Service Date: May 23, 2016

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

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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

MOUNTAIN WATER COMPANY'S POST-HEARING RESPONSE BRIEF

Mountain Water Company ("Mountain Water"), through its counsel, hereby submits its Post-Hearing Response Brief. The Montana Consumer Counsel ("MCC"), City of Missoula (the "City"), and Clark Fork Coalition ("CFC") have all failed to provide any basis for the Public Service Commission ("Commission") to lower Mountain Water's rates or remove previously granted protections from trade secret information. As a result, the Commission must leave Mountain Water's rates at the levels set in the last rate case and allow the previously granted protective order to remain in place.

ARGUMENT

The City and MCC are advocating that the Commission abandon its long-standing precedent of carefully reviewing cost of service and establishing just and reasonable rates based on a fair and reasonable return to the utility. The Commission has traditionally done this through a review of earnings information from comparable companies, or at least companies in the same industry. Even in situations where the Commission has used a parent company's capital structure in setting a utility's rates, it has completed a similar cost of capital review for the parent. In this case, the City and MCC want the Commission to ignore those long-standing review standards, and instead choose one component of the parent's capital and engage in some type of top down adjustment that has nothing to do with Mountain Water's costs, capital structure, or cost of capital.

The Commission must reject the notion that Mountain Water experienced a cost savings as a result of Liberty's acquisition of Western Water and leave the last rate order intact. The MCC and City have failed to establish any evidence that this is the case, and their positions are fundamentally flawed. The Commission must not adjust Mountain Water's rates based on the sale of Western Water Holdings LLC ("Western Water") from Carlyle[1] to Liberty Utilities Co. ("Liberty"). To do so would be outside the scope of this docket and unlawfully punitive. The Commission must also reject the calls by the MCC and City for single-issue ratemaking and the use of double-leveraging. The Commission is not legally authorized to do so in this matter. Finally, the Commission's prior protective order remains valid, and the confidential nature of financial documents should not be disturbed.

I. THE CITY AND MCC HAVE NOT ESTABLISHED ANY VIABLE BASIS RELATED TO THE TRANSACTION TO ADJUST MOUNTAIN WATER'S RATES.

The City and MCC essentially argue that the Commission must adjust Mountain Water's rates because its ultimate parent changed from one corporation to another. Without any data of the prior owner's financing costs or current capital structure of the current owner, they contend Mountain Water's cost of capital under the new owner is significantly lower. In the absence of evidence to support their claims, the Commission must maintain Mountain Water's current rates until it has an opportunity to conduct a full review in a general rate case.

[1] The City, MCC, and Dr. Wilson all use the term "Carlyle" without identifying the specific entity to which they are referring. Dr. Wilson identified various entities collectively as "Carlyle." MCC Resp. to MWC-045. Throughout this document, we use the term "Carlyle" as it is used in the briefs of the City and the MCC, as well as Dr. Wilson, with no reference to a specific entity.

The positions the City and MCC have taken in this matter confuse and improperly mix fundamental ratemaking issues, and the proposed rate reductions they advocate are based on false assumptions, which render them invalid. The Commission must reject these rate reductions. No factual or legal basis supports them.

A. The MCC has not proven, and cannot prove, a reduction in the cost of capital.

In this case, Dr. Wilson, the MCC, and the City have impermissibly mixed and compared financial concepts to create a confusing misconception of cost reductions. They have mixed capital and financing costs with Commission-authorized returns, capital with rate base, and upstream parent with utility in arriving at their proposed rate reduction. The intervenors improperly compare Liberty's cost of debt financing with Mountain Water's ROE on rate base. *See, e.g.*, MCC Br. at 5; City Br. at 2. The MCC freely substitutes the term "cost" or "real cost" to refer to authorized returns on rate base, and the term "equity capital" with the equity-portion of rate base. Similarly, they compare the regulatory capital structure authorized for MWC in the last rate case to the capital structure of Western Water. Now, the MCC makes the incredible assertion that the acquisition premium Liberty paid to Carlyle must be considered in determining the alleged "savings" from the transaction even though "it is irrelevant for ratemaking purposes." MCC Br. p. 5. These misapplications of regulatory principles are simply invalid, as are the positions taken by the MCC and City in this matter.

