

**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

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**CITY OF MISSOULA’S SUR-REPLY TO  
LIBERTY UTILITIES CO. AND LIBERTY WWH, INC.’S MOTION *IN LIMINE***

The City of Missoula (“City”) files this sur-reply to respond to a new allegation raised by Liberty Utilities (“Liberty”) – that the City has released confidential information – in its reply to the City’s response to its Motion *in Limine*. The City has not breached the non-disclosure agreement and any allegation that there has been a breach is unfounded. As noted by Commissioner Kavulla in his dissent to the Public Service Commission’s (“PSC”) grant of a protective order, the information Liberty seeks to protect is “not exactly mysterious” and anyone with an understanding of how utilities earn profit can predict Liberty’s plans. Dissenting Opinion of Commissioner Travis Kavulla, Order No. 73920, 3 (Aug. 24, 2015).

The statement at issue is Mr. von Lossberg’s observation quoted in *The Missoulian* to the effect that (1) Algonquin and Liberty Utilities view their investment in Mountain Water as an opportunity to earn a profit by investing large amounts of capital, and (2) projections regarding such capital investments undoubtedly are reflected in the

financial models that Liberty has withheld from public view. The former is basic public information regarding the operation of any privately owned utility, including Mountain Water. The latter is Mr. von Lossberg's suspicion regarding what Liberty's financial models would reveal regarding its projected capital investment and return on earnings if those financial models ever are made public.

Although Mr. von Lossberg is, in fact, a rocket scientist, determining how privately owned utilities earn a profit in the water business is not exactly rocket science. The economics of privately owned water utilities was discussed by several witnesses in the March 2015 condemnation trial including Professor Tom Power and water utility expert Craig Close, and was also recited in Judge Townsend's June 15 Findings, Conclusions, and Preliminary Order of Condemnation. Simply stated, the utility is allowed to earn a return on its capital investment which is then incorporated into rate base which affects the costs paid by customers. That virtually guaranteed return on investment incentivizes private owners to invest in water utilities and, indeed, the more invested, the greater the return for the owner of the utility. It is this incentive that makes regulated utilities a viable business option for private owners. The more a company invests into the system, the greater the profits. Mr. von Lossberg said precisely that when he was quoted in *The Missoulian*.

Mr. von Lossberg has closely followed the condemnation proceedings in Missoula throughout his term on the City Council, and he has conducted his own research on Algonquin and its wholly owned subsidiary, Liberty. He has acquired a broad understanding of the math behind ratemaking and regulated utility investment,

apparently leading him to conclude that Liberty plans to earn a return on its acquisition of Mountain Water by making extensive capital investment upon taking ownership that will be built into the ratebase and which, in turn, will cause ratepayers' costs to rise.

Liberty's standard business practices throughout the United States is to purchase a utility, propose massive capital investments, and increase rates to incredible amounts; all allegedly justified by capital investment. In Litchfield Park, Arizona, Liberty proposed raising rates by 120%, arguing "the increase is mainly driven by capital investments made to deliver water safely and reliably and to process, treat and dispose of wastewater."<sup>1</sup> (See **Exhibit A**.) In Pine Bluff, Arkansas, Liberty Utilities raised rates by 27% upon taking over, again citing "inadequate investment"<sup>2</sup> by the previous owner. (See **Exhibit B**.) These are just a couple of the numerous examples of Liberty's business practices across the United States. Mr. von Lossberg did this research and it is a simple analysis to figure out what Liberty plans to do in Montana. He is not alone in this conclusion.

Mr. von Lossberg's quoted observation precisely parallels the independent and previously disclosed views of PSC Commissioner Kavulla who said the following about Liberty's financial model in a publicly available statement:

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

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<sup>1</sup> David Madrid, AZ Central, <http://archive.azcentral.com/community/swvalley/articles/20100128swv-libertywater0129.html#ixzz3lvxpgQnJ> (Jan. 28, 2010)

<sup>2</sup> Will Wadley, *Mountain Water Bidder Addresses Rate Hikes*, <http://www.nbcmontana.com/news/mountain-water-bidder-addresses-rate-hikes/28380458> (Oct. 2, 2014)

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]

Dissenting Opinion of Commissioner Travis Kavulla, at 3 (emphasis added; redaction original). Without disclosing exactly what are the precise capital inputs utilized by Liberty, Commissioner Kavulla noted that Liberty is intending to invest a large amount of capital into the Mountain Water System, investment that is desperately needed. Mr. von Lossberg's statement quoted in *The Missoulian* is to the same effect, albeit on a less informed basis given that he is not privy to the redacted information regarding Liberty's precise projections of exactly how much it plans to invest in order to earn a return at the expense of the Missoula ratepayers.

During the condemnation trial, Mr. von Lossberg testified that he had discussed these issues publicly well before the March trial began: "I have also spoken about the needs that everyone seems to recognize for the millions of dollars of capital investment into the system, and to make sure that's done in a way that doesn't break the backs of ratepayers." Testimony of Bryan von Lossberg, at page 199, line 9-14 (Mar. 23, 2015)

(See **Exhibit C**.) Further, based on his own research, Mr. von Lossberg testified that he believes “millions of dollars over time are going to be necessary to sustain the System and bring the System into compliance with best management practices.” *Id.*, 201:2–6.

