

ORIGINAL

COMMISSIONERS  
DOUG LITTLE - Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN

OPEN MEETING ITEM



0000171682

Executive Director  
RECEIVED

ARIZONA CORPORATION COMMISSION 2016 JUL 14 P 2:24

AZ CORP COMMISSION  
DOCKET CONTROL

DATE: JULY 14, 2016  
DOCKET NOS.: SW-02361A-16-0067

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sasha Paternoster. The recommendation has been filed in the form of an Opinion and Order on:

LIBERTY UTILITIES (BLACK MOUNTAIN SEWER), CORP.  
(CC&N EXTENSION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 25, 2016

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

AUGUST 9, 2016 AND AUGUST 10, 2016

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

JODI A. JERICH  
EXECUTIVE DIRECTOR

Arizona Corporation Commission

DOCKETED

JUL 14 2016

DOCKETED BY

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

[www.azcc.gov](http://www.azcc.gov)

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail [SABernal@azcc.gov](mailto:SABernal@azcc.gov).

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 DOUG LITTLE – Chairman  
4 BOB STUMP  
4 BOB BURNS  
5 TOM FORESE  
5 ANDY TOBIN

6  
7 IN THE MATTER OF THE APPLICATION OF  
LIBERTY UTILITIES (BLACK MOUNTAIN  
8 SEWER) CORP. FOR APPROVAL OF AN  
EXTENSION OF A CERTIFICATE OF  
9 CONVENIENCE AND NECESSITY TO PROVIDE  
WASTEWATER UTILITY SERVICE IN  
10 MARICOPA COUNTY, ARIZONA.

DOCKET NO. SW-02361A-16-0067

DECISION NO. \_\_\_\_\_

11 OPINION AND ORDER

11 DATE OF HEARING: June 2, 2016  
12 PLACE OF HEARING: Phoenix, Arizona  
13 ADMINISTRATIVE LAW JUDGE: Sasha Paternoster  
14 APPEARANCES: Mr. Jay L. Shapiro, SHAPIRO LAW FIRM, P.C., on  
15 behalf of the Applicant; and  
16 Ms. Robin Mitchell, Staff Attorney, Legal Division, on  
17 behalf of the Utilities Division of the Arizona  
18 Corporation Commission.

19 **BY THE COMMISSION:**

20 On February 24, 2016, Liberty Utilities (Black Mountain Sewer) Corp. (“Liberty Black  
21 Mountain”) filed with the Arizona Corporation Commission (“Commission”) an application requesting  
22 that the Commission approve an extension of its current Certificate of Convenience and Necessity  
23 (“CC&N”) to provide wastewater utility service to include the Eastwood development within the Town  
of Carefree (“Town”) in Maricopa County, Arizona.

24 On March 23, 2016, the Commission’s Utilities Division (“Staff”) filed a Sufficiency Letter  
25 stating that Liberty Black Mountain’s application had met the sufficiency requirements outlined in the  
26 Arizona Administrative Code (“A.A.C.”).

27 On March 25, 2016, by Procedural Order, a hearing was scheduled to commence on June 13,  
28 2016, and other procedural deadlines were established.

1 On March 29, 2016, Liberty Black Mountain filed a Request to Modify Procedural Order  
2 (“Request”) requesting that the deadline for responses to the Staff Report be moved to May 26, 2016,  
3 and that the hearing be held on a date before June 7, 2016. The Request stated that the schedule changes  
4 were consistent with the Town’s desire to have the matter resolved quickly.

5 On April 12, 2016, Staff filed a Response to Motion to Modify the March 25, 2016 procedural  
6 order, indicating it had no objection to Liberty Black Mountain’s Request.

7 Also on April 12, 2016, a Procedural Order was issued re-scheduling the evidentiary hearing to  
8 commence on June 2, 2016 at 10:00 a.m.

9 On May 9, 2016, Staff filed its Staff Report, recommending approval of Liberty Black  
10 Mountain’s application, subject to certain conditions.

11 On May 23, 2016, Liberty Black Mountain filed a Response to Staff Report, in which it attached  
12 a copy of its Operating Agreement with the Town as well as a subset of the Town’s General Plan,  
13 showing the Eastwood development within Liberty Black Mountain’s current franchise with the Town.

