Service Date: September 2, 1992

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

* * * * *

IN THE MATTER Of the Application	)	UTILITY DIVISION
Of The Town of Whitehall To Increase	)	
Rates And Charges For Water Service	)	DOCKET NO. 92.5.23
In Its Whitehall, Montana Service Area.	)	ORDER NO. 5636a

FINAL ORDER

APPEARANCES

FOR THE APPLICANT:

Erik J. Fehlig, City Attorney, Town of Whitehall, P.O. Box 488, Whitehall, Montana 59759

FOR THE INTERVENORS:

Mary Wright, Staff Attorney, Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana

FOR THE COMMISSION:

Denise Peterson, Staff Attorney, 1701 Prospect Avenue, Helena, Montana 59620-2601

G. Joel Tierney, Utilities Engineer, 1701 Prospect Avenue, Helena, Montana 59620-2601

BEFORE:

Bob Anderson, Commissioner & Hearing Examiner

BACKGROUND

1. On May 13, 1992 the Montana Public Service Commission (Commission) received an application from the Town of Whitehall (Applicant, Town or Whitehall) for authority to increase the municipal water rates and charges for the water utility customers in Whitehall, Montana on both an interim and permanent basis. The Town requested an annual revenue increase of approximately $68,000, which would result in a rate increase of approximately 154 percent for municipal water service.

2. As part of its application, the Town submitted a copy of Resolution No. 2.92 passed by a unanimous vote of the Town Council on April 29, 1992. Resolution No. 2.92 stated that engineering studies prepared for the Town demonstrated a need for a capital improvement program for the facilities which provide water to the Town. The accounting projections indicated that the rates and charges in effect would not provide adequate revenues to complete the capital improvement program.

3. On July 21, 1992 the Commission issued Order No. 5636, Order Denying Interim Water Rate Increase Application. Because the capital improvement program was not mandated by the state or federal government, the Commission would not grant a temporary rate increase. The Commission would have to decide first if the improvements should take place. Without this determination, based on a hearing and a record, the Town could not satisfy the Commission that interim relief was required to avoid an obvious

income deficiency.

4. Following adequate notice the Commission held a public hearing on August 12, 1992 in the Council Chambers, Town Hall, Whitehall, Montana at 10:00 a.m., with an evening hearing for the benefit of the public at 7:00 p.m. At the conclusion of the hearing, parties stipulated to a final order and agreed that post-hearing briefing was unnecessary, pending the final order.

SUMMARY OF TESTIMONY

Applicant's Testimony

5. Mayor James S. Frazer and Town Clerk/Treasurer Linda F. Roginske appeared and testified in support of the Town's application for a rate increase. The Town also presented testimony from the following expert witnesses:

Daniel M. McCauley, P.E.
Damschen & Associates, Inc.
P.O. Box 4817
Helena, MT 59604

Eugene F. Huntington
Dain Bosworth, Inc.
34 West 6th Avenue, Suite 2E
Helena, MT 59601-5035

6. Mayor Frazer testified that the Town has experienced major water breaks in the 75 year old, 8-inch line under Legion Avenue, its main thoroughfare. Legion Avenue is "old U.S. 10," a state highway. The State of Montana has done pavement improvements up to the city limit on both ends of Legion Avenue. The Town, with volunteer labor, has laid asphalt on Legion Avenue,

but the Town has had to dig it up frequently in cold winters to fix water breaks. The Montana Department of Transportation (DOT) now proposes to pave Legion Avenue through the Town connecting both ends of the state highway pavement project. However, before the State will improve the city street, it expects the Town to fix the water pipe beneath the street, according to the Mayor's testimony.

7. The Mayor testified that the Town has received frequent complaints from the utility's customers in the Valley View Subdivision because of inadequate water and water pressure. The Mayor believes the system must be repaired because it cannot provide Valley View Subdivision adequate water and water pressure. The subdivision installed its portion of the system to the satisfaction of the Town and Montana Department of Health and Environmental Sciences (DHES) in the 1970's and 1980's; it then became part of the Town's water system. The mayor's position is that the water system repair is the responsibility of the entire town and not of the subdivision.

