

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

In the Matter of the Application of Liberty)	
Utilities (Missouri Water) LLC for Certificates of)	
Convenience and Necessity Authorizing it to)	Case Nos. WA-2020-0397
Install, Own, Acquire, Construct, Operate, Control,)	and SA-2020-0398
Manage, and Maintain a Water System and Sewer)	
System in Bolivar, Polk County, Missouri)	

MOTION FOR SUMMARY DETERMINATION AND REQUEST FOR RULING

COMES NOW Liberty Utilities (Missouri Water) LLC (“Liberty” or “Company”), and respectfully submits, pursuant to Commission Rule 22 CSR 4240-2.117, this Motion for Summary Determination and Request for Ruling with regard to Liberty’s Application for Certificates of Convenience and Necessity (“CCNs”) authorizing Liberty to install, own, acquire, construct, operate, control, manage, and maintain a water system and a sewer system in Bolivar, Polk County, Missouri, submitted herein pursuant to RSMo. §393.170 and §393.320 and Rules 20 CSR 4240-2.060, 20 CSR 4240-3.305, and 20 CSR 4240-3.600 (the “Application”). In this regard, Liberty respectfully states as follows to the Missouri Public Service Commission (“Commission”):

Legal Issue

Pursuant to Commission Rule 22 CSR 4240-2.117(1), summary determination shall be granted by the Commission “if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case.” Based on the uncontroverted facts previously filed with the Commission, and set forth verbatim below, Liberty requests an initial ruling on the question of whether Liberty meets the definition of a “large water public utility”

under RSMo. §393.320.1(1). With regard to this threshold issue, there are no material facts in dispute.

Statement of Uncontested Facts

The Staff of the Commission (“Staff”), the Office of the Public Counsel (“OPC”), and Liberty, being all of the parties to this proceeding, stipulate and agree to the following factual statements:

1. On October 15, 2020, Liberty filed its request with the Commission to obtain CCNs authorizing Liberty to begin providing water and sewer service in Bolivar, Polk County, Missouri, pursuant to Missouri statutes §393.170 and §393.320 and Commission Rules 20 CSR 4240-2.060, 20 CSR 4240-3.305, and 20 CSR 4240-3.600 (the “Application”).

2. The areas for the requested sewer CCN and water CCN are described and depicted in Application Appendix B.

3. Liberty is a Missouri limited liability company with its principal office located at 602 Joplin Street, Joplin, Missouri, 64801, and provides water and sewer services to customers in its Missouri service areas, as certificated by the Commission.

4. Liberty is a “water corporation,” a “sewer corporation,” and a “public utility,” as those terms are defined by RSMo. §386.020 and, therefore, is subject to the general regulatory jurisdiction of the Commission as provided by law.

5. Liberty regularly provides water and/or sewer service to approximately 8,274 customer connections (approximately 7,636 water and approximately 638 sewer), with approximately 8,079 unique water/sewer customers.

6. Effective November 27, 2019, Liberty and the city of Bolivar, Missouri, executed an Asset Purchase Agreement (“APA”), a copy of which was attached to the Application as Appendix A.

7. Bolivar is a “small water utility” under RSMo. §393.320.1(2), as it is a “water system or sewer system owned by a municipality that regularly provides water service or sewer service to eight thousand or fewer customer connections.”

8. Pursuant to the APA, Liberty proposes to acquire substantially all operating assets currently used by Bolivar for its water and sewer operations.

9. The assets to be acquired are sufficient to allow Liberty to provide safe and adequate water and sewer service as requested.

10. Liberty is fully qualified, in all respects, to own and operate the water and sewer systems currently owned and/or operated by Bolivar and to otherwise provide safe and reliable sewer service to Polk County, Missouri.

11. Liberty has sufficient operating cash to sustain ongoing operations and is committed to providing regulated utility services to its customers for years to come. Further, the financial support and backing of Liberty’s parent companies demonstrates that Liberty has and will continue to have sufficient access to capital for ongoing operations and infrastructure needs.

12. On January 30, 2020, Liberty filed its initial Notice of Intended Case Filing regarding the Bolivar systems, opening Commission Case Nos. WA-2020-0215 and SA-2020-0216.

