

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

* * * * *

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

**DATA RESPONSES OF THE MONTANA CONSUMER COUNSEL
TO LIBERTY UTILITIES CO. AND LIBERTY WWH, INC.'S
(LIBERTY-053 THRU LIBERTY-087)**

Liberty-053 RE: Wilson's Economic Analysis, Wilson Testimony, page 5, lines 12-13.

Please identify all other instances over the past ten (10) years in which you have appeared before the Commission and submitted sworn testimony regarding "the financial features" of a proposed acquisition without reviewing the financial features of the proposed acquisition provided by joint applicants in response to data requests.

RESPONSE:

As discussed and described in my testimony, I have reviewed what I believe to be the key financial features of the proposed acquisition as those features have been publicly revealed by APUC in other contexts, despite APUC's refusal to make such public disclosure in this case. To my knowledge, in all previous cases in which I have participated before this Commission, responses to data requests were provided openly or under protective agreements, not containing special provisions, which I and the MCC found agreeable. As I have testified, that was not the case here. Please see response to PSC-049 (c) for a more complete discussion of this matter.

LIBERTY UTILITIES
Docket No. D2014.12.99
Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-054 RE: Workpapers and Source

Provide all John Wilson's work papers, notes and correspondence with MCC staff or counsel.

RESPONSE:

Dr. Wilson's work has been fully shown in his testimony. He has no notes. Objection to the request for correspondence with MCC staff or counsel. The basis for the objection is set forth more fully in the accompany brief which also includes a motion for a protective order and an alternative motion for additional time to prepare a privilege log if the objection is over-ruled. .

LIBERTY UTILITIES
Docket No. D2014.12.99
Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-055 RE: Wilson Testimony, pages 6-7
Witness: John Wilson

- a. What is your understanding of Mountain Water Company's existing capital structure in terms of debt and equity as approved by the Montana Public Service Commission?
- b. What is your understanding as to the amount of debt held by Mountain Water Company for regulatory purposes and what are the terms and conditions of such debt?
- c. What is Mountain Water Company's cost of debt approved by the Montana Public Service Commission? Please provide the basis for your answer.
- d. Admit that the Montana Public Service Commission does not have the authority to alter or change Mountain Water Company's approved cost of capital and/or capital structure outside of a full general rate case?
- e. Admit that if the Montana Public Service Commission altered or changed Mountain Water Company's capital structure or cost of capital as part of this approval docket, such action would be equivalent to an acquisition adjustment in violation of Commission rules, laws and/or precedent.

RESPONSE:

- a. Please see PSC-041(b) which states the capital structure used by the MPSC in setting Mountain Water's rates.
- b. Please see response to part (a) of this question.
- c. Please see Order No. 7251c in PSC Docket No. D2012.7.81.
- d. Dr. Wilson does not agree with this assertion and therefore it is denied. However, his proposal in this case concerns the pass-through of acquisition enabled finance cost savings using a monthly bill credit, and that does not necessitate the Commission's adoption of a changed ratemaking capital structure.
- e. Dr. Wilson does not agree with this assertion and therefore it is denied. See responses to Liberty-057, 057(a), 057(b), 057(d) and 058.

LIBERTY UTILITIES
Docket No. D2014.12.99
Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-056 RE: Wilson Testimony, pages 6-7
Witness: John Wilson

On page 6-7 of your testimony, you state that “Because Carlyle’s equity capital has a Commission-authorized and ratepayer-funded cost of more than 16 percent (including income tax allowance, this acquisition financing will achieve a very large finance cost savings of about \$20 million per year for APUC.”

- a. What do you mean by “Commission authorized and rate payer funded cost of more than 16 percent? Please provide any and all documents supporting that statement and your answer.
- b. Provide any and all work papers supporting that statement, including spreadsheets, analyses and any and all other documents.
- c. Provide a copy of the regulatory decision where the Montana Public Service Commission approved the cost of equity capital of Carlyle at 16%?
- d. Admit that Mountain Water Company’s approved cost of equity is 9.75%. If you deny this request, explain in detail your denial.
- e. Admit that Mountain Water Company’s capital structure, cost of debt and cost of equity approved by the Montana PSC for utility plant used and useful in providing service does not change as a result of the Liberty acquisition financing. If you deny this request, please explain in detail the basis for your denial.

