Service Date: July 29, 2005

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

* * * * *

IN THE MATTER OF WILDER RESORTS, INC. d/b/a Fairmont Hot Springs Resort, Complaint by Dan G. Wheeler	)))))	UTILITY DIVISION DOCKET NO. D2004.11.175 ORDER NO. 6635a

FINAL ORDER

BACKGROUND

1. On August 12, 2004, the Final Order in Docket D2003.10.152 was issued implementing metered rates for the customers of Wilder Resorts, Inc. (Fairmont) effective September 1, 2004.

2. On September 14, 2004, Dan G. Wheeler (Wheeler) filed a formal complaint with the Commission. Wheeler represented that Fairmont had issued a bill on September 1, 2004 by which Fairmont sought to collect $57.70 for one-fourth of a 2004 Irrigation Charge. Wheeler maintained that Fairmont was double charging for irrigation water in that it was collecting an annual charge for irrigation water under the tariff provisions in effect on June 1, 2004 and would be charging metered rates for irrigation water consumed after September 1, 2004. Wheeler requested that Fairmont be required to credit him the $57.70.

3. On November 16, 2004, the Commission issued a Notice of Complaint to Fairmont.

4. On December 6, 2004, Fairmont filed a Motion to Dismiss. In its motion, Fairmont sought dismissal of the complaint on the grounds that: (1) Wheeler lacked standing to bring a complaint on behalf of others, and (2) the complaint was barred by the filed rate doctrine.

5. On December 29, 2004, the Commission issued a Notice of Commission action in which it announced its denial of Fairmont's Motion to Dismiss. The Commission determined that Wheeler had standing to bring a complaint as a party directly affected by Fairmont's billing practice. *See* § 69-3-321, MCA. The Commission also determined the complaint involved a matter of tariff interpretation and tariff enforcement that did not implicate the filed rate doctrine. The Commission informed the parties that it would decide what irrigation water was included in the annual charge imposed on June 1, 2004 and what portion of the irrigation water included in the annual charge was actually delivered after September 1, 2004.

6. On March 16, 2005, the Commission issued Procedural Order No. 6635. On April 4, 2005, the Commission issued a Notice of Public Hearing setting April 27, 2005 as the date for hearing. Commissioner Raney presided at the hearing on that date at which he and Commissioners Molnar, Mood and Schneider heard testimony and received evidence.

7. At hearing, Wheeler changed his original request for a credit for one-fourth of the irrigation charge (from a June through September irrigation season) to a credit request for two-sevenths of the irrigation charge (an April through October irrigation season).

8. In response to data requests which were admitted into the record, Wheeler testified that he normally consumed irrigation water from May to October and Steve Luebeck, representing Fairmont, testified that Fairmont personnel have observed homeowners irrigating from April to October.

9. Wheeler filed a Post-Hearing Brief on May 23, 2005. Fairmont filed a Post-Hearing Memorandum on June 6, 2005. Wheeler filed a Response Brief on June 13, 2005.

10. Wheeler, in his Post-Hearing Brief, argued that the irrigation season is seven months, that there is no substantial evidence supporting Fairmont's claim that the irrigation season is three months, and that the flat irrigation rate is a per season rate that is time dependent. He proposed that any refund be calculated on the basis of a time ratio and that actual consumption or monthly variances in consumption should not be considered.

11. Fairmont, in its Post-Hearing Memorandum, argued that the irrigation rate was based on an irrigation season of 3 months. Fairmont further argued that Wheeler had admitted he had been irrigating for five months by September 1, 2004 and argued that Wheeler had received his three month's of irrigation, as had all Fairmont's customers.

12. In support of its argument, Fairmont provided an exhibit to its Post-Hearing Memorandum showing that in Docket D99.4.86 – the docket in which the tariff in effect on June 1, 2004 was approved – the stipulated annual irrigation rate was calculated using the following assumptions: (1) homeowners applied irrigation water at the rate of two inches per week, and (2) homeowners irrigated for 12 weeks. The estimated total residential irrigation usage of 3,699,000 gallons became the basis for the annual irrigation rate of $3.04 per 100 square feet established in Order No. 6162d.

