Service Date: February 8, 1994

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

* * * * *

IN THE MATTER of the Application of MOUNTAIN WATER COMPANY for Authority to Increase Rates and Charges for Water Service in the Missoula, Montana Service Area.	)))))	UTILITY DIVISION DOCKET NO. 92.4.19 ORDER NO. 5625c

ORDER ON MOTION FOR RECONSIDERATION

BACKGROUND

1. On June 4, 1993 the Montana Public Service Commission (Commission) issued Order No. 5625b disposing of all matters then pending in this Docket. On July 14, 1993 the Commission received Motions for Reconsideration from three parties to this proceeding. The Montana Consumer Counsel's (MCC) office requested that the Commission reconsider its decision to allow Mountain Water Company (MWC) recovery of $21,600 in costs to implement newly imposed water sampling requirements. MWC requested that the Commission reconsider its decisions regarding the depreciation reserve adjustment proposed by the MCC, the salary disallowance of a California Officer and the discount for low-income subscribers. By separate motion the Human Resource Council (HRC) joined

MWC in requesting reconsideration of the low income discount.

2. On July 14 and 15, 1993 the Commission received Petitions to Intervene and Motions for Reconsideration from U S West Communications (U S West), Montana Power Company (MPC) and Montana-Dakota Utilities Company (MDU) (jointly, Utilities). On July 21, 1993 the Commission denied late intervention status to MPC, U S West and MDU, deciding to treat the briefs filed in support of reconsideration on the issue of the accumulated depreciation reserve adjustment as Amicus Briefs. In accepting these briefs the Commission afforded MCC an opportunity to respond. The response was filed September 20, 1993.

3. Commissioner Danny Oberg requested at an open work session that the Commission en banc consider the issue of the depreciation reserve adjustment. Commissioner Bob Rowe, District No. 5, which includes Missoula, had appeared before the Commission in this Docket. Therefore, Commissioner Rowe recused himself on this issue. Commissioner Bob Anderson participated only on the issue of the depreciation reserve adjustment.

FINDINGS OF FACT AND DISCUSSION

4. At duly noticed open work sessions, the Commission considered the issues under reconsideration and now renders the following decisions.

Water Sampling Costs

5. MCC maintains that reconsideration of the adjustment to water sampling costs is warranted because the adjustment is not a known and measurable change, did not occur prior to the hearing in this docket, and did not occur within 13 months of the close of the test year. In Order No. 5625b, Findings of Fact Nos. 83 - 85 adequately address MCC's arguments. The Commission finds that $21,600 was a reasonably known cost to implement water sampling requirements, as updated by MWC with the most recent testing requirements from the Department of Health. The Commission finds that MCC's request for reconsideration of recovery of newly imposed water sampling costs should be denied.

Low-Income Discount

6. The Commission denied MWC's request to implement a 10 percent low-income discount for MWC's ratepayers qualifying for LIEAP funding. MWC and HRC requested Commission reconsideration of the denial of the discount. The basis of the denial was MWC's failure to demonstrate an overall benefit of a low-income discount to the general ratepayer. Order No. 5625b, Findings of Fact Nos. 95 - 96.

7. In its motion MWC recognizes the validity of the

Commission's concern that there is no evidence to support a general customer benefit from the discount. MWC believed that past Commission decisions were a regulatory signal that the Commission had adopted a general rate design policy to implement low-income discounting. Therefore, MWC did not perceive a need to produce significant cost-benefit evidence to support its implementation.

8. MWC maintains that it could not produce general customer cost-benefit evidence without having the discount in place. MWC claims that it requires an identified universe of low-income customers to begin any cost-benefit analysis and that it can identify that universe only if the discount is implemented. MWC asserts that without this information it cannot produce relevant information to assess the general customer benefits (see pp. 14 and 15 of MWC's motion).

9. To address the Commission's concern about lack of justification and also meet the desires of the parties to implement the discount, MWC proposes that the Commission authorize the discount on an experimental basis. MWC requests approval of an experimental discount until December 31, 1996 to allow the company to gather cost-benefit information to demonstrate possible general system benefits from the discount.

10. HRC challenges the decision on the following grounds:

(1) The parties to a Commission proceeding must rely on past Commission decisions; (2) The Commission failed to provide notice of intent to change policy; (3) The record supports the low-income discount as reasonable and just; and (4) The Commission is demanding more of low-income customers than it has demanded from other entities when granting them discounted rates. HRC joins MWC in recommending adoption of the low-income discount on an experimental basis.

