

**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 RESPONSE TO LIBERTY UTILITIES CO. AND LIBERTY
WWH, INC.’S MOTION IN LIMINE**

Liberty Utilities Co. and Liberty WWH, Inc. (collectively, “Liberty”) does not get to pick and choose the City of Missoula’s (“City”) experts based on Liberty’s preference. But that is what Liberty is asking the Public Service Commission (“PSC”) allow it to do with its Motion. The fact of the matter is that there is not a large pool of experts who are able to offer expert testimony on the issues in this proceeding. The City’s experts, though, can do just that. They are undisputedly qualified to offer credible expert testimony. They also possess background knowledge related to Missoula’s water system that allows the City to save costs by not having to retain separate “regulatory experts” and bring them up to speed on the operation of Missoula’s water system.

Neither the City nor its experts are sneaking around, scheming of ways to use confidential information from this case in the condemnation proceeding or in relation to Apple Valley. Liberty fears they are, but it offers absolutely no evidence to substantiate its paranoia. Indeed, Liberty ignores the fact that, in the condemnation proceeding, the City has sought to exclude the very evidence that Liberty claims the City purportedly

wants to disclose in that case. Liberty's valuation of the proposed sale, its due diligence, and financial analysis have absolutely no bearing on the issues in the condemnation proceeding. That is why the City has moved to keep it out. That same information, however, is highly relevant to this proceeding, if it is allowed to proceed (which it should not). That is why the PSC, the City, and MCC asked for it and why the PSC has repeatedly ordered Liberty to make it available. Liberty, though, continues to willfully disregard those orders without any basis in law or fact. The PSC should deny Liberty's Motion *in Limine*.

I. Liberty does not get to pick and choose the City's experts and its refusal to provide access to its due diligence and financial analyses violate the City's due process rights.

Liberty's brief is heavy on suspicion and light on the law. Liberty does not cite a single case supporting its argument to exclude the City's experts. It points to no cases where a court, or regulatory body, excluded experts from a regulatory case because they were testifying as experts in a parallel case, even though the experts had signed confidentiality agreements in the regulatory case. The conflict is not "inherent," as Liberty suggests. It is manufactured.

As a practical matter, there are not a large number of experts qualified to testify on the issues in this proceeding. So it's no wonder that the City would look to its left, look to its right, and retain experts who are already undisputedly qualified to offer expert testimony on issues related to the operation of a water utility. The experts also have background knowledge of Missoula's water system, which allows the City to save costs and time. The City did not retain them as spies.

The only thing Liberty has accomplished with its ongoing discovery abuses is denying the City its due process rights. The United States and Montana Constitutions' due process clauses require "the opportunity to be heard at a meaningful time and in a meaningful manner." *Staab v. Luna*, 2010 MT 125, ¶ 22, 356 Mont. 372, 233 P.3d 351 (internal quotation marks omitted) (citing, *inter alia*, *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976)). Liberty has taken that opportunity from the City. It has prevented the City from being meaningfully heard on the issues in this case because it continues to deny the City and its' experts access to highly relevant information, even though the PSC has repeatedly ordered Liberty to provide that access.

II. Liberty asks the PSC to ignore its previous orders and conclude that Nondisclosure Agreements are worthless.

Setting aside the fact that the City is actively seeking to exclude Liberty's due diligence and financial analysis from the condemnation case, Liberty's arguments ignore the very purpose of the Nondisclosure Agreements ("NDA") in this case. The NDAs – including the unprecedented special protections the PSC imposed – were designed to specifically calm Liberty's unfounded fears. Both the City and its experts are fully aware of their obligations under the NDAs and the special protections. They have no intent or interest in unlawfully using protected information or violating the NDAs. Accepting Liberty's argument would require the PSC to conclude the NDAs are not worth the paper they're printed on. The NDAs have a purpose, though – they protect legitimate trade secrets and, accordingly, should mollify Liberty's "fears," unfounded as they might be.

The irony of Liberty's argument is that the only parties in either this case or the condemnation proceeding who have violated any confidentiality protections are Algonquin/Liberty and Carlyle. (See Exhibit A) In the condemnation proceeding, Judge Townsend expressly ordered the parties to not publicly disclose valuation information or, specifically, Carlyle and Mountain Water's Statement of Claim for Just Compensation – i.e. the amount of money they believe the City of Missoula must pay them as just compensation in the condemnation case. (See, e.g., July 7, 2014 Minutes and Note of Ruling, Exhibit B.) The Court has not unsealed the Statement of Claim or otherwise rescinded its orders prohibiting the public disclosure of valuation information.

Consistent with the district court's order, Carlyle and Mountain Water filed their Statement of Claim under seal. But that did not stop them from then disregarding the Court's orders and disclosing that statement and confidential valuation information to Algonquin and Liberty CEO Ian Robertson, who also sits on Liberty's Board of Directors and who signed the Merger Agreement at issue in this proceeding on behalf of Liberty. (See *id.*; see Joint Application, p. 76.) Mr. Robertson then publicly disclosed and discussed his understanding of the confidential Statement of Claim, including the specific dollar amount demanded by Carlyle and Mountain Water as just compensation.

[T]he valuation that is being submitted by Park Water in respect of that valuation process is close to [REDACTED] million. And so we're just – as I said, this is a twist and turns kind of road. What we are looking forward to is completing the acquisition that we've signed up for with Carlyle and we'll continue to prosecute the condemnation proceeding in the way we would do in any other of our jurisdictions and it's certainly a process that we've been familiar with. You may

recall we kind of bumped into this in Texas. And so, I see them as two completely independent and parallel processes, Nelson.

(*Id.* redaction added.) None of that should have been public – the District Court’s admonitions and instructions unequivocally barred its disclosure. Like so many instances in this case, though, Algonquin and Liberty decided to play by their own rules instead of the Court’s or PSC’s rules.

When the City’s counsel sent one of Liberty’s attorneys a letter asking about the disclosure, Liberty’s counsel washed his hands of any association with Algonquin, claiming that neither he nor his firm – Crowley Fleck – represent Algonquin or could speak for Algonquin. (*See* Exhibit C.) Yet that is precisely what Liberty’s counsel has done in this very proceeding. At the hearing on the City’s Renewed Motion to Dismiss and Motion to Join Algonquin, Liberty’s counsel (a Crowley Fleck attorney) was quick to speak on behalf of Algonquin when it came to the PSC’s jurisdiction over Algonquin, Algonquin’s willingness to produce documents in this case, and whether Mr. Robertson should be subpoenaed for testimony.¹ Indeed, the PSC concluded at that hearing:

¹ Liberty’s counsel, for instance, stated at the July 28, 2015 hearing:

“This --let me just state at the outset, Algonquin is not terrified of anything. Algonquin looks forward to the opportunity for its utility businesses to operate in Montana. However, the corporate form matters. Long-arm jurisdiction matters. And Algonquin, the parent company, has never been subject to jurisdiction in any United States Court or regulatory entity. And so those personal jurisdiction issues are important when you have a multinational corporate form, which is carefully structured to adequately -- excuse me -- to prudently manage utility investments throughout the United States, and to respond to regulatory agencies as appropriate.” Mike Green, Oral Arguments before the PSC, 21:3–15 (July 28, 2015).

“They're [Algonquin] not terrified of anything, but they do have a legal right to be protected from long-arm jurisdiction and to have those entities which are actually operating in Montana, which are actually participating in the transaction which is before this Commission being held and subjected to jurisdiction by the Commission.” *Id.* 21:16–22.

“[T]here is such unity of interest that the separate personalities of [Liberty and Algonquin] no longer exists” (Minutes from July 27, 2015 PSC Work Session, p. 103.) Liberty speaks for Algonquin when it benefits Algonquin but not when it doesn’t.

On September 1, 2015, Algonquin’s Chief Legal Officer, Linda Bearsto, responded to the City’s August 19, 2015 letter, stating she was responding even though Algonquin did not have to. (*See* Exhibit D.) Remarkably, Ms. Bearsto claims that Mr. Robertson was not referring to Carlyle and Mountain Water’s Statement of Claim. Instead, Mr. Robertson was simply referring to the value that “might be submitted in the valuation phase.” (*Id.* at p. 2.) Ms. Bearsto further claims that “Mr. Robertson did not make any valuation comments in his earnings presentation” (*Id.*)

Algonquin is apparently not reading the transcript – Mr. Robertson stated on the earnings call: “[T]he valuation that is being submitted by Park Water in respect of that valuation process is close to [REDACTED] million.” This is not a forward looking statement,

“Mr. Stearns discussed this order regarding the subpoena on Ian Robertson, the CEO of Algonquin. And I think this shows the hospitality that the City of Missoula has shown Liberty thus far. Mr. Robertson came to Missoula to energetically announce Liberty’s intended acquisition of Mountain Water, to make connections, and to start building that system, and the City served him with a subpoena. Now Liberty -- keep in mind, neither Liberty nor Algonquin were a party to the condemnation action in which this motion was decided, and did not have an opportunity to appear or brief the motion in which the City sought to enforce the subpoena against Mr. Robertson. There is no doubt, however, that Mr. Robertson is a foreign citizen. The subpoena exceeded the scope and authority of the Montana Court to try to drag him back in here and appear for a trial outside the jurisdictional limits of the Court. There was no jurisdiction established and no briefing done by Algonquin or over Algonquin.” *Id.* 22:14–23:8.

