Service Date: June 24, 1993

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

* * * * *

IN THE MATTER OF the Application of MOUNTAIN WATER COMPANY for Authority to Increase Rates and Charges for Water Service in its Superior, Montana Service Area.	)))))	UTILITY DIVISION DOCKET NO. 92.6.30 ORDER NO. 5657b

DEFAULT ORDER GRANTING WATER RATE INCREASE APPLICATION

BACKGROUND

On June 24, 1992, Mountain Water Company (Mountain Water or Applicant) filed an application with the Montana Public Service Commission for authority to increase rates and charges for water service to its customers in the Superior Division, Superior, Montana, Mountain Water requested a total of $27,876 in additional annual revenues.

Having considered the application and the supporting documentation and deeming itself fully advised in the premises, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Commission granted Mountain Water interim relief of part of its request in the amount of $14,657 on October 20, 1992,

pending further proceedings.

2. On March 19, 1993, the Commission issued notice of a public hearing scheduled for April 15, 1993, at 10:00 a.m. in Superior High School. Montana Consumer Counsel (MCC), the only intervenor in this proceeding, and Mountain Water (jointly, Parties) filed a proposed Stipulation which would settle the issues of Mountain Water's revenue requirement and need for a rate increase. Parties also filed Consolidated Motions requesting the Commission to vacate the hearing date and issue a notice of opportunity for public hearing, informing the public of the stipulation. On April 6, 1993, the Commission vacated the hearing.

3. After investigation, MCC determined and stipulated that the revenue requirement for Mountain Water's Superior Division would be equal to or greater than the rate increase requested by Mountain Water. Parties proposed that the Commission issue a Notice of Opportunity for Public Hearing to explain the Stipulation and avoid unnecessary hearing costs to the Superior Division customers.

4. A legal Notice of Opportunity for Public Hearing was published in The Missoulian, Missoula, Montana, and The Mineral Independent, Superior, Montana. The notice stated that if no

requests for public hearing were received by April 29, 1993, the Commission would issue an appropriate order based on the stipulation. The Commission received no requests for a hearing.

5. In Mountain Water Company, Missoula Division, Docket No. 92.4.19, Order No. 5625b, the Commission denied Mountain Water's request to implement a discount for qualifying Low-Income Energy Assistance customers. Mountain Water has proposed that the same discount be authorized for its Superior Division. The Commission rejected the discount for the Missoula Division on the grounds that Mountain Water had not supported a low-income discount in the application or the record.

6. Likewise, the Commission finds that Mountain Water has not supported the application for low-income discount for its Superior Division. The low-income discount is not central to the stipulation in this Docket. Therefore, the Commission rejects the low-income discount for the Superior Division.

7. The proposed rates will increase annual revenues by approximately $27,876, or an increase of 30.4 percent in the total annual revenues.

CONCLUSIONS OF LAW

1. The Applicant, Mountain 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. Title 69, 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 in this order are just and reasonable. Sections 69-3-201 and 69-3-330, MCA.

ORDER

1. The rates as filed by Mountain Water Company with its application, with the exception of the proposed 10 percent low-income discount, are authorized.

2. These rates shall be effective for services rendered on and after June 11, 1993.

DONE IN OPEN SESSION at Helena, Montana on this 11th day of June, 1993, by a 3 to 2 vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

_____
BOB ANDERSON, Chairman
- VOTING TO DISSENT - ATTACHED

_____
BOB ROWE, Vice Chairman
- VOTING TO DISSENT - ATTACHED

_____
DAVE FISHER, Commissioner

_____
NANCY McCAFFREE, Commissioner

_____
DANNY OBERG, Commissioner

ATTEST:

Kathlene M. Anderson
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.

Service Date: June 24, 1993

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

* * * * *

IN THE MATTER OF the Application of	)	
MOUNTAIN WATER COMPANY for Authority to	)	UTILITY DIVISION
Increase Rates and Charges for Water	)	DOCKET NO.
Service in its Superior, Montana	)	92.6.30
Service Area.	)	

DISSENT OF COMMISSIONER ROWE FROM ORDER 5657b

I respectfully dissent from Findings 5 and 6 of the Order in this docket, in which a three-person majority rejects a ten percent reduced rate for residential customers who are certified eligible for Low Income Energy Assistance. This dissenting opinion first summarizes the record, establishing that the reduced rate was a material part of the stipulated rate design. Next, the various bases for approving reduced residential rates are summarized. Finally, this opinion demonstrates that the majority's decision was inconsistent with the stipulation presented to the Commission, was premature, was inadequately noticed, and was not supported by an adequately-developed record.

