

Further, to the extent the Commission intends to impose any change to Mountain Water's practices in this Commission initiated docket, it can only do so "after a full hearing." § 69-3-324, MCA. Mountain Water does not believe a hearing is necessary because there is no basis for the Commission to take any action at this time to change Mountain Water's rates or practices. However, to the extent the Commission intends to take such action, Mountain Water does not waive its right to a hearing.

Background

In 2011, the Commission approved the proposed sale of the Mountain Water's parent company, Park Water, to the Carlyle Group. *See* Docket No. D2011.1.8, Order No. 7149d. The PSC's approval of that transaction was conditioned on the imposition of a series of "ring-fencing provisions" on Mountain Water. Order No. 7149d, p. 29, ¶ 1 (adopting the "the ring-fencing provisions in the Stipulation" which are attached as Exhibit A for the Commission's convenience). The Commission generally defined "ring-fencing provisions" as a "series of organizational and financial measures to protect a subsidiary utility company from potential harm that could otherwise result from activities of a utility's parent company or affiliated companies." Order No. 7149d, ¶ 2.

Mountain Water has not violated any of the ring-fencing provisions. To the contrary, both Mountain Water and its new upstream parent company, Liberty Utilities Co., have expressly acknowledged that "Mountain Water remains subject to the stipulated ring-fencing provisions imposed in Order No. 7149d, Docket No. D2011.1.8." *See* Docket No. D2014.12.99, Mountain Water Company's Comments Regarding the Notice of Closing and Withdrawal of the Joint Application (Jan. 27, 2016); *see also* Docket No. D2014.12.88, Liberty Utilities Co.'s Response

to the Montana Public Service Commission's Notice of Opportunity to Comment, p. 5 (Jan. 27, 2016).

Compliance with Ring-Fencing Conditions

The PSC adopted ten separate ring-fencing provisions (a-j) contained in Appendix 1, to the parties' stipulation in Docket D2011.1.8. The Commission also summarized the conditions in paragraph 48 of Order, 7149d. The Commission's summary language is used in the headings here for convenience and brevity, but Mountain Water's responses address the terms of the conditions attached to the Stipulation and shown on Ex. A.

a. PSC may audit Park's and Mountain's accounts and have access to affiliates' records regarding transactions that are the basis of charges to or transfers from Mountain.

Mountain Water has not violated Ring-fencing Condition (a). The Commission has not requested an audit of Mountain Water's accounts or otherwise sought access to Mountain Water's or its affiliates' records. As a result, Mountain Water could not have violated Ring-fencing Condition (a).

b. Mountain will maintain its own separate financial and business operating accounts and they will be accessible in Missoula.

Mountain Water has not violated Ring-fencing Condition (b). Mountain Water continues to maintain its own separate financial and business operating accounts. Further, its financial and operating books remain accessible in Missoula.

c. Mountain's utility assets will not be encumbered to raise debt capital for non-utility purposes or non-Montana utility purposes without PSC approval. If Park or Western Water pledges the ownership of Mountain as security for non-Montana utility financing purposes, Park or Western will immediately provide the Montana PSC a copy of the financial filing that Park or Western Water submitted to the California PUC for approval.

Mountain Water has not violated Ring-fencing Condition (c). Mountain Water's utility assets have not been encumbered to raise debt capital for any purpose. Mountain Water's responses to Data Requests PSC-001 through PSC-008 provide additional information to support this response.

d. Mountain will not make any distribution to Park or its affiliates that results in Mountain's equity falling below 45% of its rate base without PSC approval.

Mountain Water has not violated Ring-fencing Condition (d). Mountain Water has not made any distributions to Park or its affiliates that resulted in Mountain Water's equity falling below 45% of its rate base. As indicated in responses to data Request PSC-004(a), Mountain Water does not make direct distributions to Park or any other upstream affiliate. Further, Mountain Water's stand-alone equity structure remains 100% equity. See Response to Data Request PSC-007(e). Mountain Water's responses to Data Requests PSC-001 through PSC-008 provide additional information to support this response.

e. If Mountain, Park or Western Water is the subject of an initial public offering, Mountain will notify the PSC and, upon PSC request, will provide all related information provided to rating analysts and the Securities & Exchange Commission (subject to federal limitations).

