

JUN 03 1992

224

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	DOCKET NO. UW-911041
Complainant,)	
)	FIRST SUPPLEMENTAL ORDER
vs.)	DENYING PETITION FOR
)	INTERIM RATES
ALDERTON-MC MILLIN WATER)	
SUPPLY, INC.,)	
)	
Respondent.)	
.....)	

PROCEEDINGS: Alderton-McMillin Water Supply, Inc. ("respondent" or "company") filed tariff revisions on September 13, 1991, designed to effect a general rate increase for water service of approximately \$172,000 annually. The Commission suspended the tariff filing on October 31, 1991.

On January 21, 1992, the company filed a Petition for Interim Rate Relief, seeking an order approving increased rates on an emergency interim basis pending final Commission action on the general rate increase filing. In this interim rate petition, the company requests immediate implementation of rates in the annual amount of \$45,669, spread to all customers by increasing each customer's base charge by \$2.88 per month.

HEARINGS: Hearings were held on the interim rate request on April 16, 1992, before Chairman Sharon L. Nelson, Commissioner Richard D. Casad, and Administrative Law Judge Elmer E. Canfield. The Commission received testimony from the parties at a morning hearing in Olympia and testimony from members of the public at an evening hearing in McMillin.

APPEARANCES: Respondent was represented by Robert E. Lundgaard, Attorney at Law, Olympia; the Staff of the Commission by Robert E. Simpson, Assistant Attorney General, Olympia; and the public by William A. Garling, Assistant Attorney General, Public Counsel Section, Seattle.

SUMMARY: The Commission denies the Petition for Interim Rates. The respondent has failed to carry its burden of proof. Extraordinary interim rate relief was not shown to be in the public interest.

I. PROCEDURAL HISTORY

On September 13, 1991, respondent filed tariff revisions designed to effect a general increase in its rates for water service in this state of approximately \$172,000. The Commission suspended this filing on October 31, 1991.

On January 21, 1992, respondent filed a Petition for Interim Rate Relief, seeking an order approving increased water rates on an emergency interim basis pending final Commission action on the general rate filing. Supporting testimony was not filed by respondent until February 28, 1992. The interim rate matter was heard April 16, 1992. Respondent is requesting interim rates in the approximate annual amount of \$45,669.

II. POSITIONS OF THE PARTIES

A. Company

The company presented testimony from James D. Bacon in support of its request for interim rate relief. Mr. Bacon is a consultant employed by the company on revenue requirements and other financial matters. In this interim filing, the company is requesting a revenue increase of \$45,669 on an annual basis, which amounts to a monthly increase of \$2.88 per customer.

The Alderton-McMillin Water Supply, Inc. is owned by Dennis Ridgway and his wife. It consists of a number of separate water systems and serves approximately 1,322 customers in Pierce County. According to Mr. Bacon, the company is in poor financial condition, i.e., it is not collecting enough revenue to meet its current operating expenses and its long term debt payments. As measures of the company's financial condition, Mr. Bacon calculated the company's current ratio (current assets over current liabilities) per books at December 31, 1991, to be 0.52 to 1; the company's earnings coverage ratio to be 0.85 to 1; and the company's interest coverage ratio to be 0.56 to 1. According to Mr. Bacon, these calculations demonstrate that the company is not able to meet its principal and interest payments from current operating income and cash flows. He further pointed out that the company's long term note to the Bank of Sumner is now due. Mr. Bacon speculated that the bank "may not want" to refinance this debt in view of the company's existing financial condition. No evidence from the bank was offered to support this position. Mr. Bacon further offered the opinion that, "If the bank fails to refinance the company and calls its note due this would put the company in serious financial jeopardy." (Ex. T-52, p.4)

B. Commission Staff

The Commission Staff presented the testimony of Daniel E. Sherry, WUTC Revenue Requirements Specialist. Mr. Sherry examined the books of the company for the calendar year 1991. He recommended approval of the requested interim rate relief, as proposed by the company in the monthly amount of \$2.88 per customer. His recommendation was based solely upon maintaining the financial integrity of the company; it does not include any

consideration of the company's service or management.

Mr. Sherry agreed with the financial ratios set forth by the company. Mr. Sherry also noted the \$85,293 note payable to the Bank of Sumner with a due date of April 15, 1992, and the company's overdue accounts payable. It was Mr. Sherry's opinion that respondent's earnings position will continue to decline without some rate relief.

