

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

IN THE MATTER OF the Joint Application)
of Liberty Utilities Co., Liberty WWH, Inc.,)
Western Water Holdings, LLC, and Mountain)
Water Company for Approval of a Sale and)
Transfer of Stock)

REGULATORY DIVISION
DOCKET NO. D2014.12.99

Direct Testimony

of

Robert Dove

on behalf of

Western Water Holdings

March 12, 2015

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1 investments in infrastructure projects that were built by Bechtel. In 2006, I accepted an
2 offer from The Carlyle Group in Washington, DC to co-head an effort to raise an
3 infrastructure fund and subsequently to seek investments primarily in the United States
4 focused on the water and transportation sectors.

5 **Q. HAVE YOU TESTIFIED BEFORE THE MONTANA PUBLIC SERVICE**
6 **COMMISSION (“COMMISSION”) BEFORE?**

7 A. Yes. I submitted testimony in Docket No. D2011.1.8, when Western Water acquired the
8 stock of Park Water Company (“Park Water”).

9 **Q, ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

10 A. I am testifying on behalf of Western Water.

11 **II. PURPOSE OF TESTIMONY**

12 **Q. PLEASE EXPLAIN HOW THIS MATTER CAME BEFORE THE**
13 **COMMISSION.**

14 A. Western Water owns the stock of Park Water. Park Water owns three water utilities,
15 including Mountain Water Company (“Mountain Water”), which provides water service
16 in and around Missoula, Montana. On September 19, 2014, Western Water entered into a
17 Plan and Agreement of Merger, pursuant to which Western Water will merge with and
18 into Liberty WWH, Inc. (“Liberty WWH”), a subsidiary of Liberty Utilities Co. (“Liberty
19 Utilities”), with Western Water continuing as the surviving entity. Following the merger,
20 Western Water will be a direct, wholly-owned subsidiary of Liberty Utilities, and Carlyle
21 Infrastructure will no longer own Western Water. Because of this change in the
22 ownership of Western Water, Mountain Water, Western Water, Liberty Utilities, and

1 Liberty WWH filed an application seeking the Commission's approval of the sale and
2 transfer of Western Water stock.

3 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY BEFORE THE**
4 **COMMISSION?**

5 A. My testimony will cover several topics. First, I will explain the relationship between
6 Carlyle Infrastructure, Western Water, and Park Water. Second, I will explain the
7 requirements under the Letter Agreement that was filed in Docket No. D2011.1.8, and
8 show how Carlyle Infrastructure satisfied its obligations under that Letter Agreement.
9 Finally, I will provide a high-level overview of the process to sell Western Water,
10 including a summary of the bids to acquire Western Water's stock.

11 **III. RELATIONSHIP BETWEEN CARLYLE INFRASTRUCTURE, PARK WATER,**
12 **AND WESTERN WATER**

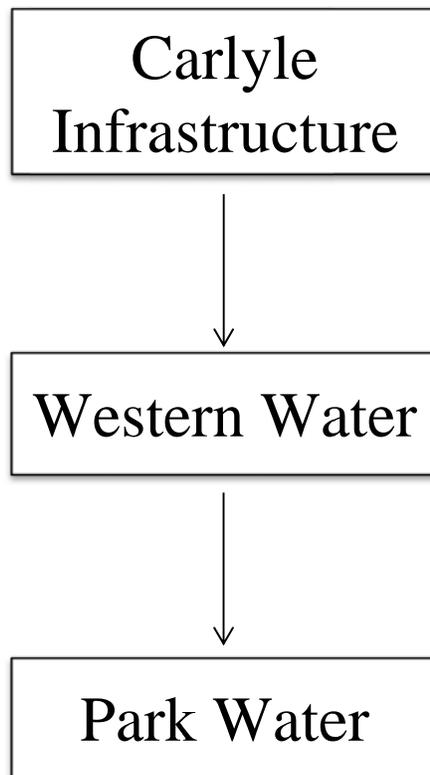
13 **Q. ARE YOU FAMILIAR WITH THE RELATIONSHIP BETWEEN CARLYLE**
14 **INFRASTRUCTURE, WESTERN WATER, AND PARK WATER?**

