Service Date: December 18, 1990

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

* * * * *

IN THE MATTER of the Application of the La Casa Grande Water Company for Authority to Increase Rates and Charges for Water Service to its East Helena, Montana Customers.	))))))	UTILITY DIVISION DOCKET NO. 90.1.4 ORDER NO. 5527

APPEARANCES

FOR THE APPLICANT:

Robert Cummins, Attorney at Law, 1 Last Chance Gulch, Helena, Montana 59601.

FOR THE INTERVENORS:

Mary Wright, Staff Attorney, Montana Consumer Counsel, 34 West 6th Avenue, Helena, Montana 59620.

Jerome Woodward, Water Subscriber, P.O. Box 533, East Helena, Montana 59635.

Dan and Twilla Steber, Water Subscribers, Fiesta Court #4, East Helena, Montana 59635.

FOR THE COMMISSION:

Martin Jacobson, Staff Attorney, 2701 Prospect Avenue, Helena, Montana 59620.

Ron Woods, Rate Analyst, 2701 Prospect Avenue, Helena, Montana.

BEFORE:

HOWARD ELLIS, Chairman
REX MANUEL, Commissioner
WALLY MERCER, Commissioner

BACKGROUND

1. On January 15, 1990, La Casa Grande Water Company (Applicant or LWC) filed an application with this Commission for authority to increase water rates and charges to its East Helena, Montana customers on a permanent basis by approximately 149%. This constitutes an annual revenue increase of approximately $43,049.

2. On September 13, 1990, after proper notice, a hearing was held in the large conference room of the Public Service Commission (PSC) Helena, Montana. For the convenience of the consuming public there was also a night session that commenced at 7:00 p.m. on September 13, 1990, at the same location.

FINDINGS OF FACT

3. During the public hearing on the Applicant's proposed rate adjustment the Applicant presented the testimony and exhibits of:

John Womack, Former Project Manager, LWC
Vivian Banschbach, Secretary-Bookkeeper, LWC
Dale Person, On-site Manager, LWC

4. At the public hearing the Montana Consumer Counsel (MCC) presented the testimony and exhibits of two expert witnesses, Frank Buckley, Rate Analyst, Montana Consumer Counsel, and Dan Fraser, Manager Public Water Supply Program, Montana Department of Health and Environmental Sciences. The MCC called as an adverse witness, Robert Cummins, Equity investor in LWC and Manager of LWC. The MCC also presented the testimony of 13 public witnesses subscribing to the water service of the Applicant.

5. The Commission in discharging its regulatory duties has an obligation to establish rates and charges that are just and

reasonable for both the utility and its ratepayers. This obligation requires that the Commission must, in assessing the reasonableness of proposed rates, balance the interests of the Company and the ratepayer. The utility's interest is in making a just and reasonable rate of return on its investment. The consumer's interest is in receiving reasonably adequate service and facilities at just and reasonable rates.

6. It is necessary in this order for the Commission to examine the unavoidable relationship between the provision of inadequate service and facilities by LWC and the revenue needs of LWC. The issue that must ultimately be resolved by the Commission in this Order is whether or not LWC's proposed increase in rates and charges would represent the implementation of just and reasonable rates.

7. LWC as a regulated public utility is entitled to recover all reasonably incurred expenses and to earn a fair return on its investment. Subscribers to LWC's utility service are, therefore, obligated to pay rates and charges that will allow LWC the opportunity to recover its reasonable costs of service, including a fair return on investment.

8. LWC by making application for increased water rates and charges is claiming that it can demonstrate that the rates and charges in effect prior to filing of a rate increase application have become unjust and unreasonable. A utility makes a rate increase application on the presumption that it can establish, with

reliable credible evidence, that current rates will not afford the utility the opportunity to recover its reasonable costs of providing service and/or the ability to earn a fair return on its investment. With the filing of a request for increased rates the Commission has the obligation to examine all matters pertaining to the utility operation that may impact its determination of need for rate relief. The Commission examines these matters because of its double regulatory duty to balance the interests of the company and the ratepayer in establishing reasonable rates.

9. In this Order there is no need for the Commission to address the financial concerns of LWC. The testimony received in this Docket clearly reveals that LWC is not discharging two of its primary public utility obligations. As a public utility LWC is required to satisfy a three part equation in the discharge of its public utility obligation. The components of this three part equation are reasonably adequate service plus reasonably adequate facilities plus just and reasonable rates equals discharge of public utility obligation (Section 69-3-201, MCA). LWC is not providing its customers with reasonably adequate service and facilities; LWC's failure to discharge these relevant regulatory requirements impact the Commission's revenue need deliberations.

10. The record in this Docket is replete with consumer testimony indicating that during periods of high demand on the water system they are not receiving adequate service. Consumer testimony revealed that during the summer irrigation months

consumers are experiencing low pressure, air in the lines, sand and sediment, and occasional instances of a total lack of water.

11. The consumer testimony regarding inadequate service during the summer irrigation period is independently supported by the testimony of MCC witness Dan Fraser and MCC exhibit F. Mr. Fraser indicated in the last 8 to 10 years during the irrigation months the DHES has received numerous complaints from consumers served by LWC regarding the operating problems enumerated in the previous finding. He further indicated that DHES continues to receive complaints from consumers concerning service provided by LWC.

