

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

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

CLARK FORK COALITION PETITION TO INTERVENE

Pursuant to the Notice of Investigation and Intervention Deadline, dated February 3, 2016, and Administrative Rules of Montana 38.2.2401, *et seq.*, the Clark Fork Coalition (“CFC”) hereby petitions the Public Service Commission of the State of Montana for leave to intervene as a general intervenor in the above-captioned proceeding.

I. PETITIONER

CFC is a Montana non-profit corporation, founded in 1985. CFC’s 2,700 members are dedicated to protecting and restoring the 22,000 square mile Clark Fork River watershed. Hundreds of CFC members live in the Mountain Water Company (“Mountain Water”) service area and are ratepayers to Mountain Water.

CFC has a 30-year history of working to improve water quality and stream flows in the Mountain Water service area, often in close collaboration with the City of Missoula (the “City”), Missoula County (the “County”), and a variety of public and private stakeholders. These partnerships have led to a ban on the use of damaging phosphate-based detergents; groundwater education around stormwater runoff and stormdrains; an aquifer protection ordinance; a riparian protection zoning regulation; a nutrient pollution reduction program; cleanup of contaminated industrial sites; closer monitoring of in-river petroleum pipeline crossings; implementation of state-of-the-art technologies at Missoula’s wastewater treatment plant; groundwater modeling studies at the site of the former Milltown Dam; and closure of a loophole that allowed unregulated pumping of groundwater. CFC is an active participant in developing policies and regulations that protect clean drinking water for area residents and advocates for water conservation measures with Mountain Water, the City and the County.

Mountain Water is the primary public utility providing drinking water to the City and over half of CFC’s membership. In addition, Mountain Water controls a significant percentage of surface water rights on Rattlesnake Creek and the majority of water rights to eight lakes in the Rattlesnake wilderness. As such, CFC will be directly affected by the Commission’s decisions in this docket.

II. INTERESTS AND POSITION

CFC has a history of intervening in Mountain Water dockets. CFC petitioned for and was granted intervention by the Commission in Docket No. D2011.1.8 (regarding the sale of Mountain Water from Park Water Company to the Carlyle Group) and most recently in Docket No. D2014.12.99 (regarding the sale of Mountain Water from the Carlyle Group to Algonquin Power & Utilities Corporation (“APUC”)/Liberty Utilities). In Docket No. D2014.12.99 the Commission’s review of the recent purported change in ownership of Mountain Water was thwarted by the joint applicants’ refusal to submit to the Commission’s jurisdiction and the applicants’ decision to consummate the change in ownership without Commission approval. As such, the Commission and parties, including CFC, were not given the opportunity to thoroughly review and vet the transfer of Missoula’s water utility to a foreign corporation.

Given the testimony filed in Docket No. D2014.12.99, CFC believes the current rate structure is not just and reasonable and – if allowed to remain in place – will result in significant harm to the financial health of the utility, to ratepayers, and potentially to the water resources tapped to run the system. A determination of whether Mountain Water’s current rate structure is just and reasonable goes to the heart of CFC’s concerns presented in Docket No. D2014.12.99: that the actual owner of Mountain Water – APUC – stands to gain a significant financial windfall

from operating Missoula's water system, with no corresponding benefits to the water users of Missoula and no reinvestment in the system to protect and conserve water resources.

Montana Consumer Counsel expert John W. Wilson, testified in Docket No. D2014.12.99 that APUC stands to realize \$20 million per year of finance cost savings that will not be passed on to Mountain Water's ratepayers. *Direct Testimony of Dr. John W. Wilson on behalf of the Montana Consumer Counsel*, pp. 14-15 (Nov. 4, 2015). In addition, Wilson states, "[w]ithout a pass-through of acquisition-related cost savings to ratepayers, this acquisition, if implemented by means of financing that replaces a substantial part of the equity component of the prior owner's capital structure with lower cost debt, would result in rates in place at acquisition that are unjust and unreasonable as a result of the acquisition." *Direct Testimony of John. W. Wilson*, p. 18. This is exactly where we are today. The Commission must thoroughly examine the rate structure in light of the acquisition by APUC and make all adjustments necessary to protect the public interest, the utility's infrastructure, and the water resources at stake.

Further, the Commission must join APUC to this proceeding. As Wilson stated, ". . . it is very important for the protection of future water utility ratepayers that the Commission is clear about this matter [that APUC is the real acquiring entity] and that it asserts regulatory authority over the parent Canadian company as

well as over APUC's designated utility operator." *Direct Testimony of John. W. Wilson*, p. 24. CFC has argued from its first filing in Docket No. D2014.12.99 that APUC be joined, and CFC renews this request to the Commission at this time.

III. SERVICE OF DOCUMENTS

CFC requests that it receive copies of all documents filed in this proceeding, including but not limited to pleadings, testimony and exhibits, data requests and responses, correspondence and other documents. Documents may be served on CFC at the following address ¹:

Barbara Chillcott
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(406) 546-3469
barbara@clarkfork.org

IV. RELIEF REQUESTED

CFC's interests are unique and cannot be adequately represented by the participation of any other party in this proceeding. CFC will not delay the proceeding or prejudice any party through its intervention, nor will it seek to broaden the issues presented in this docket. CFC respectfully requests the Commission to grant its petition to intervene in this docket and assert its regulatory authority and join APUC.

¹ Please note the new mailing address.

Respectfully submitted this 10th day of February, 2016.

CLARK FORK COALITION

By: /S/ Barbara Chillcott

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 10th day of February, 2016, the foregoing CLARK FORK COALITION PETITION TO INTERVENE was served via U.S. mail on:

The foregoing was e-filed with and the original sent by US Mail to:

Public Service Commission
1701 Prospect Avenue
P. O. Box 202601
Helena, MT 59620-2601

By: /S/ Barbara Chillcott
Barbara Chillcott