

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

In the Matter of the Joint Application of        )  
Liberty Utilities (Missouri Water) LLC and    )  
The Empire District Electric Company for     )        Case No. WM-2020-0156  
Authority for Missouri Water to Acquire     )  
Empire’s Water Franchises and Assets        )

**JOINT APPLICATION**

COME NOW Liberty Utilities (Missouri Water) LLC (“Liberty Water”) and The Empire District Electric Company (“Empire”), both Liberty Utilities companies (collectively, the “Applicants”), and, pursuant to RSMo. §393.190 and Rules 20 CSR 4240-2.060 and 20 CSR 4240-10-105, respectfully state as follows to the Missouri Public Service Commission (“Commission”):

**I. Background Information**

1. Liberty Water 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. Liberty Water 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. Liberty Water currently serves approximately 3,000 water and/or sewer customers in Missouri.

2. Empire is a Kansas corporation with its principal office and place of business at 602 Joplin Street, Joplin, Missouri, 62801. Empire is qualified to conduct business and is conducting business in Missouri, as well as in the states of Arkansas, Kansas, and Oklahoma. Empire is a “public utility” and, therefore, is subject to the general regulatory jurisdiction of the Commission as provided by law and is engaged, generally, in the business of generating, purchasing,

transmitting, distributing, and selling electricity in portions of the referenced four states. Empire is also a “water corporation,” and, through its subsidiary (The Empire District Gas Company), provides natural gas distribution service in Missouri. Empire’s small water utility currently serves approximately 4,400 water customers in Missouri.

3. Empire’s documents of incorporation from Kansas and certificate of authority from Missouri were previously filed with the Commission in Case No. EF-94-39. A copy of Liberty Water’s Certificate of Good Standing was attached as Appendix A to the Joint Application filed in Commission File No. WM-2018-0023. In Commission File No. SN-2014-0036, Liberty Water filed a fictitious name certificate showing the name “Liberty Utilities” is registered to Liberty Utilities (Missouri Water) LLC. These documents are incorporated by reference and made a part of this Application for all purposes.

4. The Applicants have no overdue Commission annual reports or assessment fees. There is no pending action or final unsatisfied judgment or decision against the Applicants, or either of them, from any state or federal agency or court which involves customer service or rates, which action, judgment or decision has occurred within three years of the date of this Application.

## **II. The Asset Transfer**

5. Because Empire is a regulated water corporation doing business in the state of Missouri, it is subject to the provisions of RSMo. §393.190.1, which states in pertinent part, that “no . . . water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public . . . without having first secured from the Commission an order authorizing it so to do.”

6. Effective November 12, 2019, Liberty Water and Empire entered into an Asset Purchase Agreement, a copy of which is attached hereto as **Application Exhibit A**. As set forth therein, Liberty Water proposes to purchase from Empire, and Empire proposes to sell and transfer to Liberty Water, Empire's water utility assets, including all contracts, agreements, franchises, and Certificates of Convenience and Necessity ("CCNs") that are currently necessary or useful to Empire's provision of water service to its customers. Application Exhibit A has been identified as Confidential in accordance with Commission Rule 20 CSR 4240-2.135(2)(A)(3) and (6), as it contains market specific information and information representing strategies employed in contract negotiations.

7. The resolution of Empire's board of directors authorizing the proposed action is attached hereto as **Application Exhibit B**. The resolution of the Board of Managers for Liberty Water is attached hereto as **Application Exhibit C**.

8. Since Liberty Water is subject to the jurisdiction of the Commission, pursuant to Rule 20 CSR 4240-10.105(1)(E), attached as **Application Exhibit D** are a balance sheet and an income statement with adjustments showing the results of the asset transfer. Application Exhibit D has been designated as Confidential pursuant to Rule 20 CSR 4240-2.135(2)(A)(5) and (8).

### **III. Tariffs/Rates/Financing**

9. For service provided to customers within Empire's existing service area, Liberty Water proposes to adopt Liberty Water's existing tariffed Rules and Regulations, so that one set of Rules and Regulations will apply to all water customers.

10. As to rates and service charges, Liberty Water proposes to continue to use the existing rates and service charges for all customers within Empire's existing service area until such time as they are changed in a general rate case proceeding.

11. No financing approval or encumbrance of assets is being requested at this time.

#### **IV. The Public Interest**

12. The proposed sale and transfer of the assets is not detrimental to the public interest, and, in fact, will be beneficial to the public interest, as Liberty Water is fully qualified, in all respects, to own and operate the systems currently being operated by Empire, and to otherwise provide safe and reliable service.