15 A. Yes.

16 **Q. PLEASE EXPLAIN THE RELATIONSHIP BETWEEN THOSE THREE**
17 **ENTITIES.**

18 A. Western Water is a wholly-owned portfolio company of Carlyle Infrastructure. In
19 December 2010, Park Water entered into a merger agreement pursuant to which a
20 wholly-owned subsidiary of Western Water was merged with and into Park Water, with
21 Park Water continuing as the surviving entity following the merger. On December 13,
22 2011, the Commission approved that merger, and since then Park Water has been wholly-

1 owned by Western Water. However, while Western Water is the corporate intermediary
2 between Carlyle Infrastructure and Park Water, Western Water itself has no employees
3 and conducts no business other than owning 100% of the stock in Park Water. Western
4 Water and Park Water have separate boards of directors. An organizational chart
5 showing the current ownership relationship between Carlyle Infrastructure, Western
6 Water, and Park Water is below:



19 **IV. COMMITMENTS CARLYLE INFRASTRUCTURE MADE IN DOCKET NO.**

20 **D2011.1.8 AND THE LETTER AGREEMENT**

21 **Q. ARE YOU FAMILIAR WITH THE COMMITMENTS CARLYLE**
22 **INFRASTRUCTURE MADE IN DOCKET D2011.1.8?**

23 **A.** Yes, I am.

24 **Q. HAS CARLYLE INFRASTRUCTURE HONORED THOSE COMMITMENTS?**

1 A. Yes. Mr. John Kappes explains how Carlyle Infrastructure honored the commitments it
2 made in Docket No. D2011.1.8 in his testimony, with the exception of the Letter
3 Agreement which I address below.

4 **Q. ARE YOU FAMILIAR WITH THE LETTER AGREEMENT BETWEEN THE**
5 **CITY OF MISSOULA (“CITY”), THE CLARK FORK COALITION, AND**
6 **CARLYLE INFRASTRUCTURE THAT RESULTED FROM DOCKET NO.**
7 **D2011.1.8?**

8 A. Yes.

9 **Q. WHAT COMMITMENTS DID CARLYLE INFRASTRUCTURE MAKE IN THE**
10 **LETTER AGREEMENT?**

11 A. The Letter Agreement included five primary commitments regarding Mountain Water
12 and its assets. These commitments were:

13 1. Sale of Mountain Water: If Mountain Water’s upstream owner received an offer to
14 buy Mountain Water independent of its parent and the parent, having received the
15 offer, decided to sell Mountain Water, the City would be notified of the decision prior
16 to any sale. The City would then have 120 days to submit its own proposal to
17 purchase Mountain Water. If the City’s offer met or exceeded the third-party’s
18 purchase price in Carlyle Infrastructure’s reasonable judgment, Carlyle Infrastructure
19 would accept the City’s proposal.

20 2. Good Faith Consideration of Any City Offer: Carlyle Infrastructure would consider
21 in good faith any offer from the City at any time to purchase Mountain Water.

22 3. Sale of Mountain Water’s Parent: If Mountain Water, Park Water, or Western Water
23 was proposed to be sold, Carlyle Infrastructure committed to notify the City prior to
24 the sale. The City would have at least 120 days after notice of Carlyle’s intention to
25 sell to determine whether to submit an offer to purchase Mountain Water and, during
26 that time, Carlyle Infrastructure would not sell the company to a third-party and
27 would consider in good faith any offer from the City to purchase Mountain Water.

28 4. Arbitration: Disputes regarding the Letter Agreement would be settled through
29 arbitration, and the arbitration decision would be final and binding on the parties.

1 5. Rattlesnake Drainage Infrastructure: Mountain Water's Rattlesnake drainage
2 infrastructure would continue to be beneficially used as a backup water supply for
3 Missoula and not diverted elsewhere and, prior to Mountain Water using its water
4 rights for a different use, Mountain Water would discuss those plans with the City
5 and the Clark Fork Coalition at least 90 days prior to the planned change of use.

