

DEPARTMENT OF PUBLIC SERVICE REGULATION
MONTANA PUBLIC SERVICE COMMISSION

IN THE MATTER OF the Investigation of
the Montana Public Service Commission
into whether Mountain Water Company's
rates are Just and Reasonable

REGULATORY DIVISION

DOCKET NO. D2016.2.15

CITY OF MISSOULA'S RESPONSE TO DATA REQUESTS MWC-037 TO MWC-044

The City of Missoula, by and through its undersigned counsel, hereby submits its responses to data requests MWC-037 to MWC-044 subject to the following general objection.

The instant data requests are not intended to produce relevant information, unduly burdensome, overly broad, and generally a continuation of Mountain Water's and Liberty's tactics towards the City in Docket D2014.12.99 where each propounded hundreds of data requests to the City to no real end.

Dated this 1st day of April 2016.



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MWC-037 RE: Response to MWC-028(b)

In response to MWC-028(b) you state "[t]he transaction to sell Mountain Water's ultimate parent company, Western Water Holdings, LLC to Liberty Utilities Co. and Algonquin Power & Utilities Corp. changed the cost of capital and other metrics used to determine the appropriate rate of return and thus the rates of Mountain Water. As such, Mountain Water's rates should be reduced to account for Liberty and Algonquin's lower cost of capital and other attributes."

- (a) Please explain how the cost of capital of Mountain Water has changed.
- (b) Please provide a complete and exclusive list of the "other metrics" referred to above.
- (c) Please explain how the "other metrics" listed in response to (b) have changed.
- (d) Please explain the basis for your statement that Western Water Holdings, LLC was sold to Algonquin Power & Utilities Corp.
- (e) Please explain the basis for your statement that Liberty and Algonquin have a "lower cost of capital."
- (f) Please provide a complete and exclusive list of the "other attributes" referenced above.
- (g) Please explain how each of the "other attributes" requires that Mountain Water's rates should be reduced.

RESPONSE:

- (a) Ratemaking is the function of the generally accepted formula: $R = O + (V-D)r$, where R = total revenue requirement; O = operating expenses; V = gross value of tangible/intangible property; D = utility's accrued depreciation; and r = rate of return allowed.

Any change to any of the various "metrics" that feed into the formula change the ensuing value for R, which is what determines a customer's rates.

Per Mountain States Telephone and Telephone Company v. Department of Public Service Regulation, the Montana Supreme Court held that an ultimate parent company's capitalization and cost of debt/equity inclusion in the ratemaking for the subsidiary was "lawful and was supported by substantial evidence." 624 P.2d 481, 485 (Mont. 1981). Therefore, Algonquin and Liberty's cost of

debt/equity is (1) directly relevant to Mountain Water's; and (2) must be factored into the calculation to ensure Mountain Water's rates are just and reasonable.

Here, due to Algonquin Power & Utilities Corp. ("Algonquin") and Liberty Utilities Co. ("Liberty") purchase of Mountain Water, Mountain Water has a lower cost for acquiring capital (debt or equity), which, in turn, changes the rate of return allowed. Mountain Water's access to such equity/debt is *how* there is such a change.

Further, Mountain Water has not fully responded to discovery requests from the Montana Public Service Commission ("PSC") which bear directly on this answer.

- (b) See the answer to (a), where, for example, the total revenue requirement could be changed by a change in operating expenses. The City was simply referencing the entire ratemaking formula and the "other metrics" present in that formula.
- (c) Mountain Water has not responded to all discovery requests, so the City cannot fully answer this question.
- (d) Liberty Utilities is the wholly owned subsidiary of Algonquin. Liberty directly acquired Western Water Holdings, LLC ("Western Water"), which means that its parent company *also* acquired Western Water. Algonquin is the ultimate parent company for Mountain Water, which, as the City has repeatedly stated, provided the equity capital, final decision, etc. in the transaction to acquire Western Water.

However, if by this question Mountain Water is open to admitting that it violated regulatory and statutory law in Montana by closing this transaction without PSC approval and that Algonquin is legally not the owner of Mountain Water, the City is willing to accept that position. If not, it is disingenuous for Mountain Water to continue this charade that somehow Algonquin did not actually purchase Mountain Water.

- (e) The City left the phrase "other attributes" in its response in case there were other factors that may influence the overall rates of Mountain Water. As noted in response to (b), the City was simply referencing the entire ratemaking formula and the attributes of Algonquin/Liberty (in addition to cost of equity/debt) that may have an impact on the rates of Mountain Water's customers.
- (f) Mountain Water has not responded to all discovery requests, so the City cannot fully answer this question.