Generally speaking, water utilities only have one source of revenue: the rates paid by customers. Mountain Water is no exception. Park Water and Carlyle currently make money by charging rates based on capital investment, and Liberty will make money by investing more capital that will, in turn, raise rates. As Judge Townsend found in her ruling this June, it is not credible to believe that Liberty will earn a return on its investment by some other means than the rates it plans to charge the citizens and residents of Missoula for the water they will purchase in future years.

Mr. von Lossberg said these same things at a public forum before Missoula’s City Club in January of 2015. See Keila Szpaller, *Councilors Debate City's Effort to Condemn Mountain Water Co.* <sup>3</sup> (See **Exhibit D**.)

He was similarly quoted in the newspaper on March 17, 2015:

Mr. Bryan Von Lossberg, who has been studying Algonquin and subsidiary Liberty Utilities, said those companies make their motives and priorities clear in presentations posted on their website.

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<sup>3</sup> [http://missoulian.com/news/state-and-regional/councilors-debate-city-s-effort-to-condemn-mountain-water-co/article\\_17c3da25-f69d-52f6-8398-06a35345f1ff.html](http://missoulian.com/news/state-and-regional/councilors-debate-city-s-effort-to-condemn-mountain-water-co/article_17c3da25-f69d-52f6-8398-06a35345f1ff.html) (Jan. 12, 2015)

In Mountain Water, they [Algonquin] see an opportunity to take advantage of aging infrastructure, **to deploy more capital with low risk, to deliver higher returns.**<sup>4</sup>

Mr. von Lossberg's September 2, 2015 quote in *The Missoulian*<sup>5</sup> is nothing more than a reprise of his long-held understanding regarding what he suspects are Liberty's plans for Mountain Water. His exact quote was:

[Algonquin] see[s] a system in need of millions of dollars in investment and to them, that's a mechanism to profit by. It ties into the financial models that Liberty has withheld.

It is no secret that Liberty and Algonquin have vigorously resisted public disclosure of Liberty's financial models regarding future investment and projected returns. See Montana Public Service Commission, Order Nos. 7392l, 7392o ("Liberty's request for special provisions pursuant to Admin. R. Mont. 38.2.5002(3) and Admin. R. Mont. 38.2.5023 are GRANTED only with respect to Liberty's due diligence materials and **financial model.**"). Mr. von Lossberg knows this, and he also is aware that such financial models undoubtedly contain the precise capital inputs that Commissioner Kavulla described in his dissenting opinion in PSC Order No. 7392o.

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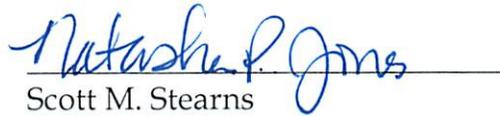
<sup>4</sup> Keila Szpaller, *Missoula Residents Rally for Public Ownership of the Water System*, [http://ravallirepublic.com/missoula/news/local/article\\_51ad8040-051a-5fa7-8ce7-6f7e0c17e90c.html](http://ravallirepublic.com/missoula/news/local/article_51ad8040-051a-5fa7-8ce7-6f7e0c17e90c.html) (Mar. 17, 2015) (emphasis added) (See **Exhibit E.**)

<sup>5</sup> Martin Kidston, *PSC Postpones Mountain Water Proceedings, Citing 'Difficulties'*, [http://missoulian.com/news/local/psc-postpones-mountain-water-proceedings-citing-difficulties/article\\_1bd10ec0-f68f-5f7a-9959-e02f2936484c.html](http://missoulian.com/news/local/psc-postpones-mountain-water-proceedings-citing-difficulties/article_1bd10ec0-f68f-5f7a-9959-e02f2936484c.html) (Sept. 2, 2015) (See **Exhibit F.**)

## Conclusion

As demonstrated by the facts above, Liberty's suspicions are unfounded. Mr. von Lossberg simply understands the process for earning profit in a regulated utility; the rest is easy to figure out.

Dated this 17<sup>n</sup> day of September 2015.



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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 17<sup>th</sup> day of September 2015:

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EXHIBIT “A”

EXHIBIT “A”

[Southwest Valley](#)

## 500 attend public hearing to protest Liberty Water's proposed rate increase

by **David Madrid** - Jan. 28, 2010 09:28 AM  
The Arizona Republic

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Litchfield Park and Goodyear residents are pleading with the Arizona Corporation Commission to reject their utility's attempt to more than double their water bill.

More than 500 people showed up at a public hearing this week to tell the commission how the rate hikes would affect them. Liberty Water serves Litchfield Park and Goodyear residents north of Interstate 10.

After eight years without raising rates, the company wants to raise water rates by about 120 percent and wastewater rates by 81 percent.

◆◆ The average monthly water bill for 9,537 gallons would rise to \$41.16 from \$18.64.

◆◆ The average monthly wastewater bill would climb to \$49.22 from a flat rate of \$27.20.

Commission Chairwoman Kristin Mayes said the turnout for the meeting was "beyond my wildest expectations." She said it was among the top five most-heavily attended meetings in her six years on the commission.

Mayes said the panel decided to come to Litchfield Park and give more residents an opportunity to speak after the large turnout at a Jan. 4 public hearing at the commission offices in Phoenix.