The Commissioners voting to reject the low income discount in the instant case comprised the three person quorum in Mountain Water's Missoula division case, Docket 92.4.19, in which a similar proposal was rejected. This dissent should not be interpreted as a

criticism of the overall outcome in that case, which appears to have served ratepayers well given the record which the Commission was presented.

Based on the Missoula decision, the same majority now finds Mountain Water has not supported the reduced-rate rate design in the Superior Division. The Superior order then states the low income discount is not central to the stipulation in this docket, and rejects the low and moderate income rate, while purporting to accept the stipulation.

I. THE RECORD DEMONSTRATES THAT THE REDUCED RESIDENTIAL RATE WAS A MATERIAL PART OF THE STIPULATED RATE DESIGN.

Mountain Water General Manager Arvid Hiller initially proposed a ten percent discount for Superior, with eligibility tied to independently-verified criteria, and with negligible administrative expenses. Costs would be tracked, using a balancing account, with adjustments made in future cases. (Pre-filed testimony, pp. 6-8) Hiller noted:

> Electric utilities are coming out of their construction cycle, while water utilities are entering their's (sic). There is tremendous uncertainty regarding the drinking water standards which will be established by federal and state government, and the ultimate effect of those regulations on the industry. (Id. at 5.)

Hiller also stated:

> It is our belief that the cost of complying with the Safe Drinking Water Act will significantly increase over time as the various standards are implemented. The low income discount will soften such impacts for those of our customers least able to afford them. (Id. at 7.)

On April 1, 1992, Mountain Water and the Montana Consumer Counsel entered into a stipulation. MCC was the only intervenor in this case.

The stipulation accepted the Superior Division's revenue requirement. It stated, "The rates . . . if increased as requested . . . would be just and reasonable." The stipulation proposed adequate public notice and opportunity for comment and called for final approval of "the increase in rates requested by Mountain Water in its application." (Emphasis supplied.)

The Commission properly issued a notice of opportunity to comment, along with a press release explaining the stipulation. No objections were received to the stipulation.

At the time of the stipulation, the public notice, and the press release, the ten percent discount was a distinct part of the rate design proposal. It comprised a substantial portion of the key policy witness's testimony.

At the time of the stipulation, the public notice, and the press release, a similar discount proposal was also an element of the Missoula rate case. The Missoula proposal was offered by the applicant, aggressively supported by one intervenor, and either tacitly supported or not opposed by the other two intervenors. The Missoula quorum's sua sponte rejection of the Missoula proposal occurred in an order dated June 2, 1993. At least one party to that case has requested reconsideration.

II. SUMMARY OF BASES FOR RATEPAYER ASSISTANCE PROGRAMS.

This section very briefly summarizes the various bases for ratepayer assistance programs. It does not argue that any one approach necessarily applies in this case. It does maintain that the Commission failed to develop a record for their rejection of the proposal stipulated to in this case.

Many seniors, disabled, single parents, and working families have difficulty meeting their utility bills, despite their best efforts. Failure to meet these expenses imposes obvious costs on the family affected: doing without essential services, shutoff notices, even eviction. Costs are also imposed on the utility, including late payment, non-payment, collection, termination, reconnection, carrying costs of bad debt, and so on. These costs, where they exist, are passed on to ratepayers, as are the larger "social costs" so deeply experienced in economically-distressed communities.

This Commission considered these important issues in Docket 88.6.15, in which residential and targeted low income weatherization was approved; in Docket 90.6.39, in which an MPC ten percent reduced rate was approved; in Docket 90.10.67 approving ten percent lower water and sewer rates in Great Falls; through staff participation in a collaborative; and through the Commission's own sponsorship of the recent Low and Moderate Income Workshop. The Commission has also recognized its authority to address these problems through adoption of the telephone lifeline and link-up programs and through implementation of customer service rules which include various termination prohibitions and restrictions. There are generally three bases for addressing the problems of moderate and low income residential customers.

A. The Unique Importance of Public Utility Service.

Unarguably, utility bills place a great burden on low and moderate income residential customers. While their actual consumption may be less, they typically pay a much higher proportion of their household incomes in utility bills than do other customers. Some experts explain that, given the seriousness of this problem, utility-based responses should be part of the utility obligation to serve the public - all the public.

