

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

* * * * *

IN THE MATTER OF the Application) REGULATORY DIVISION
of HLH, LLC to Implement Increased)
Rates for Water and Wastewater Service) DOCKET NO. D2008.10.123
in Big Sky, Montana) ORDER NO. 6972f

FINAL ORDER

History

1. On October 27, 2008, HLH, LLC (HLH) submitted its application for increased rates for water and wastewater service to its 218 customers in Firelight Meadows Condominiums in Big Sky, Montana. In its original application, HLH requested interim rates of \$305,598 and final rates of \$441,702. Ex. HLH-1, p. 4. The application was based on a 2008 test year that included actual data through October 11, 2008, and used projected data for the remainder of the year, as well as known and measurable changes through 2009. *Id.*, p. 2.

2. On November 24, 2008, a Notice of Application and Intervention Deadline was issued. The Montana Consumer Counsel (MCC) intervened on December 19, 2008.

3. On February 20, 2009, MCC and HLH requested suspension of the procedural schedule for settlement purposes. The Commission issued a Notice of Commission Action on March 17, 2009, which suspended the procedural schedule at a point prior to the filing of discovery responses by HLH and MCC testimony.

4. In a Motion for Interim submitted April 1, 2009, HLH reduced its interim rate request to \$283,008. On April 17, 2009, the Commission issued Interim Order No. 6972a approving the amended interim request.

5. On December 17, 2009, HLH and MCC submitted a Stipulation Agreement (Stipulation) that the two parties proposed as a settlement of the issues in the docket. The terms of the Stipulation called for: (1) approval of interim rates to produce total annual revenues of \$337,360 for HLH, consisting of \$198,540 in water revenue and \$138,820 in wastewater revenue; and (2) approval, after hearing, of final rates to produce total annual revenues of \$340,487, consisting of

\$200,372 in water revenue and \$140,115 in wastewater revenue. According to the Stipulation, the proposed interim rates were less than the proposed final rates because the interim rates did not include the estimated cost to HLH to install disinfection equipment on the system, a project that was not yet complete at the time of the Stipulation. Stipulation, p. 2.

6. On December 22, 2009, the Commission issued a second interim order (Order No. 6972b) that granted interim rates at the stipulated interim amount of \$337,360.

7. On February 18, 2010, the Commission issued a Notice of Public Hearing to announce that a public hearing would be held in this matter on March 11, 2010, in Big Sky. The hearing was held on March 11, 2010, in Big Sky.

8. On August 16, 2010, the Commission issued Interim Order No. 6972c, rejecting the Stipulation. The Commission determined the record did not provide sufficient information to allow the Commission to make an informed decision on the adequacy of the Stipulation and whether the proposed rates were just and reasonable. In the order, the Commission gave HLH the choice of restarting and completing the suspended procedural schedule to allow a more in-depth analysis of HLH's records or to re-file an amended application using a completed test year of 2009 or 2010. HLH was directed to notify the Commission prior to September 1, 2010, whether it chose to reset the procedural schedule or re-file using a more recent test year. In the order, the Commission reduced the interim rates to a level that would produce total annual revenues of \$310,000.

9. On August 25, 2010, HLH filed a Motion for Reconsideration, Motion for Stay, and Request for Oral Argument of Interim Order No. 7085. MCC filed comments in support of the motion on August 31, 2010. At a September 14, 2010, work session to consider the motion, the Commission denied HLH's Request for Oral Argument and granted HLH's Motion for Stay until the Commission acted on the Motion for Reconsideration. *Commission Minutes for the week of September 13, 2010*, ¶ 286. On December 28, 2010, the Commission issued its Order on Reconsideration (Order No. 6972d), which granted reconsideration but affirmed Interim Order No. 6972c. The Commission also reset the procedural schedule based on the 2008 application.

10. On January 13, 2011, the Firelight Meadows Unit Owners Association (Unit Owners) petitioned for intervention.

11. On January 14, 2011, HLH notified the Commission that pending a final order, HLH would self-implement interim rates pursuant to § 69-3-302(2), MCA, at the rate levels authorized

in Order 6972b. HLH asserted the rates were the same as those currently being charged under Commission-approved tariffs.

12. On February 18, 2011, HLH submitted its responses to Commission and MCC data requests. On March 7, 2011, the procedural schedule was reset, allowing the Unit Owners intervention in the docket. The Unit Owners presented both written and oral testimony in the docket. MCC did not submit testimony in this docket. On February 27, 2012, a second public hearing was held in Big Sky.

