

Service Date: June 22, 1982

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

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IN THE MATTER of the Complaint of)	UTILITY DIVISION
the Town of Superior against Mountain)	DOCKET NO. 81.10.115
Water Company Fire Hydrant Charges.)	ORDER NO. 4909

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FINAL ORDER

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APPEARANCES

FOR THE COMPLAINANT:

James Congdon, Attorney at Law, 520 Brooks, Missoula, Montana 59801 appearing on behalf of the Town of Superior.

FOR THE RESPONDENT:

Dennis R. Lopach, Attorney at Law, Hjort and Lopach, Arcade Building, P.O. Box 514, Helena, Montana 59624-0514, appearing on behalf of Mountain Water Company.

FOR THE CONSUMER COUNSEL:

James C. Paine, Attorney, Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59620.

FOR THE COMMISSION:

Opal Winebrenner, Staff Counsel, 1227 11th Avenue, Helena, Montana 59620.

BEFORE:

HOWARD L. ELLIS, Commissioner & Hearing Examiner.

HELD

Complaint Petition Denied.

BACKGROUND

1. On October 28, 1981, the Public Service Commission (Commission) received a "Petition for a Water Rate Reduction for Fire Hydrants" submitted by Mayor Erin D. Goosey, Town of Superior. The Petition requested that the Commission approve a reduction in the flat rate per month per fire hydrant being charged by Mountain Water Company to the Town of Superior from the current \$32.31 (an incorrect figure, See No. 3) to \$10.00. The Petition contained two comparison tables; one compared the water rate classifications of the Town of

Superior with the City of Hamilton, and the second compared rate classifications of the following privately-owned utilities: Mountain Water (Superior and Missoula) , Valley Water (Hamilton) , Western Water (Missoula) and Butte Water (Anaconda and Butte). Based on those comparisons, the Town of Superior concluded the fire hydrant water rates it was charged by Mountain Water were the highest in Montana, and therefore the Town was justified in requesting a hydrant rate reduction.

2. On October 30, 1981, the Commission notified Mountain Water Company of the Town's complaint and requested an answer be submitted pursuant to Commission Rules A.P 38.2.2106 and 38.2.2107.

3. On November 19, 1981, the Commission received Mountain Water Company answer which indicated that the correct per hydrant monthly charge was \$23.50, as indicated on the tariffs filed with the Commission, rather than \$32.31. The Company stated that the Town's comparison tables were irrelevant as each water utility has a different cost structure upon which rates are based, The Company also argued that the appropriate cost consideration is the cost associated with the water system capacity necessary to provide sufficient flows to fight fires. The Company submitted the following documents: "Costs Allocated to Public Fire", "Allocated Cost of Service", "Revenue Requirements for Test Year 1976", and a "Computation of Required Increase in Water Rates to Offset Decrease in Fire Protection Service Rates." The Company calculated that it needed at least a \$19.98 per hydrant per month charge, based on the utility's costs allocated to public fire. However, the Company requested that if any reduction in the current rate were approved that all other water rates be increased so the Company's total revenues would remain constant.

4. On December 3, 1981, the Commission received a letter from Mayor Erin D. Goosey, indicating the Town and Mountain Water Company would attempt to negotiate a settlement as provided by Commission Rule A.R.M. 38.2.2106. On January 26, 1982, Commission staff wrote to Mayor Goosey to inquire as to whether a settlement between the two parties had been reached, and Town Planner, Jack Wright, later informed the Commission staff that no agreement had yet been reached.

5. On February 26, 1982, the Commission received an Amended Answer from Mountain Water Company. The Amended Answer requested that if the Commission found the

existing fire hydrant charge to the Town to be unreasonable and choose a per hydrant rate level of \$12.50 (or higher), then the Company would require a 5.81 percent increase in all its other water service rates to offset any revenue reduction that would result from the lowered fire hydrant rates.

6. On March 1, 1982, the Commission notified Mayor Earl Anderson, Town of Superior, of the Amended Answer and explained that the Town could make a response. On March 1, 1982, the Commission issued a Notice of Opportunity for Public Hearing.

The Montana Consumer Counsel intervened in the Complaint.

7. On March 26, 1982, the Commission held a public hearing at 10:00 a.m, in the Senior Citizen Center, 301 Second Avenue East, Superior, Montana. At the close of the hearing all parties waived their rights to a proposed order and stipulated to authorize the Commission to issue a final order in this Docket. Section 2-4-622, MCA.

SUMMARY OF TESTIMONY

Testimony of Town of Superior

8. Jack Wright, City Planner for the Town of Superior, was the only witness who testified concerning the Town's complaint. Wright explained that the Town Council deemed that the amount of money being paid out of property taxes to pay fire hydrant rates was excessive, and with a reduction of hydrant rates to \$12.50 per hydrant per month, the Town could reduce its property mill levy by 3.58 mills. Wright explained that he went through the tariffs filed by privately-owned water utilities with the Commission and compared those fire hydrant rates with the rates being paid by the Town of Superior. He concluded from his research that the Town was paying the highest fire hydrant rates in the state. He also stated that he believed that decreasing the fire hydrant rate and spreading the loss in revenues to the other water service classifications could result in a consumer savings. He estimated that most consumers would have a lower combined payment for property taxes (lowered by a decreased hydrant rate) and water service (raised by a small amount) to offset the hydrant rate decrease. He stated that philosophically the Town Council did not believe it should have to levy any mills to pay Mountain Water Company for fire protection services.

