

Service Date: March 16, 2005

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE Commission
OF THE STATE OF MONTANA

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IN THE MATTER of WILDER)	UTILITY DIVISION
RESORTS, INC., d/b/a Fairmont Hot Springs)	
Resort, Complaint by Dan G. Wheeler)	DOCKET NO. D2004.11.175
)	ORDER NO. 6635

PROCEDURAL ORDER

NOTE: PLEASE READ CAREFULLY. PROVISIONS OF THIS ORDER MAY MODIFY PREVIOUS Commission PROCEDURAL AND SCHEDULING POLICY. THIS IS NOT A PROPOSED ORDER. RECONSIDERATION IS AVAILABLE FOR GOOD CAUSE.

Introduction

1. On December 29, 2004, the Montana Public Service Commission (“Commission”) issued a Notice of Commission Action informing the parties that it had denied the Motion to Dismiss filed by Wilder Resorts, Inc. d/b/a/ Fairmont Hot Springs Resort (“Wilder”) on December 6, 2004. In the Notice of Commission Action, the Commission identified the issues in this docket to be tariff interpretation – what irrigation water was included in the annual charge imposed on June 1, 2004 – and tariff enforcement – how much of the metered water delivered after September 1, 2004 should have been delivered under the previous tariff provisions. Associated with these issues is the determination of a remedy.

2. The Public Service Commission (PSC), itself or through delegation to Commission staff, hereby establishes the procedure and schedule to be followed in the above docket. Any request for reconsideration of this Order must be submitted to the Commission within 10 days of the service date above. A request for reconsideration will be scheduled for the Commission's next available business meeting following the request and the parties will be informed of the action taken. This Order is effective immediately and remains effective unless and until modified by action of the Commission.

Schedule

3. All dates listed in the following schedule are receipt dates (filing and service) unless otherwise specified. Dates prior to the date of this order are for informational purposes only. Dates and procedures after the date set for hearing are subject to change at the close of hearing. Discovery requests on either party may be submitted at any time up to the discovery date fixed by this schedule. Discovery requests may be submitted by Commission staff at any time subsequent to date of the Notice of Complaint and prior to the final day for such discovery; discovery requests may be submitted by the complainant at any time subsequent to the date of the Notice of Complaint and prior to the final day for such discovery. Any discovery request submitted at least 10 days prior to an applicable deadline must be answered no later than 10 days after receipt. All other discovery requests must be answered by the response date fixed by this schedule.

- (a) March 25, 2005 Final day for submission of written discovery to either party
- (b) April 8, 2005 Final day for either party to respond to written discovery
- (c) April 15, 2005 Final day for depositions
- (d) April 22, 2005 Final day for Pre-hearing Briefs
- (e) April 27, 2005 Hearing commences and continues from day to day until concluded
- (f) May 16, 2005 Final day for simultaneous Post-hearing Briefs
- (g) May 23, 2005 Final day for simultaneous Post-hearing Response Briefs
- (h) June 15, 2005 Target date for Final Order by Commission

Ex Parte Communications

4. This proceeding is a contested case proceeding. In contested case proceedings most *ex parte* communications are prohibited. An *ex parte* communication is one between (i.e., to or from) a Commissioner and any person associated with a party in the contested case, when the communication involves the contested case or an issue in the contested case and all other parties to the contested case have not been given a reasonable opportunity to participate in the communication. PSC Commissioner receipt or conveyance of *ex parte* communications is

prohibited by law. § 2-4-613, MCA. Party receipt or conveyance of *ex parte* communications is prohibited by law. Id. A few categories of *ex parte* communications, some pertaining to procedure and scheduling, may be allowed by law and are not prohibited (e.g., emergency motion for extension of time). Id. Any oral, written, electronic, or other form of communication of any kind, between (i.e., to or from) a PSC Commissioner and any person associated with any party to a contested case pending before the Commission may be or may include, inadvertently or otherwise, a prohibited *ex parte* communication. Parties and Commissioners being ever alert to this possibility, the prohibition applicable, and the corrective action necessary is extremely important in regard to any face-to-face, phone, letter, e-mail, or other encounter involving a party and a Commissioner.

Procedure

General

5. Unless otherwise stated in this Procedural Order the procedure governing this contested case is set forth in applicable provisions of: (a) Title 69, MCA, public utilities; (b) Title 2, Chapter 4, MCA, MAPA; (c) ARM Title 38, Chapter 2, procedural rules of the Commission; (d) tariffed procedures; and (e) previous Orders of the Commission bearing specifically on the procedure and issues in this docket, if any.

Service and Filing

6. Copies of all pleadings, motions, discovery requests, discovery responses, pre-filed testimony, briefs, and other documents shall be filed with the Commission and served on all parties. In the case of a filing directed to the Commission, such as motions, testimony, and briefs, the original and 10 copies shall be filed. Service upon the parties shall be upon each party's attorney of record, if any, or upon such party and such other individuals as may be reasonably designated by the attorney of record. The parties may limit service of discovery responses to service on the party making the discovery request, the Commission (original and 10 copies, unless waiver is obtained), and parties specifically requesting service of discovery responses.

7. Service and filing by means of facsimile transmission is prohibited. Deadlines for service and filing are deadlines for the service and filing of the original and copies as required.

Discovery

8. The term "discovery" includes all forms of discovery authorized by rules of the Commission. The term "written discovery" as used in this order includes data requests. The Commission urges all parties to conduct discovery through the use of data requests as the preferred method of discovery.

