

Service Date: April 18, 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. 7475f

**ORDER**

**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 (“City”), and the Clark Fork Coalition (“Clark Fork”) were granted limited intervention. On March 2, 2016, the Montana Consumer Counsel (“MCC”) was granted intervention. On March 7, 2016, the Commission, through delegation of authority to staff, issued *Procedural Order No. 7475a*, setting an initial discovery deadline of March 25, 2016.

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

4. 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.

5. The Commission has adopted Rules 26, 28 through 37 (excepting rule 37(b)(1) and 37(b)(2)(d)) of the Montana Rules of Civil Procedure. Mont. Admin. R. 38.2.3301 (2016).

6. “Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense... The information sought need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” Rule 26(b)(1) Mont. R. Civ. P.

7. “Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Mont. R. Evid. 401.

8. Courts recognize a policy of broad and liberal discovery. *Patterson v. State*, 2002 MT 97, ¶ 15, 309 Mont. 381, 46 P.3d 642, (quoting *State ex rel. Burlington N. R.R. v. District Court*, 239 Mont. 207, 216, 779 P.2d 885 (1989)).

9. “The purpose of discovery is to promote the ascertainment of truth and the ultimate disposition of the lawsuit in accordance therewith. Discovery fulfills this purpose by assuring the mutual knowledge of all relevant facts gathered by both parties which are essential to proper litigation.” *Murphy Homes, Inc. v. Muller*, 2007 MT 140, ¶ 67, 337 Mont. 411, 162 P.3d 106 (quoting *Richardson v. State*, 2006 MT 43, ¶ 22, 331 Mont. 231, 130 P.3d 634).

10. “The attorney-client privilege protects communications between attorney and client during the course of the professional relationship.” *Am. Zurich Ins. Co. v. Mont. Thirteenth Judicial Dist. Court*, 2012 MT 61, ¶ 9, 364 Mont. 299, 280 P.3d 240.

11. The work product privilege protects against the disclosure of the mental processes of an attorney, creating a privileged space in which an attorney can analyze and prepare a case. *State v. Ugalde*, 20 MT 308, ¶ 37, 372 Mont. 234, 311 P.3d 772.

12. On March 17, 2016, Mountain Water objected to MCC’s data requests MCC-001 and MCC-002. Despite the objections, Mountain Water appears to have filed information responsive to the MCC’s request, on April 8, 2016, after receiving a *Protective Order*, issued by

the Commission on April 7, 2016. The Commission will assume that the MCC finds the information provided by Mountain Water to be an adequate response.

13. On March 23, 2016, the MCC filed an objection to Mountain Water's data request MWC-008, originally submitted on March 18, 2016. The MCC argues that the data request seeks correspondence between witnesses or potential witnesses and MCC staff or counsel, which qualifies as work product, which is protected from disclosure by Mont. R. Civ. P. 26(b)(3)(B). MCC Obj. to Mountain Water Co. First Set of Data Requests 1 (Mar. 23, 2016).

14. On March 28, 2016, the City filed an objection to Mountain Water's data request MWC-035, submitted on March 18, 2016. Additionally, Clark Fork filed an objection to Mountain Water's data request MWC-026. Similar to the MCC, the City and Clark Fork assert that the data requests seek information that is attorney-client privileged and work product privileged. City Resp. to Data Requests 11 (Mar. 28, 2016), Clark Fork Resp. to Data Requests 12 (Mar. 28, 2016).

15. The MCC, City, and Clark Fork's communications with their witnesses and potential witnesses are privileged under the work product doctrine. Any information that the MCC, City, and Clark Fork intend to make testimonial use of will be disclosed in their written, pre-filed testimony. In response, Mountain Water will be permitted to ask discovery. Mountain Water will also have the ability to cross-examine the MCC, City, and Clark Fork's testimonial witnesses at the hearing.

16. The City additionally lodged a number of objections to Mountain Water data requests on the basis that they are overly broad, unduly burdensome, and not calculated to lead to relevant material. Specifically, MWC-033, MWC-034, and MWC-043. However, notwithstanding its objections, the City did provide information in response to the identified data requests. The Commission will assume that Mountain Water finds the responses the City did provide to be adequate.

17. On March 23, 2016, Mountain Water filed an objection to the MCC's data requests MCC-005 and MCC-006. The MCC's data requests sought "complete copies of all rate orders for Liberty and/or APUC affiliates issued by regulatory authorities" in a number of states for the years 2014, 2015, and 2016. Data Requests of the MCC to Mountain Water (Mar. 18, 2016).

18. Mountain Water objects on the basis that the requests are “overly broad, unduly burdensome, and [seek] information that is not relevant to the scope” of the docket. Mountain Water Objections to MCC-005 and MCC-006 pp. 2-3 (Mar. 23, 2016). Mountain Water also objects on the basis of relevance. *Id.* Mountain Water also points out that the documents the MCC seeks are publicly available.

19. The Commission agrees that the request is overly broad and unduly burdensome, especially given that the MCC is apparently just as capable of tracking down the voluminous information as Mountain Water. Therefore, Mountain Water should not be required to provide the information, though it does appear to be relevant.

**ORDER**

Based on the foregoing,

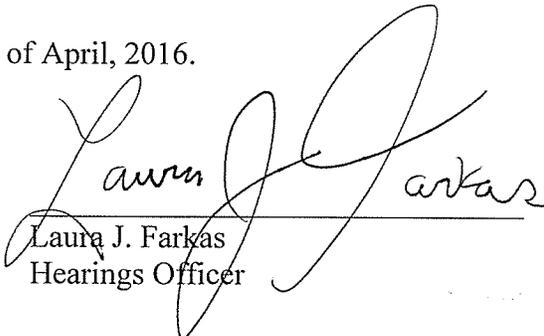
**IT IS HEREBY ORDERED THAT:**

20. The MCC’s objection to MWC-008 is hereby **SUSTAINED**.

21. The City’s objection to MWC-035 is hereby **SUSTAINED**.

22. Mountain Water’s objections to MCC-005 and MCC-006 are hereby **SUSTAINED**.

DONE AND DATED this 18<sup>th</sup> day of April, 2016.

  
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Laura J. Farkas  
Hearings Officer

ATTEST:

  
Aleisha Solem  
Commission Secretary  
(SEAL)