The MCC's mixing of concepts invalidates its proposal for a rate reduction. The MCC bases its proposals on the false claims that "capital costs have been drastically reduced" as a result of the transaction between Carlyle and Liberty. MCC Br. at 3. As Mountain Water has consistently explained in this matter, the upstream capital costs and the acquisition financing source of Carlyle and Liberty are irrelevant for ratemaking purposes. *See, e.g.*, Direct Test. of Thomas J. Bourassa

("Bourassa Test.") at 3:12-7:3; Mountain Water's Opening Br. at 5-10.

Moreover, the intervenors have not proven this claim. For the MCC's statement to be true, the MCC would have to identify which Carlyle entity's capital costs were at issue and then provide the capital costs for that entity before the acquisition, and compare them with the capital costs of Liberty. However, the MCC has failed to do so, and the Commission has not previously considered any evidence establishing the "actual" cost of capital for any Carlyle entity. Without this information, there is simply no basis for the MCC's claim. As a result, its rate reduction proposals fail.

Instead, the MCC compares the capital costs of Liberty with the authorized ROE of Mountain Water, which is an inappropriate and invalid comparison. The Commission's determination of ROE had nothing to do with Carlyle's capital costs. *See* Order 7251c, ¶ 36, Docket No. D2012.7.81. The Commission determined that the proxy group used by Mountain Water's expert was the most appropriate and conducted its own analysis of the range of ROEs. *Id.* ¶¶ 28-36. The only mention of Carlyle in that discussion was in rejecting Dr. Wilson's contention that the Carlyle acquisition had made Park and Mountain Water less risky. *Id.* ¶ 35. There is absolutely no factual or legal basis to contend the Commission has considered the actual capital cost of Carlyle.

In addition, during the last rate case, the Commission confined its consideration of returns to Mountain Water's authorized rate base. *Id.* ¶ 48. It did not include other capital owned by Carlyle. *Id.* The Commission accepted Mountain Water's suggested capital structure based on Park Water's structure, according to its longstanding precedent, but did not review or adopt the capital structure of any parent above Park Water. As a result, there was no consideration of Carlyle's cost of capital or the source of its acquisition financing, or an authorized return on any capital in excess of Mountain Water's authorized rate base.

The MCC's resulting comparison is invalid, and the Commission must reject the positions the MCC and City have taken, which are based upon it. There is no viable evidence of a reduction in the cost of capital.

B. The Commission must reject the positions taken by the intervening parties because they are fundamentally flawed.

A number of positions taken by the MCC, City, and CFC in this case abandon or otherwise fail to comprehend longstanding principles of utility ratemaking, Commission precedent, and controlling case law. The Commission cannot base its decision on these erroneous arguments.

The City's brief highlights the problem with its position and the rate reduction advocated by the MCC. The City argues that the Commission initiated this case because it was concerned "that any decrease to the cost of the utility's capital would increase the portion of Missoula water consumer's bills that go to corporate profit." City Br. at 2 (emphasis in original). The CFC makes a similar claim that Mountain Water's "profit is being generated from the public's water and shipped to Canadian investors." CFC Br. at 2. These statements show a fundamental misunderstanding of the issues in this case.

Even if this statement accurately described the Commission's concerns, there is no indication in the record that corporate profit has increased as a result of this transaction. Nor is there any evidence to suggest that Mountain Water's rates will increase, or have increased, due to this transaction. In fact, the evidence is to the contrary—there is no change to the capital structure of Mountain Water, or of the upstream parent of Mountain Water as a result of the transaction.

As the Commission is aware, for regulated utilities the actual return on equity, measured by Mountain Water's net income or earnings, is the equivalent of corporate profit. Liberty's ability to obtain low-cost debt to finance its purchase of Mountain Water's upstream parent company has absolutely no impact on Mountain Water's "corporate profit." Instead, Mountain Water's earnings, or profit, are driven by its own revenues and expenses. Since revenues are relatively flat and its actual expenses are up since the last rate case, Mountain Water's "profit" is below its authorized return. MWC-2; MWC-3. This situation was not impacted at all by the acquisition. *See* MCC-2. As a result, Mountain Water's customers are paying <u>less</u> towards "corporate profit" than the Commission authorized in the last rate case. The suggestion that Liberty's acquisition somehow improperly increased the profit component of Mountain Water rates is baseless and false.