13. On November 29, 2012, the presiding officer at the February 27, 2012, hearing issued Proposed Order No. 6972e. HLH and the Unit Owners filed exceptions and briefs thereon on December 20 and December 24, 2012, respectively.

Discussion and Findings of Fact

14. The Commission approved initial rates for Firelight Meadows, LLC, the previous owner of the HLH utilities, in Docket D2001.12.175, Order 6410a, issued May 31, 2002. Even though the Commission expressed its “reservations about the future profitability of the [wastewater] utility” at the rates proposed by Firelight Meadows, the Commission approved them on an interim basis pending actual cost information to be collected over the next two years. *See* Order 6410a, ¶ 5. In the subsequent (and last) Firelight Meadows, LLC, rate case, which was based on a 2003 test year, the Commission approved a stipulation between the utility and MCC that resulted in rate increases of approximately 15-17 percent for most wastewater customers. *Docket D2004.5.71, Order 6601a*, issued September 29, 2005. The Commission approved the sale of the water and wastewater utilities by Firelight Meadows, LLC, to HLH in October 2007. *Docket D2007.4.33, Order 6831b*, issued October 3, 2007. HLH became the owner and operator of the utilities on January 14, 2008. Affidavit of Kevin Loustaunau, p. 1 (April 1, 2009).

15. The rate application in this docket was based on a test period of the actual first 9-1/2 months of 2008 with projected costs for the remainder of 2008. Ex. HLH-1, p. 2. If the application was approved as filed, rates would increase by approximately 103% over the rates approved in the last Firelight Meadows rate case in 2005. *Id.*, Statement H. HLH proposed a total rate base of \$1,117,366, and a hypothetical capital structure of 55% equity and 45% debt. *Id.*, pp. 2-3. HLH adjusted its utility plant account by \$218,925, an amount that reflects the loan it secured for needed capital repairs and improvements, namely replacement in 2009 of two of

the wastewater system's three recirculating sand filters. *Id.*, Statement C. The third sand filter failed and was replaced in 2008 at a cost of \$120,664. Affidavit of Kevin Loustaunau, pp. 1-2. HLH's pro forma income statement in its 2008 application was updated in 2011 in response to data requests (DR). DR PSC-026(a) and (c) and DR MCC-001(a) (February 18, 2011). Total O&M expenses were listed at \$230,023, with proposed increases to actual 2008 expenses of \$83,444 in system operator/administration expense and \$34,839 in system maintenance expense. DR MCC-001(a). HLH proposed to increase the annual expense for office rent from the \$7,500 that was accepted in the last Firelight Meadows rate case to \$34,500. *Id.*; Ex. HLH-1, Statement G. Total administrative expenses were listed at \$21,879, with a proposed increase of \$944 to insurance expense. DR MCC-001(a).

16. HLH neglected to list its property tax expense in the updated pro forma statement, but it was \$1,200 in the original filing, which would bring the category of total tax expense other than income to \$2,277. Ex. HLH-1, Statement G. Other expenses listed in the updated statement were rate case expense of \$12,337, income tax expense of \$30,656, and depreciation/amortization expense totaling \$54,596. DR MCC-001(a).

17. The Stipulation entered into by the MCC and HLH proposed total annual revenues of \$340,487, consisting of \$200,372 in water revenue and \$140,115 in wastewater revenue. Stipulation, p. 2. The weighted cost of capital used by the parties in their negotiations was 9.07%, based on HLH's actual capital structure of 72% debt and 28% equity, a 10.5% cost of equity and 8.5% cost of debt. *Id.* The Stipulation recommended an original cost depreciated rate base for HLH as of December 31, 2009, of \$1,156,054, to be increased by \$34,490 upon HLH's installation of disinfection equipment. *Id.*, pp. 2-3. MCC and HLH also proposed elimination of HLH's separate charge for hot tub service and a proportional reallocation of the cost of providing hot tub service to the cost of service for chalet and condominium units. *Id.*, p. 3.

