

**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.,)	REGULATORY DIVISION
Western Water Holdings, LLC, and Mountain)	
Water Company for Approval of a Sale and)	DOCKET NO. D2014.12.99
Transfer of Stock)	

**MOUNTAIN WATER COMPANY’S COMMENTS REGARDING THE NOTICE OF
CLOSING AND WITHDRAWAL OF THE JOINT APPLICATION**

Mountain Water Company (“Mountain Water”), by and through its counsel, Holland & Hart LLP, respectfully submits the following comments in response to the Commission’s Notice of Opportunity to Comment regarding the Notice of Closing and Withdrawal of the Joint Application.¹

INTRODUCTION

The Commission’s jurisdiction is limited to the supervision and regulation of “public utilities,” as defined by § 69-3-101, MCA. As a result, the Commission lacks jurisdiction over the sale and transfer of the stock of Western Water Holdings LLC (“Western Water”) to Liberty Utilities Co. (“Liberty Utilities”) as a matter of law, because neither Western Water nor Liberty Utilities is a “public utility” subject to the Commission’s jurisdiction under Title 69 of the Montana Code. Instead, the Joint Application was only filed with the Commission as a result of Western Water’s and Liberty Utilities’ decision to include Commission approval as a contractual contingency to the closing of the sale and transfer of Western Water. And, because the Joint Application was only filed due to the terms of a private contract (and not pursuant to the

¹ By submitting these comments Mountain Water does not waive, and expressly reserves, any and all arguments regarding an applicant’s ability to withdraw any application without the Commission’s approval.

provisions of Montana law), Western Water and Liberty Utilities were free to waive the contractual condition and close the sale of Western Water without the Commission's approval.

Furthermore, even if the Commission's exercise of "implied jurisdiction" over the sale and transfer of Western Water was supported by Montana law, then exercising that "implied jurisdiction" would only constitute permissive—not required—Commission action. As a result, the Commission should recognize the unique circumstances surrounding the sale and transfer of the stock of Western Water to Liberty Utilities, including the City of Missoula's ("City") ongoing effort to condemn Mountain Water's utility assets, and reach the conclusion that the Commission need not exercise jurisdiction over the stock transaction relating to Western Water. By doing so, the Commission can avoid tying up additional resources with its review of the sale of Western Water stock and any related appeals, including the current proceeding before the district court. Furthermore, Commission action is unnecessary because the sale of Western Water stock (a) has no impact on the ownership of Mountain Water and its assets, (b) has no impact on Mountain Water's assets that are and will continue to be utilized in full in Missoula County and deployed to serve the public, (c) has no impact on the Commission's jurisdiction over Mountain Water, (d) has no impact on Mountain Water's operations in Montana, (e) has no impact on the rates Mountain Water is authorized to charge its customers, and (f) will not increase the risk that Mountain Water's customers will receive inadequate service.

Finally, as long as Mountain Water remains under private ownership, the Commission maintains exclusive jurisdiction to determine the reasonable cost of capital, address changes in the cost of service, approve any change in rates, and address any concerns regarding the condition of Mountain Water's system in Missoula. To facilitate the Commission's review and consideration of these issues, Mountain Water commits to file a rate case within six months of

the final completion of the condemnation proceedings (including appeals). There is no need to address these issues in a review of the sale of Western Water stock.

COMMENTS

1. Jurisdiction in general.

As an initial matter, the Commission’s request for comment on this issue relies on a false premise. Specifically, the Commission requested “comments from the parties regarding the Commission’s current jurisdiction over the sale and transfer of *Mountain Water* in the context of the ongoing condemnation proceeding, judicial review in the district court, and the Notice.”² But the sale and transfer of Mountain Water was not the subject of the Joint Application nor was it the transaction memorialized in the Merger Agreement.³ Instead, only the sale and transfer of the stock of Western Water (a Delaware limited liability company) to Liberty Utilities (a Delaware corporation) was before the Commission in this proceeding.

