

Service Date: March 10, 2016

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. 7475b

**ORDER GRANTING LIMITED INTERVENTION TO
THE CITY OF MISSOULA AND THE CLARK FORK COALITION**

Procedural History

1. On January 29, 2016, the Montana Public Service Commission (“Commission”) voted to initiate a proceeding to inquire into whether Mountain Water Company’s (“Mountain Water”) current rates for its Missoula, Montana customers are just and reasonable.

2. On January 11, 2016, the Commission received the *Joint Applicants’ Notice of Closing and Withdrawal of Joint Application* in Docket No. D2014.12.99. This *Notice* informed the Commission that on January 8, 2016, the sale and transfer of Western Water stock to Liberty WWH closed, with Liberty WWH merging into Western Water and Western Water continuing as the wholly-owned subsidiary of Liberty Utilities. The Commission never completed its review of the sale and transfer in Docket No. D2014.12.99.

3. On February 3, 2016, the Commission issued a *Notice of Investigation and Intervention Deadline*. On February 10, 2016, the City of Missoula (“City”), the Clark Fork Coalition (“Clark Fork”), and the Montana Consumer Counsel petitioned for general intervention. On February 19, 2016, Mountain Water filed a *Response to City of Missoula and Clark Fork Coalition Petitions to Intervene*. On February 29, 2016, the City filed a *Reply to Mountain Water’s Response to City of Missoula’s Motion to Intervene*. On March 1, 2016, the Commission held a regularly scheduled work session to discuss and act on the parties’ petitions for intervention.

Discussion, Findings of Fact, and Conclusions of Law

4. Montana law invests the Commission with the “full power of supervision, regulation, and control” of public utilities. Mont. Code Ann. § 69-3-102. The Commission has

the authority to “regulate the mode and manner of all investigations and hearings of public utilities and other parties before it.” Mont. Code Ann. § 69-3-103(2)(c). The Commission initiated this investigative proceeding pursuant to Mont. Code Ann. § 69-3-324, which permits the Commission to, at any time, “upon its own motion, investigate any of the rates, tolls, charges, rules, practices, and services” of a utility.

5. The Commission’s rules regarding intervention are articulated in Mont. Admin. R. 38.2.2401, *et seq.* Mont Admin. R. 38.2.2401 states that any person “interested in and directly affected by the subject matter of any hearing or investigation pending before the commission may petition to become a party thereto.” Mont. Admin. R. 38.2.2403 states that any person who desires to appear in a Commission proceeding “and who does not desire to broaden the issues of the original proceeding, may petition in writing for leave to intervene in the proceeding.” Mont. Admin R. 38.2.2405 states that the Commission “may” grant a petition for intervention if it appears that “the petition or motion discloses a substantial interest in the subject matter of the hearing, that participation of the petitioner will be in the public interest, or that the granting of the petition would not unduly broaden the issues in the proceeding.”

6. The common thread throughout Mont. Admin. R. 38.2.2401, *et seq.* is that parties seeking general intervention may be permitted to join a Commission proceeding as long as they do not “broaden the issues” of the proceeding. The scope of this proceeding is limited to the inquiry of whether Mountain Water’s current rates are just and reasonable, and whether Mountain Water is in violation of any ring fencing provisions. *See* Notice of Investigation and Intervention Deadline (Feb. 3, 2016); Order 7475 (Feb. 8, 2016). This proceeding is not a continuation of Docket No. D2014.12.99, rather it is separate and distinct.

7. The City correctly states that it is “one of Mountain Water’s largest customers.” City Pet. to Intervene 2 (Feb. 10, 2016). This fact demonstrates that the City has a “substantial interest” in this proceeding. However, the City also asserts that it is a representative of “the majority of Mountain Water customers” and that it “has a substantial interest in ensuring the interests of the citizens of Missoula are represented in this proceeding.” *Id.* The proper representative of the citizens of Missoula in this proceeding is the Montana Consumer Counsel. *See* Mont. Code Ann. § 69-2-201 *et seq.* The City’s participation in this docket is strictly as a customer of the utility.

8. The City also purports to be a future owner of the utility and states that due to the ongoing and concurrent condemnation proceedings “[c]hanges in Mountain Water’s rate structure could have an impact on the City’s interest in these associated actions.” City Pet. to Intervene 2. The Commission is uncertain as to how its investigation into the current rates of Mountain Water impacts the City’s condemnation efforts. Regardless, the City’s condemnation proceeding “has no impact on the PSC’s continuing authority to regulate Mountain Water while it is investor owned...” Order and Memorandum Re The Montana Public Service Commission’s Motion to Intervene 13, *City of Missoula v. Mountain Water Company*, DV-14-352 (Mont. 4th Jud. Dist. Aug. 19, 2014). The Commission’s investigation into Mountain Water is squarely within the Commission’s authority. Mont. Code Ann. §§ 69-3-102, 69-3-103(2)(c), 69-3-324.