12. Exhibit F is photocopies of charts from a continuous monitoring and recording pressure meter installed in a residence in the LWC service area. This exhibit shows a substantial number of pressure readings below 20 pounds per square inch (psi) which is the minimum desired operating pressure at all points in the distribution system. As related by Mr. Fraser an operating pressure below 20 psi could allow the introduction of contaminants into the system and this represents a potential health hazard.

13. If the Commission were to authorize an increase when testimony received during the hearing clearly indicates that facilities and service are inadequate there is no economic incentive for LWC, or any other regulated utility, to take appropriate action to rectify system deficiencies. The Commission further finds that it would not be just and reasonable for the ratepayer to reward LWC for inadequate service and facilities and

that the rate allowed should reflect the inadequacies inherent in LWC's East Helena service area. The Commission finds that the record warrants the denial of an increase in rates.

14. A Commission decision to deny LWC's request for increased rates in this proceeding due to inadequate service or facilities is not unprecedented. The Commission has previously exercised its authority to deny increases in rates, or ordered the implementation of reduced rates, in cases involving Butte Water Company (Docket No. 6801, Order No. 4699a, Docket No. 81.3.25, Order No. 4801a, Docket No. 82.3.13, Order No. 4896a) and Western Water Company (Docket No. 82.4.24, Order No. 4911a). In these Dockets the denial of a request for increased rates extended only to those customers receiving inadequate service due to system deficiencies. In Butte Water Company, Docket No. 88.9.29, Order No. 5382b, the Commission found that the condition of the existing facilities affected service received by all subscribers connected to the system and denied the entire increase requested by the Butte Water Company.

15. The problem of a utility providing inadequate service is not a new one. Commissions in other jurisdictions have addressed the issue and when faced with a utility's failure to provide adequate service, Commissions have declined to increase rates. See e.g. Re Middle States Utilities Co. of Missouri (1947) 1 Mo PSC NS 1.c. 122, 72 PUR NS 17, 27; Re North Missouri Telephone Co., Inc., 49 PUR 3d 313, 318 (Mo. PSC 1963); Re General Telephone Co. of the Southwest, 89 PUR 3d 92 (Ark. PSC 1971); Re Citizens Utilities Co.,

35 PUR 4th 378 (Idaho PUC 1980); Pennsylvania Public Service Commission, Docket No. R-850178.

16. The Commission finds, based upon the preceding Findings of Fact, that LWC's request for authorization to increase rates and charges in its East Helena, Montana service area should be denied.

17. Every utility in this state should recognize that it cannot be permitted to let its facilities threaten the health, welfare or safety of its consumers. Utilities that enjoy monopolistic privileges must bear the burden of providing reasonably adequate service and facilities. No utility should be heard to argue, such as the Applicant did in this Docket, that it cannot, and/or will not, make the necessary improvements because it does not have the financial resources. If the current management and/or owners of LWC are unable or unwilling to discharge their obligations in the operation of the public utility then they should arrange for some other entity to conduct those services.

DISCUSSION

The Commission in this order has denied rate relief to the Applicant because of service and facility inadequacies, but a review of the record supporting financial need would have resulted in the same outcome. It has been, and still is, the Commission's opinion that small utility operations should not be held to the same high standard of financial review in rate proceedings as major utilities. But the small utility must still meet the threshold requirement of supporting its case with credible evidence. In the

Commission's opinion LWC in this Docket failed to meet the threshold requirement of supporting its financial case and believes that it is appropriate to briefly discuss the defects in the Applicant's filing.

The Applicant in putting together its rate filing failed to utilize the actual expenses incurred by the utility in a twelve month period, as the starting point for supporting its need for rate relief. Rather than use the actual expenses incurred by the utility the Applicant constructed what was, purportedly, current expense levels and again adjusted those figures to come up with projected expenses. In future cases filed before the Commission the Applicant should start with actual expenses incurred and then adjust those actual expenses for known and measurable changes or include ongoing expenses previously recognized in Commission orders but not currently being recovered through rates. The known and measurable expense changes proposed by the Applicant should be supported by some type of documentation i.e. increased insurance expense should be supported with a billing or a letter from the insurance carrier indicating increases in some percentage are anticipated, increased telephone expense should be supported by a billing, etc. The Applicant attempted to support the reasonableness of expense increases after the close of the hearing in a brief that is not part of the evidence, and the justification contained in the brief was insufficient support. This discussion

is provided in the hope that it will be of assistance to the Applicant when the Applicant again files for rate relief.

The Applicant needs to have an engineering assessment of its water system completed. As related in this order, in the Commission's view, LWC's customers are not receiving adequate service. The only way that utility management is going to be able to determine necessary corrective actions to remedy service deficiencies is by have an engineering study completed that quantifies the current facility deficiencies and provides reasonable corrective actions. The Commission is willing to work with the Applicant in having such a review completed and is willing to accept an application from LWC for a rate increase to recover reasonable engineering costs associated with the study. Further, once it becomes clear that management is committed to taking necessary corrective actions to discharge its public utility obligation the Commission will aid the utility by authorizing rate relief (if the application is properly supported).

CONCLUSIONS OF LAW

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

2. The Commission has provided adequate 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 in this Order are just and reasonable. Section 69-3-201, and 69-3-330, MCA.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

1. La Casa Grande Water Company's request for authorization to increase rates and charges in its East Helena, Montana service area is hereby DENIED.

DONE IN OPEN SESSION THIS 17th day of December, 1990, by a vote of 3 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

_____
HOWARD L. ELLIS, Chairman

_____
WALLACE W. "WALLY" MERCER, Commissioner

_____
REX MANUEL, 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 38.2.4806, ARM.