

**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)	

RESPONSE TO STAFF RECOMMENDATION AND REQUEST FOR RULING

COMES NOW Liberty Utilities (Missouri Water) LLC (“Liberty” or “Company”), and respectfully submits its Response to Staff Recommendation and Request for Ruling with regard to Liberty’s Application for Certificates of Convenience and Necessity (“CCNs”) authorizing Liberty to install, own, acquire, construct, operate, control, manage, and maintain a water system and a sewer system in Bolivar, Polk County, Missouri, submitted herein pursuant to RSMo. §393.170 and §393.320 and Missouri Public Service Commission (“Commission”) Rules 20 CSR 4240-2.060, 20 CSR 4240-3.305, and 20 CSR 4240-3.600. In this regard, Liberty respectfully states as follows:

Legal and Factual Summary and Request for Relief

On October 15, 2020, Liberty filed its request with the Commission to obtain CCNs authorizing Liberty to begin providing water and sewer service in Bolivar, Polk County, Missouri, pursuant to Missouri statutes §393.170 and §393.320 and Commission Rules 20 CSR 4240-2.060, 20 CSR 4240-3.305, and 20 CSR 4240-3.600 (the “Application”). This is a somewhat unique case, as, in addition to seeking the traditional CCNs, Liberty’s Application seeks ratemaking treatment. Pursuant to RSMo. §393.320, the Application asks the Commission to set the ratemaking rate base for the Bolivar water and sewer assets. Although ratemaking requests are traditionally made in general rate cases, and not CCN proceedings, Liberty was able

to make this ratemaking request in this docket on the basis that Liberty is now a large water utility, with the right to proceed under RSMo. §393.320 with regard to the Bolivar water and sewer assets.

With certain exceptions not applicable here, §393.320.1(1) defines a “large water public utility” as one that “regularly provides water service or sewer service to more than eight thousand customer connections.” Looking to the plain wording of the statute, it is the total number of customer connections served (more than 8,000) that is relevant to the statute’s definition – not the specific type of service, as between water and sewer, that is provided. The statute then specifies a detailed appraisal process, and §393.320.5(1) provides that “(t)he lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility.” Additionally, §393.320.2 provides that these procedures “may be chosen by a large water public utility, and if so chosen shall be used by the public service commission to establish the ratemaking rate base of a small water utility during an acquisition.”

Liberty regularly provides water and/or sewer service to approximately 8,275 customer connections, and Liberty and Bolivar followed the appraisal process as set forth in RSMo. §393.320 with regard to the Bolivar water and sewer assets. Pursuant to the undisputed facts and the applicable law, the Commission should issue an order pursuant to RSMo. §§393.170 and 393.320 issuing CCNs to authorize Liberty to provide water and sewer service in Bolivar, Polk County, Missouri, and establishing the ratemaking rate base for the Bolivar water and sewer assets, as set forth in Liberty’s Application. There are no material facts in dispute. As such, the Commission should issue an order on the Application at this time.

Statement of Material, Undisputed Facts

1. Liberty is a Missouri limited liability company with its principal office located at 602 Joplin Street, Joplin, Missouri, 64801, and provides water and sewer services to customers in its Missouri service areas, as certificated by the Commission.

2. Liberty is a “water corporation,” a “sewer corporation,” and a “public utility,” as those terms are defined by RSMo. §386.020 and, therefore, is subject to the general regulatory jurisdiction of the Commission as provided by law.

3. Liberty regularly provides water and/or sewer service to more than 8,000 customer connections.¹

4. Bolivar is a “small water utility” as it is a “water system or sewer system owned by a municipality that regularly provides water service or sewer service to eight thousand or fewer customer connections.” RSMo. §393.320.1(2).

5. Effective November 27, 2019, Liberty and the city of Bolivar, Missouri, executed an Asset Purchase Agreement (“APA”), a copy of which was attached to the Application as Appendix A.

6. Pursuant to the APA, Liberty proposes to acquire substantially all operating assets currently used by Bolivar for its water and sewer operations. The assets to be acquired are sufficient to allow Liberty to provide safe and adequate water and sewer service as requested.

7. The appraised value of the Bolivar water and sewer assets is the lesser of the purchase price set forth in the APA or the appraised value.

¹ The Application states that Liberty was providing water service and/or sewer service to approximately 8,285 customer connections. The customer connections were updated during the discovery process. Per Liberty’s response to Staff data request 0004, at that time, Liberty was providing water service and/or sewer service to 8,274 customer connections (6874 water only, 1119 water and sewer, and 281 sewer only), with 8,079 unique water/sewer customers.

