

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

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IN THE MATTER OF the Joint Application of)	
Liberty Utilities Co., Liberty WWH, Inc.,)	REGULATORY DIVISION
Western Water Holdings, LLC, and Mountain)	
Water Company for Approval of a Sale and)	DOCKET NO. D2014.12.99
Transfer of Stock)	

**RESPONSE OF LIBERTY UTILITIES CO. AND LIBERTY WWH, INC.
TO PETITIONS TO INTERVENE OF
THE CITY OF MISSOULA AND THE CLARK FORK COALITION**

Pursuant to ARM 38.2.2405, Liberty Utilities Co. (“Liberty Utilities”) and Liberty WWH, Inc. (“Liberty WWH”) (collectively, “Liberty”), by and through their counsel, respond to the Petitions to Intervene filed by the City of Missoula (the “City”) and the Clark Fork Coalition (“CFC”). For the reasons set forth below, Liberty requests the Montana Public Service Commission (“Commission”) limit any intervention granted to the City and CFC to the scope of the proceedings required by the Joint Application, and disregard the unsupported statements in the Petitions to Intervene.

Both the City and CFC have requested the Commission set a procedural schedule for this matter. CFC has requested the Commission schedule two hearings on this matter. Liberty welcomes opportunities to provide relevant information to the Commission, Mountain Water Company’s (“Mountain Water”) customers and other interested parties, but respectfully suggests any formal hearings on this matter should occur after the Commission has an opportunity to define the scope of the issues in this case. Liberty anticipates the details of the procedural schedule can be addressed in a scheduling conference with staff and counsel.

PROCEDURAL BACKGROUND

On December 15, 2014, Liberty Utilities, Liberty WWH, Western Water Holdings, LLC (“Western Water”), and Mountain Water filed a Joint Application for Approval of a Sale and Transfer of Stock. The application seeks approval for Liberty Utilities to acquire the stock of Western Water through a merger between Liberty WWH and Western Water. On January 12, 2015, the City and CFC filed their respective Petitions to Intervene seeking to expand the scope of the proceedings and to join other parties.

ARGUMENT

Liberty does not object to the Commission granting general intervention to the City and CFC, as long as their participation and the proceedings remain limited to the scope of the original proceeding and do not involve unnecessary issues or proceedings. Motivated by other concerns and interests, the City and CFC seek to broaden the issues in this docket. This is impermissible under the Commission’s rules and past orders. The Commission should disregard the unsupported and irrelevant claims in these Petitions.

I. The Commission should limit the general intervention of the City and CFC to the scope of the original proceeding.

As an initial matter, Liberty opposes the Petitions of the City and CFC to the extent they constitute requests for special interventions under ARM 38.2.2404, seeking to expand the scope of the docket beyond the original issue. This rule requires persons seeking special intervention to attach a “complaint or answer, as the case may be, setting forth clearly and concisely the facts supporting the relief sought.” The City and CFC failed to meet these requirements. They did not attach complaints or answers to their respective Petitions. Moreover, CFC states it seeks “to intervene as a **general** intervener” in this matter. (CFC Pet. at 1.)

Liberty consents to allowing the City and CFC general intervention, under ARM 38.2.2403. Their intervention, however, must be limited to the issues raised in the application in this original proceeding. Any attempt to broaden the scope of the original proceeding is inappropriate, and must be rejected by the Commission. ARM 38.2.2403; 38.2.2405; *see also* Docket Nos. D2013.5.33 and D2014.5.46, Aug. 20, 2014 Notice of Comm'n Action at 3.

The issue in this docket is limited to whether Liberty Utilities' acquisition of Western Water meets the no-harm-to-consumers standard. That is the standard used when "service inadequacy is not at issue" as in this matter. *See* Docket No. D2011.1.85, Order No. 7149d ¶ 54 (stating "service inadequacy is not at issue with Mountain [Water]"). Contrary to the assertions in both Petitions, the issue before the Commission is consideration of the merits of the proposed merger compared to the status quo, and not a comparison of the status quo to the City's desired future municipal ownership. The Commission should prevent the City from overriding the Commission's jurisdiction and standard practices in an effort to facilitate and benefit the City's condemnation efforts. As a result, there is no basis for the Commission to impose or consider a standard any different than in the dozens of similar dockets it has considered in the past.

