

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
James and Dawn Martell; Robert Kimball;) DOCKET NO. 11-097-01
Frank and Pat Cumberland; Larry and Sharon)
Zini; David and Marsha Smith; *et al* vs.)
Mountain Sewer Corporation)
)
In the Matter of Ronald J. Catanzaro’s Notice) DOCKET NO. 11-097-02
of Intent to Sell Mountain Sewer Corporation)
and Lakeview Water Corporation)
)
In the Matter of the Application of Mountain) DOCKET NO. 11-097-03
Sewer Corporation for a General Rate)
Increase) ORDER APPROVING INTERIM RATES
)

ISSUED: June 25, 2012

SYNOPSIS

The Commission approves the request of Mountain Sewer Corporation for an interim rate increase, subject to further review and refund following audit by the Division of Public Utilities.

By The Commission:

On April 6, 2012, Mountain Sewer Corporation (“MSC”) filed in Docket No. 11-097-03 three applications seeking three forms of rate relief: 1) an interim rate increase, 2) a special assessment, and 3) a general rate increase. On May 21, 2012, the Commission held a duly-noticed hearing to consider the application for an interim rate increase.¹ At the conclusion of the hearing, the Commission directed the presiding officer to issue an order on the record

¹ The remaining rate issues as well as the complaint and intent-to-sell dockets (Docket Nos. 11-097-01 and 11-097-02) will be addressed in hearings scheduled for later in the year. See Scheduling Order and Notice of Hearing issued May 14, 2012.

approving the application for an interim rate increase. This written order memorializes that earlier oral order.

PROCEDURAL BACKGROUND

MSC is a privately-owned public utility established in 1985 to provide sewer service to a residential development near Huntsville, Utah. MSC currently serves 127 connections, with another 55 unconnected lots. Currently, service is provided pursuant to a fee schedule established in 1987. Fees have not changed since then.

On May 3, 2011, Mr. and Mrs. Larry Zini (“Complainants”) joined several other customers² in filing a complaint with the Commission alleging, among other things, repeated malfunctions of an improperly designed and maintained sewer system. These malfunctions required the pumping of raw sewage from holding tanks on the banks of the Pineview Reservoir, transporting this sewage over local streets onto private property, and dumping the raw sewage into manholes. The Complainants also allege various instances of corporate governance irregularities and financial mismanagement, including discriminatory billing practices. On May 26, 2011, Complainants joined by several MSC customers filed a supplemental complaint alleging numerous additional instances of financial mismanagement and reciting statements of MSC’s owner to the effect that MSC was without funds to pay essential operating expenses.

MSC’s owner at the time of these complaints was Dr. Ronald J. Catanzaro. On May 16, 2011, he filed a response with the Commission denying responsibility for the sewer system malfunctions and asserting the system to be in proper working order. On May 18, 2011,

² The formal complaint lists the following as complainants: James and Dawn Martell, Larry and Sharon Zini, Frank and Pat Cumberland, Andrew and Lisa Hecht, Michael and Diane Suley, Robert Kimball, David Hayes, Dominick Guida, Kostas and Kristi Mallos, Salim and Lauri AbiEzzi, Jeff and Kris Larsen, and David and Marsha Smith.

Dr. Catanzaro filed a handwritten note with the Commission giving notice of his intent to sell MSC to Mr. Brett LaSorrella.

On June 2, 2011, the Division of Public Utilities (“Division”) filed a memorandum summarizing its findings following a site inspection and preliminary investigation of the complaint. The Division concluded the Commission should hold hearings to evaluate a likely violation of Utah Code Ann. § 54-3-1, which, among other things, imposes on every public utility the duty to provide and maintain such service and facilities as will promote the safety and health of its patrons.

On June 23, 2011, MSC filed a notice of intent to file a general rate case. On June 27, 2011, the Division filed a second memorandum reporting on its investigation into Mr. Catanzaro’s notice of intent to sell MSC. The Division reported that Mr. LaSorrella had not decided to purchase MSC but was rather investigating a potential purchase. The Division recommended the Commission put the MSC dockets on hold pending further information that a purchase was imminent.

