

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

IN THE MATTER OF 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

**CITY OF MISSOULA’S MOTION TO COMPEL RESPONSES TO ITS DATA
REQUESTS TO WESTERN WATER HOLDINGS, MOUNTAIN WATER
COMPANY, LIBERTY UTILITIES CO., AND LIBERTY WWH, INC. AND
STAY THE PROCEEDING PENDING RESPONSES**

The City of Missoula (“City”) respectfully moves the Montana Public Service Commission (“PSC”) to compel Western Water Holdings, Mountain Water Co., Liberty Utilities Co. and Liberty WWH, Inc. to produce documents in response to the City’s data requests. The City further requests, as has the Montana Consumer Counsel, that the PSC extend the deadline for providing testimony and stay these proceedings pending complete responses to the City’s data requests. If Western Water, Mountain Water, and Liberty persist in improperly withholding relevant information, the City reserves the right to move to dismiss the joint application. By improperly withholding broad categories of information, Western Water, Mountain Water, and Liberty are depriving the City of a meaningful opportunity to participate in these proceedings.

BACKGROUND

The City of Missoula filed its data requests to Western Water, Mountain Water, and Liberty on April 21, 2015. The requests cover an array of topics including analyses that Carlyle and its subsidiaries prepared and presented in the so-called Project Orchard documents, future rate-making and rate cases, capital improvements, future financial projections for Mountain Water, valuations for Mountain Water, future plans for Park Water Company, and the corporate relationship between Liberty and Algonquin, among others.

The purpose of these requests is to provide insight into the level of service Liberty and Algonquin are prepared to provide the people of Missoula; how they plan to finance Mountain Water's future; Liberty and Algonquin's willingness and ability to deal with rampant leaks in the water system (a system that loses more water than it delivers); whether Algonquin and Liberty, like Carlyle, will continue to prioritize shareholder dividends and executive payouts above the needs of the people of Missoula and its water system; and what the people of Missoula will ultimately be paying for through their rates if the PSC approves the proposed sale.

Western Water, Mountain Water, and Liberty's coordinated responses to the City's requests are illustrative of the strident attitude the three corporations have taken throughout this proceeding: All three believe they, not the PSC, are the arbiters of what facts or issues are important in this case. All three parties make blanket relevance objections to nearly all of the City's requests without offering any explanation for why the requests are irrelevant. In particular, they claim that financial analyses and projections for Mountain Water are simply not important to this case. Again, they are

wrong. Mountain Water's and Liberty's financial future is a determining factor of the level of service to expect from Mountain Water and Liberty if sale is approved and what it will end up costing the people of Missoula.

The people of Missoula will inevitably help finance this sale through their rates if the sale goes through. If the people of Missoula are going to pay for it, they deserve to know what they are getting in return. The City of Missoula therefore requests the PSC to compel Western Water, Mountain Water, and Liberty to provide complete responses to the City's data requests. Moreover, because the three corporations have withheld broad categories of information from the City, the City asks the PSC to extend the deadline for submitting testimony and to stay these proceedings pending complete responses to the data requests.

ARGUMENT

I. Western Water, Mountain Water, and Liberty make identical impermissible, blanket relevance objections.

In their coordinated responses to the City's data requests, Western Water, Mountain Water, and Liberty make—word for word—the same blanket relevance objections:

[Mountain Water and Western Water or Liberty] objects to this request to the extent it seeks information not relevant to the subject matter of the instant proceeding, information not reasonably calculated to lead to the discovery of evidence admissible in the instant proceeding, and on the grounds the reference to 'you' is vague and ambiguous.

Mountain Water, Western Water, and Liberty made this stock objection to nearly all of the City's requests. Yet, in nearly all instances, they fail to provide any explanation

whatsoever as to why they believe the requested information is irrelevant.¹ Once again, Mountain Water, Western Water, and Liberty are operating under the assumption that they – not the PSC – are the gatekeepers in this case.

If a party objects to a request on the basis of relevance (or any other basis, for that matter), it must explain the basis of that objection. Why is the requested information not relevant? Mountain Water, Western Water, and Liberty refuse to answer that question. They must, as the PSC’s procedural order states: “Objections must be sufficiently specific for the Commission to adequately rule on whether to sustain or object.” Or. No. 7392, ¶ 11. At this point, it is impossible for the City to respond to Mountain Water, Western Water, and Liberty’s relevance objections because they offer no explanation or support for their objection. They just make them and expect the PSC to sustain it without justification.