Nearly 50 people addressed commissioners during Monday's 3◆1/2-hour meeting, at the Wigwam Golf Resort and Spa in Litchfield Park.

Many spoke of being on fixed incomes or unemployed. Others said they might have to walk away from their homes if such a hefty rate increase becomes a reality.

Gerald Abmont of Goodyear said there are thousands of people out of work in Arizona, and many cannot afford to pay higher rates. He said Liberty Water should be ashamed of asking the commission for such an increase.

"It looks like the way things are going in this country. We're not in a recession, we're in a depression, and it isn't going to get any better in the next five years," Abmont said. "For you people sitting on this commission, we strongly urge you to protect us. You are our last hope."

Rich Crabb of Litchfield Park said Liberty Water, formerly Litchfield Park Service Co., doesn't deserve such a large rate increase.

"You are the firewall," he told the commission.

Liberty Water maintains that the increase is mainly driven by capital investments made to deliver water safely and reliably and to process, treat and dispose of wastewater.

Utility officials also point to federal mandates and costs to monitor contaminated groundwater migrating toward Liberty Water wells.

But Liberty Water customers are shocked by the size of the proposed rate hike. Some told the commission that if the increase must be given, it should be done in phases.

Those who spoke described the company's plans with words such as "unbelievable," "crazy," "unreasonable," "idiotic" and "reprehensible."

They accused Liberty Water of attempting to pillage them.

Litchfield Park resident Estelle Helman said "outrage" is too mild a word for what she thinks of Liberty Water's rate-increase request.

"They have a working position to achieve as high a rate as possible," she said before the meeting. "I think it's unconscionable."

Her husband, Robert, noted that Social Security recipients didn't receive a cost-of-living increase this year, but medical rates and costs rose significantly.

"A lot of people are very concerned," he said.

Also speaking against the rate increase were Litchfield Park Mayor Thomas Schoaf, most of the City Council and state Sen. John Nelson, a Litchfield Park Republican.

Greg Sorensen, director of operations for Liberty Water's Western Division, said he realizes the rate hike would be steep.

"I think it's a significant increase, and I can understand their concern," he said Tuesday. "I think we certainly heard our customers, and it's part of the process of going through a rate case along with what I believe is a thorough investigation of the books and the records of the company by the commission and RUCO."

RUCO is the Residential Utility Consumer Office, which represents the interests of residential utility ratepayers.

Sorensen said Mayes has requested that Liberty Water provide a plan for phased-in rates.

"We will, along with our final schedules and our legal briefs in these proceedings, be proposing a phase-in," he said.

The commission is awaiting a recommendation from an administrative law judge, probably in early May, before taking action.

"We don't have to accept the (judge's) decision. We don't have to accept the company's decision. We don't have to accept the staff's decision," Mayes said.



EXHIBIT “B”

EXHIBIT “B”



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# Mountain Water bidder addresses rate hikes MISSOULA COUNTY



By Will Wadley, KECI Weekend Anchor, wwadley@keci.com

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meeting Wednesday, the lawyers brought attention to a 47-percent rate increase recently approved for a New Hampshire-based utility owned by Liberty Utilities, a branch of Algonquin Power and Utilities Corp.

Algonquin has reached a sales agreement to buy Mountain Water from the current owner, the Carlyle Group.

The 47-percent hike was for a power utility. We looked into other utilities Algonquin owns, and discovered that a branch of the company, Liberty Utilities, has a 27-percent rate increase pending for a water utility it bought a few years ago in Pine Bluff, Arkansas. According to public records, that works out to \$7.25 per month for Pine Bluff customers.

Much like with Montana's own Public Service Commission, Arkansas Public Service Commission Director John Bethel says the rate change request must be approved by commission before it can take effect.

"Our job as the commission staff will be to evaluate the request, and make a recommendation as to whether the company's cost of service supports the increase that they've requested, or supports some other level of increase," said Bethel.

In a statement issued Thursday, Liberty Utilities President David Pasieka addressed the pending rate change in Arkansas and the 47-percent rate increase already approved in New Hampshire.

"The rate increases in New Hampshire and Arkansas resulted from circumstances unique to those two regions," said Pasieka. "With regard to New Hampshire, it is important to keep in mind that there are two components to an electrical bill, the energy supply and the distribution charges."

Pasieka says natural gas is a key component in setting the price of electricity on the East Coast. As the price for this commodity goes up, he says, so does the price of electricity.

He says the cost of purchasing electricity for Liberty is passed through to the customer with no profit. He's says the result is a rate adjustment that's largely driven by the effect of increased natural gas pricing on electricity rates.

Pasieka claims inadequate investment by the previous owners is what is driving its rate hike request in Arkansas.

"Liberty Utilities needed to make prudent investments in order to ensure safety, improve quality and fortify reliability for customer," said Pasieka. "At the Arkansas utility rates had not been increased in more than five years."

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**7 things to watch for at GOP debate**

10:47 AM Sep 16 2015

Donald Trump will play the lead role in the second Republican presidential debate tonight -- but his rivals are jockeying to steal his spotlight. Here are seven things to watch in tonight's debate, according to CNN.



**Celebrity beards**

10:13 AM Sep 16 2015

In honor of World Beard Day 2015, here are some celebrities who sport (or sported) facial hair.



