

December 9, 1986

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

IN THE MATTER of the Application )  
of the BUTTE WATER COMPANY for ) UTILITY DIVISION  
Authority to Increase Rates and ) DOCKET NO. 86.3.8  
Charges for Water Service to its ) ORDER NO. 5195b  
Anaconda, Montana Customers. )

ORDER ON PETITION FOR RECONSIDERATION

BACKGROUND

1. On October 7, 1986, the Montana Public Service Commission (Commission) issued Order No. 5195a disposing of all matters then pending in this docket. On October 15, 1986 the applicant, Butte Water Company (BWC), filed a Motion for Reconsideration on one issue:
  - i.) Net operating loss (NOLs) carry forward.

NET OPERATING LOSS CARRY FORWARD

2. BWC requests reconsideration of the Commission's treatment of the NOLs that could be available to reduce BWC's taxable income. Generally for ratemaking purposes NOLs from prior periods are subtracted from current taxable income to calculate tax expense. BWC urges this Commission to ignore BWC's past NOLs calculating its taxable income and resulting tax expense. This issue was addressed at paragraphs 51 through 57 of Order No. 5195a.

3. BWC incurred tax net operating losses of \$3,376,243 from 1974 through 1985. In its brief supporting its motion for reconsideration BWC states the following reasons why the Commission should reconsider including NOLs in the calculation of BWC's tax expense:

a. BWC will receive no future benefits from the NOLs because a substantial portion resulted from interest on intercompany borrowings that were eliminated on a consolidated tax return. Any NOLs that were available were used by ARCO to offset income tax liabilities of profitable enterprises on a consolidated return.

b. BWC's debt was the result of loans from its former parent, ARCO, to offset the operating losses. The fact that the NOLs approximately equal the cash loaned by ARCO "makes the exchange a wash and confers neither a benefit nor a detriment on either the rate payor or the investor." Brief page 5.

c. The NOL issue in this docket is unique because of the conversion of debt to equity that resulted from the purchase from ARCO. BWC asserts that ARCO could have declined to convert debt into equity and this would have been detrimental to the ratepayer.

These arguments were raised by BWC in its brief filed after the hearing in this docket and were considered by the Commission Order No. 5195a. The Commission does not find any of these arguments persuasive reasons for reconsidering Order No. 5195a or deviating from its prior orders.

4. BWC's argument (a). Intercompany eliminations. From 1974 through 1981 BWC sustained total net operating losses of

\$2,257,802. These losses were not caused by interest on intercompany borrowings; interest payments to ARCO did not start until 1982. Any interest expense during 1974 to 1981 was paid to a third party lender, Crocker National Bank. (Response to staff data request No.20). Since the interest expense was paid to a third party during this time, no intercompany elimination occurred and a contention that the equity investor received no tax benefit from the net operating loss would be incorrect.

5. BWC's arguments (b) and (c). BWC unique because NOLs approximate loans from ARCO and ARCO could have declined to convert debt into equity. In Order No. 5195a the Commission considered BWC's argument that because no NOLs are actually available to reduce taxable income the NOLs should be ignored in calculating income tax expense for ratemaking purposes. At paragraph 54 the Commission stated, "However, no NOLs are available to BWC for tax reporting purposes because ARCO elected to use BWC's net operating losses to offset taxable income of other profitable enterprises. BWC as well as the BWC ratepayer would have benefited from these NOLs if they were available. Nothing prevented BWC from retaining the NOLs. It would be inequitable to the ratepayer to deny it the benefit of a tax savings that BWC could have retained but chose not to.

6. BWC generated and did not use NOLs that could be available to reduce taxable income. For ratemaking purposes the NOLs must be considered to calculate BWC's tax expense. Any tax benefit accruing to a regulated utility must remain with the utility until such time as it can be used by the utility. To do otherwise would prevent the ratepayer from realizing the effects of such tax benefits.

## CONCLUSIONS OF LAW

1 Butte Water Company, is a public utility as defined in Section 69-3-101, MCA. The Montana Public Service Commission properly exercises jurisdiction over Applicant's rates and service pursuant to Section 69-3-102, MCA.

2. The Commission has provided adequate public notice and an opportunity to be heard as required by Section 69-3-303, MCA, and Title 2, Chapter 4, MCA.

3. The rates and rate structure approved Order No. 5194a are just and reasonable. Sections 69-3-201 and 69-3-330, MCA.

## ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

1. Butte Water Company's motion for reconsideration is denied. Butte Water Company shall file rate schedules which reflect and increase in annual revenues of \$51,573 for its Anaconda, Montana service areas. The increased revenues shall be generated by increasing rates and charges to all customer classifications on a uniform percentage basis.
2. The rates approved in Order No. 5195a shall be effective when approved by the Commission.
3. The revenue approved in Order No. 5195a is in lieu of those approved in Order No. 5195.

4. DONE IN OPEN SESSION at Helena, Montana, this 8th day of  
December, 1986, by a 3 - 0 vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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JOHN B. DRISCOLL, Commissioner

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HOWARD L. ELLIS, Commissioner

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TOM MONAHAN, Commissioner

ATTEST:

Ann Purcell  
Acting Secretary

(SEAL)

NOTE: You may be entitled to judicial review in this  
matter. Judicial review may be obtained by filing a  
petition for review within thirty (30) days of the  
service of this order. Section 2-4-702, MCA.