Moreover, they claim the City’s requests are not calculated to lead to the discovery admissible evidence, but the PSC’s procedural order expressly rejects that objection: “[O]bjections on admissibility will be overruled.” Or. No. 7392, ¶ 11.

A further problem with the blanket relevance objections is that the City is unable to determine whether Mountain Water, Western Water, and Liberty actually withheld any documents on the basis of relevance. They make their relevance objections to virtually every request but do not state whether any documents were withheld on the basis of those objections.

¹ The only notable exception is Liberty’s response to CITY-020, which relates to Liberty’s analysis of Mountain Water’s value. Remarkably, Liberty claims that Mountain Water’s value has no bearing on the issues in this matter, so those analyses are not relevant. Liberty’s response to this request is discussed in more detail below.

The City's requests are not the only requests that have been subjected to Mountain Water, Western Water, and Liberty's blanket and unsupported relevance objections. They have made the same objections to the PSC's data requests and the Montana Consumer Counsel's requests. All the while, they assume that they – not the PSC – gets to decide what is relevant. In MCC-002, for example, the Montana Consumer Counsel asked Western Water and Mountain water to provide all analyses related to the full value of Mountain Water, which is plainly relevant to this proceeding. But Western Water and Mountain Water decided to not provide that information because they maintain the value is "only relevant to the extent it is directed at the Letter Agreement between the City of Missoula, the Clark Fork Coalition, and Carlyle." Moreover, they claim the Missoula Mayor John Engen "conceded" that Carlyle had complied with the terms of that Letter Agreement. Western Water and Mountain Water are flat wrong. The value of Mountain Water is relevant, and Carlyle certainly did not comply with the terms of the Letter Agreement. Regardless, the PSC – not Western Water and Mountain Water – determines whether evidence in this matter is relevant.

Finally, Mountain Water, Western Water, and Liberty are grasping at straws when they object to the City's use of the word "you." They claim that word is "vague and ambiguous." Their objection is straight out of the Lawyer Stonewalling Handbook. *Merriam-Webster's* online dictionary defines "you" as: "the one or ones being addressed." The City's requests were plainly directed at the three corporations, and, by serving the requests on them, the City expected a response from each corporation. To the extent they were directed at a specific person, as opposed to the three corporations

themselves, the City identified that person in its request. Western Water, Mountain Water, and Liberty's objection is nothing more than gamesmanship.

The City respectfully requests the PSC to order Western Water, Mountain Water, and Liberty to produce any and all documents withheld on the basis of relevance or to provide a "sufficiently specific" explanation for each objection so that the PSC can adequately rule on the objection. In either case, the City asks the PSC to extend the deadline for submission of testimony and to stay the proceedings pending a response from the three corporations. *See* Or. No. 7392, ¶ 15 (allowing the PSC to "stay the proceeding until the request is satisfied.") By refusing to provide requested information, Mountain Water, Western Water, and Liberty are preventing the City's witnesses from adequately preparing their testimony.

II. The City incorporates by reference its motions to compel responses to the PSC's data requests.

In addition to improperly withholding information requested by the City, Western Water, Mountain Water, and Liberty have also improperly withheld information requested by the PSC and Montana Consumer Counsel. The City moved to compel responses to some of the PSC's data requests and incorporates those motions here by reference because Western Water, Mountain Water, and Liberty responded to the City's requests by relying, in part, on the documents at issue in those motions.

III. Responses related to specific data requests

The City respectfully requests the PSC compel responses to several of the City's specific data requests:

CITY-002 (Western Water and Mountain Water)

In CITY-002, the City asked whether Western Water, Mountain Water, or Liberty have done any analyses related to potential or anticipated rate increases. This request required only a “yes” or “no” answer. Western Water and Mountain Water did not answer the question; they simply said no rate increases are at issue in this specific proceeding. That was not the question, though. The question is whether they have done any analyses related to potential or anticipated rate increases. If the answer is “yes,” Western Water and Mountain Water must describe the analyses and produce them in accordance with subsections (b) and (c).

CITY-002 (Liberty)

Liberty, to its credit, more or less gave a “yes” or “no” answer to the request, stating it has not performed a “stand-alone evaluation, due diligence or analysis of potential or anticipated increases in Mountain Water rates.” At the same time, though, the City is aware that Liberty sent people from Arizona to Missoula for a couple days to conduct due diligence. Liberty, though, fails to identify that due diligence, describe the results of that due diligence, who was sent to conduct it, and what they did. The PSC should compel Liberty to provide this information in response to CITY-002.

