

DEPARTMENT OF PUBLIC SERVICE REGULATION
MONTANA PUBLIC SERVICE COMMISSION

IN THE MATTER OF the Investigation of the) REGULATORY DIVISION
Montana Public Service Commission into) DOCKET NO. D2016.2.15
whether Mountain Water Company's Rates are)
Just and Reasonable) ORDER NO. 7475

ORDER TO SHOW CAUSE

Background

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 Company. 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. The Commission has consistently asserted jurisdiction over sale and transfers of Montana investor owned public utilities. The purpose of such review is to evaluate the financial fitness of the new owners of Montana investor owned public utilities and ensure Montana rate payers are not subjected to unreasonable risk through new ownership. *In Re Cut Bank Gas Co.*, Dkt. No. D2008.3.27, Order 6907b p. 7 (Nov. 2, 2009). Often, the Commission will institute ring-fencing provisions to mitigate risk towards rate payers in a proceeding and in fact did so when the sale of Mountain Water to Carlyle was approved in 2011. *In Re Mountain Water*, Dkt. No. D2011.1.8, Order 7149d ¶¶ 58-70 (Dec. 14, 2011).

3. As a portion of the Joint Applicants' filing for approval received in December 2014, the Commission received an organizational chart, plan and agreement of merger, a Mountain Water Affidavit, and a Liberty Utilities Affidavit.

Discussion

4. Included within the Merger Agreement was a requirement for regulatory approval by the Commission. Joint Application for Approval of a Sale and Transfer of Stock, Ex. B, Plan and Agreement of Merger, § 6.5(a)-(d), pp. 35-36 (Dec. 15, 2014). Since approval was not provided, the Commission is left to assume that a new merger agreement was formed or consent was provided to waive these covenants allowing for closure of the sale without regulatory approval by the Commission. Potentially, other aspects of the transfer are materially different than what was provided in the Joint Applicants' December 15, 2014 filing. Furthermore, the discovery that was elicited throughout this proceeding is possibly inaccurate.

5. The ring-fencing provisions put into place in the last sale and transfer docket covers a wide variety of risk mitigation issues. Now that much of the information provided to the Commission in the Joint Application is potentially inaccurate and the Commission and parties were unable to evaluate the evidence in a hearing context, the Commission is unsure of the status of these various ring-fencing provisions. Due to the Joint Applicant's unilateral decision to proceed with this docket without examination of the full and complete record, the onus is now on the Joint Applicants to demonstrate that no violation of these ring-fencing provisions has occurred.

6. The Commission recognizes that typically it must identify specific violations of orders, rules, and statutes in order to show cause. *See Wilson v. Dep't of Pub. Serv. Regulation*, 260 Mont. 167, 172, 858 P.2d 368, 371 (1993) However, the unusual and unprecedented measures taken by the Joint Applicants creates an emergency scenario jeopardizing the status quo and potentially shifting excessive risk onto rate payers justifying placing the general burden of proving the ring-fencing provisions have not been violated by new ownership on the Joint Applicants. *See, e.g. Mont. Tavern Ass'n v. State*, 224 Mont. 258, 264, 729 P.2d 1310, 1314-15 (1986) (“[T]he purpose of a temporary restraining order is to preserve the status quo until a hearing can be held to determine whether an injunction should be granted”); *Mathews v. Eldridge*, 424 U.S. 319, 334, 96 S. Ct. 893, 902 (1976) (“[D]ue process is flexible and calls for such procedural protections as the particular situation demands”). The situation created by the

Joint Applicants' decisions requires the Commission to act quickly to ensure the status quo remains in place to the greatest degree possible and to protect rate payers for unreasonable risk exposure.

Order

THEREFORE, IT IS HEREBY ORDERED THAT

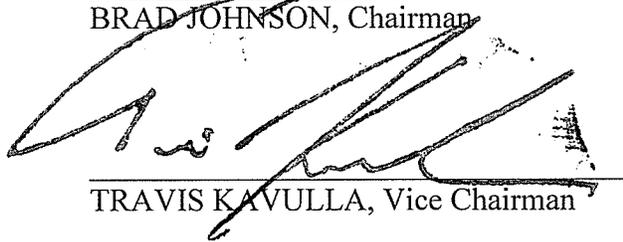
7. Mountain Water show cause before the Montana Public Service Commission within fourteen (14) days of the service date of this order, why the Commission should not immediately suspend upstream dividend payments. Mountain Water must address each ring fencing provision and explain with specificity why it did or did not violate the provision. Mountain Water must provide legal argument as to why the Commission should not suspend upstream dividend payments. Mountain Water is also required to submit any relevant documentation available in support of its position on each ring fencing provision. Mountain Water must also provide any documents establishing a new merger agreement or consent of waiver requiring regulatory approval of the Commission. Mountain Water must show cause before the Commission in the form of a written response filed with the Commission. Mountain Water may also request a hearing before the Commission at the same time it files its written response.

DONE AND DATED this 29th day of January, 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)

