

**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

RESPONSE TO LIBERTY’S MOTION AND REQUEST FOR COMMISSION ORDER

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), through the undersigned counsel, and for *Response to Liberty’s Motion and Request for Commission Order*, respectfully states as follows:

I. RESPONSE TO LIBERTY’S MOTION

1. On July 28, 2021, the Commission issued its Order Denying Motion for Partial Summary Determination and Issuing a Determination on the Pleadings That Liberty is Not a Large Water Public Utility (“Order”). This Order denied the request by Liberty Utilities (Missouri Water) LLC d/b/a Liberty Utilities (“Liberty”) for a decision that it met the definition of a “Large Water Public Utility” under Section 393.320.1(1), RSMo.¹ The Order determined that Liberty is not a “Large Water Public Utility” as defined by Section 393.320.1(1), RSMo.

2. The Commission’s Order did not rule on the merits of Liberty’s applications for certificates of convenience and necessity (“CCN”) to acquire the sewer and water systems in Bolivar, Missouri. Liberty’s applications are still pending before the Commission.

¹ Section 393.320.1(1) 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...”

3. Following the issuance of the Commission's Order, Liberty filed its Unopposed Motion to Suspend Procedural Schedule on August 2, 2021. The Commission granted Liberty's request the same day, cancelling the evidentiary hearing in this matter scheduled for August 12, 2021.

4. Liberty filed its Motion for Reconsideration and/or Application for Rehearing ("Motion") on August 6, 2021, in which it requested that the Commission find and conclude that Liberty is a "Large Water Public Utility" as contemplated under Section 393.320(1), RSMo.

5. Liberty raises the following three points in its Motion:

- a. Liberty regularly provides water service, sewer service, or water and sewer service to approximately 8,274 customer connections – or, Liberty regularly provides water service or sewer service to more than 8,000 customer connections;²
- b. The Missouri legislature defined only a Large Water Public Utility in Section 393.320.1(1), stating that a public utility may elect to use the statute if it "regularly provides water service or sewer service to more than eight thousand customer connections," and did not separately define a large sewer public utility, thus indicating that it is the number of connections served (more than 8,000) that is significant and not the type of service provided (water or sewer or water and sewer);³ and

² *Motion for Reconsideration and/or Application for Rehearing*, pg. 2-3.

³ *Id.*, pg. 3-6.

c. Acceptance of Staff's suggested statutory interpretation leads to illogical results and is inconsistent with the Commission's ratemaking process for Missouri water and sewer service providers.⁴

6. As to point (a), there is no dispute that Liberty regularly provides water service, sewer service, or water and sewer service to approximately 8,274 customer connections.⁵

7. As to point (b), Liberty has already brought forward this argument prior to the Commission's Order.⁶ This sort of conjecture is irrelevant because, as the Commission states in its Order,

even if the word 'or' could be considered ambiguous, an application of the rules of statutory construction and a comparison and contrast of the definitions and appraisal subsections of the statute confirms that the statute uses the term "or" in its ordinary sense to indicate an alternative.⁷

8. Liberty has not put forward any credible argument as to why the Commission's definition of "or," in the context of Section 393.320.1(1), RSMo, is not proper under the rules of statutory construction and interpretation.

9. As to point (c), this is another argument previously raised by Liberty.⁸ This argument ignores the fact that sewer and water utilities are two very distinct entities

⁴ *Id.*, pg. 6-9.

⁵ *Legal Issue and Statement of Uncontested Facts*, pg. 2, para. 5 (June 14, 2021). See also *Order Denying Motion for Partial Summary Determination and Issuing a Determination on the Pleadings that Liberty is Not a Large Water Public Utility*, pg. 4, para. 4 and pg. 6, para. J.

⁶ *Motion for Summary Determination and Request for Ruling*, pg. 6-7; *Reply in Support of Liberty's Motion for Summary Determination*, pg. 2, para. 4; and *Motion for Reconsideration and/or Application for Rehearing*, pg. 3-6.

⁷ *Order Denying Motion for Partial Summary Determination and Issuing a Determination on the Pleadings That Liberty is Not a Large Water Public Utility*, pg. 11.

