

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held by telephone/internet
audio conference on the 8th day of
April, 2020.

In the Matter of the Joint Application of Liberty)
Utilities (Missouri Water), LLC d/b/a Liberty)
Utilities and The Empire District Electric)
Company for Authority for Liberty Utilities) **File No. WM-2020-0156**
(Missouri Water), LLC d/b/a Liberty Utilities to)
Acquire the Water Franchises and Assets of)
The Empire District Electric Company)

**ORDER APPROVING TRANSFER OF ASSETS
AND GRANTING CERTIFICATE OF
CONVENIENCE AND NECESSITY**

Issue Date: April 8, 2020

Effective Date: May 8, 2020

On December 27, 2019, Liberty Utilities (Missouri Water) LLC d/b/a Liberty Utilities (hereinafter Liberty Water) and The Empire District Electric Company (hereinafter Empire)¹ filed a joint application asking the Commission to approve a sale and transfer of water utility assets between the applicants whereby Empire will sell and transfer Empire's water utility assets, including all contracts, agreements, franchises, and certificates of convenience and necessity (CCNs), to Liberty Water.

On December 27, 2019,² the Commission issued its Order Directing Notice, Setting Intervention Date, and Directing Staff to File a Recommendation. No applications to intervene were filed. Staff filed a recommendation on March 27, recommending the Commission approve Empire's sale and transfer of water utility assets and CCNs to

¹ Hereinafter, collectively, the applicants.

² All date references hereafter will be to 2020, unless otherwise indicated.

Liberty Water subject to conditions. Staff, however, did not support Liberty Water's adoption of its own rules and regulations from P.S.C. MO No. 14 for the transferred Empire water customers.³ Staff stated there were sufficient differences in the rules and regulations between the two sets of tariffs that Liberty Water should adopt Empire's currently effective tariff and work towards a consolidation in the course of Liberty Water's next rate proceeding.⁴

Staff recommended the Commission do the following:

1. Authorize Empire to transfer utility assets and its current CCNs to Liberty Water;
2. Authorize Liberty Water to apply Empire's existing rates and rules on an interim basis immediately after closing on the assets, to apply to the Empire service area until an adoption notice tariff sheet becomes effective;
3. Require Empire to submit an adoption notice tariff sheet for the existing tariffs within 10 days after closing on the assets and as a 30-day tariff filing, for the existing Empire tariff;
4. Approve Empire's existing depreciation rates for water utility plant accounts to apply to the Empire service area assets;
5. If closing on the water system assets does not take place within 30 days following the effective date of the Commission's order approving such, require Liberty Water and/or Empire to submit a status report within 5 days after this 30-day period regarding the status of closing, and additional status reports within 5 days after each additional 30-day period,

³ Staff Report, Case File Memorandum, p. 2.

⁴ Staff Report, Case File Memorandum, p. 2.

until closing takes place, or until either Liberty Water or Empire determines that the transfer of the assets will not occur; and

6. Make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the acquisition at any later proceeding.

FINDINGS

Findings of Fact

Liberty Water is a Missouri limited liability company with its principal office located in Joplin, Missouri. It provides water and sewer service to customers in its Missouri service areas, as certificated by the Commission, serving approximately 3,000 water and/or sewer system customers in McDonald, Stone, Taney and Christian Counties in southwest Missouri; in Franklin and Jefferson Counties in eastern Missouri; and in Cape Girardeau County in southeast Missouri. Empire is a Kansas corporation with its principal office and place of business in Joplin, Missouri. Empire is qualified to conduct business and is conducting business in Missouri, as well as in the states of Arkansas, Kansas, and Oklahoma. The affected water assets are in Aurora, Verona, and Marionville, Lawrence County, Missouri, where Empire currently serves approximately 4,400 drinking water customers.⁵

Both applicants are subsidiaries of Liberty Utilities Co., a Delaware Corporation, which is a subsidiary of Algonquin Power & Utilities Corp (APUC).⁶ The Commission authorized the merger of Liberty Utilities Co. and Empire on October 7, 2016, whereby

⁵ Staff Report, Case File Memorandum, p. 1.

