

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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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 )  
) REPORT AND ORDER  
)  
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ISSUED: October 30, 2012

SYNOPSIS

The Commission dismisses the complaint, approves the transfer of ownership, and authorizes an increase in the rates of Mountain Sewer Corporation, as detailed in this Report and Order.

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By The Commission:

PROCEDURAL BACKGROUND

Mountain Sewer Corporation (“MSC”) is a privately-owned public utility established in 1985 to provide sewer service to a residential development near Huntsville, Utah. MSC currently serves 129 active connections, with another 55 unconnected lots proposed to become subject to a new standby fee. Currently, service is provided pursuant to a fee schedule established in 1987, as modified by the Commission’s approval of new interim rates in an order

issued on May 21, 2012. Except for this most recent order, the rates/fees for MSC's services have not changed since 1987.

On May 3, 2011, Mr. and Mrs. Larry Zini ("Complainants") joined several other customers<sup>1</sup> 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. Complainants also allege possible financial mismanagement, including discriminatory billing practices and corporate governance irregularities. On May 26, 2011, Complainants joined by several other MSC customers filed a supplemental complaint alleging numerous additional instances of possible 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. Dr. Catanzaro founded MSC in 1985 in connection with his development of various residential properties it serves. On May 16, 2011, Dr. Catanzaro filed a response to the complaints denying responsibility for the sewer system malfunctions and asserting the system to be in proper working order. On May 18, 2011, 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

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<sup>1</sup> 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 Mallios, Salim and Lauri AbiEzzi, Jeff and Kris Larsen, and David and Marsha Smith.

of the complaints. 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 Dr. Catanzaro's notice of intent to sell MSC. The Division reported that Mr. LaSorrentella had not decided to purchase MSC but was only 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 complaint hearing 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 noted the current monthly rate for sewer service had been in place since MSC's founding. MSC also 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. 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, 2012. Complainants stated they perceived continuing improvements with the quality of service and were pleased with their interaction with Mr. Bowden and with his work.

On April 6, 2012, 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 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 requested 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 duly-noticed hearing to consider the application for an interim rate increase.<sup>2</sup> At the conclusion of the hearing, the Commission directed the presiding officer to issue an order on the record approving the requested interim rate increase. On June 25, 2012, the Commission issued a written order memorializing that earlier oral order. The approved interim rates, in contrast to the original rates/fees, are presented in the following table:

<b>Original Rates</b>		<b>Approved Interim Rates</b>	
Fixed System Fee	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
		<b>Total Monthly Fee (connected customers only)</b>	<b>\$57.06</b>
Standby Fee	None	<b>Total Standby Fee equal to Fixed System Fee plus Capital Reserve Fee (unconnected customers only)<sup>3</sup></b>	<b>\$24.40</b>
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

On July 9, 2012, the Commission issued an order to show cause in response to Complainants' allegations of MSC's failure to provide access to corporate information in preparation for the hearing on final rates. Following a hearing on July 19, 2012, the

<sup>2</sup> The remaining rate issues as well as the complaint and intent-to-sell dockets (Docket Nos. 11-097-01 and 11-097-02) were addressed in hearings held on October 16, 2012 (see Scheduling Order and Notice of Hearing, issued May 14, 2012).

<sup>3</sup> All owners of platted and recorded lots for which the connection fee has not been paid are obligated to pay the monthly standby fee according to the rate and fee schedules of the applicable tariff.

Commission issued various orders affording access to the requested information and amending the schedule for filing testimony to accommodate the delays in Complainants' access to relevant data.

On July 27, 2012, MSC filed its direct testimony and updated rate increase request. On August 23, 2012, the Division filed its direct testimony addressing all three dockets. Complainants did not file direct testimony. No party filed rebuttal or surrebuttal testimony, although the Commission's May 14, 2012 scheduling order and notice of hearings afforded time to do so.

