

**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

COMES NOW Ozark Mountain Condominium Association (“OMCA”) and for its Post-Hearing Brief states as follows:

**I. INTRODUCTION**

On December 15, 2017, Liberty Utilities (Missouri Water) LLC (“Liberty Utilities” or the “utility”) initiated this rate case (the “Rate Case”) involving its Silverleaf water system and its Ozark Mountain sewer system. (*Request for Increase*, December 15, 2017 [EFIS Item 1]). The Rate Case was the utility’s first in ten years involving these two systems. (Ex. 105, p. 5, l. 14-p. 6, l. 5 (Harrison Direct)). Initially, Liberty Utilities requested an annual water system operating revenue increase of \$995,844 and an annual \$196,617 increase in sewer system operating revenues (the “Rate Case”) (EFIS Item 1). Liberty Utilities and Staff subsequently have taken the joint position that a water system increase of \$818,800 and a sewer system increase of \$196,782 would be just and reasonable. (*Non-Unanimous Stipulation and Agreement*, August 3, 2018 [EFIS Item 72]).

Intervenor OMCA is a 101-member condominium association. Each member owns a condo unit and is an individually-metered sewer (Ozark Mountain sewer system) and water customer (Silverleaf water system) of Liberty Utilities. (Ex. 401, p. 1, l. 6 – p. 2, l. 2 (Allsbury Direct)). Staff’s and Liberty Utilities’ jointly-proposed increases would result in a 197.43% increase in OMCA’s members’ fixed charges for water, among other increases (EFIS Item 72, attachment A, p. 3). This steep increase has upset OMCA’s members because their water service

from Liberty Utilities has not been consistently safe and adequate and the customer service provided to them has been consistently poor.

Customer service is an issue in the Rate Case: “Has Liberty Utilities adequately responded to customer service issues?” (*List of Issues, Order of Witnesses, Order of Cross-Examination and Order of Opening Statements*, August 10, 2018 [EFIS Item 86]). OMCA intervened to inform the Commission about the inadequate service Liberty Utilities has provided, to suggest that the Commission impose certain specific conditions on Liberty Utilities to address the deficiencies, and to assert its position that in view of the inadequate service, rate increases of the magnitude sought would not be just or reasonable.

Of course, there are also several rate-specific issues and subissues in this Rate Case. (EFIS Item 86). Like most individual utility customers, however, OMCA simply lacks adequate means to engage experts or present testimony on these matters. OMCA’s interests in these issues align with fellow intervenor Silverleaf Resorts Inc. and Orange Lake Country Club, Inc. (“Silverleaf”). Therefore OMCA again states its support for Silverleaf’s positions on these issues. (*Ozark Mountain Condominium Association’s Position Statement*, August 13, 2018 [EFIS Item 96]). OMCA urges the Commission to take into consideration the utility’s history of poor customer service, when determining what rate increase for Liberty Utilities, if any, would be just and reasonable to both the utility *and* its customers.

## **II. HAS LIBERTY UTILITIES ADEQUATELY RESPONDED TO CUSTOMER SERVICE ISSUES?**

OMCA’s witness Mr. Allsbury is OMCA’s property manager, and has communicated for years with Liberty Utilities’ contractors and employees regarding service problems experienced by the condo unit owners and by OMCA. (Ex. 401, p. 2, l. 6-16). He kept a record of service problems with Liberty Utilities dating back to 2009 (Id., p. 2, l. 17-20). That has turned out to be

a very good thing, since as Staff's Customer Experience Department reported, Liberty Utilities has failed to keep a summary log of all customer complaints and inquiries (*Customer Experience Department Report*, Attachment B to Attachment B to EFIS Item 72).

Staff's witness Mr. Roos is a utility engineering specialist in Staff's water and sewer department. He gave rebuttal testimony wherein he waved off all the water service problems experienced by OMCA as merely slow responses or passive responses by the utility, and concluded that all the water service problems documented by Mr. Allsbury had been resolved, the water system had been repaired, and was currently a reliable source of water. (Ex. 112, p. 2, l. 7-15; p. 3, l.15-p. 4, l. 6 (Roos Rebuttal)). Mr. Roos reached that conclusion despite Mr. Allsbury's testimony that meter boxes that were rotting back in 2015 still have not been repaired by Liberty Utilities. (Ex. 401, p. 5, l. 19-p. 6, l. 13, p. 8 l. 5-8). He reached his conclusion despite his admission that he never received a direct answer to a portion of a data request he propounded on the utility asking it specifically to describe what improvements to its system the utility had made to prevent the recurrence of a serious situation where OMCA's members had had no water for sixteen days (Tr. Vol. 5, p. 191, l. 5-p. 192, l. 19). He reached his conclusion despite the fact that the contractor whose contract was terminated in response to the incidents in the summer of 2015 continued to provide services at Silverleaf until just recently (Id., p. 192, l. 5-13). He reached that conclusion after speaking with Liberty Utilities' operations manager, Paul Carlson, but without ever speaking to Mr. Allsbury. (Id., p. 195, l. 10-16). Mr. Roos also reached that conclusion despite the fact that even Liberty Utilities admits that there are still issues with the Silverleaf water system that have yet be addressed. (Id., p. 206, l. 13-20). Given the lack of foundation for Mr. Roos' testimony, and the extent to which it contradicts both Mr. Allsbury's testimony and Liberty Utilities' admissions, OMCA believes his testimony on the

