

**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 )     REGULATORY DIVISION  
whether Mountain Water Company's rates are Just )  
and Reasonable. )     DOCKET NO. D2016.2.15

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**MOUNTAIN WATER COMPANY'S RESPONSE TO CITY OF MISSOULA AND  
CLARK FORK COALITION PETITIONS TO INTERVENE**

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Pursuant to ARM 38.2.2405, Mountain Water Company ("Mountain Water"), by and through its counsel, responds to the Petitions to Intervene filed by the City of Missoula (the "City") and the Clark Fork Coalition ("CFC"). For the reasons set forth below, Mountain Water requests the Montana Public Service Commission ("Commission") limit any intervention granted to the City to the scope of the proceedings already established by the Commission in Docket No. D2016.2.15. Mountain Water also respectfully requests the Commission deny CFC's petition to intervene because CFC has not identified any direct interest in this docket.

**PROCEDURAL BACKGROUND**

On January 11, Liberty Utilities Co. ("Liberty Utilities"), Liberty WWH, Inc. ("Liberty WWH"), Western Water Holdings, LLC ("Western Water"), and Mountain Water (collectively, the "Joint Applicants") submitted a notice of closing and withdrawal of the joint application that had been filed in Commission Docket No. D2014.12.99 ("Notice of Withdrawal"). Pursuant to its terms, the Notice of Withdrawal was filed to "provide notice to the Montana Public Service Commission that on January 8, 2016, the sale and transfer of Western Water units to Liberty

WWH closed, with Liberty WWH merging into Western Water and Western Water continuing as a wholly-owned subsidiary of Liberty Utilities.” Notice of Withdrawal, p. 1.

On February 3, 2016, the Commission entered a Notice of Investigation and Intervention Deadline in Docket No. D2016.2.15 (“Notice of Investigation”). The Commission stated that the Notice of Investigation was entered in response to the Joint Applicants’ entry of the Notice of Withdrawal. Specifically, the Commission stated it opened Docket No. D2016.2.15 for one reason: to “investigate Mountain Water’s rates to determine if they are just and reasonable under the current capital structure and cost of capital now that Liberty Utilities is the new owner of Mountain Water.” Notice of Investigation, p. 1.

The Commission has issued data requests to Mountain Water in Docket No. D2016.2.15. Mountain Water submitted its responses to the Commission’s Data Requests on February 17, 2016. The Commission has not issued data requests to any other entity.

On February 10, 2016, both the City and CFC filed Petitions to Intervene seeking to expand the scope of the proceedings and to join other parties.

### **ARGUMENT**

Motivated by other concerns and interests, the City and CFC seek to broaden the issues in this docket and join unnecessary parties. This is impermissible under the Commission’s rules and past orders. Liberty does not object to the Commission granting general intervention to the City, as long as its participation and the proceedings remain limited to the scope already set by the Commission. The CFC’s Petition should be denied in its entirety, however, because CFC asserts no direct interest in Mountain Water’s rates.

**I. The Commission should limit the general intervention of the City to the scope of the original proceeding, as defined by the Commission in its Notice of Investigation.**

As an initial matter, Mountain Water opposes the City's Petition to the extent it constitutes a request for special intervention under ARM 38.2.2404 by seeking to expand the scope of the docket beyond the original issue.

Liberty does not object to the Commission granting the City general intervention under ARM 38.2.2403. As a customer of Mountain Water, the City has a direct interest in this docket. Its intervention, however, must be limited to the issues the Commission raised in its Notice of Investigation. Any attempt to broaden the scope of the original proceeding is inappropriate, and must be rejected by the Commission. ARM 38.2.2403; 38.2.2405; *see also* Docket Nos. D2013.5.33 and D2014.5.46, Aug. 20, 2014 Notice of Comm'n Action at 3.

