

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

In the Matter of a Proposed Rule       )  
Regarding Incentives for Acquisition   )     File No. AX-2018-0240  
of Nonviable Utilities                    )

**LIBERTY UTILITIES (MISSOURI WATER) COMMENTS**

Liberty Utilities (Missouri Water) LLC (Liberty Utilities) provides the following comments in response to the proposed Missouri Public Service Commission (Commission) Rule 4 CSR 240-10.085, as published in the July 2, 2018 *Missouri Register*:

Liberty Utilities appreciates the Commission’s attention to, and attempts to address, the common problem of non-viable small water and sewer systems. Liberty Utilities provides the following comments for the Commission’s consideration in an effort to assist with this issue.

**Rate of Return Premium**

Liberty Utilities believes that the described “rate of return premium” is somewhat ambiguous as to its application in future rate cases. Specifically, does it apply to the entire company rate base in a future rate case or simply to the distressed assets being acquired? 4 CSR 240-10.085(3)(A)3 suggests that perhaps it may only apply to the acquired assets (“If the system to be acquired is part of a larger transaction involving multiple systems of which some do not qualify as non-viable, a detailed revenue and rate base plan describing how the acquiring utility will only apply the sought acquisition adjustment to the non-viable system(s) within the larger transaction.”). Because the non-viable utilities generally have little in the way of rate base to be acquired, a premium applying to only that system’s assets may not provide a significant incentive.

The rule does refer to applicability of the premium to “associated system improvement costs.” 4 CSR 240-10.085(1)(B). It would be helpful for that phrase to be defined in the rule in an attempt to eliminate future disagreement as to what costs will constitute such “system improvement costs.” Along these same lines, Liberty Utilities would appreciate an example as to how the rate of return premium would be applied within the context of a future rate case.

Lastly, the proposed rule seems to require a standard beyond its intent to “incentivize” the purchaser. 4 CSR 240-10.085(4)(I) requires the acquiring company to show that the deal would be unlikely to occur in the absence of a 100 basis point adder (a “but for” test). Proving the negative is always a challenge from an evidentiary perspective. Liberty Utilities is concerned that this requirement creates a proof requirement that may never be met.

### **Financial Records**

Liberty Utilities has some concern for the requirements that the acquiring utility obtain certain records. 4 CSR 240-10.085(3). Usually, any failure of Liberty Utilities to obtain these records is a result of the non-existence of the records, not a failure to ask for them. Yet, there seems to be an expectation that the acquiring company will obtain such records (4 CSR 240-10.085(3)(B) – such records “shall be furnished . . . prior to the next rate case;” and, 4 CSR 240-10.085(3)(C) – failure of the seller to provide such documents “will not be a basis for the acquiring utility to provide incomplete information . . . .” (emphasis added)

If reasonable efforts have been made to obtain financial records, but such records are not available, what alternatives would be acceptable to determine rate base? The proposed rule does refer to estimated information supported by documentation as to the reasonableness of such estimates. It is unclear whether such estimates would be a satisfactory substitute for the acquiring utility’s violation of 4 CSR 240-10.085(3)(B) (“shall be furnished”) and 4 CSR 240-

10.085(3)(C) (non-existence of documents “will not” be a basis to provide incomplete information).

### **Consolidated Rates**

Lastly, Liberty Utilities is not sure that a 100 basis point premium will be a significant incentive to acquire non-viable properties. A more significant incentive would be the ability to utilize consolidated rates. Without consolidation, the addition of the incentive merely adds to what is likely to already be a high rate for the customers of the acquired system because of the lack of economies of scale. Consolidation of rates has at least the possibility that some economy will be brought to these small systems.

Thank you for your consideration of these comments.

//S// Jill Schwartz  
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