Service Date: June 27, 1979

FINDINGS AND FINAL ORDER NO. 4523

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF TH E STATE OF MONTANA

In the Matter of the Application of	)	
the City of Glendive for an order	)	DOCKET NO. 6662
authorizing new special rules for	)	ORDER NO. 4523
water and sewer service.	)	

APPEARANCES

FOR THE APPLICANT:

Gerald J. Navratil, P.O. Box 1307, Glendive, Montana.

FOR THE PROTESTANT:

None

FOR THE COMMISSION:

Eileen E. Shore, Staff Attorney

BEFORE:

Gordon E. Bollinger, Chairman and Commissioner

On March 23, 1979, the City of Glendive filed a petition with the Montana Public Service Commission for an order authorizing the City to establish the following rules:

> SPECIAL RULE 11
>
> Whenever, on account of paving or other improvement, about to be made upon any street or alley in the City, in the opinion of the Council the best interest of the public of the City requires, the Council may by resolution order any iron or other water pipes connecting any private property with the water mains, replaced with copper pipes. Upon the passage by the Council of any resolution

ordering any water pipes replaced as herein provided, the Clerk must forthwith notify the owner or owners of the property involved, by serving upon them a copy of Said Resolution, and such owners must comply with said order within ten (10) days of the service of the same.

In the event the owner or owners of any property affected by any order herein provided, fail to comply with the same, within ten (10)days after service thereof, the Council may cause the work provided in said order to be done and charge the costs of the same to the owner or owners of the property involved, such costs shall be a lien against such property and be collected in the same manner that special improvement taxes are collected by the City.

SPECIAL RULE 12

The owner and occupant of each premise to which municipal water and sewer service is rendered or made available shall be jointly and severally liable for all charges imposed for such service. All bills for such service shall be made a part of the statements, if any, for water service to the same premises, and no payment of water or sewer charges so billed shall be accepted without payment of both said items. Water and sewer charges shall become due a and payable on the 10th day of each and every month, and if any bill is not paid on or before the 30th day of the month when due, or upon failure of any customer to comply with all rules and regulations established for the water and sewer system within ten (10) days after notification thereof, the water service to the premises involved shall be discontinued and shall not be resumed until payment of all past due bills for water and sewer service and compliance with all such rules and regulations. Such bills shall be a lien against such property and be collected in the same manner that special improvement taxes are collected by the City.

This new special rule is a further clarification of two existing special rules S-2 and S-6 now on file with the Public Service Commission. It merely clarifies the responsibility of payment of a water bill by either tenant or owner and upon what day the bill becomes delinquent, and when service may be discontinued and how a delinquent billing may be collected.

On April 5, 1979, a Notice of Proposed Hearing was issued and requests for hearing were received.

On April 26, 1979, a Notice of Public Hearing was issued by this Commission scheduling public hearings in this Docket to commence on May 17, 1979.

Public hearings were conducted by the Commission in the Dawson County Courthouse, Courtroom, Glendive, Montana.

The Montana Consumer Counsel was unable to attend the hearing. He did, however, favor the Commission with an objection to the hearing which alleged that the Notice of Proposed Hearing and the Notice of Public Hearing were

> unreasonable, insufficient, incomplete and misleading as to the matters asserted and do not afford all interested parties an opportunity to respond and present evidence and argument on all issues involved.

The objection was overruled.

Prior to the public hearing the Commission issued a press release which addressed some of the Consumer Counsel's Concerns.

Consumer Counsel also favored the Commission with a Memorandum Brief opposing the City's proposal.

Following the hearing, Mr. Gerald J. Navratil, Counsel for the City, submitted a Memorandum Brief to which the Consumer Counsel replied on June 11, 1979.

Both parties stipulated to a final order.

Special Rule 11

FINDINGS OF FACT

1. The City proposed Rule 11 to allow the City to replace old lines at the same time the State Highway Department repaved ten blocks of a downtown street. According to City officials, replacement of lines at this time would save landowners a substantial amount of money in replacement costs compared to replacement after the new asphalt had been laid. Concern was also expressed about the possible need to dig up the new pavement to reach old lines which might break

in the future. Some of the lines which will lie under the proposed new paving are 50 to 60 years old and have an expected useful life of 30 years.

