

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

In the Matter of Liberty Utilities Verified	)	
Application for Approval of PVC Pipe	)	File No. GO-2019-0091
Replacement Program and Recovery of Associated	)	
Costs Through ISRS Mechanism	)	

**LIBERTY UTILITIES' RESPONSE TO STAFF RECOMMENDATION  
AND REQUEST FOR PROCEDURAL CONFERENCE**

**COMES NOW** Liberty Utilities (Midstates Natural Gas) Corp. d/b/a iberty Utilities ("Liberty Utilities" or "Company") and submits its Response to Staff Recommendation filed in the above-captioned matter on January 9, 2019 and its Request for Procedural Conference. In support thereof, Liberty Utilities states as follows:

**RESPONSE**

1. On January 9, 2019, the Staff of the Missouri Public Service Commission ("Staff") filed its Recommendation ("Staff's Recommendation") in response to the Verified Application filed by Liberty Utilities on September 28, 2018. In that Application, the Company requested that the Commission approve a ten-year replacement program for the PVC pipe remaining in its system. The Company also requested that the Commission determine that the costs associated with such replacements would be eligible for recovery under the Company's Infrastructure System Replacement Surcharge ("ISRS") mechanism.

2. In its Recommendation, the Staff opposes a predetermination by the Commission that the expenditures made by the Company in connection with such a program would be eligible for recovery through its ISRS mechanism. (Staff

Recommendation, p. 2). In an Order issued on January 23, 2019, the Commission also directed the Company to explain whether it was seeking a predetermination of ISRS eligibility given its prior representations in its November 26, 2018 response to Staff's Motion for Clarification that the Company's filing was not being pursued under the ISRS statute or the Commission's rules for an ISRS filing.

3. In response to the Commission's January 23, 2019 Order, the Company wishes to clarify that in its earlier response to Staff's Motion for Clarification, it was simply trying to provide the Staff and the Commission with assurances that its Application was not a filing being made to adjust rates under the ISRS statute or the Commission's ISRS rules. That was true then and remains true today. The fact that the Company is not seeking to adjust rates with its Application, however, is a separate and distinct issue from its request that the Commission determine whether the costs of its replacement program *would* generally be eligible for ISRS recovery if, and when, it made a filing to adjust rates under the ISRS mechanism.

4. The Company continues to believe that such a predetermination would be appropriate, especially given the time constraints in a normal ISRS proceeding that might preclude a more detailed and considered examination of this issue.<sup>1</sup> Nevertheless, the

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<sup>1</sup>The Company understands Staff's general opposition to having the Commission predetermine various regulatory issues. The Company believes, as discussed elsewhere in this response, that the Commission's regulation of natural gas safety matters is unique and makes this general antipathy to pre-approval inapplicable. For example, one of the cases cited by the Staff in opposing a pre-determination of ISRS eligibility was *Matter of Mason-Cassilly, Inc.*, 23 Mo. P.S.C. (N.S.) 303 (Nov. 30, 1979), in which the Commission stated that " . . . it is the utility which bears the ultimate responsibility for quality and cost of service, and this Commission will not undertake to evaluate and thereupon essentially predetermine design characteristics and material selection for a respective utility." These are precisely the kind of determinations that the Commission routinely makes in its regulation of natural gas safety matters as evidenced by its gas safety rules that prescribe such matters in great detail. See 4 CSR 240.40.030 *et. seq.*

Company is willing to withdraw this element of its request for two reasons. First, the Company is modifying its request on this issue in deference to Staff's position on this matter. Second, the Company has recently become aware of the fact that the Commission and the Staff have already acknowledged the ISRS eligibility of PVC pipeline replacement costs by approving such expenditures in an ISRS proceeding involving another gas corporation. *See e.g. Re: Union Electric Company d/b/a Ameren Missouri*, Case No. GO-2014-0015.<sup>2</sup> Accordingly, the Company no longer believes it is necessary to obtain such a pre-determination.

5. Liberties Utilities continues to request, however, that the Commission approve its proposed program for replacing such PVC pipe over a ten-year period. In the Memorandum accompanying its Recommendation, the Staff states there are a number of safety rules that already address, in one manner or another, any safety issues relating to the existence of PVC pipe in the Company's system and that there is no "safety related reason to recommend that the Commission *order* replacement of Liberty's PVC pipe." (Staff Memorandum, p. 2 of 12, *emphasis supplied*).

6. At the outset, Liberty Utilities wishes to clarify that it is not seeking to have the Commission order the Company to replace its PVC pipe, but instead to review and determine that there are sound safety-related reasons to approve the Company's plan to replace such pipe over a ten-year period. In short, the Company is seeking to partner with both the Commission and its Staff in taking a proactive approach towards improving public safety.

