

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

IN THE MATTER of the Consolidated)	
Petition by Mountain Water Company for)	REGULATORY DIVISION
Declaratory Rulings and Application for)	
Approval of Sale and Transfer of Stock in)	Docket No. D2011.1.8
Park Water Company)	

**CARLYLE INFRASTRUCTURE PARTNERS, LP'S
POST-HEARING BRIEF**

I, [Robert Dove], want to underscore my fund's commitment, and my personal pledge to continue and expand Mountain's commitment to the community it serves. First, water is the most precious resource we have in a community with the exception of each other. Montana, and specifically Missoula, has been blessed with some of the cleanest and best water in the world. It is essential that any company responsible for the system that delivers that water to the community do so recognizing those truths and that they pledge to operate a system that is safe, secure, and protects the quality of that water. I am making that pledge to the Commission. Second, as an essential commodity the owner of the system must invest time and capital in the system. It cannot be irresponsible or greedy in what it charges users of the system. I pledge we will work closely with the Commission and its staff to find the most equitable rates for users of the system, and to abide by the procedures of the Commission that were set up to ensure those rates. Third, it is essential that the people who own and operate that company recognize that they are part of the community and become active members in the community. As the entity responsible for delivering the water in Missoula it must be a leader in communicating to the members of that community and engaging other stakeholders that are involved in delivering and protecting the water. I pledge that Western Water Holdings, Park Water, and Mountain Water personnel will fulfill that responsibility.¹

On May 6, 2011, Robert Dove, Chairman of the Board of Western Water Holdings LLC, gave his pledge to the customers of the Mountain Water Company, the employees of Mountain Water Company, and the Montana Public Service Commission

¹ Exhibit Carlyle 1, Testimony of Robert Dove, p. 8, l. 4-p. 9, l.2.

that, if Carlyle Infrastructure Partners LP acquires the stock of the Park Water Company, Mountain Water will continue to provide high quality, reliable, environmentally-responsible, and reasonable-priced water service to the City of Missoula. Subsequently, Mr. Dove and Carlyle transformed these words into action by:

1. Reaching an agreement with the City of Missoula to provide the City with a reasonable opportunity in the future to negotiate with Carlyle for a possible sale of Mountain Water to the City;²
2. Reaching an agreement with the Clark Fork Coalition to provide concrete assurances that Mountain will continue to be a responsible steward of the environment and the precious water resources in the Missoula area;³ and
3. Working with Mountain Water, the Montana Consumer Counsel, and the City of Missoula to stipulate to reasonable ring-fencing provisions to both (a) protect Montana customers in the unlikely event of financial issues with Mountain Water's upstream owners and (b) ensure that the Commission retains full regulatory authority over Mountain Water.

As a result, the Mayor of the City of Missoula, with the support of the overwhelming majority of Missoula City Council members, agrees that the proposed sale of Park Water stock from Mr. Wheeler to Carlyle is in the public interest and should be approved by the Commission. Further, the Clark Fork Coalition, a respected environmental advocate, agrees that the proposed sale is in the public interest and should be approved by the Commission. Finally, the MCC supports the adoption of the

² See Carlyle Exhibit 3.

³ *Id.*

ring-fencing provisions set forth in the stipulation between the MCC, Mountain Water, the City, and Carlyle and the MCC has no objection to the approval of the sale.

Therefore, Carlyle respectfully requests that the Commission authorize the sale of the stock in Park Water to Carlyle without conditions other than as set forth in the stipulation regarding ring fencing provisions.

I. STANDARD OF REVIEW

The Commission should review the application in this docket under a “no harm to consumers” standard of review. This is the standard that the Commission adopted in the proposed sale of NorthWestern to Babcock & Brown and, more recently, in the sale of Qwest Communications to CenturyLink.⁴ While the Commission stated in the NorthWestern case that the standard of review might change based on the facts of each case, there is nothing in the facts of this case to support a different or higher standard of review than the Commission has utilized in the prior cases.⁵

II. THE PROPOSED TRANSACTION WILL NOT HARM CONSUMERS BY INCREASING THE RISK OF HIGHER RATES OR INADEQUATE SERVICE. TO THE CONTRARY, CONSUMERS WILL CONTINUE TO ENJOY HIGH QUALITY SERVICE AT REASONABLE RATES.

Carlyle will ensure that Mountain Water customers continue to enjoy high-quality service at reasonable rates. In the Babcock and Brown order the Commission

⁴ In the Matter of the Joint Application of NorthWestern Corporation and Babcock & Brown Infrastructure Limited, BBI US Holdings Pty Ltd., BBI Holdings II Corp., and BBI Glacier Corp. for Approval of the Sale and Transfer of NorthWestern Corporation Pursuant to a Merger Agreement, Docket No. D2006.6.82, Order No. 6754e, Aug. 1, 2007, at ¶¶ 35-36; In the Matter of the Joint Application of Qwest Communications International, Inc. and CenturyLink, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp., Docket No. D2010.5.55, Order No. 7096e, Dec. 15, 2010, at ¶ 106.