issue of whether Liberty Utilities has adequately responded to customer service issues should be given very little weight.

Liberty Utilities' witness Ms. Schwartz is its senior manager for rates and regulatory affairs. Her testimony regarding water service problems experienced by OMCA and plans for improvement to the Silverleaf water system were based on her conversations with Paul Carlson, who has been with Liberty Utilities less than a year, and his report of his communications with Mr. Allsbury. (Ex. 2, p. 6, l. 6-p. 8, l. 8 (Schwartz Rebuttal); Tr. Vol. 5, p. 206, l. 7 – 207, l. 15).

Mr. Allsbury presented a detailed list of continual problems OMCA has experienced with the water service provided by Liberty Utilities, and the related customer service. (Ex. 401, p. 2, l. 21-p. 8, l. 8). He explained that the list was a list of major problems that kept coming up, but other small problems had also occurred that he hadn't listed. (Tr. Vol. 5, p. 170, l. 6-15).

Representative problems to which Mr. Allsbury testified include: broken water mains that resulted in damage to the condo units and common elements, and the loss of fire protection for several days *after* the main itself was repaired, because no one was available to come and recharge the line and restore service (Ex. 401, p. 2, l. 21-p. 3, l. 8); more broken mains (Id. p. 3, l. 20-22); frozen water meters (Id., p.3, l. 23-p. 4, .1.); more frozen meters (Id. 1; p. 4, l. 10-17); multiple instances of loss of water pressure (Id. p. 4, l. 5-6; p. 5, l. 19-22; p. 7, l. 3-7); multiple instances of extremely high water pressure, in some instances due to improperly working valves, which caused OMCA to have to drain pressure off its fire sprinkler system and which caused damage to irrigation lines (Id. p. 4, l. 2-4 and 18-20; p. 5, l. 13-15; p. 7, l. 11-p. 8, l. 4); rotted meter boxes that after three years have yet to be fully repaired, and which filled with water and froze again this winter (Id. p. 5, l. 19-p. 6, l. 13, p. 8 l. 5-8); and most alarmingly, a continuing situation in the summer of 2015 where for sixteen consecutive days there was no water at all (Id. p. 7, l. 11- p. 8, l. 4).

Mr. Allsbury's testimony also highlights that the problems with Liberty Utilities' service did not lie solely with its previous contractors. He tried calling the utility directly regarding urgent service disruptions but the utility was not responsive. In one instance when he called to report a broken main, instead of arranging to send someone immediately to deal with the water shooting from the broken main, the Liberty Utilities representative told Mr. Allsbury she could not arrange for a service call because he was unable to provide a billing number for the address. (Ex. 401, p. 175 l. 15-p. 178, l. 5). On another occasion, he tried calling various 800 numbers for the company, first an Arizona number and then a Texas number, but the offices were closed. (Id.) On another occasion, a Liberty Utilities representative that Mr. Allsbury contacted about water pressure problems insisted that the problem was the result of high water usage and Liberty Utilities could do nothing about it, even though the same water pressure issues were experienced during vacation offseasons when many OMCA members' condos were vacant (Id. p.5, l. 23-p. 6, l. 7).

Mr. Allsbury identified Paul Carlson as the person who, in his understanding, Mr. Allsbury would be dealing after the contractor was terminated, and who was to take over maintenance of the Silverleaf water system. (Tr. Vol. V, p. 170, l. 24-p. 171, l. 2). Mr. Allsbury has only met Mr. Carlson twice—once during the summer of 2017 when Mr. Carlson was on site as a pump in a wellhouse was replaced, and once in February of 2018 after the Rate Case was filed. (Tr. Vol. V, p. 172, l. 23- p. 173, l. 10). During that February visit, Mr. Allsbury offered to take Mr. Carlson around the OMCA property to show him problems that still needed to be dealt with, but Mr. Carlson declined because Liberty Utilities had yet to end its contract with its then-contractor, RK Water. (Id. p. 174, l. 1-15). Mr. Carlson has not yet offered to come back and meet with Mr. Allsbury. (Id. p. 174, l. 16-18.).