Not all economic actors are regulated; most are not, and should not be. Public utilities are regulated because they are monopolies affected with vital public interests. They provide necessities. This analysis supports across-the-board rate reductions, such as that proposed here, but also supports other measures. In Montana, the argument has been forcefully made by this Commission's former Chairman, Tom Schneider.

The "public interest" position is often cited in support of rate programs on small utility systems, where the cost of developing a full factual record specific to the utility may be prohibitive. Indeed, this Commission previously adopted a ten percent reduced residential water rate based solely on the public testimony of former Chairman Schneider and by reference to the then-ongoing Montana Power docket. City of Great Falls, Docket 90.10.67 (Order No. 5523g, November 18, 1991).

In Great Falls, the Commission found that all customers should pay a rate that recovers fixed costs and makes a contribution to variable costs. Based on Schneider's testimony, the Commission recognized the economic conditions faced by moderate and low income customers

(up to 150 percent of poverty), and recognized the impact of anticipated future rate increases on these customers. "These increases in rates will have a significant economic impact on LIEAP-qualifying customers and will affect their ability to pay." Id. at 9. As noted, similar testimony was offered by witness Hiller in the present case.

B. Utility and Other-Ratepayer Costs May Be Avoided.

Some argue that the costs imposed by payment-troubled customers on the utility, and therefore on other ratepayers, may be avoided by keeping rates affordable (avoiding the various payment and collection expenses, having the customer cover fixed expenses and making a contribution to variable expenses). Typically, this analysis supports targeted assistance to payment-troubled customers, coupled with various other measures.

Especially when the analysis is offered in conjunction with the "obligation to serve" analysis, it also supports flat rate discounts. This approach has also provided the basis for utility-initiated programs combining deep rate reductions, conservation, rigorous customer budgeting expectations, and other measures. The Commission rejects Mountain Water's proposal without inquiring whether these conditions pertain in Superior, Montana.

C. "Universal" Utility Service May Confer Broad Benefits.

Texas Public Utility Commissioner Karl R. Rabago argues for "Universal Electric Service," based on the Universal Phone Service which has been national policy since the Federal Communications Act of 1934. See, 47 U.S.C. Section 151. Commissioner Rabago observes that the societal benefits of telephone universality are widely recognized (public health, safety, and economic growth; rural development; being able to call, not just be called). So too, movement towards or away from universal utility service creates social benefits or imposes social costs. These may include the potentially-avoidable utility and ratepayer costs described above, but would also include such things as the enhancement or harm to property values, health and safety, and other larger considerations.

Witness Hiller correctly noted the probable near-future effect of mandatory capital expenditures on rates. Water utilities in other regions are already experiencing dramatic cost increases, and are borrowing heavily from electric and gas rate design. Indeed, several water utilities have been among the leaders in designing and implementing aggressively-targeted rate programs. The Commission's decision fails to evaluate whether a discount at this time would be valuable in preparing to meet future changes in the ratio of utility bills to community income.

Finally, water, gas, and electricity are all part of a package of shelter costs. To the extent each of these costs is kept affordable, a family is more likely able to remain adequate ly-housed. This too may produce individual, utility, other-ratepayer, and societal benefits. These considerations, while not controlling, should be weighed in passing on any one proposal.

III. THE PROCEDURE FOLLOWED FAILED TO PROVIDE ADEQUATE NOTICE OR DEVELOP A RECORD TO SUPPORT THE COMMISSION'S DECISION.

This dissent does not argue that the same approach to the problems of moderate and low income ratepayers is appropriate in each case. It does not argue that a rate-based approach is always the best. It does not even argue that a reduced rate is necessarily the best approach in this case. However, in rejecting a portion of the stipulation, the Commission's procedure is defective in four ways.

A. The Commission Rejected A Stipulated Rate Design Without Conducting a Hearing.

The parties' stipulation had two components: revenue requirement and rate design. As established, the ten percent rate reduction was a significant part of the rate design.

The Commission purported to decide this case without a hearing based upon the stipulation, but rejected the rate design element, asserting, "The low-income discount is not central to the stipulation in this Docket. Therefore, the Commission rejects the low-income discount for the Superior Division."

It is proper to make non-substantive or clerical corrections to stipulations. Material terms should not be modified by the Commission without additional proceedings.