“Mr. Chairman, very briefly, as I outlined previously, Liberty is not APUC. Liberty is a wholly owned subsidiary of APUC. It is part of the consolidated financial statements of Algonquin Power and Utilities, and thus, it is appropriate for Algonquin to share with its public investors the benefits that it believes it will reap from a transaction that one of its subsidiary corporations is undertaking. . . . To the second point, which relates to the discovery in this issue, Algonquin has not refused to produce anything. Liberty, as the applicant in this party, has sought a protective order to protect the confidentiality of information.” *Id.* 50:22–51:14.

and it obviously relates to valuation. Algonquin's argument to the contrary lacks credibility. Mr. Robertson's disclosure is a statement of what Carlyle and Mountain Water submitted to the Court, and an accurate one at that. Given the precision of his statement, Algonquin cannot colorably claim his statement is based on sheer conjecture or guesswork. Mr. Robertson knew what was submitted, and he disclosed it in violation of the Court's orders.

Carlyle and Mountain Water have also attempted to wash their hands of any responsibility for the disclosure. In response to the City's letter asking about the disclosure, Carlyle and Mountain Water disingenuously claimed they were not aware of any confidentiality orders and that Mr. Robertson did not know about the confidentiality protections. (*See Exhibit E.*) Further, Carlyle and Mountain Water (like Algonquin) argue Mr. Robertson purportedly was not disclosing valuation numbers; he was instead making a "forward looking statement about what he felt might be submitted in the valuation phase." (*Id.*)

Here's the straight story: The parties in the condemnation case were ordered to not publicly disclose valuation numbers or Carlyle and Mountain Water's Statement of Claim. Carlyle and Algonquin/Liberty flatly ignored those orders, and now they are attempting to engage in linguistic gymnastics to cover their tracks. Neither Algonquin nor Liberty should cast stones when it comes to the protection of confidential information. Neither have shown they can be trusted to abide by the Court's or PSC's orders.

The City and its experts – unlike Algonquin/Liberty and Carlyle – understand and respect confidentiality protections. The City and its experts are committed to abiding by the NDAs and the PSC’s Orders. Liberty’s fears to the contrary are not supported by the facts. They are based on unfounded paranoia and lack credibility in light of Liberty’s own inability to maintain the confidentiality of protected information.

III. Liberty’s Motion rehashes the same relevancy argument it has already made and lost several times in this case.

The PSC, as well as the City and MCC, asked for Liberty’s due diligence and financial analysis because it is relevant to this case. Yet, Liberty again claims it should not have to provide the information because it is irrelevant. Liberty is (again) wrong. The PSC squarely concluded – contrary to Liberty’s objections both then and now – that its’ due diligence and financial analyses are relevant:

8. Liberty objected to PSC-033(b) stating that its due diligence work papers and financial projections are not relevant because they “have no impact on Mountain Water’s consumers” and because “Liberty does not intend to seek an acquisition adjustment.” *Responses* at p. 2. In a past Commission docket, the Commission denied a sale and transfer, determining that the proposed sale and transfer presented the risk of harm to the utility’s financial integrity and therefore to Montana customers. Or. 6754e, Dkt. D2006.6.82, p. 57 (July 31, 2007).

9. The Commission was able to determine that “BBIL’s proposed ownership of NorthWestern presents the likelihood that NorthWestern’s capital structure will deteriorate and become unacceptably leveraged.” *Id.* at p. 49. The Commission was able to make this determination in part by reviewing BBIL’s financial projections. *Id.* Considering the broad and liberal nature of discovery, as well as the fact that the overall financial health of the company that owns the utility is highly relevant, the Commission must overrule Liberty’s relevance objections. Liberty must provide the subject information.

(Order 7392e, ¶¶ 8-9.)

Even after the PSC issued this Order, Liberty again objected to providing the information, claiming it is not relevant. And the PSC again overruled Liberty's objection:

9. Liberty objected to MCC-010 stating that its due diligence work papers and financial projections are not relevant because they “have no impact on Mountain Water’s consumers” and because “Liberty does not intend to seek an acquisition adjustment.” DR MCC-010. In a past Commission docket, the Commission denied a sale and transfer, determining that the proposed sale and transfer presented the risk of harm to the utility’s financial integrity and therefore to Montana customers. In the Matter of Joint Application for Authorization for Babcock & Brown Infrastructure Limited's Acquisition of all of the Common Stock of NorthWestern, Dkt. No. D2006.6.82, Or. 6754e p. 57 (July 31, 2007); *see also* Or. 7392e ¶ 8 (Jun. 3, 2015) (finding a potential acquirers’ financial information relevant in this Docket).

10. The Commission was able to determine that “BBIL’s proposed ownership of NorthWestern presents the likelihood that NorthWestern’s capital structure will deteriorate and become unacceptably leveraged.” Or. 6754e at p. 49. The Commission was able to make this determination in part by reviewing BBIL’s financial projections. *Id.* Considering the broad and liberal nature of discovery, as well as the fact that the overall financial health of the company that owns the utility is highly relevant, the Commission must overrule Liberty’s relevance objections.

11. Further, the Commission’s standard of review of sale and transfers depends on the financial characteristics of a potential acquiring company. The Commission uses the public interest standard, the no-harm to consumers standard, or the net-benefit to consumers standard in sale and transfer sales. *Id.* at p. 13. In explaining these standards, the Commission stated:

[A] utility may be providing adequate service but just rates for the potential acquirer *may be* higher than currently charged. In such a situation, it would be appropriate for the Commission to apply a no-harm to consumers standard.

Id. (emphasis added). The Commission has not yet determined which standard will be applied to this Application. However, the Commission and the parties must have access to the acquiring company’s financial information to determine the appropriate standard to apply. The Commission agrees that “[t]he MCC is entitled to explore the mechanisms by which the utility plans to manage its financial stability and keep ratepayers from incurring risk into the future.”

DOCKET NO. D2014.12.99, ORDER NO. 7392k 4

Mot. to Compel p. 3 (May 8, 2015). This information does “naturally and logically” assist in determining whether this transaction satisfies the public interest, no-harm to customers, or net-benefit to customers standards. *See* Response Brief p. 6 (May 15, 2015) (quoting *Monaco v. Cecconi*, 180 Mont. 111, 119, 589 P.2d 156, 161 (1979)). Therefore, the Commission finds that Liberty must provide the subject information.

(Order 7392k, ¶¶ 9-11.)

In its' Brief in Support of its Motion *in Limine*, Liberty again argues the requested information is not relevant because it simply relates to valuation. (See Response Br., pp. 13-14, discussing remarks from Commr. Kavulla.) As the PSC's Orders show, though, Liberty's due diligence and financial analysis bear on more than just Mountain Water's or Park Water's value. That information also shows how Liberty will attempt to recover its acquisition costs in the future and what this purchase will mean for Missoula's rate payers going forward. Whether in this proceeding or the next, Liberty will attempt to recover its money, no doubt. Liberty is not attempting to purchase Park Water out of charity or to lose money. It is simply saving its cost-recovery battle for another day. As Liberty has previously admitted: "The impact of Liberty's ownership will be dealt with fully in future rate cases" (Liberty Response to City's Motion to Compel re: PSC-031 to PSC-033(B), May 8, 2015, p. 6.) The people of Missoula deserve to have "the impact of Liberty's ownership" dealt with now, not in the future when they are wondering how they could have avoided this bad deal in the first place.

After the fourth Order or so, the PSC and one of the City's representatives (Tyler Stockton) – but not the City's experts – were eventually able to access Liberty's due diligence and financial analysis. That review confirms the relevancy of the information. As Commissioner Kavulla noted in his dissent in Order 7392o:

Finally, I have had the opportunity to review the information which is specially protected at the Helena, Mont., offices of Liberty's counsel in this matter. In that review, I am struck not so much by its exceptionality but by its sameness. It is essentially the same type of valuation any firm seeking to buy a regulated utility would and should conduct. The things that make this proceeding of any particular interest—the substantially larger purchase price than book value, for instance—are explained by inputs to the financial model which are not exactly mysterious. In a regulated utility setting, firms grow profits on a long-term basis by growing the rate base, which drives greater earnings as a firm plows more capital into a utility that may require investment to serve new customers, to fix leaks, to upgrade its software, whatever. Ironically, many of the City of Missoula's complaints about the lack of quality service of Mountain Water—leakage particularly—are the gateways through which the cost-of-service-regulated buyer of a privately-owned utility would project growing profits. In any case, it should be no surprise that [REDACTED]

[REDACTED]

[REDACTED]. Otherwise, there are a handful of other minor revelations in the supposedly highly sensitive material which are, in fact, relatively mundane. I would list them, but that would require the rest of this opinion to be redacted from the public record in its entirety—in my view, rather absurdly.

(Order 7392o, Commr. Kavulla, dissenting, p. 3.)

Of course, in the interest of complying with the NDAs, the City, like Commissioner Kavulla, cannot publicly discuss the implications of Liberty's due diligence and financial analysis on the rate base and future rate increases for the people of Missoula. Suffice it to say, though, that those implications are highly relevant to this proceeding, as the PSC has repeatedly ordered. The PSC should again reject Liberty's relevancy arguments and again order Liberty to make its due diligence and financial analysis available to the City and its experts.

IV. The NDAs were properly and timely delivered to Liberty.

Liberty claims the City's NDAs were improperly disclosed at the eleventh hour. Not so. The PSC instructed the City to not file NDAs and instead simply deliver them to the providing party and mail the PSC a hard copy. (Exhibit F.) Liberty does not point to a single rule or order that would have prevented the City's experts from showing up in person at Crowley Fleck's office with NDAs in hand and personally serving them on Liberty's counsel. The City's experts would have then been entitled to review the protected information. Liberty claims the City violated the rules, but how?² Liberty does not have a good answer. The rules did not require the City to provide the NDAs a week in advance or even a day in advance of the review. As a matter of courtesy, though, the City provided the NDAs ahead of time, and the City did not violate any rules by doing so. The NDAs were timely and proper.

