

**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

**REPLY TO MOUNTAIN WATER'S RESPONSE TO CITY OF
MISSOULA'S MOTION TO INTEVENE**

The City of Missoula ("City") submits this reply to Mountain Water Company's ("Mountain Water") response regarding the City's Motion to Intervene. Mountain Water argues the City is attempting to impermissibly expand the scope of these proceedings because the City has asked that the entity responsible for financing, cash flow, and all other financial services for Mountain Water be joined in the proceeding.¹ This is not an expansion of the scope; this is a request that the relevant entities be required to participate in this proceeding so the Public Service Commission ("PSC") can conduct a comprehensive review of whether or not Mountain Water's rates are just and reasonable.

Argument

I. The City is not expanding the scope of this inquiry by requesting that Algonquin be joined.

Mountain Water would have the PSC believe that "the Commission has no reason to investigate Mountain Water's parent companies." (Mountain Water Resp. Br.

¹ The City still maintains that the purported sale from Carlyle Infrastructure Partners, LP ("Carlyle") to Liberty Utilities Co. ("Liberty") and Algonquin Power & Utilities Corp. ("Algonquin") was invalid because it was not reviewed and approved by the PSC. References to Algonquin/Liberty as the owners of Mountain Water are only for convenience and clarity of briefing.

at 3.) This is incorrect; there are numerous reasons why Algonquin and Liberty should be included in this proceeding.

Mountain Water's response demonstrates that it believes Mountain Water is the *only* relevant party for the proceeding and it used the same argument it invoked to purportedly escape PSC review of the sale of Mountain Water: Liberty and Algonquin are not "utilities," so the PSC cannot force them to appear in a proceeding. The City's response to this argument has been extensively briefed in Docket No. D2014.12.99 and the City believes the PSC has jurisdiction over Mountain Water, Liberty, and Algonquin due to the authority granted in Mont. Code Ann. § 69-3-102.² Mountain Water's response is just a taste of what working with Mountain Water will look like under Liberty and Algonquin ownership. Regardless of the subject matter, it appears Liberty and Algonquin will dispute PSC regulatory authority, even if they are named in the investigation and admit they are relevant entities – Mountain Water's response does not dispute that Algonquin is the corporate treasury, furnished the capital to purchase Mountain Water, and will provide future needed debt capital.³

A. The scope of the inquiry into Mountain Water's rates is the rates and the factors that contribute to *how* those rates are set.

The PSC's notice of its investigation into Mountain Water's rates stated it would

² "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." Mont. Code Ann. § 69-3-102. The City believes, particularly, "regulation" and "control" are applicable in this given proceeding.

³ Liberty is specifically named in this investigation, as its capital structure and other attributes directly influence how the Mountain Water rates are set, yet, only Mountain Water has responded to the PSC.

“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 and Intervention Deadline 1* (D2016.2.15 Feb. 3, 2016). The PSC specifically focused on the capital structure and cost of capital available to Liberty Utilities Co. (“Liberty”), a wholly owned subsidiary of Algonquin Power & Utilities Corp. (“Algonquin”). *Id.*

Rate applications require declaration of the utility’s cost of debt capital and capitalization, including that of the utility’s parent corporation(s) if applicable. Admin. R. Mont. 38.5.146–152. Investigations require the same information needed in an application. The scope of the inquiry into Mountain Water’s rates is the scope sufficient to conduct a thorough and complete review, which includes the cost of debt capital and capitalization of that utility’s parent entities. The PSC must have the appropriate and relevant information to conduct that investigation, including information from, and provided by, the proper respective entity.

As such, the scope of the investigation is not limited to just one corporate entity as Mountain Water seems to suggest; it is whether that corporate entity (Mountain Water), which happens to now be part of a multi-national utility conglomerate, has reasonable and just rates. If Mountain Water’s acquisition financing, cash flow, debt, and other financial attributes are controlled and managed by Algonquin and Liberty, those entities must be part of this proceeding because they have a direct bearing on what just and reasonable rates would be. It is not an expansion of the scope of these

proceedings to ensure the right parties for the investigation are present and provide the necessary information.

B. Algonquin's financing for the Mountain Water acquisition and its ongoing access to capital markets is relevant to how Mountain Water's rates are set.

Algonquin is a relevant party for this investigation because its cost of debt capital and other financial metrics have a direct impact on Mountain Water's rates. The PSC appropriately named Liberty in its *Notice of Investigation and Intervention Deadline*, but Algonquin has just as important of a role in determining if Mountain Water's rates are just and reasonable.

First, as noted in the City's opening argument, per Algonquin's Administrative Services Agreement, Algonquin is the corporate treasury for all its subsidiaries. As such, any future financing needed by Mountain Water (in excess of revenue from rates) will flow from Algonquin through the various subsidiaries. As such, Algonquin's cost of capital is also Mountain Water's cost of capital in the future.