8. Town Clerk/Treasurer Linda Roginske testified on the Town's budget, submitting Exhibits 3 and 4, Enterprise Fund Budget Summary for FY 1992-1993 and Water Operating Fund Financial Reports, July 1986 to June 1992. The Town Council approved the proposed budget assuming new water rates would be in place as requested and issuance and sale of bonds of approximately $548,000. She testified that the Town had conferred with the Department of Natural Resources and Conservation (DNRC) on whether the Town could use the excess funds from its waste water treatment grant toward the water system repairs, either appropriated or as a loan. If possible to do so, the Town would have about $89,000 less to raise through the sale of bonds.

9. Under the proposed FY 1992-93 Enterprise Fund Budget, Ms. Roginske testified that water revenues would total $749,281.53, including $111,294.03 in water sales (under the proposed rates); other miscellaneous water sales of $987.50; $548,000 from the sale of bonds; $35,276.68 excess from the sewer operating fund; and $53,723.32 from the sewer bond sinking fund. Proposed expenses would include $21,750 in personal services; $7,800 in supplies; $31,943 in purchased services; $1,700 in fixed charges; and $550,450 in capital outlay, for total expenses of $613,643, plus noncash expenses of $350 and a depreciation fund of $7,200, for a total of $620,843. There would be no repayment on interest or principal on bonds sold during FY 1992-1993.

10. Ms. Roginske further testified that if the Town could improve only the Legion Avenue line or various other items of the proposal, the engineering expenses could be allocated to each part of the project.

11. Daniel M. McCauley, P.E., testified at length on the Town's need for this capital improvement program to upgrade the water facilities. According to his testimony and exhibits submitted, the Town has high per capita water use because customers are not metered. The Town has inadequate storage for fire control, emergencies, power outages, and insurance requirements. He recommended adding 300,000 gallons of storage. Mr. McCauley also testified that the telemetry system, dating back to the 1950's, does not work adequately and parts are impossible to procure. He recommended replacement with newer technology. While the Water System Analysis (Town's Exhibits 3 and 5) proposes a city-wide capital improvement program, Mr. McCauley testified that the Town Council asked for recommendations to improve water pressures and meet the DOT requirements for paving of Legion Avenue.

12. Mr. McCauley's testimony concentrated on the distribution system deficiencies. Several distribution lines are undersized. Most of the distribution system is 75 years old, consisting of cast iron mains. Tuberculation in the lines causes turbulence and pressure loss. Mr. McCauley recommended using larger diameter pipe and completing loops to increase pressure and

prevent stale water in dead-end lines. Because the town cannot afford all the needed distribution replacements, Mr. McCauley proposed prioritizing them. Figure 5 of Exhibit 5 shows proposed Phase I distribution system improvements, including an 8-inch line running east and west under Legion Avenue, extending north on Stanley Street and west on Valley View Drive. The plan would then complete a loop by placing a new 6-inch main from Legion Avenue north to First Street, west to Meadow View Lane, and north to Valley View where it would connect with the new 8-inch main. Mr. McCauley testified that these improvements would improve fire-flow protection and increase pressures.

13. Mr. McCauley testified that the estimated cost for Phase I distribution system improvements would be as follows:

Legion Avenue	$361,000
Stanley Street	70,000
Division Street	27,000
Meadow View Lane	21,000
First to Legion	13,800
	$492,800

This calculation exceeds the calculation on Table 25 of Exhibit 5, which was $482,400.