CONCLUSION

Liberty's Motion rests on one word: fear. The problem, though, is that Liberty's fear is entirely unsupported and unsubstantiated. NDAs exist for a reason—to protect parties in regulatory proceedings. The City and its experts understand that. Unlike Algonquin/Liberty and Carlyle, the City and its experts respect their obligations in this case. Until Liberty can come forward with even a scintilla of evidence that the City or its experts intend to violate those obligations, the PSC should do what it has done every other time Liberty has made the same arguments—deny Liberty's motion.

² Liberty chides the City for not understanding the rules, but Liberty itself fails to appreciate the timing of the PSC docket. Liberty claims the City did not file the NDAs until after it filed its Renewed Motion to Dismiss or Stay. That is wrong. The City filed them and served them on August 25, 2015—before the expert's review was scheduled to occur and before the City filed its Renewed Motion. The NDAs were not posted by the PSC to the electronic docket, however, until the 27th, pursuant to the rules.

Dated this 4th day of September 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 4th day of September 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 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	Gary Zadick #2 Railroad Square, Suite B P. O. Box 1746 Great Falls, MT 59403 gmz@uazh.com
Kate Whitney Public Service Commission 1701 Prospect Avenue Helena, MT 59620-2601 kwhitney@mt.gov lfarkas@mt.gov jkraske@mt.gov ORIGINAL SENT VIA OVERNIGHT DELIVERY	 Tina Sunderland

EXHIBIT “A”

EXHIBIT “A”



August 19, 2015

Harry H. Schneider, Jr.
HSchneider@perkinscoie.com
D. +1.206.359.8508
F. +1.206.359.9508

1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
PHONE: 206.359.8000
FAX: 206.359.9000
www.perkinscoie.com

VIA EMAIL AND US MAIL

Mark Stermitz
Crowley Fleck PLLP
305 South 4th Street East, Suite 100
Missoula, MT 59801
mstermitz@crowleyfleck.com

Re: City of Missoula v. Mountain Water Co., et al. -- Statement of Claim for Just Compensation

Dear Mark:

As you probably know, last month Carlyle Infrastructure Partners, LP, and Mountain Water Company filed their Statement of Claim for Just Compensation. The Statement was filed under seal pursuant to the Court's order and the amount of the claim was to be kept confidential. Enclosed is a copy of Defendants' July 15 Notice of Filing Under Seal.

We were surprised to learn that such confidential information may have been shared with Ian Robertson, CEO of Algonquin Power & Utilities Corp. We were even more surprised to learn that Mr. Robertson took it upon himself to share with the public his understanding of that confidential information during Algonquin's Q2 2015 Analyst and Investor Call that occurred starting at 10:00 am on August 14, 2015, a transcript of which is also enclosed. (See Transcript at page 8, reporting Mr. Robertson's answer to a question asked by Nelson Ng of RBC Capital Markets, indicating that the value sought by defendants in the next phase of the case is "close to [REDACTED].")

We are not quite sure what to do about this, but we believe we must report the leak and breach of confidentiality to the Court. In order to do so, could you inquire of Mr. Robertson and let us know immediately:

1. What was his source of information regarding the statement he made during the earnings call?
2. With whom at Algonquin was the information shared?
3. When did he receive that information and in what format (telephone, email, face-to-face conversation)?

76764-0002/LEGAL127385885.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DALLAS · DENVER · LOS ANGELES · MADISON · NEW YORK
PALO ALTO · PHOENIX · PORTLAND · SAN DIEGO · SAN FRANCISCO · SEATTLE · SHANGHAI · TAIPEI · WASHINGTON, D.C.

Perkins Coie LLP

Mark Stermitz
August 19, 2015
Page 2

4. Was he informed by the person who provided the information that it was confidential, filed under seal, and not to be disclosed to him, much less to the public at large?
5. Has he ever signed a Protective Order that covers confidential information disclosed by the parties in this case? If so, we would appreciate receiving a copy.

We would like to receive your client's responses to these questions as soon as they can be obtained so that we can report to the Court by the end of the week.

Very truly yours,

A handwritten signature in black ink, appearing to read "H. Schneider, Jr.", with a long horizontal flourish extending to the right.

Harry H. Schneider, Jr.

HHS/tab

Enclosure

William T. Wagner
Stephen R. Brown
Brian J. Smith
Kathleen L. DeSoto
GARLINGTON, LOHN & ROBINSON, PLLP
350 Ryman Street • P. O. Box 7909
Missoula, MT 59807-7909
Telephone (406) 523-2500
Telefax (406) 523-2595
wtwagner@garlington.com
srbrown@garlington.com
bjsmith@garlington.com
klidesoto@garlington.com

Joe Conner (“*Pro Hac Vice*”)
Adam Sanders (“*Pro Hac Vice*”)
D. Eric Setterlund (“*Pro Hac Vice*”)
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.
Suite 1800, Republic Centre
633 Chestnut Street
Chattanooga, TN 37450-1800
jconner@bakerdonelson.com
asanders@bakerdonelson.com
esetterlund@bakerdonelson.com

Attorneys for Defendant
Mountain Water Company

William W. Mercer
Adrian A. Miller
Holland & Hart LLP
401 North 31st Street
Suite 1500
P.O. Box 639
Billings, Montana 59103-0639
Telephone: (406) 252-2166
Fax: (406) 252-1669
wwmerc@hollandhart.com
aamiller@hollandhart.com

Attorneys for Defendant Carlyle
Infrastructure Partners, LP

MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY

THE CITY OF MISSOULA, a
Montana municipal corporation,

Plaintiff,

v.

MOUNTAIN WATER COMPANY, a
Montana corporation; and CARLYLE
INFRASTRUCTURE PARTNERS,
LP, a Delaware limited partnership,

Defendants.

Dept. No. 4
Cause No. DV-14-352

NOTICE OF FILING DEFENDANTS'
STATEMENT OF CLAIM OF JUST
COMPENSATION TO THE FULL
EXTENT OF THE LOSS UNDER
SEAL

THE EMPLOYEES OF MOUNTAIN WATER COMPANY, (Shanna M. Adams, Heather M. Best, Dennis M. Bowman, Kathryn F. Datsopoulos, Wayne K. Davis, Valarie M. Dowell, Jerry E. Ellis, Greg A. Gullickson, Bradley E. Hafar, Michelle Halley, Douglas R. Harrison, Jack E. Heinz, Josiah M. Hodge, Clay T. Jensen, Kevin M. Johnson, Carla E. Jones, Micky A. Kammerer, John A. Kappes, Susan M. Lowery, Lee Macholz, Brenda K. Maes, Jason R. Martin, Logan M. McInnis, Ross D. Miller, Beate G. Newman, Maureen L. Nichols, Michael L. Ogle, Travis Rice, Eric M. Richards, Gerald L. Schindler, Douglas J. Stephens, Sara S. Streeter, Joseph C. Thul, Denise T. Tribble, Patricia J. Wankier, Michael R. Wildey, Angela J. Yonce, and Craig M. Yonce),

Intervenors.

Defendants Mountain Water Company (“Mountain”) and Carlyle Infrastructure Partners, LP (“Carlyle”) (collectively “Defendants”) are filing the Statement of Claim of Just Compensation under seal pursuant to this Court’s request.

//

//

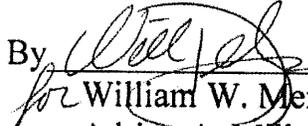
//

//

DATED this 15th day of July, 2015.

Attorneys for Defendant
Carlyle Infrastructure Partners, LP

HOLLAND & HART LLP
401 North 31st Street, Suite 1500
P. O. Box 639
Billings, MT 59103-0639

By 
for William W. Mercer
Adrian A. Miller

Attorneys for Defendant
Mountain Water Company:

GARLINGTON, LOHN & ROBINSON, PLLP
350 Ryman Street
P. O. Box 7909
Missoula, MT 59807-7909

By 
for Kathleen L. DeSoto

Joe Conner
Adam Sanders
D. Eric Setterlund
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

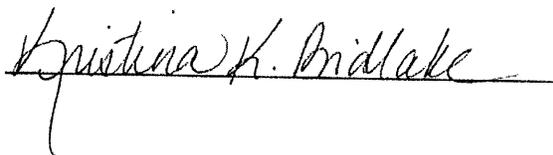
CERTIFICATE OF SERVICE

I hereby certify that on July 15th, 2015, a copy of the foregoing document was served on the following persons by the following means:

_____ Hand Delivery
_____ Mail
_____ Overnight Delivery Service
_____ Fax
1-4 E-Mail

ELECTRONICALLY ONLY

1. Scott M. Stearns
Natasha Prinzing Jones
Boone Karlberg P.C.
P. O. Box 9199
Missoula, MT 59807-9199
sstearns@boonekarlberg.com
npjones@boonekarlberg.com
tsunderland@boonekarlberg.com
blorenge@boonekarlberg.com
Attorneys for Plaintiff
2. William K. VanCanagan
Phil L. McCreedy
Datsopoulos, MacDonald
& Lind, P.C.
201 West Main Street, Suite 200
Missoula, MT 59802
bvancanagan@dmlaw.com
pmccreedy@dmlaw.com
jjohnson@dmlaw.com
Attorneys for Plaintiff
3. Harry H. Schneider, Jr.
Sara Baynard-Cooke
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101
hschneider@perkinscoie.com
sbaynardcooke@perkinscoie.com
rditlevson@perkinscoie.com
Attorneys for Plaintiff
4. Gary M. Zadick
Ugrin, Alexander, Zadick
& Higgins, P.C.
P. O. Box 1746
Great Falls, MT 59406-1746
gmz@uazh.com
ajc@uazh.com
Attorneys for Intervenors



Seeking Alpha ^α

Algonquin Power & Utilities' (AQUNF) CEO Ian Robertson on Q2 2015 Results - Earnings Call Transcript

Executives

Alison Holditch - Manager of Investor Relations

Ian Robertson - Chief Executive Officer

David Bronicheski - Chief Financial Officer

Analysts

Rupert Merer - National Bank

Paul Lechem - CIBC

Nelson Ng - RBC Capital Markets

Matthew Akman - Scotiabank

Ben Pham - BMO

Sean Steuart - TD Securities

Algonquin Power & Utilities Corp (OTCPK:AQUNF) Q2 2015 Results Earnings Conference August 13, 2015 10:00 AM ET

Operator

Good day and welcome to the Algonquin Power & Utilities Corp Q2 2015 Analyst and Investor Call Conference Call. Today's conference is being recorded. At this time, I would like to turn the conference over to Ms. Alison Holditch, Manager Investor Relations. Please go ahead.

