

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 28<sup>th</sup> day of July, 2021.

In the Matter of the Application of Liberty Utilities )  
(Missouri Water) LLC d/b/a Liberty Utilities for )  
Certificates of Convenience and Necessity ) File No.: WA-2020-0397<sup>1</sup>  
Authorizing it to Install, Own, Acquire, Construct, )  
Operate, Control, Manage, and Maintain a Water )  
System and Sewer System in Bolivar, Polk County, )  
Missouri )

**ORDER DENYING MOTION FOR PARTIAL  
SUMMARY DETERMINATION AND ISSUING  
A DETERMINATION ON THE PLEADINGS THAT  
LIBERTY IS NOT A LARGE WATER PUBLIC UTILITY**

Issue Date: July 28, 2021

Effective Date: August 7, 2021

**PROCEDURAL HISTORY**

On October 15, 2020,<sup>2</sup> Liberty Utilities (Missouri Water), LLC d/b/a Liberty Utilities (Liberty) filed two (2) applications. Both applications requested the Commission issue certificates of convenience and necessity (“CCN”) authorizing Liberty to acquire a water system and a sewer system in Bolivar, Polk County, Missouri, and begin providing water and sewer services pursuant to Missouri statutes Sections 393.170 and 393.320, RSMo<sup>3</sup> and Commission Rules 20 CSR 4240-2.060, 20 CSR 4240-3.305, and 20 CSR 4240-3.600. Both applications requested “certificates.”

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<sup>1</sup>On October 16, 2020, the Commission consolidated Files WA-2020-0397 and SA-2020-0398 with WA-2020-0397 to be the lead case.

<sup>2</sup> All date references hereinafter will be to 2021 unless otherwise indicated.

<sup>3</sup> All statutory references are to the 2016 Revised Statutes of Missouri as supplemented.

Both applications alleged Liberty's election to exercise an option provided by Section 393.320, RSMo, where a "large" utility acquires a "small" utility, "large" and "small" being defined by the statute. The procedures outlined in this statute involve setting a rate making rate base for the acquired "small" utility equal to the lesser of either the purchase price or a fair market value appraisal for the small utility. The applications allege that Liberty and Bolivar are, respectively, "large" and "small" utilities<sup>4</sup> and asks the Commission to set the ratemaking rate base for the Bolivar water and sewer assets. The Commission opened two files, one for the sewer system application (SA-2020-0398), and one for the water system application (WA-2020-0397). Both applications requested consolidation, and the Commission consolidated the files on October 16, 2021.

On April 16, 2021, the Commission's Staff (Staff) filed its recommendation, objecting to the Commission's granting Liberty the benefit of Section 393.320, RSMo, procedures, contending that Liberty is not a "large" utility under the statutory definition in Section 393.320.1(1), RSMo. An evidentiary hearing was scheduled for August 12 and 13. On June 14, Liberty, Staff, and the Office of the Public Counsel filed a pleading entitled Legal Issue and Statement of Uncontested Facts.

On June 16, Liberty filed a Motion for Summary Determination and Request for Ruling on this limited issue (Motion). On June 25, Staff filed its Response to Liberty's Motion, and on July 1, Liberty filed its Reply in Support of Liberty's Motion for Summary Determination. In their respective pleadings, both parties asked the Commission to rule on the Section 393.320 issue and to waive Commission Rule 20 CSR 4240-2.117(1)(A)

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<sup>4</sup> Section 393.320.1(1) defines a "large water *public* utility." Section 393.320.1(2) defines a "small water utility."

requiring motions for summary determination to be filed more than 60 days prior to a hearing. Liberty has asked the Commission for its ruling that it is a “large public water utility.” Staff has asked the Commission for its ruling that Liberty is not a “large public water utility.”

### **FINDINGS OF FACT**

Based upon the Legal Issue and Statement of Uncontested Facts agreed to by Liberty, Staff, and the Office of Public Counsel filed on June 14, the Commission makes the following findings of fact relevant to the single issue presented by the parties for summary determination:

1. Liberty is a Missouri limited liability company with its principal office located at 602 Joplin Street, Joplin, Missouri, 64901, and provides water and sewer services to customers in its Missouri service areas, as certificated by the Commission.