To be clear, Liberty does not oppose the City's request to intervene generally "to be informed about, monitor, and participate in the [Commission's] regulatory process to review this application." (City Pet. at 2.) However, the City and CFC improperly attempt to broaden the scope of this docket by injecting issues regarding eminent domain and nonparties into this matter.

A. Issues regarding eminent domain are not within the scope of the original proceeding and should not be considered in this matter.

Both Petitioners improperly seek to inject issues regarding the ongoing condemnation action the City brought against Mountain Water and Carlyle Infrastructure Partners, LP

(“Carlyle”). The Commission must recognize that as a litigant the City considers itself in competition with Liberty Utilities for control of Mountain Water. Issues regarding the City’s condemnation litigation must not be injected into this docket. The City incorrectly claims “[t]he pendency of the eminent domain proceeding limits the jurisdiction of the [Commission] to take action at this time” and raises concerns over confusion “regarding discovery, trial, and the potential appeals process in the eminent domain case.” (City Pet. at 1-2.)

There should be no confusion as to the Commission’s jurisdiction in this matter or the applicable standard of review. Montana law grants the Commission jurisdiction over this transaction, which the Commission must evaluate using the no-harm-to-consumers standard. The Commission’s jurisdiction and standard are unaffected by the ongoing condemnation action. This matter and the condemnation action are separate and independent proceedings. Jurisdiction remains with the Commission unless and until the City actually owns Mountain Water Company’s assets. Accordingly, any discovery, trial, or appeals of that matter do not concern the Commission. The City has repeatedly contended the Commission does not have jurisdiction over the City’s condemnation action, and the CFC has supported its efforts. Neither the City nor CFC, therefore, should be allowed to seek discovery or introduce issues related to the merits of the City’s eminent domain claims in this matter. The introduction of these issues into this proceeding is improper.

In addition, the Commission should not stay the proceedings as the City and CFC request in their Petitions. There is no legal basis for this request. As an independent legal proceeding, the eminent domain action has no impact on whether the proposed merger and acquisition meet the no-harm standard.

Moreover, a stay is not practical or desirable. The City's last attempt to use eminent domain to acquire Mountain Water's assets took five years and was ultimately unsuccessful. The action was commenced in 1984. *City of Missoula v. Mountain Water Co.*, 236 Mont. 442, 444, 771 P.2d 103, 104 (1989). The district court's decision was appealed, remanded, and appealed again. *Id.* In 1989 the Montana Supreme Court affirmed the District Court's ruling denying the City's ability to exercise eminent domain. *Id.* at 453, 771 P.2d at 110. Liberty recognizes the potential for a long period to resolve the condemnation proceedings and the possibility they will be unsuccessful. Given these considerations, a stay would be wasteful and inappropriate. There is no reason to delay the Commission's review.

B. The Commission should not require Algonquin to join the matter as a party.

The issue before the Commission is whether Liberty Utilities' acquisition of Western Water meets the no-harm standard. In its Petition, CFC demands "Algonquin," be added as a party. This unnecessarily expands the scope of the proceeding to include additional parties and is based upon faulty arguments. It is also legally unsupported.

Liberty Utilities, the signatory to the merger agreement at issue and the proposed owner of Western Water, is already a party. As a result, the intervenors will be able to address appropriate discovery to Liberty Utilities through the Commission's procedural rules. Liberty Utilities anticipates being able to provide the Commission and parties all information relevant to the Commission's consideration of the issues in this docket. CFC has provided no basis for its suggestion, or for the Commission to conclude, that it will be unable to obtain the relevant information it needs to consider this docket from the current parties. CFC's demand to expand this proceeding to include additional parties is inappropriate.