Alison Holditch

Thank you. Good morning everyone. Thanks for joining us on our 2015 Second Quarter Conference Call. My name is Alison Holditch, Manager of our Investor Relations function. Joining me on the call today are Ian Robertson, our Chief Executive Officer and David Bronicheski, our Chief Financial Officer.

For your reference, additional information on the results is available for download from our web site at AlgonquinPowerandUtilities.com. I would like to note that on this call, we will provide information that relates to future events and expected financial position that should be considered forward-looking. We will provide additional details at the end of the call and I direct you to review our full disclosure on forward-looking information and non-GAAP financial measures in our results published yesterday which are available on the quarterly results page of the investor center on our web site.

This morning, Ian will discuss the highlights for the quarter, David will follow with a review of the financial results and then we will open the lines for questions. I would ask that you restrict your questions to two and then requeue if you have any additional questions to allow others the opportunity to participate.

Now I would like to turn things to Ian to review the quarter's results.

Ian Robertson

Thanks Allison and thanks to everyone for joining us for our Q2 results call from [indiscernible] I would point out that it rained last night but it is sunny and windy today which is kind of the tri-sector for an organization which is in the hydro, solar and wind power business. So anyway, in summary for the second quarter, we were pleased to see the continuation of increased year-over-year financial results. During the second quarter, we realized a 22% increase in our adjusted EBITDA with \$81.1 million generated versus the \$66.4 million we reported at the same period a year ago.

This growth is the result of incremental contribution from both our generation and distribution business groups and it is highlighted in the second quarter with two renewable energy facilities having achieved commercial operations is favorable rate case settlements in our regulated utilities.

Within the generation business group, the company's eighth generating facility, the 23 megawatt Morse Project in Saskatchewan and the company's second solar facility, the 20 megawatt Bakersfield I Solar Project located in California. Both achieved commercial operations in April, these facilities operate under 20 year power purchase agreements with large investment grade electric utilities effectively extending our average power purchase agreement.

While the resource levels of wind, solar and hydro naturally fluctuate from quarter-to-quarter, we were pleased that the diversification strategies on which our portfolio is constructed were to effectively to mitigate the lower than average resources experienced in the Generation Business Group.

As a note, regarding further reductions in our already competitive cost of capital in their reaffirmation of the General Business Group DBRS changed their outlook commentary to positive obviously such trend will change is consistent with our view of the credit positive activities within this business group.

Moving on, the Distribution Business group had a good quarter with a 9% overall increase in net utility sales and a 27% increase in operating profit. Growth in net utilities sales is driven primarily by successful rate case outcomes specifically the EnergyNorth asset and received final order on its spending rate case request approving a US\$12.4 million revenue increase.

And lastly, APUC's Transmission Business group announced last November that its participation in the joint development of Kinder Morgan's NorthEast energy direct natural gas pipeline transmission project in the North East US. We were pleased that in July that Kinder Morgan Board of Director approved proceeding with the project development, this opportunity now adds more than US\$300 million to our growth pipeline.

Before I turn things over to David, I like to provide a quick update on our continuing strong relationship with our larger shareholder in Emera. By way of background, open in Emera entered into a strategic investment agreement or SIAS we call it five years ago, which crafted a collaborative commercial relationship between our respective organizations.

Without a doubt our [indiscernible] enjoyed benefit from our close relationship with the Emera through their endorsement of our growth strategies, their continuing financial commitments would just help drive down our comp to capital and last but not least the continuing contributions of Chris Huskison, Emera's CEO as a member of our Board.

Over the intervening five years, Algonquin has undergone profound growth and evaluation to put that in perspective in 2010, Algonquin was \$980 million organization focused primarily on independent power development. In pretty start contrast today's Algonquin is a \$4.5 billion organization competing across the entire generation distribution and transmission utility value spectrum serving over 0.5 million electric natural gas utility customers owning over 1,100 megawatts of electric generation and driving growth through our \$2.6 billion pipeline of identified opportunities.

It might be important to note that is just Emera or Algonquin who is just growing and changing in addition to Algonquin's broadening strategic interest over the past five year Emera has also continued to evolve it's business focus with a recently stated interest in natural gas utilities.

In recognition of these natural evaluations in our respective organizations over the past five years, Emera and ourselves jointly concluded that our strategic investment agreement or SIA would benefit from an update to its terms. And therefore, we're now in the process of updating this agreement to serve us better for the next five years while the final document is an active work in progress. There are three main areas of which the changes are focused.

First, we are seeking to reflect the pursuit of larger transactions by Algonquin giving the reduced size differential between our respective companies. Second, the amended SIA needs to acknowledge the evolving sectorial and geographic areas of interest of both organizations. And lastly, we will remove the existing share ownership restrictions, which would potentially allow Emera to increase its interest in Algonquin beyond the current 25%.

In summary, we believe and I'd hope that Emera would also agree that the relationship embodied in the SIA has served us well for the past five years, delivering significant benefits to both of us and we look forward to continuing to create mutual value with Emera for the years to come.

With that, I'll turn things over to David to speak to the Q2 results, David?

David Bronicheski

Thanks, Ian. And good morning, everyone. We're pleased to be reporting yet another solid quarter of earnings. The benefits of the diversification of our portfolio are evident in our results, as well as the benefits from having 80% of our operations in the US given the recent strength of the US dollar. As an example should the current exchange rate of a US\$1.30 hold to the end of the year, we would expect this contribute over and above everything else we are doing, and additional \$0.40 per share relative to the \$1.10 exchange rate that we experienced in 2014.

Adjusted EBITDA in the second quarter totaled \$81.1 million, a 22% increase over the amount reported a year ago, which was primarily due to rate case settlements of full three months of production that are Morse and Bakersfield solar facilities and of course, as I mentioned a stronger US dollar. Adjusted EBITDA for the six months came in at \$195.6 million, a 19% increase over what was reported in the first six months of 2014.

Taking that close to look at some of the numbers are just a net earnings came in at \$22.2 million compared to \$16.6 million a year ago for the quarter and on a six-month basis, our adjusted net earnings were \$64.6 million compared to \$53.6 million last year. So now I let's move into a little bit more detail about our operating subsidiaries beginning with the generation group.

For the first six months of 2015, the Generation Groups renewable energy division generated electricity equal to 88% of long-term average resources compared to a 100% during the first six months of 2014. For the second quarter of this year, the combined operating profit of the Generation Group that will \$45.9 million as compared to the \$43.3 million during the same period in 2014.

Moving on to our distribution group in the second quarter of 2015, the distribution group reported an operating profit of \$35.4 million compared to the \$27.9 million reported in the same quarter a year ago. The increase in the operating profit is primarily due to the impact of rate case settlements.

In the first six months of 2015, the distribution group reported an operating profit of \$98.3 million compared to \$86.1 million for the six months of last year. And a little bit more detail, the electricity division within the distribution group had net utility, electricity sales totaling \$17.4 million compared to \$18.1 million last year.

For the first six months of 2015 net utility electricity sales totaled \$36.1 million which adjusting for the retroactive recognition of \$2.5 million for new revenues granted under the granted state electric system rate case implemented in the first quarter of last year or consistent basically year-over-year.

Moving on to the natural gas division. In the second quarter of 2015 net utility natural gas sales and distribution revenue was \$34.7 million compared to the \$29.9 million for the same period a year ago. We have been quite successful in our rate cases and that accounts for most of that increase.

Moving on to the water division in the second quarter of 2015 revenue from water distribution and waste water treatment totaled \$15.6 million compared to \$15.1 million during the same period in 2014. Again, rate increases and our successful prosecution there up was a main contributing factor as was the acquisition of White Hall Water System.

Now I want to update on recent financing activities at April 30, 2015 the distribution group completed a private placement of the U.S. issuing \$160 million of senior unsecured 30 year notes bearing the coupon of 4.13% this was the first time the utility group issued 30 year notes and we were very pleased with the offering.

The proceeds of the financing would be used to partially financing our pending part water system acquisition, which is expected to occur later this year and some of that for general corporate purposes. This offering a very attractive rates and long tender clearly demonstrates the strong currencies that are elaborating utilities on platform has in the U.S. private placement market. I'm also pleased to report as Ian had mentioned DBRS is also changed the rating trend to positive on a generation business, which we view as a quite positive and reflective of the strengthening credit of our generation business.

I'll now hand things back to over Ian.

Ian Robertson

Thanks, David. Before we open the line up for question as usual, I would like to provide a quick update on our growth initiatives. Within the generation business group construction work at our 200 megawatt, Odell Wind project in Minnesota commenced in May of this quarter and I can report that all of the access rows and foundation [indiscernible] has now been completed. We're started on the collection and introduction facilities for approximately three quarters of transmission line haven't been installed.

With the California Bakersfiled, one solar facility now completed. The generation business groups team has begin work on the adjacent 10-megawatt Bakersfiled 2 expansion project. During the quarter, the final permit complaints binders were submitted to the county, engineering designer facility as well underway in procurement of long lead-time electrical equipment in solar panels has begin.