Like Mr. Allsbury's testimony, that provided by witnesses at the local public hearings in this case also reflected the utility's inadequate customer service. For example: unanswered customer service phone calls and outages without advance notice (Tr. Vol. 3, p. 9, l. 12-21); four outages in a one-year period, with no notice whatsoever (Tr. Vol. 3, p. 15, l. 1-16); water chlorinated to a degree the witness found it undrinkable (Tr. Vol. 4, p. 10, l. 10-p. 11, l. 7); and repeated line breaks in the same spot (Tr. Vol. 4, p. 13, l. 13-18. A sampling of the public comments filed in the Rate Case are also of a piece: water pressure so poor only one tap can be used at a time (Comment P201800971); frequent problems with low pressure (Comment P201801011); service is terrible and water tastes terrible (Comment P201801069); water sputters, response time for service is slow and a long time to resolution (Comment P201801372); consistent water pressure issues have caused leaks, which lead to high water bills and repair bills (Comment P201801425); and lack of maintenance and service (Comment P201900025).

The question of whether Liberty Utilities has adequately responded to customer service issue also involves consideration of whether Liberty Utilities has committed to making meaningful changes to improve its customer service. The changes Liberty Utilities and Staff have proposed that Liberty Utilities make to improve its customer service are:

The Company agrees to record all customer inquiries received by Company personnel, as well as all contractors, in the customers' account records in the customer information system. [T]he information recorded will include the nature of the customer inquiry, date of occurrence, as well as an explanation of how the Company addressed the customer issue. While the Company prefers, and is committed to, providing service to customers with Liberty employees, for service territories where contractors are necessary, the Company will require all contractors to report all customer inquiries to Company personnel as soon as practicable, but not later than monthly.

The Company agrees to take the following actions within thirty (30) days of Commission approval of this Agreement to ensure that customers are directed to the new unified customer service number:

- A. All Company employees whose responsibilities include routine interaction with customers will be trained to direct customers to the customer service number so that calls can be routed to appropriate Company staff for response.

- B. The new customer service number will be included on all signs, notices, door hangers, etc., such as those associated with boil advisories.
- C. A letter, separate from the monthly bills, will be sent to all current customers notifying them of the new customer service number.
- D. The new customer service number will be included on voicemails of Company employees who have previously received direct calls from customers.

By January 30, 2019, the Company agrees to file in this docket a 5-year capital improvements plan. This plan shall include all planned projects including water or sewer line replacements, hydrant replacements, pumps, treatment facilities, etc. This Plan shall be updated annually no later than January 30<sup>th</sup> of each year, beginning on January 30, 2020.

The Company agrees to inform the City of Noel of planned capital investment projects within the City of Noel right-of-ways so that other utility or street work can be coordinated, to the extent practicable.

(EFIS Item 72, p. 5-6).

Despite the foregoing, on cross-examination Ms. Schwartz admitted that the utility's commitment and preferences for using employees to provide service applied only to "day-to-day" operations. (Tr. Vol. V, p. 202, l. 8-p. 203, l. 6). Even though Liberty Utilities cited the firing of its contractor as the only improvement it had made to its system to prevent the recurrence of situations like the sixteen consecutive days in 2015 when OMCA members went without water service, and even though Mr. Allsbury's testimony demonstrates that contractors consistently botched and failed to complete repairs, Ms. Schwartz admitted on cross examination that Liberty Utilities still planned to "use contractors to—you know, to provide emergency services or leak services[.]" (Tr. Vol. 5, p. 202, l. 8-p. 203, l. 6). She indicated that such work might need be done, "under the supervision of Company personnel," but she could not say whether its operations manager would actually provide on site direct supervision. (Id. p. 203, ll.7-23). This seems unlikely, as she admitted that Mr. Carlson travels a lot from his office in Aurora managing *all* the utility's water systems throughout the state. (Tr. Vol. 5, p. 205, l. 19-.14).