In summary, Liberty does not oppose general intervention of the City and CFC. Even so, the scope of the original proceeding must be maintained. The City and CFC must not be allowed to expand the proceeding to include other issues or parties.

II. The Commission should disregard the unsupported statements in the Petitions, which are unnecessary for the Commission’s consideration of intervention.

Liberty objects to several unsupported statements in the Petitions filed by the City and CFC. First, the City incorrectly claims Apple Valley Ranchos (“Apple Valley”), which is also owned by Park Water Company, is involved in a condemnation process in California. (City Pet. at 3.) This is simply false. No ordinance has been passed and no legal action has been filed seeking to exercise eminent domain over Apple Valley.

In addition, the City incorrectly claims a future condemnation action should be considered in this action. There is no certainty as to whether condemnation action would be successful, and the impact of a condemnation action is pure speculation. Moreover, the risk of a condemnation action is always present for all water systems. Local governments may pursue condemnation actions at any time.

Contrary to statements in the City’s Petition, there is no information from which the City can determine how allocated costs might be affected by some future condemnation. But it is certain that Missoula ratepayers would not “bear the brunt” of an unreasonable or imprudent reallocation of Park Water’s overhead costs. The proper recovery of any allocated costs, including those of Park Water, would remain to be considered and approved by the Commission in future rate cases, if necessary. These concerns are neither ripe for review nor relevant to the determination of whether the proposed acquisition meets the no-harm standard.

The Commission should also disregard CFC’s claim that the acquisition “will impact and affect the ownership of Mountain Water.” This is false and has no bearing on the Commission’s

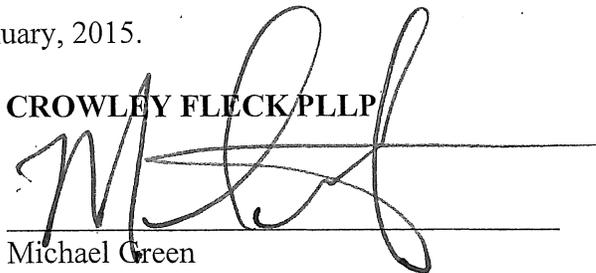
review. As explained in the application, the acquisition will have no impact on Mountain Water or its assets. (Joint App. at 7.) Mountain Water will retain 100 percent ownership of its assets. (*Id.*) In turn, it will continue to be wholly owned by Park Water Company, which will continue to be wholly owned by Western Water. (*See id.* at Ex. A.) Mountain Water's operations will continue unaffected, and its management team and employee base will be maintained along with employee wages, benefits, and working conditions. (*Id.* at 5, 7.) Accordingly, the Commission's jurisdiction will be unaffected by the acquisition.

CONCLUSION

For these reasons Liberty requests the Commission limit the general intervention of the City and CFC to the issues of the original proceeding and disregard the unsupported statements in the Petitions to Intervene.

Submitted this 23rd day of January, 2015.

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**ATTORNEYS FOR LIBERTY UTILITIES CO.
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CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that a copy of the foregoing **RESPONSE OF LIBERTY UTILITIES CO. AND LIBERTY WWH, INC. TO PETITIONS TO INTERVENE OF THE CITY OF MISSOULA AND THE CLARK FORK COALITION** was served upon the following by mailing a true and correct copy thereof on this 23rd day of January, 2015, addressed as follows:

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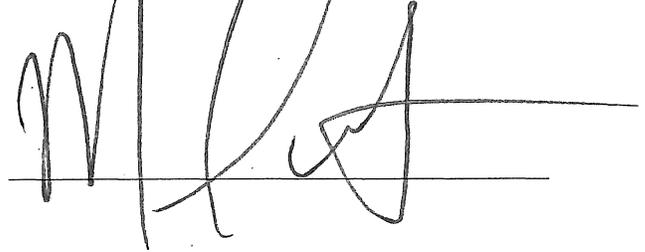
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