It is proper for the Commission to resolve cases without an evidentiary hearing (after notice and an opportunity to comment) based on a stipulation. It is improper to decide a case without hearing based upon rejection of a stipulation's material elements.

The Commission should either have accepted the stipulation, which was clearly within its authority, or should have rejected that part of the stipulation with which the majority disagreed. The parties would remain free to renegotiate or to amend their testimony.

B. The Commission Should Have Deferred Action on Rate Design Until Final Resolution of the Missoula District Case.

The Stipulation clearly contemplated a ten percent rate reduction. The Commission majority premised its rejection of that part of the stipulation on its decision, several days earlier, in the Missoula Division case. Conjoining the outcomes can be based only on sufficiently close facts in the record, or on an overriding desire for consistency between the two cases.

As noted, the Commission rejected the Superior rate design without conducting a separate factual inquiry. Therefore, the Commission should not assert that the rate design is unsupported, based simply on reference to the Missoula docket.

If the objective is consistency, the Commission's action is premature. As noted, at least one party has filed a motion to reconsider the Missoula Division order. Given the Commission's decision not to accept the stipulation as presented to it, a prudent course would be to defer action on the Superior rate design pending outcome of the Missoula motions to reconsider, using the intervening time to conduct discovery and obtain public comment.

C. The Commission Failed to Give Adequate Notice.

As established in Part I, the stipulation clearly contemplated the rate design proposed

by Mountain Water, including the reduced residential rate. That was the stipulation which was noticed for comment, and on which no response was received.

The Supreme Court has stated, "The purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending hearing." Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 14 (1978). This we did not do.

The Montana Administrative Procedure Act requires "reasonable notice" in contested cases, including a "plain statement of the matters asserted," and where necessary "a more definite and detailed statement" to be provided later. Section 2-4-601, MCA. These requirements are reflected in our own procedural rules concerning notice. ARM 38.2.1801 through 1803. The notice in this case was reasonable to approve the stipulation, but not to modify it unilaterally.

This objection is not grounded in mere proceduralism. There may well be interested parties, not party to this case, with genuine concerns, both supporting and opposing that portion of the stipulation which the Commission rejected. These include local officials, county commissioners, senior citizens' councils, job retraining programs, and individuals.

It is not clear from the order whether the two parties, Mountain Water and MCC, were informed in advance of the Commission's intent. One assumes they were. The record should reflect their positions.

Professor Bernard Schwartz emphasizes how important adequate notice is:

> Specification of the issues is one of the basic elements of fair procedure. The notice instituting the proceeding must not only tell when and where the hearing will be held; it must also apprise the individual of the issues involved. Administrative Law(2d ed. 1984), 283.

Both the parties already participating and those potentially affected deserved notice of

the issue before the Commission.

D. The Commission Should Have Undertaken Independent Discovery Before Rejecting the Stipulation.

As summarized in Section II, different rate or non-rate approaches may be appropriate to different situations. The parties stipulated to a rate design they believed consistent with this Commission's preference, and with the record established in prior Commission cases.

The Commission has itself resorted to "administrative common law," drawing on analyses from prior cases, even when those positions are not fully developed in the record of the case currently before it. Subject to appropriate due process con straints, this is a useful, appropriate, and efficient way to develop policy within the contested case framework.

Given the record in this case, it was imprudent for the Commission to reject a method it had previously adopted, embodied in a stipulation, without developing the record further. If the Commission believed additional information to be required, each of the analyses described in Part II would be supported by particular kinds of data.

Apparently the two parties believed the rate design was adequately supported. Either they should have been given the opportunity to defend it, or the Commission should have developed the record on its own.

IV. CONCLUSION.

It will not do simply to assert, "The low income discount is not central to the stipulation

in this Docket." The Commission made a specific decision to reject the rate design proposed.

The Commission should either have accepted the stipulation as presented or should have taken one or all of the following steps:

A. Deferred action on rate design until conclusion of the Missoula case.

B. Provided notice and an opportunity to comment on its refusal to accept certain portions of the stipulation.

C. Instructed the parties to proceed with rate design cases, in which case the parties would have been free to continue negotiations.

D. Initiated discovery on which to base a reasoned decision.

RESPECTFULLY SUBMITTED this 22nd day of June, 1993

_____
BOB ROWE
Vice Chair

DISSENT OF CHAIRMAN ANDERSON FROM ORDER 5657b

I join fully in Commissioner Rowe's dissenting opinion.

_____

BOB ANDERSON
Chairman