

Service Date: February 4, 1981

PROPOSED ORDER NO. 4664a  
DEPARTMENT OF PUBLIC SERVICE REGULATION  
MONTANA PUBLIC SERVICE COMMISSION

In the Matter of the Application of ) UTILITY DIVISION  
MARTIN CITY WATER CO. to Terminate ) DOCKET NO. 80.5.34  
Service. ) ORDER NO. 4664a

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APPEARANCES

FOR THE APPLICANT:

John Dudis, Esq. and Donald Murray, Esq., Box 759, Kalispell,  
Montana 59901.

FOR THE PROTESTANTS:

James C. Paine, Montana Consumer Counsel, 34 West 6th Avenue,  
Helena, Montana 59620.

FOR THE COMMISSION:

Robert F. W. Smith, Staff Attorney, 1227 11th Avenue, Helena,  
Montana 59620.

BEFORE:

GORDON E. BOLLINGER, Chairman  
CLYDE JARVIS, Commissioner  
GEORGE TURMAN, Commissioner

The Commissioners, having taken evidence and being fully  
advised in the premises, makes the following findings,  
conclusions and order:

FINDINGS OF FACT

1. The Martin City Water Company is a public utility  
providing water service in Martin City, Flathead County,  
Montana.

2. On May 27, 1980, Wesley F. Johnson, owner/operator of the  
Martin City Water Company, informed the Montana Public  
Service Commission, both orally and by letter, that he

intended to terminate the company's service on June 15, 1980 due to the mental and financial burdens of continuing operation. At the May 27th meeting, Mr. Johnson was informed that it would be unlawful for him to terminate service prior to a hearing and Order on the matter. Mr. Johnson agreed with this, saying that his main concern was to inform the customers of the Company of his intention to terminate service.

3. On June 12, 1980, the Commission issued Notice and Order No. 4664 in Docket No. 80.5.34, the matter of the Termination of Service by the Martin City Water Company. This Order formally notified Mr. Johnson that he could not terminate service without a hearing and order of the Commission. A hearing was set for July 15, 1980, at 7:30 p.m. in the Fire Hall, Martin City, Montana.

4. At the July 15th hearing Mr. Johnson testified in support of the Application. He stated that he desired to terminate service regardless of his proposed rate increase (Docket No. 80.6.39, proposed increase denied by Order No. 4732a). He stated that for several reasons he desires to terminate service: 1) Even if the increase were granted, revenues would be insufficient; 2) Mr. Johnson has moved to Hot Springs, making operation of the Martin City Water Co. extremely difficult; and 3) Relations between Mr. Johnson and his customers have seriously deteriorated, making continued operation of the system by Mr. Johnson a serious problem, for both management and customers.

5. The following public witnesses testified:

Stan McAllister, Chairman, Martin City Water District;  
Morris Burns, Treasurer, Martin City Water District;  
Doug Olson, Staff Attorney, Department of Health and

Environmental Sciences;

Ike Treat, Martin City Subscriber;

Norris Bacon, Martin City Subscriber; and

Bill Dakin, representative, Coram Water Users Association.

6. Mr. McAllister said that he felt that the people of Martin City gave Mr. Johnson the benefit of the doubt when he started, but that now they had run out of patience. He added that many Martin City Water Co. subscribers had endured periods of up to two weeks without water, eventually forcing them to conclude that Mr. Johnson had a total disregard for the people. On this subject, Mr. McAllister concluded by saying that if Mr. Johnson desired to terminate service, he should go ahead.

7. Mr. McAllister also discussed the current state of things with the County Water District, which was formed in Martin City to buy the system, saying that the Farm Home Administration was encouraging the conglomeration of the towns of Coram, Martin City, and Hungry Horse into one District. Also there was a substantial difference of opinion as to the value to be paid for the system; any solution requires an appraisal by an independent engineer.

8. Mr. Burns testified to some of the difficulties that customers and the District have had with Mr. Johnson. He tended to agree with Mr. McAllister that service could be terminated, but was not as adamant on this point.

9. Mr. Olson stated that his Department opposed the termination of service because contamination would result. He outlined some of the Department of Health's dealings with the system, noting that it had never been approved by the Department, as is required by law.

10. Neither Mr. Treat nor Mr. Bacon were in favor of the termination of service, although both opposed the rate increase proposed in Docket No. 80.6.39.

