

**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)
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)

**LIBERTY UTILITIES CO. AND LIBERTY WWH, INC.'S RESPONSE TO THE 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**

Pursuant to Procedural Order No. 7392, Liberty Utilities Co. ("Liberty Utilities") and Liberty WWH, Inc. ("Liberty WWH") (collectively, "Liberty"), by and through their counsel, respond to the City of Missoula's ("City") motion to compel Liberty to produce additional responses to the City's April 21, 2015 data requests to the Joint Applicants. Liberty incorporates by reference all arguments raised in its May 8, 2015 response to the City's similar motion to compel as well as Liberty's May 15, 2015 response to a similar Montana Consumer Counsel motion to compel. Liberty requests the Commission deny the City's motion to compel because Liberty fully answered the questions actually asked by the City in its Data Requests and/or submitted specific objections relating to the relevancy of the City's Data Requests, as expressly authorized by ¶ 11 of Procedural Order No. 7392. The City's motion also should be denied because it is a thinly-veiled attempt to argue the merits of the case and, in many cases, does not raise a legitimate discovery issue. Put simply, the City's disagreement with applicable regulatory law or Liberty's legal position does not necessarily mean Liberty's discovery

responses are inadequate.¹ Although Liberty objects to the City's motion to stay the proceedings as being procedurally improper, Liberty does not oppose an extension of time for the City to file testimony so long as the Commission's hearing on the Joint Application still commences on July 28, 2015.

FACTUAL AND PROCEDURAL BACKGROUND

Pursuant to Admin. R. Mont. 38.2.3301(2) and ¶ 9 of the Public Service Commission's ("Commission") Procedural Order No. 7392, data requests are the "primary method of discovery in proceedings before the Commission." To that end, the Commission's Procedural Order No. 7392 set a schedule by which data requests should be submitted to the Joint Applicants, including Liberty. Pursuant to ¶ 6(f), data requests to the Joint Applicants were to have been submitted no later than April 16, 2015. On April 14, 2015, however, the Commission staff extended the deadline for data requests to April 20, 2015. The City subsequently filed its data requests to the Joint Applicants on April 21, 2015.

Liberty's responses to the City's data requests appropriately responded to the relevant questions the City actually asked in their data requests. Nevertheless, the City's motion to compel repeatedly asks this Commission to require Liberty to answer questions not raised in the City's April 21, 2014 data requests. It would be inappropriate for the Commission to compel Liberty to provide information that was not requested in the City's initial data requests.

¹ A perfect illustration of the City's tactics is the statement on page three of its motion that "[t]he people of Missoula will inevitably help finance this sale through their rates if the sale goes through. If the people are going to pay for it, they deserve to know that they are getting in return." Motion to Compel, p. 3. Again, the record is undisputed that Liberty is not seeking any acquisition adjustment relating to the sale price. That means that Mountain Water customers will not pay for the sale price in rates. Rates will be determined by the Commission in future rate cases under Liberty ownership based on used and useful plant, approved operating expenses and other standard ratemaking determinations. The City is flatly misstating both the law and facts on this issue. The Commission will have the ability to review and evaluate future Mountain Water rate cases under Liberty ownership. On that issue, the City of Missoula has been openly and publicly critical of the Commission's expertise in regulating utilities and the Commission should not allow the City to turn that criticism into an illusory discovery issue in this docket.

This Commission consistently has instructed applicants to provide answers that are responsive to the question asked in a data request. *See, e.g.*, PSC Docket D.97.5.87, Order No. 5982e, ¶ 20 (motion to compel granted because “answers are nonresponsive to the question asked”). Allowing the City to force Liberty to respond to additional data requests under the guise of a motion to compel violates both the spirit and the substance of the schedule the Commission set in Procedural Order No. 7392. At this point in the proceedings, the City is limited to the data requests it actually submitted to Liberty on April 21, 2015. The Commission should reject the City’s attempt to ignore amended ¶ 6(f) of Procedural Order No. 7392 and submit new and additional data requests to Liberty after the deadline for doing so has passed.

Liberty’s relevancy objections to the City’s data requests fully complied with the Commission’s Procedural Order No. 7392. If the City requested information that Liberty believed was not necessary to enable the Commission to perform its duties, Liberty objected that the information requested was not discoverable. *See, e.g., Mountain States Tel. & Tel. Co. v. Dep’t of Pub. Serv. Regulation*, 194 Mont. 277, 284-85, 634 P.2d 181, 186 (1981) (overruled on other grounds by *Great Falls Tribune v. Montana Pub. Serv. Comm’n*, 2003 MT 359, 319 Mont. 38, 82 P.3d 876) (Commission “has the right to obtain from any public utility all necessary information to enable the PSC to perform its duties”) (emphasis added).

