MEMORANDUM

TO: Public Service Commission of Utah

FROM: Intervenors in Dockets 11-097-1to3

RE: Opposition to Application for an Interim Rate Increase

DATE: May 15, 2012

RECOMMENDATION: 1) Deny the application in its entirety or, in the alternative, cut the interim rate to $44.00 per month per connected customer and $10 standby fee per month for unconnected customers and, *of critical importance,* 2) make clear in the Commission's order that decision on the legitimacy and enforceability of a certain purported loan in the amount of $457,000.00 and alleged accrued interest thereon from Ronald Catanzaro to Mountain Sewer Corp. (MS) in or about the year 1984 or 1985 is reserved; is not a part of any order issued in connection with this application for an interim rate increase, by implication or otherwise; and that no party to any of these dockets is or shall be estopped to henceforth challenge the said legitimacy and enforceability by *res judicata,* collateral estoppel, law of the case, or any other doctrine.

ANALYSIS: (As to recommendation 2): Implicit in the Applicant's approach to its request for an interim rate increase is the temporary

effectiveness of its proposed new tariff. Part and parcel of that tariff is the intention of the owner of MS, Ray Bowden (after looking through the various layers of supposed corporate insulation) to avoid payment of MS's exorbitant new connection, hookup, and "turn on" fees himself, in his role as developer of the real estate he obtained in the very same transaction in which he obtained ownership of MS, by offsetting those fees against a purported loan from Ronald Catanzaro to MS in 1984 or 1985, which loan was assigned to Mr. Bowden's shell corporation also in that same transaction. It is the intention of the intervenors to vigorously challenge the legitimacy and enforceability of that loan which, according to the applicant, will carry a balance of principal and interest as of June, 2012, in the ostensible amount of $1,992, 520.00.

Should the Commission grant the interim application in whole or in part, temporarily put the new tariff in place, and allow Mr. Bowden to charge all MS new customers except himself the new fees, it could be argued, and the intervenors have no doubt that MS would argue, that the Commission had already tacitly decided the loan legitimacy and enforceability question in Mr. Bowden's favor, and that the intervenors were therefore estopped from challenging it as part of the final rate case and/or part of the transfer case. That cannot and should not be allowed to happen, and the intervenors

accordingly respectfully request that in the interests of allowing the Commission to rule on the interim rate increase request timely and without the complex and lengthy arguments concerning the loan, the requested cautionary language be inserted into the Commission's ruling, whatever else it may contain.

As to Recommendation 1, the analysis is simple: MS does not need an interim rate increase at all, and if it needed one at all, it could easily get by on a monthly increase to connected customers of $44.00 instead of $57.06, and a monthly standby fee of $10.00, the same standby fee currently in place for MS's sister company, Lakeview Water. After all, Lakeview Water actually purchases and resells a product (water), and must provide for purchase of that water whether a standby customer uses it or not. MS has no such need for contributions from standby customers. Even a $10.00 per month fee is a gift to it and its owner.

MS needs no interim rate increase because the figures submitted by it in support of the application are so obviously skewed in its favor as to defy reason and logic. The alleged expenses it claims to face are so full of fat that they virtually jiggle on the page. The revenues it projects are so hopelessly

incomplete that they would be laughable, except that their obvious omissions are not at all funny.

For instance, the Commission is reminded that the new tariff calls for payment of the almost doubled connection fees, hookup fees, and "turn on" fees (whatever they may be) as a condition precedent to Weber County's grant of final plat approval of any new subdivision. Conspicuously absent from MS's projections are the payment of any such fees by Celtic Bank, the owner and developer of the Edgewater Beach subdivision, which MS has recently agreed to supply with sewer service. Application for final plat approval of phase 1 of Edgewater Beach is in, and will to a certainty be granted within the period of the interim rate increase request, resulting in as few as five but as many as eight new units, each of which would have to pay the $5400.00 fees unless the Commission reduces them, for a total accretion of funds to MS in the minimum amount of $27,000.00.