This difference is material in the context of the Commission’s jurisdiction over the sale and transfer of Western Water stock, because the Commission’s jurisdiction is expressly limited to the supervision and regulation of *public utilities* in Montana.⁴ “Public utility” is narrowly defined by Montana law to only include entities “that own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing to or for other persons, firms, associations or corporations” certain utility services, including water.⁵ The statutory definition of public utility does not include individuals or entities owning public utilities in Montana and, as a result, the Commission’s jurisdiction does not extend to an out-of-state transaction involving only out-of-

² Notice of Opportunity to Comment, page 2 (emphasis added).

³ The Plan and Agreement of Merger (“Merger Agreement”) was provided as Exhibit B to the Joint Application.

⁴ Mont. Code Ann. § 69-1-102.

⁵ Mont. Code Ann. § 69-3-101.

state entities notwithstanding the fact that one of those entities is an upstream parent company of a public utility in Montana. That definition of public utility definitely does not apply to entities owning the stock of a company such as Western Water two corporate steps above the public utility.

In addition to the limitation on the Commission's jurisdiction due to the narrow definition of public utility under Montana law, it is undisputed that the Commission *has not* been granted explicit power to exercise authority over mergers, sales, and transfers of regulated utilities or utility assets.⁶ Indeed, the Montana Legislature has declined to grant the Commission express authority over mergers, sales, and transfers of regulated utilities and utility assets despite the fact the Commission requested legislation giving the Commission jurisdiction over such sales and transfers on at least three occasions.⁷ This history demonstrates two important points: First, the Montana Legislature has had multiple opportunities to consider whether the Commission should be granted express authority over mergers, sales, and transfers of regulated utilities or utility assets, and has repeatedly declined to give the Commission that authority. Second, the Commission has historically had enough doubt regarding its jurisdiction over mergers, sales, and transfers that it felt it was necessary to request express authority from the Montana Legislature. Both of these points demonstrate that the Commission lacks jurisdiction over upstream changes in ownership (including the sale and transfer of Western Water stock) as a matter of law.

Despite the absence of express statutory authority, the Commission has asserted "implied jurisdiction" over mergers, sales, and transfers of utility property.⁸ This "implied jurisdiction" has not been recognized or affirmed by the Montana courts or the Montana Legislature.

⁶ Docket D.2011.1.8, Order No, 7149c at ¶ 17.

⁷ See SB 234, 2003 Session; HB 106, 2005 Session; SB 313, 2007 Session.

⁸ Notably, the only time the Commission used its "implied authority" to review an upstream change in ownership was the sale of Park Water in 2011. The rest of the Commission's decisions regarding mergers, sales, or transfers are predominately direct acquisitions of or sales by public utilities.

Nonetheless, in exercising this “implied authority” to review the change in ownership of regulated utilities, the Commission has relied on its duty to supervise and regulate the operations of public utilities in conformity with Title 69 of the Montana Code;⁹ the Commission’s full power to supervise, regulate, and control public utilities;¹⁰ the Commission’s express power to do all things necessary and convenient in the exercise of the powers conferred by Title 69, Chapter 3;¹¹ the Commission’s authority over the cessation or abandonment of service by a utility;¹² the Commission’s authority over utility complaints;¹³ and the Commission’s authority over utility rates.¹⁴ However, these various aspects of the Commission’s jurisdiction over *public utilities* only highlight how the Commission does not have jurisdiction over entities that are *not* public utilities, like Western Water and Liberty Utilities. Even under those powers, the Commission simply does not have express or implied jurisdiction relating to ownership of stock of non-public utilities such as Western Water.

For example, the Commission has the duty to supervise and regulate the operations of “public utilities” and such “supervision and regulation shall be in conformity with [Title 69].”¹⁵ Thus, unless an entity fits within the definition of public utility set forth in § 69-3-101, the entity is outside of the Commission’s jurisdiction as a matter of law. And, as noted above, Title 69 provides a narrow definition of “public utility,” and that definition *does not* include individuals or entities that have an ownership interest in a public utility in Montana, let alone stock ownership of a holding company two levels above the regulated utility. As a result, the Commission’s duty to supervise and regulate the operations of public utilities is limited to

⁹ Mont. Code Ann. § 69-1-102.

¹⁰ *Id.*

¹¹ Mont. Code Ann. § 69-3-103(1).

¹² Docket No. D2011.1.8, Order No. 7149c at ¶¶ 20-21.