14 On May 27, 2016, Liberty Black Mountain filed a Notice of Filing Certification of Publication  
15 and Proof of Mailing.

16 On June 2, 2016, the hearing in this matter was held as scheduled before a duly authorized  
17 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. Liberty Black  
18 Mountain and Staff appeared through counsel and no members of the public appeared to present public  
19 comment. The parties presented evidence and testimony during the hearing.

20 On June 3, 2016, Liberty Black Mountain filed a Notice of Filing Late-Filed Exhibit, attaching  
21 a copy of the fully executed First Amendment to the Operating Agreement between Liberty Black  
22 Mountain and the Town, which expressly includes the Eastwood development in the Operating  
23 Agreement and extends the terms to June 1, 2031.

24 Thereafter, the matter was taken under advisement pending submission of a Recommended  
25 Opinion and Order to the Commission.

26 \* \* \* \* \*

27 Having considered the entire record herein and being fully advised in the premises, the  
28 Commission finds, concludes, and orders that:

**FINDINGS OF FACT**

**Background**

1. Liberty Black Mountain is an Arizona public service corporation that provides wastewater utility service to the public in portions of Maricopa County, Arizona pursuant to authority granted by the Commission. Liberty Black Mountain has approximately 2,198 wastewater customers.<sup>1</sup>

2. Liberty Black Mountain is owned by Liberty Utilities (Sub) Corp., a Delaware corporation, through its operating subsidiary, Liberty Utilities, Co. Liberty Black Mountain's ultimate parent, Algonquin Power & Utilities Corp., is a Canadian corporation whose shares are traded on the Toronto Stock Exchange.<sup>2</sup>

3. On February 24, 2016, Liberty Black Mountain filed an application for an extension of its current CC&N to provide wastewater utility service to the Eastwood development in Maricopa County, Arizona, the legal description of which is set forth in Exhibit A, attached hereto and incorporated by reference.

4. The proposed extension area is within the Town in Maricopa County within Section 36 of Township 6 North, Range 4 East. The Eastwood development is bounded by Cave Creek Road to the north, Pima Norte Commercial Site to the east, a vacant lot to the south, and a planned Stagecreek Estates subdivision to the west.<sup>3</sup>

5. Liberty Black Mountain is requesting Commission approval to extend its wastewater CC&N to serve the 9.5-acre property in Maricopa County. The Eastwood development is expected to have 39 residential dwelling units with construction to be completed in 2016.<sup>4</sup>

6. The Town will provide water service to the Eastwood development.<sup>5</sup> Liberty Black Mountain has received four (4) requests for service: three (3) from the property owners and one (1) from the developer, Keystone at Eastwood, LLC. As of the hearing, each property owner had transferred title to the developer, making Keystone at Eastwood, LLC the sole property owner of the

<sup>1</sup> Although the Staff Report states that Liberty Black Mountain "provides water utility service to approximately 18,400 customers," Liberty Black Mountain is a wastewater only utility. As pointed out in the Staff Engineering Report, "[t]he Town of Carefree will provide water service to the requested area." Exhibit S-1 at Attachment A at 1-2.

<sup>2</sup> Ex. S-1 at 1.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id. at 2.

1 proposed extension area.<sup>6</sup>

2 7. Because water and wastewater will be provided to the proposed extension area from  
3 separate providers, Liberty Black Mountain will utilize sewer shut off valves to allow for termination  
4 of service in the event of nonpayment of utility bills.<sup>7</sup>

5 8. According to Staff's Engineering Report, Liberty Black Mountain owns and operates  
6 the Boulder Wastewater Treatment Plant ("Boulder WWTP"), which has a treatment capacity of  
7 120,000 gallons per day ("GPD"). Decision No. 75510 (April 25, 2016) ordered the Boulder WWTP  
8 to close on or before November 30, 2018. Liberty Black Mountain has contracted with the City of  
9 Scottsdale ("City") to treat any excess wastewater flow, pursuant to service agreements<sup>8</sup> in which  
10 Liberty Black Mountain purchases additional treatment capacity in the Scottsdale Wastewater  
11 Treatment Plant.<sup>9</sup>

12 9. Staff concluded that Liberty Black Mountain's wastewater system has adequate  
13 treatment capacity to serve the existing customer base.<sup>10</sup>