Within the distribution business group applications now have been filed seeking a total of \$26.2 million in revenue increases collectively for the CalPeco electric system in California, the Black Mountain Sewer system in Arizona, Dracut system in Massachusetts and the Missouri natural gas system final decisions on all for rate proceedings are expected within the next 12 months. Regarding the acquisition of the Park Water company, which David spoke, approval from both the California Public Utilities Commission and the Montana Public Service Commissions are required.

An approval application was filed in November 2014 with the CPUC seeking approval to acquire the two water utilities, which are located in California. In this regard, a joint settlement agreement has now been executed with the office at the ratepayer advocate and a joint motion to approve settlement was filed with the CPUC in May.

The settlement agreement is currently before the administrative law judge and the decision is expected in the fourth quarter of this year. In Montana, an approval application was filed in December last year with the Montana Public Service Commission seeking approval to acquire the Montana Utility Mountain Water Company. I would say notwithstanding the ongoing twist and turns in the condemnation proceeding with the city in Missoula are regulated - a regulatory hearing with the State of Montana is now scheduled for October 19 of this year with the decision on the Montana application expected before the end of the year. Within the transmission business group permitting work on the Northeast Energy Direct continued with the Environmental Review being filed with the FERC in June and the filing of the formal FERC certificate application planned for October of this year.

Construction is currently forecast to begin in January 2017 with the commercial operation targeted for late 2018. In closing, we trust the shareholders were pleased with the dividend increase that we announced early in Q2. I will point out that this represents the fifth consecutive year of dividend increases bringing our current five-year dividend CAGR in Canadian dollars to over 15%. APAC has confirmed its expectations for double-digit earnings in cash flow growth to support future targeted dividend increases.

And lastly, before we go to questions, I would like to offer the commentary that we believe that our current dividend yield is not fully reflected of the fundamental value of our business. In particular, we speculate that perhaps it's not fully appreciated that the material growth in our annualized dividend is more than \$0.48 Canadian per share to our normal course increases together with appreciation of the U.S. dollar is actually supported by increased Canadian equivalent earnings coming from 80% of our operations, which are located in the U.S.

We're confident that as we continue to communicate their hedging and deliver on the promised earnings cash flow and dividend growth from our clearly identified \$2.6 billion growth pipeline this will ultimately reflect in a continued rise in our share price for the balance of 2015. So with that, let's open the line for the question-and-answer session.

Question-and-Answer Session

Operator

Thank you. [Operator Instructions] Your first question will come from the line of Rupert Merer with National Bank. Please go ahead.

Rupert Merer

Good morning everyone.

Ian Robertson

Good morning, Rupert.

David Bronicheski

Good morning, Rupert.

Rupert Merer

So on growth and M&A with your updated agreement with [indiscernible] it sounds like you could cast your net a little wider for growth, can you talk about how your focus could change and then what are you seeing on transaction multiples recently, maybe a little color on how prices vary between asset types and what you could see in broader geographies?

David Bronicheski

Sure, I'm not so sure that in broader geographies we clearly obviously have been, I won't say home bodies because we have a North American focus and I think of your question would we consider regulated utilities outside of North America and I don't think it would be unreasonable for us to think that there is - there maybe opportunities for us in OECD countries obviously outside of our current focus.

In terms of the multiples, I think it's not - they remain strong and robust, the interest rates are continued to be low though I think we are cautiously optimistic that I think there is an interesting dynamic developing between Canada and the U.S. as you read every day in the newspaper with continued slide in the oil and gas prices, the prospect for increases in Canadian interest rates is somewhat muted whereas in the U.S. I think the prospect of interest rate increases is probably if not a foregone conclusion. It's certainly a probability.

I think that's creating an interesting dynamic that would improve the competitiveness of Canadian organizations in the M&A space as we think about US. So perhaps think about it this way, improving PDEs in Canada versus falling PDEs in the US and so I think we are cautiously optimistic Rupert that our competitive advantage generated by the differential between the Canadian environment in the US market will create some very interesting opportunities over the next 12 to 18 months.

Rupert Merer

Great. And then a follow-up on growth talking about Kinder Morgan pipeline, it looks like our COD target November 2018, and I believe you mentioned potentially starting construction January 2017. Talk about what the milestones look like for that project leading up to construction what you are going to need to see to be sure you are moving forward that's' and what the returns look like compared to some of your other investment opportunities.

Ian Robertson

Sure. Well, I think we all in this business obtaining the FERC Certificate is a huge gating item right now but the first FERC is expected to be filed in October of this year so October 2015 I think a year worth of prosecution of that application is probably are reasonable so therefore October 2016 is a reasonable period to expect that FERC certificate.

Our construction start of January 2017 really kind of falls on the expected receipt of that certificate late fall next year. I will say that, what is ongoing and I think Algonquin Liberty can play an important role in it is all of the outreach programs that are going on certainly across New Hampshire. We are thinking an active role in demonstrating the benefits that this pipeline can bring to the existing customers of liberty utilities, but also potential new customers that pipeline is going through a sections of the state which are underserved by natural gas as I sort of joke.

They don't call the Hampshire the granted state for non and that the installation of pipelines is quite expensive and so I think we are taking a lead role and trying to show the talent and communities that will now be within economic distance of the pipeline, the opportunity to participate in what is undeniably a convenient and cost effective field. So I think that the next year is going to be busy for us in terms of supporting Kinder's prosecution of the FERC and our own continued outreach in New Hampshire.

You asked the question about returns, I think we are confident that the returns of the Kinder Morgan pipeline are going to meet or exceed the returns that we see from our other utility investments and frankly depending how the capacity of the pipeline has increased to incremental compression to get at it, the returns could significantly exceed the regulated returns on our distribution utilities. I hope that's helpful, Rupert.

Rupert Merer

Yes. That's helpful. Thanks very much.

Ian Robertson

Thanks,

David Bronicheski

Thanks,

Operator

Your next question will come from Paul Lechem with CIBC. Please go ahead.

Paul Lechem

Thank you. Good morning.

Ian Robertson

Good morning, Paul.

Paul Lechem

Good morning. And just continuing the question on Northeast Energy Direct, you have an option to increase your ownership from 2.5% to 10% so I just wondering under what circumstances would you exercise that, are you looking, are you waiting out through the FERC process, if you do so, is that something else you are waiting for.

Ian Robertson

No our auction is continuing until the FERC certificates in hand and frankly when we negotiated it with Kinder, the fault was, where is the FERC certificates in hand, it's pretty clear what the future is going to look like and so I'm not sure there is really practically any value in exercising the options since it's at book value if you want to think of it that way before that date.

So October 2016 will be called on to make a decision, it's hard to frankly to imagine a circumstance as we look at the project today to say that you wouldn't be exercising that option. I think the project is an attractive opportunity to commit as I said close to US\$300 million to other opportunity, which will generate returns, which are kind of consistent with our expertise of our regulated utilities and so with the approval of Kinder Morgan's board of directors of the project.

I think from my perspective and you'd I have spoken and historically I have always characterized the Northeast energy direct opportunity really more I asked people to characterized it more as an additional of the entrepreneurial spirit alive and well within our [indiscernible] to be able to set out this kind of an opportunity but I think now with the approval in hand and the commitment from Kinder Morgan that we start to think about this being added to the do this rather than that perhaps the spec of that nature that might had before.

Paul Lechem

Okay, thanks and then back on the [indiscernible] agreement given your expanding geographic and scope of the acquisitions you'd look at how do you avoid complex between the two companies when you go after these new expanded opportunities access, of the areas where you still delineates which company will go after what's or is that potential now for you both to start looking at similar kind of opportunities?

Ian Robertson

Well I think I'll start by saying is that, is this has been an incredibly collaborative relationship over the past five years and well we certainly we evolved and Emera's evolved and I'm highly confident that reasonable people can come to a reasonable understanding in terms of what's best for both of us and I think that there is, there remains obviously a size differential I think they would probably agreed or the very, very focused on the North East, U.S. in terms of and Eastern, in terms of their focus and so I think there, I see way more opportunities for mutual support then for competition if you want to think of that way and but I think it is important if we just recognized that what was five years to go probably requires a update this and so we're going into this, I don't say positive and enthuse and you have to ask Chris but I would probably say the same from his perspective, it's been a great run and we obviously wanted to continue.

Paul Lechem

Okay, thanks again.

Ian Robertson

Thanks Paul.

Operator

Your next question will come from Nelson Ng with RBC Capital Markets. Please go ahead.

Nelson Ng

Great, thanks good morning everyone.

Ian Robertson

Good morning Nelson.

Nelson Ng

Just two follow up on that Emera arrangements would there any projects where over the last year so we're you actually wanted to pursue but based on your current arrangement with Emera you current per sale.

Ian Robertson

Yes, no, that I mean that it's not about should have not being able to pursue and then just saying no or asked the say no clearly it's a much more as I said collaborative relationship with that I think if you read the SIA that existed five years ago there were some sort of size though limits in there that probably don't make as much sense any more we are clearly with the NED have got foot in the natural gas pipeline business which is with never contemplated before I think Chris acknowledged on his call that I think their interest per utility they're spending to include natural gas a distribution utilities that was in contemplate.

So I think we just need to. I think we just need to, I think it's all about are just recognizing that the companies look different today but I think their remains the commitment to create mutual value as they said its worked really well and we're filled with the relationship I don't what more I can add because we're obviously in the discussions for right now but we're - we strive can kind of provide transparency in terms of these sort of ongoing relationships that's kind what we are talking about it.

Nelson Ng

And could you just remind us when you expect to have that agreement revised or completed.