¹³ *Id.* at ¶¶ 28-29.

¹⁴ Docket No. D2011.1.8, Order No. 7149d at ¶ 5.

¹⁵ Mont. Code Ann. § 69-1-102.

entities that fit the narrow definition of public utility—and neither Western Water nor Liberty Utilities fits that definition. Similarly, the Commission’s full power to supervise, regulate, and control public utilities, and the express authority do to all things necessary and convenient in the exercise of its powers conferred by Title 69, is also limited to *public utilities*, not the *owners* of public utilities. The Commission’s express jurisdiction over public utilities in Montana does not include a utility’s shareholders or owners, and the Commission cannot significantly expand the statutory definition of, and its statutory jurisdiction over, public utilities under the guise of its “implied authority.”

The Commission’s reliance on its authority over the cessation or abandonment of service by a utility is similarly misplaced as a basis to exercise jurisdiction over the owners of a public utility in Montana. Mountain Water, the only public utility here, will not cease or abandon providing regulated water service as a result of the sale of Western Water to Liberty Utilities. Indeed, Mountain Water has been engaged in substantial litigation with the City of Missoula so that Mountain Water can continue providing water service as a privately-owned and regulated utility in Montana. Here, Mountain Water will continue to provide water service to customers using the same local employees, using the same local management, and using the same Montana utility assets and facilities. Under these circumstances, by relying on its authority over the cessation or abandonment of service in this instance, the Commission would effectively be regulating a private investor’s cessation or abandonment of an *ownership interest* in a public utility in Montana, not the cessation or abandonment of service by the utility.

Likewise, the Commission’s jurisdiction over complaints also fails to support its implied jurisdiction over the upstream change in ownership of a public utility. Montana law provides:

The commission may at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, practices, and services and after a full hearing as

provided in this part may make by order such changes as may be just and reasonable, the same as if a formal complaint had been made. § 69-3-324, MCA.

Notably absent from the Commission's authority over complaints is any reference to complaints regarding the ownership of a public utility, let alone stock ownership of a corporate parent. Instead, the Commission has limited jurisdiction to address concerns regarding utility service (rates, tolls, charges, rules, practices, and services) with the specific utility (as defined by § 69-3-101, MCA) subject to the Commission's jurisdiction (as limited by Title 69 of the Montana Code). As a result, changes in upstream ownership involving entities or individuals that are not public utilities cannot be deemed to constitute a utility "practice" and are therefore beyond the scope of the Commission's express complaint jurisdiction under Title 69. To find otherwise would empower the Commission to reach entities that are not public utilities, and to regulate transactions that are not related to utility service, despite the express limitations on the Commission's authority under Montana law.

Finally, the Commission's reliance on its jurisdiction over rates also fails to support the existence of an implied authority over individuals or entities with an ownership interest in a public utility. Any new rates must be filed with the Commission and the Commission has the authority to review and approve any increases in rates for Mountain Water.¹⁶ Nothing about a change in the ownership of a public utility or a change in ownership of stock of a corporate parent impairs the Commission's authority over the public utility's rates.

As it relates to the Joint Application, Mountain Water owns, operates, and controls the plant, equipment, and water rights in Montana used to provide regulated water service to its customers as a public utility. In turn, Mountain Water (the public utility) is owned by Park Water Company, which is not a public utility in Montana. And Park Water is owned by Western

¹⁶ Mont. Code Ann. § 69-3-301, *et seq.*

Water, which is also not a public utility in Montana. Because an individual or entity does not become a public utility in Montana solely due to an ownership interest in a regulated utility like Mountain Water, the Commission lacks jurisdiction over the sale and transfer of Western Water to Liberty Utilities as a matter of law. This is true regardless of the City's ongoing condemnation proceeding and the judicial review of the Commission's intermediate and procedural decisions at the district court.

Nevertheless, while the Commission lacks jurisdiction over changes in the upstream ownership of Mountain Water, changes in upstream ownership do not impact the Commission's authority to supervise, control, and regulate Mountain Water as a public utility. As noted above and in the Joint Application, nothing about the sale of Western Water impacts Mountain Water's assets or operations in Montana or the Commission's jurisdiction over Mountain Water, including the rates Mountain Water is authorized to charge its customers.

