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Decision 91-07-045 July 24, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of Mountain Charlie Water Works )  
to increase rates to surcharge )  
customers for participation in the )  
Mountain Mutual Water Company's )  
Montevina Pipeline Project. )

**ORIGINAL**

Application 91-03-051  
(Filed March 25, 1991)

Wester Sweet and Mark Lew, Attorneys at Law,  
for Mountain Charlie Water Works, applicant.  
Donald McCrea and Tom Smegal, for the Commission  
Advisory and Compliance Division, Water  
Utilities Branch.

INTERIM OPINION

Statement of Facts

General Background

Mountain Charlie Water Works (Mt. Charlie) is a small privately owned Santa Cruz mountain water system constructed on the Santa Cruz County side of the summit which first came under Commission regulation September 10, 1987 as a result of Decision (D.) 87-09-032 following consumers' complaints. Headed by Wester Sweet, Mt. Charlie serves 137 active metered connections with an obligation to serve an additional 12 parcels in its service area.

With water obtained from a well and various mountain creek sources, and with limited transfer capability across rugged mountain terrain, Mt. Charlie's system has been vulnerable in recent years to recurrent drought. This has required it to regularly purchase and haul water with stringent conservation. The 1989 Loma Prieta earthquake devastated the Mt. Charlie system along with most other of the Santa Cruz mountain small water systems. While temporary tanks and patched mains have restored service

generally, permanent replacement tanks will be required and additional water sources must be obtained to restore Mt. Charlie to full service.

The Montevina Pipeline

A positive result of the 1989 earthquake for mountain residents was the construction of the 21,000-foot, 8-inch Montevina Pipeline from San Jose Water Company's Montevina treatment plant above Lexington Reservoir paralleling Highway 17 to Holy City. Built with Federal Emergency Management Agency and Office of Emergency Services' grants, augmented by a 30-year Department of Water Resources' (DWR) loan at 8-1/2% to Redwood Mutual Water Company (Redwood), the pipeline was completed at a cost of approximately \$2.7 million. Redwood is the initial owner. Although there appears to be no written federal or state requirement that it be a shared resource, the pipeline has capacity to deliver water for approximately 1,500 homes. Redwood, with 388 connections, wants to share the resource with other water companies, but, as a mutual water company exempt from regulation by the Commission and wanting to maintain that exemption (See Public Utilities (PU) Code § 2705),<sup>1</sup> it has decided to form a new mutual water company, Mountain Mutual Water Company (Mountain), to be the owner and operator of the Montevina Pipeline. Accordingly, both privately owned public utilities and mutuals could join Mountain and get access to pipeline water. Of the 14 companies other than

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1 As relevant here, PU Code § 2705 provides that any corporation or association organized for the purpose of delivering water to its stockholders or members at cost, including use of works for conserving, treating, and reclaiming water, and which delivers water to any one except its stockholders or members or to the state or any agency or department thereof, to any city, county, school district, or other public district, or to any other mutual water company, at cost, is not a public utility, and is not subject to the jurisdiction, control, or regulation of the Commission.

Redwood, all except Idylwild Water System and Mt. Charlie are mutuals.

**Mt. Charlie's Problem With Continued Reliance on Creek Water**

Increasingly stringent Environmental Protection Agency and Department of Health Service requirements associated with the federal Safe Drinking Water Act Amendments of 1986 require that all community water systems relying on surface water sources provide multiple barrier treatment including filtration and disinfection by June 30, 1993. There are no exceptions. The requirements include preparation of an engineering report on the capacity of the water treatment plant to treat the specific source waters available, the installation of facilities to store and condition backwash water prior to reuse, the provision for certified water treatment plant operation, and the capability of meeting ongoing daily monitoring and operating requirements. The construction of a new water treatment plant requires a significant capital investment and also imposes additional operating expenses for power, chemicals, and increased operator surveillance and attention.

The owners of Mt. Charlie do not have the funds to enable it to meet the present requirements of adequate supply, much less the forthcoming federal and state requirements. While at present it does chlorinate, it has no filter or treatment capability. It is already diverting far more creek water than its water rights permit allows. Accordingly, Mt. Charlie's management believes that the Montevina Pipeline connection with its certainty of reliability and quality is the most feasible solution to meet present and future requirements and quality.