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<sup>2</sup>In Case No. GO-2014-0015, the Commission approved expenditures made by Ameren Missouri to replace PVC in various parts of its Missouri distribution system, including PVC main

7. After carefully evaluating the considerations raised by Staff in its Recommendation, the Company continues to believe that such action by the Commission is warranted for a number of reasons. First, having the Commission consider and determine whether there is a safety justification for the PVC replacement program proposed by the Company is fully in keeping with the comprehensive and active supervision that the Commission has customarily exercised over natural gas safety matters. The scope and intensity of that supervision, which makes the Commission's regulation in this area unique, is illustrated by its gas safety rules which address in exceptional detail everything from the materials and methods that must be employed in constructing distribution facilities to how such facilities are maintained and monitored.

8. It is also illustrated by the Commission's historic practice of approving specific programs for replacing distribution facilities where warranted by safety considerations. These include, among others, approved programs for the replacement of cast iron and bare steel mains, as well as copper service lines for numerous local distribution companies. See e.g., *Order Approving Stipulation and Agreement, Re Adequacy of Laclede Gas Company's service line and leak survey procedures*, Case No. GO-99-155 (May 18, 2000); *Order Granting Application To Modify Order, Re Request of Missouri Gas Energy, a Division of Southern Union Company, to Modify and Accelerate Its Service Line Replacement Program*, Case No. GO-99-302 (March 11, 1999); *Order Approving Application, Re Missouri Gas Energy, for a determination of certain matters pertaining to ongoing cast iron main and service/yard replacement as a*

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replacements in Cairo, Hawk Point, Old Monroe, New London, Foley, High Hill, Rocheport, and Wentzville, Missouri.

*part of its Safety Line Replacement Program*, Case No. GO-2002-50 (September 21, 2001); *Report And Order, Re Laclede Gas Company's application for an order establishing replacement requirements for the final phase of its unprotected steel main replacement program previously approved*, Case No. GO-2003-0506 (March 5, 2004); *Order Approving Application, Atmos Energy Corporation's application to modify its Approved Cast Iron Main and Unprotected Steel Main Replacement Program*, Case No. GO-2006-0253 (January 26, 2006); *Report And Order, Re Application of Missouri-American Water Company for an Accounting Order Concerning MAWC's Lead Service Line Replacement Program*, Case No. WU-2017-0296 (November 30, 2017).

9. In view of these considerations, Liberties Utilities believes that the Commission has both the authority and, in its view, the obligation to weigh in on whether the Company's plan to accelerate replacement of its PVC pipes is warranted by safety considerations. To that end, the Company believes that the Staff has added some valuable information in its Recommendation that, at least from the Company's perspective, supports such a determination. Most notable, is the helpful evaluation that Staff has provided regarding the various Commission safety rules and other legal requirements that support the Company's actions in replacing PVC pipe. The Company also appreciates Staff pointing out in its Recommendation the additional information that it believes is necessary for it to support the specific ten year time frame that the Company has proposed for completing the replacement of PVC piping.<sup>3</sup> As discussed below, the

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<sup>3</sup>At pages 2-3 of its Memorandum, the Staff lists three factors that it believes should be satisfied before a replacement program is approved by the Commission, including that there be a safety concern relating to the facilities being replaced, that alternative ways of addressing the safety issue short of replacing the facility be explored before replacement is pursued and there be no other safety rules that address the issue. The Company agrees with the first two criteria

Company will address each of these in the context of the specific factors set forth in the Company's Application as support for its plan.

10. As explained in the Application, there are multiple reasons supporting approval of the Company's proposed PVC replacement plan:

a. First, the PVC piping was installed in Liberty Utilities' natural gas distribution systems in Missouri in the late 60's and much of it is a half century (or more) old. The Company agrees with Staff's statement at page 3 of its Memorandum, that age alone is not necessarily a determining factor in whether specific facilities need to be replaced. However, most of the PVC pipe in the Company's system has already exceeded the 50-year recommended service life for PVC pipe used in distributing natural gas. Accordingly, this is certainly one factor in favor of determining that such pipe it is appropriate from a safety standpoint to accelerate its replacement over a ten-year period, versus the nearly 30 years it would take under the Company's current pace of replacement.

b. Second, approximately 40% of the installed PVC piping is un-locatable because it was either installed without tracer wire or was installed with galvanized tracer wire or other wire that has since deteriorated and corroded away. As the Company pointed out in its Application, this is particularly concerning in terms of being able to

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referenced by Staff and will attempt in this response to further demonstrate that they have been satisfied. The Company does not fully understand or necessarily agree with the third criterion cited by Staff. The mere existence of other safety regulations that address a particular issue may, as Staff suggest, mean that the Commission does not need to *order* that a replacement program be implemented to replace facilities. However, that does not mean that the Commission can or should abandon its obligation to review and *approve* the pace at which replacements should be performed to best comply with those safety obligations. Other replacement programs have been routinely approved by the Commission even though there were other safety regulations that addressed various aspects of the facilities being replaced.

avoid third party damage – the single largest cause of natural gas incidents. At page 5 of its Memorandum the Staff readily acknowledges “that the ability to locate pipe in advance of excavation is a safety concern.” The Staff asserts, however, that ordering a replacement program is not necessary because there are already safety regulations that address how pipeline facilities are to be marked “as far as practicable” prior to excavation and because the Company has identified an alternative to locating such facilities without replacing such pipe.

