

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

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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

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**CITY OF MISSOULA'S RESPONSE TO WESTERN WATER HOLDINGS  
AND MOUNTAIN WATER COMPANY'S  
MOTION FOR A PROTECTIVE ORDER (PSC-014)**

Western Water and Mountain Water made sweetheart loans to their top executives in order to bail them out of tax obligations they incurred from bonuses and share agreements. Despite the PSC's request for information related to these loans and an earlier order to compel, Western Water and Mountain Water belatedly ask the PSC to keep that information secret. The City of Missoula respectfully requests the PSC deny their motion. It is untimely and should be denied on that basis alone. Regardless, any privacy interests, to the extent they exist, can be protected without allowing Western Water and Mountain Water to continue hiding the ball and completely withholding requested information.

**BACKGROUND**

The PSC issued its first set of data requests on February 2, 2015. Included in these requests was PSC-014, in which the PSC asked Western Water and Mountain

Water to provide copies of loans that Park Water and Western Water made to their top executives in order to bail them out of their tax bills associated with bonuses and Class B Share Agreements.

This information is relevant, which is why the PSC asked for it in the first place. As Western Water and Mountain Water openly acknowledge, these sweetheart agreements are still in full force and effect and are part of the proposed sale at issue in this proceeding. They show that Park Water and Western Water have no qualms bailing out their executives from their tax obligations even while Missoula's water system continues to suffer from spiraling degradation, rampant leaks, and underfunded capital investment.

Western Water and Mountain Water responded to PSC-014 by claiming the PSC got it wrong – the information is not relevant and, regardless, it is “confidential.” Nevertheless, Western Water and Mountain Water disregarded the PSC's rules and did not move for a protective order. The City then moved to compel a complete response to PSC-014, and the PSC granted that motion.

Western Water and Mountain Water were not happy with the order and moved the PSC to reconsider. Yet they alleged no new facts or law that would justify reconsideration. The PSC has presumably denied that motion since it did not rule on the motion within 10 days after it was filed. Admin. R. Mont. 38.2.4806(5) (“A motion for reconsideration shall be deemed denied when it has not been acted upon within ten days of its filing.”) While their motion for reconsideration was pending, Western Water and Mountain Water still refused to comply with the PSC's order to compel, even

though the PSC's rules plainly required them to do so regardless of whether there was a pending motion to reconsider. *See* Admin. R. Mont. 38.2.4806(2).

Western Water and Mountain Water's response to PSC-014, not to mention their responses to dozens of other requests in which they have made improper and baseless objections, shows they will simply do what they want, ignore the rules, and assume they'll be able to get away with it. Here, instead of complying with the order to compel in a timely manner, Western Water and Mountain Water have now moved for a protective order, asking the PSC to keep the redacted executive tax bailout information out of the hands of the PSC and out of the hands of the people of Missoula. The PSC should deny their motion.

#### ANALYSIS

**I. Western Water and Mountain Water's motion for a protective order is untimely.**

At virtually every step of this proceeding, Western Water and Mountain Water have chosen to not follow the PSC's rules or its procedural order. Instead, they hyperbolically point the finger at the PSC and claim it has "ratified a system where chaos rules," created a "twisted procedural history," and made "unjust" and "unreasonable" rulings. (Mot. for Reconsideration, p. 4-5.)

All the while, Western Water and Mountain Water refuse to follow even the most basic rules for their responses and motions. In response to PSC-014, not to mention many other data requests, Western Water and Mountain Water unilaterally decided the requested information was "confidential," so they redacted it. That was improper for at least two reasons. The PSC's procedural order for this case plainly required Western

Water and Mountain Water to first move for a protective order and then do so before the deadline to respond to the data request: “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.” Order No. 7392, ¶ 11. Western Water and Mountain Water did neither.

This rule serves an important purpose: A party should not be permitted to sandbag other parties by withholding information as long as it can in order to prevent the other parties from having meaningful access to the information. Here, for instance, by unilaterally withholding information and failing to timely move for a protective order, Western Water and Mountain Water have prevented the City from basing any of its prepared testimony on that information. In short, Western Water and Mountain Water are doing whatever they can in order to prevent the City from meaningfully participating in this proceeding.

Western Water and Mountain Water did not move for a protective order until now, and they did not make that motion before responding to the data requests made by the PSC and the City, including PSC-014. For those reasons their motion is untimely under a plain reading of the procedural order.

What is more, they continued to disregard the PSC’s rules while their motion to reconsider was pending. The PSC’s rules state:

Motion for such a reconsideration shall not excuse any corporation or person or public utility from complying with or obeying any order or decision or any requirement of an order or decision of the commission, or operate in any manner to stay or postpone the enforcement thereof except as the commission may by order direct as provided by law

Admin. R. Mont. 38.2.4806(1). Western Water and Mountain Water should have immediately filed its motion for a protective order when they were compelled to do so (even though it would have still been untimely and subject to denial for that reason alone). They did not do so because they did not want to.

