

# *Strand Law Firm*

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**January 13, 2012**

Kate Whitney, Administrator  
Montana Public Service Commission  
P.O. Box 202601  
Helena, MT 59620-2601

Re: Docket No. D2011.4.34

Dear Ms. Whitney:

Please find enclosed for filing in the above-referenced docket, AquaFlo's Reply to MCC's Responses to AquaFlo's Objections to MCC's Data Requests.

If you should have any questions or concerns regarding this document please feel free to call on me using the contact information in the letterhead.

Sincerely,

Michael Strand  
Strand Law Firm  
Attorney for AquaFlo

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

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IN THE MATTER OF the APPLICATION of ) REGULATORY DIVISION  
AquaFlo, LLC for Authority to Permanently )  
Increase Rates and Charges and Amend Tariff ) DOCKET NO. D2011.4.34  
Rules and Regulations for Water and Sewer )  
Service to its Helena, Montana, Customer )

**AQUAFLO'S REPLY TO MCC'S RESPONSES TO AQUAFLO'S OBJECTIONS  
TO MCC'S DATA REQUESTS**

**I. Introduction**

In the course of responding to data requests from the Montana Consumer Counsel (MCC), AquaFlo raised certain objections to those data requests. The MCC has responded to AquaFlo's objections to MCC-002 and MCC-005. AquaFlo hereby responds to those objections.

**II. MCC-002**

With respect to MCC-002, the following represents the data request made by the MCC and Sandra Barrow's response:

*MCC-002 RE: Ownership  
Witness: John Maxness*

*Please indicate whether any of the individual providers of contracted services to AquaFlo personally, or through ownership/membership of any legal entity have a direct or an indirect interest in AquaSierra, LLC.*

*RESPONSE:*

*This data request is directed by the MCC to John Maxness. However, the only witness for whom pre-filed testimony has been filed to this point is Sandra Barrows. AquaFlo would therefore respectfully request that the data request be changed so that it is directed to Ms. Barrows. While AquaFlo reserves the right to call Mr. Maxness as a rebuttal witness, AquaFlo does not currently intend to call Mr. Maxness as a witness at the hearing of this matter.*

*Objection. Information regarding whether any of the individual providers of contracted services to AquaFlo have a direct or indirect interest in AquaSierra, LLC is irrelevant to the pending proceeding, which is limited in scope to whether AquaFlo may make certain adjustments to its rates for providing water and waste water services to its customers. Further, any response to this data request would be unlikely to lead to discoverable evidence in this proceeding.*

*Moreover, AquaSierra, LLC, is not a party to this proceeding and is not a “public utility” as defined by §69-3-101 Mont. Code Ann. Any “relevant” information or data not available from AquaFlo and sought from AquaSierra, LLC would properly be directed to AquaSierra, LLC via Rule 45, Mont. R. Civ. P. and should be limited to matters relevant to the proceeding currently before the Commission.*

*Notwithstanding this objection and without waiving it for any purpose, AquaFlo can confirm that Bill Gallagher has no direct or indirect interest in AquaFlo or AquaSierra.*

MCC’s initial objection to AquaFlo’s response is to the fact that AquaFlo objected to MCC’s designation of John Maxness as the person to whom the data request was directed. The MCC stated: “Although Mr. Maxness is more likely to have the requested information, AquaFlo itself can redirect the data request and provide the information to Ms. Barrows to respond.”

The first part of this objection, that John Maxness is more likely to have the requested information” assumes facts not in evidence. None of the evidence presented thus far in this case indicates that Mr. Maxness would be more likely or less likely to

have the requested information. While the MCC is correct that AquaFlo itself can redirect the question to Sandra Barrows, AquaFlo must nonetheless ensure that the record is clear that Ms. Barrows is responding to the data request and not Mr. Maxness. If Mr. Maxness responds to the data request and the response is later admitted into evidence, the MCC would be free to cross examine Mr. Maxness with respect to this response even though AquaFlo has not otherwise called Mr. Maxness as a witness in this proceeding.

The PSC issued a standard procedural order in this docket. The procedural order requires a short description of the subject matter of the data request. The requesting party may, if it chooses to do so, also identify the witness to whom the request is directed but may not do so in lieu of the short description of the subject matter. MCC decided to direct the data request to John Maxness. But John Maxness has not – at least to this point in the proceeding – been identified by AquaFlo as a witness. Therefore the data request cannot be directed to him. AquaFlo therefore requested that the witness identification be changed so that the data request is directed to the attention an actual witness in this proceeding.

As to the remainder of AquaFlo's objection to this data request, AquaFlo continues to maintain that a response would be irrelevant to this proceeding and would be unlikely to lead to discoverable evidence. Whether or not a vendor to AquaFlo also has some direct or indirect interest in AquaFlo's parent company has no relevance with respect to whether AquaFlo has met its burden of proof in this proceeding. The mere fact that a vendor to one company may or may not own shares or some other type of ownership interest in that company's parent is immaterial and proves nothing.

By the same token if some vendor with a contractual relationship with NorthWestern Energy or MDU also owned one or more shares of the parent of one of those companies, that interest would have no bearing on whether NorthWestern Energy or MDU was entitled to change their rates in a rate case proceeding. Indeed, AquaFlo greatly doubts that the MCC has either the interest or the resources to identify every single vendor that has a contractual relationship with NorthWestern Energy or MDU and also owns one or more shares of their parent companies. AquaFlo sees no reason why it should be treated any differently than NorthWestern Energy or MDU.