RESPONSE:

- a. Please see response to PSC-041(a)
- b. See response to MW/WWH-0110
- c. In PSC Docket No. D2012.7.81, Order No. 7251c, ¶ 34, the PSC approved an after tax ROE for Mountain Water of 9.8%. The conversion of this after tax ROE allowance into its before tax equivalent is explained in the response to part (a) of this question.
- d. The PSC states in data request PSC-041(a) that In PSC Docket No. D2012.7.81, Order No. 7251c, ¶ 34, the PSC approved an ROE for Mountain Water of 9.8%.

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Liberty-053 through Liberty-087

Liberty-056 continued

Assuming a 40% combined federal/state tax rate, the before tax equivalent of an after tax ROE of 9.75% is 16.25%

- e. I agree that Mountain Water's Commission approved capital structure does not change for this reason. Clearly, however, it is undeniable that the Company's capital costs do decline dramatically as the result of replacing \$160 million of capital costing 16% with \$160 million of capital costing 4.1%. The re-matching of these much lower financing costs with lower rates should be required by the Commission in any regulatory approval of this proposed acquisition. I do agree that without this Commission action it is unlikely that APUC will reduce its rates to reflect the new lower level of capital costs, and, as a consequence, Montana consumers would be deprived of just and reasonable cost of service rates.

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Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-057 RE: Acquisition-enabled Cost Savings, Wilson Testimony, page 7, lines 3-5; *see also* page 13, lines 7-11
Witness: John Wilson

On page 8 of your testimony, you state that “It is clearly Algonquin’s plan to fully recover the acquisition premium (and more) from Park Water’s rate payers, including Mountain Water customers in Montana.” Please explain exactly how Mountain Water Company would recover an acquisition premium paid by Liberty Utilities in a rate case before the Montana Public Service Commission.

- a. Admit that an acquisition premium would not be included in Mountain Water Company’s rate base in a future rate case. If you deny this request, please explain in detail the basis for your denial.
- b. Admit that Mountain Water Company’s approved capital structure and cost of capital is based on the capital structure and cost of capital used by Mountain Water Company in funding plant in service used by the Company in providing service to customers.
- c. Admit that the acquisition price to be paid by Liberty Utilities Co. is for the stock of Western Water Holdings. If you deny this request, please explain in detail your denial.
- d. Admit that the price paid for the stock of Western Water Holdings does not change the capital structure of Mountain Water Company or alter the cost of capital incurred by Mountain Water Company relating to plant in service. If you deny this request, please explain in detail the basis of your denial.

RESPONSE:

The Acquisition premium would be recovered by leaving in place rates that reflect a 16% capital cost when, in fact, those costs have been reduced to 4.1%.

- a. Dr. Wilson does not know what Mountain Water may attempt to include in its rates in a future rate case. Note, however, that APUC’s attempt to recover the acquisition premium here is not by inclusion in rate base, but by failing to credit ratepayers with acquisition enabled cost of capital reductions.

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Data Responses to
Liberty-053 through Liberty-087

Liberty-057 continued

- b. That is generally true. However, as a direct result of the proposed acquisition financing, these capital costs will decline dramatically. As Dr. Wilson has testified, Mountain Water's current rates have been found to be just and reasonable. Those rates are premised on a cost of service determination, including the current cost of capital to finance the utility. When and if those costs undergo substantial change, as would occur here, it is appropriate to change the rates so as to maintain their justness and reasonableness. Without a pass-through of acquisition-related cost savings to ratepayers, this acquisition, if implemented by means of financing that replaces a substantial part of the equity component of the prior owner's capital structure with lower cost capital, would result in rates in place at acquisition that are unjust and unreasonable as a result of the acquisition.
- c. While this appears to be the way in which the Applicants are attempting to present their deal in his proceeding, it is clear that APUC is the real acquiring entity in this case. As shown in Dr. Wilson's testimony and exhibits, APUC has arranged and controlled virtually all of the funding and organization for the acquisition of Park Water (and Mountain Water). APUC has also touted the Park Water/Mountain Water acquisition as APUC's acquisition in its press releases and in its reports to investors and stockholders. When the acquisition closes, if it is approved, APUC will house Park Water in its "Distribution Group," Liberty Utilities, to hold and supervise the operations of Park Water and Mountain Water for the benefit of APUC and its stockholders.
- d. The price paid does not change the capital structure or alter the cost of capital. However, the replacement of capital costing 16 percent with capital costing 4.1 percent brings about a dramatic reduction in financing costs, which must be passed through to ratepayers in order to maintain just and reasonable cost of service rates.

