

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

* * * * *

IN THE MATTER OF the Application of)	REGULATORY DIVISION
Utility Solutions, LLC to Implement Initial)	
Rates and Charges for Water Service in its Elk)	DOCKET NO. D2005.11.163
Grove Subdivision, Gallatin County, Montana)	
Service Area)	
		consolidated with
IN THE MATTER OF the Application of)	
Utility Solutions, LLC to Implement Initial)	DOCKET NO. D2005.11.164
Rates and Charges for Wastewater Service in)	
its Elk Grove Subdivision, Gallatin County,)	
Montana, Service Area)	FINAL ORDER NO. 6707e

FINAL ORDER

History

1. On November 1, 2005, Utility Solutions, LLC (USLLC), filed before the Public Service Commission (PSC or Commission) an application for approval to implement initial rates and charges for water service in USLLC’s Elk Grove service area in Gallatin County, Montana. The application was designated Docket D2005.11.163. On the same date, USLLC also filed an application for approval to implement initial rates and charges for wastewater service in the Elk Grove service area. The wastewater application was designated Docket D2005.11.164. USLLC also requested approval of special rules of service in both dockets. The applications were noticed and the Montana Consumer Counsel (MCC) was the sole intervenor.

2. On January 13, 2006, the PSC issued Interim Order Nos. 6707 and 6708, approving the filed rates on an interim basis in both dockets. The interim order in Docket D2005.11.163 approved a metered rate of \$14.68 per month plus \$1.644 per 1000 gallons or fraction thereof, and monthly flat rates ranging from \$34.97 per month to \$86.65 per month, depending on customer class. According to USLLC’s filing, the rates would generate \$163,978 in annual revenues. Interim Order 6708 in Docket D2005.11.164 approved a metered wastewater rate of \$14.06 per month plus \$4.449 per 1000 gallons or fraction thereof and monthly wastewater flat

rates of \$53.97 for residential customers, \$80.10 for daycare customers, and \$108.76 for commercial customers. According to USLLC's filing, the rates would generate annual revenues of \$199,188 based on the customer count in the application. Both interim orders directed USLLC to file an application for permanent rates by July 1, 2007.

3. On July 3, 2007, the PSC extended the deadline for USLLC to file its permanent rate application to August 15, 2007.

4. On August 14, 2007, USLLC filed applications in both dockets to make the interim rates permanent. On September 18, 2007, the PSC granted intervention to MCC, and issued procedural orders in each of the Dockets. On November 8, 2007, the PSC consolidated the water and wastewater dockets under Docket D2005.11.163.

5. On December 14, 2007, USLLC requested an extension to January 21, 2008 to respond to data requests. Through staff action, the extension was granted and the procedural schedule was modified.

6. On December 5, 2008, USLLC submitted a Motion to Vacate Procedural Schedule and for authorization to file amended applications for permanent water and sewer rates based on a 2008 test year. The request was initiated as a result of the death of USLLC's rate consultant, Ron Woods. On December 16, 2008, the PSC granted the motion and directed USLLC to file amended applications for permanent water and sewer rates no later than June, 30, 2009.

7. On June 30, 2009, an amended application was submitted requesting annual water revenues of \$327,499 and annual wastewater revenues of \$356,305. A new Notice of Application and Intervention Deadline was issued on July 29, 2009, and MCC subsequently intervened in the docket as the sole intervenor.

8. MCC's testimony, submitted on December 23, 2009, recommended the PSC approve rates to generate annual USLLC water revenues of \$238,077 and annual wastewater revenues of \$251,877.

9. On January 8, 2010, the PSC issued a Notice of Additional Issue in which the PSC sought testimony regarding USLLC's compliance with a PSC rule requiring statements and schedules to be prepared in accordance with the general classifications set forth in the National Association of Regulatory Utility Commissioners' (NARUC) System of Accounts.

10. On January 8, 2010, USLLC filed a Motion to Partially Vacate Procedural Order and Motion to Change Hearing Date. Also on January 8, 2010, a Stipulation (attached as Exhibit A)

was submitted by USLLC and MCC, which accepted the MCC revenue requirement recommendations. Under the terms of the proposed Stipulation, residential and small commercial water customers would pay a customer charge of \$23.95 per month, plus \$3.888 per 1000 gallons of usage or fraction thereof. Monthly rates for flat-rate wastewater service would be \$80.42 for residential customers and \$281.47 for daycare and commercial customers. The Stipulation includes water and wastewater tariff provisions regarding unauthorized use of service, reconnection, late payment fee, sprinkling, disconnection, multiple users, failure to pay, returned check fee and refunds.

11. On January 21, 2010, the PSC denied the Motion to Partially Vacate Procedural Order but did reschedule the hearing date to April 7, 2010.

12. On January 21, 2010, USLLC submitted its additional issue testimony of Sandra Barrows. According to Ms. Barrows, USLLC does not maintain a set of regulatory books prepared in accordance with the NARUC System of Accounts and should not be required to do so because the cost to USLLC of complying with such a regulatory regime would significantly increase rates to the customers of USLLC, which is a small water utility.

13. On March 3, 2010, USLLC filed for Interim Rate Relief at the rates that were agreed upon by USLLC and MCC in the proposed Stipulation. That request was denied by the PSC on March 16, 2010.

14. On March 23, 2010, USLLC submitted tariffs to the PSC reflecting the water and sewer rates contained in the proposed Stipulation and, citing § 69-3-202(2), MCA, as legal justification, notified the PSC that it would self-implement the rates as of April 9, 2010.

15. On May 3, 2010, a public hearing was held in Bozeman. At the close of the hearing, it was agreed that the briefing schedule would be tied to the receipt of the hearing transcript and receipt by USLLC of PSC public records that had been requested by USLLC. The public records requested by USLLC were submitted to its counsel on June 21, 2011, and the briefing schedule was established on September 9, 2011.

