

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. 7392e
Transfer of Stock)

ORDER COMPELLING RESPONSES TO DATA REQUESTS

BACKGROUND

1. On December 15, 2014, Liberty Utilities Company filed a *Joint Application for Approval of a Sale and Transfer of Stock* with the Montana Public Service Commission ("Commission"). Joint Applicants included Liberty Utilities Co., Liberty WWH, Inc., (collectively, "Liberty") and Western Water Holdings, LLC, and Mountain Water Company (collectively, "Mountain Water").

2. On December 23, 2014, the Commission issued a *Notice of Application and Intervention Deadline* and granted intervention to the City of Missoula ("City"), the Clark Fork Coalition, and the Montana Consumer Counsel. On February 9, 2015, the Commission issued *Procedural Order 7392* establishing discovery guidelines for this docket.

3. On April 2, 2015, the Commission issued Data Requests PSC-028 through PSC-038 to Liberty and Mountain Water. On April 21, 2015, Liberty responded to Data Requests PSC-028 through PSC-038. Liberty did not respond to PSC-028 through PSC-032, stating that the data requests were directed to Mountain Water and that Liberty "does not possess any independent responsive information for those requests." Responses to Data Requests PSC-028 through PSC-038 p. 1 (Apr. 21, 2015). Liberty objected to PSC-033(b), because the request "seeks information which is not relevant to this matter and is protected from disclosure as confidential and containing proprietary trade secrets." *Id.* at p. 2.

4. Also on April 21, 2015, Mountain Water filed its *Responses to Montana Public Service Commission's Data Requests PSC-028 to PSC-032*. Mountain Water did not respond to PSC-033 through PSC-038, stating that Liberty would provide those responses. Responses at p. 1. Mountain Water objected to PSC-031 arguing that the information is irrelevant and confidential, and also argued that the question was overly broad. *Id.* at p. 5.

5. On April 28, 2015, the City filed a *Motion to Compel Production of Documents Withheld in Response to Data Requests PSC-031 to PSC—033(b)*. On May 8, 2015, Liberty filed its *Response to City of Missoula's Motion to Compel Production of Documents Withheld in Response to Data Requests PSC-031 to PSC-033(b)*. Also on May 8, 2015, Mountain Water filed its *Response to the City of Missoula's Motion to Compel*. On May 14, 2015, the City filed its *Reply in Support of its Motion to Compel Production of Documents Withheld in Response to Data Requests PSC-031(a) and PSC-033(b)*.

DISCUSSION, FINDINGS & CONCLUSIONS

6. The Commission is vested with the full power of supervision, regulation, and control of public utilities. Mont. Code Ann. § 69-3-102 (2014). The Commission has adopted Rules 26, 28 through 37 (excepting rule 37(b)(1) and 37(b)(2)(d)) of the Montana Rules of Civil Procedure. Admin. R. Mont. 38.2.3301 (2015). “Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense. . . . The information sought need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” Mont. R. Civ. P. 26(b)(1). Confidential information at the Commission has typically involved constitutionally protected matters of individual privacy and trade secret, but may involve other types of confidential information. Admin. R. Mont. 38.2.5007(5).

7. Courts recognize a policy of broad and liberal discovery. *Patterson v. State*, 2002 MT 97, ¶ 15, 309 Mont. 381, 46 P.3d 642, (quoting *State ex rel. Burlington N. R.R. v. Dist. Ct.*, 239 Mont. 207, 216, 779 P.2d 885 (1989)). “The purpose of discovery is to promote the ascertainment of truth and the ultimate disposition of the lawsuit in accordance therewith. Discovery fulfills this purpose by assuring the mutual knowledge of all relevant facts gathered by both parties which are essential to proper litigation.” *Murphy Homes, Inc. v. Muller*,

2007 MT 140, ¶ 67, 337 Mont. 411, 162 P.3d 106 (quoting *Richardson v. State*, 2006 MT 43, ¶ 22, 331 Mont. 231, 130 P.3d 634).

8. Liberty objected to PSC-033(b) stating that its due diligence work papers and financial projections are not relevant because they “have no impact on Mountain Water’s consumers” and because “Liberty does not intend to seek an acquisition adjustment.” *Responses* at p. 2. In a past Commission docket, the Commission denied a sale and transfer, determining that the proposed sale and transfer presented the risk of harm to the utility’s financial integrity and therefore to Montana customers. Or. 6754e, Dkt. D2006.6.82, p. 57 (July 31, 2007).

9. The Commission was able to determine that “BBIL’s proposed ownership of NorthWestern presents the likelihood that NorthWestern’s capital structure will deteriorate and become unacceptably leveraged.” *Id.* at p. 49. The Commission was able to make this determination in part by reviewing BBIL’s financial projections. *Id.* Considering the broad and liberal nature of discovery, as well as the fact that the overall financial health of the company that owns the utility is highly relevant, the Commission must overrule Liberty’s relevance objections. Liberty must provide the subject information.

10. Mountain Water objected to PSC-031(a), arguing irrelevance and also stating that any responsive documents are “subject to the attorney-client privilege.” Mountain Water also asserts that the question is “overly broad.” Mountain Water provided one single e-mail in response to the request. Contrary to Mountain Water’s assertions, this information is relevant. Discovery is broad and liberal, and Mountain Water asserted in its testimony that it conferred with outside experts as well as conducted internal analysis to evaluate the tax, bond indenture, and regulatory implications of the potential sale. Parties have an interest in determining just how extensive this external and internal analysis was, to understand whether the parties did indeed conduct adequate due diligence. The results of the analysis are also relevant in so far as they indicate the impact of the sale on the utility and therefore the customers. Again, the financial health of the company that owns the utility is of import to the Commission.

11. Mountain Water’s objection is overruled. Mountain Water must provide additional responsive documents, if there are any, or else indicate that no additional responsive documents exist. The documents are relevant and the question is not overly broad, as the subject matter of the request is clearly identified. To the extent that responsive documents are protected

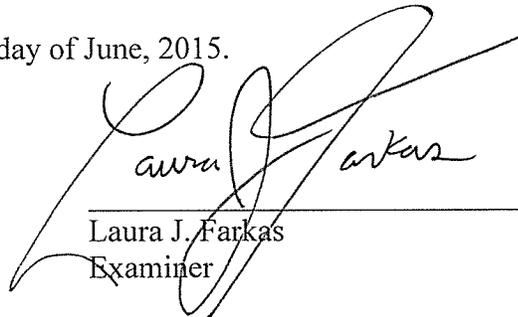
by the attorney-client privilege, Mountain Water must provide a privilege log consistent with Montana Rule 26(b)(6)(A) of the Montana Rules of Civil Procedure.

Order

IT IS HEREBY ORDERED THAT:

12. Liberty's objection to Data Request PSC-033(b) is OVERRULED;
13. Mountain Water's objection to Data Request PSC-031 is OVERRULED; and
14. Liberty and Mountain Water must provide the subject information or file a motion for protective order within ten days of this Order.

DONE AND DATED this 3rd day of June, 2015.



Laura J. Farkas
Examiner

ATTEST:



Aleisha Solem
Commission Secretary
(SEAL)