

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

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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
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**PRELIMINARY COMMENTS OF THE MONTANA CONSUMER COUNSEL
ON JOINT STIPULATION AND SETTLEMENT AGREEMENT**

The Montana Consumer Counsel (MCC) filed with the Montana Public Service Commission (Commission) its Petition to Intervene in this proceeding on January 12, 2015, seeking leave to represent the consuming public. That Petition was granted on January 27, 2015, and the MCC has been actively involved as a party since that time. When the Joint Applicants, Liberty Utilities Co. (Liberty) and Mountain Water Company (Mountain Water) (collectively “Joint Applicants”) on January 11, 2016 filed the document they termed their “Notice of Closing and Withdrawal of Joint Application,” MCC joined the other parties in commenting on the appropriate regulatory process that should be followed.

The Commission initiated Docket D2016.2.15 on February 3, 2016, for the purpose of investigating whether the rates charged Mountain Water’s customers were just

and reasonable following the unauthorized closing of the sale transaction. The MCC intervened in that proceeding and has actively participated throughout the case.

The Commission, MCC and other parties are now faced with a highly unusual situation. The Commission has issued Final Order 7475i in Docket D2016.2.15, reducing Mountain Water's rates by approximately \$1.11 million. At the same time, in this, the transfer approval proceeding, the Joint Applicants and the Commission's advocacy staff have filed a Joint Stipulation and Settlement Agreement (Stipulation) that asks the Commission to bring this Docket to a close if no party challenges the \$1.11 million rate reduction.

The MCC respectfully asks that the Commission afford the other parties to this proceeding an opportunity to formally respond to the Stipulation, and to not close this proceeding at this time. The MCC would use such an opportunity to address the following (and possibly other) concerns in greater detail.

First, the current procedure in this Docket fails to provide due process to the intervening parties. The Stipulation will result in a final order that fails to address, among other things, the question of whether a future sale of Mountain Water would require Commission approval. The parties have not been provided an opportunity to formally respond to or fully analyze the impacts of the Stipulation. The MCC requests an opportunity for all parties to formally respond to the Stipulation between the Joint Applicants and Commission staff.

Second, the purpose and effect of paragraph (3) of the Stipulation is not clear:

Future Sale: Mountain Water, Liberty Utilities, and its corporate affiliates will not challenge the Commission's jurisdiction **to review** any future direct or up-stream **(up to and including the Western Water Holdings level)** sale or transfer of assets or stock, including transfer or effective control of stock of Mountain Water, **provided, however,** the Commission **will not be required to review** affiliate restructuring within the Liberty Utilities' corporate group **so long as** Mountain Water remains part of a subsidiary group consisting predominantly of regulated utilities. The Commission retains the right **to investigate whether it has authority to review** any sale or transfer that may occur at a higher corporate holding level. Nothing in this section limits the Commission's authority under Title 69 to exercise the full power of supervision, regulation, and control of such public utilities.

(Emphasis added). It is worth asking what would prevent Algonquin Power and Utilities Corporation (Algonquin) from simply attempting to sell at a level above Western Water in an attempt to avoid the Commission's jurisdiction. As the Commission knows from the testimony of Liberty's Regulatory Director, Mr. William Killeen, Algonquin has so many levels of subsidiary companies that he could not identify them, nor did he have any idea what their purpose for existence might be. Hr'g Tr., Dkt. D2016.2.15, p. 137 (May 3, 2016).

In any event, the Commission should not limit its future authority to review – and approve – sales and transfers to some arbitrary level in the corporate chain, and it cannot waive its future responsibility to regulate activities that are within its jurisdiction.

Although the last sentence of paragraph (3) leaves the Commission free to exercise its full regulatory powers under Title 69 over any future sale, the Joint Applicants have demonstrated their willingness to defy that authority.

Third, MCC also has concerns about Paragraph 7 of the Stipulation, which reads:

If the City of Missoula (“City”) does not join the settlement agreement, Mountain Water and the Commission will seek dismissal of the City’s petition for judicial review pending with the Montana Fourth Judicial District Court in Cause No. DV-15-918 as moot. Upon dismissal of the district court action, the Commission will close docket D2014.12.99.

Apparently the Joint Applicants and Commission staff have concluded that final action in the recent rate investigation, Docket No. D2016.2.15, and the terms of the Stipulation (however uncertain) leave no issues unresolved. But if the Stipulation is approved, the Commission’s review of the transfer will have been effectively silenced, with no determination of fitness or conditions on future management. This is the proper proceeding to assert such jurisdiction, and its closure should not be tied to the disposition of an interlocutory appeal filed by one party.

Finally, even if the Commission has limited remedies available to ultimately enforce its jurisdiction, it should not decline to assert that jurisdiction altogether. The Commission is charged by law with the regulation of entities that “control” public utilities:

The term ‘public utility’, within the meaning of this chapter, includes every corporation, both public and private, company, individual, association of individuals, and their lessees, trustees, or receivers appointed by any court 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 for or to other persons, firms, associations, or corporations, private or municipal...

§ 69-3-101, MCA. There can be little doubt at this point that Algonquin is now in full control of Liberty, of Park Water and Mountain Water. The Commission should resolve outstanding issues in this Docket, including whether Liberty is fit to manage Mountain

Water, and what regulatory conditions should apply to Mountain Water and its parent companies. Having come this far in this proceeding, it may make sense to now resolve these essential issues rather than defer them to a future case or ignore them altogether.

In offering these comments regarding the Stipulation, the MCC does not mean to diminish the efforts of the Joint Applicants and Commission staff. These are highly complex matters that are made far more uncertain by the City of Missoula's efforts to condemn Mountain Water. The MCC is asking, however, that the Commission afford the parties an additional opportunity to respond to the Stipulation between the Joint Applicants and Commission staff before it is acted upon.

Respectfully submitted June 27, 2016.



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