

**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)	Case Nos. WA-2020-0397
Install, Own, Acquire, Construct, Operate, Control,)	and SA-2020-0398
Manage, and Maintain a Water System and Sewer)	
System in Bolivar, Polk County, Missouri)	

MOTION FOR RECONSIDERATION AND/OR APPLICATION FOR REHEARING

COMES NOW Liberty Utilities (Missouri Water) LLC (“Liberty” or “Company”) and respectfully submits this Motion for Reconsideration and/or Application for Rehearing regarding the *Order Denying Motion for Partial Summary Determination and Issuing a Determination on the Pleadings that Liberty is Not a Large Water Public Utility*, issued by the Missouri Public Service Commission (the “Commission”) on July 28, 2021, to be effective August 7, 2021 (the “Order”).

With the *Order*, the Commission stated that “(a)s allowed by Rule 20 CSR 4240-2.117(2), the Commission will make a determination on the pleadings that Liberty is not a ‘large water public utility’ as the term is defined in Section 393.320.1(1), RSMo.” *Order*, p. 12. Liberty respectfully requests that the Commission reconsider and/or rehear this issue and, thereafter, issue an order finding and concluding that Liberty is a large water public utility pursuant to RSMo. §393.320. With certain statutory exceptions not applicable here, a “large water public utility” is one that “regularly provides water service or sewer service to more than eight thousand customer connections.” RSMo. §393.320.1(1). Liberty submits that a public utility qualifies as a “large water public utility” if it regularly provides water service or sewer service or water and sewer service to more than 8,000 customer connections. The Commission’s Staff, however, contends that “a company qualifies as a ‘large water public utility’ only if it has either at least 8,001 sewer service

customer connections or at least 8,001 water service customer connections.” *Order*, pp. 8-9. The Commission *Order* is line with Staff’s recommendation.

Liberty seeks reconsideration or rehearing of the *Order* on the basis that the Commission improperly found that Liberty does not regularly provide water service or sewer service to more than eight thousand customer connections, improperly concluded that a company qualifies as a “large water public utility” only if it has either at least 8,001 sewer service customer connections or at least 8,001 water service customer connections, and failed to address the consequences and implications of the statutory interpretation set forth in the *Order*. Liberty also believes rehearing is necessary in order to implement the policy underlying the statute: to incentivize and encourage acquisition of small, troubled water and sewer systems.

Liberty regularly provides water service, sewer service, or water and sewer service to approximately 8,274 customer connections – or, Liberty regularly provides water service or sewer service to more than 8,000 customer connections.

As noted by the Commission in its *Order*, “Liberty is a ‘water corporation,’ a ‘sewer corporation,’ and a ‘public utility,’ as those terms are defined by Section 386.020.” *Order*, Finding of Fact #2. Put another way, Liberty is one utility that provides water or sewer service to more than 8,000 customer connections. This one entity (Liberty Utilities (Missouri Water) LLC) 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. Relying on an appraisal performed in conformity with §393.320, Liberty Utilities (Missouri Water) LLC is seeking to acquire the water and sewer assets currently owned and operated by Bolivar. Liberty is a single utility seeking a Certificate of Convenience and Necessity (“CCN”) to provide water service in Bolivar and a CCN to provide sewer service in

Bolivar. And, as a result of numerous previously-issued CCN orders and other Commission proceedings, Liberty is a single entity that already regularly provides regulated utility (water or sewer or both water and sewer) service to more than 8,000 customer connections.

The agreed upon factual statement regarding the number of connections served by Liberty is that Liberty “regularly provides water and/or sewer service to approximately 8,274 customer connections . . .” *Order*, Finding of Fact #4.¹ Staff and the Commission rely on the use of “and/or” in this situation. But that is a distinction without a difference. That sentence could just as easily have used “or” when describing the number of connections served by Liberty. There is no material significance to the use of “and/or” in this factual statement. It is simply easier, while also being more descriptive, to use “and/or” instead of listing out the three categories with “or” between each item in the list (just water service, just sewer service, both water and sewer service). More importantly, the use of “and/or” does not change the fact that Liberty is a single company that provides water or sewer service to more than 8,000 customer connections.

It is undisputed that Liberty regularly provides water service, sewer service, or water and sewer service to approximately 8,274 customer connections. As such, the Commission must find and conclude that Liberty regularly provides water service or sewer service to more than 8,000 customer connections and thus qualifies as a “large water public utility.” That is the only reasonable interpretation of the statute for utilities like Liberty that provide both water and sewer service to Missouri customers.