2. Liberty is a “water corporation,” a “sewer corporation,” and a “public utility,” as those terms are defined by Section 386.020, RSMo, and, therefore, is subject to the general regulatory jurisdiction of the Commission as provided by law.

3. Effective November 27, 2019, Liberty and the City of Bolivar, Missouri, executed an Asset Purchase Agreement (APA).<sup>5</sup> Pursuant to the APA, Liberty proposes to acquire substantially all operating assets currently used by Bolivar for its water and sewer operations. Liberty filed its initial Notices of Intended Case Filing regarding the acquisition on January 30, 2020, at which time an election had been scheduled for April 7, 2020, for the Bolivar voters to consider approving the transfer of the assets by Bolivar to Liberty.

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<sup>5</sup> All findings in this paragraph are based upon the parties’ June 14 Legal Issue and Statement of Uncontested Facts.

The election was postponed to June 2, 2020, and on that date the citizens of Bolivar voted 743 to 448 in favor of transferring the water and wastewaters systems and authorizing Bolivar to enter into a franchise agreement with Liberty for water and sewer service.

4. Per the stipulations set out in the June 14 Legal Issue and Statement of Uncontested facts, the Commission finds that Liberty regularly provides water and/or sewer service to approximately 8,274 customer connections (approximately 7,636 water and approximately 638 sewer), with approximately 8,079 unique water/sewer customers.

5. The Commission officially notices all the stipulations set out in the Legal Issue and Statement of Uncontested Facts agreed to by Liberty, Staff and the Office of Public Counsel filed on June 14.

6. Finally, the Commission will officially notice that the Merriam-Webster Dictionary defines “or” as a function word to indicate an alternative.<sup>6</sup>

### **CONCLUSIONS OF LAW**

Based in relevant part on the non-controverted verified pleadings and the stipulations set out in the June 14 Legal Issue and Statement of Uncontested Facts, the Commission makes the following conclusions of law:

A. Liberty Water is a certificated water corporation and a sewer corporation, subject to the Commission’s jurisdiction.<sup>7</sup>

B. The procedures set out in Section 393.320, RSMo, shall be applied to large water public utilities in the acquisition of a small water utility.<sup>8</sup>

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<sup>6</sup> *Merriam-Webster Dictionary*, Or | Definition of Or by Merriam-Webster (merriam-webster.com).

<sup>7</sup> Section 386.020(49), (59), RSMo 2016.

<sup>8</sup> Section 393.320.8, RSMo.

C. The procedures contained in Section 393.320, RSMo, may be chosen by a large water public utility, and if so chosen shall be used by the Commission to establish the ratemaking rate base of a small water utility during an acquisition.<sup>9</sup>

D. The Section 393.320, RSMo, procedures provide for an appraisal by three appraisers, one appointed by the small water utility, one appointed by the large water public utility, and the third appointed by the other two appraisers. Each must be a disinterested appraiser and a certified general appraiser under chapter 339, RSMo. The three shall “[j]ointly prepare an appraisal of the fair market value of the water system and/or sewer system.” The statute provides that “determination of fair market value shall be in accordance with Missouri law and with the Uniform Standards of Professional Appraisal Practice.” The statute provides that “the appraisal, when signed by two of the appraisers, constitutes a good and valid appraisal.”

E. The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking base for the small water utility as acquired by the acquiring large water public utility.<sup>10</sup>

F. The Commission shall issue its decision establishing the ratemaking rate base of the small water utility in its order approving the acquisition.<sup>11</sup>

G. With exceptions not relevant here, Section 393.320.1(1), RSMo, defines “large water public utility” as “a public utility that regularly provides water service or sewer

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<sup>9</sup> Section 393.320.2, RSMo.

<sup>10</sup> Section 393.320.6(1), RSMo.

<sup>11</sup> Section 393.320.5(2), RSMo.

service to more than eight thousand customer connections and that provides safe and adequate service . . . .”

H. Section 393.320.1(2), RSMo defines “small water utility” as one regularly providing water service or sewer service to eight thousand or fewer customer connections.

