Can you describe CP Boulders' position with respect to Mr. Sorenson's testimony on these topics?

A. CP Boulders did not own the Resort property at the times described in Mr. Sorenson's testimony, and I was not involved at that time. For the purposes of background, CP Boulders' position regarding that history is best summarized in the appeal of the Commission's plant closure order that was filed with the Maricopa County Superior Court in Case No. CV2013-007804. A copy of the Complaint filed in that action is attached as Exhibit B to this testimony.

Q. What is the current status of the Resort's appeal case?

A. The Superior Court granted summary judgment in favor of the Commission on August 20, 2014. Wind P1 Mortgage Borrower L.L.C. then appealed the Superior Court's summary judgment decision to the Court of Appeals in case number 1-CA-CV 14-0643. Oral argument is currently scheduled for December 8, 2015. I will not attempt to describe the current status of all the parties' arguments in the appeal, but will just confirm that the dispute is ongoing. I am attaching a copy of the parties' briefs in the appeals court, without the bulky attachments, as Exhibit C to provide the most current description of the dispute.

Q. Has the Resort agreed to settle the appeal case?

A. The Resort has entered into a Settlement Agreement regarding the plant closure, and I understand that a copy of the agreement has been provided to the Commission. The agreement provides that, if the Settlement Agreement is approved by the Commission, then afterward the appeal case will be dismissed.

Q. Why has CP Boulders agreed to the terms in the Settlement Agreement?

A. Most important, the Settlement Agreement is intended to allow the Resort to continue to use effluent produced by the treatment plant at an agreed rate until November 30, 2018. The later date for closure will allow the Resort additional time to adapt its golf course operations for the loss of that water supply.

Q. In the prior rate case, witnesses testified that the Resort needs the effluent produced by Black Mountain's treatment plant to water the golf course. Is that still true?

A. Yes.

Q. Does the Resort support other aspects of the Settlement Agreement?

A. Yes, the Resort has agreed to all of the terms.

Q. Do you believe the Settlement Agreement is in the public interest?

A. Yes, because it reflects a compromise between divergent interests, including the Resort's need for water. The closure costs are significant and will result in higher future rates, but, as opposed to an immediate plant closure, the plan in the Settlement Agreement will allow for a bit more time to implement the closure plan and incur costs.

Q. What would CP Boulders like to see the Commission do with the Settlement Agreement?

A. The Commission should approve the terms as they are written so as not to risk continuation of a very contentious problem.

A

ASSIGNMENT AND ASSUMPTION OF EFFLUENT DELIVERY AGREEMENT AND RELATED CLAIMS

THIS ASSIGNMENT AND ASSUMPTION OF EFFLUENT DELIVERY AGREEMENT AND RELATED CLAIMS (the "Assignment") is made as of the 24 day of April, 2015 among BOULDERS JOINT VENTURE, an Arizona general partnership, WIND P1 MORTGAGE BORROWER L.L.C., a Delaware limited liability company (collectively, Boulders Joint Venture and Wind P1 Mortgage Borrower L.L.C. are referred to herein as "Assignor") and CP BOULDERS, LLC, a Delaware limited liability company ("Assignee").

RECITALS

A. Boulders Joint Venture is a "Party" to that Effluent Delivery Agreement dated as of March 2001, between the Boulders Carefree Sewer Corporation [subsequently named Black Mountain Sewer Corporation, and currently named Liberty Utilities (Black Mountain Sewer) Corp., referred to herein as "Black Mountain"] and Boulders Joint Venture (the "Effluent Delivery Agreement"). Wind P1 Mortgage Borrower L.L.C. is a successor "Party" to Boulders Joint Venture in the Effluent Agreement. For avoidance of doubt regarding the extent of this Assignment, both Boulders Joint Venture and Wind P1 Mortgage Borrower L.L.C. are executing this Assignment as Assignor.

B. Assignor wishes to assign the Effluent Delivery Agreement to Assignee in conjunction with the closing of the sale of the Boulders Resort property to Assignee, effective as of the closing date described in the Agreement of Purchase and Sale between Assignor and Assignee (the "Closing Date"). Pursuant to paragraph 19 of the Effluent Delivery Agreement, Assignor may assign its interest in the Effluent Delivery Agreement without the consent of the other Parties.

C. Assignor has certain appeal rights, causes of action, and claims for damages against the Arizona Corporation Commission and its Commissioners, and Black Mountain, including an administrative appeal that is currently proceeding in Arizona Court of Appeals docket number CA-CV 14-0643 (such administrative appeal and all rights related thereto, the "Appeal"), a related special action case filing in Maricopa County Superior Court case number LC-2013 000371, and a claim for breach of contract and related damages arising out of Black Mountain's actions and inactions contributing to the Arizona Corporation Commission's order to close the Boulders East Plant (as defined in the Effluent Delivery Agreement). Except as provided in this Assignment, Assignor wishes to assign all of its appeal rights, causes of action, and claims for damages to Assignee.

D. As provided in paragraph 19 of the Effluent Delivery Agreement, Assignee wishes to assume all obligations of the Assignor in the Effluent Delivery Agreement from the Closing Date forward.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Assignor and Assignee agree as set forth below.

1. Recitals. The Recitals are hereby incorporated into this Assignment and made a part hereof.

2. Assignment. Effective as of the Closing Date (the "Effective Date"), Assignor assigns, conveys and transfers to Assignee all of Assignor's right, title, and interest in, to, under and with respect to the Effluent Delivery Agreement. Except as provided in Paragraphs 3 and 4 below, as of the Effective Date, Assignor assigns, any and all of Assignor's rights in the Appeal, and any and all claims, demands, and causes of action that Assignor may have against the Arizona Corporation Commission and Commissioners, and Black Mountain, relating to the Effluent Delivery Agreement.

3. Exception to Assignment – Pre-Closing Attorneys' Fees. Assignor retains and does not assign its right to receive court-awarded attorneys' fees and costs related to the administrative appeal of the Arizona Corporation Commission's plant closure order and the related Appeal relating to fees and costs incurred by Assignor prior to the Closing Date. Assignor authorizes Ryley Carlock & Applewhite attorneys to prepare proof of such fees and expenses to support Assignor's claim for such pre-Closing fees and costs.

4. Exception to Assignment – Appeal Rights. Assignor retains and does not assign its rights to pursue the Appeal, but only to the extent that any portion of this Assignment would otherwise destroy the Arizona courts' statutory jurisdiction to continue to consider Assignor's full administrative appeal of the Arizona Corporation Commission's plant closure order. Assignor's retention of rights pursuant to this paragraph 4 will extend only so long as Assignee desires to pursue the Appeal and any related subsequent court proceedings such as remands and further appeals. Notwithstanding Assignor's retention of the rights in this paragraph 4, after the Closing Date, Assignor will be a nominal party and shall have no obligation to actively participate in the Appeal, and Assignee shall bear all risk, responsibility, obligations, and expenses related to such proceedings.

5. Assumption. Beginning on the Effective Date, Assignee assumes each and all of Assignor's right, title and interest in, to, under and with respect to the effluent Delivery Agreement and all obligations thereunder to the extent accruing on or after the date hereof.

6. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

7. Governing Law and Venue. This Assignment shall be construed and interpreted according to Arizona law. Any proceedings regarding this Assignment shall be brought in Maricopa County, Arizona.

8. Further Actions. Assignor and Assignee agree to promptly take such further actions reasonably required to put into effect and document the assignments and assumption in this Assignment. In addition, Assignor agrees to reasonably cooperate with Assignee, as reasonably requested by Assignee from time to time, in the Appeal and all actions related thereto at no cost or expense to Assignor.

[signature pages follow]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption of Effluent Water Delivery Agreement and Related Claims as of the date set forth above.

ASSIGNOR:

BOULDERS JOINT VENTURE, an Arizona general partnership

By: **BRE/Wind Inactive Companies L.L.C.**, its sole managing partner

By: **BRE/Wind Hotels Holdings II L.L.C.**, its sole member

By: **New Wind Parent L.L.C.**, its sole member

By: _____

Name: Amy Lancaster

Title: Vice President

[Additional signature page follows]

[Counterpart signature page to Assignment and Assumption of Effluent Water Delivery Agreement and Related Claims]

ASSIGNOR:

WIND P1 MORTGAGE BORROWER L.L.C., a Delaware limited liability company

By: _____

Name: Glenn Alba

Title: Managing Director and Vice President

[Additional signature page follows]

[counterpart signature page to Assignment and Assumption of Effluent Delivery Agreement and Related Claims]

ASSIGNEE:

CP BOULDERS, LLC, a Delaware limited liability company

By: _____
Name: CHRISTOPHER J. BALLAD
Its: CFO

KTBH: 4845-5099-8563, v. 2

B

COPY

MAY 31 2013

MICHAEL K. JEANES, CLERK
M. DE LA CRUZ
DEPUTY CLERK

RYLEY CARLOCK & APPLEWHITE
One North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4417
Telephone: 602/258-7701
Telecopier: 602/257-9582

Fredric D. Bellamy - 010767
fbellamy@rcalaw.com
Michele L. Van Quathem – 019185
mvq@rcalaw.com
Attorneys for Plaintiff,
Wind P1 Mortgage Borrower, L.L.C.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

CV2013-007804

WIND P1 MORTGAGE BORROWER, L.L.C., a Delaware limited liability company

Plaintiff,

v.

THE ARIZONA CORPORATION COMMISSION, an agency of the State of Arizona; BLACK MOUNTAIN SEWER CORPORATION, an Arizona corporation; THE BOULDERS HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation; RESIDENTIAL UTILITY CONSUMER OFFICE, an agency of the State of Arizona; TOWN OF CAREFREE, an Arizona municipal corporation; DENNIS E. DOELLE, an individual; and M.M. SHIRTZINGER, an individual;

Defendants.

Case No. _____

COMPLAINT

(Unclassified Civil; Priority Case – A.R.S. § 40-255)

For its Complaint, Plaintiff Wind P1 Mortgage Borrower, L.L.C. ("Wind P1" or the "Resort") alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Plaintiff Wind P1 is a Delaware limited liability company authorized to do business in the State of Arizona.

2. Defendant Arizona Corporation Commission (the "ACC" or the "Commission") is an agency of the State of Arizona as defined in the Arizona Constitution, Article XV, and A.R.S. § 41-1001(1). The Commission is a five-member publicly elected body.

3. The Commission's principal offices are in Maricopa County, Arizona.

4. Defendant Black Mountain Sewer Corporation, an Arizona corporation ("Black Mountain"), is a privately-owned public service corporation that provides wastewater collection and treatment services in an area that includes a portion of the Town of Carefree, Arizona. Black Mountain was a party to the administrative action that is appealed in this Complaint.

5. Defendant The Boulders Homeowners Association, an Arizona non-profit corporation ("BHOA"), was a party to the administrative action this is appealed in this Complaint.

6. Defendant Residential Utility Consumer Office ("RUCO"), an agency of the State of Arizona, was a party to the administrative action that is appealed in this Complaint.

7. Defendant Town of Carefree is an Arizona municipal corporation that was a party to the administrative action that is appealed in this Complaint.

8. Defendant Dennis E. Doelle, an individual, was a party to the administrative action that is appealed in this Complaint.

9. Defendant M. M. Shirtzinger, an individual, was a party to the administrative action that is appealed in this Complaint.

10. The Commission's and its members' actions that are the subject of this Complaint occurred in Maricopa County, Arizona.

11. Jurisdiction and venue are proper in this Court pursuant to A.R.S. § 40-254(A).

GENERAL ALLEGATIONS

12. Black Mountain currently provides wastewater collection and treatment services to approximately 2100 customer connections in a service area that includes residential and commercial properties in the Town of Carefree.

13. BMSC owns, operates, and maintains a wastewater treatment plant (the "WWTP") located near the Boulders Resort property.

14. Wind P1 owns the Boulders Resort, a world-class resort that includes a hotel and two 18-hole golf courses.

15. Wind P1 is a wastewater customer of Black Mountain.

16. Wind P1 also purchases treated wastewater (effluent) produced by the WWTP from Black Mountain pursuant to the Effluent Delivery Agreement dated March 2001, a true and correct copy of which is attached to this Complaint as **Exhibit A**.

17. The Effluent Delivery Agreement is currently in effect, and the initial term ends March 2021.

18. Wind P1 relies on the effluent purchased from WWTP to water turf and other landscaping at its two golf courses within the Boulders Resort property, especially at peak water use times when Wind P1's other reclaimed water source from the City of Scottsdale is insufficient.

19. Wind P1 is not able currently to purchase more reclaimed water from Scottsdale's Reclaimed Water Delivery System because other users have rights to all available capacity.

20. Wind P1's golf courses must be maintained in very good condition in order to attract and retain customers because Wind P1 competes with resort destinations locally, nationally, and internationally.

21. The WWTP through which effluent is delivered to Wind P1 has been operating in its present location for over 40 years.

22. The WWTP was constructed to provide water to the Resort golf courses. The WWTP parcel was platted as part of a Boulders subdivision titled "The Boulders Carefree Unit Four Phase One."

23. Houses located closest to the WWTP were constructed in the early 1970s and early 1980s.

24. During all times relevant to this matter, the WWTP has been operated in accordance with applicable law, permit provisions, and industry standards.

2005 ACC Rate Case Addressed Odors from Black Mountain's Collection System

25. On September 16, 2005, Defendant Black Mountain filed an application for a utility rate increase with the ACC (the "2005 rate case"). Odor complaints were made by Black Mountain's customers during the 2005 rate case.

26. Evidence cited in the final decision for the 2005 rate case, ACC Decision No. 69164, included an engineering study by Lamb Technical Services, Inc. that concluded odors were caused by the presence of hydrogen sulfide in Black Mountain's collection system pipes and force mains, and that turbulence and negative pressure in the piping system pushed the gas out of openings such as manhole cover pickholes and vent stacks, causing odors.

27. Black Mountain agreed during the 2005 rate case to remove the troublesome Carefree Inn Estates ("CIE") lift station, and the Commission further ordered Black Mountain to adopt one of two engineer-recommended design changes to Black Mountain's collection system. The Commission ordered no changes to the WWTP.

Black Mountain Addressed Odors after 2005 Rate Case

28. During and after the 2005 rate case, Black Mountain asserted that it complied with the Commission's order in ACC Decision No. 69164, and made a number of additional improvements to its system and operations that Black Mountain believed further reduced odors emitted by both the collection system and the WWTP.

2008 Rate Case – Settlement Agreement

29. On December 19, 2008, Defendant Black Mountain filed another application for a utility rate increase with the Commission, Commission docket number SW-02361A-08-0609 (the "2008 rate case"), that resulted initially in Commission Decision No. 71865. Two hearings were conducted in the 2008 rate case docket, and two formal decisions were issued, Decision Nos. 71865 and 73885. The parties have referred to the initial 2008 fair value determination/rate hearing process that culminated in Decision No. 71865 as "Phase 1" of the 2008 rate case.

30. All of the Defendants named in this Complaint were each admitted by the Commission as parties to Phase 1 of the 2008 rate case, and there were no parties admitted other than the Defendants.

31. Wind P1 was not a party during Phase 1 of the 2008 rate case.

32. BHOA asserted in Phase 1 of the 2008 rate case that resident complaints indicated that, although the 2005 rate case concluded odor problems were primarily caused by Black Mountain's collection system, the BHOA was now certain Black Mountain's WWTP was emitting unacceptable noises and odors.

33. Prior to the Commission's resolution of Phase 1, two parties, Black Mountain and the BHOA, entered into a voluntary settlement agreement, the Wastewater Treatment Plant Closure Agreement (the "Closure Agreement," attached hereto as Exhibit B). In the Closure Agreement, Black Mountain promised to close the WWTP subject to certain conditions precedent. One of the conditions precedent required that Black Mountain obtain the Commission's approval of a surcharge that would allow Black Mountain to recover through its rates at least some of the costs of closing the WWTP prior to its next rate case.

34. Another condition precedent to the Closure Agreement required as follows:

> [Black Mountain] currently has an agreement with the Resort which requires [Black Mountain] to deliver all effluent generated at the Plant to the Resort through March 2021. In the agreement, BMSC

> covenanted to continue to operate the Plant and to not reduce the amount of effluent produced by the Plant. [Black Mountain] must sign an agreement with the Resort whereby the Resort agrees to allow the termination of the Effluent Agreement at no or limited cost to [Black Mountain].

35. Defendant BHOA agreed to all of the conditions precedent in the Closure Agreement.

36. No Defendants other than Black Mountain and BHOA were parties to the voluntary Closure Agreement.

37. Black Mountain and BHOA both requested during Phase 1 that the Commission approve the proposed surcharge mechanism described in the Closure Agreement to fund closure of the WWTP, and the Commission approved the surcharge in Commission Decision No. 71865 on August 31, 2010. Decision No. 71865 is attached to this Complaint as Exhibit C.

38. The Commission did not order closure of the WWTP, or any other changes to the WWTP, in Decision No. 71865. A decision to close a wastewater reclamation plant is typically a management decision reserved to a public service corporation's management.

39. The Commission found in Phase 1 that the WWTP is used and useful in the provision of treatment services to customers, and included the WWTP in Black Mountain's rate base.

BHOA Moves for Closure Prior to Satisfaction of Conditions to Settlement Agreement

40. Before satisfaction of all the remaining conditions precedent to the Closure Agreement occurred, on June 15, 2011, BHOA filed a motion requesting that the Commission order the plant closed to relieve Black Mountain of its contractual commitment to deliver effluent to the Resort. The purpose of BHOA's motion was to obtain a Commission order forcing closure of the WWTP to render moot a condition precedent to the Closure Agreement at little or no cost to Black Mountain, and subsequently at little or no cost to BHOA.

41. The Resort moved to intervene in the rate case on July 7, 2011, and was granted intervention on January 26, 2012.

42. The Commission decided to reopen the Phase 1 rate case decision, Decision No. 71865, pursuant to A.R.S. § 40-252, to address the BHOA's motion to order closure of the WWTP. The parties have referred to the hearing process following this reopening as "Phase 2" of the 2008 rate case.

43. A Phase 2 hearing was held May 8, 2012. The only parties that participated or offered evidence in the Phase 2 hearing were BHOA, Black Mountain, Wind P1, and the Commission Staff. RUCO, the Town of Carefree, and the individual parties admitted during Phase 1 did not participate in Phase 2.

Lack of Evidence of Noise or Odor Levels Attributable to Plant Operation

44. In the Phase 2 hearing, BHOA offered no new witnesses in support of its motion for closure of the WWTP. BHOA instead offered stipulated facts regarding the mere existence of complaints about perceived odor and noise that residents attributed to the WWTP.

45. The only engineering testimony offered in either the Phase 1 hearing conducted on November 18, 23, 24, and 25, or the Phase 2 hearing conducted on May 8, 2012 regarding the design, construction, operation, or maintenance of the WWTP was the testimony of one witness – Commission staff engineer Dorothy Hains – during the Phase 1 hearing. Ms. Hains reviewed the WWTP as part of her routine engineering review of all Black Mountain's plant property. Ms. Hains did not recommend closure of the WWTP to address the odor or noise issues noted in public comments.

46. The Commission in its decisions in Phase 1 (Decision No. 71865) and Phase 2 (Decision No. 73885, attached as Exhibit D) of the rate case found no unreasonable defect in the design of the WWTP.

47. The Commission in its decisions in Phase 1 and Phase 2 of the rate case found no unreasonable defect in the operation of the WWTP.

48. The Commission in its decisions in Phase 1 and Phase 2 of the rate case found no unreasonable defect in the maintenance of the WWTP.

49. The Commission found that the WWTP is operated in full compliance will all applicable law and industry standards, including applicable rules of the Commission, Arizona Department of Environmental Quality, and Maricopa County.

50. The Commission found that BMSC has taken steps to minimize odors and noises from the operation of the WWTP, including installation of an odor scrubber.

51. No evidence was offered or admitted in either Phase 1 or Phase 2 of the 2008 rate case that indicates any health or safety danger in the continued operation of the WWTP at its present location.

52. No evidence was offered or admitted in either Phase 1 or Phase 2 of the 2008 rate case that Black Mountain's wastewater collection services are unsafe, unsatisfactory, or non-continuous.

53. The Commission did not measure noise and odor levels in the vicinity of the WWTP or elsewhere, nor did any party offer such measurements into evidence to support a closure order.

54. The Commission conducted no technical investigation by qualified professionals to determine the source or strength of odors and noises that were the subject of customer complaints, nor did any party offer such measurement to support an order of closure.

55. No odor or noise studies conducted by a qualified technical professional were offered into evidence by any party during either Phase 1 or Phase 2 of the 2008 rate case.

56. Despite having insufficient evidence to determine the source and strength of either odors or noises attributable to the WWTP as needed to determine whether the continued operation of the WWTP reasonably complies with a recommended or required noise or odor standard, the Commission ordered closure of the WWTP in Decision No. 73885 based upon speculation and unsworn public comments requesting closure.

COUNT 1

(Preliminary Injunction; Injunction; A.R.S. §§ 12-1801, 40-254)

57. Wind P1 incorporates the foregoing allegations as if they were fully set forth herein.

58. Closure of the WWTP as a result of the Commission's unlawful and unreasonable order in Decision No. 73885, described in paragraphs 44 through 56 above, will cause Wind P1 material and irreparable damage because closure will cut off Wind P1's water supply from the WWTP. Loss of the WWTP water supply will likely result in the loss of or damage to valuable golf course turf and other water-dependent landscaping, related lost business from customers expecting a world-class golf experience, and irreparable loss of business reputation.

59. Black Mountain's relinquishment of the Aquifer Protection Permit, air quality permit(s) and other entitlements for the WWTP, and the physical closure of the WWTP, prior to the conclusion of this appeal will likely render Wind P1's right to an appeal in this case ineffective because, once the WWTP is closed, it will likely not be possible to re-permit, re-entitle, and re-construct the WWTP in the same location due to new, more restrictive permit and construction requirements.

60. Grant of an injunction preliminarily setting aside the Arizona Corporation Commission's Decision No. 73885 in accordance with A.R.S. § 40-254(A), and prohibiting Black Mountain from closing the WWTP during the pendency of the appeal process, will maintain the status quo for a WWTP that has been operating lawfully and in compliance with permit requirements in the same location for over 40 years.

61. Wind P1 has no other adequate remedy at law to stop Black Mountain from closing the WWTP before Wind P1's appeal is heard by this Court.

62. A.R.S. § 40-254 recognizes the Court may grant an injunction to enjoin actions of the Commission that are unlawful or exceed the Commission's authority.

63. Pursuant to A.R.S. §§ 12-1801, 40-254, and pursuant to the principles of equity, the Commission and Black Mountain should be enjoined from taking any action to relinquish permits or physically close the WWTP during the pendency of this appeal.

COUNT 2

(Decision Unreasonable and Unlawful; Lack of Substantial Evidence: Ariz. Const. Art. 15, §3; A.R.S. 40-254)

64. Wind P1 incorporates the foregoing allegations as if they were fully set forth herein.

65. The Commission failed to accurately or reliably measure the level of existing utility service provided by Black Mountain to customers.

66. The Commission failed to identify a required or recommended standard of design, operation, or maintenance of wastewater reclamation plants that was reasonable, and then compare evidence regarding the WWTP to the recommended standard to determine if continued use of the WWTP was reasonable.

67. The Commission failed to compare the costs of WWTP closure to the costs of other potential remedies.

68. The Commission unreasonably relied upon, in violation of its own rules and in violation of principles of basic due process, unverified, unsubstantiated, unqualified, unreliable, and un-admitted public comments and form letters. The Commission's decision violates A.R.S. § 41-1062(A) (evidence must be substantial, reliable, probative, and parties shall have right of cross-examination) and Arizona Administrative Code rules R14-3-104(A) (right of cross-examination), R14-3-109(F) (testimony must be under oath), (N) (municipal resolutions must be properly authenticated and offered by proper person at hearing; are subject to rebuttal), and R14-3-105(C) (consumers may make a statement on his or her own behalf but are not deemed a party to the proceedings).

69. The Commission had insufficient evidence to support the Commission's decision to force closure of the WWTP as ordered in Decision No. 73885.

COUNT 3

(Decision Violates Commission Rule Regarding Sufficiency of Sewer Facilities and Service; A.A.C. R14-2-607)

70. Wind P1 incorporates the foregoing allegations as if they were fully set forth herein.

71. The Commission in its Decision No. 73885 failed to follow its own rule regarding the level of service and adequacy of plant provided by a sewer utility.

72. The Commission made no finding that existing collection and treatment services provided by Black Mountain were unsafe, unsatisfactory, or non-continuous.

73. The Commission made no finding that the WWTP violated any applicable requirement of ADEQ or any other governmental agency having jurisdiction over such facilities.

74. The Commission failed to follow its own rule, Arizona Administrative Code R14-2-607, by ordering closure of the WWTP when the WWTP met the Commission's requirements for such facilities and service.

COUNT 4

(Violation of United States Constitution, Art. I, and Arizona Constitution, Art. 2, Sec. 25 – Contract Impairment)

75. Wind P1 incorporates the foregoing allegations as if they were fully set forth herein.

76. Commission Decision No. 73885 substantially impairs Wind P1's contractual right to effluent delivery pursuant to the Effluent Delivery Agreement because the closure of the WWTP will end deliveries.

77. The Commission failed to identify a significant and legitimate purpose for the contractual impairment because it found the WWTP is in compliance with all laws and industry standards.

78. The Commission's Decision No. 73885 contains an unreasonable condition to close the WWTP and end effluent deliveries to Wind P1 altogether that is not necessary to meet an important general social problem.

COUNT 5

(Violation of United States Constitution, Amendment 14, and Arizona Constitution, Art. 2, Sec. 4 – Due Process)

79. Wind P1 incorporates the foregoing allegations as if they were fully set forth herein.

80. The Commission's Decision No. 73885 lacks sufficient evidence of causation, harm, a reasonable standard of harm, and comparative costs of remedies to support the reasonableness of an order to close the WWTP.

81. The Commission considered and relied upon public comments made outside the Commission's hearing process and, even after timely objections were made, failed to allow Wind P1 the right to cross-examine the witnesses providing such comments.

82. The Commission's Decision No. 73885 violates Wind P1's and the public's right to due process in violation of law.

PRAYER FOR RELIEF

WHEREFORE, Wind P1 prays for judgment on its claims against the Commission as follows:

A. Enjoining the Commission and Black Mountain from taking any action to relinquish permits or physically close the WWTP as a result of Commission Decision No. 73885 prior to the resolution of this appeal.

B. Vacating, setting aside, and reversing Commission Decision No. 73885 as unlawful and unreasonable under Arizona Constitution, Article 15, section 3.

C. Vacating, setting aside, and reversing Commission Decision No. 73885 as unlawful and unreasonable under A.R.S. section 40-254 and the statutes and rules cited in this Complaint.

D. Vacating, setting aside, and reversing Commission Decision No. 73885 as unconstitutional for unjustified and undue interference with a private contract.

E. Vacating, setting aside, and reversing Commission Decision No. 73885 as unconstitutional for violating due process.

F. Awarding Wind P1 its taxable costs and attorneys' fees incurred in bringing this action, pursuant to A.R.S. § 12-348 and other applicable statutes.

G. Awarding such further relief as the Court deems just and proper.

Transcripts will be designated as part of the record pursuant to A.R.S. § 12-904(B)(5).

DATED this 31st day of May, 2013.

RYLEY CARLOCK & APPLEWHITE

By _____

Fredric D. Bellamy
Michele L. Van Quathem
One North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4417
Attorneys for Plaintiff Wind P1 Mortgage Borrower, L.L.C.

C

COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

WIND P1 MORTGAGE BORROWER L.L.C., a Delaware limited liability company, Plaintiff/Appellant, v. ARIZONA CORPORATION COMMISSION, an agency of the State of Arizona; BLACK MOUNTAIN SEWER CORPORATION, an Arizona corporation; TOWN OF CAREFREE, an Arizona municipal corporation, Defendants/Appellees.	Court of Appeals Division One No. 1 CA-CV 14-0643 Maricopa County Superior Court No. CV2013-007804
THE BOULDERS HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation, Intervenor/Appellee.	

APPELLANT WIND P1 MORTGAGE BORROWER L.L.C.'S OPENING BRIEF

RYLEY CARLOCK & APPLEWHITE
Fredric D. Bellamy – 010767
fbellamy@rcalaw.com
Michele Van Quathem – 019185
mvq@rcalaw.com
Naomi Thurston – 029863
nthurston@rcalaw.com
One North Central Avenue, Suite 1200
Phoenix, Arizona 85004
Telephone: 602-258-7701
Attorneys for Appellant

TABLE OF CONTENTS

Table of Contents i

Table of Authorities iii

INTRODUCTION 1

STATEMENT OF THE CASE 2

I. Commission Procedural History 2

II. Superior Court Procedural History 3

A. Appeals to Both Superior Court and Court of Appeals 3

B. Summary Judgment Motions Made in Superior Court 4

STATEMENT OF FACTS 5

III. Factual Background 5

A. History of 2005 Rate Case – Collection System Odors 6

B. Settlement Agreement between BMSC and BHOA in 2008 Rate Case 7

C. After 2008 Rate Case, BHOA Moves for Plant Closure Order 8

ISSUES PRESENTED 9

ARGUMENT 10

I. Standard of Review 10

II. Issue 1: Commission Lacks Authority to Order Closure of a Compliant Plant to Remediate Alleged Nuisance Conditions on Non-Utility Properties 11

A. Superior Court Correctly Concluded that the Commission Has No Constitutional Power to Order Plant Closure 12

B. Superior Court Erred in Concluding the Commission Has Statutory Authority to Order Plant Closure under A.R.S. §§ 40-321(A), 40-331(A), and 40-361(B) 15

III. Issue 2: The Trial Court Erred in Granting Summary Judgment Where Disputes of Material Fact Were Demonstrated, Denying Plaintiff a Trial De Novo 26

A. Trial Court Erroneously Applied "Substantial Evidence" Rate Case Standard Instead of Rule 56 "Trial de Novo" Non-Rate Case Standard Required By A.R.S. § 40-254 26

B. Trial Court Erred in Denying Admission of Affidavit of Robert Owens Based on Erroneous Application of "Substantial Evidence" Standard ..31

C. The Evidence Cited by the Commission Demonstrates Disputed Facts Regarding the Alleged Odors and Noises, Their Sources, and the Effectiveness and Reasonableness of Closure as a Solution to the Unproven Remaining Problems 34

IV. Issue 3: The Trial Court Erred in Concluding Plant Closure Order Did Not Violate Constitutions' Contract Impairment Clauses 49

REQUEST FOR ATTORNEYS' FEES AND COST 55

CONCLUSION 55

TABLE OF AUTHORITIES

Constitutional Provisions

Ariz. Const. Art. XV, § 3 ..... 12, 13, 14

Ariz. Const. Art. XV, §2 20

Statutes

A.R.S. § 13-2917 22

A.R.S. § 36-601 22

A.R.S. § 40-253 3

A.R.S. § 40-254 ..... 1, 3, 4

A.R.S. § 40-321 ..... 15, 18, 24

A.R.S. § 40-331 ..... 15, 18, 24

A.R.S. § 40-361 ..... 15, 18

A.R.S. § 40-421 24

A.R.S. § 49-101 20

A.R.S. § 49-104 ..... 22, 23

A.R.S. § 49-106 23

A.R.S. § 49-107 23

A.R.S. § 49-112 23

A.R.S. § 49-141 23

A.R.S. § 49-142 24

A.R.S. § 49-401 21

A.R.S. § 49-407 24

A.R.S. § 49-421 22

A.R.S. § 49-461 24

A.R.S. § 49-467 22

Cases

Allied Structural Steel Co. v. Spannaus, 438 U.S. 234 (1978) 50, 52

Ariz. Corp. Comm'n v. Citizens Utils. Water Co., 120 Ariz. 184, 584 P.2d 1175 (App. 1978) ... 31

Ariz. Corp. Comm'n v. Fred Harvey Transp. Co., 95 Ariz. 185, 388 P.2d 236 (1964) 27

Ariz. Corp. Comm'n v. Palm Springs Utility Co., Inc., 24 Ariz. 124, 536 P.2d 245 (App. 1975) 12, 13

Ariz. Corp. Comm'n v. Reliable Transp. Co., 86 Ariz. 363, 346 P.2d 1091 (1959) 27

Ariz. Corp. Comm'n v. Woods, 171 Ariz. 286, 830 P.2d 807 (1992) 13, 14

Chanay v. Chittenden, 115 Ariz. 32, 563 P.2d 287 (Ariz. 1977) 33, 37

Corp. Comm'n of Ariz. v. People's Freight Line, 41 Ariz. 158, 16 P.2d 420 (1932) 27

Corp. Comm'n v. Pacific Greyhound Lines, 54 Ariz. 159, 94 P.2d 443 (1939) 12, 13, 14

Corp. Comm'n v. Southern Pac. Co., 55 Ariz. 173, 99 P.2d 702 (1940) 28

Cruz v. City of Anaheim, 765 F.3d 1076 (9th Cir. 2014) 38

Desert Waters, Inc. v. Superior Court, 91 Ariz. 163, 370 P.2d 652 (1962) 21

Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 103 S. Ct. 697, 74 L.Ed.2d 569 (1983) 49, 52

General Motors Corp. v. Romein, 503 U.S. 181, 117 L.Ed.2d 328 (1992) 51

Grand Canyon Trust v. Ariz. Corp. Comm'n, 210 Ariz. 30, 107 P.2d 356 (App. 2005) .. 30, 31, 32

Havasu Heights Ranch & Dev. Corp. v. Desert Valley Wood Prods., Inc., 167 Ariz. 383 (App. 1990) 32

Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 54 S.Ct. 231, 78 L.Ed. 413 (1934) 54

James P. Paul Water Co. v. Ariz. Corp. Comm'n, 137 Ariz. 426, 671 P.2d 404 (1983) 18

McClead v. Pima County, 174 Ariz. 348, 849 P.2d 1378 (App. 1992) 49

Peeples, Inc. v. Arizona State Land Dept., 204 Ariz. 66, 59 P.3d 830 (App. 2002) 17

People's Choice TV Corp. v. City of Tucson, 202 Ariz. 401, 46 P.3d 412 (2002) 19

Phelps Dodge Corp. v. Ariz. Elec. Power Co-op., Inc., 207 Ariz. 95, 83 P.3d 573 (App. 2004) 10, 11, 14, 15, 38, 49, 50

Pure Wafer, Inc. v. City of Prescott, 14 F.Supp.3d 1279 (D.Ariz. 2014) 52

Simms v. Round Valley Light & Power Co., 80 Ariz. 145, 294 P.2d 378 (1956) 29

State v. Marana Plantations, Inc., 75 Ariz. 111, 252 P.2d 87 (1953) 19

State v. Sweet, 143 Ariz. 266, 693 P.2d 921 (1985) 19

Tonto Creek Estates Homeowners Ass'n v. Ariz. Corp. Comm'n, 177 Ariz. 49, 864 P.2d 1081 (1946) 11

Trico Elec. Co-op. v. Ralston, 67 Ariz. 358, 196 P.2d 470 (1948) 11

Tucson Elec. Power Co. v. Ariz. Corp. Com'n, 132 Ariz. 240, 645 P.2d 231 (1982) 27, 28, 30

United Bank of Ariz. v. Allyn, 167 Ariz. 191, 805 P.2d 1012 (App. 1990) 10, 37

US West Communications, Inc. v. Ariz. Corp. Comm'n, 197 Ariz. 16, 23, ¶28, 3 P.3d 936, 943 (App. 1999) 11

Webb v. Omni Block, Inc., 216 Ariz. 349, 166 P.3d 140 (App. 2007) 33

West End Tenants Ass'n v. George Washington University, 640 A.2d 718, (1994) 53

Rules

A.A.C. R14-2-607 25

Ariz.R.Civ.P. Rule 56 ..... 29, 31, 37

INTRODUCTION

The Arizona Corporation Commission (the "Commission" or "ACC") regulates public service corporation rates charged to consumers and certain other matters as specified in Arizona Constitution Article XV and Arizona Revised Statutes Title 40. In this case, in response to a request submitted by the Boulders Homeowners Association ("BHOA"), in an unprecedented action, the Commission ordered a public service corporation, Black Mountain Sewer Corporation ("BMSC"), to close an operating wastewater treatment plant (the "Plant" or "WWTP"), even though the plant meets all industry and legal standards, to remediate alleged nuisance conditions on non-utility properties.

Plaintiff-Appellant, Wind P1 Mortgage Borrower L.L.C. ("Wind P1"), owns two golf courses adjacent to the WWTP property. Wind P1 purchases effluent produced by the WWTP for landscape watering pursuant to a contract between Wind P1 and BMSC, the Effluent Delivery Agreement. Closure of the WWTP will substantially impair the Effluent Delivery Agreement, harming Wind P1 by cutting off a critical golf course water supply.

This case arises out of Wind P1's challenge of the Commission's plant closure order, Commission Decision No. 73885 (the "Decision"). Wind P1 challenged the Commission Decision in Superior Court as "unlawful" and "unreasonable" under A.R.S. § 40-254, and as an unconstitutional contract

impairment and violation of due process. The Commission's plant closure order in this case was in the nature of a political zoning decision, and was not an authorized administrative agency enforcement action.

The Superior Court, applying the wrong standard of review, erroneously granted the Commission's Cross-Motion for Summary Judgment prior to a trial, and entered final judgment. This case is Wind P1's appeal of the Superior Court's legal conclusions and grant of the Commission's Cross-Motion for Summary Judgment.

STATEMENT OF THE CASE

I. COMMISSION PROCEDURAL HISTORY

On December 19, 2008, BMSC filed a rate case that concluded in Commission Decision No. 71865, issued on September 1, 2010. *See* Index of Record docketed October 3, 2014, document number 140 ("I.R. 140"), ¶16; I.R. 142, Ex. 10. The evidentiary hearings in the 2008 rate case occurred on November 18, 23, 24, and 25, 2009.

After the final decision in the rate case, on June 15, 2011, BHOA filed a motion with the Commission in the same docket, requesting that the Commission issue an order to BMSC to close the WWTP. I.R. 140, ¶26; I.R. 141, Ex. 3. The Commission decided to reopen the matter to consider BHOA's motion. Wind P1

was granted intervention by the Commission's hearing officer on January 6, 2012. I.R. 140, ¶28; I.R. 141, Ex. 3.

The Commission's hearing officer held a hearing on May 8, 2012, followed by briefing by the parties, and issuance of a recommended opinion and order. I.R. 140, ¶29; I.R. 141, Ex. 3. Wind P1 then filed exceptions to the hearing officer's recommended opinion and order, and a motion to strike un-admitted public comments from the recommended opinion and order. I.R. 140, ¶30; I.R. 143, Ex. 16, 17. The Commission's final Decision No. 73885 (containing the plant closure order) was issued on May 8, 2013. I.R. 141, Ex. 3.

Wind P1 timely requested a Commission rehearing on May 10, 2013, and the rehearing was denied by operation of law 20 days later under A.R.S. § 40-253(A). I.R. 143, Ex. 18.

II. SUPERIOR COURT PROCEDURAL HISTORY

A. Appeals to Both Superior Court and Court of Appeals

Wind P1 timely filed an action in the Superior Court on May 31, 2013 pursuant to A.R.S. § 40-254(A). I.R. 1. Concurrent with the Complaint, Wind P1 filed a Motion for Preliminary Injunction to stay the Commission's Decision

pending appeal,[1] but the motion was rendered moot by the Superior Court's summary judgment ruling.

In response to the Commission's argument in its Answer that the Superior Court lacked jurisdiction due to the nature of the Plant closure order as "ratemaking," Wind P1 later timely filed a parallel direct appeal to this Court of Appeals per A.R.S. § 40-254.01. I.R. 140, ¶¶31, 32; I.R. 143, Ex. 19.

On August 26, 2013, this Court in case number 1 CA-CC 13-0001 issued an order finding that it had no jurisdiction over Wind P1's direct appeal because "Decision No. 73885 did not arise from a process involving rate making or rate design..." I.R. 143, Ex. 19. The Court of Appeals order confirmed the action was properly brought in Superior Court under A.R.S. § 40-254.

B. Summary Judgment Motions Made in Superior Court

On December 18, 2013, Wind P1 filed motions for partial summary judgment on Counts 2, 3, 4, and 5 of its Complaint.[2] I.R. 139-44. On February 7, 2014, the Commission and BMSC both responded and filed Cross-Motions for

---

[1] Because the availability of interlocutory relief was uncertain under the provision in A.R.S. § 40-254(F), Wind P1 also filed parallel special action requests for interlocutory relief in the Supreme Court (No. CV-13-0236-SA) and Superior Court (No. LC2013-000371). The Supreme Court declined to take jurisdiction, and the parties stipulated to stay the Superior Court special action, pending in front of the same judge considering the Motion for Preliminary Injunction in the present case.

