

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

In the Matter of the Application of Liberty )  
Utilities (Missouri Water) LLC d/b/a Liberty )  
Utilities for Certificates of Convenience and )  
Necessity Authorizing it to Install, Own, )  
Acquire, Construct, Operate, Control, Manage )  
And Maintain a Water System and Sewer )  
System in Bolivar, Polk County, Missouri )

**File No. WA-2020-0397**

**STAFF RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”) and for its *Staff Recommendation*, states as follows:

**Procedural History**

1. On October 15, 2020, Liberty Utilities (Missouri Water) LLC, d/b/a Liberty Utilities (“Liberty”) filed applications with the Missouri Public Service Commission (“Commission”) requesting Certificates of Convenience and Necessity (“CCNs”) to install, own, acquire, construct, operate, control, manage, and maintain a water system (WA-2020-0397) and a sewer system (SA-2020-0398) in and around Bolivar, Polk County, Missouri (“Bolivar”).

2. On October 16, 2020, the Commission issued an *Order Directing Notice, Setting Date for Intervention, Consolidating Files, and Ordering Staff Recommendation*. The Commission consolidated the files under File No. WA-2020-0397.

3. Liberty, for the first time, filed its applications as a “Large Water Public Utility” per Section 393.320, RSMo, in order to purchase the water and sewer systems by utilizing the appraisal method, also outlined under Section 393.320, RSMo.

4. Due to the novel nature of Liberty’s applications and its request to utilize the appraisal method outlined under Section 393.320, RSMo, Staff initially informed the

Commission it would file a recommendation no later than February 15, 2021. On February 8, 2022, due to the need for continued investigation and analysis, Staff requested and the Commission granted an extension to file its recommendation no later than April 16, 2021.

### **Compliance with Section 393.320, RSMo.**

5. Section 393.320, RSMo, details the appraisal method that a “Large Water Public Utility” may choose from, “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.”<sup>1</sup> The statute further outlines that “the lessor of the purchased price or the appraised value...shall constitute the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility.”<sup>2</sup>

6. The statute defines a “Large Water Public Utility” as “a public utility that regularly provides water service **OR** sewer service to more than eight thousand customer connections (emphasis added)...”<sup>3</sup>

7. When interpreting a statute, it is important to first look at the language chosen by the legislature. Missouri courts have held that, “If the intent of the legislature is clear and unambiguous, by giving the language used in the statute its plain and ordinary meaning, then we are bound by that intent and cannot resort to any statutory construction in interpreting the statute.”<sup>4</sup>

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<sup>1</sup> Section 393.320.2, RSMo.

<sup>2</sup> Section 393.320.5, RSMo.

<sup>3</sup> Section 393.320.1, RSMo.

<sup>4</sup> *State ex rel. Union Elec. Co. v. Pub. Serv. Comm'n of State*, 399 S.W.3d 467, 479-480 (Mo.App. W.D. 2013) (quoting *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 455 (Mo. banc 2011) (quoting *Scott v. Blue Springs Ford Sales, Inc.*, 215 S.W.3d 145, 166 (Mo.App. W.D.2006)).

8. Further, the “...primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue.”<sup>5</sup>

9. In regards of the use of the word “or” in statute, the courts have already held that the use of the word “or” in a statute cannot be rendered meaningless. As stated in *Grain Belt Express Clean Line, LLC v. Pub. Serv. Comm’n*:

*ATX’s failure to distinguish between line CCNs in subsection 1 and area CCNs in subsection 2 resulted in the Commission’s issuance of either type of CCN being contingent on the utility’s receiving local approval. **Such an incorrect interpretation renders the use of the disjunctive “or” in subsection 3 meaningless. This Court cannot ignore words in a statute and must give meaning to every word used** (emphasis added).*<sup>6</sup>

10. Liberty, per its response to Staff data requests, is both a water and sewer corporation, currently serving 7,636 water customers and 638 sewer customers.<sup>7</sup>

11. Though Liberty’s separate applications for both the water and sewer systems around Bolivar, Polk County, Missouri have been consolidated for administrative efficiency, they remain separate applications: one from a public utility serving only 7,636 customers, and one from a public utility serving only 638 sewer customers.

12. This fact is particularly important considering the use of the word “or” in the definition of “Large Public Water Utility” under Section 393.320, RSMo. Ordinarily, “or” is a disjunctive term, meaning that it expresses an alternative, and is “used in logic as a sentential connective that forms a complex sentence which is true when at least one of its constituent sentences is true.”<sup>8</sup>

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<sup>5</sup> *Id.* (quoting *Parktown Imports, Inc. v. Audi of Am., Inc.*, 278 S.W.3d 670, 672 (Mo. banc 2009)).

<sup>6</sup> *Grain Belt Express Clean Line, LLC v. Pub. Serv. Comm’n*, 555 S.W.3d 469, 473 (Mo. banc 2018).

<sup>7</sup> Liberty Response to Staff Data Request 0004.

<sup>8</sup> Merriam-Webster Dictionary, [Or | Definition of Or by Merriam-Webster \(merriam-webster.com\)](https://www.merriam-webster.com/dictionary/or).

13. Utilizing the plain meaning of the word “or,” it is reasonable to conclude that the requirement established in Section 393.320, RSMo defining a “Large Public Water Utility” requires that the public utility provide water service to 8,000 or more connections. The public utility could also provide sewer service to 8,000 or more connections. However, Liberty puts forward its applications by asserting that it meets the statutory requirement by combining its water and sewer customers, which would equal 8,274 water **AND** sewer customers.

