

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

* * * * *

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

MOUNTAIN WATER COMPANY'S MOTION FOR A CONTINUANCE

Mountain Water Company ("Mountain Water"), by and through its undersigned counsel, hereby submits to the Montana Public Service Commission ("Commission") this motion to continue the hearing in this docket to a later date when Mountain Water's expert will be available to testify. Mountain Water's motion is filed pursuant to Admin. R. Mont. 38.2.3907. Mountain Water has consulted with counsel for intervenors, but has not received a response. Mountain Water's counsel and witnesses are available for hearing anytime in May except May 9, 2016.

FACTUAL AND PROCEDURAL BACKGROUND

On January 29, 2016, the Commission "voted to initiate a proceeding to inquire into whether Mountain Water Company's current water rates . . . are just and reasonable." Notice of Investigation, PSC Docket No. D2016.2.15 (Feb. 3, 2016). On March 7, 2016, the Commission approved a Procedural Order in this docket and set the hearing for April 28, 2016. See PSC Docket No. D2016.2.15, Order No. 7475a, ¶ 5(d) (March 8, 2016). As counsel previously

advised staff and intervenors on Monday, March 14, 2016, Mountain Water's expert witness is unavailable on April 28 or 29 due to a pre-existing commitment to testify at a Commission hearing in Arizona. If the hearing in this docket is not continued, Mountain Water will be denied the ability to fully participate during the hearing and present its case to the Commission because Mountain Water will be unable to rely on its expert testimony.

MOUNTAIN WATER IS ENTITLED TO A CONTINUANCE

The Commission's administrative rules allow Mountain Water to request that a hearing be continued. *See* Admin. R. Mont. 38.2.3907. The relevant rule establishes that "[a]ny party who desires a continuance shall, immediately upon receipt of notice of the hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the commission of said desire, stating in detail the reasons why such continuance is necessary." *Id.* In considering a motion for a continuance, the Commission considers: (1) whether the request is timely; and (2) whether the request is supported by good cause. *Id.* Mountain Water's motion satisfies both of those criteria.

Mountain Water's motion for a continuance is timely. Mountain Water notified intervenors and Commission staff of its witness's unavailability and sought input on any scheduling conflicts by email on March 14, 2016. Mountain Water has not received any response. Furthermore, Mountain Water has filed its motion for a continuance before the deadline for filing a motion for reconsideration of Procedural Order No. 7475a has run.

Mountain Water's motion for a continuance is supported by good cause. The Commission previously has granted a motion for a continuance when a party's witness was unavailable to testify at a hearing. *See* PSC Docket No. D96.7.121, Order No. 5940c, ¶ 4 (December 16, 1997) (Commission vacated procedural schedule after party "asked for a

continuance of the hearing date due to the unavailability of its costing witness on the scheduled hearing date”). Furthermore, the Commission generally grants motions for a continuance. *See, e.g.*, PSC Docket No. T-93.54.PCN, Order No. 6251a, ¶ 3 (December 23, 1993) (Commission granted continuance when party’s “counsel would be unavailable” on hearing date); *see also* PSC Docket No. D2014.11.91, Notice of Commission Actions, p. 2 (November 12, 2014). In fact, Mountain Water was only able to find one instance where the Commission denied a motion for a continuance. *See* PSC Docket No. T-00.20.PCN, Order No. 6480 (May 24, 2000). In that docket, the Commission denied the motion for a continuance because the movant had failed to participate in the administrative process in an egregious manner. *Id.* Nevertheless, the Commission noted that “**normally, the Commission generously grants continuances** [.]” *Id.* (emphasis added).

The Commission should grant Mountain Water’s motion for a continuance because, historically, the Commission “generously grants continuances.” *Id.* Furthermore, the Commission has granted a continuance on identical facts, *i.e.* when an expert was unavailable to testify at the scheduled hearing date. Order No. 5940c, ¶ 4. Under Montana law, “it is a well-established principle of agency law that an agency has a duty to either follow its own precedent or provide a reasoned analysis explaining its departure.” *Waste Mgmt. Partners of Bozeman, Ltd. v. Montana Dep’t of Pub. Serv. Regulation*, 284 Mont. 245, 257, 944 P.2d 210, 217 (1997).

If the Commission were to deny Mountain Water’s motion for a continuance, it would violate Mountain Water’s procedural, statutory, and constitutional rights. Mountain Water has a procedural right to “introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding.” Admin. R. Mont. 38.2.3902(1). Mountain Water also has the statutory right to “appear . . . and to be fully heard” at the hearing.

Mont. Code Ann. § 69-3-326. If Mountain Water cannot rely on expert testimony, it cannot participate in the hearing and be “fully heard.”

Furthermore, Mountain Water has a constitutional right to due process in hearings before the Commission. *See Montana Power Co. v. Pub. Serv. Comm'n*, 206 Mont. 359, 364, 671 P.2d 604, 607 (1983) (“a corporation is a ‘person’ within the due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution” and “administrative agencies are not exempt from the constitutional restraints of due process requirements”). The “essence of due process is the requirement that a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it”; in other words, **Mountain Water must be “given a meaningful opportunity to present [its] case.”** *Mathews v. Eldridge*, 424 U.S. 319, 348-49, 96 S. Ct. 893, 909-10 (emphasis added) (quoted in *Montana Power Co. v. Public Service Comm.*, 206 Mont. 359, 368, 671 P.2d 604, 609 (1983)). If the Commission denies Mountain Water’s motion and insists on a hearing date when the Commission knows Mountain Water’s expert is unavailable, the Commission will have restricted Mountain Water’s ability to meaningfully present their case to the Commission. Neither the United States nor the Montana constitutions allow for such a result.

CONCLUSION

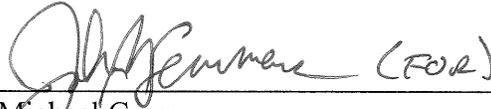
For the foregoing reasons, the Commission should grant Mountain Water’s motion for a continuance. Mountain Water is willing to work with Commission staff to identify a hearing

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date at which Mountain Water's expert will be available to testify.

Submitted this 18th day of March, 2016.

CROWLEY FLECK PLLP

Handwritten signature of John M. Semmens in cursive, with the initials "(FOR)" written in parentheses to the right of the signature.

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CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on March 18, 2016, the foregoing was served via electronic and U.S. mail on:

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