The Water Branch staff is also convinced that Mt. Charlie should connect to the Montevina Pipeline. It must have substantial additional water supplies and upgrading to meet the coming standards. The funds for either upgrading of present sources and treatment, or to join Montevina must come from the ratepayers as

Mt. Charlie lacks the capital or ability to obtain them, and the Montevina connection in staff's view is the best answer.

**Mountain's Initial Period  
Administrative Costs Assessment**

Each applicant water company, mutual or privately owned, was required to pay a \$1,500 application fee to become a member of Mountain. Mt. Charlie was one of the 14 water companies who paid this fee to join Mountain.

But in addition to this membership fee, until Mountain owns the pipeline and can obtain revenues from the member companies related to the resale of water to them, Mountain has imposed a \$20 per month assessment against all active water service connections for its 14-member companies. This assessment is to pay Mountain's ongoing administrative expenses (legal costs, consultant costs, an engineering water master plan, insurance, and other start-up expenses).<sup>2</sup> The mutual companies began surcharging their members starting February 1991. The assessment initially is to run nine months. It is anticipated that after that, it can be reduced. Start of assessment through the two privately owned public utility companies was deferred to allow each company to obtain Commission authorization to make the assessment surcharge, but their assessment period at \$20 per connection for each month must also run nine months.

While the Water Branch staff has some concerns with the rather substantial legal and consultant fees incurred and budgeted

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<sup>2</sup> Redwood, the largest of the Mountain mutuals, during 1989 and 1990 advanced more than \$100,000 toward formation of Mountain and construction of the pipeline, and will be reimbursed a pro rata share of these advanced costs by Mountain as part of the transfer of pipeline ownership after a detailed accounting. Meanwhile, since February 1991, Redwood has received a \$7,000 monthly credit against its monthly assessment fees to pay a portion of the anticipated reimbursement of advanced costs.

for the year by Mountain, the Branch believes that Mt. Charlie's membership in Mountain is necessary, and therefore recognizes that to retain membership Mt. Charlie is obligated to pay all necessary and reasonable charges required by Mountain. Nonpayment of any obligation to the mutual is grounds for expulsion. The Branch agrees that the assessment per connection should be paid by Mt. Charlie by means of a monthly \$20 surcharge applicable to all metered Mt. Charlie customers regardless of whether they are currently paying service charges or receiving water service; however, at this time the Branch would authorize a surcharge for an initial period of only nine months while requiring Mt. Charlie's management to make progress on a feasibility study for an intertie, if possible on a joint basis with two neighboring mutuals.<sup>3</sup>

The Present Application

Mt. Charlie filed the present application on March 25, 1991, noting therein that the surcharge sought would cover first phase funding, and that subsequent phase surcharges would be needed

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3 Negotiations are under way between Mt. Charlie, Ridge Mutual Water Company (Ridge) (71 connections), and Stagecoach Mutual Water Company (Stagecoach) (7 connections) to use an easement held by Stagecoach along Summit Road from Redwood's 125,000-gallon Reservoir Tank No. 5 to Mt. Charlie's service area. The existing Stagecoach's 4-inch pipeline is being considered for upgrading to 6 inches. An engineering study will be required, and Ridge is engaging an engineering firm (Bissell & Karns out of Danville) with the costs to be shared on a pro rata basis based on connection count. While the 8-inch Montevina Pipeline extends to Redwood Estates near Holy City, a new 6-inch line then carries the pumped water up to Redwood's Reservoir No. 2. From there a 4-inch Redwood-owned line brings the water to Redwood's 125,000-gallon No. 5 reservoir near Summit Road. Bissell & Karns on June 3 began a study to determine what upgrading would be required, including a possible tank farm adjacent to Reservoir No. 5 on Redwood land, to serve Mt. Charlie, Ridge, and Stagecoach, as well as Redwood's 84 customers presently served out of that reservoir. Mt. Charlie has been using the services of a California registered civil engineer in a consulting capacity to help it make preliminary assessments.

to pay for the engineering study and construction of the intertie needed to connect Mt. Charlie's system to Mountain's source point. In April Sweet asked for a delay in processing the application to enable him to look further into the procedures involved in Mountain's Board of Directors and voting procedures in that Board. This accomplished, Sweet obtained two votes on the Mountain Board for Mt. Charlie. On May 9, 1991 Sweet, through Branch staff, advised the administrative law judge of his readiness to proceed with the application.