14. The conjunction “and” indicates a connection, or to signify “as well as.”<sup>9</sup>

15. 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.

16. As a result of Liberty not being eligible to use the appraisal procedures outlined under Section 393.320, RSMo, the Commission is not bound to set rate base for the acquired Bolivar system at the lesser of purchase price or appraised value.

### **Staff Recommendation**

17. Pursuant to Section 393.170, RSMo, no water or sewer corporation shall provide service to consumers without first having obtained approval from the Commission.

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<sup>9</sup> *Id.*, [And | Definition of And by Merriam-Webster \(merriam-webster.com\)](https://www.merriam-webster.com/dictionary/and).

18. When reviewing whether a utility should be granted a CCN, the Commission typically applies the five Tartan Criteria established in *In the Matter of Tartan Energy Company, et al.*, 3 Mo. PSC 3d 173, 177 (1994). The criteria are: (1) there must be a need for the service; (2) the applicant must be qualified to provide the service; (3) the applicant must have the financial ability to provide service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.

19. In addition to the Tartan Criteria, when considering an application involving existing water and/or sewer systems, the Commission analyzes the TMF capabilities of the applicant.

20. As explained in Staff's Memorandum, attached hereto as Appendix A, Staff conducted an investigation into Liberty's request. Based upon its review, Staff concludes 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.

21. However, as more thoroughly discussed in Appendix A, it is Staff's position that using the appraised value of \$20,000,000 as the basis for rate base for the Bolivar systems would effectively result in an acquisition premium of approximately \$7,000,000, an amount that Staff concludes would be contrary to the public interest. That in turn leads Staff to conclude that Liberty's request for a CCN, utilizing the appraisal method outlined under Section 393.320, is not convenient or necessary for the public service Section 393.170, RSMo, and does not promote the public interest.

22. Accordingly, Staff recommends that the Commission find that Liberty is not a “Large Public Water Utility” pursuant to Section 393.320, RSMo, and approve Liberty’s request for CCNs to install, own, acquire, construct, operate, control, manage, and maintain a water and sewer system in Bolivar, Polk County, Missouri, subject to the conditions and action outlined herein and within Appendix A.

**WHEREFORE**, Staff respectfully submits this *Staff Recommendation* for the Commission’s information and consideration, and hereby requests the Commission determine that Liberty does not meet the statutory definition of a “Large Public Water Utility” pursuant to Section 393.320, RSMo, and grant Liberty’s application pursuant to the following actions and conditions:

1. Grant Liberty a CCN to provide water and sewer service in the proposed Bolivar service areas, as modified as outlined herein;
2. Approve existing Bolivar water and sewer rates applicable to customers in Liberty’s Bolivar water and sewer approved service areas;
3. Establish rate base for the Bolivar systems utilizing Staff’s calculation of net book value for water and sewer assets as of March 31, 2021.
4. Require Liberty to submit tariff sheets, to become effective before closing on the assets, to include a service area map, and service area written description to be included in its EFIS tariffs P.S.C. MO No. 14 and 15, applicable to water service and sewer service in its Bolivar service area;
5. Require Liberty to notify the Commission of closing on the assets within five (5) days after such closing;
6. If closing on the water and sewer system assets does not take place within thirty (30) days following the effective date of the Commission’s order approving such, require Liberty to submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until Liberty determines that the transfer of the assets will not occur;
7. If Liberty determines that a transfer of the assets will not occur, require Liberty to notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and require Liberty to submit tariff sheets as appropriate that would cancel service area maps and descriptions

applicable to the Bolivar area in its water tariff, and rate sheets applicable to customers in the Bolivar area in both the water and sewer tariffs;

8. Require Liberty to develop a plan to book all of the Bolivar plant assets, with the concurrence of Staff and/or with the assistance of Staff, for original cost, depreciation reserve, and contributions (CIAC) for appropriate plant accounts, along with reasonable and prudent transaction, closing, and transition costs. This plan should be submitted to Staff for review within 60 days after closing on the assets;
9. Require Liberty to keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;
10. Adopt for Bolivar Water and Sewer assets the depreciation rates ordered for Liberty in Case No. WR-2018-0170;
11. Require Liberty to provide to the Customer Experience Department an example of its actual communication with the Bolivar service area customers regarding its acquisition and operations of the Bolivar water and sewer system assets, and how customers may reach Liberty, within ten (10) days after closing on the assets;
12. Require Liberty to obtain from Bolivar, as best as possible prior to or at closing, all records and documents, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions;
13. Except as required by §393.320, RSMo, make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to Liberty, including expenditures related to the certificated service area, in any later proceeding;
14. Require Liberty to distribute to the Bolivar customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13.040(3), within thirty (30) days of closing on the assets;
15. Require Liberty to provide to the CXD Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days of closing on the assets.
16. Require Liberty communicate with Bolivar customers concerning the billing date, delinquent date, and billing changes that will occur once the acquisition is approved, and provide a copy of this communication to CXD Staff.
17. Require Liberty to provide training to its call center personnel regarding rates and rules applicable to the Bolivar customers;

18. Require Liberty to include the Bolivar customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets; and
19. Require Liberty to file notice in this case outlining completion of the above-recommended training, customer communications, and notifications within ten (10) days after such communications and notifications.

Respectfully submitted,

**/s/ Travis J. Pringle**  
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Attorney for the Staff of the  
Missouri Public Service Commission

### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile, or electronically mailed to all parties and/or counsel of record on this 16th day of April, 2021.

**/s/ Travis J. Pringle**