

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Request of The Empire District)
Electric Company and The Empire District Gas)
Company for Waiver of a Dual Branding)
Requirement Regarding the Continued Use of the Empire)
District Name for Electric, Gas, and Water Operations)
Case No. _____

MOTION FOR WAIVERS

COME NOW The Empire District Electric Company (“EDE”) and The Empire District Gas Company (“EDG”), both Liberty Utilities companies (collectively, the “Movants”), and for their Motion for Waivers, respectfully state as follows to the Missouri Public Service Commission (“Commission”):

The Movants – EDE and EDG

1. EDE is a Kansas Corporation with its principal office and place of business at 602 South Joplin Avenue, Joplin, Missouri, 64801. Empire is qualified to conduct business and is conducting business in Missouri, as well as in the states of Kansas, Arkansas, and Oklahoma. EDE is engaged generally in the business of generating, purchasing, transmitting, distributing, and selling electric energy in portions of said states. EDE also provides water service in Missouri.
2. EDG is a corporation organized and existing under the laws of the state of Kansas, with its principal office and place of business located at 602 Joplin Street, Joplin, Missouri, 64801. EDG is a wholly-owned subsidiary of EDE and provides natural gas utility service throughout a number of Missouri counties.
3. All of EDE’s and EDG’s Missouri utility operations are subject to the jurisdiction of the Commission as provided by law.
4. A certified copy of EDE’s restated Articles of Incorporation, as amended, was filed in Commission Case No. EF-94-39 and is incorporated herein by reference. A certificate from

the Missouri Secretary of State that EDE, a foreign corporation, is authorized to do business in Missouri was filed with the Commission in Case No. EM-2000-369 and is incorporated herein by reference. This information is current and correct.

5. EDE and EDG have no pending or final unsatisfied judgments or decisions against them, or either of them, from any state or federal agency or court that involve customer service or rates and that have occurred within the three years immediately preceding the filing of this Motion. EDE's and EDG's Annual Reports and assessment fees are not overdue.

Liberty Utilities

6. EDE and EDG are indirect subsidiaries of Liberty Utilities Co. ("Liberty Utilities"), and both EDE and EDG are part of the Liberty Utilities Central Region. The Liberty Utilities Central Region encompasses a number of other Liberty Utilities subsidiaries, including Liberty Utilities (Pine Bluff Water) Inc., Liberty Utilities (Missouri Water) LLC, Liberty Utilities (Arkansas Water) Corp., and Liberty Utilities (Midstates Natural Gas) Corp.
7. Liberty Utilities is a Delaware corporation that owns regulated utilities in the United States and is an indirect subsidiary of Algonquin Power & Utilities Corp. ("APUC").
8. APUC is the ultimate corporate parent and is publicly traded on the Toronto and New York Stock Exchanges. A corporate organization chart showing how EDE and EDG fit into APUC's and Liberty Utilities' corporate structures is attached as **Motion Exhibit A**.
9. Currently, EDE, for both electric and water operations, and EDG, for its gas operations, operate under a co-branding designation that utilizes both Empire and Liberty in the name. For example, the website for EDE and EDG utilizes the following logo:



10. The other Liberty Utilities subsidiaries, however, mainly operate under the name "Liberty Utilities."

11. Branding – the process involved in creating a unique name and image for a product or service – is very important to Liberty Utilities and APUC, as branding is able to establish a significant and differentiated presence in the market. Branding helps to deliver a clear message, confirm company credibility, and solidify customer loyalty.

Request for Relief - Dual Branding

12. The name under which a utility does business is generally not a question for this Commission. The Commission has not been charged with the obligation to operate and manage the utilities it regulates, and the Commission may not dictate the manner in which a utility conducts its business.

13. EDE, however, entered into an agreement regarding the branding of its operations and those of its subsidiaries as part of the Agreement and Plan of Merger dated February 9, 2016 (“Agreement”), which was executed by EDE, Liberty Utilities (Central) Co., and Liberty Sub Corp.

14. By application filed on March 16, 2016, in Commission Case No. EM-2016-0213, EDE and certain other entities sought approval to perform under the Agreement.

15. Section 6.06(e) of the Agreement provides: “Parent shall cause the Surviving Corporation and the Company Subsidiaries to maintain and operate their respective businesses under the ‘Empire District’ brand for a period of at least five (5) years following the Effective Time, provided that such use may also include ‘a Liberty Utilities company’ or similar co-branding designation.” In the Agreement, Liberty Utilities (Central) Co. is defined as the Parent, and EDE is defined as the Surviving Corporation. The Effective Time is January 1, 2017.

16. Pursuant to Section 6.06(e) of the Agreement, EDE and EDG would be required to operate their businesses under the “Empire District” brand, or a co-branding designation including the name Liberty Utilities, until January 1, 2022.

