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

* * * * *

IN THE MATTER OF the 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

DATA RESPONSES OF THE MONTANA CONSUMER COUNSEL TO MOUNTAIN WATER AND WESTERN WATER (MW/WWH-0102 THRU MW/WWH-0120)

MW/WWH-0102 RE: Direct Testimony of John W. Wilson.

Please provide all workpapers, studies, analyses, and other documents prepared, used, referred to, or relied upon by Dr. Wilson to support his testimony in this proceeding.

RESPONSE:

There are no additional workpapers.

MW/WWH-0103 RE: Direct Testimony of John W. Wilson, page 1, line 12 through page 2, line 15.

Has Dr. Wilson has ever testified on behalf of a utility? If yes, please provide copies of all testimony Dr. Wilson provided on behalf of utilities.

RESPONSE:

Yes. Dr. Wilson has testified on behalf of many utilities and utility trade associations, such as NRECA, EEI, and APPA, in both regulatory proceedings and in court proceedings. Please see Dr. Wilson's resume attached to this response, which lists cases in which he has testified. While Dr. Wilson does not have copies of those testimonies, they should be available from the referenced agencies.

MW/WWH-0104 RE: Direct Testimony of John W. Wilson, page 4, line 1.

In the regulatory and court proceedings dealing with mergers, acquisitions, and other financial matters where Dr. Wilson testified, please provide a list of the states, docket numbers, party on whose behalf you testified, whether the proceeding involved a water utility, and the general subject of your testimony.

RESPONSE:

Please see Dr. Wilson's response to MW/WWH-0103 and the attachment thereto.

MW/WWH-0105 RE: Direct Testimony of John W. Wilson, page 5, fn 1.

Is it Dr. Wilson's position that there is no difference between the various "Carlyle" entities and the various "Algonquin" entities? Please explain your answer in detail.

RESPONSE:

No. That is not Dr. Wilson's position. Please see Dr. Wilson's testimony and exhibits for discussion and descriptions of the Algonquin entities.

MW/WWH-0106 RE: Direct Testimony of John W. Wilson, page 6, lines 10-15.

a. Please identify all utility merger and acquisition proceedings where Dr. Wilson provided testimony and the administrative agency required the "passing through" of "acquisition-related cost savings to ratepayers."

b. Please provide copies of Dr. Wilson's testimony in the proceedings identified in response to subpart (a).

RESPONSE:

a. Please see response to MW/WWH-0103 and the attachment thereto, which identifies the utility merger and acquisition proceedings where Dr. Wilson provided testimony. Not all of those cases involved acquisition-related cost savings. The Commission Orders would identify instances where there were acquisition-enabled cost savings. It is Dr. Wilson's understanding that in those cases where Commissions found that there were acquisition-enabled cost savings regulatory provisions were established for the pass-through of cost savings to ratepayers.

b. Dr. Wilson does not have the requested copies, but they are publicly available and should be available from the agencies listed.

MW/WWH-0107 RE: Direct Testimony of John W. Wilson, page 6, lines 10-15.

Please identify any rules, regulations, statutes, Commission decisions, or other authority referenced or relied upon by Dr. Wilson to support his position that the pass through of acquisition-related cost savings is "required."

RESPONSE:

This conclusion derives directly from Dr. Wilson's understanding of cost of service regulation and the meaning of just and reasonable rates. While this would be reflected and documented in numerous regulations, decisions and other authority, Dr. Wilson's testimony is not premised on any tabulation of those documents.

Please note, in particular that 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. The failure to reflect

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actual finance costs in utility rates would be a fundamental violation of cost-of-service regulatory principles.

MW/WWH-0108 RE: Direct Testimony of John W. Wilson, page 6, lines 10-15.

Please provide all documents used, referred to, or relied upon by Dr. Wilson to support his position that the public interest or net-benefit to consumers standards are the appropriate standards for the PSC's review of the sale of Western Water stock.

RESPONSE:

As regards the three standards that regulatory commissions employ in evaluating sales, mergers, and acquisitions (the public interest standard, the no-harm to consumers standard, and the net-benefit to consumers standard) please see MPSC Order No. 6754e at P 20, In the Matter of the Joint Application of NorthWestern Corp. and Babcock & Brown Infrastructure Limited, Docket No. D2006.6.82 (August 1, 2007).

It is for the Commission to apply the appropriate standard in this case, and as it has stated, it can apply all three. As Dr. Wilson has testified, none of these standards is met in this case. First, no net benefit to consumers has been shown or demonstrated. Second, the loss of just and reasonable rates as the direct result of a public utility acquisition where many millions of dollars of acquisition-enabled finance cost savings are not passed through to ratepayers, but are instead retained as additional above cost profits for the benefit of the acquiring holding company and to fund a large acquisition premium for the current owner, cannot be deemed as being in the public interest. Finally, 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.

