

Service Date: January 31, 2008

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

IN THE MATTER of the Application of) UTILITY DIVISION
Utility Solutions, LLC to Implement)
Initial Rates and Charges for Water Service)
in its Elk Grove Subdivision, Gallatin) DOCKET NO. D2005.11.163
County, Montana Service Area) ORDER NO. 6707b

Consolidated with

IN THE MATTER of the Application of) UTILITY DIVISION
Utility Solutions, LLC to Implement)
Initial Rates and Charges for Wastewater)
Service in its Elk Grove Subdivision,) DOCKET NO. D2005.11.164
Gallatin County, Montana Service Area) ORDER NO. 6707b

PROTECTIVE ORDER

On December 14, 2007, Utility Solutions, LLC (USLLC) filed a motion for a protective order (Motion) seeking protection for copies of USLLC's partnership tax returns for 2005 and 2006. USLLC asserted that the ground for protection is individual privacy. USLLC supported the Motion with an affidavit from Barbara Campbell in which she stated "The members of USLLC, and/or the members of entities that are in turn members of the USLLC, do not waive their privacy interests in their personal financial information, or in records by which the personal financial information of members of entities that are members of USLLC can be inferred." Aff. at ¶ 2.

ARM 38.2.5007(4) (a) (i) requires a provider seeking a protective order based on individual privacy to demonstrate that "the provider has made a reasonable effort to contact the individual to ascertain whether the individual waives the right to privacy for the information at issue." Although USLLC states its members do not waive their individual privacy issues, it does not demonstrate that it has contacted those members. Further, USLLC seems to suggest that entities enjoy a right to privacy.

The individual privacy exception to the public's right to know is limited to natural human individuals only. *Great Falls Tribune v. Public Serv. Comm'n*, 2003 MT 359, ¶ 37, 319 Mont. 38, ¶ 37, 82 P.3d 876, ¶ 37 (2003). Entities that are members of USLLC do not enjoy an individual right to privacy. The Commission concludes that USLLC has not demonstrated that its partnership tax returns can be protected on the basis of individual privacy.

The conclusion regarding individual privacy does not resolve this matter. Although not asserted by USLLC, the Commission considers that income tax returns, including partnership returns, are protected from disclosure by federal and state law. *See, e.g. In the Matter of NorthWestern Energy's Application for Approval to Establish Increased Natural Gas and Electric Delivery Service Rates*, Docket No. D2007.7.82, Order No. 6852a (Pub. Serv. Comm'n September 19, 2007) (granting protective order for tax returns on legal grounds).

The Commission determines that USLLC's partnership tax returns for 2005 and 2006 are confidential information pursuant to ARM 38.2.5001(1). USLLC's Motion is granted and the affidavit requirement of ARM 38.2.5007(3) (c) is waived. Information submitted in accordance with this Order will be treated as confidential information under the terms of this Order and Commission protective order rules, ARM 38.2.5001-5030.

This Order may be challenged at any time pursuant to ARM 38.2.5008.

Done and dated this 29th day of January 2008, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman

DOUG MOOD, Vice Chairman

BRAD MOLNAR, Commissioner

ROBERT H. RANEY, Commissioner

KEN TOOLE, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: There is no reconsideration of the granting of a protective order. There is a procedure to challenge the provider's claim of confidentiality. See ARM 38.2.5008. Reconsideration of a denial of a protective order is available in accordance with ARM 38.2.4806.

Montana Public Service Commission
Protective Orders and Protection of Confidential Information

Nondisclosure Agreement

(7-26-00)

ARM 38.2.5012

Docket No., D2005.11.163, Order No. 6707b
Docket No., D2005.11.164, Order No. 6707b
Order Action Date: January 29, 2008

I understand that in my capacity as counsel or expert witness for a party to this proceeding before the commission, or as a person otherwise lawfully so entitled, I may be called upon to access, review, and analyze information which is protected as confidential information. I have reviewed ARM 38.2.5001 through 38.2.5030 (commission rules applicable to protection of confidential information) and protective orders governing the protected information that I am entitled to receive. I fully understand, and agree to comply with and be bound by, the terms and conditions thereof. I will neither use nor disclose confidential information except for lawful purposes in accordance with the governing protective order and ARM 38.2.5001 through 38.2.5030 so long as such information remains protected.

I understand that this nondisclosure agreement may be copied and distributed to any person having an interest in it and that it may be retained at the offices of the provider, commission, consumer counsel, any party and may be further and freely distributed.

Typed or Printed Name

Signature

Date of Signature

Business Address:

Employer

Party Represented