18. The Unit Owners were granted intervention and submitted testimony subsequent to the Commission's rejection of the HLH/MCC Stipulation. The Unit Owners contended that the sand filters on HLH's wastewater system failed and had to be replaced sooner than they should have been because the system was poorly maintained by HLH's predecessor, Firelight Meadows, LLC. Ex. FLM-2, pp. 7-8. The Unit Owners argued that wastewater flows greatly exceeded the permitted amount, the septic tanks were not fully pumped more than once or twice, and warning signs that the system was not functioning properly, such as alarms being triggered, pump

failures, leaks and overflows, were ignored. Ex. FLM-1, pp. 3-5. The Unit Owners asserted the typical life expectancy of a septic tank and drainfield system is 20 years or more and the O&M manual for the Firelight Meadows system indicated that properly installed distribution lines for that recirculating sand filter system should last 50 years. Ex. FLM-2, p. 4. Unit Owners' witness John Hazen, who contracted with Firelight Meadows, LLC, from 2002 to 2007 to maintain the wastewater treatment system, testified that he discussed his opinion that the sand filters were failing in 2006 or 2007 with a Firelight Meadows representative and may have "tried to convey a concern" to HLH owner and witness in this docket Kevin Loustaunau. Ex. FLM-1, p. 5; Tr., pp. 33-34. The Unit Owners contended that the sand filters were failing prior to 2008 and that, as of January 10, 2008, the fair market value of the sand filters was zero and the value of the remainder of the wastewater treatment system (drainfield, piping, tanks, pumps, electrical and controls), estimated to comprise 40% of the total system, was approximately 80% of its original installed cost. Ex. FLM-2, p. 14.

19. HLH witness and owner Matt Huggins disagreed with the Unit Owners' testimony that the sand filters were failing prior to HLH's purchase of the utility and that the new owners were aware of it prior to the acquisition. Ex. HLH-3, p. 2. Huggins said that HLH hired Redleaf Consulting to conduct an engineering assessment of the condition of the wastewater facilities prior to the acquisition and again after the purchase. *Id.* Redleaf's March 2007 pre-acquisition report did not say the sand filters were failing but found leaking pipes that were subsequently repaired. *Id.* Huggins said it was not until Redleaf's second report in September 2008, after HLH's acquisition of the utilities, that the consultant reported the sand filters were failing and had to be replaced. *Id.* According to Huggins, HLH would not have purchased the utility in the first place had HLH's owners known the sand filters would have to be replaced a few months after closing the sale. *Id.*, pp. 2-3.

20. The Commission finds that the evidence in the record supports HLH's position that it was not aware prior to acquiring the utilities that the wastewater system's sand filters were failing. When HLH was considering acquiring the utility, it took the prudent step of hiring an engineering firm to assess the condition of the water and wastewater facilities. Redleaf's report to HLH in March 2007, prior to the sale, did not contain warnings that the sand filters were in poor condition or failing. Ex. HLH-3, Exhibit MH-01, Engineering Assessment Report, March 19, 2007. The Redleaf report did identify several problems that may indicate the previous owner

did not adequately maintain the system and that needed repair, such as effluent seeping to the surface outside the filters on Systems A and B that Redleaf advised might be caused by a crack in a lateral pipe (System A) and in the manifold (System B). *Id.*, pp. 13, 16. Redleaf also found non-working system alarms, lack of maintenance logs, failure to perform complete cleanings, broken inspection risers, and valve problems. *Id.*, pp. 11-24. HLH witness Huggins testified that the recommended repairs to the system were made prior to the sale. *Tr.*, pp. 157, 159.

21. Unit Owners' witness Hazen's prefiled testimony included documentation of septic system overflow incidents in August and September 2007. *Ex. FLM-1, Attachment The Ass'n of Unit Owners of Firelight Meadows Condos, Inc.*, pp. 000055-000096. The majority of the documentation consisted of correspondence between and among representatives of Firelight Meadows, LLC, the state Department of Environmental Quality (DEQ), and Gallatin County. Huggins said at hearing he was aware of and witnessed the aftermaths of the two overflow instances that occurred during the period in 2007 that HLH was conducting its due diligence prior to the sale. *Tr.*, pp. 155-156. He testified that those incidents were overflows of the septic tank, which is separate from the sand filters, and were caused by clogging of the septic tank's mechanical filter. *Tr.*, pp. 156-157. His testimony that the cause of the overflows was a clogged septic tank filter and not the sand filters was confirmed by the DEQ's Administrative Order on Consent (AOC), Docket No. WQ-08-03, FID #1471, which included findings of fact that, in the 2007 incidents, untreated sewage overflowed to the surface "due to a clogged filter" (AOC, ¶ 9) and that Firelight Meadows had clarified to DEQ that the cause of the overflows was not a clogged sand filter, but a clogged septic tank filter (AOC, ¶ 12). *Ex. FLM-1, Attachment The Ass'n of Unit Owners of Firelight Meadows Condos, Inc.*, p. 000093.

