

**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

**RESPONSE OF LIBERTY UTILITIES
TO MOTION TO DISMISS SMALL UTILITY RATE CASE**

COMES NOW Liberty Utilities (Missouri Water) LLC (“Liberty Utilities” or “Company”), by and through counsel, and, for its Response to the Motion to Dismiss filed by Orange Lake Country Club, Inc. and Silverleaf Resorts, Inc. (hereinafter “Movants”), states as follows to the Missouri Public Service Commission (“Commission”):

1. On February 8, 2018, Movants filed a Motion to Dismiss, or in the Alternative, to Order Liberty Utilities (Missouri Water), LLC to File a Tariff Pursuant to Section 393.140(11) (hereinafter the “Motion”). The Motion should be denied for the reasons hereinafter set forth.

2. The Company qualifies to file under the Small Utility Rate Case Procedure (“SURP”) set forth in Commission rule 4 CSR 240-3.050 because it is a water and sewer utility serving 8,000 or fewer customers. Movants do not dispute this key, qualifying fact.

3. Movants’ preference that the Company file tariff sheets in order to seek a general rate increase is inconsequential in that the Commission gives the utility the option of choosing the SURP as the means to seek an increase. The utility’s customers are not granted an equivalent discretion under the rule.

4. 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 240-3.050.¹

5. Movants rightly address the consequence their Motion, if granted, would have on the level of the Company's rate case expense. They refer the Commission to the views expressed by its former Chairman Davis in Case No. WR-2006-0458, in which he chided the Company in a concurring opinion for not having invoked the SURP in that case as a means to manage rate case expense and, instead, having chosen the customary file and suspend rate case procedure.² Omitted from the Motion is the additional pertinent fact that the Commission's staff in that same 2006 rate case had sought to disallow as imprudent all but \$5,000 of the Company's rate case expense because the Company chose the file and suspend rate case procedure suggested here by Movants instead of invoking the SURP.³

6. The Motion is an unlawful collateral attack on the unambiguous language of the Commission's 2008 rulemaking order. *See*, §386.550 RSMo. 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. Their stated policy concern is one that would better be addressed in a generic rulemaking, at which time other potentially interested parties would have the opportunity to have their views heard and the implications of Movant's qualifying theory fully considered by the Commission.

¹ In fact, even where the owner of the properties themselves has operations in other industries, the SURP has been used. For many years, The Empire District Electric Company has filed under the SURP for its water utility properties.

² *See*, Motion at p. 10.

³ Report and Order, pp. 31-34.

7. Within this historical context and experience, the Company's choice was not only within its discretion, but also a reasonable decision. Movants cite no authority that would require a different process.

WHEREFORE, Liberty Utilities requests that the Commission deny the Motion for the reasons aforesaid.

Respectfully submitted,

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ATTORNEYS FOR LIBERTY UTILITIES
(MISSOURI WATER) LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail on this 23rd day of February, 2018, to:

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