LIBERTY UTILITIES
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Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-058 RE: Acquisition-enabled Cost Savings, Wilson Testimony, page 7, lines 3-5;
see also page 13, lines 7-11
Witness: John Wilson

Please identify all requirements under Montana law, including statutes, administrative regulations, or legal opinions that require acquisition-enabled cost savings to be passed through to ratepayers as a necessary condition to gain regulatory approval?

RESPONSE:

The Montana Supreme Court has found and consistently applied the principle of matching rates and costs. See *Mt. Water Company v. Mont. Dep't of Public Serv. Regulation*, 254 Mont. 76, 79 (Mont. 1992), in which the Court noted:

In Montana, public utility rates are set to match utility costs during the period that rates are in effect. The utility, the Montana Consumer Counsel, the PSC, or other persons with standing may seek a rate change when the financial information indicates a mismatch. See § 69-3-301, MCA et seq.

Dr. Wilson's testimony is that pass-through of acquisition cost savings is essential in order to preserve the fundamental regulatory standard of cost-of-service regulation. In contradiction of these cost-of-service principles, it is apparently APUC's strategy in this case to retain these finance cost savings for its own benefit so as to enhance profits and to fund the substantial acquisition premium that Algonquin proposes to pay Carlyle. Although the Company has said that it does not intend to recover its Carlyle acquisition premium from Montana ratepayers, Algonquin's plans for financing the acquisition without passing through the merger-related finance cost savings to ratepayers is a de facto recovery of the acquisition premium from ratepayers.

Financing costs, including tax loadings, are by far the largest element of costs incurred by capital intensive utilities such as water companies. It is unquestionable logic that the failure to reflect actual finance costs in utility rates would be a fundamental violation of cost-of-service regulatory principles, resulting in rates that are neither reasonable nor just.

LIBERTY UTILITIES
Docket No. D2014.12.99
Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-059 RE: Acquisition Standards, Wilson Testimony, page 7, fn. 4
Witness: John Wilson

Please identify all Commission decisions in which it applied a net benefit standard analysis and/or relied upon local government official's "vehement opposition to the proposed acquisition."

RESPONSE:

Dr. Wilson has not undertaken the requested work nor made the requested tabulation.

LIBERTY UTILITIES
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Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-060 RE: Rate Increase, Wilson Testimony, page 8, lines 3-6
Witness: John Wilson

Please explain how the “burden” on rate payers will increase as a result of the proposed acquisition and without any subsequent rate case?

RESPONSE:

Montana utility ratepayers are unquestionably entitled to just and reasonable rates that reflect cost of service. As Dr. Wilson has observed, although the Joint Applicants, who would benefit immediately from the abandonment of just and reasonable cost-of-service ratemaking may argue that no *immediate* rate increase for consumers is consistent with the no harm standard, such a limited short term perspective would impose great harm over time due to the abandonment of cost-of-service rates and just and reasonable ratemaking principles.

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Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-061 RE: Limited Access, Wilson Testimony, page 9
Witness: John Wilson

Please describe information you believe has been denied to the commission as a result of APUC not being a party to this action.

