

**DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA**

IN THE MATTER OF the Application of)
UTILITY SOLUTIONS, LLC to)
Implement Initial Rates and Charges)
for Water Services in its Elk Grove)
Subdivision, Gallatin County, Montana)
Service Area)

UTILITY DIVISION

DOCKET NO. D2005.11.163

Consolidated with

IN THE MATTER OF the Application of)
UTILITY SOLUTIONS, LLC to)
Implement Initial Rates and Charges)
for Wastewater Services in its Elk)
Grove Subdivision, Gallatin County,)
Montana Service Area)

UTILITY DIVISION

DOCKET NO. D2005.11.164

OBJECTION TO DATA REQUEST

Utility Solutions, LLC, the Applicant in this proceeding objects to PSC Data Request 54 because it: (1) demands the production of information which is not relevant to the subject matter of this proceeding; (2) was issued in excess of the Commission's lawful jurisdiction; and (3) would require Utility Solutions to violate state law governing the confidentiality of income tax returns. Although not required to do so by the Commission's administrative rules or its Procedural Order 6707c entered in this docket, Utility Solutions submits the following brief in support of its objections.

FACTS

This proceeding is an Application by Utility Solutions to implement initial rates for water and wastewater service. Utility Solutions, organized as a limited liability company, is the jurisdictional utility before the Commission in this docket. As the jurisdictional utility, it has provided its tax returns under Protective Orders 6707b, 6708b, and 6707d in response to previous discovery requests

On November 5, 2009, the Commission served PSC Data Request 54 upon Utility Solutions:

PSC-054

Regarding: Double Tree, Inc.

Witness: Barrows

Please provide copies of the tax returns of Double Tree since it began its service contract with Utility Solutions.

Double-Tree, Inc. is a business organized as a corporation. It is not an affiliate of Utility Solutions. It is not a member of Utility Solutions. Double-Tree, Inc. has several business interests including a management services contract under which it provides management services to Utility Solutions. The contract was previously provided by Utility Solutions in response to PSC Data Request 3(a). Double-Tree, Inc. is not a utility, and is neither the subject of this proceeding nor the Commission's jurisdiction.

In accordance with Section 15-31-506 of the Montana Code Annotated, the Montana Department of Revenue requires attachment of the federal income tax return. (See App. 1 attached.)

ARGUMENT

- I. The Commission has demanded the production of information which is irrelevant to the subject matter of this proceeding.

The Commission has demanded the production of information which is irrelevant to the subject matter of this proceeding. The Montana Rules of Civil Procedure govern discovery in this docket. ARM 38.2.3301. Rule 26(a) M.R. Civ. Pro. provides in pertinent part:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action,...

The subject matter of this proceeding is the application of Utility Solutions to establish initial rates for water and waste water service. The scope of inquiry in this proceeding is the

reasonableness of the cost of service presented by Utility Solutions in its filing for initial rates. The reasonableness of the costs incurred by Utility Solutions and included in the cost of service it has presented in its filing will be determined without reference, of any kind, to the income tax liability of Double-Tree, Inc. or how that income tax liability was computed on its federal and state income tax returns.

II. The Commission's demand for the income tax returns of Double-Tree, Inc. exceeds the lawful scope of the Commission's jurisdiction

The Commission's demand for the income tax returns of Double-Tree, Inc. exceeds the lawful scope of its jurisdiction. Utility Solutions is subject to the jurisdiction of this Commission. Double-Tree, Inc. is not. Utility Solutions necessarily assumes the Commission will concede it lacks the power to compel Double-Tree, Inc. to provide its income tax returns to the Commission.

III. The Commission's demand for the income tax returns of Double-Tree, Inc. would require Utility Solutions to violate state law governing the confidentiality of income tax returns.

The Commission's demand for the income tax returns of Double-Tree, Inc. would require Utility Solutions to violate state law governing the confidentiality of income tax returns. The Commission apparently believes that it can require Utility Solutions to obtain and provide to the Commission what the Commission cannot obtain directly from Double-Tree, Inc.

