

Service Date: March 29, 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 Application of	)	UTILITY DIVISION
the Town of Fairview to Increase	)	DOCKET NO. 81.9.94
Sewer Rates and Implement a Sewer	)	PROPOSED ORDER NO. 4891
Hook-up Fee.	)	

APPEARANCES

FOR THE APPLICANT:

Jean Lanouette, Town Clerk, Town Hall, Fairview, Montana 59221

FOR THE INTERVENORS:

NONE

FOR THE COMMISSION:

Calvin Simshaw, Staff Attorney, 1227 11th Avenue, Helena, Montana 59620

BEFORE:

Gordon Bollinger, Chairman and Hearing Examiner

FINDINGS OF FACT

1. On September 25, 1981, the Town of Fairview (Applicant or Town) filed an application with this Commission for authority to increase rates and charges for sewer service to its customers in Fairview, Montana. In its application the Town also requested that the Commission allow the Town to implement a \$500 hook-up fee for all new connections to the sewer system. The Applicant's proposed increase in water rates will generate approximately \$22,850 in additional revenues annually.

2. On December 2, 1981, pursuant to notice of public hearing, a hearing was held in the Lions Hall, Fairview, Montana. The purpose of the public hearing was to consider the merits of the Applicant's proposed sewer rate adjustments.

3. At the public hearing the Applicant presented the following two witnesses:

Jean Lanouette, Town Clerk  
Jerry Leivstad, Water and Sewer Commissioner

No public witnesses took the stand and testified in opposition to the proposed rate adjustments.

4. The Town's witnesses testified the Town needed the proposed increase in rates to cover increased costs of operation, to repair and maintain the current system, to make needed capital improvements and to provide funds for contingencies.

5. The Town's exhibits indicate that for the fiscal years 1979 through 1981 the sewer operating fund incurred an average operating deficit of approximately \$1,350. This would indicate that the sewer utility has experienced increased costs of operation.

6. Based upon Finding of Fact No. 5 the Commission can conclude that the Town has not had funds available from the sewer operating account to adequately maintain the sewer system or to provide funding for needed capital improvements.

7. The Town's witnesses testified that the Town had completed a Step I study, required by the Environmental Protection Agency (EPA), evaluating the improvements necessary to bring the sewer system into compliance with EPA regulations. The study indicated that for the present system to comply with the EPA regulations it would be necessary for the Town to make improvements costing between \$800,000 and \$1,000,000, of which the Town would have to provide 25 percent of the funding. The Town's cost for the Step I study was \$2,500, of which approximately \$1,700 is still outstanding and payable.

8. At the present time, the Town has a moratorium on any new connections to the sewer system because the present plant is operating at capacity. The Town has also received complaints from residents living near its sewer lagoon and from the North Dakota Township Board for discharging the lagoon into a drainage ditch.

9. To increase the capacity and efficiency of its sewer utility and prevent further complaints relative to sewage discharge into a drainage ditch, the Town needs to increase the efficiency of its aerator operations and build a new sewer cell. The Town has not been operating

its aerator properly because of the operating costs associated with its operation. The Town needs to build a new sewer cell to increase capacity, which will eliminate the discharge of sewage into the drainage ditch and allow the Town the ability to permit new connections to the system. The Commission finds these expenses prudent and in the public interest.

10. Based upon the findings that the sewer utility has experienced increased costs of operation and that there exists a need for revenue to make necessary capital improvements to the existing sewer system, which are in the public interest, the Commission finds the Town's request to increase sewer revenues by approximately \$22,850 to be reasonable.

11. There was discussion on the record relative to the rate structure proposed by the Town. Given the fact that the system is unmetered it is necessary for the Town to assess sewer charges on a flat monthly charge basis, which may create a certain degree of rate inequity between various customer classes based on usage. The Town's witnesses testified that the proposed rate structure was an attempt to cover the costs of providing service to various customer classifications and the Commission finds the rate structure to be reasonable.

12. Contained in the Town's application is a request for authority to implement a \$500 hook-up fee for all new connections to the sewer system. The Town proposes to place all funds received from the assessment of the hook-up fee in an earmarked account and utilize these proceeds to defray part of the cost of any future plant expansions. While it is not the Commission's general policy to allow the assessment of a hook-up fee, the Commission is of the opinion, that even with its denial, the Town would have the authority to implement such a fee on its own motion. The Town is delegated the authority under Title 69, Chapter 7, which took effect July 1, 1981, to establish its own service requirements and the latitude to increase sewer revenues by 12 percent annually without Commission approval. Given these facts the Commission accepts the implementation of the \$500 hook-up fee.

13. Testimony on the record in this docket indicates that the Town has assessed a hook-up fee without having Commission approval for the assessment of said fee. It is contrary to statute for any utility to collect a fee that is not specified in its tariff of rates and charges as approved by this Commission (69-3-305 MCA). Notwithstanding, that statutory cite, it is not within this Commission's jurisdiction to order a refund of any monies collected by a utility for non-tariffed items (*Montana-Dakota Utilities vs. Public Service Commission, Lewis and Clark*

County District Court, Cause No. 46028, July 6, 1981). The proper authority to handle the question of any refund relative to the utility collecting an illegal fee is the District Court's.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and subject matter in this proceeding.
2. The Commission afforded all interested parties notice of and an opportunity to participate in this proceeding.
3. The rates approved herein are just and reasonable.

ORDER

IT IS ORDERED by the Hearing Examiner Gordon Bollinger, that the Town of Fairview is authorized to implement increased rates that generate an additional annual revenue of \$22,850.

IT IS FURTHER ORDERED, that the rates and rate structure filed with the application are the rates to be implemented by the Town of Fairview

IT IS FURTHER ORDERED, that the Town is authorized to implement the assessment of a \$500 hook-up fee for all new connections to the sewer system.

IT IS FURTHER ORDERED, pursuant to ARM 38.2.4802, that this is a proposed order. Any party shall have an opportunity to file exceptions to this initial decision, present briefs and make oral arguments before the entire Commission, provided such exception, 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 26<sup>th</sup> day of March, 1982.

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GORDON E. BOLLINGER, Chairman  
Hearing Examiner

ATTEST:

MADLINE L. COTTRILL  
Secretary  
(Seal)