[2] Count 1 was a request for a Preliminary Injunction to stay the Commission's Decision.

Summary Judgment. I.R. 150-53, 155-70. The Court heard oral arguments on the summary judgment motions on April 1, 2014,[3] and docketed a written ruling on June 2, 2014 (the "Ruling"). I.R. 197. A final judgment was entered in the case on August 22, 2014, and certified on September 23, 2014. I.R. 205, 212. Wind P1 filed a Notice of Appeal in the Superior Court on August 26, 2014. I.R. 206.

STATEMENT OF FACTS

III. FACTUAL BACKGROUND

BMSC is a privately-owned public service corporation that owns and operates the WWTP located near two Boulders Resort golf courses owned by Wind P1. I.R. 140, ¶1. The WWTP has been located in the same location near homes in the Boulders community for over 40 years. I.R. 140, ¶3. Houses closest to the WWTP were constructed in the early 1970s and early 1980s. *Id.*

Wind P1 purchases treated wastewater (effluent) produced by the WWTP from BMSC pursuant to the Effluent Delivery Agreement dated March 2001 ("Effluent Agreement"). I.R. 140, ¶4; I.R. 141, Ex. 5. The Effluent Agreement's initial term ends March 2021. I.R. 140, ¶5; I.R. 141, Ex. 5. Wind P1 obtains approximately 15 percent of its total irrigation water from the WWTP, and relies on the effluent from the WWTP for at least six months each year during peak water use times. I.R. 140, ¶6. Without the effluent, Wind P1 would have to leave one or

[3] A transcript of the oral argument was docketed in this matter on October 24, 2014.

both courses brown for several months each winter, and the lack of sufficient water may harm re-establishment of summer grass. *Id.*

In addition to serving local residents, the Boulders Resort owned by Wind P1 is a destination golf resort for tourists. I.R. 140, ¶7. Many visitors come for the primary purpose of golfing. *Id.* Both of the Resort's golf courses are world-class courses that are designed and operated to compete with courses at other luxury properties, both in the United States and internationally. *Id.* If the Resort is not able to maintain the golf courses in world-class condition, it will have a negative impact on the Resort's ability to continue attracting visitors and golf club members. I.R. 140, ¶8.

A. History of 2005 Rate Case – Collection System Odors

On September 16, 2005, BMSC filed an application for a utility rate increase with the Commission (the "2005 rate case"). I.R. 140, ¶9. Odor and noise complaints were made during the 2005 rate case, and engineering studies and testimony as well as the Commission's findings indicated odors were coming from various points in BMSC's sewer collection system of pipes, manholes, and lift stations. I.R. 140, ¶¶10, 11, 12. BMSC made improvements to its sewer collection system and also to the WWTP (including installation of an odor scrubber) after the 2005 rate case to address odors and noises. I.R. 140, ¶¶14, 15. The measures

successfully reduced odors and noises in the collection system leading to the plant and at the plant itself. I.R. 140, ¶15.

B. Settlement Agreement between BMSC and BHOA in 2008 Rate Case

On December 19, 2008, BMSC filed a new rate case that concluded in Commission Decision No. 71865, issued on September 1, 2010 (the "2008 rate case"). I.R. 140, ¶16. During the 2008 rate case, BHOA and BMSC entered into a two-party settlement agreement,[4] the Wastewater Treatment Plant Closure Agreement ("Closure Agreement"), in which BMSC promised to BHOA that BMSC would close the WWTP subject to a number of conditions precedent. I.R. 140, ¶17; I.R. 143, Ex. 12. One of the conditions precedent in the Closure Agreement provides, in pertinent part:

> Effluent Agreement with the Resort. BMSC currently has an agreement with the Resort which requires BMSC to deliver all effluent generated at the Plant to the Resort through March 2021. In the agreement, BMSC covenanted to continue to operate the Plant and to not reduce the amount of effluent produced by the Plant. BMSC must sign an agreement with the Resort whereby the Resort agrees to allow the termination of the Effluent Agreement at no or limited cost to BMSC.

I.R. 140, ¶19, Ex. 12. In support of BHOA's request that the Commission adopt certain of the Closure Agreement terms, BHOA offered one lay witness, Les Peterson, who testified that it was now clear to BHOA that the odors experienced

[4] Wind P1 was not a party to the 2008 rate case. The Commission Staff and other parties to the Commission's case at that time did not sign the Closure Agreement.

by Boulders residents were caused not only by the collection system, but also by the WWTP. I.R. 140, ¶21. Peterson asserted that, although the frequency of odors was reduced after improvements, odors continued to be "very noticeable" and "objectionable" to residents. *Id.*

No engineering testimony was offered in support of the Closure Agreement other than the Commission's staff engineer's responses to questions following a routine plant infrastructure review indicating she was unsure if WWTP closure would resolve customer odor concerns and recommending further study. I.R. 140, ¶22; I.R. 143, Ex. 15. The Commission's engineer did not recommend closure of the WWTP. I.R. 140, ¶23; I.R. 143, Ex. 15. The Commission did not order closure of the WWTP in the 2008 rate case; rather, the Commission found the WWTP was used and was useful in service to customers, and included the plant in BMSC's rate base. I.R. 140, ¶24. A decision to close a plant is typically a decision reserved to a public service corporation's management. I.R. 140, ¶25.

C. After 2008 Rate Case, BHOA Moves for Plant Closure Order

After the 2008 rate case concluded, on June 15, 2011, BHOA filed a motion requesting that the Commission order the WWTP closed despite BMSC's failure to achieve a voluntary release of its contractual obligations to deliver effluent to Wind P1. I.R. 140, ¶26; I.R. 143, Ex. 23. BHOA's motion was directed to a provision in the Effluent Agreement that BHOA argued [with the Commission's

help in the form of a plant closure order] would excuse BMSC from performance of the terms of the Effluent Delivery Agreement "if . . . any laws, regulations, orders or other regulatory requirements prevent or materially limit the operation of the [WWTP] . . . ." I.R. 140, ¶27.

Wind P1 moved to intervene in the case on July 6, 2011, and was granted intervention by the Commission's hearing officer on January 6, 2012. I.R. 140, ¶28. The Commission's hearing officer held a hearing on May 8, 2012, followed by briefing by the parties, and issuance of a recommended opinion and order. I.R. 140, ¶29. Wind P1 then filed exceptions to the hearing officer's recommended opinion and order, and a motion to strike un-admitted public comments from the recommended opinion and order. I.R. 140, ¶30; I.R. 143, Ex. 17. The final Commission Decision No. 73885 followed. I.R. 141, Ex. 3.

ISSUES PRESENTED

1. Did the trial court err in concluding that A.R.S. §§ 40-321(A), 40-331(A), and 40-361(B) grant the Commission authority to order BMSC to close a compliant wastewater treatment plant to remediate alleged nuisance conditions on non-utility properties?

2. Did the trial court err in granting summary judgment to the Commission, denying Wind P1 a trial de novo on the question of the lawfulness and reasonableness of the Commission's plant closure order under A.R.S. § 40-

254, where evidence presented to the trial court demonstrated disputes of material facts in Wind P1's favor?

3. Did the trial court err in granting summary judgment to the Commission by concluding as a matter of law that the Commission's unprecedented plant closure order does not violate the contract impairment clauses in United States Constitution Article I, section 10, and Arizona Constitution Article 2, section 25, because the parties' expectation of future regulation completely negated the substantial nature of the contract impairment?

ARGUMENT

I. STANDARD OF REVIEW

This Court reviews the judgment of the Superior Court rather than the decision of the Commission, and reviews the facts and reasonable inferences in the light most favorable to the party against whom the Superior Court granted summary judgment. *Phelps Dodge Corp. v. Ariz. Elec. Power Co-op., Inc.*, 207 Ariz. 95, 103, 83 P.3d 573, 581 (App. 2004) (internal citations omitted) ("*Phelps Dodge*"). Any evidence or reasonable inference contrary to the material facts needed for judgment will preclude summary judgment. *United Bank of Ariz. v. Allyn*, 167 Ariz. 191, 195, 805 P.2d 1012, 1016 (App. 1990), *review den'd* (citation omitted). This Court applies the same standard as that used by the trial court in ruling on the summary judgment motion in the first instance. *Id.*

II. ISSUE 1: COMMISSION LACKS AUTHORITY TO ORDER CLOSURE OF A COMPLIANT PLANT TO REMEDIATE ALLEGED NUISANCE CONDITIONS ON NON-UTILITY PROPERTIES

The Commission's powers are limited to those derived expressly from the Constitution or through express legislative delegation; the Commission has no implied powers. *Phelps Dodge,* 207 Ariz. at 111, 83 P.3d at 589 (internal citations omitted); *Trico Elec. Co-op. v. Ralston*, 67 Ariz. 358, 365, 196 P.2d 470, 474 (1948) ("The Corporation Commission has no implied powers and its powers are limited to those derived from a strict construction of the Constitution and implementing statutes."); *see also Tonto Creek Estates Homeowners Ass'n v. Ariz. Corp. Comm'n*, 177 Ariz. 49, 55, 864 P.2d 1081, 1087 (App. 1946) ("The Corporation Commission's powers are limited and do not exceed those to be derived from a strict construction of the Constitution and implementing statutes."); *US West Commc'ns, Inc. v. Ariz. Corp. Comm'n*, 197 Ariz. 16, 23, ¶28, 3 P.3d 936, 943 (App. 1999) ("The Commission's powers are limited to those declared in the constitution and implementing statutes."). In this case, no provision of the Constitution or the Commission's statutes expressly authorizes the Commission to order a utility to close a compliant wastewater treatment plant to remediate alleged nuisance conditions on non-utility properties.

A. Superior Court Correctly Concluded that the Commission Has No Constitutional Power to Order Plant Closure

The Superior Court properly concluded on page 3 of the Ruling that the Commission's plant closure order was not made under its constitutional authority for ratemaking in Article XV, section 3 of the Arizona Constitution. The Arizona Supreme Court long ago held that the only *legislative* power granted to the Commission in Article XV, section 3 of the Constitution is the ratemaking authority granted at the beginning of that section. *Corp. Comm'n v. Pacific Greyhound Lines*, 54 Ariz. 159, 169–77, 94 P.2d 443, 447–50 (1939) ("*Pacific Greyhound*") (construing the powers reserved to the legislature to regulate all corporations in Article XIV, section 14, as limiting the Commission's legislative authority to regulate the business of public utilities in Article XV, section 3 to ratemaking).

The Commission below challenged this longstanding precedent based upon this Court's listing of the constitutional provision along with other statutory provisions as authority for the decision at issue in *Ariz. Corp. Comm'n v. Palm Springs Utility Co.*, 24 Ariz.App. 124, 129–30, 536 P.2d 245, 250–51 (App. 1975) ("*Palm Springs*"). At issue in *Palm Springs* was whether the Commission could require a standard of potable water service through individual case orders as opposed to promulgating rules of general applicability. *Palm Springs*, 24 Ariz. at 129–30, 536 P.2d at 250–51. This Court in *Palm Springs*, however, noted the

parties in that case did not dispute the Commission's authority, and the authority issue was not explained by the Court, so it is not even clear if the issue was briefed. *Palm Springs*, 24 Ariz. at 126–27, 536 P.2d at 248–49.

Further, in two later cases considering the scope of the Commission's powers under Arizona Constitution Article XV, section 3, the courts have not even cited *Palm Springs* in the lines of relevant cases, but instead have continued to recognize the binding precedent in the *Pacific Greyhound* case. For example, in *Ariz. Corp. Comm'n v. Woods* , decided by the Supreme Court in 1992, the Attorney General refused to certify rules promulgated by the Commission to regulate public utilities' affiliate interests because, in part, under the controlling precedent in *Pacific Greyhound*, Article XV, section 3 grants the Commission no regulatory authority over public utilities outside of its ratemaking powers in that section. *Ariz. Corp. Comm'n v. Woods*, 171 Ariz. 286, 292-94, 830 P.2d 807, 813-15 (1992) ("*Woods*"). After reviewing the line of cases on this issue, and noting that *Pacific Greyhound* has been controlling precedent for over 50 years, the Arizona Supreme Court in *Woods* stated it would not overturn *Pacific Greyhound*, holding instead that the affiliate interest rules at issue in that case were reasonably necessary steps for ratemaking (because utilities can use affiliate entities to

manipulate rates). *Id.*[5] Even more recently, this Court in *Phelps Dodge* followed *Pacific Greyhound* in holding the Commission lacked power under Article XV, section 3 to promulgate a rule requiring utilities to create an administrator and coordinator to oversee fair access to transmission services because the provisions were not reasonably necessary steps for ratemaking. *Phelps Dodge*, 207 Ariz. at 111–12, 83 P.3d at 589–90.

As to whether the Decision in this case was ratemaking, this Court already determined it was not ratemaking for purposes of considering a direct appeal under A.R.S. § 40-254.01. I.R. 143; Ex. 19 (Court of Appeals Order dated August 26, 2013) ("We conclude that Decision No. 73885 did not arise from a process

---

[5] The Supreme Court in *Woods* was somewhat critical of the *Pacific Greyhound* case reasoning, but the *Pacific Greyhound* precedent still makes perfect sense today. The Arizona Constitution expressly provides all legislative authority of the state to the legislature, except the powers reserved to the people through initiative and referendum in Article 4, Part 1, section 1. Other provisions in the Constitution indicate a clear intent that the Legislature was to exercise the power of the people. *See* Article III (powers of government divided into three separate departments); *see also* Article XV, section 6 (legislature may enlarge Commission powers and duties). The only specific grant of *legislative* authority to the Commission is in the introductory phrase of Article XV, section 3 (". . . commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the state for service rendered therein . . ."). The remaining clauses in Article XV, section 3 that reference "rules, regulations, and orders" are commonly understood to refer to *administrative* functions that require implementing legislation. Construing these administrative words to provide the Commission instead with "concurrent" full legislative authority with the Legislature with no means to avoid an impasse with the Legislature on such broad topics could not have been logically intended.

involving rate making or rate design . . ."). There is no distinction to be made in this case between the application by the Court of Appeals of the statutory language in A.R.S. § 40-254.01 (appeal of an order "relating to rate making or rate design") and the "reasonably necessary step in ratemaking" standard described in the *Woods* and *Phelps Dodge* cases. It is clearly not a reasonably necessary step in ratemaking to order the closure of a valuable plant to address alleged nuisance conditions on nearby properties.

B. Superior Court Erred in Concluding the Commission Has Statutory Authority to Order Plant Closure under A.R.S. §§ 40-321(A), 40-331(A), and 40-361(B)

1. No Express Authority in Statute

The Superior Court erred in concluding that the Commission had statutory authority to order plant closure under A.R.S. §§ 40-321(A), 40-331(A), and 40-361(B). As stated in cases cited at the beginning Section II.A., *supra*, the Commission's statutory powers are limited to those derived through strict construction of express legislative delegations; the Commission has no implied powers. *See, e.g., Phelps Dodge,* 207 Ariz. at 111, 83 P.3d at 589. These three statutes do not expressly authorize the Commission to order plant closure to remediate alleged nuisance conditions at non-utility properties.

Section 40-321(A) provides as follows:

> When the commission finds that the equipment, appliances, *facilities or service* of any public service corporation, or the methods of

> manufacture, distribution, transmission, storage or supply employed by it, *are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine what is just, reasonable, safe, proper, adequate or sufficient*, and shall enforce its determination by order or regulation.

(Emphasis added). This section does not expressly grant the Commission power to remediate alleged nuisance conditions at non-utility properties with plant closure orders. The section addresses "facilities" and "services." Application of the plain words of this section would have required that the Commission first find that the WWTP (the "facility") or BMSC's "service" are "unjust, unreasonable, unsafe, improper, inadequate or insufficient," and also find what facilities or service are "safe, proper, adequate or sufficient." In this case, the Commission found that the WWTP is operated in full compliance with all applicable law and industry standards, and is used and useful in service to customers, and the Commission identified no defect in BMSC's wastewater service. I.R. 140, ¶¶ 24, 33. Rather, the Commission found fault with the WWTP's *location*, concluding vaguely that "due to its location, the Boulders WWTP can no longer be operated in a manner consistent with the public interest . . ." I.R. 141, Ex. 3 (Decision 73885 at 49:16-19, 50:7-11). The statute does not address facility siting.

Even if authority to order plant closures to remediate off-site nuisances is implied in the vague words used by the Legislature in this section (contrary to the case law that prohibits implied powers), the Commission has no express authority

under A.R.S. § 40-321(A) to do anything unless it determines a facility standard or service standard is not being met. Section 40-321(A) grants the Commission no express authority to enforce a plant closure. *See also Peeples, Inc. v. Arizona State Land Dept.*, 204 Ariz. 66, 71, 59 P.3d 830, 835 (App. 2002) (administrative agency may not carry out enforcement actions that are not authorized by the express provisions of its enabling statutes) (citation omitted).

The Commission further relied on section 40-331(A), which provides:

> When the commission finds that additions or improvements to or changes in the existing plant or physical properties of a public service corporation ought reasonably to be made, or that a new structure or structures should be erected, *to promote the security or convenience of its employees or the public*, the commission shall make and serve an order directing that such changes be made or such structure be erected in the manner and within the time specified in the order. If the commission orders erection of a new structure, it may also fix the site thereof.

(Emphasis added). This section grants no authority to the Commission to remediate off-site nuisances. There is no "security" or "convenience" issue here, so this section does not apply. There was no evidence presented that the WWTP is an insecure facility. Further, convenient sewer service is already being provided to each home or business via underground pipes, and such service would be the same before and after any change in the off-site treatment plant location. In a utility context, "convenience" has been interpreted to mean "adequate service" at a "reasonable rate." *James P. Paul Water Co. v. Ariz. Corp. Comm'n*, 137 Ariz. 426,

429, 671 P.2d 404, 407 (1983). The only siting authority granted in this section is restricted to the construction of *new* facilities to promote security or convenience, a topic not applicable to this case.

Finally, section 40-361(B) does not grant express authority to the Commission to order closure of the WWTP. This section does not grant any authority to the Commission, but simply requires that "[e]very public service corporation shall furnish such . . . equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient and reasonable." A.R.S. § 40-361(B). The Commission can enforce this statute only in accordance with the Commission's express enforcement authorities in Title 40, Article 9 (providing for enforcement by court actions and fines). The absence of language precluding the Commission from ordering a plant closure to enforce 40-361(B) cannot be construed as an express grant of such authority.

2. The Legislature Did Not Intend to Grant the Commission Authority to Issue Plant Closure Orders to Remediate Alleged Nuisance Conditions on Off-Site Properties

Words used by the Legislature in A.R.S. §§ 40-321(A) and 40-331(A) (such as the words "improper" and "unjust"), if even applicable here given their vagueness, are at best capable of more than one construction and are thus ambiguous. The Legislature has not defined these words, especially in the context

of sewer treatment plants or nuisances. For example, it is reasonable to interpret the terms "unjust" or "improper" or "unreasonable" in the context of these statutes to require that the Commission apply objective standards of equipment performance or service rather than a subjective standard such as whether a particular customer is offended. To the extent the Court does not find these terms too vague to even apply, the ambiguity in these terms make it proper for the Court to resort to the rules of statutory interpretation. *See State v. Sweet*, 143 Ariz. 266, 269–70, 693 P.2d 921, 924–25 (1985) (ambiguity found when there is uncertainty as to the meaning of the terms of a statute or failure to include necessary words that causes confusion as to the scope of the statute); *see also State v. Marana Plantations, Inc.*, 75 Ariz. 111, 114–15, 252 P.2d 87, 89–90 (1953) (finding statute granting Board of Health power to "regulate sanitation and sanitary practices in the interests of public health" unconstitutionally delegated legislative power to administrative agency).

The primary goal in interpreting a statute is to discern and give effect to legislative intent. *People's Choice TV Corp., Inc. v. City of Tucson*, 202 Ariz. 401, 403, 46 P.3d 412, 414 (2002) (citation omitted). In doing so, the Court considers its context, language, subject matter, historical background, effects, consequences, spirit and purposes. *Id.* (citation omitted). The plain language of these two statutes in the context of the Commission's statutory powers in Title 40 expresses a general

intent that customers of utilities regulated by the Commission have access to adequate utility services, but the language does not express an intent that the Commission adjudicate and remediate nuisances on non-utility properties or re-zone existing plant sites.

Historical circumstances at the time the statutes were enacted indicate the Legislature had no specific concern regarding empowering the Commission to remediate nuisance conditions near sewer facilities. All of the statutes were in substantially the same form in the 1912 Laws of Arizona. Laws Ariz., ch. 13(b), 35, 36. The Commission had no jurisdiction over sewer utility companies until 68 years later, starting in 1980, when the definition of "public service corporations" in the Arizona Constitution was amended to add references to sewage service providers. Ariz. Const. Art. XV, section 2.

Against this backdrop of vague statutory authority and no prior precedent for the Commission's administrative action in this case, in 1986, the Legislature created the Arizona Department of Environmental Quality ("ADEQ"), specifically to regulate on a statewide basis, among other things, odor emissions from sewer treatment plants and the design, construction, and operation of such plants. *See generally* A.R.S. § 49-101 *et seq.* The Legislature's subsequent creation of a new state agency to regulate on a statewide basis the same subject matter over which the Commission, another state agency, claims jurisdiction here should be examined

together because the statutes are asserted to relate to the same subject matter. *See Desert Waters, Inc. v. Superior Court*, 91 Ariz. 163, 171, 370 P.2d 652, 657 (1962) ("Statutes that are in pari materia should be read together and harmonized if at all possible.") (Internal citation omitted).

The Legislature has declared its intent that ADEQ be the primary regulator of air pollution through a coordinated state-wide program, in relevant part, as follows:

> The legislature finds and declares that air pollution exists with varying degrees of severity within the state, such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is esthetically unappealing. The legislature by this act intends to exercise the police power of this state *in a coordinated state-wide program* to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that insures the health, safety and general welfare of all the citizens of the state; protects property values and protects plant and animal life. *The legislature further intends to place primary responsibility for air pollution control and abatement in the department of environmental quality and the hearing board created thereunder.* However, counties shall have the right to control local air pollution problems as specifically provided herein.

A.R.S. § 49-401(A) (emphasis added). The statutory provisions defining this coordinated statewide program delegate no role to the Commission. "Air pollution" is defined broadly in ADEQ's statutes to include "odors . . . or any other material in the outdoor atmosphere" that "by reason of their concentration and duration are or tend to . . . unreasonably interfere with the comfortable enjoyment

of life or property of a substantial part of the community . . ." A.R.S. § 49-421(1), (2). The Legislature specifically requires ADEQ to "[p]rovide for the prevention and abatement of all . . . air pollution including that related to . . . odor . . ." in accordance with the detailed program requirements and limitations as defined in Title 49. A.R.S. § 49-104(A)(10). While there is a general provision in A.R.S. § 49-467 that, as relevant here, preserves to the "state" the right to exercise its rights under "statutory law" to "suppress nuisances or to abate pollution," neither of the Commission's statutes, § 40-321(A) nor § 40-331(A), address the abatement of nuisances or air pollution, a power which the Legislature would have included if the Commission was intended to regulate public nuisances or air pollution. *Compare with* A.R.S. § 36-601 *et seq.* (empowering Health Department to regulate certain public nuisances) *and* A.R.S. § 13-2917 (power to address and abate public nuisance within state criminal code).

ADEQ is also specifically vested with all state authority to prescribe rules for the design standards for sewer collection and treatment systems. A.R.S. § 49-104(B)(9) (department shall "[s]upervise sanitary engineering facilities and projects in this state, authority for which is vested in the department . . ."). ADEQ is further vested with specific authority to regulate sewer treatment facilities and related public nuisances. A.R.S. §§ 49-104(B)(10) (shall adopt and enforce rules relating to design documents for sewer facilities), (11) (shall define and prescribe

reasonably necessary rules for sewage disposal in subdivisions), (14) (shall prescribe reasonably necessary rules to abate public nuisances relating to sewage treatment and disposal).

The Legislature expressed its intent that ADEQ's rules be observed statewide, recognizing that "local governing bodies" may enact stricter regulations if such authority is provided to the local bodies in a separate law, but imposing specific limitations on county regulation. A.R.S. §§ 49-106, 112. The Commission is not mentioned. ADEQ may delegate portions of its statewide authority, but not to the Commission. A.R.S. § 49-107(A) (ADEQ may delegate to local environmental agency, county health department, public health services district, or municipality).

The Legislature further delegated to ADEQ additional specific "catch-all" authority to prevent and abate environmental nuisances in soil, air, or water not otherwise covered in Title 49. *See* A.R.S. § 49-141 *et seq.* Then, in 2010, the Legislature added a restriction to ADEQ's statewide authority, requiring ADEQ to, unless specifically authorized by the Legislature, "ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter." A.R.S. § 49-104(17).

The Legislature's subsequent delegation of the state's regulatory authority on the same topics to ADEQ, with specific limitations on such delegations as are contained in Title 49, is inconsistent with an interpretation of the Commission's general statutes (statutes that do not even mention the words "odor" or "nuisance") that would newly recognize that the Commission is empowered to thwart the Legislature's intent by regulating such facilities in an inconsistent manner and without abiding by the specific limitations placed on newer regulations in Title 49.

Further, in the Commission's statutes, A.R.S. § 40-421(A) specifically limits the Commission to enforcing laws "the enforcement of which is not specifically vested in some other officer or tribunal." A.R.S. § 40-421(A). The Legislature has specifically vested ADEQ,[6] the Attorney General,[7] the Superior Court,[8] and in limited cases, private citizens,[9] with enforcement authority found in Title 49, as described above, so under the restriction in 40-421(A), the Commission is expressly prohibited from enforcing the laws over which others have been given such authority.

The context, language, subject matter, historical background, effects, consequences, spirit and purposes of A.R.S. § 40-321(A) and -331(A) and subsequent legislative enactments on the same subjects negate any intent of the

---

[6] *See* A.R.S. § 49-142, 49-461 *et seq.*
[7] *See* A.R.S. § 49-461 *et seq.*
[8] *See* A.R.S. § 49-142, 49-461 *et seq.*
[9] *See* A.R.S. § 49-407.

Legislature to vest the Commission with authority to regulate odor and noise conditions on non-utility properties (or to retroactively re-zone the WWTP site).

3. The *Palm Springs* Case Does Not Apply

The Commission argued to the Superior Court that in *Palm Springs*, this Court already recognized its authority under the three statutes to require a higher level of service than health and safety requirements, but that is not what the Commission did here. Issuance of a plant closure order without identification of non-compliance with any discernible facility or service standard is quite different than the order in *Palm Springs*, which required a utility to comply with a recognized federal potable water quality standard where evidence demonstrated non-compliance. In *Palm Springs*, which was decided before the Legislature created ADEQ, the issue was whether a utility could be required by a Commission order to apply a federally-recommended standard for the taste and hardness of drinking water where there was an "absence of a previously adopted rule or regulation of general application." 24 Ariz. at 125, 536 P.2d at 246.[10]

The Commission in *Palm Springs* was resolving a customer dispute about the quality of a product (water) being sold by a utility to customers that the customers were expected to use in their homes. 24 Ariz.App. 124, 126, 536 P.2d

[10] Here, the Commission already has a rule of general applicability, A.A.C. R14-2-607, that simply requires all sewer treatment providers to comply with the design, construction, and operation requirements of ADEQ (the successor of the Arizona Department of Health Services) and Maricopa County.

245, 247 (App. 1994). Evidence indicated that the water was causing property damage or was in some cases unusable inside the customers' homes. Palm Springs, 24 Ariz. at 126, 536 P.2d at 247. The Commission heard evidence from a State Health Department engineer regarding the quality of the utility's water as tested by the department, how the tested quality compared to the applicable federal recommended water quality standard, the palatability and aesthetics of the water as tested, the comparative costs of treating the water and replacing the water supply, and the engineer's recommendation of one of the alternatives analyzed. *Id.* The Commission in *Palm Springs* ordered that the utility seek the most economical means of supplying satisfactory water to meet the federal recommended standard. *Id.* In contrast, in this case, the evidence identified no standard that is not already being met, and the Commission's order does not require the utility's compliance with a standard.

III. ISSUE 2: THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WHERE DISPUTES OF MATERIAL FACT WERE DEMONSTRATED, DENYING PLAINTIFF A TRIAL DE NOVO

A. Trial Court Erroneously Applied "Substantial Evidence" Rate Case Standard Instead of Rule 56 "Trial de Novo" Non-Rate Case Standard Required By A.R.S. § 40-254

The Plaintiff, Wind P1, was not seeking a review of a ratemaking decision by the Commission; rather, the Commission's Decision was appealed to the Superior Court under A.R.S. § 40-254(A), authorizing trial de novo challenges to

Commission decisions as "unreasonable," and "unlawful." Subsections 40-254(A) and (C) both provide that the Superior Court action shall be tried and determined as other civil actions, except as otherwise stated. The Arizona Supreme Court has held multiple times that, in *non-rate* cases brought under the Commission's statutory powers (such as those involving certificates of convenience and necessity), the express language of A.R.S. § 40-254 provides for a trial de novo in Superior Court in which the trial court weighs evidence and draws an independent conclusion subject only to the constraint that the burden of proving the invalidity of the Commission's conclusion is on the party adverse to the Commission. *See Tucson Elec. Power Co. v. Ariz. Corp. Comm'n,* 132 Ariz. 240, 243, 645 P.2d 231, 234 (1982) ("*Tucson Elec.*"), *quoting Rate Decisions: Judicial Review of the Arizona Corporation Commission*, 19 Ariz. L. Rev. 488, 493 (1977) *and citing Ariz. Corp. Comm'n v. Fred Harvey Transp. Co.*, 95 Ariz. 185, 190, 388 P.2d 236, 239 (1964) (recognizing numerous Arizona cases unequivocally held the superior court must exercise independent judgment); *Corp. Comm'n of Ariz. v. People's Freight Line*, 41 Ariz. 158, 161, 16 P.2d 420, 421 (1932) (the proceeding is a new and independent action heard de novo upon proper evidence, and not merely upon review of the evidence taken before the commission; trial court not bound to defer); *Ariz. Corp. Comm'n v. Reliable Transp. Co.*, 86 Ariz. 363, 371, 346 P.2d 1091, 1096 (1959) ("the superior court may properly hold an order unreasonable

on the basis of 'clear and satisfactory evidence' presented to it, whereas it may be perfectly apparent that the Commission acted reasonably on the basis of the evidence which it had to consider"); *Corp. Comm'n v. Southern Pac. Co.*, 55 Ariz. 173, 175–76, 99 P.2d 702, 703 (1940) ("the proceeding is not an appeal from the decision of the commission" but a new, independent action requiring review of new evidence from that presented to the commission).

In *Tucson Elec.,* ("*Tucson Elec.*"), a rate case, the Arizona Supreme Court addressed in detail the standard of review applicable in the Superior Court for review of *rate* cases, which prior to the 1991 enactment of A.R.S. § 40-254.01 (providing for direct appeals of rate cases to this Court), were also determined under A.R.S. § 40-254. The present case is not a rate case, but review of the *Tucson Elec.* case is helpful to understanding the distinction made in prior case law between the two different trial de novo standards historically applicable under A.R.S. § 40-254 to rate cases and non-rate cases.

Tucson Elec. and the authority relied upon by the Arizona Supreme Court in that decision demonstrate the de novo review standard applicable to *non-rate* cases: the trial court weighs evidence and draws an independent conclusion subject only to the constraint that the burden of proving the invalidity of the Commission's conclusion is on the party adverse to the Commission. The trial de novo standard applicable to *rate* cases, on the other hand, is more restricted due to the

Commission's plenary constitutional power to determine rates (a legislative function). *Tucson Elec.*, 132 Ariz. at 243, 645 P.2d at 234 (citations omitted); *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 154, 294 P.2d 378, 384 (1956) (restriction on de novo review in rate cases not in conflict with prior precedent allowing independent judgment in questions of public convenience). In contrast to the independent conclusion the Superior Court may reach in a non-rate case review, the Superior Court in a rate case under A.R.S. § 40-254 was not permitted to re-weigh the evidence and substitute its judgment for that of the Commission – it had to uphold the Commission's decision if it was supported by "substantial evidence." *Id.* Since this is not a rate case, however, the Superior Court is not constitutionally constrained to the "substantial evidence" standard and instead applies the plain language in A.R.S. § 40-254. The plain language of A.R.S. § 40-254 requires that the Superior Court apply the summary judgment standard applicable to other civil actions in Arizona Rule of Civil Procedure 56(a), granting summary judgment only if it finds "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law."

But even in a rate case appeal brought under A.R.S. § 40-254 (prior to the enactment of A.R.S. § 40-254.01), with the recognized constitutional restriction on review described in *Tucson Elec.*, the trial de novo standard allowed "all parties to be heard and to present evidence before a decision is made as to whether the

findings and conclusion of the Corporation Commission are supported by substantial evidence." *Tucson Elec.*, 132 Ariz. at 244, 645 P.2d at 235. The Supreme Court agreed with the dissent's following statement in that case:

> * * * Admittedly, the nature of the judgment which may be rendered on review in superior court is far more restrictive in 'rate' cases than in 'certificate' cases. However, the whole concept of the de novo review provided for in A.R.S. § 40-254 is the right to introduce new evidence before any determination is made by the court. * * *

Id.

Here, the Superior Court in granting summary judgment to the Commission before trial based upon an erroneous "substantial evidence" standard, denied Wind P1 a trial de novo and the right to introduce new evidence before a decision was made. *See* I.R. 197 (Ruling, pp. 2, 4, 5).[11] The Superior Court's citation to *Grand Canyon Trust v. Ariz. Corp. Comm'n,* 210 Ariz. 30, 33–34, 107 P.2d 356, 360 (App. 2005) ("*Grand Canyon*") on pages 2 and 5 of the Ruling for the "substantial evidence" standard confirms the trial court applied the wrong review standard to the summary judgment motions in this case. The standard of review was not at issue in *Grand Canyon,* and the *Grand* Canyon case was not a rate case, but all of the cases cited in *Grand Canyon* regarding the review standard were rate cases. *Id.* at 34, 360, *citing Tucson Elec.*, 132 Ariz. at 243–44, 645 P.2d at 234–35 *and Ariz.*

---

[11] Plaintiff notes the Appellee in a case currently pending before this Court, *Sierra Club—Grand Canyon Chapter v. Ariz. Corp. Comm'n*, Case No. 1-CA-CV 14-0003 made an argument on this same issue in Appellee's Answering Brief docketed June 10, 2004, pp. 20–29.

Corp. Comm'n v. Citizens Utils. Water Co., 120 Ariz. 184, 187, 584 P.2d 1175, 1178 (App. 1978). In the context of *Grand Canyon*, a non-ratemaking case, the Court's characterization of the standard of review applied by the superior court in that case was actually contrary to established Arizona Supreme Court case law. The Superior Court erred here in deferring to the Commission's factual findings rather than applying the summary judgment standard in Ariz.R.Civ.P. 56(a).

B. Trial Court Erred in Denying Admission of Affidavit of Robert Owens Based on Erroneous Application of "Substantial Evidence" Standard

In response to the Commission's cross-motion for summary judgment, Plaintiff offered the Affidavit of Robert L. Owens, II, P.E. ("Owens"), a professional engineer with expertise in the area of wastewater odor investigation, design, and remediation. *See* I.R. 197 (Ruling, p. 5). Plaintiff offered the Owens affidavit per Arizona Rule of Civil Procedure 56(e) to explain the categories of facts that, in his expert opinion, are important to investigation and remediation of odors, and to further to assist the trier of fact in identifying and understanding how the specific facts of this case contribute to certain technical conclusions, such as causation. The Owens Affidavit was further offered per Arizona Rule of Civil Procedure 56(e) to demonstrate that the Commission's Decision was unreasonable under A.R.S. § 40-254 because the Commission lacked information that is material to the reasonableness of its decision to issue a plant closure order. The Superior

Court concluded that "[i]n essence, Owens opines that there is insufficient evidence in the record to support Decision 73885." I.R. 197, p. 5.[12] Plaintiff agrees that a person reading the Owens Affidavit could come to the conclusion that the Commission lacked evidence that Mr. Owens believes is needed to isolate the causes of odors, to determine their strengths and compare them to the industry standards he identifies, and to determine whether plant closure will effectively remediate odors, but the Owens Affidavit and its attached evidence should have been considered for the purposes for which it was offered – to demonstrate disputes of material fact requiring a trial.

The Superior Court concluded summarily that the Owens Affidavit was not admissible because "whether substantial evidence supports the [Commission's] order does not raise material issues of fact; it presents a question of law," citing the erroneous standard in *Grand Canyon* and an inapplicable State Land Department case standard. I.R. 197, p. 5, citing *Grand Canyon,* 210 Ariz. at 34, 107 P.3d at 360 (citing *Havasu Heights Ranch & Dev. Corp. v. Desert Valley Wood Prods., Inc.*, 167 Ariz. 383, 387 (App. 1990)). As explained in the prior section of this

[12] The Superior Court on page 7 in the Ruling appears to imply that the Plaintiff did not put on evidence to rebut the BHOA's case for plant closure. The Plaintiff did introduce evidence regarding the Plaintiff's interests, but there was no evidence to rebut regarding the condition of the plant – all parties to the Commission's evidentiary hearing agreed the plant meets all industry standards, and no contrary evidence was introduced.

brief, the Superior Court erred in deferring to the Commission's factual findings under the "substantial evidence" standard applicable to rate case appeals.

The Superior Court seems to be saying in its denial of admission of the Owens Affidavit that a party aggrieved by an order of the Commission cannot challenge the reasonableness of the Commission's adverse factual findings in a trial de novo even if the party demonstrates disputes of material fact in the Commission's record. This conclusion directly contradicts the language in A.R.S. § 40-254 and well-established Arizona case law holding the trial court weighs the evidence, including new evidence, and draws an independent conclusion. "Summary judgment is not designed to resolve factual issues, but to ascertain whether such issues exist." *Chanay v. Chittenden*, 115 Ariz. 32, 39, 563 P.2d 287, 294 (1977) (citation omitted). The Superior Court applied the wrong standard when determining whether the Owens Affidavit could be considered, which was an abuse of discretion. *Webb v. Omni Block, Inc.*, 216 Ariz. 349, 352, 166 P.3d 140, 143 (App. 2007) (admissibility of expert testimony is in the sound discretion of trial court except when court commits an error of law in reaching a discretionary conclusion) (citations omitted).

But even if the Owens Affidavit had not been offered in response to the Commission's cross-motion for summary judgment, the evidence submitted by the parties with the motions, including the materials from the administrative record

attached to the Owens Affidavit, demonstrates genuine disputes of material fact for trial.

C. The Evidence Cited by the Commission Demonstrates Disputed Facts Regarding the Alleged Odors and Noises, Their Sources, and the Effectiveness and Reasonableness of Closure as a Solution to the Unproven Remaining Problems

In moving for summary judgment, the Commission cited purportedly undisputed facts regarding the alleged odor and noise problems that the Commission's closure order would supposedly solve. However, reviewing the actual ***evidence*** reveals that ***not a single one*** of the critical facts regarding odors or noises necessary to support the Commission's closure order is, in fact, undisputed.[13] The record reveals that at least three categories of disputed and critical factual issues exist that are fundamental to supporting or refuting the factual basis of the Commission's closure order:

(1) A threshold category of disputed and critical factual issues is whether an unreasonable level of odors or noises exists in the community surrounding the WWTP, even though it is undisputed that previously ordered improvements to the plant effectively reduced odors and noise. The record contains evidence of customer complaints, which reflects that the

[13] As noted in footnote 12, Wind P1, having intervened at a late stage, did not present independent evidence to rebut the evidence before the Commission because that evidence itself failed to prove any of the three critical facts regarding the WWTP as an alleged source of unreasonable odors or noises, as discussed below.

WWTP suffered from an unfortunate reputation and community skepticism that predate the plant's improvements; however, the record is notably lacking in objective data from the post-improvement period of time to demonstrate that an ongoing problem persists with respect to the WWTP.

(2) Even assuming unreasonable odors persist (despite the absence of objective data to show that they do), a second category of critical and disputed factual issues is whether the continued operation of the WWTP is the source of such odors, and whether closing the WWTP would sufficiently mitigate them. The record contains the testimony of the Commission's own engineering expert establishing the existence of ***multiple*** sources of odors and failing to demonstrate that the Commission's closure order would solve any (presently unproven) odor problems that may exist.

(3) Even assuming that unreasonable odors persist, and further assuming they are caused by the continued operation of the WWTP (despite the absence of objective data on either count), a third category of critical and disputed factual issues is whether the WWTP's operation is unreasonable in light of its undisputed compliance with all applicable legal and industry standards. The record contains no evidence whatsoever that those standards are inadequate to prevent a nuisance based on unreasonable odors or noises. In the absence of such evidence, the record is consistent with the likely

possibility that the WWTP's and BMSC's history have provoked a "Not-in-My-Backyard" unpopularity based more on the longstanding community animosity toward, and poor reputation of, the WWTP than measurable evidence.