22. The record evidence indicates that HLH's owners became aware that the sand filters were not working properly shortly after their acquisition of the utility in January 2008. According to their testimony at the first hearing, about two weeks after the sale closed they received the results of the 4th quarter 2007 DEQ-required system tests conducted by the previous owner, which showed that the sand filters were not treating the water to the level required by its permit. 3/11/10 Hearing Audio Recording beginning at 29:22. The record is not clear as to exactly when in 2008 the System C sand filter was replaced with a recirculating trickle filter (RTF) or the exact circumstances surrounding its replacement. HLH asserted it was the first sand filter to clog with bacteria and require replacement. Affidavit of Kevin Loustaunau, pp. 1-2. The September

2008 Redleaf report refers in passing to the “recent” System C replacement. Ex. HLH-3, Attachment MH-02, p. 2. Regarding the other two sand filters, HLH’s owners were informed on September 22, 2008, that they had failed after HLH again hired Redleaf Consulting to investigate the cause of the wastewater pooling on the surface of one of the sand filters and a backup of wastewater on the other. *Id.*, Attachment MH-02, pp. 1-2. Redleaf’s urgent recommendation was that the two sand filters be replaced rather than repaired or rebuilt because they were “past the point of no return.” *Id.*, p. 2. The Commission finds that \$339,589 total cost incurred by HLH to replace the sand filters in 2008 and 2009 was prudently incurred and is appropriately included in rate base.

23. The Commission cannot determine from evidence in the record whether the sand filters failed earlier than they should have because the system was poorly maintained by the previous owner or whether sand filters septic systems by their nature have shorter lives than other types of septic systems. The Unit Owners certainly believed the former was the case, even though their witness David Crawford acknowledged he could find no definitive information on the typical life span of a recirculating sand filter system. Ex. FLM-2, p. 4. He added at hearing that these types of systems were used only for a short period of time, they did not have much of a track record, and they have been replaced with improved technology. *Tr.*, pp. 49, 51. HLH’s witness made similar statements at the first hearing. 3/11/10 Hearing Audio Recording beginning at 27:40. Whatever the cause, the sand filters had to be replaced in order to ensure the provision of adequate service.

24. There were questions at the first hearing concerning whether HLH should have pursued legal action against the previous owner alleging a failure to disclose the true condition of the wastewater facilities and seeking reimbursement for the cost of the sand filter replacement. HLH’s owners replied that they had explored the idea by talking to the contractor who had installed the system, the equipment vendors and regulators and determined from those conversations that there was “no clarity” as to the cause of the sand filters’ failure and had concluded that it would likely not be possible to prove a failure to disclose or negligence prior to the sale and to recover the replacement costs from the previous owner. 3/11/10 Hearing Audio Recording beginning at 30:00.

25. The Unit Owners asserted that HLH’s application did not comply with the Commission’s minimum filing requirements or include independently audited financial statements and this lack

of information would prevent anyone from concluding that the proposed rates are just and reasonable. Ex. FLM-3, p. 12. The Unit Owners testified that no rate increase is warranted. *Id.*

26. HLH acknowledged that it did not hire experts with regulatory experience to assist with developing its 2008 rate application and, therefore, it did not strictly comply with the minimum filing requirements; however, the Commission did not reject the filing. Ex. HLH-2, pp. 2-3. HLH said that the Unit Owners also did not provide a cost of service that conforms to the minimum filing requirements. *Id.*, pp. 3-4. According to HLH, the Commission should not accept the Unit Owners' advocacy, which would mean incurring significant additional expense for the utility and its ratepayers by requiring HLH to re-file its rate application (based on a test year that would have to be determined) in strict compliance with the minimum filing requirements and to hire a certified public accountant to submit audited financial statements. *Id.*, pp. 5-6.