The same applies to CFC's claim that Mountain Water is providing profits to Canadian investors, rather than investing in the water system to conserve and protect. CFC Br. at 2-3. The CFC cites no evidence to support its assertion. In fact, the record refutes this claim. Since the last rate case, Mountain Water has "invested capital" in excess of its depreciation sufficient to increase rate base by $3.7 million. Direct Test. of John Kappes 2:19; 6:6-7. This undisputed evidence represents substantial investment, and shows the CFC's claim is false.

The fundamental mistake in the briefs of the MCC and City, is that both parties assume the "cost of capital" is an actual cost that can be subjected to a tracker or single-issue rate making. This is incorrect. The "cost of equity" is essentially a misnomer, a short hand way of referring to the investors' expectations of what their investment will return. Unlike items such as debt service, taxes, payroll, and other costs imbedded in rates, the utility is not legally bound to pay a particular amount to equity holders and the Commission does not determine an "actual" amount.[2]

Rather, the Commission determines an authorized value of rate base, a reasonable capital structure, and a reasonable return on equity and debt. *See, e.g.*, Order 7251c, Docket No. D2012.7.81; *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1943) (requiring a "return to the equity owner should be commensurate with returns on investments in other enterprises

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[2] However, regulatory commissions are required to provide utilities rates that create enough revenue not only for "operating expenses" but also for "service on the debt and dividends on the stock." *Hope*, 320 U.S. at 603.

having corresponding risks"); *Bluefield Water Works & Improv. Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 692 (1923) ("A public utility is entitled to such rates . . . equal to that generally being made at the same time in the same general part of the county on investments in other business . . . ."). The Commission is not confined to actual capital structures, and does not generally allow returns on actual capital investments in excess of the original depreciated cost of rate base assets. *See id.* As a result, there can be no contention that the Commission has or even could consider actual capital "costs" in setting rates. Rather, it has attempted to measure investor expectations and set rates that allow Mountain Water an opportunity to meet those expectations.

Finally, the City's argument regarding the "best evidence rule" reveals serious miscomprehensions of utility regulation and the rule itself. The City claims Mont. Rule Evid. 1002 requires the Commission base Mountain Water's cost of capital on the interest rate on loan financing documents. City Br. at 5. As explained at every stage of this docket, the City's position violates widely-accepted financial theory, the Commission's own precedent, and controlling case law. *See, e.g.*, Mountain Water Opening Br. at 4-16.

Even at this late stage of the proceedings, the City has offered no rebuttal to these facts. Instead, it fundamentally misstates the best evidence rule, claiming the rule requires the Commission use the "recent and exact figures" in the loan documents because they are "better evidence" of Mountain Water's cost of capital than the "imprecise and outdated hypotheticals" the Commission used to set Mountain Water's ROE in the last rate case. City Br. at 5. However, Montana law is clear that the best evidence rule has nothing to do with the evidentiary value of the loan documents. The rule "relates to the authenticity of an exhibit, not the value of its contents." *State v. Arnold*, 2015 MT 163N, ¶ 9, 379 Mont. 537, 353 P.3d 507 (unpublished) (citation omitted) (rejecting the use of a recording as the "highest and best evidence" of the party's account of events). The City's argument has no legal basis.

The Commission must reject the intervenors' arguments regarding the nonexistent financing cost savings. They are based on the misapplication of ratemaking principles and Montana law.

C. Dr. Wilson's testimony must be rejected in its entirety because it is based on demonstrably false assumptions.

All of Dr. Wilson's testimony flows from his comparison of Carlyle's Commission-authorized "rate of return" with a single debt issuance by Algonquin Power & Utilities Corp. ("APUC"). The assumptions underlying that comparison are false and the comparison is invalid. When a meaningful comparison is actually made, it demonstrates the return Mountain Water is authorized is not in excess of the costs of APUC debt issuance. As a result there is no validity to the assertions that Liberty's cost of capital will result in any savings in this case or that Liberty seeks to recover its acquisition premium through Mountain Water's rates.

