

Service Date: November 9, 2011

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

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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,) ORDER NO. 6707e
Montana, Service Area)

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

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. Through a June 2, 2010, Notice of Staff Action, the briefing deadline was suspended pending Commission response to a public records request from 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 charges 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 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 at Helena, Montana, this 8st day of November 2011 by a vote of 4 to 1.

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 (Dissenting)

ATTEST:


Alisha 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.

**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

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)

Consolidated with
UTILITY DIVISION
DOCKET NO. D2005.11.164

STIPULATION

COMES NOW, Utility Solutions LLC, Inc., the Applicant in this proceeding, and the Montana Consumer Counsel (MCC), the Intervenor in this proceeding, and agree and stipulate as follows:

1. On October 27, 2005, Utility Solutions filed with the Commission an Application for authority to establish initial rates for regulated water service in what is commonly known as Elk Grove, a subdivision in the Four Corners area west of Bozeman, Montana. The cost of service presented in the filing was based upon a test year ended December 31, 2004. When granted in its entirety, the requested initial rates generate \$163,978 per year in annual revenues, based upon the customer counts included in the Application. The Application was denominated PSC Docket D2005.11.163. On January 6, 2006, the Commission authorized, on an interim basis, the initial rates requested by Utility Solutions. Interim Order 6707. Ordering paragraph 6 of the order required Utility Solutions

to file a new cost of service, based upon a 2006 test year, no later than July 1, 2007, later extended until August 15, 2007.

2. On October 27, 2005, Utility Solutions also filed with the Commission an Application for authority to establish initial rates for regulated waste water service in its Elk Grove service area. The cost of service presented in the filing was also based upon a test year ended December 31, 2004. When granted in its entirety, the requested initial rates generate \$199,188 per year in annual revenues, based upon the customer counts included in the Application. The Application was denominated PSC Docket D2005.11.164. On January 6, 2006, the Commission authorized, on an interim basis, the initial rates requested by Utility Solutions. Interim Order 6708. Ordering paragraph 5 of the order required Utility Solutions to file a new cost of service, based upon a 2006 test year, no later than July 1, 2007, later extended until August 15, 2007.

3. Utility Solutions made filings in the two docket on August 12, 2007, which sought to make the interim rates authorized in each docket permanent. On November 7, 2007, the Commission ordered the consolidation of the two dockets for purposes of hearing.

4. The consultant who prepared the Applications in the two dockets on behalf of Utility Solutions became seriously ill, then tragically died. With his passing, Utility Solutions was unable to move its August 12, 2007, Applications to hearing and establish final rates. On December 8, 2008, Utility Solutions moved the Commission to suspend the procedural order which governed the proceedings, to allow Utility Solutions to retain a new rate consultant, and to prepare a more recent cost of service based upon a test year ended December 31, 2008. The Commission granted the motion, and ordered Utility Solutions to make a general rate filing, using a 2008 test year, no later than June 30, 2009.

5. Utility Solutions made the required filing. Its Amended Application to establish permanent regulated rates for water service seeks the authorization of permanent

rates which will generate \$327,499 per year in annual revenues. Its Amended Application to establish permanent regulated rates for waste water service seeks the authorization of permanent rates which will generate \$356,305 per year in annual revenues.

6. The MCC has intervened in the dockets, opposing the permanent rates sought by Utility Solutions in these proceedings. It has conducted discovery and on-site audits of the books and records of Utility Solutions.

7. The pre-filed testimony of the MCC expert witness was filed in this docket on December 23, 2009. In that pre-filed testimony, the MCC concludes that Utility Solutions is entitled to permanent water rates which would generate \$238,077 per year in annual revenues, and permanent sewer rates which would generate \$251,877 per year in annual revenues.

8. The revenue requirements presented by Utility Solutions in these cases included a weighted cost of capital of 8.11%, using a hypothetical capital structure of 55% equity at a cost of 10% and 45% debt at a cost of 5.8%. The revenue requirements presented by the MCC in this case included a weighted cost of capital of 5.8%, derived by using a 0% equity and 100% debt capital structure.

9. For settlement purposes, a fair and equitable resolution of the issues between Utility Solutions and the MCC, and one which would result in the expeditious establishment of permanent rates at just and reasonable levels, would be to establish permanent rates at the rate levels determined by the MCC to be just and reasonable, that is permanent water rates which will generate \$238,077 per year in annual revenues, and permanent sewer rates which would generate \$251,877 per year in annual revenues. Attached as Appendix 1 are proposed tariffs which Utility Solutions and the MCC agree should be utilized to implement their settlement agreement.

10. The Commission, after the completion of contested case proceedings in this docket, should be moved in its discretion to issue a final order approving, adopting, and implementing the terms of this Stipulation, and authorizing as permanent initial rates the tariffs attached as Appendix 1.


11. The parties to this Stipulation present it to the Commission as a reasonable settlement of the issues raised in this docket. No party's position in this docket is accepted by the other parties by virtue of their entry into this Stipulation, nor does it indicate their acceptance, agreement, or concession to any rate making principle, cost of service determination, or legal principle embodied, or arguably embodied, in this Stipulation.

12. The various provisions of paragraphs 1 through 12 of this Stipulation are inseparable from the whole of the agreement between the parties to the Stipulation. The reasonableness of the proposed settlement set forth in this Stipulation is dependent upon its adoption, in its entirety, by the Commission. If the Commission decides not to adopt, in its entirety, the proposed settlement set forth in this Stipulation, then the entire Stipulation is null and void, no party to the Stipulation is bound by any provision of it, and it shall have no force or effect whatsoever.