**A. The Commission should not permit the City to broaden the issues in this proceeding.**

The issue in this docket is limited to whether Mountain Water's rates are just and reasonable under Mountain Water's current capital structure and cost of capital. Contrary to the assertions in the City's Petition, the Commission has no reason to investigate Mountain Water's corporate parent companies or to consider how a rate change might affect the City's condemnation proceedings. To the extent the City seeks to join the Algonquin Power & Utilities Corp. ("Algonquin" or "APUC"), or inject issues relating to its condemnation action against Mountain Water, the City impermissibly is seeking to broaden the issues in Docket No. D2016.2.15. *See* Admin.R.Mont. 38.2.2403.

Mountain Water also objects to the City's purported attempts to participate in this docket as a representative of the people of Missoula. The Montana Consumer Counsel has sought intervention and is obligated, both by the Montana Constitution and Montana law, to represent the people of Missoula's interests in this docket. To summarize, Liberty does not oppose the City's request to

participate in this docket as a Mountain Water customer, but the City should not be permitted to represent any other interests.

**B. The Commission should not require Algonquin to join the matter as a party.**

According to the Commission, the issue in this docket is limited to whether Mountain Water's rates are just and reasonable under Mountain Water's current capital structure and cost of capital. Notice of Investigation, p. 1. The City devotes roughly half of its Petition to arguing that "Algonquin should be joined for this investigation[.]" City's Petition, pp. 3-4. This unnecessarily expands the scope of the proceeding to include additional parties and is based upon faulty arguments. It is also legally unsupported.

Mountain Water, as a public utility operating in Montana, is the proper party to provide evidence regarding its rates, including its capital structure and cost of capital. To that end, the Commission has issued Mountain Water data requests relating to Mountain Water's current capital structure and cost of capital, and Mountain Water has filed its responses. Simply put, Mountain Water already has demonstrated its willingness and ability to provide the Commission with the information necessary to satisfy the scope of the Commission's investigation in this docket.

Moreover, the Commission only has the authority to investigate the rates of "public utilities." Under relevant Montana law, a "public utility" is narrowly defined to only include entities "that own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations." Mont. Code Ann. § 69-3-101(1). APUC is a diversified electric generation, transmission, and distribution utility company based in Oakville, Ontario and publicly-traded on the Toronto Stock Exchange. Although APUC's subsidiaries

own regulated utilities in the United States, APUC does not directly own any such utilities. Furthermore, APUC is not registered to do business in Montana with the Montana Secretary of State's Office. Given those facts, APUC is not a "public utility" as defined by Montana law and, therefore, the Commission lacks authority to join APUC in this docket.

For the foregoing reasons, it is abundantly clear that the City is seeking intervention to expand the scope of the Commission's investigation by joining additional parties who do not assist in the Commission's investigation and who are beyond the Commission's investigatory authority. Pursuant to the Commission's rules, such a request is not permitted. *See* Admin.R.Mont. 38.2.2403(1) (petition to intervene may be granted if the potential intervenor "does not desire to broaden the issues of the original proceeding"). The Commission must deny the City's request to join additional parties and expand the scope of the Commission's investigation.

**II. The Commission should deny Clark Fork Coalition's Petition to Intervene because it has no direct interest in these proceedings.**

Mountain Water objects to CFC's Petition to Intervene in its entirety. CFC's petition does not assert a "direct and substantial interest" in this rate investigation docket, as required by Montana law. *See* Mont. Code Ann. § 38.2.2403. Indeed, CFC does not even assert that it is a customer of Mountain Water. Instead, CFC raises a variety of issues that are unrelated to an analysis of Mountain Water's rates. Because CFC cannot articulate any direct interest in these proceedings, the Commission should deny its petition entirely.

**A. The Commission should not permit CFC to broaden the issues in this proceeding.**

As previously noted, the sole purpose of these proceedings is to determine whether Mountain Water's rates are just and reasonable under Mountain Water's current capital structure

and cost of capital. To grant the relief CFC has requested, however, the Commission would have to consider numerous issues unrelated to Mountain Water's rates. *See* CFC Petition, p. 4 (CFC asks the Commission "to protect the public interest, the utility's infrastructure, and the water resource at stake"). Because CFC is seeking to expand this docket to include issues unrelated to ratemaking, CFC's petition should be denied. ARM 38.2.2403; 38.2.2405; *see also* Docket Nos. D2013.5.33 and D2014.5.46, Aug. 20, 2014 Notice of Comm'n Action at 3.

