

Service Date: March 23, 2016

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

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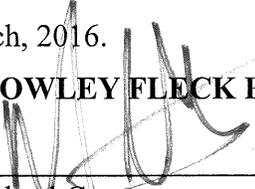
IN THE MATTER OF the Investigation of the)
Montana Public Service Commission into) **REGULATORY DIVISION**
whether Mountain Water Company's rates are)
Just and Reasonable.) **DOCKET NO. D2016.2.15**
)

MOUNTAIN WATER COMPANY'S OBJECTIONS TO MCC-005 AND MCC-006.

Mountain Water Company ("Mountain Water"), by and through its undersigned counsel, hereby submits to the Montana Public Service Commission ("Commission") the following objections to the Montana Consumer Counsel's ("MCC") Data Requests MCC-005 and MCC-006. Mountain Water's objections are authorized by ¶ 10 of Procedural Order No. 7475a.

Submitted this 23rd day of March, 2016.

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ATTORNEYS FOR MOUNTAIN WATER CO.

MCC-005

Regarding: Rate Orders
Witness: John Kappes

Please provide complete copies of all rate orders for Liberty and/or APUC affiliates issued by regulatory authorities in the following states in 2014, 2015 and 2016: New Hampshire, Arkansas, Georgia, California, Texas, Arizona, Illinois, Iowa, Missouri and Massachusetts.

Response: Objection. This data request is overly broad, unduly burdensome, and seeks information that is not relevant to the scope of Docket No. D2016.2.15 as established by ¶ 3 of Procedural Order No. 7475a. To comply with this data request, Mountain Water would have to locate rate orders from regulatory authorities in ten different states. Upon information and belief, those rate orders are matters of public record and, therefore, are equally available to both Mountain Water and the MCC.

Additionally, Mountain Water objects that this data request seeks discovery of irrelevant information. The Commission has adopted M.R.Civ.P. 26 to govern discovery in contested cases. *See Admin.R.Mont. 38.2.3301(1)*. Rule 26 establishes that “parties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense.” M.R.Civ.P. 26(b)(1). Under Montana law, “[e]vidence is relevant if it naturally and logically tends to establish a fact in issue.” *State v. Smith*, 220 Mont. 364, 376, 715 P.2d 1301, 1308 (1986). In this docket, the Commission has established that the only fact in issue is whether “Mountain Water’s rates . . . are just and reasonable under [its] current capital structure and cost of capital.” Procedural Order No. 7475a, ¶ 3. Mountain Water is a public utility that operates only in Montana. Mountain Water does not operate in any other states. The “rate orders for Liberty and/or APUC affiliates” issued by regulatory authorities in other states have no logical connection to Mountain Water’s current capital structure and cost of capital and, consequently, MCC-005 impermissibly requests production of irrelevant information. *See Simmons Oil Corp. v. Wells Fargo Bank, N.A.*, 1998 MT 129, ¶ 19, 289 Mont. 119, 960 P.2d 291 (“relevance is determined based on whether the evidence logically or based on experience has any value in proving the proposition for which it is offered”). Further, state regulatory commissions in other states are subject to and apply different laws, rules, regulations, methods and standards relating to utility rate setting. Any attempts by the MCC to set or adjust Mountain Water’s rates, returns, capital structure or capital cost based on rate orders for other Liberty Utilities entities in other states under different circumstances is both unsupported and unlawful. As the United States Supreme Court has explained, “[r]ates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.” *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm’n*, 262 U.S. 679, 690 (1923).

MCC-006

Regarding: Rate Cases
Witness: John Kappes

A news release dated March 10, 2016 and titled “Algonquin Power & Utilities Corp. Announces 2015 Fourth Quarter and Year End Financial Results”, states “During 2015, the Distribution Group successfully completed several rate cases, representing a cumulative annual revenue increase of approximately U.S. \$20.8 million.” Please provide the Distribution Group’s filings (including testimony and exhibits) in each of those cases and the Commission Orders resolving the cases.

Response: Objection. This data request is overly broad, unduly burdensome, and seeks information which is not relevant to the scope of Docket No. D2016.2.15, as established by ¶ 3 of Procedural Order No. 7475a. To comply with this data request, Mountain Water would have to locate each of the Distribution Group’s “filings (including testimony and exhibits)” from regulatory authorities in several different states. Upon information and belief, those filings are matters of public record and, therefore, are equally available to both Mountain Water and the MCC.

Additionally, Mountain Water objects that this data request seeks the discovery of irrelevant information. The Commission has adopted M.R.Civ.P. 26 to govern discovery in contested cases. *See* Admin.R.Mont. 38.2.3301(1). Rule 26 establishes that “parties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense.” M.R.Civ.P. 26(b)(1). Under Montana law, “[e]vidence is relevant if it naturally and logically tends to establish a fact in issue.” *State v. Smith*, 220 Mont. 364, 376, 715 P.2d 1301, 1308 (1986). In this docket, the Commission has established that the only fact in issue is whether “Mountain Water’s rates . . . are just and reasonable under [its] current capital structure and cost of capital.” Procedural Order No. 7475a, ¶ 3. Mountain Water is a public utility that operates only in Montana. Mountain Water does not operate in any other states. The documents, testimony and exhibits filed by the Distribution Group with regulatory authorities in other states have no logical connection to Mountain Water’s current capital structure and cost of capital and, consequently, MCC-006 impermissibly requests production of irrelevant information. *See Simmons Oil Corp. v. Wells Fargo Bank, N.A.*, 1998 MT 129, ¶ 19, 289 Mont. 119, 960 P.2d 291 (“relevance is determined based on whether the evidence logically or based on experience has any value in proving the proposition for which it is offered”).

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on March 23rd, 2016, the foregoing was served via electronic and U.S. mail on:

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