

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

IN THE MATTER OF the APPLICATION of) REGULATORY DIVISION
AQUAFLO, LLC for Authority to Increase)
Rates and Charges and Amend Tariff Rules) DOCKET NO. D2009.1.9
and Regulations for Water and Sewer Service)
to its Helena, Montana, Customers)

IN THE MATTER OF the APPLICATION of) REGULATORY DIVISION
AQUAFLO, LLC for Authority to Permanently)
Increase Rates and Charges and Amend Tariff) DOCKET NO. D2011.4.34
Rules and Regulations for Water and Sewer)
Service to its Helena, Montana, Customers)

**AQUAFLO, LLC RESPONSES TO MONTANA PUBLIC SERVICE
COMMISSION DATA REQUESTS PSC-013 THROUGH PSC-028**

As noted in its earlier objections, AquaFlo's position is unchanged that AquaSierra, LLC (AquaSierra) is not a party to this action and the Commission is not legally empowered to obtain information from non-party companies it cannot and does not regulate. Although the Commission claims to have broad legal authority under 38.5.146 A.R.M., AquaFlo is unable to square this interpretation of power with attempts to obtain information with respect to the transfer or acquisition of a pass-through entity such as AquaSierra, LLC.

The most recent ETIC committee meeting of January 13, 2012 seemed to support AquaFlo's position. When companies are merged or acquired among willing buyers and willing sellers of stock, the legislature has declined to grant to the PSC this authority on at least one if not more occasions.

Additionally, AquaFlo hopes that this matter does not become mired in idle curiosity or speculation. It is merely a straight forward request by a very small water company for a rate adjustment, and AquaFlo hopes to avoid unnecessary costs that could affect ratepayers to a larger degree simply because there are so few of them over whom to spread those costs.

However, in an effort to mitigate the financial impact on its consumers of a lengthy and expensive court action, pursuant to the Notice of Commission Action issued on February 8, 2012, AquaFlo, LLC (AquaFlo) hereby submits amended responses to PSC-019, PSC-021(a),(b), PSC022, PSC-023, PSC-024, and PSC-026.

To make the document easier for both the parties and the PSC to use, AquaFlo will include the responses that have not been amended so all of the responses appear in a single document.

PSC-013

Regarding: Leakage Reconciliation
Witness: Maxness

Please provide a comparison of the 2010 water volumes pumped at the pump house to the water volumes billed to the customers of AquaFlo.

RESPONSE:

This data request is directed by the PSC to John Maxness. However, the only witness for whom pre-filed testimony has been filed to this point is Sandra Barrows. AquaFlo would therefore respectfully request that the data request be changed so that it is directed to Ms. Barrows. While AquaFlo reserves the right to call Mr. Maxness as a rebuttal witness, AquaFlo does not currently intend to call Mr. Maxness as a witness at the hearing of this matter.

A comparison does not exist.

PSC-014

Regarding: Long Term Debt
Witness: Barrows

Your capital structure in ARM 38.5.146 states that as of February 2011, AquaFlo had 100% equity and no debt. The AquaFlo Ledger provided for that period of time does not reflect the payoff.

- a. Please provide a copy of the paid off LT Debt agreement and source of funds used to pay off the debt.
- b. Please explain why the debt was not reflected in the 2010 general ledger.
- c. Was the debt carried at the parent level, though reflected as an obligation of AquaFlo? Please explain

RESPONSE:

- a. The requested information is attached hereto as:

PSC-014 Attachment A. Secured Promissory Note for \$100,000 between AquaFlo, LLC, a Montana Limited Liability Company and W.A. (Bill) Gallagher, individually, the “Borrower” and MT Associates, LLC, a Montana Limited Liability Company, the “Lender”. The \$22,642 balance was paid off by AquaSierra, LLC in January 2011.

PSC-014 Attachment B. Promissory Note for \$50,747 between AquaFlo, LLC (“Borrower”) and Valley Bank of Helena (“Lender”). The \$44,818 balance was paid off by AquaSierra, LLC in January 2011.

