

Service Date: February 9, 1977

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
MONTANA PUBLIC SERVICE COMMISSION

IN THE MATTER OF the Application of)	UTILITY DIVISION
MARTIN CITY WATER COMPANY for)	
Authority to Discontinue Operation.)	DOCKET NO. 6470
)	ORDER NO. 4320
)	
)	

Appearances:

RUSSELL L. BAETH, proprietor of the Martin City Water Company, appearing on his own behalf

GEOFFREY L. BRAZIER, Montana Consumer Counsel, appearing on behalf of the consuming public

DENNIS R. LOPACH, Staff Counsel, appearing for the Commission

Before:

George Turman, Commissioner

FINDINGS OF FACT

1. By letter dated October 24, 1976, Russell L. Baeth of Martin City, Montana, the proprietor of the Martin City Water Company, sought authorization from this Commission to discontinue service.
2. Mr. Baeth, in his letter, stated that the Martin City water system is in need of substantial improvements, and that a "considerable rate increase" would be required to accomplish these improvements. Mr. Baeth stated that he and his wife hoped to retire on May 1, 1977.
3. The Commission on November 5, 1976, accepted Mr. Baeth=s letter as an application to discontinue service.

4. A notice of public hearing was published in the Hungry Horse News and the Kalispell Daily Inter Lake.

5. On December 10, 1976, Mr. Brazier filed a Motion to Dismiss the application, alleging that it failed "to state a claim upon which relief can be granted, or at all." The Motion was denied at a Commission meeting held December 14, 1976.

6. On December 17, 1976, Commissioner George Turman, serving as hearing examiner, conducted a hearing on the discontinuance application. The hearing was held at the Vets Hall in Martin City, and was attended by approximately twenty-five interested parties.

7. Mr. Baeth testified that he wanted to cease operations for several reasons. In addition to the reasons expressed in his letter, repeated operating losses and his desire to retire, Mr. Baeth stated that his doctor had ordered him to get out of his business. He stated that, as a Martin City resident, he was interested in seeing water service continue and, accordingly, that he hoped the other Martin City residents would come together in an effort to establish a county water district. This district would then purchase the water plant from Baeth, and would proceed to make the necessary improvements.

8. Mr. Baeth testified that, at the minimum, a storage tank would have to be built. This tank would have the effect of improving water pressure in part of the town which is on a hill. Baeth estimated that a tank would cost \$35,000. He stated that 3,000 feet of the 9,700 feet of wooden main now in place was in need of immediate replacement at a cost to replace of \$6 per foot.

9. Baeth's assessment of his system's advanced state of disrepair was corroborated by the Chief of the Martin City Volunteer Fire Department, who runs the water system in Mr. Baeth's absence. He testified that, in his opinion, the entire system is in need of replacement. He stated that the system is inadequate to meet Martin City's fire protection requirements.

10. Mr. Baeth testified that he is unwilling to undertake the necessary repairs because he wants to leave the water business. He feels that any loan he might secure could not be repaid in his lifetime. His efforts to sell the system at an asking price of \$15,000, which was said to be less than the value of the system's wells, have been unsuccessful.

11. The Martin City Water Company has reported an operating loss for every year from 1970 through 1975. Losses ranged from a low of \$747 in 1973 to a high of \$1,333 in 1975. Baeth indicated that the reported losses did not take account of a labor expense.

12. Mr. Baeth was asked why he had not sought a rate increase in order to put his company in a profit-making position. He stated that he was aware of his right to earn a return on his investment, and that he had considered applying for a rate increase approximately two years earlier. He said that he had decided not to file for rate relief because he preferred to attempt to cease operations.

13. Mr. Art Clarkson of the Water Quality Bureau of the Department of Health and Environmental Sciences testified in support of the application. He stated that small private water companies are encountering difficulty securing the financing necessary to comply with the water standards promulgated by the U. S. Environmental Protection Agency. Publicly-owned systems, on the other hand, have access to numerous federal financing programs.

14. It appears from the record that the residents of Martin City should encounter no difficulty in establishing a county water district under the Montana statutes. Several witnesses suggested that this is a viable option, and that all that is needed to initiate the organization process is sufficient public interest.

15. During the hearing Mr. Brazier objected to the shortness of the notice in this Docket and to the taking of Mr. Baeth's testimony, as he alleged that the application and supporting papers failed to state a claim. At the close of the hearing, Mr. Brazier renewed his Motion to Dismiss.

CONCLUSIONS OF LAW

1. R. C. M. 1947, Section 70-105, provides that "Every public utility is required to furnish reasonably adequate service and facilities."

2. This Commission has jurisdiction under R. C. M. 1947, Section 70-105, to grant authority to discontinue utility operations. See generally: 1 Priest, Principles of Public Utility Regulation, pp. 379-380 (1969).

3. In a 1956 opinion, the Montana Supreme Court stated that a public utility may not cease its operations without prior Commission approval. This decision, which applied to railroad service, was made in the absence of a statute expressly granting the Commission authority to pass on proposed service abandonments. The Court said

"This order of the board is in line with the authorities throughout the country to the effect that a public utility may not discontinue its service without approval of the Public Service Commission (citations omitted)." Great Northern Railway Co. v. Board of Railroad Commissioners, 130 M. 250, 252, 298 P. 2d 1093.

4. In view of the foregoing, the Commission concludes that Mr. Brazier's Motion to Dismiss is not well-founded, and it is again denied.

5. The release of a public utility from its service obligation is a matter of tremendous importance. In the past the Commission has stated that the utility is obligated to first seek rate relief before attempting to cease operations.

"Ordinarily, we require any utility contemplating abandonment or suspension of public service to use every means at its command, including applications for rate increases to this Commission, to remain in function (citations omitted)." Re Kenneth Tracy, 68 PUR (ns) 120 (1947).

6. In another case the Commission granted authority to discontinue service, stating that the required increase would result in a rate "so high that decreased use of energy would result and possible benefit be thus wiped out ..." Re Barnes-Ring Dev. Co., PUR 1925 E 200, at 202.

7. For additional discussion of the showing required to obtain authority to discontinue service, see Re Eureka Teleph. Co., Docket No. 1737, Order No. 1655 (Mont. PSC 1934); Re Billings Gas Co., 26 PUR (ns) 328 (Mont. PSC 1938); and North Carolina v. Haywood Electric Membership Corp., ____ N. C. ____ 131 S. E. 2d 865, 50 PUR 3d 342 (1963).

8. In this case Mr. Baeth has stated that his doctor has advised him to get out of the water business, and that he and his wife are planning to retire. The application has been supported by the State Department of Health, whose representative stated that the county water district option is readily available to Martin City residents once they choose to pursue it. Mr.

Clarkson suggested that the community will be better off if service is provided by a public agency because required funding should be readily available.

9. In view of the factors summarized in Conclusion No. 8, the Commission concludes that the application should be granted.

ORDER

THE MONTANA PUBLIC SERVICE COMMISSION ORDERS THAT:

1. The Martin City Water Company is authorized to cease operations effective June 1, 1977. It is the Commission's belief that the delayed implementation of this Order will afford Martin City residents sufficient time to form a water district, if they so choose.

2. Any motions or objections made at the hearing and not previously ruled upon are denied.

3. This is a Proposed Order. Any party shall have the opportunity to file exceptions to this initial decision, present briefs and make oral arguments before the entire Commission, provided such exceptions, briefs and requests for oral argument are presented to this Commission within thirty (30) days from the service date of this Proposed Order.

Done at Helena, Montana, this 9th day of February, 1977.

Commissioner George Turman
Hearing Examiner