**10 most snubbed Olympic cities**

9:53 AM Sep 16 2015

Five-time failed bidder Budapest is one of five cities officially bidding for the 2024 Olympics. Hoping that the sixth time will be the charm for the Hungarian capital, take a look at the 10 cities that have been most often snubbed as Summer Olympics hosts.



**Community searches for survivors following flash flood**

9:10 AM Sep 16 2015

Authorities and residents search for missing people after a flash flood washed away vehicles in Hildale, Utah.



**Playboy's Top 10 party schools of 2015**

11:04 AM Sep 15 2015

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10:10 AM Sep 15 2015

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EXHIBIT “C”

EXHIBIT “C”

02:27:06 **1 I have done a lot of research on this particular**  
 02:27:08 **2 topic.**  
 02:27:09 **3 Q.** If you can, would you please describe to  
 02:27:15 **4 the Court why you feel that it's worth your time**  
 02:27:17 **5 to study these issues in the position you have.**  
 02:27:21 **6 What do you consider to be your responsibilities**  
 02:27:24 **7 with regard to this question?**  
 02:27:28 **8 A. I think that starts with my**  
 02:27:30 **9 responsibility as a City Council member per our**  
 02:27:34 **10 Charter. I'm responsible--the Council is a**  
 02:27:36 **11 legislative body. It's a policy-making body in**  
 02:27:39 **12 local government, and we obviously also review and**  
 02:27:42 **13 adopt the budget.**  
 02:27:44 **14 But I have a specific responsibility to**  
 02:27:46 **15 the health and security and welfare of my**  
 02:27:49 **16 constituents under the Charter. And given that**  
 02:27:54 **17 responsibility, it's very important to me to, you**  
 02:27:57 **18 know, be as knowledgeable as I can be about the**  
 02:28:00 **19 issues in front of the Council.**  
 02:28:03 **20 Q.** Have you entertained input from  
 02:28:05 **21 constituents over the last year or two?**  
 02:28:08 **22 A. Absolutely.**  
 02:28:09 **23 Q.** On this issue?  
 02:28:09 **24 A. Absolutely.**  
 02:28:10 **25 Q.** And have you spoken and participated in  
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02:28:13 **1 public meetings and so forth?**  
 02:28:15 **2 A. Yes.**  
 02:28:17 **3 Q.** Did you participate in a deposition where  
 02:28:20 **4 counsel for Defendants had an opportunity to**  
 02:28:23 **5 question you about this case?**  
 02:28:25 **6 A. Yes.**  
 02:28:26 **7 Q.** And that occurred in January of this  
 02:28:28 **8 year?**  
 02:28:29 **9 A. I believe that's the case.**  
 02:28:32 **10 Q.** Based on the information you have and  
 02:28:35 **11 whatever research and thinking you've done on your**  
 02:28:38 **12 own, how would you describe why, if it is true,**  
 02:28:44 **13 that you believe the City should acquire the**  
 02:28:46 **14 system?**  
 02:28:47 **15 A. I have spoken about this matter many**  
 02:28:51 **16 times and I keep coming back to sort of the same**  
 02:28:54 **17 three key areas. I do strongly support municipal**  
 02:28:59 **18 ownership of the water system.**  
 02:29:01 **19 And those three key areas that I have**  
 02:29:03 **20 spoken to the most and always come back to, have**  
 02:29:06 **21 to do with transparency of the decision-making**  
 02:29:11 **22 that's involved with the operation of the system**  
 02:29:16 **23 and the capital expenditures that are necessary to**  
 02:29:18 **24 sustain the system. I have spoken about bringing**  
 02:29:22 **25 the system into compliance with what I see to be**  
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02:29:27 **1 best management practices indicators, performance**  
 02:29:31 **2 indicators--**  
 02:29:32 **3 MS. DESOTO: Objection, Your Honor. He's**  
 02:29:34 **4 giving expert testimony. He's not a disclosed**  
 02:29:37 **5 expert.**  
 02:29:37 **6 THE COURT: No, I don't think this is**  
 02:29:39 **7 expert testimony.**  
 02:29:41 **8 MS. DESOTO: Thank you, Your Honor.**  
 02:29:48 **9 A. And I have also spoken about the needs**  
 02:29:54 **10 that everyone seems to recognize for the millions**  
 02:29:57 **11 of dollars of capital investment into the system,**  
 02:30:00 **12 and to make sure that's done in a way that doesn't**  
 02:30:03 **13 break the backs of ratepayers. And so that's my**  
 02:30:09 **14 consideration.**  
 02:30:09 **15 Q.** (By Mr. Schneider) Do you have any  
 02:30:10 **16 understanding as to whether capital will need to**  
 02:30:13 **17 be invested in this system no matter who owns it?**  
 02:30:17 **18 A. Yes.**  
 02:30:17 **19 Q.** What is your understanding?  
 02:30:18 **20 MS. DESOTO: Objection, Your Honor. This**  
 02:30:20 **21 is expert testimony.**  
 02:30:20 **22 THE COURT: No, I think a layperson can**  
 02:30:28 **23 have an understanding that money may need to be**  
 02:30:31 **24 spent. Right?**  
 02:30:34 **25 MS. DESOTO: Thank you, Your Honor.**  
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 1-800-735-5498/406-543-6447