Ms. Schwartz also admitted that, as to the Silverleaf water system, there is still a “list of issues that need to be addressed,” for which the utility’s operations manager Mr. Carlson “is working on a plan to address [] later this year.” (Tr. Vol. V, p. 206, l. 13-20). OMCA assumes the plan is the 5-year plan cited above. However, when pressed by Commissioner Kenney as to why Mr. Carlson did not, six months after meeting with Mr. Allsbury, *already* have a plan in process, Ms. Schwartz could only give assurances that the utility takes the concerns very seriously and is working to address all of them. (Tr. Vol. 5, p. 213, l. 19-p. 214, l. 214). The vagueness of the assurances and the failure to already develop and implement a plan to address issues with the Silverleaf water system make sense, however, in view of Mr. Allsbury’s testimony that he has not seen or heard from Mr. Carlson since his visit to OMCA six months ago. (Tr. Vol. 5, p. 174, l. 16-18).

The proposed solution that contractors be required to report customer inquiries to the utility, as soon as practicable, *but not later than monthly*, is equally unsatisfying. Even Staff’s witness Mr. Roos has characterized the customer service provided by the contractors as slow and passive—giving a contractor a month will not remedy that problem. Mr. Roos certainly could not explain why it would not be practicable for a contractor to report such inquiries immediately. He only expressed a concern that if a contractor called the utility every time a customer made an inquiry to the contractor, it might “clog the system.” (Vol. 5, p. 190, l. 5-16). Although he suggested that a contractor, “would definitely want to respond to” a “serious incident and let people know immediately,” he admitted that the proposal that all customer inquiries to contractors be reported not later than monthly did not *require* more “serious” inquiries or problems to be reported to Liberty Utilities immediately. (Tr. Vol 5, p. 19, l. 9-p. 190, l. 20).

In sum, it is simply not rational to conclude that, Liberty Utilities has a plan in place that will adequately respond to customer service concerns. Its customer service improvement



proposal essentially maintains the status quo: there was no meaningful contact between the utility's operations manager, Paul Carlson, and customers like OMCA and its liaison, Mr. Allsbury, before this Rate Case, and there hasn't been any since February of 2018, even though Mr. Carlson is purportedly working on a plan to address "issues" with the Silverleaf water system and the plan is supposed to be complete by January of 2019; various water system problems have persisted for years and although Liberty Utilities will now have a plan, there is no indication that there will be any firm deadlines to resolve "issues" identified in the plan; contractors Liberty engaged previously were slow to respond, apparently unsupervised, did not make effective repairs and did not report about it to Liberty (or Liberty did not keep records), and yet Liberty plans to continue to utilize contractors to handle the most serious service issues for customers such as repairs and leaks, its operations manager cannot possibly supervise all such work all over the state at one time, and the contractors would only be required to report back to Liberty Utilities regarding customer inquiries and service problems on a monthly basis.

### **III. OMCA'S ASKS**

In opening statements, Commissioner Rupp inquired about OMCA's "asks." (Tr. Vol. V, p. 75, l. 7-p. 77, l. 15). First, OMCA renews its request for leave to latefile its objections to the *Non-Unanimous Stipulation and Agreement* filed by Staff and Liberty Utilities (*OMCA's Objections to Non-Unanimous Stipulation and Agreement and Request to Latefile Same*, August 13, 2018 [EFIS Item 97]). OMCA acknowledged that it neglected to timely file its objection. Although Liberty Utilities attempted to characterize the latefiling as a "change of heart" by OMCA, that is simply an unsupported and patently false characterization. (*Objection of Liberty Utilities to OMCA's Objection* [EFIS Item 99]). More importantly, no party has disputed the Commission's authority (cited by OMCA in its request) after the expiration a specified time period within which an act may be done, to permit an act to be done where the failure to act was

the result of excusable neglect or *for other good cause shown*. 4 CSR 240-2.050. OMCA asserts that good cause exists. The parties worked diligently to develop the evidence and their positions on the issues in this case, there is in fact no unanimity among the parties on how to resolve the issues in the Rate Case, and it simply must better serve the public interest to decide issues in the Rate Case based on evidence presented at hearing, especially an issue as important to the utility's customers as the issue of whether the utility has responded adequately to customer service concerns, than to make a decision reachable only by punishing parties for their inadvertent, untimely (by one weekday) filing of objections.

Second, OMCA asks that the Commission exercise its authority to order Liberty Utilities to employ specific practices directly responsive to past customer service deficiencies, that ought to yield adequate responses by Liberty Utilities to customer service issues in the future.