The Commission's statement of undisputed facts in support of its motion for summary judgment ignored the foregoing deficiencies and conflicts in the evidence, and instead listed superficial and inaccurate descriptions of the evidence that glossed over these material issues of fact. In granting summary judgment in the Commission's favor, the Superior Court failed to recognize that the evidence presented by the Commission proved almost nothing. The evidence in the record instead reflects the Commission's profound failure to investigate these intensively factual issues, objectively, scientifically, or otherwise.

The record further reflects that – in light of the fact that the WWTP's owner had agreed to a settlement agreement rather than continuing to fight the BHOA's largely hearsay complaints – the Commission simply elected to take a shortcut rather than thoroughly investigate the objective facts. However, summary judgment could not properly be based (as it implicitly was) on the mere ***inferences*** that the Commission elected to make (and incorrectly labeled as "undisputed facts") from its paltry record assembled in the absence of a full-blown adversary proceeding. The Superior Court was required to determine whether the evidence in

the record would preclude a jury at trial from reasonably drawing different inferences that could lead to findings different from those reached by the Commission and implicitly affirmed by the Superior Court. A review of the evidence underlying the purportedly undisputed facts cited by the Commission demonstrates that its cited evidence does not meet that standard, or even come close to it. The Superior Court's judgment should therefore be reversed.[14]

Under Rule 56, "[s]ummary judgment is not designed to resolve factual issues, but to ascertain whether such issues exist." *Chanay,* 115 Ariz. at 39, 563 P.2d at 294; *see* Ariz.R.Civ.P. Rule 56(a). As the moving party, the burden of demonstrating the absence of any disputed issues fell on the Commission. *See United Bank of Ariz. v. Allyn*, 167 Ariz. 191, 195, 805 P.2d 1012, 1016 (App. 1990) ("The burden of persuading the trial court that summary judgment was warranted fell to . . . the party seeking judgment."). Moreover, as the moving party, the Commission was required to meet this burden in the first instance with its own cited evidence, even without Plaintiff Wind P1 independently presenting controverting evidence. *See Allyn,* 167 Ariz. at 196, 805 P.2d at 1017 (holding that when a motion for summary judgment "fails to show entitlement to judgment, the adverse party need not respond to the motion with controverting evidence").

---

[14] Indeed, to the extent that the evidence cited by the Commission instead demonstrates that the Commission failed to meet its burden to provide a factual basis to support the drastic relief ordered that impairs Wind P1's constitutional and legal rights, that evidence justified partial summary judgment in Wind P1's favor.

Any evidence ***or reasonable inference contrary to the material facts needed for judgment*** will preclude summary judgment. *Id.* (emphasis added). Therefore, where the record cited by the moving party itself is sufficiently ambiguous or conflicted that a reasonable jury could make different inferences than those made by the judge, the court's order of summary judgment must be reversed. *See id.*; *see also Cruz v. City of Anaheim*, 765 F.3d 1076, 1079 (9th Cir. 2014) (reversing summary judgment for defendant despite the uncontroverted nature of defendants' evidence because a reasonable "jury could reach the opposite conclusion" from that of the trial judge). The record cited by the Commission demonstrates that disputed issues of fact exist with respect to practically every fact that the Commission needed to rely on to support its closure order.

The record, therefore, requires that Plaintiff be given its day in court in a trial. This Court reviews the judgment of the Superior Court rather than the decision of the Commission, and reviews the facts and reasonable inferences in the light most favorable to the party against whom the Superior Court granted summary judgment. *Phelps Dodge*, 207 Ariz. 95, 103, 83 P.3d 573, 581 (App. 2004) (internal citations omitted). This Court applies the same standard as that used by the trial court in ruling on the summary judgment motion in the first instance, and therefore examines the record below de novo. *Id.* Reviewing the facts and reasonable inferences in the light most favorable to the Plaintiff, the

materials accompanying the Commission's summary judgment motion themselves demonstrate that a reasonable jury could reach different inferences regarding essentially ***all*** the critical factual issues concerning the levels of odor and noise allegedly emitted by the WWTP. At least three categories of disputed and critical factual issues were demonstrated by the Commission's own materials, and thus preclude summary judgment in the Commission's favor, as discussed below.

1. Disputed Issue of Fact: Whether There Are Ongoing and Unreasonable Levels of Odors and Noise, Despite BMSC's Improvements to the WWTP

The Commission offered no evidence of any measured values of odors or noises that might indicate objectively whether the odor and noise levels (which already fall within all applicable legal and industry standards) were reasonable or unreasonable at the locations where the Commission intended to remediate odors and noises by issuing a plant closure order. A reasonable jury or judge could find that a plant closure order was unreasonable and premature under the circumstances since no evidence was presented regarding measured odor or noise levels emitted ***outside the boundaries of the plant property***. Compounding the lack of objective evidence, the evidence regarding *qualitative* characterizations of the odors and their frequency was inconsistent. BMSC witness Greg Sorenson testified that, between December 2006 and December 2008, in addition to several projects relating to the collection system, BMSC "undertook several projects in an effort to

further reduce fugitive odor emissions from the treatment plant itself. We purchased, reconditioned and installed an odor scrubber . . . This process has been a very successful and cost efficient solution." I.R. 152, Ex. 4, p. 6. Sorenson testified further that BMSC undertook a noise study and implemented several projects "and all resulted in positive results." *Id.* He described remaining odors associated with the collection system and WWTP as "minor odor events." *Id.*

BMSC "installed four Odor Loggers at the plant in May 2008 to detect, measure and record hydrogen sulfide (H2S) levels." *Id.*, p. 7. Sorenson testified that "[s]ince installation of the devices, there have been only two notable odor events[15] recorded, both of which were concurrent with maintenance work on the plant's aeration system. Each of these lasted for only a short period of time." *Id.* Sorenson did not state the numeric values of the measurements or if any measurements of odor levels during these two events were made anywhere other than immediately adjacent to the Plant on BMSC's property.

Sorenson's description of BMSC's odor remediation efforts as "very successful," achieving "positive results," and measuring only isolated "minor odor events" at the Plant property after BMSC's changes, with only two "notable" odor events of short duration, viewed in the light most favorable to Plaintiff Wind P1,

---

[15] The trial court on page 5 of the Ruling incorrectly describes this testimony as "several occasions." Mr. Sorenson describes the same two events in his hearing testimony, attached to Owens Affidavit (I.R. 174) as Exhibit E, pp. 141–44.

are inconsistent with the customer complaints describing odors as "noticeable," "objectionable," and "irritating." The BHOA/BMSC stipulated facts referred to by the Court on page 4 of the Ruling provided as follows:

> 5. Complaints have been received that odors from the Treatment Plant are noticeable by and objectionable to Boulders residents. Such residents have also complained that odors from the Treatment Plant can be irritating and sometimes interfere with residents' opportunity to leave their windows open to enjoy fresh air in the immediate vicinity of the facility. Residents of the Boulders have complained to the Boulders' community manager about odors from the Treatment Plant.
>
> 6. Complaints from residents regarding odors from the Treatment Plant appear more frequent from October through April.
>
> 7. Since Decision No. 71865 was issued, the Company has received and logged 23 odor complaints from customers (including a lawsuit filed in Maricopa County Superior Court by a resident living adjacent to the Treatment Plant).
>
> 8. A portion of the north Boulders golf course is adjacent to the Treatment Plant. Golfers playing the north Boulders golf course have also complained at times of noticeable odors as they pass by the Treatment Plant.
>
> 9. At times, noises from the operation of the Treatment Plant are noticeable from homes within approximately 400 feet of the Treatment Plant.
>
> 10. There is periodic traffic (service vehicles, pumper trucks, sub-contractor 18 vehicle parking, dumpsters, etc.) in the Boulders community associated with the Treatment Plant's operations.

I.R. 152, Att. 7, ¶¶5–10. During the Commission's hearing, Greg Sorenson's testimony and the Company's customer complaint log clarified that ***not all of the 23 odor complaints referred to in stipulated fact number 7 above were***

attributable to the WWTP, with a number relating to the collection system or conditions in homes or other causes. I.R. 174, Att. C, D.

Sorenson's testimony regarding the success of odor remediation efforts and only two "notable" odor events is seemingly inconsistent with the stipulated facts and public comments described in the Commission's written Decision that were not admitted into evidence at the hearing. *See, e.g.*, I.R. 140, Ex. 3 [Decision at 19:1-5, 20:13-15, 20:21-22 (relying on the content of public comments for "levels and frequencies" of odors; "almost unanimous support by customers for closing the plant", and stating that public comment provides "useful insight"); *see also* 20:13-15 (". . . the public comments . . . made clear that customers . . . have endured and continue to endure offensive odors . . . ."); 45:3-10 (Commission relies on public comments for its decision); *see also* Decision at 2:8-10, 2:23-27, 4:6-7, 4 (n.2), 4:19-5:1, 5(n.3), 19:1-20:15 (including footnotes); 27:2-4 (BHOA argument based on public comment inconsistent with witness testimony); 45:4-6, 45:8, 47:4-5, 49:12-13).[16] It should also be noted that the Superior Court and the Commission's Decision referred to a public comment submitted in the 2005 rate case by the

[16] Wind P1 has repeatedly objected to the Commission's apparent reliance on certain specific public comments cited in its Decision as Wind P1 was given no opportunity to cross-examine those providing the comments and the Commission's rules require that it rely only on sworn testimony. Wind P1 believes the trial court erred in concluding that the Commission "could fairly consider the comments short of admitting them into evidence" in an adjudicative proceeding because an administrative agency cannot violate its own rules.

Resort's Director of Golf Operations, Tom McCahan, regarding "intermittent smells and odors", but that public comment was outdated as it preceded BMSC's more recent odor remediation improvements to the Plant made prior to the latest hearings. I.R. 197, p. 4 (referring to Decision No. 73885 at 45, n. 18). Further, Plaintiff does not deny there are intermittent odors, just as Plaintiff would not deny that diesel trucks emit intermittent odors, and, for that matter, that garbage cans or grease traps or restrooms emit intermittent odors, all of which are necessary and useful features of daily living. The point here is that a jury could infer and find that it is unreasonable to enforce the penalty of closure of a valuable plant that already meets all reasonable, objective standards, especially given the sketchy nature of the Commission's evidence.

The Superior Court summarily concluded in granting summary judgment that evidence submitted with the motions established sufficient evidence that "offensive" odors emanated from the WWTP. I.R. 197, p. 4. "Offensive" is a highly subjective term that is not defined anywhere in the Commission's statutes or the Court's Ruling. Further, the "offense" a particular witness feels is an arbitrary standard for the Commission to adopt to justify a costly plant closure decision. *See also Bakery Salvage Corp. v. City of Buffalo*, 573 N.Y.S.2d 788, 790, 175 A.D.2d 608, 610 (N.Y. App. Div. 1991) (municipal ordinance containing no objective standards by which one can determine the quantum of emissions of odors declared

unconstitutional for vagueness). Under that sort of measurement, the evidence in this case also compels the closure of the sewer pipes, lift stations, and manholes serving the community. Presumably all power plants, electrical substations, and transmission lines that offend neighbors are subject to closure, too. Whether the Commission applied a reasonable standard to odor emissions with appropriate supporting evidence is material to whether the plant closure decision was unreasonable or unlawful under A.R.S. § 40-254(A).

Considering all of the qualitative descriptions of the alleged nuisance conditions above, a jury could infer and find that the Commission's plant closure order was unreasonable because the evidence does not establish nuisance conditions, or that the descriptions of odors and noises were too subjective to be credible; and that the descriptions and recollections were colored by the history of problems predating the WWTP's improvements, animosity arising from its checkered past, and a (perhaps understandable) unwillingness to give the WWTP and BMSC any benefit of the doubt regarding any bad odors, the source of which is not immediately identifiable. In a trial de novo, there would be no one-sided public comment process, witnesses would be sworn and subject to cross-examination, and the jury would need to consider witness credibility in making these determinations. Furthermore, objective evidence beyond the Commission's "complaints-were-made" stipulation presumably would be presented at trial to

substantiate or rebut perceptions of continuing problems from the WWTP, and Plaintiff would have the opportunity to present its own scientific evidence. These are matters for a trial.

2. Disputed Issue of Fact: Whether the WWTP's Operation is the Source of the Alleged Unreasonable Odors and Noise, or Whether Other or Alternative Sources Exist

The evidence is undisputed that there are multiple odor sources in the area of concern, and that the plant closure will not resolve all odors that led to customer complaints. This evidence, presented in the record without sufficient objective analysis to ascertain what part of the problem, if any, is caused by the continued operation of the WWTP, thus creates material issues of fact that a jury would have to sort out. Of the 23 complaints logged by BMSC over the 2010-2012 timeframe, a number were unrelated to the WWTP. *See* I.R. 174, Ex. D, pp. 157–59, and Ex. C. Les Peterson, BHOA's sole lay witness, agreed that there are multiple causes of odors. I.R. 143, Ex. 14 at 355: 11-18. ("So we are now confident this processing or treatment plant is the primary remaining source of odors, although there are other things . . . and there are manholes that are now under golf course greens and things like this, which sometimes there will be odors that come up through there..."). The Commission's staff engineer, Dorothy Hains, testified that odors originated from lift stations and manholes in the collection system too, and those odors would continue. *See* I.R. 143, Ex. 15, pp. 617:2-619:4, 638:5-641:24,

642:23-643:13, 655:19-659:1. The effect of closing the WWTP, therefore, remains objectively unknown.

Mr. Owens, an expert in odor remediation, testified that, in order to determine the cause of odors, it is necessary to examine the collection system because collection systems (that collect raw sewage) are often the source of surfacing odors. I.R. 174, ¶6. He would need to examine design and operation data for the system, and since this is an existing system, he would measure the strength of gases at points throughout the neighborhood to pinpoint release locations. *Id.* This sort of objective information was not considered by the Commission, and a reasonable jury or judge could determine that the Commission had insufficient information to determine the effectiveness of a plant closure order to remediate neighborhood odors and noises, especially as to those properties located hundreds of feet from the Plant. The inadequacy of the record cited by the Commission leaves open the risk that closing the WWTP would not solve any odor problems, even assuming they persist. Again, a trial is warranted.

3. Disputed Issue of Fact: What Objective Standard for Measuring the Reasonableness of Odors and Noise Should Apply If Existing Legal and Industry Standards Are Met

The evidence submitted with the summary judgment motions demonstrated that BHOA and BMSC, the only parties urging the WWTP closure order, stipulated in relevant part as follows:

> 11. The Treatment Plant is operated in full compliance with all applicable law and industry standards. In addition, BMSC has taken steps to minimize odors and noises from operation of the facility, including, among other improvements, the installation of an odor-scrubber.
>
> * * *
>
> 13. The issue is one of location rather than anything BMSC has done wrong or failed to do.

I.R. 152. Mr. Owens testified in his Affidavit that he found no measurements in the materials he reviewed to compare to "accepted industry standards such as those adopted by the Water Environment Federation and American Society of Engineers..." I.R. 174, ¶6.

Plaintiff agrees with the stipulated facts quoted above: There was no evidence presented to the Commission or the Superior Court indicating that the WWTP violates any applicable legal or accepted industry standard regarding odor or noise emissions. This is a material fact directly relevant to whether the Commission's plant closure order was "unreasonable" or "unlawful" under A.R.S. § 40-254(A), including whether the Commission met the statutory requirement that the Commission determine "what is just, reasonable, safe, proper, adequate or sufficient" under A.R.S. § 40-321(A). This undisputed fact would allow a reasonable jury to infer that closure is an unreasonable response. This undisputed fact also raises questions regarding whether complaints about the WWTP are potentially rooted in its poor reputation resulting from the Plant's history of odors

before BMSC's remedial corrections, the desire to rid the community of a useful sewage treatment plant out of a "Not-in-My-Backyard" sentiment, or even to a potentially short-sighted belief that property values would improve without such an operation (or all of the above). A reasonable jury could find that the plant closure order was unreasonable due to the plant's compliance with all industry standards and legal requirements.

The bottom line is that the Commission's purported evidence – far from actually proving any of its contentions regarding the odors – actually demonstrates that disputed and critical issues exist regarding all the material factual questions:

- whether odors or noises really exist in any unreasonable amount;
- whether, if so, they are actually coming from continued operation of the WWTP or potentially from other sources, and whether closing the plant would stop any such odors; and
- whether some objective standard exists that should reasonably be applied to the WWTP beyond the applicable legal and industry standards to which it undisputedly adheres.

Based on at least these three material issues of fact, it is plain that a party would not be entitled to summary judgment granting an order to permanently close a wastewater treatment plant if this case had been originally filed in Superior Court as a nuisance case. Though this case originated before the Commission, its motion

for summary judgment improperly relies on the Commission's own inferences (which are not controlling, given Plaintiff's right to a trial de novo), and a reasonable jury could make different inferences based on the evidence in the record. Therefore, the Superior Court's summary judgment order in favor of the Commission should be reversed.

IV. ISSUE 3: THE TRIAL COURT ERRED IN CONCLUDING PLANT CLOSURE ORDER DID NOT VIOLATE CONSTITUTIONS' CONTRACT IMPAIRMENT CLAUSES

In Count 4 of its Complaint in Superior Court, Wind P1 asserted the Commission's plant closure order is a state action that unconstitutionally deprives Wind P1 of its contractual right to continued effluent delivery through March 2021. I.R. 1, pp. 11-12. To determine whether the Commission exercised its powers properly under the constitutional contract impairment provisions in Article I of the United States Constitution and article II, section 25 of the Arizona Constitution, a court will apply a three-part test. *Phelps Dodge,* 207 Ariz. at 119, 83 P.3d at 597, *citing Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 410, 103 S. Ct. 697, 74 L.Ed.2d 569 (1983); *McClead v. Pima County*, 174 Ariz. 348, 359, 849 P.2d 1378, 1389 (App. 1992). First, the Court will determine whether the order substantially impairs a contractual relationship. *Phelps Dodge,* 207 Ariz. at 119, 83 P.2d at 597. The severity of the impairment will increase the level of scrutiny of the impairment. *Energy Reserves*, 459 U.S. at

411, *citing Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 245 (1978). Second, if there is substantial impairment, then the Commission would need to identify a significant and legitimate purpose to justify the order. *Phelps Dodge*, 207 Ariz. at 119, 83 P.2d at 597. Finally, if such a purpose exists, then the Commission would need to demonstrate that the adjustment of the parties' contractual obligations is reasonable and appropriate to the public purpose justifying the order. *Id.*

In response to the summary judgment motions, the Superior Court reached only the first part of the test, ruling that the Commission's plant closure order did not substantially impair a contractual relationship. First, the Superior Court found that language in the parties' Effluent Agreement providing generally that certain obligations of BMSC terminated "if physical conditions at the [Plant] or any laws, regulations, orders or other regulatory requirements prevent or materially limit the operation of the [Plant]" indicated the parties "contemplated that the Plant could be closed . . . " I.R. 197, p. 6. Second, the Superior Court cited *Energy Reserves*,459 U.S. at 413–16, for the proposition that parties operating in a heavily regulated industry are deemed to expect such regulation. *Id.*

The Superior Court's ruling is wrong for two reasons. First, to the extent that the Superior Court's holding depended on evaluation of the factual evidence of the Plaintiff's reasonable expectations in forming the contract, the Superior Court

applied the wrong legal standard to the summary judgment motion in deciding the matter. *See* Section III.A, *supra*. Second, the Superior Court misapplied the *Energy Reserves* precedent. The Superior Court applied the parties' operation in a "heavily regulated industry" as legally limiting the parties' reasonable expectations of full contract performance. The Superior Court thereby freed itself of its obligation to review the substantial nature of the contract impairment with greater scrutiny, based merely on the fact that the utility industry is heavily regulated. *Energy Reserves* does not stand for the rule that a contract in a heavily regulated industry limits the parties' reasonable expectations of full performance so that the reviewing court may apply a lower level of judicial scrutiny. In addition, despite the regulation of the utility industry and foreseeable necessary measures to maintain compliance with legal and industry standards, Plaintiff could not have anticipated that its fully-compliant and valuable plant would become so politically unpopular as to be singled out by the Commission and ordered closed under vague statutory law regarding the delivery of "adequate" utility service.

Whether a substantial impairment exists depends on three elements: (1) whether there is a contractual relationship, (2) whether the change in law impairs that contractual relationship, and (3) whether the impairment is substantial. *General Motors Corp. v. Romein*, 503 U.S. 181, 186, 117 L.Ed.2d 328 (1992). The severity of the impairment increases the level of scrutiny to which the

legislation will be subjected. *Energy Reserves,* 459 U.S. at 411, *citing Allied Structural Steel Co. v. Spannaus,* 438 U.S. 234, 245, 57 L.Ed.2d 727 (1978). Plaintiff demonstrated undisputed facts establishing the contract and the severe and permanent nature of the impairment (loss of effluent deliveries) in its summary judgment motion. I.R. 140, ¶¶4-8, 26-27 (and exhibits referenced therein). The Superior Court's reliance on precedent in *Energy Reserves* regarding the substantial nature of the impairment, the third item in the substantial impairment test, is misplaced. This case is significantly different from the *Energy Reserves* case because the new regulation at issue here, which was in essence an unprecedented retroactive zoning decision, severely and permanently impairs only one party's contractual right to delivery of effluent from the WWTP, even though the WWTP already complies with the relevant state industry regulation. *See, e.g., Pure Wafer, Inc. v. City of Prescott,* 14 F.Supp.3d 1279, 1299 (D. Ariz. 2014) (rejecting city's argument that new ordinance cloaked as environmental regulation negated party's substantial interest in contract).

In *Energy Reserves,* the Supreme Court held that a change in the government's natural gas price fixing methodology did not substantially impair a contract term that escalated prices based on future changes in government price fixing, where the parties had agreed the contract was subject to relevant present and future state and federal law. 459 U.S. at 416. The new law at issue in *Energy*

Reserves involved a subject – government price fixing – that the parties clearly expected to change in the future. In fact, the contract price *depended* on future price fixing changes. The new law at issue in *Energy Reserves* was a statewide law applicable to all natural gas contracts executed before April 20, 1977. 459 U.S. at 407.

In contrast, in this case, the Commission's Decision is a party-specific, location-specific new regulation that severely impairs ***only*** the Plaintiff's contract, in a manner new and different from regulations applicable to all other wastewater treatment providers. The Commission has never ordered an existing, compliant plant to be closed because residents no longer wish to live near it. It is the nature of the Commission's action, not merely the closure order itself, which is unprecedented. No other wastewater providers are affected by the new regulation. This is not an anticipated "industry regulation" like the price control legislation addressed in *Energy Reserves*. *See, e.g., West End Tenants Ass'n v. George Washington University*, 640 A.2d 718, 733 (1994) (the holdings in *Energy Reserves* and *Allied Structural Steel* require that earlier regulation must share more with the challenged regulation than simply the broad industry in which it operates, or even broad phase of that industry's activity). The new regulation here was tailored as a plant closure order to assist BMSC in resolving a contractual obligation that BHOA asserted stood in the way of a voluntary plant closure. This

is precisely the type of case the contracts clauses were meant to address – those in which the state adopts as its policy "the repudiation of debts or the destruction of contracts or the denial of the means to enforce them." *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 439, 54 S.Ct. 231, 78 L.Ed. 413 (1934).

Disputes of material fact exist in Plaintiff's favor on the question of substantial impairment because (1) there is no evidence the Commission had ever regulated odor emissions from wastewater treatment plants prior to the date of contract formation (negating the expectation of such regulation), (2) the Commission's statutory authority and rules provided Plaintiff with no advance warning that the Commission might someday enter the area of odor/noise regulation of plants and order the closure of a single plant that meets all relevant laws and industry standards, and (3) the Commission in this case made a case-specific order applicable to one wastewater treatment plant in direct response to a customer's request that the Commission provide BMSC with specific contractual relief. I.R. 143, Ex. 23, p. 1 (". . . BHOA asks that the Commission order BMSC to close the Treatment Plant, thereby relieving BMSC of its contractual obligation to provide effluent to the Resort . . ."). Wind P1 is entitled to a trial regarding the factors to be considered by the court in determining whether the plant closure order was a "substantial impairment."

REQUEST FOR ATTORNEYS' FEES AND COSTS

Plaintiff-Appellant Wind P1 requests that the Court, pursuant to A.R.S. §§ 12-341, 12-342, 12-348(A) and other applicable law, award Wind P1 its costs and reasonable attorneys' fees incurred in connection with this appeal and all related actions.

CONCLUSION

For the foregoing reasons, Plaintiff-Appellant, Wind P1, respectfully requests that this Court:

- Reverse the Superior Court's decision granting summary judgment to the Commission, and remand this case with instructions to enter judgment in Wind P1's favor as a matter of law because the Commission lacked authority to issue the plant closure order; or, in the alternative:
- Reverse the Superior Court's decision granting summary judgment to the Commission because disputes of material fact exist that require a trial de novo per A.R.S. § 40-254; and
- Reverse the Superior Court's ruling that the Commission's plant closure order was not a "substantial impairment" of the Effluent Delivery Agreement under the Contract Clauses of the United States

and Arizona Constitutions because disputes of material fact exist that require a trial de novo per A.R.S. § 40-254.

DATED this 1st day of December, 2014.

/s/ Fredric D. Bellamy
Fredric D. Bellamy – 010767
Michele Van Quathem – 019185
Naomi Thurston – 029863
Ryley Carlock & Applewhite, P.A.
One North Central Avenue, Suite 1200
Phoenix, Arizona 85004
Attorneys for Appellant
E-mail:
fbellamy@rcalaw.com
mvq@rcalaw.com
nthurston@rcalaw.com

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

WIND P1 MORTGAGE BORROWER, L.L.C., a Delaware limited liability company, Plaintiff/Appellant, v. ARIZONA CORPORATION COMMISSION; an agency of the State of Arizona; BLACK MOUNTAIN SEWER CORPORATION, an Arizona corporation; TOWN OF CAREFREE, an Arizona municipal corporation Defendants/Appellees.	**Case No. CA-CV 14-0643** Maricopa County Superior Court No. CV2013-007804
THE BOULDERS HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation Intervenor/Appellee.	

APPELLEE - ARIZONA CORPORATION COMMISSION'S ANSWERING BRIEF

Robin R. Mitchell (No. 019213)
rmitchell@azcc.gov
Janet F. Wagner (No. 012924)
jwagner@azcc.gov
Robert W. Geake (No. 009695)
rgeake@azcc.gov
Maureen A. Scott (No. 012344)
mscott@azcc.gov
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007
Telephone: (602) 542-3402

Attorneys for Arizona Corporation Commission

TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT OF THE CASE 2

I. COMMISSION PROCEDURAL HISTORY. 2

II. SUPERIOR COURT PROCEDURAL HISTORY. 3

STATEMENT OF FACTS 5

I. THE 2005 RATE CASE. 6

II. 2008 RATE CASE (Phase I) 8

III. 2008 RATE CASE (Phase II). 11

ISSUES PRESENTED 16

ARGUMENT 16

I. STANDARD OF REVIEW. 16

II. THE COMMISSION HAS THE AUTHORITY TO ORDER CLOSURE OF THE WASTEWATER TREATMENT PLANT. 17

A. The Superior Court Correctly Concluded That The Commission Has The Necessary Statutory Authority To Order Closure Of The WWTP 17

B. The Commission's Statutory Authority Has Not Been Repealed By Title 49 19

C. The Commission May Require Public Utilities To Achieve Quality Of Service Standards That Exceed Applicable Health And Safety Requirements 22

D. The Commission's Constitutional Authority Encompasses Both Ratemaking And Non-Ratemaking Authority And Grants The Commission The Authority To Order Plant Closure. 24

III. THE SUPERIOR COURT CORRECTLY DETERMINED THAT THE SUBSTANTIAL EVIDENCE TEST IS THE

APPROPRIATE STANDARD OF REVIEW UNDER A.R.S. § 40-254(E).....27

IV. THE SUPERIOR COURT CORRECTLY DETERMINED THAT THE OWENS AFFIDAVIT IS INADMISSIBLE UNDER APPLICABLE ARIZONA LAW.....31

A. The Owens Affidavit Is Inadmissible Because It Offers An Opinion On A Question of Law.....31

B. The Resort Cannot Offer Evidence In The Superior Court That Was Not Available In The Proceeding Before The Commission.....32

C. Mr. Owens' Testimony Is Not Admissible Because The Resort Did Not Identify This Witness In Its Disclosure Statement.....34

V. THE SUPERIOR COURT CORRECTLY DETERMINED THAT THE COMMISSION'S DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.....35

VI. EVEN UNDER A DE NOVO STANDARD OF REVIEW, THE COMMISSION WOULD STILL BE ENTITLED TO SUMMARY JUDGMENT.....39

A. The Resort's Argument On The Burden Of Proof Is Incorrect.....39

B. The Resort's Summary Judgment Analysis Is Incomplete..40

C. This Court Should Disregard Wind P1's Citations To The Owens Affidavit.....42

D. Wind P1 Cannot Meet The "Clear And Convincing" Standard Set Forth In A.R.S. § 40-254(E).....43

VII. THE SUPERIOR COURT CORRECTLY FOUND THAT THE COMMISSION'S ORDER DOES NOT VIOLATE THE CONTRACT CLAUSES OF THE FEDERAL AND STATE CONSTITUTIONS.....45

VIII. THE RESORT SHOULD NOT BE AWARDED ATTORNEY'S FEES. 50

A. A.R.S. § 12-348(A)(2) Precludes An Award Of Attorney's Fees For Cases Related To Rates 51

B. A.R.S. § 12-348(A)(2) Precludes An Award Of Attorney's Fees For Cases Decided Under A *de novo* Standard Of Review 51

C. Attorney's Fees Are Not Available Under A.R.S. § 12-328(A)(2) Unless Wind P1 Prevails On The Merits 51

D. Attorney's Fees Are Not Available In This Matter Because The Commission Was Adjudicating A Complaint Between Private Parties 52

TABLE OF AUTHORITIES

Cases

Allstate Indemnity Company v. Ridgely, 214 Ariz. 440, 153 P.3d 1069 (App.2007).....20

Ariz. Corp. Comm'n v. Reliable Transp. Co., 86 Ariz. 363, 346 P.2d 1091 (1959).....40

Arizona Corp Comm'n v. Citizens Util. Co., 120 Ariz. 184, 584 P.2d 1175 (App.1978).....31

Arizona Corp. Comm'n v. Fred Harvey Transp. Co., 95 Ariz. 185, 388 P.2d 236 (1964) 30

Arizona Corp. Comm'n v. Palm Springs Util. Co., Inc., 24 Ariz. App. 124, 536 P.2d 245 (App.1975) ..... passim

Arizona Corp. Comm'n v. State ex rel. Woods, 171 Ariz. 286, 830 P.2d 807 (1992). ..... passim

Arizona Corp. Commission v. Catalina Foothills Estates, 78 Ariz. 245, 247, 278 P.2d 427, 428 (1954). 20

Arizona Water Co. v. Arizona Corp. Comm'n, 217 Ariz. 652, 177 P.3d 1224 (App.2008).....30

Baker v. Arizona Department of Revenue, 209 Ariz. 561, 105 P.3d 1180 (App. 2005).....47

Barrows v. Jackson, 346 U.S. 249, 73 S.Ct. 1031, 97 L.Ed. 1586 (1953).....48

Boomer v. Frank, 196 Ariz. 55, 993 P.2d 456 (App.1999) 45

Borders Online LLC v. State Bd. Of Equalization, 29 Cal. Rptr. 3d 176, 129 Cal. App.4th 1179 (2005) 44

Bryan v. Riddel, 178 Ariz. 472, 875 P.2d 131 (1994). 35

Church v. Arizona Corp. Comm'n, 94 Ariz. 107, 382 P.2d 222 (1963).....33

Columbia Parcar Corp. v. Arizona Dept. of Transp., 193 Ariz. 181, 971 P.2d 1042 (1999) 52

Cortaro Water Users' Ass'n v. Steiner, 148 Ariz. 314, 714 P.2d 807 (1986) 52

Corp. Comm'n v. Pacific Greyhound Lines, 54 Ariz. 159, 94 P.2d 443 (1939) ... 25

Corp. Comm'n of Ariz. v. People's Freight Line, 41 Ariz. 158, 16 P.2d 420 (1932) 39

Cyprus Bagdad Copper Corp. v. Ariz. Dept. of Revenue, 188 Ariz. 345, 933 P.2d 923 (App.1997) 51

DeGroot v. Ariz. Racing Comm'n, 141 Ariz. 331, 686 P.2d 1301 (App.1984) 37

Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 103 S.Ct. 697 (1983) 46, 47, 50

Gibbons v. Arizona Corp. Comm'n, 75 Ariz. 214, 254 P.2d 1024 (1953) 33

Grand Canyon Trust v. Arizona Corp. Comm'n, 210 Ariz. 30, 107 P.3d 356 (App.2005) ..... passim

Havasu Heights Ranch & Dev. Corp. v. Desert Valley Woods Prods., Inc., 167 Ariz. 383, 807 P.2d 1119 (App.1990) 37

Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 54 S.Ct. 231, 78 L.Ed. 413 (1934) 46

In re Dobert, 192 Ariz. 248, 963 P.2d 327 (App.1998) 47

Jamaica Ash & Rubbish Removal Co. v. Ferguson, 85 F.Supp.2d 174 (E.D.N.Y.2000) 48

Larson v. Farley, 106 Ariz. 119, 471 P.2d 731 (1970) 21

Layton v. Yankee Caitheness Joint Venture, 774 F.Supp. 576 (D.Nev.1991) 38

Liberty Mutual Insurance Company, 868 F.Supp. 425 (R.I. 1994) 50

Marco Crane and Rigging v. Arizona Corp. Comm'n, 155 Ariz. 292, 746 P.2d 33 (App.1987) 17, 30

Maricopa Cty. v. Corp. Comm'n, 79 Ariz. 307, 289 P.2d 183(1955). 26

Marques v. Ortega, 231 Ariz. 437, 296 P.3d 100 (App.2013). 35

Miller v. Ariz. Corp. Comm'n, 227 Ariz. 21, 251 P.3d 400 (App.2011) 27, 29

Modular Mining Systems, Inc. v. Jigsaw Technologies, Inc., 221 Ariz. 515, 212 P.3d 853 (App. 2009) 43, 44

Orme School v. Reeves, 166 Ariz. 301, 802 P.2d 1000 (1990). 40, 41

Phelps Dodge Corp, Inc. v. Ariz. Elec. Power Co-op, Inc., 207 Ariz. 95, 83 P.3d, 573 (App.2004) 17, 46, 51

Robson Ranch Quail Creek, LLC v. Pima County, 215 Ariz. 545, 161 P.3d 588 (App.2007).....47

San Diego Gas & Elec. Co. v. Superior Court, 13 Cal.4th 893, 920 P.2d 669 (1996) 22

Santanello v. Cooper, 106 Ariz. 262, 475 P.2d 246 (1970) 26

Simms v. Round Valley Light & Power Co., 80 Ariz. 145, 154, 294 P.2 378, 384 (1956).....31

State v. Buhman, 181 Ariz. 52, 56, 887 P.2d 582, 586 (App.1994) 21

Tucson Elec. Power Co. v. Arizona Corp. Comm'n, 132 Ariz. 240, 645 P.2d 231 (1982). ..... passim

United Bank of Arizona v. Allyn, 167 Ariz. 191, 805 P.2d 1012 (App.1990). 40, 45

Webb v. Omni Block, Inc., 216 Ariz. 349, 166 P.3d 140 (App.2007).....32

Wells Fargo Bank, N.A. v. Allen, 231 Ariz. 209, 292 P.3d 195 (App.2012).....43

Wind P1 Mortgage Borrower LLC v. Arizona Corp. Comm'n , No. 1CA-CC 13-0001 (App.2013). 4

Wind P1 Mortgage Borrower LLC v. Gary Pierce, et al., No. CV13-0236 SA (2013) 4

Statutes

A.R.S. §12-328 52

A.R.S. § 12-341 51

A.R.S. § 12-342 51

A.R.S. § 12-348 51

A.R.S. § 40-202 ..... 21, 26

A.R.S. § 40-252 ..... 3, 12

A.R.S. § 40-253 15

A.R.S. § 40-254 ..... passim

A.R.S. § 40-254.01 4

Rules

Ariz. R. Civ.App. P. 1 26

Ariz. R. Civ.App. P. 13 26

Ariz. R. Civ. P. 26.1 35

Ariz. R. Civ. P. 37(c) 35

Ariz.R. Civ P. 56(e) 34

Treatises

Stemple, *A Distorted Mirror: The Supreme Court's Shimmering View of Summary Judgment, Directed Verdict, and the Adjudication Process,* 49 OHIO ST. L.J. 95 (1988). 41

Regulations

Arizona Corp. Comm'n Decision No. 69164, SW-02361A-05-0657.....6, 7

Arizona Corp. Comm'n Decision No. 71865, SW-02361A-08-0609..... passim

Arizona Corp. Comm'n Decision No. 73885, SW-02361A-08-0609..... passim

Constitutional Provisions

U.S. Const. art. I.....46

Ariz. Const. art. II, § 25 46

Ariz. Const. art. XV, § 3 ..... 25, 26

Ariz. Const. art. XV, § 14 27

INTRODUCTION

The Arizona Corporation Commission ("Commission") is an agency of the State of Arizona that is constitutionally empowered to regulate public utilities.[1] The Commission began its regulation of sewer utilities after the amendment to article 15, sec. 2 in 1974 to include sewer companies in the definition of public service corporations.[2] This case concerns a Commission order requiring the closure of a wastewater treatment plant ("WWTP") that is located in the midst of a residential neighborhood. The WWTP emits offensive odors and has been the subject of customer complaints for a period of years. The WWTP in question is owned by Black Mountain Sewer Corporation ("BMSC"), an Arizona corporation engaged in the provision of sewer utility service to approximately 2,000 residential and commercial customers located in and around Carefree, Arizona.[3]

Appellant Wind P1 Mortgage Borrower, LLC ("Resort" or "Wind P1") owns and operates the Boulders Resort, a resort hotel located in Carefree, Arizona.[4] Wind P1 currently purchases effluent from the WWTP in order to irrigate its golf

[1] *See* Ariz. Const. art. XV, § 3.
[2] The Resort's opening brief states that the Commission's jurisdiction over sewer companies began in 1980. This is incorrect. Article 15, § 2 was amended effective December 5, 1974. In 1980, article 15, §§ 2 and 10 were amended to remove motor carriers and airlines from the definition of public service corporation.
[3] Index of Record, herein after "I.R.," 109, Certified Record Docket No. SW-02361A-08-0609, A-182 at 2:5-7 (Decision 71865). Certified Record, herein after "C.R.," is contained within the Index of Records sent from the Maricopa County Superior Court.
[4] I.R. 125, C.R. C-51 at 2:6-7.

courses.[5] The WWTP's effluent makes up approximately fifteen percent of the Resort's irrigation supply.[6] Closure of the plant will mean that there will no longer be effluent from this particular source for the Resort to purchase.[7] Because the Resort does not wish to pay more for effluent, it seeks to set aside the Commission's decision in an effort to force the continued operation of the WWTP.[8]

STATEMENT OF THE CASE

I. COMMISSION PROCEDURAL HISTORY.

BMSC filed a rate application in December 2008.[9] An evidentiary hearing was held on November 18, 23, 24 and 25, 2009.[10] The Commission issued Commission Decision No. 71865 on September 1, 2010.[11] This has been referred to as Phase 1.

On June 15, 2011, Boulders Homeowners Association ("BHOA") filed a motion at the Commission seeking to amend Decision No. 71865 (the Commission's decision in Phase I).[12] On July 6, 2011, the Resort filed a motion to

---

[5] I.R. 114, C.R. A-296 at 28:3-8 **(App. 146)**.
[6] *Id.* at 28:6-8.
[7] *Id.* at 28:14-17.
[8] I.R. 114, C.R. B-3 at 118:2-119:21; I.R. 118, C.R. B-9 at 41:10-20 **(App. 254-55)**.
[9] I.R. 97, C.R. A-1 (Application).
[10] I.R. 114 – 117, C.R. B-3 3-6.
[11] I.R. 109, C.R. A-182 **(App. 48-116)** (Decision 71865).
[12] I.R. 110, C.R. A-204.

intervene in the Commission proceeding and requested a hearing.[13] On January 24, 2012, the Commission voted to reopen Decision No. 71865 pursuant to A.R.S. § 40-252, and directed its Hearing Division to conduct proceedings to address the issues related to the WWTP.[14] On January 26, 2012, the Resort's motion to intervene was granted.[15]

An evidentiary hearing was held on May 8, 2012.[16] There was briefing by the parties, and the Administrative Law Judge issued a recommended opinion and order.[17] The Commission, after considering the full record from Phase I and Phase II, issued Decision No. 73885, which ordered BMSC to close the WWTP and reaffirmed the surcharge mechanism discussed in Decision No. 71865.[18]

Wind P1 timely filed an application for rehearing, which was denied by operation of law.[19]

II. SUPERIOR COURT PROCEDURAL HISTORY.

The Resort filed a complaint against the Commission in Superior Court on May 31, 2013.[20] Concurrent with the filing of the complaint, the Resort filed a

---

[13] I.R. 110, C.R. A-205.
[14] I.R. 114, C.R. A-296 at 3:1-3 **(App. 121)**(Decision 73885).
[15] I.R. 111, C.R. A-217.
[16] I.R. 118, C.R. B-9.
[17] I.R. 112, C.R. A-277.
[18] I.R. 114, C.R. A-296 **(App. 119-70)**.
[19] I.R. 114, C.R. A-297.
[20] I.R. 1 (Complaint).