14. In order of priority, Mr. McCauley recommended the following:

Priority	Estimated Cost
1. Northeast tank renovation	$ 23,400
2. Telemetry and level control improvement	49,400
3. Well #3 improvement	20,900
4. Phase I distribution system improvements	482,400
5. Phase II distribution system improvements	468,000
6. Water reservoir	604,500
7. Phase III distribution system improvements	191,000
8. Zone #2 - Booster station with pressure reducing station	104,100
	$1,943,700

Exhibit No. 5, pp. 6-1 to 6-3; Table 25, p. 6-3.

The project proposed for this application and subsequent bond sale, according to Mr. McCauley's testimony and Exhibits, includes only priorities #2 and #4. Priority #1, northeast tank renovation, is already under contract and the Town is considering Priority #3.

15. Eugene F. Huntington, municipal financial expert for Dain Bosworth, Inc., a financial group, appeared and testified on behalf of the Town's application for a rate increase as necessary to satisfy the financial community. During the hearing, he sponsored Whitehall Exhibit 7, which demonstrated cash flow assumptions. Mr. Huntington testified that the Town needs a city rate pledge at the time of issuance of the bonds. The proposed bond issue is based on a project cost of $548,000, consisting of

$483,000 from the construction contract and $65,000 for engineering costs (all rounded numbers). Mr. Huntington's estimate reflects current interest rates and the current amount to be financed with the Town's plan of contributing Town funds, based on seven months of the current fiscal year. The sources of funds include bond proceeds or $515,000 and interest of $4,165, plus city funds of $88,999 (the excess sewer grant money referred to in >8) for a total source of $608,164. Since the date of the Town's application, the total annual revenue needs decreased because of lower interest rates. However, the earnings from the reserve fund will also be at a lower rate (4% instead of 7%).

16. Mr. Huntington testified that the Town's expenditures of the funds, to the best estimate, will total $608,184.

Construction Contract	$483,000
Engineering	65,000
Costs of Issuance	8,750
Reserve	48,000
Miscellaneous Expense	3,414
Total Use of Funds	$608,164

The debt service payment reflects an interest rate of 6.28 percent over 20 years for the principal bond amount of $515,000. The coverage requirements are at least 125 percent of the debt service, after deducting operating and maintenance costs. The debt service reserve must equal 10 percent of the principal amount of the bond issue or the highest annual payment of principal and interest, whichever is less.

Public Testimony

17. The Commission received two petitions with numerous signatures, one in support of the application and one requesting denial of the rate increase. At the evening public meeting there was a large attendance of the Town's residents. Approximately ten members of the public testified.

Favoring the Rate Increase

18. Those in favor of the Town's application for this rate increase generally testified to the following concerns and positions.

19. Mary Tolf, speaking on behalf of the Valley View Subdivision, stated that Valley View is a part of the community and has paid its taxes. It, too, "would like water," but the area also looks on the lack of water pressure as a general safety hazard.

20. Alvina Crutchfield testified that Whitehall must take care of its problems now or else have a larger problem requiring even a larger increase in the future. She stated that Whitehall would pay for the price of not making improvements, as Butte, Montana is now facing the situation of paying for delay in repairs. Ms. Crutchfield testified that she is retired and believes the retired people cannot afford not to support the water system. She has lived elsewhere and believes that they could pay far more for water.

21. Charles Buus, city councilperson, testified that the Valley View Subdivision is part of the city and its water problems are the city's responsibility. He supports the project on the basis of the expert's recommendations. He has lived in Whitehall since 1980 and finds it a nice town. He does not feel a $15 increase per month is too much because the residents have spent so little on their water system in the past. As a councilperson, Mr. Buus has received comments only in favor of the water system repair. He personally inspected one water break and observed a six-inch gash caused by a shovel. This break put houses out of commission. In his opinion the Town could not afford not to make the improvements.

22. Francine Giono, city councilperson, testified in support of the project. For many years the town made no improvements. The result has been breaks in the streets and boil advisories last fall and this spring. It is incredible what bad shape the pipe is in, she testified. The Town also needs increased pressure for fire flows for the 8-inch hydrants. She testified that the Department of Health will probably require testing if the line is not fixed, because the present condition of the line predisposes the system to breaks and possible contamination. In her opinion, the expense of this testing would be unnecessary.