Of course, Mr. Bowden himself has substantial development projects in the works, and the probability is that he will be applying for and obtaining final plat approval on one or more of them during the interim period is quite high. Unfortunately, no income in the form or connection fees, hookup fees, turn

on fees, or standby fees is projected due to Mr. Bowden's intention to treat his lots differently from all others' lots, at customer expense.

Of some interest is the inclusion in the expense column of a management fee at the annual rate of $24,000.00 payable to one Mr. Ray Bowden. One would think that in dealing with a company that is as cash-strapped as Mr. Bowden and Mr. Mel Smith profess MS to be, some temporary concession on Mr. Bowden's part related to that management fee might be in order. But no; not to be, unless the Commission were to order it. Also of interest is the inclusion of a substantial expense in the form of legal fees *during the interim period,* when there has been no adjudication of whether those fees are properly allocable to the rate base, and no investigation as to what the fees are for in the first instance.

As intervenors, we can only hope that DPU personnel, whose knowledge and experience in the area allow them to do so, and whose charter mandates them to do so, will carefully scrutinize every line item and correct the manifestly skewed entries.

Last, the necessity for an interim rate increase is blunted by the availability of substantial monies left undisbursed on the line of credit that MS already has in place. There can be no doubt that MS will wish the ratepayers to

absorb that line of credit at some point, so why not use it to head off the dire predictions of inability to pay the electric bill, and the like? Mr. Bowden doesn't need the undisbursed balance on the line to make further improvements in the system; he has already made it quite clear that he will be doing no further work on the system, whether or not that work would ultimately reduce costs, until and unless the ratepayers accede to his monetary demands.

As should come as no surprise, the application for an interim and permanent increase is misleading in its citation of the Utah Water Quality Board's Wastewater Assistance Program as "proof" that the exorbitant rate requested is "just and reasonable" because it constitutes less than 1.4% of the Huntsville median adjusted gross income, or $59.51.

The Water Quality Board has made no such determination. In point of fact, the WQB consistently uses quotation marks when it refers to the MAGI rate as "reasonable," and *never* refers to that figure as "just."

What the WQB uses the MAGI figure for is to determine eligibility for financial aid from the State's revolving fund if the cost of a sewer project is so large that the system would be required to charge the users more than the MAGI figure without State aid. Put another way, Mountain Sewer's

requested rate is not only *un*just and *un*reasonable; it is so high that it is $2.45 away from generating State aid because it is a hardship on the users.

The actual language of the report is as follows:

> **II. LIST OF FEDERAL HARDSHIP GRANTS**
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> The State of Utah provides hardship grants to entities that may not otherwise afford to complete a wastewater project. The Water Quality Board may consider authorizing a hardship grant when the estimated annual cost of sewer service exceeds 1.4% of the median adjusted gross household income (MAGI).

CONCLUSION: Mountain Sewer, by its own admission, has constructed a sewage system capable of handling seven hundred customers, and yet it wishes to have that system paid for and operated, as will be demonstrated at the hearing on the main rate case, by a small fraction of that number of customers, and it wishes to have that system paid for not just once, but multiple times, by that same small fraction of customers. It has since its acquisition by Mr. Bowden (basically for no consideration whatsoever) made it clear that its income was going to go up as high as possible, as quickly as possible. The proposition that MS is destitute and must have an infusion of cash immediately, is a ruse. With careful operation, avoidance of needless spending, employment of the unexpended line of credit, and diligent, fair application of connection fees certain to materialize, MS can

easily make it through the next eight months until its claims for increased revenue can be fairly and thoroughly investigated and tested and decided in the full rate case. There is no need to rush to throw money at it because of unsubstantiated claims of destitution.

At the risk of repetition, the intervenors again request the inclusion in the Commission's order herein, of the language set forth in the Recommendation section of this memorandum, whatever else the Commission may order.

Respectfully submitted,

/s/ Frank J. Cumberland

On behalf of the Intervenors

CERTIFICATE OF SERVICE

I certify that pursuant to the Order of Administrative Law Judge Clark, copies of this Memorandum were served electronically upon the Commission, Counsel for Mountain Sewer, the Division of Public Utilities, and each of the Intervenors this 15th day of May, 2012.

/s/ Frank J. Cumberland