2. Bruce Russell, Division Construction Superintendent for the State Department of Highways, testified in favor of the rule, which he suggested to the City. He admitted that he had informed the City of the desirability of replacing of old line fairly recently, although the Highway Department had known of the repaving project for over one year.

3. Alvin W. Schmidt, a plumber, and L. C. Allen, Mayor of Glendive, testified that replacement of old line prior to repaving would benefit landowners. Mr. Schmidt stated that replacement at this time rather than later would save landowners a substantial amount of money. Mr. Allen stated that he didn't know why anyone would object to replacement of their old line during repaving. Mr. Schmidt estimated that it might cost landowners $600 to $800 to replace lines while the street is torn up, compared to $2,500 to $3,000 if done later.

4. Accepting the testimony summarized in Finding 3, it is somewhat difficult to understand why the City needs the powers it would have if Rule 11 were approved. The testimony suggested that it was to guard against the occasional "black sheep" who would refuse to replace the line.

5. The City has made no concerted effort to contact affected land owners to explain the advantages of replacing their lines during the Highway Department repaving project.

CONCLUSIONS OF LAW

1. Under the facts presented to the Commission it is uncertain whether, as a matter of policy, Proposed Rule 11 should be approved. However, it is unnecessary for the Commission to make any such policy decision since it is persuaded that Montana law does not authorize imposition of the kind of lien contemplated by Special Rule 11. The Commission may not approve actions by the City which are not authorized by statute.

2. There is no express delegation of power from the Legislature to an incorporated city or town in Montana to order water service lines to be replaced at the expense of the user.

3. There is no reasonable implication that can be inferred from any statutes of the State of Montana that the Legislature has delegated power to an incorporated city or town to order water service lines to be replaced at the expense of the user.

4. There is no express delegation of power from the Legislature to an incorporated city or town in Montana to impress a lien to enforce the payment of charges for conversion of utility service lines.

Special Rule 12

FINDINGS OF FACT

1. Rule 12 was proposed by the City as a means of assuring that it would be able to collect for water service. The City is concerned about tenants who leave a rented dwelling with water bills unpaid.

2. According to John Hamilton, Water Clerk, the City has required payment by the owner when it was not able to collect from a tenant. Under this system, the City has had only three bad accounts in the last twenty years.

3. The Commission acknowledges that bad accounts are a problem, to some extent, for virtually every public utility. However, the usual means by which a utility can limit these accounts is through discontinuance of service, which is authorized by the Commission's rules relating to water utilities.

CONCLUSIONS OF LAW

1. There is no express delegation of power from the Legislature to an incorporated city or town in Montana to impose a liability upon a non-user owner of property for utility service rendered to his tenant.

2. There is no reasonable implication that can be inferred from any statutes of the State of Montana that the Legislature has delegated power to an incorporated city or town to either impress a lien for enforcement of utility service charges or create a liability of a non-user for utility charges against an actual user of utility service.

3. There is no express delegation of authority from the Legislature to this Commission to allow the impression of a lien to enforce the payment of charges for utility service.

4. There is no express delegation of authority from the Legislature to this Commission to recognize liability of a non-user owner of property for utility service rendered to his tenant.

5. In the construction of a statute, the office of the judge (Commission) is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted.

6. The City has viable, lawful alternatives to do what it desires to do.

ORDER

The rules proposed by the City of Glendive are beyond the powers delegated by the Legislature to incorporated cities and towns in Montana to exercise or the powers delegated by the Legislature to this Commission to approve. Therefore, the Application of the City of Glendive is denied as a matter of law.

DONE IN OPEN SESSION this 25th day of June, 1979 by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION:

_____
GORDON E. BOLLINGER, Chairman

_____
CLYDE JARVIS, Commissioner

_____
THOMAS J. SCHNEIDER, Commissioner

_____
JAMES R. SHEA, Commissioner

ATTEST:

Madeline L. Cottrill
Secretary

(SEAL)

NOTE: You are entitled to judicial review of the final decision in this matter. If no Motion for Reconsideration is filed, judicial review may be obtained by filing a petition for review within thirty (30) days from the service of this order. If a Motion for Reconsideration is filed, a Commission order is final for purpose of appeal upon the entry of a ruling on that motion, or upon the passage of ten (10) days following the filing of that motion. cf. the Montana Administrative Procedure Act, esp. Sec. 2-4-702, MCA; and Commission Rules of Practice and Procedure, esp. 38-2.2(64)-P2750, ARM.