13. During the pendency of this proceeding, the Commission should be moved, in its discretion, to grant Utility Solutions interim rate relief at the same level and in the same fashion as is set forth in the tariffs attached as Appendix 1.

Dated this 8th day of January, 2010.

HUGHES, KELLNER, SULLIVAN & ALKE, PLLP



John Alke
40 W. Lawrence, Suite A
P.O. Box 1166
Helena, MT 59624-1166
ATTORNEY FOR UTILITY SOLUTIONS, LLC

Dated this 8 day of January, 2010.

MONTANA CONSUMER COUNSEL



Mary Wright
616 Helena Avenue, Suite 300
P.O. Box 201703
Helena, MT 59620-1703

ATTORNEY FOR MONTANA CONSUMER COUNSEL

Public Service Commission of Montana

Utility Solutions

Sheet No. 1
1st Revised Sheet No. 1
Canceling Original Sheet No. 1

METERED WATER SERVICE

T

Schedule M

Availability: For the Elk Grove Service Area Gallatin County, Montana for all purposes except resale.

Rate:

Applicable to all residential and small commercial customers.

Customer Charge \$23.95 /per month

I

Quantity Charge

For all usage per 1000 gallons or fraction there of.... \$3.888

I

The Customer Charge is applicable to all metered water service. It is a readiness to serve charge which is added to the charge computed at the Quantity Rates for water used during the month.

Issued: _____
(Date)

By: _____
(Signature of Officer of Utility)

Public Service Commission of Montana

Utility Solutions

Sheet No. 2
 1st Revised Sheet No. 2
 Canceling Original Sheet No. 2

WATER SERVICE

Special Rules of Service

Schedule R

D
D
D
D

Unauthorized use of service

Unauthorized use of service is defined as any deliberate interference such as tampering with the Company's meter, connections, equipment, seals, procedure or records that result in a loss of revenue to the company. Unauthorized service is also defined as reconnection of service that has been terminated, without the company's consent.

Cost incurred to repair damage to company owned property installed on the customer's premise will be billed to the customer.

Charges for unauthorized use of service will be:

- a. time, material and transportation costs used in investigation or surveillance.
- b. estimated charge for water
- c. on-premise time to correct situation
- d. costs incurred to repair company owned property if any damage.

Reconnection of Service

Water service disconnected for unauthorized use of service shall not be reconnected until the customer furnishes satisfactory evidence of compliance with the company's rules and conditions of service and paid all outstanding service charges.

Late payment fee

An account having a balance left unpaid 30 days after the bill date is subject to a 1.0% late payment charge.

(Continued)

T

Issued: _____
 (Date)

By: _____
 (Signature of Officer of Utility)

Public Service Commission of Montana

Utility Solutions

 Sheet No. 3
 Original Sheet No. 3

WATER SERVICE

Special Rules of Service (Continued)

Schedule R

Sprinkling

Company will specify the hours and days during which sprinkling will be permitted and will publish notice thereof in newspapers at the start of the sprinkling season or whenever conditions require a change and will permanently post such notice in its local office.

Temporary Disconnection

If service has been temporarily discontinued at the customer's request, a reconnection charge of \$100.00 per meter will be paid before service is reconnected.

Disconnection/Reconnection

If service has been disconnected for non-payment, a reconnection charge of \$100.00 per meter will be paid before service is reconnected.

Permanent Disconnection

Customers who wish to have their water service permanently discontinued, will be responsible for any and all costs associated with the physical disconnection of the service line from the utility's system.

Multiple Users

In situations where more than one user is being provided with water from a single service line, with a single shut-off device controlling the water flow, and if any one or more of the water users either will not sign up for service or will not pay for that service, then the responsibility for payment of future water charges must be assumed by the property owner until such time as the piping configuration has been modified to provide an individual shut-off valve for each water user in order to prevent the service from being disconnected for non-signup or non-payment.

(Continued)

 Issued: _____
 (Date)

 By: _____
 (Signature of Officer of Utility)

Public Service Commission of Montana

Utility Solutions

Sheet No. 4
Original Sheet No. 4

WATER SERVICE

Special Rules of Service (Continued)

Schedule R

Failure to provide payment

Failure to provide payment or satisfactory arrangements for payment may result in total discontinuance of service even though one or more users may not be in arrears with their account.

Returned Check Fee

A fee of \$15.00 will be charged to any customer who presents a check that is returned unpaid by the depository financial institution for any reason.

Refunds

Customer bills or refunds that total \$1.00 or less will not be issued.

N

N

Issued: _____
(Date)

By: _____
(Signature of Officer of Utility)

Public Service Commission of Montana

Utility Solutions

Sheet No. 1
1st Revised Sheet No. 1
Canceling Original Sheet No. 1

FLAT RATE WASTEWATER SERVICE

T

Schedule F

Availability: For the Elk Grove Service Area Gallatin County, Montana for all purposes except resale.

Rate:

Applicable to all residential and small commercial customers not provided service by meter.

Residential	\$80.42 /per month
Daycare	\$281.47 /per month
Commercial	\$281.47 /per month

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I
I

Issued: _____
(Date)

By: _____
(Signature of Officer of Utility)