RESPONSE:

Since APUC has not been a party to this proceeding, it is not possible to identify all of the information that has been withheld from the Commission. One potentially important category of information that has been denied is a full understanding of the Strategic Investment Agreement between Emera and APUC, in support of what APUC calls “the acquisition by APUC of Park Water Company *in Montana.*” The proceeds of this subscription are said to be intended to be used by APUC to partially finance the Park Water Acquisition in Montana, and Emera may convert the Subscription Receipts into common shares of APUC on a one-for-one basis. The related issue of Emera’s potential acquisition of APUC has also not been explored and it is unclear whether Emera is any longer barred from acquiring an even larger stake in (or all of) APUC by the standstill agreement that had previously been related to the Strategic Investment Agreement. Further, there has not been clear transparency regarding APUC’s other holdings, such as Silverleaf Resorts, Red Lily, the Minnesota wind farm with an admitted \$312 million of exposure, and the long term non-recourse debt of New England Gas, Peach Tree Gas, the Pine Bluff (Arkansas) water system to which Liberty is exposed in addition to unspecified investments by its revolving credit facility.

LIBERTY UTILITIES
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Data Responses to
Liberty-053 through Liberty-087

Liberty-062 RE: Acquiring Entity, Wilson Testimony, page 9, line 17
Witness: John Wilson

Please define the term “real acquiring entity” as used in your testimony.

RESPONSE:

The real acquiring entity is the entity (here, APUC) that has arranged, managed, organized, evaluated, financed, implemented, promoted and controlled this deal – and which in all likelihood will continue to be in control in the future.

LIBERTY UTILITIES
Docket No. D2014.12.99
Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-063 RE: Fitness to Serve, Wilson Testimony, page 10, lines 11-15
Witness: John Wilson

Please specifically identify all instances in which the Commission has analyzed the “fitness to serve” of a non-party to a proposed acquisition.

RESPONSE:

It is extremely misleading and incorrect to characterize APUC as a non-party to this acquisition. As is clearly shown in APUC’s own documents presented in Dr. Wilson’s exhibits and in APUC’s Annual Report to its stockholders, as quoted in Dr. Wilson’s testimony, it is without question that APUC has arranged, managed, organized, evaluated, financed, implemented, promoted and controlled this proposed acquisition. All of the evidence, including APUC’s Annual Report to stockholders and the exhibits to Dr. Wilson’s testimony, make it clear, beyond any doubt, that APUC is the real acquiring party. If the proposed acquisition is approved in this case, it is very important for the protection of future water utility ratepayers in Montana that the Commission is clear about this matter and that it asserts regulatory authority over the ultimate parent Canadian utility holding company as well as over APUC’s designated utility operator.

LIBERTY UTILITIES
Docket No. D2014.12.99
Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-064 RE: Corporate Treasury, Wilson Testimony, page 10, lines 18-20
Witness: John Wilson

Please identify the basis for your statement that “Liberty is not the corporate treasury to which the [Mountain Water] will need to look for financial support from time-to-time.”

RESPONSE:

Please see the exhibits to Dr. Wilson’s testimony and APUC’s Annual Report to its stockholders. Also see responses to Liberty-057, 062 and 063 above.

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Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-065 RE: Corporate Treasury, Wilson Testimony, page 10, lines 18-20
Witness: John Wilson

Please produce all documents you relied upon in formulating your answer to the preceding data request.

RESPONSE:

The documents are cited and provided in Dr. Wilson's testimony. APUC has its own Report to Stockholders.

LIBERTY UTILITIES
Docket No. D2014.12.99
Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-066 RE: Fitness to Serve, Wilson Testimony, page 11
Witness: John Wilson

Please describe other situations in Montana of which you are aware where the non-regulated parent or holding company is subject to regulatory jurisdiction of this commission.

RESPONSE:

Please see response to Liberty-063, above. The status of the acquiring entity here as regulated or otherwise has not been determined and that determination is not for the utility to make, but for the Commission. See § 69-3-101, MCA.

LIBERTY UTILITIES
Docket No. D2014.12.99
Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-067 RE: Strategic Investment Agreement, Wilson Testimony, page 11, lines 7-
13
Witness: John Wilson

Please specifically identify why the Strategic Investment Agreement is an “additional matter of concern to Montana ratepayers that must be fully evaluated by the Commission in addressing the merits of this proposed acquisition and fitness to serve issues in this case.”