First, the MCC's claim that "real capital costs have been drastically reduced," which is the basis for Dr. Wilson's recommended rate reductions, is found nowhere in the record. MCC Br. at 3. As explained above, to make this comparison, the MCC would have to provide the "real cost" of Carlyle's equity interest. It has not done so. Instead, Dr. Wilson bases his recommended rate reductions on a comparison of Mountain Water's authorized returns on allowed rate-base, with a component of the new parent's debt obligations. This impermissible mixing of concepts invalidates Dr. Wilson's proposals.

Second, Dr. Wilson's proposals, which are advocated in briefing by both the MCC and City, are invalid because they are based on demonstrably false assumptions. In his pre-filed testimony, Dr. Wilson calculates a $6.217 million rate reduction based on the following assertions:

1. "APUC's acquisition of Carlyle's $250 million of equity value of Park Water/Mountain Water was funded with $160 million of 4.13% 30-year debt and $90 million of equity capital." Direct Test. of John W. Wilson ("Wilson Test.") 23:2-4.
2. "Carlyle's equity capital has a Commission-authorized and ratepayer-funded cost of more than 16%." *Id.* 20:16-18 & n.11.
3. "Based on this most recent test year percentage, Mountain Water customers could be assigned 31.81% of the annual financing cost savings, or $6.127 million." *Id.* 23:13-15.

These statements are false, and they are irrelevant to determining the impact of the transaction on Mountain Water's customers.

First, Carlyle was not earning a return on its $250 million equity interest.[3] The MCC's claim that Dr. Wilson did not make this assumption is demonstrably false. Dr. Wilson's own calculations show that he did so.

In his pre-filed testimony, Dr. Wilson claimed $19.2 million in savings were available because Liberty used approximately 4% debt financing to purchase Carlyle's "equity value," which was earning a pre-tax ROE of 16%. Wilson Test. 8:12-9:2. He demonstrated this with the following formula: $160 million x (.16-.04) = $19.2 million in savings. Wilson Test. 9:1-2 & n.5. Dr. Wilson also admitted Carlyle maintained another $90 million of "equity value," which Liberty purchased with "equity capital." *Id.* 22:4-23:6.

Considering all of these facts, the full calculation of the equity portion of the transaction shows Dr. Wilson assumed Carlyle was earning 16% on $250 million of equity:

[3] Mountain Water does not dispute 16% is the approximate pre-tax ROE it was allowed on the equity portion of its rate base. Hr'g Test. 274:23-25.

$250 million x .16 – (($90 million x .16) + ($160 million x .04)) = $19.2 million in savings. The Commission must disregard the MCC's claims that Dr. Wilson's "savings" calculation was based on something other than a return on equity of 16% on all $250 million of Carlyle's equity.

This assumption is flawed and invalidates Dr. Wilson's proposals. All parties agree Carlyle was permitted to earn a return only on authorized rate base, not on its total equity capital. Currently, the total authorized rate base for Park Water's utilities, including Mountain Water is approximately $161 million, not $250 million. Bourassa Test. 17:4-7; Hr'g Test. 285:9-12. It was not, and never has been, anywhere near $250 million.

Based on the correct numbers, there are no cost savings in this matter. At the hearing, Dr. Wilson admitted Mr. Bourassa's calculation on MWC-5 of $3.25 million was "fairly close" to the Commission's authorized ROE for Mountain Water. Hr'g Tr. 331:8-332:8. He initially claimed the Commission should use 31.81% to allocate the alleged cost savings to Mountain Water. Wilson Test. 23:13-15. However, when confronted with Mr. Bourassa's calculations, Dr. Wilson reversed course and revised the percentage of Park Water he contended should be allocated to Mountain Water downward from 31.81% to 27.95%. Oddly, the MCC's brief abandons the 27.95% figure from Dr. Wilson's hearing testimony and advocates for the Commission to use the 31.81% from Dr. Wilson's original numbers.