The Commission expressly authorized Liberty’s relevancy objections in ¶ 11 of Procedural Order No. 7392. Liberty satisfied ¶ 11 of Procedural Order No. 7392 because its objections were sufficiently specific to allow the Commission to rule on Liberty’s objection. Liberty did not, as the City contends, unilaterally make decisions as to what information is relevant. *See City’s Motion to Compel*, p. 4 (Liberty assumes “that they—not the PSC—gets to decide what is relevant”). Liberty simply filed its objections as instructed by the Commission

and now Liberty awaits the Commission's decision as to whether it will "sustain or object" to Liberty's objections. See ¶ 11, Procedural Order No. 7392.

I. LIBERTY'S RESPONSES TO THE CITY'S DATA REQUESTS WERE APPROPRIATE AND IN COMPLIANCE WITH THE COMMISSION'S ORDERS.

A. Liberty's General Objection to the City's Use of "You" in Various Data Requests Was Appropriate.

The City consistently failed to identify which Joint Applicant was expected to answer the City's various data requests. In doing so, the City ignored the Commission's guideline that data requests be directed to a specific party, as laid out in ¶ 9(a) of Procedural Order No. 7392. Furthermore, the City generally failed to address the specific testimony referenced in a data request or identify the specific witness to whom the data request was directed.

As a result of the City's poorly-drafted data requests, Liberty was unable to discern which of the City's data requests required responses from Liberty. Liberty therefore appropriately objected to the vague and ambiguous use of the word "you" throughout its responses. Despite this lack of clarity, and where the information requested was deemed relevant, Liberty did provide responses to such requests to the extent the term "you" appeared intended to seek information from Liberty.

B. Liberty's Response to CITY-002 Was Appropriate.

In CITY-002(a), the City asked Liberty if it had done any due diligence or analysis regarding "**anticipated increase in rates charged** to customers of Mountain Water?" (Emphasis added). Liberty appropriately responded that it had not "performed a stand-alone evaluation, due diligence or analysis of **potential or anticipated increase in Mountain Water rates.**" (Emphasis added). On page 7 of its motion to compel, however, the City asks the Commission to order Liberty to provide additional information on people "that Liberty sent . . .

from Arizona to Missoula for a couple days to conduct due diligence.” The individuals Liberty sent to Missoula from Arizona did not conduct any due diligence related to anticipated increases in rates, the subject matter of the CITY-002(a). Thus, the City has asked the Commission to order Liberty to provide information that was not requested in CITY-002(a). Further, information regarding the due diligence trips by Liberty will not assist the Commission in approving the proposed transfer of ownership of Mountain Water Company. The new information the City seeks in its motion to compel regarding trips to Missoula is not responsive to CITY-002. The City is not allowed to submit new and additional data requests after the deadline has passed under the guise of a motion to compel. Liberty fully responded to the question the City actually raised in CITY-002.

C. Liberty’s Response to CITY-004(c) Was Appropriate.

The City’s request that Liberty be compelled to provide documents in response to CITY-004(c) ignores the limited nature of the request. CITY-004(c) sought documents Liberty relied on in preparing its response to CITY-004. Liberty’s response to CITY-004(a) explained it is impossible to predict the future rate filing schedule. Its response to (b) was a narrative explanation of the “rationale” for Liberty’s rate filing approach. Both of these responses are based on Liberty’s own corporate philosophy and its understanding of the Commission gleaned from a variety of general sources, not documents. As a result, Liberty did not rely on any specific documents in preparing this response. There are no documents responsive to CITY-004(c), and nothing for the Commission to compel. The City’s motion on this response is based on nothing more than the City’s opposition to Liberty’s “corporate philosophy” to managing and operating regulated utilities.

D. Liberty’s Responses to CITY-007 and CITY-028 Were Appropriate.

CITY-007 sought information about what investments “you” intend to make in the first five years of operation and CITY-028 sought information about Liberty’s plans to address specific areas of capital investment. Liberty answered both requests indicating that it intends to follow the existing capital plan of Mountain Water, but is willing to address “additional capital if warranted and needed.”

