MOUNTAIN WATER COMPANY

P.O. Box 4826 - 1345 W. Broadway - Missoula, MT 59806 - Phone (406) 721-5570 - Fax (406) 523-5090 - www.mtnwater.com

ARVID M. HILLER
V.P. & General Manager

September 23, 2011

Ms. Kate Whitney
Montana Public Service Commission
1701 Prospect Avenue
Helena, Montana 59620

RE: Responses to Montana Consumer Counsel Data Requests 005-015 From D2011.1.8

Dear Kate:

Enclosed please find Mountain Water's responses to data requests 005-015 from the Montana Consumer Counsel.

An additional copy of all materials has been provided to the City of Missoula, the Montana Consumer Counsel, the Clark Fork Coalition, and representatives of the Carlyle Group.

MOUNTAIN WATER COMPANY

John A. Kappes
Co-CEO

Cc: Mr. John Alke, Esquire
Hughes, Kellner, Sullivan and Alke
40 W. Lawrence Suite A
P O Box 1166
Helena, Montana 59634-1166

Jim Nugent
Missoula City Attorney's Office
435 Ryman Street
Missoula, MT 59802

Barbara Hall, Legal Director
Clark Fork Coalition
140 S. 4th Street West, Unit 1
PO Box 7593
Missoula, MT 59801

Mr. Robert Nelson
Montana Consumer Counsel
111 N. Last Chance Gulch
Helena, MT 59601

Thorvald A Nelson
Holland & Hart Llp
6380 South Fiddlers Green Cir Suite 500
Greenwood Village, CO 80111

William Mercer
Holland & Hart LLP
P O Box 639
Billings, MT 59103-0639

Bryan D Lin
The Carlyle Group
520 Madison Ave 41st Floor
New York, NY 10022

Jim Larocque
The Carlyle Group
520 Madison Avenue
New York, NY 10022

MCC-005 RE: Scope of the Proceedings

In reference to your statement at page 2, lines 21-22 of your rebuttal testimony, please provide an explanation of the witness' qualifications to testify about "lawful scope of [the Commission's] authority."

For more than seventeen years, Mr. Kappes has worked in, and has been responsible for, Mountain's compliance with the Commission's regulatory authority. He knows from personal experience that the Commission regulates Mountain's rates and service, and that the California Commission regulates Park Water Company's rates and service. In the course of performing his job duties, with formal training, and with the assistance of legal counsel, he has had to become intimately familiar with the provisions of Title 69 applicable to Mountain, and how the Commission applies those provisions to the utilities it regulates. For example, he knows that Part 5 of Chapter 3 of Title 69 applies only to gas and electric utilities, and knows, from discussions with Park executives and his service as a Director of Park, that Park, under California law, must seek and obtain the approval of the California Commission for the issuance of securities or incurrence of debt. He is not providing a legal opinion. He is stating what he knows from his many years of working with the regulatory requirements of the PSC under Montana law.

MCC-006 RE: Mountain Water Ownership

In reference to your statement at page 3, lines 10-11, you assert that the ownership of Mountain Water is not an issue in this proceeding.

a. **Do you agree that an issue in this proceeding is a change in the proposed ultimate control of Mountain Water by virtue of the sale of its parent from the Wheelers to Carlyle? If not, provide a full explanation.**

Mountain does not agree. The ultimate control of Mountain, under Montana law, is vested in Mountain's Board of Directors, both before and after the proposed sale of Park's stock to Carlyle. Park Water, because it owns all the shares in Mountain is sometimes referred to having indirect control over Mountain, because it has the ability to choose Mountain's directors. Similarly, if Carlyle acquires all the shares of Park, Carlyle will have what is sometimes referred to as indirect control of Park.

b. **Do you agree that Mountain Water customers and the State of Montana have a legitimate interest in who exercises ultimate control over Mountain Water and in how that control is exercised? If not, provide a full explanation.**

Mountain does not agree. Neither the Commission nor Mountain's customers have the right to determine who will sit on Mountain's Board of Directors.

c. **Do you agree that it is appropriate for the Commission to investigate the intentions of Carlyle regarding its proposed acquisition of Park Water ownership and Park's ultimate control over Mountain Water? If not, provide a full explanation.**

Mountain does not agree. Since the Commission fully regulates Mountain, regardless of who owns the stock of Park, a non-jurisdictional utility, the Commission's power and authority over Mountain is unaffected.

MCC-007 RE: Mountain Water Ownership

In reference to your statement at page 4, line 2, do you agree that the proposed transaction is, from the perspective of the MPSC and Mountain Water customers, more than simply a stock sale in that the full ownership of Mountain Water's parent will transfer to Carlyle and that Carlyle will acquire full effective ownership control over Mountain Water?

Mountain does not agree. It does not speak for the perspective of the Commission, or directly for the perspective of its customers. However, it knows that the identity of Park's stockholders has no impact on the Commission's regulatory authority over Mountain, or the Commission's authority to balance the best interests of Mountain and its customers.

