

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 18th day of March, 2020.

In the Matter of Liberty Utilities (Missouri Water), LLC's Application for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain, Control, and Manage a Sewer System in Cape Girardeau County, Missouri)

File No. SA-2020-0067

**ORDER GRANTING CERTIFICATE OF
CONVENIENCE AND NECESSITY**

Issue Date: March 18, 2020

Effective Date: April 17, 2020

On November 25, 2019, Liberty Utilities (Missouri Water), LLC (Liberty Water) filed an application with the Missouri Public Service Commission requesting a Certificate of Convenience and Necessity (CCN) to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in Cape Girardeau County, Missouri.

The Commission issued notice and set a deadline for intervention requests, but received none. On March 2, 2020, the Commission's Staff filed its recommendation to approve Liberty Water's request for a CCN, with specified conditions.

Liberty Water is a "water corporation," a "sewer corporation," and "public utility" as those terms are defined in Section 386.020, RSMo, and is subject to the jurisdiction of the Commission.

The CCN would allow Liberty Water to acquire sewer utility assets in Savers Farm, a new development with five phases to be completed by the end of 2020. Phases one through three are completed. The system is currently owned and operated by the

system's developer, Cape Land & Development, LLC (Cape Land), an entity not currently subject to the Commission's jurisdiction.

Cape Land operates a recirculating sand filter system providing sewer service to approximately 110 residential customers in the subdivision. Construction of the wastewater treatment facility began in 2016 and was completed in 2017. The facility is comprised of a parallel tank system with a 50,000-gallon septic tank and a 25,000-gallon recirculating tank in each of the parallel paths, followed by four sand filter beds and ultraviolet light disinfection. Two of the four sand filter beds are currently in use to treat the flow from approximately 110 completed homes.

Staff's calculations for projected plant-in-service of \$688,941 and depreciation reserve balances of \$71,093, as of December 31, 2019, yield an estimated rate base of \$617,848. Based on its review of the Savers Farm information in this proceeding, the purchase price being paid by Liberty Water may be below the Net Book Value (NBV) of the Savers Farm assets.

If the Commission approves this CCN and Liberty acquires the sewer system, then Staff expects an updated rate base level for this system will be established when Liberty Water files its next rate case. The Savers Farm wastewater system was designed and constructed to serve approximately twice the number of residential customers currently being served. Staff states that it may propose, in a future rate proceeding, a capacity adjustment to certain wastewater system components. Such a capacity adjustment, if applied, would reduce the plant balance level and depreciation expense to be included in rate calculations.

Savers Farm homeowners currently pay no fees for the sewer service provided by the subdivision developer. Liberty Water proposes the existing rates, rules, and

regulations currently applicable to certain named service areas found in MO PSC No. 15 Sheet No. 4.1 be applied to Savers Farm. The monthly flat rate for a single-family residence would be \$46.21. Staff states that a Commission's decision regarding rate base level in this case is not necessary, and Staff is not recommending any change to the rates charged by Liberty in the applicable existing tariff to be applied to Savers Farm. Members of the homeowners association were given notification of a proposed transfer of the system to Liberty at an annual homeowner's association meeting on December 19, 2019. Liberty informed Staff that the homeowners were very receptive to the proposal.

Ten days have passed since Staff filed its recommendation and no party has objected to Liberty Water's application or Staff's recommendation. No party has requested an evidentiary hearing.¹ Thus, the Commission will rule upon the application.

The Commission may grant a sewer corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."² The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity in the case *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must

¹ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

² Section 393.170.3, RSMo.

promote the public interest.³ These criteria are known as the Tartan Factors.⁴

There is a need for the service since the customers in Savers Farm already receive sewer service and more homes will be built that require service. Liberty Water is qualified to provide the service as it is currently providing water and sewer services to approximately 3,000 customers throughout its Missouri service areas. Liberty Water has the financial ability to provide the service and no financing approval is being requested. The proposal is economically feasible because the system is relatively new and has already been constructed. The proposal promotes the public interest as demonstrated by positive findings in in the first four Tartan Factors.