Motion for Preliminary Injunction to stay Decision No. 73885.[21] The Resort also filed a direct appeal to this Court pursuant to A.R.S. § 40-254.01[22] and petitions for special action in both the State Supreme Court[23] and in Superior Court.[24]

On August 26, 2013, this Court concluded that it lacked jurisdiction over the appeal.[25] On August 27, 2013, the Supreme Court declined to accept jurisdiction and denied the Resort's request to preliminarily enjoin the Commission's order.[26]

On December 18, 2013, the Resort filed motions for partial summary judgment on Counts 2, 3, 4 and 5 of its Complaint.[27] On February 7, 2014, the Commission and BMSC responded and filed cross-motions for summary judgment.[28] Oral argument was heard on the summary judgment motions on April 1, 2014.

On June 2, 2014, the court entered a written ruling granting the Commission's cross-motion for summary judgment. A final judgment was entered

---

[21] I.R. 18.
[22] *Wind P1 Mortgage Borrower LLC v. Arizona Corp. Comm'n* , No. 1CA-CC 13-0001 (App.2013).
[23] *Wind P1 Mortgage Borrower LLC v. Gary Pierce, et al.*, No. CV13-0236 SA (2013).
[24] Maricopa County Superior Court, *Wind P1 Mortgage Borrower LLC v. Arizona Corp. Comm'n*, No. LC 2013-000371-001.
[25] *Wind P1 Mortgage Borrower LLC v. Arizona Corp. Comm'n*, No. 1CA CC 13-0001, Order Re: Motion to Determine Jurisdiction (8/26/13).
[26] *Wind P1 Mortgage Borrower v. Gary Pierce, et al.*, CV 13-0236-SA
[27] I.R. 139-144.
[28] I.R. 150-153; I.R. 155-170.

on August 22, 2014 and was certified on September 23, 2014.[29] The Resort filed a notice of appeal on August 26, 2014.[30]

STATEMENT OF FACTS

Sewer utility service consists of transporting wastewater from its point of origin to a treatment facility, treating the wastewater, and then properly disposing of the resulting treated wastewater, which is called effluent.[31] BMSC delivers approximately eighty percent of its wastewater flows to the treatment plant at the City of Scottsdale.[32] BMSC treats up to 120,000 gallons per day ("gpd"), which represents about twenty percent of its wastewater flows, at the WWTP.[33] To dispose of the effluent produced at the WWTP, BMSC has a twenty-year Effluent Delivery Agreement ("Effluent Agreement"), executed in 2001, that requires BMSC to deliver all effluent produced by the WWTP to the Resort unless certain events occur, such as a Commission order requiring the plant to close.[34] The WWTP is situated less than one hundred feet from three homes and within one thousand feet of three hundred homes.[35]

---

[29] I.R. 205-212.
[30] I.R. 206.
[31] I.R. 125, C.R. C-51at 2:6-7; I.R. 114, C.R. B-3 at 116:1-6.
[32] I.R. 125, C.R. C-42 at 1 ¶ 4 **(App. 190)** (Stipulation of Facts).
[33] *Id.* at 1 ¶ 3.
[34] I.R. 125, C.R. C-44, attach. A **(App. 196-209)**(Effluent Agreement).
[35] I.R. 125, C.R. C-42 at 1 ¶ 2 **(App. 121)**.

I. THE 2005 RATE CASE.

In 2005, BMSC filed a rate application at the Commission seeking a rate increase.[36] One of the most contentious issues in that proceeding involved allegations that objectionable odors were emanating from the entire BMSC system.[37] The BHOA intervened in the proceeding to testify about the severity of the odors.[38] In addition, the Commission received numerous public comments complaining about the smells.[39] The Resort's Director of Golf Operations, Tom McCahan,[40] appeared as a representative on behalf of the Resort and provided public comment:

> Over the past several years the Golden Door Spa, Club, Resort and various locations around the golf course have experienced intermittent smells and odors . . . . We believe this issue must completely be remedied for the future of our resort as well as our members and homeowners.[41]

Based on sworn testimony given during the proceeding, there appeared to be general agreement that the odor problems came from two separate sources: 1) an older lift station ("CIE lift station") and 2) the wastewater line that flows under Boulders Drive in the Boulders Subdivision.[42] Because of ongoing operational

---

[36] I.R. 121, C.R. C-19 **(App. 3-47)** (Decision 69164).
[37] *Id.* at 30 **(App. 32)**.
[38] *Id.* at 4, n. 3 **(App. 6).**
[39] *Id.* at 30-31 (App. 32-33).
[40] Mr. McCahan appeared as the Resort's witness in 2008 Rate Case Phase 2.
[41] I.R. 114, C.R. A-296 at 45, n. 18 **(App. 163)**(Decision 73885); I.R. 114, C.R. B-3 at 65-68.
[42] I.R. 121, C.R. C-19 at 31:19-32:8 **(App. 33)** (Decision 69164).

problems with the CIE lift station, BMSC simply agreed to its removal.[43]

By contrast, determining a remedy for the odor problems associated with the line under Boulders Drive proved to be more complex. According to an engineer testifying on behalf of the Town of Carefree, the odors in BMSC's collection system were caused by two problems: 1) the long retention time that sewage sits in the Boulders line, thereby allowing the sewage to become septic, and 2) "positive pressure" between the CIE lift station and the WWTP, which was created by having pressurized lines in one part of the system and then switching to gravity-fed lines in another part of the system.[44] The testimony presented two possible solutions: 1) replacement of the gravity-flow lines with pressurized lines or 2) installation of fans and carbon filters to create a negative pressure filtration system within the gravity-fed portion of the system.[45]

The Commission ordered BMSC to adopt either of these two solutions or to develop an alternative remedy with the agreement of the other parties.[46] BMSC then hired a consultant, who proposed an alternative remedy: installing air jumpers between the manholes along Boulders Drive.[47] The other parties agreed to this

---

[43] I.R. 109, C.R. A-182 at 40:20-23 **(App. 89)** (Decision 71865).
[44] I.R. 114, C.R. A-296 at 38:21-28 **(App. 156)** (Decision 73885).
[45] I.R. 114, C.R. B-3 at 33.
[46] I.R. 121, C.R. C-19 at 37 **(App. 39)**(Decision 69164).
[47] *Id.*

alternative,[48] and BMSC subsequently installed these items.[49]

II. 2008 RATE CASE (Phase I).

On December 19, 2008, BMSC filed another application for a rate increase ("Phase I").[50] Odors were again at issue. BMSC witness, Greg Sorenson, then BMSC's Vice President of Operations and Engineering, testified about BMSC's remediation efforts.[51] In compliance with the Commission's order in the 2005 rate case, BMSC had deactivated the CIE lift station.[52] To address the odor problems along Boulders Drive, BMSC had rerouted sewer lines and installed air-jumper pipelines at four locations along the street between manholes to allow air to flow with the sewage, thereby preventing it from escaping into the atmosphere.[53] To remedy additional odor problems later discovered on Quartz Valley Drive, BMSC had also constructed a new sewer line and grinder pump station to permit sewage to flow freely.[54]

BMSC had also undertaken additional measures that were not required by the 2005 rate case. BMSC had installed an odor scrubber at the plant, placed heavy rubber mats over grate openings covering treatment basins, and

---

[48] I.R. 109, C.R. A-182 at 40:20-41:3 **(App. 89)** (Decision 71865).
[49] I.R. 119, C.R. C-1 at 4:24-5:3 **(App. 226)**(Sorensen Direct).
[50] I.R. 97, C.R. A-1 (Application).
[51] I.R. 118, C.R. B-9 at 107:17-18.
[52] *Id.* at 3:4-5.
[53] *Id.* at 4-5.
[54] *Id.* at 5:4-22.

commissioned a noise study to determine the source of noises emanating from the plant.[55] The noise study led to several projects aimed at reducing noises coming from the treatment plant.[56]

BMSC also purchased odor loggers, which are devices that are placed around the perimeter of a sewer plant to measure the amount of hydrogen sulfide in the air.[57] Mr. Sorenson stated that there were several instances in which the devices detected noticeable smells, but these incidents did not rise to the level of a violation of applicable odor regulations.[58] He further stated that the majority of the odors emanate from the WWTP and that closure would eliminate the vast majority of those odor concerns.[59] He acknowledged that, despite the remediation efforts undertaken by BMSC, odors still remain:

> I go out to the plant; I'm not used to working in a wastewater treatment plant, so my nose is, I would say, akin to what our customers' noses would be like. And I can certainly smell odors walking around that plant, in spite of us covering, sealing buildings, installing an additional odor scrubber on the plant, adding chemicals to the process to try and reduce the odors. *We've gone through virtually everything that we can do on that plant, and yes, there are still odors there.*[60]

Despite BMSC's efforts, Les Petersen, the BHOA's president, testified that odors from the WWTP plant continued to be very noticeable, and were

---

[55] *Id.* at 6.
[56] *Id.*
[57] *Id.* at 7:13-24; I.R. 109, C.R. A-182 at 41:11-13**(App. 90)** (Decision No. 71865).
[58] I.R. 114, C.R. B-3 at 142:20-143:12 **(App. 183-84)**.
[59] *Id.* at 113, 114-115 **(App. 179-81)**.
[60] *Id.* at 161:14-25 **(App. 187)** (emphasis added).

objectionable to Boulders residents.[61] He further stated that noise from the WWTP was noticeable not only to nearby homes, but also to homes as far away as an estimated four hundred feet.[62] He further testified that, when the WWTP was constructed, it was expected to be a temporary wastewater treatment solution until another location could be secured further away from homes.[63]

During the 2008 rate case, the BHOA had worked in cooperation with BMSC to come up with a solution for the odor issues.[64] As a result of those discussions, BMSC and the BHOA agreed that the WWTP could be closed and entered into an agreement ("Closure Agreement").[65] The Closure Agreement provided that BMSC, subject to Commission approval, could implement a surcharge to recover the costs associated with closing the plant.[66] BMSC's obligations under the agreement were subject to a number of conditions, including the "[s]uccessful renegotiation of the Effluent Agreement with the Resort to allow termination of that agreement with little or no cost to BMSC upon closure of the treatment plant."[67]

Mr. Petersen had informed the Resort of the BHOA's efforts to close the

---

[61] I.R. 121, C.R. C-22 at 5:14-16; I.R. 115, C.R. B-4 at 354:6-355:14 **(App. 237)**.
[62] *Id.*
[63] I.R. 114, C.R. B-3 at 144 **(App. 183)**, 161-62 **(App. 187-88)**.
[64] I.R. 121, C.R. C-22 at 6:20-24.
[65] *Id.*
[66] I.R. 125, C.R. C-43 at 3 ¶ vi **(App. 213)**(WWTP Closure Agreement).
[67] I.R. 110, C.R. A-204, attach. A ¶ C.

plant as early as December of 2008 and then again in mid-2009.[68] Nonetheless, the Resort elected not to intervene in Phase I of the 2008 Rate Case.

On September 1, 2010, the Commission issued Decision No. 71865, which granted BMSC an increase in rates and, among other things, found that the Closure Agreement between BMSC and BHOA concerning the WWTP provided "an appropriate and creative solution" to address ongoing odor issues related to the plant.[69] The Commission also established a surcharge mechanism to allow BMSC to recover certain costs associated with the decommissioning of the plant.[70]

III. 2008 RATE CASE (Phase II).

After the issuance of Decision No. 71865, BMSC and the BHOA renewed their efforts to negotiate with the Resort.[71] In the months that followed, BMSC, BHOA, and the Resort conducted discussions on several occasions; however, for reasons that are not apparent, discussions eventually ceased.[72]

On June 15, 2011, BHOA filed a motion at the Commission requesting that the WWTP be closed.[73] In its motion, the BHOA asserted that, despite what appeared to be BMSC's good faith efforts to negotiate with the Resort, the negotiations had reached an impasse, and BMSC and the Resort had been unable to

---

[68] I.R. 126, C.R. C-56 at 39-42.
[69] I.R. 109, C.R. A-182 at 53:20-23 **(App. 102)**(Decision 71865).
[70] *Id.* at 54-55 **(App. 103-04)**.
[71] I.R. 125, C.R. C-44 at 7:3-10.
[72] *Id.*
[73] I.R. 110, C.R. A-204 at 1.

agree to a termination of the Effluent Agreement.[74]

On July 6, 2011, the Resort filed a motion to intervene in the Commission proceeding and requested a hearing to present evidence and legal arguments regarding the WWTP and the Effluent Agreement.[75] On January 24, 2012, the Commission voted to reopen Decision No. 71865 pursuant to A.R.S. § 40-252, and directed its Hearing Division to conduct proceedings to address the issues related to the WWTP.[76] On January 26, 2012, the Resort's motion to intervene was granted.[77]

At the hearing, the BHOA offered a stipulation of facts that was admitted without objection.[78] The stipulation provides that, if constructed today, the plant would require a setback of either five hundred feet (for a facility without odor, noise, and aesthetic controls) or at least one hundred feet (for a facility with full odor, noise, and aesthetic controls).[79] The WWTP is located less than one hundred feet from three homes and within one thousand feet of 200-300 homes, as well as certain dining and conference facilities at the Resort.[80] Numerous complaints have been raised by residents in the Boulders community regarding objectionable odors

---

[74] *Id.*
[75] I.R. 114, C.R. A-296 at 2 **(App. 120)**(Decision 73885).
[76] *Id.* at 3 **(App. 121)**.
[77] *Id.*
[78] I.R. 125, C.R. C-42 **(App. 190-93)**(Stipulation of Facts); I.R. 118 C.R. B-9 at 30.
[79] I.R. 125, C.R. C-42 at 3 ¶14 **(App. 193)**.
[80] *Id.* at 1 ¶ 2 **(App. 190)**.

from the treatment plant.[81]

According to the Resort, closing the WWTP would have a significantly negative effect on its operations, because it would have to replace a portion (about fifteen percent) of the water supply for its golf courses at a cost that the Resort alleged to be prohibitive.[82] The Resort did not present any testimony refuting the presence of noises or odors.[83] In fact, all three of the Resort's witnesses acknowledged the presence of noticeable sewer odors.[84] The Resort's testimony instead focused on its efforts to find replacement effluent or other solutions.

According to the Resort, it attempted to work with BMSC and local residents to find a solution that would allow early termination of the Effluent Agreement, but the Resort was unable to identify a reasonable and affordable solution.[85] The Resort claimed to have evaluated a number of options including operating without BMSC's effluent through conservation measures, finding replacement water supplies, or building a closed treatment plant on the Resort's property.[86] Despite the variety of possibilities discussed by the Resort in its testimony, it concluded that each of the available alternatives would be

---

[81] *Id.* at 2 ¶ 5 **(App.191)**.
[82] I.R. 125, C.R. C-44 at 9; C.R. C-45 at 4.
[83] I.R. 114, C.R. A-296 at 27:14-17 **(App. 145)**(Decision 73885).
[84] I.R. 118, C.R. B-9 at 63:13-16 **(App. 246)**, 66:5-11 **(App. 247)**, 83:16-18 **(App. 248)**, 95-96 **(App. 250-51)**.
[85] I.R. 125, C.R. C-44 at 8.
[86] I.R. 125, C.R. C-46 at 4-6.

significantly more expensive than the current Effluent Agreement.[87]

BMSC, in its testimony, reiterated its remediation efforts.[88] BMSC also testified that, in the spring of 2012, it had met with representatives from the Town of Cave Creek about the possibility of rerouting the wastewater flows from BMSC's system to Cave Creek's treatment facility; from there, the wastewater could be treated and then, if an effluent delivery line were built, sent to the Resort to replace the effluent that it now gets from BMSC.[89]

Although this is a possible option,[90] the costs to BMSC would likely be higher than the costs of purchasing additional treatment capacity from Scottsdale.[91] In addition, it would be necessary to construct an effluent delivery line to the Resort and to reroute a portion of BMSC's flows to the Cave Creek facility.[92] The costs reroute were estimated to be between $546,000 and $1.1 million, and the costs of a new effluent line were estimated to be between $1.3 million and $2.3 million.[93]

After the Administrative Law Judge had submitted a proposed order to the

---

[87] I.R. 125, C.R. C-46 at 4-6, C-45 at 3-4, C.R. C-44 at 8, 9, C.R. C-51 at 11-12.
[88] I.R. 119, C.R. C-1 at 2-5.
[89] I.R. 118, C.R. B-9 at 117:7-118:22, 119:17, 120:2 **(App. 253-56)**.
[90] I.R. 126, C.R. C-53 at 1; I.R. 118, C.R. B-9 at 118:23 - 119:1 **(App. 254-55)**.
[91] I.R. 114, C.R. A-296 at 27:14-17 **(App. 145)**(Decision 73885).
[92] *See also* I.R. 118, C.R. B-9 at 116:23-118:22,119:2-120:2, **(App. 252-57)**121:13-123:24,136:18 - 140:10.
[93] I.R. 126, C.R. C-53 at 1.

Commission, the matter was scheduled for a Commission open meeting.[94] Commissioner Pierce, in a letter to the docket on April 5, 2013, requested that the matter be pulled from the agenda.[95] He urged the parties to meet and attempt to find a mutually acceptable solution.[96] The parties subsequently met, but were unable to reach agreement.[97]

The Commission, after considering the full record from Phase I and Phase II, issued Decision No. 73885, which orders BMSC to close the WWTP and reaffirms the surcharge mechanism discussed in Decision No. 71865.[98] The Commission concluded that continued operation of the WWTP, which is located in the midst of a residential neighborhood, would have a detrimental effect on the quality of life for residents within the Boulders community.[99]

The Resort filed a petition for rehearing of Decision No. 73885 pursuant to A.R.S. § 40-253, which was denied by operation of law.[100] To challenge the Commission's order, the Resort filed four different judicial actions in three different courts.[101] This appeal stems from the Resort's Superior Court complaint,

---

[94] I.R. 113, C.R. A-277.
[95] I.R. 113, C.R. A-283 (Comm. Pierce Letter).
[96] *Id.*
[97] I.R. 113, C.R. A-284 (Status of Settlement Agree.).
[98] I.R. 114, C.R. A-296 at 46-51**(App. 164-69)** (Decision 73885).
[99] *Id.* at 38 **(App. 156)**.
[100] I.R. 114, C.R. A-297.
[101] Maricopa County Superior Court CV2013-007804, LC2013-000371-01; Court of Appeals 1 CA-CC 13-0001; Supreme Court CV 13-0236 SA.

which was filed pursuant to A.R.S. § 40-254.[102]

ISSUES PRESENTED

1. Does the Commission's constitutional and statutory authority empower it to require the closure of a sewer plant that emits offensive odors in a residential neighborhood?
2. Did the Superior Court correctly conclude that the Commission's closure order is completely unrelated to its constitutional authority?
3. Did the Superior Court properly conclude that the substantial evidence test is equivalent to the "clear and convincing" standard set forth in A.R.S. § 40-254(E)?
4. Is the Commission's order supported by substantial evidence?
5. If a *de novo* standard of review should have been applied, can Wind P1make a clear and convincing showing that the Commission's order was unreasonable?
6. Does the Commission's closure order offend the Contract Clauses of the state and federal constitutions?

ARGUMENT

I. STANDARD OF REVIEW.

On appeal, the Court of Appeals reviews the judgment of the Superior Court, not the Commission's decision.[103] In addition, the Superior Court's decision is

---

[102] I.R. 1 (Complaint).

[103] *Phelps Dodge Corp, Inc. v. Ariz. Elec. Power Co-op, Inc.*, 207 Ariz. 95, 103, ¶16, 83 P.3d, 573, 581 (App.2004).

reviewed on the basis of the reasonable evidence standard.[104]

II. THE COMMISSION HAS THE AUTHORITY TO ORDER CLOSURE OF THE WASTEWATER TREATMENT PLANT.

Wind P1 argues that neither the Arizona Constitution nor the Commission's governing statutes in Title 40 gives the Commission the authority to order the closure of the WWTP, as directed in Decision No. 73885. This argument is an incorrect statement of the Commission's authority under the constitution, the statutes in Title 40, and applicable case law. It also mischaracterizes the facts of this case.

A. *The Superior Court Correctly Concluded That The Commission Has The Necessary Statutory Authority To Order Closure Of The WWTP.*

A.R.S. § 40-331(A) provides the Commission with express and unambiguous authority over the facilities of public service corporations:

> When the Commission finds that additions or ***improvements to or changes in the existing plant or physical property of a public service corporation ought reasonably to be made,*** or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, ***the commission shall make and serve an order directing that such changes be made*** or such structure be erected in the manner and within the time specified in the order. If the commission orders erection of a new structure, it may also fix the site thereof.

(Emphasis added). *See also* A.R.S. § 40-321(A) (granting Commission authority

---

[104] *Marco Crane and Rigging v. Arizona Corp. Comm'n*, 155 Ariz. 292, 294, 746 P.2d 33, 35 (App.1987), *quoting Tucson Elec. Power* 132 Ariz. at 244, 645 P.2d at 235.

to oversee the "equipment, appliances, facilities, or service of any public service corporation"); A.R.S. § 40-361(B) (requiring public service corporations to maintain "equipment and facilities" as will be "in all respects adequate, efficient, and reasonable"). The Superior Court correctly concluded that the Commission has ample statutory authority to order the closure of the WWTP.[105]

The Resort argues that these statutes are vague and ambiguous and urges the Court to apply the rules of statutory construction. Far from vague or ambiguous, these statutes make it abundantly clear that the Commission has not only the authority but also the duty to protect the health, safety, and welfare of a public service corporation's customers. When statutory language is clear, unequivocal, and unambiguous, this court must give effect to the language and may not invoke the rules of statutory construction to interpret it.[106] These statutes clearly give the Commission the flexibility to fashion appropriate remedies to govern public service corporations.

In this case, the Commission addressed a unique, longstanding problem in a careful and painstaking manner. As noted above, the odor problems have existed at least since 2005, and the Commission did not order closure of the plant before

---

[105] I.R. 197 at 4-5 (Min. Entry).
[106] *U.S. West Commc'n, Inc. v. City of Tucson*, 198 Ariz. 515, 520, ¶8, 11 P.3d 1054, 1059 (App. 2000).

attempting to find a remedy to the uncontroverted odor issues.[107] Specifically, in response to the Resort's argument that the Commission's closure of the plant would reflect an overreach of government power, the Commission concluded that its actions over the years to address ongoing odor complaints were

> taken in a manner that reflects the least amount of governmental intrusion possible on the Company's operations, while at the same time attempting to provide for the "convenience, comfort and safety" of the Company's customers by protecting them from noises and noxious odors that have pervaded the community for years. Our order in this proceeding is hopefully the final step in this lengthy process . . . .[108]

The Commission's action in this matter is completely consistent with its statutory authority. Moreover, as the Superior Court also noted, the Resort concedes that the Commission has the authority to order the Company to mitigate odor problems at the plant.[109] The closure order differs from other odor-remediation remedies only in degree.[110]

B. *The Commission's Statutory Authority Has Not Been Repealed By Title 49*

In its Opening Brief, Wind P1 argues that the Commission's authority to regulate the WWTP, as it did in this case, has been eliminated by the Legislature's creation of the Arizona Department of Environmental Quality ("ADEQ") and its

---

[107] I.R. 197 at 2 (Min. Entry).
[108] I.R. 114, C.R. A-296 at 46:8-12 **(App. 164)**(Decision 73885).
[109] I.R. 197 at 4.
[110] *Id.*

enabling statutes.[111] Wind P1 did not raise this issue before the Superior Court. Issues that are not raised below will not be considered for the first time on appeal.[112] The Resort has waived this issue, and it should not be considered here.

However, even if the issue had been timely raised by the Resort, which the Commission disputes, it has no merit. The Resort's argument implies that with the passage of the legislation creating ADEQ, the statutory authority of the Commission to regulate the quality of service of the public service corporations is somehow repealed. It is well settled law that repeals by implication are not favored, and will not be indulged if there is any other reasonable construction.[113]

To the extent possible, courts must enforce all statutes that have been duly enacted. In so doing, it is the court's "obligation to harmonize related statutes," and this obligation "'applies even where the statutes were enacted at different times, and contain no reference one to the other.'"[114] Furthermore, it is immaterial to this endeavor that the statutes are found in different titles.[115]

The ADEQ was established as the state's environmental regulatory agency under the Environmental Quality Act of 1986 to serve as a separate, cabinet-level

---

[111] Wind P1's Op. Br. at 21-25.
[112] *Allstate Indemnity Company v. Ridgely*, 214 Ariz. 440, 442, ¶7, 153 P.3d 1069, 1071 (App.2007).
[113] *Arizona Corp. Commission v. Catalina Foothills Estates*, 78 Ariz. 245, 247, 278 P.2d 427, 428 (1954).
[114] *State v. Buhman,* 181 Ariz. 52, 56, 887 P.2d 582, 586 (App.1994) (quoting *State ex rel. Larson v. Farley,* 106 Ariz. 119, 122, 471 P.2d 731, 734 (1970)).
[115] *Larson,* 106 Ariz. at 122, 471 P.2d at 734.

agency to administer all of Arizona's environmental protection programs. ADEQ's mission is to protect and enhance public health and the environment in Arizona.[116] The Commission's role to regulate public service corporations and protect the health, safety and welfare of the customers of public service corporations is not in conflict with nor does it supplant the role of ADEQ.

Furthermore, the Resort's ADEQ arguments miss the point: the Commission's authority goes beyond ordinary health and safety concerns, and includes matters related to the "comfort and convenience" of customers and the public. *See, e.g.,* A.R.S. §§ 40-202, -321, -331; *see also* Ariz. Const. art. XV, § 3. As this Court has previously stated, "the regulatory powers of the Commission are not limited to making orders respecting the health and safety, but also include the power to make orders respecting comfort, convenience, adequacy and reasonableness of service . . . ." *See Arizona Corp. Comm'n v. Palm Springs Util. Co., Inc.,* 24 Ariz. App. 124, 536 P.2d 245 (App.1975).[117]

According to the Resort, the BHOA's request to the Commission to close the plant is essentially a nuisance claim over which the Commission has no jurisdiction. But the fact that the Commission's action may also have averted what

---

[116] http://www.azdeq.gov/function/about/index.html

[117] *See also San Diego Gas & Elec. Co. v. Superior Court*, 13 Cal.4th 893, 920 P.2d 669 (1996) (noting that public utilities commission has "comprehensive jurisdiction over questions of public health and safety arising from utility operations").

may be a nuisance is not of consequence and does not affect the Commission's ability to exercise its lawful jurisdiction in this case. The Commission acted pursuant to its lawful authority to remedy an ongoing deficiency with BMSC's facilities, and the Superior Court's judgment upholding that action should be affirmed.

C. *The Commission May Require Public Utilities To Achieve Quality Of Service Standards That Exceed Applicable Health And Safety Requirements*

The Resort argues that the Commission cannot require a utility to close a plant unless the plant is violating some specific regulatory rule or standard.[118] The Resort further asserts that the WWTP is operating within all applicable regulatory requirements and that the Commission's closure order, therefore, falls outside of its regulatory authority as set forth in A.R.S. §§ 40-321, -331, and -361.

This argument has already been considered and rejected by the Court of Appeals in *Arizona Corp. Comm'n v. Palm Springs Util. Co., Inc.*[119] In that case, the court upheld the Commission's power to require a utility company to provide water that *exceeded* applicable water quality standards."[120] The court further recognized that, "in regulating public service corporations the Commission might accomplish some goals by the use of rules and regulations of general applicability

---

[118] Wind P1's Op. Br. at 16, 19.
[119] 24 Ariz.App. 124, 536 P.2d 245.
[120] *Palm Springs*, 24 Ariz.App. at 129-30, 536 P.2d at 250-51.

but *would have to accomplish others by the use of orders pertaining to particular situations or to particular public service corporations."*[121]

In *Palm Springs,* the Commission had received several customer complaints about the quality of water provided by a water company. The Commission's witness, a State Health Department engineer, testified that the water met all mandatory requirements set by the Department and was safe to drink.[122] He also testified, however, that the water was neither palatable nor aesthetically pleasing, and had a corrosive effect on plumbing.[123] Despite the fact that the water was safe to drink and met all mandatory requirements, the Commission entered an order mandating improvements, which was upheld by the Court of Appeals in *Palm Springs.*[124]

The Resort's contention—that the Commission cannot enter an order to remedy a service problem if the facility is otherwise in regulatory compliance—is simply incorrect, and is completely undercut by the holding in *Palm Springs*. In elaborating on the constitutional and statutory provisions concerning the Commission's authority, the court noted that two pertinent generalizations may be drawn:

---

[121] I.R. 114, C.R. A-296 at 39 **(App. 157)**(Decision 73885), quoting *Palm Springs*, 24 Ariz. at 128, 536 P.2d at 249 (emphasis added).
[122] *Palm Springs*, 24 Ariz. App. at 126, 536 P.2d at 247.
[123] *Id.*
[124] *Id.* at 130, 536 P.2d at 251.

> First, the regulatory powers of the Commission are not limited to making orders respecting the health and safety, but also include the power to make orders respecting comfort, convenience, adequacy and reasonableness of service, which is what was done by the Commission in the decision under consideration. Second, both in the constitution and the statutes the lawmakers recognized...that the Commission...would have to accomplish [other goals] by the use of orders pertaining to particular situations and particular public service corporations.[125]

Palm Springs has been good authority in Arizona for nearly forty years. The Resort cannot successfully argue that it is not applicable to this case. Under the facts of this case, the Superior Court correctly concluded that the Commission may require the WWTP to close.

D. *The Commission's Constitutional Authority Encompasses Both Ratemaking And Non-Ratemaking Authority And Grants The Commission The Authority To Order Plant Closure.*

The Superior Court concluded that the Commission's constitutional authority does not extend beyond ratemaking and thus does not extend to the Commission's closure order in this case.[126] This is an incorrect reading of the Commission's constitutional authority, as the language of article XV, section 3 clearly extends beyond ratemaking.

The Commission's constitutional authority under section 3 contains *two separate* authorizations, one for ratemaking and the other for non-ratemaking:

> The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public

[125] *Id.* at 128, 536 P.2d at 249.
[126] I.R. 197 at 3.

> service corporations within the State for service rendered therein, ***and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the State,*** and may prescribe the forms of contracts and the systems of keeping accounts to be used by such corporations in transacting such business, and ***make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of such corporations;*** Provided, that incorporated cities and towns may be . . .

(Emphasis added). The first section of highlighted text refers to the Commission's ratemaking authority, which courts describe as the Commission's exclusive authority.[127] The second section of highlighted text, however, refers to the Commission's constitutional, non-ratemaking authority.[128] To conclude that section 3 does not contain any authority beyond ratemaking ignores this plain language.[129]

This conclusion is also supported by *Palm Springs*. Wind P1 argues that *Palm Springs* cannot be used to establish the Commission's authority because the

---

[127] *See Arizona Corp. Comm'n v. State ex rel. Woods,* 171 Ariz. 286, 830 P.2d 807 (1992); *Corp. Comm'n v. Pacific Greyhound Lines*, 54 Ariz. 159, 173, 94 P.2d 443, 449 (1939).

[128] *See Palm Springs*, 24 Ariz.App. at 129-30, 536 P.2d at 250-51.

[129] The Commission is asking the court to uphold the Superior Court's decision. As a prevailing party not seeking to expand its own rights, the Commission is not required to file a cross-appeal. Arizona's long-settled rule is that, "if [an] appellee in its brief seeks only to support or defend and uphold the judgment of the lower court from which the opposing party appeals, a cross-appeal is not necessary." *Maricopa Cty. v. Corp. Comm'n*, 79 Ariz. 307, 310, 289 P.2d 183, 185 (1955). A cross appeal is required only if the appellee seeks "to attack [the] judgment with a view of either enlarging his rights thereunder or lessening the rights of his adversary." *Id.* (internal quotations omitted). Merely seeking to support the Superior Court's judgment for reasons not relied upon by it "is not attempting to enlarge [an appellee's] own rights or lessen those of [an] adversary," and a cross-appeal is unnecessary. *Santanello v. Cooper*, 106 Ariz. 262, 265, 475 P.2d 246, 249 (1970); *see also* Ariz. R. Civ.App. P. 1, 13, State Bar Committee Note.

parties in that case did not dispute the Commission's authority, and because the authority issue was not explained by the court.[130] This characterization is simply incorrect: the court used nearly two full pages to explain its view of the Commission's authority under article XV, section 3 and the applicable statutes (A.R.S. §§ 40-202(B) and -321(A)).[131] The court specifically recognized that the authority found in the subsequent portion of section 3 has been interpreted as authority held concurrently by the legislature and the Commission.[132] This concurrent authority has also been acknowledged by the Arizona Supreme Court in *Woods*.[133]

Finally, the Commission does not concede that the decision is unrelated to ratemaking. The Commission's decision in this matter occurred *in a rate case*.[134] Furthermore, the decision to close a plant has implications for the utility's rate base—and therefore, for the utility's rates. *See Miller v. Ariz. Corp. Comm'n,* 227 Ariz. 21, 28-29, 251 P.3d 400, 407-08 (App.2011). As our Supreme Court has recognized, the Commission's ratemaking authority extends to every necessary step in ratemaking,[135] and decisions regarding plant have a special connection to

---

[130] Wind P1's Op. Br. at 13.
[131] *Palm Springs*, 24 Ariz.App. at 127-28, 536 P.2d at 248-49.
[132] *Id.*
[133] *Woods,* 176 Ariz. 286, 292, 830 P.2d 807, 813.
[134] *See* I.R. 109, C.R. A-182 (Decision 71865), I.R. 114, C.R. A-296 (Decision 73885).
[135] *Woods*, 171 Ariz. at 294, 830 P.2d at 815.

ratemaking.[136]

III. THE SUPERIOR COURT CORRECTLY DETERMINED THAT THE SUBSTANTIAL EVIDENCE TEST IS THE APPROPRIATE STANDARD OF REVIEW UNDER A.R.S. § 40-254(E).

Wind P1 challenged the Commission's entry of Decision No. 73885 pursuant to A.R.S. § 40-254. That statute provides that "the burden of proof shall be upon the party adverse to the commission . . . to show by clear and satisfactory evidence that [the Commission's order] is unreasonable or unlawful."[137] "Clear and satisfactory" means "clear and convincing," which is a higher standard of proof than "preponderance of the evidence."[138] The nature of this elevated standard of proof imposes *deference* to the Commission's resolution of factual issues. *See Grand Canyon Trust v. Arizona Corp. Comm'n*, 210 Ariz. 30, 34, ¶11, 107 P.3d 356, 360 (App.2005) (equating the "clear and convincing" standard with the "substantial evidence" test).

The leading case on this issue is *Grand Canyon Trust v. Arizona Corp. Comm'n*, wherein the Arizona Court of Appeals addressed the standard of review under A.R.S. § 40-254 in the context of summary judgment. That case articulates the governing standard:

[W]hen the plaintiff challenges a factual determination of the

---

[136] *Miller,* 227 Ariz. at 28, ¶27-30, 251 P.3d at 407; *see also* Ariz. Const. art. XV, § 14.

[137] A.R.S. § 40-254(E).

[138] *Tucson Elec. Power Co. v. Arizona Corp. Comm'n*, 132 Ariz. 240, 243, 645 P.2d 231, 234 (1982).

> Commission, the superior court is not free to overturn it unless the plaintiff demonstrates by "clear and convincing" evidence that the Commission's determination is unreasonable. *In making this assessment Arizona courts uphold such determinations if they are supported by substantial evidence.*[139]

In that case, the Court expressly equated the "clear and convincing" standard with the "substantial evidence" test.[140]

Wind P1, however, proposes a *de novo* standard of review, claiming that the Superior Court is entitled to reweigh the evidence and reach an independent conclusion.[141] To support its argument, Wind P1 relies primarily upon older cases that deal with certificates of convenience and necessity ("CC&Ns") in the transportation industry.[142] These cases are distinguishable from the present matter: they are dated, they address CC&Ns (a uniquely statutory creation),[143] and they deal with an industry that is no longer regulated by the Commission.

By relying on these CC&N cases, Wind P1 simply draws the scope of the deference owed to the Commission too narrowly, in effect arguing that courts should accord deference only to Commission rate decisions and engage in *de novo* review of everything else. True, there are cases—many of them dating from the 1930s—that adopt *de novo* review of Commission orders, *but the vast majority of them are CC&N cases.* That these older cases establish *de novo* review in the

---

[139] *Grand Canyon Trust,* 210 Ariz. at 34, ¶11, 107 P.3d at 360 (emphasis added).
[140] *Id.*
[141] Wind P1's Op. Br. at 27.
[142] *Id.* at 27-29.
[143] A.R.S. § 40-281 *et seq.*

context of CC&Ns does not extend to all Commission orders. Wind P1 essentially characterizes deference as the exception (*i.e.,* only for rate cases) and *de novo* review as the rule. This is exactly the opposite of Arizona's constitutional construct for the Commission: *de novo* review is the exception (*i.e.,* only for CC&N cases) and deference is the rule.

Grand Canyon Trust was not a rate case, so Wind P1's claim that the "substantial evidence" test is applicable only to rate cases is erroneous. Moreover, there are other cases that accord heightened deference to Commission decisions, even in circumstances where the Commission is not establishing rates. *See Woods,* 171 Ariz. at 294, 830 P.2d at 815 (affiliated interest rules); *Miller,* 227Ariz. at 28, ¶27, 251 P.3d 407 (renewable energy rules); *Marco Crane and Rigging v. Arizona Corp. Comm'n*, 155 Ariz. 292, 294, 746 P.2d 33, 35 (App.1987) (tariffs). Finally, not all CC&N cases use a strict *de novo* standard. In *Arizona Water Co. v. Arizona Corp. Comm'n,* the court used the following deferential standard:

> When the Commission has a choice among CC&N applications, we will not disturb "the wide discretion vested unless it appears that its decision was clearly arbitrary or capricious or in disregard of legal rights. "This is because the Commission was established to make such decisions and has developed the expertise to do so, which is not shared by the courts. ***"That a judge of the superior court, or that this court, might be of the opinion that a different order should have been entered than that which the department did enter, does not, of***

itself, warrant reversal . . . ."[144]

Wind P1 also argues that the Superior Court's reliance on *Grand Canyon Trust* was erroneous because the standard of review was not at issue in *Grand Canyon Trust.*[145] This statement is simply incorrect. The first section of the "Discussion" portion of the *Grand Canyon Trust* case is entitled "Standard of Review."[146] The court discussed at length the argument concerning the standard of review, which the appellant claimed had been applied incorrectly by the Superior Court. The Resort's characterization of *Grand Canyon Trust* is without merit.

In this case, the Commission is operating within its unique expertise (both ratemaking and non-ratemaking) under article XV, section 3 of the Arizona Constitution and Title 40 of Arizona's statutes. Arizona law clearly recognizes a heightened standard of review when a Commission decision is based on a constitutional grant of authority, such as the Commission's ratemaking authority. *See Woods*, 171 Ariz. at 297, 830 P.2d at 818; *Tucson Electric*, 132 Ariz. at 243-44, 645 P.2d at 234-34; *Simms v. Round Valley Light & Power Co.,* 80 Ariz. 145, 154, 294 P.2 378, 384 (1956). But judicial deference is not limited to instances in which

---

[144] *Arizona Water Co. v. Arizona Corp. Comm'n,* 217 Ariz. 652, 659, ¶23, 177 P.3d 1224, 1231 (App.2008) (citing *Arizona Corp. Comm'n v. Fred Harvey Transp. Co.,* 95 Ariz. 185, 388 P.2d 236 (1964))(emphasis added).
[145] Wind P1's Op. Br. at 30.
[146] 210 Ariz. at 33, 107 P.3d at 359.

the Commission is engaged in ratemaking.[147] Deference is appropriate whenever the Commission is engaged in an endeavor that is related to its special expertise.[148] The present case is clearly such an endeavor.