2. City's previous position on Commission jurisdiction.

As this question is specifically addressed at the City, Mountain Water only notes the difference between the Joint Applicants' arguments regarding the Commission's lack of jurisdiction over the sale of Western Water to Liberty Utilities (due to the Commission's lack of jurisdiction over non-utilities) and the City's arguments regarding the Commission's lack of jurisdiction over Mountain Water (due to the condemnation proceeding). Unless and until the City completes its condemnation of Mountain Water's utility assets (including appeals) and pays for the property taken by eminent domain, Mountain Water will remain a privately-owned public utility subject to the Commission's jurisdiction under Title 69. However, as discussed above, Mountain Water's status as a privately-owned public utility is insufficient to give the Commission jurisdiction over the sale and transfer of Western Water stock.

3. Joint Applicants' previous position on Commission jurisdiction.

The Merger Agreement included the approval of the California Public Utilities Commission (“CPUC”) and this Commission as contingencies to the closing of the sale and transfer of Western Water stock.¹⁷ However, unlike the CPUC’s approval (which was required as a matter of California law), the Commission’s approval was only included as a contingency because Western Water and Liberty Utilities felt it was appropriate, primarily as a means for the Commission to become familiar and comfortable with Liberty Utilities. In other words, the condition was included in the Merger Agreement (and the subsequent arguments regarding the Commission’s continued review were made by the Joint Applicants) because Commission approval would have been desirable.¹⁸

Again, there is a difference between the City’s arguments against the Commission’s continued review of the sale and transfer of Western Water and the Joint Applicants’ position regarding the Commission’s jurisdiction to review changes in ownership as a matter of law. The City asserted that the Commission lacks jurisdiction over *Mountain Water* because of the City’s ongoing effort to condemn Mountain Water’s assets. The City also argued it was the *de facto* owner of Mountain Water, which, in turn, deprived the Commission of jurisdiction. In contrast, the Joint Applicant’s challenge the Commission’s authority to require approval of the sale and transfer of an entity that *is not* a public utility under Montana law. Because the Commission’s approval was a contractual condition that was not based on the requirements of Montana law, it was within Western Water’s and Liberty Utilities’ control to agree to waive the contingency and close the sale and transfer without the Commission’s approval.

¹⁷ See Exhibit B to the Joint Application at § 7.1(e).

¹⁸ The Joint Applicants clearly reserved the right to challenge the Commission’s jurisdiction to review Liberty Utilities’ acquisition of Western Water. And, tellingly, there is no record showing the Commission reviewed the Montana Power Company’s sale of Mountain Water’s stock to Park Water in 1979.

The Joint Applicant's would have preferred to close the sale and transfer of Western Water with the Commission's approval. This preference was the basis for their collective urging for the Commission to continue forward with its review. However, once the Commission's proceeding became mired as a result of the City's efforts to inject irrelevant issues into the proceeding (such as comparisons of public versus private ownership) and interfere with or entirely halt the Commission's review of the sale of Western Water (including the stay issued by the district court to review the Commission's intermediate decisions), the Joint Applicants determined that continuing to pursue Commission approval no longer presented the best path forward, especially given that the Commission lacked jurisdiction over the sale of Western Water stock in the first place.

4. Violation of any specific statutes, rules, orders.

As described above, there are no statutes or rules giving the Commission express authority over the upstream change in ownership of a public utility in Montana. Indeed, the Commission has sought (unsuccessfully) to obtain statutory authority from the Montana Legislature over that type of sale and transfer. As a result, there are no statutes or rules that were violated when the sale of Western Water to Liberty Utilities was completed without the Commission's approval. The only entity subject to the Commission's jurisdiction—Mountain Water—remains in full compliance with any and all applicable statutes, rules, and orders regarding water service in Montana.