PSC-014 Attachment C. Promissory Demand Note for \$15,361 between AquaFlo, LLC (“Borrower”) and AquaSierra, LLC (“Lender”) secured by a Deed of Trust between AquaFlo, LLC (“Grantor” and “Borrower”) and AquaSierra, LLC (“Lender” or “Beneficiary”). The \$16,540 balance was disposed of with the Full Reconveyance dated January 4, 2011 between AquaFlo, LLC (Grantor) and AquaSierra, LLC (Beneficiary) – Lot 6A, Block 7, Skyview Subdivision.

- b. The document AquaFlo has is more characteristically like a check book than a general ledger. A traditional general ledger does not exist. Also, the transactions took place in 2011, not 2010.
- c. No. The debt was AquaFlo’s debt.

PSC-015

Regarding: Loan to AF
Witness: Barrows

- a. Who is AF as reflected on the beginning balance of the “Maxness” general ledger?
- b. Please provide all loan documentation of the transaction.
- c. Is the payment to John Maxness for “reimburse loan” dated March 29, 2011, to repay Maxness for a loan to AquaFlo? Please explain. Are the two transactions related?

RESPONSE:

- a. AquaFlo.
- b. No loan documentation exists.
- c. Yes. When Mr. Maxness took over as manager of AquaFlo he made a temporary infusion of cash into the AquaFlo account in order to pay current bills. This is the transaction referenced in part (a) of PSC-015. This loan was reimbursed on March 29, 2011. Yes, the two transactions are related.

PSC-016

Regarding: Outside Service Providers
Witness: Maxness

- a. Please provide copies of the Service Contracts for the Outside Service Providers list that you provided in response to Audit Request PSC-010 for 2009, 2010 and 2011.
- b. Please provide copies of any Service Contracts that are not on the list and are presently in force.

RESPONSE:

This data request is directed by the PSC to John Maxness. However, the only witness for whom pre-filed testimony has been filed to this point is Sandra Barrows. AquaFlo would therefore respectfully request that the data request be changed so that it is directed to Ms. Barrows. While AquaFlo reserves the right to call Mr. Maxness as a rebuttal witness, AquaFlo does not currently intend to call Mr. Maxness as a witness at the hearing of this matter.

- a. The requested documents are provided herewith on the enclosed CD.
- b. Copies of all service contracts that are presently in force have been provided in the response to PSC-016(a).

PSC-017

Regarding: Financial Statements

Witness: Barrows

- a. Please provide the detail trial balance for YE 2009, 2010, and June 30, 2011.
- b. Please provide the detail General Journal for the same period.
- c. Please provide the detail General Ledger for the same period.

RESPONSE:

- a. AquaFlo does not have a trial balance for 2009, 2010 or 2011.
- b. The documents that exist are provided in response to PSC – 019 (Audit Request PSC-009).
- c. The documents that exist are provided in response to PSC – 019 (Audit Request PSC-009).

PSC-018

Regarding: Decrease in land value in rate base

Witness: Barrows

The testimony exhibits provided in response to ARM 38.5.121 indicate a decrease in land and land rights between 2009 and 2010.

- a. Please provide a description of the land and land rights accounting for the decrease in value including legal description.
- b. Was the land being reflected as used and useful in the rate base in 2009? Was the land used and useful? Please explain.

- c. If the land was disposed of by AquaFlo, please explain the transaction, including all parties involved.
- d. Please provide the fair market value of the land and land rights.

RESPONSE:

Note: The related debt transaction occurred January 4, 2011. The reduction in land should not have been reflected at 2010 year end. See PSC-014 Attachment C.

- a. Skyview Phase II, Block 7 Lot 6A.
- b. No, per discussions with PSC staff, AquaFlo was under the impression that Land was not allowed in ratebase. Skyview Phase II Block 7 Lot 6A served as the previous drain field, it was decommissioned in 2007 and physically disconnected from the system.
- c. See PSC-014 Attachment C.
- d. \$16,514.

