

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held by telephone
and internet audio conference on
the 17th day of June, 2020.

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)	File No. WM-2020-0174
Heights Water Company, Oakbrier Water)	
Company, R.D. Sewer Company LLC, and)	
Whispering Hills Water System)	

**ORDER GRANTING TRANSFER OF ASSETS AND GRANTING
CERTIFICATES OF CONVENIENCE AND NECESSITY**

Issue Date: June 17, 2020

Effective Date: July 17, 2020

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 requesting that the Commission approve its acquisition of the water and sewer franchises and assets of Lakeland Heights Water Company (Lakeland Heights), Oakbrier Water Company (Oakbrier), R.D. Sewer Company LLC (R.D. Sewer), and Whispering Hills Water System (Whispering Hills)(collectively the Selling Utilities). Liberty Water also requested the transfer of the related certificates of convenience and necessity (CCNs).

The Commission issued notice of the application and set a deadline for the filing of applications to intervene, but no applications were received. The Commission ordered its Staff (Staff) to file a recommendation. Staff filed a recommendation on June 4, 2020, recommending approval of the transfer of assets and CCNs subject to conditions. No other responses were received. No responses or objections to Staff's recommendation were filed.

No party requested a hearing and the requirement for a hearing is met when the opportunity for a hearing has been provided.¹ Thus, the Commission will rule on the application.

Liberty Water provides water service to over 7,000 customers and sewer service to more than 400 customers in several service areas throughout Missouri. Liberty Water is a certificated water corporation and a sewer corporation, subject to the Commission's jurisdiction.²

Lakeland Heights provides water service to approximately 101 single-family residential customers in the Lakeland Heights subdivision, located in the Rockwood Point area of the City of Wappapello, Wayne County, Missouri. Lakeland Heights is a certificated water corporation, subject to the Commission's jurisdiction.³ Liberty Water's proposed improvements for Lakeland Heights appear to be consistent with the results of Staff's document review and observations at the time of Staff's inspection.

Oakbrier provides water service to approximately 78 single-family residential customers in the Oakbrier subdivision located in Butler County, Missouri. Oakbrier is a certificated water corporation, subject to the Commission's jurisdiction.⁴ Liberty Water's proposed improvements for Oakbrier appear to be consistent with the results of Staff's document review and observations at the time of Staff's inspection.

R.D. Sewer provides sewer service to approximately 176 single-family residential customers in a subdivision near the city of Dexter in Stoddard County, Missouri. R.D. Sewer is a certificated sewer corporation, subject to the Commission's jurisdiction.⁵ Liberty Water's

¹ *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

² Section 386.020(49), (59), RSMo 2016.

³ Section 386.020(59), RSMo 2016; CCN granted in Case No. 17928 (1973).

⁴ Section 386.020(59), RSMo 2016; CCN granted in WA-88-128.

⁵ Section 386.020(49), RSMo 2016; CCN granted in SO-2008-0289.

proposed improvements for R.D. Sewer appear to be consistent with the results of Staff's document review and observations at the time of Staff's inspection.

Whispering Hills provides water service to approximately 50 single-family residential customers in the Whispering Hills subdivision located in Wayne County, Missouri. Whispering Hills is a water corporation, subject to the Commission's jurisdiction.⁶ Liberty Water's proposed improvements for Whispering Hills appear to be consistent with the results of Staff's document review and observations at the time of Staff's inspection.

As regulated utilities, the Selling Utilities must obtain the Commission's authorization before selling or transferring their assets.⁷ In evaluating the proposed acquisition, the Commission can only disapprove the transaction if it is detrimental to the public interest.⁸

Liberty Water has acquired several small existing water and sewer systems, and, as a subsidiary of Algonquin Power & Utilities Corporation, is affiliated with other companies that undertake some of the tasks associated with utility service, such as customer billing, and technical resources. Liberty Water has demonstrated managerial capacity in the operation of its current system. Liberty Water has access to capital through its upstream affiliates. Staff's position is that Liberty Water has the technical, managerial, and financial capacities to acquire and operate the Selling Utilities. The Commission finds that allowing Liberty Water to acquire the assets of the Selling Utilities is not detrimental to the public interest.

The purchase price for the Selling Utilities is above the net book value of the assets to be acquired. It has been Staff's position in prior cases that utility rates for acquired properties should be based upon the remaining net book value associated with the original cost of utility plant at the time when the plant was first devoted to public use; rate base should not reflect the amount of any acquisition adjustment, either above or below net book value.

⁶ Section 386.020(59), RSMo 2016; CCN granted in WM-2009-0436.

⁷ Section 393.190, RSMo 2016.

⁸ *State ex rel. City of St. Louis v. Public Service Com'n of Missouri*, 73 S.W.2d 393, 400 (Mo banc 1934).

Liberty Water has not requested an acquisition adjustment in this matter. Liberty Water has the financial capacity to purchase and operate the Selling Utility's systems at the agreed to purchase price.

The Selling Utilities currently maintain a business office in Bernie, Missouri, that is used by many customers to pay their bills or conduct business with the Selling Utilities. Liberty Water will not maintain a local office in the area, but will establish a third-party payment center at a location yet-to-be-determined. Liberty Water's current customer service representatives will be available to take and process customer inquiries pertaining to billing and/or service issues, make necessary bill adjustments, enter into payment plans within company guidelines, interact with Staff in working with customer complaints, and manage new customer accounts and the closing of customer accounts.