MCC-008 RE: Mountain Water Ownership

In reference to your statement at page 9, lines 14-16, you state that Mountain "has offered a 90 day opportunity to the City." Does Park acknowledge that Mountain is fully authorized to provide the City with such a binding opportunity and that such opportunity cannot, under any circumstances, be revoked at Carlyle's discretion?

Mountain was fully authorized to enter into the agreement provided to the City that was signed by the President of Mountain Water Company, Mr. Wheeler, who was also the President of Park, and the agreement does not include any provisions for revocations.

MCC-009 RE: Ring Fencing

In reference to your statement at page 12, lines 19-20, you state that ring fencing is considered when "jurisdictional utilities are acquired by non-jurisdictional entities."

a. **Are Park and/or Carlyle "jurisdictional entities" in Montana?**

No.

b. **Is it appropriate for Commissions to consider ring fencing when the ultimate control of a jurisdictional utility is being acquired by a non-jurisdictional entity like Carlyle? Explain your answer.**

If Carlyle was directly acquiring Mountain, it would be appropriate for the Commission to consider ring fencing provisions which protected its regulatory jurisdiction over Mountain. Since the transaction in this case is at the Park level, and not the Mountain level, it is the California Commission which needs to determine what ring fencing provisions are appropriate to protect its regulatory jurisdiction over Park.

c. **Is it appropriate for the MPSC to institute ring fencing "to protect against potential abuse" by a non-jurisdictional controlling entity like Carlyle? If not, please provide a complete explanation of your answer and all authority.**

Not in this case, as the regulatory authority of the Commission over Mountain is unaffected by the sale of stock at the Park level. Mountain has been wholly owned by a non-jurisdictional entity (Park) since its inception, and the Commission has never felt the need to impose ring fencing to protect its regulatory authority over Mountain. If the Commission decided that the sale of Park's stock was a change in circumstance which warranted the imposition of reasonable ring fencing provisions, that could be appropriately accomplished through the application of ring fencing provisions proposed by Dr. Wilson in his testimony as modified by Mr. Kappes in his testimony.

MCC-010 RE: Page 15, line 10, Rebuttal Testimony

Please explain fully why you propose that Mountain Water's accounts should be maintained separate from those of Park's utility affiliates, but not separate from those of Park's parent or its non-utility affiliates.

That is not Mountain's proposal. Mountain believes that its proposed condition was both intended and phrased in the conjunctive, that it would maintain its accounts separate from those of Park and its utility affiliates. If the MCC believes that is not clear, Mountain would agree to work with the MCC to develop clarifying language.

MCC-011 RE: Page 15, line 16, Rebuttal Testimony

Since Park's accounts are now maintained electronically, please explain the difficulty with making them available electronically at the Company's offices in Missoula.

To the extent that records are readily available Mountain would not have a problem making them available for review. The electronic files are not maintained in Missoula for control purposes, but Mountain can and will have the information available for the regulatory process as necessary.

MCC-012 RE: Page 17, lines 14-23, Rebuttal Testimony

Please explain fully why you object to a provision to supply the Commission with access to information provided to rating agencies. In answering this question please note that although neither Mountain nor Park is publicly traded now, Carlyle has suggested the possibility of a future IPO which would change that circumstance.

If Carlyle became a publicly traded company, subject to SEC disclosure rules and the subject of rating agency review, the preparation and production of such information would necessarily have to be at the Carlyle level, and subject to federal law.

MCC-013 RE: Page 19, lines 5-6, Rebuttal Testimony

Please provide documentation and authority for your contention that because cost allocation is relevant in a rate case, it is inappropriate for the Commission to be concerned about charges that Park or its affiliates may impose on Mountain Water without Commission knowledge or authorization. Would you object to such a provision if it were limited to charges above a threshold amount?

That is not Mountain's contention. Since the Commission regulates Mountain's rates, the costs incurred by Mountain in an affiliate transaction cannot be reflected in its Montana rates without Commission approval. Mountain's contention is that it is much more efficient for the Commission to continue retrospective review of such costs in a rate case setting than to try and set standards outside of the ratemaking process.

MCC-014 RE: Page 19, line 17, Rebuttal Testimony

Please explain why there should be no requirement for Commission authorization in the event that Mountain Water's parent decides to sell or encumber Mountain Water utility property having a book value exceeding $1,000,000 whose costs are recovered through Commission-approved rates.

Mountain's parent cannot sell or encumber Mountain's assets. Under Montana's corporation code, only Mountain can sell or encumber its assets.

MCC-015 RE: Page 20, lines 3-7, Rebuttal Testimony

Please explain fully why you believe that the MPSC lacks authority to require that debt financing that is secured by Mountain Water property that is in Mountain Water's utility rate base with costs that are recovered from Montana ratepayers through Commission-approved rates, may be only used for utility purposes.

That is not Mountain's contention. If Mountain borrowed money which was not used for utility purposes, the borrowing costs would not be included in Mountain's rates.