

Service Date: April 7, 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. 7475d

**ORDER GRANTING CONTINUANCE**

**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 March 1, 2016, the City of Missoula and Clark Fork Coalition were granted limited intervention. On March 2, 2016, the Montana Consumer Counsel was granted intervention. On March 7, 2016, the Commission, through delegation of authority to staff, issued *Procedural Order No. 7475a*.

4. On March 18, 2016, Mountain Water filed a *Motion for Reconsideration of Procedural Order No. 7475a* and a *Motion for a Continuance*. The Commission granted Mountain Water’s requests for additional discovery and continued the hearing date to April 29-30, 2016. *See* Dkt. No. D2016.2.15, NSA (April 6, 2016).

5. On April 4, 2016, Mountain Water filed a *Motion for a Continuance of the April 29, 2016 Hearing Date* (“Motion”).

### **Discussion, Findings of Fact, and Conclusions of Law**

6. Montana law vests the Commission with the “full power of supervision, regulation, and control” of public utilities. Mont. Code Ann. § 69-3-102 (2015). 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.

7. Pursuant to Mont. Admin. R. 38.2.3907(1), “[a]ny party who desires a continuance shall, immediately upon receipt of notice of the hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the commission of said desire, stating in detail the reasons why such continuance is necessary.” Furthermore, “[t]he commission in passing upon a request for a continuance shall consider whether such request was timely made, and whether it is supported by good cause. The commission may grant such a continuance and may at any time order a continuance upon its own motion.” Mont. Admin. R. 38.2.3907(1) (2016).

8. Mountain Water’s March 18, 2016 *Motion for a Continuance* suffered from a lack of details stating the reasons why a continuance was necessary, as required by Mont. Admin R. 38.2.3907(1). The Commission only knew that a witness was unavailable on April 28-29, 2016. The particulars were vague indeed. Mountain Water states that the Commission “already determined good cause exists to grant a continuance...” Mot. for a Continuance 3 (April 4, 2016). In fact the Commission did not find good cause, but chose to be accommodating and continued the hearing a for a day, hoping such accommodation would settle the matter.

9. Mountain Water now argues that its witness, Thomas J. Bourassa, is scheduled to testify before the Arizona Corporation Commission at a hearing scheduled for April 28-29, 2016. Mot. at 2. The Commission appreciates the additional information that Mountain Water included in its second Motion, but it is still puzzled as to why Mr. Bourassa is unavailable to attend the hearing in Missoula, Montana, on Saturday, April 30, 2016. Again, Mountain Water has left the Commission to speculate. Further information as to why the new hearing date is not viable would have been appreciated.

10. In any case, the reason certainly cannot be that Mr. Bourassa is unable to get his person from Phoenix, Arizona on April 29, 2016 to Missoula, Montana on April 30, 2016. A quick search on Kayak.com indicates that there are numerous affordable flight options via which one could depart from Phoenix, Arizona on Friday afternoon and arrive in Missoula, Montana, later that night, in plenty of time to attend a Saturday hearing. *See* Attachment A. The Commission is left to speculate that perhaps Mr. Bourassa has leisure plans which prevent him from being able to attend the hearing on Saturday.

11. Mountain Water argues that the Commission's own precedent obligates it to grant continuances. Mot. at 4. Mountain Water points out that the Commission has stated in the past that it "generously grants continuances," and therefore precedent dictates that the Commission must continue in the same vein. *Id.* Mountain Water also asserts that because the Commission has granted continuances due to witness unavailability in the past that it must do so here. *Id.* Finally, Mountain Water argues that denying its Motion "violates [its] procedural, statutory, and constitutional rights." Mot. at 5.

12. Mont. Admin. R. 38.2.3907(1) articulates that a party that desires a continuance must notify the Commission and state in detail the reasons why such continuance is necessary. The burden is upon the party requesting a continuance to demonstrate that good cause exists and that a continuance is required. Continuances are evaluated on a case by case basis, and determinations are made based upon whether the requirements of Mont. Admin. R. 38.2.3907(1) are met.

13. The Commission routinely grants continuance as a courtesy. It is not often necessary for a party to make a formal filing with details that demonstrate good cause. However, the Commission's accommodating nature has apparently been taken as entitlement by some parties, namely, in this instance, Mountain Water. The Commission is not obligated by precedent, its own rules, or state law to grant continuances. Granting a continuance in one instance, does not necessitate one in another.

14. Regarding the case at hand, Mountain Water's filing still lacks pertinent details that demonstrate good cause as to why a continuance is necessary. The Commission does not find that good cause is present. However, in recognition of Mountain Water's panicky insistence upon a continuance, the Commission will grant one in this isolated instance.

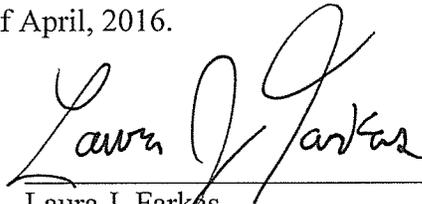
**ORDER**

Based on the foregoing,

**IT IS HEREBY ORDERED THAT:**

15. Mountain Water's *Motion for a Continuance* is hereby **GRANTED**.
16. The hearing regarding the above entitled docket is hereby scheduled for May 3-4, 2016, in Missoula, Montana.

DONE AND DATED this 7<sup>th</sup> day of April, 2016.

  
\_\_\_\_\_  
Laura J. Farkas  
Hearings Officer

ATTEST:

  
Aleisha Solem  
Commission Secretary  
(SEAL)

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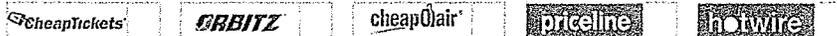
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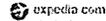
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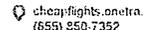
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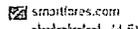
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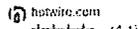
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