

Service Date: January 17, 1990

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) | UTILITY DIVISION |
| of the BUTTE WATER COMPANY for) | |
| Authority to Increase Rates and) | DOCKET NO. 88.9.29 |
| Charges for Water Service to its) | |
| Butte, Montana Customers.) | ORDER NO. 5387b |

ORDER ACCEPTING CAPITAL IMPROVEMENT PLAN

BACKGROUND

On November 21, 1988 the Montana Public Service Commission (Commission) held a hearing in this docket on Butte Water Company's (BWC) application for an interim rate increase. The hearing was bifurcated, and the Commission heard testimony on the issue of adequacy of service and facilities in its Butte, Montana service area.

The Commission issued Adequacy of Service Order No. 5387 on December 21, 1988 which in part directed BWC to file a capital improvement plan within 60 days demonstrating how it intended to remedy specific inadequate facilities by 1992.

On February 23, 1989 BWC filed a response to Order No. 5387 which the Commission determined to be unresponsive in three particular respects involving distribution, filtration and storage.

The Commission issued Supplemental Order on Noncompliance with Adequacy of Service Order No. 5387a, directing BWC to file its compliance plan showing how it would make necessary improvements to the water system pursuant to Order No. 5387.

BWC filed a petition for judicial review of Order No. 5387a in the First Judicial District Court, Lewis and Clark County, on March 9, 1989, and the Commission filed a complaint for fines for violation of Order No. 5387 in the Second Judicial District Court, Silver Bow County, on March 10, 1989. Both actions were consolidated under Cause No. 89-C-138, Montana Second Judicial District Court, Silver Bow County on August 17, 1989.

On or about December 1, 1989 BWC filed a Notice of Filing of Capital Improvement Plan with the District Court under Cause No. 89-C-138.

On December 1, 1989 BWC submitted and filed its Capital Improvement Plan to the Commission pursuant to Order Nos. 5387 and 5387a in this docket.

The Commission upon review of the plan voted on December 11, 1989 to find the Capital Improvement Plan to rectify system

deficiencies in the Butte, Montana service area in compliance with its orders in this docket.

The Commission and BWC stipulated by agreement dated December 26, 1989 to a withdrawal of BWC's petition for judicial review of Order No. 5387a and a stay on the complaint for fines on Order No. 5387 until after a rehearing in Docket No. 88.9.29 on changed circumstances, to be held January 11, 1990. By court order entered December 29, 1989 the petition portion of Cause No. 89-C-138 was dismissed with prejudice.

FINDINGS

The Commission finds that the Capital Improvement Plan generally complies with its previous orders to develop a plan and a timetable to make necessary capital improvements to distribution, filtration and storage in order to provide adequate service and facilities for the Butte, Montana service area. The previous orders directed BWC to establish a timetable for the completion of the necessary improvements to the filtration and distribution water storage by 1992. The filed Capital Improvement Plan provides for completion of these improvements by the end of the construction season of 1992. The improvements to the distribution system were not commenced in the construction season in 1989 as ordered. However, because of the intent and good faith effort of BWC to comply with the previous orders henceforth in filing its plan, the Commission will deem the plan to commence distribution system improvements during 1990, the first year of the plan, as in compliance with its orders.

It is understood that all amounts and details of the plan are subject to change. The Commission accepts the plan as compliant with its order to complete distribution storage and filtration facilities by the conclusion of 1992 and to begin timely improvements to the distribution system in 1990, with a reasonable timetable for eventual completion of such necessary improvements.

The Commission will not make BWC's management decisions. Therefore, the specific amounts and details of the plan may be modified as necessary in BWC's management judgment in the best interests of the company and its consumers. However, the requirements and general parameters of Order Nos. 5387 and 5387a must be met, in particular that necessary capital improvements and construction on distribution storage and filtration be completed by the conclusion of the construction season in 1992 and that improvements to the distribution system be commenced in 1990 with a realistic timetable for their completion.

The Commission finds it necessary to continue supervising and monitoring BWC until its facilities and service are deemed adequate. Therefore, the Commission will direct BWC to file with the Commission modifications to this plan as they develop in order for the Commission to monitor BWC's continuing intention to comply and its progress in compliance with the Commission's previous Order Nos. 5387 and 5387a in this docket.

CONCLUSIONS OF LAW

The Commission is vested with full power of supervision, regulation and control of public utilities. § 69-3-102, MCA.

The Commission has the authority to inquire into the management of all public utilities, to keep itself informed, and to

obtain all necessary information from public utilities in order to perform its duties. § 69-3-106, MCA.

BWC is a public utility subject to the Commission's jurisdiction and is required to furnish reasonably adequate service and facilities. §§ 69-3-101 and 69-3-201, MCA.

The Commission has the jurisdiction and authority to direct a public utility to take the necessary steps to ensure adequate service and facilities. §§ 69-3-102 and 69-3-330, MCA.

ORDER

Wherefore, it is hereby ordered as follows:

(1) BWC's Capital Improvement Plan filed December 1, 1989 is accepted as compliant with the Commission's previous orders;

(2) BWC shall file with the Commission any future modifications to its Capital Improvement Plan which shall continue to be in compliance with the requirements of Order Nos. 5387 and 5387a; and

(3) The Commission shall continue to monitor the capital improvement plan and BWC's efforts, pursuant to the Commission's jurisdiction, supervision and regulation under Title 69, Montana Code Annotated.

Done and Dated this 15th day of January, 1990 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

HOWARD L. ELLIS, Vice Chairman

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Ann Peck
Commission 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 ARM 38.2.4806.