

August 15, 2011

VIA E-MAIL

Mr. Justin Kraske, Esq.
Attorney
State of Montana
Public Service Commission
1701 Prospect Ave
P.O. Box 202601
Helena, MT 59620-2601

**Re: Docket No. D2011.1.8
Response to Notice of Additional Issues**

Dear Mr. Kraske:

On August 11, 2011, the Commission issued a Notice identifying four additional issues in Docket No. D2011.1.8. Carlyle Infrastructure Partners LP, through its undersigned counsel, wishes to convey to the Commission and the Parties its grave concerns with the additional issues identified by the Commission. On August 19, 2011, Carlyle intends to respond as appropriate to the additional issues as ordered by the Commission. However, in advance of that response Carlyle must make its concerns with the Notice known.

First, the purpose of additional issues is to bring evidence before the Commission on issues neither raised by the applicant nor the intervenors. However, the four issues identified by the Commission have already been raised in Mountain Water's application, the testimony prefiled in this docket, and the discovery conducted by the Parties. Specifically, Issue (a) is the issue of Carlyle's qualifications and intentions. Both of those issues have been discussed at length in the prefiled testimony and were the subject of extensive discovery by the Parties and the Commission Staff. Issue (b) is the issue of the circumstances under which the City of Missoula may seek to municipalize Mountain Water. That issue has been covered in depth in the testimony of the City of Missoula, the Montana Consumer Counsel, and the Clark Fork Coalition. Issue (c) is purely a legal issue that relates to the issue of the scope of the Commission's authority as discussed both in the application and Petition for Declaratory Ruling. Finally, Issue (d) is the question of the impacts, if any, of Carlyle's acquisition on Mountain Water's customers. Again, that issue has been discussed in the application, in Carlyle's testimony, the testimony of the other intervenors, and the discovery in this docket. Except with regard to the legal issues raised in Issue (c), the parties and Commission Staff have had every opportunity to conduct discovery and file prefiled testimony on these issues. Indeed, Carlyle and Mountain Water fully intend to file rebuttal testimony on all of these points except the legal issue raised in Issue (c). With respect to Issue (c), Carlyle intends to address that issue in legal

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pleadings filed in this docket. Therefore, raising these issues creates unnecessary additional work for Mountain Water and Carlyle. Worse yet, the Commission has provided the intervenors with the opportunity to file another round of testimony on issues they have had every opportunity to fully raise well after their deadline has come and gone. This procedure is contrary to Carlyle's reasonable due process rights.

Second, the Notice of Additional Issues violates Carlyle's due process rights further by elevating unsworn statements by unknown persons to the level of evidence before the Commission without even providing a copy of the statements to Carlyle or providing Carlyle with an opportunity to cross-examine the "evidence" presented. Public comment is a valuable tool for the Commission to understand how the public views matters before the Commission. For example, in a rate case public comment can provide the Commission with insights into how the proposed rates will impact the customers. However, many of the comments received by the Commission in this docket appear to be less about how the proposal will impact customers and more about a crusade against a well-respected American investment company based on rumor and innuendo. The Notice appears to accept these statements as true and forces Carlyle to essentially prove its innocence rather than requiring the people making these statements to support them with sworn evidence that is subject to cross-examination. This is a fundamental violation of Carlyle's due process rights and sets centuries of American jurisprudence on its head. The Montana Consumer Counsel and the Clark Fork Coalition both retained experts, conducted discovery, and reviewed the qualifications of Carlyle and none of these issues were raised by either the MCC – the organization charged with representing Montana utility consumers – or the CFC – the organization whose mission is the protection of the water in the Clark Fork. That fact should cause the Commission to doubt the merits and relevance of some of the statements apparently received as public comment in this case.

Third, the Commission has no legal authority to require either Park Water or Carlyle to sell Mountain Water to the City of Missoula – now or in the future. The Commission also has no legal authority to establish a condition on the sale of Park Water to Carlyle that Carlyle must in turn sell Mountain Water to the City in the future. When the government desires to forcibly take ownership of private property, under law the government must condemn the property. The condemnation process is based on well established law that both dictates when the government may do so under the Constitution and sets forth procedures for how to fairly compensate the private property owner. The Commission, obviously, has no legal authority to condemn private property. As such, the Commission should not engage in any effort to unlawfully order a private party to sell its property. Rather, any arrangement between Park Water, Carlyle, and the City of Missoula should be left to Park Water, Carlyle, and the City.

Fourth, Issue (c) essentially calls on Carlyle to present expert witness testimony of a pure issue of law. This is a very inefficient way for the Commission to consider legal argument. If testimony is presented on this issue Carlyle would either have to have a lay witness testify on a legal issue or call its attorney to the stand to offer testimony. Neither approach is an efficient use

of the Commission's time. Carlyle submits that it would be far more efficient for argument to be raised in legal pleadings or briefs rather than in testimony.

In conclusion, Carlyle is deeply concerned about the impact of the additional issues on Carlyle's due process rights, the apparent unlawful attempt to require a private property owner to sell property to the government, and the extra effort and inefficiency associated with responding in both rebuttal testimony and additional issue testimony to what are, essentially, identical issues. Notwithstanding these concerns, Carlyle will provide additional issue testimony, as it deems appropriate. However, for the aforesaid reasons, Carlyle believes that the Notice is both unreasonable and raises issues well outside the Commission's jurisdiction and, through this letter, Carlyle is putting its position on the record.

Best regards,



Thorvald A. Nelson

cc: Service List in Docket No. D2011.1.8