9. In an apparent attempt to broaden the issues of this docket right out of the gate, the City requests that Algonquin Power and Utilities Corp. (“Algonquin”) be joined to this proceeding. To support this assertion, the City relies on information from Docket No. D2014.12.99. City Pet. to Intervene 3. The City states that “Algonquin should be joined... so as to ensure the PSC can fully and completely understand the capital structure used to finance Mountain Water.” City Pet. to Intervene 4.

10. The Commission will not be considering requests to join Algonquin to this proceeding. This docket was initiated by the Commission to investigate “the rates, tolls, charges, rules, practices, and services” of Mountain Water. Mont. Code Ann. § 69-3-324. The Commission has the authority to “regulate the mode and manner” of this investigation. Mont. Code Ann. § 69-3-103(2)(c). If the Commission finds itself unable to collect the requisite information from Mountain Water, the Commission will address the situation appropriately at such time.

11. Mountain Water asserts that it “does not object to the Commission granting the City general intervention” but that the City’s intervention “must be limited to the issues the Commission raised in its Notice of Investigation.” Mountain Water Resp. 3 (Feb 19, 2016). The Commission agrees. The City is granted intervention as a customer of Mountain Water, and the City will not be permitted to broaden the issues of this proceeding.

12. Clark Fork states that it “has a 30-year history of working to improve water quality and stream flows in the Mountain Water service area.” Clark Fork Pet. to Intervene 2 (Feb. 10, 2016). Clark Fork states that it “has a history of intervening in Mountain Water

dockets.” Mountain Water asserts that while Clark Fork does have a history of intervening in sale and transfer dockets, Clark Fork “does not have a history of intervening in Mountain Water rate case dockets,” including the most recent. Mountain Water Resp. 6. Moreover, Clark Fork does not assert to be a customer of Mountain Water. Like the City, Clark Fork asserts that in some manner it is representing Mountain Water customers. As previously discussed, the Montana Consumer Counsel is the sole representative of the consuming public in this docket. Clark Fork’s interest in Mountain Water’s rates is dubious.

13. Furthermore, Clark Fork appears to be blurring the lines between this current docket and Docket No. D2014.12.99. Clark Fork Pet. to Intervene 3-5. Like the City, Clark Fork requests that the Commission join Algonquin to this proceeding. As stated above, this request will not be entertained by the Commission. This docket is not intended to perpetuate the issues in Docket No. D2014.12.99, but to investigate the issues identified in the *Notice of Investigation and Intervention Deadline*. Clark Fork’s concern is the protection and conservation of water. Clark Fork Pet. to Intervene 2.

14. To the extent that the matter of whether Mountain Water has violated ring fencing provisions relates to water protection and conservation, Clark Fork is an appropriate party to this proceeding. The Commission rejects Mountain Water’s argument that Clark Fork’s intervention in this matter be rejected in its entirety. *See* Mountain Water Resp. 5. Clark Fork is granted intervention, but not as a customer or a consumer representative. Clark Fork’s intervention is limited to participation in matters regarding water protection and conservation, and it is not permitted to broaden the issues of this proceeding.

ORDER

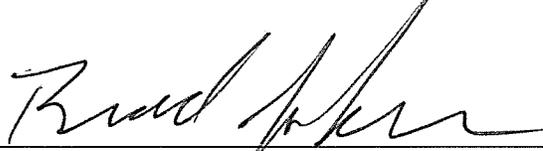
Based on the foregoing,

IT IS HEREBY ORDERED THAT:

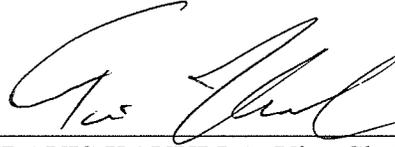
15. The *Petition to Intervene by the City of Missoula* is hereby **GRANTED**.
16. The Clark Fork Coalition’s *Petition to Intervene* is hereby **GRANTED**.
17. The Parties’ interventions in this proceeding are limited consistent with this Order.

DONE AND DATED this 1st day of March, 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

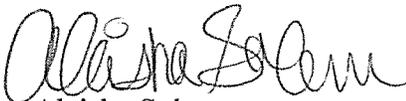


ROGER KOOPMAN, Commissioner



BOB LAKE, Commissioner

ATTEST:



Aleisha Solem
Commission Secretary

(SEAL)

