

Service Date: April 19, 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. 7475e

ORDER TO COMPEL

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 8, 2016, the Commission issued an *Order to Show Cause*, which ordered, in part, that Mountain Water “submit any relevant documentation available” to demonstrate to the Commission that it did not violate ring fencing provisions. Order No. 7475, ¶ 7 (Feb. 8, 2016). Mountain Water was further ordered to “provide any documents establishing a new merger agreement or consent of waiver requiring regulatory approval of the Commission.” *Id.*
4. On February 10, 2016, the City of Missoula (“City”), the Clark Fork Coalition (“Clark Fork”), and the Montana Consumer Counsel (“MCC”) petitioned for general intervention. On February 19, 2016, Mountain Water filed a *Response to City of Missoula and Clark Fork Coalition Petitions to Intervene*.

5. On February 22, 2016, Mountain Water filed its *Response to Montana PSC's Order to Show Cause*.

6. 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.

7. On March 2, 2016, the Commission issued a *Notice of Staff Action Granting Intervention* to the MCC. On March 10, 2016, the Commission issued an *Order Granting Limited Intervention* to both the City and Clark Fork. On March 7, 2016, the Commission issued *Procedural Order No. 7475a*.

8. On March 1, 2016, the Commission held a regularly scheduled work session to discuss and act on Mountain Water's *Response to Montana PSC's Order to Show Cause*.

Discussion, Findings of Fact, and Conclusions of Law

9. Montana law vests 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." *Id.* § 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.

10. The Commission expressed concern regarding Mountain Water's adherence to ring fencing provisions established as part of the approval of a past transaction of Park Water to the Carlyle Group. *See* Dkt. No. D2011.1.8, Order No. 7149d, p. 29, ¶ 1 (December 14, 2011). Therefore, the Commission requested that Mountain Water provide "any relevant documentation available" to demonstrate to the Commission that it did not violate ring fencing provisions established in the previous sale and transfer docket. Order No. 7475, ¶ 7. Mountain Water was further ordered to "provide any documents establishing a new merger agreement or consent of waiver requiring regulatory approval of the Commission." *Id.*

11. In its *Response*, Mountain Water states that it "has not declared any dividends or other transfers that exceed 5% of Mountain Water's equity so the notice requirements of Condition (f) have not been triggered." *Resp. to Order to Show Cause 5* (Feb. 22, 2016).

However, Mountain Water provides no “relevant documentation available” to support this assertion.

12. In addition, despite the fact that the Commission ordered Mountain Water to “provide any documents establishing a new merger agreement or consent of waiver requiring regulatory approval of the Commission” (Order No. 7475, ¶ 7), Mountain Water responded that the information is not relevant. Resp. at 6. The Commission disagrees. This is the document that allowed the Joint Applicants to proceed with the sale and transfer of Western Water stock to Liberty WWH, therefore it is highly relevant to the Commission’s investigatory docket.

13. Mountain Water must provide relevant documentation supporting its assertion that it “has not declared any dividends or other transfers that exceed 5% of Mountain Water’s equity.” Resp. at 5. Mountain Water must also provide the communications, electronic or otherwise, that allowed the Joint Applicants to proceed with the sale and transfer of Western Water stock absent Commission approval.

ORDER

Based on the foregoing,

IT IS HEREBY ORDERED THAT:

14. Mountain Water provide documentation supporting Mountain Water’s assertion that it has not declared any dividends or other transfers that exceed 5% of Mountain Water’s equity;

15. Mountain Water provide documentation, including but not limited to the consent e-mail, related to the waiver of Section 7.1.(e) of the Merger Agreement requiring regulatory approval of the sale and transfer;

16. Mountain Water must comply with the terms of this Order within 5 calendar days of the service date of 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



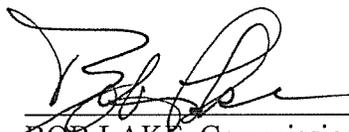
TRAVIS KAVULLA, Vice Chairman



KIRK BUSHMAN, Commissioner



ROGER KOOPMAN, Commissioner



BOB LAKE, Commissioner

ATTEST:



Aleisha Solem
Commission Secretary

(SEAL)