Ian Robertson

Its, discussions is going on right now, I think but there is couple of things that we've certainly have committed to and I kind of outline them in the agreement and one of them is obviously the agreement made reference to restrictions to - interest in Algonquin [indiscernible] totally appropriate any more given the size of Algonquin and so its underway right now, it's in active working progress Nelson.

Nelson Ng

Okay. Got it. And then I guess somewhat related in terms of pursuing M&A or development opportunities, I guess there is a lot of activity in Mexico and I was just wondering whether you would look at doing transmission or pipeline or power opportunities there?

Ian Robertson

We actually have looked at some solar projects down in Mexico, obviously whatever other thing is a big step for us to be thinking about introducing country risk and potentially currency risk depending on how the PPA or is denominated but Mexico is not too far certain Dallas, Arizona utility and so I think there would definitely be a comfort there and I think what are the things that maybe just getting back to my prepared remarks is broadening its horizon on that one and as we look forward to the next five years, I think there are opportunities that we need be at least cognizant of that - that would be considered international as we think about U.S. and Canada today but I might provide reasonable

growth and value opportunities for our shareholders. So I'll give you, the short answer to your question Nelson is yes I mean I think we are interested in looking there.

Nelson Ng

Okay, got it. And then just one last question in terms of the Park Water acquisition on the Missoula condemnation process, I believe there was a ruling in favor of the city and can you provide us with an update on the process going forward, presuming you are appealing the decision and how long will that take and when do you think that will be final decision on that?

Ian Robertson

Sure. Well maybe the best way to quote the answer to your question is to quote the Montana Commission when they were petitioned by the City to dismiss our approval - transfer approval application in the commission basically said back to the City, when you are a long way away from actually owning this utility and some check is written, we are going to continue on, it's a long road as you point out Nelson, we are in early innings that as you suggest the ruling on necessity which is only half of the process has been appealed by us the next part of the process is the valuation section of a condemnation and that is crafted to make sure that under the fifth amendment of the U.S. constitution we [indiscernible] just consideration.

And I would point out that the value application, the valuation that is being submitted by Park Water in respect of that valuation process is close to [REDACTED] and we're just as I said this is a twist and turns kind of road, but we are looking for to completing the acquisition that we signed up for with Carlyle and we will continue to prosecute the condemnation part of this - the condemnation proceeding in the way we would do in any other of our jurisdictions and it's certainly a process that we've been familiar with, you may recall we kind of bumped into this in Texas and so I see them as two completely independent and parallel processes now.

So we're looking forward to completing the acquisition of the whole [indiscernible] late this year.

Nelson Ng

Okay, great. Thanks for the clarification.

Ian Robertson

Thanks Phil, thank you.

Operator

Your next question will come from Matthew Akman with Scotiabank. Please go ahead.

Matthew Akman

Thank you. Good morning.

Ian Robertson

Good morning, Matthew.

Matthew Akman

My question is just follow up on the agreement with - one thing I'm not sure if you mentioned was whether you would consider doing development with [indiscernible] in line with possibly doing larger acquisitions?

Ian Robertson

That's an interesting thought, until now historically as you're aware - development has really kind of focused on development within the regulated utility footprint and joint ventures with other developers. And it is I guess I got to be frank and say that that is something that we would need to explore to see whether that is of interest with Emera I think one of the things I think this is where the heart of your question is that the development, I will call it again but the development process for power projects is becoming should have not again for Mom's and Pop's as you know Odell project is a third of US\$1 billion.

We've looked at other projects which are significantly larger and so there may well be an opportunity for a collaboration between Emera ourselves and some of these larger projects up to now we've been pretty comfortable

with the things that we've been able to announce Emera has obviously implicitly supported our initiatives by stepping up to the plate with continued commitments of equity capital and there has obviously been a history of us working together, you will recall the CalPeco acquisition was done in direct partnership with Emera and ultimately they rolled their direct interest into us to create an indirect one. So I think it's a great thought and certainly something that will be on the table as we're sort of continuing discussions over the coming weeks.

Matthew Akman

Okay. Thank you. And just one other question is with the Obama administration announcing that they will be putting in place more incentives for clean energy in the US, I'm wondering if you have started to give any thought to opportunities around your existing US footprints that might arise from that.

Ian Robertson

I think you are making reference to the whole rule, Section 11D of that clean power plant. We think that's a real shot in the arm for a positive shot in the arm for the renewable sector and so for sure I think as we contrast the activity that's taking place in Canada versus the US, there is no doubt about it, our development teams are keeping their Canadian passports in good stead because there is tons of opportunity down there and frankly, to be frank we actually don't bump into as many certainly in Canadian competitors who are comfortable with the US tax equity landscape and the US electricity markets and so for sure I think the recent announcements and you might continue, you might phrase it as Obama is continuing war on coal, I think is a really good thing as positive implications for an organization with our focus.

Matthew Akman

Okay. Thank very much. Those are my questions.

Ian Robertson

Thank you.

David Bronicheski

Thanks, Matthew.

Operator

Your next question will come from Ben Pham with BMO. Please go ahead.

Ben Pham

Hi, thanks, good morning everybody.

Ian Robertson

Hi, Ben.

Ben Pham

I just wanted to go back and then maybe if you can quantify the size of the [indiscernible] opportunity for you in terms of acquisitions when you consider your EBITDA mix and just where you want to go, geographically going forward.

Ian Robertson

Sure. I think in terms of our, I mean I will start with the question about EBITDA mix. Currently we are about 50-50, we are completely comfortable with 50-50 though I will say we are not wedded to 50-50 and acquisitions such as the Odell project, or Park Water, they tend to be lumpy, we don't add our EBITDA \$1 in time. So we acknowledge that, that split could temporarily move in one direction or the other. I think we are mindful of the fact that our credit rating is primest on the organization as a whole, which is obviously reflect of significant portion of our earnings on regulated utilities and so we are mindful of that.

In terms of our sweet spot for transaction, I think we were obviously comfortable with the Odell project, a third of a US\$1 billion. And so arguably maybe our sweet spot has certainly increased as the organization is headed for \$5 billion in total size but the good news is projects tend to be getting larger in size and the scale as well and so we are tending to find those larger projects.

In terms of M&A, acquisitions, I don't think it's a reasonable rule of some to say that quite comfortably an organization could probably do M&A equal to about one-third of its size without creating huge [indiscernible] in the marketplace and so as we head for \$5 billion we're definitely north of \$1.5 billion in terms of the acquisition that we can do on our own. But just a follow on, I know that was Matthew's question but one of the benefits of the relationship of the Emera is allowing us to punch way above our weight in terms of that scale and scope of M&A activity I mentioned our California experience which Amherst took a direct interest in the utility, the allowing us to as definitely hunt in a size range that would be north of that \$1.5 billion which would be our left or own devices kind of threshold and so I think it's just been another example of how we benefited from that opportunity of the [indiscernible] relationship to be able to explore opportunities which have a very wide dynamic range

Ben Pham

And you mentioned about the CalPeco JV and years back when you first starting you guys thinking that's one own with the utility side of things when you think about that doing from our side and thinking about the nears comments about the OTC gas, I remain are you having more discussions about bringing back that JV structure going forward with Amherst?

Ian Robertson

Well, I think it would, I think it's obviously circumstantial dependent, we have, when do you we gone at on our own I think that the short answer is we've identified utility acquisitions and growth opportunities that obviously to seem to make sense to fit into our portfolio perk water in examples that's hard to imagine how JV with the [indiscernible] on that would have been strategically aligned for them but obviously right on the fair away from our perspective but I think as we think about some of the larger opportunities and I think we're thrilled that [indiscernible] has an interest in gas LDCs because now all the sudden there is a possibility to collaborate on some of the larger LDC sales where - would say yeah, we are interested in a direct opportunity up till now to be frank I think it would be reasonable to a thought that those JV opportunities would have been pretty much limited to electrical distribution company because that's where [indiscernible] focus was so I think it actually just expand the potential scope for in terms of modality and in terms of geography for collaborating with - so I think it's all good.

Ben Pham

Okay, got it. That's all I have.

David Bronicheski

Thanks Ben.

Operator

Your next question will come from Sean Steuart with TD Securities. Please go ahead.

Sean Steuart

Thanks good morning guys.

Ian Robertson

Hi Sean.

David Bronicheski

Good morning.

Sean Steuart

Thanks for all the general commentary on I guess broader growth ambitions I just have a couple of projects specific questions. On Odell you guys have an option to take full ownership there, can you give us a little bit of context of you're thinking on when that actually happens?

Ian Robertson

Sure and I think it's important as we think about managing our balance sheet through the development cycle and those we think about all of the metrics by which we're elevated that joint venture structure is a good way to address

what is the very short term part of the overall life of a generating station and so when you think that once the generated station hit COD you'll got 30, 40 years of life in front of you but the development pace is 12 months long.

And so we were comfortable putting that development structure in place during the construction phase but would have to rethink whether we would prefer to own a 100% of that come to COD of the project and we've obviously crafted an option to do that and so I think may be so just to be so to be specific in responses to your question we would probably evaluate whether we want to 100% of that project at the end of the development phase once we got through the COD and that's where we probably be thinking about it.

Sean Stuart

Okay, understood and on Amherst you guys give a little bit of commentary in the MD&A about some recent progress there any inside on what we might be looking at for construction beginning and expected appeals from locals any general update on Amherst?

Ian Robertson

Sure and obviously we kind of give up, given specific dates for how we think this process will but broadly and that the which is the renewable energy approval and we're thinking end of summer the appealed process which is you aware is called the Environmental Review Tribunal ERT at the six month process and so it sounds like as we have been managing our construction timing and contracting that next year we jumped heavily into that construction process at the end of the ERT which kind of sounds early 2016.

Sean Stuart

Okay. Thanks very much Ian.

Ian Robertson

All right. Thanks, Sean.

End of Q&A

Operator

[Operator Instructions] There are no further questions at this time, please continue.