23. Ervin Hedegaard testified in support of the application. As the developer of Valley View Subdivision in the 1970's,

he wanted to clarify some issues. He testified that he went through all the hassle required by the Department of Health in the 1970's. At that time, everyone on the west side of town had 4-inch pipe and it made no sense to have 8-inch pipe to serve only 15 houses. The Town and developer recognized the water pressure problems -- the only storage tank was on the east side of town. The Town placed a second tank on the northwest side to mitigate the problem. Mr. Hedegaard testified that Valley View was not an "addition," that it had always been part of Whitehall. Later in the hearing, he testified that water softener material comes out of the faucet in the lower portion of Valley View during low water pressure periods.

24. Frank Russell, a resident of Valley View, testified that the subdivision often has low water pressure and that toilets flush only half way. Once a cup of water back-drafted into a faucet. The potential to put something into the system appears high, he testified. Twice this summer his house was completely out of water due to breaks. He favors the rate increase, believing that the rates would still be reasonable in comparison with other places.

25. Neil Gallegher testified in favor of the rate increase to do improvements now. In response to a suggestion that the Town could "pay as you go," he stated that with inflation and no rate increase it would take seven years to do the improvements proposed for now.

Opposing the Rate Increase

26. Don Jenkins, a resident of Whitehall since 1975, testified in opposition to a rate increase. His concern was whether the council has made sure the improvements are needed and there are no less costly alternatives available. He recalled that previously the State had told the Town it needed another sewage lagoon. The Town proved it was not needed, saving about $1,000,000. He questioned the engineering costs for this small project. The Town had not budgeted for cleaning the tank, which was a problem. When he retired in 1984, the Town had $35,000 in reserve. He did not remember repairs being done. Mr. Jenkins testified that the low water pressure in the Valley View Subdivision was the fault of the developer and the DHES. The retirement community on fixed incomes does not have the money to pay for raises like this, he testified.

27. Dale Davis, resident and owner of a laundromat, testified in opposition to the rate increase request. He questioned two portions of the project. First, regarding the telemetry system, Mr. Davis asserted that the present system could be repaired and parts are available. He worked on the system for 18 years and knows where parts can be acquired. Mr. Davis agreed that he could assist the Town in resolving this concern. Second, Mr. Davis questioned whether replacing 4-inch with 8-inch lines would increase water pressure, or instead would only increase

flow. If the Town kept its reservoirs full, there would be no pressure problem, he stated. In his opinion, increasing supply would be less costly than replacing the line.

28. Mr. Davis introduced as an exhibit a 1975 engineering study prepared by S & A Engineers, a preliminary report and recommendations for water system improvements. S & A Engineers recommended the same improvements as are now recommended, according to Mr. Davis. It is unrealistic to expect improvement of the entire distribution system, he testified. The Town should look at other alternatives and do Legion Avenue piecemeal, he recommended, in a four year period.

29. Duane Scott testified against the proposed capital improvement program and in favor of a "pay as you go" program. There has probably been no increase for too long, but a 154 percent increase at once is excessive, in his opinion. He recommended raising rates 25-35 percent per year.

FINDINGS AND DISCUSSION

30. The Commission commends the Town and its residents on the professional and thoughtful presentations. Based on the record, the Commission finds that the Town should do most of the Phase I distribution system improvements as recommended by the engineer. The Commission will grant the portion of the request for increased rates to cover the replacement of Legion Avenue and Stanley Street lines, complete the Valley View loop, and extend the 8-inch PVC line from the intersection of Legion Avenue and Division Street south under the tracks to the existing 8-inch PVC. The ancient age and deterioration of much of this line and the dead-end dictate that this portion of the system be replaced and otherwise connected to improve pressure, reduce head loss, and lessen the potential for contamination. The fact that this line was deteriorated in 1975, according to the S & A engineering report, speaks to the necessity of replacement 17 years later. Replacement will allow the DOT to pave the road and further lower maintenance costs which have resulted from unnecessary and excessive breaks.