As an initial matter, the City’s assertion that the Commission should compel Liberty to identify hypothetical scenarios under which additional capital investment would be warranted and needed exceeds the scope of the question asked in CITY-007. *See* Motion to Compel, p. 11. Further, it ignores Liberty’s indication in response to CITY-028 that “it has not had an opportunity to determine whether additional projects will be needed.” It would be inappropriate for the Commission to compel a response to a data request that was not previously submitted and to which Liberty has already indicated it lacks information to provide a different response. The City asked Liberty about its capital improvement plans, and Liberty fully answered that question. The City should not be afforded another opportunity to submit new and additional data requests under the guise of a motion to compel. Liberty fully responded to the questions the City actually raised in CITY-007 and CITY-028.

Moreover, the City’s “argument” in support of its request to compel different answers to CITY-007 and CITY-028 misstates testimony and information and relies on testimony submitted in response to questions on a completely different topic. The engineering evidence and testimony presented at the right-to-take trial clearly established that the Mountain Water System is in good shape, that it is operated adequately and properly by Mountain Water Company, and that Mountain Water Company is properly and adequately addressing water leaks. Mountain Water Company’s customer satisfaction rates are further proof of those facts. The Commission

has previously reviewed and addressed Mountain Water Company's leak mitigation plan. Liberty intends to follow Mountain Water Company's capital expenditure and leak mitigation plans. The Commission should disregard the City's attempts to reargue these issues in the guise of a motion to compel.

At this juncture, Liberty cannot specifically anticipate under what circumstances additional capital investment will be warranted for the Mountain Water System. The evidence presented at that trial and prior studies by Mountain Water Company demonstrate that a significant portion of the leaks occur on customer service lines, which are not owned or controlled by Mountain Water Company. The City is drastically misstating the evidence and underlying facts relating to the condition of the Mountain Water System and the City is misstating Mr. Sorensen's testimony on these issues.

Mr. Sorensen's testimony does not suggest or indicate that MWC should have "dealt with [water leakage] sooner," but instead indicates that addressing water leakage rates involves an evaluation of many factors, "including costs and impacts on customers." Motion to Compel, p. 10. In fact, during the condemnation trial, Mr. Sorensen indicated that capital investment needed to address leaks must be weighed against the cost of the water being lost to properly balance costs to be mindful of the impact on customer rates. (Trial Tr., pp. 215-216.)

Liberty's response indicates Liberty intends to follow Mountain Water's capital plan, and is willing to make investments in addition to those already in the plan if warranted in the future. As noted above, any such investments would be subject to review and approval by the Commission for prudence and by customers in future rate cases. As Mr. Sorensen testified in the excerpt the City cited, every utility is different and capital investment decisions require consideration of "lots of factors" not the least of which are "costs and impact on customers." At

this time, Liberty is not in a position to offer any more definitive information about future capital plans other than to indicate its willingness to make additional prudent capital investments if “warranted and needed” and consistent with the Commission’s expectations for prudent investment. Liberty does not believe the data supports the City’s contention that the system is “spiral[ing] into degradation] under Mountain Water’s watch” and Liberty certainly does not intend to allow it to degrade under Liberty’s “watch.” Additionally, Liberty has a superior track record of providing reliable, high-quality regulated utility service to customers in ten states.

E. Liberty’s Responses to CITY-009 and CITY-029(a) Were Appropriate.

As an initial matter, the City’s motion to compel responses to CITY-009 and CITY-029(a) exceeds the scope of the questions asked in CITY-009 and CITY-029(a). For example, the City requests additional information regarding the corporate relationship between Liberty and Algonquin Power and Utilities Corporation (“Algonquin”). *See* Motion to Compel, pp. 12, 29. It would be inappropriate for the Commission to compel a response to a data request that was not previously submitted. The City asked Liberty about the capital structure Liberty intends to maintain for Mountain Water, and Liberty answered that question. The City should not be afforded another opportunity to submit new and additional data requests under the guise of a motion to compel. Liberty fully responded to the question the City actually raised in CITY-009 and CITY-029(a). Liberty also has provided an organization chart demonstrating the corporate relationships of Algonquin and the Liberty entities.

Liberty’s responses to CITY-009 and CITY-029(a) were complete and responsive. If the City is interested in how the Commission determines the capital structure of a wholly owned utility subsidiary that does not have its own debt or publicly issued equity, the City should consult the application and supporting schedules as well as the testimony of the witnesses for

Mountain Water and MCC in Docket D2012.7.81. Liberty and its affiliates expect to inject new capital into Mountain Water in similar proportions to the capital structure the Commission has approved, as may be mandated by the Commission in future rate cases, or as may be mandated by changing financial conditions in the market.

