

**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            )  
Install, Own, Acquire, Construct, Operate, Control,     )  
Manage, and Maintain a Water System and Sewer        )  
System in Bolivar, Polk County, Missouri                )

Case Nos. WA-2020-0397  
and SA-2020-0398

**REPLY IN SUPPORT OF  
LIBERTY’S MOTION FOR SUMMARY DETERMINATION**

COMES NOW Liberty Utilities (Missouri Water) LLC (“Liberty” or “Company”), and respectfully submits this Reply in Support of Liberty’s Motion for Summary Determination.

1. Pursuant to Commission Rule 22 CSR 4240-2.117(1), partial summary determination should be granted herein, with a Commission finding that 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.

2. 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. There are no material facts in dispute as to the issue of whether Liberty is a “large water public utility,” but there is disagreement between Liberty and Staff as to the reading of the applicable statute.

3. In Staff’s Response to Liberty’s Motion for Summary Determination, Staff states: “though Liberty’s separate applications for both systems have been consolidated for administrative efficiency, they remain separate applications for the purpose of ratemaking: one from a public utility serving only 7,636 water customers, and one from a public utility serving

only 638 sewer customers.” But it is the same entity (Liberty Utilities (Missouri Water) LLC) that is the applicant in both cases, and that entity provides regulated utility (water or sewer or both water and sewer) service to more than 8,000 customer connections.

4. It is noteworthy that RSMo. §393.320 does not separately define a “large *water* public utility” and a “large *sewer* public utility,” as Staff’s arguments would imply. Instead, with regard to the ability to utilize the appraisal method for determining rate base, 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.” Whether there is a “W” docket number or an “S” docket number, as noted in Staff’s Response, “393.320, RSMo, states that, in order to utilize the appraisal method for determining rate base in acquisitions like the one proposed by Liberty in its applications, a utility must meet the definition of a ‘large water public utility.’”<sup>1</sup>

5. Staff found significance in the fact that Liberty used “and/or” instead of just using “or” when describing the number of connections served by Liberty. There is, however, no material significance to the use of “and/or” in this situation. Liberty regularly provides both water service and sewer service to its Missouri customers, with some customers being water only, some customers being sewer only, and some customers receiving both water service and sewer service via the same connection. Said another way, Liberty regularly provides water service, sewer service, or water and sewer service to approximately 8,274 customer connections – or regulatory provides water or sewer service to more than 8,000 customer connections. It is simply easier to

---

<sup>1</sup> This is in contrast to RSMo. §386.020, which, as noted in Staff’s Response, separately defines a water utility and a sewer utility.

use “and/or” instead of listing out the three categories (just water service, just sewer service, both water and sewer service).

6. Staff’s Response argues that the statute “cannot be construed in a manner to render the disjunctive ‘or’ meaningless.” Liberty agrees with Staff that it is significant that the Missouri Legislature used “or” instead of “and” regarding the provision of water/sewer service to more than 8,000 customer connections. 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, regular service to a total of more than 8,000 customer connections is all that is required.

7. 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.

8. Accepting Staff’s statutory interpretation arguments would mean that a utility would not qualify as a “large water public utility” under §393.320 even if that entity regularly provided regulated utility service to a total of up to 16,000 water/sewer 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. In other words, under Staff’s interpretation of the statute, 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 acceptance of 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.

9. 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 service *or* sewer service *or* water and sewer service to approximately 8,274 customer connections.<sup>2</sup> 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.**”

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

Diana C. Carter MBE #50527

Liberty Utilities (Missouri Water) LLC

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

---

<sup>2</sup> “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.” Statement of Uncontroverted Facts, ¶5.

**CERTIFICATE OF SERVICE**

I hereby certify that the above document was filed in EFIS on this 1<sup>st</sup> day of July, 2021, and sent by electronic transmission to the Staff of the Commission and the Office of the Public Counsel.

/s/ Diana C. Carter