14 10. Liberty Black Mountain submitted the proposed cost for the sewer improvement  
15 projects needed to serve the requested extension area. Liberty Black Mountain's projection estimates  
16 a total cost of approximately \$127, 204 for wastewater facilities in the proposed extension area.<sup>11</sup>

17 11. Liberty Black Mountain proposes to finance the wastewater infrastructure needs with a  
18 combination of contributions and advances in aid of construction paid by the developer of Eastwood.<sup>12</sup>

19 12. Staff concluded that Liberty Black Mountain's proposed costs to construct facilities  
20 needed to serve the extension area are reasonable. However, Staff stated it did not make a "used and  
21 useful" determination for the proposed plant-in-service and no conclusions should be inferred for rate  
22

23 \_\_\_\_\_  
<sup>6</sup> Ex. S-1 at 1; Transcript at 12.

24 <sup>7</sup> Tr. at 11.

25 <sup>8</sup> On January 21, 1996, Liberty Black Mountain and the City entered into an agreement in which the City agreed to treat  
26 and dispose of Liberty Black Mountain's wastewater, up to 600,000 GPD. The City currently accepts up to 1,000,000 GPD  
from Liberty Black Mountain and, pursuant to the most recent agreement, the City will treat an additional 120,000 gallons.  
Beginning January 1, 2018, Liberty Black Mountain will have the option to purchase another 150,000 gallons of treatment  
capacity from the City; Ex. S-1 at Att. A at 1-2.

27 <sup>9</sup> Ex. S-1 at Att. A at 1.

<sup>10</sup> Id. at 2.

<sup>11</sup> Id.

28 <sup>12</sup> Ex. S-1 at 2.

1 making or rate base purposes.<sup>13</sup>

2 13. Liberty Black Mountain will charge its existing wastewater rates in the proposed  
3 extension area.<sup>14</sup>

4 14. The Arizona Department of Environmental Quality's ("ADEQ") Compliance Status  
5 Report dated March 23, 2016, indicated that Liberty Black Mountain's Boulder WWTP is in  
6 compliance with Commission decisions and ADEQ. The Compliance Status Report further stated that  
7 the City's wastewater treatment plant "was not in violation at a level at which ADEQ would take an  
8 action or issue a Notice of Opportunity to Correct or Notice of Violation and/or is in compliance with  
9 the Order/Judgment."<sup>15</sup>

10 15. Liberty Black Mountain has an approved Wastewater Offsite Hookup Fee Tariff on file  
11 with the Commission.<sup>16</sup>

12 16. Staff reported that there are no delinquent Commission compliance items for Liberty  
13 Black Mountain.<sup>17</sup>

14 17. Staff stated that Maricopa County Environmental Services Department ("MCESD")<sup>18</sup>  
15 has determined that the Town's water system is in compliance and is currently delivering water that  
16 meets quality standards as determined by the A.A.C.<sup>19</sup>

17 **Staff's Recommendations**

18 18. Staff is recommending the Commission approve Liberty Black Mountain's application  
19 for extension of its CC&N to provide wastewater service in the Eastwood development, subject to  
20 conditions. Staff's recommendations continue as follows:

21 1. That Liberty Black Mountain charge its existing rates and charges in the  
22 proposed extension area.

23 2. That Liberty Black Mountain file with Docket Control, as a compliance item in  
24 this docket, a copy of the Town's franchise agreement or consent for the

25 <sup>13</sup> Ex. S-1 at Att. A at 3.

26 <sup>14</sup> Ex. S-1 at 3.

<sup>15</sup> Id. at 2.

<sup>16</sup> Id. at 3.

27 <sup>17</sup> Ex. S-1 at Att. A at 3.

<sup>18</sup> MCESD is the formally delegated agent of ADEQ.

28 <sup>19</sup> Ex. S-1 at Att. A at 4.

1 extension area no later than June 30, 2017.

2 3. That Liberty Black Mountain file with Docket Control, as a compliance item in  
3 this docket, a copy of the Certificate of Approval of Construction for the first  
4 parcel served in the Development area no later than June 30, 2017.

5 19. Staff further recommends that the Commission's Decision granting this extension of  
6 Liberty Black Mountain's wastewater CC&N be considered null and void, after due process, should  
7 Liberty Black Mountain fail to meet Conditions Nos. 2 and 3, within the time specified.

