

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

In the Matter of the Application of The Empire District)
Electric Company, The Empire District Gas Company,)
Liberty Utilities (Midstates Natural Gas) Corp., and) Case No. AO-2018-0179
Liberty Utilities (Missouri Water) LLC)
for an Affiliate Transactions Rule Variance.)

**The Office of the Public Counsel’s Response to the
Applicants’ Motion for Clarification, or Relief**

COMES NOW the Office of the Public Counsel and responds to the Applicants’ *Motion for Clarification, or, to the Extent Required, Motion for Relief* as follows:

1. As the Applicants recite, on January 18, 2019, the parties jointly moved the Commission to modify the then existing procedural schedule. As part of that motion they requested the following in paragraphs nos. 3 and 4:

3. Commencing January 23, 2019, the response time for all data requests shall be five (5) calendar days to provide the requested information, and three (3) calendar days to object or notify that more than five (5) calendar days will be needed to provide the requested information. Data requests sent after 5:00 pm will be considered served on the next business day.

4. With respect to deposing witnesses, any depositions concerning issues raised in parties’ Additional Direct Testimony shall be held on January 28, 2018, if necessary. Further, any depositions concerning Surrebuttal Testimony shall be held on February 26, 2018, if necessary.

That same day the Commission issued an order granting that motion in which the Commission ordered, “1. The Motion to Modify Procedural Schedule is granted,” set out specific filing dates, and declined to order deposition dates stating in a footnote, “The Commission will not order depositions; the parties may proceed with discovery as they see fit.”

2. Also, as the Applicants recite, the Commission’s Staff, with the other parties’ consent, on February 7, 2019, moved to modify the procedural schedule for the following reason

“Due to surgery scheduled for the undersigned in late February, Staff proposes to modify the procedural schedule”

3. The following day, February 8, 2019, the Office of the Public Counsel, with consent of the other parties, proposed a tweak to the schedule proposed the day before to extend the rebuttal and surrebuttal testimony filing dates.

4. On February 8, 2019, with the exception of the hearing and briefing dates, the Commission granted the pending February 7th and 8th motions thereby modifying the procedural schedule.

5. On February 13, 2019, the Office of the Public Counsel, again with consent of the other parties, requested that the dates for filing rebuttal and surrebuttal testimony be further extended. The following day, February 14, 2019, the Commission granted that motion.

6. On February 21, 2019, the Commission reset the hearing in this case to April 24, 2019, and extended the date briefs are due to May 10, 2019.

7. On February 22, 2019, the Applicants and the Commission’s Staff moved, without objection by the Office of the Public Counsel, to extend the filing dates of surrebuttal testimony, the list of issues, and position statements, and that depositions regarding surrebuttal testimony take place during the week of March 11th. The Commission granted that motion ordering, “The Motion to Modify Procedural Schedule is granted,” and restating the new schedule.

8. On March 7, 2019, the Commission reset the hearing date to April 25, 2019, to accommodate the main evidentiary hearing in Case No. EM-2019-0150.

9. On April 5, 2019, the Office of the Public Counsel, after unsuccessfully attempting to obtain agreement from the Applicants and Staff for a new hearing date, requested

the Commission to continue the April 25, 2019, hearing because, on or about March 27, 2019, its counsel received a jury summons from the 13th Judicial Circuit Court Jury Commission Board to be available as a juror during the week of April 22, 2019. That same day the Commission ordered, "The Motion to Continue Hearing is granted," and directed the parties to provide by April 12, 2019, their available dates for a hearing during May and June of 2019.

10. After the parties filed two differing lists of issues on April 12, 2019, the Applicants filed a motion on April 17, 2019, requesting the Commission expeditiously to order the issues to be decided before the parties file their position statements. The following day, April 18, 2019, the Commission acted expeditiously, extended the date for filing position statements, stated, "If the parties disagree on the issues the Commission should resolve, the parties may state in their position statements why the Commission should not resolve a certain issue or issues," and set the following remaining schedule:

Statements of Position June 13, 2019
Evidentiary Hearing June 27, 2019
Briefs July 18, 2019

11. By agreement among the parties, rather than deposing them during the week of March 11, 2019, the Office of the Public Counsel deposed Mr. Timpe on March 28, 2019, and Mr. Murray and Ms. Bolin on April 2, 2019.

12. On May 22, 2019, the Office of the Public Counsel issued data requests to the Applicants. These data requests are the subject of the Applicants' motion.

13. Although they had never asserted before that they were not obligated to object or state they needed more than five calendar days within three calendar days of being served with data requests, the Applicants' immediate response was to assert that they had 10 days to object or state they needed more time to provide the requested information and twenty to provide it.

14. Although counsel for the Office of the Public Counsel expressed willingness to agree to more than three days to object or state additional time was needed, largely due to the Memorial Day holiday, counsel for the Applicants indicated unwillingness to agree to anything less than the 10 and 20 days of Commission rule. Regardless, the Office of the Public Counsel views that with the three calendar days to object the deadline for the Applicants to object and to state they will need additional time to provide the requested information, if they require that additional time, is May 28, 2019.¹ In any event, the Applicants filed their objections on Saturday, May 25, 2019. Further, the Office of the Public Counsel does not assert that the Applicants' must provide the requested information before May 30, 2019, two days after May 28, 2019.

15. On January 18, 2019, the Commission ordered that commencing January 23, 2019, the response time for all data requests is five (5) calendar days to provide the requested information, and three (3) calendar days to object or notify that more than five (5) calendar days will be needed to provide the requested information. The Commission has never changed those timeframes, and they still are the timeframes to which the Applicants, Commission Staff and the Office of the Public Counsel agreed, and it is now the Applicants who are unilaterally trying to refute that agreement.

16. In an effort to be reasonable, the Office of the Public Counsel does not object to the Applicants having until Monday, June 2, 2019, to provide the information in response to the Office of the Public Counsel's data requests served May 22, 2019, but absent some showing by

¹ 4 CSR 240-2.050 provides: (1) In computing any period of time prescribed or allowed by the commission, the day of the act, event, or default shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. This rule does not apply when the commission establishes a specific date by which an action must occur, nor does it operate to extend effective dates which are established by statute.

the Applicants by the end of the day May 28, 2019, that they cannot provide the information requested by that date, opposes them having more time than Monday, June 2, 2019, to provide that information.

17. The Office of the Public Counsel does not want to be in the position of litigating discovery disputes at the same time it is preparing for the evidentiary hearing in this case that is scheduled for June 27, 2019.

Wherefore, the Office of the Public Counsel responds to the Applicants' *Motion for Clarification, or, to the Extent Required, Motion for Relief* as set forth above.

Respectfully,

/s/ Nathan Williams

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 28th day of May 2019.

/s/ Nathan Williams