Service Date: April 29, 1996

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

* * * * *

IN THE MATTER of the Application of MOUNTAIN WATER COMPANY for Authority to Increase Rates and Charges for Water Service to its Missoula Division	))))	UTILITY DIVISION DOCKET NO. D96.4.61 ORDER NO. 5910

PROCEDURAL ORDER

Mountain Water Company (Mountain Water) filed an application for a rate increase on April 12, 1996. The Montana Public Service Commission (Commission) has adopted the policy of issuing a final procedural order upon receipt of a rate increase application. The Commission has delegated to Commission staff the duty to set the procedural schedule and issue the Order without a prehearing conference. The Commission has set forth a firm schedule in this Procedural Order. The Commission staff may amend the procedural schedule when the amendment does not alter the scheduled hearing date. The Commission will reconsider the date set for hearing only upon good cause shown and upon waiver of the nine-month requirement under § 69-3-302, Montana Code Annotated (MCA).

INTRODUCTION

1. Under the authority of ARM 38.2.2702, the Commission enters this Order setting forth the procedure and schedule to be followed in Docket No. D96.4.61. This Order is effective immediately and remains effective until modified by the Commission. A party must submit any request for reconsideration of this schedule within ten (10) days of the service date of this Order. (Intervenors not on the service list for this Order may request reconsideration within ten (10) days of intervention.) The Commission will schedule reconsideration for its next business meeting following any request and then inform the parties of the action taken.

SCHEDULE

2. All dates listed in the following schedule are **receipt dates** (filing and service) unless otherwise specified. Dates prior to the service date of this Order are for reference purposes only. Dates after the hearing are subject to change after the hearing. Upon a determination that

parties have not addressed concerns raised in the Commission staff review of the application, the Commission staff may identify additional issue(s) and require testimony. At such time the Commission will issue a Supplemental Procedural Schedule for additional issues.

(a) April 12, 1996: Mountain Water files Application.

(b) April 29, 1996: Notice of Application and Intervention Deadline issued by Commission. Procedural Order issued by Commission.

(c) May 20, 1996: Final day for intervention as a matter of right.

(d) June 10, 1996: Final day for written discovery (includes data requests) from intervenors to Mountain Water on application and prefiled testimony.

(e) July 1, 1996: Final day for Mountain Water to respond to intervenor discovery.

(f) July 22, 1996: Final day for testimony from intervenors.

(g) August 9, 1996: Final day for written discovery from Mountain Water to intervenors; final day for intervenor discovery to parties other than Mountain Water. The Commission Staff shall identify *additional issues*, notify the parties and establish a Supplemental Procedural Schedule.

(h) August 27, 1996: Final day for intervenors to respond to written discovery from Mountain Water and other intervenors.

(i) September 10, 1996: Final day for rebuttal testimony from Mountain Water and cross-rebuttal from intervenors to testimony filed pursuant to 2(f).

(j) September 24, 1996: Final day for written discovery directed to all parties filing rebuttal testimony pursuant to 2(i), limited to material directly related to rebuttal testimony.

(k) October 4, 1996: Final day for parties to respond to written discovery on rebuttal testimony filed pursuant to 2(j).

(l) October 11, 1996: Final day for prehearing memoranda filed by all parties. Staff shall file a limited prehearing memorandum pursuant to ¶26.

(m) October 17, 1996: Hearing commences.

(n) November 1, 1996: Applicant's opening brief due.

(o) November 15, 1996: Intervenors' response briefs due.

(p) November 27, 1996: Applicant's reply brief due.

(q) January 7, 1997: Final Order issued by the Commission.

3. In addition, the Commission may schedule prehearing conferences and may grant interim relief.

PROCEDURE

General

4. The procedure governing this Docket is set forth in applicable provisions of (a) Title 69, Chapter 3, MCA; (b) Title 2, Chapter 4, MCA, Montana Administrative Procedures Act (MAPA); and (c) ARM Title 38, Chapter 2, procedural rules.

Service and Filing

5. Copies of all pleadings, motions, discovery requests, discovery responses, prefiled testimony, and briefs shall be filed with the Commission and served on all parties (Mountain Water and all intervenors). Parties shall file with the Commission an original and ten copies of motions, testimony, briefs and documents directed to the Commission. Service upon the parties shall be upon each party's attorney of record, if applicable, and such other individuals as may be reasonably designated by the attorney of record.

6. The Commission recommends the following guidelines where data processing and computer equipment are available:

(1) Data may be provided on 3 ½ " IBM/PC Compatible computer diskettes;

(2) Spreadsheets may be provided in Lotus 1-2-3 Version 3.1 DOS compatible format;

(3) Text may be provided in Work Perfect Version 5.1, 6.0 or 6.1 compatible format.

7. Testimony exhibits and data requests/responses should be provided both electronically and in hard copy. Briefs, motions and any correspondence normally provided to the Service List should be made available electronically on request. In general, all parties to this proceeding should attempt to provide rate filing material in electronic form to the extent it is practical and not cost-prohibitive.

Intervention

8. Parties seeking to intervene must file a Petition to Intervene with the Commission. The Commission deems intervention granted as a matter of right upon a timely filing pursuant to ¶ 2(c), subject to a later ruling on standing. In a request for late intervention, the petitioner must (a) identify the general position that the intervenor will take if the intervention is granted; (b) demonstrate a legal interest directly affected by this Docket; (c) demonstrate that the intervention, if granted, will not delay or prejudice the proceeding in this Docket; and (d) show good cause why

the request for intervention was not timely filed. Late intervention will be effective only upon action of the Commission.

Discovery

9. The term "discovery" includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as data requests. The Commission urges all parties to conduct discovery primarily through the use of data requests.