Second, as the PSC is well aware, Algonquin was the entity that raised the capital to purchase Mountain Water. In its 2014 Annual Report and 2015 Quarterly Updates, Algonquin announced it (not Liberty) had financed the purchase of Mountain Water through both subscription receipts with Emera and \$160M in senior unsecured notes.⁴ The PSC was correct to point out in PSC-009 the discrepancy in the information

⁴ 2014 Annual Report, Algonquin Power & Utilities Corp. 16, <http://investors.algonquinpower.com/Cache/1001197149.PDF?Y=&O=PDF&D=&FID=1001197149&T=&IID=4142273>; Q3 Quarterly Report, Algonquin Power & Utilities Corp 4, <http://investors.algonquinpower.com/Cache/1500077730.PDF?Y=&O=PDF&D=&fid=1500077730&T=&iid=4142273>

provided by Mountain Water in response to PSC-001b compared to the public information Algonquin has released regarding the purchase of Mountain Water.

The cost of the capital used to purchase Mountain Water is relevant to an examination of Mountain Water's rates. As John Wilson testified before the PSC in the acquisition docket:

The central and most important financial feature of the proposed acquisition is Algonquin Power and Utilities' ("APUC") plan to finance the proposed purpose of most of Carlyle's ownership of Park Water's common equity capital with low cost debt capital, and to retain the finance cost savings for its own financial benefit.

Direct. Test. of John Wilson 6 (D2014.12.99 Nov. 4, 2015). Dr. Wilson testified that Algonquin's plans were "contrary to long standing cost-of-service regulatory principals" because Algonquin "does not propose to pass through or share these substantial cost savings with its water utility ratepayers." *Id.* at 13. For Dr. Wilson, Algonquin's (not Liberty or Mountain Water) financing for the purchase of Mountain Water was the central tenet for determining if there was just and reasonable rates. *Id.* at 18.

The reasons above are just a few of the various factors that make Algonquin a relevant party to the PSC's investigation into Mountain Water's rates. As such, Algonquin, along with Liberty, should be included in this proceeding.

II. **As illustrated by the New Hampshire Public Utility Commission’s ongoing audit of Algonquin finances, Algonquin’s and Liberty’s finances are relevant to rate proceedings.**

During a recent rate increase proceeding in New Hampshire, the New Hampshire Public Utilities Commission (“NH PUC”) audited Liberty Utilities (Energy North Natural Gas) Corp. (“Liberty NH”) books and found various audit issues. Order No. 25,797, NH PUC, Docket No. 14-180 (June 26, 2015). This led to a settlement where Liberty NH agreed to an audit conducted by an independent consultant selected by the NH PUC focusing on, among other things, Liberty NH’s financial processes. *Id.* at 6. Particularly, NH PUC staff was concerned that transaction costs for the recent acquisition of Energy North by Liberty/ Algonquin were being included in customer rates. The consultant was given the authority to broaden the audit if it found it necessary. *Id.* at 15.

Liberty recently moved to block the consultant’s access to Algonquin financials claiming it was outside the scope of review. *Liberty NH Motion for Determination of Scope of Audit Inquiry*, NH PUC, Docket No. 14-180 (Feb. 2, 2016). The consultants audit sought information regarding the “business, strategic and financial plans of its [Liberty NH’s] upstream parent company, Algonquin Power & Utilities Corp.” *Response of Commission Staff to Liberty NH Motion*, NH PUC, Docket No. 14-180 (Feb. 8, 2016). NH PUC staff argued particularly regarding Algonquin’s involvement:

In Staffs view, it is all the more appropriate in a **holding company structure**, with many functions managed by or coordinated with the corporate parent company, **to examine how operations and functions directly performed by or affecting the utility subject to audit fit and are treated within the parent-level context**. The multi utility holding

company context may necessarily involve competition for and prioritization of resource application between and among various corporate affiliates through, among other things, the budgeting process.

Id. at 5. Liberty NH's request was denied and the NH PUC has allowed the consultant to complete its audit, including seeking information from Algonquin itself.

As the NH PUC illustrates, Algonquin's financials are directly relevant to the rates set for Algonquin/Liberty subsidiary and the exercise of jurisdiction over both entities is necessary to ensuring the local utility (here, Mountain Water) is charging just and reasonable rates.

CONCLUSION

The City does not want to expand this proceeding beyond a determination of Mountain Water's rates of just and reasonable. Core to that inquiry, however, is the financing used to purchase Mountain Water itself and the ongoing capital access Mountain Water has through Algonquin. The City is merely requesting that Algonquin be included in this docket so the PSC can conduct a full and complete investigation into the rates Mountain Water is allowed to charge.

Dated this 26th day of February 2016.



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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 26th day of February 2016:

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