PSC-019

Regarding: Audit requests of the August on-site audit
Witness: Barrows

- a. Please provide the responses to Audit Requests for Audit Requests PSC-001, PSC-002, PSC-003, PSC-004, PSC-005, PSC-006, PSC-007, PSC-008, PSC-009 and PSC-010
- b. Please provide the information requested in PSC-011 for 2008, 2009, 2010, and 2011.
- c. Please provide the information requested in PSC-012 for both AquaSierra and AquaFlo for 2008, 2009, 2010.

RESPONSE:

- a.

Audit Request PSC-001 Please provide all board minutes of AquaFlo since inception through the most current. If there are no minutes available, please state so.

RESPONSE:

There are no AquaFlo, LLC board minutes.

Audit Request PSC-002 Please provide all board minutes of the parent company of AquaFlo in which AquaFlo was discussed.

RESPONSE:

There are no AquaSierra, LLC board minutes in which AquaFlo was discussed.

Audit Request PSC-003 Please provide for the year 2010, and year to date, by customer classification, the revenue and water consumption of customers. Please include the customer count in each classification.

RESPONSE:

The response provided during the audit is attached hereto as PSC-003.

Audit Request PSC-004 Please provide copies of the documents transferring the management of AquaFlo to John Maxness.

RESPONSE:

The requested documents do not exist.

Audit Request PSC-005 Please provide a listing of the partners of AquaFlo, percentage owned, and date ownership acquired.

RESPONSE:

The response provided during the audit is attached hereto as PSC-005.

Audit Request PSC-006 If AquaFlo is owned by a parent company, please provide a listing of those owners/partners, percentage owned, and date ownership acquired.

RESPONSE:

The response provided during the audit is attached hereto as PSC-006.

Audit Request PSC-007 Please provide copies of AquaFlo's proposed capital budgets for the years since its last general rate case.

RESPONSE:

No AquaFlo capital budgets exist.

Audit Request PSC-008 Please provide any acquisitions by AquaFlo for the years since its last general rate case. Additionally, please provide any plans for near future acquisitions.

RESPONSE:

AquaFlo has not had, nor does it have near future plans, for acquisitions.

Audit Request PSC-009 Please provide a copy of the general ledger for AquaFlo for 2009, 2010 and year to date. Also, please have available supporting documentation for the entries.

RESPONSE:

The information provided during the audit is provided herewith on the enclosed CD.

Audit Request PSC-010 Please provide a listing of all outside service providers, copies of all contracts between AquaFlo and those providers, and the dollar amount per year for 2009, 2010

and year to date. Please include all contracts between AquaFlo and its parent company if applicable.

RESPONSE:

The information provided during the audit inadvertently excluded current AquaFlo Manager, John Maxness. The response has been amended and is provided herewith on the enclosed CD. Copies of the requested contracts are provided in response to PSC-016b.

Audit Request PSC-011 Please provide copies of all debt agreements for AquaFlo including any to its parent company.

RESPONSE:

The requested information is attached in response to PSC-014 (a). (See PSC-014 above).

Audit Request PSC-012 Please provide copies of the Montana and federal tax returns for AquaFlo for 2009 and 2010. If AquaFlo does not file its own independent return, please provide copies of the parent's returns and the partnership returns of AquaFlo for 2009 and 2010.

RESPONSE:

The information requested for AquaFlo is provided herewith on the enclosed CD, labeled as PSC-019(c).

Amended Response:

The current AquaSierra management is not aware of and does not possess any AquaSierra state or federal income tax returns for 2008, 2009 or 2010. This is consistent with the response provided in PSC Docket D2009.1.9 that AquaSierra had not filed any state or federal income tax returns.

AquaSierra does not intend to file state or federal income tax returns for 2011.

PSC-020

Regarding: Transfer of ownership 2007

Witness: Barrows

- a. Please provide a copy of the transfer of ownership of AquaFlo from Gallagher to AquaSierra.
- b. Please provide a copy of the debt agreement between Gallagher/AquaFlo, and AquaSierra. Gallagher/AquaFlo 2007 partnership return indicates a payment to AquaSierra.

RESPONSE:

- a. The ownership of AquaFlo has not changed since its inception. AquaSierra owns 100% of the membership shares of AquaFlo.