6 The Commission summarized these commitments in Paragraph 47 of Order No. 7149d in
7 Docket No. D2011.1.8.

8 **Q. DID CARLYLE INFRASTRUCTURE SATISFY ITS OBLIGATIONS UNDER**
9 **THE LETTER AGREEMENT?**

10 A. Yes.

11 **Q. PLEASE EXPLAIN HOW CARLYLE INFRASTRUCTURE SATISFIED ITS**
12 **OBLIGATION REGARDING A SALE OF MOUNTAIN WATER.**

13 A. Neither Western Water nor Park Water received an offer to buy Mountain Water as a
14 stand-alone entity from any party other than the City. The marketing process which
15 resulted in the pending sale to Liberty Utilities only sought indications of interest from
16 parties interested in acquiring Western Water, not Mountain Water. Thus, Carlyle
17 Infrastructure's obligation under this provision of the Letter Agreement was not
18 triggered.

19 **Q. HOW DID CARLYLE INFRASTRUCTURE SATISFY ITS OBLIGATION TO**
20 **CONSIDER IN GOOD FAITH ANY OFFER FROM THE CITY FOR**
21 **MOUNTAIN WATER?**

22 A. On February 8, 2013, through its advisor Roger Wood at Moelis & Company, the City
23 submitted to Carlyle Infrastructure an unsigned offer to purchase the stock of Mountain
24 Water for \$65 million. As part of its consideration of that offer, Carlyle Infrastructure

1 and Western Water conferred with outside experts and evaluated the tax, bond indenture,
2 and regulatory implications of a potential sale to the City. Carlyle Infrastructure also
3 conducted internal analysis and concluded that there would be a significant value
4 degradation in our investment in Western Water if the City's offer was accepted. On
5 March 25, 2013, Carlyle Infrastructure rejected the offer because it did not reflect the full
6 value of Mountain Water and because the offer would trigger other issues, including
7 capital gains tax and a make-whole premium on Park Water's bond.

8 On October 29, 2013, the City submitted an identical \$65 million offer to
9 purchase the stock of Mountain Water. On November 4, 2013, as part of its
10 consideration of this identical offer, Carlyle Infrastructure sought clarification regarding
11 the City's offer and underlying assumptions and methodology. Based on the City's
12 response to Carlyle Infrastructure's request for clarification, as well as the analysis
13 conducted in connection with the earlier identical \$65 million offer, Carlyle Infrastructure
14 once again rejected the City's offer. Carlyle Infrastructure again rejected the offer
15 primarily because of the same concerns with the initial offer.

16 Around December 5, 2013, the City responded to Carlyle Infrastructure's
17 rejection of the \$65 million offer and issued an ultimatum to reach a negotiated sale for
18 Mountain Water within three weeks or face condemnation. By letter dated December 13,
19 2013, Carlyle Infrastructure declined the City's ultimatum. On January 28, 2014, the
20 City submitted a significantly reduced offer of \$50 million to Mountain Water to
21 purchase its utility assets. Having previously considered in good faith and declined

1 higher offers from the City, on January 31, 2014, Carlyle Infrastructure respectfully
2 declined the latest offer of \$50 million based upon the inadequacies of the earlier offers.

3 Carlyle Infrastructure devoted the necessary resources to evaluate each of the
4 offers received from the City. As a result of that evaluation and analysis, Carlyle
5 Infrastructure ultimately determined not to accept the City's offers. Although Carlyle
6 Infrastructure did not accept the City's offers, Carlyle Infrastructure did thoroughly
7 consider the City's offers for Mountain Water in good faith.

8 After Carlyle Infrastructure declined the offers upon good faith consideration, on
9 April 2, 2014, the City filed the condemnation lawsuit in state district court in Missoula
10 to take Mountain Water's utility assets by eminent domain power. On May 5, 2014, the
11 City served the amended summons related to the condemnation lawsuit.