27. The Commission finds that, while HLH's 2008 application did not fully comply with the minimum rate case filing requirements, the Commission did not reject the application from this small utility and it has been pending final resolution for more than four years. After discovery, two hearings, and intervention and participation by the MCC and the Unit Owners, there is sufficient information in the record for the Commission to act on the application.

28. Based on the information that HLH purchased the water and wastewater utilities from Firelight Meadows, LLC, for \$1,040,000 and that the 2007 Firelight Meadows annual report to the Commission lists the combined net utility plant value at a total of \$834,998, the Unit Owners calculated HLH paid an acquisition premium for the utilities of \$205,012. Ex. FLM-3, p. 3. The Unit Owners contended that the acquisition premium was paid at HLH's discretion and should be disallowed. *Id.* They said the wastewater plant was impaired at the time of acquisition by \$356,000, which they estimated to be HLH's cost to replace the failed sand filters, and that HLH's application did not reflect that impairment amount in the book value of the wastewater plant in its rate base calculation. *Id.*, p. 4.

29. HLH responded that, although the Commission usually excludes an acquisition premium from rate base, it also has on occasion amortized the excluded amount as an expense. Ex. HLH-2, p. 6. According to HLH, during its negotiations with MCC, MCC had required the Stipulation to exclude the acquisition premium. *Id.* HLH disagreed with the Unit Owners' argument that the rate base should be reduced to reflect an impairment to the value of the wastewater system.

Id., p. 7. HLH contended that the Unit Owners inappropriately applied Generally Accepted Accounting Principles and the concept of “fair value” in its testimony, when a key principle of public utility ratemaking is the concept of original cost depreciated. *Id.*, pp. 7-8. HLH argued that it is unreasonable for the Unit Owners to contend that the previous owners of the utility poorly maintained the wastewater system while simultaneously contending that test year 2008 O&M expenses are unreasonably high compared to the 2003-2007 average of the previous owner’s expenses. *Id.*, p. 8.

30. For the reasons discussed earlier in this order concerning the replacement of the sand filters, the Commission does not agree that the assets were impaired and that HLH’s rate base value should be reduced by any amount to reflect an asset impairment. However, consistent with Commission policy, the Commission excludes the acquisition premium, calculated to be \$205,012, from rate base and will not allow it to be recovered from ratepayers as an amortized expense.

31. The Unit Owners claimed HLH did not justify the proposed increase to its office rent expense, which is paid to West Fork Communications, a company owned by the same persons who own HLH, LLC. Ex. FLM-3, p. 7; 3/11/10 Hearing Audio Recording beginning at 33:25. The Unit Owners argued HLH has not proved what portion of the building is used for utility purposes. Ex. FLM-3, p. 7. The Commission agrees that HLH has not justified its proposed increase to rent expense, especially since HLH and its landlord, West Fork Communications, are owned by the same persons, the proposed rent increase to \$34,500 is a significant jump from the \$7,500 amount currently in rates, as well as from the actual rent expense of \$12,000 listed in HLH’s 2009 annual report. It is evident that HLH uses only some portion of the building for utility purposes. The Commission disallows the proposed increase in annual rent expense and limits the annual rent expense to the \$12,000 actual amount paid in 2009.

32. Regarding the calculation of rate of return for HLH, the Commission finds it should be based on: HLH’s actual 2008 capital structure of 71.6% debt and 28.4% equity; a 10% cost of equity, which is Mountain Water Co.’s approved return on equity; and 8.5% actual cost of debt. (At the first hearing, HLH’s witness testified the utility’s actual cost of debt on its adjustable rate loan was 8.5%. 3/11/10 Hearing Audio Recording beginning at 32:00.) The resulting approved rate of return is 8.93%.

33. The Commission determines that HLH's rate base value at end of year 2009 is \$1,116,640. The rate base starting point is the combined water and wastewater utilities' rate base of \$834,998 in the 2007 Firelight Meadows, LLC annual reports to the Commission. The Commission made the following adjustments to HLH's rate base and expenses: included HLH's actual 2008 and known and measurable 2009 costs for the sand filter replacements of \$120,664 and \$218,925, respectively; included HLH organization costs of \$18,509 amortized over 20 years; deducted depreciation expense (as reported in HLH's 2007 annual reports) for existing plant in the amount of \$30,041; deducted depreciation expense totaling \$14,524 for the three RTFs that replaced the failed sand filters, which the Commission estimates to have 20-year service lives; reduced annual office rent expense by \$22,500 to \$12,000; and included rate case expense of \$32,558 (\$17,538 actual through January 2011, plus \$15,020 estimated to complete the case (Ex. HLH-4)), amortized over 5 years. The Commission does not include in rate base the cost for the disinfection equipment that HLH installed in 2010, which was incurred outside the 2008 test year, or income tax expense because limited liability companies do not pay income taxes.