13. At the time the initial Notice of Intended Case Filing was submitted, an election was scheduled for April 7, 2020, for voters in Bolivar to be asked to approve the transfer of the water and sewer systems currently owned and operated by the city of Bolivar, Missouri, to Liberty.

14. Due to the COVID-19 pandemic, the Bolivar election was postponed from April 7 to June 2, 2020.

15. The election took place on June 2, 2020, and the citizens of Bolivar voted 743 to 448 in favor of transferring the water and wastewater systems and authorizing the city of Bolivar to enter into a franchise agreement with Liberty for water and sewer service.

16. On June 5, 2020, Liberty submitted a Notice of Intended Case Filing initiating these dockets (WA-2020-0397 and SA-2020-0398).

17. Following the filing of the Application by Liberty, Staff conducted discovery in this matter and investigated Liberty's Application and filed its Recommendation on April 16, 2021.

18. Staff concluded "that Liberty fulfills the requirements regarding [technical, managerial, and financial] capacities. Staff also finds that Liberty meets the first four Tartan Criteria; i.e., (1) there is a need for the service; (2) Liberty is qualified to provide the service; (3) Liberty has the financial ability to provide service; and (4) Liberty's proposal is economically feasible."

19. In addition to seeking the traditional CCNs, Liberty's Application seeks ratemaking treatment. Pursuant to RSMo. §393.320, the Application asks the Commission to set the ratemaking rate base for the Bolivar water and sewer assets.

20. With certain exceptions not applicable here, §393.320.1(1) defines a "large water public utility" as one that "regularly provides water service or sewer service to more than eight thousand customer connections."

21. The appraisal process set forth in RSMo. §393.320.3 was followed by Liberty and Bolivar with regard to the Bolivar water and sewer assets, with the resulting appraisal, containing a joint assessment of the fair market value of the water system and the sewer system, attached to the Application as Appendix H.

22. The appraised value of the Bolivar water and sewer assets is less than the purchase price set forth in the APA.

23. With its Application, Liberty requests that “(t)he lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs” incurred by Liberty be established as “the ratemaking rate base” for the Bolivar water and sewer assets.

Memorandum in Support of Liberty’s Request for Partial Summary Determination

This is a somewhat unique case, as, in addition to seeking the traditional CCNs, Liberty’s Application seeks ratemaking treatment. Pursuant to RSMo. §393.320, the Application asks the Commission to set the ratemaking rate base for the Bolivar water and sewer assets. Although ratemaking requests are traditionally made in general rate cases, and not CCN proceedings, Liberty was able to make this ratemaking request in this docket on the basis that Liberty is now a “large water public utility,” with the right to proceed under RSMo. §393.320 with regard to the Bolivar water and sewer assets.

With certain exceptions not applicable here, §393.320.1(1) defines a “large water public utility” as one that “**regularly provides water service or sewer service to more than eight thousand customer connections.**” As stipulated and agreed to by the parties, Liberty regularly provides water and/or sewer service to approximately 8,274 customer connections. Statement of Uncontroverted Facts, ¶5. Although there are no material facts in dispute as to the issue of whether Liberty is a “large water public utility,” there is disagreement between Liberty and Staff as to the reading of the applicable statute. In the Memorandum attached to the Staff Recommendation, Staff states that “it is Staff Counsel’s position that Liberty does not currently meet the statutory definition of a large water public utility, as provided in 393.320, RSMo.”

When faced with questions of statutory interpretation, Missouri courts often cite the basic principle that legislative intent must be discerned from the text of the statute and the statute interpreted to further that intent. *Stiers v. Director of Revenue*, 477 S.W.3d 611, 615 (Mo. banc 2016); *Greer v. SYSCO Food Servs.*, 475 S.W.3d 655, 666 (Mo. banc 2015). Missouri courts then begin with the plain meaning rule: if the intent of the legislature is clear and unambiguous, by giving the statutory language its plain and ordinary meaning, then that intent is binding and no further statutory construction would be appropriate. *Howard v. City of Kansas City*, 332 S.W.3d 772, 787 (Mo. banc 2011); *see also Greer*, 475 S.W.3d at 666; *Ben Hur Steel Worx, LLC v. Director of Revenue*, 452 S.W.3d 624, 626 (Mo. banc 2015).

