

Service Date: July 28, 2016

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. 7392r
Transfer of Stock	)	

**FINAL ORDER**

**PROCEDURAL HISTORY**

1. On December 15, 2014, Liberty Utilities Co. (“Liberty”), Liberty WWH, Inc., Western Water Holdings, LLC and Mountain Water Company (“Mountain Water”), collectively known as the Joint Applicants, filed an *Application for Approval of Sale and Transfer of Stock* with the Montana Public Service Commission (“Commission”). Approval of this transaction would have allowed Liberty Utilities Co. to be the sole owner of Western Water Holdings, which is the sole upstream owner of Park Water Company. In turn, Park Water Company is the sole upstream owner of Mountain Water. The Montana Consumer Counsel (MCC), the City of Missoula (“City”), the Clark Fork Coalition (CFC), and the Employees of Mountain Water were granted intervention in this docket.

2. Over a period of 8 months the Commission endeavored to resolve the discovery and procedural disputes between the parties. Unsatisfied with the Commission’s decisions, the City sought judicial review in Montana district court. *See City of Missoula v. Mont. Dept. of Pub. Serv. Regulation*, DV-15-918, Pet. for Judicial Review (Mont. 4th Dist. Ct. Aug. 31, 2015). Despite the Commission’s and Mountain Water’s motion to dismiss the proceeding, the district court stayed the Commission’s proceeding allowing itself time to examine the merits of this interlocutory appeal. *See City of Missoula v. Mont. Dept. of Pub. Serv. Regulation*, DV-15-918, Minutes and Note of Ruling (Mont. 4th Dist. Ct. Dec. 18, 2015). On January 11, 2015, the Commission was informed through a *Notice of Closing and Withdrawal of Joint Application* that

the Joint Applicants had closed on the sale of Park Water to Liberty WWH, which included Mountain Water and two California water utilities. This sale and transfer occurred without Commission approval in apparent violation of the Commission's implied authority over sales and transfers.

3. On January 13, 2016, the Commission issued a *Notice of Opportunity to Comment* requesting parties to discuss the issues of: 1) jurisdiction in general; 2) the City's previous position on Commission jurisdiction; 3) the Joint Applicant's previous position of Commission jurisdiction; 4) violations of any specific statutes, rules or orders; 5) violation of ring fencing provisions; 6) rate adjustments; and 7) the notice in general. On January 27, 2016, the Commission received comments from the MCC, the City, Mountain Water, Liberty, and the CFC. The Commission held a work session on January 29, 2016 to discuss and act on Joint Applicants' *Notice of Closing and Withdrawal of Joint Application* and the comments provided by the various parties.

4. The Commission voted to open an investigatory docket to determine if Mountain Water's rates were just and reasonable under the new capital structure and cost of capital resulting from Liberty's ownership of Mountain Water. *See* Notice of Investigation and Intervention Deadline, Dkt. D2016.2.15 (Feb. 3, 2016). The Commission held a hearing on May 3, 2016, and subsequently issued *Final Order 7475i*, which implemented a \$1,111,484 reduction to Mountain Water's revenue requirement. *See* Order 7475i, Dkt. D2016.2.15, ¶ 48 (June 22, 2016).

5. The Commission also directed legal staff to pursue fines against Mountain Water under Montana Code Annotated §§ 69-3-209 and 69-3-206 and cooperate with the Montana Attorney General's office to consider other remedies pursuant to Montana Code Annotated § 69-3-110. Order 7392q ¶¶ 19, 22 (Feb. 5, 2016). In order to effectuate these requests, the Commission designated staff attorney Jeremiah Langston as advocacy staff to pursue a settlement agreement or other litigation objectives with the relevant parties.

6. On June 22, 2016, Mountain Water filed a *Joint Stipulation and Settlement Agreement* ("Original Stipulation") entered into between Mountain Water and the Commission's advocacy staff. On June 27, 2016, the MCC filed *Preliminary Comments of the Montana Consumer Counsel on Joint Stipulation and Settlement Agreement*. At a work session on June 27, 2016, the Commission discussed the Original Stipulation and ultimately provided guidance to

advocacy staff to reinitiate negotiations with Mountain Water and other parties. On July 6, 2016, Mountain Water filed a *Revised Joint Stipulation and Settlement Agreement* (“Revised Stipulation”) between Mountain Water and Commission advocacy staff. Also on July 6, 2016, the MCC filed *Comments of the Montana Consumer Counsel Regarding Revised Joint Stipulation and Settlement Agreement*. During a work session on July 7, 2016, the Commission voted to approve the Revised Stipulation.