Those issues aside, the City's motion on this issue is based on a misunderstanding of regulatory financing and incorrect facts. Under Liberty, Mountain Water Company would be a subsidiary of Liberty Utilities Co., which will provide debt and equity capital to Mountain Water Company. Liberty and Mountain Water Company directly will determine the capital structure of Mountain Water Company, in accordance with the Commission-approved capital structure. Liberty will invest capital and debt into Mountain Water and that capital structure will be subject to review and approval by the Commission. Liberty has adequately responded to this data request and the City's motion to compel should be denied.

F. Liberty's Response to CITY-020 Was Appropriate.

Liberty stands by its objection that its due diligence regarding this transaction is not relevant to this matter and will not lead to the discovery of admissible information. Liberty specifically incorporates the legal analysis it relied upon in objecting to the discoverability of its pre-bid valuation of Mountain Water in Liberty's May 8, 2015 response to the City's similar motion to compel as well as Liberty's May 15, 2015 response to a similar Montana Consumer Counsel motion to compel. The Commission has not yet ruled on those relevancy objections. As a result, Liberty's response to CITY-020 was a valid discovery objection expressly authorized by ¶ 11 of Procedural Rule 7392.

The City's assertion that Liberty "waived its confidentiality objection because it did not move for a protective order before responding to the data requests" demonstrates the City's lack

of familiarity with the Commission. Motion to Compel, pp. 15-16. The Commission consistently has allowed applicants to move for a protective order if that applicant's objection is overruled. In the most recent Order issued in this docket, the Commission overruled Mountain Water's relevancy objection, but stated that Mountain Water still could move for a protective order. PSC Docket No. D2014.12.99, Order No. 7392d, ¶ 9 (May 12, 2015). The City's assertion that Liberty has waived its right to move for a protective order if the Commission overrules its relevancy objection is simply incorrect. Liberty expressly reserves its right to move for protective orders if the Commission overrules its relevancy objections.

G. Liberty's Response to CITY-029(b) Was Appropriate.

Liberty remains unsure as to how to answer CITY-029(b) beyond the information provided in its response, in part because the words "optimal" and "desirable" are not terms of art used in the utility industry within the context of capital structures. "Desirability" depends on one's perspective as well as underlying circumstances, and does not clarify the question. Regardless of perspective or circumstances, however, the unavoidable reality is that Mountain Water is a regulated utility that must have its rates and capital structure approved by the Commission. Within this context, the "desirability" of a particular capital structure is irrelevant. As stated in its initial response, Liberty strives to maintain the capital structure of each utility as close as possible to the structure approved by the Commission. It is worth noting that the considerations by which the appropriateness of a utility's capital structure are determined will vary over time, and the acceptability of a particular capital structure in the future is impossible to predict without a detailed understanding of the utility's needs, regulators' expectations, and market forces.

The City's objections on this issue are based on its assumption that there is some pre-determined "optimal" capital structure for Mountain Water Company. That assumption is misguided and misunderstands utility regulation. Capital funding and structure for regulated utilities vary by each utility and are based on a myriad of factors such as service and operational needs, impact on rates and other similar factors. Liberty does not have any set "optimal" capital structure in mind for Mountain Water Company, other than to strive to meet the capital structure approved by the Commission. The City's motion should be stricken on this issue.

H. Liberty's Response to CITY-031 Was Appropriate.

As an initial matter the City's motion references both CITY-030 and CITY-031, but does not indicate any deficiency in the response to CITY-030 and does not appear to seek to compel any additional response. As a result, Liberty does not address CITY-030 here.

As to CITY-031, the City's motion acknowledges that its original requests for all board minutes and tax returns were intended to help it "gain insight into Algonquin's control over and separation from Liberty in approving the proposed purchase of Park Water." Motion to Compel, p. 19. However, the City fails to indicate how its broad requests will assist the Commission in understanding those issues or how they are relevant to this docket. As indicated in response to CITY-030, Algonquin was involved in the approval process, and Liberty has not made any effort to hide that fact.

After receiving Liberty's objection to CITY-031, the City's counsel did attempt to informally clarify that it sought a much narrower scope of information than its original requests indicated. In response to that request, Liberty offered a set of information it thought responsive to the City's more limited request, but the City indicated it was unwilling to accept that offer, and preferred to stand by its original motion. In light of the inability to reach an agreement as to

a revised scope, Liberty stands by its objections to the City's original, overly-broad and vague request. The Commission must uphold Liberty's objection to those requests because they are vague as to which corporate entities are included in the term "described above" and overly broad and unduly burdensome because they are unlimited in scope in time and topic.