Looking to the plain wording of the statute, it is the total number of customer connections served (more than 8,000) that is relevant to the statute’s definition – not the specific type of service, as between water and sewer, that is provided. Liberty regularly provides water and/or sewer service to approximately 8,274 customer connections. Pursuant to this undisputed fact and the applicable law, the Commission should issue an order, at this time, finding and concluding that Liberty is a “large public water utility” under RSMo. §393.320 – a utility that “**regularly provides water service or sewer service to more than eight thousand customer connections.**”

It is noteworthy that the statute does not separately define a “large *water* public utility” and a “large *sewer* public utility,” as Staff’s arguments would imply. Instead, the Missouri Legislature chose to speak only to a “large water public utility” as one that “regularly provides water service or sewer service to more than eight thousand customer connections” and a “small water utility” as one “that regularly provides water service or sewer service to eight thousand or fewer customer connections.” Again, it is clear that it is the total number of customer

connections served (more than 8,000) that is relevant to the statute's definition – not the specific type of service, as between water and sewer, that is provided.

The Staff Recommendation argues that “a public utility must provide water service **OR** sewer to more than 8,000 customers. Seeing as how ‘or’ and ‘and’ do not have the same meaning, it is clear that Liberty does not meet the statutory definition of ‘Large Public Water Utility.’” Accepting Staff's argument in this regard would mean that a utility would not qualify as a “large water public utility” under §393.320 even if that utility regularly provided service to a total of up to 16,000 customer connections, so long as it provided water service to 8,000 or less customer connections and sewer service to 8,000 or less customer connections. On the other hand, a utility would qualify as a “large water public utility” under §393.320 if it provided only sewer service to a total of 8,001 customer connections.

In other words, a utility with 8,001 sewer customer connections would qualify as a “large water public utility” and be able to make use of the ratemaking rate base treatment of §393.320 in its acquisition of a “small water utility” with 16,000 customer connections, so long as 8,000 were for water and 8,000 were for sewer. The scenarios resulting from Staff's statutory interpretation are nonsensical, and Staff's suggested statutory interpretation would obliterate the statute's purpose: to encourage larger utilities to acquire smaller utilities. To fulfill the intent of the Missouri Legislature, the total number of customer connections served (more than 8,000 versus at/less than 8,000) must be given relevance.

Liberty agrees with Staff that it is significant that the Missouri Legislature did not use “and” regarding the provision of water/sewer service to more than 8,000 customer connections. For example, to qualify as a “large water public utility” under RSMo. §393.320, a utility need not provide both water service *and* sewer service to its 8,001 or more customer connections.

Instead, a total of more than 8,000 customer connections is all that is required. In order to adopt Staff's interpretation of the meaning of "or" in the statute, however, the Commission would need to disregard the plain wording of the statute and, instead, misconstrue the statute to require that a utility, in order to qualify as a "large water public utility," be one that regularly provides water service to more than eight thousand customer connections and/or one that regularly provides sewer service to more than eight thousand customer connections. This is not how the Missouri Legislature chose to phrase the statutory requirements.

RSMo. §393.320.1(1) simply defines a "large water public utility" as one that "regularly provides water service or sewer service to more than eight thousand customer connections." It is the total number of customer connections served (more or at/less than 8,000) that is relevant to the statute's definitions of large and small water utility – not the specific type of service provided, as between water and sewer. Liberty, in fact, "regularly provides water service or sewer service to more than eight thousand customer connections," as Liberty regularly provides water service or sewer service to approximately 8,274 customer connections (approximately 7,636 water and approximately 638 sewer, with approximately 8,079 unique water/sewer customers). Statement of Uncontroverted Facts, ¶5. As such, under the plain reading of the statute, Liberty is a "large water public utility."

WHEREFORE, Liberty requests an order of the Commission finding and concluding that Liberty is a "large public water utility" under RSMo. §393.320. Liberty requests such additional relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Diana C. Carter
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CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 16th day of June, 2021, and sent by electronic transmission to the Staff of the Commission and the Office of the Public Counsel.

/s/ Diana C. Carter