9. The Commission directs all parties to prepare data requests according to the following guidelines:

(a) Parties must assign their data requests a request number (e.g., MCC-001). Request numbers must be consecutive regardless of the party to whom the request is directed (e.g., the Commission might direct PSC-001 through 008 to the utility, PSC-009 through 016 to an intervenor, and PSC-017 through 019 to the utility).

(b) All data requests must include at the beginning of each request a description of five words or less explaining the subject of the data request. This requirement will help to identify all data requests and responses addressing a particular subject or group of subjects. Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another.

(c) Multi-party requests may be used, each part denoted by a lower case letter (a, b, c, d, and e). Requests must be limited to five (a-e) parts. If additional parts are necessary additional requests must be made. A single part request should be denoted by the request number only.

(d) Examples of acceptable data requests are as follows:

PSC-500 RE: Purchased Gas Contracts

Please provide the origination and expiration date for each contract.

PSC-501 RE: Bypass

- a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

10. The party receiving the written discovery or data request has five days from receipt to object. The objection and notice thereof shall be filed with the Commission and served on all parties. The Commission may dispose of objections by prompt ruling or may schedule arguments. Failure to timely object will be deemed acceptance of the request.

11. Any requesting party dissatisfied with the response to any written discovery or data request and desiring Commission action to compel, must, within five days after receipt of such response, file before the Commission and serve all parties, the objection or motion and identify the relief requested. The Commission may dispose of such objection by prompt ruling or may schedule argument. The Commission will act to either sustain or overrule the objections. If an objection is sustained, a time period will be set within which a satisfactory response must be made.

12. Submission of written discovery after the period established will be allowed by leave of the Commission only. Requests will not be permitted unless the party making the request shows good cause as to why the request was not submitted within the time period allowed.

13. Unless excused by the Commission, failure by a party to answer data requests or other discovery from any party may result in: (a) action refusing to allow the failing party to support or oppose related claims; (b) action prohibiting introduction of related matters in evidence; (c) action striking pleadings, testimony, or parts thereof; (d) action staying further proceedings until the request is satisfied; or (e) action dismissing the case, defense, proceeding, or parts thereof.

Testimony and Evidence

14. The Commission contemplates a complete identification of issues prior to the time of hearing. Introduction of new issues or data in new areas at the time of hearing will be carefully scrutinized and will be subject to disallowance unless reasonably related to issues earlier identified in the application, pre-filed testimony, or proceedings.

15. All proposed exhibits shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter and presiding officer for the preferred manner of identifying exhibits.

16. When cross-examination is based on a document, not previously filed with the Commission, copies of the document must be made available to each Commissioner, parties, and

staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each Commissioner, the Commission staff, and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, and if previous arrangements have been made with the Commission and all parties.

17. Citizens and citizen groups will, in the discretion of the Commission, be allowed to make statements without having submitted prepared written testimony. In addition, if they have prepared written testimony they may read it if they desire, or they may have it adopted directly into the record.

18. The Montana Rules of Evidence in effect at the time of the hearing in this docket will govern at the hearing.

19. Any party to this proceeding having responded, itself or through agents, to written discovery from any other party or the Commission, shall have all persons authoring each response present and available as a witness at the hearing for the purposes of introduction of the discovery and cross-examination thereon. Reasonable alternatives to this requirement, such as waiver of objection to introduction absent the author and waiver of right to cross-examine, agreed to by the parties may be accepted if approved by the Commission. Written discovery (not including transcripts of depositions on oral examination) and data requests will not be introduced at hearing unless done in accordance with applicable rules of evidence and through an appropriate witness subject to cross-examination or upon stipulation approved by the Commission.

Pre-hearing Motions and Conferences

20. Motions by any party, including motions concerning any procedural matter connected with this docket, shall be raised at the earliest possible time. Pre-hearing motions shall be submitted on briefs unless otherwise requested by a party and approved by the Commission. If oral argument is granted, the party requesting oral argument shall, after scheduling with the Commission, notice the same for hearing before the Commission.

21. The Commission may, at any time prior to the hearing, set a pre-hearing conference for discussion of, among other things, the feasibility of settlement of any issues in the proceeding, the simplification of issues, the possibility of obtaining admissions of fact and documents, the distribution and marking of written testimony and exhibits prior to the hearing, and

such other matters as may aid in the disposition of the proceeding or settlement thereof.

22. Nothing in this Order shall be construed to limit the legally established right of the Commission or its staff to inspect the books and accounts of the utility at any time.

Pre-hearing Brief

23. The Pre-hearing Brief shall be from each party unless the parties agree to file jointly. It shall contain a list of all issues determined to be uncontested, all issues determined to be contested, witnesses intended to be called to testify or stand cross-examination, exhibits intended to be introduced, and discovery, to date, intended to be introduced at hearing. Identified responses to data requests to be introduced at hearing will be accompanied by a proper identification of the request, the witness responsible for the response, and the issue to which it relates. Any special needs to accommodate witness sequence or scheduling should be identified in the Pre-hearing Memorandum.

Open Meetings

24. All Commission meetings regarding this docket are open meetings except as otherwise required or permitted by law. Parties will not routinely be notified of Commission business meetings or work sessions that may pertain to discussion or action on matters within this docket. Notification of Commission work sessions concerning this docket will be provided to all persons requesting notification through the Commission's weekly agenda mailing list.

Done and dated this 16th day of March, 2005, by delegation to Commission staff as an Order of the Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman
BRAD MOLNAR, Vice-Chairman
DOUG MOOD, Commissioner
ROBERT H. RANEY, Commissioner
THOMAS J. SCHNEIDER, Commissioner

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.