

Service Date: November 26, 1993

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

* * * * *

IN THE MATTER OF the Application)	UTILITY DIVISION
of Lone Mountain Springs for)	
Authority to Increase Rates and)	DOCKET NO. 92.9.55
Charges for Water Service to Its)	
Big Sky, Montana Customers.)	ORDER NO. 5660e

ORDER ON MOTION FOR RECONSIDERATION

1. On August 10, 1993 the Montana Public Service Commission (Commission) issued a Revised Interim Order (Order No. 5660d) directing Lone Mountain Springs, Inc. (LMS) to refund with interest all rates collected and forego all rates accrued but uncollected under the Commission's second interim order, Order No. 5660a. This action was taken in response to LMS's failure to file tariffs reflecting interim increases granted in Order Nos. 5660 and 5660a. Because of the financial instability of LMS the Commission did not order refunds of those amounts collected under the first interim order, Order No. 5660. The Commission believed these were necessary for LMS to cover operating and maintenance (O&M) expenses.

2. On September 7, 1993 LMS filed a motion for reconsider-

ation of the Commission's Revised Interim Order. LMS argues that actual O&M expenses exceeded the revenues provided under the first Interim Order and, therefore, the Commission's intent to provide LMS with adequate revenues to cover O&M expenses is defeated. LMS's motion is denied for the following reasons:

3. Preliminarily, LMS's motion reflects a belief that the Commission's direction to refund those amounts collected and accrued under the second interim order constituted a penalty. This is an incorrect interpretation of the Revised Interim Order.

The refund was ordered because LMS failed to have a tariff on file which covered the rates it imposed on its customers. See § 69-3-305(1)(b), MCA (utility may not charge a rate not specified in its tariff); § 69-3-305(3), MCA (commission may order refunds of amounts collected in violation of statute). While the imposition of a penalty was considered, the Commission ultimately concluded that its financial situation could not withstand both a refund and a penalty. See Revised Interim Order at 5.

4. In the Revised Interim Order the Commission did express an intent to provide LMS with revenues sufficient to cover O&M expenses. However, ratemaking is a legislative activity and is prospective in its effect. Using a utility's historic operating data, referred to as test-year data, rates are set to match

utility costs during the period that rates are in effect. In this respect, the Commission may not retroactively set rates so as to allow a utility to amortize past deficits. See generally, Mountain Water Company v. Montana Department of Public Service Regulation, 254 Mont. 76, 835 P.2d 4 (1992). For the Commission to adjust LMS's interim rates to account for O&M expenses already incurred would constitute retroactive ratemaking.

5. In regard to increased O&M expenses not yet incurred, the data and projections provided by LMS are not part of the test-year data. Requests for interim rate changes are to be based on the test-year data supporting a utility's application for permanent rate relief. See ARM 38.5.506.

CONCLUSIONS OF LAW

1. Order No. 5660d directed Lone Mountain Springs, Inc. to refund with interest at 12% all interim rates collected and forego all interim rates accrued but uncollected under Order No. 5660a.

2. A Montana Public Service Commission order is final for purposes of appeal upon the entry of a ruling on a motion for reconsideration. ARM 38.2.4806.

ORDER

1. The motion for reconsideration filed by Lone Mountain Springs, Inc. is denied.

Done and Dated this 1st day of November, 1993 by a vote of 3-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ANDERSON, Chairman

DAVE FISHER, Commissioner

NANCY MCCAFFREE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: You may be entitled to judicial review in this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. Section 2-4-702. MCA