02:30:36 **1 A. Can you repeat the question?**  
 02:30:38 **2 Q.** (By Mr. Schneider) Perhaps. Let me add  
 02:30:39 **3 one more question before that one.**  
 02:30:43 **4 Why don't you give me a yes or no, if you**  
 02:30:45 **5 can, to this.**  
 02:30:46 **6 Do you have an understanding of whether**  
 02:30:47 **7 or not capital will need to be invested,**  
 02:30:50 **8 regardless of who owns the water system?**  
 02:30:52 **9 A. Yes.**  
 02:30:52 **10 Q.** Has that understanding informed your  
 02:30:55 **11 evaluation and ultimate decision as to whether or**  
 02:30:58 **12 not, as an elected City official, you should**  
 02:31:00 **13 support or not support the acquisition?**  
 02:31:02 **14 A. Yes.**  
 02:31:03 **15 Q.** What is your understanding?  
 02:31:04 **16 A. My understanding--and part of this**  
 02:31:08 **17 understanding is formed from listening to Mountain**  
 02:31:11 **18 Water's chief engineer speak on Public Radio when**  
 02:31:15 **19 there was an American Water Works conference here,**  
 02:31:17 **20 and talked about the need for capital investments**  
 02:31:21 **21 in the system.**  
 02:31:22 **22 Part of this is based on Mr. Dove's very**  
 02:31:26 **23 clear indication in Public Service Commission**  
 02:31:29 **24 testimony that their due diligence had turned up**  
 02:31:32 **25 the need for investment in the system due to**  
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02:31:35 **1** leakage issues.  
02:31:36 **2** And then it's from my own research that  
02:31:38 **3** clearly indicates that millions of dollars over  
02:31:41 **4** time are going to be necessary to sustain the  
02:31:43 **5** system and bring the system into compliance with  
02:31:47 **6** best management practices.

02:31:51 **7** **Q.** Does the opportunity to have the City be  
02:31:55 **8** involved in long-term planning and approval or  
02:31:58 **9** nonapproval of capital expenditures enter into  
02:32:03 **10** your calculus?

02:32:04 **11** **A.** Yeah. It's actually another item that  
02:32:06 **12** I've mentioned. I've always talked to people  
02:32:09 **13** about the fact that this is a system--it's a piece  
02:32:11 **14** of infrastructure that has served the community  
02:32:15 **15** for decades and needs to serve the community for  
02:32:17 **16** decades to come, hopefully centuries to come.

02:32:20 **17** And long-range ownership, long-term  
02:32:24 **18** ownership and stability of ownership, in my mind,  
02:32:27 **19** clearly goes to best serving the needs of a system  
02:32:33 **20** that needs to be in service for that kind of a  
02:32:35 **21** time frame.

02:32:36 **22** **Q.** In general, what is your understanding as  
02:32:39 **23** to where in particular, if you know, the system  
02:32:41 **24** needs replacement/rehabilitation?

02:32:45 **25** **A.** I'm very familiar with the data that's  
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02:34:14 **1** on Pine Street, 140 West Pine. And we meet in  
02:34:20 **2** committees on Wednesday and we meet in the Council  
02:34:23 **3** on Monday evenings and we do that just about every  
02:34:26 **4** week. And that's in addition to obviously being  
02:34:31 **5** open to my constituents on pretty much a 24/7  
02:34:34 **6** basis.

02:34:35 **7** But, principally, the decision-making,  
02:34:37 **8** the review of budgets, the review of operations,  
02:34:40 **9** all the things that we do on Council with every  
02:34:41 **10** other aspect of City operations happens in a  
02:34:45 **11** really public and transparent way.

02:34:48 **12** **Q.** If I tell you that today the PSC,  
02:34:53 **13** 90 percent of the water customers that it  
02:35:01 **14** regulates are the citizens in the Missoula water  
02:35:04 **15** system, do you have any view as to whether or not  
02:35:06 **16** the absence of the PSC under municipal ownership  
02:35:10 **17** would be a benefit or a detriment?

02:35:13 **18** **A.** In my opinion the absence of the PSC  
02:35:16 **19** relative to this sort of governance of Missoula's  
02:35:20 **20** water system would be a benefit.

02:35:22 **21** **Q.** Why?

02:35:23 **22** **A.** I view the PSC oversight of the system as  
02:35:27 **23** being almost entirely reactive in its nature and  
02:35:32 **24** not proactive. I am very familiar with what the  
02:35:37 **25** PSC here, as well as similar bodies, do in other  
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02:32:50 **1** been provided about the system's leakage. And  
02:32:54 **2** also I've reviewed years of Mountain Water's  
02:32:57 **3** annual reports and looked at the percentage of the  
02:33:01 **4** system that is metered. I understand that about  
02:33:08 **5** 19 percent of the system remained unmetered at  
02:33:12 **6** this point. So the leakage issues, the metering  
02:33:14 **7** issues have been issues of particular concern to  
02:33:16 **8** me.

02:33:29 **9** **Q.** What particular benefits, if any, do you  
02:33:31 **10** see if the City acquires the water system with  
02:33:34 **11** respect to those things that you think need to be  
02:33:37 **12** done?