9. On cross-examination, Wright agreed that the Commission had determined that the current fire hydrant rates were just and reasonable rates when they were initially authorized

during the last rate hearing for the Superior service area. He also agreed that it might be more beneficial to Superior consumers to pay the Town's fire hydrant charges through their property taxes, rather than through increased residential and commercial water rates, as property taxes may be deducted from the consumer's income tax payment. On further cross-examination, Wright allowed that increasing the residential and commercial water rates to offset any revenue loss to Mountain Water Company caused by a reduction in fire hydrant rates could result in either no decrease or in an increase in property taxes. For example, the Town and the school district have public buildings which would have to pay higher water service rates. These higher water service rates would necessitate that the Town and County levy adequate mills from the property taxes to cover the water rate increase. It is quite possible, therefore, that any mill reduction realized by the lowered fire hydrant rate would be offset by the resulting increased rates for all other water services.

Summary of Mountain Water Company

10. Daniel Conway, Vice President of Revenue Requirements for Park Water Company, parent company of Mountain Water Company, was the main witness testifying on behalf of Mountain Water Company, and had prepared the answers submitted by the Company. He stated that the current water rates were just and reasonable as they reflected the Commission determination at the latest rate hearing involving the Superior water service area. He summarized the documents contained in the Company's Answer and Amended Answer, which he had prepared.

He explained that the principal design criteria for a small water system is its fire flow requirement, and 1,000 gallons per minute (GPM) is the basic public fire flow required by fire insurance underwriters. Although some areas of Superior have a lesser flow requirement than 1,000 GPM, he used the 1,000 GPM for his calculations rather than dealing with a different rate for each hydrant. On a cost basis, he stated that smaller communities have a greater fire flow revenue requirement as the water system must be designed to fight one large fire.

11. On cross-examination, Conway explained that the \$19.98 charge figure he had calculated from "Costs Allocated to Public Fire" indicated to him that the current \$23.50 rate was reasonable due to the range proximity of both figures. He stated he would not agree that the difference between the current \$23.50 rate and his \$19.98 calculation was an overcharge. Further

he testified he found that the Company is actually spending more on the maintenance of the water system than it is receiving in compensation. He explained that he could not testify as to why there was a discrepancy between the fire hydrant rates charged to the Town and those charged by other privately-owned utilities to other communities because he would not be knowledgeable about the cost structures of those utilities.

12. Lee Magone, General Manager of Mountain Water Company, Missoula, Montana testified briefly concerning the location of the Town's fire hydrants.

Testimony of Public Witnesses

13. The Montana Consumer Counsel was present to represent the Superior service area consumers; however, no public consumers/witnesses chose to testify.

DISCUSSION, ANALYSIS AND FINDINGS OF FACT

1. The essence of the complaint is that the Town of Superior believes that the fire hydrant rate it must pay to Mountain Water Company is too high in comparison to other communities of a similar size. The essence of Mountain Water Company reply is that the current rates approved by the Commission in the last rate hearing are just and reasonable, and that any comparison between Mountain Water Company charges and that of other privately-owned utilities charges is irrelevant due to the different cost structures of the utilities.

2. The appropriate consideration in determining whether a particular utility's rates are reasonable is the cost structure/cost of service for the utility. The utility's cost of providing the necessary water service to its consumers is the basis from which rates are determined (although no cost factors may be considered). As was explained at the hearing, each utility has its own cost structure upon which the utility bases its charges and upon which the Commission determines whether the rates and charges are just and reasonable. A comparison between utilities with dissimilar cost structures only indicates that the rates and charges differ. It does not indicate that some rates are more or less just and reasonable than others.

3. The Town of Superior owns the fire hydrants and Mountain Water Company charges the Town a per hydrant rate for the fire protection service it provides via its water system. Currently the Town of Superior pays for the cost of that fire protection service through property tax mill levies. At the hearing the Town testified that with a reduction in fire hydrant

rates, the Town could lower its mill levy for fire protection, and thus reduce its total mill levy. However, under cross-examination, it was pointed out that the Town would have to pay increased water service rates for its public buildings and other uses to offset the revenue loss from reduced hydrant rates. It was agreed by Mr. Wright that any savings to the Town would probably be negligible, since the Town's increased water service bills would also have to be paid from the property tax mill levy. Thus any reduction in the number of mills levied due to lower fire hydrant rates would be offset to some degree because additional mills would have to be levied to pay the Town's other increased water service rates.