- b. The requested information is attached in response to PSC-014 (a). (See PSC-014 above).

PSC-021

Regarding: Transfer of Interest – February 2011

Witness: Barrows

- a. Please provide a copy of the transfer of Gallagher's control/ownership of AquaFlo/AquaSierra to whomever is presently in control.
- b. What was the remuneration paid to Gallagher for his interest? What was the value of his interest at the time he liquidated his interest? Please provide supporting documentation.
- c. Is there any direct or indirect ownership or control of AquaFlo or AquaSierra by Gallagher? Please explain.

RESPONSE:

- a. The ownership of AquaFlo has not changed since its inception. AquaSierra owns 100% of the membership shares of AquaFlo.

Amended Response:

- a. The requested information is attached hereto as PSC-021a.
- b. Mr. Gallagher received \$220,000 for his interest in AquaSierra. The current AquaSierra management does not know what the value of Mr. Gallagher's interest was at the time Mr. Gallagher liquidated his interest in AquaSierra.
- c. No. See previously submitted e-mail from Mr. Gallagher to the Commission dated January 26, 2011.

PSC-022

Regarding: Transfer of Interest

Witness: Barrows

Please provide copies of any and all transfers of interest and or ownership in AquaFlo and AquaSierra since 2007.

RESPONSE:

The ownership of AquaFlo has not changed since its inception. AquaSierra owns 100% of the membership shares of AquaFlo.

Amended Response:

The ownership of AquaSierra has not changed since January 2011. The current AquaSierra management is not aware of nor does it possess information regarding

transfers of interest and or ownership of AquaSierra prior to January 2011. As previously stated, the ownership of AquaFlo has not changed since its inception.

PSC-023

Regarding: AquaSierra Capital Structure
Witness: Barrows

Please provide the capital structure of AquaSierra for YE 2007, 2008, 2009, 2010.

RESPONSE:

Amended Response:

The current AquaSierra management is not aware of nor does it possess information regarding the capital structure of AquaSierra for YE 2007, 2008, 2009, 2010.

PSC-024

Regarding: AquaSierra
Witness: Barrows

Please list percentage of ownership of all entities that AquaSierra has an interest in for 2007, 2008, 2009, 2010 and 2011.

RESPONSE:

AquaSierra owns 100% of the membership shares of AquaFlo.

Amended Response:

The current AquaSierra management is not aware of nor does it possess information regarding the percentage of ownership of all entities in which AquaSierra had an interest for YE 2007, 2008, 2009, 2010.

For YE 2011, AquaSierra holds 100 percent of the of the membership shares of AquaFlo.

PSC-025

Regarding: Outside Contracts – Accounting Services
Witness: Barrows

Prior to the transfer in 2011, the accounting services contract would be considered a related party transaction. Please provide copies of any and all competitive bids for accounting services.

RESPONSE:

No written competitive bids were received. In 2007 an oral bid with similar terms was tendered.

PSC-026

Regarding: Outside Contracts – Gallagher and Assoc, PLCC
Witness: Barrows

Prior to the transfer in 2011, this is a related party transaction. Please provide copies of all invoices for services rendered for 2008, 2009, 2010 and YTD 2011. This should include as well an explanation of the purpose of the charge.

RESPONSE:

Amended Response:

The requested invoices are attached hereto as PSC-026

PSC-027

Regarding: Rate Case Expense
Witness: Barrows

Please provide actual rate case expense incurred to date.

RESPONSE: To date, AquaFlo has incurred \$19,025 in rate case expenses.

PSC-028

Regarding: Election as to be taxed as a C corporation
Witness: Barrows

Please explain the tax benefits to the ratepayer of AquaFlo's election to be taxed as a C corporation for both federal and state taxing entities.

RESPONSE:

AquaFlo has not retained the services of a tax accountant to analyze the tax benefits to the ratepayer and therefore cannot address the tax benefits to the ratepayer.

RESPECTFULLY SUBMITTED this 17th day of February, 2012

Michael Strand
Attorney for AquaFlo, LLC