

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. 7392k  
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.

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

3. On April 20, 2015, the MCC issued Data Requests MCC-001 through MCC-018 to Liberty and Mountain Water. On May 4, 2015, Liberty responded to Data Requests MCC-010 through PSC-018. Liberty objected to MCC-010 "because it seeks information which is not relevant to this matter and is protected from disclosure as confidential and containing proprietary trade secrets." Data Response (DR) MCC-010 (May 4, 2015).

4. MCC-010 seeks the following information:  
MCC-010 Regarding: Enterprise Value.  
Witness: David Pasioka

Please provide a working copy, including data, supporting spreadsheets and all formulas and links intact, of the financial model used in evaluating the acquisition of Park Water Company by Liberty Utilities Co.

5. Liberty in its objection argues:

Liberty's due diligence work papers and financial projections are not relevant because they have no impact on Mountain Water's consumers. The documents are not tied to the service consumers will receive, the operations of Mountain Water, or the rates consumers will pay. Moreover, Liberty's internal valuation will not affect Mountain Water's rates or the level of service, as stated in Liberty's application, because Liberty does not intend to seek an acquisition adjustment to the existing rate base. Regardless of these considerations, all future rate changes will be subject to the Commission's review and approval.

DR MCC-010.

6. On May 8, 2015, the MCC filed a Motion to Compel ("Motion") arguing the information sought in MCC-010 is relevant to this sale and transfer docket and the Commission should overrule Liberty's objection. On May 15, 2015, Liberty filed a Response Brief to the MCC's Motion.

### **DISCUSSION, FINDINGS & CONCLUSIONS**

7. 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).

8. 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).

9. Liberty objected to MCC-010 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.” DR MCC-010. 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. In the Matter of Joint Application for Authorization for Babcock & Brown Infrastructure Limited's Acquisition of all of the Common Stock of NorthWestern, Dkt. No. D2006.6.82, Or. 6754e p. 57 (July 31, 2007); *see also* Or. 7392e ¶ 8 (Jun. 3, 2015) (finding a potential acquirers’ financial information relevant in this Docket).

10. 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.” Or. 6754e 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.

11. Further, the Commission’s standard of review of sale and transfers depends on the financial characteristics of a potential acquiring company. The Commission uses the public interest standard, the no-harm to consumers standard, or the net-benefit to consumers standard in sale and transfer sales. *Id.* at p. 13. In explaining these standards, the Commission stated:

[A] utility may be providing adequate service but just rates for the potential acquirer *may be* higher than currently charged. In such a situation, it would be appropriate for the Commission to apply a no-harm to consumers standard.

*Id.* (emphasis added). The Commission has not yet determined which standard will be applied to this Application. However, the Commission and the parties must have access to the acquiring company’s financial information to determine the appropriate standard to apply. The Commission agrees that “[t]he MCC is entitled to explore the mechanisms by which the utility plans to manage its financial stability and keep ratepayers from incurring risk into the future.”

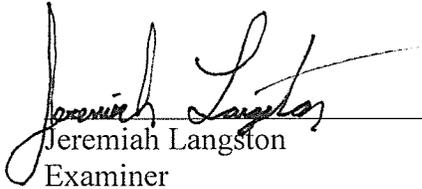
Mot. to Compel p. 3 (May 8, 2015). This information does “naturally and logically” assist in determining whether this transaction satisfies the public interest, no-harm to customers, or net-benefit to customers standards. See Response Brief p. 6 (May 15, 2015) (quoting *Monaco v. Cecconi*, 180 Mont. 111, 119, 589 P.2d 156, 161 (1979)). Therefore, the Commission finds that Liberty must provide the subject information.

**Order**

IT IS HEREBY ORDERED THAT:

12. Liberty’s objection to Data Request MCC-010 is OVERRULED;
13. 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 29<sup>th</sup> day of June, 2015.

  
Jeremiah Langston  
Examiner

ATTEST:

  
Aleisha Solem  
Commission Secretary  
(SEAL)