IV. THE SUPERIOR COURT CORRECTLY DETERMINED THAT THE OWENS AFFIDAVIT IS INADMISSIBLE UNDER APPLICABLE ARIZONA LAW.

In response to the Commission's cross-motion for summary judgment, Wind P1 offered the affidavit of Robert L. Owens, an engineer. The Commission objected to the admission of the affidavit, and the Superior Court agreed that the affidavit is not admissible.[149] The decision whether to admit new evidence in an appeal of a Commission order is left to the discretion of the Superior Court.[150] The trial court correctly exercised its discretion in denying the admission of the affidavit, and this Court should sustain its ruling on this issue.

A. *The Owens Affidavit Is Inadmissible Because It Offers an Opinion On A Question of Law*

The Owens' affidavit is inadmissible as expert testimony because it offers an opinion on the ultimate legal issue presented in this case: the sufficiency of the evidence. *See Webb v. Omni Block, Inc.*, 216 Ariz. 349, 355, ¶19-20,166 P.3d 140, 146 (App.2007). In Wind P1's supplemental statement of facts

---

[147] *See Grand Canyon Trust,* 210 Ariz. at 37, ¶29, 107 P.3d at 363.
[148] *See id.*
[149] I.R. 197 at 5 (Min. Entry).
[150] *Arizona Corp Comm'n v. Citizens Util. Co.*, 120 Ariz. 184, 584 P.2d 1175 (App.1978).

offered in response to the Commission's Cross Motion for Summary Judgment, Wind P1 set forth three statements (nos. 56, 57, and 58) that are attributed to the Owens affidavit.[151] All three of these statements draw conclusions about the sufficiency of the evidence in support of the Commission's decision. As *Grand Canyon Trust* clearly states, the evaluation of the sufficiency of the evidence rests with the Superior Court.[152]

The Superior Court correctly concluded that the affidavit essentially provides Mr. Owens' opinion on the sufficiency of the evidence in the Commission's record.[153] On its face, the Owens affidavit sets forth conclusions of law, not statements of fact. Accordingly, the Superior Court did not err in concluding that the affidavit is inadmissible.

B. *The Resort Cannot Offer Evidence In The Superior Court That Was Not Available In The Proceeding Before The Commission*

In an appeal of a Commission order, the Arizona Supreme Court has consistently held that, although new evidence may be presented to the Superior Court, there is a difference in evidence that was in existence or available at the time of the hearing before the Commission and evidence that comes into existence

---

[151] I.R. 175-76.

[152] 210 Ariz. at 34, ¶13, 107 P.3d at 360.

[153] *See, e.g.*, I.R. 176 at ¶ 4 ("Based on the information listed above, there is insufficient information to determine the cause of the odors within the Boulders area . . . ."); *id.* at ¶ 9 ("For the same reasons stated above, there is insufficient information to determine whether the WWTP will eliminate or even measurably improve odor levels in the Boulders residential areas . . . .").

after the hearing. Evidence of events occurring subsequent to the Commission hearing is not admissible.[154]

In Mr. Owens' affidavit, he states that he reviewed the record that was created in the proceeding before the Commission. Clearly, this review occurred after the conclusion of the Commission's proceeding, as the documents that he purportedly reviewed encompass every stage of the proceeding before the Commission, including the resulting Commission order.[155] Mr. Owens' statements concern matters that were not in existence at the time of the Commission's hearing, and are therefore inadmissible pursuant to A.R.S. § 40-254.[156] Although the Superior Court did not rely on this principle in its Minute Entry,[157] this argument nonetheless provides an alternative ground to support the Superior Court's determination.

Tellingly, while arguing that the Superior Court erred in denying admission of the affidavit, Wind P1 does not mention *Tucson Electric*.[158] Instead, basically admitting that the affidavit does not meet the legal test for admissible new

---

[154] *Tucson Electric*, 132 Ariz. 240, 645 P.2d 231, citing *Church v. Arizona Corp. Comm'n,* 94 Ariz. 107, 382 P.2d 222 (1963); *Gibbons v. Arizona Corp. Comm'n*, 75 Ariz. 214, 254 P.2d 1024 (1953).
[155] I.R. 176, attach. A at 2-3 (Owen Affidavit).
[156] *Id.* at ¶ 4, 9.
[157] Although the Superior Court cited and correctly quoted *Tucson Electric* on this point of law, the court appears to have assumed, without deciding, that the affidavit was admissible new evidence under A.R.S. § 40-254. I.R.197 at 5.
[158] Wind P1's Op. Br. at 31-34.

evidence before the Superior Court, Wind P1 states that the affidavit "was further offered per ARCP 56(e) to demonstrate that (Decision No. 73885) was unreasonable . . . because the Commission *lacked information* that is material to the reasonableness of its decision . . . ."[159] By offering the affidavit, Wind P1 now purports to provide the alleged missing information (in other words, new evidence). Furthermore, this new evidence is provided through the affidavit of an expert who did not testify at the Commission's hearing and who formed his opinion *after the completion* of the hearing. Clearly, the affidavit concerns matters that occurred subsequent to the Commission's hearing. It is therefore inadmissible under *Tucson Electric.*

C. *Mr. Owens' Testimony Is Not Admissible Because The Resort Did Not Identify This Witness In Its Disclosure Statement*

Rule 26.1 requires parties to disclose the names of expert witnesses and the scope of each expert's testimony at the outset of litigation. The disclosure statement is the primary vehicle by which a party is informed of the facts and law upon which its opponent relies. Thus, it should fairly expose the facts and issues to be litigated, as well as the witnesses and exhibits to be relied upon.[160] The duty to disclose is continuing and ongoing.

Rule 37(c) provides that "[a] party who fails to timely disclose information

---

[159] Wind P1's Op. Br. at 31 (emphasis added).
[160] *Bryan v. Riddel*, 178 Ariz. 472, 477, 875 P.2d 131, 136 (1994).

required by Rule 26.1 shall not, unless such failure is harmless, be permitted to use as evidence at trial, at a hearing, *or on a motion*, the information or witness not disclosed, except by leave of court for good cause shown." (Emphasis added). Delay, standing alone, does not necessarily establish prejudice. Every late disclosure will involve some delay, but the relevant question must be whether it is harmful to the opposing party or to the justice system.[161]

It was unfair and prejudicial for the Resort to attempt to add this new evidence so late in the Superior Court proceeding. The documents that Mr. Owens purports to have reviewed have been in existence since at least 2013. The Commission's position—that there is substantial evidence in the record to support the Commission's Order—has not changed since the outset of this litigation. The Resort cannot reasonably claim that the Owens affidavit was prepared in response to some new position of the Commission.

Accordingly, the Superior Court correctly determined that the Owens affidavit is inadmissible.

V. THE SUPERIOR COURT CORRECTLY DETERMINED THAT THE COMMISSION'S DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

In its Opening Brief, Wind P1 argues that disputed issues of fact preclude

[161] *Marques v. Ortega*, 231 Ariz. 437, 442, ¶20, 296 P.3d 100, 105 (App.2013).

summary judgment for the Commission.[162] Simply stated, Wind P1 disagrees with some of the Commission's factual findings and claims that its mere opposition to these findings creates disputed issues of fact. For several reasons, this Court should reject Wind P1's argument.

In the context of an appeal under A.R.S. § 40-254, Wind P1 cannot establish a dispute of fact merely by stating that it disputes the Commission's factual findings. The *Grand Canyon Trust* Court succinctly explained the applicable standards in the context of summary judgment:

> Because the superior court resolved the action by motion [for summary judgment], and the facts in the affidavit were not contested, we presume the truthfulness of the facts contained therein. *We do not, however, presume the truthfulness of the Trust's factual allegations that were determined adversely to the Trust by the Commission.* Instead, we determine, as presumably did the superior court, whether those determinations were supported by *substantial evidence.*[163]

"[I]f two inconsistent factual conclusions could be supported by the record, then there is substantial evidence to support an administrative decision that elects either conclusion."[164]

As determined correctly by the Superior Court, the question of whether substantial evidence supports the Commission's order does not raise material

---

[162] Wind P1 Op. Br. at 34-49.
[163] 210 Ariz. at 34, ¶13, 107 P.3d at 360 (emphasis added).
[164] *DeGroot v. Ariz. Racing Comm'n,* 141 Ariz. 331, 336, 686 P.2d 1301, 1306 (App.1984).

issues of fact, but instead presents a question of law.[165] Under this standard, Wind P1's alleged disputed facts are not disputed facts at all. Wind P1 cannot create an issue of "disputed fact" to preclude summary judgment merely by asserting that it disagrees with the Commission's factual findings. The Commission's factual determinations will be set aside only if they are not supported by substantial evidence, and that inquiry is a question of law, not an issue of fact.[166]

In this case, the evidence clearly supports the conclusion that the WWTP emits offensive odors. In Phase I of the 2008 rate case, BHOA president Les Peterson testified that after the remediation efforts were completed, odors and noises still remained and the BHOA concluded that the treatment plant was the primary source of remaining odors.[167] In the Phase II hearing before the Commission, the BHOA again presented evidence to establish that the WWTP emits offensive odors. This evidence was offered in a stipulation that was admitted *without Wind P1's objection.*[168] Even more significant, the Resort's own witnesses acknowledged the presence of offensive odors,[169] and one of its witnesses expressly

---

[165] *See Grand Canyon Trust*, 210 Ariz. at 34, ¶11, 107 P.3d at 360, *citing Havasu Heights Ranch & Dev. Corp. v. Desert Valley Woods Prods., Inc.,* 167 Ariz. 383, 387, 807 P.2d 1119, 1123 (App.1990).
[166] *Grand Canyon Trust,* 210 Ariz. at 34, ¶11, 107 P.3d at 360.
[167] Phase I transcript, Vol II 354:21-25- 355:1-3; 11-18.
[168] I.R. 125, C.R. C-42 **(App. 190-92)**(Stipulation of Facts).
[169] Appx., Ex. D, Tr. at 63:13-16 **(App. 246)**, 66:5-11**(App. 247),** 83:16-18 **(App. 248)**, 95-96 **(App. 250-51)**.

acknowledged that the odors emanate from the treatment plant.[170] On this record, one cannot seriously argue that the evidence fails to establish that the WWTP smells.

Faced with evidence that establishes the WWTP's offensive odors, Wind P1's tactic throughout this litigation has been to argue that one cannot ascertain if the odors are actually offensive without some sort of "odor measurement," engineering study, or expert testimony. Wind P1 essentially argues that the lay testimony is insufficient, positing that expert testimony is required in order to establish the presence of odors.[171] Such might have been the case had the Resort proffered expert testimony (or any testimony) to rebut the lay testimony, but it did not.[172] As Wind P1 concedes, it has not presented any evidence concerning the odors or noise at the plant.[173]

The BHOA, having provided evidence establishing the undisputed presence of offensive odors at the WWTP, was not required to then present additional evidence to numerically measure the odors. If the Resort, in response to the BHOA's case, wanted to assert that the odors were not offensive according to some odor standard, it was the Resort's burden to offer evidence in support of that assertion. It was not the BHOA's burden before the Commission—nor was

---

[170] *Id.* at 65:4-12.
[171] Wind P1's Op. Br. at 35.
[172] *See Layton v. Yankee Caitheness Joint Venture*, 774 F.Supp. 576, 579-80 (D.Nev.1991). *See also* I.R. 186 at 7 (Comm'n Reply Sum.J. Counts 1, 2, 3).
[173] Wind P1's Op. Br. at 32-34, fns 12, 13.

it the Commission's burden in Superior Court—to rebut evidence that the Resort failed to produce.

All that the Resort may do, at this late stage of the proceedings, is to argue that the evidence presented is somehow deficient. But to the contrary, substantial evidence clearly supports the Commission's decision. The Court should reject Wind P1's arguments and affirm the Superior Court's judgment.

VI. EVEN UNDER A *DE NOVO* STANDARD OF REVIEW, THE COMMISSION WOULD STILL BE ENTITLED TO SUMMARY JUDGMENT.

Wind P1 argues that the Superior Court should have used the *de novo* standard of review[174] set forth in *Corp. Comm'n of Ariz. v. People's Freight Line*[175] and *Ariz. Corp. Comm'n v. Reliable Transp. Co.*[176] Even if the Superior Court adopted the wrong standard—which the Commission does not concede—the Commission is still entitled to summary judgment. Even under *de novo* review, Wind P1 cannot show, by a clear and convincing standard, that the Commission's decision is unreasonable.

A. *The Resort's Argument On The Burden Of Proof Is Incorrect*

The Resort in its Opening Brief argues that the Commission did not meet its

---

[174] *Id.* at 27.
[175] *Corp. Comm'n of Ariz. v. People's Freight Line,* 41 Ariz. 158, 16 P.2d 420 (1932).
[176] *Ariz. Corp. Comm'n v. Reliable Transp. Co.,* 86 Ariz. 363, 346 P.2d 1091 (1959).

burden of proof concerning Decision No. 73885.[177] To the contrary, Wind P1 has the burden of proof, in its appeal of Decision No. 73885, to prove by clear and convincing evidence that the decision is unreasonable or unlawful.[178]

B. *The Resort's Summary Judgment Analysis Is Incomplete*

Wind P1 cites *United Bank of Arizona v. Allyn*[179] for the proposition that any evidence or reasonable inference contrary to the moving party's material facts will preclude summary judgment.[180] However, Wind P1 fails to acknowledge *Orme School v. Reeves*,[181] the Arizona Supreme Court's leading decision on summary judgment. *Orme School* is neither cited nor discussed in the opening brief.

In *Orme School*, the Arizona Supreme Court held that motions for directed verdict and motions for summary judgment share the same underlying theory: either motion should be granted if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense.[182] A motion for summary judgment should not be denied simply on the speculation that some slight doubt might turn into a real controversy

---

[177] Wind P1 Op. Br. at 34-49.
[178] *See Tucson Electric*, 132 Ariz. 240, 645 P.2d 231.
[179] *United Bank of Arizona v. Allyn,* 167 Ariz. 191, 805 P.2d 1012 (App. 1990).
[180] Wind P1 Op. Br. at 10.
[181] *Orme School v. Reeves,* 166 Ariz. 301, 802 P.2d 1000 (1990).
[182] *Id.*

in the midst of trial.[183] "[T]he mere existence of a scintilla of evidence is insufficient;" there must instead be evidence on which a jury could reasonably find for the proponent of a claim.[184]

In ruling on a motion for summary judgment, the Superior Court must evaluate the evidence to some extent in order to determine if the necessary quantum of evidence has been produced.[185] Wind P1, to defeat the Commission's motion for summary judgment, has the burden to show by clear and convincing evidence that the Commission's order is unreasonable. To meet this burden, it must present something beyond mere speculation or possible doubt. In light of the facts on the record, this is a showing that Wind P1 cannot achieve.

The Commission has addressed BMSC's odor problems in three separate evidentiary proceedings: the 2005 rate case and Phases I and II of the 2008 rate case. In its cross-motion for summary judgment, the Commission provided numerous factual citations to the records of these proceedings. It also provided the factual stipulation that established (without objection by the Resort) that objectionable odors emanate from the WWTP, that odors from the treatment plant are noticeable on the golf course, and that the WWTP would not comply with

---

[183] *Orme School* at 308, 802 P.2d at 1007.
[184] *Id.* at 309, 802 P.2d at 1008, citing Stemple, *A Distorted Mirror: The Supreme Court's Shimmering View of Summary Judgment, Directed Verdict, and the Adjudication Process,* 49 OHIO ST. L.J. 95 (1988).
[185] *Orme School*, 166 Ariz. at 309, 802 P.2d at 1007.

applicable set-back requirements if constructed today. The Commission's record also shows that Wind P1's own witnesses acknowledged the presence of objectionable odors.[186] Finally, the record before the Commission contains over 500 customer complaints about odors.[187]

Wind P1, by contrast, refers to "evidence" that is either not evidence at all or is completely lacking in any probative value. Under these circumstances, the Commission is entitled to summary judgment, even under the *de novo* standard proposed by Wind P1.

C. *This Court Should Disregard Wind P1's Citations To The Owens Affidavit*

Wind P1's "facts" each depend, for the most part, on the inadmissible Owens affidavit. Wind P1's citations to this inadmissible material do not create disputed issues of fact. A motion for summary judgment must demonstrate *by admissible evidence* that a party has met its burden of proof and that it is entitled to judgment as a matter of law. *See Wells Fargo Bank, N.A. v. Allen,* 231 Ariz. 209, 213, ¶17, 292 P.3d 195,199 (App.2012). Wind P1's citations to the Owens affidavit do not meet this standard.

---

[186] I.R. 118, C.R. B-9 at 63:13-16 **(App. 246)**, 66:5-11 **(App. 247)**, 83:16-18 **(App. 248)**, 95-96 **(App. 250-51)**; I.R. 114, C.R. A-296 at 44 **(App. 162)**(Decision 73885).

[187] I.R. 114, C.R. A-296 at 19, *see also* fn 9 **(App. 137)**.

The affidavit instead highlights the paucity of the material that Wind P1 presented, both before the Commission and in the Superior Court. The Owens affidavit is replete with statements about what Mr. Owens did not do, could not conclude, or did not determine. Even if the affidavit were admissible, these kinds of assertions do not establish a dispute of material fact. *See Modular Mining Systems, Inc. v. Jigsaw Technologies, Inc.*, 221 Ariz. 515, 520, ¶15, 212 P.3d 853, 858 (App. 2009) (noting that statements indicating a need for additional research or further discovery do not demonstrate the existence of a dispute of fact precluding summary judgment).

D. *Wind P1 Cannot Meet The "Clear And Convincing" Standard Set Forth In A.R.S. § 40-254(E).*

Wind P1 cannot present the quantum of evidence necessary to defeat the Commission's motion for summary judgment. Such a showing is not possible on this record, because the quantum of evidence supporting the Commission's decision is too great, and Wind P1's evidence, by contrast, is too paltry. In other words, even under Wind P1's *de novo* standard, it cannot produce facts of sufficient probative value—under a clear and convincing standard—to allow the trier of fact to find for Wind P1.

Wind P1 repeatedly relies on the *absence* of evidence as the source for its alleged disputes of fact. These assertions, however, fail to meet Wind P1's burden, which is to *produce evidence* demonstrating a genuine issue of fact. *See id.* This

principle is illustrated in *Borders Online LLC v. State Bd. Of Equalization.*[188] In that case, the plaintiff had argued that there was no evidence regarding several issues of material fact. The court, however, found that a party "cannot simply point to an absence of evidence to avoid summary judgment; rather, once a defendant has made a *prima facie* showing, the plaintiff must then set forth the specific facts showing that a triable issue of material fact exists."[189]

Wind P1 also engages in a series of sheer speculations, which it attempts to characterize as "reasonable inferences." These musings, however, are not really connected to the record in any reasonable way. For example, Wind P1 speculates that the residents' complaints may have stemmed from the WWTP's "poor reputation," their concerns about their property values, or "animosity arising from . . . [the WWTP's] checkered past."[190] There is no specific citation to the record to support these possibilities. They are the type of mere speculation or doubt that will not suffice to preclude summary judgment. *See Boomer v. Frank,* 196 Ariz. 55, 58, ¶8, 993 P.2d 456, 459 (App.1999); *Allyn,* 167 Ariz. at 195, 805 P.2d at 1016.

When one examines the respective statements of fact filed in the Superior Court (by the Commission, Wind P1, and the other parties), it becomes apparent that Wind P1 is, in reality, arguing that the evidence before the Commission was

---

[188] *Borders Online LLC v. State Bd. Of Equalization,* 29 Cal. Rptr. 3d 176, 129 Cal. App.4th 1179 (2005).
[189] *Id.*
[190] Wind P1's Op. Br. at 44, 47-48.

not sufficient, not that the Commission's Superior Court presentation of that evidence is somehow inaccurate or in dispute. The issue of whether Wind P1 can show, by clear and convincing evidence, that the Commission's decision is unreasonable is more appropriately evaluated as a question of law under the principles of *Grand Canyon Trust.* However, if this Court were to conclude that the Superior Court should have used a *de novo* standard, the Superior Court's judgment should nonetheless be affirmed.

VII. THE SUPERIOR COURT CORRECTLY FOUND THAT THE COMMISSION'S ORDER DOES NOT VIOLATE THE CONTRACT CLAUSES OF THE FEDERAL AND STATE CONSTITUTIONS.

Wind P1 argues that the Superior Court erred in finding that there was no unconstitutional impairment of its Effluent Agreement with BMSC.[191] The Court should reject Wind P1's arguments, which are contrary to established precedent. Although, the Contract Clause "prohibits states from passing laws impairing the obligation of contracts,"[192] it is not absolute, and is subject to the inherent police power of the State to safeguard vital public interests.[193]

The Superior Court applied the following three-part test typically applied by

---

[191] Wind P1 Op. Br. at 49-51.
[192] U.S. Const. art. I; Ariz. Const. art. II, § 25.
[193] *Energy Reserves Group, Inc. v. Kansas Power & Light Co.,* 459 U.S. 400, 410, 103 S.Ct. 697, 703 (1983)("*Energy Reserves Group*") , (*citing Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 434, 54 S.Ct. 231, 238, 78 L.Ed. 413 (1934); *Phelps Dodge Corporation v. Arizona Corp. Comm'n,* 207 Ariz. at 119, ¶101, 83 P.3d at 597.

courts to determine whether a regulation unconstitutionally impairs a contract:

> 1) Has the law operated to substantially impair a contractual relationship?
>
> 2) If so, is there a significant and legitimate public purpose underlying the law?[194]
>
> 3) Once a legitimate public purpose is identified, is the adjustment of the rights and responsibilities of the contracting parties based upon reasonable conditions and of a character appropriate to the public purpose underlying adoption of the law?[195]

The Superior Court correctly found that the Commission's order does not substantially impair Wind P1's Effluent Agreement with BMSC. In finding that there was no substantial impairment, the Superior Court correctly relied upon an express provision in the parties' contract providing for termination in the event of regulatory action that prevents operation of the plant:

> The obligations of [Black Mountain] ... shall terminate if physical conditions at the [Plant] or any laws, regulations, orders or other regulatory requirements prevent or materially limit the operation of the [Plant] or render the operation of such plant uneconomic.[196]

The Superior Court found that, under this provision in the Effluent Agreement, the parties clearly "contemplated that the Plant could be closed, the Resort's professed surprise by the 'unprecedented' closure order

---

[194] *Energy Reserves Group,* 459 U.S. at 411-412, 103 S.Ct. at 704(*citing to Allied Structural Steel Co. v. Spannaus.*, 438 U.S. 234, 247- 249, 98 S.Ct. 2716, 2723-2725)("such as remedying of a broad and general social and economic problem").
[195] *See Energy Reserves Group*, 459 U.S at 411-12, 103 S.Ct. at 704; *See also Phelps Dodge Corp.*, 207 Ariz. 95, 83 P.3d 573.
[196] I.R. 125, C.R. C-44, attach. A at 5 ¶ 6 **(App. 201)**(Effluent Agreement).

notwithstanding."[197] State regulation that restricts a party to gains it reasonably expected from the contract does not constitute substantial impairment.[198] In finding no substantial impairment, the Superior Court also found it significant that Wind P1 and BMSC are operating in a heavily regulated industry, another factor that courts consider in assessing impairment.[199]

Wind P1 argues that the Superior Court misapplied the *Energy Reserves* precedent.[200] Wind P1 argues that the Superior Court relied on the fact that the parties operate in a heavily regulated industry to "legally limit" the parties' reasonable expectations of full contract performance. This argument misconstrues the Superior Court's order. There is nothing in the Superior Court's order to suggest that it viewed this consideration as limiting the parties' expectations of full performance of the agreement. The Superior Court was allowed to consider this factor in determining the degree of impairment, which is exactly what the Superior

---

[197] I.R 197 at 6. *See* also *Energy Reserves Group*, 459 U.S. 400, 416, 103 S.Ct. 697, 707. ("Moreover, the contracts expressly recognize the existence of extensive regulation by providing that any contractual terms are subject to relevant present and future state and federal law. This latter provision could be interpreted to incorporate all future state price regulation, and dispose of the Contract Clause claim.") *See also Baker v. Arizona Department of Revenue*, 209 Ariz. 561, 105 P.3d 1180 (App. 2005), *citing In re Dobert*, 192 Ariz. 248, 253, 963 P.2d 327, 332 (App.1998)("because a party lacked any reasonable expectation that her beneficiary status would continue, her interest in remaining the designated beneficiary was not substantially impaired by a statute's revocation provision").
[198] *See Robson Ranch Quail Creek, LLC v. Pima County*, 215 Ariz. 545, 552, ¶28, 161 P.3d 588, 595 (App.2007).
[199] *Energy Reserves Group*, 459 U.S. at 411, 103 S.Ct. at 704.
[200] *Id.*

Court did.[201]

Wind P1 correctly points out that the Commission's order is case-specific and is limited to the WWTP. This factor actually provides further support for the Superior Court's rejection of Wind P1's claim. The Contract Clause has been held to apply only to legislative action, not to administrative acts. *See Jamaica Ash & Rubbish Removal Co. v. Ferguson,* 85 F.Supp.2d 174, 183 (E.D.N.Y.2000). Legislation has been defined as the power to make laws or rules. *See id.* The Commission's order in this case is not a rulemaking order, and is therefore more adjudicatory in nature. It "bears none of the hallmarks of a legislative act"; it is, instead, the "application of the law, not the creation of a law." *See id; see also Barrows v. Jackson,* 346 U.S. 249, 260, 73 S.Ct. 1031, 97 L.Ed. 1586 (1953). As the mere vehicle for the application of existing law, the Commission's order does not create new regulations, and therefore cannot be said to create legislation that impairs a contract. Under these circumstances, the Superior Court correctly determined that there is no contract impairment.

Wind P1 next suggests that there are disputes of material fact that preclude summary judgment, arguing that it has established the impairment of its "reasonable expectations" under the Effluent Agreement. Specifically, Wind P1 claims that it did not expect the Commission to regulate the WWTP in this manner,

---

[201] *Energy Reserves Group*, 459 U.S. at 411, 103 S.Ct. at 704.

because it has not done so in the past and because the applicable statutes and regulations provide "no advance warning" that the WWTP is subject to such oversight.[202] By this argument, Wind P1 essentially claims that it expected the WWTP to be immune from government regulation. Such an expectation is simply not reasonable. The language of the Effluent Agreement clearly and unambiguously provides that BMSC's obligation to continue to operate the WWTP is subject to regulatory requirements, such as a requirement to discontinue operation. And as a matter of law, the Commission clearly has the authority to oversee the facilities of public service corporations and to remediate problems with those facilities.[203]

Even if Wind P1 were correct that the court should have found impairment, the end result is still the same under the remaining two prongs of the Contract Clause analysis. The Commission identified a significant and legitimate purpose to justify its order, as required under prong two: protecting residents from objectionable sewer odors which were of a long-standing and ongoing nature. The Commission's order was also reasonable and appropriate in light of its underlying public purpose, as required under the third prong of the test. As the Commission stated in its order,

---

[202] Wind P1's Op. Br. at 54.
[203] *See supra*, Argument II.

> [o]ur actions over the years to address ongoing odor complaints were taken in a manner that reflects the least amount of governmental intrusion possible on the Company's operations, while at the same time attempting to provide for the convenience, comfort and safety of the Company's customers by protecting them from noises and noxious odors that have pervaded the community for years.[204]

Courts defer to legislative judgment about the necessity and reasonableness of social and economic regulations.[205]

Finally, Wind P1 argues that the Commission was merely trying to provide a benefit to BMSC at Wind P1's expense.[206] Under prong two of the standard, which the Court was not required to consider in this case, [t]he critical inquiry is whether the "State is exercising its police power, rather than providing a benefit to special interests."[207] Decision No. 73885 clearly demonstrates the Commission's intent to resolve the offensive odor problems experienced by residents for many years, and was therefore a reasonable exercise of the State's police power. The Superior Court correctly granted the Commission's Motion for Summary Judgment on the Contract Clause claim, and this Court should affirm that determination.

VIII. THE RESORT SHOULD NOT BE AWARDED ATTORNEY'S FEES.

The Resort requests an award of attorney's fees pursuant to A.R.S. §§ 12-

---

[204] I.R. 114, C.R. A-296 at 46 **(App. 164)**(Decision 73885).
[205] *Energy Reserves Group*, 459 U.S. 400, 412-13, 103 S.Ct. 697, 705.
[206] Wind P1 Op. Br. at 53.
[207] *Liberty Mutual Insurance Company*, 868 F.Supp. 425, 433 (R.I. 1994)(*citing Energy Reserves Group*, 459 U.S. at 412, 103 S.Ct. at 705 ("The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests.")

341, -342, -348(A) and "other applicable law."[208] The Resort should not be granted attorney's fees and costs because it cannot be the prevailing party. Even if it were to prevail, however, it would not be entitled to attorney's fees.

A. *A.R.S. § 12-348(A)(2) Precludes An Award Of Attorney's Fees For Cases Related To Rates*

A.R.S. § 12-348(A)(2) precludes a fee award for any "action arising from a proceeding . . . in which the role of this state . . . was . . . to establish or fix a rate." Decision No. 73885 was a rate case. As a result, the Resort is not entitled to recovery of fees and expenses pursuant to this statute.[209]

B. *A.R.S. § 12-348(A)(2) Precludes An Award Of Attorney's Fees For Cases Decided Under A de novo Standard Of Review*

The attorney's fees statute, A.R.S. § 12-348(A)(2), does not apply to proceedings in which the Superior Court reviews agency action under a *de novo* standard of review.[210] If the Resort were to prevail in this matter, and if the Court were to adopt a *de novo* standard of review, the Resort would not be entitled to an award of attorney's fees.

C. *Attorney's Fees Are Not Available Under A.R.S. § 12-328(A)(2) Unless Wind P1 Prevails On The Merits*

If this Court were to conclude that Wind P1 is entitled to a trial in Superior

---

[208] Wind P1's Op. Br. at 55.
[209] *See Phelps Dodge Corp..*, 207 Ariz. at 127, 83 P.3d at 605.
[210] *See Cyprus Bagdad Copper Corp. v. Ariz. Dept. of Revenue,* 188 Ariz. 345, 349, 933 P.2d 923, 927 (App.1997).

Court, the ruling would be procedural in nature, rather than an adjudication on the merits. Procedural matters do not trigger an award of attorney's fees under A.R.S. § 40-328(A)(2). *See Columbia Parcar Corp. v. Arizona Dept. of Transp.,* 193 Ariz. 181, 183, ¶13, 971 P.2d 1042, 1044 (1999). "A judgment on the merits is one which is based on legal rights as distinguished from mere matters of practice, procedure, jurisdiction, or form." *Id.* at 184, 971 P.2d at 1045.

D. *Attorney's Fees Are Not Available In This Matter Because The Commission Was Adjudicating A Complaint Between Private Parties*

Just as a trial judge is not assessed attorney's fees if one of his decisions is overturned, the Commission should not be assessed attorney's fees when its involvement in a case is merely to resolve a matter filed before the Commission in its capacity as a forum.[211] For all of these reasons, Wind P1 is not entitled to attorney's fees, even if it were to prevail in this appeal.

CONCLUSION

For the foregoing reasons, this Court should affirm the Superior Court's judgment.

---

[211] *See Cortaro Water Users' Ass'n v. Steiner,* 148 Ariz. 314, 318, 714 P.2d 807, 811 (1986).

RESPECTFULLY SUBMITTED this 6th day of February, 2015.

By /s/ Robin R. Mitchell

Robin R. Mitchell (No. 019213)
Janet F. Wagner (No. 012924)
Maureen A. Scott (No. 012344
Robert W. Geake (No. 009695)
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

ARIZONA COURT OF APPEALS

DIVISION ONE

WIND P1 MORTGAGE BORROWER L.L.C., a Delaware limited liability company, Plaintiff/Appellant, v. ARIZONA CORPORATION COMMISSION, an agency of the State of Arizona; BLACK MOUNTAIN SEWER CORPORATION, an Arizona Corporation; TOWN OF CAREFREE, an Arizona municipal corporation, Defendants/Appellees. THE BOULDERS HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation; Intervenor/Appellee.	Court of Appeals Division One No. 1CA-CV 14-0643 Maricopa County Superior Court No. CV2013-007804

INTERVENOR/APPELLEE BOULDERS HOMEOWNERS ASSOCIATION'S ANSWERING BRIEF

Scott S. Wakefield, State Bar No. 013442

RIDENOUR HIENTON, P.L.L.C.

201 North Central Avenue, Suite 3300

Phoenix, Arizona 85004-1052

(602) 254-9900 (phone); (602) 254-8670 (fax)

swakefield@rhlfirm.com

Attorneys for Intervenor/Appellee The Boulders Homeowners Association

TABLE OF CONTENTS

Page

INTRODUCTION.....4

ARGUMENT.....4

CONCLUSION.....6

TABLE OF CITATIONS

Page

Cases

Ariz. Eastern R. Co. v. State, 19 Ariz. 409, 171 P. 906 (1918) 4, 5

Ariz. Corp. Comm'n v. State ex rel. Woods, 171 Ariz. 286, 830 P.2d 807 (1992) 5

Ethington v. Wright, 66 Ariz. 382, 189 P.2d 209 (1948) 5

Pacific Gas & Electric Co. v. State, 23 Ariz. 81, 201 P. 623 (1921) 5

State ex rel. Corbin v. Ariz. Corp. Comm'n, 174 Ariz. 216, 848 P.2d 301 (App. 1992) 5

State v. Tucson Gas, Electric Light & Power Co., 15 Ariz. 294 (1914) 5

INTRODUCTION

Pursuant to Rule 13(h) of the Arizona Rules of Civil Appellate Procedure, Intervenor/Appellee The Boulders Homeowners Association, an Arizona non-profit corporation ("BHOA") does join in the Answering Brief of Defendant/Appellee Arizona Corporation Commission, as if fully set forth herein. In addition, regarding the Commission's argument that it has constitutionally-based authority to adopt Decision No. 73885 (Commission's Answering Brief Section I.D), BHOA offers the following additional argument.

ARGUMENT

As noted by the Commission, Ariz. Constitution Article XV, Section 3 includes two separate authorizations:

> The corporation commission ***shall*** **have full power to**, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the state for services rendered therein, and **make reasonable rules, regulations and orders**, by which such corporations shall be governed in the transaction of business within the state, ***and may*** prescribe the forms of contracts and the systems of keeping accounts to be used by such corporations in transacting such business, and **make** and enforce reasonable **rules, regulations and orders for the convenience, comfort, and safety,** and the preservation of the health of, the employees and patrons of such corporations; .... (emphasis added).

The two authorizations grant two types of powers: mandatory powers ("shall....") and discretionary powers ("may..."). *See, Ariz. Eastern R. Co. v. State*, 19 Ariz. 409, 413, 171 P. 906, 908 (1918). The authority to make rules, regulations and

orders is mentioned twice, as both a mandatory and a discretionary power. The mandatory authority described in the first part of Section 3 is often described as the Commission's rate making authority. *See, Ariz. Corp. Comm'n v. State ex rel. Woods*, 171 Ariz. 286, 294, 830 P.2d 807, 815 (1992). It is this rate making authority that is the exclusive prerogative of the Commission, and the courts have been careful to protect the Commission's authority over rate making from infringements by other branches. *State v. Tucson Gas Electric Light & Power Co.*, 5 Ariz. 294, 299-301 (1914); *Ethington v. Wright*, 66 Ariz. 382, 189 P.2d 209 (1948); *State ex rel. Corbin v. Ariz. Corp. Comm'n*, 174 Ariz. 216, 848 P.2d 301 (App. 1992). Most of the cases that discuss the Commission's authority concern the Commission's exclusive rate making authority.

The Commission's discretionary, but nonetheless constitutionally-based, authority has received much less attention from the courts. In *Ariz. Eastern R. Co.*, the Arizona Supreme Court held that Article XV, Section 3's grant to the Commission of authority to make rules for the comfort, convenience and safety of patrons is not exclusive, but that such power may also be exercised by the Legislature. 19 Ariz. 409, 415-16, 171 P. 906, 909 (1918). In *Pacific Gas & Electric Co. v. State*, the Supreme Court held that even though the Legislature and the Commission may both have authority to act as to matters affecting comfort,

convenience and safety, the Commission's action would trump any conflicting legislative enactment. 23 Ariz. 81, 201 P. 623 (1921).

Decision No. 73885 advances the public's convenience and comfort, and is therefore within the scope of Commission's authority under the second portion of Article XV, Section 3. Further, if there is a conflict between requirements established by legislative authority (e.g., Arizona Department of Environmental Quality ("ADEQ") exercising delegated legislative authority) and the Commission-established requirement of Decision No. 73885, the Commission's requirement would prevail over that of ADEQ.

CONCLUSION

For the foregoing reasons, this Court should affirm the Superior Court's judgment.

RESPECTFULLY submitted this 6th day of February, 2015.

RIDENOUR HIENTON, P.L.L.C.

By: /s/ Scott S. Wakefield
Scott S. Wakefield
201 North Central Ave., Suite 3300
Phoenix, Arizona 85004-1052
swakefield@rhlfirm.com
Attorneys for Intervenor/Appellee The Boulders Homeowners Association

443939

Kim Hayes

From: TurboCourt Customer Service <CustomerService@TurboCourt.com>
Sent: Friday, February 06, 2015 3:41 PM
To: Diane Barnes; Kim Hayes
Subject: AZTurboCourt E-Filing Courtesy Notification

PLEASE DO NOT REPLY TO THIS EMAIL.

A party in this case requested that you receive an AZTurboCourt Courtesy Notification.

AZTurboCourt Form Set #1337085 has been delivered to Court of Appeals Division 1.

You will be notified when these documents have been processed by the court.

Here are the filing details:
Case Number: CV-14-0643 (Note: If this filing is for case initiation, you will receive a separate notification when the case # is assigned.)
Filed By: Scott S Wakefield
AZTurboCourt Form Set: #1337085
Delivery Date and Time: Feb 06, 2015 3:41 PM MST

Forms:
Summary Sheet

Attached Documents:
BRIEF - Answering: Intervenor/Appellee Boulders Homeowners Association's Answering Brief
Certificate of Compliance: Certificate of Compliance for Intervenor/Appellee Boulders Homeowners Association's Answering Brief
Certificate of Service: Certificate of Service for Intervenor/Appellee Boulders Homeowners Association's Answering Brief

ARIZONA COURT OF APPEALS

DIVISION ONE

WIND P1 MORTGAGE BORROWER L.L.C., a Delaware limited liability company, Plaintiff/Appellant, v. ARIZONA CORPORATION COMMISSION, an agency of the State of Arizona; BLACK MOUNTAIN SEWER CORPORATION, an Arizona Corporation; TOWN OF CAREFREE, an Arizona municipal corporation, Defendants/Appellees. THE BOULDERS HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation; Intervenor/Appellee.	Court of Appeals Division One No. 1CA-CV 14-0643 Maricopa County Superior Court No. CV2013-007804

CERTIFICATE OF COMPLIANCE FOR INTERVENOR/APPELLEE BOULDERS HOMEOWNERS ASSOCIATION'S ANSWERING BRIEF

Scott S. Wakefield, State Bar No. 013442

RIDENOUR HIENTON, P.L.L.C.

201 North Central Avenue, Suite 3300

Phoenix, Arizona 85004-1052

(602) 254-9900 (phone); (602) 254-8670 (fax)

swakefield@rhlfirm.com

Attorneys for Intervenor/Appellee The Boulders Homeowners Association

1. This certificate of compliance concerns:

[√] A brief, and is submitted under Rule 14(a)(5)

[] An accelerated brief, and is submitted under Rule 29(a)

[] A motion for reconsideration, or a response to a motion for reconsideration, and is submitted under Rule 22(e)

[] A petition or cross-petition for review, a response to a petition or cross-petition, or a combined response and cross-petition, and is submitted under Rule 23(h)

[] An amicus curiae brief, and is submitted under Rule 16(b)(4)

2. The undersigned certifies that the brief/motion for reconsideration/petition or cross-petition for review to which this Certificate is attached uses type of at least 14 points, is double-spaced, and contains 578 words.

///

///

///

///

///

///

///

3. The document to which this Certificate is attached [√] does not, or [] does exceed the word limit that is set by Rule 14, Rule 22, Rule 23, or Rule 29, as applicable.

RIDENOUR HIENTON, P.L.L.C.