The Missouri legislature defined only a large *water* public utility in §393.320, stating that a public utility may elect to use the statute if it “regularly provides water service or

¹ “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.

sewer service to more than eight thousand customer connections,” and did not separately define a large sewer public utility, thus indicating that it is the number of connections served (more than 8,000) that is significant and not the type of service provided (water or sewer or water and sewer). Contrary to the specific wording of the statute, Staff’s contention is that “a company qualifies as a ‘large water public utility’ only if it has either at least 8,001 sewer service customer connections or at least 8,001 water service customer connections.” *Order*, pp. 8-9. That interpretation will undercut the purpose underlying the statute – to encourage acquisition of small, troubled water and sewer systems – and unfairly impacts a utility that provides both water and sewer service to customers.

In the *Order*, while apparently accepting Staff’s contention regarding the proper interpretation of the statute, the Commission said it “will officially notice that the Merriam-Webster Dictionary defines ‘or’ as a function word to indicate an alternative.” *Order*, Finding of Fact #6.² Liberty, however, qualifies as a large water public utility under §393.320.1(1) with either a disjunctive interpretation of “or” or a connective interpretation.³ As noted above, Liberty regularly provides water service, sewer service, or water and sewer service to approximately 8,274 customer connections. This same undisputed fact could be rephrased to say that Liberty regularly provides water and/or sewer service to more than 8,000 customer connections, or it could be

² It should also be noted that while the word “or” is disjunctive in nature and is generally viewed in its ordinary sense as an alternative which generally corresponds to the word “either,” such a statutory construction is not required where necessary to give effect to legislative intent. *See Hawkins v. Hawkins*, 511 SW2d 811 (Mo Sup Court 1974). Use of “or” in a statute may be viewed as inadvertent and construed in a coupling and connective sense, like “and/or.” *Id.*

³ There may be significance to the use of “or” in this statute – but that significance is in contrast to the use of “and.” In other words, the Missouri legislature elected to require service to more than 8,000 water *or* sewer connections to qualify as a large water public utility, as opposed to requiring service to more than 8,000 connections where the utility provides both water *and* sewer service to the same customers.

rephrased to say that Liberty regularly provides water service or sewer service or water/sewer service to more than 8,000 customer connections. This same undisputed fact could, however, also be rephrased to use the exact statutory language of §393.320.1(1): Liberty “is a public utility that regularly provides water service or sewer service to more than eight thousand customer connections.” All of these rewordings have the same meaning.

Additionally, acceptance of Staff’s suggested interpretation of “or” – that “a company qualifies as a ‘large water public utility’ only if it has either at least 8,001 sewer service customer connections or at least 8,001 water service customer connections” – would only be logical if there is further rewording of the statute: i.e., in the situation where a water system is being acquired, a “large water public utility” is a public utility that regularly provides water service to more than eight thousand customer connections; and in the situation where a sewer system is being acquired, a “large water public utility” is a public utility that regularly provides sewer service to more than eight thousand customer connections.⁴ If the Missouri Legislature had the intention of water service and sewer service being viewed separately, with each having its own customer connection requirement, then the Missouri Legislature would have defined a “large water public utility” with regard to water acquisitions and defined a “large sewer public utility” with regard to sewer acquisitions. As noted, instead, the Missouri legislature elected to define only a large *water* public utility, stating that a public utility may elect to use the §393.320 appraisal method for determining

⁴ The actual and complete wording of RSMo. §393.320.1(1): “**Large water public utility**, a public utility that regularly provides water service or sewer service to more than eight thousand customer connections and that provides safe and adequate service but shall not include a sewer district established under Section 30(a), Article VI of the Missouri Constitution, sewer districts established under the provisions of chapter 204, 249, or 250, public water supply districts established under the provisions of chapter 247, or municipalities that own water or sewer systems;”

rate base for water and/or sewer system acquisitions if it “regularly provides water service or sewer service to more than eight thousand customer connections.”

This is a clear indication that the Missouri Legislature placed significance on the number of connections served by the company (more than 8,000) and not on the particular type of service provided by that company (water or sewer or water and sewer). The bottom line is that it is unreasonable and unlawful to interpret §393.320 to mean that a company that provides water service to 8,001 customers is a “large utility,” that a company that provides sewer service to 8,001 customers is a “large utility,” but that a company that provides water or sewer or water and sewer service to 8,001 customer connections is not a “large utility.”

Acceptance of Staff’s suggested statutory interpretation leads to illogical results and is inconsistent with the Commission’s ratemaking process for Missouri water and sewer service providers.

