

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

IN THE MATTER of the Joint Application) REGULATORY DIVISION
for Approval to Change and Establish Natural)
Gas Delivery Rates for Energy West) DOCKET NO. D2017.9.80
Montana, Inc. and Cut Bank Gas Company) ORDER NO. 7575a

PROTECTIVE ORDER

PROCEDURAL HISTORY

1. On September 29, 2017, Energy West Montana, Inc. (“EWM”) and Cut Bank Gas Company (“CBGC”) submitted their Joint Application to the Montana Public Service Commission (“Commission”) for authority to increase and establish natural gas delivery service rates for each utility’s service territory.

2. On November 20, 2017, the Commission issued a procedural order that, among other things, established the procedures for requesting Commission protection of sensitive information.

3. On February 9, 2018, EWM and CBGC filed a Motion for Protective Order and Brief in Support with Commission, requesting the Commission issue a protective order to govern the use and disclosure of certain state and federal income tax returns requested in PSC-079. On February 20, 2018, the Commission published notice of the Motion in its weekly agenda.

4. In their Motion, EWM/CBCG state that the protection and confidentiality of tax return information is a matter of law, and explained the legal standards required for protection. Mot. for Protective Order 2–3 (Feb. 8, 2018).

FINDINGS OF FACT

5. The Commission has previously found federal and state income tax returns are confidential and subject to protection. *In re NorthWestern’s Application for Pre-Approval of its Interest in Colstrip Unit 4*, Docket D2008.6.69, Order 6925a (Jul. 18, 2008); *In re NorthWestern’s 2009 Natural Gas General Rate Case*, Docket D2009.9.129, Order 7046d

(Mar. 9, 2010); *In re Northwestern's 2012 Natural Gas General Rate Case*, Docket D2012.9.94, Order 7249a (Jan. 7, 2013).

6. The Commission finds, based upon the procedural and substantive discussion in the Motion, that EWM/CBGC's Motion regarding its responses to PSC-079 satisfies the Commission's protective order requirements.

CONCLUSIONS OF LAW

7. The Montana Constitution imposes an affirmative duty on the Commission to make all of its records and proceedings available to public scrutiny. Mont. Const. art. II, §§ 8-9. The Commission may issue a protective order, however, "when necessary to preserve . . . information that must be protected under law. . . ." Mont. Code Ann. § 69-3-105(2) (2015).

8. A motion for protective order must make clear the basis for the request, and make a *prima facie* showing of confidentiality. Mont. Admin. R. 38.2.5007(3). "If there are bases for confidential information other than individual privacy or trade secret, requests for protection must explain, and demonstrate compliance with, the legal standards required for protection." *Id.* at 38.2.5007(5).

9. Federal law prohibits an employee of the State of Montana from publicly disclosing a federal income tax return or information contained within a federal income tax return. 26 U.S.C. § 6103(a)(2) (2012) ("Returns and return information shall be confidential").

10. State law makes it "unlawful to divulge or make known in any manner" information set forth in a federal or state tax return except "in accordance with a proper judicial order, or as otherwise provided by law. . . ." Mont. Code. Ann. § 15-31-511(1); *see also Elliott v. State Dept. of Revenue*, 2006 MT 267, ¶ 11, 334 Mont. 195, 146 P.3d 741 ("statutes are presumed constitutional absent proof beyond a reasonable doubt to the contrary").

11. EWM/CBGC has explained the legal basis for their Motion and made a *prima facie* showing of confidentiality with respect to their federal and state income tax returns.

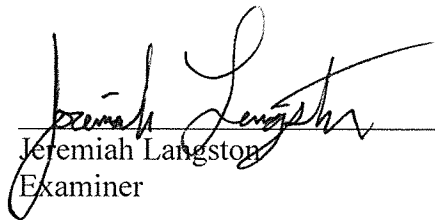
12. A motion for protective order generally must include, in part, "a complete and specific factual basis, supported by affidavit of a qualified person, which supports the claim of confidential information." Mont. Admin. R. 38.2.5007(3)(c). However, as a matter of both federal and state law, EWM/CBGC's federal and state income tax returns are confidential and subject to protection, and therefore no factual justification is required.

ORDER

IT IS HEREBY ORDERED THAT:


13. EWM/CGBC's *Motion for Protective Order* is granted; and
14. Information submitted in accordance with this Order be treated as confidential pursuant to Title 38, Subchapter 50 of the Administrative Rules of Montana.

DONE AND DATED this 7th day of March, 2018.



Jeremiah Langston
Examiner

ATTEST:


Rhonda J. Simmons
Commission Secretary



Protective Orders and Protection of Confidential Information

Nondisclosure Agreement

(7-26-00)

ARM 38.2.5012

Docket Nos. D2017.9.80, Order No. 7575a

Order Action Date: March 7, 2018

I understand that in my capacity as counsel or expert witness for a party to this proceeding before the commission, or as a person otherwise lawfully so entitled, I may be called upon to access, review, and analyze information which is protected as confidential information. I have reviewed ARM 38.2.5001 through 38.2.5030 (commission rules applicable to protection of confidential information) and protective orders governing the protected information that I am entitled to receive. I fully understand, and agree to comply with and be bound by, the terms and conditions thereof. I will neither use nor disclose confidential information except for lawful purposes in accordance with the governing protective order and ARM 38.2.5001 through 38.2.5030 so long as such information remains protected.

I understand that this nondisclosure agreement may be copied and distributed to any person having an interest in it and that it may be retained at the offices of the provider, commission, consumer counsel, any party and may be further and freely distributed.

Typed or Printed Name

Signature

Date of Signature

Business Address:

Employer

Party Represented

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Procedural Order issued on March 8, 2018 in Docket D2017.9.80 was served upon the following, by mailing a true and correct copy, via first class mail, on the 8th day of March, 2018, addressed as follows:

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