Service Date: April 2, 1987

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

IN THE MATTER Of The Application Of BUTTE WATER COMPANY To Increase Rates And Charges For Water Service In Its Butte, Montana Service Area.	)))))	UTILITY DIVISION DOCKET NO. 87.1.3 ORDER NO. 5263

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FINAL ORDER

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BACKGROUND

1. On January 22, 1987, Butte Water Company (BWC) applied to the Montana Public Service Commission (PSC) to increase the Butte division water rates 1.9 percent for two years. A 1.9 percent increase to all rates will generate approximately $62,500 additional revenue per year, or $125,000 total. BWC proposed to use the $125,000 to pay for the preparation of a master plan for its Butte Division. The master plan was requested by a committee formed by Butte-Silver Bow Government to assist BWC in planning the future improvement of its system. In its application BWC stated that the committee would be responsible for the preparation of the master plan, including the selection of the engineering firm to prepare it.

2. The PSC gave notice of the application and provided an opportunity for a hearing. No requests for hearing were received.

3. On March 3, 1987, the PSC received a stipulation between

the Montana Consumer Counsel (MCC) and BWC. The stipulation stated in part:

The Montana Consumer Counsel (MCC), statutorily charged with representing the utility consuming public, sees merit in development of a master plan for the Butte Water Company. The MCC recognizes that significant capital expenditures will, in the near-term, have to be made by the Applicant for upgrading the Company's system. A master plan could supply needed recommendations of an informed nature.

Therefore, the Butte Water Company and the Montana Consumer Counsel stipulate and agree, subject to the approval of the Commission, that a 1.9% increase in current rates for the Company's Butte subscribers for a period of two years should be implemented under the following conditions:

(1) Applicant will establish a Special Revenue fund and all proceeds from the 1.9% increase will be placed in said Special Revenue Fund.

(2) All monies from the 1.9% increase should be used only for defraying the expenses of the development of the master plan.

(3) Should the 1.9% increase generate more revenue than is necessary to pay for development of the master plan, such excess revenues will be refunded to the Butte Water Company subscribers.

The parties agree that this stipulation is made for settlement purposes only. The matters settled herein do not constitute and cannot be considered as precedent for any future proceeding. It is expressly understood and agreed that neither of the parties hereto, by entry into this stipulation, shall be deemed to have accepted, agreed to or conceded to any particular ratemaking principle, cost of service determination, or legal principle underlying any of

the provisions of this stipulation.

The parties agree that neither party, by consenting to the approval of this stipulation by the PSC, waives any claim, right, defense or legal argument which it may otherwise have with respect to any matters not specified herein.

DISCUSSION AND FINDINGS OF FACT

4. During its last rate case hearing, Docket No 86.3.7, BWC testified that it had no capital improvement program and had done no long term planning. In Order No. 5194a the PSC informed BWC that a capital improvement program may be necessary to meet its statutory obligation of maintaining reasonably adequate facilities.

5. BWC's application for additional revenue to fund the Committee's planning efforts is a request that this Commission increase rates before the company incurs the expense and, in effect, treat the cost as an operating expense. As a general rule, the Commission will allow the reasonable and necessary expenses incurred for long term planning to be capitalized and included in rate base. Because of circumstances unique to this rate increase application, however, the Commission will approve the stipulation between BWC and MCC. The Commission believes the participation of the committee formed by Butte-Silver Bow Government in long term planning for the Butte water system will be a significant benefit to both the ratepayer and BWC. Also, BWC has recently changed ownership; the current shareholder is not entirely responsible for the lack of long term planning by BWC.

6. In addition to the conditions stated in the stipulation, the Commission accepts the stipulation between BWC and MCC

to increase all rates 1.9 percent for BWC's Butte division subject to the following conditions:

a) The Commission will not approve increased rates to fund the cost of a master plan until planning begins. The Commission considers the execution of a contract with an engineering firm as the commencement of planning.

b) Six months after the rate increase is effective, and every six months thereafter, BWC must submit to the PSC an accounting of the expense incurred by the Committee to date. The PSC shall disallow any expense that is not reasonable and necessary for the development of a master plan.

c) The revenue generated by 1.9 percent rate increase will only defray reasonable, necessary expenses up to $125,000. If the 1.9 percent rate increase generates more revenue than the reasonable, necessary expenses incurred, the excess revenue will be refunded to the ratepayers.

7. The PSC's approval of this rate increase to fund the development of a master plan is not approval of BWC's future capital improvements. BWC must be considering alternatives available and planning for any necessary improvements to both its transmission and distribution systems. In its last rate case BWC introduced evidence that its transmission system was badly deteriorated. BWC introduced little testimony on its distribution system, but public witnesses testified about distribution problems. See Order No. 5194a, Paragraphs 123 through 127. In Paragraph 128 the PSC stated. "The Commission has not fully investigated these representations and makes no findings on the condition of the facilities." The Commission continues to make no finding on the condition of BWC facilities. Nothing in this order can be construed as approval by the PSC of any type of acquisition of transmission or distribution facilities.

8. The Commission reiterates its position as stated in Paragraph 129 of Order 5194a. The Commission is aware that BWC is considering various solutions to the transmission

problems that it asserts exist. On September 30, 1986, BWC filed a Petition for a Declaratory Ruling stating that it is "contemplating the acquisition of a water system commonly known as the Silver Lake System to provide water to its Butte and Anaconda, Montana customers." The Silver Lake system is owned by Dennis Washington, who is also the owner of BWC. As the Montana Supreme Court noted in MDU v. Bollinger, 632 P.2d 1086, 1089 (1981) and MPC v. Department of Public Service, 665 P.2d 1121 (1983), the Commission must scrutinize more intensely transactions between a utility and its subsidiary or shareholder. If in a future rate case BWC seeks to include in rate base the cost of upgrading its transmission system, it should be aware that the Commission must determine if the property acquired is actually used and useful for the convenience of the public. The Commission will require substantial, credible evidence that BWC considered all reasonable alternatives and chose the alternative in the best interest of BWC and its ratepayer.

9. Approval of this rate increase has no effect on the Commission's authority to ascertain the value of property of every public utility actually used and useful for the conve nience of the public. ¸69-3-109, MCA. BWC has a legal obligation to provide its ratepayers with adequate facilities at a just charge. The Commission will require BWC to establish that any change, whether by purchase, lease, etc., in its distribution or transmission facilities is necessary, used and useful, negotiated in good faith, reasonable and the least cost alternative.

10. The Anaconda division was not included in the application and is not affected by this order.

CONCLUSIONS OF LAW

1. Butte water Company is a public utility as defined in .69-3-101, MCA. The Montana Public Service Commission properly exercises jurisdiction over the company's rates and services pursuant to S.69-3-102, MCA.

2. The Commission has provided adequate public notice and an opportunity to be heard as required by .69-3-330, MCA.

3. The rates and rate structure approved in this order are just and reasonable.

ORDER

NOW THEREFOR IT IS ORDERED THAT:

1. Butte Water Company will file rate schedules that reflect an increase in annual revenues of $62,500 for its Butte, Montana service areas. The $62,500 will be generated by increasing rates to all customer classification by 1.9 percent.

2. This rate increase is effective upon approval of the rate schedules by this Commission. This rate increase, to generate $125,000 additional revenue, will be effective for up to two years.

3. Butte Water Company will establish a Special Revenue fund and all proceeds from the 1.9% increase will be accounted for through this account.

Done and Dated this 1st day of April, 1987,by a vote of 5-0

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSIOM

CLYDE JARVIS, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

TOM MONAHAN, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Ann Purcell
Acting Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.