Based on his examination of the company's books, Mr. Sherry determined that the current operating revenue is about equal to the total of the current monthly cash financial obligations, but he felt that the company would not have the ability to pay its financial obligations for the next few months because of a significant amount of overdue accounts, wages, and taxes payable. In his investigation, Mr. Sherry used anticipated monthly operating revenues of \$20,000 and anticipated monthly financial obligations of \$21,000 (cash operating expenses of \$17,000, plus principal and interest on debt of \$4,000). Mr. Sherry noted that the company had other outstanding financial obligations in the approximate amounts of \$37,000 of accounts payable and \$6,700 of wages payable and taxes payable.

C. Public Counsel

Public Counsel argued that interim rates were not needed or justified on this record. Thus, Public Counsel recommended that the Commission deny the company's request for interim rate relief as not being in the public interest.

Public Counsel contended that the Commission should consider the issues of service quality and prudence of management, along with the interim rate criteria set forth in Cause No. U-72-30, Washington Utilities and Transportation Commission vs. Pacific Northwest Bell Telephone Company. Public Counsel pointed to the company's service and management problems chronicled in the ratepayers' testimony and letters. Public Counsel urged the Commission to consider the ratepayers' deep-seated frustration, discontent, and total lack of confidence and trust in the company and its owner, Mr. Ridgway. Arguing that the cause of the company's inadequate operating income is "self-inflicted" by its own mismanagement, Public Counsel contended that this poor financial condition does not amount to an emergency. He further contended that the company has not taken prudent steps to address financial problems first recognized by the company in 1990 and that it has not taken substantial steps to remedy its service and water quality problems.

Public Counsel argued for denial even if the Commission decides not to consider service quality and prudence of management

issues. Public Counsel did not feel that an actual emergency financial condition was shown to exist due to the mere potential that the company's loan might be called by the Bank of Sumner. Further, Public Counsel questioned the Staff's use of rounded figures in describing the company's financial condition and argued that the company has a positive cash flow if actual figures are used. In short, Public Counsel argued that the company's financial condition was not shown to be an emergency situation which places it in clear jeopardy of financial crisis, within the meaning of the Pacific Northwest Bell interim rate criteria. Public Counsel thus urged the Commission to deny the company's interim rate request.

III. PUBLIC PARTICIPATION

The ratepayers of Alderton-McMillin overwhelmingly opposed the rate increase. A hearing was held on April 16, 1992, at McMillin for the purpose of taking testimony from members of the public. As with the public hearing in the surcharge filing, public turnout was large. Several hundred customers appeared. Thirty nine members of the public testified. Again, the testimony was opposed to the company's requested rate increase, including the request for interim rate relief. Also, the SAM (Subscribers of Alderton-McMillin) Association also opposed the company's request.

The ratepayers on the various Alderton-McMillin systems were angry and upset about the deplorable quality of the water and poor service they are receiving. They feel that their rates are already too high for what they receive in return. They object to paying still more to the same individual who has owned and managed the company for the past decade. They have lost faith, trust, and confidence in Mr. Ridgway. The ratepayers do not feel they will see any benefit from a rate increase while Mr. Ridgway runs the company. The customers' testimony demonstrated that they have experienced deplorable water quality and water service problems, and customer relations problems during Mr. Ridgway's decade of ownership, and that those problems continue largely unabated.

The complaints of the customers were numerous but similar and consistent. Many brought in water samples showing significant discoloration and impurity. There were complaints of iron and other elements in the water. Residents complained of the water's offensive taste and smell. Some residents testified that they believe the water caused health problems for them and their children. Many customers have installed water filters, which become clogged due to the impurities. Some customers absolutely refuse to drink the water. Many customers in the various Alderton-McMillin systems have resorted to the inconvenience and added expense of buying bottled water to drink. There were complaints of skin irritation and rashes when using the water for bathing.

Ratepayers have been forced on repeated occasions to go without water for extended periods of time. Customers have experienced these numerous water outages, and shut-offs for repairs, without notice from the company. Customers have had to do without working toilets, showers, and other modern conveniences.

The customers complained about damage to their appliances allegedly caused by the water. There were many complaints about stains on clothes and fixtures.

There are water pressure problems, as well as fire flow problems, on the various systems. Property owners in Chinook Estates are unable to build on their lots because a moratorium on building permits has been imposed due to the water-related problems.