8. On January 30, 2020, Liberty filed its initial Notice of Intended Case Filing regarding the Bolivar systems, opening Commission Case Nos. WA-2020-0215 and SA-2020-0216.

9. At the time the initial Notice of Intended Case Filing was submitted, an election was scheduled for April 7, 2020, for voters in Bolivar to be asked to approve the transfer of the water and sewer systems currently owned and operated by the city of Bolivar, Missouri, to Liberty.

10. Due to the COVID-19 pandemic, the Bolivar election was postponed from April 7 to June 2, 2020.

11. The election took place on June 2, 2020, with voters approving the transfer of the water and wastewater systems and authorizing the city of Bolivar to enter into a franchise agreement with Liberty for water and sewer service.

12. On June 5, 2020, Liberty submitted a Notice of Intended Case Filing initiating these dockets (WA-2020-0397 and SA-2020-0398).

13. October 15, 2020, Liberty filed its verified Application herein, seeking CCNs authorizing it to construct, install, own, operate, maintain, control, and manage water and sewer (wastewater) systems. The area for the requested CCNs is described and depicted in Application Appendix B.

14. Liberty is fully qualified, in all respects, to own and operate the water and sewer systems currently owned and/or operated by Bolivar and to otherwise provide safe and reliable sewer service to Polk County, Missouri.

15. Liberty has sufficient operating cash to sustain ongoing operations and is committed to providing regulated utility services to its customers for years to come. Further, the

financial support and backing of Liberty’s parent companies demonstrates that Liberty has and will continue to have sufficient access to capital for ongoing operations and infrastructure needs.

16. The appraisal process set forth in RSMo. §393.320.3 was followed by Liberty and Bolivar with regard to the Bolivar water and sewer assets, with the resulting appraisal, containing a joint assessment of the fair market value of the water system and the sewer system, attached to the Application as Appendix H.

17. The Staff of the Commission (“Staff”) conducted discovery in this matter and investigated Liberty’s Application and filed its Recommendation on April 16, 2021.

18. Staff concluded “that Liberty fulfills the requirements regarding TMF capacities. Staff also finds that Liberty meets the first four Tartan Criteria; i.e., (1) there is a need for the service; (2) Liberty is qualified to provide the service; (3) Liberty has the financial ability to provide service; and (4) Liberty’s proposal is economically feasible.”

Discussion and Argument

In the Memorandum attached to the Staff Recommendation, Staff states that “it is Staff Counsel’s position that Liberty does not currently meet the statutory definition of a large water public utility, as provided in 393.320, RSMo.” The Staff Recommendation argues as follows: “Despite Liberty’s attempts, the statute is clear: a public utility must provide water service **OR** sewer to more than 8,000 customers. Seeing as how ‘or’ and ‘and’ do not have the same meaning, it is clear that Liberty does not meet the statutory definition of ‘Large Public Water Utility.’ Because Liberty does not meet the statutory definition of a ‘Large Public Water Utility,’ Liberty is not eligible to use the appraisal procedures outlined under Section 393.320, RSMo.” Staff’s arguments in this regard are without merit.

It is noteworthy that the statute does not provide an appraisal method for a “large *water* public utility” and a “large *sewer* public utility,” as Staff’s arguments would imply. Instead, the Missouri Legislature chose to speak only to a “large water public utility” as one that “regularly provides water service or sewer service to more than eight thousand customer connections” and a “small water utility” as one “that regularly provides water service or sewer service to eight thousand or fewer customer connections.”

Accepting Staff’s argument would mean that a utility would not qualify as a “large water public utility” under §393.320 even if it regularly provided water service to 8,000 customer connections and sewer service to 8,000 customer connections, for a total of 16,000 customer connections served, while a utility would qualify as a “large water public utility” under §393.320 if it provided only sewer service to a total of 8,001 customer connections. Also, under Staff’s interpretation of “or” in the statute, a large water utility could use the rate base ratemaking treatment afforded by RSMo. §393.320 to acquire the sewer assets of a company providing water service to a million or more customer connections, so long as that company was providing sewer service to no more than 8,000 customer connections. The scenarios resulting from Staff’s statutory interpretation are nonsensical, and Staff’s suggested statutory interpretation would obliterate the statute’s purpose: to encourage larger utilities to acquire smaller utilities.