Again, the fact that utilities have an obligation to locate and mark their underground facilities to the extent practical does not mean that the Commission should not consider and approve a Company-proposed replacement program that would substantially contribute to its ability to comply with this vital safety requirement. The Company appreciates the Staff’s statement at page 6 of its Memorandum that the Company’s predecessors did not violate the Commission’s rules requiring that tracer wire be installed with plastic pipelines so they can be located since the installation of PVC pipe took place before such requirements were mandated by the Commission. But the fact remains that a significant portion of the Company’s PVC pipe does not have such tracer wire, either because it was never installed by its predecessors or has since worn out or deteriorated to the point of being non-existent. Given these considerations, the fact that the Commission’s rules indicate that the absence of such tracer wire is a significant safety concern supports rather than disfavors approval of a replacement program that would remedy this concern sooner rather than later.

In its Application and in response to Staff, the Company did indicate that pipe that could not be located because of an absence of tracer wire could be physically exposed to

determine its location. Excavating around such lines, especially where there is not a ready means to precisely locate them, brings with it an additional safety risk of damaging such lines, even if the utility is doing the digging. In addition, the Company does not, believe, this is a cost-effective or practical alternative over the longer term. The need to divert crews from other work, deploy them in the field and have them perform the necessary excavation work would be very difficult to complete within the relatively narrow time constraints for locating facilities under the Missouri one-call law. The cost of repeatedly digging around such underground lines to locate them would be an expensive undertaking and would still leave the cost of having to eventually replace the line in any event. In short, exposing PVC lines that have no tracer wire is far from an ideal alternative. Hopefully, this clarification will be useful in enabling the Staff to determine that approval of the Company's proposed PVC replacement program is appropriate.

c. Third, the Company has pointed out in its Application that it is increasingly difficult to maintain PVC piping in a safe condition. Currently there is no PVC pipe manufactured today that is rated for use in a natural gas distribution system. While the Company has been able to source a repair fitting from Continental Industries of Tulsa Oklahoma, it is not clear how long even this fitting will be available given the general phase out of PVC pipe that is occurring in the natural gas industry. While this may not be a decisive factor justifying the Company's proposal to replace its PVC pipe over the next 10 years (versus 30 years under its current schedule), when combined with the other considerations addressed herein, it is another reason for moving in that direction.



d. Fourth, the Company pointed out in its Application that the chemical composition of PVC pipe has resulted in it becoming unacceptably brittle over time. Because of this characteristic, PVC piping is more susceptible to breakage due to natural forces, including earth movement and tree root growth that stresses the pipe and induces brittle cracking. As additional support for this proposition, the Company also noted that the Federal Pipeline and Hazardous Materials Safety Administration (PHMSA) was considering a rule that would phase out or eliminate the use of PVC piping for natural gas distribution systems for this very reason.

As noted in the Staff Memorandum, subsequent to the filing of Liberty's Application, PHMSA published its final Plastic Pipe Rule noting that "PVC pipe has decreased since the mid-1980s . . ." and that "[g]as distribution annual reports also show operators are phasing-out this material . . ." (Staff Memorandum, p. 9). While a number of natural gas industry groups supported PHMSA's proposal to affirmatively prohibit the future installation of PVC pipe (including the American Public Gas Association and the National Association of Pipeline Safety Representatives)<sup>4</sup> PHMSA ultimately concluded that it was unnecessary to take such action because it knew that the industry was already moving in that direction and had been doing so for some time. The Company's proposal

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<sup>4</sup>As the name implies, the National Association of Pipeline Safety Representatives "NAPSR" is a non-profit organization of state pipeline safety regulatory personnel who serve to promote pipeline safety in the United States and its territories. NAPSR members support the safe delivery of pipeline products by conducting inspections of pipeline operators to determine compliance with applicable state and federal pipeline safety requirements under a certification agreement. It supported the prohibition on new PVC pipe installations because it believed that "the exclusion of PVC pipe for new installations will increase safety."

is merely an effort to move in this same direction somewhat quicker than would be achieved under the pace of its current replacement strategy.<sup>5</sup>

The Staff also notes in its Memorandum that the installation of new PVC pipe, other than for repairs, has been prohibited by the Commission since December 15, 1989, or nearly three decades. (Staff Memorandum, p. 9). The Company believes that it is not unreasonable to phase out over the next ten years a brand of pipe that the Commission had determined for the last 30 years should *not* be installed for safety-related reasons.