MWC-038 RE: Documents Supporting Responses to MWC-029

Please provide all documents supporting your responses to MWC-029 and indicate the subsection to which each document relates.

RESPONSE:

The City relied upon the public websites of the City of Missoula (<http://ci.missoula.mt.us/>) and HDR Inc. (<http://www.hdrinc.com/>) to provide the address and phone number for the four individuals noted.

For Mayor Engen, Mr. Bickell, and Councilman von Lossberg, the City relied upon the City of Missoula website, above.

For Mr. Close, the City relied upon the HDR Inc. website, above.

MWC-039 RE: Response to MWC-031
Witness: Mayor John Engen

Please explain the basis for the City's contention that Mayor John Engen can opine that Mountain Water's rates are not just and reasonable without being disclosed as an expert witness. Please include the appropriate legal citations.

RESPONSE:

The PSC has adopted the Montana Rules of Evidence for all proceedings. Admin. R. Mont. 38.2.4201. The Montana Rules of Evidence allow both expert and non-expert testimony. *See e.g.*, Mont. R. Evid. 602, 701, 702.

MWC-040 RE: Response to MWC-032
Witness: Dale Bickell

Please explain the basis for the City's contention that Dale Bickell can opine that Mountain Water's rates are not just and reasonable without being disclosed as an expert witness. Please include the appropriate legal citations.

RESPONSE:

The PSC has adopted the Montana Rules of Evidence for all proceedings. Admin. R. Mont. 38.2.4201. The Montana Rules of Evidence allow both expert and non-expert testimony. *See e.g.*, Mont. R. Evid. 602, 701, 702.

MWC-041 RE: Response to MWC-033
Witness: Bryan von Lossberg

Please explain the basis for the City's contention that Bryan von Lossberg can opine that Mountain Water's rates are not just and reasonable without being disclosed as an expert witness. Please include the appropriate legal citations.

RESPONSE:

The PSC has adopted the Montana Rules of Evidence for all proceedings. Admin. R. Mont. 38.2.4201. The Montana Rules of Evidence allow both expert and non-expert testimony. *See e.g.*, Mont. R. Evid. 602, 701, 702.

MWC-042 RE: Response to MWC-033

In response to MWC-033, you state "the City does not have the burden of proof in this proceeding."

- (a) Please explain why the City of Missoula does not have the burden of proof given the City is a "party that wishes to challenge the existing rates." *Qwest Corp. v. Dep't of Pub. Serv. Comm'n*, 2007 MT 350, ¶34, 340 Mont. 309, 174 P.3d 496.
- (b) Please explain which party has the burden of proof in this proceeding and provide the appropriate legal citations.

RESPONSE:

- (a) Mountain Water mistakes the holding in *Qwest Corp. v. Dep't of Pub. Serv. Comm'n*, 174 P.3d 496 (Mont. 2007). The *District Court* held that the PSC's investigation into Qwest's rates – and the data requests included in that investigation – was a reversal of the burden of proof. However, upon review by the Montana Supreme Court, it did not evaluate the question as whether or not it was an improper burden shift. Rather, the Montana Supreme Court focused on the PSC's investigatory powers and held the PSC's investigation was allowed and proper:

The commission has the authority to inquire into the management of the business of all public utilities, shall keep itself informed as to the manner and method in which the business is conducted, and has the right to obtain from any public utility all necessary information to enable the commission to perform its duties.

Qwest Corp., 174 P.3d at 502-03 (quoting Mont. Code Ann. § 69-3-106(1)). In case it was not clear, however, the Court explicitly noted that the PSC has "broad investigatory power in Montana." *Qwest Corp.*, 174 P.3d at 503.

Here, the PSC has, like in *Qwest*, initiated an investigation into Mountain Water's rates. The PSC is looking into the possible changes that have occurred due to the Algonquin/Liberty transaction.

Per Montana Code Annotated § 69-3-110(2), "[a]ll rates, fares, charges, classifications, and joint rates fixed by the commission shall be enforced and are

prima facie lawful from the date of the order until changed or modified by the commission." Therefore, if there is any burden, the burden is only to show that rates are no longer "lawful." Rates are unlawful if the PSC determines they are not "reasonable and just." Mont. Code Ann. § 69-3-201 ("The charge made by any public utility for any heat, light, power, water, or regulated telecommunications service produced, transmitted, delivered, or furnished or for any service to be rendered as or in connection with any public utility shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.").

