

**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  
OF THE APRIL 29, 2016 HEARING DATE**

Mountain Water Company (“Mountain Water”), through its counsel, moves the Public Service Commission (“Commission”) to continue the hearing recently reset for Friday and Saturday, April 29-30, 2016. This motion is timely and should be granted because Mountain Water’s expert will be unavailable to testify in Montana on these dates.

**FACTUAL AND PROCEDURAL BACKGROUND**

On July 30, 2012, Mountain Water filed an Application for Authority to Increase Rates and Charges for Water Service to its Missoula, Montana Customers. Final Order No. 7251c, Docket No. D2012.7.81 (Nov. 21, 2013). Following discovery and the filing of testimony and exhibits, the Commission held a public hearing on July 10-11, 2013. *Id.* As a result of these proceedings, the Commission set appropriate rates, finding “[t]he rates and cha[r]ges approved in this Final Order are just and reasonable.” *Id.* at 13-14.

On January 29, 2016, the Commission initiated this action to investigate the rates the Commission set in 2012 “to determine if they are just and reasonable.” Notice of Investigation

and Intervention Deadline, at 1 (Feb. 3, 2016). On March 7, 2016, the Commission issued Procedural Order No. 7475a, which set the hearing to begin on April 28, 2016.

On March 18, 2016, Mountain Water timely filed a motion for continuance, citing as good cause the Commission's longstanding precedent of granting continuances and the potential violation of Mountain Water's due process rights because its expert was not available to testify at the date set by the Commission. *See* Mountain Water's Mot. for a Continuance (Mar. 18, 2016). Specifically, Mountain Water notified the Commission that its expert would be "unavailable on April 28 or 29 due to a pre-existing commitment to testify at a Commission hearing in Arizona." *Id.* at 2.

On March 25, 2016 the Commission held a work session to consider Mountain Water's motion. The Commission granted the motion but shifted the hearing only a single day to Friday April 29, 2016 and to continue through Saturday, April 30, 2016.

Mountain Water has retained Thomas J. Bourassa of Phoenix, Arizona to testify as its cost of capital witness in this matter. Mr. Bourassa is also scheduled to testify before the Arizona Corporation Commission at a hearing scheduled for April 28-29, 2016. This is a general rate case for a utility with no affiliation to Mountain Water which is subject to statutory deadlines, so Mountain Water has no ability to request a change to the hearing date. As a result, Mr. Bourassa is unable to appear before the Commission in Montana on April 29-30, 2016. Mountain Water's witnesses, including Mr. Bourassa, are available anytime in May, with the exception of May 12-13, 2016. Thomas M. Zepp, the expert that has previously offered testimony on behalf of Mountain Water, has retired. Obtaining an informed opinion from a different qualified expert at this time creates an extreme and unprecedented burden for Mountain Water and is likely impossible at this point.

Counsel for Mountain Water is currently scheduled to represent another utility before the Commission in a hearing schedule for May 9, 2016. However, counsel is willing to move that hearing date, if necessary, to accommodate the hearing in this matter.

### **ARGUMENT**

The Commission should continue the hearing to allow Mountain Water's expert witness to testify. Mountain Water's request for a continuance is timely and supported by good cause. The Commission has already determined good cause exists to grant a continuance on the same basis. Mountain Water's expert is not available on the days the Commission has scheduled for the hearing. Denial of Mountain Water's request violates the Commission longstanding precedent and Mountain Water's procedural, statutory, and due process rights.

Under the Commission's administrative rules, "[t]he [C]ommission in passing upon a request for a continuance shall consider whether such request was timely made, and whether it is supported by good cause." ARM 38.2.3907. Mountain Water satisfies both of these criteria.

Mountain Water's motion is timely. The Commission's decision to schedule the hearing for Friday and Saturday, April 29-30, 2016, occurred less than a week ago on March 25, 2016. The Commission has not yet issued formal notice of its decision, and no deadlines have passed since the decision was made.

The Commission has already found good cause exists to grant this motion. Mountain Water cited the same grounds in its March 18, 2016 Motion for Continuance, which the Commission granted. However, the issues requiring a continuance were not resolved by the Commission's decision to shift the hearing date by one day. Mountain Water's expert witness is not available to testify in Montana on these dates. The Commission should make a consistent ruling here, and grant this motion as well.

Granting Mountain Water's motion is consistent with the Commission's longstanding precedent to continue a hearing to allow a party to be properly represented. Montana law requires the Commission follow its precedent or provide a reasoned explanation explaining its departure. *See Waste Mgmt. Partners of Bozeman Ltd. v. Mont. Dep't of Pub. Serv. Regulation*, 284 Mont. 245, 257, 944 P.2d 210, 217 (1997). As the Commission itself stated, it "generously grants continuances." PSC Docket No. T-00.20.PCN, Order No. 6480 (May 24, 2000). It has granted continuances in numerous cases to allow parties to be fully represented. *See, e.g.*, PSC Docket No. T-93.54.PCN, Order No. 6251a, ¶ 3 (Dec. 23, 1993) (rescheduling a hearing when counsel was unavailable).

