

**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

**REPLY BRIEF OF
LIBERTY UTILITIES (MISSOURI WATER) LLC**

Liberty’s reply will address the briefs filed by Silverleaf, OPC and OMCA. Failure to address in this brief every matter raised by those parties is merely an indication that the matters left unaddressed have been adequately covered in Liberty’s initial brief.

1. Introduction – Summary Observations

It is notable that Silverleaf’s brief readily agrees with Staff’s calculation of Liberty’s revenue requirement with the exception of cost of capital.¹ Silverleaf’s primary focus is on its rate increase phase-in proposal and its concerns about Staff’s rate design proposal.

Although it is not entirely clear in its brief what OPC’s positions are, it clearly states that it “does not object to the Stipulation and Agreement agreed to by Staff and Liberty . . .”²

Implicit in this statement is that OPC does not contest Staff’s revenue requirement or rate design

¹ Silverleaf brief p. 7. Its recommended range of 8% to 9% ROE is significantly below a range of reasonableness established by this Commission’s recently ordered ROEs of 12% for Indian Hills Utility Operating Company, 9.5 to 10% for Missouri-American Water Company and 9.8% for Spire, Inc. Consequently, Silverleaf’s recommendation should be rejected, particularly in light of the fact that a very modest 9.75% ROE is baked into the terms of the Nonunanimous Stipulation and Agreement (“Agreement”).

² OPC brief at p. 9.

conclusions or that the final rates should include an allowance for rate case expense incurred by the Company in presenting this case for the Commission's determination.

OMCA's brief is limited to addressing service quality concerns which the Company takes very seriously. OMCA reiterates its witness's accounting of operational issues experienced by OMCA the last of which (with one exception) occurred in the Summer of 2015, well before this case was filed in December of 2017. After looking into the matter, Staff witness Roos has concurred with the testimony of Jill Schwartz that the Company already has taken steps and made "significant improvements" in service to OMCA.³ The fact that Mr. Allsbury only mentions in his testimony one incident which occurred after the Summer of 2015 in January of 2018 is a compelling indication that OMCA's specific concerns have been adequately addressed by Liberty.

2. Additional Reply to Brief of Silverleaf

Silverleaf's brief reiterates a number of claims it has made throughout this case. It resurrects the notion that Silverleaf's 36,686 timeshare owners are customers of Liberty,⁴ a claim that already has been discredited by the Commission. It contains a general suggestion that Silverleaf has been denied due process in this case,⁵ but it has been denied nothing, not even the evidentiary hearing it prematurely requested.⁶ It complains that Liberty has not filed tariff

³ Schwartz, Exh. 2 p. 7-8.

⁴ Silverleaf brief p. 2-3.

⁵ Silverleaf brief p. 4.

⁶ Leading up to the evidentiary hearing, Silverleaf submitted, and Liberty answered, four separate sets of data requests. Additionally, Silverleaf noticed up Jill Schwartz for a discovery deposition on August 3. In addition, the procedural schedule established by the Commission provided for multiple rounds of pre-filed, prepared testimony.

sheets,⁷ but Staff's rate case timeline specifically included a tariff filing obligation⁸, an event that has been superseded by the scheduling order issued on June 13. Notably, the Agreement now addresses this matter by calling for the Commission to establish a date for filing compliance tariffs. *See*, §7, "Tariff Modifications".⁹

Silverleaf's brief claims that it was unaware of the negotiations between Staff and Liberty leading up to the filing of the Agreement on August 3.¹⁰ This is a statement cannot be reconciled with a collective course of conduct which preceded the filing of that document. There were extensive communications by and between counsel for all parties in an effort to reach a unanimous settlement of the issues remaining after the filing of the PDA. Those discussions started on June 22 when the undersigned circulated a communication to all counsel of record along with a proposed settlement term sheet which later evolved into a draft settlement pleading. Unfortunately, those discussions were unsuccessful so the decision was made by Liberty and Staff to file a non-unanimous agreement. The filed Agreement is in large

⁷ Silverleaf brief p. 4.

⁸ EFIS doc. 28 (See the attached timeline at Target Day 155).