17. With its *Order Approving Stipulations and Agreements and Authorizing Merger Transaction*, issued in Case No. EM-2016-0213 on September 7, 2016, effective October 7, 2016, the Commission authorized the applicants “to consummate the transaction described in their joint application in accordance with the terms and conditions of the Agreement and Plan of Merger and all other transaction-related instruments.”
18. The Movants and all parties to the Agreement desire to cease using the Empire name for the utility operations of EDE and EDG. As such, the Movants seek partial waiver of and relief from the Commission’s *Order Approving Stipulations and Agreements and Authorizing Merger Transaction* to the extent it requires EDE and EDG to continue operating their businesses under the “Empire District” brand, or a co-branding designation including the name Liberty, until January 1, 2022.
19. The dual branding requirement was likely included in the Agreement to ensure that EDE and EDG customers would have continuity of service under a name known to them for many years, and thus would be readily identifiable, and to assure the communities served by EDE and EDG that the utilities would continue to participate in the local communities. This objective has been satisfied.
20. Liberty Utilities and its employees are committed to serving the local communities. For example, the Business and Community Development team actively participates in several organizations, with its members attending various events within the Missouri service territories, including Chamber of Commerce and City Council meetings. Also, Liberty Utilities supports, contributes to, and participates in local organizations and events such as Boys and Girls Club of SW MO, Children’s Haven of SW MO, Taney County Partnership (economic development), Neosho Schools Foundation, Ronald McDonald house service projects, city park cleanups, and the Joplin Memorial Run. Company employees who engage

in these community and civic activities do so primarily under the Liberty Utilities name.

21. EDE and EDG customers are quite familiar with the “Liberty Utilities” name, and Liberty Utilities is well known to the communities in which EDE and EDG provide utility service. There is no longer a purpose served by continuing to include “Empire District” in the name under which the companies operate.
22. For EDE and EDG customers, all bills are co-branded with the Liberty Utilities logo. Building signage and company vehicles include the Liberty Utilities name and logo. Social media feeds also include the Liberty Utilities name and logo, and press releases and media coverage throughout the service areas are sent under the co-branded name with the Liberty Utilities logo.
23. Continuing to include “Empire District” in the operating name for certain operations will interfere with the branding goals of delivering a clear message, confirming company credibility, and solidifying customer loyalty.
24. Continuing to use “Empire District” for certain operations will become even more difficult as Liberty Utilities grows its customer base. For example, there is a planned acquisition by Liberty Utilities (Missouri Water) LLC for water and wastewater systems in a community already receiving electric service from EDE. That community views Liberty Utilities (Missouri Water) LLC as just “Liberty Utilities.” To that community, “Liberty Utilities” is the same company that provides its electric service. It will cause unnecessary confusion and extra costs if the water and wastewater services are provided to this community under one name, while electric service is provided under another name.
25. Moving into the future, APUC will be undertaking a corporate-wide rebranding of its “Liberty Utilities” and “Liberty Power” business, with rebranding decisions likely to be made in the first quarter of 2020. It is important for Liberty Utilities and APUC to be able to

effectuate their rebranding goals without the limitation of the name restriction for the EDE and EDG operations.

26. As a result, and for the reasons stated above, the Movants request a waiver from any continued use of the “Empire District” branding upon APUC’s adoption of new branding for its Liberty Utilities’ family of businesses. EDE and EDG will keep the Commission and interested stakeholders apprised of any new corporate name and/or logo once adopted, including making a presentation to the Commission regarding its new brand and customer communication plan at a future agenda meeting.

Motion for Waiver – 60-Day Notice Requirement

27. Commission Rule 20 CSR 4240-4.017(1) provides that “(a)ny person that intends to file a case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case.” A notice was not filed 60 days prior to the filing of this Motion, and, as such, the Movants seek a waiver of the 60-day notice requirement.

28. Commission Rule 20 CSR 4240-4.017(1)(D) provides that a waiver may be granted for good cause. In this regard, the Movants declare (as verified) that they have had no communications with the Office of the Commission (as defined in Commission Rule 20 CSR 4240-4.015(10)) within the prior 150 days regarding any substantive issue likely to be in this case. It would serve no purpose to delay the Commission’s consideration of the Movants’ request regarding rebranding. In addition, given the time sensitivity associated with rebranding efforts, it would be impracticable for EDE and EDG to seek a waiver of the “Empire District” co-branding requirement at the time of the selection and implementation of a new brand across the Liberty Utilities business.

WHEREFORE, EDE and EDG request an order of the Commission waiving the 60-day notice requirement of Rule 4.017(1) and granting a partial waiver of and relief from the Commission’s *Order*

Approving Stipulations and Agreements and Authorizing Merger Transaction. EDE and EDG request such additional and further relief as is just and proper under the circumstances.

/s/ Diana C. Carter
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CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 23rd day of December, 2019, and electronically delivered to the Staff of the Commission and the Office of the Public Counsel.

/s/ Diana C. Carter