The Commission noted that under §393.320 assets or systems being acquired may be “appraised together in a single appraisal: The appraisers shall ‘prepare *an* appraisal of the fair market value of the water system *and/or* sewer system’ [emphasis added].” *Order*, p. 10. This illustrates that the Missouri Legislature contemplated use of the statute by one utility acquiring both a water system and a sewer system. It also illustrates how Staff’s suggested statutory interpretation of the statute leads to illogical results. The *Order* finds and concludes that Liberty, with approximately 8,274 water and/or sewer customer connections, cannot use the §393.320 appraisal method for determining rate base based on the one appraisal performed for the combined acquisition of the Bolivar water and sewer systems. But what if Liberty comes back when it has more than 8,000 water connections, while still serving less than 8,000 sewer connections – could Liberty then elect to use the §393.320 appraisal method for determining rate base using one

appraisal performed for the acquisition of the Bolivar water and sewer systems? If Liberty, with more than 8,000 water connections but less than 8,000 sewer connections, could then use the §393.320 appraisal method for determining rate base for the acquisition of both the Bolivar water system and the Bolivar sewer system, what could be the justification for requiring more than 8,000 connections for just one of the commodities?

Or, is the Commission taking another statutory interpretation step and finding that a “large water public utility” is a public utility that regularly provides water service to more than eight thousand customer connections in the situation where a water system is being acquired; but, in the situation where a sewer system is being acquired, a “large water public utility” is a public utility that regularly provides sewer service to more than eight thousand customer connections? As noted in the prior section above, this additional language is not contained in the statute. Also, this interpretation cannot be reconciled with the fact that under §393.320 water and sewer systems being acquired may be valued together in a single appraisal. Is it the Commission’s interpretation of the statute, in the case of the acquisition of water and sewer systems, that a “large water public utility” is a public utility that regularly provides water service to more than eight thousand customer connections *and* regularly provides sewer service to more than eight thousand customer connections? This interpretation would render the Missouri Legislature’s defining of only a “large water public utility” and use of “or” in §393.320.1(1) meaningless.

In responding to one of Liberty’s prior examples of illogical results of Staff’s statutory interpretation in this case, the Commission stated:

Liberty’s hypothetical is combining under one company the total customers of two very distinct utilities. The hypothetical scenario, however, is not absurd where the legislature decided to limit the public utilities allowed to elect the special rate base treatment under the statute based on the size and nature of service of the public utility. This is reasonable because a water company is a distinctly different utility

providing a service with different rates from a sewer company and possibly different customers.

Order, p. 11.

As noted above, Liberty Utilities (Missouri Water) LLC is one entity – one company – that is seeking to acquire the Bolivar water and sewer systems, under one appraisal. As a result of numerous previously-issued CCN orders and other Commission proceedings, Liberty Utilities (Missouri Water) LLC currently 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. To serve those approximately 8,274 customer connections, however, Liberty Utilities (Missouri Water) LLC, has 16 water costs of services/accounting entities, with 14 different rate structures, and 6 sewer costs of services/accounting entities, with 4 different rate structures.

The Missouri Legislature speaks only of a “public utility” being able to qualify as a “large water public utility” that may elect to use the rate base determination part of the statute when acquiring water and/or sewer systems. The statute does not address different rates or different sets of customers, as the *Order* implies. If the statute allowed the Commission to look to the number of customer connections under the same rate, which it does not, then Liberty would be divided into 14 or more “utilities” providing water service and 4 or more “utilities” providing sewer service. That would be a clear contradiction of the statutory language.

The *Order* should be reconsidered and set aside on the basis that it improperly finds that Liberty does not regularly provide water service or sewer service to more than eight thousand customer connections, improperly concludes that a company qualifies as a “large water public utility” only if it has either at least 8,001 sewer service customer connections or at least 8,001 water service customer connections, and leads to illogical consequences. 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 the deciding factor. Liberty regularly provides water service *or* sewer service *or* water and sewer service to approximately 8,274 customer connections. Pursuant to this undisputed fact and the applicable law, the Commission should reconsider the *Order* and find and conclude that Liberty is a “large public water utility” under RSMo. §393.320.

WHEREFORE, Liberty respectfully requests an order of the Commission granting this Motion for Reconsideration and/or Application for Rehearing and 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

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CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 6th day of August, 2021, and sent by electronic transmission to the Staff of the Commission and the Office of the Public Counsel.

/s/ Diana C. Carter