12 **Q. PLEASE EXPLAIN WHY YOU BELIEVE CARLYLE SATISFIED ITS**
13 **OBLIGATION REGARDING A SALE OF MOUNTAIN WATER'S PARENT**
14 **COMPANY.**

15 A. On May 21, 2014, Wells Fargo Securities, LLC ("Wells Fargo"), the financial advisor
16 engaged by Western Water to sell 100% equity interest in Park Water, commenced the
17 sale process via a competitive auction. On the same day, counsel for Carlyle
18 Infrastructure sent a letter to the City's attorney, Jim Nugent, providing notice to the City
19 that, in accordance with the Letter Agreement, the City had 120 days to submit an offer
20 for Mountain Water. The City's Mayor, John Engen, publicly stated that he had no
21 intention to submit another offer for Mountain Water, and no offer was received from the
22 City following the required notice. On September 19, 2014, Western Water and Liberty

1 Utilities executed a Plan and Agreement of Merger for Liberty Utilities to acquire 100%
2 of Western Water, 121 days after Carlyle Infrastructure provided notice to the City of its
3 intent to sell 100% of the stock in Mountain Water's indirect parent company.

4 **Q. PLEASE EXPLAIN HOW CARLYLE INFRASTRUCTURE SATISFIED ITS**
5 **OBLIGATION REGARDING ARBITRATION.**

6 A. None of the parties to the Letter Agreement invoked the arbitration provision, and
7 therefore Carlyle Infrastructure's obligation to arbitrate was not triggered.

8 **Q. PLEASE EXPLAIN HOW CARLYLE INFRASTRUCTURE SATISFIED ITS**
9 **OBLIGATION REGARDING THE RATTLESNAKE DRAINAGE**
10 **INFRASTRUCTURE.**

11 A. Mountain Water's Rattlesnake drainage infrastructure continues to be beneficially used as
12 a backup water supply for Missoula and has not been diverted elsewhere. Mr. Kappes
13 also discusses the issue of the preservation of the Rattlesnake drainage infrastructure in
14 his testimony.

15 **V. OVERVIEW OF THE PROCESS TO SELL WESTERN WATER**

16 **Q. ARE YOU FAMILIAR WITH THE PROCESS THAT WAS UNDERTAKEN TO**
17 **SELL WESTERN WATER?**

18 A. Yes, I am.

19 **Q. PLEASE EXPLAIN THAT PROCESS.**

20 A. In May 2014, Western Water decided to entertain offers for acquisition of its interest in
21 Park Water, and retained Wells Fargo to identify a buyer for its 100% equity interest in
22 Park Water through a competitive auction process. This decision was reached as a result

1 of Carlyle Infrastructure having received unsolicited interest and inquiries regarding our
2 ownership in Park Water and was based on Carlyle Infrastructure's view that the overall
3 mergers and acquisitions market presented favorable conditions. That competitive
4 auction process had two phases. In Phase I, interested parties were invited to submit a
5 preliminary, non-binding indication of interest. Following Phase I, Western Water, with
6 the advice of Wells Fargo, evaluated each indication of interest and determined which
7 participants would be invited to conduct further due diligence and submit final proposals.
8 The performance of due diligence and submission of final proposals constituted Phase II.

9 **Q. WHAT WAS THE RESULT OF THE TWO-PHASE AUCTION PROCESS?**

10 A. Indications of interest were submitted by 13 respondents at the end of Phase I. Phase II
11 resulted in binding proposals from four respondents. Proposed cash payments for equity,
12 exclusive of outstanding debt to be assumed, ranged from \$211.6 million to \$250.6
13 million. These binding proposals were evaluated based on a variety of factors, including
14 proposed purchase payments, differences in contingencies and conditions, and proposed
15 modifications to the proposed merger agreement. Liberty Utilities' bid was ultimately
16 selected. The final purchase price for Western Water was \$250 million in cash for the
17 equity and assumption of approximately \$77 million in debt obligations, or a total of
18 approximately \$327 million.

19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

20 A. Yes.