MW/WWH-0109 RE: Acquisition Premium

a. Please explain Dr. Wilson's understanding of the concept of an "acquisition premium" as used in Dr. Wilson's testimony.

b. Please provide all documents used, relied upon, or referred to by Dr. Wilson to support his understanding of what an "acquisition premium" is.

RESPONSE:

a. An acquisition premium is generally defined as an amount included in the acquisition price that exceeds the net book value of the acquired asset. It is often recorded as "goodwill" on the balance sheet of the acquiring entity.

b. The answer is based on Dr. Wilson's knowledge and experience. No particular documents were relied on.

MW/WWH-0110 RE: Direct Testimony of John W. Wilson, page 7, fn 3.

a. Is the calculation in footnote three the entire calculation of the alleged $19.2 million in savings that Dr. Wilson alleges Liberty will receive as a result of how the acquisition of Western Water is financed? If not, please provide a detailed explanation of how Dr. Wilson determined there would be approximately $20 million of finance cost savings as a result of the transaction.

b. Please produce all documents used, referred to, or relied upon in responding to subpart (a).

RESPONSE:

a. Yes.

b. There are no additional documents.

MW/WWH-0111 RE: Direct Testimony of John W. Wilson, page 8, lines 3-6.

Please provide all documentation used, referred to, or relied upon by Dr. Wilson to support his position that the proposed transaction should be evaluated under the "public interest" standard.

RESPONSE:

Generally, all decisions made by public utility commissions should be in the public interest. More specifically, Dr. Wilson has testified in this case that there are three standards that regulatory commissions employ in evaluating sales, mergers, and acquisitions: the public interest standard, the no-harm to consumers standard, or the net-benefit to consumers standard. Order No. 6754e at P 20, *In the Matter of the Joint Application of NorthWestern Corp. and Babcock & Brown Infrastructure Limited*, Docket No. D2006.6.82 (August 1, 2007). In this case none of these standards is met. See also the response above to MW/WWH-0108.

MW/WWH-0112 RE: Direct Testimony of John W. Wilson, page 10, line 18 through page 11, line 5.

a. Please explain the basis for Dr. Wilson's claim that financial support can be provided to Liberty's public utility operating companies "only if Algonquin has (1) submitted itself to the regulatory jurisdiction of this Commission with respect to the ownership and operation of Mountain Water, and (2) demonstrated its own financial and managerial fitness to own and operate this utility in Montana."

b. Please provide all documents used, referred to, or relied upon by Dr. Wilson in drafting the referenced portion of his testimony and responding to subpart (a) of this request.

RESPONSE:

a. Please see response to PSC-044 (a).

b. There are no additional documents.

MW/WWH-0113 RE: Direct Testimony of Dr. Wilson.

Admit Dr. Wilson does not claim that Mountain Water has provided inadequate service while owned by Western Water. If your answer is anything other than an unqualified admission, please explain in detail and identify the specific portions of Dr. Wilson's testimony where adequacy of service is addressed.

RESPONSE:

Dr. Wilson has not researched this question, and he does not make that claim or offer any opinion on the matter.

MW/WWH-0114 RE: Direct Testimony of Dr. Wilson.

Admit Dr. Wilson does not claim that Mountain Water will provide inadequate service if Liberty acquires the stock in Western Water. If your answer is anything other than an unqualified admission, please explain in detail and identify the specific portions of Dr. Wilson's testimony where adequacy of service is addressed.

RESPONSE:

Please see responses to PSC-044 (a), MW/WWH-0108, PSC-046 and PSC-047.

MW/WWH-0115 RE: Direct Testimony of John W. Wilson, page 10, lines 11-20.

a. Please describe in detail Dr. Wilson's understanding of the requirements for a determination of "fitness to serve."

b. Please identify any rules, regulations, statutes, Commission decisions, authority used, referred to, or relied upon to support Dr. Wilson's understanding of "fitness to serve."

