

DISSENTING STATEMENT
OF COMMISSIONER ROGER KOOPMAN

At first glance, approval of this application would appear to be a “no brainer.” The salient facts represented by the parties are (1) all assets, including water rights, equipment, buildings and infrastructure of the Phantom Hills Water Company (an affiliated of Washington Corporation), are being offered to the City of Missoula free of charge, (2) the city would assume none of Phantom Hills’ existing financial liabilities, and (3) the city warrants that the private utility’s 174 current customers would benefit from a significant rate decrease, including a reduction in the monthly service charge from \$30 to \$16.26, and reduced fire protection fees and volumetric rates.

So what’s not to like?

And yet, the record in this docket was very thin, with no hearing, no commission or MCC discovery, no testimony and no user or general public comment. To this commissioner, it was the questions that were not asked and the information that was not provided that has given me pause, and brought me to the conclusion that as presently constituted, this application cannot be approved by the commission with any degree of confidence. The concerns outweigh the perceived benefits.

Examples of questions left unanswered by the applicant include:

- (1) What was the motivation behind owner Washington Corporation gifting city government a private asset, presumably worth in the millions of dollars? What is truly behind all of this? Is the system failing or in poor shape? Is the corporation simply seeking a tax write-off? Is Phantom Hills receiving other incentives or considerations from other sources? What exactly is going on here? What is the full picture? The commission does not know. No explanations were put into evidence. Commissioners speculated all kinds of things, including that Phantom Hills “may” be having financial problems or an inability or produce a profit, “may” be having competency difficulties in operating the utility, etc., etc. But these are mere unfound speculations, based on no record evidence.
- (2) Has a professional valuation been done? What is the actual market value of the assets that would be transferred from private to public ownership?
- (3) Based on what evidence can we be confident that the City of Missoula can operate and maintain the water system more efficiently or cost effectively than the private owner (or another private owner?) Economies of scale tend to argue that the city can do the same job cheaper, but how do we know this? The counter-argument is that privately-owned entities tend to be better and more cheaply run if for no other reason than that private investors have their own money at stake, and have the added incentive of seeking greater profit through cost-saving practices and innovations. Once again, these are questions without answers, and PSC decisions can never be based on speculation in the absence of evidence.

- (4) Once the City of Missoula gains full, unencumbered ownership of the Phantom Hills assets, what is to stop them from, at some point, simply re-selling the utility to the highest bidder? This may seem an unlikely scenario, but if the utility could fetch several million dollars for city coffers, and/or is finding the new acquisition to be an inconvenience, who's to say this couldn't happen? The commission has been provided no information that would argue otherwise.
- (5) How committed is the City of Missoula – really – to providing lower rates out into the future? What are the guarantees? The “word” and “good will” of city officials? How is “future” to be defined? How long before rates go up, and who is to stop them?

This last question is, to this commissioner, the critical one. “Who is to stop them?” Yes, theoretically the voters of Missoula, to whom they are politically accountable. But the key difference between a private water system like Phantom Hills, or the forceably confiscated Mountain Water Company, and a municipally owned and operated system, is that while the private utility is diligently performance and rate-regulated by the Public Service Commission, the public utility is not.

In the 6 ½ years I have served on this honorable commission, among the most discouraging jobs I have had is having to inform customers of publicly-owned water systems who have serious complaints, that the PSC has no jurisdiction and can provide no assistance in helping the through their (often very legitimate) problems and conflicts with their water provider. In a number of these cases, the complaints we receive appeared to happen as a result of a transfer from private to public ownership.

This is precisely the situation Phantom Hills consumers will face, once the City of Missoula gratuitously takes over their previously private, PSC-accountable, water system.

These questions are just that – questions. But until they can be answered, I cannot, in full consideration of the public interest and the solemn duty of this commission to uphold that interest with wisdom and fidelity, support the proposed transfer in this application.

Roger Koopman
Commissioner