CFC does have a history of intervening in Mountain Water transaction dockets. CFC Petition, p. 3. However, CFC does not have a history of intervening in Mountain Water rate case dockets. For example, in the most recent Mountain Water rate case docket, CFC did not intervene. *See* Docket No. D2012.7.81, Notice of Staff Action Granting Intervention (Oct. 5, 2012). Historically, CFC has not asserted an interest in Mountain Water's rates and, in fact, CFC fails to assert any such interest in its Petition to Intervene. Although CFC suggests it will represent its members, who allegedly are Mountain Water customers, the Montana Consumer Counsel already represents those interests as required by Montana law.

**B. The Commission should not require Algonquin to join the matter as a party.**

Like the City, CFC asks the Commission to "join APUC to this proceeding." CFC Petition, p. 4. Mountain Water already has refuted the City's assertion that APUC should be joined as a party, *supra*. Mountain Water incorporates that analysis by reference.

**CONCLUSION**

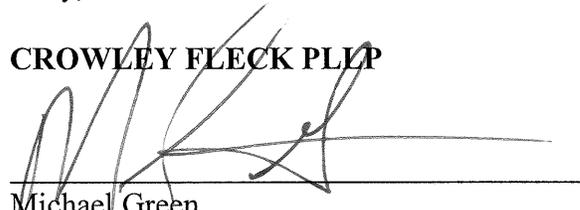
For the foregoing reasons, Mountain Water respectfully requests the Commission limit the scope of the City's intervention to the issue the Commission identified in its Notice of Investigation, *i.e.* whether Mountain Water's current rates are just and reasonable under Mountain Water's current capital structure and cost of capital. The City should be permitted to

intervene and represent its interests as a customer of Mountain Water. However, the Commission should not allow the City to represent any other interests, expand the scope of these proceedings, or join other parties.

Mountain Water also respectfully requests the Commission deny CFC's petition to intervene. CFC impermissibly seeks to expand the scope of the Commission's investigation in this docket, and asserts no direct interest in the Commission's analysis of Mountain Water's rates.

Submitted this 19<sup>th</sup> day of February, 2016.

**CROWLEY FLECK PLLP**



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Michael Green  
John M. Semmens  
CROWLEY FLECK PLLP  
P. O. Box 797  
Helena, MT 59624-0797  
Telephone: (406) 449-416  
Fax: (406) 449-5149  
mgreen@crowleyfleck.com  
jsemmens@crowleyfleck.com

**ATTORNEYS FOR LIBERTY UTILITIES CO.  
AND LIBERTY WWH, INC.**

**CERTIFICATE OF SERVICE BY MAIL**

I hereby certify that on February 19, 2016, the foregoing was served via electronic and U.S. mail on:

John Kappes  
President & General Manager  
Mountain Water Company  
1345 West Broadway  
Missoula, MT 59802-2239  
johnk@mtwater.com

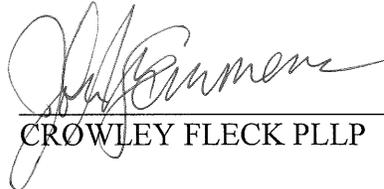
Jim Nugent  
City Attorney  
The City of Missoula  
435 Ryman Street  
Missoula, MT 59802  
JNugent@ci.missoula.mt.us

Scott M. Stearns  
Natasha Prinzing Jones  
BOONE KARLBERG P.C  
P.O. Box 9199  
Missoula, MT 59807-9199  
sstearns@boonekarlberg.com  
npjones@boonekarlberg.com

Robert Nelson  
Montana Consumer Counsel  
Box 201703  
Helena, MT 59620-1703  
robnelson@mt.gov

Barbara Chillcott  
Legal Director  
Clark Fork Coalition  
P.O. Box 7593  
Missoula, MT 59801  
barbara@clarkfork.org

Dennis R. Lopach, P.C.  
4 Carriage Lane  
Helena, MT 59601  
dennis.lopach@gmail.com  
ssnow@mt.gov

  
CROWLEY FLECK PLLP