However, both numbers demonstrate Dr. Wilson's proposals must be rejected. When divided by $250 million in equity, the authorized return renders a pre-tax ROE rate of 4.09% when Dr. Wilson's original assertion 31.81% is used, and 4.65% when his revised assertion of 27.95% is used. In either event, the "authorized" return to Carlyle is much closer or even below to the 4.13% rate Dr. Wilson contends Liberty should be allowed. Neither number is anywhere near the 16% he claims

Carlyle earned on its capital. Accordingly, Dr. Wilson's proposals are as invalid as the false assumption upon which they are based, and should be rejected by the Commission.

Additionally, these calculations undermine the unsupported assertions the MCC makes in its briefs about Liberty recovering its acquisition premium through low-cost financing. MCC Br. at 2-3. As demonstrated by Mr. Bourassa's calculations, the "profit" Liberty is receiving on its total investment will not allow an undue recovery. As explained above, Park Water's authorized returns on the equity portion of the rate base of its three utilities could result in a return on its total equity of up to 4.09% or 4.65%, depending on what share of Park's overall return is attributable to Mountain Water. MWC-5. Therefore, as Mr. Bourassa testified, Liberty will have to wait a considerable time before its actual returns on its total equity approach the level authorized by the Commission for the equity portion of Mountain Water's rate base.

In fact, Liberty has done nothing different than the average long-term investor, which purchases stock of a company for an amount greater than the book value of its assets. The investor expects to earn back its investment over time through growth in earnings on a growing rate base. As Mr. Bourassa explained, if an investor were to purchase the stock of Aqua America, which owns multiple water utilities, the investor could expect to receive a 3% dividend yield growing to 6-6.5%. Hr'g. Tr. 245:17-246:4. In these situations, the investor's method of financing is irrelevant. Liberty has done the same here. It has purchased the stock of Western Water and expects to earn back its investment over time, as a result of growth of earnings on a growing rate base. Given that this is similar to the expectations of investors in other publicly traded water companies, there is no support for the notion that Liberty is taking advantage of Mountain Water customers.

It is important to note that Dr. Wilson's calculations, however inaccurate, remain irrelevant. Mountain Water is allowed to earn an ROE of 9.8% (approximately 16% before tax) on the equity portion of its rate base, which is unrelated to the costs of financing the purchase of Mountain Water's upstream parent. Liberty's method of financing its acquisition is irrelevant, and there is no basis on which the Commission can reduce rates.

Considering these things, the Commission should reject the calls by the MCC and City to reduce Mountain Water's rates through Dr. Wilson's proposal. The MCC and City have failed to provide evidence of cost savings; their positions abandon ratemaking principles, Commission precedent, and binding case law; and Dr. Wilson's proposals are admittedly and demonstrably flawed. There is no basis in this record for the Commission to adopt the proposed rate reduction.

II. THE COMMISSION CANNOT REDUCE MOUNTAIN WATER'S RATES IN THIS CASE BASED ON CLOSING WITHOUT AUTHORITY.

Both the City and the MCC advocate the Commission must do something to remedy Liberty's decision to close the transaction at issue without the Commission's approval. However, both fail to recognize that the Commission elected to pursue a rate review rather than to assert its authority over the transaction in this docket. Notice, at 1. As previously noted, the Commission's review in this matter is authorized by and governed by its authority to investigate rates. It is not based on the Commission's authority to review utility transactions, and the Commission must reject any attempt to assert that authority as the basis for adjusting rates in this case. Moreover, the Commission held the acquisition docket in abeyance, so it is not necessary to review or determine the Commission's authority over the acquisition in this docket. Relying on that authority to change Mountain Water's rates will necessarily involve a legal review of the Commission's authority which none of the parties have briefed in this case.

Independent of the legal and factual problems with Dr. Wilson's proposed cost savings adjustment, the Commission must also reject the request by the MCC and City for the Commission to suspend Mountain Water's return on equity pending a review of Liberty's fitness to serve. MCC Br. at 5; City Br. at 7. This issue is not within the scope the Commission set for this matter. Doing so would result in confiscatory rates because it would be denying Mountain Water a fair and reasonable return. *See Mtn. States Tel. & Tel. Co. v. Dep't of Pub. Serv. Reg.*, 191 Mont. 331, 339, 624 P.2d 481, 485 (1981); *Hope*, 320 U.S. at 603.