RESPONSE:

Please see response to PSC-047.

LIBERTY UTILITIES
Docket No. D2014.12.99
Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-068 RE: Strategic Investment Agreement, Wilson Testimony, page 11, lines 7-20

Witness: John Wilson

Please identify any portion of Montana law, including statutes, administrative rules, or Commission decisions that would require an agreement between two non-parties to a proposed acquisition (such as the Strategic Investment Agreement) to be disclosed in order to create a “complete Application.”

RESPONSE:

As discussed in detail in Dr. Wilson’s testimony and in other data responses above, it is incorrect to characterize APUC as a non-party to the proposed acquisition. Further, since Emera is providing APUC with the equity capital for the acquisition, which will, in turn, enable Emera to acquire an increased ownership interest in APUC, it is not clear that Emera should be viewed as a non-party. Also, please see responses to PSC-044(a), PSC-047, Liberty-057(c) and Liberty-061.

LIBERTY UTILITIES
Docket No. D2014.12.99
Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-069 RE: Acquisition Financing, Wilson Testimony, page 13, lines 5-7.
Witness: John Wilson

Please define the term “central financial feature of the proposed acquisition” as used in your testimony.

RESPONSE:

The central and most important financial feature of the proposed acquisition is Algonquin Power and Utilities’ (“APUC”) plan to finance the proposed purchase of most of Carlyle’s ownership of Park Water’s common equity capital with much lower cost capital, and to retain the finance cost savings for its own financial benefit. This central financial feature will enable annual finance cost savings to APUC, amounting to approximately \$20 million each year. Contrary to long standing cost-of-service regulatory principles that govern public utility ratemaking in Montana and have for many decades, Algonquin does not propose to pass through or share these substantial cost savings with its water utility ratepayers.

These finance cost savings are a central and most important financial feature of the proposed acquisition because they will provide very large and above cost financial gains to APUC’s stockholders (and corresponding cost-of-service overcharges to water utility ratepayers) on an ongoing basis. They will also fund the acquisition premium that APUC proposes to pay to Carlyle.

LIBERTY UTILITIES
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Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-070 RE: Acquisition Financing, Wilson Testimony, page 13, lines 5-7.
Witness: John Wilson

Please identify any Montana law, including statutes, administrative rules, or Commission decisions that supports your answer to the preceding data request.

RESPONSE:

See response above to Liberty-058.

LIBERTY UTILITIES
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Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-071 RE: Financing Plan, Wilson Testimony, pages 15-16
Witness: John Wilson

Please explain the basis for your statement that Carlyle would have required regulatory approval to refinance its equity with the debt.

RESPONSE:

Please see responses to Liberty-069 and 070.

LIBERTY UTILITIES
Docket No. D2014.12.99
Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-072 RE: Financial Gain, Wilson Testimony, page 16, lines 6-9; *see also* page 17, lines 5-14
Witness: John Wilson

Please explain how Mountain Water consumers could ever pay a “higher cost” for their water utility without a rate case occurring first?

RESPONSE:

Please see responses above to Liberty-057 and 058.

LIBERTY UTILITIES
Docket No. D2014.12.99
Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-073 RE: Financial Gain, Wilson Testimony, page 16
Witness: John Wilson

Please describe the basis for your assertion that ratepayers would receive the benefit of lower cost debt without a rate case?

RESPONSE:

If, as is generally the case, regulatory approval requires, as it should, that acquisition cost savings be passed through to ratepayers, consistent with cost-of-service public utility ratemaking and the maintenance of just and reasonable rates, ratepayers would receive the benefit of finance cost savings. This can be accomplished with bill credits for acquisition cost savings as a condition for acquisition approval in this case and does not require a new general rate case.

LIBERTY UTILITIES
Docket No. D2014.12.99
Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-074 RE: Wilson’s Exhibits, Wilson Testimony, page 19, lines 12-14.
Witness: John Wilson

Please admit that Algonquin has not “extensively revealed and publicized the financial details of its acquisition analysis in other contexts.”