Finally, in addition to the Commission's prohibition on installing new PVC pipe and the overall industry consensus that its use should be phased out because of its brittle characteristics, Liberty Utilities has gathered additional information on the subject in response to Staff's comments in its Recommendation. To that end, Liberty Utilities would offer the following examples of PVC embrittlement encountered within its own distribution system.<sup>6</sup> It should be noted that in each of these examples the use of more modern, non-PVC pipe would in all likelihood have prevented the breakage and resulting leakage from occurring.

2006: A section of 2" and a section of 1 ½" PVC was replaced due to pipe embrittlement in the Butler Service Area

2015: In the Jackson Service Area a contractor crew was preparing a gravel road for asphalt overlay. In the process, the contractor dug around a manhole to raise to the new road level. While digging, the excavator crushed the 1-1/2 PVC main. A Liberty crew was sent to the site for repairs. After the pipe was repaired the excavated area was covered over and lightly compacted to prevent further damage to the pipe. The next day

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<sup>5</sup> It is important to note that the current pace of PVC replacements is driven almost exclusively by the financial constraints of the traditional regulatory system. It was precisely these constraints that the ISRS mechanism, in the interests of public safety, was designed to remedy.

<sup>6</sup>These examples were accumulated by the Company in response to Staff's concern in its Recommendation regarding the extent of information provided on the issue of embrittlement of PVC pipe and are by no means an exhaustive list of such instances.

at the same area, the contractor arrived on site to begin paving the road. Multiple dump trucks were used to haul in asphalt, driving over the area of the previously repaired PVC pipe. After many passes, the weight of the trucks broke the older PVC pipe where the repair was made. This caused a leak and subsequently gas was lost to over 50 customers.

2018: A section of the 3” PVC pipeline that serves the town of Amoret in the Butler Service Area was cracked when a farm tractor ran over the top of it. This caused an outage and re-light of 100 customers.

All of these factors, especially when considered as a whole, demonstrate the worn-out or deteriorated condition of PVC pipe and justify its replacement on a more accelerated basis.

11. Liberty believes that in order to be proactive in its efforts to maintain a safe and reliable natural gas system in its service area, the Commission should approve the Company’s plan to replace the PVC pipe over a ten-year period. The Company fully concurs with Staff that such a replacement plan should be undertaken as part of its Distribution Integrity Management Plan (“DIMP”) and intends to reflect the accelerated replacement schedule in its DIMP. The Company also believes that a Commission-approved PVC replacement plan will further serve to clarify the eligibility of the associated costs for eventual cost recovery in a future ISRS mechanism tariff filing. Without a Commission-approved plan, the investments are more likely to be subject to litigation over their eligibility for recovery through an ISRS mechanism.

#### **REQUEST FOR PROCEDURAL CONFERENCE**

12. For the above-stated reasons, Liberty Utilities continues to request that the Commission approve its proposal to implement a program under which its PVC pipe would be replaced over a ten-year period, but withdraws its request that the Commission

specifically pre-determine that such costs are eligible for recovery under its ISRS mechanism, although it clearly believes they are.

13. Although the Company has met with both Staff and OPC to discuss these matters, the parties have not been able to reach agreement regarding the relief requested by the Company. The Company accordingly requests that the Commission schedule a procedural conference for April 3, 2019 (or such other date as the Commission may find appropriate) so that the parties may discuss and propose, either jointly or individually, what additional procedural steps should be approved by the Commission to address the matters raised herein. Counsel for the Commission Staff and OPC have indicated that they have no objection to scheduling a procedural conference on this date.

**WHEREFORE**, the Company respectfully requests that the Commission accept its Response and, at the conclusion of these proceedings, issue an Order approving a ten-year replacement program for the remaining PVC pipe in the Company distribution system and finding that such approval is necessary to protect public safety by removing facilities that, for the reasons discussed herein, are in a worn-out or deteriorated condition. The Company further requests that the Commission schedule a procedural conference for April 3, 2019, or such other date as the Commission may find appropriate, so that the parties may discuss and propose, either jointly or individually, what additional procedural steps should be approved by the Commission to address the matters raised herein.

Respectfully submitted,

LIBERTY UTILITIES

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**Certificate of Service**

The undersigned certifies that a true and correct copy of the foregoing Verified Application of Liberty Utilities Inc. was served on the General Counsel of the Staff of the Missouri Public Service Commission and the Office of the Public Counsel on this 28th day of February 2019 by hand-delivery, e-mail, fax, or by placing a copy of such document, postage prepaid, in the United States mail.

**/s/James M. Fischer**