

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

IN THE MATTER OF the Consolidated)	REGULATORY DIVISION
Petition by Mountain Water Company)	
for Declaratory Rulings and Application)	
for Approval of Sale and Transfer of)	DOCKET NO. D2011.1.8
Stock in Park Water Company)	

**REQUEST OF CLARK FORK COALITION FOR RECONSIDERATION
OF May 13, 2011 PROCEDURAL ORDER**

On January 23, 2001, Mountain Water Company (“Mountain Water”) filed with the Public Service Commission (the “Commission”) its *Petition by Mountain Water Company for a Declaratory Ruling Disclaiming Commission Jurisdiction over the Sale and Transfer of Stock in Park Water Company* (the “Petition for Declaratory Ruling”) and its *Application by Mountain Water Company for Approval of the Sale and Transfer of Stock in Park Water Company* (the “Application”). Together the Petition for Declaratory Ruling and the Application will be referred to herein as the “Consolidated Petition.”

On April 14, 2011, the parties to the docket participated in a telephone conference along with Commission staff to discuss scheduling. During the telephone conference, the parties were informed by Commission staff that the Commission would be holding a work session within the “next couple of weeks” to decide on the jurisdiction question. Based on the assumption that a decision on jurisdiction would be forthcoming within two

weeks of the telephone conference, the parties tentatively agreed on a procedural schedule to be followed in the event that the Commission assumed jurisdiction over the sale and transfer of stock in Park Water Company and a contested case proceeding became necessary. Commission staff indicated that they would follow up the call with a draft procedural schedule for comment to make sure the parties were in agreement.

On May 6, 2011, counsel for CFC contacted Commission staff inquiring about the status of the draft procedural schedule and timeline for a Commission decision on jurisdiction. At that time, Commission staff indicated that the Commission would be making a decision on jurisdiction during its May 17, 2011 work session. The agenda for the work session was published on May 12, 2011 with no work session scheduled to take up Mountain Water's Petition for Declaratory Ruling.

On May 13, 2011, counsel for Mountain Water contacted Commission staff and the parties via email message to inquire about the status of the procedural order and to urge Commission staff to require all parties to follow the tentative schedule discussed during the April 14, 2011 call. Commission staff responded with the Procedural Order dated May 10, 2011 (with a May 13, 2011 service date) which states in the first paragraph:

[t]he PSC has not yet determined whether it will disclaim jurisdiction or refrain from exercising jurisdiction over the sale of Park Water Company stock to the Carlyle Group. The PSC will make that decision in the upcoming weeks. If the PSC decides to disclaim jurisdiction or refrains from exercising jurisdiction, then this contested case procedural schedule *will no longer be necessary* and will be vacated. (emphasis added)

For the reasons stated below, CFC respectfully requests the Commission for a reconsideration of the Procedural Order in this docket and to suspend further filing deadlines until such time as the Commission has had an opportunity to resolve Mountain Water's Petition for Declaratory Ruling.

The Commission Should Reach a Decision on Mountain Water's Petition for Declaratory Ruling Prior to Requiring the Parties to Adhere to a Procedural Order that May Ultimately be Rendered Unnecessary and Vacated.

Because the Commission has not reached a decision on whether it will assert jurisdiction over the proposed transfer of stock in Park Water Company to Carlyle, the Commission should suspend the May 13, 2011 Procedural Order until and if the Commission determines to assert its jurisdiction.

Mountain Water poses two questions for the Commission in its Petition for Declaratory Rulings:

Question #1: Whether, on the facts of this case, the Commission has the implied power to review and approve the sale and transfer of Park stock to Carlyle.

Question #2: Whether, on the facts of this case, the Commission should decline, in its discretion, to exercise jurisdiction over the sale and transfer of Park stock to Carlyle.

Consolidated Petition, ¶ 9.

Mountain Water correctly asserts in its Consolidated Petition, that the Commission should reach decisions on the two questions posed in its Petition for Declaratory Rulings prior to taking up its review of Mountain Water's Application. As Mountain Water states:

If the Commission answers Question #1 by refusing to disclaim jurisdiction, and answers Question #2 by refusing to provide comity to the California PUC, it should then determine that the sale and transfer of Park stock to Carlyle does not increase the risk that Mountain's customers will receive inadequate service, or will receive it at rates that are not just and reasonable.

