

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

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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 RESPONSES TO THE EMPLOYEES' FIRST SET OF  
DATA REQUESTS TO THE CITY OF MISSOULA**

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The City of Missoula provides the attached responses to the Employees' Data  
Requests to the City of Missoula.

Dated this 2<sup>nd</sup> day of December 2015.



Scott M. Stearns  
Natasha Prinzing Jones  
BOONE KARLBERG P.C

Jim Nugent  
City of Missoula  
CITY ATTORNEY'S OFFICE

*Attorneys for the City of Missoula*

## GENERAL OBJECTIONS

The City of Missoula (“City”) continues to maintain that its condemnation has deprived the Public Service Commission (“PSC”) of jurisdiction over this joint application—especially in light of the condemnation commissioner’s recent determination of fair market value. At a minimum, this proceeding should be stayed in light of the condemnation act.

The merits of the condemnation action are not before the PSC. Therefore, questions regarding the condemnation action, the City’s actions during and after, and the City’s future plans are not relevant to this proceeding. Only Algonquin’s purchase is before the PSC and, thus, the only relevant information is that related Algonquin’s proposed purchase. As Mountain Water Company (“Mountain Water”), Western Water LLC (“Western Water”), Liberty Utilities Company (“Liberty”), and Algonquin Power and Utilities Corporation (“APUC”) have repeatedly stated, the merits of the City’s condemnation action are not before the PSC:

**Issues regarding the City’s condemnation litigation must not be injected into this docket.**

Response of Liberty Utilities Co. and Liberty WWH, Inc. to Petitions to Intervene of the City of Missoula and the Clark Fork Coalition, D2014.12.99 (Jan. 23, 2015) (emphasis added).

Reviewing and approving the sale and transfer in no way changes the current use or ownership of Mountain Water’s utility property, and **therefore the issues in this proceeding are independent from those in the condemnation action.**

Western Water Holdings and Mountain Water Company’s Response to the City of Missoula’s Motion to Stay, D2014.12.99 (Feb. 23, 2015) (emphasis added).

The number and volume of these data requests is overly broad and unduly burdensome. Each and every one of the Employees' separate requests on the City are not relevant nor do they request information that will aid the PSC in determining whether or not the proposed Algonquin merger should be approved.

These data requests are designed to harass the City and increase the costs and burden associated with its continued participation in this docket. Each and every one of the Employees' separate requests on the City are not relevant to the instant proceeding and seek information that will not aid the PSC in its determination of whether or not to approve the Liberty/Algonquin purchase.

The City has no burden of proof in this proceeding. The burden to prove this transaction should be approved rests solely on the Joint Applicants. Any questions seeking information regarding the City actions, past or present, or how the City would operate Mountain Water are not relevant and seek to inappropriately shift the burden to the City.

The PSC lacks jurisdiction to consider the benefits of public ownership versus private ownership. The District Court has already ruled on this matter and it has been determined that it is "more necessary" that the City own Mountain Water.

Many of the Employees' data requests seek information protected by attorney-client privilege and/or work product protection.

All responses provided below are provided without waiving these objections or waiving further, specific objections asserted along with the responses.

being made whole upon City acquisition.

The City of Missoula in its Amended Complaint, Paragraphs 91-95 promised to make the Employees whole. Explain in detail how the City of Missoula plans to make the Employees whole with respect to their employment, including but not limited to:

- a. Wages,
- b. Benefits,
- c. Retirement Plans,
- d. Waiver of Five Year Vesting Requirement under Public Employees
- e. Retirement System,
- f. Credit for years of service and seniority as it affects benefits,
- g. Paid time off,
- h. Sick leave,
- i. Working conditions,
- j. Job descriptions, duties and responsibilities; and
- k. Retention of all Mountain Water Company Employees as full-time permanent employees subject to discharge only for cause.

**OBJECTION:**

The City objects to this request. The request is directed at the merits of the condemnation proceeding and the City's plans upon successful condemnation, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant

information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This request seeks attorney/client privileged and work product information.

**INTERVENORS/EMPLOYEES-002      RE: Direct Testimony of Dale Bickell**

Produce all drafts and final documents regarding the City's operational and organizational plan for Mountain Water Company Employees if the City acquires the water system.

