

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

IN THE MATTER OF the Joint)	
Application of Liberty Utilities Co., Liberty)	REGULATORY DIVISION
WWH, Inc., Western Water Holdings, LLC,)	
and Mountain Water Company for Approval)	DOCKET NO. D2014.12.99
of a Sale and Transfer of Stock)	

**WESTERN WATER HOLDINGS' AND MOUNTAIN WATER COMPANY'S
MOTION FOR PROTECTIVE ORDER (PSC-024)**

Western Water Holdings, LLC (“Western Water”) and Mountain Water Company (“Mountain Water”), by and through their counsel, Holland & Hart LLP, respectfully submit this Motion for Protective Order and Brief and Support (“Motion”). Western Water and Mountain Water respectfully request a protective order pursuant to Admin. R. Mont. 38.2.5001 through 38.2.5030 to govern the use and disclosure of the confidential information contained in the documents being produced in response to PSC-024. In support of this Motion, Western Water and Mountain Water provide the Affidavit of Douglas Martinet (“Affidavit”).

I. INTRODUCTION

Mountain Water and Western Water seek a protective order from the Commission to keep confidential bank account numbers contained in two of the documents produced in response to PSC-024. All of the information for which protection is requested is trade secret. For the reasons set forth below, the bank account numbers subject of this request are (1) information; (2) secret; (3) subject to efforts reasonable under the circumstances to maintain its secrecy; (4) not readily ascertainable by proper means; and (5) independent economic value is derived from its

secrecy.¹ Accordingly, the information is entitled to protection through an order from this Commission.

Western Water and Mountain Water have considered that the Commission is a public agency and that there is a presumption of access to documents and information in the Commission's possession.² Western Water and Mountain Water understand they have the burden of demonstrating that the identified information is confidential information and they must, with this Motion, establish a prima facie showing of confidentiality, factually and legally, and make clear the basis for the claim of confidentiality.

Western Water and Mountain Water recognize the challenge presented to the Commission in balancing the public's broad access to documents and information in the Commission's possession with the importance of preserving the confidentiality of sensitive information such as trade secrets. Western Water and Mountain Water respectfully represent that, with this Motion, they have overcome the presumption that the public should have unrestricted access to documents and information in the Commission's possession. Western Water and Mountain Water provide herein a prima facie showing of confidentiality, both legally and factually, and explains the basis for the claim of confidentiality.

II. CONTACT PERSON

The contact persons regarding this Motion and items to be protected are:

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¹ Admin. R. Mont. 38.2.5007(4)(b)(ii)-(vi).

² Admin. R. Mont. 38.2.5007(4)(b)(i).

III. IDENTIFICATION OF THE CONFIDENTIAL INFORMATION

Western Water and Mountain Water seek a protective order for the bank account numbers contained in two documents produced in response to PSC-024. Specifically, Western Water and Mountain Water seek protection for Park Water Company's ("Park Water") and Wells Fargo's bank account numbers contained in the Wells Fargo Loan Agreement (WWH000547-WWH000570) and Park Water's and CoBANK ACB's bank account numbers in the CoBANK Term Loan Agreement (WWH000619-WWH000653/WWH001164-WWH001246).³ This list of information is a complete and specific nonconfidential identification of the information for which protection is requested.⁴ The information identified above is hereafter referred to as the "Confidential Information."

IV. FACTUAL AND LEGAL BASES FOR PROTECTION

For each item listed above, a complete and specific factual basis, including thorough identification and explanation of specific facts, and a complete and specific legal basis and application of the law to the facts supporting the claim of confidentiality follows.⁵ Further, the supporting affidavit of a qualified person, Douglas Martinet, is attached.⁶

A. The Confidential Information is "information."

"Information," as defined by the Commission's regulations, includes knowledge, observations, opinions, data, facts, and the like, whether recorded or communicated in writing, orally, electronically, or otherwise, and whether provided through pleadings, reports, exhibits, testimony, work papers, or similar items or attachments to such items, or in response to

³ The CoBANK Term Loan was supplemented to provide information previously redacted based on relevance.

⁴ Admin. R. Mont. 38.2.5007(3)(b).

⁵ See Admin. R. Mont. 38.2.5007(3)(c) and (d).

⁶ See Admin. R. Mont. 38.2.5007(3)(c).

discovery, subpoena, order, audit, investigation, or other request.⁷ Each item for which protection is sought constitutes written data contained in the documents requested through the discovery process in this proceeding. Therefore, each item meets the definition of “information.”⁸

B. The Confidential Information is secret.

The Confidential Information for which protection is requested is, in fact, secret, and the Confidential Information has been protected by whatever means available.⁹ In addition to being secret, the Confidential Information is trade secret information from which independent economic value is derived. Montana law provides “[t]he commission may issue a protective order when necessary to preserve trade secrets, as defined in 30-14-402, or other information that it must be protected as a matter of law as required to carry out its regulatory functions.”¹⁰ “Trade secrets,” as defined by Mont. Code. Ann. § 30-14-402(4), means:

information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

As articulated in the remainder of this Motion, the Confidential Information is trade secret information, which is subject to efforts reasonable under the circumstances to maintain its secrecy, not readily available by proper means, and derives independent economic value from its secrecy.

