

Service Date: April 15, 2015

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. 7392c
Transfer of Stock)

ORDER TO COMPEL

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

On December 23, 2014, the Commission issued a *Notice of Application and Intervention Deadline* and granted intervention to the City of Missoula ("City"), the Clark Fork Coalition, and the Montana Consumer Counsel. On February 9, 2015, the Commission issued *Procedural Order 7392* establishing discovery guidelines for this docket.

On February 2, 2015, the Commission issued Data Requests PSC-001 through PSC-027 to Mountain Water. On February 17, 2015, Mountain Water responded to Data Requests PSC-001 through PSC-027. However, some of this information in response to PSC-014, PSC-015, PSC-016, PSC-019, PSC-021, PSC-022, and PSC-024 was redacted to exclude information that was deemed to be irrelevant and confidential by Mountain Water.

On March 16, 2015, the City filed a *Motion to Compel Unredacted Information Produced by Western Water Holdings, LLC and Mountain Water Company*. This motion largely concerned redacted information in data responses in PSC-015 and PSC-024. See Employment Agreement between Christopher Schilling and PWC Merger Sub, Inc., WWH000189-WWH000205; Amended and Restated Class B Unit Grant Agreement, dated November 27, 2012 by and between Christopher Schilling and Western Water Holdings, LLC, WWH000233-

WHH00244; Amended and Restated Class B Unit Grant Agreement, dated November 27, 2012 by and between John Kappes and Western Water Holdings, LLC, WWH000283- WWH000292. On March 23, 2015, Mountain Water filed a Response Brief to this motion. On March 26, 2015, the City filed a Reply Brief.

Upon review of this redacted information in the context of data responses, it is apparent that this information should be treated as confidential information, subject to potential protection through a motion for a protective order, rather than irrelevant or undiscoverable information. Information is relevant if it “appears reasonably calculated to lead to the discovery of admissible evidence.” Mont. R. Civ. P. 26(a)(1). By contrast, confidential information at the Commission has typically involved constitutionally protected matters of individual privacy and trade secret, but may involve other types of confidential information. Admin. R. Mont. 38.2.5007(5).

Mountain Water redacted information in PSC-014, PSC-015, PSC-016, PSC-019, PSC-021, PSC-022, and PSC-024. This redacted information concerns—among other things—locations of Park Water Company property and facilities; employee names, signatures, and bank accounts; Employer Identification Numbers; and individual employee salary information. The information redacted in these data responses resembles the type of confidential information dealt with in protective orders. *See* Or. 7385b ¶ 27 (Feb. 9, 2015) (protective order granting in part and denying in part protection of compensation information of Mountain Water officers and managers in annual reports); Or. 7388d ¶ 22 (April 1, 2015) (protecting information for CenturyLink QC’s detailed shape file for site specific analog carrier systems in the state); *Billings Gazette v. City of Billings*, 2013 MT 334, ¶ 17, 313 P.3d 129 (upholding the District Court’s decision that employees had an expectation of privacy in specific employee identifying information). However, the Commission cannot confirm with certainty this redacted resemblance to confidential information since proprietary versions of these documents have not been provided to the Commission.

Although Mountain Water did reach out to the Commission to find out what information was truly required, the utility is effectively making its own confidentiality findings cloaked in relevance garb. Additionally, in the interest of avoiding duplicative discovery, the City may reasonably expect the Commission’s data requests will appropriately be answered. Only the Commission may determine whether information is confidential and may be redacted in its public form. “Confidential information will be protected only on commission approval of a

request by a provider.” Admin. R. Mont. 38.2.5007(1). Under the Montana Constitution, the Commission has an affirmative duty to make an independent determination whether information warrants protection under the applicable state or federal law. *Great Falls Tribune v. Mont. PSC*, 2003 MT 359, ¶ 56, 319 Mont. 38, 82 P.3d 876. The information provided by Mountain Water does not meet these procedural requirements. Therefore, Mountain Water must provide this information in its unredacted form or file a motion for protective order so that the Commission can make the determination whether this information may be protected.

Order

THEREFORE, based upon the foregoing, it is HEREBY ORDERED as follows:

Mountain Water must provide this information in its unredacted form or file a motion for protective order for the redacted information in Data Responses PSC-014, PSC-015, PSC-016, PSC-019, PSC-021, PSC-022, and PSC-024 within 10 days of this order.

DONE AND DATED the 15th day of April, 2015.


Jeremiah Langston
Examiner

ATTEST:


Aleisha Solem
Commission Secretary
(SEAL)