In accordance with the May 14, 2012 scheduling order, the Commission held a hearing on October 16, 2012 to receive testimony on the complaints, the sale of MSC, and MSC's requested final rates. MSC and the Division presented testimony and exhibits. Complainants did not appear.

On October 17, 2012, beginning at 7:00 p.m., the Commission held a public witness hearing in the Huntsville Public Library, the location recommended by Complainants and identified in the Commission's May 14, 2012 scheduling order. Representatives of the Division and MSC were present to receive customer statements and answer questions along with the Commission's designated presiding officer; however, neither the Complainants nor any other MSC customers appeared at the public witness hearing.

### DISCUSSION, FINDINGS AND CONCLUSIONS

#### I. Docket No. 11-097-01

This docket addresses the complaints of customers regarding poor service and possible financial mismanagement. As noted above, Complainants did not appear at either the

evidentiary hearing or the public witness hearing. During earlier stages of the proceeding, however, Complainants stated the new owner, Mr. Bowden, had remedied the most pressing service issues and that they were satisfied with the improvements in service. The Division's investigation corroborates these statements. Through both its own assessment of the system and a review by an independent engineer, the Division confirmed the system repairs made by the new owner were appropriate, cost effective, and necessary.

Regarding the allegations of possible financial mismanagement, Complainants offered no evidence. The Division, nevertheless, investigated the allegations as thoroughly as possible given the condition of MSC's corporate records for the period prior to August 2011, when Mr. Bowden became the owner. Complainants allege possible comingling of MSC funds with Dr. Catanzaro's other holdings, and irregularities in the collection and use of connection fees and other charges. Conversely, MSC asserts Dr. Catanzaro did not improperly divert MSC funds to other purposes but instead heavily subsidized MSC operations. To evaluate these positions, the Division created a detailed estimate of MSC's potential revenues and operating expenses from 1984 through 2010, based on the best available information. This analysis shows MSC operated at a loss of over \$1.4 million during this period. Based on this analysis the Division concludes Dr. Catanzaro did not improperly divert MSC revenues to his personal use, but instead subsidized MSC operations during this period, likely in excess of \$1.0 million. Similarly, the Division found no evidence that MSC revenues were used to subsidize MSC's affiliated water company, Lakeview Water, or vice versa.

Based on the evidence presented, the Commission finds the deficiencies in service have been remedied. Moreover, the Commission finds no basis on which to conclude MSC

funds have been improperly expended or diverted. Accordingly the complaint and supplemental complaint are dismissed.

II. Docket No. 11-097-02

This docket addresses the transfer of MSC ownership from Dr. Catanzaro to Valley Utility Company, LLC, owned by Ray Bowden. The Division in its report notes the certificate of public convenience and necessity (“CPCN”) the Commission granted MSC in 1985 describes Dr. Catanzaro as the owner of all outstanding shares. The cost of the MSC system was funded by a \$457,000 loan from Dr. Catanzaro to MSC, repayable pursuant to a promissory note secured by a trust deed and a security interest in MSC’s property and equipment. The Commission’s 1985 order granting the CPCN requires Dr. Catanzaro to give 30 days notice to the Division of any intent to sell or assign the note or a controlling interest in MSC. The CPCN further expresses the Commission’s intent to conduct a hearing on any such proposed sale if the Division petitions the Commission to do so within 30 days of receiving the notice.

The Division did not petition the Commission for a hearing upon receiving notice of Dr. Catanzaro’s intent to sell MSC. Moreover, the Division has confirmed that MSC has satisfied its obligation under the promissory note through a private agreement with Ray Bowden and Valley Utility Company, LLC. Thus, MSC is no longer liable to repay the loan from Dr. Catanzaro or any interest that may be due. With the original \$457,000 loan satisfied, the Division asserts the transfer of ownership from Dr. Catanzaro to Ray Bowden’s Valley Utility Company, LLC is in the public interest and recommends the Commission approve the transfer.