Consolidated Petition, ¶ 22.

CFC is aware that the Mountain Water and Carlyle would like to see a resolution to this issue as soon as possible. CFC would also like to avoid undue delay. However, because Mountain Water determined to first seek declaratory rulings from the Commission, prior to the Commission reviewing its application, Mountain Water cannot now argue that the parties should march down the path of a contested case proceeding just in case the Commission does decide to take jurisdiction.

Requiring the parties to move forward with the uncertainty surrounding whether or not their limited time and resources spent establishing an evidentiary record for a contested case proceeding are for naught is not appropriate under these circumstances.¹ Further, any party may determine to seek judicial review of the Commission's decision on Mountain Water's Declaratory Rulings. Because of the uncertainties that exist on preliminary matters that may be dispositive in this docket, CFC respectfully requests a reconsideration of the Procedural Order.

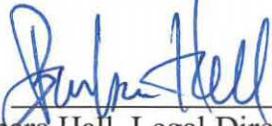
Finally, because the deadline established in the Procedural Order for intervenor discovery and data requests is May 20, 2011, CFC respectfully requests the Commission to consider this request for reconsideration at its May 17, 2011 work session. In the

¹ CFC acknowledges that Carlyle made its filing of the Testimony of Robert Dove on May 6, 2011, which was the date discussed in the April 14, 2011 teleconference. However, CFC does not believe that because Carlyle made the decision to adhere to the tentative schedule, that all parties should thereafter be required to do so.

alternative, CFC requests the Commission to suspend further filing deadlines until it has an opportunity to consider this request at a subsequent work session.

Respectfully submitted this 14th day of May, 2011.

CLARK FORK COALITION

By:  _____

Barbara Hall, Legal Director
Clark Fork Coalition
140 S 4th Street West, Unit 1
PO Box 7593
Missoula, Montana 59801
(406) 542-0539 ext 211
barbara@clarkfork.org

CERTIFICATE OF SERVICE

I hereby certify that on this, the 14th day of May, 2011, the foregoing REQUEST OF CLARK FORK COALITION FOR RECONSIDERATION OF May 13, 2011 PROCEDURAL ORDER was served via U.S. mail and electronic mail on:

Arvid Hiller
Mountain Water Company
1345 W Broadway
PO Box 4826
Missoula, MT 59806-4826
(U.S. mail only)

Robert A Nelson
Mary Wright
Montana Consumer Counsel
111 North Last Chance Gulch, Suite 1B
PO Box 201703
Helena, MT 59620-1703
rnelson@mt.gov
mwright@mt.gov

John Alke
Hughes, Kellner, Sullivan & Alke
40 W. Lawrence, Suite A
P.O. Box 1166
Helena, MT 59624-1166
jalke@hksalaw.com

Bryan D. Lin
The Carlyle Group
520 Madison Avenue, 41st Floor
New York, NY 10022
bryan.lin@carlyle.com

Jim Nugent
Missoula City Attorney's Office
435 Ryman Street
Missoula, MT 59802
Nugent@ci.missoula.mt.us

Jim Larocque, CFA
The Carlyle Group
520 Madison Ave
New York, NY 10022
jim.larocque@carlyle.com

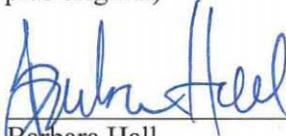
Thorvald A. Nelson
Holland & Hart LLP
6380 South Fiddlers Green Circle, Suite 500
Greenwood Village, CO 80111
tnelson@hollandhart.com

William Mercer
Holland & Hart LLP
401 North 31st Street, Suite 1500
P. O. Box 639
Billings, Montana 59103-0639
wwmerc@hollandhart.com

Electronic service only:
ramoody@hollandhart.com
jkraske@mt.gov

Kate Whitney
Public Service Commission
1701 Prospect Avenue
P. O. Box 202601
Helena, MT 59620-2601
(e-filed plus original)

By: _____


Barbara Hall