III. THE COMMISSION CANNOT ENGAGE IN SINGLE-ISSUE RATEMAKING OR DOUBLE LEVERAGING IN THIS MATTER.

The MCC and City alternatively suggest that double leveraging and single-issue ratemaking in this matter are appropriate. However, the Commission's own precedent and binding case law prohibit their application here.

The case law the MCC cited in its brief does not support its proposals. As an initial matter, the MCC asserts, without support, that the "unique" nature of these proceedings make a compelling case for single-issue ratemaking. MCC Br. at 9-10 (citing *MCC, Geoffrey Brazier v. Commission* ("*Brazier*"), 168 Mont. 180, 541 P.2d 770 (1975)). However, the MCC does not, and cannot, provide any reason the circumstances of this case allow single-issue ratemaking or how they relate to *Brazier*. This conclusory statement must be rejected.

In addition, the MCC's reliance on *Brazier* is misplaced and omits key portions of the decision. *Id.* There, the Court allowed the Montana Power Company to adjust the rates charged to customers based on increased costs for gas exported from Canada. *Brazier*, 168 Mont. at 194, 541 P.2d at 778.

In its decision, the Court specifically distinguished this case, and other cases, where the Commission is deciding a rate of return. The Court stated "[i]n the instant case it is important to note that the Company is not seeking an increased rate of return or increased net annual earning. The 1972 rate order established 6.6% as a fair and reasonable rate of return . . . after a full scale hearing . . . and consideration of all factor affecting the Company's rate of return." *Id.* at 186, 541

P.2d at 773-74. Therefore, a full scale hearing was not required. *Id.* at 188, 541 P.2d at 773. The Court also noted the Commission's order required monthly review to ensure "billings [were] adjusted accordingly." *Id.* at 184-85, 541 P.2d at 773.

In direct contrast to *Brazier*, this docket expressly includes a review of whether Mountain Water's rates are just and reasonable "under the current capital structure and cost of capital." Notice, at 1. Therefore a full rate hearing is required, unlike in *Brazier*. The MCC's own expert tacitly admitted a full ratemaking hearing is required to adjust the cost of capital in response to data requests. MCC Resp. to PSC-032(a) ("Moreover, this is not a rate case and I am not recommending a change in the approved cost of equity.").

Moreover, unlike the adjustment in *Brazier*, there is no ongoing review or adjusting of the MCC's proposed adjustments. The MCC proposes the Commission allow the adjustment regardless of what may happen regarding Mountain Water's financing costs.

The MCC's position is also betrayed by its arguments in other dockets and by the Commission's own precedent. The MCC admits, as it must, that it has "agreed consistently for years, that the best way to determine public utility rates is by looking at the full cost of service and capturing investment, revenue and expense changes that have occurred since the prior rate proceeding." MCC Br. at 9. Over the more than 40 years since *Brazier*, the MCC and its experts continue to assert that single-issue ratemaking is inappropriate. As explained in prior briefing, the Commission has regularly rejected single-issue adjustments, in favor of full ratemaking proceedings. *See* Order 7375a, ¶ 36, Docket No. 2014.6.53; Order 5986r, ¶ 23, Docket No. D97.7.90.

Considering these things, applying *Brazier* is inappropriate here. The MCC's proposal is nothing like the adjustment made in *Brazier*, and the Montana Supreme Court specifically distinguished it from this matter.

Likewise, the MCC's citation to *Mountain State Telephone and Telegraph Co. v. Department of Public Service Regulation* ("*Mountain Bell*") misses the mark. MCC Br. at 11 (citing *Mountain Bell*, 191 Mont. 331, 624 P.2d 481 (1981)). The MCC claims this case supports its proposed rate reductions, which is false. *Id.* *Mountain Bell* authorized the Commission to use "double leveraging" as a possible result in full ratemaking proceedings. *Id.* at 332, 339, 624 P.2d at 482, 485. Double leveraging is the replacement of a wholly-owned utility's ROE with its parent's weighted average cost of capital. *See id.* at 335-36, 624 P.2d at 483; Bourassa Test. 8:11-10:10.

