

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**RESOLUTION NO. E-3629  
SEPTEMBER 16, 1999**

**RESOLUTION**

**Resolution E-3629. Mountain Utilities requests approval of a Methyl Tertiary Butyl Ether (MTBE) Response Memorandum Account (MRMA). Approved with modifications.**

**By Advice Letter No. 10 Filed June 28, 1999**

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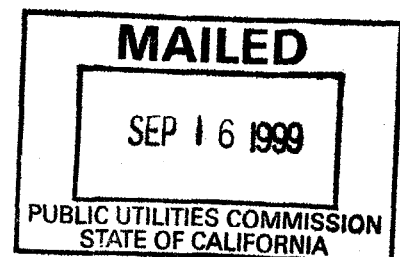
**SUMMARY**

By Advice Letter (AL) No. 10 filed June 28, 1999, Mountain Utilities (MU) requests authority to implement a Methyl Tertiary Butyl Ether (MTBE) Response Memorandum Account (MRMA). The Kirkwood Meadows Public Utility District (the PUD) protested AL 10. MU wants to track expenses incurred in performing environmental response measures due to the existence of MTBE. This resolution approves AL 10 subject to certain conditions.

**BACKGROUND**

Decision (D.) 97-12-093 addressed the application of California electric industry restructuring legislation to regulated utilities such as MU that were not specifically named in the legislation. The decision ordered MU to file a general rate case (GRC) application no later than December 21, 1998. MU filed Application (A.) 99-01-037 (MU's GRC) on January 29, 1999 to comply with that decision.

A settlement agreement in MU's GRC is currently under Commission consideration. In GRCs, the Commission reviews service quality, managerial decisionmaking and effectiveness, the adequate level of service facility investment, and other rate-related management decisions. Groundwater contamination and environmental externalities and their corresponding rate impacts are issues of major import best addressed in a GRC proceeding. In such a proceeding, after evaluating all of the factors management considered in making its decisions, the Commission can most effectively address the disposition and cost allocation of externalities such as hazardous waste and wastewater contamination.



In this AL, MU proposes to establish a memorandum account, the MRMA, to record expenses caused by "... environmental response measures flowing from the existence of MTBE, diesel and gasoline in the groundwater at Kirkwood."

Although its investigation is currently underway, MU acknowledges that the MTBE contamination may be traceable to its former diesel fuel underground storage tanks. In order to determine the causes of and liability for the contamination, MU seeks ratepayer funding for the following items: consulting and professional fees; fees for planning and executing response measures; costs for plant and equipment; and unspecified interest costs related to "financing of such capital expenditures."

### **NOTICE**

Notice of the AL was made by publication in the Commission's Daily Calendar and was distributed to parties in accordance with Section III-G of General Order 96-A.

### **PROTEST**

The PUD filed a timely protest on July 16, 1999.

In its protest, the PUD does not generally oppose the request. However, the PUD requests that costs booked to this account be expressly reviewed by the Commission before recovery is allowed.

In its timely response to the protest, filed on July 21, 1999, MU indicates that it needs the MRMA immediately so it can respond to the environmental issues raised by MTBE. MU indicates that it included environmental response costs in the GRC application, exclusive of the MTBE issue, which had not yet emerged in its more serious form. In its response, MU indicates that the response costs for MTBE contamination will range from \$750,000 to \$1,500,000.

### **DISCUSSION**

The Energy Division has reviewed MU's AL 10 and the PUD's protest. It also reviewed the suggested language proposed by both the PUD and MU and obtained additional information about the utility's AL through a data request

Commission practice has previously held that responsive measures to environmental externalities like MTBE contamination are a utility's normal and expected obligation. However, MU has demonstrated a hardship need that requires an exception to Commission practice.

