

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

In the Matter of the Establishment of a Working Case for the Review and Consideration of Rewriting and Writing of Existing and New Affiliate Transaction Rules and HVAC Affiliate Transaction Rules)
Case for the Review and Consideration of a)
Rewriting and Writing of Existing and New) File No. AW-2018-0394
Affiliate Transaction Rules and HVAC Affiliate)
Transaction Rules)

LIBERTY UTILITIES' INITIAL COMMENTS

COME NOW The Empire District Electric Company, The Empire District Gas Company, and Liberty Utilities (Midstates Natural Gas) Corp. (collectively, “Liberty Utilities”), by and through counsel, and in response to the Motion to Establish Working Case filed herein by the Staff of the Commission (“Staff”) and the *Order Opening a Working Case to Consider New and Revised Rules Regarding Affiliate Transactions and HVAC Affiliate Transactions* issued herein by the Missouri Public Service Commission (“Commission”), respectfully state as follows:

1. Liberty Utilities appreciates the opportunity to participate in this working docket regarding possible changes to the Commission’s affiliate transactions rules and provide comments regarding Staff’s proposed rules.
2. As noted in the Staff Motion to Establish Working Case filed herein, the Commission has been taking actions to streamline rules and lessen unnecessary administrative burdens in response to Executive Order 17-03. In this regard, Staff proposes consolidation of the Commission’s existing affiliate transactions rules that are currently broken out by utility type. Liberty Utilities supports this consolidation.
3. The Commission’s current affiliate transactions rules do not apply to water and sewer corporations of any size. Staff’s proposed rules, however, would apply to all electric, gas, heating, water, and sewer corporations with greater than 8,000 customers. Although

Liberty Utilities has concerns with specific provisions of Staff's proposed rules, Liberty Utilities does not object to the Commission's affiliate transactions rules being extended to apply to water and sewer corporations with greater than 8,000 customers.

4. Liberty Utilities, however, believes that instead of further expanding the scope of the rules, there should be a provision added to reflect prior Commission decisions regarding the asymmetrical pricing requirements not applying to transactions between two Missouri-regulated affiliates. "(T)he purpose of the Commission's Affiliate Transactions Rule is to prevent cross-subsidization of regulated utility's non-regulated operations, not to prevent transactions at cost between two regulated affiliates." 2008 Mo. PSC Lexis 693, *515. Adopting such a provision in the rules would eliminate the need for variance requests related to the asymmetrical pricing requirements and would improve administrative efficiencies for the Commission and the regulated utilities.
5. Liberty Utilities also objects to the following proposed provisions:
 - a. The Cost Allocation Provisions: Staff's proposal to increase the requirements regarding Cost Allocation Manuals ("CAMs") (subsection (5)) would result in significant administrative expense and burden. Liberty Utilities is unaware of any need or justification for the suggested increase in administrative burdens regarding CAM approval, which would likely lead to increased costs with no corresponding customer benefits. For example, the proposed rule would require that a covered utility update its CAM within 60 days of "[a]n affiliate relationship of the covered utility changes." Effectively, this new rule would require that the CAM be updated any time a new affiliate is formed, even if that affiliate bears no relation whatsoever to the covered utility, other than the mere fact that they share

a common corporate parent. At a minimum, this provision should be eliminated since is onerous and is not based on any meaningful nexus between the utility and the new affiliate.

- b. The Employee Transfer Provision: Subsection (4)(E) would require notice to the Commission if a utility were to transfer 10% or more of its employees to an affiliated regulated or nonregulated entity. This requirement would appear to liken people to property for which transfer of asset approval may be required and would constitute an unreasonable restriction on the exercise of a utility's management discretion.
- c. Recording of Affiliate Transactions: Subsection (5)(B) of the proposed rules requires that the utility, Commission Staff, and the Office of Public Counsel agree on the electronic format in which a covered utility maintains its affiliate transactions. This provision is overreaching and unnecessary. Covered utilities should be afforded the discretion to maintain information regarding affiliate transactions in an electronic format that the utility deems appropriate based on its computer systems and particular business processes. To do otherwise is an unnecessary intrusion on the day-to-day conduct of the business.
- d. Marketing Materials: Subsection (2)(F) of the rule would require the use of a disclaimer by an affiliate of a covered utility that uses the exact name or a similar logo or trademark. As the Commission may be aware, "Liberty Utilities" is a trade name that is used in 12 states in the United States. Based on the proposed rule, Liberty Utilities would be required to place on any marketing materials, information (notably a term that is not limited in any manner whatsoever), or

advertisements by an affiliated entity (which could include another Liberty Utilities regulated gas, water, or electric company), the disclaimer that the entity is not regulated by the “Missouri Public Service Commission.” Practically speaking, this means that the Liberty Utilities electric utility that operates in the Lake Tahoe, California region would be required to place this “not regulated by the Missouri Public Service Commission” disclosure on information it circulates to its California customers. This is nonsensical and could not be the intention of the rule.

6. For the reasons stated above, Liberty Utilities recommends that the Commission schedule working group meetings so there can be a meaningful exchange regarding the proposed rule changes.

WHEREFORE, Liberty Utilities respectfully submits these Initial Comments and looks forward to further discussion regarding possible changes to the Commission’s affiliate transaction rules.

BRYDON, SWEARENGEN & ENGLAND, P.C.

By:

/s/ Diana C. Carter
Diana C. Carter MBE#50527
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, Missouri 65102
Phone: (573) 635-7166
Fax: (573) 635-3847
E-mail: dcarter@brydonlaw.com

CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 10th day of August, 2018, with notification of the same being sent to all parties of record.

 /s/ Diana C. Carter