Furthermore, no Commission orders were violated as result of the sale and transfer of Western Water to Liberty Utilities without Commission approval. The Commission points to Paragraph 9 of Order No. 7149d, which states “[t]he Commission would review any future transfer of *Mountain [Water]* to the City or any other entity under the same standards that govern

its decision in this case.”¹⁹ Here, the ownership of Mountain Water has not been transferred; it is still wholly-owned by Park Water Company. In the prior proceeding, the stock of Park Water (Mountain Water’s parent company) was sold and transferred, not Mountain Water or its utility assets. Thus, the Commission was aware that an upstream change in ownership was possible, yet the Commission only stated that it would review any future transfer of “Mountain [Water]” under the same standards. This makes intuitive sense, because the Commission’s jurisdiction is limited to Mountain Water, not its parent companies. And, if the Commission intended that it would review the sale and transfer of Park Water, Western Water, or any other upstream entity, it certainly could have expressly stated as much given the circumstances presented in Docket No. D2011.1.18. But the Commission only opted to refer to future transfers of Mountain Water in Order No. 7149d. Additionally, the transaction presented in the Joint Application is different than the one before the Commission in Docket No. D2011.1.8, because the entity being sold and transferred here was two levels removed from the public utility, Mountain Water.²⁰ Following the sale and transfer of Western Water’s stock to Liberty Utilities, Mountain Water is still owned by Park Water and Park Water is still owned by Western Water. As a result, there was no transfer of Mountain Water which would have been bound by the terms of Order No. 7149d.

Finally, the imposition of fines is neither authorized nor appropriate as a result of the sale and transfer of Western Water to Liberty Utilities without the Commission’s approval. Under § 69-3-206, MCA, the Commission is authorized to fine a utility’s officer, agent, or other person for their refusal or failure to furnish to the Commission or otherwise permit the Commission to inspect the utility’s books, accounts, records, or papers. Thus, under this provision the

¹⁹ Emphasis added.

²⁰ In Docket No. D2011.1.18, Mountain Water’s parent company, Park Water, was sold. On January 8, 2016, Park Water’s parent company, Western Water, was sold. As a result, both Park Water and Mountain Water are completely intact following the transaction.

Commission could only impose fines on Mountain Water's officers, agents, or other persons (not Mountain Water as a public utility), and only if Mountain Water's officers, agents, or other persons refused to allow the Commission to inspect the company's books, accounts, records, or papers. The Commission never requested access to Mountain Water's books, accounts, records, or papers, and Mountain Water's officers, agents, or other persons never refused to provide the Commission with access to those materials. As a result the Commission cannot fine Mountain Water under § 69-3-206, MCA.

Similarly, the Commission cannot fine Mountain Water under § 69-3-209, MCA. That statute provides:

If any public utility violates any provision of this chapter, does any act herein prohibited, or fails or refuses to perform any duty enjoined upon it, fails to place in operation any rate or joint rate, or fails, neglects, or refuses to obey any lawful requirement or order made by the commission or any court, then for every such violation, failure, or refusal the public utility is subject to the penalty prescribed by 69-3-206.

Fines are not available under § 69-3-209, MCA, because Mountain Water (the only public utility in this proceeding) did not violate any provision of Title 69 or any Commission order, as described above. Instead, Mountain Water continued to provide safe and reliable water service to its customers at Commission-approved rates both before and after the sale of Western Water to Liberty Utilities. There is no basis to fine Mountain Water for the acts of other entities that are not public utilities under Montana law and therefore not subject to the Commission's jurisdiction under Title 69.

5. Violation of ring-fencing conditions.

None of the ring-fencing conditions established in Docket No. D2011.1.8 were violated as a result of the sale of Western Water to Liberty Utilities. Additionally, Liberty Utilities

committed to maintain the same ring-fencing conditions following its acquisition of Western Water. Those ring-fencing conditions are:

Ring-Fencing Condition	Relationship to the Sale and Transfer of Western Water
<p>The Commission may audit the accounts of Mountain Water and Park Water and both shall cooperate fully with such Commission audits. In addition, in cases where transactions with other affiliates are the basis of charges to or transfers from Mountain Water, the Commission will be provided access to all documents, data, records and other information which pertain to these transactions, and which are necessary for the Commission to perform its duties under Title 69.</p>	<p>This condition speaks only to auditing Mountain Water and Park Water and has nothing to do with Western Water stock. Nothing in the sale of Western Water stock violates this provision.</p>
<p>Mountain Water shall maintain its own financial and business operating accounts, separate from Park's and its affiliates' accounts. All financial and operating books and records of Mountain Water shall be completely and immediately accessible at Missoula, Montana.</p>	<p>This condition speaks only to Mountain Water accounts and has nothing to do with Western Water stock. Nothing in the sale of Western Water stock violates this provision.</p>
<p>Mountain Water and its affiliates will not encumber Mountain Water's utility assets to either: (1) raise debt capital for non-utility purposes; or (2) to raise debt capital for utility purposes outside of Montana, without first seeking and receiving the approval of the encumbrance from the Commission. If, at any time, Park or Western Water plans to obtain debt or other financing for non-Montana utility purposes by pledging the ownership of Mountain Water as security for such financing, they shall immediately provide to the Commission a copy of their filing with the California Public Service Commission for approval of the financing.</p>	<p>This condition speaks only to Mountain Water's assets and has nothing to do with Western Water stock. Nothing in the sale of Western Water stock violates this provision.</p>
<p>Mountain Water shall not make any distribution to Park, or to any affiliate of Mountain or Park, that would cause Mountain Water's equity capital to fall below 45 percent of its rate base without first obtaining Commission approval.</p>	<p>This condition speaks only to Mountain Water's distributions and has nothing to do with Western Water stock. Nothing in the sale of Western Water stock violates this provision.</p>

<p>If Mountain Water, Park or Western Water becomes the subject of any initial public offering or any other public securities issuance, Mountain will advise the Commission of that fact, and upon its request, will provide the Commission with all related information provided to securities rating analysts and all information submitted to the Securities and Exchange Commission in connection with the offering, in accordance with any limitations or restrictions upon such disclosure under federal law or regulation.</p>	<p>There has not been any initial public offering or other public securities issuance of Western Water stock. Nothing in the sale of Western Water stock violates this provision.</p>
<p>Unless such a disclosure is determined to be unlawful in an opinion of counsel provided to the Commission, Mountain Water shall notify the Commission of any declaration of dividends, or other transfer of more than 5 percent of Mountain Water's shareholder equity, 30 days in advance.</p>	<p>The transaction before the Commission does not include any dividends by Mountain Water or sale of Mountain Water shareholder equity. Nothing in the sale of Western Water stock violates this provision.</p>
<p>Any allocation of expense to Mountain Water, or direct charge to Mountain Water, from Park or an affiliated company which is included in Mountain Water's cost of service shall be subject to the heightened scrutiny of the Commission in Mountain Water's rate case proceedings.</p>	<p>Nothing in the sale of Western Water stock violates this provision. Any change in how expenses are allocated to Mountain Water will be addressed in future rate case proceedings.</p>
<p>Without the prior and specific authorization of the Commission, Mountain Water shall not transfer, sell, lease or otherwise dispose of: (a) any of Mountain Water's water rights, with the exception of transfers that may be required for permitting of new water rights required to provide water service to existing or new customers, provided that such permitting falls within the jurisdiction of the Montana Department of Natural Resources and Conservation and/or the Montana Water Court; or (b) any utility property which has a net book value in excess of \$1,000,000 and which is included in Montana rate base.</p>	<p>Nothing in the sale of Western Water stock violates this provision. No Mountain Water water rights or assets have been transferred.</p>
<p>If any material amount of Mountain Water utility assets that are pledged or otherwise encumbered to secure debt issuances are divested, the net proceeds of the sale must be used to pay down the debt, or be reinvested in utility assets in accordance with the security agreement under which the debt was issued.</p>	<p>Nothing in the sale of Western Water stock violates this provision. Mountain Water still owns the same water rights and assets as it did prior to the Western Water stock sale.</p>

<p>In the event that Mountain Water desires to change its current cash management agreement with Park, Mountain Water shall incorporate best practices for protecting Mountain Water's credit from the risks associated with participating in such an agreement and shall provide the Commission with 30 days advance notice of such changes.</p>	<p>Nothing in the sale of Western Water stock violates this provision. Any future change in the current cash management agreement shall comply with this provision.</p>
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6. Rate adjustments.

