

Service Date: August 11, 2011

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

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

**NOTICE OF ADDITIONAL ISSUES AND PROCEDURAL SCHEDULE**

1. On January 24, 2011, Mountain Water Company (Mountain Water) filed a Consolidated Petition for Declaratory Ruling and Application for Approval of Sale and Transfer of Stock (Filing) with the Montana Public Service Commission (Commission). On February 1, 2011, the Commission issued a Notice of Application and Intervention in this Docket. The Montana Consumer Counsel (MCC), City of Missoula, Clark Fork Coalition (CFC), and the Carlyle Group (Carlyle) filed for intervention. Procedural Order No. 7149 was issued on May 13, 2011.

2. The Procedural Order No. 7149 was modified on August 3, 2011 by an Amended Procedural Order No. 7149b. The Amended Procedural Order established an August 16, 2011 deadline for the Commission to identify additional issues. The Procedural Order states that if the Commission identifies additional issues the Commission will issue a modified procedural schedule with dates for testimony and discovery on the additional issues.

3. Based on a review of Mountain Water and Carlyle's pre-filed testimony, responses to data requests, and intervenors' testimony, the Commission identifies additional issues for resolution in this Docket.

4. The Commission directs Carlyle and/or Mountain Water to provide additional testimony on these issues:

- a) The Commission received a few hundred public comments from concerned citizens and Mountain Water ratepayers from the time the proposed sale of Mountain Water was announced until now. If the sale of Park Water/Mountain

Water to Carlyle is approved, Carlyle will own a regulated water utility that provides water service to many of the customers that submitted these comments and concerns. The comments focused on five major areas of concern. Carlyle is directed to respond to the public comments as summarized in these five paragraphs.

- i. If the sale of Park Water/Mountain Water to Carlyle was approved, how would local control and security of the critical resource of drinking water to Missoula be impacted?
- ii. Carlyle does not appear to have any experience owning a regulated public utility. What information can Carlyle provide to assure the public and the Commission that it is fit and qualified to own the Mountain Water Company?
- iii. Carlyle, as a private equity firm, has the objective to maximize investment returns to its partners. How will that objective be met while charging just and reasonable rates which the Commission is required to maintain? Please specifically explain how those two competing interests will be balanced and how Mountain Water ratepayers will be impacted by that balance.
- iv. Mountain Water ratepayers expressed concern that access to clean safe drinking water at affordable rates is critical to the public health and economic welfare of Missoula. How will Carlyle ensure access to clean safe drinking water as the owner of Mountain Water and its water rights? Does Carlyle have any future plans for the Rattlesnake Lakes water rights and will those water rights stay with the Mountain Water system?
- v. Mountain Water ratepayers expressed concern about the perceived history of Carlyle, the investments it has been involved in, and the business ethics of Carlyle. Please respond to these ratepayer concerns by providing specific information about ethics and compliance policies at Carlyle and its companies, management training on ethics issues, and compliance with policies that ensure

ethical activities by corporate representatives. In addition, please list and provide the details and results of any and all investigations that were undertaken by local, state, and federal regulatory and law enforcement authorities that resulted in fines, penalties, or convictions involving the Carlyle Group, its subsidiaries, affiliates, investment companies, and/or employees working on behalf of Carlyle owned companies.

- b) Several of the intervenors have discussed a Right of First Refusal (ROFR) during their intervenor testimony and responses to data requests. Carlyle and Mountain Water have not yet had an opportunity to respond and comment on that testimony. Carlyle and/or Mountain Water is directed to respond to that testimony and discovery and the following questions:
- i. Please analyze what situations the August 14, 1997 letter from the owner of Park Water to then Mayor Kadas pertains to. Does Mountain Water believe it has met the requirements of that letter pertaining to the planned sale to Carlyle?
  - ii. Please explain whether Carlyle is open to negotiation of providing the City of Missoula with a ROFR and under what terms and situations. Would Carlyle consider agreeing to a sale of Mountain Water earlier in its investment horizon of Park Water, or only at the time of a future sale of Park Water/Mountain Water? If Carlyle is open to negotiations, how would Carlyle establish a value for Mountain Water if and when a ROFR is agreed to and a future sale of Park Water/ Mountain Water is commenced?
- c) In Docket No. D2006.6.82 (the proposed acquisition of NorthWestern Energy by Babcock & Brown Infrastructure), the Commission identified three possible standards for its review of the transaction: (1) the net benefits to consumer's standard; (2) the public interest standard; and (3) the no harm to consumer are standard. In that case, the Commission determined that the appropriate standard for review of the transaction was the no harm to consumer's standard. Joint Application of NorthWestern Corporation and Babcock & Brown Infrastructure

Limited, Docket No. D2006.6.82, Order No. 6754e ¶36. The Commission seeks testimony in this case regarding which standard of review the Commission should apply to this proposed acquisition.

- d) Please explain and analyze Carlyle's overall business plan for Mountain Water if the acquisition is approved and how that plan will impact customers. A response to this question will include, but is not limited to, a discussion of infrastructure improvements, meter conversion, leaking mains and services, customer service, management decisions, water conservation, and an analysis on how that business plan will impact future water rates. Please detail what benefits or drawbacks the Mountain Water ratepayers may experience based on Carlyle's possible acquisition of Mountain Water.

5. Amended Procedural Order No. 7149b will be modified to establish the deadlines for additional issue testimony from Carlyle, discovery requests, intervenor testimony (if necessary), and rebuttal testimony (if necessary). The deadline for Carlyle to file additional issue testimony is August 19, 2011. Commission staff will work with the parties to set dates for the additional issue schedule that maintains the hearing date of September 26, 2011.

BY THE MONTANA PUBLIC SERVICE COMMISSION

TRAVIS KAVULLA, Chairman  
GAIL GUTSCHE, Vice-Chair  
W.A. (BILL) GALLAGHER, Commissioner  
BRAD MOLNAR, Commissioner  
JOHN VINCENT, Commissioner