By: /s/ Scott S. Wakefield
Scott S. Wakefield
201 North Central Ave., Suite 3300
Phoenix, Arizona 85004-1052
swakefield@rhlfirm.com
Attorneys for Intervenor/Appellee The Boulders Homeowners Association

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

WIND P1 MORTGAGE BORROWER, L.L.C., a Delaware limited liability company, Plaintiff/Appellant, v. ARIZONA CORPORATION COMMISSION, an agency of the State of Arizona; BLACK MOUNTAIN SEWER CORPORATION, an Arizona corporation; TOWN OF CAREFREE, an Arizona municipal corporation, Defendants/Appellees. THE BOULDERS HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation, Intervenor/Appellee.	Court of Appeals No. 1 CA-CV 14-0643 Maricopa County Superior Court No. CV2013-007804

ANSWERING BRIEF

SHAPIRO LAW FIRM, P.C.
Jay L. Shapiro (No. 014650)
1819 E. Morten Avenue, Suite 280
Phoenix, AZ 85020
Telephone: (602) 559-9575
Email: jay@shapslawaz.com

Attorneys for Defendant/Appellee
Black Mountain Sewer Corporation

TABLE OF CONTENTS

PAGE

INTRODUCTION 8

ISSUES PRESENTED 12

COMBINED STATEMENT OF THE CASE AND FACTS 13

I. The Administrative Record Before the Superior Court. 14

A. Commission Docket No. SW-02361A-08-0609 – Phase 1. 14

B. Commission Docket No. SW-02361A-08-0609 – Phase 2. 17

II. The Superior Court's Review 21

ARGUMENT 23

I. Standard of Review. 23

II. The Superior Court Correctly Held that the Commission Has Statutory Authority to Direct a Public Service Corporation to Make Additions, Improvements, or Changes for the Public Convenience. 24

A. The Commission Has Statutory Authority to Order Closure of the Plant in this Case. 24

B. The Commission Was Not Regulating Nuisances, and It Did Not Invade the Province of Other Agencies of the State. 28

III. The Superior Court Applied the Correct Standard of Review to the Phase 2 Decision. 29

A. The Resort Failed to Show by Clear and Convincing Evidence that the Decision was Unlawful, Unreasonable, or Unsupported by Evidence 30

PAGE

B. The Owens Affidavit Missed the Point and was Properly Rejected by the Superior Court....35

C. The Resort's Disagreements with Certain Facts are not the Same as Material Facts in Dispute....36

IV. The Superior Court Correctly Held that There Was No Unconstitutional Impairment of Contract....37

CONCLUSION....41

TABLE OF AUTHORITIES

PAGE

CASES

Arizona Bd. of Regents v. Superior Court, 106 Ariz. 430, 477 P.2d 520 (1970) 32

Arizona Corp. Comm'n v. Citizens Util. Co., 120 Ariz. 184, 584 P.2d 1175 (App. 1978) 31

Ariz. Water Co. v. Ariz. Corp. Comm'n, 161 Ariz. 389, 778 P.2d 1285, (App. 1989) 26

Babe Invs. v. Arizona Corp. Comm'n, 189 Ariz. 147, 939 P.2d 425 (App. 1997) 30

Baca v. Ariz. Dep't of Econ. Sec., 191 Ariz. 43, 951 P.2d 1235 (App. 1997) 33

Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837, 844 (1984) 31

City of Phoenix v. Johnson, 51 Ariz. 115, 75 P.2d 30 (1938) 28

Croft v. Arizona State Bd. of Dental Examiners, 157 Ariz. 203, 755 P.2d 1191 (App. 1988) 32

DeGroot v. Arizona Racing Comm'n, 141 Ariz. 331, 686 P.2d 1301 (App. 1984) 32

Eaton v. AHCCCS, 206 Ariz. 430, 79 P.3d 1044 (App. 2003) 32

Employers Mut. Cas. Co. v. DGG & CAR, Inc., 218 Ariz. 262, 183 P.3d 513 (2008) 39

Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400 (1983) 38

PAGE

Gaveck v. Ariz. State Bd. of Podiatry Examiners, 222 Ariz. 433, 215 P.3d 1114 (App. 2009) 32, 33

Grand Canyon Trust v. Ariz. Corp. Comm'n, 210 Ariz. 30, 107 P.3d 356 (App. 2005) ..... *passim*

Havasu Heights Ranch & Dev. Corp. v. Desert Valley Wood Prods., Inc., 167 Ariz. 383, 807 P.2d 1119 (App. 1990) 31

Liberty Mut. Ins. Co. v. Whitehouse, 868 F. Supp. 425 (D.R.I. 1994) 38

Mining Inv. Group, LLC v. Roberts, 217 Ariz. 635, 177 P.3d 1207 (App. 2008) 39

Roberson v. Wal-Mart Stores, Inc., 202 Ariz. 286, 44 P.3d 164 (App. 2002) 39

S.E.C. v. Chenery Corp., 332 U.S. 194, 202 (1947) 27

Tucson Elec. Power Co. v. Ariz. Corp. Comm'n, 132 Ariz. 240, 645 P.2d 231 (1982) 23, 30, 31, 36

U.S. Parking Sys. v. City of Phoenix, 160 Ariz. 210, 772 P.2d 33 (App. 1989) 33

Webster v. State Bd. of Regents, 123 Ariz. 363, 599 P.2d 816 (App. 1979) 32

W. States Petroleum, Inc. v. Ariz. Dept. of Env't. Quality, 232 Ariz. 252, 304 P.3d 539 (App. 2013) 32

CONSTITUTIONS

ARIZ. CONST. art. 15, § 17 21

PAGE

STATUTES

A.R.S. § 40-254.....21, 30, 34, 35

A.R.S. § 40-254(E).....23, 24, 30

A.R.S. § 40-321(A).....25, 27, 29, 33

A.R.S. § 40-331(A).....25, 27, 29, 33

A.R.S. § 40-360.07(B).....34

A.R.S. § 40-361(B).....25, 27, 29, 33

ELECTRONIC FORMAT

PURSUANT TO RULE 13, ARIZ. R. CIV. APP. P.

Pursuant to Rule 13 and Rule 13.1, Ariz. R. Civ. App. P., the Table of Contents to this Answering Brief is bookmarked at the referenced page. Additionally, this brief has been formatted with bookmarks to items in the Appendix to Answering Brief ("APP") where the items are cited. The Appendix Table of Contents is also bookmarked at the referenced appendix page number.

INTRODUCTION

The Boulders East wastewater treatment plant ("WWTP" or "Plant") has been in the same location in Carefree, Arizona since the 1960s. Wind P1 Mortgage Borrower L.L.C.'s ("Resort") predecessors-in-interest built the Plant and two golf courses near the Plant and then developed the residential community around them. The Plant is now adjacent to one of the golf courses and less than 100 feet from three homes, less than 300 feet from ten homes, and within 1000 feet of 200-300 homes. The Resort's predecessors-in-interest built the Plant and golf courses, and then developed the residential community around them.

Liberty Utilities (Black Mountain Sewer) Corp. ("Liberty (BMSC)") has owned and operated the Plant for nearly 15 years.[1] Liberty (BMSC) is an Arizona public service corporation that provides wastewater utility service to approximately 2100 customers in Carefree and portions of Scottsdale, Arizona. As a public service corporation, Liberty (BMSC) is regulated by the Arizona Corporation Commission ("Commission").

The WWTP treats 120,000 gallons per day (gpd) of wastewater flows from residences and businesses in Liberty (BMSC)'s certificated service territory. Additional wastewater from its customers is collected and delivered by Liberty

---

[1] Black Mountain Sewer Corporation formally changed its name to Liberty Utilities (Black Mountain Sewer) Corp. in June 2013.

(BMSC) to the City of Scottsdale for treatment. Wastewater collected and delivered to the WWTP is treated and reclaimed as "A" quality effluent and then delivered to the Resort for use in irrigating its golf courses pursuant to an agreement between the Resort and Liberty (BMSC). It is undisputed that Liberty (BMSC) has operated the Plant in full compliance with all applicable laws and regulations governing the operation of a water reclamation facility.

Liberty (BMSC) has made significant capital improvements to the sewer collection system in and around the Boulders community. Following a Commission rate order in 2006, Liberty (BMSC) eliminated a lift station, a facility used to force wastewater uphill and a known source of sewer odors. Liberty (BMSC) also implemented other upgrades to minimize odors produced from the sewer collection system. Liberty (BMSC) also made substantial improvements to the WWTP to minimize release of sewer odors and noise from the Plant's operation. Significant capital improvements to the Plant included purchase and installation of an odor scrubber, and heavy rubber matting over grates to seal off areas of the Plant where treatment takes place.

While such improvements substantially reduced odors from the Plant, one thing has not changed – the WWTP is located in the middle of the Boulders community, on the golf course and near homes. The issue in this case has always been about location and Liberty (BMSC)'s continued compliance with all legal and

industry standards will not change the Plant's location, a location that the Commission twice has concluded is no longer consistent with the public interest.

In the proceedings before the Commission, the Resort was given every opportunity to present its case and the Commission determined that the public interest is best served by closure of the Plant. At hearing, the Resort presented evidence and witnesses, and challenged the evidence presented by the other parties. After the hearing, the Resort filed closing briefs, arguing its case to the Administrative Law Judge ("ALJ") before he made a Plant closure recommendation to the Commission, and the Resort then presented its case before the full Commission at open meeting.

The Commission issued its Phase 2 Decision on May 8, 2013,[2] concluding, "due to its location, the Boulders WWTP can no longer be operated in a manner

---

[2] "Phase 2 Decision" refers to *In the Matter of Black Mountain Sewer Corp., an Ariz. Corp., for a Determination of the Fair Value of Its Utility Plant and Prop. and for Increases in its Rates and Charges for Utility Servs. Based Thereon*, Docket No. SW-02361A-08-0609, Decision No. 73885, Phase 2 Opinion and Order, 2013 WL 2420850 (Ariz. Corp. Comm'n May 8, 2013). The Phase 2 Decision is included in the Appendix to Answering Brief (APP004-055). "Phase 1 Decision" refers to *In the Matter of the Application of Black Mountain Sewer Corp., an Ariz. Corp., for a Determination of the Fair Value of Its Utility Plant and Prop. and for Increases in its Rates and Charges for Utility Servs. Based Thereon*, Docket No. SW-02361A-08-0609, Decision No. 71865, Phase 1 Opinion and Order, 2013 WL 2420850 (Ariz. Corp. Comm'n Sept. 1, 2010). The Phase 1 Decision is included in the Appendix to Answering Brief (APP058-127).

consistent with the public interest." EIR 141, Ex. 3 at 50:7-8 [APP053].[3] Accordingly, the Commission ordered Liberty (BMSC) to close the Plant. *Id.* [APP053]. The Resort then appealed to Superior Court, arguing that the Commission did not have the authority to order Liberty (BMSC) to close the Plant. The Superior Court disagreed. After another round of briefing and argument, the Superior Court granted summary judgment against the Resort finding that it had failed to meet its burden to show by clear and convincing evidence that the Phase 2 Decision was unlawful, unreasonable, or otherwise unsupported by substantial evidence.[4]

---

[3] "EIR" means the Clerk's Electronic Index of Record for Maricopa County Superior Court Case No. CV2013-007804, dated Oct. 14, 2014.

[4] The Resort has also sought and been denied relief by the Arizona Supreme Court with respect to the Commission's order. *Wind P1 Mortgage Borrower v. Gary Pierce, et al.*, No. CV-13-0236-SA (Ariz. Aug. 27, 2013) (order declining to accept special action jurisdiction).

ISSUES PRESENTED

Did the trial court correctly conclude that the Resort failed to meet its burden to show by clear and convincing evidence that the Commission's order that Liberty (BMSC) close the WWTP was unreasonable, unlawful, or unsupported by substantial evidence?

COMBINED STATEMENT OF THE CASE AND FACTS

The Commission has twice determined that Liberty (BMSC), a public service corporation subject to Commission authority, should close the WWTP. EIR 142, Ex. 10 at 64:5-9 [APP123]; EIR 141, Ex. 3 at 50:7-11 [APP053]. The Commission properly reasoned that even though Liberty (BMSC) operates the Plant in compliance with all applicable laws and has taken reasonable steps to address noises and odors emanating from the Plant, the Plant's location compels that it be closed. EIR 141, Ex. 3 at 44 [APP047]; *see also* EIR 141, Ex. 3 at 18:14-15 [APP021] ("complaints regarding odors and noises at the [P]lant are due to its proximity to homes rather than mechanical problems").

Given the repeated and ongoing complaints of residents living near the Plant, the Commission recognized that the consumers serviced by the Plant no longer wanted it located in their community and were willing to pay for its removal. EIR 141, Ex. 3 at 45-46 [APP048-049]. In no uncertain terms, the Commission determined that the public interest and convenience of the customers and the community were best served by closure of the Plant. *See, e.g.,* IR 141, Ex. 3 at 47:13-18 [APP050]. It is this finding by the Commission that the Resort has challenged, and which the Superior Court upheld. EIR 19; EIR 197; EIR 204.

I. The Administrative Record Before the Superior Court.

The Commission concluded its resolution of the issues in the Phase 2 Decision with the following declaration: "Our order in this proceeding to move forward with closure of the treatment plant is hopefully the final step in this lengthy process and will provide relief for customers in the Boulders community." EIR 141, Ex. 3 at 46:12-14 [APP049]. A review of the "lengthy process" that precedes this appeal explains the Commission's statement.

A. Commission Docket No. SW-02361A-08-0609 – Phase 1.

Liberty (BMSC) is an Arizona public service corporation providing sewage treatment service to approximately 2,100 primarily residential customers in and around Carefree, Arizona, under a certificate of convenience and necessity issued by the Commission. ERI 142, Ex. 10 at 2:3-6 [APP061]. Liberty (BMSC) owns and operates a single wastewater treatment facility, the Plant, formally known as the Boulders East Wastewater Treatment Facility. *See* EIR 141, Ex. 3 at 48:7-8 [APP051].

The Plant was built more than 40 years ago and is located in the middle of the Boulders community on one of the Resort's golf courses. EIR 141, Ex. 3 at 5:25-26, 48:7-8 [APP008, APP051]. It is situated less than 100 feet from three homes and within 1,000 feet of approximately 300 homes. EIR 141, Ex. 3 at 48:12-13 [APP051]. The Plant treats up to 120,000 gallons of wastewater each day, which

represents roughly 20 percent of Liberty (BMSC)'s treatment capacity. EIR 141, Ex. 3 at 48:9-10 [APP051]. The remainder of that daily sewer flow is delivered to the City of Scottsdale for treatment. EIR 141, Ex. 3 at 48:10-11 [APP051]. The reclaimed water, also known as effluent, is delivered to the Resort under an Effluent Delivery Agreement between the Resort and Liberty (BMSC). EIR 142, Ex. 5 [APP131-143].

On December 19, 2008, Liberty (BMSC) filed a rate case application requesting that the Commission establish new rates for its services. EIR 142, Ex. 10 at 61:10-11 [APP120]. The Boulders Homeowners Association ("BHOA") intervened in that rate case in April 2009 (EIR 142, Ex. 10 at 2:14-15 [APP061]), in an effort to address odor issues relating to operation of the Plant and potential closure of the Plant. Thereafter, Liberty (BMSC) and BHOA entered into settlement negotiations and, on September 17, 2009, reached an agreement concerning closure of the Plant (the "Closure Agreement"). EIR 142, Ex. 10 at 42:8-43:6 [APP101-102]; EIR 143, Ex. 12.

Among other things, the Closure Agreement conditioned the Plant closure on: (1) an amendment to Liberty (BMSC)'s treatment agreement with the City of Scottsdale, (2) termination of Liberty (BMSC)'s obligation to deliver effluent from the Plant to the Resort under the parties' effluent delivery contract, and (3) approval of a rate surcharge by the Commission to address Liberty (BMSC)'s closure costs.

See EIR 141, Ex. 3 at 11:14–12:1 [APP014-015]. The Closure Agreement was submitted to the Commission in Liberty (BMSC)'s rate case. *See* EIR 142, Ex. 10 at 42:8-43:6 [APP101-102].

The Commission found that the Closure Agreement represented a "reasonable resolution of the current odor concerns expressed by hundreds of [Liberty (BMSC)] customers." EIR 142, Ex. 10 at 49:17-18 [APP108]. To facilitate Liberty (BMSC)'s funding and recovery of costs associated with closure of the Plant, the Commission approved a special rate design mechanism. As the Commission explained:

> We believe that allowance of a reasonable surcharge to permit [Liberty (BMSC)] to collect legitimate capital costs, for the narrow and explicit purpose of affording relief from noxious odors, is within the Commission's constitutional and statutory authority and is consistent with our obligation to balance the interests of public service corporations and their customers. We do not believe that being responsive to the concerns expressed by customers in this case will open the floodgates to a spate of adjustment mechanism applications, given the unique characteristics of this case. There is no other instance recounted in the record in which customers of a company have so overwhelmingly supported a solution to a quality of life issue, as well as a willingness to pay a reasonable charge to bring that solution to fruition.

EIR 142, Ex. 10 at 53:7-15 [APP112].

Following the Phase 1 Decision, representatives from Liberty (BMSC), BHOA and the Town of Carefree met with representatives of the Resort to discuss closure of the Plant. EIR 141, Ex. 3 at 24:20-22 [APP027]. Plant closure would mean that the effluent from the Plant would no longer be available to the Resort,

and alternatives to the effluent supplied by Liberty (BMSC) to the Resort were considered over the next year. EIR 141, Ex. 3 at 24:22–25:7 [APP027-028]. No resolution was ever reached.

B. Commission Docket No. SW-02361A-08-0609 – Phase 2.

Tired of waiting for Liberty (BMSC) and the Resort to agree upon termination of effluent deliveries from the Plant, BHOA sought relief from the Commission on June 15, 2011. EIR 141, Ex. 3 at 47:6-9 [APP050]. Specifically, BHOA requested that the Commission reopen the rate case decision to order closure of the Plant. *See id.* [APP050]. On January 24, 2012, the Commission reopened Liberty (BMSC)'s rate case to consider the additional question of whether to order Liberty (BMSC) to close the Plant. EIR 141, Ex. 3 at 47:20-22 [APP050].

The Resort intervened in the second phase of the rate case (EIR 141, Ex. 3 at 47:10-12 [APP050]), and an evidentiary hearing was held before the same ALJ who had presided over the first phase. EIR 141, Ex. 3 at 1:13, 47:27-28 [APP004, APP050]. All parties were provided the opportunity to conduct discovery, pre-file testimony, cross-examine witnesses, and present other evidence at the hearing. *See* EIR 141, Ex. 3 at 3:22–4:4 [APP006-007]. The parties to the Phase 2 proceedings agreed that Liberty (BMSC) had operated the Plant in compliance with all applicable laws and regulations, and had made substantial improvements to decrease odors and noise from the Plant. EIR 141, Ex. 3 at 44:6-28 [APP047].

After trial, and prior to open meeting before the Commission, the parties filed closing briefs, citing to the hearing transcripts, exhibits, deposition testimony, and other evidence. *See, e.g.*, EIR 141, Ex. 3 at 3:16-17, 4:3-18, 48:1-4 [APP006, APP007, APP051]. Applying the law and weighing the evidence, including the existing record in the rate case docket, the Commission carefully considered whether to order closure of the Plant. EIR 141, Ex. 3 at 37:20-46:14 [APP040-049].

The Commission relied on, in part, several key facts, which were entered into evidence by stipulation – a stipulation unopposed by the Resort:

- Complaints have been received that odors from the Treatment Plant are noticeable by and objectionable to Boulders residents. Such residents also have complained that odors from the Treatment Plant can be irritating and sometimes interfere with residents' opportunity to leave their windows open to enjoy fresh air in the immediate vicinity of the facility.
- Complaints from residents regarding odors from the Treatment Plant appear more frequent from October through April.
- Since Decision No. 71865 was issued, [Liberty (BMSC)] has received and logged 23 odor complaints (including a lawsuit filed in Maricopa County Superior Court by a resident living adjacent to the Treatment Plant).

- A portion of the north Boulders golf course is adjacent to the Treatment Plant. Golfers playing the north Boulders golf course have also complained at times of noticeable odors as they pass by the Treatment Plant.
- The Treatment Plant is operated in full compliance with all applicable law and industry standards. In addition, Liberty (BMSC) has taken steps to minimize odors and noises from the operation of the facility, including, among other improvements, the installation of an odor-scrubber.
- It is not feasible to completely eliminate odor and noise from the operation of the Treatment Plant.

EIR 141, Ex. 3 at 44:10-28 [APP047].

The Resort did not object to the foregoing evidence. EIR 141, Ex. 3 at 45:1-2 [APP048]. Moreover, the Resort had ample opportunity to submit its own evidence, including expert witness testimony, to rebut the fact that the Plant's location remains an intractable problem, but did not do so. *See* EIR 141, Ex. 3 at 44:3-28 [APP047]. Nor did the Resort produce evidence that other reasonable odor and noise control measures were available.

In addition to the unopposed stipulated facts set forth above, the Commission noted that it had received more than 500 customer comments during the first phase

of Liberty (BMSC)'s rate case. EIR 141, Ex. 3 at 45:3-4 [APP048]. Additionally, between November 2012 and January 2013, the Commission received more than 30 additional public comment letters requesting closure of the Plant. EIR 141, Ex. 3 at 45:6-7 [APP048]. The Town of Carefree also passed a resolution supporting closure of the Plant, which was filed with the Commission, and the Town urged the same during the public comment portion of the Commission's open meeting. *See* EIR 141, Ex. 3 at 19:8-11, 47:15-19 [APP022, APP050].

The Commission reached the well-reasoned conclusion that closure of the Plant served the public interest, determining that "[t]he record supports a finding that due to its location, the Boulders WWTP can no longer be operated in a manner consistent with the public interest[.]" EIR 141, Ex. 3 at 49:16-17 [APP052]. Pursuant to its statutory authority, the Commission ordered Liberty (BMSC) to close the Plant, finding that such closure was "necessary to protect the health and safety of the public, and provide for the comfort and convenience of customers." EIR 141, Ex. 3 at 50:1-5 [APP053]. The Resort's two special actions to the Supreme Court, and its appeal to the Superior Court, followed the Commission's second finding that, after more than 40 years, the location of the plant is no longer consistent with the public interest.

II. The Superior Court's Review.

After the Resort's request for rehearing was denied, it appealed to the Superior Court pursuant to A.R.S. § 40-254. EIR 1. Limited discovery was conducted, and the Resort moved for summary judgment on four of the five counts set forth in its complaint. EIR 139; EIR 144.[5] In its moving papers, the Resort asserted that on the record before the Superior Court, the Resort was entitled to summary judgment on all four counts. *Id.* Nowhere in its pleadings did the Resort assert or otherwise suggest that summary judgment in its favor would fall short of satisfying its right to due process on appeal. Rather, the Resort sought judgment and reversal of the Commission's decision arguing that there was no material issue of disputed fact to preclude a finding of summary judgment in its favor on the four counts of its complaint. *Id.*

The Commission and Liberty (BMSC) both filed responses and cross-motions for summary judgment. EIR 150; EIR 155. Oral argument was held and the Superior Court issued its ruling on June 2, 2014, denying summary judgment to the Resort

---

[5] The four counts upon which summary judgment was sought were (1) the decision was unreasonable, unlawful, lacks substantial evidence, (2) the decision violates Commission rules on sufficiency of facilities, (3) contract impairment, and (4) denial of due process. The remaining count was the Resort's request for a preliminary stay of the Phase 2 Decision pending appeal. However, the Superior Court was constitutionally precluded from granting such relief. ARIZ. CONST. art. 15, § 17. Moreover, this count was moot upon issuance of the Superior Court's ruling granting summary judgment against the Resort on its other claims. *See* EIR 197 at 7-8.

and granting summary judgment to the Commission and Liberty (BMSC) on counts 2-5 of the Resort's complaint. EIR 197 at 7. The final judgment was entered on August 20, 2014 and certified on September 23, 2014. EIR 204; EIR 212. This appeal followed. EIR 206.

ARGUMENT

I. Standard of Review.

The Resort correctly states that this Court is reviewing the decision of the Superior Court upholding the Commission's decision, not the decision of the Commission itself. Appellant Wind P1 Mortgage Borrower L.L.C.'s Opening Brief (filed Dec. 1, 2014) ("Resort Br.") at 10. It is important, however, to also consider the standard of review applicable to the Superior Court and its review of the Phase 2 Decision.

A decision of the Commission may not be overturned unless the party challenging that decision shows by clear and convincing evidence that the Commission acted in an unreasonable or unlawful manner. A.R.S. § 40-254 (E); *Grand Canyon Trust v. Ariz. Corp. Comm'n*, 210 Ariz. 30, 33, ¶ 9, 107 P.3d 356, 359 (App. 2005). The Superior Court is not permitted to reweigh evidence or substitute its judgments for those of the Commission. *Tucson Elec. Power Co. v. Ariz. Corp. Comm'n*, 132 Ariz. 240, 243, 645 P.2d 231, 234 (1982). *See also Grand Canyon Trust,* 210 Ariz. at 34, ¶ 11, 107 P.3d at 360. Instead, a decision of the Commission may only be reversed if it is not reasonably supported by the evidence, is arbitrary, or is otherwise unlawful. *Grand Canyon Trust*, 210 Ariz. at 33-34, ¶¶ 10-11, 107 P.3d at 359-360. *See also Tucson Elec. Power*, 132 Ariz. at 243, 645 P.2d at 234. This is true even if the matter under review does not involve

ratemaking. *See* A.R.S. § 40-254(E).[6] In this case, there was substantial evidence for the Superior Court to affirm the Phase 2 Decision, and little, if any, evidence that would support the arguments the Resort asserted on appeal below or in this Court now.

II. The Superior Court Correctly Held that the Commission Has Statutory Authority to Direct a Public Service Corporation to Make Additions, Improvements, or Changes for the Public Convenience.

A. The Commission Has Statutory Authority to Order Closure of the Plant in this Case.

The Commission relied on both its constitutional and its statutory authority in support of its order that Liberty (BMSC) close the Plant. EIR 141, Ex. 3 at 37:19–42:21 [APP040-045]. The Superior Court found at page 3 of the Ruling that the order to close the Plant was not within the Commission's constitutional powers, nor a necessary ratemaking step. EIR 197 at 3. But this Court need not address the scope of the Commission's constitutional authority as applied to the facts of this case. The Commission's statutory authority is adequate.

---

[6] Further discussion of the deferential standard of review applicable to the Commission and other administrative agencies can be found in Section III of the Argument, *infra*, at 29-37.

A.R.S. § 40-331(A) provides

> A. When the commission finds that additions or improvements to or changes in the existing plant or physical properties of a public service corporation ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, the commission shall make and serve an order directing that such changes be made or such structure be erected in the manner and within the time specified in the order. If the commission orders erection of a new structure, it may also fix the site thereof.

Consistent with this statute, the Commission ordered changes to a public service corporation's existing facilities to promote the public convenience. EIR 141, Ex. 3 at 33:9-11, 36:10 [APP036, APP039].

A.R.S §§ 40-321(A) and 361(B), also relied upon by the Commission, grant similar authority. The first statute provides, in relevant part

> A. When the commission finds that the equipment, appliances, facilities or service of any public service corporation, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine what is just, reasonable, safe, proper, adequate or sufficient, and shall enforce its determination by order or regulation.

The second statute provides

> B. Every public service corporation shall furnish and maintain such service, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient and reasonable.

Again, consistent with these statutes, the Commission found that, due to its location in the middle of the Boulders community, portions of Liberty (BMSC)'s facilities – the Plant – could no longer be operated consistent with the public comfort and convenience. EIR 141, Ex. 3 at 45:21–46:14 [APP048-049]. *See also* EIR 141, Ex. 3 at 32, n. 15 [APP035] citing *Ariz. Water Co. v. Ariz. Corp. Comm'n,* 161 Ariz. 389, 392, 778 P.2d 1285, 1288 (App. 1989) (confirming Commission's authority to order public service corporation to expand its facilities and the utility's obligation to comply). The Phase 2 Decision also included a mechanism to ensure just compensation to Liberty (BMSC) for closure of the Plant.

Nevertheless, the Resort argues that the Superior Court should have found "express" statutory authority for the decision to order closure of a WWTP. Resort Br. at 15. Presumably, the Resort believes that the legislature should have specifically stated in the statutes that the Commission can order a sewer utility to close a sewer plant. As noted in the statutes cited above, the Commission has the explicit power to order Liberty (BMSC) to make changes to its facilities to promote the public convenience. Such changes necessarily include additions or deletions to a utility's plant in service. The Resort has not pointed to any legal authority for the proposition that statutes granting Commission authority must somehow specify the types of facilities regulated utilities operate, the actual problems they may face, and the potential remedies the Commission might order. The Resort seeks to hold

legislative action to an impossible and impractical standard. *See S.E.C. v. Chenery Corp.*, 332 U.S. 194, 202-03 (1947) (an administrative agency needs to deal with problems on a case-by-case basis, and the choice as to how to proceed is one that lies primarily in the informed discretion of the agency).

The Commission regulates over 400 public service corporations providing electric, gas, water and wastewater utility services to millions of Arizona citizens and businesses. Obviously, the Arizona Legislature could not and cannot foresee all of the specific circumstances involving the equipment and facilities of every one of these utility providers, and the adequacy and sufficiency of these utility services, and the comfort and convenience of millions of Arizonans impacted by Commission regulation. An electric utility may face a problem with the location of a transmission line in a developing community, or a water utility may have inadequate facilities to treat the groundwater it pumps. The legislature could only empower the Commission to address these matters as they arose, which it did in the statutes that give the Commission the power to order changes to utility facilities to promote adequate and sufficient service and/or the public comfort and convenience. *See* A.R.S §§ 40-321(A), 331(A) and 361(B). The Resort's interpretation of these statutes is not reasonable, let alone real world practical, and certainly does not support reversal of the Superior Court decision below.

B. The Commission Was Not Regulating Nuisances, and It Did Not Invade the Province of Other Agencies of the State.

The Resort has consistently sought to portray the Commission as acting to address a nuisance, which would be outside its powers. Resort Br. at 18-20. As the Commission noted regarding common law nuisance

> It is a class of wrongs which arises from an unreasonable, unwarranted, or unlawful use by a person of his own property, working an obstruction or injury to the right of another, or to the public, and producing such material annoyance, inconvenience, and discomfort that the law will presume a resulting damage.

EIR 141, Ex. 3 at 35 [APP038] quoting *City of Phoenix v. Johnson,* 51 Ariz. 115, 123, 75 P.2d 30, 34 (1938). Nuisance was not before the Commission, and no tribunal has ever found the Plant to constitute a nuisance. Here, plain and simple, the Commission determined that continued operation of the Plant was no longer in the interest of Liberty (BMSC) customers or in the public interest.

Moreover, the common law of nuisance does not supersede the constitutional or statutory powers of the Commission to act to promote the public health, safety, peace, comfort or convenience. EIR 141, Ex. 3 at 43-44 [APP046-047]. Exercising those powers, the Commission directed Liberty (BMSC) to make the capital improvements necessary to stop treating wastewater at a specific location.

The Commission's order also did not stray into the exclusive regulation of the Arizona Department of Environmental Quality, or the Arizona Department of Water Resources, or Maricopa County Environmental Services department, or the United

States Environmental Protection Agency, or any other agency with applicable jurisdiction. Resort Br. at 20-25. Operation of the WWTP met every applicable law, rule and industry standard for such things as odors and noises. EIR 141, Ex. 3 at 44 [APP047]; *see also* EIR 141, Ex. 3 at 18:14-15 [APP021].

It stands to reason that lawful operation of a sewer plant may not necessarily serve the public interest at a specific location. So, the Legislature gave the Commission the power to determine, among other things, that the mere existence of a facility in the midst of the Boulders community, on the golf course and less than a hundred feet from some homes and less than a 1,000 feet from a lot of homes, no longer promotes the public convenience. *See* A.R.S. §§ 40-321(A), 331(A) and 361(B). The Commission exercised those powers in determining that continued operation of the Plant at issue here was not in the public interest and the Superior Court rightfully upheld that decision.

III. The Superior Court Applied the Correct Standard of Review to the Phase 2 Decision.

The Resort devotes approximately 40 percent of its opening brief arguing for an essentially unqualified right to retry the Commission's Phase 2 Decision in the Superior Court. Resort Br. at 26-49. What the Resort suggests, however, is a standard of review under which all non-ratemaking decisions by the Commission would be retried in the Superior Court. That is not the law.

A. The Resort Failed to Show by Clear and Convincing Evidence that the Decision was Unlawful, Unreasonable, or Unsupported by Evidence.

The Resort's appeal was brought under A.R.S. § 40-254. The statute states in part (E)

> In all trials, actions and proceedings the burden of proof shall be upon the party adverse to the commission or seeking to vacate or set aside any determination or order of the commission to show by clear and satisfactory evidence that it is unreasonable or unlawful.[7]

As the *Grand Canyon Trust* Court explained, because the plaintiff's burden of proof is to establish "in all proceedings" that the Commission's order is either unlawful or unreasonable, the superior court must evaluate the determinations already made by the Commission. 210 Ariz. at 33, ¶ 10, 107 P.3d at 359. The Court further explained that:

> "[B]oth the superior court and this court may depart from the Commission's legal conclusions or interpretation of a statute and determine independently whether the Commission erred in its interpretation of the law." *Babe Invs. v. Arizona Corp. Comm'n,* 189 Ariz. 147, 150, 939 P.2d 425, 428 (App. 1997) (citation omitted). However, when the plaintiff challenges a factual determination of the Commission, the superior court is not free to overturn it unless the plaintiff demonstrates by "clear and convincing" evidence that the Commission's determination is unreasonable. In making this

---

[7] " 'Clear and satisfactory' [evidence] is the same as 'clear and convincing' [evidence]." This is a higher burden of proof than the "preponderance of the evidence" standard which plaintiffs must meet in most civil cases." *Grand Canyon Trust,* 210 Ariz. at 33, ¶ 10, n. 5, 107 P.3d at 359 quoting *Tucson Elec. Power*, 132 Ariz. at 243, 645 P.2d at 234.

> assessment Arizona courts uphold such determinations if they are supported by **substantial evidence**. *Tucson Elec. Power,* 132 Ariz. at 243–44, 645 P.2d at 234–35 (court may disturb Commission's finding of fact only if it is not reasonably supported by evidence, is arbitrary or is otherwise unlawful); *Arizona Corp. Comm'n v. Citizens Util. Co.,* 120 Ariz. 184, 187, 584 P.2d 1175, 1178 (App. 1978) (same). Such a review is very different from assuming that all facts alleged by the Trust are true. *Havasu Heights Ranch & Dev. Corp. v. Desert Valley Wood Prods., Inc.,* 167 Ariz. 383, 387, 807 P.2d 1119, 1123 (App. 1990) (citations omitted) ("In reviewing factual determinations, our respective roles begin and end with determining whether there was substantial evidence to support the administrative decision.... The question whether substantial evidence supports the state land commissioner's order does not raise material issues of fact; it presents a question of law.").

Id. at 33-34, ¶ 11 (emphasis added).

A deferential standard of review is not unusual in administrative law. The standard in federal law is perhaps best articulated in *Chevron U.S.A., Inc. v. Natural Resources Defense Council,* 467 U.S. 837, 844 (1984) wherein the United States Supreme Court stated

> We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations. (citations omitted).

Arizona courts have advocated a similar deferential standard for administrative review. Arizona courts "will allow an administrative decision to

stand if there is any credible evidence to support it." *Eaton v. AHCCCS*, 206 Ariz. 430, 432, ¶ 7, 79 P.3d 1044, 1046 (App. 2003). Even "[i]f two inconsistent factual conclusions could be supported by the record, then there is substantial evidence to support an administrative decision that elects either conclusion." *Webster v. State Bd. of Regents*, 123 Ariz. 363, 365-66, 599 P.2d 816, 818-19 (App. 1979). In addition, trial courts are required to "defer to the agency's factual findings and affirm them if supported by substantial evidence." *Gaveck v. Ariz. State Bd. of Podiatry Examiners*, 222 Ariz. 433, 436, ¶ 11, 215 P.3d 1114, 1117 (App. 2009) (citations omitted). *See also Croft v. Arizona State Bd. of Dental Examiners*, 157 Ariz. 203, 208, 755 P.2d 1191, 1196 (App. 1988) (superior court required to "show a certain degree of deference to the judgment of the agency based upon the accumulated experience and expertise of its members." (citation omitted); *see also W. States Petroleum, Inc. v. Ariz. Dept. of Env't. Quality*, 232 Ariz. 252, 253, ¶ 7, 304 P. 3d 539, 540 (App. 2013) ("We view the evidence in the light most favorable to upholding the administrative decision.")

The Superior Court was not supposed to "function as a 'super agency' and substitute its own judgment for that of the agency where factual questions and agency expertise are involved." *DeGroot v. Arizona Racing Comm'n*, 141 Ariz. 331, 336, 686 P.2d 1301, 1306 (App. 1984) citing *Arizona Bd. of Regents v. Superior Court*, 106 Ariz. 430, 477 P.2d 520 (1970). The Commission's decision as to what

the public interest and convenience required under the circumstances before the agency is "entitled to great weight." *Baca v. Ariz. Dep't of Econ. Sec.*, 191 Ariz. 43, 45-46, 951 P.2d 1235, 1237 (App. 1997); *see also U.S. Parking Sys. v. City of Phoenix*, 160 Ariz. 210, 211, 772 P.2d 33, 34 (App. 1989) ("Judicial deference should be given to agencies charged with the responsibility of carrying out specific legislation, and ordinarily an agency's interpretation of a statute or regulation it implements is given great weight." (citations omitted)).

Presumably, the Resort will argue that the Commission was not entitled to deference because it was acting outside its authority. As discussed above, this was not the case. The Commission had authority under A.R.S. §§ 40-321(A), 331(A) and 361(B) to order Liberty (BMSC) to make additions, improvements or other changes to its utility system to promote the public convenience. The Commission was free to weigh the evidence, accepting and rejecting the parties' positions in its discretion, and the Superior Court was required to defer to that decision absent a showing it was not supported by credible evidence. *See Grand Canyon Trust,* 210 Ariz. at 33-34, ¶¶ 9-11, 107 P.3d at 359*; Gaveck*, 222 Ariz. at 436, ¶ 11, 215 P.3d at 1117.

Such deference was confirmed in *Grand Canyon Trust*. That case involved an appeal to this Court from a superior court decision affirming a decision of the Commission authorizing the construction of a coal-powered electric generating unit

by Tucson Electric Power ("TEP"). The CEC was approved by the Commission in Decision No. 55477 and conditioned on TEP obtaining an order finding that the electricity to be produced by that unit was necessary to provide an " 'adequate, economical and reliable supply of electric power' to its customers all in accordance with the requirements of A.R.S. § 40–360.07(B)" prior to undertaking any construction. 210 Ariz. at 32, ¶¶ 2-3, 107 P.3d at 358. Thus, like this case, *Grand Canyon Trust* involved an appeal under A.R.S. § 40-254 of a Commission decision issued in accordance with the agency's statutory authority.

The Resort improperly seeks to distinguish this Court's ruling in *Grand Canyon Trust* by asserting that "the standard of review was not an issue," and that all of the cases this Court cited in explaining the standard of review were rate cases. Resort Br. at 30-31. These arguments fail. This Court's discussion of the standard of review applicable to an appeal brought pursuant to A.R.S. § 40-254 in *Grand Canyon Trust* is directly applicable to this case.

In its moving papers, the Resort asserted that the Decision "was not supported by substantial evidence." EIR 197 at 4. The Superior Court reviewed the record before the Commission and disagreed. It properly held that the Resort had failed to meet its burden to show by clear and convincing evidence that the Phase 2 Decision was unreasonable, unlawful, or unsupported by substantial evidence. In so ruling, the Superior Court followed the correct standard of review.

B. The Owens Affidavit Missed the Point and was Properly Rejected by the Superior Court.

In response to the Commission's motion for summary judgment, the Resort proffered the Affidavit of Robert L. Owens, II, P.E. ("Owens Affidavit"). EIR 174. Owens – who did not testify or provide evidence at the ALJ hearing – opined without even visiting the Plant, that there may be things that could have been done to determine with greater certainty the source of the odors and noises the customers wanted eliminated. Resort Br. at 31. The Superior Court correctly held that Owens was offering his opinion that the Commission failed to order plant closure based upon sufficient evidence. EIR 197 at 5. Whether the Phase 2 Decision was supported by substantial evidence is a matter of law, not fact, and the Owens Affidavit was not admissible on that point. *Id.* However, even if it had been admitted, the affidavit would not affect the Court's ruling given the record.

The Resort's argument that this ruling should be overturned because the substantial evidence standard does not apply is flat wrong. Resort Br. at 32-33. As discussed above, this is the standard of review of Commission decisions challenged pursuant to A.R.S. § 40-254. As this Court explained in *Grand Canyon Trust*, while the Resort was allowed on appeal to present new evidence that it failed to present to the Commission, the nature of the Superior Court's inquiry and the Resort's burden of proof were unchanged. 210 Ariz. at 34, ¶ 12, 107 P.3d at 360 ("The inquiry remains whether, even in light of the new evidence, there is substantial

evidence supporting the Commission's decision."). The Superior Court was therefore free to find, as it did, that the Commission's decision was supported by substantial evidence and that the Resort failed to present clear and convincing evidence otherwise, including the Owens Affidavit.

