Service Date: July 31, 2015

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

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 ORDER NO. 7392m

ORDER ON CITY OF MISSOULA'S MOTION TO COMPEL

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"), 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, the 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 22, 2015, the City propounded discovery upon the Joint Applicants. On May 4, 2015, the Joint Applicants filed their *Responses to the City of Missoula's Data Requests CITY-001 to CITY-031*.

4. On May 19, 2015, the City filed a *Motion to Compel Responses to its Data Requests to Western Water Holdings, Mountain Water Company, Liberty Utilities Co., and Liberty WWH, Inc. and Stay the Proceeding Pending Responses*. On May 29, 2015, Mountain Water filed its *Response to the City of Missoula's Motion to Compel*. On June 1, 2015, Liberty filed its *Response to the City of Missoula's Motion to Compel Responses to its Data Requests to Western Water Holdings, Mountain Water Company, Liberty Utilities Co., and Liberty WHW,*

Inc. and Stay the Proceeding Pending Responses. On June 5, 2015, the City filed its *Reply in Support of Motion to Compel Response and Stay the Proceeding Pending Responses*.

5. The Commission is vested with the full power of supervision, regulation, and control of public utilities. Mont. Code Ann. § 69-3-102 (2013). 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).

6. 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).

7. The City requests that the Commission compel responses to Data Requests CITY-002, CITY-003, CITY-004, CITY-007, CITY-009, CITY-010, CITY-011, CITY-015, CITY-020, CITY-028, CITY-029, CITY-030, and CITY-031. The City asserts that the Joint Applicants have improperly withheld information requested by the City. Mot. to Compel pp. 3-6 (May 19, 2015). The City argues that the Joint Applicants' make "blanket relevance objections" in response to the City's data requests. Mot. at p. 3. The City also asserts that the Joint Applicants are "grasping at straws" by arguing that the City's use of the word "you" in its data requests is vague and ambiguous. Mot. at p. 5.

8. Liberty argues that the City "consistently failed to identify which Joint Applicant was expected to answer the City's various data requests." Response p. 4 (June 1, 2015). Liberty asserts that in doing so the City violated *Procedural Order No. 7392*. *Id*. Liberty argues that it was unclear which of the City's data requests required responses from Liberty, but that Liberty nonetheless provided responses. *Id*. Similarly, Mountain Water argues that it responded to each

of the City's requests so far as "a response could reasonably have been expected given the request." Response p. 3 (May 29, 2015).

9. Reviewing the City's requests and the Joint Applicants' responses, it is apparent that notwithstanding objections, the Joint Applicants' provided responses. This practice is discouraged by the Commission and generally the Commission will simply ignore objections that precede responsive answers. Furthermore, the Commission expressly requested via *Procedural Order No. 7392* that the parties not engage in this practice. "The responding party need not object if an answer has been provided to a discovery request. If the requesting party finds the responsive inadequate, they may file a motion to compel." Or. 7392 ¶ 11 (Feb. 2, 2015).

10. The Joint Applicants', in both objecting to and answering the City's requests, created unnecessary confusion. Additionally, the response "N/A" is less than obvious in its meaning. The Commission is forced to assume that in this instance "N/A" means that no responsive documents exist. However, in the future, the Commission would appreciate a more articulate statement. While there are minor failings in the Joint Applicants' handling of the City's discovery, ultimately the Joint Applicants provided sufficient responses. The City did not take appropriate care to ensure that its requests were unambiguous and specific, which may have yielded better answers. A motion to compel is not an opportunity for a party to clarify or redraft discovery requests.

11. The City may not like the Joint Applicants' responses, and the Joint Applicants may not have been overly accommodating, but based upon a careful review of the questions and responses, it is apparent that the Joint Applicants' did answer the questions as written adequately. Furthermore, if the Joint Applicants' are asserting in front of this tribunal that there are no additional responsive documents to provide, there is nothing this Commission can order be produced. The City will have more opportunities to seek discovery of the Joint Applicants, as well as the opportunity to cross examine the Joint Applicants' witnesses at the hearing. The City should take steps to ensure that their discovery and cross examination questions are thoughtful as to elicit the information the City seeks.

Order

THEREFORE, based upon the foregoing, it is HEREBY ORDERED as follows:

12. The City's *Motion to Compel* is hereby DENIED

DONE AND DATED the 31st day of July, 2015.

Laura Farkas
Examiner

ATTEST:

Aleisha Solem
Commission Secretary
(SEAL)