Ian Robertson

Well again, thanks everyone for joining us on our Q2 investor call and we appreciate all the questions and interest that you've demonstrated. So with, I would ask everyone to remain on the line for a review of our disclaimer. Alison.

Alison Holditch

Certain written and oral statements contained in this call are forward-looking within the meaning of certain securities laws and reflect the views of Algonquin Power & Utilities with respect to future events based upon assumptions relating to among others, the performance of the company's assets and business financial and regulatory climates in which it operates. These forward-looking statements include among others statements with respect to the expected performance of the company, its future plans, and its dividends to shareholders. These forward-looking statements relate to future events and conditions by their very nature and require us to make assumptions and involvements here and uncertainties.

We caution that although we believe our assumptions are reasonable in the circumstances, these risks and uncertainties give rise to the possibility that our actual results may differ materially from the expectations set out in the forward-looking statements. Material risk factors include those presented in the company's most recent annual financial results, the annual information found in most recent quarterly management discussion and analysis. Given these risks, undue reliance should not be placed on any forward-looking statements.

In addition, such statements are made based on information available and expectations as of the date of this call and such expectations may change after this date. APUCs reviews materials, forward-looking information that is presented not less frequently than on a quarterly basis. APUC is not obligated to nor does it intend to update or revise any forward-looking statements whether as a result of new information, future developments, or otherwise except as required by law.

With respect to non-GAAP financial measures, the terms adjusted net earnings, adjusted earnings before interest tax and depreciation and amortization, or adjusted EBITDA, adjusted funds from operations, per share cash provided by adjusted funds from operations, per share cash provided by operating activities, net energy sales, and net utility sales collectively the financial measures are used on this call and throughout the company's financial disclosures. The financial measures are not recognized measures under generally accepted accounting principles or GAAP.

There is no standardized measure of these financial measures, consequently APUC's method of calculating these measures may differ from methods used by other companies and therefore may not be comparable to similar measures presented by other companies. Our calculation and analysis of the financial measures and a description of the use of non-GAAP financial measures can be found in the most recent and published management discussion and analysis available on the company's website and cedar.com.

Per share cash provided by operating activities is not a substitute measure of performance or earnings per share. Amounts represented by per share cash provided by operating activities do not represent amounts available for distribution to shareholders and should be considered in light of various charges and clearance against APUC.

Operator

Ladies and gentlemen, this does conclude the conference call for today. Thank you for participating. You may now disconnect your lines.

Copyright policy: All transcripts on this site are the copyright of Seeking Alpha. However, we view them as an important resource for bloggers and journalists, and are excited to contribute to the democratization of financial information on the Internet. (Until now investors have had to pay thousands of dollars in subscription fees for transcripts.) So our reproduction policy is as follows: **You may quote up to 400 words of any transcript on the condition that you attribute the transcript to Seeking Alpha and either link to the original transcript or to www.SeekingAlpha.com. All other use is prohibited.**

THE INFORMATION CONTAINED HERE IS A TEXTUAL REPRESENTATION OF THE APPLICABLE COMPANY'S CONFERENCE CALL, CONFERENCE PRESENTATION OR OTHER AUDIO PRESENTATION, AND WHILE EFFORTS ARE MADE TO PROVIDE AN ACCURATE TRANSCRIPTION, THERE MAY BE MATERIAL ERRORS, OMISSIONS, OR INACCURACIES IN THE REPORTING OF THE SUBSTANCE OF THE AUDIO PRESENTATIONS. IN NO WAY DOES SEEKING ALPHA ASSUME ANY RESPONSIBILITY FOR ANY INVESTMENT OR OTHER DECISIONS MADE BASED UPON THE INFORMATION PROVIDED ON THIS WEB SITE OR IN ANY TRANSCRIPT. USERS ARE ADVISED TO REVIEW THE APPLICABLE COMPANY'S AUDIO PRESENTATION ITSELF AND THE APPLICABLE COMPANY'S SEC FILINGS BEFORE MAKING ANY INVESTMENT OR OTHER DECISIONS.

If you have any additional questions about our online transcripts, please contact us at: transcripts@seekingalpha.com. Thank you!

Check out Seeking Alpha's new Earnings Center »



EXHIBIT “B”

EXHIBIT “B”

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

Cause No. DV-14-352

Dept. No. 4

July 7, 2014
Date

Hon. Karen S. Townsend

Cathy Rebish
Court Reporter

Laura M. Driscoll
Deputy Clerk of Court

THE CITY OF MISSOULA, a
Montana municipal corporation,

Plaintiff,

Jones

Counsel

vs.

MOUNTAIN WATER COMPANY, a
Montana corporation; and CARLYLE
INFRASTRUCTURE PARTNERS,
LP, a Delaware limited partnership

Defendants.

Wagner/Mercer

Counsel

THE EMPLOYEES OF MOUNTAIN
WATER COMPANY, (Shanna M.
Adams, Heather M. Best, Dennis M.
Bowman, Kathryn F. Datsopoulos,
Wayne K. Davis, Valarie M. Dowell,
Jerry E. Ellis, Greg A. Gullickson,
Bradley E. Hafar, Michelle Halley,
Douglas R. Harrison, Jack E. Heinz,
Joshiah M. Hodge, Clay T. Jensen,
Kevin M. Johnson, Carla E. Jones,
Micky A. Kammerer, John A. Kappes,
Susan M. Lowery, Lee Macholz,
Brenda K. Maes, Jason R. Martin,
Logan M. McInnes, Ross D. Miller,
Beate G. Newman, Maureen L.
Nichols, Michael L. Ogle, Travis Rice,
Eric M. Richards, Gerald L.
Schindler, Douglas J. Stephens, Sara
S. Streeter, Joseph C. Thul, Denise
T. Tribbble Patricia J. Wankier,
Michael R. Wildey, Angela J. Yonce,
and Craig M. Yonce).

Intervenors.

Zadick

Counsel

MINUTES AND NOTE OF RULING

Counsel for the Plaintiff, Natasha Prinzing Jones, counsel for Mountain Water Company, William T. Wagner, counsel for Carlyle Infrastructure Partners, William W. Mercer, and counsel for The Employees of Mountain Water Company, Gary M. Zadick, came into court, this being the time set for a scheduling conference. Also in the courtroom were Philip L. McCreedy, Harry H. Schneider, Jr., Scott M. Stearns, William VanCanagan and James Nugent, co-counsel for the Plaintiff and Joe A. Conner and John L. Alke, co-counsel for Mountain Water Company.

Thereupon, the Court advised counsel that she is requesting only one counsel per party address the Court. The Court also noted that a Motion to Intervene on behalf of the Montana Public Service Commission has been filed today. The Court inquired if counsel object to the motion, or wish to brief the issue. The Defendants stated they have no objection to the Motion to Intervene. The Plaintiff requested time to brief the issue and the Court gave the Plaintiff one (1) week to respond to the Motion and the Public Service Commission shall have one (1) week thereafter to reply.

The Court then inquired of counsel as to the length of trial needed, the Court noting that statute requires the trial be set within six (6) months of service of the Summons, which would be November, 2014, unless the parties will agree to go past the deadline. Plaintiff's counsel stated the parties have agreed that trial on necessity will take eight (8) to ten (10) days and that Plaintiff's experts are to be disclosed by October 15, 2014 with the Defendants' experts disclosed by November 14, 2014. The City requested a trial setting in January or February, 2015. The Court

advised that February, 2015 is not available, but January 2015 would be available. Counsel for Mountain Water Company stated their Answer is not due until July 17, 2014 and with the amount of discovery necessary the January setting would be difficult. After further comments from counsel, the Court set this cause for trial beginning **Wednesday, March 18, 2015, continuing through Thursday, April 2, 2015**, excluding Tuesday, March 24 and Tuesday, March 31, 2015. The Court requested proposed Findings of Fact, Conclusions of Law seven (7) to ten (10) days prior to trial.

The Court then inquired of the proposal put forth by the Plaintiff that a Special Master be appointed and the Plaintiff has suggested Tracy Axelberg. Counsel for Mountain Water Company and Carlyle stated they have no objection to Tracy Axelberg but counsel for the Defendants stated the appointment of a Special Master is not necessary and no showing has been made. The Court stated the request is held in abeyance at this time.

The Court then addressed the steps required by the Court and the appointment of commissioners to determine value. The Court questioned the parties on how information on valuation could be kept confidential to not influence potential commissioners. Counsel for Mountain Water stated he believes the appointment of commissioners can be waived by the parties and the matter of compensation could move directly to trial. Counsel for Carlyle stated he is not prepared to address the issue at this time. Counsel for the Plaintiff stated counsel should be able to agree on a protective order regarding valuation and that a process to identify potential commissioners could begin immediately. Counsel for Mountain Water stated the value is critical during proceedings on necessity and that the Plaintiff has to prove they can provide water at a lower rate.

The Court suggested that for the time being, the briefing not address valuation and that any filings addressing monetary value be sealed.

The Court then inquired if counsel can address Plaintiff's Request to Take Judicial Notice and counsel will brief the issue, however, counsel for Carlyle stated he will oppose the request.

c: Natasha Prinzing Jones, Esq.
 Scott Stearns, Esq.
 William VanCanagan, Esq.
 Philip McCreedy, Esq.
 Harry H. Schneider, Esq.
 William A. Mercer, Esq.
 Adrian Miller, Esq.
 William A. Wagner, Esq.
 Joe A. Conner, Esq.
 John L. Alke, Esq.
 Stephen Brown, Esq.
 Gary M. Zadick, Esq.
 Adam Sanders, Esq.
 W. Patton Hahn, Esq.
 Justin Kraske, Esq.
 Jeremiah Langston, Esq.

