

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

In the Matter of Liberty Utilities)	
(Midstates Natural Gas) Corp. d/b/a)	
Liberty Utilities' Tariff Revisions Designed)	
To Implement a General Rate Increase for)	Case No. GR-2014-0152
Natural Gas Service in the Missouri)	
Service Areas of the Company)	

**PUBLIC COUNSEL’S RESPONSE IN OPPOSITION
TO PROPOSED RATE CASE EXPENSE**

COMES NOW the Missouri Office of the Public Counsel (“Public Counsel”) and for its reply in opposition to the proposed rate case expense claimed by Liberty Utilities (Midstates Natural Gas) Corp. d/b/a Liberty Utilities (“Liberty”), states:

1. Liberty’s direct testimony requested a total rate case expense amount of \$400,000 (EFIS No. 3).¹ The Partial Stipulation and Agreement (“Stipulation”) between the parties, which was approved by the *Order Approving Partial Stipulation and Agreement*, partially settled the rate case issue by providing that \$37,768 will be included in rate case expense and any amount above \$37,768 “will be reviewed for *possible* inclusion at future stages of this rate case” (emphasis added) (EFIS Nos. 72, 87).

2. On November 19, 2014, Liberty and the Commission’s Staff filed a Joint Filing Memorandum (“Memorandum”) proposing to include \$609,679 for rate case expense in Liberty’s revenue requirement (EFIS No. 177). This amount is an increase of \$571,911 above the \$37,768 the parties agreed in the Stipulation to include in revenue requirement for rate case expense and \$209,679 above what was requested in Liberty’s

¹ Exhibit 9, Liberty Cost of Service Study, Schedule COS-4, WP-4-3.

direct testimony. The Commission must now determine whether adding over a half-million dollars of additional rate case expense above what was identified just three months ago in the Partial Stipulation is just and reasonable. § 393.150, RSMo.²

3. Rate increases must be supported by competent and substantial evidence with Liberty carrying the burden of proving that the rate case expense is just and reasonable. Mo. Rev. Stat. § 393.150.2; *Friendship Village of South County v. Public Service Commission*, 907 S.W.2d 339 (Mo. App. 1995).

4. The Memorandum submitted by Liberty and Staff does not provide the Commission with any basis to approve the requested amount. Attached to the Memorandum is a one-sheet page that merely states, “Final amount of rate case expenses to be included in revenue requirement: \$609,679 normalized over three years at \$203,226 per year” (EFIS No. 177). A one-sentence conclusory assertion offered without foundation does not constitute competent and substantial evidence.

5. In past gas company rate cases the Commission has disallowed rate case expenses. In Case No. GR-2004-0209, the Commission explained:

The Commission is hesitant to disallow expenses incurred by MGE in prosecuting its rate case. The company is entitled to present its case as it sees fit and the Commission will not lightly intrude into the company’s decisions about how best to present its case. However, the Commission has a responsibility to ensure that the expenses that the company submits to its ratepayers are reasonably and prudently incurred. Otherwise, the company could take a cost-is-no-object approach to its rate case presentation, secure in the knowledge that the ratepayers would be required to pay for any cost that the company might incur.³

² All statutory references are to Revised Statutes of Missouri, Supp. 2013, unless otherwise noted.

³ *In the Matter of Missouri Gas Energy’s Tariffs to Implement a General Rate Increase for Natural Gas Service*, Case No. GR-2004-0209, Report and Order, September 21, 2004, pp.75-76.

As the Commission explained in the above quote, it has a responsibility to ensure reasonable and prudently incurred rate case expenses, and that this is necessary to ensure an avoidance of a “cost-is-no-object approach.”