To the extent CITY-031(a) is limited to those portions of board minutes related to the purchase of Park Water for a company identified in response to CITY-030, Liberty would be prepared to seek a protective order and offer supplemental responses on a confidential basis. Assuming an appropriate protective order were issued, Liberty is prepared to produce certain sections of the Algonquin Board minutes from August 14, 2015, September 4, 2014, and September 15, 2014 meetings at which the Western Water bid process or the proposed sale were discussed, and a copy of the Board resolution of Liberty Utilities Co.

Liberty disagrees that the unlimited tax return information sought in CITY-031 is relevant to any issue in this docket. Moreover, even if limited to the last two years, the City has failed to demonstrate how tax return information is at all relevant to any issues in this docket. United States Tax reporting will not provide any information relevant to the corporate relationships, other than ownership, which has already been disclosed, because United States Federal Tax reporting requirements focus on ownership and allow consolidated filings for affiliated groups with more than 80% ownership. *See* IRC 1504. Canadian tax reporting is also not helpful in disclosing corporate relationships as it focuses on individual entities and does not allow consolidated reporting. In light of Algonquin's publicly available financial information, the City simply cannot demonstrate any relevance of tax return information to this docket.

The City's assertion that Liberty "waived its confidentiality objection because it did not move for a protective order before serving its responses to the City's data requests" demonstrates

again the City's lack of familiarity with the Commission. Motion to Compel, p. 20. The Commission consistently has allowed applicants to move for a protective order if that applicant's objection is overruled. In the most recent Order issued in this docket, the Commission overruled Mountain Water's relevancy objection, but stated Mountain Water still could move for a protective order. PSC Docket No. D2014.12.99, Order No. 7392d, ¶ 9 (May 12, 2015). The City's assertion that Liberty has waived its right to move for a protective order if the Commission overrules its relevancy objection is simply incorrect. Liberty expressly reserves its right to move for protective orders if the Commission overrules its relevancy objections.

II. LIBERTY DOES NOT OPPOSE THE CITY BEING GRANTED AN EXTENSION OF TIME WITHIN WHICH TO FILE TESTIMONY IF THE COMMISSION'S HEARING ON THE JOINT APPLICATION REMAINS SCHEDULED FOR JULY 28, 2015.

Pursuant to ¶ 15 of Procedural Order No. 7392, the City has asked the Commission to stay the proceedings. Motion to Compel, p. 20. Liberty categorically rejects the City's assertion that Liberty has impermissibly withheld information or refused to provide complete responses to the City's requests. Furthermore, Liberty believes that the City's request to stay the proceedings is procedurally improper and premature. The Commission has not issued an order compelling any of the Joint Applicants to submit additional responses or otherwise found that a Joint Applicant has failed to answer a data request; pursuant to the terms of ¶ 15 of Procedural Order No. 7392, the Commission must make such a finding before it will stay the proceedings.

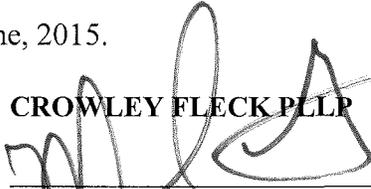
Nevertheless, and as a sign of good faith, Liberty does not oppose an extension of time for the City to file testimony, provided that ¶ 6(p) of Procedural Order No. 7392 is not amended and the Commission's hearing on the proposed transaction begins on July 28, 2015. To the extent the City seeks to delay the proceedings indefinitely or amend the ¶ 6(p) of Procedural Order No. 7392, Liberty objects to the City's motion as being procedurally improper.

CONCLUSION

For the foregoing reasons, Liberty requests the Commission deny the City's motion to compel further responses from Liberty to the City's Data Requests. Liberty has fully answered the questions actually asked by the City in its Data Requests and/or submitted specific objections relating to the relevancy of the City's Data Requests, as expressly authorized by ¶ 11 of Procedural Order No. 7392. The Commission should not allow the City to contravene the Commission's deadline for submitting data requests by allowing the City to submit new and additional data requests under the guise of a motion to compel.

Submitted this 1st day of June, 2015.

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CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on June 1st, 2015, the foregoing LIBERTY UTILITIES CO. AND LIBERTY WWH, INC.'S RESPONSE TO THE CITY OF MISSOULA'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS WITHHELD IN RESPONSE TO DATA REQUESTS PSC-031 TO PSC-033(B) was served via electronic and U.S. mail on:

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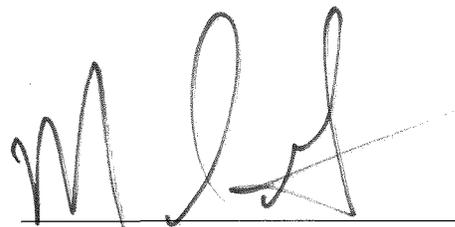
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