

Service Date: April 7, 1999

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

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IN THE MATTER of the Application of)	UTILITY DIVISION
BIG MOUNTAIN WATER COMPANY)	
for Authority to Increase Rates and Charges)	DOCKET NO. D99.3.57
for Water Service to its Customers)	ORDER NO. 6159

PROCEDURAL ORDER

On March 11, 1999, the Montana Public Service Commission (Commission) received an application from Big Mountain Water Company for authority to increase rates for water service to its residential customers within the boundaries of the Big Mountain Ski and Summer Resort located 8 miles north of Whitefish, Montana. On receipt of a rate increase application, the Commission has delegated to Commission staff the duty to set the procedural schedule and issue a Procedural Order without a prehearing conference. Therefore, the Commission issues the following Procedural Order and Schedule:

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. D99.3.57. This Order is effective immediately and remains effective until modified by the Commission.
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. The schedule sets forth an expedited discovery procedure. If more process is necessary, e.g., parties desire additional discovery, the staff may modify this schedule, on the request of parties.

SCHEDULE

- (a) March 11, 1999: Application received by Commission.
- (b) April 7, 1999: Notice of Application and Intervention Deadline issued.
- (c) April 30, 1999: Final day for requests for intervention to be automatically granted.
- (d) May 7, 1999: Final day for written discovery (includes data requests) from staff and intervenors to Big Mountain on application. Discovery may be propounded before this date.

- (e) May 14, 1999: Final day for Big Mountain to respond to discovery in (2)(d). The Commission recommends that Big Mountain respond to discovery propounded before the deadline under (d) within two weeks of receipt, or sooner if possible, to expedite this proceeding.
- (f) May 28, 1999: Final day for testimony and/or recommendations from intervenors.
- (g) June 4, 1999: Final day for written discovery from Big Mountain to intervenors; final day for intervenor discovery to parties other than Big Mountain. If there are no other intervening parties and it is satisfied with the recommendations of Montana Consumer Counsel (MCC), Big Mountain may waive discovery of MCC.
- (h) June 14, 1999: Final day for intervenors to respond to written discovery from Big Mountain and other intervenors.
- (i) June 18, 1999: Final day for prehearing memoranda.
- (j) June 21, 1999: Approximate date set aside for hearing if requested.

In addition, the Commission and/or Staff may schedule prehearing conferences. The Staff may amend the discovery schedule on application of a party, with agreement of other parties.

PROCEDURE

General

3. 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.

Ex Parte

4. This proceeding is a contested case proceeding, for which most *ex parte* communications are prohibited. A communication between (i.e., to or from) a Commissioner and any person associated with a party in the contested case is *ex parte* when the communication involves discussion of an issue in the contested case without notice to all other parties to the contested case and a reasonable opportunity to participate in the communication. A Commissioner's and a party's receipt or conveyance of an *ex parte* communication is prohibited by law. § 2-4-613, MCA. Some *ex parte* communications pertaining to procedure and scheduling may be allowed by law and are not prohibited. Id. Any oral, written, electronic, or other form of communication

between (i.e., to or from) a Commissioner and a person associated with a party to a contested case pending before the PSC may include, inadvertently or otherwise, prohibited *ex parte* communication.

Parties and Commissioners must be ever alert to the possibility of prohibited *ex parte* communication and take corrective action in any face-to-face, phone, letter, e-mail, or other encounter involving a party and a Commissioner.

Service and Filing

5. The Commission's procedural rules require that copies of all pleadings, motions, discovery requests, discovery responses, prefiled testimony, and briefs must be filed with the Commission and served on all parties. Parties shall file with the Commission an original and ten copies of motions, testimony, briefs and documents directed to the Commission. Service shall be upon each party's attorney of record, and other individuals reasonably designated by the attorney of record.

Intervention

6. 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). In requesting 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

7. 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. The dates set forth in the Procedural Schedule, 2, are *deadlines* for filing.

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

(a) Parties must assign a request number (e.g., Big Mountain-001) to their data requests. Request numbers must be consecutive, regardless of the party to whom the request is directed (e.g., the PSC might direct PSC-001 through -008 to Big Mountain and PSC-009 through -016 to MCC).

(b) At the beginning of each request, parties must include a description of five words or less explaining the subject of the data request. Parties may include other identifying information, such as the witness to whom the request is submitted, exhibit number and page number, etc., 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.

(c) 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. Parties should denote single part request by the request number only.

(d) 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?

9. Any party dissatisfied with the written discovery or data requests directed to that party or with responses to its discovery or data requests has five days from receipt to file objections to the request(s) or responses. Notice of the objection(s) shall be served on the Commission and 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 should attempt to resolve discovery objections informally, if possible.

10. The Commission will act either to sustain or overrule the objection(s), and if sustaining, set a deadline for a satisfactory response. Permission granted by the Commission is necessary for submission of written discovery after the deadline established. 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.

11. Failure by a party to answer data requests or other discovery from any party, unless excused, 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

12. At hearing, the Commission will adopt into the record all prefiled direct, answer and rebuttal testimony on 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.

13. 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.

14. 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.

15. The Commission may permit parties to present live rebuttal testimony only 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.

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

17. 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

18. 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 must 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.

19. 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.

20. 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 Big Mountain at any time.

Prehearing Memorandum

21. Each party shall submit a prehearing memorandum, which must 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 6th day of April, 1999 by delegation to Commission staff as the Order of the Montana Public Service Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman
NANCY MCCAFFREE, Vice Chair
BOB ANDERSON, Commissioner
GARY FELAND, Commissioner
BOB ROWE, Commissioner