I. Commission Rule 20 CSR 4240-2.117(1)(E) allows the Commission to grant a motion for summary determination if “the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest.”

J. There is no genuine issue as to any material fact that “Liberty regularly provides water and/or sewer service to approximately 8,274 customer connections (approximately 7,636 water and approximately 638 sewer), with approximately 8,079 unique water/sewer customers.”

K. Rule 20 CSR 4240-2.117 (2), the Commission’s rule on Determination on the Pleadings, states that the Commission “may, on its own motion or on the motion of any party, dispose of all or any part of a case on the pleadings whenever such disposition is not otherwise contrary to law or contrary to the public interest.”<sup>12</sup>

L. The goal of statutory construction is to ascertain the legislature's intent in enacting the statute.<sup>13</sup> A court's analysis is guided by the language of the statutes.<sup>14</sup> A

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<sup>12</sup> 20 CSR 4240-2.117 (2)

<sup>13</sup> *United Pharmacal Co. of Missouri, Inc. v. Missouri Bd. Of Pharmacy*, 208 S.W.3d 907, 909 (Mo. Banc 2006).

<sup>14</sup> *United Pharmacal Co. of Missouri, Inc. v. Missouri Bd. of Pharmacy*, at 909.

court does not presume the legislature enacts meaningless provisions.<sup>15</sup> The court must presume every word, sentence or clause in a statute has effect, and the legislature did not insert superfluous language.<sup>16</sup> The Commission is bound by the language of the statute if the meaning is clear and unambiguous based on the plain and ordinary meaning of the wording of the statute.<sup>17</sup> A court will look beyond the plain meaning of a statute only when the language is ambiguous or would lead to an absurd or illogical result.<sup>18</sup> “When the words are clear, there is nothing to construe beyond applying the plain meaning of the law.”<sup>19</sup>

M. If the meaning of a statute or regulation enforced by the Commission is ambiguous and the canons of construction cannot resolve the issue, the Court is entitled to give weight to a textually permissible interpretation adopted by the Commission.<sup>20</sup> But no deference will be given to an agency’s interpretation where the ambiguity can be resolved by resorting to the canons of construction.<sup>21</sup>

N. The Commission must determine the use of the word “or” in the statute to have a plain and ordinary meaning if the meaning would be “plain and clear to a person

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<sup>15</sup> *E & B Granite, Inc. v. Dir. of Revenue*, 331 S.W.3d 314, 317 (Mo. banc 2011), quoting *Kilbane v. Dir. of Revenue*, 544 S.W.2d 9, 11 (Mo. banc 1976).

<sup>16</sup> *Wehrenberg, Inc. v. Dir. of Revenue*, 352 S.W.3d 366, 367 (Mo. banc 2011).

<sup>17</sup> *State ex. Rel. Union Elec. Co. v. Pub. Serv. Comm’n*, 399 S.W.3d 467, 480-81 (Mo. App. W.D. 2013).

<sup>18</sup> *City of University City v. At&T Wireless Services*, 371 S.W.3d 14, 19 (Mo. App. E.D. 2012); *Akins v. Dir. of Revenue*, 303 S.W.3d 563, 565 (Mo. banc 2010). *Bateman v. Rinehart*, 391 S.W.3d 441, 446 (Mo. 2013)

<sup>19</sup> *State ex rel. Valentine v. Orr*, 366 S.W.3d 534, 540 (Mo. banc 2012) (quoting *State v. Rowe*, 63 S.W.3d 647, 649 (Mo. banc 2002)).

<sup>20</sup> *Missouri Public Service Commission v. Union Electric Company, d/b/a Ameren Missouri*, 552 S.W.3d 532 (Mo. banc 2018), F.N. 9.