We believe that, in the future, as part of its ongoing obligation to provide safe and reliable electric service, MU must consider (and plan for) externalities and contingencies to its operations, as this is a fundamental responsibility for any utility. As such, reasonable expenses

such as those required for legal expenses and consulting fees, should be covered in utility base rate revenues and litigated through the GRC process. We hesitate to include those costs in this relief. Indeed, absent MU's urgent need and request for immediate consideration, memorandum account treatment of traditional GRC costs, during a utility's rate case proceeding would not be appropriate.

Despite our hesitation, we find that in order to prudently provide a portion of the emergency relief, it is appropriate to cap the amount that MU can book to the memorandum account. This cap is based on estimates for capital expenditures and contract work provided to ED and shall serve as the maximum amount of costs eligible for recovery through this mechanism.

### COMMENTS

The draft resolution of the Energy Division in this matter was mailed to the parties in accordance with Public Utilities Code Section 311(g). Comments were filed on August 10, 1999 by MU, who requested that the Commission revise the Draft Resolution and approve the requested Memorandum Account.

### FINDINGS

1. Advice Letter 10, filed on March 3, 1999, requests approval of an MRMA to record the costs of addressing the externalities of MTBE diesel and gasoline in the groundwater at Kirkwood Ski Resort.
2. MU's advice letter is approved subject to its acceptance of specified modifications to its tariffs as described herein.
3. The Kirkwood Meadows Public Utility District (the PUD) has filed a timely protest to AL 10. The PUD's protest is substantive in nature and suggests language that would require the Commission to review costs if it approves the AL.
4. The PUD's protest is granted. MU is required to limit costs booked to the MRMA to those specifically related to the cleanup of MTBE as outlined in this resolution, and those costs will be subject to further Commission scrutiny and review.
5. Legal and consultant fees are a normal and expected obligation of every utility and should be recovered through base rate revenues and litigated through the general rate case process.
6. The Commission should provide limited relief to MU by creating a restricted MRMA. Absent MU's need for immediate consideration, establishment of a memorandum account to

track expenses associated with a utility's fundamental obligation would not be appropriate. Such expenses, if found to be reasonable, should be recovered through base revenues.

7. The Commission should cap the amount MU can allocate to the MRMA.
8. Section 14 should be modified to read as follows:

- Section 14, paragraph A should read:  
"The purpose of the MRMA is to record and track expenses and costs incurred as a result of performing environmental response measures due to MTBE, diesel and gasoline in the groundwater at Kirkwood. Such expenses and costs shall be limited to capital and contract work expenses. Costs for professional and consulting fees (including legal) shall not be included".
- Section 14, paragraph D.1. should read:  
"A monthly debit entry equal to the itemized, recorded amount of costs incurred to perform necessary MTBE-remediation and related environmental response measures. Such costs shall be limited to a cap of \$373,000 for capital expenditures and \$411,400 for contract work, including environmental response plant and equipment costs."
- Section 14, Paragraph D.2. should be stricken.
- Section 14, Paragraph D.3. should be stricken.
- Section 14, Paragraph D.4. should be stricken.

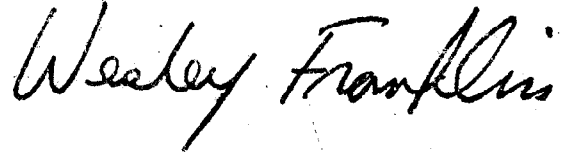
**THEREFORE, IT IS ORDERED that:**

1. MU's advice letter is approved subject to its acceptance of specified modifications to its tariffs as described herein.
2. If MU accepts the modifications described herein, it shall supplement its advice letter to make the tariff language changes set forth within 20 days of the effective date of this resolution. Failure to provide the specified supplemental tariff language in the time required shall nullify this order.
3. MU is authorized to book in the MRMA only those costs directly related to the cost categories and dollar amounts specified in the findings section of this resolution.

This Resolution is effective today.

September 16, 1999

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on September 16, 1999 ; the following Commissioners voted favorably thereon:



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WESLEY M. FRANKLIN  
Executive Director

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
JOEL Z. HYATT  
CARL W. WOOD  
Commissioners