CITY-003 (Western Water and Mountain Water)

In CITY-003, the City asked Western Water and Mountain Water to provide any analyses or due diligence they prepared related to their expressed intention to file a rate case every year with the PSC. That intention was made clear in the June 2014 Project Orchard memo.

In response, Western Water and Mountain Water again chose to not respond. Instead, they stated only that Mountain Water did not file a rate case in 2014, has not filed one in 2015, and no decisions have been made regarding future rate cases. That response does not answer the question: Did Western Water or Mountain Water prepare any analyses related to the rate increases referenced in the Project Orchard memo? Those analyses are relevant, regardless of Mountain Water's current plans for rate cases because they, at a minimum, describe Mountain Water's possible plans for future rate cases. A "yes" or "no" answer to the request would have been sufficient. If the answer is "yes," then Western Water and Mountain Water must describe and produce the analyses in accordance with subsections (b) and (c).

CITY-004 (Liberty)

In CITY-004, the City asked whether rate cases would be filed annually or every two years if the PSC approves the proposed sale. In response, Liberty wrote that it "generally supports the rate gradualism allowed by more frequent rate cases." In explaining its rationale for annual rate cases, Liberty offered several conclusions, including: "Liberty understands its customers generally prefer gradual increases and Liberty is committed to avoiding rate shock for customers." Yet, when asked to produce all documents "reviewed, prepared, or relied upon" in answering this request, Liberty simply wrote "N/A." That means Liberty either pulled these conclusions out of thin air without any support or they are withholding documents that provide the basis for these conclusions. The City asks the PSC to order Liberty to comply with the request for documents in subsection (c) by produce the documents supporting the statements it made in subsection (b).

CITY-007 (Liberty)

In CITY-007, the City asked Liberty to describe all capital improvements it would make in the first five years of operation. On the one hand, Liberty states in its response that it is simply going to let Mountain Water operate business as usual and that Liberty will “support” Mountain Water’s plan. This statement is consistent with testimony offered by Greg Sorenson, Liberty Utilities’ Vice President and General Manager, during the condemnation trial. When asked about leakage rates in other water systems owned by Liberty, Mr. Sorenson testified that the highest is approximately 20%. When asked what Liberty would do about Mountain Water’s leak rate, which exceeds 50% and is more than double the leak rate of any Liberty-owned water system, Mr. Sorenson testified that Liberty would simply continue to let Mountain Water proceed as it has in the past:

18	A. Yes. We know that the Mountain Water
19	folks and John and Logan and their teams are well
20	aware of the situation. We know that they have a
21	plan to address the water loss concern. And we
22	fully stand behind them and their plant, and we
23	stand at the ready to support that plan
24	financially either today or if it changes.

(Sorenson Trial Tr., April 1, 2015, 216:18-24.)

On the other hand, Liberty acknowledges that Mountain Water’s capital improvement plan and infrastructure replacement is inadequate – even by Mountain Water’s own assessment – and that the water system’s epidemic leaks should have been fixed sooner. At the condemnation trial, Mr. Sorenson testified:

3 Q. And you realize that, according to their
4 own report, the level of infrastructure
5 replacement with mains is not sustainable,
6 correct?
7 A. Yes.
8 Q. Let's assume for a moment that the 40
9 percent-plus leakage factor unaccounted-for water
10 loss is occurring throughout Carlyle's tenure as
11 owner.
12 If you were in that position over the
13 last three years, would you have tried to address
14 it a little faster? Would you try?
15 A. I think that each and every utility
16 situation is different, and so there would be a
17 lot of factors that go into the replacement of
18 those mains and the efforts that would be made and
19 you can't look at it in just a vacuum. There have
20 to be a lot of things considered, including costs
21 and impact on customers.
22 Q. Would you try? Would you have tried?
23 A. I certainly would have evaluated it.

(Sorensen Trial Tr., 230:3–23.) Mountain Water's plan is not sustainable and, according to Mr. Sorensen, they should have dealt with it sooner.

To this end, Mountain Water's attorney asked Mr. Sorensen at trial what expertise Liberty could offer Mountain Water to address the necessary capital improvements. Mr. Sorensen pointed to the following programs:

- a "safety coin" program, where employees keep a coin in their pocket to remind them to be safe;
- a "near-miss" program, where employees are encouraged to report near-miss safety violations;
- a "Liberty Day" program, where employees are given three days of paid time off to do community service work; and
- a "Power of Suggestion" program, where employees are encouraged to offer helpful or cost-saving suggestions for Liberty's business operations.