⁵ See Order No. 6754e at ¶ 35.

identified two potential “harms” that may result from a change of utility up-stream ownership – “increased risk of higher rates or inadequate service.” The evidence in this case is clear that neither risk is present in this transaction.

First, as Mr. Dove testified, “Our infrastructure fund does not seek to quickly increase the value of its assets by raising revenues or slashing expenses and then selling the asset for as large a profit as the marketplace will permit. To the contrary, our investors, which include public pension funds, organized labor funds, and other institutional investors, have invested in the Carlyle infrastructure fund because they want to invest in something that has a low-risk of failing and a steady and predictable rate of return.”⁶

Second, Dr. Wilson testified on behalf of the MCC that his analysis of Carlyle’s financial model suggested only modest future rate increases. In responding to questions from the Commission, Dr. Wilson stated:

Q. Would it be accurate to say that your statement, that at the level of CapX, as projected in MCC-4 going forward were implemented, that there would be substantial rate increases to pay for it?

A. The level of cap expenditure reflected in the company's financial model?

Q. Yes.

A. In that model, the resulting rate increases from that capital expenditure were not dramatic. There were rate increases that were

⁶ Exhibit Carlyle 1, Testimony of Robert Dove, p. 4, l. 15-21.

assumed, based upon cost of service in each year. So there were some adjustments. But it wasn't clear from the model whether those adjustments were increases in rates or increases in the number of customers. There was an increase in revenues, so there was a revenue increase, modest, in each of the years. I wouldn't say there was a dramatic rate impact that was reflected in the model.⁷

Third, Dr. Wilson specifically distinguished Carlyle's business plans from Babcock and Brown's business plan with regard to the NorthWestern transaction. Dr. Wilson stated, "While one cannot be certain without the requested discovery, it appears from the summary that was provided in response to MCC-004 that Carlyle's plans are nearly the opposite [of Babcock and Brown's]. That is, rather than paying out the utility's equity capital to itself after the acquisition, it appears that Carlyle's intent is to invest further in water utility infrastructure, including the reinvestment of earnings as opposed to dividend payouts."⁸ At hearing, Dr. Wilson offered the same testimony distinguishing Carlyle's plans from those of Babcock and Brown after having seen the entirety of the investor committee memo and analysis in response to discovery request MCC-004.⁹

Finally, Carlyle has been clear in its intention to provide the resources necessary to ensure that the service provided by Mountain Water remains reliable and high-quality. But, Carlyle understands that the goal of reliable, high-quality service must work hand-in-hand with the goal of keeping rates reasonable. Specifically, Mr. Dove

⁷ Hearing Transcript p. 174, l. 11 – p. 175, l. 2.

⁸ Exhibit MCC-1, Testimony of John W. Wilson at p. 10, ll. 8-16.

⁹ See Hearing Transcript p. 187, l. 1 – 191, l. 10.

committed to work with the Mountain Water management team to ensure they have the capital and the other resources to provide the high quality of service which the community of Missoula has the right to expect. But Mr. Dove also said Carlyle would work with the Commission and the Consumer Counsel and the Mountain Water customers to manage the pace of capital improvements to ensure that rates remain reasonable..¹⁰

III. THE PROPOSED TRANSACTION WILL PROVIDE CONCRETE BENEFITS TO MOUNTAIN WATER CUSTOMERS.

Setting aside the fact that the proper standard for the Commission to apply in this case is the “no harm” standard, not only with the transaction not harm customers, the evidence established clear benefits to consumers if the transaction is approved. Such benefits include better access to capital markets and other funding sources, an agreement to work in good faith with the City of Missoula regarding a possible future purchase of Mountain Water by the City, and an agreement to protect the Rattlesnake drainage and ensure that Mountain Water’s water rights are only used for the benefit of the people of Missoula.

With regard to access to capital markets, Mr. Dove explained:

I think capital is vitally important for a business. We are in capital markets now which have volatility which has not been seen in decades. Just the stock investor with the Dow plunging 600 points or going up 220 points as it did yesterday, whether Greece ... defaults, it has a direct impact on businesses in America and in Montana. Carlyle has capital and has capital available so that should there be a need for this company to grow and to invest in the future, we have that capital. And you know, capital markets aren’t necessarily open in these difficult times. So I think it is important

¹⁰ Hearing Transcript at p. 34, l. 13-22.

that we have capital and that we're able to bring capital to bear to the business, in addition to operational and other management efficiencies.¹¹

Mr. Kappes agreed with this conclusion and testified, “You know, I think, as Mr. Dove pointed out, they are bringing capital to the table. So if there was a necessity to have capital over and above what our plan is, that would be available. ... And in the past, we’ve become very weather dependent. Weather can really affect the amount of money we’re bringing in. So if you look at our capital plans, we don’t always – we aren’t always able to spend right up to the amount that we planned for, because of restrictions on capital. We believe with Carlyle that will not be the case. We will be able to meet our plans as far as the infrastructure that we budget for.”¹²

As both Mr. Dove and Mr. Kappes agree, access to capital markets and access to reasonably priced capital is critical for any utility. Both also testified that if the transaction moves forward Mountain Water will have better access to reasonably priced capital in the future. That fact will provide long-term benefits for Mountain Water’s customers.

