

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

**THE MONTANA CONSUMER COUNSEL
MOTION TO COMPEL**

Intervenor Montana Consumer Counsel [MCC] moves the Commission for an Order compelling Liberty Utility's [Liberty] to fully answer and respond to MCC data request 010 as set forth more fully below. MCC further requests additional time to prepare initial testimony after full responses have been provided.

Overview

Liberty objects to providing information on relevance grounds, and also claims the requested information is confidential. Whether the information is confidential or not is a matter to be decided by the Commission after Liberty files a request for an order protecting such information, in compliance procedurally and substantively with the scheduling order. If a utility takes the position that certain information is protected, the scheduling order sets out a process to follow. Since

Liberty has chosen not to avail itself of that process, its claim of confidentiality must be denied.

Specific MCC data request

MCC 010 seeks the following information:

MCC-010 Regarding: Enterprise Value.
Witness: David Pasieka

Please provide a working copy, including data, supporting spreadsheets and all formulas and links intact, of the financial model used in evaluating the acquisition of Park Water Company by Liberty Utilities Co.

Liberty argues that this information is not relevant because it will not seek an acquisition adjustment "to the existing rate base" and Liberty's due diligence work papers and financial projections have no impact on Mountain Water's customers.

Relevance in the context of discovery has been interpreted to mean "any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue **that is or may be** in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 57 L. Ed. 2d 253, 98 S. Ct. 2380 (1978)(emphasis added).

Courts have repeatedly followed the principle that the discovery rules are to be accorded a "broad and liberal treatment . . . mutual knowledge of all relevant facts gathered by both parties is essential to proper litigation." *Hickman v. Taylor* (1947), 329 U.S. 495, 507, 91 L. Ed. 451.

The United States and Montana Supreme Courts adhere to such principles in the discovery process. See *Owen v. F. A. Buttrey Co.* (1981), 192 Mont. 274, 627 P.2d 1233. Liberty's opinion about relevance completely ignores the liberal

construction of the rules of discovery as well as the process of discovery, especially before the Commission as an administrative agency. Administrative agencies are required to provide for discovery. Section 2-4-602, MCA. The Commission has done so by adopting Administrative Rule of Montana 38.2.3301, which states that nothing in the rule shall limit the free use of data requests among the parties. The rule provides that “the exchange of information among parties pursuant to data requests **is the primary method of discovery** in proceedings before the commission.” ARM 38.2.3301(2). An administrative agency must follow its own administrative rules. See *Williamson v. Montana Public Service Commission*, 2012 MT 32 ¶ 53, 364 Mont. 128, 272 P.3d 71.

Combining the liberal approach to discovery that courts have adopted with the Commission’s rule establishing data requests as the primary method of discovery, MCC’s request for Liberty’s valuation of Mountain Water is a key component of a determination about whether the acquisition is in the public interest and is a benefit to Mountain’s ratepayers.

The information MCC seeks pertains to how Liberty is valuing Mountain and how it intends to recover the cost of the acquisition. While Liberty disavows recovery of the acquisition adjustment in this case, that does not alleviate of its obligation to provide information to the MCC. The MCC is entitled to explore the mechanisms by which the utility plans to manage its financial stability and keep ratepayers from incurring risk into the future. The information sought by MCC in this data request is information that is sought and supplied by any utility

undergoing an acquisition or merger. The data and information responsive to this request was central to the merger analysis in the proposed acquisitions by Carlyle of Mountain Water in a predecessor docket, and by BBI in its attempted acquisition of NorthWestern.

The MCC expects that this analysis will reveal Liberty's financial plans for Mountain Water subsequent to the proposed acquisition. Without it, neither MCC nor the Commission can know what Liberty plans in the future, to the great risk of Montana ratepayers. The specific information sought here was central to the Commission's decision to allow the Carlyle acquisition of Mountain Water, and to reject the BBI acquisition of NorthWestern.

Full and complete responses should be ordered and the MCC should be given additional time to submit its testimony after such information is produced.

Conclusion

For the foregoing reasons, Liberty should be compelled to provide full and complete responses to MCC data requests. Once full and complete responses are provided, MCC should have additional time to prepare its testimony in this case.

DATED this 23rd day of May, 2015.

By: _____

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