

**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	)	Case No. GR-2014-0152
Increase for Natural Gas Service in the	)	
Missouri Service Areas of the Company	)	

**PUBLIC COUNSEL’S REPLY TO MOTION TO STRIKE**

**COMES NOW** the Missouri Office of the Public Counsel and for its Reply to the Missouri Division of Energy’s Motion to Strike Portions of OPC Witness Geoff Marke’s Surrebuttal Testimony, states as follows:

1. On July 30, 2014, all parties filed their rebuttal testimony in this case, including Staff witness Kory Boustead. Ms. Boustead’s rebuttal testimony includes the following Q&A on pages 2-3:

Q. What is Staff’s recommendation?

A. Staff recommends the Commission approve the goal of 0.5 percent of annual revenues as the target level for both **energy efficiency** and Low Income Weatherization assistance programs combined. Since the utility potentially can recover the costs through rates Staff feels there is **not enough information regarding how effective these programs are** in reducing energy usage to justify allowing more money in addition to the 0.5 percent of annual revenues, causing a further potential future increase than what could be necessary. [emphasis added].

2. On August 15, 2014, all parties filed Surrebuttal testimony, including Public Counsel witness Dr. Geoff Marke. Dr. Marke responded to Ms. Boustead’s testimony by challenging the Staff’s recommendation to include 0.5 percent as the target level for energy efficiency programs.

3. On August 27, 2014, the Division of Energy (“DE”) filed its Motion to Strike portions of Dr. Marke’s testimony. DE’s motion provides two basis for striking Dr. Marke’s testimony: 1) Dr. Marke’s Surrebuttal testimony “is unresponsive to any rebuttal testimony, and stands in direct contradiction to 4 CSR 240-2.130(7)(C)”;<sup>1</sup> and 2) Dr. Marke’s testimony does not comply with the Partial Stipulation and Agreement entered into by the parties on August 12, 2014. DE’s motion should be denied because no rule violation or violation of the Partial Stipulation and Agreement has occurred.

4. The Commission’s rules regarding surrebuttal testimony state at 4 CSR 240-2.130(7)(D), “Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party’s rebuttal testimony.” The question to ask is whether Dr. Marke’s testimony was responsive to matters raised in Ms. Boustead’s rebuttal testimony. Ms. Boustead’s rebuttal testimony recommended to the Commission that it: 1) agree to an energy efficiency expenditure goal of 0.5 percent; and 2) that the Commission not go above 0.5 percent due to questions regarding the cost effectiveness of the energy efficiency program. These recommendations raise an issue of overall expenditure, and a related issue of cost effectiveness.

5. Dr. Marke’s Surrebuttal testimony responds to these two recommendations by including a section on energy efficiency that begins by identifying the current programs and discussing their cost-effectiveness. This matter was addressed in Ms. Boustead’s rebuttal testimony when she testified that there is not enough information regarding the effectiveness of the energy efficiency program. Dr. Marke

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<sup>1</sup> DE references 4 CSR 240-2.130(7)(C) twice in its motion, but it appears that DE intended to reference 4 CSR 240-2.130(7)(D), which DE correctly quotes on page 2 of its motion.

responded by explaining the energy efficiency programs and by providing information on the cost effectiveness of those programs.

6. In response to Ms. Boustead's recommendation that the Commission authorize a goal of 0.5 percent expenditures on energy efficiency, Dr. Marke responds by explaining that due to questions on cost-effectiveness, Liberty should not make future expenditures on energy efficiency until cost effectiveness information becomes available.

7. DE argues that Dr. Marke's Surrebuttal testimony "is unresponsive to any rebuttal testimony," without giving any recognition to Ms. Boustead's rebuttal testimony regarding energy efficiency. DE identifies only the stated *purpose* of Staff's testimony to determine the content of that testimony, without recognizing that while the Staff's purpose may be limited, the actual testimony provided was broader than that limited purpose stated in the executive summary. It is not uncommon for a witness' testimony to generalize or summarize the purpose of the testimony when in fact the testimony expands into other areas. Such is the case here. While Ms. Boustead's executive summary does not mention energy efficiency, her testimony does address energy efficiency and provides a recommendation to the Commission. A party is not limited in surrebuttal testimony to responding only to a party's executive summary. Instead, a party is authorized by 4 CSR 240-2.130(7)(D) to respond to *any* matter raised in another party's rebuttal testimony.

8. DE also argues that Dr. Marke's testimony violates the Partial Stipulation and Agreement filed by the parties on August 12, 2014. DE correctly points out that all issues related to energy efficiency and weatherization are included in that document as "the remaining issues." DE mistakenly assumes that simply because there was no dollar value associated with energy efficiency in the "remaining issues" list that this means

Public Counsel has agreed to a particular level of funding. That is not the case. The Partial Stipulation and Agreement does not resolve the energy efficiency expenditures, and therefore, the issue remained an unsettled issue along with all other energy efficiency issues.

9. On September 5, 2014, Liberty, Public Counsel, and DE filed a Non-Unanimous Second Partial Stipulation and Agreement that would resolve all energy efficiency and weatherization issues. During the evidentiary hearing, the Staff has indicated that it does not object to the energy efficiency and weatherization terms. It therefore appears that the issue of Mr. Marke's testimony may have become moot.

WHEREFORE, the Office of the Public Counsel respectfully replies to DE's Motion to Strike and urges the Commission to deny the motion.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston

Marc D. Poston (#45722)

Deputy Public Counsel

P. O. Box 2230

Jefferson City MO 65102

(573) 751-5558

(573) 751-5562 FAX

[marc.poston@ded.mo.gov](mailto:marc.poston@ded.mo.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 8<sup>th</sup> day of September 2014:

**Missouri Public Service Commission**

Jeff Keevil  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
jeff.keevil@psc.mo.gov

**Missouri Public Service Commission**

Office General Counsel  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
staffcounsel@psc.mo.gov

**Noranda Aluminum, Inc.**

Diana M Vuylsteke  
211 N. Broadway, Suite 3600  
St. Louis, MO 63102  
dmvuylsteke@bryancave.com

**Liberty Utilities (MNG)**

James M Fischer  
101 Madison Street, Suite 400  
Jefferson City, MO 35101  
jfischerpc@aol.com

**Liberty Utilities (MNG)**

Larry W Dority  
101 Madison, Suite 400  
Jefferson City, MO 65101  
lwdority@sprintmail.com

**Missouri Division of Energy**

Jeremy D Knee  
301 West High Street  
P.O. Box 1157  
Jefferson City, MO 65102  
jeremy.knee@ded.mo.gov

/s/ Marc Poston

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