The Commission still has the jurisdiction to review and approve any changes in Mountain Water’s rates,²¹ and the Commission can investigate Mountain Water’s rates on its own motion.²² However, any adjustments to Mountain Water’s rates can only be made outside of the context of this approval docket. Montana law establishes that rate changes can only occur in rate case hearings, and the Montana Legislature directed the Commission to adopt “rules for rate cases.”²³ In response to this direction, the Commission adopted detailed rules to govern rate cases.²⁴ The Montana Legislature also enacted legislation governing the Commission’s “ratemaking procedures.”²⁵ And the Commission is specifically required to provide “notice and hearing on proposed [rate] changes.”²⁶ No rate change was proposed or noticed in connection with this proceeding.

However, Mountain Water understands that the parties to this case have raised issues that can be reasonably considered in a future rate case. To facilitate the Commission’s opportunity to review and consider these issues, if the Mountain Water assets are not condemned, Mountain

²¹ Mont. Code Ann. § 69-3-301, *et seq.*

²² Mont. Code Ann. § 69-3-324.

²³ See Mont. Code Ann. § 69-2-101 (referring to “rate cases” as “applications to increase or decrease rates and charges of . . . public utilities as the commission finds necessary or appropriate to enable it to reach a final decision in an orderly manner”).

²⁴ See Admin. R. Mont. §§ 38.5.101, *et seq.*

²⁵ See Mont. Code Ann. §§ 69-3-301 to -330.

²⁶ See Mont. Code Ann. § 69-3-303 (requiring publication of “a notice of the proposed change, conforming to the requirements of 2-4-601 in one or more newspapers published and of general circulation within the area affected by the proposed change” as well as notice of a “hearing on the proposed change and [information for] interested persons as to how they may petition the commission to become parties to the hearing”); *see also* Mont. Code Ann. § 69-3-325.

Water commits to filing a rate case with the Commission within six months of the final completion of the condemnation proceedings (including appeals). And, in that future rate case, all issues regarding Mountain Water's rates, including the rate of capital investment, return on equity, and capital structure, will be eligible for parties to contest and the Commission to decide as part of a properly noticed and comprehensive ratemaking proceeding

7. Notice in general.

As discussed earlier, the Commission lacks jurisdiction over entities that are not public utilities, including entities that own public utilities. As a result, the Commission lacks jurisdiction (express or implied) to require its approval of the sale and transfer of Western Water stock to Liberty Utilities. However, even if the Commission disagrees that it lacks jurisdiction over the sale and transfer of Western Water, the Commission should acknowledge that its "implied authority" to review changes in ownership is only permissive and, as such, is not *required* as a matter of Montana law. And, as a result of the circumstances surrounding the sale and transfer of Western Water to Liberty Utilities (including the City's ongoing effort to take Mountain Water's utility assets and the district court's decision to stay the Commission's proceeding), the Commission should determine that it need not exercise jurisdiction over the sale of Western Water in this case but can elect to exercise its jurisdiction over similar transactions in the future.²⁷ That result would allow the Commission to avoid the unnecessary drain on resources associated with extending an already protracted Commission proceeding (including pending and future appeals), while acknowledging the Commission's continued authority over Mountain Water to address issues such as system integrity, capital investment, capital structure,

²⁷ Indeed, this approach would not be unprecedented. Mountain Water acquired two systems (Clark Fork Water Company on October 1, 1991, and Linda Vista Water Company on July 31, 1998) without the Commission's approval.

service adequacy, and rates. Nothing about the sale of Western Water impacts the Commission's jurisdiction over Mountain Water, the service Mountain Water is currently providing, or the authorized rates being charged for that service.

CONCLUSION

Mountain Water looks forward to continuing working with the Commission to ensure that customers in Missoula County continue to receive safe, clean, reliable, and affordable water service.

Respectfully submitted on the 27th day of January, 2016.

HOLLAND & HART LLP

s/ Thorvald A. Nelson

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**ATTORNEYS FOR MOUNTAIN WATER
COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of January, 2016, **MOUNTAIN WATER COMPANY'S COMMENTS REGARDING THE NOTICE OF CLOSING AND WITHDRAWAL OF THE JOINT APPLICATION** was filed with the Montana PSC and served via U.S. Mail and/or e-mail, unless otherwise noted, to the following:

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s/ Adele C. Lee