11. HRC's reasons for challenging the Commission's decision do not have merit. The Commission relies upon the record in each case to support its decision in that case, and not upon previous decisions based on different facts. HRC's argument that the Commission failed to give notice of an intent to change policy, thus denying HRC a fair opportunity to support a discount, is also without merit. HRC participated fully in this docket on the issue of discounting. HRC sponsored testimony and exhibits of a witness in support of the discount, because HRC was concerned that MWC responses to data requests weakened the case for extending a discount. HRC had full notice that this was a contested issue. Low-income discounting is a ratemaking issue that stands or falls on its own merits in each application presented to the Commission.

12. HRC claims that the record supports the low-income

discount and the Commission is obligated to accept it. However, the Commission properly relied on the testimony of MWC witnesses that no overall cost savings would be passed on to ratepayers .

13. HRC asserts that the Commission holds the low-income discount to a higher evidentiary standard than other discounts. The Commission has not approved a discount without some showing of general ratepayer benefit. It has allowed non-cost based rates in order to mitigate the effects of rate shock when moving a class to cost based rates (e.g., irrigators).

14. On July 16, 1993 the Commission received a stipulation signed by all the parties requesting authorization of MWC's low-income discount as an experimental tariff. The discount would be effective through December 31, 1996 unless specifically reauthorized by the Commission.

15. The Commission rejects consideration of this stipulation. A request to accept a stipulation should be filed before the Commission has issued a final order, at the latest, and preferably in time for presentation at the hearing. The Commission's rules allow for motions for reconsideration of a decision and requests for rehearing. ARM 38.24805 and 38.2.4806. In a motion for reconsideration, the parties must address the merits of the Commission's decision setting forth specific grounds on which the movant alleges the decision to be unlawful, unjust or

unreasonable. The Commission's rules do not provide for a stipulated resolution to reverse or replace a decision. Relying on a stipulation instead of valid argument to determine the content of an order on reconsideration would establish poor precedent. In future proceedings parties unhappy with the Commission's decision in a final order could attempt to stipulate an issue rather than argue the merits. Modifying decisions by stipulation after the fact would weaken the exercise of the Commission's jurisdiction.

16. MWC did not place significant importance on analytical justification of the discount. MWC should further investigate the merits of discounting before requesting its implementation. The failure of MWC to demonstrate that discounting produces an overall benefit to the general ratepayer warrants its rejection. The Commission finds that HRC's and MWC's requests for reconsideration of low-income discounting should be denied.

Salary of California Officer

17. The Commission denied recovery of MWC's allocated share of salary and fringe benefits for Park Water Company's (MWC's parent) Vice President, Investment and Acquisitions. MWC has requested Commission reconsideration of the denial of this salary cost. In Order No. 5625b, Findings of Fact Nos. 85 - 87, the Commission determined that MWC's operation and maintenance expenses should be reduced by $22,199. Based on the testimony of MWC's witness, the Commission determined the investment function of the position was non-utility related. The Commission had denied recovery of this position's salary in the previous docket. In this Docket, the Commission found that MWC failed to remove and quantify the non-utility costs. Therefore, the Commission disallowed the entire cost associated with the position, as it had done previously.

18. In requesting reconsideration, MWC alleges that all of the job functions of this position are utility related. Because investment income is not utility revenue does not mean that the investment function is not utility related and providing a benefit to MWC subscribers, MWC asserts. MWC argues that since Park Water pays no dividends, the net proceeds from the investment function are a source of capital for all divisions of Park Water used to pay for plant improvements and extraordinary

expenses.

19. MWC's arguments appear to support a finding that the investment function is utility related, but fail when the accounting entries are considered. If investment income is non-utility revenue then reinvestment of the proceeds in plant increases the equity investment and entitles the investor to a "return of and a return on" the monies. As such the function is not utility related but rather investor related.

20. MWC further asserts that it did quantify the non-utility related costs of this position at $3,000 after allocation to MWC. MWC mischaracterizes the testimony on costs stated in Exhibit F:

> If the PSC decides that these other benefits are not sufficient to warrant inclusion of the full amount of the salary and benefits for the Vice President, Investment and Acquisition, it is clear from response PSC-24 that the time spent on this activity (investments) is so small that any appropriate adjustment could not exceed $2,000-$3,000 after allocation to Mountain Water.

The witness (Leigh Jordan) submitting this testimony made a general observation, not a specific calculation. The Commission finds that it should reaffirm the decision to disallow the salary costs of this position in addressing the arguments raised in MWC's motion.

