

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

**COMMENTS OF THE MONTANA CONSUMER COUNSEL REGARDING  
REVISED JOINT STIPULATION AND SETTLEMENT AGREEMENT**

On June 27, 2016, the Montana Consumer Counsel (MCC) filed with the Montana Public Service Commission (PSC or Commission) its Preliminary Comments Regarding the Joint Stipulation and Settlement Agreement of Mountain Water and the Commission Advocacy Staff. In the week that followed, MCC has engaged in negotiations with Mountain Water and the Advocacy Staff in an effort to reach a stipulation that would be acceptable to all of the parties engaged in those discussions. Ultimately, that effort proved unsuccessful. MCC will not comment on the substance of those negotiations inasmuch as it believes those discussions are properly maintained as confidential.

However, there is one aspect of the proposed resolution of this Docket that prompts the MCC to raise the issue at this point, prior to action by the PSC on the Revised Joint Stipulation. If the PSC approves the Revised Joint Stipulation, MCC understands that Mountain Water and the Advocacy Staff will ask the District Court to

lift its stay in the present Docket for the purpose of allowing the Commission to enter an order dismissing this case.

MCC submits that it and the other parties to this proceeding must, under procedural due process requirements, be provided with the opportunity to argue that this proceeding should not be dismissed. The parties have been deeply engaged in this transfer proceeding and have devoted a significant amount of resources in the effort to develop evidence on the issue of whether Liberty Utilities would be a fit provider of service to Montana utility customers. The unauthorized closing of the sale transaction left that issue undecided. Closing the docket before that issue is adjudicated by the Commission would deny the parties who have opted not to join the settlement their due process rights in pursuing the issues pending before the Commission to a conclusion.

The pending issues are not moot and not inconsequential. Important questions remain about the financial viability of Liberty Utilities and its parent, Algonquin Power, and about their capability to provide reasonably adequate utility service for the long term. These companies appear to have an extremely aggressive growth strategy that could impact both the ability to provide service in Missoula and the cost of providing that service. Before it completes its consideration of this case, MCC submits, the Commission should understand the long-term financial implications of Algonquin's strategy, as well as the experience of other regulatory bodies within the United States in dealing with Liberty on these and other issues.

The necessity of determining the fitness of an acquiring utility has been a central part of this Commission's regulatory authority for decades. MCC submits that there is a

risk that simply assuming Liberty's fitness at this preliminary stage of the proceeding could diminish the Commission's future ability to assert its jurisdiction over sales and transfers. There is no reason to take that risk, as the case could be held in abeyance pending resolution of the condemnation, and later reactivated if the District Court permits the Commission to proceed.

MCC cannot predict the outcome of a reactivated fitness proceeding. However, it seems clear that the protection of Missoula customers could require modified ring-fencing requirements that would ensure that utility customers are sheltered from the extremely complex financial maneuvers of Liberty, its affiliates and its parent. If the Commission approves the Revised Joint Stipulation, and if the District Court allows this proceeding to go forward, MCC intends to carefully weigh the merits of asking that the Commission, rather than dismissing this proceeding, allow the proceeding to go forward to the ultimate end of deciding whether Liberty is fit to operate a public utility in Montana, and what forms of conditions may be needed to protect Missoula customers.

MCC thanks the Commission for considering its views prior to acting in this important matter.

Respectfully submitted this 6th day of July 2016.



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