The Division's recommendation is unopposed. It is supported by the Division's analysis as well as by the evidence of Mr. Bowden's efforts to restore the system to proper working order, following Dr. Catanzaro's departure from the state and failure to address the obvious service deficiencies. The transfer of ownership is in the public interest and is approved.

III. Docket No. 11-097-03

This docket addresses MSC's rate increase application. MSC testifies its new owner has extensive background in operating sewer and other plumbing-related entities. He functions as MSC's manager. When he became MSC's owner in July 2011, 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 testifies its accounting records for the period July 11, 2011, through March 12, 2012, show a total operating loss of over \$99,000. MSC projects annual revenue for 2012 at the rates in effect at the time it filed its application would be approximately \$33,000. MSC projects total operating expenses for 2012, plus depreciation and tax expense, will be slightly over \$115,000.

MSC maintains its proposed rates are necessary to enable it to recover its projected operating costs, to make needed system improvements, and to begin to develop a capital reserve. In addition, MSC proposes a special assessment to enable it to recover costs it incurred prior to the test year to make needed system repairs. The following table presents MSC's final requested rates/fees and the Division's recommendation. No other party submitted any recommendation.

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<b>Description</b>		<b>Requested by MSC</b>	<b>Recommended by Division</b>
Monthly System Expenses	System Fees	\$32.36	\$10.25
	Capital Reserve Fees	\$15.21	\$15.00
Total Monthly System Expenses (which is also the total monthly standby fee)	Standby Fees <sup>4</sup>	<b>\$47.57</b>	<b>\$25.25</b>
Monthly Usage Fees	Connected Customers	\$26.17	\$59.00
Total Monthly Fee for Connected Customers	Connected Customers	<b>\$73.74</b>	<b>\$84.25</b>
Special Assessment (One-Time Payment)	Connected & Standby	\$1,240.94	\$204.69
Connection Fee	Connected Under Existing Street	\$5,000.00	\$5,000.00
	Connected Before Street Installation	\$3,000.00	\$3,000.00
Hook-up Fee		\$300.00	\$300.00
Turn-on Fee		\$100.00	\$100.00
Turn-off Fee		\$100.00	\$100.00
Late Fee		18% per annum	18% per annum

<sup>4</sup> All owners of platted and recorded lots for which the connection fee has not been paid are obligated to pay the monthly standby fee according to the rate and fee schedules of the applicable tariff.

A. Final Rates and Fees

The Division testifies it has performed a detailed review of the expense, plant-in-service, and revenue projections supporting MSC's rate increase application. In general, the Division testifies MSC's evidence meets the requirements for approval of substantial increases in rates. MSC's expense and rate base projections are supported by detailed evidence of its recent operating expenditures. Based on its examination of MSC's accounting records and expense projections, however, the Division concludes certain adjustments to MSC's projections are warranted. The Division's adjustments are described in detail at pages 15 through 22 of Exhibit 1.0 to the pre-filed direct testimony of Division witness Mark Long (received into evidence as Hearing Exhibit #4).

Fundamentally, the Division proposes to recover more revenue through the monthly usage fee and less through the system fee that is paid by both connected and standby customers. Additionally, the Division believes a monthly fee for connected customers higher than MSC's request is necessary to meet a reasonable projection of test year operating costs. The Division testifies it recognizes rate increases of the magnitude it recommends are unusual. Nevertheless, the Division believes its recommended increases are necessary in this case due to the required level of operating expenses in relation to revenues and the vital need to establish a capital reserve fund. Notably, neither MSC nor any other party offered any rebuttal to the Division's recommendations. The Commission finds the Division's recommended rates/fees are warranted and adopts the rate/fee increases presented in the following table as just and reasonable.