34. As MCC and HLH proposed in their Stipulation, the Commission eliminates HLH's separate charge for hot tub service and proportionally reallocates the cost of providing hot tub service to the cost of service for the chalet and condominium units.

35. The Commission determinations and adjustments discussed above would produce an annual revenue requirement for the combined HLH water/wastewater utility of \$341,454, as shown in the table below.

	HLH Pro Forma Per DR MCC-001(a)	Commission Adjustments	PSC- Calculated Amount
OPERATING EXPENSES			
Total O & M	230,023	(55,834) ¹	174,189
Total Admin Expenses	21,879	-	21,879
Total Tax Expense	1,077	1,200 ²	2,277
Other Expenses			
Rate Case Expense	12,337	20,221 ³	6,512
Depreciation/Amortization	54,596	(12,123) ⁴	42,473
Income Taxes	30,656	(30,656) ⁵	-
Total Other	97,589		48,985
TOTAL EXPENSES	350,568	(77,192)	247,330
Contribution Margin			94,124
REVENUE REQUIREMENT			\$341,454

36. The Stipulation proposed an interim revenue requirement of \$337,360, an amount that differed from the Stipulation's proposed final revenue requirement only by the cost of the then-yet-to-be-installed disinfection equipment, a cost disallowed in ¶ 32 above. HLH customers' current rates should be based on the stipulated interim revenue requirement that was approved in Interim Order 6972b and that have been in effect in HLH's tariff since January 2010. (See ¶ 38 below for an explanation of why HLH's current rates are not its tariffed rates.) The Commission finds the \$4,094 difference between its own calculated revenue requirement and the stipulated interim revenue requirement is negligible and, in the interests of rate stability and ease of implementation, approves the stipulated interim revenue requirement of \$337,360 on a final basis.

37. When the Commission denied the Stipulation in Order No. 6972c, it did so because there was insufficient information in the record at that time "to make an informed decision on the adequacy of the figures presented in the Stipulation." Order No. 6972c, ¶ 9. Since then, the additional information provided by HLH and by the Unit Owners has given the Commission the opportunity to conduct a thorough analysis of the parties' proposals. Based on its analysis of the record, the Commission is satisfied that rates based on the stipulated interim revenue requirement are just and reasonable.

¹ Reduced system operator expense by \$33,334 to \$83,444 and reduced office rent expense from \$34,500 to \$12,000.

² Increased taxes other than income to allow for property tax expense. See ¶ 14.

³ Increased overall rate case expense to \$32,558. Based on a 5-year amortization, annual expense is \$6,512.

⁴ Adjusted depreciation to allow ½ year for the 2009 plant additions, full year on 2008 additions.

⁵ Income taxes removed from expenses.

38. Because HLH's system is not metered, service to customers is billed at flat rates under two separate tariffs, one for water and the other for wastewater service. For simplicity's sake, the Commission directs HLH to combine its water and wastewater tariffs into one tariff and to bill customers one flat-rate charge for both services. It will no longer be necessary for HLH to file two separate annual reports with the Commission; one combined water/wastewater annual report will suffice. The authorized combined water/wastewater monthly charges are the same as those currently contained in HLH's tariff: \$137.06 for chalet customers, \$116.97 for condominium customers, and \$115.60 for the administration building.

Exceptions to Proposed Order

39. The parties' reviews of the Proposed Order led to the discovery that the interim rates specified by the Commission in Interim Order 6972b (issued December 22, 2009) produced a revenue requirement of \$340,487 rather than the \$337,360 amount stipulated to for interim purposes by MCC and HLH and approved in the interim order. HLH Exceptions, p. 2; Unit Owners' Brief on Exceptions, p. 2. The combined water/wastewater rates specified in the interim order were \$138.33 for chalet customers, \$118.06 for condominium customers, and \$116.69 for the administration building. Interim Order 6972b, ¶ 7. However, the Commission-approved tariffs to implement the interim order, which were effective January 1, 2010, produce the \$337,360 interim revenue requirement approved in the order. The approved, combined tariffed rates are: \$137.06 for chalet customers, \$116.97 for condominium customers, and \$115.60 for the administration building. Since January 2010, HLH has been charging customers the higher rates contained in the interim order rather than the tariffed rates.⁶ Unit Owners' Brief on Exceptions, p. 2.