<sup>21</sup> *Missouri Public Service Commission v. Union Electric Company, d/b/a Ameren Missouri*, 552 S.W.3d 532 (Mo. Banc 2018), F.N. 9.

of ordinary intelligence.”<sup>22</sup> When employing the plain meaning of a word to interpret a statute, the law requires the use of a dictionary.<sup>23</sup>

O. “The provisions of a legislative act are not read in isolation but construed together, and if reasonably possible, the provisions will be harmonized with each other.”<sup>24</sup>“In determining the intent and meaning of statutory language, the words must be considered in context and sections of the statutes in *pari materia*, as well as cognate sections, must be considered in order to arrive at the true meaning and scope of the words.”<sup>25</sup> In ascertaining legislative intent, courts are guided by established rules of statutory construction, including the rule known as “*expressio unius est exclusio alterius*” (i.e., “the express mention of one thing implies the exclusion of another”).<sup>26</sup>

## DECISION

There is no genuine issue as to the material facts that “Liberty regularly provides water and/or sewer service to approximately 8,274 customer connections (approximately 7,636 water and approximately 638 sewer), with approximately 8,079 unique water/sewer customers.” The question presented for determination here is one of law: Whether these facts qualify Liberty as a “large water public utility” within the meaning of that term as defined in Section 393.320.1(1), RSMo. Staff contends that Liberty does not qualify as “large.” Staff contends that a company qualifies as a “large water public utility” only if it has either at least 8,001 sewer service customer connections or at least 8,001 water

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<sup>22</sup> *State ex. Rel. Union Elec. Co. v. Pub. Serv. Comm’n* at 480 (quoting *State v. Daniel*, 103 S.W.3d 822, 826 (Mo. App. W.D. 2003).

<sup>23</sup> *State ex rel. Humane Society of Missouri v. Beetem*, 317 S.W.3d 669, 673 (Mo. App. W.D. 2010).

<sup>24</sup> *Bachtel v. Miller Cty. Nursing Home Dist.*, 110 S.W.3d 799, 801 (Mo. banc 2003).

<sup>25</sup> *State ex rel. Evans v. Brown Builders Elec. Co.*, 254 S.W.3d 31, 35 (Mo. banc 2008); cited in *R.M.A. by Appleberry v. Blue Springs R-IV School District*, 568 S.W.3d 420, 429 (Mo. banc 2019)

<sup>26</sup> *McCoy v. Hershewe Law Firm, P.C.*, 366 S.W.3d 586, 593-594 (Mo. App. W.D. 2012).



service customer connections.<sup>27</sup> Liberty contends it qualifies as “large.” Liberty contends that a company with neither 8,001 sewer service customer connections nor 8,001 water customer connections nevertheless qualifies as “large” if the aggregate total of water and sewer connections exceeds 8,000.<sup>28</sup>

Section 393.320.1(1) defines “large water public utility” as “a public utility that regularly provides water service *or* sewer service to more than eight thousand customer connections and that provides safe and adequate service . . .”[emphasis added]. At issue here is the meaning of “or.” The Merriam-Webster Dictionary defines “or” as a function word to indicate an alternative.<sup>29</sup> The statutory definition of “large water public utility” does not use *and/or*; and, similarly, Section 393.320.1(2) does not use *and/or* in defining a “small” company. Thus, the definition of “large” is not phrased as *a public utility that regularly provides water and/or sewer service*. Nor does the statute in plain words otherwise expressly state that water service connections and sewer service connections may be aggregated together to determine whether the utility is “large.” Thus, the language of the statute does not indicate that the word “or” is being used in other than its ordinary sense to indicate an alternative.

Still mindful, however, that neither does the statute expressly state that sewer and water connections may *not* be aggregated, the Commission next applies the rules of statutory construction to resolve any ambiguity. The provisions of a legislative act are not read in isolation but construed together, and, if reasonably possible, the provisions will be

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<sup>27</sup> Staff Response to Liberty’s Motion for Summary Determination, Request for Ruling and Motion for Waiver, 4

<sup>28</sup> Liberty’s Motion for Summary Determination and Request for Ruling, 6-8.