02:33:37 **13** **A.** What particular benefits from City  
02:33:39 **14** ownership?

02:33:40 **15** **Q.** Yes.

02:33:41 **16** **A.** You would have a long-term owner matched  
02:33:44 **17** to a system that needs to serve a community for  
02:33:48 **18** the long-term.

02:33:49 **19** You have an entity, the City, with costs  
02:33:54 **20** of capital that are lower than the cost of capital  
02:33:57 **21** of private ownership.

02:34:02 **22** And you have, I think, the greatest  
02:34:06 **23** transparency over decision-making that you could  
02:34:08 **24** hope to have. I have spoken on numerous occasions  
02:34:12 **25** about the fact that we do our business right over  
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02:35:43 **1** states with regards to rates and the way that  
02:35:47 **2** our--

02:35:47 **3** MS. DESOTO: Objection. This is expert  
02:35:49 **4** testimony, Your Honor.

02:35:50 **5** THE COURT: Sustained.

02:35:54 **6** **Q.** (By Mr. Schneider) Let me ask you a  
02:35:56 **7** different question.

02:35:57 **8** PSC has elected commissioners; is that  
02:36:00 **9** correct?

02:36:01 **10** **A.** They do. Five.

02:36:02 **11** **Q.** And of those five, are 90 percent of  
02:36:04 **12** those from Missoula?

02:36:06 **13** **A.** Are 90 percent of the--no.

02:36:08 **14** **Q.** Commissioners.

02:36:09 **15** **A.** No.

02:36:09 **16** **Q.** What percentage are from Missoula?

02:36:12 **17** **A.** Zero.

02:36:14 **18** **Q.** With respect to insurance, do you see any  
02:36:18 **19** detriment or benefit if the City owns the water  
02:36:21 **20** system?

02:36:23 **21** **A.** I see a likely benefit in terms of the  
02:36:25 **22** opportunity for pooling with our city employee  
02:36:32 **23** insurance programs.

02:36:33 **24** **Q.** Are you personally aware whether the City  
02:36:35 **25** today has such a pooling arrangement for other  
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EXHIBIT “D”

EXHIBIT “D”

MOUNTAIN WATER COMPANY

## Councilors debate city's effort to condemn Mountain Water Co.

JANUARY 12, 2015 6:30 PM • BY [KEILA SZPALLER](#)

It's clear the economic costs of condemnation are a risk to the public.

But what are the intangible risks of having Missoula's water, "a necessity of life," turned over to a foreign nation?

"If that doesn't give folks a moment of pause, I don't know what would," said Beverly McNamara.

McNamara participated in a sold-out City Club Missoula lunch on the topic of the city of Missoula's bid to condemn Mountain Water Co. City Club is a nonprofit with a mission to inform and inspire residents and promote new ideas.

At the DoubleTree Hotel, Councilors Bryan Von Lossberg and Adam Hertz debated the merits of the eminent domain case, and audience members posed questions.

The city of Missoula took the local utility and owner The Carlyle Group to court this spring to try to force a sale of the water company to the city. The global equity firm subsequently announced its plans to sell Mountain to a subsidiary of Algonquin Power and Utilities Corp., a Canadian conglomerate.

Both council members addressed McNamara's question about foreign control. Algonquin is based in Ontario, Canada, and Liberty Utilities is based in New Hampshire.

"We're not turning over the natural resource," Hertz said. "The state owns the natural resource for the benefit of the people."

Von Lossberg, however, said he sees "huge risks" with the proposed transfer. The sale to the Algonquin subsidiary, Liberty Utilities, is pending with the Montana Public Service Commission.

"This is a company that has not been around for the long haul," Von Lossberg said. "This is a company that has been on this billion-dollar acquisition spree for 18 months."

In fact, he said, Liberty is an unproven corporation that's been on a "tryout" in the financial market since 2009. It's easy to go on a buying binge, but far more difficult to do a good job managing the acquired companies, Von Lossberg said.

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**At the debate,** Von Lossberg made the case for public ownership. The water system is in ill repair, and he said the city would be in the best position to put the most money into fixing the pipes.

"Our water system, no matter who owns it, is going to require tens of millions of dollars of infrastructure investment over the next couple decades," Von Lossberg said.

Failing infrastructure is a pressing issue nationwide because of the age and material of pipes, he said. In general, he said, water systems are in need of "massive reinvestment."

"The industry calls it the replacement era. It's not business as usual," Von Lossberg said.

Additionally, Mountain's leakage rate is high, some 40 percent to 50 percent, he said. And he said Carlyle's managing director acknowledged to the Public Service Commission that leaks were high.

The plan to fix it, though, is shielded from the very people who use the water, Von Lossberg said: "The action plan for your water utility ordered by your Public Service Commission (has) been marked confidential."

City ownership would provide more transparency, he said.

Ownership by Liberty, on the other hand, might cost ratepayers a bundle, he said. In Pine Bluff, Arkansas, the company that wants to buy Mountain is requesting a 28 percent rate hike for water customers, he said.

"I see huge risk on the financial side with this company that's been proposed to be our new partners," he said.

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**Hertz said he isn't opposed** to municipal ownership, but he's against going about it through condemnation. In the 1980s, he said, the city tried and failed to condemn Mountain Water in a case that went to the Montana Supreme Court.