### FINDINGS OF FACT

7. The Commission finds that the Revised Stipulation represents a reasonable resolution of the issues in the case and that approval of it is in the public interest. Mountain Water’s agreement to provide \$150,000 to the Human Resources Council will directly aid Mountain Water customers who may need assistance in covering the costs associated with replacing service lines or installing meters. Moreover, Mountain Water’s agreement to not seek judicial review of the revenue reduction ordered in Docket D2016.2.15 will ensure that customers will, for the foreseeable future, directly benefit in the form of reduced rates. Mountain Water customers will receive substantial value from both the available funds to help cover needed costs to replace service lines and install meters, and the reduction in their water rates. Mountain Water’s agreement to not seek recovery of any costs related to the Liberty acquisition, as well as its consent that the ring fencing provisions enumerated in Docket D2011.1.8 will remain in place, and be reviewed, provide additional protection to Mountain Water’s customers. Mountain Water ratepayers are better served by the terms and conditions of the Revised Stipulation than court actions to impose fines on Mountain Water.

8. The Commission’s authority over sales and transfers is implied from its full power of supervision, regulation, and control of public utilities, and its ability to do all things necessary and convenient in the exercise of its conferred powers, pursuant to Mont. Code Ann. §§ 69-3-102 and 69-3-103. *Infra* ¶¶ 12-15. The Commission’s authority over sales and transfers can also be implied from its authority over complaints. *Infra* ¶¶ 17-18. Furthermore, the Montana Supreme Court, in *Great N. Ry. V. Board of R.R. Comm’rs*, determined that utilities cannot discontinue service without the consent of the Commission. *Infra* ¶ 20. A sale and transfer is a type of discontinuation of service. Additionally, this principle was never articulated in statute, rather, the Court determined that it is inferred from the Commission’s statutory grant

of authority. *Infra* ¶ 20. The Commission has consistently asserted its authority over sales and transfers. *In re Joint Application of NorthWestern Corporation and Babcock & Brown Infrastructure Limited for Approval of the Sale and Transfer of NorthWestern Corporation Pursuant to a Merger Agreement*, Order 6754c, Dkt. D2006.6.82, ¶¶ 21-29 (Mont. Pub. Serv. Comm'n Jul. 31, 2007). In the Revised Stipulation, Mountain Water, Liberty, and its corporate affiliates agree that no sale or transfer of Mountain Water will occur without the Commission's approval. Assurance that the Commission will fully vet all future sales and transactions involving Mountain Water is an additional benefit to ratepayers.

9. The MCC, in filed comments, expresses concern that the conclusion of this docket will leave the issue of whether Liberty is a fit provider of service to Mountain Water customers undecided. The MCC also argues that it is a violation of its procedural due process rights to close the above captioned docket. MCC Revised Joint Stip. Comments 2 (July 6, 2016). However, pursuant to Mont. Code Ann. § 69-3-321, the Commission has the authority to "make such investigation as it may deem necessary" upon a complaint. *Infra* ¶ 17. Additionally, the Commission, pursuant to Mont. Code Ann. § 69-3-324, may "at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, practices and services" of a utility. *Infra* ¶ 18. At any time the Commission may investigate a utility. Furthermore, the MCC has been provided sufficient due process. In *Mathews v. Eldridge*, the United States Supreme Court determined that due process is flexible and the procedure necessary differs depending on the circumstances. *Infra* ¶ 21. The United States Supreme Court also found that the degree of potential deprivation that may result from a particular decision is something to be considered in assessing the adequacy of an administrative process. *Infra* ¶ 21.