13. Both Applicants are subsidiaries of Liberty Utilities Co. (“Liberty Utilities”), and both Applicants are part of the Liberty Utilities Central Region. The Central Region encompasses a number of other Liberty Utilities subsidiaries, including The Empire District Gas Company, Liberty Utilities (Pine Bluff Water) Inc., Liberty Utilities (Arkansas Water) Corp., and Liberty Utilities (Midstates Natural Gas) Corp.

14. Liberty Utilities is a Delaware corporation that owns and operates regulated utilities in the United States and is an indirect subsidiary of Algonquin Power & Utilities Corp. (“APUC”). APUC is the ultimate corporate parent and is publicly traded on the Toronto and New York Stock Exchanges.

15. Liberty Water has sufficient operating cash to sustain ongoing operations and is committed to providing water and sewer services to Liberty Water customers for years to come. Further, the financial support and backing of Liberty Utilities and APUC demonstrates that Liberty Water has and will continue to have sufficient access to capital for ongoing operations and infrastructure needs.

16. Additionally, the combining of the Empire and Liberty Water operations into one, with all water and sewer assets held by Liberty Water, may benefit customers through the consolidation of duties and may simplify cost allocation matters for Empire.

17. The sale and transfer of assets as contemplated herein will have no material impact on the tax revenues of the political subdivisions in which any structures, facilities, or equipment of the companies involved in the sale and transfer are located.

WHEREFORE, the Applicants respectfully request that the Commission issue its order authorizing Empire to sell and transfer and Liberty Water to acquire the Empire water assets identified herein, including all water service franchises and CCNs for water service currently held by Empire. The Applicants request such additional relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Diana C. Carter

Diana C. Carter MBE #50527

Liberty Utilities

428 E. Capitol Ave., Suite 303

Jefferson City, Missouri 65101

Joplin Office Phone: (417) 626-5976

Cell Phone: (573) 289-1961

E-Mail: Diana.Carter@LibertyUtilities.com

**CERTIFICATE OF SERVICE**

I hereby certify that the above document was filed in EFIS on this 27<sup>th</sup> day of December, 2019, and sent by electronic transmission to the Staff of the Commission and the Office of the Public Counsel.

/s/ Diana C. Carter

**ASSET PURCHASE AGREEMENT**

**BETWEEN**

**LIBERTY UTILITIES (MISSOURI WATER) LLC, as Buyer**

**AND**

**THE EMPIRE DISTRICT ELECTRIC COMPANY, as Seller**

**DATED AS OF**

**November 12, 2019**

**UNANIMOUS WRITTEN CONSENT TO TAKE ACTION  
IN LIEU OF A SPECIAL MEETING  
OF THE BOARD OF DIRECTORS OF  
THE EMPIRE DISTRICT ELECTRIC COMPANY**

June 3, 2019

In lieu of a special meeting of the Board of Directors of The Empire District Electric Company, a Kansas corporation (the "Corporation"), the undersigned, being all the members of the Board of Directors (the "Board") of the Corporation and acting pursuant to the *Kansas General Corporation Code*, as amended, and the Bylaws of the Corporation, hereby consent to the adoption of the following resolutions, the same declared to be authorized and effective as of the date first written above:

**Sale of Water Distribution System Assets to  
Liberty Utilities (Missouri Water) LLC**

**WHEREAS**, the Board deems it desirable and in the best interest of the Corporation to enter into that certain Asset Purchase Agreement between the Corporation and Liberty Utilities (Missouri Water) LLC ("Missouri Water"), substantially in the form attached hereto as Exhibit A (the "Asset Purchase Agreement"), pursuant to which the Corporation will sell substantially all of its water distribution system assets to Missouri Water, (the "Asset Purchase").

**NOW, THEREFORE, BE IT RESOLVED**, that the form, terms and provisions of the Asset Purchase Agreement, including all exhibits and schedules attached thereto, be, and hereby are, approved;

**FURTHER RESOLVED**, that the President, Secretary, and any other officer of the Corporation (each such person, an "Authorized Officer") be, and each of them hereby is, authorized and empowered in all respects to execute and deliver the Asset Purchase Agreement, as conclusively evidenced by the signature of any two such Authorized Officers, including all exhibits and schedules attached thereto, in the name and on behalf of the Corporation with such additions, deletions or changes therein (including, without limitation, any additions, deletions or changes to any schedules or exhibits thereto) as the Authorized Officers executing the same shall approve (the execution and delivery thereof to be conclusive evidence of approval and authorization of any such additions, deletions or changes);

**FURTHER RESOLVED**, that the Corporation be, and hereby is, authorized and empowered to perform all of its obligations under the Asset Purchase Agreement, including but not limited to, the Asset Purchase;

