

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

IN THE MATTER OF the Application of)
UTILITY SOLUTIONS, LLC to)
Implement Initial Rates and Charges)
for Water Services in its Elk Grove)
Subdivision, Gallatin County, Montana)
Service Area)

UTILITY DIVISION

DOCKET NO. D2005.11.163

Consolidated with

IN THE MATTER OF the Application of)
UTILITY SOLUTIONS, LLC to)
Implement Initial Rates and Charges)
for Wastewater Services in its Elk)
Grove Subdivision, Gallatin County,)
Montana Service Area)

UTILITY DIVISION

DOCKET NO. D2005.11.164

PREHEARING MEMORANDUM

Utility Solutions, LLC, the Applicant in the above entitled dockets, respectfully submits this Pre-Hearing Memorandum in accordance with the Commission's Procedural Order 6707c.

ISSUES

There are only two parties in this case, Utility Solutions and the Montana Consumer Counsel (MCC). On January 8, 2010, the parties executed a Stipulation which, if adopted by the Commission, will be fully dispositive of the amended applications for increased rates filed in these consolidated dockets. The Stipulation proposes final rates and tariffs for implementation by the Commission in a final rate order, and the pre-filed testimony of the parties establishes that the proposed final rates and tariffs are just and reasonable. The only issue before the Commission at hearing is whether it should be persuaded, in its discretion, to adopt the proposed rates set forth in the Stipulation as the final rates established by the Commission in this proceeding.

Utility Solutions has been made aware of a potential procedural issue which may arise at hearing concerning possible public testimony by a Mr. Tony Kolnik. Attached to this Pre-Hearing Memorandum is an email sent to legal counsel for the Four Corners County Water and Sewer District (District), which is not a party to these proceedings, by Mr. Kolnik. Mr. Kolnik's email to the District indicates that he intends to appear at the hearing in this matter and testify about his difficulties in getting water and sewer service from the District. Mr. Kolnik does not live in Elk Grove, does not receive water or waste water service from Utility Solutions, and will not be affected by the rates established in these dockets. He has no standing before the Commission in this proceeding, and his testimony is irrelevant to the issues before the Commission in these proceedings.

In the thirty years that counsel for Utility Solutions has been practicing before the Commission, the MCC has asked three foundational questions of every public witness testifying in a Commission proceeding: (1) their name; (2) their address, and;(3) whether they are a customer of the utility which is the subject of the proceeding in which they are going to testify. The answer to the last question establishes the requisite standing of the witness to testify, and the relevance of his or her testimony. When Mr. Kolnik answers the third question in the negative, the Commission, to preserve the integrity of its proceedings, will need to inform him he cannot testify in these proceedings.

WITNESS

At hearing, Utility Solutions will call to the witness stand Ms. Sandra Barrows, the witness who pre-filed testimony on its behalf

EXHIBITS

Applicant will mark the following exhibits as indicated, and offer them into evidence at the beginning of its case in chief:

- U.S. Exhibit 1. Amended Application for Increased Water Rates dated June 30, 2009.
- U.S. Exhibit 2. Amended Application for Increased Waste Water Rates dated June 30, 2009.
- U.S. Exhibit 3. Stipulation between Utility Solutions and the Montana Consumer Counsel dated January 8, 2010.

These three exhibits are pleadings, and are automatically part of the administrative record in this case under the provisions of Section 2-4-614 of the Montana Code Annotated.

Applicant believes they may be frequently referenced during the course of the proceeding, and that marking and offering them as its exhibits will add clarity to the record.

Applicant will mark the following testimony and exhibits as indicated, and offer them into evidence after the witness is qualified and before the witness is tendered for cross-examination:

- U.S. Exhibit 4. Supplemental Prefiled Direct Testimony and Exhibits of Sandra Barrows in PSC Docket D2005.11.163.
- U.S. Exhibit 5. Supplemental Prefiled Direct Testimony and Exhibits of Sandra Barrows in PSC Docket D2005.11.164.
- U.S. Exhibit 6. Prefiled Testimony on Additional Issues of Sandra Barrows

DATED this 7th day of March, 2010.

HUGHES, KELLNER, SULLIVAN & ALKE

By John Alke
John Alke
40 W. Lawrence, Suite A
P. O. Box 1166
Helena, MT 59624-1166

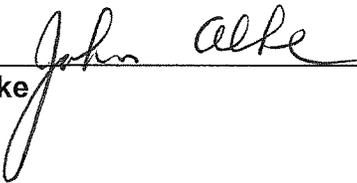
Attorneys for Utility Solutions, LLC

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that a copy of the foregoing **PREHEARING MEMORANDUM** was served upon the following by mailing and emailing a true and correct copy thereof on **March 26, 2010**, addressed as follows:

**MONTANA CONSUMER COUNSEL
P O BOX 201703
HELENA MT 59620-1703**

**TONY KOLNIK
kolnik@yahoo.com**



John Alke

above, and may be legally privileged. If the reader of this message is not the intended recipient, you are hereby notified that any viewing, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please return it to the sender immediately and delete the original and any copy of it from your computer system. If you have any questions concerning this message, please contact the sender.