⁸ *Motion for Summary Determination and Request for Ruling*, pg. 7-8; *Reply in Support of Liberty's Motion for Summary Determination*, pg. 3-4, para. 8; and *Motion for Reconsideration and/or Application for Rehearing*, pg. 6-9.

under statute.⁹ Further, the Commission robustly addressed this point in its Order, stressing that Liberty’s hypothetical scenario:

...is not absurd where the legislature decided to limit the public utilities allowed to elect the special rate base treatment under the statute based on the size and nature of service of the public utility.¹⁰

10. For the above reasons, Staff recommends that the Commission deny Liberty’s Motion.

II. REQUEST FOR COMMISSION ORDER

11. An appellate court can only entertain appeals regarding final orders or decisions of the Commission.¹¹

12. While the Commission’s Order resolved the issue as to whether Liberty met the definition of a “Large Water Public Utility” under Section 393.320.1(1), the Order does not resolve the ultimate issue before the Commission: whether Liberty’s acquisition of the Bolivar sewer and water systems is “necessary or convenient for the public interest” as contemplated by Section 393.170.3, RSMo.

13. In order for Liberty to appeal the Commission’s Order as to whether it meets the definition of a “Large Water Public Utility” per Section 393.320.1(1), a final order will need to be issued either granting or denying Liberty’s request for certificates of convenience and necessity (“CCN”) to acquire and operate the Bolivar sewer and water systems.

⁹ Sections 386.020(49) and (59), RSMo, respectively.

¹⁰ *Order Denying Motion for Partial Summary Determination and Issuing a Determination on the Pleadings That Liberty is Not a Large Water Public Utility*, pg. 11.

¹¹ *Matter of Missouri-Am. Water Co. v. Hall*, 470 S.W.3d 761, 764 (Mo.App. W.D. 2015), citing *AG Processing, Inc. v. KCP & L Greater Mo. Operations Co.*, 432 S.W.3d 226, 230 (Mo. App. W.D. 2014) (citing *MO. CONST. art V, § 18*).

14. In light of the Commission's Order finding that Liberty is not a "Large Water Public Utility" as contemplated under Section 393.320(1), RSMo, it is Staff's position that the proposed acquisitions are "necessary and convenient" within the meaning of Section 393.170.3, RSMo, subject to the utilization of Staff's calculation of net book value for rate base.¹²

15. Staff has determined that the net book value of the assets Liberty is proposing to purchase from the City of Bolivar to be approximately \$7,745,104 for the sewer system, and \$5,273,511 for the water system, with a combined value of \$13,018,615.¹³

16. Staff respectfully requests an order from the Commission approving 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 following conditions and actions:

- a. Grant Liberty CCNs to provide water and sewer service in the proposed Bolivar service areas, as modified as outlined herein;
- b. Approve existing Bolivar water and sewer rates applicable to customers in Liberty's Bolivar water and sewer approved service areas;
- c. 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;
- d. Require Liberty to submit tariff sheets, to become effective before closing on the assets, to include a service area map, and service area written

¹² *Direct Testimony of Curt B. Gateley* (Confidential), pg. 2, ln. 2-3.

¹³ *Id.*, Schedule CBG-d2, pg. 9.

- 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;
- e. Require Liberty to notify the Commission of closing on the assets within five (5) days after such closing;
 - f. 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;
 - g. 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;
 - h. 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;

- i. 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;
- j. Adopt for Bolivar Water and Sewer assets the depreciation rates ordered for Liberty in Case No. WR-2018-0170;
- k. 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;
- l. 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;
- m. Except as required by Section 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;

- n. 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;
- o. 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.
- p. 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.
- q. Require Liberty to provide training to its call center personnel regarding rates and rules applicable to the Bolivar customers;
- r. 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
- s. 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.¹⁴

17. In the alternative, if the Commission believes an evidentiary hearing is still necessary in this matter, Staff respectfully requests that the Commission issue an order

¹⁴ *Id.*, pg. 16-18.

re-establishing a procedural schedule for the Commission to decide if granting Liberty a CCN in this matter is “necessary or convenient for the public service.” Staff further requests the Commission issue an order asking the parties to suggest potential dates for an evidentiary hearing in this matter.

WHEREFORE, Staff hereby tenders its *Response to Liberty’s Motion and Request for Commission Order* for the Commission’s information and consideration.

Respectfully submitted,

/s/ Travis J. Pringle

Travis J. Pringle
Associate Counsel
Missouri Bar No. 71128
Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Mo 65102-0360
(573) 751-4140 (Telephone)
(573) 751-9285 (Facsimile)
(Email) travis.pringle@psc.mo.gov

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 August 2021.

/s/ Travis J. Pringle