**FURTHER RESOLVED**, that each of the Authorized Officers be, and each of them hereby is, authorized and empowered to take all such further action and to execute and deliver all such further agreements, certificates, instruments and documents, in the name and on behalf of the Corporation, and if requested or required, under its corporate seal duly attested by the Secretary or Assistant Secretary; to pay or cause to be paid all expenses; to take all such other actions as they or any one of them shall deem necessary, desirable, advisable or appropriate to consummate, effectuate, carry out or further the transactions contemplated by and the intent and purposes of the foregoing resolutions;

**FURTHER RESOLVED**, that in connection with the transactions contemplated in the preceding resolutions, the Secretary of the Corporation be, and hereby is, authorized in the name and on behalf of the Corporation, to certify any more formal or detailed resolutions as such officer may deem necessary, desirable, advisable or appropriate to consummate, effectuate, carry out or further the transactions contemplated by and the intent and purposes of the foregoing resolutions; and that thereupon, such resolutions shall be deemed adopted as and for the resolutions of the Board as if set forth at length herein; and

**FURTHER RESOLVED**, that the omission from these resolutions of any agreement or other arrangement contemplated by any of the agreements or instruments described in the foregoing resolutions or any action to be taken in accordance with any requirements of any of the agreements or instruments described in the foregoing resolutions shall in no manner derogate from the authority of the Authorized Officers to take all actions necessary, desirable, advisable or appropriate to consummate, effectuate, carry out or further the transactions contemplated by and the intent and purposes of the foregoing resolutions

**FURTHER RESOLVED**, that the Authorized Officers be, and each of them individually hereby is, authorized and empowered to do and perform or cause to be done and performed all such acts, deeds and things, and to make, execute and deliver, or cause to be made, executed and delivered, all such agreements, undertakings, documents, instruments or certificates in the name of the Corporation and to retain such counsel, agents and advisors and to incur and pay such expenses, fees and taxes as shall, in the opinion of the officers of the Corporation executing the same, be deemed necessary or advisable (such necessity or advisability to be conclusively evidenced by the execution thereof) to effectuate or carry out fully the purpose and interest of all of the foregoing resolutions; and that any and all such actions heretofore or hereafter taken by the Authorized Officers relating to and within the terms of these resolutions be, and they hereby are, adopted, affirmed, approved and ratified in all respects as the act and deed of the Corporation;

**FURTHER RESOLVED**, that this Unanimous Written Consent may be executed in counterparts and/or by facsimile signatures, and all counterparts so executed shall constitute one and the same instrument, notwithstanding that all of the directors are not signatories to the original or the same counterpart; and

**FURTHER RESOLVED**, that an executed copy of this Unanimous Written Consent shall be filed with the minutes of the proceedings of the Board.

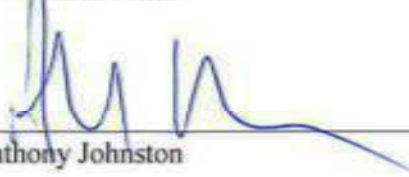
*[Signature page follows.]*



**IN WITNESS WHEREOF**, the undersigned directors have duly executed this Unanimous Written Consent as of the date first written above.



\_\_\_\_\_  
Ian H. Robertson



\_\_\_\_\_  
Anthony Johnston

\_\_\_\_\_  
Kenneth R. Allen

\_\_\_\_\_  
Nicole R. Brown

\_\_\_\_\_  
John H. Thompson

*[Signature page follows.]*

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Ian E. Robertson

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Anthony Johnston



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Kenneth R. Allen

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Nicole R. Brown

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John H. Thompson

*[Signature page follows.]*

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Nicole R. Brown

  
\_\_\_\_\_  
John N. Thompson

**UNANIMOUS WRITTEN CONSENT  
TO ACTION TAKEN IN LIEU  
OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF  
LIBERTY UTILITIES (MISSOURI WATER) LLC**

December 11, 2019

In lieu of a special meeting of the Board of Managers of Liberty Utilities (Missouri Water) LLC, a Missouri limited liability company (the "Company"), the undersigned, being all the members of the Board of Managers (the "Board") of the Company and acting pursuant to the *Missouri Limited Liability Companies Act*, as amended, and the limited liability company agreement of the Company, hereby consent to the adoption of the following resolutions, the same declared to be authorized and effective as of the date first written above:

**Purchase of the Water Distribution System Assets of  
The Empire District Electric Company**

**WHEREAS**, the Board deems it desirable and in the best interest of the Company to enter into that certain Asset Purchase Agreement between the Company and the Empire District Electric Company ("Empire"), substantially in the form attached hereto as Exhibit A (the "Asset Purchase Agreement"), pursuant to which the Company will purchase substantially all of the water distribution system assets of the Empire, (the "Asset Purchase").