Staff evaluates applications involving existing sewer systems utilizing technical, managerial, and financial criteria. Staff states “Liberty has demonstrated over many years that it has adequate resources to operate utility systems that it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues when such situations arise.” Staff’s review found that Liberty Water meets the requisite technical, managerial, and financial criteria.

Based on the application and Staff’s recommendations, the Commission concludes that the factors for granting a CCN to Liberty Water have been satisfied and that it is in the public’s interest for Liberty Water to provide sewer service to Savers Farm in Cape Girardeau County. The Commission finds that Liberty Water possesses adequate

³The factors have also been referred to as the “Tartan Factors” or the “Tartan Energy Criteria.” See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

⁴ *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

technical, managerial, and financial capacity to operate the sewer system. Further, Commission finds that the flat fee of \$46.21 for sewer service is just and reasonable. Therefore, the Commission will grant Liberty Water's requested CCN, subject to the conditions described by Staff's recommendation.

THE COMMISSION ORDERS THAT:

1. Liberty Utilities (Missouri Water), LLC is granted a certificate of convenience and necessity to provide sewer service to the property described in the map and legal description provided in its application, subject to the conditions and requirements contained in Staff's Recommendation, including the filing of tariffs, as set out below:

- A. Liberty Water's monthly residential flat rate of \$46.21 shall apply to Savers Farm;
- B. Liberty Water shall submit new and revised tariff sheets, to become effective before closing on the assets, that include:
 - a. Cover (Sheet No. Title Page)
 - b. Index (Sheet No. 1)
 - c. Sewer rates (Sheet No. 4.1)
 - d. Service area map (Sheet No. 2.4)
 - e. Service area written description (Sheet No. 3.4)

as applicable to sewer service in its Savers Farm service area, to be included in its EFIS sewer tariff P.S.C. MO No. 15;

- C. Liberty Water shall notify the Commission of closing on the assets within five (5) days after such closing;
- D. If closing on the sewer system assets does not take place within thirty (30) days following the effective date of the Commission's order approving such, Liberty Water shall submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until Liberty determines that the transfer of the assets will not occur;
- E. If Liberty Water determines that a transfer of the assets will not occur, Liberty Water shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and

- Liberty Water shall submit tariff sheets as appropriate and necessary that would cancel service area maps, descriptions, rates and rules applicable to the Savers Farm service area in its sewer tariff;
- F. Liberty Water shall keep its financial books and records for plant-in-service and operating expenses as related to the Savers Farm operations in accordance with the NARUC Uniform System of Accounts;
 - G. Liberty Water shall provide detailed plant records that includes for each plant asset a detailed description and original plant costs with supporting detailed invoices and identified by USOA account numbers in its next rate case for Savers Farm Sewer System;
 - H. Liberty Water shall adopt for the Savers Farm sewer assets the depreciation rates ordered for Cape Rock Village in Liberty's last rate case, Case No. WR-2018-0170;
 - I. Liberty Water shall obtain from Cape Land, prior to or at closing, all available plant-in- service related records and documents, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions;
 - J. The Commission makes no finding that would preclude it from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to Liberty Water, including expenditures related to the certificated service area, in any later proceeding;
 - K. Liberty Water shall provide training to its call center personnel regarding rates and rules applicable to the Savers Farm customers;
 - L. Liberty Water shall include the Savers Farm customers in its established monthly reporting to the Customer Experience Department Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;
 - M. Liberty Water shall distribute to the Savers Farm customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13, within thirty (30) days of closing on the assets;
 - N. Liberty Water shall provide to the Customer Experience Department Staff an example of its actual communication with the Savers Farm customers regarding its acquisition and operations of the sewer system assets, and how customers may reach Liberty Water, within ten (10) days after closing on the assets;

- O. Liberty Water shall provide to the Customer Experience Department Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days after closing on the assets; and,
 - P. Liberty Water shall file notice in this case outlining completion of the above-recommended training, customer communications, and notifications within ten (10) days after such communications and notifications.
2. This order shall become effective on April 17, 2020.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur.

Clark, Senior Regulatory Law Judge