"They say those who forget the past are doomed to repeat it," Hertz said.

He is open to city ownership at the right price and through fair negotiation, Hertz said. On the other hand, he is not in favor taking a private property owner to court an attempt to force a sale.

"If we lose, the city has to come up with the money, and there are a few tricks I suppose the city has up its sleeve, all of which draw money from taxpayers," Hertz said.

If the city wins, it plans to roll its legal costs into a bond that will pay for the entire transaction. If the city loses, it will have to come up with millions of dollars in legal fees, Hertz said.

So far, the city is on the hook for some \$1.4 million in legal fees, and a judge could order the city pay at least some of the defendants' bills, too, he said. Mountain recently reported its legal bills had hit \$1.4 million, and Carlyle's costs were at \$700,000.

"I'm not sure we have a Plan B if this goes on for years and years," Hertz said.

The city wants to redirect profit into pipes if it owns the company. Hertz, though, said the profit could very well go into making the city's interest payments instead.

"There's a lot of questions that haven't been answered for me as far as the city's operating plan," Hertz said. "Does the city have the ability to increase capital expenditures without increasing rates?"

In the meantime, he represents constituents who aren't even Mountain Water customers. He said hundreds, possibly as many as a thousand, are on private systems.

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**One audience member** wanted to know how much more money the city could put into fixing pipes as opposed to the roughly \$4 million a year Mountain has spent under Carlyle.

Based on a purchase price of \$60 million to \$80 million, the city could put at least \$4 million into infrastructure at current rates, Von Lossberg said. He said he would advocate for a higher amount, possibly \$4.5 million.

Said the audience member: What about at a \$110 million purchase price?

In the announcement of the pending sale, Algonquin noted a proposed purchase price of \$327 million for three water companies including Mountain. Mountain accounts for roughly a third of all the customers in the package deal.

The city of Missoula believes the company is worth less; it offered \$50 million and \$65 million to buy the utility before it went to court.

Hertz said he doesn't believe the purchase price is as low as the possible \$60 million to \$80 million presented to council members a year ago. "It's bound to be much, much higher."

"In order to do capital improvements of \$4 million a year or more, then water rates would have to increase significantly," Hertz said.

Dan Brooks wanted the council members to identify the threshold at which the costs of condemnation exceed the revenue advantages over the life of the bond. Councilors, though, did not have a specific number.

"I don't know what that exact amount is," Von Lossberg said.

Hertz said a detailed financial analysis with the figure was not available.

"It's an excellent question," Hertz said.

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**Walt Muralt** wanted to know the fear behind continued private ownership. Under the current structure, he said, the public has a voice with the Public Service Commission.

One concern is the potential for a massive failure of the system, or multiple breakdowns, Von Lossberg said. Another is the inordinate amount of water leaking from the pipes – he said 50 percent is a problem in and of itself, and it's also a problem if it indicates the overall health of the system.

"It's not even close to what you would consider industry standards," Von Lossberg said.

The trial is in March, but Geoff Badenoch said the case will surely be appealed, as it was in the 1980s. He asked for "an upside figure on the legal costs" and the city's exposure.

Von Lossberg said the final amount will depend on judgments and appeals. He also said the defendants' legal strategy has been less about the merits of public ownership as it has been a plan to outspend the city.

In response to the question, Hertz said the city's exposure is one of his biggest worries with condemnation.

"I think the city is lacking a risk management plan, and I'm very concerned about that," Hertz said.

EXHIBIT “E”

EXHIBIT “E”



CITY OF MISSOULA VS. MOUNTAIN WATER CO. AND THE CARLYLE GROUP

## Missoula residents rally for public ownership of the water system



MARCH 17, 2015 6:00 PM • BY [KEILA SZPALLER](#)

One supporter of a public water utility pulled a bicycle trailer filled with clean mugs and a dispenser.

A soggy sign on the dispenser parked on the Missoula County Courthouse lawn said this: "Water. Stay hydrated."

On the side of the trailer, a colorful plaque had these words along with painted blue drops: "Water for the people (We are made of water!)"

On the eve of the trial between the city of Missoula and Mountain Water Co. and The Carlyle Group, an estimated 50 people gathered Tuesday on the courthouse lawn, most to show their support for local ownership of the water company.

Speakers thanked Mayor John Engen and Missoula City Council members for their pursuit of the company, blasted multinational firms such as Carlyle, and repeated their mantra that water in the Missoula aquifer should be for people in the Missoula Valley.

"Whose water?" said various speakers.

"Our water," yelled the crowd.

Samuel Thompson carried a sign that read "Flush Carlyle," and the Missoula resident and Mountain Water customer said he wants the city, not the global equity firm, to own the water company.

Carlyle bought the company in 2011.

"The bonus for corporations is to have customer satisfaction and ensure low rates, and that's going to be the city's No. 1 priority," said Thompson, an environmental studies student at the University of Montana. "I also like the fact that the water utility will be held accountable blocks and not miles away through the PSC's process."

Currently, the Montana Public Service Commission in Helena regulates the water utility.

Dodie Andersen, who wore a sticker that said "Take Back the Tap," said she doesn't think water should yield profits to investors out of state, much less out of the country.

