

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

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

**THE MONTANA CONSUMER COUNSEL  
MOTION TO COMPEL  
COMPLETE RESPONSE TO MCC-010**

Intervenor Montana Consumer Counsel (MCC) moved the Commission for an Order compelling Liberty Utilities Co. (Liberty) to fully answer and respond to MCC data request 010. Liberty submitted a supplemental response and motion for a protective order. The supplemental response does not provide an adequate response. MCC requests, again, that the Commission issue an order compelling full and complete responses to MCC's data request MCC-010.

MCC further requests additional time to prepare initial testimony after a full response has been provided.

**Overview**

Liberty's initial response to MCC-010 was filed May 4, 2015. Liberty objected to providing information on relevance grounds, and also claimed the requested information is confidential. MCC moved to compel a full and complete response. That motion remains pending. On June 10, 2015, Liberty filed a

Motion for a Protective Order relating to its response to MCC-010 along with a Supplemental Response to MCC-010. In the supplemental response Liberty identifies “An Excel Workbook containing Liberty’s financial model” as responsive to MCC’s request. Liberty then states that it will limit MCC’s access by allowing access to “MCC’s outside expert through Webex access to the file on the Liberty system.” Files accessed on the Liberty system may only be saved on the Liberty system. Liberty will have the ability to monitor and trace MCC’s experts’ particular access and use of the files. Liberty does not authorize access to MCC staff and counsel. It is unclear whether MCC will be able to print documents accessed on Liberty’s system. Finally, the proposed curtailed access would not allow for meaningful testimony and evaluation by the Commission and its staff of the information provided.

Liberty’s separate request for a protective order was also filed on June 10, 2015. Paragraph 12 of the Procedural Order in this docket provides:

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.**

(Emphasis added.) The latest possible date for Liberty to file a request for a protective order was May 4, 2015. Paragraph 14 of the Procedural Schedule allows MCC 14 days after service of the response to MCC 010 to move to compel. Accordingly, MCC’s response to the supplemental response to MCC 010 is not due until June 24. Since Liberty has chosen not to avail itself of the process set out in the Procedural Schedule, its claim of confidentiality must be denied.

Alternatively and at a minimum, the MCC should be allowed adequate time (not less than three weeks) to prepare testimony after receiving full and complete responses to its data requests.

### **Specific MCC data request**

MCC 010 seeks the following information:

**MCC-010** Regarding: Enterprise Value.  
Witness: David Pasioka

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

Initially Liberty objected, claiming that this information is not relevant because it will not seek an acquisition adjustment “to the existing rate base” and Liberty’s due diligence work papers and financial projections have no impact on Mountain Water’s customers.

Liberty now claims confidentiality and seeks protection of the information. Liberty’s supplemental response identified the following documents as responsive to MCC - 010:

Liberty identifies the following documents as responsive to this request:

1. An Excel Workbook containing Liberty's confidential financial model;
2. A PowerPoint deck dated September 1, 2014 consisting of 36 total pages, presented to the APUC Board. Eight pages of that deck are a due diligence appendix which was prepared by counsel, is an attorney/client communication and is withheld on privilege grounds.
3. Project Orchard Due Diligence Report dated September 1, 2014, compiled by APUC's general counsel's office consisting of 86 pages is an attorney/client communication and is withheld on privilege grounds.
4. A PowerPoint deck dated September 15, 2015, consisting of eight pages, presented to the APUC Board.

The non-privileged portions of these documents will be produced upon the Commission's entry of a protective order granting Liberty's request for special protections and non-disclosure agreement.

Liberty claims that the reason the information must be protected is that it is trade secret and that there are two pending condemnation actions relating to the Apple Valley Ranchos water system and the Mountain Water system in Missoula. Brief in Support of Request for Protective Order, p. 10.

Liberty's identification of an Excel workbook containing its confidential financial model as responsive to MCC-010 is qualified in the final paragraph of its response as follows:

Liberty will make a live version of the financial model workbook available to specifically identified Commission staff and the MCC's outside expert through Webex access to the file on the Liberty system. This access will provide the approved user access to the file with the ability to analyze and modify imbedded formulas as necessary for his or her review as well as the ability to save any modifications to the original file as a new file on the Liberty system.

The limitations and qualifications contained within Liberty's response effectively nullifies MCC's access to the documents Liberty itself identifies as responsive to MCC-010. There is no debate that the information MCC requests is relevant, responsive, and should be produced. The question is whether Liberty must be directed to produce the information in a format that the MCC may utilize in a meaningful way.

Utilities and parties appearing before the Commission are consistently and normally asked to produce, and do produce, financial information in Excel spreadsheet formats that make it possible for the parties requesting the information

to work with the data and to make alternate runs of models with alternative assumptions and inputs. Refusing to produce the material in this format ties the MCC's hands and makes it impossible to work through the data using alternative assumptions and inputs. Making the information available on Liberty's system in a way that can only be saved on Liberty's system is unduly burdensome. This effectively gives Liberty the ability to watch every input and data point the MCC uses, and the MCC cannot save its work on an independent system. Liberty has "big brother" type oversight of MCC's work and is completely in control of what is saved, how, and whether it's accessible again to the MCC.

As discussed in the initial motion to compel related to MCC-010, the requested information has been previously ordered to be produced. The data and information responsive to this request was central to the merger analysis in the proposed acquisitions by Carlyle of Mountain Water in a predecessor docket, and by BBI in its attempted acquisition of NorthWestern. The specific information sought here was central to the Commission's decision to allow the Carlyle acquisition of Mountain Water, and to reject the BBI acquisition of NorthWestern.

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

### **Conclusion**

For the foregoing reasons, Liberty should be compelled to provide full and complete responses to MCC-010. Once full and complete responses are provided, MCC should have additional time to prepare its testimony in this case.

DATED this 24<sup>th</sup> day of June, 2015.

By:   
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