

Date: March 8, 2016

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

IN THE MATTER OF the Investigation of ) REGULATORY DIVISION  
the Montana Public Service Commission )  
into whether Mountain Water Company's ) DOCKET NO. D2016.2.15  
rates are Just and Reasonable ) ORDER NO. 7475a

**PROCEDURAL ORDER**

1. On January 29, 2016, the Montana Public Service Commission (Commission) voted to initiate a proceeding to inquire into whether Mountain Water Company's current water rates for its Missoula, Montana customers are just and reasonable. On February 3, 2016, the Commission issued a *Notice of Application and Intervention Deadline*.

2. State law vests the Commission with “full power of supervision, regulation, and control of public utilities.” Mont. Code Ann. § 69-3-102 (2015). The Commission may at any time “upon its own motion, investigate any of the rates, tolls, charges, rules, practices, and services” of a utility. Mont. Code Ann. § 69-3-324. Rates must be "reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful." Mont. Code Ann. § 69-3-201. The Commission may, “after a full hearing... make by order such changes as may be just and reasonable.” Mont. Code Ann. § 69-3-324.

3. Through this docket the Commission intends to investigate Mountain Water's rates to determine if they are just and reasonable under the current capital structure and cost of capital now that Liberty Utilities is the new owner of Mountain Water. The scope of this docket is restricted to issues involving Mountain Water’s current capital structure and cost of capital.

4. The Commission, through delegation of authority to staff, hereby establishes the Procedural Order (Order) to be followed in this proceeding. This Order is effective immediately and remains effective unless modified by the Commission or its staff. Nothing in this Order limits the right of the Commission or its staff to inspect the books, accounts, papers, records and memoranda of Mountain Water at any time. Mont. Code Ann. § 69-3-106. A party may seek

reconsideration of this Order within ten (10) days of its service date. Mont. Admin. R. 38.2.4806 (2015).

#### Schedule

5. This Order sets the following procedural schedule for this Docket:
- (a) March 25, 2016: Final day for data requests to parties regarding the limited matter of whether Mountain Water's current rates are just and reasonable whether the Commission should order such changes to rates as may be just and reasonable. *See infra* ¶ 9.
  - (b) April 1, 2016: Final day for parties to respond to data requests. *See infra* ¶ 9.
  - (c) April 15, 2016: Final day for testimony from parties regarding whether Mountain Water's rates are just and reasonable and whether the Commission should order such changes to rates as may be just and reasonable.
  - (d) April 28, 2016: Hearing commences in Missoula, Montana and continues day to day as necessary.
  - (e) May 3, 2016: Work session on whether Mountain Water's rates are just and reasonable and whether the Commission should order changes to rates as may be just and reasonable.

#### Service and Filing

6. A party must serve a copy of every pleading, motion, brief, objection, data request or response, and other document it files in this proceeding on every other party. Upon e-filing a document with the Commission, the filing party must email a copy of the document to counsel of record. In order to file a document with the Commission, a party must: (1) Submit the document electronically (e-file) on the Commission's website at <http://psc.mt.gov> ("Account Login/Registration" under "Electronic Documents" tab); and (2) physically deliver or mail the original document to the Commission at 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. The Commission will not post an e-filed document to its website until it receives the original from the filing party. Service or filing by means of facsimile is prohibited. Service by mail does not extend a deadline.

#### Intervention

7. The deadline for intervention in this proceeding was February 10, 2016. An entity seeking late intervention must file a petition to intervene setting forth: (1) The general position that it intends to take; (2) a legally protectable interest directly affected by this

proceeding; (3) whether late intervention would delay the proceeding or prejudice another party; and (4) good cause for not having filed a timely petition. Late intervention will become effective only upon action of the Commission.

### Discovery

8. “The exchange of information among parties pursuant to data requests is the primary method of discovery in proceedings before the [C]ommission.” Mont. Admin. R. 38.2.3301(2). The Commission directs parties to use the following guidelines for data requests:

- (a) Assign a unique, consecutive number to each data request (e.g., MCC-001), regardless of the party to whom the request is directed (e.g., the Commission may direct PSC-001 through 008 to Mtn Water, PSC-009 through 016 to MCC, and PSC-017 through 019 again to Mtn Water).
- (b) At the beginning of each data request, consistently describe its subject in five words or less. In addition, a party may direct the request to a particular witness or include citations to exhibits or testimony.
- (c) For multi-part requests, use lower case letters (a-e) to denote up to five parts.
- (d) The following is an example of an acceptable data request:

PSC-006 RE: Purchased Gas Contracts  
Witness Doe, JBD-4:13-15.

- a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

9. Parties must respond to data requests within seven (7) calendar days of the service date of the data request or by the deadline to respond, whichever is earlier.

10. A party may file an objection to a data request within three (3) business days. Objections must be sufficiently specific for the Commission to adequately rule on whether to sustain or object. The responding party need not object if an answer has been provided to a discovery request. If the requesting party finds the response inadequate, they may file a motion to compel. *See infra* ¶ 12. If a party objects based on privilege, it must file a privilege log by the deadline to respond with enough information for the Commission to determine whether the privilege applies.

11. If a data request asks for protected information, the responding party must file a motion for a protective order within three (3) business days.

12. If a response to a data request fails to answer the request, the discovering party may move within three (3) business days after service of the response for an order compelling an answer. The motion, which the party must file with the Commission and serve on all parties, must identify the relief requested. The responding party may file a brief in opposition within one (1) calendar days of service of the motion to compel. The Commission will set a new response deadline if it grants the motion.

13. In order to promote the efficiency of the administrative process, staff attorney Laura Farkas will act as examiner for the limited purpose of disposing of discovery disputes (including objections to data requests and motions to compel) and motions for protective order in this proceeding. Mont. Code Ann. §§ 69-2-101, 69-3-103 (2014); *see also* Mont. Admin. R. 38.2.306, 38.2.1501. “Any party may apply for reconsideration in respect to any matter determined” in a Commission order or decision, including the examiner’s final written decision. Mont. Admin. R. 38.2.4806.

#### Hearing

14. The Montana Rules of Evidence in effect at the time of the hearing will govern the hearing. Because each party is entitled to reasonable notice of what issues will be addressed at the hearing, the Commission may not allow a party to raise an issue at a hearing unless it is reasonably related to an issue previously identified in the proceeding.

15. Prior to the hearing, the parties must arrange with the court reporter and Commission staff to consistently mark all proposed exhibits, responses to data requests, and pre-filed testimony for reference.

16. A party must make each person that authored a data request response available for cross-examination at the hearing unless the Commission approves an agreement among the parties to waive cross-examination. A witness need not recite pre-filed testimony before counsel moves to admit the testimony into the record.

17. When a party seeks to cross-examine a witness based on a document not previously filed in this proceeding, it must make copies of the document available to each Commissioner, party, and staff member, unless it shows good cause why copies are not available. A party seeking to introduce a document not previously filed in this proceeding must also provide a copy of the document to the court reporter.

18. At the discretion of the Commission, members of the public may comment on the

proceeding at the hearing.

19. “In the discretion of the commission or hearing examiner persons desiring to testify at a commission hearing may be allowed to do so without filing a petition to intervene.”  
Mont. Admin. R. 38.2.2401.

DONE AND DATED this 7<sup>th</sup> day of March, 2016, by delegation to Commission staff as an Order of the Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

BRAD JOHNSON, Chairman  
TRAVIS KAVULLA, Vice Chairman  
KIRK BUSHMAN, Commissioner  
ROGER KOOPMAN, Commissioner  
BOB LAKE, Commissioner