Depreciation Reserve Adjustment

21. In Order No. 5625b the Commission granted MCC's proposed adjustment to the Accumulated Depreciation and Amortization Reserve. The Commission found that the rate base of MWC should be reduced by $473,593 or the accumulated depreciation expense accruing during the 13 month change period allowed by the optional filing rules. The Commission has considered the briefs on motions for reconsideration, including those of the parties and the Amicus Briefs of Montana-Dakota Utilities Co., U S West, Inc., and Montana Power Company (Utilities). On Reconsideration, the Commission reverses its decision to allow the adjustment proposed by MCC to the 1991 test year depreciation reserve. The Commission deems it inappropriate to depart from traditional rate-making to make this adjustment to rate base in this case.

22. The Commission staff asked MCC the following in a data request: if the Commission adopts your proposal (to include an additional year's depreciation in the reserve), "wouldn't inclusion of plant additions and retirements completed prior to the hearing be required if requested by the utility?" MCC's witness responded as follows: "Yes if requested by the utility in its application and if it does not create any mismatch; that is, all known and measurable cost changes must be known with reasonable accuracy and be made accordingly." MWC did not request inclu-

sion of plant additions, retirements and the matching revenues and expenses. Therefore, the Commission made the rate base adjustment in Order No. 5625b without considering post-test year rate base events.

23. In Principles of Public Utility Rates, Professor Bon-bright, et al., stated the following in the introduction to Chapter 13, *Original and Replacement Cost Standards of Rate Base.* Our treatment of rate base and depreciation is *willy nilly* tentative for the rate of change in the accounting and regulatory treatment of these things is rapid and it is not our intent to ramble through the wilds of accounting theory. While for many years the rate of change of these concepts was at the pace of a glacial drift, this is no longer true. [1]

In Final Order No. 5625b, FOF 34, the Commission recognized the dynamic nature of the ratemaking process. Although it had not previously adjusted the test year rate base prospectively, except

[1] James C. Bonbright, Albert L. Danielsen and David R. Kamerschen, Public Utilities Reports, Inc., Second Edition, March 1988, page 267.

in extraordinary circumstances, the Commission was willing to consider the MCC's proposal to reflect an additional year's depreciation as an issue of first impression.

24. On reconsideration the Commission finds that the record in this docket does not support a departure from traditional ratemaking. Lack of notice from the Commission precludes the adjustment. From an MCC data response to a Commission question the utility could not have forecast the Commission's willingness to consider the proposed adjustment to the test year plant along with post-test-year rate base events. Without notice that the Commission would have considered ordinary post-test-year plant additions with matching revenues and expenses, MWC was at a disadvantage. The proper course of action would have been to develop fully the issues of matching, rate base adjustments, test year determinations and fairness to both the utility and the consumers at the outset of the proceedings.

25. The Commission will consider the merits of the adjustment in Montana Power Company's application for a general rate increase, Docket No. 93.6.24, and may make a policy determination in that case. The Utilities with concerns about the adjustment, including Montana Power Company, attempted late intervention in MWC's docket. They filed their briefs later deemed Amicus, and now have full notice of this proceeding and decision on reconsid-

eration. A decision in Montana Power Company's proceeding will be based on a full opportunity for all parties to present a complete record.

CONCLUSIONS OF LAW

1. The Applicant, Mountain Water Company, is a public utility as defined in Section 69-3-101, MCA. The Montana Public Service Commission properly exercises jurisdiction over Applicant's rates and service pursuant to Section 69-3-102, MCA.

2. The Commission has provided adequate public notice and an opportunity to be heard as required by Section 69-3-303, MCA, and Title 2, Chapter 4, MCA.

3. The rates and rate structure approved in this order are just and reasonable. Sections 69-3-201, and 69-3-330, MCA.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

1. Mountain Water Company shall file rate schedules which reflect an increase in annual revenues of $88,007 for its Missoula, Montana, service areas. The increased revenues shall be generated by increasing rates and charges to all customer classifications as provided in Order No 5625b.

2. This rate increase is in addition to the rate increase

approved in Order No. 5625b.

3. The rates approved herein shall not become effective until approved by the Commission.

DONE IN OPEN SESSION at Helena, Montana, this 31st day of January, 1994, by a 4 - 0 vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

_____
BOB ANDERSON, Chairman
(Participating only on depreciation reserve adjustment issue)

_____
DAVE FISHER, Commissioner

_____
NANCY MCCAFFREE, Commissioner

_____
DANNY OBERG, Commissioner

ATTEST:

Kathleen M. Anderson
Commission Secretary

(SEAL)

NOTE: You may be entitled to judicial review in this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. Section 2-4-702, MCA.