**OBJECTION:**

The City objects to this request. The request is directed at the merits of the condemnation proceeding and the City's plans upon successful condemnation, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This request seeks attorney/client privileged information.

**INTERVENORS/EMPLOYEES-003      RE: Direct Testimony of Dale Bickell**

Produce all meeting minutes, agendas, memoranda and documents concerning the City's plan to integrate all Mountain Water operations and employees if the City acquires the water system.

**OBJECTION:**

The City objects to this request. The request is directed at the merits of the condemnation proceeding and the City's plans upon successful condemnation, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This request seeks attorney/client privileged and work product information.

**INTERVENORS/EMPLOYEES-004      RE: Direct Testimony of Dale Bickell**

Produce all plans, analysis and writings pertaining to the City's plan to integrate the Mountain Water Company's billing system, mapping system and all other systems to ensure seamless transition for the Employees and customers of Mountain Water System should the City acquire the system.

**OBJECTION:**

The City objects to this request. The request is directed at the merits of the condemnation proceeding and the City's plans upon successful condemnation, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

**INTERVENORS/EMPLOYEES-005      RE: Direct Testimony of Dale Bickell**

Produce all analysis, plans and writings pertaining to maintenance and operation of the water system including IT support and software for the operation of the Mountain Water Company's computerized water system operation.

**OBJECTION:**

The City objects to this request. The request is directed at the merits of the condemnation proceeding and the City's plans upon successful condemnation, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

**INTERVENORS/EMPLOYEES-006      RE: Direct Testimony of Dale Bickell**

Produce all analysis, plans and writings pertaining to the City's plan to maintain the Mountain Water Company retirees' health benefits should the City acquire the water system.

**OBJECTION:**

The City objects to this request. The request is directed at the merits of the condemnation proceeding and the City's plans upon successful condemnation, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This request seeks attorney/client privileged information.

**INTERVENORS/EMPLOYEES-007      RE: Direct Testimony of Dale Bickell**

Produce all analysis, plans and writings pertaining to the maintenance, continuation, funding and operation of the Mountain Water Company Employees' retirement plan administration including payment of costs of administration.

**OBJECTION:**

The City objects to this request. The request is directed at the merits of the condemnation proceeding and the City's plans upon successful condemnation, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This request seeks attorney/client privileged and work product information.

**INTERVENORS/EMPLOYEES-008      RE: Direct Testimony of Dale Bickell**

Produce all meeting minutes, agendas, memoranda and documents concerning any and all employment, wage, or benefit changes that would impact Mountain Water employees in the future and the timing of such changes if the City acquires the water system.

**OBJECTION:**

The City objects to this request. The request is directed at the merits of the condemnation proceeding and the City's plans upon successful condemnation, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This request seeks attorney/client privileged and work product information.

**INTERVENORS/EMPLOYEES-009      RE: Direct Testimony of Dale Bickell**

Produce all meeting minutes, agendas, memoranda and documents concerning employment probationary periods, health insurance enrollment waiting periods, retirement benefit vesting period and other employment-related waiting periods.

**OBJECTION:**

The City objects to this request. The request is directed at the merits of the condemnation proceeding and the City's plans upon successful condemnation, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This request seeks attorney/client privileged and work product information.

**INTERVENORS/EMPLOYEES-010      RE: Direct Testimony of Dale Bickell**

Produce all meeting minutes, agendas, memoranda and documents concerning the City's plan to integrate Mountain Water employees and the anticipated affect it will have with City unions and Mountain Water employees if the City acquires the water system.

**OBJECTION:**

The City objects to this request. The request is directed at the merits of the condemnation proceeding and the City's plans upon successful condemnation, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This request seeks attorney/client privileged and work product information.

**INTERVENORS/EMPLOYEES-011 RE: Direct Testimony of Dale Bickell**

Produce all meeting minutes, agendas, memoranda and documents concerning the City's Ordinance Number 3495 requiring that City department heads and supervisory managers reside continuously within city limits and how this will affect Mountain Water employees' opportunities to hold management positions.

**OBJECTION:**

The City objects to this request. The request is directed at the merits of the condemnation proceeding, the City's plans upon successful condemnation, and a municipal ordinance, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This request seeks attorney/client privileged and work product information.