10. Here, the degree of deprivation that the MCC stands to endure is minimal. It's only purported interest in the above entitled docket is ensuring that "Liberty is a fit provider of service to Mountain Water customers." Closing the docket does not waive the Commission's duty to ensure reasonably adequate service at just and reasonable rates. *Infra* ¶¶ 12, 16. In *Qwest Corp. v. Mont. Dep't of Pub. Serv. Regulation*, the Montana Supreme Court affirmed the Commission's broad investigatory powers. *Infra* ¶ 22. In the Revised Stipulation, Mountain Water agrees to provide the Commission information about the company and its upstream ownership to ensure that Mountain Water will continue to provide reasonably adequate service and facilities at just and reasonable rates. Pursuant to the terms of the Revised Stipulation, the

Commission will continue to ensure that Mountain Water and any upstream owners are fit operators of the utility.

11. For the reasons stated herein, the Commission approves the Revised Stipulation in full and without modification.

### CONCLUSIONS OF LAW

12. The Commission's duty is to supervise and regulate the operations of public utilities pursuant to Mont. Code Ann. § 69-1-102.

13. The Commission has full power of supervision, regulation, and control of public utilities. Mont. Code Ann. § 69-3-102 (2015).

14. Mountain Water is a public utility pursuant to Mont. Code Ann. § 69-3-101.

15. The Commission has the authority to do all things necessary and convenient in the exercise of its conferred powers. *Id.* at § 69-3-103.

16. Public utilities have an obligation to furnish reasonably adequate service and facilities while charging just and reasonable rates. *Id.* at § 69-3-201.

17. The Commission shall "with or without notice... make such investigation as it may deem necessary upon a complaint made against any public utility..." *Id.* at § 69-3-321.

18. "The commission may, at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, practices, and services [of a utility] and after a full hearing... may make by order such changes as may be just and reasonable..." *Id.* at § 69-3-324.

19. "If the commission finds that any regulation, measurement, practice, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of the provisions [of statute] or that service is inadequate or any reasonable service cannot be obtained, the commission may substitute therefore other regulations, measurements, practices, services, or acts and make such order relating thereto as is just and reasonable." *Id.* at § 69-3-330(3).

20. The Montana Supreme Court has found that "a public utility may not discontinue its service without approval of the public service commission. This has been held in a great many states under statutes no broader than ours." *Great N. Ry. V. Board of R.R. Comm'rs*, 130 Mont. 250, 252, 298 P2d 1093, 1094 (1956).

21. “Due process is flexible and calls for such procedural protections as the particular situations demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). “[T]he degree of potential deprivation that may be created by a particular decision is a factor to be considered in assessing the validity of any administrative decisionmaking process.” *Id.* at 341.

22. “[A]dministrative agencies have broad investigatory power in Montana and an agency should not be denied access to information necessary to perform its statutory investigative duties.” *Qwest Corp. v. Mont. Dep’t of Pub. Serv. Regulation*, 2007 MT 350, ¶ 38, 340 Mont. 309; 174 P.3d 496. The Commission’s “statutory duty to investigate utilities may not be hindered by limiting its ability to obtain information in a specific manner.” *Id.* ¶ 39.

23. The terms and conditions proposed in the Revised Stipulation are just, reasonable, and provide a fair resolution of the issues in this case.

## ORDER

### IT IS HEREBY ORDERED THAT:

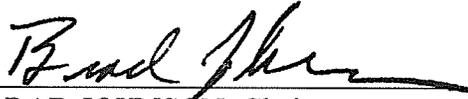
24. The Revised Stipulation is APPROVED;

25. That the Commission’s motion on January 29, 2016 directing its legal staff to initiate an action in district court to seek fines against Mountain Water pursuant to Mont. Code Ann. §§ 69-3-209 and 69-3-206 is reconsidered and reversed;

26. Mountain Water is required to make the \$150,000 payment to the Human Resource Council, which will be used to help cover the costs associated with replacing service lines or installing meters of Mountain Water customers. Regardless of the future ownership of the utility, Mountain Water as of the service date of this order, is required to make the \$150,000 payment to the Human Resource Council as agreed to in the Revised Stipulation.

