

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

In the Matter of Liberty Utilities (Missouri) File No. WR-2018-0170
Water) LLC’s Application for a Rate Increase.) SR-2018-0171

SUGGESTIONS IN OPPOSITION TO REQUEST FOR AN EVIDENTIARY HEARING

Comes now, Liberty Utilities (Missouri Water) LLC (“Liberty Utilities”) and offers the following suggestions in opposition to the Request for Evidentiary Hearing filed by Orange Lake Country Club and Silverleaf Resorts (hereinafter the “Intervenors”):

On April 3, 2018, Intervenors filed their Request for an Evidentiary Hearing (“Hearing Request”). For the reasons set forth herein, Liberty Utilities suggests that the Hearing Request be denied because it does not comply with the requirements of Commission rule 4 CSR 240-3.050(20) and, additionally, the request is both speculative and premature.

Intervenors’ Hearing Request presents two grounds. First, they contend that this small rate case is different than a “typical” small rate case in that Liberty Utilities is a subsidiary of a larger holding company operation. Secondly, Intervenors state that the requested consolidation of rates over Liberty Utilities different service districts implicates cross-subsidization issues of particular interest to them. Neither ground asserted by Intervenors justifies the scheduling of an evidentiary hearing at this time.

As noted in the Hearing Request, Intervenors’ assertion that Liberty Utilities is different than a “typical” small utility was also made in its motion to dismiss the company’s filing.¹ The day following the filing of the Hearing Request, the Commission issued its Order Denying

¹ Hearing Request, p. 2.

Motion to Dismiss. In doing so, the Commission rejected this distinction stating that while “Liberty [Utilities] may be more sophisticated than a great many smaller water and sewer utilities for which the rule may have been designed, its use of the Small Rate Procedure is acceptable provided it has 8,000 or fewer customers.”² The Commission’s finding is a rejection of the general proposition put forward by Intervenors that Liberty Utilities’ status as a subsidiary within a larger utility holding company structure is a justification for denying it the procedures it has properly invoked by filing under Commission rule 4 CSR 240-3.050. Accordingly, Intervenors’ rationale provides no justification for ordering the holding of an evidentiary hearing in advance of the predicate events contemplated by the plain language of the rule.

In its April 4th Order Denying Motion to Dismiss, the Commission noted, correctly, that its SURP does not either expressly permit or prohibit an intervening party from requesting an evidentiary hearing.³ Importantly, it *does* contemplate a request being filed by the Office of the Public Counsel (“OPC”), but only, presumably, in the event that there is not a full resolution of the utility’s rate increase request and, in such an event, any such request filed by OPC “shall include a specified list of issues” that should be the subject of a hearing.⁴ All that intervenors offer in this regard is the bare allegation that comprehensive settlement is “highly unlikely.”⁵ For this reason alone, the Hearing Request should be denied.

Beyond just the technical deficiency of the Hearing Request, the “highly unlikely” allegation in the Hearing Request has no factual basis. It is pure conjecture. Although a preliminary report was provided by Staff prior to the Day 90 meeting on March 28th, Staff’s audit

² Order, p. 3.

³ Order, p. 6.

⁴ 4 CSR 240-3.050(20).

⁵ Hearing Request, p. 1. For purposes of this filing, Liberty Utilities is assuming, without conceding, that Intervenors have standing under the SURP to request an evidentiary hearing.

had not yet been completed and, accordingly, its positions on revenue requirement and rate consolidation are still not known. Additional events will need to play themselves out before anyone, including Liberty Utilities, knows whether “full resolution” as contemplated by the rule is possible. The next event will be the Day 120 meeting at which time Staff is obliged to offer a settlement agreement and, thereafter, the Day 150 filing by Staff of a disposition agreement. An added consideration is an anticipated request by OPC for the Commission to schedule one or more local public hearings.

Underlying the Hearing Request is Intervenor’s assertion that its procedural due process rights necessitate a contested case-like hearing.⁶ Liberty Utilities takes no position at this time on Intervenor’s standing to request an evidentiary hearing or whether the Commission should grant any such request that Intervenor may later make. However, the implication that the SURP is inherently procedurally deficient without one is untrue. To the contrary, the rule provides, variously, for customer notice and an opportunity for comment,⁷ the possibility of mediation or arbitration,⁸ local public hearings⁹ and, as noted above, for OPC to request an evidentiary hearing. Keeping in mind that ratemaking is a legislative undertaking¹⁰, an evidentiary hearing is not a threshold requirement, but, rather, a tool the Commission *may* employ if it believes one is necessary as it sometimes does in rulemakings. This is the reason the SURP rule requires that OPC identify issues with respect to which such a hearing is needed.

To summarize, the Hearing Request does not comply with the requirements of the Commission’s SURP and is prematurely made. Scheduling an evidentiary hearing at this time

⁶ Hearing Request, p. 2.

⁷ Subsection 14.

⁸ Subsection 3 and 16.

⁹ Subsection 17.

¹⁰ *Lightfoot v. City of Springfield*, 236 S.W.2d 348, 352 (Mo. 1951).

will do little more that complicate and disrupt an already intricate and demanding procedural calendar without good justification.

WHEREFORE, Liberty Utilities prays that the Commission deny the Hearing Request for the reasons aforesaid.

Respectfully submitted,

Paul Boudreau

Paul A. Boudreau MBE #33155
Dean L. Cooper MBE #36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
Phone: (573) 635-7166
paulb@brydonlaw.com
dcooper@brydonlaw.com

ATTORNEYS FOR LIBERTY UTILITIES
(MISSOURI WATER) LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail on this 11th day of April, 2018, to:

Office of the General Counsel
Governor Office Building
Jefferson City, MO 65101
staffcounsel@psc.mo.gov
casi.aslin@psc.mo.gov

Office of the Public Counsel
Governor Office Building
Jefferson City, MO 65101
opcservice@ded.mo.gov

Joshua Harden
1201 Walnut St., Suite 2900
Kansas City, MO 64106
Joshua.Harden@stinson.com

Paul A. Boudreau