10. The Commission directs all parties to prepare data requests according to the following guidelines:

(a) All data requests must include at the beginning of each request a description of five words or less explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit number and page number may be included in addition to, but not in lieu of, the subject of the request. Each party should attempt to keep descriptions consistent from one request to another.

(b) Multi-part requests may be used, each part denoted by a lower case letter (a, b, c, d, and e). Requests must be limited to five parts (a-e), without any sub-parts. If additional parts are necessary, additional requests must be made. A single part request should be denoted by the request number only. Examples of acceptable data requests follow:

PSC-500 RE: Return on Equity
Witness - Doe, Page JQD-4, Lines 13-15.

Please provide an analysis of hypothetical debt/equity structure.

PSC-501 RE: Return on Equity
Witness - Doe, Page JQD-14, Lines 11-14.

a. What is the cost of equity and how is it derived?

b. What portion of the equity capital is transferred, or imputed, to debt for ratemaking purposes?

11. The party receiving the written discovery or data requests has five days from receipt to file objections to the request(s). Notice of the objection shall be served upon the Commission and on all parties. The Commission may dispose of objections by prompt ruling or may schedule argument. Failure to timely object will be deemed acceptance of the request. Parties are encouraged to try to resolve concerns about requests before filing objections.

12. Any requesting party dissatisfied with the response to any written discovery or data request and desiring Commission action to compel must serve its written objection(s) and relief requested simultaneously upon the Commission and parties within five days after receipt of such response. The Commission may dispose of such objection(s) by prompt ruling or may schedule argument. The Commission will act either to sustain or overrule the objection(s), and if sustaining, set a deadline for a satisfactory response.

13. Submission of written discovery after the deadline established will be allowed by leave of the Commission only. The Commission will not grant requests without a showing of good cause as to why the request was not submitted within the time period allowed.

14. Unless excused by the Commission, failure by a party to answer data requests or other discovery from any party may result in Commission action: (a) refusing to allow the failing party to support or oppose related claims; (b) prohibiting introduction of related matters in evidence; (c) striking pleadings, testimony, or parts thereof; (d) staying further proceedings until the request is satisfied; or (e) dismissing all or part of the case, defense, or proceeding.

Testimony and Evidence

15. The Commission contemplates a complete identification of issues before the hearing. The Commission will scrutinize new issues or data in new areas introduced at the time of hearing and may disallow the issues or information unless reasonably related to issues earlier identified in the application, prefiled testimony or proceedings.

16. At hearing, the Commission will adopt into the record all prefiled direct; answer, and rebuttal testimony (including additional issues) upon motion of the proponent, without the witness reading the testimony into the record. The testimony will be an exhibit and not otherwise entered into the transcript.

17. All proposed exhibits and prefiled written testimony shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter for the preferred manner of identifying exhibits.

18. When cross-examination is based on a document not previously filed with the Commission, copies of the document must be made available to the Commissioners, parties, and staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each Commissioner, the Commission staff and all parties. This last requirement

may be waived if the documents to be introduced are bulky, or for other good cause, upon making previous arrangements with the Commission and all parties.

19. Parties may be permitted to present live rebuttal testimony only if it is in direct response to an issue raised for the first time in cross-examination or in the testimony of a public witness. Such testimony will be allowed only by leave of the Commission or presiding officer.

20. The Commission may allow citizens and citizen groups to make statements without submitting prepared written testimony. Public witnesses may also read written testimony or have it adopted directly into the record.

21. The Montana Rules of Evidence in effect at the time of the hearing in this Docket will govern at the hearing.

22. Any party to this proceeding responding to written discovery from any other party or the Commission shall have each person authoring any response(s) present and available as a witness at the hearing to introduce the response(s) and be available for cross-examination. Parties may waive objection(s) to introduction absent the author and the right to cross-examine. Upon Commission approval of parties' agreement to waiver, the person responding to data requests need not be present to testify and the responses may be introduced into the record. Written discovery (not including transcripts of depositions on oral examination) and data responses will be introduced at hearing only pursuant to applicable rules of evidence and through an appropriate witness subject to cross-examination, or by waiver of Parties and upon stipulation approved by the Commission.

Prehearing Motions and Conferences

23. Motions by any party, including motions to strike prefiled testimony and motions concerning any procedural matter connected with this Docket, shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs unless otherwise requested by a party and approved by the Commission. Upon a grant of oral argument, the requesting party shall notice it for hearing before the Commission.

24. The Commission staff may set a final Prehearing Conference to discuss settlement of any issues in the proceeding; simplification of issues; possibility of obtaining admissions of fact and documents; distribution and marking of written testimony and exhibits prior to the hearing; and other procedural matters as may aid in the disposition of the proceeding.

25. Nothing in this order shall be construed as limiting the legally established right of the Commission or its staff to inspect the books and accounts of Mountain Water at any time.

Prehearing Memorandum

26. Each party shall submit a prehearing memorandum. The memorandum shall contain a list of all issues uncontested and contested, witnesses to testify, and exhibits and discovery for introduction at hearing. Any special needs to accommodate witness sequence or scheduling should be identified in the prehearing memorandum. Commission staff shall file a limited prehearing memorandum identifying data or discovery responses to be introduced into the record and the witnesses necessary to sponsor the responses, or alternatively, to testify.

Done and Dated this 29th day of April, 1996 by delegation to Commission staff as the Order of the Montana Public Service Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

NANCY MCCAFFREE, Chair
DAVE FISHER, Vice Chair
BOB ANDERSON, Commissioner
DANNY OBERG, Commissioner
BOB ROWE, Commissioner