Mountain Bell does not support the MCC's proposal in this case. The MCC's proposal is not a double leveraging adjustment. Dr. Wilson admitted this during the hearing. "Q. In this response you are saying you are not recommending a traditional double leverage adjustment, is that correct? A. That's correct." Hr'g Tr. 60:24-61:2. In fact, Dr. Wilson is not recommending any variation of a double leveraging argument because he is not recommending any change to Mountain Water's ROE. MCC Resp. to PSC-032(a) (". . . I am not recommending a changed in the approved cost of equity.").

To the extent the MCC seeks to contradict this testimony and claim the proposal is double leveraging, *Mountain Bell* still does not apply. First, the hearing in *Mountain Bell* was a full ratemaking proceeding. *Mountain Bell*, 191 Mont. at 332, 624 P.2d at 482. This matter is not. The Commission has specifically limited the issues here to cost of capital. Notice, at 1. The Commission cannot undertake an adjustment to rate of return without a full ratemaking proceeding. *See Brazier*, 168 Mont. at 186, 188, 541 P.2d at 773-74; MCC Resp. to PSC-032(a) ("Moreover, this is not a rate case and I am not recommending a change in the approved cost of equity.").

Second, as explained in prior briefing and testimony, double leveraging is based on flawed assumptions, has largely disappeared from regulatory practice and is inappropriate in this matter.

Bourassa Test. 7:5-16:16; Morin, Roger A., New Regulatory Finance, at 523 (2006); Mountain Water Resp. to PSC-019(b). These facts are undisputed, leaving no room in the record for the Commission to adopt the MCC's approach. Likewise, Dr. Wilson's approach violates fundamental financial theory and controlling case law, including *Hope* and *Bluefield*, and the Commission's own precedent. *See* Mountain Water's Opening Post-Hr'g Br. at 5-10.

As a result, there can be no dispute the case law cited by the MCC does not support its positions in this matter. Single-issue ratemaking is not authorized here and double leveraging has not been requested, nor can it be applied.

IV. THE COMMISSION SHOULD UPHOLD ITS PRIOR PROTECTIVE ORDER BECAUSE THE INTERVENORS HAVE NOT ESTABLISHED A BASIS FOR REMOVING THE PROTECTION OR THAT THE INFORMATION IS RELEVANT AND ADMISSIBLE.

The intervening parties have not offered any new authority or argument for removing protection from Mountain Water's responses to MCC-001 or 002. Moreover, none have indicated that the information provided is relevant. The MCC made no attempt to review the information, and the City made no offer of proof as to why the protected information was relevant to the Commission's consideration. Dr. Wilson chose to rely exclusively on public information for his testimony and was the only witness MCC offered. Wilson Test. at 8 & n.4. The CFC remained silent on all issues until its brief, where it claims without support that it is "fundamentally unfair" to constitutionally-tested protections to trade secret and confidential proprietary information. CFC Br. at 3.

As noted previously, the parties and the Commission have access to the information which Mountain Water has established as trade secret information. This is the balance the courts of Montana have recognized is vital to protect property rights while allowing the Commission access to information for regulatory purposes. *See Mountain States Tel. & Tel. Co. v. Dep't of Pub. Serv.*

Reg., 194 Mont. 277, 634 P.2d 181 (1981), *overturned on other grounds by Great Falls Tribune v. Pub. Serv. Comm'n*, 2003 MT 359, 319 Mont. 38, 82 P.3d 876 (discussing trade secret and reiterating the right to protection of confidential proprietary information). As a result, the Commission appropriately protected Mountain Water's property rights as well as the rights of unrepresented third parties while permitting the Commission and the parties to this docket access to information to prepare and present the case. There is no basis for the Commission to reverse it prior decision in this matter.

CONCLUSION

For the foregoing reasons, the Commission should not adjust Mountain Water's rates in this matter, and should maintain its prior determination that the financial documents are confidential.

Submitted this 23rd day of May, 2016.

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CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on May 23, 2016, the foregoing was served via electronic and U.S. mail on:

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