The Commission has granted a continuance for the same reason asserted in this matter—the party's witness was unavailable on the hearing date. *In the Matter of the Application of US West Communications, Inc.*, PSC Docket No. D96.7.121, Order No. 5940c, ¶ 4 (December 16, 1997). In the *US West* matter, a party filed a Motion for Continuance. PSC Docket No. D96.7.121, Mot. to Continue Hr'g Dates, at 1-2 (Sept. 12, 1997). The party's costing witness was unavailable because he was moving, and no other witness could take his place. *Id.* at 1-2. The PSC granted the party's request and rescheduled the hearing date, pending the resolution of other issues in the case. PSC Docket No. D96.7.121, Order No. 5940c, ¶ 4.

The Commission should grant the same relief here. Like the costing witness in *US West*, Mountain Water's expert witness is unavailable on the dates the Commission has scheduled the hearing. Mountain Water is unaware of any other qualified expert witness, who is available and able to take his place. Accordingly, the Commission should reconsider the hearing date and reschedule the hearing to allow Mountain Water's witness to testify, as it did in *US West*. There

is no legal or factual basis for the Commission to differentiate between this motion and its prior decisions, especially its decision in this case regarding the same issues.

Finally, as Mountain Water previously explained, denying Mountain Water's motion for a continuance violates Mountain Water's procedural, statutory, and constitutional rights. *See* Mot. for a Continuance, at 3-4 (Mar. 18, 2016). Mountain Water incorporates these arguments from its March 18, 2016 Motion for a Continuance by reference. Mountain Water has "the right . . . to be fully heard" and must be "given a meaningful opportunity to present its case." § 69-3-326, MCA; *Mathews v. Eldridge*, 424 U.S. 319, 348-49 (1976), *cited favorably in Mont. Power Co. v. Pub. Serv. Comm'n*, 206 Mont. 359, 368, 671 P.2d 604, 609 (1983).

Mountain Water's expert is not able to testify in Montana on the dates the Commission has set. Without this expert, Mountain Water cannot be fully heard. The Commission must provide Mountain Water an opportunity to present expert testimony in support of its case. The only way to remedy this issue, and guarantee Mountain Water's rights, is to grant the continuance.

### CONCLUSION

For the foregoing reasons, the Commission should grant Mountain Water's motion, and continue the hearing date to allow Mountain Water's expert witness to testify.

Submitted this 4<sup>th</sup> day of April, 2016.

CROWLEY FLECK PLLP

Michael Green  
D. Wiley Barker  
P. O. Box 797  
Helena, MT 59624-0797  
Telephone: (406) 449-416  
Fax: (406) 449-5149  
mgreen@crowleyfleck.com  
wbarker@crowleyfleck.com

ATTORNEYS FOR MOUNTAIN WATER COMPANY

**CERTIFICATE OF SERVICE BY MAIL**

I hereby certify that on April 4, 2016, the foregoing was served via electronic and U.S. mail on:

John Kappes  
President & General Manager  
Mountain Water Company  
1345 West Broadway  
Missoula, MT 59802-2239  
johnk@mtnwater.com

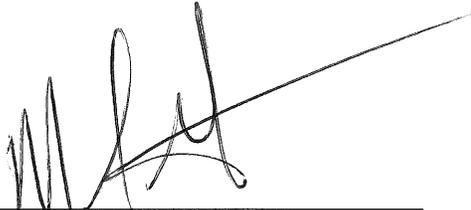
Barbara Chillcott  
Legal Director  
Clark Fork Coalition  
P.O. Box 7593  
Missoula, MT 59801  
barbara@clarkfork.org

Jim Nugent  
City Attorney  
The City of Missoula  
435 Ryman Street  
Missoula, MT 59802  
JNugent@ci.missoula.mt.us

Dennis R. Lopach, P.C.  
4 Carriage Lane  
Helena, MT 59601  
dennis.lopach@gmail.com  
ssnow@mt.gov

Scott M. Stearns  
Natasha Prinzing Jones  
BOONE KARLBERG P.C  
P.O. Box 9199  
Missoula, MT 59807-9199  
sstearns@boonekarlberg.com  
npjones@boonekarlberg.com

Robert Nelson  
Montana Consumer Counsel  
Box 201703  
Helena, MT 59620-1703  
robnelson@mt.gov

  
CROWLEY FLECK PLLP