To adopt Staff’s interpretation of the statute, the Commission would need to disregard the plain wording of the statute and, instead, misconstrue the statute to require that a utility, in order to qualify as a “large water public utility,” be one that regularly provides water service to more than eight thousand customer connections or one that regularly provides sewer service to more than eight thousand customer connections. This is not how the Missouri Legislature chose to phrase the statutory requirements.

Instead, RSMo. §393.320.1(1) simply defines a “large water public utility” as one that “regularly provides water service or sewer service to more than eight thousand customer connections.” It is the total number of customer connections served (more or less than 8,000) that is relevant to the statute’s definitions of large and small water utility – not the specific type of service provided, as between water and sewer. Liberty, in fact, “regularly provides water service or sewer service to more than eight thousand customer connections,” as Liberty regularly provides water service or sewer service to approximately 8,275 customer connections (6874 water only, 1119 water and sewer, and 281 sewer only). As such, under the plain reading of the statute, Liberty is a “large water public utility.”

Staff takes a second attempt at ignoring the mandate of the Missouri Legislature by arguing that the Commission, even if it finds and concludes that Liberty is a “large water public utility,” should not establish the ratemaking rate base of the Bolivar water and sewer assets pursuant to RSMo. §393.320, under the guise of the public interest standard for granting a CCN.

As set forth in the Staff Recommendation, Staff found that “Liberty meets the first four Tartan Criteria; i.e., (1) there is a need for the service; (2) Liberty is qualified to provide the service; (3) Liberty has the financial ability to provide service; and (4) Liberty’s proposal is economically feasible.” Staff also noted that as “the Commission determined in Case No. GA-94-127, positive findings with respect to the other four standards above will, in most instances, support a finding that an application for a CCN will promote the public interest.” Additionally, demonstrating that the grant of the CCNs would serve the public interest, Staff noted:

(T)he citizens of Bolivar voted to approve the sale of the utility systems, Bolivar’s elected officials were involved in the negotiation with Liberty and developed a subsequent Purchase Agreement between the City and Liberty. Further, while it is Staff’s position that Bolivar has the capability to eliminate the bypasses and upgrade the wastewater treatment facility, the City has not done so. Liberty also has the ability, and has developed sufficient plans, to bring the facility into

compliance and cease pollution of Piper Creek. Restoring this public resource to its full use, and eliminating the public health threat of bypasses, is generally in the public interest.

The Missouri Legislature has afforded considerable discretion to this Commission, but that discretion is not limitless. As noted above, §393.320 provides that its procedures, once chosen by a large water public utility, *shall* be used by the Commission to establish the ratemaking rate base. Staff may not use a CCN “public interest” argument to ignore a statutory mandate regarding the establishment of the ratemaking rate base for the Bolivar water and sewer assets.²

Lastly, the Staff Recommendation states that “if the Commission does find that Liberty is a large water public utility, and approves Liberty’s Application as filed, Staff recommends that Liberty keep Bolivar’s books and records separate from Liberty’s other service areas and that the rates for the Bolivar systems not be consolidated with the rates for Liberty’s other customers for a period of at least ten years after the effective date of this transaction.” If Liberty’s Application is granted pursuant to RSMo. §§393.170 and 393.320, Liberty would not object to the CCNs being conditioned on Liberty keeping the Bolivar water and sewer books and records separate from Liberty’s other service areas and the rates for the Bolivar water and sewer systems not being consolidated with the rates for Liberty’s other customers for a reasonable period of time.

WHEREFORE, Liberty requests an order of the Commission, pursuant to RSMo. §393.170, issuing CCNs to authorize Liberty to provide water and sewer service as set forth in the

² The Staff Recommendation urges the Commission to find that Liberty is not a “large water public utility,” but still establish rate base in this proceeding in connection with granting the requested CCNs. Liberty disputes Staff’s calculation of a proper rate base amount for the Bolivar water and sewer assets. Outside of providing the appraisal performed pursuant to RSMo. §393.320, Liberty was under no obligation to demonstrate the proper rate base of the Bolivar water and sewer assets in this proceeding. If the Commission finds that Liberty is not a “large water public utility,” there is no authority for the Commission to establish the ratemaking rate base for the assets in this proceeding. Instead, such a determination would be made in a future general rate case.

Application, and, pursuant to RSMo §393.320, establishing the ratemaking rate base for the Bolivar water and sewer assets. 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 26th day of April, 2021, and sent by electronic transmission to the Staff of the Commission and the Office of the Public Counsel.

/s/ Diana C. Carter