<sup>29</sup> *Merriam-Webster Dictionary*, Or | Definition of Or by Merriam-Webster (merriam-webster.com).

harmonized with each other.”<sup>30</sup> Applying this canon of statutory construction and looking next to the appraisal procedure subsections of Section 393.320, RSMo, the Commission notes that the legislature there used an “and/or” + “an” formula to signal evaluating the different systems together. Section 393.320.3(2)(a), RSMo, states that the appraisers shall jointly “prepare an appraisal of the fair market value of the water system and/or sewer system.” The statute uses “and/or” in connection with “an” to state that when there is both a sewer *and* a water system,<sup>31</sup> both may be appraised together in a single appraisal: The appraisers shall “prepare *an* appraisal of the fair market value of the water system *and/or* sewer system” [emphasis added].<sup>32</sup>

It is apparent after comparing the definition section and the appraisal subsections of Section 393.320, RSMo, that when the legislature wishes to allow sewer and water systems to be considered together as one, it expressly says so. Applying the rule of statutory construction that “*expressio unius est exclusio alterius*,” the conclusion follows that Liberty is not a large public water utility. The use of the “and/or” + “an” formula in the appraisal section signals that the appraisers may prepare and return one appraisal where there is both a sewer and a water system. In contrast, the absence of the “and/or” + “an” formula in the “large” definition section, where the focus is service connections and not dollars, means that different kinds of service connections may not be aggregated together to determine the size of the public utility. The *inclusion* of “and/or” + “an” to permit combining water and sewer appraisals compared with the *exclusion* of “and/or” + “an” in the large/small definition section, excludes combining water and sewer customer

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<sup>30</sup> *Bachtel v. Miller Cty. Nursing Home Dist.*, 110 S.W.3d 799, 801 (Mo. banc 2003).

<sup>31</sup> Section 393.320.3(2)(a), RSMo.

<sup>32</sup> Section 393.320.3(2)(a), RSMo.

connections to qualify as a large public water utility. In summary, 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.

A court “will look beyond the plain meaning of the statute only when the language is ambiguous or would lead to an absurd or illogical result.”<sup>33</sup> The final question is whether the application of the plain meaning of the term “or” will lead to an absurd result. Liberty contends that a construction of the statute against Liberty in this case can lead to absurd results in hypothetical cases such as the “small” company with 8,000 water connections and 8,000 sewer connections acquired by the “large” one with only 8,001 sewer connections. It should be noted that Liberty’s hypothetical is combining under one company the total customers of two very distinct utilities. The hypothetical scenario, however, 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. This is reasonable because a water company is a distinctly different utility providing a service with different rates from a sewer company and possibly different customers. In which case, under Liberty’s hypothetical, it would not be absurd for a sewer company with 8,001 sewer connections to be entitled to the statute’s special treatment when acquiring a small sewer company, even if there is an affiliated water company. Such an interpretation of the statute, based upon the plain meaning of “or”, recognizes the legislature’s minimum requirement of 8,001 customer connections for a public utility to use the special treatment under Section 393.320, RSMo. The Commission

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<sup>33</sup> *Akins v. Dir. of Revenue*, 303 S.W.3d 563, 565 (Mo. banc 2010); *Bateman v. Rinehart*, 391 S.W.3d 441, 446 (Mo. 2013)

determines that applying the plain meaning of “or” in this case does not lead to an absurd result. The Commission will grant a waiver of the 60-day rule in 20 CSR 4240-2.117(1), and deny Liberty’s Motion for Summary Determination that Liberty is a “large water public utility.” Further, based upon the pleadings and both parties’ requests for a ruling, the Commission finds that it is not contrary to the public interest for the Commission now to dispose of part of the case on the pleadings and make a determination on whether Liberty is “large.” As allowed by Rule 20 CSR 4240-2.117(2), the Commission will make a determination on the pleadings that Liberty is not a “large water public utility” as the term is defined in Section 393.320.1(1), RSMo. Because the case is set for hearing on August 12, the Commission will make this order effective on August 7.

**THE COMMISSION ORDERS THAT:**

1. The Commission grants the parties’ request to waive the sixty-day requirements of Commission Rule 20 CSR 4240-2.117(1).
2. Liberty’s request for an order of partial summary determination that it is a “large water public utility” is denied.
3. Per Rule 20 CSR 4240.2.117(2) the Commission makes a determination on the pleadings and declares that Liberty is not a “large water public utility” as defined by Section 393.320.1(1), RSMo.
4. This order shall be effective on August 7, 2021.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff  
Secretary

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

Graham, Regulatory Law Judge


**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 28<sup>th</sup> day of July, 2021.**



  
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**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**July 28, 2021**

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

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**



**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.