

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

IN THE MATTER OF the Investigation of the) REGULATORY DIVISION
Montana Public Service Commission into)
Whether Mountain Water Company’s) DOCKET NO. D2016.2.15
Rates are Just and Reasonable) ORDER NO. 7475h

ORDER DENYING MOUNTAIN WATER’S MOTION TO COMPEL

Procedural History

1. On February 2, 2016, the Montana Public Service Commission (Commission) initiated an investigation into whether Mountain Water Company’s (Mountain Water) rates are just and reasonable. On March 7, 2015, the Commission issued Procedural Order establishing deadlines for discovery, testimony, pre-hearing documents and a hearing date. On March 25, 2016, Mountain Water issued data requests MWC-010 through MWC-018 to the Commission. Commission staff informally communicated to Mountain Water that the Commission would not be answering the data requests as this process did not conform the Commission’s usual practices. On March, 30, 2016, Mountain Water filed a motion to compel the Commission to respond to data requests MWC-010 through MWC-018. The Commission held a work session on April 19, 2016, to discuss and act on Mountain Water’s motion to compel, which was denied five to zero. Staff Correspondence was sent to Mountain Water on April 25, 2016, explaining the Commission’s decision.

Discussion, Findings of Fact, and Conclusions of Law

2. Staff Correspondence articulated the following reasons for denying Mountain Water’s motion to compel.

This letter is to serve as the Commission’s response to the data requests served upon it on March 18, 2016, pursuant to Commission action at a regularly scheduled work session on April 19, 2016. The Commission does not intend to call any witnesses at the hearing on this matter. As of today’s date, the only documents or exhibits that the Commission plans to introduce at the hearing will be data requests, if they

are not introduced by another party first. I will update you if the situation changes. Please do not hesitate to call if you have any questions.

Staff Correspondence, Letter to Attorney for Mountain Water (Apr. 25, 2016). This Staff Correspondence is incorporated into this Order.

3. Additionally, Mountain Water relies significantly on *Wilson v. Dep't of Pub. Serv. Regulation*, 260 Mont. 167, 172, 858 P.2d 368, 371 (1993) to stand for the proposition that the Commission must respond to discovery in this instance. In *Wilson*, fundamental fairness and due process were deprived when the Commission declined to respond to discovery issued by the respondent in addition to “cumulative circumstances” of a property right decided by the agency being in question; the agency failing to identify the applicable order, rules or statutes; and the agency failing to provide timely notice of the evidence to be used against the respondent. *Montanans v. State*, 2006 MT 277, ¶ 37, 334 Mont. 237, 146 P.3d 759. It is also notable that an underlying factual question existed as to why the Commission initiated a show cause order against the Wilsons. “[T]he PSC issued a notice of complaint and order to show cause (the notice) to the Wilsons pursuant to § 69-12-327, MCA, on the basis of three complaints of *alleged* intimidation and harassment of customers and competitors by the Wilsons in the operation of their business. *Wilson*, 260 Mont. at 169, 858 P.2d at 369 (emphasis added).

4. No similar underlying factual question exists in the case at hand. The triggering event of the inquiry, the sale and transfer of Mountain Water, is beyond dispute because the joint applicants in D2014.12.99 self-reported the event in the notice of closing and withdrawal of joint application filed with the Commission on January 11, 2016. Furthermore, Mountain Water’s capital structure is established through previous rate cases. *In re Mountain Water*, Dkt. D2012.7.81, Order 7251c (Nov. 21, 2013); *In re Mountain Water*, Dkt. D2010.4.41, Order 7088e ¶¶ 12-14 (Mar. 23, 2011). The situation at hand is dissimilar to what occurred in *Wilson* and the obligations imposed upon the Commission in that case are not applicable here.

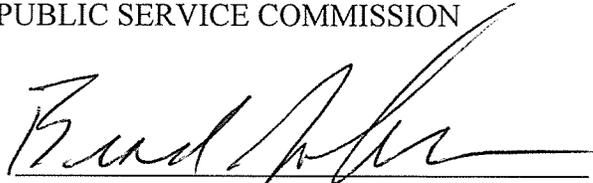
ORDER

IT IS HEREBY ORDERED THAT:

5. Mountain Water’s Motion to Compel is **DENIED**.

DONE AND DATED this 19th day of April, 2016, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION


BRAD JOHNSON, Chairman


TRAVIS KAVULLA, Vice Chairman


KIRK BUSHMAN, Commissioner


ROGER KOOPMAN, Commissioner


BOB LAKE, Commissioner

ATTEST:


Aleisha Solem
Commission Secretary

(SEAL)