⁶ Joint Application, paragraph 14.

Liberty Utilities Co. acquired all of Empire's common stock.⁷ Customer service for each utility has been merged into one call center.⁸ Billing for Empire and Liberty Water customers is accomplished utilizing the same system.⁹ Empire's website is already rebranded "Liberty Utilities Empire District." There will be no foreseeable operational changes to either entity as a result of the asset transfer.¹⁰ Therefore, while this matter is a transfer of assets between two subsidiaries of Liberty Utilities Co., from a customer perspective it is primarily a restructuring.¹¹ The transfer will cause no change to or disruption of utility operation, and the primary difference that some ratepayers will experience is a change in the name of their utility provider.¹²

Conclusions of Law and Decision

The Commission has jurisdiction to rule on the application because Missouri law requires that "[n]o gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell. . .its. . .works or system. . .without having first secured from the commission an order authorizing it so to do."¹³ The Commission may deny the application only if approval would be detrimental to the public interest.¹⁴

Based upon the information provided in the verified joint application and upon the verified recommendation and memorandum of Staff, the Commission finds that the proposed transfer of assets is not detrimental to the public interest. The Commission

⁷ Staff Report, Case File Memorandum, p. 1.

⁸ Staff Report, Case File Memorandum, p. 1.

⁹ Staff Report, Case File Memorandum, p. 1.

¹⁰ Staff Report, Case File Memorandum, p. 2.

¹¹ Staff Report, Case File Memorandum, p. 1.

¹² Staff Report, Case File Memorandum, p. 4.

¹³ Section 393.190.1, RSMo.

¹⁴ *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo. 1934).

finds, however, that the applicant's proposal that Liberty Water adopt its existing rules and regulations from P.S.C. MO No. 14 for the transferred Empire water customers should not be granted. The Commission finds there are sufficient differences in the rules and regulations between the two sets of tariffs such that Liberty Water should adopt Empire's currently effective tariff and work towards a consolidation in the course of Liberty Water's next rate proceeding.

The joint application includes a request for authorization to transfer Empire's CCNs to Liberty Water. It expressly states no CCN is sought. The water assets in question and the customers served by the water system are located in Lawrence County, Missouri. Neither the joint application nor Staff's recommendation indicates Liberty Water currently has a CCN for the Lawrence County area. Such a deficiency cannot be cured by transferring Empire's CCNs to Liberty Water. Among other requirements for receiving a CCN, the CCN applicant must be qualified to provide the proposed service and have the financial ability to do so.¹⁵ Empire's CCNs were based in part upon Empire's meeting those criteria. Those qualifications are personal and not transferrable. In order to operate the water system and serve the Lawrence County customers, Liberty Water must have its own CCN for that area. On its own motion, the Commission will consider whether Liberty Water may be granted a CCN.

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."¹⁶ The Commission articulated the specific criteria to be used when

¹⁵ *In re Intercon Gas, Inc.*, 30 Mo. P.S.C. (N.S.), 561 (1991).

¹⁶ Section 393.170.3, RSMO.

evaluating applications for utility CCNs in the case *In re Intercon Gas, Inc.*, 30 Mo. P.S.C. (N.S.), 561 (1991). *Intercon* combined the standards used in several similar certificate cases and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.¹⁷

The Empire water assets and system in question currently serve approximately 4,400 drinking water customers in Aurora, Marionville, and Verona in southwest Missouri.¹⁸ Empire needed and currently has a CCN to serve these customers. Criteria one and five are satisfied: There is a need for the service, and the service promotes the public interest.

Liberty Water serves approximately 3,000 water and/or sewer system customers in McDonald, Stone, Taney and Christian Counties in the southwest; in Franklin and Jefferson Counties in the east; and in Cape Girardeau County in the southeast.¹⁹ The records of the Department of Natural Resources reveal no violations for the Liberty Water or Empire water system that would indicate operational compliance challenges,²⁰ and the Commission concludes that given Liberty Utilities Co. is the parent company for the joint applicants, the technical and managerial standards will continue to be met after the utility asset transfer. Criterion two is satisfied: The applicant is qualified to provide the service.