EXHIBIT “C”

EXHIBIT “C”

Mark L. Stermitz
P. O. Box 7099
Missoula, MT 59807-7099
Telephone: (406) 523-3600
Facsimile: (406) 523-3636
mstermitz@crowleyfleck.com

August 27, 2015

Harry H. Schneider, Jr.
Perkins Coie
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099

Sent via email and U.S. Mail

Re: Your letter of August 19, 2015

Dear Harry,

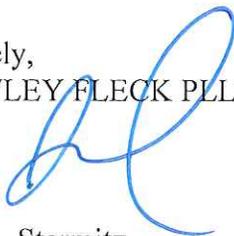
This is in response to the above-referenced letter relating to the Statement of Claim for Just Compensation in the City of Missoula's condemnation action against Mountain Water Company.

As you know, I am local Montana counsel for Liberty Utilities Co. I do not represent Algonquin Power & Utilities Corp. (APUC). I do not represent Mr. Robertson. As such, I am not authorized to speak for APUC or Mr. Robertson on the questions raised in your letter.

Your letter discusses a protective order and confidentiality agreement in the pending condemnation case. I am not aware of any protective orders or confidentiality agreements in that case, and it should be noted further that APUC and Liberty Utilities Co., are not parties to the condemnation case.

I had no knowledge of the events and circumstances described in your letter before reading the attachments you included.

Sincerely,
CROWLEY FLECK PLLP



For: Mark L. Stermitz

EXHIBIT “D”

EXHIBIT “D”



354 Davis Road, Suite 100
Oakville, Ontario L6J 2X1

905-465-4500

VIA: EMAIL and FAX

September 1, 2015

Harry H. Schneider, Jr.
Perkins Coie LLP
1201 Third Avenue Suite 4900
Seattle, WA 98101-3099

Dear Mr. Schneider:

Mark Stermitz forwarded to me your letter dated August 19, 2015 along with your email to Mr. Stermitz dated August 27, 2015. As you know, Mr. Stermitz is local Montana counsel for Liberty Utilities Co. He does not represent Algonquin Power & Utilities Corp. (APUC) and he does not represent Mr. Robertson either in his capacity as CEO of APUC or as a board member of any of its subsidiaries. APUC is not obligated to respond to your letter or email relating to the issues raised by you. Even so, I address your letter and email below in order to correct the issues raised in your letter based on the underlying facts.

To start, your letter and email assume that Mr. Robertson's statements in the APUC quarterly analyst call on August 13, 2015 referred to the July 15, 2015 Notice and Statement of Claim for Just Compensation filed by Mountain Water Company and Carlyle Infrastructure Partners in the City of Missoula's condemnation action against Mountain Water Company. Your assumption is incorrect. At the time of that earnings call on August 13, 2015, Mr. Robertson had not reviewed or read the July 15 Statement of Claim. It also should be noted that Mr. Stermitz had not reviewed the July 15 Notice of Claim until you provided him with a copy in your August 19, 2015 letter.

Your letter and email also misconstrue Mr. Robertson's comments in the transcript of the earnings call. Mr. Robertson did not say that Mountain Water Company and/or Carlyle filed a statement of claim of just compensation for [REDACTED]. Instead, he reportedly stated,

"the valuation that is being submitted by Park Water in respect of that valuation process is close to [REDACTED]. And so, we're just - as I said, this is a twist and turns kind of road. What we are looking forward to is completing the acquisition that we've signed up for with Carlyle and we'll continue to prosecute the condemnation part of this - the condemnation

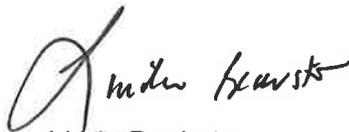
proceeding in the way we would do in any other of our jurisdictions and it's certainly a process that we've been familiar with. You may recall we kind of bumped into this in Texas. And so, I see them as two completely independent and parallel processes, Nelson".

Put simply, Mr. Robertson was expressing his personal views on what he thought Park Water would seek in terms of valuation for Mountain Water Company. Mr. Robertson based his views on other condemnations cases, including the valuation of Pennichuck Water Works (a company similarly sized to Mountain Water Company with 25,000 customers) for approximately [REDACTED] (plus [REDACTED] in additional severance damages).

Further, Mr. Robertson's comment that "the valuation that is being submitted by Park Water" is clearly a forward looking statement of what he felt might be submitted in the valuation phase of the City's condemnation case. The earnings call occurred on August 13, 2015, almost a full month after filing of the July 15, 2015 Notice of Claim. The plain wording of Mr. Robertson's purported comments shows that he was referring to what Park Water may seek in the valuation case, and not to a Statement of Claim filed a month earlier. Finally, it bears emphasis that your transcript apparently printed from the website "Seeking Alpha" is not an official publication of APUC and my understanding is that the transcript has not been reprinted in any publication in Missoula. Mr. Robertson did not make any valuation comments in his earnings presentation and only responded to a question asked during the call using his own previous knowledge of general condemnation matters. Mr. Robertson's comments certainly did not compromise the condemnation commission in any way.

We trust this letter alleviates the concerns you have raised in your letter and email to Mr. Stermitz. Accordingly, APUC will not provide further comment or correspondence related to this matter.

Yours truly,



Linda Beairsto
Chief Legal Counsel and Corporate Secretary

c: Mark Stermitz at mstermitz@crowleyfleck.com

EXHIBIT “E”

EXHIBIT “E”

From: Bill Mercer [mailto:WWMercer@hollandhart.com]
Sent: Monday, August 31, 2015 5:52 PM
To: Schneider, Harry (Perkins Coie)
Cc: Joe A. Conner (jconner@bakerdonelson.com); Kathleen L. DeSoto
Subject: Response to correspondence

I have consulted with Mr. Conner in regard to your inquiry, so you may consider this as a joint response on behalf of Carlyle Infrastructure Partners, LP and Mountain Water Company to your letter addressed to me dated August 19, 2015. In the letter, you state that there has been an "apparent breach of confidentiality and a violation of a standing court order in the proceedings."

First, we are not aware of a "standing court order in the proceedings" regarding confidentiality of the statement of claim filed pursuant to 70-30-207(1), MCA. Instead, the court previously expressed concern about selecting commissioners in the valuation phase and requested that the parties refrain from filing pleadings with valuation numbers. We have complied with this request. Since the commissioners are nominated by the parties only after the condemnor rejects the statement of claim, we contacted the clerk and asked if the statement should be filed under seal. The clerk said yes and that is what was done. On July 31st, both the City and our clients provided the clerk with the names of our respective nominees and their affidavits. By email on August 20th, counsel for the parties were advised by the clerk that Dick Barrett was selected as the third commissioner and that he had signed a commissioner affidavit.

With respect to the transcript you attached, this appears to be from an independent website called "Seeking Alpha". The website contains transcripts of earnings calls for numerous companies. From what we can tell, the statement you reference in the document has not been reprinted or reported in any publication in Missoula or, for that matter, anywhere else. We have reviewed the passage in the transcript attached to your letter, which purportedly is a statement made on August 14th by Mr. Robertson, the Chief Executive Officer of Algonquin Power & Utilities Corp., and do not agree with your construction of his statement. The transcript does not reflect that Mr. Robertson said "he was aware of the confidential information that was submitted under seal by Carlyle to the Court in Montana." In fact, the statement does not appear to pertain to the statement of claim filed by the Defendants pursuant to 70-30-207(1), MCA. Instead, a month after the Defendants submitted the statement of claim, Mr. Robertson reportedly stated, *"the valuation that is being submitted by Park Water in respect of that valuation process is close to [REDACTED] and we're just as I said this is a twist and turns kind of road, but we are looking for to completing the acquisition that we signed up for with Carlyle and we will continue to prosecute the condemnation part of this - the condemnation*

proceeding in the way we would do in any other of our jurisdictions and it's certainly a process that we've been familiar with, you may recall we kind of bumped into this in Texas and so I see them as two completely independent and parallel processes now".

On its face, this is a forward looking statement about what he felt might be submitted in the valuation phase. The transcript does not reflect the basis for his statement. Further, Park Water is not a party to the case as you are aware.

With respect to the statement of claim, prior to its filing, we made personnel with Liberty Utilities aware of the claim and that it was going to be filed under seal.

We simply disagree with your inference that Mr. Robertson's statement in some way constitutes a violation of a court order.

William W. Mercer
Holland & Hart LLP
401 N. 31st Street, Suite 1500
P.O. Box 639
Billings, MT 59103-0639
(406) 896-4607 Office
(406) 647-3223 Mobile
wwmerc@hollandhart.com

Billings, MT
Salt Lake City, UT
Denver, CO

Boulder, CO
Colorado Springs, CO
Carson City, NV

Las Vegas, NV
Reno, NV
Jackson Hole, WY

Cheyenne, WY
Boise, ID
Aspen, CO

Santa Fe, NM
Washington D.C.

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK-PRODUCT

This transmission may contain privileged or confidential information protected by joint defense, attorney-client, and/or attorney work-product privileges. If you are not the intended recipient, (1) you are instructed not to review this transmission; and (2) please notify the sender that you received this message and deleted this transmission from your system.

you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

NOTICE: This communication may contain privileged or other confidential information. If

EXHIBIT “F”

EXHIBIT “F”

From: [Scherer, Sandra](#)
To: [Tina Sunderland](#)
Subject: Non-Disclosure Agreements
Date: Thursday, August 27, 2015 11:41:52 AM

Hi Tina,

Hope you are having a great day. I just received the FedEx today from your firm and wanted to let you know that you do not have to e-file any Non-Disclosure Agreements. I just note the information on my end.

Please call if you have any questions.

Thanks.

Sandy Scherer

Administrative Assistant, Centralized Services
Montana Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601
(406) 444-6180
sscherer@mt.gov