This is not a no-harm, no-foul situation. The City has suffered actual prejudice as a result of Western Water and Mountain Water's improper withholding of information. The City's deadline for submitting testimony was yesterday<sup>1</sup> – May 20, 2015 – and it still does not have any of the information that Western Water, Mountain Water, and Liberty have improperly withheld in response to the PSC's, the City's, or the Montana Consumer Counsel's data requests. None of the individuals offering testimony on behalf of the City were able to analyze or address that withheld information. By continuing to withhold this information, Western Water, Mountain Water, and Liberty are trying to shape the facts in their favor and once again pull the wool over the eyes of the PSC and the City.

Given this prejudice, the City asks the PSC to deny the motion as untimely, order Western Water and Mountain Water to provide unredacted responses to PSC-014, allow the City to provide supplemental testimony in light of those responses, and stay the proceedings until Western Water and Mountain Water have fully responded the data requests.

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<sup>1</sup> The parties have since agreed to a nine-day extension to see if Western Water and Mountain Water will provide the materials the parties need to provide their testimony.

**II. Untimeliness aside, Western Water and Mountain Water's motion should still be denied.**

In its order to compel, the PSC correctly observed that Western Water and Mountain Water are making their own confidentiality findings cloaked in relevance garb. Order No. 7392c, p. 2. They continue to do so with this motion. The information is relevant to this proceeding, and it should not be withheld from the public.

Park Water and Western Water treat their executives well, even if at the expense of their utility assets. Even as Mountain Water loses more water than it delivers, Park Water and Western Water express no hesitation in bailing out their executives from their tax problems. Park Water and Western Water's bailouts are illustrative of a fundamental problem with private ownership of Missoula's water supply: As long as the utility owner's interests are driven by executives and shareholders, Missoula's water system and Missoula's water consumers will continue to take a back seat.

Western Water and Mountain Water openly acknowledge that these executive tax bailouts are presently in effect and are an element of the proposed sale. (*See* WWH and MWC response to PSC-014.) Yet, they incredulously claim the bailouts should be protected because they are confidential and irrelevant.

Missoula's water system is operated for the benefit of the public, and the fact that the proposed sale, "although private, [is] negotiated for the benefit of the public must be taken into consideration" when determining whether the information is confidential. *See Great Falls Tribune v. Mont. PSC*, 2003 MT 359, ¶ 61, 319 Mont. 38, 82 P.3d 876.

Western Water and Mountain Water claim the public does not have an interest in knowing information related to the executive tax bailouts because that information

“relates to a form of compensation that will ultimately be repaid with interest and that is not being recovered through Mountain Water’s rates.” (Mot. for Prot. Or., p. 5.)

Western Water and Mountain Water, though, must have had the money in the bank in the first place to make the loans, and they offer no explanation for where that money came from other than utility rate revenue. After all, how does a utility company generate revenue but through its utility rates? Western Water and Mountain Water offer no answer. Moreover, how will Western Water and Mountain Water put to use the interest they will earn on these loans – will it be used to help repair Missoula’s water system or will it go right back into the executives’ pockets?

The people of Missoula have a right to know how a private owner will use the money earned from their rates in the future. Will that money be used for much needed infrastructure, or will it be used to bankroll tax bailouts to keep executives and shareholders happy?

In Order 7385b (Docket No. N2014.2.21), upon which Western Water and Mountain Water heavily rely, the PSC wrote: “The public’s right to know [officers’ compensation] information is associated with its right to know what it is paying for through government-approved tariffs.” Order 7385b, ¶ 26. Moreover, “[T]he public does have a right to know the trend of management expense over time . . . .” *Id.* at ¶ 27. The PSC therefore ordered Park Water and Mountain Water to provide aggregate compensation information for their officers and managers, along with the names of the officers and managers whose salaries were part of that aggregate.

Even if, here, the PSC ultimately decides that individual loan amounts should not be publicly disclosed, there is an easy way to resolve Mountain Water and Western

Water's motion. The PSC could do the same thing it did in Order 7385b – order Western Water and Mountain Water to publicly provide the aggregate total of the loans and names of those receiving the loans. If it does so, the PSC should further order Mountain Water and Western Water to provide to the City the individual loan amounts with associated names, subject to a nondisclosure agreement under Rule 38.2.5012.

The people of Missoula have an unrefuted stake in this proposed sale, and their meaningful participation should not be thwarted in order to protect the self-proclaimed interests of corporate executives.

#### CONCLUSION

For the reasons above, the PSC should deny Western Water and Mountain Water's motion for a protective order. Under the terms of the procedural order, they have waived their ability to move for a protective order. Granting the protective order and allowing Western Water and Mountain Water to continue withholding their response to PSC-014, not to mention all the other outstanding data requests, will prejudice the City and prevent it from meaningfully participating in this proceeding. If, however, the PSC grants the motion, it should order Western Water and Mountain Water to publicly provide aggregate loan information and to provide the City with individual loan information subject to a non-disclosure agreement.

The PSC should further allow the City to provide supplemental prepared testimony once this information is provided and stay the proceeding until it is provided.

Dated this 21<sup>ST</sup> day of May 2015.



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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 21<sup>st</sup> day of May 2015:

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DELIVERY**

  
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