

Service Date: July 22, 1991

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

* * * * *

SILVERBOW OWNERS ASSOCIATION, a)	
Non-profit Condominium Association)	
of the State of Montana,)	UTILITY DIVISION
)	
Complainant,)	
)	DOCKET NO. 89.3.5
vs.)	
)	
LONE MOUNTAIN SPRINGS, INC.,)	ORDER NO. 5493c
)	
Defendant.)	

ORDER CLARIFYING FINAL ORDER NO. 5493b

APPEARANCES

FOR THE COMPLAINANT:

James J. Screnar, Esq., Screnar, Guenther & Zimmer, P.O. Box 1330, Bozeman, Montana 59771-1330

FOR THE DEFENDANT:

Thomas R. Anacker, Esq., Kirwan & Barrett, P.O. Box 1348, Bozeman, Montana 59771-1348

FOR THE COMMISSION:

Timothy N. Sweeney, Staff Attorney, 2701 Prospect Avenue, Helena, Montana 59620-2601

BEFORE:

JOHN B. DRISCOLL, Commissioner & Hearing Examiner

BACKGROUND

On May 21, 1991 the Public Service Commission (Commission) issued a final order in this matter (Order No. 5493b).

On June 11, 1991 Complainant filed a motion for clarification of the final order. The basis of this motion was an alleged ambiguity in the order regarding certain 2-inch and 1 1/2-inch pipelines.

On June 19, 1991 Defendant filed a brief in opposition to the motion for clarification. Defendant argues that no procedural rule allows for a motion for clarification, Complainant's remedy was limited to a motion for reconsideration, and such a motion was now untimely since a motion for reconsideration must be filed within ten (10) days of the issuance of a final order.

DISCUSSION

I. MOTION FOR CLARIFICATION GENERALLY

ARM 38.2.4806 provides that within ten days after an order or decision has been made by the Commission, any party may apply for a reconsideration in respect to any matter determined therein. Such motion shall specifically set forth the grounds upon which the movant considers the order or decision to be unlawful, unjust or unreasonable.

The rules of procedure that govern this Commission do not specifically provide for a clarification of a final order or entry of a nunc pro tunc order. Following the issuance of a final order, a party's only remedy against errors or omissions contained in a final order is to file a motion for reconsideration. This remedy clearly does not address those situations where errors, omissions and resulting ambiguities do not manifest themselves within the ten day limit set forth in ARM 38.2.4806.

A court may amend its judgement at any time to make it express what was actually decided. In re Marriage of Cannon, 697 P.2d 901, 215 Mont. 272 (1985); Price v. Zunchich, 612 P.2d 1296, 188 Mont. 230 (1980). Equity and efficiency dictate that the

Commission likewise be able to amend its orders and decisions to reflect what was actually decided.

II. COMPLAINANT'S MOTION

Complainant requests that the Commission clarify whether its final order, which essentially directed Defendant to perform certain repairs and maintenance, applies to all service distribution lines within the Silverbow complexes or just 3-inch service distribution lines.

Since ownership was determinative of Defendant's responsibility to perform such repairs and maintenance, paragraph 44 of the Final Order is focal to Complainant's motion:

The Commission therefore finds that Defendant is the owner of the water service pipelines extending from the main to the service lines connecting the individual units within the Silverbow complexes.

This finding makes no distinction between the size of the water service pipelines, and the Commission did not intend to make such a distinction. Defendant is the owner of all the pipelines extending from the main to the service lines connecting the individual units, whether they be 3-inch, 2-inch or 1 1/2 inch.

The Commission recognizes that its use of the terms "service pipelines," "distribution pipelines" and any combination thereof could create confusion. Normally, the term "distribution" is used in reference to those pipelines that carry water to other pipelines. "Service," on the other hand is used in conjunction with those pipelines that carry water to a terminating point, e.g., a residence or place of business.

Because Section 69-4-511, MCA, does not distinguish between service and distribution pipelines, and because the parties argued the application of this section to this

case, the Commission was reluctant to use both terms in its paragraph 44 finding. However, for the purpose of clarifying the Commission's intent on this point, paragraph 44 will be amended to read:

The Commission therefore finds that Defendant is the owner of the water distribution pipelines extending from the main to the water service pipelines that service the individual units within the Silverbow complexes.

Likewise, paragraph 1 of the Order subsection should be amended to read:

Defendant repair or replace those sections of its water distribution pipelines servicing the Silverbow complexes that are currently leaking by June 30, 1991.

The Commission further recognizes that its analysis of ownership, to the extent of the emphasis on 3-inch lines, could be confusing when measured against the paragraph 44 finding. However, the aforementioned amendment to paragraph 44 should remove any doubt regarding the Defendant's responsibility for the distribution pipelines whether 3-inch, 2-inch, 1 1/2 inch or any other size.

III. ADMINISTRATIVE REMEDIES OR APPEAL

Before Rule 60 of the Montana Rules of Civil Procedure was amended to clearly allow for correction of clerical mistakes at any time, the Montana Supreme Court held that "... where such error can be corrected or the meaning of the judgment, order or other record can be clarified without inequity or prejudice to another party, such clerical

error can be corrected by the court at anytime." In Re Marriage of Winn, 651 P.2d 51, 200 Mont. 402 (1982).

In determining the effect of this order for purposes of administrative remedy or appeal, the Winn holding is instructive. The effect of this order should not work to prejudice or deny any party's ability to pursue remedies or appeals that would normally be available. Therefore, the Commission holds that the Final Order (Order No. 5493b) is final for purposes of review and appeal as of the date of this Order (Order No. 5493c).

ORDER

Therefore, the Commission hereby orders that:

1. Paragraph 44 of the Final Order (Order No. 5493b) be amended to read:

The Commission therefore finds that Defendant is the owner of the water distribution pipelines extending from the main to the water service pipelines that service the individual units within the Silverbow complexes.

2. Paragraph 1 of the Order subsection of the Final Order (Order No. 5493b)

be amended to read:

Defendant repair or replace those sections of its water distribution pipelines servicing the Silverbow complexes that are currently leaking by June 30, 1991.

Done and Dated this 15th day of July, 1991 by a vote of 3-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, 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.