⁹ The SURP rule provides for the audit process to precede the filing of tariffs whereas a general rate case has an audit process that follows the filing of tariffs. In either case, the utility implements new rate schedules by the filing of tariff sheets after consideration of all relevant factors. Both approaches comply with the requirements of §393.150 RSMo.

¹⁰ Silverleaf brief p. 4.

part based on the framework of the settlement document that had been the subject of discussion by all parties.¹¹

At pages 5 and 6, Silverleaf deplores the Commission's ruling denying Silverleaf's request for the admission of the deposition transcript of Jill Schwartz's taken on August 3. This ruling was correct in all respects because two different legal standards are in play. The deposition of Ms. Schwartz was a discovery deposition where questions that would not be admissible at trial are not necessarily objectionable. Questions in a deposition are permissible if they are relevant, or are "*reasonably calculated to lead to the discovery of admissible evidence.*" See, Civil Rule 56.01(b). This is a much more liberal scope of inquiry as compared to the rules of evidence at a hearing where a question needs to be relevant to be admissible. Moreover, Silverleaf was not prejudiced at all by this ruling. As the undersigned pointed out at the time of the hearing, Ms. Schwartz was under oath *and on the witness stand* at the time the bench ruled.

¹¹ In footnote 56 of its brief on page 17, Silverleaf reiterates this claim and further states that it offered to discuss settlement with Liberty's counsel after the conclusion of Ms. Schwartz's deposition on August 3, 2018, as if this was the first such overture. Silverleaf's proposal (i.e., to consent to a phase-in of any authorized rate increase) was one the Company had rejected previously on July 6th during the course of settlement discussions with Silverleaf's counsel. Here is a copy of that communication which belies Silverleaf's assertion that only Staff and Liberty were in settlement talks:

From: Paul Boudreau [e-mail address omitted]
Sent: Friday, July 06, 2018 3:18 PM
To: Harden, Joshua K.
Subject: Liberty Water rate case

Josh, I had a chance to visit with Jill about our conversation. Her reaction to a phase-in of any rate increase is that it actually could end up being as, or more, costly to customers once you factor in the carrying costs on any revenue deferral. Based on that conversation, I think it unlikely that she would be disposed to recommending that course of action to the company's management.

Counsel for Silverleaf simply could have pursued any appropriate line of questioning with her at that time, but he chose not to do so.

Silverleaf's brief renews its motion to strike the surrebuttal testimony of Liberty witness Keith Magee.¹² The Company addressed this matter in its initial brief. Mr. Magee's testimony was proper surrebuttal testimony and Silverleaf was promptly notified of his involvement in the case in accordance with the Commission's rule on updating data requests. Liberty did not retain Mr. Magee's services earlier in the process because (1) it was not certain that an expert on the topic of cost of capital would be required until it became aware of the positions being taken by the parties in the rebuttal testimony round and, as importantly, (2) the Company wanted to avoid incurring substantial additional rate case expense before it became absolutely necessary to do so because of the cost burden it imposes on a company having only approximately 1,700 customers.¹³ Liberty handled this matter prudently and appropriately in all respects.

Oddly, Silverleaf includes a section in its brief objecting to the notion that the Commission can direct Liberty to file another rate case within two years because, among other things, Silverleaf does not want to "incur substantial rate-case expense" so soon after this case.¹⁴ This comes after complaining at length about how the amount of the rate increase request in this case is the result of Liberty not having filed rate cases frequently enough in the past to suit

¹² Silverleaf brief, p. 6.

¹³ Mr. Magee testified that his charges will be in the neighborhood of \$20,000. Tr. 93-94.

¹⁴ Silverleaf brief p. 15-17. Part of Silverleaf's complaint appears to be that the Commission should not compel the filing of a rate case against the Company's will, but the Agreement includes a commitment *by Liberty* to file a rate case not later than 24 months after the effective date of compliance tariffs filed in this case. *See*, §4. Thus, it is evident in the record that a management decision has been made.

Silverleaf.¹⁵ Thus, Silverleaf describes a bed that is too soft and one that is too hard, but fails to describe one that is “just right”.