The PSC has initiated this docket to investigate whether or not Mountain Water's rates are "no longer reasonable and just." *Notice of Investigation and Intervention Deadline*, Montana Public Service Commission, D2016.2.15 (Feb. 3, 2016). The City, as an intervenor in this action, is joining in the PSC's investigation of Mountain Water's rates. This is an investigation and, pursuant to the PSC's statutory power, it decides whether or not the rates are no longer reasonable and just. The PSC will make the final determination upon an inquiry into all the relevant information.

(b) See answer to (a).

MWC-043 RE: Response to MWC-033
Witness: Craig Close

In response to MWC-033 you state "Mr. Close has testified and participated in over 15 rate case proceedings (between 1988 and 2000) in California, Arizona, New Mexico, and Pennsylvania."

- (a) Please provide the names of the regulatory bodies overseeing the rate case proceedings referenced above.
- (b) Please identify the docket numbers of each rate case proceeding referenced above.
- (c) Please describe why Mr. Close has not testified or participated in a rate proceeding since 2000.

RESPONSE:

- (a) Utilities are considered "natural monopolies" that fall under the regulation of state agencies. *See e.g., Jersey Cent. Power & Light Co. v. F.E.R.C.*, 810 F.2d 1168, 1189 (D.C. Cir. 1987) ("The utility business represents a compact of sorts; a monopoly on service in a particular geographical area (coupled with state-conferred rights of eminent domain or condemnation) is granted to the utility in exchange for a regime of intensive regulation, including price regulation, quite alien to the free market."); Mont. Code Ann. § 69-3-102 ("The commission is hereby invested with full power of supervision, regulation, and control of such public utilities, subject to the provisions of this chapter and to the exclusion of the jurisdiction, regulation, and control of such utilities by any municipality, town, or village."). This is why the instant proceeding – which involves a Montana based utility – is before the Montana Public Service Commission, which is the entity in the State of Montana granted the authority to regulate private utilities.

Therefore, depending on the state where Mr. Close testified in utility rate case proceedings (as already conveyed to Mountain Water), Mr. Close has testified before the state agency in that state which has been granted the authority to review and set such rates:

California – California Public Utilities Commission;
Arizona – Utilities Division of the Arizona Corporation Commission;
New Mexico – Public Regulation Commission;
Pennsylvania – Public Utility Commission.

- (b) The City objects to this request in that it is overly broad, unduly burdensome, and not calculated to lead to relevant information. Mr. Close did not maintain copies of his testimony, however, in an attempt to respond to the substance of Mountain Water's request, Mr. Close's testimony was in his capacity at American Water for its various subsidiaries in the respective states he testified. So, depending on the state, it was on behalf of the California American Water Company, Arizona American Water Company, New Mexico American Water Company, or Pennsylvania American Water Company. Therefore, the testimony is available from each of the respective regulatory bodies if Mountain Water would like to search through those dockets.
- (c) Mr. Close simply has not been retained to testify before a state regulatory body, although as demonstrated in the City's initial responses to Mountain Water's data requests, Mr. Close does this work for various entities in different capacities.

MWC-044 RE: City's Adoption of Mountain Water's Rates

The proposed ordinances under consideration by the City Council regarding creation of its water utility appear to propose to adopt Mountain Water's existing rates and rules.

- (a) Please indicate whether the City's proposed rates and rules are based on Mountain Water's rules and rates.
- (b) To the extent the City's proposed rates differ from Mountain Water's current rates, please identify the differences.
- (c) To the extent the City's rates adopt Mountain Water's current rates, please explain why the City considers those rates just and reasonable for City imposition, but not for Mountain Water.

RESPONSE:

- (a) The City's proposed rates and rules are largely based on Mountain Water's current rules and rates.
- (b) The City has increased the cost of the bad check fee, removed the surcharge for paying off the SRF loan that Mountain Water had not removed (even though the loan is paid off), removed a power tracker charge, and removed the employee discount, however, all other rates and fees in the draft proposal are identical to those established for Mountain Water on January 6, 2014.
- (c) The City has chosen to – regardless of its opinion on Mountain Water's rates and rules – have as seamless of a transition as possible from private to public ownership assuming the condemnation is completed. To that end, the City plans to keep as many aspects the same so there will be as little change as possible for customers. The City's decision to largely adopt Mountain Water's rates is not a reflection of its belief the rates are just and reasonable or not, but out of a planning consideration for the transition.

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by mail and email upon the following counsel of record at their addresses this 1st day of April 2016:

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