**INTERVENORS/EMPLOYEES-012      RE: Direct Testimony of Craig Close**

Produce all financial calculations of HDR regarding Mountain Water Company Employee's pay, job reductions, benefits, job protection, working conditions, if the City acquires the water system.

**OBJECTION:**

The City objects to this request. The request is directed at the merits of the condemnation proceeding and the City's plans upon successful condemnation, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This request seeks attorney/client privileged and work product information.

**INTERVENORS/EMPLOYEES-013      RE: Direct Testimony of Craig Close**

Produce all communications between the City, its consultants and HDR pertaining to the Employees of Mountain Water Company including wages, benefits, cost savings to the City through changes in the number of employees, reductions in force, terminations and reductions in wages and benefits in the event City acquires the water system.

**OBJECTION:**

The City objects to this request. The request is directed at the merits of the condemnation proceeding and the City's plans upon successful condemnation, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This request seeks attorney/client privileged and work product information.

**INTERVENORS/EMPLOYEES-014      RE: Direct Testimony of Craig Close**

Admit that the financial calculations of HDR included proposed cost savings for the City by eliminating employees, and reductions in wages and benefits.

**OBJECTION:**

The City objects to this request. The request is directed at the merits of the condemnation proceeding and the City's plans upon successful condemnation, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This request seeks attorney/client privileged and work product information.

**INTERVENORS/EMPLOYEES-015      RE: Direct Testimony of Craig Close**

State the dollar amount of savings to the City projected by HDR relating to reductions in force, cuts in pay or benefits, wage and benefit freezes and all other aspects of employment of the Mountain Water Company Employees in the event the City acquires the water system.

**OBJECTION:**

The City objects to this request. The request is directed at the merits of the condemnation proceeding and the City's plans upon successful condemnation, which are not relevant to this proceeding. The PSC does not have jurisdiction to consider the benefits of private ownership compared to public ownership. This request, along with others, is vague, overly broad, unduly burdensome, not calculated to lead to the discovery of relevant information, and designed to harass the City and increase its costs. Moreover, the City has no burden of proof in this proceeding.

This request seeks attorney/client privileged and work product information.

**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 2<sup>nd</sup> day of December 2015:

Thorvald A. Nelson Nikolas S. Stoffel Holland & Hart LLP 6380 South Fiddlers Green Circle, Suite 500 Greenwood Village, CO 80111 tnelson@hollandhart.com nsstoffel@hollandhart.com cakennedy@hollandhart.com aclee@hollandhart.com	Michael Green Gregory F. Dorrington CROWLEY FLECK PLLP P.O. Box 797 Helena, MT 59624-0797 mgreen@crowleyfleck.com gdorrington@crowleyfleck.com cuda@crowleyfleck.com cgoomez@crowleyfleck.com
Robert Nelson Monica Tranel Montana Consumer Counsel 111 North Last Chance Gulch, Suite 1B P.O. Box. 201703 Helena, MT 59620-1703 robnelson@mt.gov mtranel@mt.gov ssnow@mt.gov	Christopher Schilling Chief Executive Officer Leigh Jordan Executive Vice President Park Water Company 9750 Washburn Road Downey, CA 90241 cschilling@parkwater.com leighj@parkwater.com
John Kappes President & General Manager Mountain Water Company 1345 West Broadway Missoula, MT 59802-2239 johnk@mtwater.com	Barbara Hall Legal Director The Clark Fork Coalition P.O. Box 7593 Missoula, MT 59801 Barbara@clarkfork.org
Todd Wiley Assistant General Counsel Liberty Utilities 12725 West Indian School Road, Suite D-101 Avondale, Arizona 85392 todd.wiley@libertyutilities.com	Gary Zadick #2 Railroad Square, Suite B P. O. Box 1746 Great Falls, MT 59403 gmz@uazh.com
Public Service Commission 1701 Prospect Avenue Helena, MT 59620-2601 lfarkas@mt.gov jkraske@mt.gov jlangston@mt.gov <b>ORIGINAL SENT VIA OVERNIGHT DELIVERY</b>	 Tina Sunderland