Making Mountain Water employees carry a coin in their pocket or participate in community service is not going to prevent Mountain Water from losing more water than it delivers to customers. Liberty has no “secret sauce” to offer. It brings nothing to the table in terms of fixing the rampant leaks except to let Mountain Water continue doing what it has done all along, which Liberty openly acknowledges is inadequate.

In its response to CITY-007, Liberty mentions in passing that it will offer “additional capital investment if warranted and needed” With a leakage exceeding 50%, how could additional capital investment not be warranted and needed? This is a critical question for the PSC to consider as it decides whether to approve the proposed sale. Liberty offers no answer to this question, though. The PSC should compel Liberty to explain the circumstances under which “additional capital investment” will be “warranted and needed.” What do they intend to bring to the table other than continuing to let the water system spiral into degradation under Mountain Water’s watch?

CITY-009 (Liberty)

In CITY-009, the City asked Liberty to explain, in the event the PSC approves the proposed sale, how capital improvements made in the first five years would be paid for. Liberty states that it cannot identify how particular capital improvements will be financed over the next five years but that it would try to maintain a capital structure approved by the PSC. In the last rate case, the Commission approved rates based on a capital structure of 43.88% debt to 56.12% equity.

Liberty, though, is a subsidiary of Algonquin, which means it does not have its own equity. Liberty’s response fails to explain how Liberty is able to effectuate or

establish a specific debt/equity ratio or otherwise adhere to a capital structure approved by the PSC. While Algonquin, as the parent company, is able to establish its capital structure, Liberty has no control over it. This, too, is another reason why Algonquin should be a party to this proceeding. The PSC should order Liberty to explain how it has any control over the capital structure that would be subject to PSC approval.

CITY-010 (Western Water and Mountain Water)

In CITY-010, the City asked Western Water and Mountain Water to identify and provide any evaluations, analyses, or due diligence regarding Mountain Water's ability to acquire small water utilities. When asked whether they conducted those evaluations, analyses, or due diligence, Western Water and Mountain Water responded: "Yes." They then provided a detailed description of those evaluations, analyses, and due diligence. Mountain Water and Western Water also wrote: "Mountain Water's staff is also familiar with difficulties the Montana Department of Environmental Quality and the Montana Public Service Commission have had over the years in regulating the numerous small systems throughout the state."

But, when asked to produce those analyses or documents on which Western Water and Mountain Water based their statements in subsection (b), they wrote "N/A." As with Liberty's response to CITY-004, this means Western Water and Mountain Water are either making unsupported assertions or they are withholding documents. The City asks that the PSC order Western Water and Mountain Water to provide the due diligence, analysis, and evaluations they described.

CITY-011 (Western Water and Mountain Water)

In CITY-011, the City asked Western Water, Mountain Water, and Liberty whether they have performed any evaluation, due diligence, or analysis regarding leakage at Mountain Water, including necessary capital expenditures and maintenance to address the problem. All three indicated that Mountain Water had done those analyses, and all three described those analyses. When asked to produce those analyses, Liberty responded:

See documents produced by WWH and Mountain Water in response to this request, including Financial Analysis and Proposed Action Plan for Water Loss Mitigation; Mountain Water Company: System Report in Support of the Distribution System Improvement Charge August 2013; AWWA Water Audit Summary 2011-2013.

Western Water and Mountain Water, though, did not produce those documents. Instead, when asked to produce those documents, they simply wrote "N/A."

To their credit, after a meet and confer, Western Water and Mountain Water provided a supplemental response to the City's data request and produced the documents referenced by Liberty. Those documents, at a minimum, should have initially been provided by Western Water and Mountain Water. But, even with their supplemental production, Western Water and Mountain Water's response remains grossly selective and incomplete. There are numerous responsive documents related to Mountain Water's leakage rate and capital expenditures necessary to fix the leaks that Western Water and Mountain Water have refused to provide. What is more, the documents they have chosen to provide were apparently selected in order to cast

Mountain Water in the best light possible, even though those documents still show abhorrent leakage rates in excess of 50%. (See WWH001247, attached as **Exhibit A**)

For instance, in their supplemental production, Western Water and Mountain Water produced a table titled “Comparison of Water Loss Data,” which shows leakage rates for the years 2010 through 2013. That table shows that leakage rates (non-revenue water loss) have historically been as high as 52.8% (2010) and was 51.7% in 2013.² The Microsoft Word version of that document shows that the table was last modified on January 10, 2014 by one of Mountain Water’s civil engineers.

A later version of that table, though – which Western Water and Mountain Water chose to not produce – shows that leakage rates have actually been as high as 55.7% (2011) and was 54.4% in 2013.³ (See Comparison of Water Loss Data (8/25/2014), attached as **Exhibit B**.) The Microsoft Word version of this document was last modified on August 25, 2014, by the same civil engineer that created the previous version, more than 7 months after the earlier version had been last modified.