RESPONSE:

This is not true. Despite its claims in this proceeding that its acquisition modeling is proprietary and contains confidential trade secrets, detailed statements regarding APUC’s modeling have been publicly disseminated by the Company in other venues where that dissemination suited the Company’s purposes. This evidence is presented and discussed in Dr. Wilson’s testimony. For example, Exhibit JW-1 attached to Dr. Wilson’s testimony is an April 30, 2015 Algonquin Power and Utilities press release concerning \$160 million of low cost (4.13%), long term (30 year) financing to partially fund APUC’s proposed acquisition of Park Water/Mountain Water. As Dr. Wilson testified, APUC’s Chief Financial Officer, David Bronicheski was quoted in this press release as stating that “This long term 30 year financing, with a very attractive all in coupon, is an important element in achieving the *expected accretion* from our pending acquisition of the Park Water System” (emphasis added).

APUC’s strategy to substantially buy out Carlyle’s equity with low cost debt is further confirmed at page 2 of Exhibit JW-2, where APUC states that “APUC’s strong balance sheet and credit metrics support financing the acquisition with more than 50% debt.”

Further, as shown in Exhibit JW-2, an “Acquisition Fact Sheet” pertaining to this acquisition, which APUC provided to its investors on September 19, 2014, the Company revealed that at the proposed purchase price of \$327 million (including \$77 million of debt assumption), the Company’s financial modeling projected an Enterprise Value/EBITDA ratio for 2016 of 9.6 times. The Company has also revealed in this Fact Sheet that over the longer forecasted period 2016-2020 its acquisition financial modeling indicates that an EBITDA compound annual growth rate (“CAGR”) of about 7.5 percent could be attained.

LIBERTY UTILITIES
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Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-075 RE: Acquisition Premium, Wilson Testimony, page 24
Witness: John Wilson

What is the basis for your assertion that Park Water/Mountain Water customers will pay the acquisition premium?

a. How does that violate rate regulation principles?

RESPONSE:

Although the Company has said that it does not intend to recover its Carlyle acquisition premium from Montana ratepayers, Algonquin's plans for financing the acquisition without passing through the merger-related finance cost savings to ratepayers is a de facto recovery of the acquisition premium from ratepayers. Since these finance cost savings will be approximately \$20 million annually, it is clearly Algonquin's plan to fully recover the acquisition premium (and more) from Park Water's rate payers, including Mountain Water's consumers in Montana.

The Montana Supreme Court has found and consistently applied the principle of matching rates and costs. See *Mt. Water Company v. Mont. Dep't of Public Serv. Regulation*, 254 Mont. 76, 79 (Mont. 1992), in which the Court noted:

In Montana, public utility rates are set to match utility costs during the period that rates are in effect. The utility, the Montana Consumer Counsel, the PSC, or other persons with standing may seek a rate change when the financial information indicates a mismatch. See § 69-3-301, MCA et seq.

Dr. Wilson's testimony is that pass-through of acquisition cost savings is essential in order to preserve the fundamental regulatory standard of cost-of-service regulation. In contradiction of these cost-of-service principles, it is apparently APUC's strategy in this case to retain these finance cost savings for its own benefit so as to enhance profits and to fund the substantial acquisition premium that Algonquin proposes to pay Carlyle.

LIBERTY UTILITIES
Docket No. D2014.12.99
Montana Consumer Counsel
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Liberty-053 through Liberty-087

Liberty-076 RE: Acquisition Premium, Wilson Testimony, page 24, lines 10-19
Witness: John Wilson

Please admit that the rates Mountain Water consumers actually pay will not change as a result of the proposed acquisition.

RESPONSE:

As a direct result of this proposed acquisition, the utility's capital financing costs will decline dramatically. As Dr. Wilson has testified Mountain Water's current rates have been found to be just and reasonable. Those rates are premised on a cost of service determination, including the current cost of capital to finance the utility. When and if those costs undergo substantial change, as they would in this proposed acquisition, it is appropriate to change the rates so as to maintain their justness and reasonableness.