From: Tony Kolnik [mailto:kolnik@yahoo.com]
Sent: Thursday, March 18, 2010 11:39 AM
To: Susan Swimley
Cc: Andy Malby; Mark Allen; Marty Lambert
Subject: view files FCCW&SD

Dear Four Corners Water and Sewer District President Mike Pearson & fellow Board Members,
March 18, 2010
C/O Susan Swimley, Districts' Attorney at Law,

The Four Corners Water and Sewer District Board members past policy was to allow me access to view and copy their files, located in Susans' office. I would like to set-up a time next week to view the files. The files/records I wish to view are listed below.

1) The monthly itemized records of the two Districts' Attorneys invoices beginning with 2001 for Attorney John Brown (now Judge John Brown) to present 2010.

I did find one letter in my records from the past water and sewer District Attorney, John Brown, to past District President, John Humle, showing an invoice amount for approximately \$67,000.00 including only a partial list of detail 15 minute time periods breakdown & with whom.

2) The ""Conflict of Interest" statements for all past and present elected or appointed Public District Board members since 2001 to present, 2010.

I found one in my records from Districts' past President, Chris Nelson (2002 to 2004?), disclosing who has ownership of Galactic Pack Subdivision and three large Public water wells (Zoot Wells).

3) Detail list of all lawsuits/Hearings that the two water and sewer Districts' attorneys have been involved in beginning 2001 to present.

a) Which ones were Utility Solutions,LL a participant/intervene with the water and sewer District.

b) It is my understanding that Attorney Matt Williams (partner with Mt. Representative Larry Jent, now Mt. Senator Larry Jent) and Attorney John Kauffman, along with the then District Attorney John Brown (formerly with the law

firm, Supreme Court Justice Mike Wheat was part of) filed a complaint with the Montana Supreme Court Commission of Practice against an attorney, who represented people from the Four Corners area. May I see all the water and sewer Districts' records regarding this complaint? I do not recall if Mr. Williams and Mr. Kauffman represented Utility Solutions,LLC at this time.

Please see the attached email of March 9th. I would, at this time, like a detailed explanation from the Districts' Board of Directors as to why I am being told I need to pay a \$7500.00 capital improvement fee to Utility Solutions, LLC, to get water and sewer service to my Lot 122 in Rainbow Subdivision, part of the Districts' "Tier One Properties". "Tier One Properties" refers to approximately 178 lots, most only a 1/10 acre (4800 sq. ft.) in size, to have the availability of water and sewer service back in 2001, when Gallatin County Commissioners approved the formation of Four Corners Water and Sewer District. A current Gallatin County Commissioner Bill Murdoch vote for the Districts' formation back in December 2001.

These records/copies of the Districts' files are to be part of a letter/complaint from me to PSC regarding Utility Solutions,LLC. I plan to have all the information by April 2, as the PSC hearing for Utility Solutions,LLC Rate Hearing for Elk Grove, is April 7th. I also plan to forward this March 18th,2010 letter for clarification of the facts to:

- a) Gallatin County Commissioner Bill Murdoch
- b) Gallatin County Attorney Marty Lambert
- c) Gallatin County District Judge John Brown
- d) Montana Board of Regents President Stephen Barrett
- e) Montana Supreme Court Justice Mike Wheat

Thank You,
Tony Kolnik

Attachment:

Response to your questions

Tue, March 9, 2010 12:08:48 PM

From: "Carlson, Sarah" <SCarlson@mt.gov>
[View Contact](#)

To: Tony Kolnik <kolnikt@yahoo.com>

Tony:

I spoke with Leroy and he indicated that there is nothing in the tariffs authorizing Utility Solutions to collect a capital improvement fee. If you are not a part of the water district, there presently are not any tariffs in place for anyone other than Elk Grove residents. Utility Solutions would have to apply for and be granted initial rates, unless Utility Solutions proposed to the PSC that any new hookups would be

3/24/2010

under the Elk Grove tariffs. It is not known if the PSC will be assuming jurisdiction of the water district customers. Presently the contract is between Utility Solutions and the Water District.

The hearing you asked about it scheduled for 7:00 pm April 7th at the Monforton School Gym.

Sarah

MT PSC

scarlson@mt.gov

406.444.6171