Why did Western Water and Mountain Water choose to provide the earlier version of the table that showed lower (but still grim) leakage rates when the newer version is readily available to them?

The City will not be able to get a straight or complete answer from Western Water and Mountain Water without an order from the PSC. The City respectfully requests the PSC to order that Western Water and Mountain Water fully respond to the

² With respect to these figures, Western Water and Mountain Water were assuming that flat rate consumption is equal to metered consumption. They also provided figures based on the assumption that flat rate consumption is two times metered consumption.

³ See *supra* n. 3. While the city has some of these responsive documents in its possession, many are subject to a protective order that prevents them from being used outside the context of the condemnation proceeding, which is why the City asks that they be reproduced for purposes of this proceeding.

City's data request by providing all documentation related to "leakage at Mountain Water, including necessary capital expenditures and maintenance to address the problem."

CITY-015 (Western Water and Mountain Water)

In CITY-015, the City asked Western Water and Mountain Water to provide current salary information for all individuals they employ who would be paid, in whole or part, from the allocation of any proceeds from Mountain Water if the PSC approves the sale. Western Water and Mountain Water did not object; they simply did not respond. A response is owed. At a minimum, the City is aware that some employees stand to receive payouts from the Class B Share Agreements. Yet, Western Water and Mountain Water did not identify these individuals or any other forms of payment their employees might receive. The PSC should compel Western Water and Mountain Water to respond to the request.

CITY-020 (Liberty)

In CITY-020, the City asked Liberty to provide valuation documents provided to Liberty Utilities that were used to calculate the purchase price of \$327 million for all three water systems. The City asked about the purchase price for all three systems because, in response to the PSC's data request PSC-002, Liberty indicated that a "separate valuation" for Mountain Water was not made. Liberty objects to the City's request on the basis of relevance and confidentiality.

The latter objection is easy to resolve: Liberty may not withhold documents on the basis of confidentiality without moving for a protective order, which it has not done. Admin. R. Mont. 38.2.5007(1). Indeed, Liberty has now waived its confidentiality

objection because it did not move for a protective order before responding to the data requests. Order No. 7392, ¶ 12 (“If a data request asks for protected information, the responding party must file a motion for a protective order as soon as practicable, but no later than the deadline to respond to the data request.”)

As to relevance, Liberty makes the same meritless objection it made in response to the PSC’s request PSC-033(b) – i.e., financial projections have no bearing on this case because Mountain Water is not seeking an acquisition adjustment or rate increase in this case. The City explained why this information is relevant in its motion to compel Liberty’s response to the PSC’s data requests: The information provides insight into Liberty’s future financial plans for Mountain Water. The financial projections, due diligence, and analyses would help the PSC determine whether Liberty will be able to provide adequate service (including putting an end to epidemic leaks) and whether its ownership will harm or benefit the people of Missoula. Will, for instance, capital improvements continue to take a back seat to shareholder dividends and payouts? The PSC and the City requested this information for the same reason – Liberty’s financial plans for Mountain Water are central to this case.

CITY-028 (Liberty)

In CITY-028, the City asked Liberty to describe its specific plans for addressing the capital improvements that need to be made to the Water System in the first five years. As with its response to CITY-007, Liberty simply states it will continue to let Mountain Water handle capital improvements. Liberty’s response to CITY-028 is inadequate for the same reasons its response to CITY-007 is inadequate: Liberty offers no explanation of what it brings to the table other than deferring to Mountain Water.

As Mr. Sorensen testified in the condemnation proceeding, Mountain Water's capital improvement and infrastructure replacement plan is not sustainable. (Sorensen Trial Tr., 230:3-23.) Much more must be done to remediate the fact that Mountain Water loses more water than it delivers. Yet, Liberty refuses to explain what it would do differently than Mountain Water to fix the water system. The PSC should order Liberty to provide this explanation with specific reference to the aged and leaking water mains, aged water pumps, the Rattlesnake intake dam and Rattlesnake creek, the Wilderness dams located in the Rattlesnake Wilderness, and any other capital improvements necessary to improve the aged Water System.

