

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. 7392h  
Transfer of Stock )

**PROTECTIVE ORDER**

**PROCEDURAL HISTORY**

1. On December 15, 2014, Liberty Utilities Co., Liberty WWH, Inc., Western Water Holdings, LLC and Mountain Water Company ( collectively, “Mountain Water”) 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 Montana Consumer Counsel, Clark Fork Coalition, City of Missoula (“City”), and the Employees of Mountain Water Company, on January 27, 2015.

3. On February 2, 2015, the Commission issued Data Request PSC-024(d) requesting the Wells Fargo Loan Agreement and CoBANK Term Loan Agreement documents referenced in the *Joint Application* at 4.11 (x) 5 and 7.

4. On April 21, 2015, Mountain Water filed a *Motion for Protective Order and Affidavit of Robert Dove* (Motion) asserting that the following types of information contained in the documents produced in response to PSC-024(d) is trade secret:

- Bank account numbers corresponding to accounts owned by Park Water Company (Park Water) and Wells Fargo contained in the Wells Fargo Loan Agreement (WWH000547-WWH000570).

- Bank account numbers corresponding to accounts owned by Park Water and CoBANK ACB contained in the CoBANK Term Loan Agreement (WWH000619-WWH000653/WWH0001164-WWH0001246).

5. The City does not contest the protection of Mountain Water's bank account information. *See* Response Brief at 3 (May 4, 2015).

6. The Montana Supreme Court has articulated the standard the Commission is held to in evaluating protective orders:

[A] non-human entity seeking protective orders or other protective measures for materials filed with a regulating governmental agency, such as the PSC, must support its claim of confidentiality by filing a supporting affidavit making a *prima facie* showing that the materials constitute property rights which are protected under constitutional due process requirements. The claimant's showing must be more than conclusory. It must be specific enough for the PSC, any objecting parties, and reviewing authorities to clearly understand the nature and basis of the public utility's claims to the right of confidentiality.

*Great Falls Tribune v. Mont. PSC*, 2003, ¶ 56, 319 Mont. 38, 89 P.3d 879 (emphasis added). The Commission may protect information that is deemed trade secret. *Id.* at ¶ 62.

7. Trade secret is defined as:

[I]nformation 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.

Mont. Code Ann. § 30-14-402 (2013).

8. The Commission has implemented these constitutional and statutory requirements through its own administrative rules concerning protective orders. *See* Admin. R. Mont. 38.2.5001-5030.

9. A party requesting a protective order based on trade secret must demonstrate:

(i) prior to requesting a protective order, the provider has considered that the Commission is a public agency and that there is a constitution presumption of access to documents and information in the commission's possession; (ii) the claimed trade secret material is information; (iii) the information is in fact secret; (iv) the secret information is subject to efforts reasonable under the circumstances to maintain its secrecy; (v) the secret information is not readily ascertainable by proper means; and (vi) the information derives independent economic value from its secrecy, or that competitive advantage is derived from its secrecy.

Admin. R. Mont. 38.2.5007(4)(b).

10. Mountain Water provided a supporting Affidavit with its Motion, as required by Admin. R. Mont. 38.2.5007(3)(c). Aff. Robert Dove (Apr. 21, 2015).

11. In its Motion, Mountain Water states that it has “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.” Mot. at p. 2.

12. In its Motion, Mountain Water states that the material for which protection is sought is information. *Id.* at 1; *see also* Admin R. Mont. 38.2.5001(3) (defining information).

13. Mountain Water asserts that all of the information in question is secret. *Id.* at 1, 4.

14. Mountain Water claims all the information in question is subject to reasonable efforts to maintain its secrecy. In its Motion, Mountain Water states that, consistent with industry practices, the information in question is protected by whatever means available. Robert Dove states that the information is not provided publicly in any forum, and indeed is provided internally only to Park Water employees on a need-to-know basis. *Id.* at 5; Aff. Robert Dove, ¶4.

15. Mountain Water asserts that its information is not readily ascertainable by proper means. *Id.*

16. The final factor at issue in the trade secret analysis is whether the information that Mountain Water is seeking to protect derives independent economic value or a competitive advantage from its secrecy.

17. Mountain Water asserts that the independent economic value of the secrecy of its bank account numbers is apparent. *Id.* Mountain Water states that publication of the numbers would subject it to risk of theft or fraud or other “nefarious activities”. *Id.* Mountain Water asserts that the economic value of privacy is the avoided costs of increased vigilance of the bank accounts, as well as the costs of resolving thefts or frauds arising from the dissemination of the account information. *Id.*

18. The City does not contest the protection of Mountain Water’s bank account information. Response Brief at 3.

19. The Commission agrees with the *prima facie* assertions made by Mountain Water with regard to the independent value derived from the secrecy of its bank account numbers. Specific financial information of this nature is highly sensitive and balance between public

accessibility and protection of trade secret information in this matter weighs overwhelmingly in favor of protection.

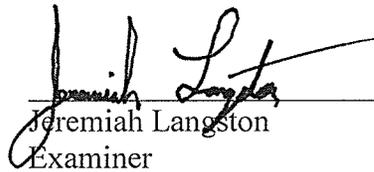
20. Because Mountain Water has stated facts sufficient to support a *prima facie* finding that the information in question constitutes property rights under *Great Falls Tribune* and because Mountain Water has met the factors for requesting a protective order for trade secret under Admin. R. Mont. 38.2.5007(4)(b), the Commission grants Mountain Water's Motion for Protective Order.

**ORDER**

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

21. Mountain Water's Motion for Protective Order is GRANTED in its entirety.

DONE AND DATED this 8<sup>th</sup> day of June, 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. 7392h

Order Action Date: June 8, 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.

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Typed or Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of Signature

Business Address:

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\_\_\_\_\_  
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\_\_\_\_\_  
Employer

\_\_\_\_\_  
Party Represented