Without a pass-through of acquisition-related cost savings to ratepayers, this acquisition, if implemented by means of financing that replaces a substantial part of the equity component of the prior owner's capital structure with lower cost capital, would result in rates in place at acquisition that are unjust and unreasonable as a result of the acquisition.

As Dr. Wilson has testified, although the Joint Applicants, who would benefit immediately from the abandonment of just and reasonable cost-of-service ratemaking may argue that no *immediate* rate increase for consumers is consistent with the no harm standard, it is obvious that such a limited short term perspective would impose great harm over time with the abandonment of cost-of-service rates and just and reasonable ratemaking principles.

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Docket No. D2014.12.99
Montana Consumer Counsel
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Liberty-053 through Liberty-087

Liberty-077 RE: Fitness to Serve, Wilson Testimony, page 29, line 12 to page 30, line 12

Witness: John Wilson

Please identify all other instances in which the Commission has determined that the proposed acquisition of a utility through a holding company created an issue concerning fitness to serve.

RESPONSE:

The issue in this case is not simply one of acquisition by a holding company. As Dr. Wilson has testified, there are some other situations where utility operating companies are, in turn, owned by holding companies. However, the circumstances here are sufficiently unusual, and potentially adverse to the public interest, to require some special attention. Liberty is a fully enmeshed and dependent intermediate holding company within APUC, which is not alone the proper subject of the fitness to serve analysis here. As discussed in Dr. Wilson's testimony, Liberty's status and operations as an intermediate holding company within the APUC organization is quite distinguishable from other holding company situations.

As is clearly shown in APUC's own documents presented in Dr. Wilson's exhibits and in APUC's Annual Report to its stockholders, as quoted in Dr. Wilson's testimony, it is without question that APUC has arranged, managed, organized, evaluated, financed, implemented, promoted and controlled all aspects of this proposed acquisition. All of the evidence, including APUC's Annual Report to stockholders and the exhibits to Dr. Wilson's testimony, make it clear, beyond any doubt, that APUC is the real acquiring party. These facts are further complicated by the Strategic Investment Agreement between APUC and Emera and the importance of Emera's financing of the water utility acquisition in Montana – despite the fact that there appears to be no direct or contractual relationship between Liberty and Emera. If the proposed acquisition is approved in this case, it is very important for the protection of future water utility ratepayers in Montana that the Commission becomes fully informed about these matters and that it asserts regulatory authority over the ultimate parent Canadian utility holding company as well as over APUC's designated utility operator.

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Montana Consumer Counsel
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Liberty-053 through Liberty-087

Liberty-078 RE: Fitness to Serve, Wilson Testimony, page 30
Witness: John Wilson

Please describe negative impacts of APUC's foreign corporate domicile you believe exists in this case.

RESPONSE:

The negative implications in this case are primarily related to the possibility of inadequate regulatory control and knowledge concerning key factors that are under the control of the foreign corporation. See response to Liberty-077, PSC-044, MW/WWH-0115 and Liberty-057 and 061 above.

LIBERTY UTILITIES
Docket No. D2014.12.99
Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-079 RE: Intermediate Holding Companies, Wilson Testimony, page 31
Witness: John Wilson

Please describe other situations of which you are aware regulated utilities are owned by intermediate holding companies and describe how the Liberty/APUC arrangement varies from that situation.

RESPONSE:

Dr. Wilson has not made the requested tabulation. See response to Liberty-077.

LIBERTY UTILITIES
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Montana Consumer Counsel
Data Responses to
Liberty-053 through Liberty-087

Liberty-080 RE: Fitness to Serve, Wilson Testimony, page 32
Witness: John Wilson

Please provide the basis for your statement that financial pressure on APUC could leave Liberty loaded with debt.

RESPONSE:

Please see the response to Liberty-061 and Dr. Wilson's direct testimony at pgs. 33-34.

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Liberty-081 RE: Entrepreneurial Risk, Wilson Testimony, page 32
Witness: John Wilson

Please define the term “unusual entrepreneurial risk” as used in your testimony.