CITY-029 (Liberty)

In CITY-029, the City asked Liberty to describe the capital structure Liberty intends to maintain for Mountain Water if the proposed sale is approved. Consistent with its response to CITY-009 (see above), Liberty stated it would try to maintain a capital structure approved by the PSC. In the last rate case, the Commission approved rates based on a capital structure of 43.88% debt to 56.12% equity. Again, Liberty offers no explanation for how it could "strive" to maintain that structure since it has no control over Mountain Water's capital structure. Algonquin, as the parent company, has that control, but not Liberty. The PSC should order Liberty to explain how it has any control over the capital structure that would be subject to PSC approval.

In this request, the City also asked Liberty to describe the optimal capital structure for the Mountain Water business. Liberty responded by simply stating that the term "optimal" is not defined and does not have a clear meaning in the context of the request. Liberty is, again, playing games. Webster's defines "optimal" as "best or

most effective” or “most desirable or satisfactory.” The meaning of “optimal” in this context is clear: From Liberty’s perspective, what is the best capital structure for Mountain Water’s business? If Liberty cannot answer this fundamental question, it has no business operating a water system. The PSC should compel Liberty to provide a response to this question.

CITY-030/CITY-031 (Liberty)

In requests CITY-030 and CITY-031, the City asked Liberty to provide information about Liberty and its corporate parents. The City made these requests so that it and the PSC can better understand Algonquin’s control over Liberty and whether there is any separation at all between the two. To the extent there is little or no separation and that Algonquin ultimately makes Liberty’s decisions, Algonquin should be a party to this matter.

In Order No. 7392b, the PSC observed that “[a] formal corporate structure between the companies – like minutes, records, and tax returns – appears to exist.” *Id.* at ¶ 25. But, as the PSC also stated, it “will continue to monitor Algonquin’s control over Liberty and reevaluate this determination if a lack of meaningful separation becomes more apparent.” *Id.* Data requests CITY-030 and CITY-031, then, were made to better understand that corporate structure and the level of control that Algonquin exerts over Liberty.

In response to CITY-030, Liberty stated that Ian Robertson, Richard Leehr, and Greg Sorenson each serve on the boards of:

- Liberty Utilities Co.
- Liberty Utilities (America) Corp.
- Liberty Utilities (America) Holdco In.

Mr. Robertson further serves on the Board for Liberty Utilities (Canada) Corp., which owns the three subsidiaries above. And he is the CEO and a member of the Board of Directors for Algonquin Power and Utilities Corp., which owns Liberty Utilities (Canada) Corp.

Liberty indicated in its response to CITY-030(b) that “[t]he Board of APUC [Algonquin] was consulted and determined that the acquisition of [Park Water Company] was desirable and in the best interest of APUC that Liberty Utilities consummate the transaction.” In CITY-031, the City requested board minutes and tax records for Liberty and its corporate parents to gain insight into Algonquin’s control over and separation from Liberty in approving the proposed purchase of Park Water. Liberty responded that the “request is vague, ambiguous, overly broad, unduly burdensome and seeks information which is not relevant to this matter and is protected from disclosure as confidential and contains proprietary trade secrets.”

In an effort to clarify its request, the City contacted counsel for Liberty and stated it is requesting board minutes from the corporate entities that relate to the purchase of Park Water. And it is requesting tax returns for the corporate entities from the past two years. Liberty’s counsel has not responded.

As for Liberty’s relevance objection, the PSC has already determined that Algonquin and Liberty’s corporate structure is relevant to this case and that the PSC will continue to monitor that structure in order to accurately determine how much control Algonquin has over Liberty. The requested information would undoubtedly shed light on that question.

Finally, Liberty's confidentiality objection fails for two reasons, merits aside.

First, Liberty has not moved for a protective order as required by the PSC's procedural order and Rule 38.2.5007(1). Second, Liberty has now waived its confidentiality objection because it did not move for a protective order before serving its responses to the City's data requests. *See* Order No. 7392, ¶ 12 ("If a data request asks for protected information, the responding party must file a motion for a protective order as soon as practicable, but no later than the deadline to respond to the data request.")

The City therefore asks the PSC to order Liberty to produce board minutes or notes related the proposed transaction, as well as the corporations' tax returns for the last two years.

IV. The PSC should extend the deadline for providing testimony and stay the proceeding pending complete, supplemental responses to the City's data requests.

By withholding broad categories of information and refusing to provide complete responses to the City's requests – not to mention the PSC's data requests, which are the subject of separate motions to compel – Western Water, Mountain Water, and Liberty are preventing the City from providing adequate testimony and participating meaningfully in this matter.