40. The Unit Owners argued that, as a result of charging in excess of its tariffed rates, HLH has over-collected more than \$9,400 between December 2009 and December 2012. Unit Owners' Brief on Exceptions, p. 5. The Unit Owners requested the Commission authorize a refund of the over-collected amount, plus interest. *Id.*, p. 6.

⁶ The Unit Owners assert in their Brief on Exceptions that HLH began charging the new interim rates in December 2009, but, lacking evidence to support that assertion, the Commission assumes that HLH began charging the interim rates as of January 1, 2010, because Interim Order 6972b was not issued until December 22, 2009, and the compliance tariffs had an effective date of January 1, 2010.

41. HLH argued that, rather than adopting the Proposed Order's annual revenue requirement of \$337,360, the Commission should authorize a final annual revenue requirement of \$340,487 as proposed in the HLH/MCC Stipulation three years ago. HLH Exceptions, p. 2. HLH contended that, because rate stability was the reason cited in the Proposed Order for declining to authorize rates sufficient to recover the \$341,470 revenue requirement calculated by the presiding officer, it follows that rates should remain at their current levels. *Id.*, p. 3. As discussed above, the rates currently being charged by HLH allow the utility to collect \$340,487 in annual revenues.

42. HLH also requested the Commission revise ¶ 11 of the Proposed Order to clarify that HLH stated in its January 2011 notification to the Commission that it elected to continue the previously authorized interim rates. The paragraph at issue had said that, "HLH notified the Commission that pending a final order, HLH would self-implement interim rates pursuant to 69-3-302(2), MCA, at the amount authorized in Order 6972b of \$337,360 annually." Proposed Order 6972e, ¶ 11. The Commission agrees with HLH that the paragraph did not accurately capture HLH's notification to the Commission and has revised the paragraph in this Order to remove the reference to the Order 6972b interim revenue requirement and replace it with a reference to the rate levels approved in Order 6972b. A sentence was also added to say that HLH asserted the self-implemented rates were the same as those currently being charged under Commission-approved tariffs. As is known now, HLH was not charging the tariffed rates.

43. It is evident that HLH has been charging rates that are not its tariffed rates since January 1, 2010. The amount over-collected is \$9,396. If the Commission accepts the Unit Owners' advocacy, it would adopt the Proposed Order's revenue requirement of \$337,360, order HLH to refund the over-collection, with interest, to customers, and require HLH to start charging its tariffed rates. If the Commission accepts HLH's advocacy, it would authorize an increase in the revenue requirement to \$340,487 and keep rates at their current levels.

44. The Commission adopts the Proposed Order's resolution of this longstanding docket. The Commission reiterates the finding at ¶ 35 above that the difference between the Commission-calculated revenue requirement and the stipulated interim revenue requirement is negligible and, in the interests of rate stability and ease of implementation, approves the stipulated interim revenue requirement of \$337,360 on a final basis.

45. The Commission is not persuaded by HLH's argument that, if the Commission agrees with the Proposed Order's finding that keeping rates unchanged is a reason for approving the

\$337,360 interim revenue requirement on a final basis, then the Commission in its Final Order should allow HLH to continue to charge its current rates and approve the revenue requirement of \$340,487 that those rates produce. The rates currently being charged by HLH are not its tariffed rates; therefore, HLH is in violation of § 69-3-305(1) and (2), MCA, which provide as follows:

- (1) ... [A] public utility may not:
 - (a) charge, demand, collect, or receive a greater or less compensation for a utility service performed by it within the state or for any service in connection with a utility service than is specified in the printed schedules, including schedules of joint rates, that may at the time be in force;
 - (b) demand, collect, or receive a rate, toll, or charge not specified in the schedules; or
 - (c) grant a rebate, concession, or special privilege to a consumer or user that, directly or indirectly, has or may have the effect of changing the rates, tolls, charges, or payments.
- (2) The rates, tolls, and charges named in the printed schedules are the lawful rates, tolls, and charges until the rates, tolls, and charges are changed, as provided in this chapter.