¹⁷ The factors have been referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Ord. *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, *3 (Mo. P.S.W.C.).

¹⁸ Staff Recommendation, Memorandum, p. 1.

¹⁹ Staff Recommendation, Memorandum, p. 1.

²⁰ Staff Recommendation, Memorandum, p. 2.

Liberty Water and Empire are both subsidiaries of Liberty Utilities Co., which is a subsidiary of APUC, and the Commission authorized the merger of Liberty Utilities Co. and Empire on October 7, 2016. Liberty Water, as a subsidiary of APUC, will continue to have access to sufficient financial capacity. Criterion three is satisfied: The applicant has the financial ability to provide the service.²¹ With respect to the physical delivery of water to customers, the system is operating now. The asset transfer will require no operational changes and no physical plant or personnel changes or additions.²² Criterion four is satisfied: Nothing about a simple asset transfer with nothing added or subtracted renders Liberty Water's continued operation of a currently operating system economically unfeasible. All CCN requirements being satisfied, the Commission finds Liberty Water's operation of the water assets which are the subject of the joint application is "necessary or convenient for the public service."²³

The Commission makes no finding that will preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the joint application to any later proceeding.

The joint applicants have filed no objections to Staff's recommendation. No party requested an evidentiary hearing in this matter, so the Commission may grant the application's request based upon the verified joint application and Staff's verified recommendation.²⁴ Based upon its review of the joint application and Staff's

²¹ Staff Recommendation, Memorandum, p. 1. Thus, with the satisfaction of criteria two and three, the "technical, managerial, and financial capacity" standards originally developed by the United States Environmental Protection Agency are met. See Staff Report Case File Memorandum, p. 2

²² Staff Recommendation, Memorandum, p. 2.

²³ Section 393.170.3, RSMO.

²⁴ See *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

recommendation, the Commission will grant the application except as stated herein and will grant Liberty Water a certificate of convenience and necessity.

THE COMMISSION ORDERS THAT:

1. The joint application for Liberty Water to acquire Empire's water and assets is granted, except as stated in the next paragraphs.
2. That part of the joint application²⁵ proposing to adopt Liberty Water's existing tariff rules and regulations for the customers within Empire's existing service area is denied.
3. Empire is authorized to sell and transfer to Liberty Water and Liberty Water is authorized to acquire the water utility assets located in Lawrence County, Missouri, described in the joint application.
4. Liberty Water and Empire are authorized to do and perform, or cause to be done and performed, all such acts and things, as well as make, execute and deliver any and all documents as may be necessary, advisable and proper to the end that the intent and purposes of the approved transaction may be fully effectuated.
5. Liberty Water shall apply Empire's existing water tariff rules and rates to the Empire service area on an interim basis immediately after closing on the assets to apply to the Empire service area until an adoption notice tariff sheet becomes effective.
6. Liberty Water shall submit an adoption notice tariff sheet for the existing tariffs within ten days after closing on the assets, as a 30-day tariff filing for the existing Empire tariff.

²⁵ Joint Application, paragraph 9.

7. Empire's existing depreciation rates for water utility plant accounts are approved to apply to the acquired Empire service area assets.

8. If closing on the water system assets does not take place within thirty days following the effective date of this order, Liberty Water and Empire shall submit a status report within five days after the thirty-day period regarding the status of closing. They shall file additional status reports within five days after each additional thirty-day period until closing takes place, or until either Liberty Water or Empire determines that the transfer of the assets will not occur.

9. Liberty Water is granted a new CCN to provide water service in the Lawrence County, Missouri, service area now served by Empire with the assets and water system which is the subject of this order, with Liberty Water to begin providing such service upon closing on the assets.

10. This order shall become effective on May 8, 2020.

11. This file may be closed on May 9, 2020.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur.

Graham, Regulatory Law Judge