⁷ Admin. R. Mont. 38.2.5001(3).

⁸ See Affidavit at ¶ 2.

⁹ See Affidavit at ¶ 4.

¹⁰ Mont. Code. Ann. § 69-3-105(2) (2013).

C. The Confidential Information is subject to efforts reasonable under the circumstances to maintain its secrecy.

Consistent with normal industry practices, the Confidential Information is protected by whatever means available.¹¹ After issuance of a protective order from this Commission, Mountain Water, Western Water, and Park Water will continue to maintain the secrecy of the information provided. Because Mountain Water, Western Water, and Park Water maintain the secrecy of the Confidential Information, and will continue to do so after the issuance of a protective order pursuant to this Motion, the information maintains its status as trade secret as defined by Montana law.¹²

D. The Confidential Information is not readily ascertainable by proper means.

Since the Confidential Information to be protected is not within the public domain, it is not readily ascertainable by any other person or entity. No public documents exist which could reveal the information to be protected.¹³ No one could reasonably ascertain this information through a public source or any other proper means.¹⁴

E. The Confidential Information derives independent economic value from its secrecy.

The Commission's rules specify that the secret information must derive independent economic value from its secrecy, or that a competitive advantage is derived from its secrecy. The independent economic value of the secrecy of bank account numbers is apparent. By preserving the secrecy of this information, the integrity of Park Water's bank accounts is maintained and the accounts are provided the appropriate protection against theft or fraud. Should these bank account numbers become publicly available, the opportunity for individuals to use that information for nefarious activities is palpable. The economic value associated with

¹¹ Affidavit at ¶ 4.

¹² Mont. Code. Ann. § 30-14-402(4).

¹³ Affidavit at ¶ 4.

¹⁴ See Affidavit at ¶ 4.

maintaining the privacy of the Confidential Information includes avoiding the costs associated with increased vigilance of Park Water's bank accounts, along with the costs of resolving any theft or fraud resulting from the improper use of the bank account information following its public disclosure. Although the bank account information for Wells Fargo and CoBANK is not Park Water's, Mountain Water's, or Western Water's property, the Commission should recognize the commercial sensitivity of this information as well and provide it protection as confidential along with Park Water's bank account information. And, as there is no plausible use for the Confidential Information in this proceeding, the benefit of maintaining the confidentiality of the bank account numbers clearly outweighs any benefits associated with the disclosure of that information.

V. CONCLUSION

For the reasons stated above, Western Water and Mountain Water respectfully request the Commission grant this Motion and issue a protective order for the Confidential Information contained in the Wells Fargo Loan Agreement and CoBANK Term Loan Agreement produced in response to PSC-024.

Respectfully submitted this 15th day of May, 2015.

HOLLAND & HART LLP

s/ Thorvald Nelson

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**ATTORNEYS FOR MOUNTAIN WATER
COMPANY AND WESTERN WATER
HOLDINGS**

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

IN THE MATTER OF the Joint Application)	
of Liberty Utilities Co., Liberty WWH, Inc.,)	REGULATORY DIVISION
Western Water Holdings, LLC, and Mountain)	
Water Company for Approval of a Sale and)	DOCKET NO. D2014.12.99
Transfer of Stock)	

AFFIDAVIT OF DOUGLAS MARTINET

I, Douglas Martinet, being duly sworn upon oath, depose and state as follows:

1. I am the Senior Vice President and Chief Financial Officer at Park Water Company (“Park Water”). As CFO, I am personally knowledgeable about Park Water’s business records, and I have personal knowledge of the facts stated herein. Any opinions expressed herein are based on my experience, as well as my knowledge of the treatment of the information requested generally.

2. In response to PSC-024, Western Water Holdings (“Western Water”) and Mountain Water Company (“Mountain Water”) provided documents that contain sensitive financial information. Specifically, among other documents, Western Water and Mountain Water provided a Loan Agreement with Wells Fargo and a Term Loan Agreement with CoBANK. These loan documents contain bank account numbers for Park Water, Wells Fargo, and CoBANK.

3. Mountain Water and Western Water are seeking a protective order to maintain the confidentiality of the bank account numbers in the documents identified above. On behalf of Park Water, I am familiar with the information requested and the controls in place to maintain the confidential status of the information.

4. The bank account numbers are the private information of Park Water, Wells Fargo, and CoBANK. This specific financial information is treated by Park Water as private and confidential information, and Park Water does not currently provide the bank account numbers publicly in any forum. Internally, bank account information is only provided to Park Water employees on a need-to-know basis.

CERTIFICATE OF SERVICE

I hereby certify that on this, the 15th day of May, 2015 **WESTERN WATER HOLDINGS' AND MOUNTAIN WATER COMPANY'S MOTION FOR PROTECTIVE ORDER (PSC-024)** was filed with the Montana PSC and served via U.S. Mail and e-mail, unless otherwise noted, to the following:

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s/ Adele C. Lee _____

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