11. Mr. Dakin presented the view of the Coram water users, saying that their main concern was having to pay part of the price to be paid for the Martin City distribution system. Without this question being answered to the voters the satisfaction, he thought that the issue of consolidation would face difficulties in passage.

#### ANALYSIS

As the Commission files indicate, the problems of the Martin City water system have been an ongoing concern. In early 1977, when then-owner Russell Baeth sought to terminate the service of the Martin City Water Co., the Commission urged Martin City residents to form a County Water District. At that time, the resident's of Martin City were unable to form a District or non profit association to purchase and run the water system, so it was purchased by Mr. Johnson. As Mr. Johnson's letter of May 27, 1980 indicates, relations between company and customers have been continually fractious. Rather than waste time in assessing blame to the various parties (Commission included) everyone must surely recognize the need to try an set things in motion for the future.

For several reasons, it is clear that the present situation cannot continue. To elaborate on Finding No. 4, Mr. Johnson's current practice of capitalizing his own labor which the Commission disallowed, combined with the customer resistance apparent in the town, make it doubtful that Mr. Johnson could ever achieve a degree of financial integrity he would consider acceptable. As the Commission has noted previously

(see cases cited in Conclusion of-Law 5), the absence of prospects of achieving financial integrity is a crucial factor to be considered when a utility requests to be allowed to terminate service.

Authorizing the termination of service is a very serious move, especially here, where the Department of Health has expressed serious concerns about the contamination that could well result from a loss of water pressure. However, Mr. Johnson has made a substantial case that he should not be forced to continue to operate the system, and with no apparent prospects of a private sale of the system, pressure needs to be applied to the nascent Water District to. There are indications of progress; however, to ensure that progress continues, the Commission will set a future date for Mr. Johnson's termination, and in the meanwhile receive reports as to the ongoing negotiations.

#### CONCLUSIONS OF LAW

1. Pursuant to 69-3-102, MCA, and the Conclusions of Law set forth below, the Montana Public Service Commission properly exercises jurisdiction over the parties and subject matter in this Docket.
2. The Commission gave all interested persons reasonable notice and an opportunity to participate in this matter.
3. "Every public utility is required to furnish reasonably adequate service " 69-3-201, MCA.
4. "...[A] public utility may not discontinue its service without approval of the Public Service Commission." Great Northern Railway Co v. Board of Railroad Commissioners, 130

Mont.250, 252.

5. The Commission must base an abandonment order on unusual factual or financial conditions which make continued operation a hardship for the utility owner. Milwaukee Ry. Co. v Board of Railroad Commissioners, 126 Mont. 568 (1953); North Carolina v. Haywood Electric Membership Corp., 131 S.E. 2d 865, 50 PUR 3d 342 (1963); Re Barnes-King Dev. Co., PUR 1925 E 200, (Mont. PSC, 1925); and Re Billings Gas Co., 26 PUR (NS) 328, (Mont. PSC, - 1938).

6. For the reasons stated in Finding of Fact No. 4, and since his current customers are not eager to stop Mr. Johnson from terminating service, the Commission concludes that this application should BE GRANTED.

#### ORDER

Hearing Examiners Gordon E. Bollinger and Clyde Jarvis ORDER THAT:

The Martin City Water Company is authorized to cease operations effective May 1, 1981. It is the Commission's belief that the delayed implementation of this Order will afford the Martin City Water District sufficient time to take over the system if they choose. If the Commission finds that the District is making a good faith effort to acquire the system but has encountered unavoidable delays, this date of May 1, 1981 may be extended.

IT IS FURTHER ORDERED that the Martin City Water Company shall file monthly reports with the Commission detailing the progress being made toward a sale of the system.

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

IT IS FURTHER ORDERED, pursuant to ARM 38.2.4803, that 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 twenty (20) days from the service date of this proposed order.

IT IS FURTHER ORDERED that a full, true and correct copy of this order be sent forthwith by first class United States mail to the Applicant and to all other appearances herein.

DONE at Helena, Montana this 4th day of February, 1981.

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GORDON E. BOLLINGER, Chairman  
Hearing Examiner

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CLYDE JARIVS Commissioner

ATTEST

Madelaine:L. Cottrill  
Secretary  
(SEAL)