C. The Resort's Disagreements with Certain Facts are not the Same as Material Facts in Dispute.

The Resort argues that disputed issues of fact precluded summary judgment against it. Resort Br. at 34-49. In other words, the Resort disagrees with the Superior Court's decision to uphold the Commission's decision. But it was not the Superior Court's role to substitute its judgment for that of the Commission by assessing the facts offered by the Resort differently than the Commission. *Grand Canyon Trust*, 210 Ariz. at 33, ¶ 10, 107 P.3d at 359; *see also Tucson Elec. Power*, 132 Ariz. at 243, 645 P.2d at 234. Rather, the Superior Court could only ask whether the Resort had shown by clear and convincing evidence that the Commission's decision – that the location of the Plant could no longer be maintained consistent with the public interest and convenience – was supported by reasonable, lawful, and substantial evidence.

The Superior Court reviewed the Commission's careful and lengthy record, which contained substantial evidence concerning how the Plant's location, in the midst of a residential community, had caused intractable issues concerning odor and noise. *This evidence was admitted, in large part, without objection or rebuttal from the Resort. See, e.g.*, EIR 141, Ex. 3 at 44:3-28 [APP047]. The Resort had every

opportunity to submit evidence on the issues of odor, noise, and the Plant's location, but choose not to do so.[8] Nor did the Resort produce any evidence demonstrating that other measures were available in lieu of Plant closure. *Id.* [APP047]. On this record, the Superior Court's finding that substantial evidence was present is both factually and legally defensible – indeed it is the only conclusion the Superior Court could have reached – and should be upheld by this Court.

IV. The Superior Court Correctly Held that There Was No Unconstitutional Impairment of Contract.

The Resort asserts that the Phase 2 Decision violates the United States and Arizona Constitutions because it "deprives [the Resort] of its contractual rights to continued effluent delivery through March 2021." Resort Br. at 49. The Superior Court rejected this claim, finding that closure of the plant was clearly contemplated and foreseen in the Effluent Delivery Agreement between the Resort and Liberty (BMSC), notwithstanding the Resort's "professed surprise." EIR 197 at 6.

---

[8] The Resort has consistently complained about the Commission's consideration of public comment. *E.g.*, Resort Br. at 42; EIR 197 at 7. The Resort, however, made no effort to present evidence or argument in response to the public comment. Furthermore, the Commission took care to explain the relevance of public comment received in issuing the Phase 2 Decision. Specifically, the Commission stated that public comment is "not evidence *per se*" but that "public comment provides useful insight to the Commission regarding customer experiences." EIR 141, Ex. 3 at 45:8-10 [APP048] (quoting Phase 1 Decision). Given this distinction—and considering the Resort's failure to submit controverting evidence—the Resort's complaints about the *quality* of information the Commission considered in ordering closure of the Plant lack merit.

One cannot be "surprised" by the very result expressly contemplated in one's contract – a contract negotiated by the Resort's predecessor's lawyers. There is no "contractual impairment" here. The contract is working as expressly contemplated and anticipated by the parties.

The threshold question in any contract impairment claim is whether a state's action substantially impairs the complaining party's contractual rights. *Energy Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400, 411 (1983). Under prevailing law, "[a] statute does not substantially impair a party's contract rights unless it adversely affects that party's reasonable expectations under the contract." *Liberty Mut. Ins. Co. v. Whitehouse*, 868 F. Supp. 425, 431 (D.R.I. 1994) citing *Energy Reserves Group*, 459 U.S. at 416.

Here, the contract expressly contemplates and allows for the closure of the Plant by the Commission or a court, terminating Liberty (BMSC)'s obligation to deliver effluent to the Resort:

> The obligations of [Liberty (BMSC)] under this paragraph [6] shall terminate if physical conditions at the Boulders East Plant or any laws, regulations, *orders or other regulatory requirements prevent or materially limit the operation of the Boulders East Plant* or render the operation of such plant uneconomic.

EIR 142, Ex. 5 ¶ 6 [APP135] (emphasis added). This language confirms and acknowledges the power of the Commission or others to issue orders that affect the Plant, including an order to close it. When parties bind themselves by a lawful

contract, the terms of which are clear and unambiguous, effect must be given to the contract as written. *See Mining Inv. Group, LLC v. Roberts*, 217 Ariz. 635, 639, ¶ 16, 177 P.3d 1207, 1211 (App. 2008). The law of contracts provides no basis upon which courts may "alter, revise, modify, extend, rewrite or remake an agreement." *Id. See also Employers Mut. Cas. Co. v. DGG & CAR, Inc.*, 218 Ariz. 262, 267, ¶ 24, 183 P.3d 513, 518 (2008) (plain and unambiguous contract language must be applied as written).

The Resort also argues that the contract was impaired because the decision of the Commission was unique and not an industry wide regulation. Resort Br. at 52-53. As such, the Resort asserts that it could not reasonably expect an order of the Commission closing the plant. *Id.* This is the same sort of hair-splitting underlying the Resort's claim that the statutes do not specify plant closure. The Resort expressly agreed that Liberty (BMSC)'s contractual obligations could be altered (indeed terminated) by any order limiting operation of the Plant, and the Resort could not have any *reasonable* expectation otherwise. *See Roberson v. Wal-Mart Stores, Inc.*, 202 Ariz. 286, 291, ¶ 18, 44 P.3d 164, 170-71 (App. 2002) (holding that clear disclaimer undercut plaintiff's claim of "reasonable expectations" contrary to disclaimer language).

Because the Resort reasonably expected and knew of the possibility of an order requiring Liberty (BMSC) to close the Plant, there cannot possibly be any

contract impairment from an order that the Plant be closed. In other words, the Phase 2 Decision does not interfere with the Resort's "reasonable expectations under the contract" that the Plant would remain open until March 2021 under all circumstances because such a reasonable expectation never existed.

CONCLUSION

Liberty (BMSC) respectfully requests that the Court affirm the Superior Court's ruling in all respects.

RESPECTFULLY SUBMITTED this 5th day of February, 2015.

SHAPIRO LAW FIRM, P.C.

By */s/ Jay L. Shapiro*
Jay L. Shapiro (No. 014650)

Attorneys for Black Mountain Sewer Corporation

ARIZONA COURT OF APPEALS
DIVISION ONE

WIND P1 MORTGAGE BORROWER L.L.C., a Delaware limited liability company, Plaintiff/Appellant, v. ARIZONA CORPORATION COMMISSION, an agency of the State of Arizona; BLACK MOUNTAIN SEWER CORPORATION, an Arizona corporation; TOWN OF CAREFREE, an Arizona municipal corporation, Defendants/Appellees.	No. 1-CA-CV 14-0643 Maricopa County Superior Court No. CV2013-007804
THE BOULDERS HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation, Intervenor/Appellee.	

REPLY BRIEF OF APPELLANT WIND P1 MORTGAGE BORROWER L.L.C.

RYLEY CARLOCK & APPLEWHITE
Fredric D. Bellamy – 010767
fbellamy@rcalaw.com
Michele Van Quathem – 019185
mvq@rcalaw.com
Naomi Thurston – 029863
nthurston@rcalaw.com
One North Central Avenue, Suite 1200
Phoenix, Arizona 85004
Telephone: 602-258-7701
Attorneys for Appellant

TABLE OF CONTENTS

Table of Contents i

Table of Authorities iii

INTRODUCTION 1

REPLY TO PARTIES' STATEMENTS OF THE CASE 1

ARGUMENT 2

I. Standard of Review 2

II. Issue 1: Commission Lacks Authority to Order Closure of a Compliant Plant to Remediate Alleged Nuisance Conditions on Non-Utility Properties 3

A. Superior Court Correctly Concluded that the Commission Has No Constitutional Power to Order Plant Closure 3

B. Superior Court Erred in Concluding the Commission Has Statutory Authority to Order Plant Closure under A.R.S. §§ 40-321(A), 40-331(A), and 40-361(B) 6

III. Issue 2: The Trial Court Erred in Granting Summary Judgment Where Disputes of Material Fact Were Demonstrated, Denying Plaintiff a Trial De Novo 12

A. Trial Court Erroneously Applied "Substantial Evidence" Rate Case Standard Instead of "Trial de Novo" Non-Rate Case Standard Required By A.R.S. § 40-254 12

B. Trial Court Erred in Denying Admission of Affidavit of Robert Owens Based on Erroneous Application of "Substantial Evidence" Standard ..19

C. The Evidence Cited by the Commission Demonstrates Disputed Facts Regarding the Alleged Odors and Noises, Their Sources, and the Effectiveness and Reasonableness of Closure as a Solution to the Unproven Remaining Problems 21

IV. Issue 3: The Trial Court Erred in Concluding Plant Closure Order Did Not Violate Constitutional Contract Impairment Clauses 25

A. Material Issues of Fact Exist Regarding Wind P1's Reasonable Expectation of Regulation by Commission's Plant Closure Order 25

B. Plant Closure Order Was State Law within the Meaning of the Contracts Clauses 26

C. Superior Court Did Not Reach Last Two Tests for Contractual Impairment 27

REQUEST FOR ATTORNEYS' FEES AND COST 28

CONCLUSION 30

TABLE OF AUTHORITIES

Constitutional Provisions

Ariz. Const. Art. XV, § 3 ..... 3, 4, 6, 7

Statutes

A.R.S. § 12-341 32

A.R.S. § 12-342 32

A.R.S. § 12-348(A) 32, 33, 34

A.R.S. § 40-202 9

A.R.S. § 40-254.01 18

Civ. Code 1913, § 2343 20

Code 1939, § 69-249 20

Laws 1912, Ch. 90, § 67 20

Rev. Code 1928, § 720 20

Cases

Allied Structural Steel Co. v. Spannus, 438 U.S. 234, 98 S.Ct. 2716 (1978) 31

Ariz. Corp. Comm'n v. Fred Harvey Transp. Co., 95 Ariz. 185, 388 P.2d 236 (1964) 15

Ariz. Corp. Comm'n v. Palm Springs Utility Co., Inc., 24 Ariz.App. 124, 56 P.2d 245 (App. 1975) 11

Ariz. Corp. Comm'n v. Reliable Transp. Co., 86 Ariz. 363, 346 P.2d 1091 (1959) 15

Ariz. Corp. Comm'n v. State ex rel. Woods, 171 Ariz. 286, 830 P.2d 807 (1992) 5

Consolidated Water Utilities, Ltd. v. Ariz. Corp. Comm'n, 178 Ariz. 478, 875 P.2d 137 (App. 1993) 19

Corp. Comm'n of Ariz. v. People's Freight Line, 41 Ariz. 158, 16 P.2d 420 (1932) 15

Corp. Comm'n v. Pacific Greyhound Lines, 54 Ariz. 159, 94 P.2d 443 (1939) 5

Corp. Comm'n v. Southern Pac. Co., 55 Ariz. 173, 99 P.2d 702 (1940) 16

Cortaro Water Users' Ass'n v. Steiner, 148 Ariz. 314, 714 P.2d 807 (1986) 34

Cyprus Bagdad Copper Corp. v. Ariz. Dept. of Revenue, 188 Ariz. 345, 933 P.2d 923 (App. 1997) 33

Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 103 S. Ct. 697, 74 L.Ed.2d 569 (1983) 31

Gibbons v. Ariz. Corp. Comm'n, 75 Ariz. 214, 254 P.2d 1024 (1953) 22

Grand Canyon Trust v. Ariz. Corp. Comm'n, 210 Ariz. 30, 107 P.3d 356 (App. 2005) 16, 17

Jamaica Ash & Rubbish Removal Co., Inc. v. Ferguson, 85 F.Supp.2d 174 (E.D.N.Y. 2000) 30

Northern Contracting Co. v. Allis-Chalmers Corp., 117 Ariz. 374, 573 P.2d 65 (1977) 14

Phelps Dodge Corp. v. Ariz. Elec. Power Co-op., Inc., 207 Ariz. 95, 83 P.3d 573 (App. 2004) ..... passim

Pure Wafer, Inc. v. City of Prescott, 14 F.Supp.3d 1279 (D.Ariz. 2014) 30

Southern Pac. Co. v. Ariz. Corp. Comm'n, 98 Ariz. 339, 404 P.2d 692 (1965) 6

State ex rel. Church v. Ariz. Corp. Comm'n, 94 Ariz. 107, 382 P.2d 222 (1963) 22

State v. Marana Plantations, Inc., 75 Ariz. 111, 252 P.2d 87 (1953) 10

Sulger v. Ariz. Corp. Comm'n, 5 Ariz.App. 69, 423 P.2d 145 (1967) 22

Trico Elec. Co-op. v. Ralston, 67 Ariz. 358, 196 P.2d 470 (1948) 6

Tucson Elec. Power Co. v. Ariz. Corp. Comm'n, 132 Ariz. 240, 645 P.2d 231 (1982) ... 14, 20, 23

U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505 (1977) 32

United Bank of Ariz. v. Allyn, 167 Ariz. 191, 805 P.2d 1012 (App. 1990) 2, 18

Williams v. Pipe Trades Industry Program of Ariz., 100 Ariz. 14, 409 P.2d 720 (1966)..... 6

Rules

Ariz.R.Civ.P. Rule 56 ..... 13, 16

INTRODUCTION

Wind P1 Mortgage Borrower L.L.C. ("Wind P1") submits this Reply Brief to reply to all three of the answering briefs to the extent the arguments raised are not already addressed in Wind P1's Opening Brief:

- Arizona Corporation Commission's ("Commission" or "ACC") Answering Brief ("ACC Ans.")
- Black Mountain Sewer Corporation's ("BMSC") Answering Brief ("BMSC Ans.")
- The Boulders Homeowners Association's ("BHOA") Answering Brief ("BHOA Ans.").

REPLY TO PARTIES' STATEMENTS OF THE CASE

Wind P1 makes no response to the parties' statements of the case or cited evidence, with one exception. BMSC cited to certain public comments that were not admitted into evidence in the Commission's hearing, and Wind P1 has consistently objected to consideration of such comments, including filing a Motion to Strike portions of the Commission's written Decision that rely on the substance of such comments as evidence. *See* BMSC Ans. at pp. 19-20. The comments were not offered or admitted in evidence at the Commission's hearing, and Wind P1 had no opportunity to cross-examine witnesses regarding the substance of such

comments. *See* Index of Record docketed October 3, 2014 ("I.R.") 143, Ex. 17 (Wind P1 Motion to Strike).

ARGUMENT

I. STANDARD OF REVIEW

The parties agree this Court reviews the Superior Court's decision, but neither the Commission nor BMSC quote the applicable standard of review that the Superior Court must apply in deciding whether to grant a summary judgment motion. ACC Ans. at pp. 16-17; BMSC at p. 23. It is well established that this Court in reviewing a Superior Court's grant of summary judgment reviews the facts and reasonable inferences in the light most favorable to the party against whom the Superior Court granted summary judgment. *Phelps Dodge Corp. v. Ariz. Elec. Power Co-op., Inc.*, 207 Ariz. 95, 103, 83 P.3d 573, 581 (App. 2004) (internal citations omitted) ("*Phelps Dodge*"). Any evidence or reasonable inference contrary to the material facts needed for judgment will preclude summary judgment. *United Bank of Ariz. v. Allyn*, 167 Ariz. 191, 195, 805 P.2d 1012, 1016 (App. 1990), *review den'd* (citation omitted). This Court applies the same standard as that used by the trial court in ruling on the summary judgment motion in the first instance. *Id.*

II. ISSUE 1: COMMISSION LACKS AUTHORITY TO ORDER CLOSURE OF A COMPLIANT PLANT TO REMEDIATE ALLEGED NUISANCE CONDITIONS ON NON-UTILITY PROPERTIES

A. Superior Court Correctly Concluded that the Commission Has No Constitutional Power to Order Plant Closure

Even though the Commission and BMSC both argue that the Commission has express *statutory* authority to support its plant closure order under A.R.S. §§ 40-321(A), 40-331(A), and 40-361(B), the Commission and BHOA[1] go further and urge this Court to determine that the Commission has independent "concurrent" legislative authority with the Legislature to order plant closure under the following phrase in Arizona Constitution Article XV, section 3: ". . . and make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of such corporations." *See* ACC Ans. at pp. 24-26; BHOA Ans. at p. 5; BMSC Ans. at p. 24. The Commission essentially urges that, even though binding case law holds that the Commission *may not regulate a public utility's business regarding non-ratemaking matters* under the Commission's broad plenary ratemaking power at the beginning of Article XV, Section 3, the Commission *may still regulate a public utility's business regarding non-ratemaking matters* under its less generous, but

[1] BMSC chose not to support the Commission's and BHOA's arguments regarding the Commission's constitutional authority, arguing instead that it is unnecessary to address the issue. BMSC Ans. at p. 24.

"concurrent," legislative authority in the latter part of section 3 so long as the regulation involves, as pertinent here, a customer comfort matter.

The implication of the Commission's argument regarding the meaning of Article XV, section 3, is that the Commission need not comply with the express boundaries of the Legislature's enactments because the Commission is free to legislate anew on all matters relating to "convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of [regulated] corporations." *See* Ariz. Const. Art. 15, section 3. For example, following the Commission's argument here, even if the Legislature carefully chooses a workplace safety law, or perhaps a health insurance requirement, that strikes a balance between the interests of the employer and employee, the Commission would argue that it is free to strike a different balance as to those employees of regulated utilities, either promulgating rules on a statewide basis, or issuing ad hoc orders that treat regulated utilities differently in individual cases, as the Commission did in this case.

The Commission's and BHOA's arguments urging a "concurrent" legislative authority finding are inconsistent with binding Arizona Supreme Court precedent. *See* ACC Ans. at p. 26, n. 133; BHOA Ans. at pp. 4-5. The Supreme Court in the *Woods* case recognized the *Pacific Greyhound* case is still binding, and the *Pacific Greyhound* case specifically examined the "extent of the authority of the

commission as to regulation of the business of such corporations" on matters other than ratemaking. *Ariz. Corp. Comm'n v. State ex rel. Woods*, 171 Ariz. 286, 293, 830 P.2d 807, 814 (1992) (*"Woods"*), *quoting from Corp. Comm'n v. Pacific Greyhound Lines*, 54 Ariz. 159, 168, 94 P.2d 443, 447 (1939) (*"Pacific Greyhound"*) (*"Pacific Greyhound"*). The Supreme Court in *Woods* found the *Pacific Greyhound* case, and subsequent cases relying on it, had been the law for over 50 years, and specifically rejected the opportunity to revisit history to change it. *Woods*, 171 Ariz. at 293–94, 830 P.2d at 814–15 ("therefore, we measure the Commission's regulatory power by the doctrine apparently established by *Pacific Greyhound* and its progeny—that the Commission has no regulatory authority under article 15, section 3 except that connected to its ratemaking power.").

The Supreme Court has already interpreted the *Pacific Greyhound* case in the context of the Commission's non-ratemaking regulatory authority, holding that the Commission lacks authority to regulate convenience matters through the "convenience, comfort, safety . . ." language in Article XV, section 3. *See Williams v. Pipe Trades Industry Program of Ariz.*, 100 Ariz. 14, 17, 409 P.2d 720, 722 (1966) (Constitution does not authorize Commission to issue public certificates of convenience and necessity); *Southern Pac. Co. v. Ariz. Corp. Comm'n*, 98 Ariz. 339, 346, 404 P.2d 692, 696 (1965) (Constitution does not authorize Commission to order provider to restore discontinued railroad service);

see also Phelps Dodge, 207 Ariz. at 112–14, 83 P.3d at 590–92, ¶¶57–60, 66–68 (Commission lacked constitutional authority to promulgate rules requiring utilities to create independent schedulers to oversee fair access to facilities, to divest of certain assets at a certain time); *see also Trico Elec. Co-op. v. Ralston*, 67 Ariz. 358, 363, 196 P.2d 470, 473 (1948) (finding no judicial authority to adjudicate contracts in Art. 15, sec. 3).

Under this binding precedent, the Commission did not have authority under Art. XV, section 3, to order a utility to close a particular treatment plant, because such an order was not reasonably necessary for ratemaking.

B. Superior Court Erred in Concluding the Commission Has Statutory Authority to Order Plant Closure under A.R.S. §§ 40-321(A), 40-331(A), and 40-361(B)

1. There is No Express Authority in Cited Statutes to Support the Commission's Action

Other than disagreeing with Wind P1's ultimate conclusion regarding the content of the express language in the statutory authorities at issue, the Commission failed to respond to the substance of Wind P1's arguments regarding the plain meaning of certain words in the statutes. Specifically, A.R.S § 40-321(A) requires a finding that a facility standard or service standard is not being met, and requires identification of a standard. A.R.S § 40-331(A) provides that the action must promote security and convenience. A.R.S § 40-361(B) grants no authority to the Commission, but, if a utility is in violation, may be enforced through the

Commission's express enforcement statutes. *See* Opening Brief at pp. 15-19; ACC Ans. at pp. 17-19.

BMSC asserts repeatedly without explanation that the plant closure order promoted the "public convenience" under A.R.S. § 40-331(A), but fails to acknowledge that an order to close an existing treatment plant does not affect in any manner the "convenience" of the underground sewer collection service already provided directly to each customer's home. *See* BMSC Ans. at pp. 25–26, 29, 33. This was not a case where utility service was not yet reasonably accessible to homes – convenient service was already being provided directly to homes. The Commission's plant closure order was instead a political reaction to customer complaints of discomfort or distaste – not complaints about a lack of reasonable access to utility services.

The Commission and BHOA both failed to address Wind P1's argument that the Commission is not authorized to enforce A.R.S. § 40-361 through a plant closure order, but must instead enforce noncompliance through its express enforcement authorities in Title 40, Article 9. *See* Opening Brief at pp. 19-20. The Commission lacked express authority under any of the three statutory sections it relied upon for the authority to order a plant closure for the purpose of remediating alleged nuisance conditions on *other* properties.

2. The Legislature Did Not Intend to Grant the Commission Authority to Issue Plant Closure Orders to Remediate Alleged Nuisance Conditions on Off-Site Properties

The Commission mischaracterizes Wind P1's argument on pages 18-25 of the Opening Brief regarding statutory interpretation of potentially ambiguous terms in A.R.S. §§ 40-321(A), 40-331(A), and 40-361(B)[2], by reference to later ADEQ statutes as an implied "repeal" argument. ACC Ans. at pp. 19–22. Wind P1 argued, and has consistently argued throughout these proceedings, that the Commission never had the statutory authority to order a plant closure to remediate alleged off-site nuisances. Opening Brief at pp. 15–18.

The Commission is incorrect to argue that the issue of statutory interpretation is being raised for the first time on appeal. ACC Ans. at p. 20; Opening Brief at pp. 20–27. Wind P1 has argued the meaning and application of the three statutes upon which the Commission bases its claim of statutory authority throughout the underlying Commission proceedings and in in front of the Superior Court. I.R. 141, Ex. 3 at 38:8-22, 42:13-21 (noting Wind P1's argument regarding Legislature's grant of specific authority to ADEQ); *see also* I.R. 139 at 7-10 (arguments regarding meaning and application of statutes).

---

[2] The Commission refers in its argument to A.R.S. § 40-202 as granting it authority to make orders regarding the comfort and convenience of customers, but this section has been held to grant the Commission no power in addition to those powers it already possesses under the Constitution. *Phelps Dodge*, 207 Ariz. at 112, 83 P.3d at 590 (internal citation omitted).

The Commission argues that its powers extend generally to matters relating to the health, safety and welfare of public service corporation customers. ACC Ans. at p. 20. But, again, the Commission fails to explain how the words used by the Legislature in each of the three statutes at issue[3] can be interpreted through the rules of statutory construction to provide the Commission with express authority to order a plant closure to address alleged nuisance conditions on non-utility properties.

If the three statutes are instead interpreted as a group to imply authority to make unrestricted "orders" regarding infrastructure with the only connection to the statutory language being the words "health and safety, comfort and convenience," then such a statute would be an unconstitutional (and complete) delegation of the Legislature's police power to the Commission. *State v. Marana Plantations, Inc.*, 75 Ariz. 111, 114–15, 252 P.2d 87, 89–90 (1953) (finding statute granting Board of Health power to "regulate sanitation and sanitary practices in the interests of public health" unconstitutionally delegated legislative power to an administrative agency).

The three statutes at issue do not grant the Commission unrestricted power to make any order it chooses in the name of customer comfort. There is no basis for the Court, given the context, language, subject matter, historical background,

---

[3] The Commission's argument regarding its authority under Ariz. Const. Art XV, § 3 is addressed in section II.A of this brief.

effects, consequences, spirit, or purpose of these statutes, to conclude that the Legislature intended to imbue the Commission with standardless police power to legislate the Commission's own agenda.

Wind P1 notes that the Commission characterizes the plant closure order as remedying "an ongoing deficiency with BMSC's facilities." ACC Ans. at p. 22. This is an incorrect characterization of the evidence in this case. The Commission found nothing wrong with the WWTP facility. I.R. 140, ¶¶ 24, 33; *see also* BMSC Ans. at p. 17 (agreeing that the WWTP facility fully complied with all applicable regulations and standards). The Commission's Decision found only that the *location* of the facility was no longer "in the public interest." I.R. 141, Ex. 3 at 49:16-19; BMSC Ans. at p. 17. The Commission's Decision thus related to land use, and was not a determination that the facility was deficient.

3. The *Palm Springs* Case Does Not Apply

Wind P1 already addressed most of the Commission's arguments regarding the *Palm Springs* case in its Opening Brief. *See* Opening Brief at pp. 25–26; *Ariz. Corp. Comm'n v. Palm Springs Utility Co., Inc.*, 24 Ariz.App. 124, 56 P.2d 245 (App. 1975). The Commission urges that, based upon statements in *Palm Springs*, this Court has already recognized the Commission's legal authority in the three statutes at issue to require a utility to deliver utility service that exceeds regulatory standards. ACC Ans. at pp. 22–24. The Commission's response fails to

acknowledge that the Commission in the *Palm Springs* case required the utility to deliver water that met an objective, numeric federally-recommended water quality standard that the Commission found was not being met, which is quite different from the present case in which no standard was identified. Here, the Commission found the WWTP met all regulatory ***and industry*** standards and, rather than ordering service that met a certain standard, instead ordered one part of a multi-part odor-generating system to be closed. There was *no competent evidence* presented from which the Commission could determine that ordering the plant closure would resolve future odor complaints; in fact, it is undisputed that other odor-generating facilities also exist near the homes. I.R. 140, ¶22, ¶23; I.R. 143, Ex. 15 (pp. 617-19, 639-40) (ACC's staff engineer testified closure of WWTP would not eliminate odor from the remaining lift stations and collection system). In sum, *Palm Springs* cannot be used as a substitute for applying the statutory language to the facts of this case.

III. ISSUE 2: THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WHERE DISPUTES OF MATERIAL FACT WERE DEMONSTRATED, DENYING PLAINTIFF A TRIAL DE NOVO

A. Trial Court Erroneously Applied "Substantial Evidence" Rate Case Standard Instead of "Trial de Novo" Non-Rate Case Standard Required By A.R.S. § 40-254

The Superior Court erred in two ways when it weighed the evidence under the "substantial evidence" standard in the context of evaluating the Commission's summary judgment motion.

First, this case is not a rate case, so there is no constitutional constraint on the court's full review of the case under the plain language of A.R.S. § 40-254. A.R.S. § 40-254 requires the Superior Court to conduct an independent trial similar to a trial in a civil action, and then determine if the Superior Court is convinced by clear and satisfactory evidence that the Commission's action "is unreasonable or unlawful." There is no "substantial evidence" standard language in A.R.S. § 40-254(A) – the "substantial evidence" standard is a judicial limitation placed on court review of rate cases only.

Second, the Superior Court failed to apply the summary judgment standard under Rule 56(a), *Ariz.R.Civ.P.*, and thereby erred in denying Wind P1 a trial de novo to which it is entitled under A.R.S. § 40-254 (whether or not the substantial evidence standard is eventually applied to weigh the admitted evidence). The Superior Court here took a short cut, bypassed the trial de novo requirement, and

proceeded directly to a post-trial evidence evaluation standard (and not the right one) to weigh the evidence. *See Northern Contracting Co. v. Allis-Chalmers Corp.*, 117 Ariz. 374, 376, 573 P.2d 65, 67 (1977) (neither the trial court nor the appellate court may weigh the evidence in evaluating a motion for summary judgment) (citations omitted).

1. The *Grand Canyon Trust* Case Was Decided by the Superior Court on Motions without a Trial by Stipulation of the Parties

As noted in the Opening Brief, the Arizona Supreme Court has held that A.R.S. § 40-254 provides for a trial de novo in Superior Court in which the trial court weighs evidence and draws an independent conclusion subject only to the constraint that the burden of proving the invalidity of the Commission's conclusion is on the party adverse to the Commission (and subject to a recognized constitutional constraint for rate decisions not applicable here). *See Tucson Elec. Power Co. v. Ariz. Corp. Comm'n,* 132 Ariz. 240, 243, 645 P.2d 231, 234 (1982) ("*Tucson Electric*"), *quoting Rate Decisions: Judicial Review of the Arizona Corporation Commission*, 19 Ariz. L. Rev. 488, 493 (1977) *and citing Ariz. Corp. Comm'n v. Fred Harvey Transp. Co.*, 95 Ariz. 185, 190, 388 P.2d 236, 239 (1964) (recognizing numerous Arizona cases unequivocally held the superior court must exercise independent judgment); *Corp. Comm'n of Ariz. v. People's Freight Line*, 41 Ariz. 158, 161, 16 P.2d 420, 421 (1932) (the proceeding is a new and

independent action heard de novo upon proper evidence, and not merely upon review of the evidence taken before the commission; trial court not bound to defer); *Ariz. Corp. Comm'n v. Reliable Transp. Co.*, 86 Ariz. 363, 371, 346 P.2d 1091, 1096 (1959) ("the superior court may properly hold an order unreasonable on the basis of 'clear and satisfactory evidence' presented to it, whereas it may be perfectly apparent that the Commission acted reasonably on the basis of the evidence which it had to consider"); *Corp. Comm'n v. Southern Pac. Co.*, 55 Ariz. 173, 175–76, 99 P.2d 702, 703 (1940) ("the proceeding is not an appeal from the decision of the commission" but rather a new, independent action requiring review of new evidence from that presented to the commission).

Both the Commission and BMSC in their response briefs confuse this Court's standard of review applicable to the Superior Court's grant of a summary judgment motion under Rule 56, *Ariz.R.Civ.P.*, with the burden of proof applicable to the Superior Court's weighing of evidence after all evidence has been presented at a trial. *See* A.R.S. § 40-254(E) (burden of proof). Both parties imply repeatedly in their briefs that this Court in *Grand Canyon Trust v. Ariz. Corp. Comm'n* effectively changed the above-cited law regarding the trial de novo process in Superior Court by newly equating the burden of proof in 40-254(E) with the constitutionally-constrained standard of review applicable to rate cases – the "substantial evidence" test. *See* ACC Ans. at 27-28 *and* BMSC Ans. at 30-34

relying on Grand Canyon Trust v. Ariz. Corp. Comm'n, 210 Ariz. 30, 34, 107 P.3d 356, 360 (App. 2005).

In its Opening Brief, Wind P1 explained the history of the "substantial evidence" standard applied by courts to review of rate cases under A.R.S. § 40-254. Opening Brief at pp. 26–30. However, even if such a deferential standard applied to the ultimate determination in this case, as urged by the ACC and BMSC (it does not under the authority cited above), such a standard would be applied by the Superior Court to evaluate the strength of all the evidence *after a trial de novo*. A trial never occurred in this case.

The *Grand Canyon Trust* case was simply at a different stage of appellate review than the present case. As stated in the description of the procedural history in the *Grand Canyon Trust* case, "[t]he parties stipulated that, given the substantial evidentiary record developed in proceedings before the Commission, the action should be submitted to the superior court on dispositive motions similar to appellate briefs." *Grand Canyon*, 210 Ariz. at 33, 34, 107 P.3d 356, 360. The standard of review applied by the Superior Court in *Grand Canyon Trust* was, by stipulation of the parties, a post-trial standard where all the evidence is in front of the court acting as fact finder for a final determination. *No such stipulation was made in this case*. The Superior Court did not have all the evidence before it in the parties' summary judgment motions. At the summary judgment stage, the Superior

Court is charged not with making a final decision on the merits of the case, but instead must determine if there is a dispute of material fact for trial. Any evidence or reasonable inference contrary to the material facts needed for judgment will preclude summary judgment. *United Bank of Ariz. v. Allyn*, 167 Ariz. 191, 195, 805 P.2d 1012, 1016 (App. 1990), *review den'd* (citation omitted). Because the parties' motions demonstrated material facts in Wind P1's favor, at a minimum, Wind P1 should have been allowed to present evidence at a trial. The Superior Court here erroneously simply deferred to the Commission as a matter of law by applying the substantial evidence standard as if the parties had stipulated to an appellate briefing and decision procedure similar to the stipulated procedure that occurred in *Grand Canyon Trust*. This was not the independent review of the facts required by A.R.S. § 40-254.

Even if it may seem burdensome for the Superior Court to conduct a full-blown trial de novo for all cases brought under A.R.S. § 40-254, the Legislature has not changed this longstanding trial de novo requirement, and it still applies. In contrast, in 1991, the Legislature enacted A.R.S. § 40-254.01, providing for direct appeals to the Court of Appeals in rate cases, precisely to eliminate the burdensome trial de novo requirement for rate cases. *Consolidated Water Utilities, Ltd. v. Ariz. Corp. Comm'n,* 178 Ariz. 478, 481, 875 P.2d 137, 140 (App. 1993) (finding Legislature eliminated de novo requirement in rate cases to reduce

burden). The Legislature did *not* change the existing trial de novo requirement for non-rate cases. This case is not a rate case.

2. Supreme Court Case Law Interpreting A.R.S. § 40-254 Has Not Been Overruled and Has No Expiration Date

The ACC further challenges the application of the trial de novo requirement in A.R.S. § 40-254 by asserting that the Arizona Supreme Court law interpreting this section is "dated," addresses "CC&Ns," and the cases largely dealt with the transportation industry. ACC Ans. at pp. 28–29. The ACC cites no legal authority supporting these arguments, and cites no supporting text in § 40-254 for drawing any distinction between Certificate of Convenience and Necessity ("CC&N") cases and other cases brought under the Commission's statutory authorities. There is no rational distinction to be drawn in the context of reviewing a summary judgment motion between a factual scenario involving a CC&N (an order finding it convenient and necessary for a regulated entity to provide utility service in a certain area) and a factual scenario involving the Commission's evaluation of the adequacy of such service under another statute, nor is there any rational basis to distinguish the type of service under A.R.S. § 40-254.

Further, there is no expiration date on the validity of Arizona Supreme Court case law interpreting the same statute (A.R.S. § 40-254), a statute that has been in effect substantially unchanged since 1912. *See* Laws 1912, Ch. 90, § 67; Civ. Code 1913, § 2343; Rev. Code 1928, § 720; Code 1939, § 69-249. The Supreme

Court again reviewed the standard in detail in 1982 in *Tucson Electric,* agreeing with the dissent's statement in that case that, despite the different levels of review applicable to rate and other cases, the whole concept of the de novo review in 40-254 "is the right to introduce new evidence before any determination is made by the court." *Tucson Elec. Power Co. v. Ariz. Corp. Comm'n*, 132 Ariz. 240, 244, 645 P.2d 231, 235 (1982).

Because a trial is required in all cases brought under the statute, the appropriate standard of review in this case is the summary judgment standard; not a post-trial standard regarding the weight to be given to such evidence. The Commission and BMSC both argue that the Superior Court must grant deference to Commission decisions, but that is not the standard this Court applies in reviewing a grant of a summary judgment motion. ACC Ans. at pp. 29–31, BMSC Ans. at pp. 31–34 (citing a number of cases decided under inapplicable appeal statutes). This Court reviews the facts and reasonable inferences in the light most favorable to the party against whom the Superior Court granted summary judgment. *Phelps Dodge Corp. v. Ariz. Elec. Power Co-op., Inc.*, 207 Ariz. 95, 103, 83 P.3d 573, 581 (App. 2004) (internal citations omitted).

B. Trial Court Erred in Denying Admission of Affidavit of Robert Owens Based on Erroneous Application of "Substantial Evidence" Standard

Wind P1 has already addressed the arguments made by the Commission and BMSC regarding the legal standard applicable to a determination of the admissibility of the Owens Affidavit, with one exception.[4] *See* Opening Brief at pp. 31–33. The Commission argues, in essence, that the Owens expert opinion, even though it addresses only information already in the Commission's hearing record, is inadmissible because the expert opinions expressed in the Affidavit were formed and committed to writing after the Commission's Decision was made. ACC Ans. at pp. 32–34. The Commission supports this statement with case law providing that evidence of *circumstances* occurring subsequent to a Commission hearing is not admissible. ACC Ans. at p. 33, n.154. The Commission's position is not consistent with the cited case law or historic practice. The cited cases clearly acknowledge that new evidence may be admitted in a trial de novo in Superior Court. *See, e.g., Sulger v. Ariz. Corp. Comm'n*, 5 Ariz.App. 69, 71, 423 P.2d 145, 147 (1967) (new evidence and witnesses were introduced in Superior Court); *State ex rel. Church v. Ariz. Corp. Comm'n,* 94 Ariz. 107, 110, 382 P.2d 222, 224 (1963)

[4] Wind P1 notes the Commission also raised an argument on pages 34-35 of its Answering Brief about the timing of disclosure of Mr. Owens as a witness, but this argument was considered by the Superior Court and was not the basis for the Superior Court's Ruling. The Commission could have requested additional time in the Superior Court if it felt prejudiced by the disclosure timing, but it did not.

("superior court is free to consider evidence which was not adduced before the commission") *and Gibbons v. Ariz. Corp. Comm'n*, 75 Ariz. 214, 217, 254 P.2d 1024, 1027 (1953) (lower court properly considered depositions of two witnesses taken after Commission decision); *Tucson Elec. Power Co. v. Ariz. Corp. Comm'n*, 132 Ariz. 240, 244, 645 P.2d 231, 235 (1982) (citing *State ex rel. Church* and *Gibbons* and holding that new evidence may be presented to the Superior Court).

As indicated in the aforementioned cases, the intent of prohibiting evidence of new *circumstances* arising after the Commission decision is to allow the Commission to continue its work as to such subsequent events. However, the Commission is not insulated under § 40-254 from the Superior Court's consideration of new *evidence* relating to events occurring prior to the Commission decision, even if the Commission was unaware of the evidence. The Commission's argument regarding the timing of the Owens opinion as a disqualifying factor makes no sense, because prohibiting new opinions about events that occurred prior to the Commission's Decision would completely eviscerate the trial de novo requirement in A.R.S. § 40-254. No witnesses could take the stand because their words would be formed and uttered after the Commission's hearing date. The Commission's argument is inconsistent with well-established case law that allows presentation of new evidence never seen or

considered by the Commission. New testimony and witnesses are allowed in a trial de novo under A.R.S. § 40-254.

C. The Evidence Cited by the Commission Demonstrates Disputed Facts Regarding the Alleged Odors and Noises, Their Sources, and the Effectiveness and Reasonableness of Closure as a Solution to the Unproven Remaining Problems

Whether the Commission's plant closure order was reasonable to address alleged nuisance conditions in a neighborhood depends on certain material facts. Under the statutes relied upon by the Commission (assuming the Court determines any of them provided the Commission's legal authority here), the Commission in its summary judgment motion in the Superior Court must have demonstrated, at a minimum, no dispute of fact regarding the following material facts:

- odors or noises still existed in an unreasonable amount at homes at the time of the Commission's evidentiary hearing on May 8, 2012 **[this fact would, under the Commission's argument, tend to establish that "service" is "improper" under § 40-321(A), or not "adequate" or "reasonable" under § 40-361(B), since it was undisputed that there was nothing wrong with the WWTP, and is a necessary fact to determine if the Commission's plant closure order was "unreasonable" under § 40-254]**;

- and if so, odors were actually coming from continued operation of the WWTP as opposed to other known odor sources **[this fact is necessary to tie the WWTP to the "improper" or "inadequate" or "unreasonable" condition in § 40-321(A) or § 40-361(B), and is necessary to determine reasonableness under § 40-254]**;
- closing the plant would reduce neighborhood odors in an amount that would resolve nuisance conditions given that other known odor sources would still be operating in the neighborhood **[this fact is necessary to establish the reasonableness of the Commission's action under all applicable statutes]**; and
- whether some objective standard exists that should reasonably be applied to the WWTP beyond the applicable legal and industry standards to which it undisputedly adheres **[the Commission must determine what is "proper" under § 40-321(A), and "adequate, efficient, and reasonable" under § 40-361(B) in order to determine that the WWTP or BMSC's service is not proper, adequate, efficient, or reasonable]**.

