

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

\* \* \* \* \*

IN THE MATTER OF the Investigation of ) REGULATORY DIVISION  
the Montana Public Service Commission int )  
whether Mountain Water Company's rates ar ) DOCKET NO. D2016.2.15  
Just and Reasonable )

**OBJECTION OF THE MONTANA CONSUMER COUNSEL TO  
MOUNTAIN WATER COMPANY'S FIRST SET OF DATA REQUESTS  
TO THE MONTANA CONSUMER COUNSEL  
(MWC-001 THROUGH MWC-009)**

**DATA REQUEST**

**MWC-008** RE: Witness Communications

Please provide all documents, emails and/or communications provided to or received from all witnesses or potential witnesses regarding this matter.

Objection: The Montana Consumer Counsel (MCC) objects to this data request to the extent that it seeks correspondence between witnesses or potential witnesses and MCC staff or counsel because the apparent purpose of the request is to obtain access to “core work product” – “the mental impressions, conclusions, opinions, or legal theories of a party’s attorney or other representative concerning the litigation” – the disclosure of which is specifically prohibited by Montana Rule of Civil Procedure 26(b)(3)(B), made applicable here by A.R.M. § 38.2.3301(1). This type of work product “is virtually undiscoverable.”

*United States v. Deloitte LLP*, 610 F.3d 129, 135 (D.C. Cir. 2010), quoting, *Dir. Office of Thrift Supervision v. Vinson & Elkins, LLP*, 124 F.3d 1304, 1307 (D.C. Cir. 1997).

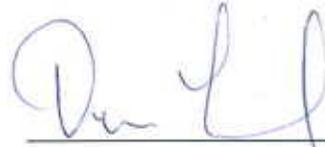
This Commission has already determined in the prior case involving Mountain Water and Liberty Utilities that the material sought in similar data requests is attorney work product. See Order 73921 at ¶ 41 and Order 73920 at ¶ 15 in Docket No. 2014.12.99. Further, the Commission has rejected a similar request for communications between MCC and its expert witnesses by another utility. See Notice of Commission Action issued May 12, 2014 in D2013.12.85.

The Montana Supreme Court has held that opinion work product or core work product “enjoys a nearly absolute immunity and can be discovered only in very rare and extraordinary circumstances.” *Kuiper v. Dist. Ct. of the Eighth Jud. Dist.* (1981), 193 Mont. 452, 466, 632 P.2d 694, quoting *In re Murphy*, 560 F.2d 326, 337 (8<sup>th</sup> Cir. 1977). In addition to the Orders cited above, the Commission has expressed comparable views as to the scope of work product protection from discovery. *In the Matter of Qwest Corp.*, Order No. 6889g, 2008 Mont. PUC LEXIS 78 at ¶¶ 42-43 (2008), citing *Palmer by Diacon v. Farmers Ins. Exch.* (1993), 261 Mont. 91, 861 P.2d 895.

## **CONCLUSION**

MCC’s objection to MWC-008 should be sustained.

Respectfully submitted March 23, 2016.

A handwritten signature in blue ink, appearing to read "Dennis Lopach", written over a horizontal line.

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