Carlyle has proposed to sell Mountain to a Canadian corporation, Algonquin Power and Utilities Corp.

"It's a basic vital resource that everybody needs," said Andersen, a retired teacher who lives in Missoula.

Council members were among those who took the microphone on the blustery afternoon. Councilman Jason Wiener said when powerful corporations want something, government generally opens the door, but in Missoula, the fight was on.

"When they don't, you get what we have right here. You get frivolous legal filings tossed out from the court, one after another. You get PR hacks, full-page ads, Facebook campaigns putting out slanted messaging," Wiener said. "The fact is the water underneath this valley belongs in the trust of the people of this valley. It does not exist to be extracted for profit."

Neva Hassanein, who teaches in the environmental studies program at the University of Montana, drew parallels between Big Agriculture and corporations turning a profit over water. She also thanked Engen and the council members who support the quest for municipal control.

"I'm so glad that we have elected officials who are willing to hold one of the most powerful corporations in the world accountable. I am proud of them for speaking truth to power," Hassanein said.

Councilman Bryan Von Lossberg, who has been studying Algonquin and subsidiary Liberty Utilities, said those companies make their motives and priorities clear in presentations posted on their website.

"In Mountain Water, they see an opportunity to take advantage of aging infrastructure, to deploy more capital with low risk, to deliver higher returns," Von Lossberg said.

Utilities need capital investments, he said, and he isn't opposed to profit. However, Von Lossberg said aspiring owner Algonquin makes it clear the consumer, the water user, is an afterthought in the equation.

"There's a last bullet point," Von Lossberg said of one presentation he viewed. "And that bullet point starts out by saying, 'Bonus.' This will lead to customer satisfaction and system reliability. A bonus."

The trial begins 9 a.m. Wednesday in Missoula County District Court, with Judge Karen Townsend presiding.

In a tweet, Councilman Adam Hertz, who has opposed the city's lawsuit, noted the trial will be streamed live on the city of Missoula's website, [ci.missoula.mt.us](http://ci.missoula.mt.us), and on MCAT, Missoula Community Access Television.

The Missoulian also will provide live coverage, via Twitter, on Missoulian.com and will link to the live stream as well.

The rally was organized by UM Climate Action Now, UM Take Back the Tap, Free Cycles and the Montana Student Activism Association.

EXHIBIT “F”

EXHIBIT “F”

MOUNTAIN WATER CO.

## PSC postpones Mountain Water proceedings, citing 'difficulties'



SEPTEMBER 02, 2015 5:45 AM • BY [MARTIN KIDSTON](#)

The Montana Public Service Commission will not consider the sale of Missoula's drinking water system to Liberty Utilities Co. as planned this October, saying information needed to hold the hearing has not been made available to the city for review.

Citing "difficulties" in the Canadian company's data releases, the PSC said Tuesday that it will suspend an October hearing date. A replacement schedule will be issued in coming weeks, the commission said.

"The city of Missoula has not reviewed the information, and must be able to do so in order to formulate its testimony," said Eric Sell, communications director for the PSC. "The commission hoped that the two parties (Liberty and the city) would be able to resolve this dispute among themselves, but unfortunately, they have been unable to do so."

Tuesday's decision by the PSC comes one week after it granted Liberty special protections regarding proprietary information it had compiled in its quest to purchase Mountain Water.

At the same time, however, the commission has said that such information, including Liberty's financial models and due diligence, should be available for review by the city of Missoula at the Crowley Fleck law office.

But attorneys representing the city have maintained that Liberty hasn't made the information available. As a result, the city asked Missoula County District Court last week to assert jurisdiction in the case.

In its request, the city asked the court to stay the PSC proceedings, saying it had been denied "a meaningful opportunity to participate" in the process.

"Liberty has not provided access to its financial models, and as far as I understand it, to the Montana Consumer Counsel, under acceptable arrangements," Ward 1 council member Bryan von Lossberg said Tuesday. "Liberty claims they've made it available, but under a set of requirements and constraints that are unacceptable."

The city also believes that District Court has already granted it constructive ownership of Mountain Water, making the PSC's hearing with Liberty irrelevant.

District Court Judge Karen Townsend has already scheduled a valuation hearing for

November in the city's quest to own the water system. A panel of three water commissioners will attempt to place a value on Mountain Water for the city to consider.

“It makes zero sense for the PSC to consider that transaction (with Liberty), given where we are in our process,” Mayor John Engen said last week. “The city already has constructive ownership of Mountain Water. The PSC is wasting its time because of that constructive ownership.”

After the PSC granted Liberty special protection, PSC Commissioner Travis Kavulla issued a dissenting opinion, suggesting that Mountain Water’s alleged "service issues" were the “gateways” through which a regulated utility, such as Liberty, would “project growing profits.”

Von Lossberg believes Liberty’s owner, Algonquin Power & Utilities Corp., of Canada, is calling the shots, and that Liberty is withholding its financial models to hide its projected profits from city leaders and Missoula ratepayers.

“Algonquin’s interests in this system are clear,” von Lossberg said. “They see a system in need of millions of dollars in investment and to them, that’s a mechanism to profit by. It ties into the financial models that Liberty has withheld.”

Liberty and Algonquin didn’t return requests for comment on Tuesday.