

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

IN THE MATTER OF the Joint Application of) REGULATORY DIVISION
Liberty Utilities Co., Liberty WWH, Inc.,)
Western Water Holdings, LLC, and Mountain) DOCKET NO. D2014.12.99
Water Company for Approval of a Sale and) ORDER NO. 7392a
Transfer of Stock)

PROTECTIVE ORDER

PROCEDURAL HISTORY

1. On December 15, 2014, Liberty Utilities Co. (“Liberty Utilities”), Liberty WWH, Inc. (“Liberty WWH”), Western Water Holdings, LLC (“Western Water”), and Mountain Water Company (“Mountain Water”) (collectively, “Joint Applicants”) filed a *Joint Application for Approval of Sale and Transfer of Stock* with the Montana Public Service Commission (“Commission”).

2. The Commission issued a *Notice of Application and Intervention Deadline* on December 23, 2014, and granted intervention to the Montana Consumer Counsel, Clark Fork Coalition, City of Missoula, and the Employees of Mountain Water Company, on January 27, 2015.

3. On February 2, 2015, the Commission issued Data Request PSC-026(b), which will require the disclosure of Western Water and Mountain Water’s state and federal tax returns.

4. On February 18, 2015, Western Water and Mountain Water filed a *Motion for Protective Order and Brief in Support* (Motion) to prevent public disclosure of their federal and State income tax returns. On February 26, 2015, the Commission published notice of the Motion in its weekly agenda.

FINDINGS OF FACT

5. The Commission has previously found that Mountain Water’s federal and state income tax returns are confidential and subject to protection. Or. 7251a, ¶ 2 (Dec. 11, 2012).

6. In their Motion, Mountain Water and Western Water argue that the protection and confidentiality of tax return information is a matter of law, and explained the legal standards required for protection. Mot. pp. 3-4. Mountain Water and Western Water also request that the Commission waive the affidavit requirement in Section 38.2.5007(3)(c) of Administrative Rules of Montana. *Id.* at p. 5.

CONCLUSIONS OF LAW

7. The Montana Constitution imposes an affirmative duty on the Commission to make all of its records and proceedings available to public scrutiny. Mont. Const. art. II, §§ 8-9. The Commission may issue a protective order, however, “when necessary to preserve . . . information that must be protected under law. . . .” Mont. Code Ann. § 69-3-105(2) (2013).

8. A motion for protective order must make clear the basis for the request, and make a *prima facie* showing of confidentiality. Admin. R. Mont. 38.2.5007(3) (2015). “If there are bases for confidential information other than individual privacy or trade secret, requests for protection must explain, and demonstrate compliance with, the legal standards required for protection.” *Id.* at 38.2.5007(5).

9. Federal law prohibits an employee of the State of Montana from publicly disclosing a federal income tax return or information contained within a federal income tax return. 26 U.S.C. § 6103(a)(2) (2012) (“Returns and return information shall be confidential”).

10. State law makes it “unlawful to divulge or make known in any manner” information set forth in a federal or state tax return except “in accordance with a proper judicial order, or as otherwise provided by law. . . .” Mont. Code. Ann. § 15-31-511(1); *see also Elliott v. State Dept. of Revenue*, 2006 MT 267, ¶ 11, 334 Mont. 195, 146 P.3d 741 (“statutes are presumed constitutional absent proof beyond a reasonable doubt to the contrary”).

11. Mountain Water and Western Water have explained the legal basis for their Motion and made a *prima facie* showing of confidentiality with respect to their federal and state income tax returns.

12. A motion for protective order generally must include, in part, “a complete and specific factual basis, supported by affidavit of a qualified person, that supports the claim of confidential information.” Admin. R. Mont. 38.2.5007(3)(c). Because the confidentiality of tax

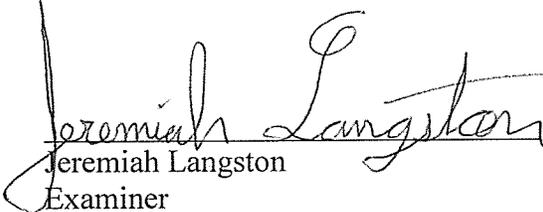
return information is a matter of law, however, the Commission waives the affidavit requirement for purposes of Mountain Water and Western Water's Motion.

ORDER

IT IS HEREBY ORDERED THAT:

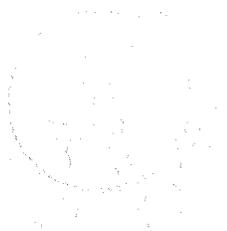
13. The affidavit requirement set forth in Section 38.2.5007(3)(c) of the Administrative Rules of Montana is waived for purposes of Mountain Water and Western Water's Motion;
14. Mountain Water and Western Water's *Motion for Protective Order* is granted;
and
15. Information submitted in accordance with this Order be treated as confidential pursuant to Title 38, Subchapter 50 of the Administrative Rules of Montana.

DONE AND DATED this 6th day of March, 2015.


Jeremiah Langston
Examiner

ATTEST:


Aleisha Solem
Commission Secretary
(SEAL)



Protective Orders and Protection of Confidential Information

Nondisclosure Agreement

(7-26-00)

ARM 38.2.5012

Docket Nos. D2014.12.99, Order No. 7392a

Order Action Date: March 6, 2015

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