13. Fairmont maintained that meter readings demonstrated that Wheeler consumed 10.6% of his 2004 irrigation water after September 1, 2004 and the residential class as a whole consumed 9.7% of its 2004 irrigation water after September 1, 2004. Fairmont argued also that based on actual consumption figures, the customers of Fairmont should receive a credit, if any, of no more than 9.7% of the annual irrigation charge.

14. In his Response Brief, Wheeler argued that regardless of whether one assumed irrigation of 2 inches per week for 12 weeks or 1 inch per week for 24 weeks the flat irrigation rate was intended to pay for 3,699,000 gallons of water.

15. Mr. Wheeler argued that Exhibit Faimont-2, entitled "2004 Homeowners Class Analysis", introduced at the hearing showed total residential irrigation for prior to September 1, 2004 to 3,283,999 gallons and that Fairmont should retain 88.78% of the irrigation charge (3,283,999 / 3,699,000 = 88.78%) and the homeowners should receive a credit of 11.22% of the 2004 irrigation charge.

DISCUSSION AND FINDINGS OF FACT

16. The range suggested for the "irrigation season" is from three months (June – August) to seven months (April – October). Fairmont contended that its revenue requirements were based on a three month irrigation season (June through August). Wheeler, in his original complaint, argued that because the homeowners had the option of

paying in 4 installments beginning June 1, the irrigation season was four months (June through September). At hearing, Wheeler argued the irrigation season was seven months.

17. The parties did not present the Commission with sufficient evidence to determine the actual length of the irrigation season. Neither party supplied adequate support for a definitive period for irrigation, nor is there anything in the tariff to support a definitive period.

18. Furthermore, even if the length of the irrigation season could be determined, the Commission would still be confronted with determining the probable usage for each period during the irrigation season. A purely time-based ratio unreasonably assumes that irrigation is uniform throughout the period. Experience suggests that irrigation usage is not uniform throughout the season. There is little irrigation consumption at the beginning of the season and usage decreases at the end of the season. It would be unfair then to base any credit due to the homeowners on an assumption that irrigation usage in the fall is equal to irrigation usage during the hotter, dryer summer months.

19. Although neither party provided specific evidence of the probable usage throughout the season, Wheeler's analysis of water consumption in his post-hearing response brief supports the conclusion that irrigation usage is less after September 1 than before. Mr. Wheeler acknowledged that most of the irrigation water that the homeowners used was delivered prior to September 1, and stated that the homeowners were entitled to a credit for unused irrigation water of 11.22%.

20. Any resolution of this matter requires the use of assumptions and estimates. There is no specific measurement of total irrigation usage separate and apart from total water usage. If the Commission used actual consumption data of water usage it would still need to estimate the irrigation usage portion.

21. However, applying reasonable assumptions derived from usage during the period when no irrigation occurs, the consumption data supports Wheeler's credit proposal of 11.22%. The proposal is not unfair to either party.

CONCLUSIONS OF LAW

1. Fairmont provides public water service within the state of Montana, and as such is a "public utility" within the meaning of § 69-3-101, MCA

2. The Montana Public Service Commission properly exercises jurisdiction over Fairmont's rates and charges pursuant to Title 69, Chapter 3, MCA

ORDER

THEREFORE THE MONTANA PUBLIC SERVICE COMMISSION ORDERS THAT:

1. On or before September 1, 2005, Fairmont shall credit the homeowners that paid the full irrigation charge for 2004, 11.22% of that irrigation charge without interest. On or before September 1, 2005, Fairmont shall credit any homeowners that paid more than 88.78% but less than 100% of the irrigation charge for 2004 the amount paid in excess of 88.78% of such irrigation charge without interest.

2. Homeowners who have paid less than 88.78% of the irrigation charge for 2004, shall pay the difference between said 88.78% and the amount previously paid without interest or late penalties. The irrigation charge shall be paid on or before the date that the September 1, 2005 billing is due.

DONE IN OPEN SESSION at Helena, Montana on this 26th day of July, 2005 by a vote of 4 to 0. Chairman Jergeson did not participate in the decision or vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman (Not Voting)

BRAD MOLNAR, Vice Chairman

DOUG MOOD, Commissioner

ROBERT H. RANEY, Commissioner

THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones
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.