Public Hearing May 23, 1991

A duly noticed public hearing was held Thursday evening, May 23, 1991, in the gymnasium of the Loma Prieta School on Summit Road in the Santa Cruz Mountains above Los Gatos. Approximately 30 ratepayers attended. Mt. Charlie's testimony was presented through Wester Sweet; Dyer Stickney of DSS General Engineering Contractors; William A. Johnson II, Consulting Civil Engineer; Thomas Summers, president of Redwood; and Robert Hansen, consultant to Mountain as well as Redwood and several other of the mutuals intending to participate in the Montevina Pipeline project. Staff presented its comprehensive report on the application through engineer Tom Smegal. Customers Jones, Musladin, Datoe, Yandow, Parker, Silva, Bruga, Strabel, Tucker, and Merrell presented illuminating questions which helped for an understanding of the problems and proposed solutions. At close of the hearing there was a unanimous showing from those present in favor of Commission authorization of the proposed surcharge. The application was then submitted for decision.

Discussion

The basic question that faces the Commission, Mt. Charlie's management, and the ratepayers is whether or not this small mountain water utility should continue its membership in Mountain and intertie to obtain reliable treated water through its membership in the mutual from San Jose Water Company, or whether it

should abandon its application fee in Mountain and face the uncertainties and large costs of investment in a modern water treatment plant, and also seek additional sources of water in the Santa Cruz mountains.

We believe that in reality there is no choice open for Mt. Charlie in this situation. The Montevina Pipeline opening is a very fortunate opportunity. The past five years have shown that reliance upon wells and the Mt. Charlie and Miller Creek sources can only be ephemeral, even assuming that Mt. Charlie's present water permit could be amended to authorize very substantially larger withdrawals and extractions. Further, the stringent water treatment requirements mandated under federal and state laws will require very heavy investment in filtration and disinfection treatment equipment in the immediate future. This new equipment will necessitate the employment or training of operational personnel skilled and licensed in operation and maintenance of the equipment, as well as monitoring and standby capability. And multiple sources may require duplication of treatment plant as well.

Mt. Charlie does not have the capital or borrowing resources necessary to fund major investment in treatment facilities, and also to fund the distribution system rebuilding, which must follow under either option. It must rely upon either Safe Drinking Water Bond Act loans or direct ratepayer assistance in the form of short-term surcharges. The utility has a ranking on the DWR's prioritized listing of projects for 1991. Financing for part of the costs of an intertie may be obtained from that source, but time is of the essence. Other applicants for Montevina Pipeline water are knocking on the door, and as either public entities or mutuals, they can act quickly. In D.89-11-069 the Commission allowed a three-month surcharge per customer to fund an engineering conceptual study and Boyle Engineering of Sacramento developed "Reconnaissance Level Cost Estimates" for a number of

alternative suggestions to increase Mt. Charlie's water supply. The Montevina Pipeline was the lowest estimate on a go-it-alone basis. At present there is under consideration a joint project involving Ridge and Stagecoach mutuals which would proportionately reduce the costs. Mt. Charlie must move swiftly to take advantage of opportunities.

Accordingly, in that Mt. Charlie must either make the \$20 monthly per connection surcharge to remain a mutual member or be dropped, we will authorize the utility to initiate and collect that surcharge immediately. But we will limit the collection of the surcharge to nine successive months. If Mountain continues an assessment beyond that time Mt. Charlie may seek an amendment to the order that follows to accommodate such requirement. As connection to the Montevina Pipeline would be beneficial to all in the Mt. Charlie system, each meter should be billed the surcharge amount whether or not it currently receives water or pays a service charge.

Mt. Charlie's management will also be placed on notice that within 60 days it is to provide Branch staff with a signed agreement between Mt. Charlie and an engineering firm for a feasibility study of connection to either Redwood's Tank No. 5 or a tank farm as a point of supply; an agreement with Ridge or Stagecoach or both for a joint pipeline project to Mt. Charlie's service territory; and a contract with an engineering firm for the design work on such a pipeline. Mt. Charlie must also present staff with a timetable for connection construction work. Upon compliance with the foregoing, further public hearing will be held to determine the appropriate surcharge to accommodate them.

The present proceeding will remain open for these purposes.



Comments on the Proposed Decision of the ALJ

As provided in PU Code § 311, the Proposed Decision of ALJ John B. Weiss was served on the parties to this proceeding. No party submitted comment.