Mountain Water Company calculated that it required at least a \$19.98 hydrant rate to meet its fire protection costs. (See "Costs Allocated to Public Fire") . At the hearing, Mountain Water testified that the closeness in range of that \$19.98 calculation to the actual \$23.50 rate indicated that the \$23.30 was a reasonable charge, and the Commission agrees.

4. During the hearing, testimony was presented concerning Mountain Water's "Allocated Cost of Service," specifically the fire flow figures used in its calculations. After the record was closed, the Town of Superior presented information in a letter received May 13, 1982, concerning a comparison of hydrant flow test data from 1977 and an April 1982 test run by Earl Hustus of Insurance Services, Great Falls. The Town alleged that the fire flow calculation used by Mountain Water was incorrect in light of that information. The Town's letter was sent to all interested parties in the Docket.

On June 4, 1982, the Commission received a copy of a letter dated May 28, 1982 from Mountain Water Company to Superior Mayor Earl Anderson which stated that a joint hydrant flow test had been run by Mr. Hustus and Mountain Water, which indicated the actual fire flows were much higher than Mr. Hustus had reported from his April 1982 tests.

5. The Commission finds that the Town has not shown that the current hydrant rates are unreasonable. Although the Town sincerely believes the fire hydrant rate it must pay is too high, the Town's comparison of its rate with those charged by other similarly-sized communities does not provide adequate evidence that the Town of Superior's rate is too high.

The information concerning flow rates through the fire hydrants submitted by the Town after the close of the hearing alleged that the flow rates Mountain Water used to calculate the

portion of the water system capacity necessary to meet the Town's fire protection needs were too high. The Town argues that Mountain Water is thus basing its cost of service allocation on a water system capacity that is higher than necessary, further substantiating its claim that its hydrant rates are too high.

The Town presented no other basis for concluding that its hydrant rates were unreasonable.

Due to the conflicting information concerning the system's fire flows and the lack of a comprehensive cost of service study, the Commission finds it inappropriate at this time to alter the Town's current fire hydrant rate charged by Mountain Water Company based on that testimony.

6. During the hearing, testimony was presented by the Town concerning a proposed means to settle the rate conflict. The proposal would require Mountain Water to lower the Town's fire hydrant charge to \$12.50 per hydrant per month. In order to agree to the settlement to reduce the fire hydrant rates, Mountain Water Company would require that the resultant loss in revenue be offset by increasing water service rates to all the other consumer service classifications by 5.81 percent. This would mean that all consumers, including the Town, would be paying increased rates for their water service.

The Commission finds the proposed rate settlement to be inappropriate. The hydrant rates charged by Mountain Water Company were not found to be unreasonable based on cost of service criteria. If any reduction in the hydrant rate were implemented, it would result in a reduction in the revenue contribution of that customer class while the overall revenue requirement of the utility would remain the same. With the overall revenue requirement remaining the same, it would be necessary to increase the rates to the residential and commercial customer classes to offset the loss of revenue from the hydrant rates.

Under the proposed settlement, the citizens of Superior would be paying for reduced fire hydrant rates through increased residential and commercial rates.

7. After consideration of the complaint petition and other information filed by the Town of Superior the answers of Mountain Water, and the hearing record, the Commission does not find the evidence sufficient to justify any change in the current rates previously set by the

Commission. The Town of Superior may, of course, present evidence concerning cost structure and hydrant flow rates at the next Mountain Water Company rate hearing involving the Superior service area.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and subject matter in this complaint pursuant to Sections 69-3-102 and 69-3-321, MCA.
2. The Commission gave all interested persons reasonable notice and an opportunity to participate in the matter. Sections 69-3-321 and 69-3-325, MCA.
3. The Commission is obligated to investigate complaints that the rates, charges or schedules of a public utility are unjust, unreasonable or unjustly discriminatory. Section 69-3-321, MCA.
4. Based on the complaint record and the hearing, the Commission finds that the current fire hydrant rates are just and reasonable, and concludes that the relief petitioned for in the Town of Superior complaint should be denied. Section 69-3-330, MCA.

ORDER

NOW THEREFORE IT IS ORDERED that the complaint petition in Docket No. 81.10.115 be DENIED.

DONE IN OPEN SESSION this 21st day of June, 1982 by a vote of 4-0

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

Howard L. Ellis, Commissioner
Hearing Examiner

John B. Driscoll, Commissioner

Clyde Jarvis, Commissioner

Thomas J. Schneider, Commissioner

ATTEST:

Madeline L. Cottrill
Commission Secretary

(SEAL)

NOTE: You may be entitled to judicial review of the final decision in this matter. If no Motion for Reconsideration is filed, judicial review may be obtained by filing a petition for review within thirty (30) days from the service of this order. If a Motion for Reconsideration is filed, a Commission order is final for purpose of appeal upon the entry of a ruling on that motion, or upon the passage of ten (10) days following the filing of that motion. cf. the Montana Administrative Procedure Act, esp. Sec. 2-4-702, MCA; and Commission Rules of Practice and Procedure, esp. 38.2..4806, ARM.