There were also numerous complaints that Mr. Ridgway has charged excessively high hook-up fees. Customers pointed out that Mr. Ridgway himself, using his construction company, installed several of the water systems, and that he installed inadequately sized water main lines and insufficient fire hydrants. They questioned whether he performed the work he was paid to do in the first place. They questioned whether they are being asked to pay a second time for a system for which they have already paid through hook-up fees.

Customers complained that Mr. Ridgway's use of company funds has been questionable and imprudent. Mr. Ridgway has failed to keep promises to customers in the past regarding connections, improvements, and repairs. Customers have repeatedly been unable to contact Mr. Ridgway concerning service problems. Several complained that the company does not keep adequate office hours. Mr. Ridgway has failed to respond or return calls to customers. Based on their past experiences, many customers don't trust Mr. Ridgway.

In addition to the public testimony, written comments from ratepayers were included in the record as an illustrative exhibit. (Ex. 55) The record contains letters and petitions signed by several hundred ratepayers. The problems and concerns are similar to those summarized above and need not be repeated here.

The Commission appreciates the testimony and exhibits from ratepayers. This input affords the Commission a basis for understanding the feelings and concerns of the customers. Through this information, the Commission is made aware of the serious problems permeating the various Alderton-McMillin water systems. The Commission recognizes the ratepayers' opposition to the company's request for interim rates.

V. COMMISSION DISCUSSION AND DECISION

As required by the public service laws, the Commission regulates in the public interest, the rates, services, facilities, and practices of water companies under its jurisdiction. RCW 80.01.040. This necessarily involves a weighing of the interests of both the company and the ratepayers. This public interest standard applies to general rate cases, as well as requests for interim relief.

In considering the merits of the company's request for interim relief, the Commission must consider the criteria it has established in the past to evaluate such requests. It is well settled that the Commission has jurisdiction to entertain a petition for interim rate relief pending the outcome of a general rate increase request. In so doing, the Commission has consistently relied upon a series of criteria initially announced in Washington Utilities and Transportation Commission vs. Pacific Northwest Bell Telephone Company, Cause No. U-72-30, Second Supplemental Order, October 1972. Those criteria include consideration of: whether an actual emergency exists or whether interim rates are needed to prevent gross hardship or gross inequity; that mere failure of the currently realized rate of return to equal that approved is not sufficient standing alone to justify interim relief; the company's financial indices; whether denial would cause clear jeopardy to the utility and detriment to its ratepayers and stockholders; and appropriate weight to all salient factors. In the criteria, the Commission pointed out that interim rate relief is an extraordinary remedy and should not be granted in any case where a full hearing can be had and the general rate increase case can be resolved without clear detriment to the utility.

The above guidelines, although developed in a telecommunications case, have been used by the Commission in resolving interim rate requests of other types of utilities. Among the water company cases in which the Commission has referenced the criteria include Washington Utilities and Transportation Commission vs. Ludlow Utilities Company, Docket No. U-87-1550-T, Second Supplemental Order, February 1988, and Washington Utilities and Transportation Commission vs. South Bainbridge Water System, Inc., Docket Nos. U-87-1355-T and U-83-50, Second Supplemental Order, April 1988.

As the criteria specifically acknowledge, the financial items listed are not all inclusive. The Commission must ultimately regulate in the public interest, and a reasoned judgment must consider "all salient factors" on a case-by-case basis.

The Commission believes that among the salient factors that must be considered are the safety and adequacy of the service the company provides, and whether the company has ignored its public service requirements or violated the public trust. In Washington Utilities and Transportation Commission vs. Pacific Beach Water, Inc., Docket No. U-89-2953-T, April 1990, the Commission stated:

Respondent as a regulated public service company has the responsibility under RCW 80.28.010 to ". . . furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable." That section also provides that charges made, demanded or received ". . . shall be just, fair, reasonable and sufficient." In this regard, the need of the company for additional funds must be balanced against the concerns of customers that money tendered for services rendered be used in a prudent manner.

The limited record on the interim rate request is not fully developed concerning service quality and prudence of management. The interim rate record, however, does contain significant ratepayer evidence. We have considered the evidence presented by the ratepayers and the concerns they voiced, along with the other evidence of record.