**NOW, THEREFORE, BE IT RESOLVED**, that the resolutions pertaining to the Company acquiring substantially all the assets of the water distribution system of Empire, adopted as of June 3, 2019, are hereby rescinded;

**FURTHER RESOLVED**, that the form, terms and provisions of the Asset Purchase Agreement, including all exhibits and schedules attached thereto, be, and hereby are, approved;

**FURTHER RESOLVED**, that the President, Vice President, Secretary and any other officer of the Company (each such person, an "Authorized Officer") be, and each of them hereby is, authorized and empowered in all respects to execute and deliver the Asset Purchase Agreement, as conclusively evidenced by the signature of any two such Authorized Officers, including all exhibits and schedules attached thereto, in the name and on behalf of the Company with such additions, deletions or changes therein (including, without limitation, any additions, deletions or changes to any schedules or exhibits thereto) as the Authorized Officers executing the same shall approve (the execution and delivery thereof to be conclusive evidence of approval and authorization of any such additions, deletions or changes), provided that the Purchase Price (as defined in the Asset Purchase Agreement) shall in no event exceed \$8,600,000.00 without the prior approval of the Board;

**FURTHER RESOLVED**, that the Company be, and hereby is, authorized and empowered to perform all of its obligations under the Asset Purchase Agreement, including but not limited to, the Asset Purchase;

**FURTHER RESOLVED**, that each of the Authorized Officers be, and each of them hereby is, authorized and empowered to take all such further action and to execute and deliver all such further agreements, certificates, instruments and documents, in the name and on behalf of the Company, and if requested or required, under its corporate seal duly attested by the Secretary or Assistant Secretary; to pay or cause to be paid all expenses; to take all such other actions as they or any one of them shall deem necessary, desirable, advisable or appropriate to consummate, effectuate, carry out or further the transactions contemplated by and the intent and purposes of the

foregoing resolutions;

**FURTHER RESOLVED**, that in connection with the transactions contemplated in the preceding resolutions, the Secretary or the Assistant Secretary of the Company be, and hereby is, authorized in the name and on behalf of the Company, to certify any more formal or detailed resolutions as such officer may deem necessary, desirable, advisable or appropriate to consummate, effectuate, carry out or further the transactions contemplated by and the intent and purposes of the foregoing resolutions; and that thereupon, such resolutions shall be deemed adopted as and for the resolutions of the Board as if set forth at length herein; and

**FURTHER RESOLVED**, that the omission from these resolutions of any agreement or other arrangement contemplated by any of the agreements or instruments described in the foregoing resolutions or any action to be taken in accordance with any requirements of any of the agreements or instruments described in the foregoing resolutions shall in no manner derogate from the authority of the Authorized Officers to take all actions necessary, desirable, advisable or appropriate to consummate, effectuate, carry out or further the transactions contemplated by and the intent and purposes of the foregoing resolutions

**FURTHER RESOLVED**, that the Authorized Officers be, and each of them individually hereby is, authorized and empowered to do and perform or cause to be done and performed all such acts, deeds and things, and to make, execute and deliver, or cause to be made, executed and delivered, all such agreements, undertakings, documents, instruments or certificates in the name of the Company and to retain such counsel, agents and advisors and to incur and pay such expenses, fees and taxes as shall, in the opinion of the officers of the Company executing the same, be deemed necessary or advisable (such necessity or advisability to be conclusively evidenced by the execution thereof) to effectuate or carry out fully the purpose and interest of all of the foregoing resolutions; and that any and all such actions heretofore or hereafter taken by the Authorized Officers relating to and within the terms of these resolutions be, and they hereby are, adopted, affirmed, approved and ratified in all respects as the act and deed of the Company;

**FURTHER RESOLVED**, that this Unanimous Written Consent may be executed in counterparts and/or by facsimile signatures, and all counterparts so executed shall constitute one and the same instrument, notwithstanding that all of the directors are not signatories to the original or the same counterpart; and

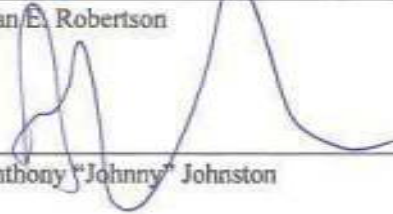
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*[Signature page follows.]*

**IN WITNESS WHEREOF**, the undersigned directors have duly executed this Unanimous Written Consent as of the date first written above.



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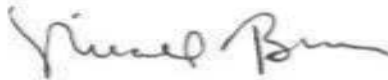
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Docket No. WM-2020-0156  
Exhibit D

Liberty Utilities (Missouri Water) LLC d/b/a Liberty Utilities  
PRO FORMA Balance Sheet and Income Statement  
Water and Sewer Operations  
For Nine Months Ending September 30, 2019