3. Additional Reply to Brief of OPC

In the prayer of its brief OPC claims asks that a capital structure be specified in the Agreement.¹⁶ As noted in Liberty’s initial brief, the Commission has the discretion to reject the Agreement and to decide all outstanding issues (including cost of capital) independently based on the record evidence. The Agreement does not, however, permit that its terms be supplemented or modified without consent of the signatories.

4. Additional Reply to Brief of OMCA

Without the benefit of any support in the testimony of its witness, Mr. Allsbury, OMCA requests that the Commission order a number of supplemental remedial/operational conditions in the context of issuing an order in this case beyond those already set forth in the PDA and the Agreement.¹⁷ This should be concerning to the Commission for two reasons. First, OMCA is a signatory to the PDA which includes an agreement to customer service commitments on the part of Liberty. Second, none of the so-called “asks” contained in its brief (beyond the additional customer service commitments contained in the Agreement) were raised by OMCA during the over 7 weeks of active settlement discussions that preceded the evidentiary hearing in this case. Rather, they have appeared for the first time in OMCA’s post-hearing brief.

¹⁵ Silverleaf brief p. 12 [“ . . . the need for the phase-in of rates, appears to be corporate negligence.”]

¹⁶ It bears repeating that the Agreement addresses cost of capital in exactly the same manner as it was handled in the recently-decided Midstates rate case based on an agreement that was signed by OPC.

¹⁷ OMCA brief p. 9-12. It is notable that the “asks” in OMCA’s brief are much broader than the “asks” stated by counsel at the time of her opening statement in response to questions from Commissioner Rupp. Tr. 75-77.

There always are cost and capability implications associated with such matters and this is a particularly important consideration for very small operations like those of Liberty. It would be a shocking denial of fundamental fairness and due process not to give the Staff, Liberty and other potentially affected parties (like the customers of the separate KMB and Noel systems) a reasonable opportunity to examine *evidence* supporting these requests¹⁸ and to provide responsive evidence regarding them. Otherwise, the Commission cannot reach a truly informed conclusion about their necessity, reasonableness, cost or feasibility. For these reasons, the Commission should deny OMCA's request for relief beyond the extensive customer service commitments on the part of the Company set forth in the PDA and the Agreement to better track customer inquiries and to provide improved operational and record-keeping protocols in the future.

5. Conclusion

Liberty once again urges the Commission to give careful consideration to the terms of the Agreement as a reasonable, holistic resolution of the matters that are before it in this case. Whether the Commission takes it as a unanimous settlement under Commission rule 4 CSR 240-2.115(2) or as a joint recommendation by Staff and the Company in the context of a contested proceeding, the Agreement presents a careful, comprehensive and fair compromise of the issues in this case. The matters addressed in the Agreement are supported by competent and substantial record evidence and they provide for the implementation of just and reasonable rates and terms and conditions of service for customers of the Company. Liberty additionally requests that the

¹⁸ The representations of OMCA's counsel during opening statement are not evidence in this case. Ms. Giboney was not sworn in as a witness, nor was she subject to cross-examination with regard to those statements at the time of the hearing.

Commission order that rate case expense incurred by the Company up to and including through September 11, 2018, be included in revenue requirement to be amortized over a period of three years with provision for a regulatory asset or liability to capture the over- or under-recovery of such expenses.

Respectfully submitted,

Paul A. Boudreau

Paul A. Boudreau MBE #33155
Dean L. Cooper MBE #36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
Phone: (573) 635-7166
paulb@brydonlaw.com

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 11th day of September, 2018, to:

Office of the General Counsel
Governor Office Building
Jefferson City, MO 65101
staffcounsel@psc.mo.gov
casi.aslin@psc.mo.gov

Office of the Public Counsel
Governor Office Building
Jefferson City, MO 65101
opcservice@ded.mo.gov

Sarah E. Giboney
SMITH LEWIS, LLP
111 South Ninth Street, Suite 200
P.O. Box 918
Columbia, MO 65205-0918
Giboney@smithlewis.com

Joshua Harden
1201 Walnut St. Suite 2900
Kansas City, MO 64106
Joshua.Harden@stinson.com

Paul A. Boudreau