8 20. On May 23, 2016, Liberty Black Mountain filed its Response to Staff Report that had  
9 attached to it a copy of Liberty Black Mountain's Operating Agreement with the Town and a portion  
10 of the Town's General Plan showing the Eastwood development within Liberty Black Mountain's  
11 current franchise.

12 21. Staff remained concerned that Liberty Black Mountain's Operating Agreement with the  
13 Town did not include a description of the Eastwood development. At hearing, Liberty Black Mountain  
14 presented a draft of a first amendment to the Operating Agreement which provides a legal description  
15 of the Eastwood development to be included in the Town's consent area, as well as extends the term  
16 for the Operating Agreement to June 1, 2031. Liberty Black Mountain's witness, Mr. Steve Carlson,  
17 testified that the first amendment was awaiting the Town's signature but that the Town's  
18 representatives agreed to the terms contained therein.<sup>20</sup> Staff's witness, Ms. Blessing Chukwu, testified  
19 that the draft first amendment alleviates Staff's concern regarding the outstanding franchise  
20 agreement.<sup>21</sup>

21 22. On June 3, 2016, in a late-filed exhibit, Liberty Black Mountain docketed a copy of the  
22 fully executed first amendment to the Operating Agreement between Liberty Black Mountain and the  
23 Town.

24 23. Based on Staff's testimony and Liberty Black Mountain's late-filed exhibit, we find  
25 Condition No. 2 to have been satisfied. Staff's remaining recommendations are reasonable and we will  
26 adopt them.

27 \_\_\_\_\_  
28 <sup>20</sup> Tr. at 8-10.

<sup>21</sup> Id. at 16.

**CONCLUSIONS OF LAW**

1  
2 1. Liberty Black Mountain is a public service corporation within the meaning of Article  
3 XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

4 2. The Commission has jurisdiction over Liberty Black Mountain and the subject matter  
5 of the application.

6 3. Notice of the application was provided in accordance with the law.

7 4. There is a public need and necessity for wastewater service in the proposed extension  
8 area set forth in Exhibit A.

9 5. Liberty Black Mountain is a fit and proper entity to receive a CC&N to provide  
10 wastewater service in the proposed extension area.

11 6. Staff's recommendations, as modified herein, are reasonable and should be adopted.

**ORDER**

12  
13 IT IS THEREFORE ORDERED that the application of Liberty Utilities (Black Mountain  
14 Sewer), Corp. for an extension of its Certificate of Convenience and Necessity to provide wastewater  
15 service in Maricopa County for that property described in Exhibit A attached hereto, is approved as  
16 conditioned herein.

17 IT IS FURTHER ORDERED that Liberty Utilities (Black Mountain Sewer), Corp. shall charge  
18 its authorized rates and charges in the extension area.

19 IT IS FURTHER ORDERED that Liberty Utilities (Black Mountain Sewer), Corp. shall file  
20 with Docket Control, as a compliance item in this docket, a copy of the Certificate of Approval of  
21 Construction for the first parcel served in the Development area no later than June 30, 2017.

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS FURTHER ORDERED that, if Liberty Utilities (Black Mountain Sewer), Corp. fails to meet the above timeframe, the Arizona Corporation Commission's Decision granting the Certificate of Convenience and Necessity shall be considered null and void, after due process.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN LITTLE

COMMISSIONER STUMP

COMMISSIONER FORESE

COMMISSIONER TOBIN

COMMISSIONER BURNS

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_ 2016.

JODI A. JERICH  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_  
SP:aw

1 SERVICE LIST FOR:

LIBERTY UTILITIES (BLACK MOUNTAIN  
SEWER), CORP.