Liberty Water proposed adopting the Selling Utilities' existing rates, and applying Liberty Water's existing tariff rules. There are sufficient differences in the rules and regulations between the two sets of tariffs that Staff recommends Liberty Water adopt the currently effective tariffs of the Selling Utilities, and work towards a consolidation at its next rate proceeding. Liberty Water did not object to this recommendation.

Staff recommends using the depreciation rates ordered in each of the Selling Utilities' most recent general rate cases: WR-2012-0266 for Lakeland Heights; WR-2012-0267 for Oakbrier; SR-2012-0263 for R.D. Sewer; and WM-2009-0436 for Whispering Hills. These rates will be reviewed during the pendency of Liberty Water's next rate case involving these systems. Liberty Water did not object to this recommendation.

The Commission may grant a water or sewer corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either

“necessary or convenient for the public service.”⁹ The Commission articulated the specific criteria to be used when evaluating applications for utility CCNs in the case *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The *Intercon* case 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.¹⁰ These criteria are known as the Tartan Factors.¹¹

There is a need for the service because as the customers of the Selling Utilities are already receiving service and will continue to need that service with the improvements Liberty Water proposes. Liberty Water is qualified to provide the service based on its current provisions of water and sewer service throughout its Missouri service areas. Liberty Water has demonstrated its financial ability by making appropriate investment in its current operations. The proposed transaction is economically feasible as no rate change is requested. The proposal promotes the public interest as demonstrated by positive findings in in the first four Tartan Factors.

The Commission finds that Liberty Water possesses adequate technical, managerial, and financial capacity to operate the water and sewer systems it wishes to purchase from the Selling Utilities. The Commission concludes that the factors for granting a CCN to Liberty Water have been satisfied and that it is in the public interest for Liberty Water to provide water and sewer service to the service areas currently served by the Selling Utilities. The

⁹ Section 393.170.3, RSMo 2016.

¹⁰ The factors have also been referred to as the “Tartan Factors” or the “Tartan Energy Criteria.” See Report and Order, *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.C.).

¹¹ *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

Commission will authorize the transfer of assets and grant Liberty Water the certificates of convenience and necessity to provide water and sewer service within the proposed service areas, subject to the conditions in Staff's memorandum.

Liberty Water also seeks a waiver of the Commission's 60-day notice requirement of Commission rule 20 CSR 4240-4.017(1)(D). Liberty Water certifies that it has had no communication with the office of the Commission regarding any substantive issue likely to be in this case during the preceding 150 days.

THE COMMISSION ORDERS THAT:

1. Liberty Water's request for waiver from the 60-day notice requirement of Commission rule 20 CSR 4240-4.017(1)(D) is granted.

2. The Selling Utilities are authorized to sell and transfer to Liberty Water the assets identified in the application.

3. Liberty Water is granted Certificates of Convenience and Necessity to install, acquire, build, construct, own, operate, control, manage and maintain water and sewer systems in the areas currently served by the Selling Utilities.

4. Upon closing of the asset transfer, the Selling Utilities are authorized to cease providing service, and Liberty Water is authorized to begin providing service.

5. Liberty Water shall adopt the currently effective tariffs of the Selling Utilities, and work towards a consolidation at its next rate proceeding.

6. Liberty water shall use the depreciation rates as recommended in Staff's Memorandum.

7. The transactions are subject to the following conditions as put forth in Staff's June 4, 2020, Memorandum:

A. Liberty Water shall submit an adoption notice prior to closing on the assets, to adopt the existing Lakeland Heights, Oakbrier, and Whispering Hills tariffs (emphasis original);

B. Liberty Water shall create and keep financial books and records for plant-in-service, revenues, and operating expenses (including invoices) in accordance with the NARUC Uniform System of Accounts;

C. Liberty Water shall provide training to its call center personnel regarding rates and rules applicable to the customers acquired from the Selling Utilities, prior to the customers receiving notification of the pending acquisition;

D. Liberty Water shall establish a third party local payment center and notify Staff of the location and associated payment fees within fifteen (15) days after closing on the assets;

E. Liberty Water shall distribute to the newly acquired customers, prior to the first billing from Liberty Water, an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its utility service, consistent with the requirements of Chapter 13 of the Commission rules, as well as notification regarding changes to the billing cycle, bill format, and payment options within fifteen (15) days of closing on the assets;

F. Liberty Water shall provide to the Customer Experience Department (CXD) Staff a sample of its actual communication with its newly acquired customers regarding its acquisition and operations of the utility assets, and how customers may reach Liberty Water, within fifteen (15) days after closing on the assets;

G. Liberty Water shall provide to the CXD Staff a sample of five (5) billing statements for each acquired company from the first month's billing within thirty (30) days after closing on the assets;

H. Liberty Water shall include the customers acquired from the Selling Utilities in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;

I. Liberty Water shall file notice in this case once the Staff recommendations regarding staff training, payment center, informational brochure, communications, and billing are completed.

8. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding.

9. This order shall become effective on July 17, 2020.



BY THE COMMISSION

Morris L. Woodruff

Morris L. Woodruff
Secretary

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

Hatcher, Regulatory Law Judge.