

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

IN THE MATTER OF the Joint Application of) REGULATORY DIVISION
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) ORDER NO. 7392
Transfer of Stock)

PROCEDURAL ORDER

1. On December 15, 2014, Liberty Utilities Co. (“Liberty Utilities”), Liberty WWH, Inc. (“Liberty WWH”), Western Water Holdings, LLC (“Western Water Holdings”), and Mountain Water Company (“Mountain Water”) (collectively, “Joint Applicants”) filed a Joint Application for Approval of Sale and Transfer of Stock with the Montana Public Service Commission (“Commission”). Liberty WWH seeks to merge with and into Western Water Holdings, and Liberty Utilities, as a consequence of such merger, to acquire the stock of Western Water Holdings. Mountain Water is a closely held Montana corporation wholly-owned by Park Water Company (“Park”), which is a closely held California corporation subject to the jurisdiction of the California Public Utilities Commission. Park is currently a wholly owned subsidiary of Western Water Holdings. Western Water Holdings is currently controlled by Carlyle Infrastructure Partners Western Water, L.P., (“Carlyle”).

2. On September 19, 2014, Liberty Utilities, Liberty WWH, and Western Water Holdings executed a Plan and Agreement of Merger (“Merger Agreement”). Pursuant to the Merger Agreement, Liberty WWH and Western Water Holdings will merge, and, once the merger is effective, the surviving entity, Western Water Holdings, will become a direct, wholly-owned subsidiary of Liberty Utilities.

3. On January 27, 2015, a Notice of Staff Action was issued granting intervention to the Montana Consumer Counsel (“MCC”), the Clark Fork Coalition (“CFC”), the City of Missoula (“City”), and the Employees of Mountain Water Company (“Employees”).

DOCKET NO. D2014.12.99, ORDER NO. 7392

4. Both the City and CFC have raised preliminary issues in this proceeding. *See* CFC Pet. for Intervention pp. 5-7, 10-11 (Jan. 12, 2015), City Pet. for Intervention p. 4 (Jan. 15, 2015). In order to resolve these issues before starting discovery and normal proceedings, Paragraph 6, subparts (a) through (d) of this Order provide the City, CFC, MCC, Employees, and Joint Applicants an opportunity to provide preliminary briefing.

5. The Commission, through delegation to staff, hereby establishes the Procedural Order (Order) to be followed in this proceeding. This Order is effective immediately and remains effective unless modified by the Commission or staff. Nothing in this Order limits the right of the Commission or its staff to inspect the books, accounts, papers, records and memoranda of Joint Applicants at any time. Mont. Code Ann. § 69-3-106 (2013). A party may seek reconsideration of this Order within ten (10) days of its service date. Admin. R. Mont. 38.2.4806 (2015).

Schedule

6. This Order sets the following procedural schedule for this Docket:
- (a) February 13, 2015: Final day for Preliminary Briefs.
 - (b) February 23, 2015: Final day for Preliminary Response Briefs.
 - (c) March 2, 2015: Final day for Preliminary Reply Briefs.
 - (d) March 4, 2015: Commission Work Session to rule on preliminary matters.
 - (e) March 12, 2015: Final day for Joint Applicant testimony.
 - (f) April 16, 2015: Final day for data requests to Joint Applicants related to their Application and testimony.
 - (g) April 30, 2015: Final day for Joint Applicants to respond to data requests issued on April 16, 2015. *See also infra* ¶ 10.
 - (h) May 20, 2015: Final day for intervenor testimony.
 - (i) June 4, 2015: Final day for data requests to intervenors.
 - (j) June 10, 2015: Final day for the Commission to identify additional issues.*
 - (k) June 18, 2015: Final day for intervenors to respond to data requests issued on June 4, 2015. *See also infra* ¶ 10.
 - (l) June 25, 2015: Final day for Joint Applicants to file rebuttal testimony and for intervenors to file cross-intervenor response testimony.
 - (m) July 2, 2015: Final day for written discovery to Joint Applicants about their rebuttal testimony and written discovery to intervenors about cross-intervenor response testimony.

- (n) July 10, 2015: Final day for Joint Applicant's responses to written discovery about its rebuttal testimony and intervenors' responses to written discovery about cross-intervenor response testimony.
- (o) July 17, 2015: Deadline for pre-hearing memorandum.
- (p) July 28, 2015: Hearing commences and continues from day-to-day as necessary.

* If the PSC identifies additional issues it will issue a modified procedural order and schedule, likely changing some of deadlines k through p.

Service and Filing

7. A party must serve a copy of every pleading, motion, brief, objection, data request or response, and other document it files in this proceeding on every other party. Upon e-filing a document with the Commission, the filing party must email a copy of the document to counsel of record. In order to file a document with the Commission, a party must: (1) Submit the document electronically (e-file) on the Commission's website at <http://psc.mt.gov> ("Account Login/Registration" under "Electronic Documents" tab); and (2) physically deliver or mail the original document to the Commission at 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. The Commission will not post an e-filed document to its website until it receives the original from the filing party. Service or filing by means of facsimile is prohibited. Service by mail does not extend a deadline.

Intervention

8. The deadline for intervention in this proceeding was January 12, 2015. An entity seeking late intervention must file a petition to intervene setting forth: (1) The general position that it intends to take; (2) a legally protectable interest directly affected by this proceeding; (3) whether late intervention would delay the proceeding or prejudice another party; and (4) good cause for not having filed a timely petition. Late intervention will become effective only upon action of the Commission.

Discovery

9. "The exchange of information among parties pursuant to data requests is the primary method of discovery in proceedings before the [C]ommission." Admin. R. Mont.