Specifically, OMCA asks that the Commission order Liberty Utilities to:

- Record all customer inquiries *and service-related complaints* received by Company personnel, as well as all customer inquiries and service-related complaints received and reported by the Company's contractors, in the customer's account records in the customer information system, *at or near the time the inquiry or service-related complaint is received, but no later than one business day thereafter*. The information recorded must include the nature of the customer inquiry or service-related complaint, date of occurrence, as well as an explanation of how Liberty Utilities employees or their contractors addressed the customer issue. (OMCA has included a reference to service-related complaints, since an inquiry is simply, "a question or request for information related to utility charges, services, practices or procedures." 4 CSR 240-13.015(1)(T)).
- Require Liberty Utilities to require all its contractors to report all customer inquiries and service-related complaints to Company personnel, at or near the time the inquiry is received, but no later than one business day thereafter.
- Require Liberty Utilities to use local (residing or working from a location no more than 20 miles from the system) employees for normal, day to day operations.
- Require Liberty Utilities to use local employees or local contractors to provide all on-site water system repairs, and where local contractors are utilized, require a local employee to either provide direct, on-site supervision while the work is performed, or to inspect and document the contractor's work no later than one business day after the work is performed. If the repair is the result of a customer inquiry or service-related complaint,

require a Liberty Utilities employee to contact the customer, no later than two business days after the work is completed to discuss the repairs that were performed and to confirm that the customer's service is working properly, and to document such contact in in the customer's account records in the customer information system.

- Require Liberty Utilities' operations manager to make an on-site visit at the Silverleaf water system with Mr. Allsbury within 30 days of issuance of the Commission's Report and Order in this Rate Case, and to document all issues of concern reported to him by Mr. Allsbury.
- Require Liberty Utilities to include with specificity, in its 5-year capital improvements plan, how it will resolve issues of concern at the Silverleaf water system reported by Mr. Ellsbury, and to specify firm deadlines by which it resolve them.

The Commission has the authority to order all of the above. Every water corporation must "furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable." § 393.130.1 RSMo (2016). As a result, "[w]henver the commission shall be of the opinion...that ... the acts [of a water corporation] are...in violation of any provision of law, the commission shall determine and prescribe ... the just and reasonable acts and regulations to be done and observed." 393.140(5), RSMo (2016). The Commission has the authority to "order such reasonable improvements as will best promote the public interest" (§ 393.140(2) RSMo (2016)) and can, "prescribe by order, forms of accounts, *records and memoranda* to be kept by such persons and corporations." 393.140(4), RSMo (2016). The Commission has the power to require the performance of *any other act* that the health and safety of the public may demand. §386.310.1 RSMo (2016). Chapter 386 is to be, "liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities." §386.610 (2016).

OMCA's third ask is that the Commission take into consideration Liberty Utilities' history of poor customer service, in determining what rate increases, if any, would be just and reasonable to both Liberty Utilities and its customers. While OMCA acknowledges that the Commission is not bound by *stare decisis* to its prior decisions, it would remind the Commission

that it *has* on occasion previously denied rate increases to utilities that it found were not providing safe or adequate service. See, e.g. *In Re Osage Water Co.*, 2004 WL 188193 (Jan. 30, 2004)(wherein the Commission discussed a number of other cases where the utility provided poor service and its request for a rate increase had been denied. “The Commission will not allow a company to increase its rates while it is unable or unwilling to provide safe and adequate service to its customers. In order for a rate to be just and reasonable, it must be fair to both the company and its customers....Allowing a company to charge even more for what is already inadequate service is not fair to the customers and will not be allowed...’All utilities are entitled to a fair return on investment but the utility and the commission should never lose sight of the cardinal principal of regulation, that the public should and must receive adequate service.”)(internal citation omitted). In the same vein, as the Commission noted in *In Re Missouri Gas Energy*, 235 P.U.R.4th 507 (Sept. 21, 2004), in determining a rate of return within a range supported by expert testimony, the Commission has appropriately taken into consideration the quality of service provided in determining what rate of return would be just and reasonable.

#### **IV. CONCLUSION**

OMCA respectfully requests that the Commission grant its request to late file its objections to the Non-Unanimous Stipulation and Agreement; that it take into account Liberty Utilities’ historically poor customer service, in determining what rate increase, if any, would be fair to both the utility and its customers, and therefore just and reasonable; and that the Commission impose on Liberty Utilities the specific requirements directed at improving Liberty Utilities’ customer service that are set forth in the bullet points in Section III of this brief.

Respectfully submitted:

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Ozark Mountain Condominium Association's Post-Hearing Brief was served via electronic mail (e-mail) on this 31<sup>st</sup> day of August, 2018, on counsel for all parties of record.

/s/ Sarah E. Giboney

Sarah E. Giboney