One serious difficulty with that apparent belief is that no one, including Utility Solutions, can disclose someone else's tax return without violating state law:

Except as provided by section 6103 of the Internal Revenue Code, 26 U.S.C. 6103, and subsection (2) of this section, it is unlawful to knowingly or purposely divulge or make known in any manner any federal tax return or federal tax return information submitted on state tax returns pursuant to state law.

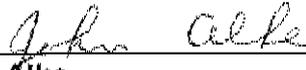
Section 15-1-106(1) of the Montana Code Annotated. No provision of 26 U.S.C. 6103 allows Utility Solutions to disclose an unaffiliated company's tax returns to the Commission.

CONCLUSION

PSC Data Request Data Request 54 is objectionable because it: (1) demands the production of information which is not relevant to the subject matter of this proceeding; (2) was issued in excess of the Commission's lawful jurisdiction; and (3) would require Utility Solutions to violate state law governing the confidentiality of income tax returns.

Dated this 12th day of November, 2009.

HUGHES, KELLNER, SULLIVAN & ALKE

By 
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Helena, MT 59624-1166

Attorneys for Utility Solutions, LLC

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that a copy of the foregoing **OBJECTION TO DATA REQUEST** was served upon the following by mailing a true and correct copy thereof on **November __, 2009**, addressed as follows:

**MONTANA CONSUMER COUNSEL
P O BOX 201703
HELENA MT 59620-1703**


John Alke



2007 Corporation License Tax Return

C
MONTANA
Form CLT-4
Rev. 6-07

For calendar year 2007 or tax year beginning (MM-DD)____ - ____ - 07 and ending (MM-DD-YY)____ - ____ - ____

- Check if applicable:
- Initial Return
 - Final Return
 - Amended Return
 - Refund Return

Corporation Name		
Address If new address check here <input type="checkbox"/>		
City	State	Zip+4

FEIN _____
Federal Business Code _____
Incorporated in State of _____
Date _____
Date Qualified in Montana _____

Check this box if you do not need the Montana corporation license tax return and instructions sent to you next year

Copy of signed Federal Form 1120 as filed with the Internal Revenue Service must be attached ←

Part I - Filing Method. Check applicable filing method (see instructions).

- a. Separate Company..... a.
- b. Separate Accounting b.
- c. Worldwide Combination..... c.
- d. Domestic Combination d.
- e. Limited Combination..... e.
- f. Water's Edge; must have a valid election and Schedule WE must be attached f.
- g. Exempt from tax under provisions of Public Law 86-272; Schedule K must still be completed g.

Part II - Amended Return Only. Check all that apply.

- a. Federal Revenue Agent Report; a complete copy of this report must be attached a.
- b. NOL carryback/carryforward; year of loss _____ b.
- c. Apportionment factor changes; attach a statement explaining all adjustments in detail c.
- d. Amended federal tax return (Form 1120X); a complete copy of this return must be attached d.
- e. Application and/or change in tax credit; type of credit being claimed e.
- f. Other; attach a statement explaining all adjustments in detail f.

Part III - General Questions. All questions must be answered.

- a. Describe in detail the nature and location(s) of your Montana activities (if necessary, provide the description on an additional page). _____
- b. Is this your corporation's first Montana return? Yes No
If this corporation is a successor to your previously existing business, enter name and FEIN of your previous business: _____
- c. Is this your corporation's final Montana return?..... Yes No
If so, indicate whether your corporation has:
 - Withdrawn; Merged (please attach detailed statement);
 - Dissolved (please attach detailed statement); Reorganized (please attach detailed statement).
Date of withdrawal, dissolution, merger, or reorganization _____
- d. For any periods, has the Internal Revenue Service issued an official notice of change or correction that you have not filed with the Montana Department of Revenue? Yes No
If "Yes," indicate the periods that have not been filed _____
- e. Are any statute of limitation waivers currently in force that have been executed with the Internal Revenue Service? Yes No
If "Yes," which taxable years are covered and what are the expiration dates of the waivers? _____
- f. Have you filed an amended federal return for any of the last five taxable periods?..... Yes No
If "Yes," for which years have you filed amended Montana returns? _____
- g. Are you filing a combined Montana return (you checked c, d, e or f in Part I above)? Yes No
If "Yes," enter the number of entities included in this return that are active in Montana. _____