31. The Commission finds, however, that the record does not support the telemetry system improvement expense at this time. The testimony of Mr. Davis, an 18 year expert on the telemetry system, indicates that the Town may be able to remedy any shortcomings at a fraction of the cost. If not, the Town may include telemetry system replacement in an ongoing capital improvement

program after this initial distribution line phase.

32. The Town may make future improvements, including the telemetry system improvement, pursuant to its municipal ratemaking authority under Title 69, Chapter 7, MCA. The Commission will exercise jurisdiction only when the rate increase will yield an increase in annual revenues in excess of 12 percent in any one year, unless the rate increases are for mandated federal or state improvements. The Town may not increase rates again within 12 months of this order, unless an increase is necessary to fulfill financial requirements to finance mandated improvements. See, <69-7-102, MCA.

33. The Commission finds that the rates and rate structure should be modified to account for the deletion of the telemetry system costs from the proposed capital improvement program at this time. The application stated that the telemetry system cost would be $51,000. Mr. McCauley's estimated cost in his testimony was $49,400. The Commission finds that, when filing new rates and tariffs, these should be calculated after deducting $50,000 from the capital improvement program proposed for this bond issuance. Rates and tariffs should then be prorated at the lower level.

34. The Commission further finds that the Town does not have a supply problem, but rather a use problem. In the summer the Town uses 3.35 times the water consumed by Harlem, a comparable town with metering. Whitehall Exh. 5, Table 6, p. 2-7.

Whitehall also consumes more than Townsend and Chester, comparable unmetered towns, during the summer. Id. The result is excessive drawdown of the storage tanks and water pressure problems. Whitehall should consider metering in its future improvement program. The Commission finds, however, that improvement to the distribution system, as outlined in this order, is the first priority.

CONCLUSIONS OF LAW

35. The Applicant, the Town of Whitehall, operates a municipal public utility as defined in §69-3-101, MCA.

36. The Montana Public Service Commission properly exercises jurisdiction over municipal utility rates, pursuant to Title 69, Chapter 7, MCA.

37. A municipal utility may not raise its rates to yield more than a 12 percent increase in total annual revenues or to exceed amounts necessary to meet bond indenture or loan agreement requirements without application to and approval of the Commission. §§69-7-101 and 69-7-102, MCA.

38. The Commission has provided adequate public notice and an opportunity to be heard as required by §69-3-303, MCA and Title 2, Chapter 4, MCA (the Montana Administrative Procedures Act or 'MAPA').

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

ORDER

1. The Town's application for approval of a rate increase is hereby GRANTED IN PART, to the extent that a rate increase will cover the improvements and costs of financing as outlined in this Order, i.e., the Phase I distribution system improvements to Legion Avenue, Stanley Street, Division Street and the Valley View Loop. If the engineering design requirements should change, the Town shall file the modified plan to the Commission for approval. Any new plan shall be within the parameters of this Order.

2. The Town's application for a rate increase to cover telemetry system replacement is DENIED at this time, without prejudice. The Town is directed to examine less costly alternatives to a complete replacement. If these efforts are unsuccessful, the Town is not precluded from including telemetry system improvements in later portions of its capital improvement program, in accordance with Title 69, Chapter 7, MCA.

3. The Town is directed to explore options for reducing its consumption of water, particularly during the high-use months of June-August. These options shall include metering.

Done and Dated this 31st day of August, 1992 by a vote of 3-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

_____
DANNY OBERG, Chairman

_____
BOB ANDERSON, Commissioner

_____
TED C. MACY, Commissioner

ATTEST:

Ann Purcell
Acting Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.