Findings of Fact

1. Mt. Charlie is a water public utility corporation subject to regulation by this Commission.

2. Already substantially overdrawing under provisions of its water permit, and having had to purchase and haul water in each of the past five years to meet minimal requirements of its customers, and lacking any filtration or treatment facilities other than basic chlorination, Mt. Charlie urgently requires additional, reliable, and safe water sources to meet present and future needs.

3. Faced with coming stringent water filtration and treatment provisions mandated by federal and state health authorities, Mt. Charlie must either switch and connect to an alternative safe and reliable treated water source, or itself develop additional sources and install and maintain costly water treatment plant.

4. Mt. Charlie lacks the funds and/or borrowing capacity to be able to go it alone in development of an independent utility-owned safe and reliable water supply and treatment plant.

5. The Montevina Pipeline project has brought a safe and reliable treated water supply to the general vicinity of Mt. Charlie's service area, and in the form of the Mountain Mutual Water Company offers a present opportunity to participate as a mutual member company to obtain a secure dependable source of safe potable water for the future.

6. As an initial step, Mt. Charlie has joined Mountain, but now as a mutual member is required to meet its obligations to the mutual.

7. Ratepayers would probably have to advance whatever funds would be required to bring Mt. Charlie into present and future

compliance with federal and state requirements, either as a mutual member company or as a self-sufficient independent utility, although the possibility exists for some assistance from Safe Drinking Water Bond Act loans.

8. Mountain, to meet its initial administrative costs and ongoing expenses pending ultimate full operations, requires its member companies to assess their customers a \$20 monthly assessment per connection for a nine-month period, with the probability of a reduced assessment thereafter.

9. At the May 23, 1991 evening hearing of the captioned application, there was no opposition from ratepayers to Commission authorization to Mt. Charlie to impose a monthly per connection assessment for a nine-month period on ratepayers.

10. There would be savings in cooperative feasibility studies and in engineering and construction of an intertie, if undertaken in conjunction with Ridge and Stagecoach.

11. Time is of the essence if Mt. Charlie is to participate in such cooperative efforts with Ridge and Stagecoach.

Conclusion of Law

The application to immediately initiate the stated monthly surcharge should be granted as expeditiously as possible.

INTERIM ORDER

IT IS ORDERED that:

1. Mountain Charlie Water Works (Mt. Charlie) is authorized to impose a \$20 per month per connection surcharge for remittance to Mountain Mutual Water Company for the latter to fund operations and administrative expenses.

2. The surcharge shall be for a period of 9 months, and will be applicable to all metered customers regardless of whether they are currently paying service charges or receiving water service.

3. Within 60 days of the effective date of this order, Mt. Charlie shall furnish the Executive Director of this Commission with a copy of a signed agreement between Mt. Charlie and an engineering firm for a feasibility study of an interconnection pipeline project, if practical in conjunction with Ridge Mutual Water Company and/or Stagecoach Mutual Water Company, to intertie to Mountain Mutual Water Company's facilities, whether at Redwood Mutual Water Company's Tank No. 5 or via a tank farm alternative.

4. Following the feasibility study, as soon as practical Mt. Charlie shall enter into a contract to design the intertie pipeline project, preferably in conjunction with the 2 mutual water companies referred to in Ordering Paragraph 3, and shall furnish the Executive Director of this Commission with a copy of the executed contract.

5. Within 60 days of the effective date of this order, Mt. Charlie shall furnish the Executive Director of this Commission with a timetable for construction work on the intertie pipeline. This schedule shall not exceed 365 days to completion from the effective date of this order.

6. This proceeding is not closed.

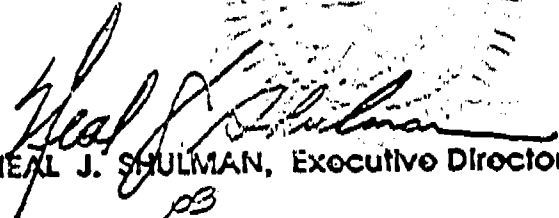
This order is effective today.

Dated July 24, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President  
G. MITCHELL WILK  
JOHN B. OHANIAN  
DANIEL Wm. FESSLER  
NORMAN D. SHUMWAY  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY

- 11 -

  
NEAL J. SHULMAN, Executive Director  
PB