

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

In the Matter of Liberty Utilities (Missouri ) File No. WR-2018-0170  
Water) LLC's Application for a Rate Increase. ) SR-2018-0171

**MOVANTS' REPLY TO STAFF AND LIBERTY UTILITIES (MISSOURI  
WATER'S) RESPONSE TO THE MOTION TO DISMISS, OR IN THE ALTERNATIVE,  
TO ORDER LIBERTY UTILITIES (MISSOURI WATER), LLC TO FILE A TARIFF  
PURSUANT TO SECTION 393.140(11)**

COME NOW, Orange Lake Country Club, Inc. and Silverleaf Resorts, Inc. ("Movants"), pursuant to 4 CSR-2.080 and files this Reply to Staff's and Liberty Utilities (Missouri Water's) Response to the Motion to Dismiss, or in the Alternative, to Order Liberty Utilities (Missouri Water), LLC to File a Tariff ("Motion"). For its cause, the Movants state the following:

**Reply to Staff Response**

Paragraph 8 of Staff's two-page Response provides, "In their *Motion*, the Interveners do not cite to any Commission rule or law violated by the Company's use of the Small Utility Rate Case procedures." The Movants respectfully direct Staff to page 9-10 of the Motion wherein the Movants explain that Liberty Utilities (Missouri Water) has more than **36,686 customers**. This number of customers exceeds the customer limits found in 4 CSR 240.050(1) by over **400%**. This would qualify as a violation.

Staff further contends, "Moreover, the *Motion to Dismiss* raises no issues that rise to the level of good cause to prevent or remedy a manifest injustice." Staff's Response, Par. 8. The Movants raise serious questions of due process for these 36,686 customers under the SURP regulations. Amplifying these concerns is the fact that the Office of Public Counsel (OPC), statutorily charged with protecting rate payers, and the only other entity besides Staff and the utility with any express rights under the

SURP, has not issued a single data request in this case yet. Nor do the Movants have any indication of OPC's level of involvement going forward in this case.

Staff's Response fails to explain what due process rights the Intervenors may or may not have in the SURP before summarily concluding that no good cause exists. Staff does not explain if the Intervenors have any discovery rights. Staff does not explain if the Intervenors have a right to request a local public hearing. Staff does not explain if the Intervenors have a right to an evidentiary hearing. In short, Staff simply ignores the Intervenors due process concerns in its conclusory position that no good cause exists to prevent injustice. Finally, based upon Staff's own testimony in AW-2018-0050 as cited in the Motion, it appears that Staff is content with the application of SURP in a manner entirely inconsistent with the spirit and purpose for which it was created.

#### **Reply to Liberty Utility (Missouri Water's) Response**

Liberty Utilities (Missouri Water) argues a point which the Movants did not make: "Movants state no other circumstance, nor cite any case authority, to support their theory that a small water or sewer utility that is a subsidiary of a utility holding company may not invoke the process clearly contemplated under Commission Rule 4 CSR 240-3.050." Liberty Utilities (Missouri Water) Response, Par. 4. The Movants do not argue that a small water and sewer subsidiary of a utility holding company cannot invoke SURP. Rather the Movants argue that Liberty Utilities (Missouri Water) is not a small water and sewer company by virtue of its 36,686 customers. The Movants further argue that the Commission's interpretation of the word "customer" -- which is defined in 4 CSR 240-3.070(7) -- should be *informed* by the purpose of the SURP to the extent that it can be.

Liberty Utilities (Missouri Water) asserts: "What Movants are advocating essentially is a change to the Commission's SURP rule based on a broad policy argument that may have a larger

impact than just as to Liberty Utilities."<sup>1</sup> Liberty Utilities (Missouri Water) Response, Par. 6. This is incorrect. There is no need to change the SURP rule, because the definition of "customer" under 4 CSR 240-3.070(7) is consistent with the purpose of SURP. That is "customer" is defined by the person financial responsible *for the utility service*, not financially responsible *to the utility company*. Under the definition of 4 CSR 240-3.070(7) Liberty Utilities (Missouri Water) has at least 36,686 customers.

Therefore, Liberty Utility (Missouri Water), LLC clearly exceeds the eligibility limits of costumers found in 4 CSR 240.3.070(7) and good cause exists to prevent the violation of the Movants' due process rights. Therefore the Movants ask the Commission to rule on the Motion in a manner which is consistent with the purpose of the SURP and prevents the violation of the Movants' due process rights.

Respectfully Submitted,

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<sup>1</sup> It is unclear here if the reference to Liberty Utilities is in reference to Liberty Utilities (Missouri Water) or its parent company.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed to all counsel of record this 26<sup>th</sup> day of February, 2018.

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/s/Joshua Harden \_\_\_\_\_