

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

\* \* \* \* \*

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 )

**MOTION TO COMPEL OF THE MONTANA CONSUMER COUNSEL**

Intervenor Montana Consumer Counsel (MCC) moves the Commission for an Order compelling Applicant Liberty Utility's (Liberty) and Intervenors Western Water Holdings (Western) and Mountain Water Company (Mountain) to fully answer and respond to MCC data requests 001 through 009 and 011 through 018, as set forth more fully below. MCC previously filed a motion to compel responses to MCC 010 which is pending with the Commission. MCC further requests the procedural schedule be suspended and MCC allowed additional time to prepare and file initial testimony after full responses have been provided.

**Overview**

Western and Mountain responded to MCC 001 through MCC 009. Liberty responded to MCC 010 through 018. MCC has filed a motion to compel responses to MCC 010.

***A. Argument regarding relevance objections***

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 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).

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 data requests to Liberty, Mountain and Western are targeted to obtain information regarding 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 its obligation to provide information to the Commission and Intervenors. 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 is information that is routinely sought and supplied by any utility undergoing an acquisition or merger. The data and information responsive to MCC's data requests 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.

Without the requested information neither MCC nor the Commission can know what Liberty plans in the future, to the great risk of Montana ratepayers. Accordingly, such information should be compelled to be produced.

***B. Specific Data Requests for which responses are sought***

**MCC 001 – 009: Motion to compel responses from Western and Mountain**

**MCC – 001**

This data request seeks the analysis referred to by Robert Dove of Carlyle's internal analysis of Western Water in the event of acquisition by the City of

Missoula. Western and Mountain object based on relevance, confidentiality and privilege. Claims of confidentiality and privilege must be raised in conformance with the procedural schedule. To the extent that Western and Mountain failed to raise these claims in a timely fashion they should be denied. Western and Mountain refer to the response provided to PSC 031(a) and (b) which explains that Carlyle conducted an analysis and that a \$65 million valuation of Mountain would result in a significant premium required for California operations or a value degradation. However, MCC requested the “analyses and related documents” referred to by Mr. Dove, not conclusory statements therefrom. The requested information should be produced. It is clear that Carlyle *performed* an analysis. MCC requests the analysis and related data, not bald conclusions about the analysis. Such information should be available to the MCC to review to determine whether the current transaction results in just and reasonable rates to the Missoula consumers.

**MCC-002**

MCC seeks information relating to Mr. Dove’s testimony regarding Carlyle’s rejection of the city’s offer to purchase Mountain Water. Mountain objects on relevance, confidentiality and privilege grounds. For the reasons set forth above, these objections should be rejected and the information produced. The valuation of the utility is directly relevant to the mechanisms by which the utility will finance or bear debt, structure the transaction, and put Missoula

consumers at risk or not, and whether rates will be just and reasonable going forward. The information sought should be produced.

**MCC-003**

MCC seeks the list of entities that submitted unsolicited interest and inquiries regarding Western's ownership in Park Water. Mountain and Western object based on relevance, confidentiality and privilege. Claims of confidentiality and privilege must be raised in conformance with the procedural schedule. To the extent that Western and Mountain failed to raise these claims in a timely fashion they should be denied. Although Western and Mountain advise that Algonquin/Liberty was not one of the entities that submitted unsolicited interest, it does not advise who did. This information should be produced as no meritorious objection to providing the information has been advanced.

**MCC – 004**

MCC seeks a list of the 13 respondents to whom Mr. Dove refers in his testimony. Mountain and Western object based on relevance and confidentiality. Claims of confidentiality must be raised in conformance with the procedural schedule. To the extent that Western and Mountain failed to raise these claims in a timely fashion they should be denied. This information is germane to an understanding of the analysis and valuation that was undertaken and whether this transaction will benefit Missoula's ratepayers and is in the public interest. The information should be produced.

## MCC – 005

This data request seeks information regarding the bidders and the terms of the offers that were made by the final four respondents submitting binding proposals. Mountain and Western object on relevance and confidentiality claims. Claims of confidentiality must be raised in conformance with the procedural schedule. To the extent that Western and Mountain failed to raise these claims in a timely fashion they should be denied. Regarding the substantive answer, the response to PSC 027 indicates that Liberty is paying nearly twice the lowest cash offer for Mountain (see PSC 027(e) response). The terms and conditions of competing offers are relevant to an understanding of how Missoula's ratepayers will benefit from a transaction that values this asset so much over what was previously paid and what competing bidders appeared to have offered. If there are conditions and terms of sale that bind the parties and that will impact the ratepayers, the MCC is entitled to that information to appropriately evaluate whether this transaction is just and reasonable and will be in the public interest. The information should be produced.

## **MCC 011 – 018: Motion to compel responses from Liberty**

### MCC 014

This data request seeks details about Liberty's \$200 million credit facility, including "draws, current balances, etc." Liberty provided a table in response to MCC 014(a) showing lenders and their commitments. There is no information at all regarding draws, current balances, etc., on each credit facility. Liberty did not

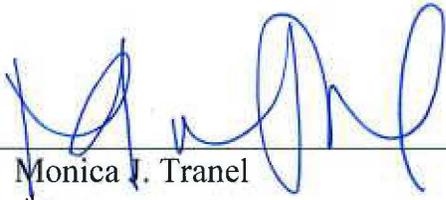
object to providing this information. A full and complete response should be compelled. MCC 014(b) requests information about the process and requirements that subsidiary utilities must follow to draw from the credit facility. Liberty's response states only that credit is available to meet daily cash needs. Liberty does not explain the process and requirements the subsidiary companies must undertake prior to drawing credit; such as, for example, inter-company agreements, collateralizing loans from other subsidiary companies, or allocation and repayment of lines of credit and debt among subsidiaries. A full and complete response should be compelled. MCC 14(c) requests a breakdown of current use of the credit facility by each subsidiary. In response Liberty provided the current draw amounts by each subsidiary as of April 28, 2015. This is incomplete, as it does not provide an explanation of how the credit facility is used and does not break down the manner in which the subsidiaries are using the credit facility. Full and complete responses to this data request should be compelled.

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, Mountain and Western 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 14<sup>th</sup> day of May, 2015.

By: 

Monica J. Tranel  
Attorney  
Montana Consumer Counsel  
111 Last Chance Gulch, Suite 1B  
Helena, MT 59601