RESPONSE:

a. Dr. Wilson has testified that fitness to serve is a component of the Commission's merger oversight under Sections 69-3-102 and 69-3-201, MCA. It is his opinion that in this case Liberty, which is a fully enmeshed and dependent intermediate holding company within APUC, is not, alone (or in conjunction with only its operating utility subsidiaries), the proper subject of the fitness to serve analysis. Liberty's status and operations as an intermediate holding company within the APUC organization is quite distinguishable from other holding company situations. Importantly, Liberty is not the corporate treasury to which the APUC public utility operating companies will need to look for financial support from time-to-time. Within the Algonquin corporate family, that kind of support can only come from the parent holding company. Consequently the Commission should assert its regulatory jurisdiction with respect to the ownership and operation of Mountain Water and require that APUC demonstrate its own financial and managerial fitness to own and operate a utility in Montana. At this point, despite its obvious role in structuring, financing and controlling the proposed acquisition, Algonquin has resisted every effort to require it to appear as a party to this proceeding. As the Commission previously recognized in Babcock and Brown's rejected acquisition of NWE, APUC's status as a foreign corporation potentially compounds this issue. Consequently, a finding of fitness to serve would be inappropriate and without support in the evidentiary record of this proceeding.

   Relatedly, APUC has entered into a Strategic Investment Agreement with Emera, a larger Canadian holding company, under which Emera is supplying capital "in support of the acquisition by APUC of Park Water Company in Montana." As a consequence of this Strategic Investment Agreement, Emera has become the largest and controlling owner of APUC.

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While these are matters of concern to Montana ratepayers that should be fully evaluated by the Commission in addressing the fitness to serve issues in this case, they have not even been disclosed, let alone addressed, in the Company's application, and there has been no opportunity to investigate them.

In addition to requiring regulatory jurisdiction over APUC, the Commission should require the provision of the Strategic Investment Agreement under which Emera is financing APUC's acquisition of Park Water Company in Montana. These are relevant matters that should be revealed and investigated in addressing fitness to serve issues in this case.

b. There are no additional documents relied upon by Dr. Wilson in answering this question.

MW/WWH-0116 RE: Exhibit JW-1 and Direct Testimony of John W. Wilson at page 20, lines 14-18.

Please provide all documents used, referred to, or relied upon to support Dr. Wilson's understanding of a "accretion" as used in Exhibit JW-1.

RESPONSE:

Dr. Wilson has testified that an accretive acquisition is one that increases the acquiring company's earnings per share because the price paid by the acquiring firm is lower than the boost to earnings that the acquisition will provide to the acquiring company's earnings per share. In this case, that "expected accretion" will be achieved by replacing most of Carlyle's relatively high cost ROE equity financing with APUC's much lower cost debt financing without passing through the cost-of-service reduction to ratepayers. Dr. Wilson has not relied on additional documents, other than JW-1 and JW-2, in this regard.

MW/WWH-0117 RE: Direct Testimony of John W. Wilson, page 26, lines 14-16.

Admit that Dr. Wilson's testimony relies on Dr. Wilson's assumptions and conclusions regarding Liberty's modeling. If your response is not an unqualified admission, please explain why.

RESPONSE:

Dr. Wilson's testimony relies on detailed statements regarding APUC's modeling that the Company has publicly disseminated where such dissemination suited its purposes despite its claims in this proceeding that its acquisition modeling is proprietary and contains confidential trade secrets. 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, an "Acquisition Fact Sheet" pertaining to this acquisition, which APUC provided to its investors on September 19, 2014 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, 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.

MW/WWH-0118 RE: Direct Testimony of John W. Wilson, page 38, line 7 through page 39, line 3.

Admit that Dr. Wilson did not request a copy of the "Strategic Investment Agreement." If your response is not an unqualified admission, please explain why.

RESPONSE:

Dr. Wilson did not request a copy of the "Strategic Investment Agreement" which he became aware of shortly before the filing of his testimony in this case. This "Strategic Investment Agreement" between Emera and APUC, in support of the acquisition by APUC of Park Water Company in Montana was not revealed or discussed by the Applicants in their filing or testimony in this case and it was not known to Dr. Wilson at the time of data requests.

As Dr. Wilson has stated in response to PSC-047, in addition to requiring regulatory jurisdiction over APUC, the Commission should require the provision of the Strategic Investment Agreement under which Emera is financing APUC's acquisition of Park Water Company in Montana. This is clearly a relevant matter that should be revealed and investigated in this case.

MW/WWH-0119 RE: Direct Testimony of John W. Wilson, page 38, line 7 through page 39, line 3.

Admit that the Montana Consumer Counsel did not request a copy of the "Strategic Investment Agreement." If your response is not an unqualified admission, please explain why.

RESPONSE:

Please see response to MW/WWH-0118.

MW/WWH-0120 RE: Direct Testimony of John W. Wilson, page 38, line 7 through page 39, line 3.

Admit that Dr. Wilson did not review or analyze the "Strategic Investment Agreement" in preparation of the direct testimony. If your response is not an unqualified admission, please explain why.

RESPONSE:

Dr. Wilson has not yet reviewed the Strategic Investment Agreement, as APUC has thus far failed to provide it in this case.