Mountain Water has not violated Ring-fencing Condition (e). Mountain Water, Park Water, and Western Water Holdings remain privately held, and have not been the subject of an initial public offering or any other public security issuance. As a result, the notice provisions of Condition (e) have not been triggered.

f. Mountain will notify the PSC 30 days in advance of any declaration of dividends or other transfer that exceeds 5% of Mountain's equity (unless a legal opinion provided to the PSC determines such disclosure is unlawful).

Mountain Water has not violated Ring-fencing Condition (f). Mountain Water has not declared any dividends or other transfers that exceed 5% of Mountain Water's equity so the notice requirements of Condition (f) have not been triggered.

g. Allocations of expense or direct charges to Mountain from Park or an affiliate which is included in Mountain's cost of service will be scrutinized closely in Mountain's rate cases.

Condition (g) is a statement about the standard of review the Commission will apply to certain expenses in a future rate case, and is not a condition imposed on Mountain Water. As a result, Mountain Water cannot violate Condition (g).

h. PSC authorization is required prior to Mountain transferring, selling or otherwise disposing of any of Mountain's water rights or any Montana rate-based utility property with a net book value in excess of \$1 million.

Mountain Water has not violated Ring-fencing Condition (h). Mountain Water has not transferred, sold, or otherwise disposed of any of its water rights or any Montana rate-based utility property with a net book value in excess of \$1 million, so the obligation to obtain Commission approval has not been triggered.

i. If a material amount of Mountain utility assets that are encumbered to secure debt issuances are divested, the net proceeds of the sale must be used to pay down the debt, or be reinvested in utility assets in accordance with the security agreement under which the debt was issued.

Mountain Water has not violated Ring-fencing Condition (i). Mountain Water has not divested a material amount of Mountain Water utility assets and its assets are not encumbered to secure debt issuances. As a result, Condition (i) has not been triggered.

j. If Mountain wants to change its current cash management agreement with Park, Mountain will incorporate best practices for protecting Mountain's credit from the risks associated with participating in such an agreement and will notify the PSC 30 days in advance of the change.

Mountain Water has not violated Ring-fencing Condition (j). Mountain Water has not changed its cash management agreement with Park Water and Mountain Water does not have an independent credit rating to protect. Mountain Water will likely eventually transition to Liberty's cash management system, but has not done so. Mountain Water will notify the Commission at least 30 days in advance of any change to its cash management practices.

Response to Request for Documents

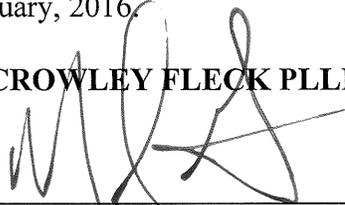
Mountain Water does not possess documents demonstrating its compliance with the Ring-Fencing Conditions, except for the information and documents attached to Mountain Water's Responses to the Commission's Data Requests PSC-001 through PSC-008. Most of the responses above indicate that nothing has changed since the closing of the merger, so there are no documents in existence to establish compliance, and no documents on which the Commission could rely to demonstrate non-compliance.

The Commission has directed Mountain Water to "provide any documents establishing a new merger agreement or consent of waiver requiring regulatory approval of the Commission." Mountain Water was not a party to the Merger, and asserts that the Merger and waiver of the requirement for the Commission's approval were beyond Mountain Water's control, and have no impact on Mountain Water's compliance with the Ring-Fencing Conditions subject to the Commission's Order and investigation in this matter. Despite the lack of relevance, Mountain Water's management inquired and is informed that no new merger agreement was created. The merger was governed by the Plan and Agreement of Merger executed September 19, 2014, which was attached as Exhibit B to the Joint Application in D2014.12.99. The parties to the Merger Agreement waived the closing condition in Section 7.1(e) of the Merger Agreement regarding the Commission pursuant to the express terms of Section 7.1.

Opposition to Suspension of Dividends

As described above, and in response to the Commission staff’s data requests, Mountain Water does not currently make upstream dividend payments. Mountain Water does not expect to begin making dividend payments while facing ongoing capital needs. However, as dividends are one of the tools used to manage the capital accounts of Mountain Water and its upstream parent companies, Mountain Water opposes any efforts by the Commission to suspend or limit “upstream dividends” beyond the restrictions already in existing Ring-Fencing Conditions (d) and (f). Mountain Water’s capital structure and rates are subject to review by the Commission, and suspension of dividends is unsupported by the facts or law, and unnecessary to protect the integrity of Mountain Water’s system or operations or maintain the Commission’s authority.

Submitted this 22nd day of February, 2016.

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CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on February 22, 2016, the foregoing was served via electronic and U.S. mail on:

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