RESPONSE:

Entrepreneurial risks are the risks of organizing and managing an enterprise. The entrepreneurial risks discussed at pages 32-34, which are primarily financial in nature, are unique to APUC.

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Liberty-082 RE: Undisclosed Principal, Wilson Testimony, page 32, lines 11-19
Witness: John Wilson

Is it Dr. Wilson's belief that all individuals or entities who hold stock in a parent company must submit to Commission jurisdiction when the parent company's subsidiary acquires a utility?

- a. If the answer to this data request is anything but an unqualified denial, please provide the legal basis for Dr. Wilson's belief, including but not limited to Montana statute, Montana administrative rule, or Commission decisions.

RESPONSE:

No. Dr. Wilson's testimony does not address individuals (or unspecified "other entities") who own stock in a company.

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Liberty-083 RE: Variable Interest Entity, Wilson Testimony, page 34
Witness: John Wilson

Please describe the risk to future operations of Mountain Water you contend may be created by APUC's ownership of the VIE in Minnesota.

a. Same question for Silverleaf and Red Lily.

RESPONSE:

Dr. Wilson has not investigated APUC's ownership of VIE in Minnesota. However, it is his understanding that although APUC is a majority investor in the facility, it does not control a majority of the voting shares of the entity. Further, according to APUC's Annual Report, this position poses significant economic risks, and APUC has acknowledged that it has a maximum exposure to a loss of \$312 million in this deal.

Similarly, Dr. Wilson has not investigated APUC's ownership of Silverleaf Resorts or Red Lilly. According to APUC's Annual Report, Silverleaf Resorts is a timeshare developer with borrowings at extraordinary interest rates, suggesting substantial risk. Red Lily is a wind facility in Saskatchewan to which APUC has also made significant construction advances, which are at risk if the project is not completed or does not perform as expected.

Further information on these entrepreneurial ventures may be obtained if APUC is recognized as a key participant in this case and is required to make full financial disclosure.

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Liberty-084 RE: Recourse Loans, Wilson Testimony, page 35
Witness: John Wilson

Please describe how the specific operating facility known recourse loans by other Liberty subsidiaries could impact the operations of Mountain Water post-closing.

RESPONSE:

The long-term debt to which Liberty is exposed in this fashion includes the acquisition costs for New England Gas, Peach Tree Gas, the Pine Bluff (Arkansas) water system and unspecified investments by Liberty's revolving credit facility. This debt has been issued at a subsidiary level relating to a specific operating facility and is secured by the respective facility with no other recourse to the APUC treasury. The loans have certain financial covenants, which must be maintained on a quarterly basis. Noncompliance with the covenants could restrict cash distributions/dividends from these specific facilities, creating a situation with limited financial liquidity.

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Liberty-085 RE: APUC Financial Statements, Wilson Testimony, page 35, lines 1-13
Witness: John Wilson

Please produce copies of all “financial statements” referenced in this testimony.

RESPONSE:

All financial statements mentioned in Dr. Wilson’s testimony are public financial statements that have been published by APUC and are, or should be, in the possession of the Company.

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Liberty-086 RE: Carlyle Group, Wilson Testimony
Witness: John Wilson

Please describe why The Carlyle Group's non-party status in the prior Mountain Water acquisition (Docket D2011.1.8) did not impact your ability to conduct an analysis in that case.

RESPONSE:

Carlyle fully responded to all requests for data and other information under reasonable conditions and did not present the issues and limitations that Dr. Wilson has discussed in this case pertaining to APUC.

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Liberty-053 through Liberty-087

Liberty-087 RE: Fitness to Serve, Wilson Testimony, page 39, lines 4-8
Witness: John Wilson

Please identify all instances in which the Commission has denied an application because an applicant's parent company did not participate in the proceedings.

RESPONSE:

Dr. Wilson is not aware of any other instance paralleling APUC's role in this acquisition wherein the entity that arranged, managed, organized, evaluated, financed, implemented, promoted and controlled all aspects of a regulated utility acquisition did not participate in the acquisition approval proceeding and take responsibility for its role in such acquisition.