

**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.,)	REGULATORY DIVISION
Western Water Holdings, LLC, and Mountain)	
Water Company for Approval of a Sale and)	DOCKET NO. D2014.12.99
Transfer of Stock)	

**WESTERN WATER HOLDINGS' AND MOUNTAIN WATER COMPANY'S
RESPONSE TO THE CITY OF MISSOULA'S MOTION TO COMPEL**

Western Water Holdings, LLC (“Western Water”) and Mountain Water Company (“Mountain Water”), by and through their counsel, Holland & Hart LLP, respectfully submit this response to the City of Missoula’s (“City”) Motion to Compel Unredacted Information Produced by Western Water and Mountain Water (“Motion to Compel”). Because the City’s Motion to Compel is procedurally flawed and the City’s argument is meritless, the Commission should deny with prejudice the City’s request for an order requiring the redacted information to be disclosed.

I. The City’s Motion to Compel is procedurally flawed and should be denied.

The City’s Motion to Compel suffers from at least four procedural flaws that warrant the Commission denying the City’s request. First, under the procedural order issued in this case, the City lacks standing to file a motion to compel. Second, the City failed to confer with Mountain Water and Western Water prior to filing to Motion to Compel as required by the Montana Rules of Civil Procedure. Third, the City failed to serve the Motion to Compel on counsel for Mountain Water and Western Water, as required by the City’s procedural order in this case. Fourth, the City’s Motion to Compel was untimely.

The City lacks standing to file a motion to compel under the Commission’s procedural order in this case. The procedural order unambiguously states that “the discovering party may move...for an order compelling an answer.”¹ As noted in the Motion to Compel, the Commission, not the City, propounded the requests to which the redacted documents were provided. Accordingly, the Commission, not the City, is the “discovering party” entitled to file a motion to compel. The City has inappropriately attempted to do what the Commission, in its sole discretion, has elected not to do. Because the City lacks standing to move to compel the responses to the Commission’s discovery requests, the Motion to Compel should be denied.

Additionally, under the Montana Rules of Civil Procedure (“MRCP”), a motion to compel “must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make discovery in an effort to obtain it without court action.”² The City’s Motion to Compel includes no such certification, because the City made no attempt, in good faith or otherwise, to confer with counsel for Mountain Water and Western Water prior to filing the Motion to Compel. Although the City lacks standing to file a motion to compel responses to the questions at issue, even if the City were entitled to file a motion to compel it failed to follow the clear requirements of the MRCP. Because of the City’s failure to abide by the requirements of the MRCP, the Motion to Compel should be denied.

The City also failed to comply with the Commission’s requirements regarding service and may have failed to comply with the Commission’s requirements regarding filing. Pursuant to the procedural order, “[u]pon e-filing a document with the Commission, the filing party must email a copy of the document to counsel of record.” Further, that paragraph requires motions to be e-filed. Despite the City’s representation in the certificate of service that the Motion to

¹ Order No. 7392 at ¶ 14.

² M.R.Civ.P. Rule 37(a)(1)(emphasis added).

Compel was emailed to counsel for Mountain Water and Western Water,³ no such email was sent or received. Instead, counsel for Mountain Water and Western Water only received a hard copy of the Motion to Compel by mail on March 20, 2015, eight days after the date the Motion to Compel was signed and four days after the Commission's website shows the Motion to Compel was received. It is unclear whether the City e-filed the Motion to Compel as required, however the fact that it was signed on the 12th and not uploaded to the Commission's website until the 16th suggests it was not. In any case, because the City failed to comply with the Commission's service requirements and may have failed to comply with the Commission's filing requirements, the Motion to Compel should be denied.

Finally, to the extent the City is permitted to compel responses to the Commission's discovery requests, the City's Motion to Compel responses related to PSC-001 through PSC-027 is untimely. Again, the Commission's procedural order is unambiguous in stating that "the discovering party may move within fourteen (14) calendar days after service of the response for an order compelling an answer."⁴ The responses at issue were filed with the Commission and served on the parties on February 18, 2015. Accordingly, a motion to compel would have been due by March 4, 2015. As noted above, the City's Motion to Compel was signed on March 12, 2015 and received by the Commission on March 16, 2016. Consequently, the City's Motion to Compel should be denied because it is untimely and failed to comply with the requirements established in the procedural order.

While any one of these procedural deficiencies alone would be grounds to deny the City's Motion to Compel, when combined they represent an inexcusable failure to comply with the Commission's procedural order and the MRCP. Because the City lacks standing to file a motion

³ See Certificate of Service to Motion to Compel, signed by Kate M. Palmer.

⁴ Order No. 7392 at ¶ 14 (emphasis added).

to compel; failed to confer in good faith regarding the Motion to Compel; failed to serve the motion via email on March 16, 2015; may have failed to e-file the Motion; and failed to file the Motion to Compel within 14 days from service of the responses to discovery at issue, the Commission should deny the City's Motion to Compel.

II. If the Commission allows the motion to proceed, the City must be required to meet and confer with counsel for Western Water and Mountain Water and any substantive response to the Motion should be due no earlier from 14 days after the meet and confer obligation is satisfied.

Western Water and Mountain Water are filing this response today out of an abundance of caution. Under paragraph 17 of the Commission's procedural order, a response to a motion is due within seven days of receipt. Despite the fact that counsel for Western Water and Mountain Water did not receive this motion until March 20th, since the Commission received the Motion on March 16th and posted it on its website, the Commission may construe Western Water and Mountain Water to have constructive service as of that date. Further, Western Water and Mountain Water believe the seven day response time is appropriate since this is not a proper motion to compel where a 14 day response time in the procedural order would apply.

However, in the event the Commission allows this Motion to Compel to proceed forward, Western Water and Mountain Water request that the Commission: (a) order counsel for the City to meet and confer with counsel for Western Water and Mountain Water as required by the MRCP, and (b) order that a substantive response to the Motion to Compel be due 14 days after the meet and confer obligation has been satisfied.

WHEREFORE, Western Water Holdings and Mountain Water respectfully urge the Commission to deny the City's Motion to Compel with prejudice. If the Commission allows the Motion to proceed forward, the Commission should order counsel for the City to meet and confer regarding the Motion with counsel for Western Water and Mountain Water and further order

that, if necessary, Western Water and Mountain Water may file a substantive response to the Motion within 14 days after the meet and confer obligation has been satisfied.

Respectfully submitted this 23rd day of March, 2015.

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**ATTORNEYS FOR MOUNTAIN WATER
COMPANY AND WESTERN WATER
HOLDINGS**

CERTIFICATE OF SERVICE

I hereby certify that on this, the 23rd day of March, 2015, **WESTERN WATER HOLDINGS' AND MOUNTAIN WATER COMPANY'S RESPONSE TO THE CITY OF MISSOULA'S MOTION TO COMPEL** was filed with the Montana PSC and served via U.S. Mail and e-mail, unless otherwise noted, to the following:

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