

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. 7475g

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. The Montana Consumer Counsel (“MCC”), the City of Missoula, and the Clark Fork Coalition have intervened in this proceeding.
3. On February 3, 2016, the Commission issued a *Notice of Investigation and Intervention Deadline*. On February 4, 2016, the Commission issued *Data Requests PSC-001 through PSC-008* to Mountain Water. PSC-001(b) states: “Please identify the total amount of debt, and the associated cost of debt, used to finance the acquisition. Please explain whether the debt is unsecured or guaranteed by certain property, and in whose name the debt was issued.”
4. On February 22, 2016, the Commission issued *Data Requests PSC-009 and PSC-010* to Mountain Water. PSC-009(a) states: “Please specifically identify the total amount of debt, and the associated cost of debt, i.e. the interest rate, used to finance the acquisition.”
5. In response to both PSC-001(b) and PSC-009(a), Mountain Water failed to provide an adequate answer. Specifically, Mountain Water failed to identify, as asked, the

interest rate used to finance the acquisition. On March 1, 2016, the Commission held a regularly scheduled work session to discuss and act on Mountain Water's failure to adequately answer Commission data requests PSC-001(b) and PSC-009(a). The Commission voted unanimously to compel Mountain Water to provide the requested information.

6. Subsequently, Mountain Water filed a supplemental response to PSC-009 on March 17, 2016, but still did not provide the requested interest rate information. Also on March 17, 2016, the MCC filed data requests MCC-001 and MCC-002, directed at Mountain Water. These data requests sought additional information regarding Mountain Water's responses to the Commission's questions regarding the interest rate of the acquisition.

7. Mountain Water filed its proprietary responses to MCC-001 and MCC-002 on April 8, 2016. Commission staff meticulously reviewed the proprietary material and were unable to ascertain the interest rate requested in PSC-001(b) and PSC-009(a).

8. The Commission provided Mountain Water the opportunity to deliver the requested information, either in a supplemental response or in response to another party's data requests. To date, Mountain Water has still not provided a satisfactory response to PSC-009(a).

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 (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." *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 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).

11. "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.

12. “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.

13. 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)).

14. “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).

15. The Supreme Court of Montana takes a dim view of discovery abuses. *Murphy Homes, Inc. v. Muller*, 2007 MT 140, ¶ 68, 337 Mont. 411, 162 P.3d 106 (quoting *Drambrowski v. Champion Int'l Corp.*, 2000 MT 149, ¶ 34, 300 Mont. 76, 3 P.3d 617). The Supreme Court of Montana has stated that “dilatatory abuse of discovery must no longer be dealt with leniently” and that “transgressors of discovery abuses should be punished rather than repeatedly encouraged to cooperate.” *Id.*

16. Mountain Water has been provided multiple opportunities to deliver information that was originally requested by the Commission on February 4, 2016, in PSC-001(b). In PSC-009(a) the Commission asked as follows: “Please specifically identify the total amount of debt, and the associated cost of debt, i.e. the interest rate, used to finance the acquisition.” In Mountain Water’s response to PSC-009(a), Mountain Water stated that “the acquisition was financed with proceeds from a term credit facility issued January 4, 2016 for \$235 million...” Resp. to Data Requests PSC-009 through PSC-010 pp. 2-3 (Feb. 24, 2016). The Commission requests that Mountain Water provide the associated cost of debt, i.e. the interest rate, for the \$235 million term credit facility.

ORDER

Based on the foregoing,

IT IS HEREBY ORDERED THAT:

17. Mountain Water is hereby **COMPELLED** to provide the following information: The associated cost of debt, i.e. the interest rate, for the \$235 million term credit facility, as referenced in its response to data request PSC-009(a). Mountain Water must submit the compelled information within three calendar days from the date of service.

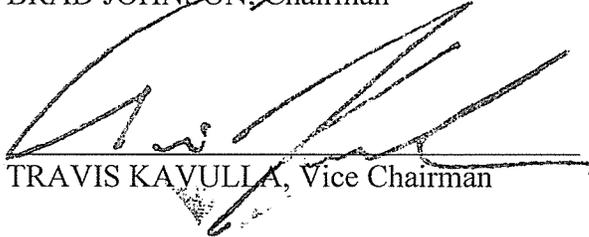
18. **IT IS FURTHER ORDERED** that failure to comply with this Order will result in sanctions pursuant to the Montana Rules of Civil Procedure. *See* Rule 37(b)(2)(A) Mont. R. Civ. P.

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



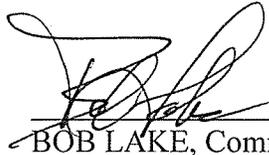
TRAVIS KAVULLA, Vice Chairman



KIRK BUSHMAN, Commissioner



ROGER KOOPMAN, Commissioner



BOB LAKE, Commissioner

ATTEST:



Aleisha Solem
Commission Secretary

(SEAL)