46. The Commission erred in specifying rates in Interim Order 6972b that were in excess of those required to produce the Commission-approved interim revenue requirement in the same Order of \$337,360. The specified interim rates were actually the rates derived from the \$340,487 final revenue requirement proposed in the HLH/MCC Stipulation. HLH Exceptions, p. 2 (emphasis added). However, the compliance tariffs subsequently filed by HLH, approved by the Commission, and returned to HLH in January 2010 did contain the correct rates to collect the approved interim revenue requirement. HLH is required by law to charge and collect its tariffed rates. § 69-3-305(1), MCA. Despite having filed compliance tariffs with rates that differed from those specified in the interim order and having received them back as tariffs approved by the Commission, HLH ignored its approved tariffs and instead charged the higher rates. The over-collection continued when HLH self-implemented the interim rates it was incorrectly charging pending a final order in this case.

47. If HLH had been charging its tariffed rates as utilities are required to do by law, Commission approval of the interim revenue requirement of \$337,360 on a final basis would not require rate changes. The Commission's error in specifying incorrect rates in Interim Order 6972b does not excuse HLH's failure to charge its lawful tariffed rates for the subsequent three-year period. The Commission directs HLH to rebate to customers the over-collection amount of \$9,396, plus interest at the rate of return authorized in this Order of 8.93 percent, over the next

three years. By setting the interest rate on the refund amount at 8.93 percent, the Commission complies with Ordering ¶ 3 of Interim Order 6972b, which said: “If there is an over-collection of revenues, the over-collection of revenues is subject to refund plus interest at the final authorized rate of return in the general rate case.”

48. The Commission orders HLH to rebate the over-collection plus interest by reducing the rates authorized in this Order by \$1.37 per month per customer for the period of January 1, 2013, through December 31, 2015. During this three-year rebate period, the monthly combined rates will be: \$135.69 for chalet customers, \$115.60 for condo customers, and \$114.23 for the administration building. Beginning with service rendered on and after January 1, 2016, HLH is authorized to begin charging \$137.06 per month to chalet customers, \$116.97 to condo customers, and \$115.60 to the administration building.

49. The Unit Owners requested that ¶ 34 in the Proposed Order be clarified to reflect the fact that HLH was over-collecting the interim revenue requirement authorized by Interim Order 6972b. Unit Owners’ Brief on Exceptions, p. 5. The paragraph, now ¶ 35, has been revised in this Order.

50. The Unit Owners suggested that, if the Commission ordered HLH to refund the over-collection, an additional Conclusion of Law should be inserted in the Order that states the HLH ratepayers are entitled to a rebate, with interest, of the amount HLH over-collected and citing to 69-3-330(2), MCA. *Id.*, p. 6. The Commission has added the requested Conclusion of Law.

Conclusions of Law

1. The Montana Public Service Commission regulates public utilities pursuant to Title 69, Chapter 3, Montana Code Annotated (MCA). § 69-3-102, MCA.

2. HLH, LLC is a public utility furnishing water and wastewater service to customers in the Big Sky, Montana, area. As such, it is subject to the supervision, regulation and control of the Commission. § 69-3-101, MCA.

3. Every public utility shall file with the Commission, within a time fixed by the Commission, schedules which shall be open to public inspection, showing all rates, tolls, and charges which it has established and which are in force at the time for any service performed by it within the state or for any service in connection therewith or performed by any public utility controlled or operated by it. § 69-3-301, MCA.

4. HLH's customers are entitled to a rebate, plus interest, of the amount over-collected by HLH for the three-year period HLH was charging rates in excess of its Commission-approved tariffs. § 69-3-330(2), MCA.

5. The Commission concludes that the granting of these permanent rates for the HLH water and wastewater service is just, reasonable and within the discretion granted by Title 69 Chapter 3, MCA.

Order

1. HLH is granted authority to implement Commission-authorized rates for its Big Sky, Montana, customers as directed and discussed herein.

2. HLH must refund to customers, over the three-year period from 2013 through 2015, the amount of revenue it over-collected from customers in excess of its tariffed rates from January 2010 through December 2012, plus 8.93 percent interest.

3. HLH is ordered to file with the Commission a compliance tariff within 10 days of the service date of the final order in this docket.

4. This Order is effective for services occurring on and after January 1, 2013.

DONE AND DATED this 3rd day of January 2013 by a vote of 5-0.

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.