16. On October 19, 2011, USLLC filed its Post Hearing Brief in these consolidated matters. The Brief was accompanied by USLLC's Motion for Disqualification of Commissioner John Vincent with supporting affidavits from Mr. John Alke counsel for Applicant and Ms. Barbara Campbell, President of Double Tree, Inc., the manager of USLLC.

Discussion and Findings of Fact

17. PSC and MCC staff conducted an on-site examination of the books and records of USLLC as well as examination of the physical plant. As a result of that examination, MCC proposed its water and sewer revenue requirements, amounts that were lower than had been requested by USLLC, and these amounts were agreed to in the Stipulation.

18. The PSC finds that the Stipulation submitted by USLLC and MCC provides a reasonable settlement of the issues in this case and results in just and reasonable rates for the customers of USLLC. The Stipulation and the rates contained therein are approved.

19. Though not a part of the evidentiary record, comments by the public in the public hearing questioned the necessity of a third well that was installed by USLLC and suggested the inclusion of the third well should be excluded from USLLC's cost of service. USLLC addressed this concern in its post-hearing brief, stating that the third well was required by the Montana Department of Environmental Quality (DEQ) as a condition of the approval of the Elk Grove subdivision. The original developer of the Elk Grove subdivision deferred the installation of the third well when he was building Phase 1 of the development. As Phase 2 and further build-out occurred, USLLC was required to bring the water system into compliance with DEQ mandates which included the third well. (USLLC Brief, p. 9, and Appendix 2).

Motion for Disqualification

20. USLLC moves for disqualification of Commissioner John Vincent pursuant to the statutory provisions of § 2-4-611, MCA, which provide as follows:

- 1) An agency may appoint hearing examiners for the conduct of hearings in contested cases. A hearing examiner must be assigned with due regard to the expertise required for the particular matter.
- 2) An agency may elect to request a hearing examiner from an agency legal assistance program, if any, within the attorney general's office or from another agency. If the request is honored, the time, date, and place of the hearing must be set by the agency, with the concurrence of the legal assistance program or other agency.
- 3) Agency members or hearing examiners presiding over hearings may administer oaths or affirmations; issue subpoenas pursuant to 2-4-104; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other

documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties.

- 4) On the filing by a party, hearing examiner, or agency member in good faith of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearing examiner or agency member, the agency shall determine the matter as a part of the record and decision in the case. The agency may disqualify the hearing examiner or agency member and request another hearing examiner pursuant to subsection (2) or assign another hearing examiner from within the agency. The affidavit must state the facts and the reasons for the belief that the hearing examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing.”

21. The Commission finds that the statute relied upon by USLLC is inapplicable to the facts of this proceeding. The statute contemplates disqualification of the person that will be presiding over a contested agency hearing. The inapplicability of the statute is based on a reading of the entire statute, not subsection (4) in isolation. Clearly, subsections (1), (2) and (3) focus on who may preside over a contested case hearing and what powers that person possesses as they relate to the hearing process. Subsection (4) must also be read as a means addressing possible disqualification of a person to preside over, i.e., to be the hearings examiner, in a contested case hearing. The scope of the statute only addresses the person that presides over the hearing, it does not address other agency members that attend the hearing, but do not possess the hearing examiner’s powers. Then-Chairman, Greg Jergeson presided over the May 3, 2010 hearing at the Monforton School gymnasium, 6001 Monforton School Road, Bozeman, Montana. Commissioner Vincent attended the hearing but was not the hearings examiner/presiding officer.

22. Moreover, subsection (4) of the statute requires the Motion for disqualification and supporting affidavits to be filed **at least 10 days prior to the hearing**. The hearing in this matter was held on May 3, 2010. Therefore, even if the statute addressed recusal of an individual Commissioner from participating in the decision-making process, the filing is untimely and should be denied on that basis alone.

23. The Motion for Disqualification of Commission of USLLC should be denied.

Conclusions of Law

1. USLLC is a public utility providing water and wastewater service to customers in the Gallatin County, Montana area. As such, it is subject to the supervision, regulation, and control of the Commission pursuant to Title 69, Chapter 3, Montana Code Annotated (MCA).

2. The Commission has provided adequate public notice and opportunity to be heard as required by § 69-3-303, MCA and Title 2, Chapter 4, MCA.

3. All findings of fact that can properly be considered conclusions of law and that should be considered as such to preserve the integrity of this Final Order are incorporated herein as conclusions of law.

4. USLLC is a public utility providing water and sewer service in the State of Montana. § 69-3-101, MCA.

5. The Commission's regulation of USLLC principally involves the rates charged for services and the quality of service provided. *See e.g., §69-3-201, MCA (utilities shall provide reasonably adequate service at just and reasonable rates).* The rates and changes approved in this Final Order are just and reasonable.

Order

NOW THEREFORE, IT IS ORDERED THAT:

1. The Stipulation submitted by USLLC and MCC is approved.
2. USLLC is hereby granted authority to implement increased rates for its Gallatin County, Montana area customers, designed to generate annual revenues in the amount of \$238,077 for water service and \$251,877 for sewer service.
3. The Motion for Disqualification of Commissioner of USLLC is hereby denied.
4. USLLC must file tariffs in compliance with this Final Order within 30 days.
5. This Final Order is effective for service rendered after the service date of this order.

DONE IN OPEN SESSION THIS 8st day of November by a vote of XX to XX at Helena, Montana.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

TRAVIS KAVULLA, Chairman

GAIL GUTSCHE, Vice Chair

W. A. GALLAGHER, Commissioner

BRAD MOLNAR, Commissioner

JOHN VINCENT, Commissioner

ATTEST:

Aleisha Solem
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.