A second clear benefit to Missoula residents of the transaction moving forward is that the agreement between Carlyle, the City, and the Clark Fork Coalition only becomes effective if the transaction occurs. Both Mayor John Engen and Ms. Karen Knudson testified that the agreement provides real benefits to Mountain Water customers.

On behalf of the City of Missoula, Mayor Engen supports the proposed sale because the agreement between Carlyle and the City provides as an opportunity for a

¹¹ Hearing Transcript at p. 118, l. 1-15.

¹² Hearing Transcript at p. 273, l. 22 – p. 274, l. 12.

potential future sale of the utility to the City.¹³ Mayor Engen explained his support for the transaction as follows:

The way I have approached that is there are two questions to ask: One is, do you support the sale? And often the answer is no, because folks don't want a global investment firm owning Missoula's water system. I hear that – I'm in receipt of maybe some of the same correspondence you are. The other question is, do you want the City of Missoula to own Missoula's water system? And the answer is yes. So our conversation becomes how do we get to that point? One of the terms of art that we've established during this process is you follow the clear path to ownership, is what I've heard used a few times. I support the sale and the proposal, and the council members support the sale. And I think – I think that a majority of the folks I serve in the City of Missoula support the sale, if. Here is the "if": If this agreement has real weight. I think it does. The status quo today is that – is that I'm guessing that someday Park Water and its holdings will become available for sale again. If history repeats itself, it will not become for sale to the City of Missoula. It will become for sale to another entity like Carlyle or someone else. I know what the status quo is. This letter gets us past the status quo. The status quo today, I believe, is the City of Missoula has no opportunity to own this utility. I think with the sale to Carlyle and this agreement in some place, the City of Missoula will have an opportunity. This is our shot. It is not perfect. It is not as secure as I or many of the folks I serve might have liked it to be. I suspect it's not as secure as some of you think it ought to be. I think it's the best we are going to do. I think it's closer than we've ever been. I think it would be irresponsible at this point, with this agreement, not to support the sale, because I do think this is our opportunity. We manage risk all day long. We make difficult choices. Those choices are based on lots of evidence, fact and to a certain degree gut, and our ability, whatever is left in this complex world we live in to trust one another, and this is difficult for, a number of my constituents believe, and I recognize that and they've expressed that. I trust Robert Dover in this matter. I trust that what we have here is an agreement that he'll honor; that Carlyle will honor; that I believe his legal counsel will help him honor; that the majority of my team and City Council believes they'll honor. I think this is our best shot.¹⁴

Additionally, Ms. Knutson clearly articulated the benefits of both the transaction and the agreement from her perspective by testifying, "As we have heard first from Mr.

¹³ Hearing Transcript at p. 230, l. 23 – p. 232, l. 22.

¹⁴ *Id.*

Dove and Mayor Engen, on September 22, 2011, the Clark Fork Coalition entered into an agreement with Carlyle and the City of Missoula that we believe addresses [the Clark Fork's] concerns. In fact, we believe that the letter of agreement secures from Carlyle assurances that the Rattlesnake is safe; the Missoula water stays home, and that the people of Missoula have a legitimate shot at becoming the next owner of Mountain Water. As a result, we believe that the sale is in the public interest, and we are asking the Commission to approve the sale.”¹⁵

Therefore, in addition to improved access to reasonably priced capital, the agreement between Carlyle, the City, and the Clark Fork Coalition provide tangible benefits to Mountain Water's customers. However, those benefits are only secured if the transaction is finalized.¹⁶

IV. CONCLUSION

Every party to this docket either supports or does not oppose the proposed sale of Park Water stock to Carlyle. The evidence provided by the parties demonstrates that customers will not be harmed by the proposed transaction, especially in light of protections afforded customers from the stipulated ring-fencing provisions. Rather, customers will continue to receive high-quality, reasonably priced water utility service going forward. Further, the evidence establishes that customers will, in fact, benefit

¹⁵ Hearing Transcript at p. 252, l. 6-18.

¹⁶ In response to questions from the Commission, both Mr. Dove and Mayor Engen suggested that there may be a future agreement between the parties in addition to the agreement submitted as Carlyle Exhibit 3. Carlyle would like to take this opportunity to clear up any potential confusion regarding these statements. Prior to the closing of the proposed transaction, no further agreements are contemplated between Carlyle, the City, and the Clark Fork Coalition. If and when the transaction closes, the parties will likely have further discussions on various issues and those discussions may lead to future agreements.

from the transaction because the utility will have improved access to capital, the City will have an opportunity in the future to offer to purchase the utility, and the Rattlesnake Creek drainage and other water rights will continue to be protected and preserved. For these reasons, Carlyle respectfully requests that, to the extent the Commission elects to exercise jurisdiction over this matter, the Commission approve the proposed transaction along with the stipulation regarding ring-fencing.

Respectfully submitted this 1st day of November, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 1st day of November, 2011, the foregoing **CARLYLE INFRASTRUCTURE PARTNERS, LP POST-HEARING BRIEF** was served via electronic mail and U.S. mail unless otherwise indicated to the following:

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