After reviewing the evidence addressed to the interim rate request, the Commission concludes that the request should be denied. The company has failed to demonstrate that extraordinary relief is required. The company is admittedly in poor financial condition; it may not currently be in a position to make principal payments on long term loans or to pay down its accounts payable. On the other hand, the company is receiving sufficient revenue to pay its current operating expenses and make interest payments on loans. The company's ability to continue providing service to its customers is not shown to be at peril. The company speculated that "if" the Bank of Sumner fails to refinance, and "if" the bank calls its note due, then the company could be in serious financial jeopardy. The Commission is unwilling to grant extraordinary interim rate relief based on speculation. We are not persuaded that waiting for a full hearing and resolution of issues in the general rate case would cause clear jeopardy to the company and detriment to ratepayers and stockholders. The company did not demonstrate on the record that interim relief is justified.

The Commission feels compelled to make some additional comments. The record presented in this interim rate request raises

serious concerns about whether the company is meeting its obligation to supply service that is safe and adequate, and is managing its revenue in a prudent manner. Although these concerns do not serve as the basis for denying this interim rate request, they do cause the Commission to be especially careful in judging whether the company has met its burden of demonstrating the need for extraordinary relief.

When it analyzes the complete record in the general rate case, the Commission will consider the company's duties as to rates, services, and facilities set out in RCW 80.28.010. The Commission will balance the financial needs of the company against the interests of the ratepayers in receiving safe and reliable service at rates that are just and reasonable. The Commission may deny the proposed general rate increase if it results in rates which are excessive for the quality of service provided.

Finally the Commission notes that it faces unique challenges when regulating water companies, as compared with other public service companies. For instance, the issues in respondent's general rate increase filing include consideration of the purity, quality, volume, and pressure of the water supplied by the company. The legislature has specifically recognized these additional concerns. The legislature has passed laws requiring water companies to comply with state board of health standards adopted under RCW 43.20.050(2)(a) and department of health standards adopted under chapter 70.116 RCW. Failure of a water company to timely comply with Commission-ordered water or service improvements can ultimately result in the company being placed in receivership. RCW 80.28.030; RCW 80.28.040.

The Commission's final order in this matter will address the full range of issues presented by the company's general rate increase filing, based upon a full and complete record.

FINDINGS OF FACT

Having discussed in detail all material matters inquired into, and having stated findings and conclusions, the Commission now makes the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate findings are incorporated by this reference.

1. The Washington Utilities and Transportation Commission is an agency of the state of Washington vested by statute with authority to regulate rates, rules, regulations, practices, accounts, securities, and transfers of public service companies, including water companies.

2. Respondent Alderton-McMillin Water Supply, Inc. is a public service company engaged in the business of furnishing water service to customers within the state of Washington, and, as such, is subject to regulation by the Washington Utilities and Transportation Commission.

3. On September 13, 1991, the company filed tariff revisions designed to effect a general rate increase for water service in this state. The proposed rates are designed to increase gross annual revenues by approximately \$172,000. The Commission suspended the filing by order entered on October 31, 1991.

4. On January 21, 1992, the company filed a Petition for Interim Rate Relief. In this interim rate request, the company is requesting immediate implementation of an annual increase of \$45,669. The company requests that this interim increase be spread to all customers by increasing each customer's base charge by \$2.88 per month.

5. Hearings were held on the company's request for interim rate relief on April 16, 1992. Evidence from the parties was taken at the 9:30 a.m. hearing in Olympia and evidence from members of the public was taken at the 6:00 p.m. hearing in McMillin.

6. The evidence does not support the interim rate request. The company has sufficient current operating revenue to cover current monthly cash financial obligations. Its lender has not indicated its intentions with regard to the note that is now due, and the company has not indicated that it anticipates unusually large expenses or construction projects which would require outside financing prior to a decision in the general rate case. The company has not shown that delaying a decision on a rate increase until a full hearing can be had and the general case can be resolved will cause clear jeopardy to the utility and detriment to its ratepayers and stockholders.

From the foregoing findings of fact, the Commission enters the following conclusions of law.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the parties and subject matter of this proceeding.

2. The Petition for Interim Rate Relief filed by the respondent on January 21, 1992, should be denied. The respondent has failed to carry its burden of proof. Interim rate relief was not shown to be in the public interest.

On the basis of its analysis of the evidence, and the above findings and conclusions, the Washington Utilities and Transportation Commission enters the following order.

ORDER

IT IS ORDERED That the company's January 21, 1992, Petition for Interim Rate Relief is denied.

DATED at Olympia, Washington and effective this 3rd day of June 1992.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD B. CASAD, Commissioner



A. J. PARDINI, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within ten days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).