38.2.3301(2). The Commission directs parties to use the following guidelines for data requests:

- (a) Assign a unique, consecutive number to each data request (e.g., MCC-001), regardless of the party to whom the request is directed (e.g., the Commission may direct PSC-001 through 008 to Liberty WWH, PSC-009 through 016 to the MCC, and PSC-017 through 019 again to Liberty WWH).
- (b) At the beginning of each data request, consistently describe its subject in five words or less. In addition, a party may direct the request to a particular witness or include citations to exhibits or testimony.
- (c) For multi-part requests, use lower case letters (a-e) to denote up to five parts.
- (d) The following is an example of an acceptable data request:

PSC-006 RE: Purchased Gas Contracts
Witness Doe, JBD-4:13-15.

- a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

10. Parties must respond to data requests within fourteen (14) calendar days of the service date of the data request or by the deadline to respond, whichever is earlier.

11. A party may file an objection to a data request by the deadline to respond. Objections must be sufficiently specific for the Commission to adequately rule on whether to sustain or object. The responding party need not object if an answer has been provided to a discovery request. If the requesting party finds the response inadequate, they may file a motion to compel. *See infra* ¶ 14. Only objections based on discoverability will be considered; objections on admissibility will be overruled. The failure to object to a data request does not waive the right to subsequently object to the admissibility of the information provided in response. If a party objects based on privilege, it must file a privilege log by the deadline to respond with enough information for the Commission to determine whether the privilege applies. The Commission may schedule oral argument before ruling on an objection.

12. If a data request asks for protected information, the responding party must file a motion for a protective order as soon as practicable, but no later than the deadline to respond to the data request.

13. A party may submit a data request after a deadline established in this Order either by agreement of the parties or with approval of the Commission upon a showing of good cause that addresses why the discovering party missed the deadline.

14. If a response to a data request fails to answer the request, the discovering party may move within fourteen (14) calendar days after service of the response for an order compelling an answer. The motion, which the party must file with the Commission and serve on all parties, must identify the relief requested. The responding party may file a brief in opposition within fourteen (14) days of service of the motion to compel. The Commission may schedule oral argument before ruling on a motion to compel, and will set a new response deadline if it grants the motion.

15. In response to a party's failure to answer a data request, the Commission may: (1) refuse to allow it to support or oppose related claims; (2) prohibit it from introducing related evidence; (3) strike pleadings, testimony, or parts thereof; (4) stay the proceeding until the request is satisfied; or (5) dismiss the proceeding, or parts thereof.

16. In order to promote the efficiency of the administrative process, staff attorneys Jeremiah Langston and Laura Farkas will act as examiners for the limited purpose of disposing of discovery disputes (including objections to data requests and motions to compel) and motions for protective order in this proceeding. Mont. Code Ann. §§ 69-2-101, 69-3-103 (2014); *see also* Admin. R. Mont. 38.2.306, 38.2.1501. "Any party may apply for reconsideration in respect to any matter determined" in a Commission order or decision, including the examiner's final written decision. Admin. R. Mont. 38.2.4806.

Pre-hearing Motions, Conferences and Memoranda

17. A party must make a pre-hearing motion, including a motion to strike pre-filed testimony, at the earliest possible time. A responding party must file and serve its response brief within seven (7) calendar days of service of the motion. If the movant wishes to reply, it must file and serve its reply brief within five (5) calendar days of service of the response brief. Upon the request of a party, the Commission may allow oral argument on a pre-hearing motion.

18. The Commission may schedule a pre-hearing conference at any time prior to the hearing to discuss the feasibility of settlement in whole or in part, simplification of the remaining issues through admissions of fact, and any other matters that may expedite the hearing.

19. Unless the parties agree to file jointly, each party must file and serve a pre-hearing memorandum listing the following information regarding the hearing: (1) Contested issues; (2) uncontested issues; (3) witnesses that it intends to call; (4) exhibits and responses to

DOCKET NO. D2014.12.99, ORDER NO. 7392

data requests that it intends to introduce (other than responses to data requests related to additional issues response testimony); (5) any special accommodations sought regarding witness sequence or scheduling. Each party's pre-hearing memorandum must also list any responses to data requests that the parties have collectively agreed to introduce. Whenever a party moves for the admission of a response to a data request, it must identify the number of the request.

Hearing

20. The Montana Rules of Evidence in effect at the time of the hearing will govern the hearing. *See* Mont. Code Ann. § 2-4-612(2). Because each party is entitled to reasonable notice of what issues will be addressed at the hearing, the Commission may not allow a party to raise an issue at a hearing unless it is reasonably related to an issue previously identified in the proceeding.

21. Prior to the hearing, the parties must arrange with the court reporter and Commission staff to consistently mark all proposed exhibits, responses to data requests, and pre-filed testimony for reference.

22. A party must make each person that authored a data request response available for cross-examination at the hearing unless the Commission approves an agreement among the parties to waive cross-examination. A witness need not recite pre-filed testimony before counsel moves to admit the testimony into the record.

23. When a party seeks to cross-examine a witness based on a document not previously filed in this proceeding, it must make copies of the document available to each Commissioner, party, and staff member, unless it shows good cause why copies are not available. A party seeking to introduce a document not previously filed in this proceeding must also provide a copy of the document to the court reporter.

24. At the discretion of the Commission, members of the public may comment on the proceeding at the hearing.

DOCKET NO. D2014.12.99, ORDER NO. 7392

DONE AND DATED this 9th day of February, 2015, by delegation to Commission staff as an Order of the Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

BRAD JOHNSON, Chairman

TRAVIS KAVULLA, Vice Chairman

KIRK BUSHMAN, Commissioner

ROGER KOOPMAN, Commissioner

BOB LAKE, Commissioner