On July 7, 2011, the Commission issued an order postponing the hearing on the complaint that had been scheduled previously for July 19, 2011, and providing notice of a prehearing conference to be held the same date in order to clarify the scope of the issues and other prehearing matters. At this conference the parties discussed various service and billing issues that needed correction, and MSC re-affirmed its intent to seek a rate increase after the existing corporate records were organized and reviewed.

On August 18, 2011, MSC filed notice of the transfer of MSC ownership to Valley Utility Company, LLC, owned by Mr. Ray Bowden. The Commission held a second prehearing conference on August 31, 2011. Mr. Bowden attended as the new owner of MSC. MSC explained Mr. Bowden had loaned Dr. Catanzaro \$180,000 secured by MSC and other property. Mr. Bowden received MSC from Dr. Catanzaro by grant deed in lieu of foreclosure. MSC again expressed its perceived need for a rate increase, stating MSC to be in dire financial condition. MSC also noted the current monthly rate for sewer service had been in place since about 1985. MSC described its efforts to restore the sewer system to reliable operating condition, including repairing broken pumps, installing clean-out valves, and repairing damage to a manhole cover to prevent storm water intrusion. The Complainants acknowledged progress in making system repairs and stated the system had been working normally in recent days.

The Commission held a duly noticed status conference on February 23, 2012, because MSC had not yet filed a rate increase application. A second purpose of the conference was for the Commission to receive an updated report on service quality. At the conference, MSC stated it was still preparing the rate increase application and expected to file it in April. The Complainants stated they perceived definite improvements with the quality of service and were pleased with their interaction with Mr. Bowden and with his work.

As noted above, on April 6, 2012, MSC filed the rate increase applications to be considered in Docket No. 12-097-03. On May 15, 2012, Complainants filed a memorandum disputing the need for MSC's proposed interim monthly fee for sewer service of \$57.06 and proposing instead a monthly fee of \$50.00.

On May 16, 2012, MSC filed a supplement to its interim rate increase application. In this filing MSC requests authority to apply the capital reserve funds generated by the requested interim rates to MSC’s obligation on a line of credit used to fund system repairs. MSC believes the use of capital reserve funds for this purpose is appropriate.

On May 18, 2012, Celtic Bank filed a petition to intervene in these dockets, stating it owns property within MSC’s service area and has an interest in any change in rates. The Commission granted this petition.

On May 21, 2012, the Commission held a hearing on the proposed interim rate increase.

PARTIES’ POSITIONS

The following chart presents MSC’s current rates and proposed interim rates.³

Current Rates		Requested Rates	
Fixed System Fees	None	Fixed System Fee (paid by all customers)	\$12.14
		Capital Reserve Fee (paid by all customers)	\$12.26
Monthly Fee (connected customers)	\$22.00	Usage Fee (connected customers only)	\$32.67
		Total Monthly Fee (connected customers only)	\$57.06
Standby Fee	None	Total Standby Fee equal to Fixed System Fee plus Capital Reserve Fee (unconnected customers only)*	\$24.40
Single Connection Fee	\$3,000	Single Connection Fee	\$5,000
Hookup Fee	none	Hookup Fee	\$300
Turn On Fee	none	Turn On Fee	\$100
Late Fee	18% per annum	Late Fee	18% per annum

³ The proposed interim rates are the same as the final rates MSC proposes for approval in the general rate case application.

MSC testifies its new owner, Ray Bowden, received MSC, in addition to a water company and certain real estate, from Dr. Catanzaro by a deed granted in lieu of foreclosure. Mr. Bowden has extensive background in operating sewer and other plumbing – related entities. He functions as MSC’s manager. When he became MSC’s owner, he recognized the system needed inspection and repairs. MSC asserts hundreds of feet of sewer lines were collapsed and the lift station pumps were in disrepair. MSC testifies there were no cash reserves to accomplish these and other needed repairs. MSC obtained a \$125,000 line of credit to fund the repairs. MSC also presents records demonstrating that, as of May 9, 2012, it had only \$305.72 in its checking account and was unable to pay employee wages or purchase office supplies. MSC testifies its accounting records for the period July 11, 2011, through March 12, 2012, show a total operating loss of over \$96,000. MSC projects annual revenue for 2012 at current rates will be \$33,000. MSC projects operating expense for 2012, plus depreciation and tax expense, will be slightly over \$102,000. MSC maintains the proposed interim rates are necessary to enable it to recover its projected operating costs.