MCC claims that information regarding whether one of AquaFlo's vendors has an ownership interest in AquaFlo's parent is relevant and of critical importance because of "the specter of a related party transaction," implying that such a related party transaction would not be "arm's length" and therefore could be harmful to consumers. For this proposition, MCC cites the case of *Montana-Dakota Utilities v. Bollinger*, 193 Mont. 508, 513, 632 P. 2d. 1086, 1089 (1981) ["When one of the expenses submitted by MDU is caused by transactions with a subsidiary company, the scrutiny applied by the Commission must be all the more intense" (citations omitted)].

First, the *Montana-Dakota Utilities* case can be distinguished from this proceeding on its facts. AquaFlo has not submitted expenses to the PSC caused by transactions with a subsidiary company as was the case with MDU. If AquaSierra were before the PSC seeking a rate increase and presenting the PSC with expenses caused by transactions between AquaSierra and AquaFlo, *Montana-Dakota Utilities* might be of precedential value to the PSC. But that is not the case before us here.

Second, MCC's claim that a contractual relationship between a vendor and AquaFlo where the vendor also has an ownership interest in AquaFlo's parent company is *de facto* a related party transaction is erroneous. Simply because a vendor has a contract to provide, for example, services to AquaFlo when that vendor also holds some ownership interest in AquaFlo's parent does not automatically mean that the provision of those services is a "related party transaction." A transaction between AquaFlo and its parent may well be a related party transaction. But the mere existence of some ownership interest in the parent by the vendor does not automatically make the vendor and AquaFlo related parties any more than a vendor to NorthWestern who owns one or more shares of NorthWestern Energy's parent makes that vendor and NorthWestern Energy related parties.

Third, even if a transaction between one of AquaFlo's vendors and AquaFlo could be shown to be a related party transaction (a relationship that MCC's data request in MCC-002 could not determine in any event), the existence of a related party transaction is not, in and of itself, abusive to the consumer. No allegation has been made that AquaFlo's consumers have been harmed by any of its vendor relationships. The MCC must show not merely that a related party transaction has occurred but that the related party transaction was in some way harmful to consumers. MCC-002 has not been worded in such a way as to provide answers to either of those questions and therefore the data request seeks information that is irrelevant.

### III. MCC-005

With respect to MCC-005, the following represents the data request made by the MCC and Sandra Barrow's response:

*MCC-005 RE: Audits  
Witness: Sandra Barrows*

*Please provide copies of any audit reports that have been produced concerning AquaFlo or its parent AquaSierra, LLC since the inception of AquaFlo in 2007.*

#### *RESPONSE:*

*No audit reports have been produced for AquaFlo.*

*With respect to AquaSierra, AquaFlo is not in possession of any audit reports that may have been produced by or for AquaSierra, LLC and further objects to this aspect of the data request on the grounds that it seeks information that is irrelevant to the current proceeding. The current proceeding is one in which AquaFlo is seeking permission to adjust certain rates for providing water and waste water services. The aspect of this data request that pertains to AquaSierra is outside the scope of this proceeding and any response by AquaFlo would be unlikely to lead to the production of discoverable evidence.*

*Moreover, AquaSierra, LLC, is not a party to this proceeding and is not a "public utility" as defined by §69-3-101 Mont. Code Ann. Any "relevant" information or data not available from AquaFlo and sought from AquaSierra, LLC would properly be directed to AquaSierra, LLC via Rule 45, Mont. R. Civ. P. and should be limited to matters relevant to the proceeding currently before the Commission.*

MCC's response to AquaFlo's objection discusses at some length the proper contents of audit reports, the value of such audit reports to investigations and the possible abuses that can be found during the course of investigating such audit reports. While AquaFlo understands and appreciates the alleged value of audit reports to the MCC, the MCC's desire to obtain AquaFlo's audit reports does not change the fact that no such reports have been produced for AquaFlo and therefore cannot be produced. Further, in the event the Commission were to order AquaFlo to produce its audit reports, such an order would not change the fact that they do not exist.

As noted in its objection, AquaFlo is not in possession of audit reports for AquaSierra. The MCC suggests that the Commission compel AquaFlo to produce AquaSierra's audit reports. While the Commission certainly has the authority to do so, AquaFlo cannot produce documents it does not have and cannot obtain.

AquaFlo can only advise the PSC that AquaFlo is a very, very tiny water company. Decisions regarding expenditures on accounting and other professionals that would be routine at larger utilities are agonizing for a company with the very limited financial resources AquaFlo has. AquaFlo simply desires to provide efficient service at a price that is as fair as possible to consumers while allowing AquaFlo to stay in business. AquaFlo is far from being some kind of cash cow for its parent company, and AquaFlo believes that the financial information already submitted proves this to be so.

RESPECTFULLY SUBMITTED this 13<sup>TH</sup> day of January, 2012.

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Michael Strand  
Strand Law Firm  
Counsel for AquaFlo

CERTIFICATE OF SERVICE

I, Michael Strand, do hereby certify that the foregoing document, entitled AquaFlo's Reply to MCC's Responses to AquaFlo's Objections to MCC's Data Requests in Docket No. D.2011.4.34 have been filed by first class mail, postage pre-paid, this 13<sup>th</sup> day of January, 2012.

Hard copies will follow to the entities listed below by first class mail, postage prepaid:

Kate Whitney  
Montana Public Service Commission  
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Helena, MT 59620-1703

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Michael Strand