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<b>Description</b>		<b>Approved Rate/Fee</b>
Monthly System Expenses	System Fees	\$10.25
	Capital Reserve Fees	\$15.00
Total Monthly System Expenses (which is also the total monthly standby fee)	Standby Fees <sup>5</sup>	<b>\$25.25</b>
Monthly Usage Fees	Connected Customers	\$59.00
Total Monthly Fee for Connected Customers	Connected Customers	<b>\$84.25</b>
Special Assessment (One-Time Payment)	Connected & Standby	\$204.69
Connection Fee	Connected Under Existing Street	\$5,000.00
	Connected Before Street Installation	\$3,000.00
Hook-up Fee		\$300.00
Turn-on Fee		\$100.00
Turn-off Fee		\$100.00
Late Fee		18% per annum

<sup>5</sup> All owners of platted and recorded lots for which the connection fee has not been paid are obligated to pay the monthly standby fee according to the rate and fee schedules of the applicable tariff.

1. Standby Fee

The Division's recommendations include the initiation of a standby fee for the owners of any recorded lots who have access to an installed sewer main but do not currently receive sewer service. In supporting this recommendation, the Division refers to MSC's obligation to maintain the system's capability to serve standby customers and the attendant costs MSC incurs. In analyzing MSC's operating expenses, the Division distinguished between "System Expenses" incurred to maintain the capability to serve all customers and "Usage Expenses" incurred depending on actual usage of the system. The Division used this analysis to determine an appropriate level of costs to assign to standby customers. The Commission concludes the Division's recommendations produce just and reasonable standby and usage rates.

2. Legal Expense

This expense category is treated separately in this order because on September 12, 2012, the Commission received a letter from Marsha Smith requesting the Commission to reduce by one-third the legal fees included in MSC's test year operating expenses. Ms. Smith is an MSC customer and purports to represent other MSC customers in making her request. Ms. Smith notes the level of expense billed by the two firms representing MSC in this matter exceeds \$112,000. She expresses concerns about duplication of effort and lack of billing details. At the hearing, counsel for MSC explained that one firm handles MSC's business transactions, including the transfer of ownership, while the other firm represents MSC in its regulatory proceedings. Counsel stated they have taken great care to avoid duplication of effort. They noted, as also mentioned by Ms. Smith, the test year legal fees are being amortized in rates over five years, in recognition of their extraordinary nature.

The Division examined the legal fees presented and made a downward adjustment of \$26,749 because this amount was for services rendered during 2010 and 2011. MSC did not dispute this adjustment. The Commission finds the legal expenses, as adjusted by the Division, to be reasonable. Because these expenses are being amortized over five years, MSC is directed to file new rates not later than June 1, 2017, reflecting the completion of recovery of the legal expenses that are being amortized.

3. Special Assessment

MSC requests to recover \$171,791.83 through a special assessment, covering various past, present, and future expenses. MSC submitted numerous invoices and estimates supporting the pertinent expenditures it seeks to recover through the assessment. They are described at pages seven through 11 of MSC witness Ray Bowden's testimony (received in evidence as Hearing Exhibit #1). The Division examined MSC's proposal, assigned each expense in question to one of four categories and recommended recovery of only part of the expenses through the special assessment.

The first expense category is comprised of general operating expenses MSC incurred in the initial months following the change in ownership. These are alleged to be expenses that exceeded the revenue generated through rates. These expenses are operating losses incurred from normal operations under the prior rate structure. The Division states these expenses, totaling \$47,695.70, are barred from recovery by the prohibition against retroactive ratemaking.

The second category involves replacement, improvement, and restoration of major capital assets necessary to make MSC services reliable, safe, and adequate. The

Division's analysis and the report of its independent engineer corroborate the need for these expenditures, totaling \$63,361.05. Due to the nature of these costs, the Division recommends they be added to MSC's rate base and recovered through depreciation expense, rather than as part of the proposed special assessment.