The facts do not support application of A.R.S. § 40-331(A) here because there was no "security" or "convenience" issue identified in the record.

Neither the Commission nor BMSC dispute Wind P1's description of the above multiple fact categories as material to the Court's evaluation of a grant of the Commission's summary judgment motion, and neither answering party make any attempt to cite facts to establish that no dispute of material fact exists in each of these categories. The Commission simplistically cites evidence it argues "supports the conclusion that the WWTP emits offensive odors." ACC Ans. at p. 37. The simple fact of whether the WWTP emitted odors that "offended" people, even if established, does not establish the other material facts described above that are necessary to determine whether the Commission's plant closure order was a lawful and reasonable response.

The Commission does not deny that evidence demonstrated the following:

- BMSC made extensive improvements to the WWTP prior to the Commission's hearing that effectively reduced odors and noises **[from which a fact finder could infer that post-improvement measurements were required to determine if current emissions levels were adequate, reasonable, and proper]**;
- there were no measurements of odor levels in evidence **[from which a fact finder could infer there was insufficient information to determine if odor emissions were adequate, reasonable, and proper]**;

- the evidence identified no odor emissions standard, regulatory or otherwise, that was not already met by the WWTP **[from which a fact finder could infer odor emissions were already controlled at an objectively adequate, reasonable, and proper level]**;[5]
- there are multiple odor-generation sources in the neighborhood other than the WWTP [**from which a fact finder could infer confusion on the part of residents submitting public comments as to the cause of odors**];
- investigations of the 23 odor complaints made to BMSC by residents prior to the hearing found a number of the reported odors were caused by sources other than the WWTP [**from which a fact finder could infer confusion on the part of residents as to the cause of odors**]; and
- even the Commission's own engineer was unsure whether closure of the plant would remedy the odors that were the subject of public comments **[from which a fact finder could infer that it was unreasonable to order plant closure without further investigation of the cause of odors]**.

The Commission tries to minimize the above facts, which are in Wind P1's favor, by arguing that no reasonable fact finder could agree, given the quantum of

[5] The Commission blames Wind P1 for not presenting evidence regarding odor levels, and thereby incorrectly argues that Wind P1 had the burden of proof in the Commission's administrative hearing on BHOA's motion. ACC Ans. at p. 38. The parties stipulated that the WWTP already met all regulatory and industry standards – *there was nothing in the record for Wind P1 to rebut.* The Commission should have denied BHOA's motion for lack of supporting evidence.

evidence required, that the Commission's order was unlawful or unreasonable. *See* ACC Ans. at p. 40. Even considering the burden of proof Wind P1 will bear at trial, the quantum of facts here weighs in Wind P1's favor. The quantum of facts includes the glaring absence of material evidence to support the reasonableness of the Commission's plant closure order; this absence *alone* warranted the denial of the Commission's summary judgment motion, under a proper application of Rule 56, *Ariz.R.Civ.P.*

IV. ISSUE 3: THE TRIAL COURT ERRED IN CONCLUDING PLANT CLOSURE ORDER DID NOT VIOLATE CONSTITUTIONAL CONTRACT IMPAIRMENT CLAUSES

Wind P1 argued in its Opening Brief that the Superior Court erred in finding there was no substantial impairment of the Effluent Delivery Agreement because the Superior Court failed to apply the proper summary judgment standard to this issue, and because the court misinterpreted the law regarding whether a contractual impairment is substantial for the purpose of analyzing a Contracts Clause argument.

A. Material Issues of Fact Exist Regarding Wind P1's Reasonable Expectation of Regulation by Commission's Plant Closure Order

The Commission did not respond to Wind P1's argument regarding the summary judgment standard that should have been applied to the contract impairment issue. The Commission instead argued that it was appropriate for the Superior Court to interpret a phrase in the Effluent Delivery Agreement and

conclude that Wind P1 "reasonably expected" the plant could be ordered closed. ACC Ans. at pp. 46–48. The Commission's argument ignores the ambiguity demonstrated in the facts regarding the parties' intent in the Effluent Agreement as to future regulation by the Commission. The phrase cited by the Commission addresses authority to operate a wastewater treatment plant, a subject over which the Commission has not in the past exercised jurisdiction. Yet, as argued in the Superior Court, the same agreement stated in a separate provision (in a very detailed way) the parties' expectations regarding future regulation by the Commission, solely addressing potential rate changes. I.R. 142, Ex. 5 at 3-4 (charges for service). The Commission does not deny that its plant closure order was unprecedented. Further, the Commission agrees the plant closure order was a case-specific order with a requirement limited to the WWTP. This was not industry regulation; this was an order targeted to resolving one specific contractual obstacle at the request of a constituent: BHOA. From these facts alone, a reasonable fact finder could infer that Wind P1 had no reasonable expectation of being blind-sided by a new regulation prohibiting operation of a plant in this manner. Summary judgment was inappropriate.

B. Plant Closure Order Was State Law within the Meaning of the Contracts Clauses

The Commission further argues (inconsistent with its arguments it was legislating under a "concurrent" constitutional authority) that it was merely acting

in an adjudicatory role here in administering existing legislative enactments, and therefore its action is not restrained by the Contracts Clauses. ACC Ans. at p. 48. The Commission's argument ignores that its plant closure order purported to establish a new retroactive zoning requirement for the WWTP that was not present in any existing laws or rules, and established a new method of enforcement not present in any existing law or rule. The new and binding nature of the Commission's order in this case was, (albeit unauthorized), akin to lawmaking or rulemaking (and similar to a municipal ordinance), both of which are subject to compliance with the Contracts Clause. *Jamaica Ash & Rubbish Removal Co., Inc. v. Ferguson,* 85 F.Supp.2d 174, 183 (E.D.N.Y. 2000); *see also Pure Wafer, Inc. v. City of Prescott,* 14 F.Supp.3d 1279, 1299 (D. Ariz. 2014) (municipal ordinance). The Commission's plant closure order here was hardly a mere ministerial act, and the Commission cannot avoid a finding that it is a new regulation simply because its effect is targeted to only one utility and one contract.

C. Superior Court Did Not Reach Last Two Tests for Contractual Impairment

Finally, even though the Superior Court never reached the final two prongs of the impairment analysis, the Commission argues about them. ACC Ans. at pp. 49–50. Whether or not the Commission could have demonstrated a significant and legitimate purpose for impairing Wind P1's contract, the Commission's action could not meet the third requirement of the constitutional contract impairment test

– that exercise of the Commission's power must be based upon reasonable conditions of a character appropriate to the public purpose justifying the Order's issuance. *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 413, 103 S. Ct. 697, 74 L.Ed.2d 569 (1983); *Phelps Dodge*, 207 Ariz. 95, 119, 83 P.3d 573, 597 (App. 2004). Even though there is usually a presumption favoring legislative judgment as to the necessity and reasonableness of a particular measure, when legislation impairs an obligation in one specific existing contract, as in this case, there must be a demonstration in the record that the severe disruption of contractual expectations is necessary to meet an important general social problem. *See Allied Structural Steel Co. v. Spannus*, 438 U.S. 234, 244–45, 98 S.Ct. 2716, 2722–23 (1978); *see also U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 23, 97 S. Ct. 1505, 1518 (1977). This is a targeted order involving one facility and one contract even though odors are a well-known byproduct of all wastewater treatment plants, made outside the agency's legal authority, and despite a dearth of evidence that closure of the WWTP is either a necessary or reasonable remedy to meet an important general social problem.

REQUEST FOR ATTORNEYS' FEES AND COSTS

Plaintiff-Appellant Wind P1 requested that the Court, pursuant to A.R.S. §§ 12-341, 12-342, 12-348(A) and other applicable law, award Wind P1 its costs and reasonable attorneys' fees incurred in connection with this appeal and all related

actions. If Wind P1 is the prevailing party, then it is entitled to attorneys' fees pursuant to A.R.S. § 12-348(A)(2) (requiring court to award fees and other expenses to prevailing party under any statute authorizing judicial review of agency decision). The Commission incorrectly asserts application of an exception in A.R.S. § 12-348(H)(1), which excepts "a proceeding before this state . . . in which the role of the state . . . was to . . .fix a rate." The Commission in ordering the plant closure was not establishing or fixing a rate; the Commission is collaterally estopped from making this argument again. I.R. 143, Ex. 19 (August 26, 2013 Order in case number 1 CA-CC 13-0001, finding that "Decision No. 73885 did not arise from a process involving rate making or rate design").

The Commission further asserts that attorney's fees are not available under A.R.S. § 12-348(A)(2) for cases determined under a de novo standard of review. ACC Ans. at p. 52. The Commission does not cite any language in the statute, but relies instead on the holding in *Cyprus Bagdad Copper Corp. v. Ariz. Dept. of Revenue*. 188 Ariz. 345, 349, 933 P.2d 923, 927 (App. 1997). The *Cyprus* case was a tax appeal, and the court in that case found that attorneys' fees were not awardable under A.R.S. § 12-348(A)(2) because there was specific language addressing the recoverability of attorneys' fees awards for tax appeal cases in the same statute, at A.R.S. § 12-348(B) and (E). This is not a tax appeal, and the

legislature has not limited the recovery of fees and expenses in a case heard under A.R.S. § 40-254.

The Commission further argues that attorneys' fees would not be recoverable under A.R.S. § 12-348 against the Commission because it was involved in this matter only in its capacity as a forum. *See* A.R.S. § 12-348(H)(1). This argument is not supported by the case cited by the Commission. *See* ACC Ans. at p. 52, n.211. Once an agency takes an adversary role against the appellant's interests in an administrative appeal, it can no longer claim it is merely a forum or nominal party under A.R.S. § 12-348(H)(1). *Cortaro Water Users' Ass'n v. Steiner*, 148 Ariz. 314, 318, 714 P.2d 807, 811 (1986). In this case, the Commission has taken the lead in opposing Wind P1 in every step of the appeal.

CONCLUSION

For the foregoing reasons, Plaintiff-Appellant, Wind P1, respectfully requests that this Court:

- Reverse the Superior Court's decision granting summary judgment to the Commission, and remand this case with instructions to enter judgment in Wind P1's favor as a matter of law because the Commission lacked authority to issue the plant closure order; or, in the alternative:

- Reverse the Superior Court's decision granting summary judgment to the Commission because disputes of material fact exist that require a trial de novo per A.R.S. § 40-254; and
- Reverse the Superior Court's ruling that the Commission's plant closure order was not a "substantial impairment" of the Effluent Delivery Agreement under the Contract Clauses of the United States and Arizona Constitutions because disputes of material fact exist that require a trial de novo per A.R.S. § 40-254.

DATED this 27th day of February, 2015.

/s/ Fredric D. Bellamy
Fredric D. Bellamy – 010767
Michele Van Quathem – 019185
Naomi Thurston – 029863
Ryley Carlock & Applewhite, P.A.
One North Central Avenue, Suite 1200
Phoenix, Arizona 85004
Attorneys for Appellant
fbellamy@rcalaw.com
mvq@rcalaw.com
nthurston@rcalaw.com

Sheryl A. Sweeney
Direct Line: 602-440-4824
Direct Fax: 602-257-6924
Email: ssweeney@rcalaw.com

October 30, 2015

Mr. Stephen M. Brophy, Chairman
Arizona Power Authority
1810 West Adams Street
Phoenix, Arizona 85007-2697

Re: Outside Counsel

Dear Chairman Brophy:

On behalf of all of the undersigned entities, we are writing to support the Arizona Power Authority's (the "Authority") hiring of outside legal counsel.

The Authority is responsible for managing this State's share of power generated at the Hoover Dam. The electric industry and public preference power are sophisticated, ever-changing areas of law. The Authority requires unique legal expertise to obtain, maintain, contract for, protect and deliver Hoover power.

We know that the Attorney General's office has suggested that the Attorney General should be the Authority's legal advisor. That would do a great disservice to the State of Arizona and to the Authority. It also would be an entirely new and unnecessary interpretation of the law. The Authority has hired outside counsel for decades. That is the only effective way to be assured that the Authority is adequately represented.

_____	_____
_____	_____
_____	_____
_____	_____
_____	

c: Joe Albo
Dalton Cole
Dick Walden
Russ Jones
Robert Johnson
Mike McVey
Stuart Somach
Brittany Lewis-Roberts

BEFORE THE ARIZONA CORPORATION COMMISSION

SUSAN BITTER SMITH, CHAIRMAN

BOB STUMP, COMMISSIONER

BOB BURNS, COMMISSIONER

DOUG LITTLE, COMMISSIONER

TOM FORESE, COMMISSIONER

IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR AUTHORITY TO ISSUE EVIDENCE OF INDEBTEDNESS IN AN AMOUNT NOT TO EXCEED $3,400,000.	Docket No.: SW-02361A-15-0206
IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR A DETERMINATION OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY AND FOR INCREASES IN ITS WASTEWATER RATES AND CHARGES FOR UTILITY SERVICE BASED THEREON.	Docket No.: SW-02361A-15-0207

TESTIMONY

OF

HOWARD HARRIS

January 27, 2016

Executive Summary

Howard Harris is the General Manager of the Boulders Resort & Spa, owned by CP Boulders, LLC, an Arizona limited liability company. The Boulders Resort offers guest accommodations, a spa, six restaurants and the El Pedregal commercial center. The Boulders Resort is a commercial customer of Liberty Utilities (Black Mountain Sewer Corp.) ("Black Mountain") and purchases treatment plant effluent for use on the Resort's two golf courses.

Mr. Harris testifies on behalf of CP Boulders, LLC, in support of both of the Settlement Agreements submitted to the Commission on November 16, 2015 and January 22, 2016 in this case that combined resolve contested issues related to the closure of Black Mountain's wastewater treatment plant and the overall rate case. Mr. Harris asks the Commission to approve the settlement agreements as a fair compromise of disputed issues.

Q. Please state your name, position, and business address.

A. My name is Howard Harris. I am the General Manager of the Boulders Resort & Spa. My business address is 34631 N. Tom Darlington Dr., Carefree Arizona 85377.

Q. Have you previously testified before the Commission?

A. No.

Q. What is CP Boulders' interest in this case?

A. CP Boulders purchased the Boulders Resort and Spa property (the "Resort") from Wind P1 Mortgage Borrower L.L.C. on April 28, 2015. The Resort is a commercial and effluent customer of Black Mountain. The Resort is a significant commercial customer in that it operates hotel guest accommodations, a spa, six restaurants, two golf courses, and the El Pedregal commercial center. In addition, the Resort purchases effluent from Black Mountain for a portion of the Resort's golf course water supply.

Q. What is the purpose of your testimony?

A. I am testifying as the designated representative of CP Boulders. CP Boulders first entered into a multi-party Settlement Agreement with Black Mountain, the Town of Carefree, The Boulders Homeowners Association, and Wind P1 Mortgage Borrower L.L.C. regarding closing the wastewater treatment plant. Subsequently, CP Boulders entered into the Comprehensive Settlement Agreement with Black Mountain, Commission Staff, RUCO, and the Town of Carefree. I am testifying that CP Boulders supports the Commission's approval of both of these settlement agreements. Joseph Yung already submitted Direct Testimony in support of the multi-party Settlement Agreement in December, attaching significant background materials explaining the dispute, so I will simply refer back to that testimony regarding my support for the first multi-party settlement agreement.

Q. Has anything changed regarding CP Boulders' support for the multi-party Settlement Agreement after Mr. Yung submitted his Direct Testimony in December?

A. No, his testimony on those issues is still the same. The Comprehensive Settlement Agreement essentially adopts the original multi-party Settlement Agreement terms regarding the plant closure and the commitment the Resort made to pay a significantly higher effluent rate, but makes some changes to the proposed rates.

Q. In Mr. Yung's Direct Testimony, he expressed support for Black Mountain's proposed commercial rate design. Does the Comprehensive Settlement Agreement address CP Boulders' concerns regarding changes to the proposed design?

A. The rate design adopted in the Comprehensive Settlement Agreement still relies on actual water use, but is less favorable to the Resort than the proposed rate design in the Black Mountain application. I understand generally that there were a number of reasons for the changes. Even though the rates that will be charged to the Resort are less favorable than had been initially proposed, CP Boulders has agreed to them as a fair compromise to address all the parties' concerns in this case in a manner that was acceptable to all parties.

Q. Does CP Boulders support other aspects of the Comprehensive Settlement Agreement?

A. Yes, it has agreed to all of the terms.

Q. Do you believe the Comprehensive Settlement Agreement is in the public interest?

A. Yes, because it reflects a compromise between divergent interests. It provides an organized plan for the plant closure that resolves some significant concerns of the stakeholders.

Q. What would CP Boulders like to see the Commission do with the Comprehensive Settlement Agreement?

A. The Commission should approve the terms as they are written so as not to risk continuation of a very contentious problem.

RECEIVED
2015 NOV 24 P 3:38
AZ CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR AUTHORITY TO ISSUE EVIDENCE OF INDEBTEDNESS IN AN AMOUNT NOT TO EXCEED $3,400,000.	DOCKET NO. SW-02361A-15-0206
IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR A DETERMINIATION OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY AND FOR INCREASES IN ITS WASTEWATER RATES AN CHARGES FOR UTILITY SERVICE BASED THEREON.	DOCKET NO. SW-02361A-15-0207

DIRECT TESTIMONY OF

MAYOR LES PETERSON

Town of Carefree

November 24, 2015

EXHIBIT
Carefree 1
ADMITTED

TABLE OF CONTENTS

I. INTRODUCTION AND PURPOSE OF TESTIMONY 1

II. BACKGROUND ON THE BOULDERS WASTEWATER TREATMENT PLANT 2

III. PROPOSED SETTLEMENT AGREEMENT 8

IV. CONCLUSION 12

INTRODUCTION AND PURPOSE OF TESTIMONY

Q. PLEASE STATE YOUR NAME AND ADDRESS.

A. My name is Les Peterson. My business address is 8 Sundial Circle, Carefree, Arizona 85377. I am the Mayor of the Town of Carefree ("Town").

Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

A. I am testifying on behalf of the Town. Approximately 50% of the Town's residents are wastewater customers of Liberty Utilities (Black Mountain Sewer) Corp. ("Liberty Black Mountain"). In addition, the Town has a number of businesses which are commercial customers of Liberty Black Mountain.

Q. WHAT IS YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND?

A. Arizona State University; BA, 1965, MA, 1967
Teacher; Scottsdale, AZ School District, 1967
Marketing; Procter & Gamble, 1968-1971
Promotion Manager; The Pillsbury Company, 1971-1973
Executive Vice President; Glendinning Companies, 1973 – 1979
Founder and President; Connecticut Consulting Group, 1979-1991
Executive Vice President; Clarion Division of Darcy Masius Benton & Bowles, 1991 – 2000

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE COMMISSION?

A. Yes. I testified on behalf of the Boulders Homeowners Association ("BHOA") in the 2008 rate case filed by Liberty Black Mountain's predecessor, Black Mountain Sewer Corporation (Docket No. SW-02631A-08-0609). At that time I

was President of BHOA.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I am testifying in support of the Proposed Settlement Agreement between Liberty Black Mountain, the Town, BHOA and CP Boulders, LLC dba the Boulders Resort (the "Resort") filed on November 16, 2015.

BACKGROUND ON THE BOULDERS WASTEWATER TREATMENT PLANT

Q. CAN YOU PROVIDE SOME BACKGROUND ON THE ISSUES THAT YOUR TESTIMONY WILL DISCUSS?

A. Yes. Liberty Black Mountain owns and operates a single wastewater treatment facility (the "Plant"), which is located in the midst of the Boulders residential community and within the Town boundaries. The Plant was built more than 40 years ago and is located adjacent to one of the Resort's golf courses. The Plant is situated less than 100 feet from three homes and within 1,000 feet of approximately 300 homes. If constructed today, the Plant would require a setback of either 350 feet (for a facility without odor, noise, and aesthetic controls) or at least 100 feet (for a facility with full odor, noise, and aesthetic controls).

The Plant treats up to 120,000 gallons of wastewater each day, which represents roughly 20 percent of Liberty Black Mountain's daily inflow. The remainder of Liberty Black Mountain's wastewater flow is delivered to the City of Scottsdale ("Scottsdale") for treatment under that certain Wastewater Treatment Agreement between Liberty Black Mountain and Scottsdale dated April 1, 1996 ("Scottsdale Agreement").

All effluent treated by the Plant is delivered to the Resort. Liberty Black Mountain and the Resort are or were parties to an Effluent Delivery Agreement

dated March 2001 ("EDA"). The EDA has a 20 year term, and prevents Liberty Black Mountain from unilaterally closing the plant and cutting off the Resorts' supply of the effluent. The Resort has a continuing need for the Plant's effluent to water the Resort golf courses during peak water use times.

In Liberty Black Mountain's[1] 2005 rate case, BHOA intervened and brought to the Commission's attention the odor and noise issues related to the wastewater operations. The odor problem was severe and pervasive throughout a broad portion of the Boulders subdivision. Testimony and public comment suggested that the odors arose from both the Plant and the collection system, but some thought corrections to the collection system would be the most efficient initial steps to take to see if those less costly corrections could solve the odor problems. In Decision No. 69164 in that rate case, the Commission required Liberty Black Mountain to implement one of the two proposed solutions in order to "mitigate" the odor problems. The Decision expressed the Commission's desired goal as "odor remediation in the Boulders community." The Commission further indicated that it believed that action should be taken to advance a solution "that will enable all customers...to enjoy fully their property without enduring offensive odors."

Despite Liberty Black Mountain's improvements to the collection system in response to Decision No. 69164, which did alleviate a small portion of the pervasive odors, strong odor problems persisted. In Liberty Black Mountain's 2008 rate case, over five hundred public comments were lodged with the Commission (letters, petitions and appearances at the public comment portion of

[1] At various time discussed herein, Liberty Black Mountain was known as Black Mountain Sewer Company and before that, Boulders Carefree Sewer Corporation. For ease of reference, I will refer to the utility as Liberty Black Mountain.

the hearing) confirming the ongoing odor problems. Commenters indicated the impacts of the odors on their lifestyle, including interruption of Thanksgiving dinner on the patio, inability to leave windows open to enjoy fresh air, noises from operation of the plant disturbing sleep, embarrassment to host guests who may experience intense odors, and golfers who must hold their breath as they pass the Plant while playing the course. It had become clear that odor problem identified by the Commission in Decision No. 69164 in fact was originating in both the collection system and the Plant and that upgrades to the collection system alone had not remedied the full problem.

Liberty Black Mountain filed a rate application with the Commission in December 2008. The BHOA intervened as a party, and then, Liberty Black Mountain and the BHOA entered into a Plant Closure Agreement on September 17, 2009. The Plant Closure Agreement set forth terms and conditions under which Liberty Black Mountain agreed to close the Plant. One of the conditions to closing the Plant was the Resort agreeing to termination of the EDA. In addition, the Plant Closure Agreement provided that upon the utility's subsequent sale of the site on which the Plant is located (which could become two, or perhaps three, residential lots), Liberty Black Mountain would share its gain on the sale of property equally with ratepayers. The Town was also a party to the rate case and supported the Plant Closure Agreement.

The Commission issued Decision No. 71865 on September 1, 2010 ("Phase 1 Decision"). Concerning the Plant Closure Agreement, the Commission stated that it was a reasonable resolution of the odor concerns expressed by hundreds of Liberty Black Mountain customers. To facilitate Liberty Black Mountain's funding and recovery of costs associated with closure of the Plant, the Commission also approved a special plant closure cost recovery mechanism in

the Phase 1 Decision. The Resort was not a party to the Phase 1 proceedings.

After the Phase 1 Decision, alternatives to the effluent supplied by Liberty Black Mountain to the Resort were considered. When the Resort and Liberty Black Mountain were unable to reach agreement to terminate the EDA in order for the Plant closure to proceed, the BHOA sought and obtained Commission intervention. On January 24, 2012, the Commission reopened Decision No. 71865 for the sole purpose of determining whether it should order Liberty Black Mountain to close the Plant.

The Resort intervened after the matter was reopened and additional hearings took place in May 2012. The Town did not participate as a party but passed a resolution that was filed with the Commission supporting closure of the Plant.

The Commission issued the Decision No. 73855 (the "2013 Closure Order") on May 8, 2013. In the 2013 Closure Order, the Commission concluded that continued operation of the Plant in the midst of a residential neighborhood would have a detrimental effect on the quality of life for residents within the community. As the Commission held "[t]he record supports a finding that due to its location, the [Plant] can no longer be operated in a manner consistent with the public interest[.]"

The Resort filed a petition for rehearing of the 2013 Closure Order pursuant to A.R.S. § 40-253, which was denied by operation of law. The Resort then appealed the 2013 Closure Order pursuant to A.R.S. § 40-254. The Superior Court in Maricopa County Superior Court Case No. CV2013-00784 upheld the Commission's order, finding that the plant closure order was within the Commission's statutory powers. The Resort appealed the Superior Court's decision, which appeal is currently pending before the Arizona Court of Appeals

as Case No. 1 CA-CV 14-0643 (the "Appeal"). Oral argument in the Court of Appeals is presently scheduled for December 8, 2015. The Resort also filed several other actions related to the 2013 Closure Order. All of those matters have been concluded.

Q. WHAT DEVELOPMENTS HAVE OCCURRED SINCED THE 2013 PLANT CLOSURE ORDER WAS ISSUED?

A. The engineering of design modifications to Liberty Black Mountain's wastewater transmission system necessary for flows to be delivered to the City of Scottsdale instead of the Plant have been substantially completed. The most reasonable alternative is Option 2—City of Scottsdale, Tom Darlington Drive – Single FM w/ Ex as shown in Exhibit 1 to the Proposed Settlement Agreement. The total estimated cost of the improvements is $2.6M.

Liberty Black Mountain is currently negotiating an amendment to the Scottsdale Agreement that would allow it to close the Plant and purchase additional capacity to replace the current capacity in the Plant. Though the Scottsdale Agreement provides that Liberty Black Mountain can purchase additional treatment capacity for a cost of $6 per gallon, Scottsdale has taken the position that the Scottsdale Agreement would be terminated by the closure of the Plant. Scottsdale is now offering replacement capacity at $10 per gallon for a total replacement capacity cost equal to $1.2M, which amount is in addition to the estimated costs to upgrade the transmission system. The $10 per gallon price is still well below market rates for treatment capacity, which are in the range of $25 to $30 per gallon.

Liberty Black Mountain filed the 2015 Rate Case on June 22, 2015. As

stated in Liberty Black Mountain's application and supporting testimony, the rate case was brought (1) because the plans for and estimated costs of the Plant closure had changed since the Phase 1 and 2013 Closure Orders; (2) Liberty Black Mountain has over $1M of investment in the Plant closure; (3) Liberty Black Mountain has not earned sufficient revenue and returns, and (4) the request and need for a new commercial rate design.

Q. HOW DOES LIBERTY BLACK MOUNTAIN'S 2015 RATE APPLICATION PROPOSE TO TREAT THE PLANT CLOSURE COSTS?

A. Mr. Sorenson's Direct Testimony indicated that through May 31, 2015, Liberty Black Mountain incurred $1,120,403.31 of engineering and legal costs related to closing the Plant. Liberty is seeking to recover those costs in this rate proceeding. Liberty has indicated in discovery that as of September 30, 2015, that amount is $1,133,080.51. Of that amount, $281,829.36 is legal expenses related to the litigation by Mr. Marshall related to odors and the Plant. Mr. Marshall's home is one of the three homes within 100 feet of the Plant. Liberty Black Mountain ultimately settled with Mr. Marshall, and is seeking recovery of the amounts incurred in connection with that litigation.

Also included in the total legal and engineering cost is $217,606.95 of legal expenses related to the Resort's legal challenges to the 2013 Closure Order. The Resort initially filed four legal actions related to the 2013 Closure Order. The Resort's appeal to the Superior Court, CV2013-007804, was resolved by the court on summary judgment motions, with the court upholding the 2013 Closure Order. The Resort then appealed that ruling to the Court of Appeals. The matter has been fully briefed and oral arguments have been scheduled for December 8, 2015 (although the parties will seek a stay of such oral argument pursuant to the Proposed Settlement Agreement). The Town intended to object in this rate

proceeding to Liberty's recovery of these legal expenses related to the Marshall litigation and the Resort's appeals of the Commission's 2013 Closure Order.

PROPOSED SETTLEMENT AGREEMENT

Q. PLEASE DESCRIBE THE MAJOR TERMS OF THE PROPOSED SETTLEMENT AGREEMENT.

A. The Proposed Settlement Agreement was filed in this matter on November 16, 2015. It provides that Liberty Black Mountain will close the Plant on November 30, 2018. My understanding is that the Resort will, prior to that date, make changes to its golf course irrigation systems such that it will no longer require the effluent from the Plant.

In addition, the settling parties agree that Liberty Black Mountain will route additional wastewater flows to the Scottsdale plant via Tom Darlington Drive. Originally, Liberty Black Mountain intended to increase existing piping capacity south from the Plant site to the Scottsdale plant. It is my understanding from Liberty Black Mountain that trenching difficulties of that routing make it more cost effective to route the additional effluent to Scottsdale via Tom Darlington Drive, rather than through the residential areas of the Boulders.

The settling parties also agree that Liberty Black Mountain will recover the costs of closing the plant as follows:

- Liberty Black Mountain agrees to not seek recovery of $200,000 of the legal fees related to the Marshall litigation.
- The Resort agrees that its effluent rate should be increased between the time new rates go into effect as a result of this proceeding, through the closure date of the Plant such that Liberty Black Mountain will recover $108,000 through effluent sales to the Resort during that time period.

- Recovery of the remaining closure costs will occur as follows:
  - A Stage 1 Surcharge, to be implemented at the time new rates go into effect as a result of this proceeding, to recover $825,080.51 (which is the remaining closure costs incurred through September 30, 2015, after removal of the $200,000 withdrawn by Liberty Black Mountain and the $108,000 to be recovered through the effluent rates paid by the Resort). Liberty Black Mountain estimates this surcharge will be $6.31 per customer per month.
  - A Stage 2 Surcharge to recover the $1.2 million which Liberty Black Mountain will pay Scottsdale to purchase 120,000 gallons per day of additional treatment capacity at Scottsdale's plant. This surcharge will be recovered from customers beginning within 90 days of Liberty Black Mountain's payment of the $1.2 million to the City of Scottsdale.
  - A Stage 3 surcharge, which will recover the additional costs Liberty Black Mountain incurs for closure of the Plant, which Liberty Black Mountain estimates will be $2,699,700. This surcharge will go into effect within 90 days after the Plant is closed on November 30, 2018.
  - Liberty will also be permitted to seek, in a subsequent rate case, the additional costs it incurs to remove the Plant from the site and remediate the site. Recovery of these amounts would be net of any share of the gain on the sale of the site, pursuant to the terms of the Plant Closure Agreement.

Further, the Town and Liberty Black Mountain will propose in this proceeding, by December 22, 2015, a separate wastewater tariff for light

industrial customers, such as breweries, for which water usage greatly exceeds the amount of wastewater which they contribute to the wastewater system, which tariff will not compute charges based on the customer's water usage but on some other appropriate means (e.g. actual wastewater flows). The Town has received inquiries from one or more potential new light industrial commercial enterprises that would consider locating in the Town. Liberty Black Mountain's proposed commercial tariff structure (which computes wastewater charges based on customers' actual water usage) would be problematic for customers that may use far more water than would actually end up flowing into Liberty Black Mountain's wastewater system. This proposed commercial tariff structure, while supported by the Town, will impede the economic growth the Town would expect from the addition of such light industrial enterprises. Therefore, Liberty Black Mountain and the Town have agreed to propose an alternative tariff for such light industrial customers that would eliminate a disincentive for such customers to locate in the Town.

Further, the Resort agrees to withdraw is appeal of the 2013 Closure Order upon Commission approval of the Proposed Settlement Agreement. Liberty Black Mountain, the Resort and BHOA will seek a stay of the oral argument currently scheduled at the Court of Appeals pending the Resort's withdrawal of appeal.

Q. WHAT ARE THE BENEFITS OF THE SETTLEMENT AGREEMENT?

A. A closure date of November 30, 2018 will address the Resort's need for continued delivery of effluent until it can implement the changes to its irrigation system, and will provide nearby residents with a date certain for closure of the Plant. Further, the Proposed Settlement Agreement provides that the litigation regarding the

Plant closure will be withdrawn upon the Commission's adoption of the Proposed Settlement Agreement, ending the years of costly litigation related to these matters. Additionally, the Settlement Agreement provides for the development of a new light industrial tariff that will promote economic development within the Town.

Further, the Proposed Settlement Agreement provides a reasonable resolution of the cost recovery issues the Town was intending to raise in this proceeding. Liberty Black Mountain has agreed to not seek recovery of $200,000 (of the $281,829.36 total) of legal expenses related to the Marshall litigation. And the Resort has agreed to an increased effluent rate such that the Resort will pay what is equivalent to half of the legal costs Liberty Black Mountain incurred in litigating the Appeal and the related actions. The Town finds these to be reasonable resolutions to the recovery of the amounts to which the Town was intending to object.

Even if the Plant were not closed as provided for in the Proposed Settlement Agreement, it is an old facility that cannot last forever. If the Plant were to continue operating, it would still need to be replaced at some point in the foreseeable future, and replacing it at the current site would likely be impossible due to current setback requirements. Replacement of the Plant in the future with treatment capacity from Scottsdale or at another facility would be far more expensive than the cost to obtain that replacement capacity now for $10 per gallon (today's market prices for such treatment capacity are in the range of $25 to $30 per gallon). Further, the cost of piping to route additional flows to Scottsdale, and cost to close the Plant and remediate the site, will only increase with time. It is inevitable that the Plant would close at some point, and it makes sense to replace it under the terms now available, rather than wait for what will be only higher cost

options later.

CONCLUSION

Q. WHAT SPECIFICALLY ARE YOU REQUESTING FROM THE COMMISSION AT THIS TIME?

A. The Town is requesting that the Commission approve the Proposed Settlement Agreement.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.

458805;ssw;26006-0001

ORIGINAL

RECEIVED

2016 JAN 27 P 4: 54

AZ CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR AUTHORITY TO ISSUE EVIDENCE OF INDEBTEDNESS IN AN AMOUNT NOT TO EXCEED $3,400,000.	DOCKET NO. SW-02361A-15-0206
IN THE MATTER OF THE APPLICATION OF LIBERTY UTILITIES (BLACK MOUNTAIN SEWER) CORP., AN ARIZONA CORPORATION, FOR A DETERMINIATION OF THE FAIR VALUE OF ITS UTILITY PLANTS AND PROPERTY AND FOR INCREASES IN ITS WASTEWATER RATES AN CHARGES FOR UTILITY SERVICE BASED THEREON.	DOCKET NO. SW-02361A-15-0207

SETTLEMENT TESTIMONY OF

MAYOR LES PETERSON

Town of Carefree

January 27, 2016

Arizona Corporation Commission
DOCKETED
JAN 27 2016
DOCKETED BY

EXHIBIT
Carefree 2
ADMITTED

TABLE OF CONTENTS

I. INTRODUCTION AND PURPOSE OF TESTIMONY 1

II. COMPREHENSIVE SETTLEMENT AGREEMENT 1

III. CONCLUSION 4

INTRODUCTION AND PURPOSE OF TESTIMONY

Q. PLEASE STATE YOUR NAME AND ADDRESS.

A. My name is Les Peterson. My business address is 8 Sundial Circle, Carefree, Arizona 85377. I am the Mayor of the Town of Carefree ("Town").

Q. ARE YOU THE SAME LES PETERSON WHO PROVIDED DIRECT TESTIMONY IN THIS PROCEEDING ON NOVEMBER 24, 2015 IN SUPPORT OF A PROPOSED SETTLEMENT AGREEMENT?

A. Yes. The proposed settlement that was the subject of that testimony was between Liberty Utilities (Black Mountain Sewer) Corp. ("Liberty Black Mountain" or the "Company"), the Town, the Boulders Homeowners Association ("BHOA"), and CP Boulders, LLC dba the Boulders Resort and Wind P1 Mortgage Borrower, L.L.C. I will refer to that proposed settlement in this testimony as the "Town/Resort Agreement."

Q. WHAT IS THE PURPOSE OF YOUR SETTLEMENT TESTIMONY?

A. My settlement testimony supports the Settlement Agreement (the "Comprehensive Settlement Agreement") filed in this matter on January 20, 2016 between Liberty Black Mountain, the Arizona Corporation Commission Utilities Division Staff ("Staff"), the Residential Utility Consumer Office ("RUCO"), the Town, and CP Boulders, LLC (the "Resort").

COMPREHENSIVE SETTLEMENT AGREEMENT

Q. HOW DID THERE COME TO BE TWO SETTLEMENT AGREEMENTS PROPOSED IN THIS MATTER?

A. The issues that the Town desired to be addressed in this proceeding centered

primarily on the closure of Liberty Black Mountain's Boulders wastewater treatment plant (the "Plant" or "Boulders WWTP") and the rate impacts related to that closure; the Company's commercial wastewater service rates; and the availability of an alternative tariff for breweries to aid the in Town's economic development efforts to attract such businesses. In advance of the deadline for filing direct testimony in this matter, the Town, the Resort, BHOA and the Company were able to reach agreement of those issues and other issues, and thus those entities entered into the Town/Resort Agreement.[1] After the filing of the Town/Resort Agreement, RUCO and Staff filed their direct testimony in this matter. The Company, the Town, the Resort, RUCO and Staff have subsequently reached an agreement for resolution of all the issues in this matter, and thus have proposed what has been titled the Comprehensive Settlement Agreement.

Q. DOES THE COMPREHENSIVE SETTLEMENT AGREEMENT REPLACE THE TOWN/RESORT AGREEMENT?

A. No. It modifies the Town/Resort Agreement in some respects, but pursuant to Section 1.3.3 of the Comprehensive Settlement Agreement, the Town/Resort Agreement remains in effect except as modified by the Comprehensive Settlement Agreement.

Q. IN WHAT RESPECTS DOES THE COMPREHENSIVE SETTLEMENT AGREEMENT MODIFY THE TOWN/RESORT AGREEMENT?

A. The Comprehensive Settlement Agreement modifies the method by which certain

[1] BHOA is not a party to this proceeding, but some provision of the Town/Resort Agreement would impact the appeal of the Commission's Decision No. 73855 (currently pending in the Arizona Court of Appeals as Case No. 1 CA-CV 14-0643), in which BHOA is an intervenor. Because BHOA is a necessary party to resolve that appeal proceeding, it was necessary that BHOA be a party to the Town/Resort Agreement.

plant closure costs will be recovered, but not the amount of such costs that will be recovered. Where the Town/Resort Agreement provided for recovery of those costs through various surcharges, the Comprehensive Settlement Agreement provides that the closure costs will be recovered through base rates.

Q. WHAT DOES THE COMPREHENSIVE SETTLEMENT AGREEMENT ADDRESS THAT GOES BEYOND THE MATTERS OF THE TOWN/RESORT AGREEMENT?

A. The Comprehensive Settlement Agreement also addresses a number of ratemaking issues that were raised by Staff and RUCO in their direct testimony.

Q. WHAT ASPECTS OF THE TOWN/RESORT AGREEMENT ARE LEFT INTACT BY THE COMPREHENSIVE SETTLEMENT AGREEMENT?

A. The Comprehensive Settlement Agreement retains the date of November 30, 2018 as the date by which the Company will close the Boulders WWTP. It also retains a commercial rate design that is based on water usage data as proposed by the Company in its application in response to the Commissions directive in Decision Nos. 71865, rather than the current commercial rate design. Further, the Comprehensive Settlement Agreement retains the Company's agreement that it will not recover $200,000 of its costs incurred in connection with the Boulders WWTP, and that $108,000 of the costs the Company has incurred in connection with that closure will be recovered through the effluent rate paid by the Resort.

Q. DOES THE TOWN SUPPORT THE COMPREHENSIVE SETTLEMENT AGREEMENT'S MODIFICATIONS TO THE TOWN/RESORT AGREEMENT?

A. Yes, as the modifications only affect the method by which the Company may recover the plant closure costs, and do not further modify the amount of such costs which may be recovered.

Q. DOES THE TOWN SUPPORT THE RESOLUTION OF THE ADDITIONAL MATTERS THAT WERE NOT ADDRESSED IN THE TOWN/RESORT AGREEMENT?

A. Yes. The Town is supportive of the resolution of these additional issues in a manner that is acceptable to the Company, RUCO and Staff.

CONCLUSION

Q. WHAT SPECIFICALLY ARE YOU REQUESTING FROM THE COMMISSION AT THIS TIME?

A. The Town is requesting that the Commission approve the Comprehensive Settlement Agreement, and approve the Town/Resort Agreement as modified by the Comprehensive Settlement Agreement.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.

460976;ssw;26006-0001