DONE AND DATED this 7<sup>th</sup> day of July 2016 by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION



BRAD JOHNSON, Chairman



TRAVIS KAVULLA, Vice Chairman



KIRK BUSHMAN, Commissioner



ROGER KOOPMAN, Commissioner



BOB LAKE, Commissioner

ATTEST:



Aleisha Solem  
Commission Secretary

(SEAL)

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

\* \* \* \* \*

<b>IN THE MATTER OF</b> the Joint Application of )	
Liberty Utilities Co., Liberty WWH, Inc., Western )	
Water Holdings, LLC, and Mountain Water Company )	REGULATORY DIVISION
for Approval of a Sale and Transfer of Stock )	
)	DOCKET NO. D2014.12.99

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**REVISED JOINT STIPULATION AND SETTLEMENT AGREEMENT**

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This Revised Joint Stipulation and Settlement Agreement (“Revised Joint Stipulation”) is entered into among Mountain Water Company (“Mountain Water”) and the Montana Public Service Commission’s Advocacy Staff (“Advocacy Staff”) (collectively, “Signatories”).

**RECITALS**

1. On January 11, 2016, Liberty Utilities Co. (“Liberty Utilities”), Liberty WWH, Inc., (“Liberty WWH”), Western Water Holdings, LLC (“Western Water”), and Mountain Water Company (“Mountain Water”), (collectively, the “Joint Applicants”), submitted a Notice of Closing and Withdrawal of the Joint Application filed in Docket No. D2014.12.99 (“Notice of Closing”). The Notice of Closing stated that on January 8, 2016, the sale and transfer of Western Water stock to Liberty WWH closed, with Liberty WWH merging into Western Water and Western Water continuing as the wholly-owned subsidiary of Liberty Utilities.

2. The Montana Public Service Commission (“Commission”) held a work session on January 29, 2016 to discuss and act upon the Joint Applicants’ Notice of Closing. At that work session, the Commission directed legal staff to pursue fines against Mountain Water under Mont.

Code Ann. §§ 69-3-209 and 69-3-206 and cooperate with the Montana Attorney General's office to consider other remedies pursuant to Mont. Code Ann. § 69-3-110. *See* Docket No. D2014.12.99, Order No. 7392q, ¶¶ 19, 22 (Feb. 5, 2016). In order to effectuate those requests, the Commission designated advocacy staff to pursue a settlement agreement or other litigation objectives with the relevant parties. *See* Docket No. D2014.12.99, Notice of Commission Action (Mar. 30, 2016).

3. On January 29, 2016, the Commission voted to initiate proceedings to review Mountain Water's rates in Docket No. D2016.2.15.

4. The stated goal of Docket No. D2016.2.15 was to inquire into whether Mountain Water's water rates were just and reasonable after the Joint Applicants filed their Notice of Closing in Docket No. D.2014.12.99.

5. On February 3, 2016, the Commission issued a Notice of Investigation and Intervention Deadline in Docket No. D2016.2.15. On March 1, 2016, the City of Missoula and Clark Fork Coalition were granted limited intervention. On March 2, 2016, the Montana Consumer Counsel was granted intervention.

6. On May 3 and 4, 2016, the Commission held a public hearing as part of its investigation into whether Mountain Water's rates were just and reasonable.

7. During a public work session held after the public hearing, the Commission voted to reduce Mountain Water's rates by \$1.1148 million on an annual basis.

8. The Signatories wish to resolve the issues outstanding in Docket Nos. D2014.12.99 and D2016.2.15 through this Revised Joint Stipulation.

## TERMS AND CONDITIONS

Mountain Water and Advocacy Staff hereby agree as follows:

- (1) **Settlement of Potential Fines:** Without admitting liability for any fine amount, Mountain Water will pay \$150,000 to the Human Resources Council designated for use in its low income and renters repair and replacement program, which assists qualifying individuals with the cost of replacing service lines or meter installation costs normally borne by customers within Mountain Water's service area. If this Revised Joint Stipulation is approved by the Commission, Signatories and the Human Resources Council will write a memorandum of understanding to ensure, among other things, minimal support of administrative costs through this payment.
- (2) **Rate Adjustment:** Mountain Water will not seek judicial review of any aspect of the Commission's revenue reduction in D2016.2.15, assuming the decision is not challenged by an intervenor in district court. If the decision is challenged by an intervenor, Mountain Water will have the right to challenge the adjustment in its entirety.
- (3) **Future Sale or Transfer:** Mountain Water, Liberty Utilities, and its corporate affiliates agree no sale or transfer of Mountain Water shall take place without prior approval by the Commission. For purposes of this Revised Joint Stipulation, "sale or transfer" means any transaction which, regardless of the means by which it is accomplished, results in a change in the majority ownership interest or control of Mountain Water, or the majority ownership interest or control of any entity which owns a majority interest in or controls Mountain Water. "Sale or Transfer" as used in this Revised Joint Stipulation shall not include a mortgage or pledge transaction entered into to secure a bona fide borrowing by the party granting the mortgage or making the pledge. Any unauthorized sale or transfer is void.
- (4) **Acquisition/Transaction Costs:** Mountain Water will not attempt to seek recovery of any costs related to the Liberty Utility acquisition, including acquisition premium, transaction, and transition costs.
- (5) **Ring-Fencing:** The ring-fencing provisions enumerated in Docket D2011.1.8 will remain in effect unless altered by the Commission.
- (6) **Rate Case Requirement:** In addition to the minimum rate case filing requirements, in its next general rate case, Mountain Water will provide the Commission information about it and its upstream corporate ownership to ensure Mountain Water will provide reasonably adequate service and facilities at just and

reasonable rates. Mountain Water also will consent to the Commission including a review of ring-fencing provisions within the rate docket.

- (7) **Acquisition Case:** If the City of Missoula (“City”) does not join the Revised Joint Stipulation, Mountain Water and the Commission will seek dismissal of the City’s petition for judicial review pending with the Montana Fourth Judicial District Court in Cause No. DV-15-918. Upon dismissal of the district court action, the Commission will close Docket D2014.12.99.
- (8) **General Authority:** Nothing in this Revised Joint Stipulation limits the Commission’s authority under Title 69 to exercise the full power of supervision, regulation, and control of public utilities including regulation of entities that control public utilities.
- (9) **Order Approving Revised Joint Stipulation:** This Revised Joint Stipulation shall be deemed final and binding on the Signatories when the Commission has approved it by Order without modification and such approval is no longer subject to administrative or judicial review.
- (10) **Hearing Participation:** The Signatories agree to support this Revised Joint Stipulation in any future judicial proceedings.
- (11) **Withdrawal:** In the event the Commission enters an order that does not satisfy the requirements of Condition No. 9 above, the Signatories reserve the right to pursue all appropriate avenues of administrative review and appeal, including but not limited to seeking rehearing of this proceeding in front of the Commission, and no party shall be bound or prejudiced by the terms of the Revised Joint Stipulation.
- (12) **Entire Agreement:** The Signatories acknowledge that this Revised Joint Stipulation is the product of negotiations and compromise and shall not be construed against any Signatory on the basis that it was the drafter or any or all portions of this Revised Joint Stipulation. This Revised Joint Stipulation constitutes the Signatories’ entire agreement on all matters set forth herein and it supersedes any and all prior oral and written understandings or agreements, on such matters that previously existed or occurred in this proceeding, and no such prior understanding or agreement or related representations shall be relied upon by the Signatories.
- (13) **Counterparts:** This Revised Joint Stipulation may be executed in counterparts and each signed counterpart will constitute an original document.

DATED this 6th day of July, 2016.

By:



Michael Green  
Attorney for Mountain Water Company, Liberty Utilities Co., and Western Water  
Holdings, LLC.

By:



Jeremiah Langston  
Attorney for Advocacy Staff

**CERTIFICATE OF SERVICE**

I hereby certify that on July 6, 2016, the foregoing Revised Joint Stipulation and Settlement Agreement was served via electronic and U.S. mail on:

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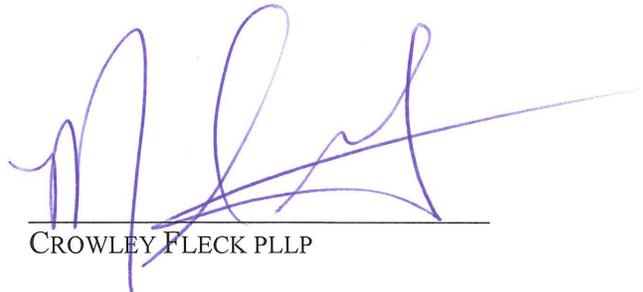
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