

**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 to Acquire the Water and Sewer)
Franchises and Assets of Lakeland)
Heights Water Company, Oakbrier Water)
Company, R.D. Sewer Company LLC, and)
Whispering Hills Water System)

File No. WM-2020-0174

STAFF RECOMMENDATION

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

1. On February 6, 2020, Liberty Utilities (Missouri Water) LLC d/b/a Liberty Utilities (“Liberty Water”), filed an *Application* with the Missouri Public Service Commission (“Commission”) requesting the Commission approve its acquisition of the water and sewer franchises and assets of Lakeland Heights Water Company, Oakbrier Water Company, R.D. Sewer Company LLC, and Whispering Hills Water System (“Selling Utilities”). On May 21, 2020, the Commission issued its *Order Granting Further Extension of Time*, directing Staff to submit its recommendation no later than June 4, 2020.

2. Pursuant to § 393.190, RSMo, no water corporation shall “sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.”

When deciding whether to approve a regulated entity's request to transfer assets pursuant to § 393.190 RSMo, the Commission must determine that the transfer is "not detrimental to the public interest."¹

3. When considering applications proposing the transfer of the assets of existing water systems, the Commission typically analyzes the transferee's Technical, Managerial, and Financial ("TMF") criteria. In addition, while Liberty Water has requested the transfer of the Selling Utilities' existing certificates of convenience and necessity ("CCNs"), Staff asserts it is appropriate to review Liberty Water's request utilizing the Tartan Energy Criteria.² As explained in the Staff *Memorandum*, attached hereto as Appendix A, Staff has determined that Liberty Water possesses the necessary TMF criteria to own and operate the assets of the Selling Utilities', and fulfills the requirements of the Tartan Energy Criteria.

4. Accordingly, as more thoroughly explained in Staff's *Memorandum*, Staff concludes that the proposed transfer of assets is not detrimental to the public interest, and recommends approval with conditions described in the *Memorandum*.

5. The Commission need not hold a hearing if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989). Should no party or individual request a hearing, the Commission need not hold a hearing to grant a CCN to United.

¹ *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980); *State ex rel. City of St. Louis v. P.S.C.*, 335 Mo. 448, 459-460, 73 S.W.2d 393, 400 (Mo. banc 1934)

² In determining whether to grant a CCN, the Commission traditionally applies the five "Tartan Energy Criteria" established in *In the Matter of Tartan Energy Company, et al.*, 3 Mo. PSC 3d 173, 177 (1994): (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

WHEREFORE, Staff respectfully submits this *Staff Recommendation* for the Commission's information and consideration and hereby requests the Commission grant Liberty Utilities (Missouri Water) LLC request to acquire the water and sewer assets of the Selling Utilities' subject to the conditions outlined in Staff's *Memorandum*, attached hereto as Appendix A; and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

/s/ Mark Johnson

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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 4th day of June 2020.

/s/ Mark Johnson