Where a party has failed to provide requested documents and information, the procedural order for this case and Rule 37 specifically allow the PSC to stay the proceedings until the responding party complies with the PSC's order to compel:

Order No. 7392, ¶ 15: In response to a party's failure to answer a data request, the Commission may: . . . (4) stay the proceeding until the request is satisfied

Rule 37(b)(2)(A)(iv): If a party . . . fails to obey an order to provide or permit discovery . . . the court where the action is pending may issue further just orders. They may include the following: . . . (iv) staying further proceedings until the order is obeyed

The City therefore requests, as has the Montana Consumer Counsel, that the PSC extend the City's deadline for providing testimony to 10 days after Western Water, Mountain Water, and Liberty provide a complete response to the City's data requests. The City further requests that proceeding itself be stayed pending complete, supplemental responses to the City's data requests. Should Western Water, Mountain Water, and Liberty continue to improperly withholding documents and information, the City reserves the right to move to dismiss the joint application. *See* Order No. 7392, ¶ 15 ("In response to a party's failure to answer a data request, the Commission may: . . . dismiss the proceeding, or parts thereof.")

CONCLUSION

For the reasons above, the City asks that the PSC grant its motion to compel, extend the deadline for providing testimony, and stay the current proceeding pending complete, supplemental responses to the City's data requests.

Dated this 18th day of May 2015.



Scott M. Stearns
Natasha Prinzing Jones
BOONE KARLBERG P.C

Jim Nugent
City of Missoula
CITY ATTORNEY'S OFFICE

Attorneys for the City of Missoula

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by mail and email upon the following counsel of record at their addresses this 18th day of May 2015:

Thorvald A. Nelson
Nikolas S. Stoffel
Holland & Hart LLP
6380 South Fiddlers Green Circle
Suite 500
Greenwood Village, CO 80111
tnelson@hollandhart.com
nsstoffel@hollandhart.com
cakennedy@hollandhart.com
aclee@hollandhart.com

Michael Green
Gregory F. Dorrington
CROWLEY FLECK PLLP
100 North Park, Suite 300
P.O. Box 797
Helena, MT 59624-0797
mgreen@crowleyfleck.com
gdorrington@crowleyfleck.com
cuda@crowleyfleck.com
jtolan@crowleyfleck.com

Robert Nelson
Monica Tranel
Montana Consumer Counsel
111 North Last Chance Gulch, Suite 1B
P.O. Box. 201703
Helena, MT 59620-1703
robnelson@mt.gov

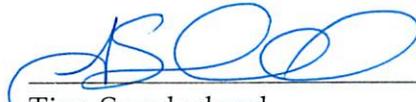
Christopher Schilling
Chief Executive Officer
Leigh Jordan
Executive Vice President
Park Water Company
9750 Washburn Road
Downey, CA 90241
cschilling@parkwater.com
leighj@parkwater.com

John Kappes
President & General Manager
Mountain Water Company
1345 West Broadway
Missoula, MT 59802-2239
johnk@mtwater.com

Barbara Hall
Legal Director
The Clark Fork Coalition
P.O. Box 7593
Missoula, MT 59801
Barbara@clarkfork.org

Todd Wiley
Assistant General Counsel
Liberty Utilities
12725 West Indian School Road, Suite D-101
Avondale, Arizona 85392
todd.wiley@libertyutilities.com

Kate Whitney
Public Service Commission
1701 Prospect Avenue
Helena, MT 59620-2601
kwhitney@mt.gov
**ORIGINAL SENT VIA OVERNIGHT
DELIVERY**



Tina Sunderland

EXHIBIT “A”

EXHIBIT “A”

DRAFT

COMPARISON OF WATER LOSS DATA

Water Loss Measurements

	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Reservoir Fall Studies ¹ (MG/YR)	4444	4231	3988	3793
Percentage Change by Year of Total Water Loss Measured	0	- 4.79%	- 5.75%	-4.89%
	0.25	49.95%	46.06%	43.36%
	0.42			

AWWA Water Audit Summary:

Assuming FLAT RATE Consumption = Metered Consumption Per Account

<u>Million gallons / Year</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Total Water Produced ²	8300	8471	8658	8747
Metered Consumption ³	3131	3295	3532	3550
Unbilled Metered ⁴	0.984	1.349	1.297	1.297
Unbilled Unmetered ⁵	103.7	105.9	108.2	109.3
Unauthorized Unmetered ⁶	20.75	21.18	21.65	21.86
Flat Rate Consumption	783	750.7	722	674
Number of Flat Rate Customers ³	4397	4094	3870	3674
Number of Metered Customers ³	17575	17972	18932	19349
Non-revenue water (%)	52.8%	52.2%	49.4%	51.7%
Real Water Losses	51.6%	51.0%	48.2%	50.2%

AWWA Water Audit Summary:

Assuming FLAT RATE Consumption = 2.0 Times Metered Consumption Per Account

<u>Million gallons / Year</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Total Water Produced ²	8300	8471	8658	8747
Metered Consumption ³	3131	3295	3532	3550
Unbilled Metered ⁴	0.984	1.349	1.297	1.297
Unbilled Unmetered ⁵	103.7	105.9	108.2	109.2
Unauthorized Unmetered ⁶	20.75	21.18	21.65	21.86
Flat Rate Consumption	1566	1501	1444	1348
Number of Flat Rate Customers ³	4397	4094	3870	3674
Number of Metered Customers ³	17575	17972	18932	19349
Non-revenue water (%)	43.4%	43.4%	40.5%	44%
Real Water Losses	42.2%	42.1%	39.3%	42.5%
Real Water Losses	3503	3566	3403	3715

Notes:

G:\Engineering\Water Loss Group\AWWA water audit\AWWA Water Audit Summary TABLE_sma.docx

WWH001247

1. Reservoir fall studies are conducted one day annually by isolating each pressure zone, filling the reservoir, turning off all pumps, and measuring the reservoir drop over a period of time during the early morning hours when demand is lowest. According to AWWA Manual M32, Figure 2 – AWWA Average Day Diurnal Curve, the usage during these studies is assumed to be 25% of average day.
2. Taken from production 'READS'.
3. Data was taken from the CIS Revenue Data Base – 1190 Annual Consumption and Cust Connections
4. Water used by the City of Missoula fire department and by MWC personnel for hydrant testing.
5. Water used for firefighting, flushing of mains and sewers, street cleaning, etc. AWWA default value of 1.25% was used.
6. Water withdrawn from hydrants, bypasses to meter reading equipment, etc. AWWA default value of 0.25% was used.

EXHIBIT “B”

EXHIBIT “B”

DRAFT

COMPARISON OF WATER LOSS DATA

AWWA Water Audit Summary:

Assuming FLAT RATE Consumption = Metered Consumption Per Account

<u>Million gallons / Year</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Total Water Produced ² (MG/YR)	8299.9	8471.4	8658.0	8747.3
Metered Consumption ³	3130.6	3295.4	3532.4	3550.0
Unbilled Metered ⁴	0.984	1.349	1.297	1.297
Unbilled Unmetered ⁵	103.7	105.9	108.2	109.3
Unauthorized Unmetered ⁶	20.75	21.18	21.65	21.86
Flat Rate Consumption	447.32	750.7	722	674
Number of Flat Rate Customers ³	4397	4094	3870	3674
Number of Metered Customers ³	17575	17972	18932	19349
Non-revenue water (%)	51.5%	55.7%	50.7%	54.4%
Real Losses (% of production)	55.38%	52.96%	43.01%	51.65%

AWWA Water Audit Summary:

Assuming FLAT RATE Consumption = 2.0 Times Metered Consumption Per Account

<u>Million gallons / Year</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Total Water Produced ²	8299.9	8471.4	8658.0	8747.3
Metered Consumption ³	3130.6	3295.4	3532.4	3550.0
Unbilled Metered ⁴	0.984	1.349	1.297	1.297
Unbilled Unmetered ⁵	103.7	105.9	108.2	109.2
Unauthorized Unmetered ⁶	20.75	21.18	21.65	21.86
Flat Rate Consumption	895	1501	1444	1348
Number of Flat Rate Customers ³	4397	4094	3870	3674
Number of Metered Customers ³	17575	17972	18932	19349
Non-revenue water (%)	56.9%	50.3%	50.1%	49.4%
Real Losses (% of production)	48.82%	47.56%	47.33%	46.66%

Notes:

*Work performed using AWWA WLCC Free Water Audit Software: WASv4.2

1. Reservoir fall studies are conducted one day annually by isolating each pressure zone, filling the reservoir, turning off all pumps, and measuring the reservoir drop over a period of time during the early morning hours when demand is lowest. According to AWWA Manual M32, Figure 2 – AWWA Average Day Diurnal Curve, the usage during these studies is assumed to be 25% of average day.
2. Taken from production 'READS'.
3. Data was taken from the CIS Revenue Data Base – 1190 Annual Consumption and Cust Connections
4. Water used by the City of Missoula fire department and by MWC personnel for hydrant testing.
5. Water used for firefighting, flushing of mains and sewers, street cleaning, etc. AWWA default value of 1.25% was used.
6. Water withdrawn from hydrants, bypasses to meter reading equipment, etc. AWWA default value of 0.25% was used.