2  
3 DOCKET NO.:

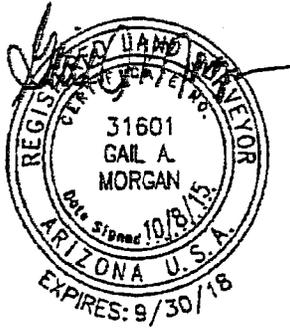
SW-02361A-16-0067

4 Jay Shapiro  
5 Shapiro Law Firm, P.C.  
6 1819 E. Morten Avenue, Suite 280  
7 Phoenix, AZ 85020  
8 Attorney for Liberty Black Mountain

9 Todd Wiley  
10 Liberty Utilities Corporation  
11 12725 W. Indian School Road, Suite D101  
12 Avondale, AZ 85392

13 Janice Alward, Chief Counsel  
14 Legal Division  
15 ARIZONA CORPORATION COMMISSION  
16 1200 West Washington Street  
17 Phoenix, AZ 85007

18 Thomas Broderick, Director  
19 Utilities Division  
20 ARIZONA CORPORATION COMMISSION  
21 1200 West Washington Street  
22 Phoenix, AZ 85007  
23  
24  
25  
26  
27  
28



## Exhibit A

**Legal Description  
Eastwood**



Job No. 15-058

October 8, 2015

A portion of the Southeast quarter of Section 36, Township 6 North, Range 4 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at a brass cap at the southeast corner of the Southeast Quarter of said Section 36, from which a brass cap at the South quarter corner of said Section 36 bears South 89 degrees 52 minutes 32 seconds West (an assumed bearing) 2641.74 feet; thence South 89 degrees 52 minutes 32 seconds West, 548.51 feet; thence North 0 degrees 03 minutes 03 seconds West, along a line parallel with the east line of the Southeast Quarter of said Section 36, 891.13 feet to the POINT OF BEGINNING;

Thence South 89 degrees 52 minutes 31 seconds West, 227.40 feet;  
 thence South 14 degrees 30 minutes 24 seconds West, 192.25 feet to the northeast corner of Lot 2C of the Lot Split of Lot 2, defined in Book 1135, Page 14, records of Maricopa County, Arizona;  
 thence South 31 degrees 52 minutes 47 seconds West, along the east line of said Lot 2C, 88.28 feet;  
 thence North 74 degrees 20 minutes 42 seconds West, 287.42 feet to a point on the west line of said Lot 2C;  
 thence North 0 degrees 03 minutes 03 seconds West, along said west line and the northerly prolongation thereof, 607.69 feet to the monument line of Cave Creek-Camp Creek Road and the beginning of a non-tangent curve, concave Northwest, from which the radius point bears North 34 degrees 29 minutes 14 seconds West a distance of 716.20 feet;  
 thence Northeasterly, 14.56 feet along said monument line and the arc of said curve to the left through a central angle of 1 degrees 09 minutes 52 seconds;  
 thence North 54 degrees 20 minutes 54 seconds East, along said monument line, 62.05 feet to the beginning of a curve, concave Southeast, having a radius of 716.20 feet;  
 thence Northeasterly 299.79 feet along said monument line and the arc of said curve to the right through a central angle of 23 degrees 59 minutes 00 seconds;  
 thence North 78 degrees 19 minutes 54 seconds East, along said monument line, 269.55 feet;  
 thence South 0 degrees 03 minutes 03 seconds East, along a line parallel with the east line of the Southeast Quarter of said Section 36, 642.15 feet to the POINT OF BEGINNING.

An area containing 413,915 s.f. or 9.5022 acres, more or less.

EPS Group, Inc. • 2045 S. Vineyard, Suite 101 • Mesa, AZ 85210  
 Tel (480) 503-2250 • Fax (480) 503-2258

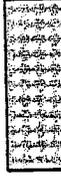
S:\Projects\2015\15-058\Legal Survey\Legals\15058 LD Combined Parcels.docx

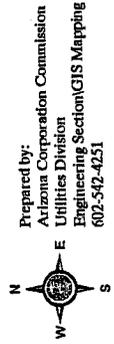
DECISION NO. \_\_\_\_\_

**MARICOPA COUNTY**

**RANGE 4 East**

**TOWNSHIP 6 North**

-  Sewer
-  Black Mountain Sewer Corporation
-  (3) Town of Carefree (Nonjurisdictional)
-  (4) Town of Cave Creek (Nonjurisdictional)
-  (1) Black Mountain Sewer Corporation Application for Extension of CC&N (Docket No. SW-02361A-16-007)



Prepared by:  
 Arizona Corporation Commission  
 Utilities Division  
 Engineering Section/GIS Mapping  
 602-542-4251

TR6N4E 06 JUN 2007

DECISION NO. \_\_\_\_\_