The third category addresses the costs of repairs and system improvements that are needed but have not yet been performed. The Division states these improvements should be completed as soon as possible. Because they are not recurring expenses, the Division recommends they be recovered through the special assessment and not through the rates/fees for monthly service. The expense amount to be recovered is \$39,710.08.

The fourth expense category is past due fees for services performed primarily in 2010 by certain MSC third-party contractors. As with the first category of expenses, the Division asserts these past due fees are not recoverable in rates. They are part of the net operating losses resulting from normal operating expenses that greatly exceeded MSC's revenues in 2010 and 2011.

The Commission finds the proposed special assessment to be reasonable and appropriate insofar as it addresses non-recurring expenses for repairs and system improvements that are necessary in the near term to maintain MSC's ability to provide safe, reliable, and adequate service, i.e., the category three expenses. Consequently, the recovery of \$39,710.08 through a one-time special assessment of an equal portion of this amount from each of the connected and standby customers is authorized. The assessment shall be billed to customers within 30 days of the date of this order and shall be due 30 days following the billing date. As stated by the Division, the recovery of past operating expenses is barred by the rule against

retroactive ratemaking; therefore, the expenses characterized above as category one and category four expenses are not approved. As to the capital improvements addressed in category three, the Commission authorizes \$63,361.05 to be transferred to rate base, as recommended by the Division.

B. Recovery of Interim Rates Deficiencies

The interim monthly rates currently in effect for connected and standby customers are less than the final rates approved in this order. As calculated by the Division, the difference is \$0.85 per month for standby customers and \$27.19 per month for connected customers. This monthly differential applies for the approximately five months the interim rates have been in effect, as of the date of this order. For standby customers, the entire undercollection (i.e., \$4.25) shall be billed to standby customers during the January 2013 billing cycle. For connected customers, the undercollection shall be recovered by adding \$27.19 to the monthly bill of each connected customer for the five monthly billing cycles beginning with the January 2013 cycle and ending with the May 2013 cycle. Customers whose status changes during the deficiency recovery period shall receive prospectively the monthly billing treatment applicable to their new status.

The final rates impose a connection fee of \$3000.00 when the connection is made before the street has been installed. The connection fee otherwise applicable is \$5000.00. The interim rates do not recognize this distinction and impose a \$5000.00 fee for all connections. MSC shall refund the difference to any customer who paid the higher interim connection fee for a connection made before the street was installed.

ORDER

1. Based on the evidence presented by MSC and the Division, the rates/fees approved in this Report and Order are just and reasonable, in the public interest, and shall become effective on the date of this order.
2. MSC is directed to file new rates not later than June 1, 2017, reflecting the completion of recovery of the legal expenses that are being amortized in rates over five years, as described in Section III. A. 2., herein.
3. The special assessment approved in this Report and Order shall be recovered as described in Section III. A. 3., herein.
4. The interim rates deficiencies identified in this Report and Order shall be recovered as described in Section III. B., herein.
5. Within ten days following the date of this Report and Order, MSC shall file revised tariffs reflecting the rates, fees, determinations, and decisions specified in this Report and Order, including the revised language specified by the Division at page 31 of Exhibit 1.0 to the pre-filed direct testimony of Division witness Mark Long (received into evidence as Hearing Exhibit #4).
6. The Division shall review the tariff revisions for compliance with this Report and Order, and shall report its findings to the Commission by memorandum filed in these dockets.

DOCKET NOS. 11-097-01, 11-097-02, AND 11-097-03

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DATED at Salt Lake City, Utah this 30<sup>th</sup> day of October, 2012.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
DH#237517

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30<sup>th</sup> day of October, 2012, a true and correct copy of the foregoing Report and Order was served upon the following as indicated below:

By U.S. Mail:

Ronald J. Catanzaro  
Mountain Sewer Corporation  
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Huntsville, UT 84317

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Huntsville, UT 84317

Frank and Pat Cumberland  
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Huntsville, UT 84317

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David and Marsha Smith  
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Administrative Assistant