The Division testifies it has performed a cursory review of the interim rate increase application and supporting exhibits. The Division believes MSC’s evidence meets the statutory requirements for approval of an interim rate increase. The Division recommends the Commission approve MSC’s request for interim rates as described in the foregoing chart. The Division also supports MSC’s supplemental request regarding use of the capital reserve account to pay the line of credit incurred for system repairs. The Division believes MSC’s proposal is a proper use of capital reserve funds.

Complainants agree MSC should receive a reasonable increase in monthly sewer fees. They believe, however, the proposed interim fees are too high. They assert the proposed fee levels fail to properly take into account revenues that will be received under the proposed fee structure for connection, hookup, turn on, and standby services, and for capital reserves. They also recommend the Commission discount the projected management fee for the interim period by 50%.

Celtic Bank did not present evidence on the request for an interim rate change. Through counsel, Celtic Bank states it foreclosed on the Edge Water Beach Resort in MSC's service area in about 2009. The development consists of 59 residential lots, four of which have been completed. Celtic Bank characterizes its position on the rate increase applications as supportive of the Complainants. It states it has questions regarding MSC's accounting and fee calculations, and objects to the requested fees while it pursues answers during the general rate case proceeding.

DISCUSSION, FINDINGS AND CONCLUSIONS

Utah Code Ann. § 54-7-12(4)(a)(iii) sets the Commission's standard for allowing a proposed rate increase to take effect on an interim basis, subject to the Commission's right to order a refund or surcharge: "The evidence presented in the hearing held pursuant to this Subsection (4) need not encompass all issues that may be considered in a rate case hearing held pursuant to Subsection (2)(d), but shall establish an adequate prima facie showing that the interim rate increase or decrease is justified." In applying this standard we

consider a prima facie showing to be one that is sufficient to support the proposed rate relief until contradicted and overcome by other evidence.⁴

MSC's evidence establishes a prima facie case that the existing sewer fees are inadequate and the proposed fees are necessary, in order to allow MSC the opportunity to recover its reasonable operating costs. Although Complainants question how MSC will use the revenue to be generated by the various new categories of fees, MSC's answers are adequate at this stage to justify granting MSC's full request, subject to future refund. For example, Complainants question MSC's failure to apply hookup and turn on fee revenue as an offset to the 2012 projected operating expenses. MSC testifies, however, that these activities are neither part of its projected operating expense nor revenue because the fee revenue is simply passed through to the contractors who perform the work. As to connection fee revenue, MSC states it is not proper accounting to use such revenue to offset monthly operating expense. Rather such revenue is to be used for investment in utility plant. As to standby fee revenue, MSC asserts all 55 qualified lots, once platted and recorded, will be subject to the standby fee, and MSC's revenue estimates are based on this assumption.

MSC also provided prima facie evidence to support recovery of the projected annual management expense, despite Complainant's position that only 50% of this expense be considered in setting the interim rates. As the Division notes, the services Mr. Bowden and his employees provide at a projected cost of \$32,900 in 2012, replace management services historically costing \$43,234 per year. Accordingly, the facts adequately demonstrate the 2012

⁴ See Black's Law Dictionary, Fourth Edition, "prima facie case," citing Pacific Telephone & Telegraph Co. v. Wallace, 175 P.2d 942, 947.

projection for this expense category is reasonable. The projection supports the proposed interim rate increase. Similarly, MSC's other expense projections provide adequate prima facie support for the proposed interim rate increase.

ORDER

Based on the evidence presented by MSC and the Division's recommendation, the application for interim rate increase is approved as filed, effective May 21, 2012, subject to refund. Additionally, the supplement to the application requesting authority to apply capital reserve funds to MSC's obligation on the line of credit used to fund system repairs is also approved.

DATED at Salt Lake City, Utah this 25th day of June, 2012.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary

D#228678

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of June, 2012, a true and correct copy of the foregoing Order Approving Interim Rates was served upon the following as indicated below:

By U.S. Mail:

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