5. Here, the only way the Commission can determine if the requested rate case expense is just and reasonable is to review what Liberty included in the proposed \$609,679. However, the Commission has not been provided any detail whatsoever. For example, the Commission has no information to determine what hourly rates are charged by Liberty’s consultants and attorneys and whether those rates are reasonable, nor has the Commission been provided with the number of hours worked by Liberty’s consultants and attorneys to determine if the hours worked are reasonable. Among others, these are necessary facts that must be before the Commission in order for it to determine the reasonableness or prudence of the rate case expense. “However difficult may be the ascertainment of relevant and material factors in the establishment of just and reasonable rates, neither impulse or expediency can be substituted for the requirement that rates be “authorized by law” and “supported by competent and substantial evidence upon the whole record.” *State ex rel. Sprint Spectrum L.P. v. P.S.C.*, 112 S.W.3d 20 (Mo. App. W.D. 2003). Commission orders that fail to consider an important aspect or factor of the issue before it may be reversed as arbitrary and capricious. *State ex rel. GS Techs. Operating Co. v. P.S.C.*, 116 S.W.3d 680, 692 (Mo. App. W.D. 2003).

6. In 2009, in another Missouri Gas Energy rate case, the Commission warned utilities that rate case expense is not a blank check:

In conclusion, this Commission wants to make clear to MGE and other utilities that rate case expense is not simply a blank check and if certain rate case duties can be performed "in-house" by existing personnel more cheaply, we expect the utility to do so. On the issue of rate case expense, we urge

MGE and other utilities to recognize that rate case expense may not be reflexively and automatically passed on to the ratepayers in the future. This Commission disallowed certain rate case expenses (attorney fees) in the 2006 MGE rate case and the Commission will not hesitate to do so again should the evidence support such a decision.⁴

The above suggests that when a utility retains outside consultants and attorneys to perform certain rate case duties, as Liberty has done in this case, the utility must show that its choice of outside experts and attorneys was justified as the least-cost option. Here, Liberty should be expected to have performed rate case duties “in-house” if it could have done so more cheaply. Such is another factor to be weighed by the Commission in order to determine a what amount of rate case expense is just and reasonable, and this is another factor where the Commission has not been provided any detail. Again, the burden of production is on Liberty, and it has not satisfied that burden with its Memorandum. § 393.150.2, RSMo.

7. Liberty’s proposed rate case expense is also unreasonable because Liberty is alleging that it incurred more than a half-million dollars in additional rate case expense above and beyond what was included in the August 12, 2014 agreement. Viewed another way, it is also unreasonable for Liberty to require customers to pay rate case expense drastically higher than the \$400,000 amount it requested through testimony, especially when Liberty has not provided any evidence to show how the amount it now seeks is somehow more reasonable than that which it requested in testimony, how the amount requested in testimony was inaccurately determined, or some other showing of good cause for the substantial (+50% increase) discrepancy in amounts.

⁴ *In the Matter of Missouri Gas Energy’s Tariffs to Implement a General Rate Increase for Natural Gas Service*, Case No. GR-2009-0355, Report and Order, February 10, 2010, p. 76.

8. Public Counsel recommends that the Commission issue an order finding that the Memorandum does not provide sufficient evidence to enable the Commission to determine the rate case expense issue. If Liberty wishes to recover any rate case expense in addition to the \$37,768 already approved by the Commission, Liberty and Staff must file the supporting detail necessary to enable the Commission to understand what rate case expenses were incurred. Among the issues the Commission should ensure are addressed are: why the amount sought by Liberty is now over 50% higher than the estimate offered in direct testimony; detailed substantiation of the hours worked and rates charged by consultants and attorneys; substantiation of all other rate case expenses; comparative review of industry rates in order to demonstrate that the rates charged to Liberty and proposed to be passed on to customers are reasonable; and an analysis demonstrating that the use of outside consultants and attorneys was the least-cost option available.

9. The Commission's concern with rate case expense is the subject of an open case - Case No. AW-2011-0330, *In the Matter of a Working File to Consider Changes to Commission Rules and Practices Regarding Rate Case Expense*. Public Counsel urges the Commission to take administrative notice of the Staff's Investigative Report on Rate Case Expense filed in September of last year in that case in order to assist the Commission in weighing the reasonableness of Liberty's rate case expense here.

10. If or when Liberty and the Staff file documents to substantiate the proposed rate case expense, Public Counsel requests an opportunity to respond.

WHEREFORE, the Office of the Public Counsel urges the Commission to reject Liberty's proposed rate case expenses as being completely unsubstantiated and affording the Commission no record upon which to make a lawful order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 24th day of November 2014:

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