

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of The Empire)
District Electric Company, et al., for an) Case No. AO-2018-0179
Affiliate Transactions Rule Variance)

INITIAL POST-HEARING BRIEF OF THE MISSOURI UTILITIES

COME NOW the Applicants, The Empire District Electric Company, The Empire District Gas Company, Liberty Utilities (Midstates Natural Gas) Corp., and Liberty Utilities (Missouri Water) LLC (the “Missouri Utilities”), and respectfully submit their Initial Post-Hearing Brief to the Missouri Public Service Commission (“Commission”).

Request for Relief and Issue Presented:

With their original application, the Missouri Utilities sought two variances from the Commission’s affiliate transaction rules with regard to what is known as a “money pool.” At this time, and pursuant to the Nonunanimous Stipulation and Agreement executed and filed herein by the Staff of the Commission and the Missouri Utilities on January 24, 2019 (the “Stipulation”), the Missouri Utilities are seeking only a variance regarding competitive bidding requirements in relation to the money pool. The Missouri Utilities are not requesting approval of the money pool as a whole, and the Missouri Utilities are not seeking any ratemaking treatment in this proceeding.

As set forth in the Response to Order Directing Filing, submitted herein by Staff and the Missouri Utilities on July 12, 2019 (the “Joint Response”), the Missouri Utilities have modified their position and request for relief, as previously set forth in the Stipulation, in order to address concerns raised at the evidentiary hearing in this matter. The Missouri Utilities continue to request only a variance from the Commission’s competitive bidding requirements, with

conditions imposed to protect the Missouri Utilities' customers, all as set forth in the Stipulation and the Joint Response.

The only issue properly before the Commission in this proceeding is whether the Commission should grant the Missouri Utilities a variance from sections 4 CSR 240-20.015(3)(A) and 4 CSR 240-40.015(3)(A), the competitive bidding requirements of the Commission's electric and gas affiliate transaction rules.

The additional issues proposed by the Office of the Public Counsel ("OPC") are irrelevant, seek impermissible advisory opinions from the Commission, attempt to address actions that may or may not take place in the future, and request that the Commission engage in a fishing expedition. Essentially, OPC's proposed Issue Nos. 2-6 represent an ad hoc complaint against the Missouri Utilities regarding their compliance with all rules and with orders issued in Commission Case No. EM-2016-0213, and also constitute an impermissible collateral attack on the *Order Approving Stipulations and Agreements and Approving Merger Transaction* issued in Case No. EM-2016-0213. If OPC believes the Missouri Applicants have violated a Commission rule or order, OPC is not without recourse. OPC may bring a complaint or challenge allocated costs in a rate case. Making these issues a part of the Missouri Utilities' variance request proceeding would improperly shift the burden of proof and violate the Missouri Utilities' due process rights.

The Money Pool Structure:

The "money pool" which is the subject of the Missouri Utilities' variance request is a cash-management arrangement among regulated subsidiaries of Liberty Utilities Co. ("LUCo"), under which the parties to the agreement may lend to (when they have excess cash) or borrow from (when they have short-term cash needs) each other. (Direct Testimony of Mark Timpe,

Ex. 1, p. 7) The Money Pool will allow for an efficient use of funds among LUCo's regulated utility operations, with participants contributing excess funds to the money pool and receiving a pro-rata share of all loan and/or investment interest. (Ex. 1, pp. 7-8) Participants in the money pool are not subject to borrowing limits, since investment-grade rated LUCo guarantees all loans made from the money pool. (Ex. 1, p. 7) There are no requirements for the Money Pool participants to post collateral or pledge utility assets. (Ex. 1, p. 10)

Mark Timpe, LUCo's Director – Treasury, explained how the money pool will be operated. The interest rate applied to all borrowings under the Money Pool Agreement is equal to the lowest rate payable on borrowings under the LUCo Credit Agreement. The borrowing rate of interest is also the interest rate paid to Money Pool participants who contribute excess funds, to the extent those funds are lent to borrowing participants. Any excess funds after borrowing participant needs have been met will be invested into qualifying highly liquid and high-quality investment vehicles as outlined in the Money Pool Agreement. (Ex. 1, pp. 7-8)

Mr. Timpe is responsible for, among other things, the day to day funding needs of all LUCo subsidiaries and management of banking services. When the Money Pool is in operation, the cash needs of each of the parties will be determined by Mr. Timpe or his designee. Daily bank balance information will be reviewed each morning for each party participating in the money pool and used, along with any other known funding needs for that day, to assess whether the individual parties require funds or have excess funds. All excess funds will then be contributed to the money pool, with excess funds loaned to participants in need of funds. Should the quantity of excess funds be insufficient to fund participant borrowing needs, the next source of funds will be LUCo's own cash on hand. If the combination of excess funds and

LUCo's excess cash, if any, are insufficient to fund participant borrowing needs, then LUCo will initiate a draw on the LUCo Credit Agreement or issue commercial paper. (Ex. 1, p. 8)

There is Good Cause to Grant the Requested Variance:

Commission Rules 4 CSR 240-20.015(3)(A) and 4 CSR 240-40.015(3)(A) provide that when a regulated utility "purchases information, assets, goods or services from an affiliated entity, the regulated [utility] shall either obtain competitive bids for such information, assets, goods or services or demonstrate why competitive bids were neither necessary nor appropriate." A strong argument can be made that no variance is required from the rules in order for the Missouri Applicants to participate in the Money Pool as planned, as the Missouri Applicants could "demonstrate why competitive bids were neither necessary nor appropriate" as to the Money Pool transactions. Commission Rules 4 CSR 240-20.015(3)(A) and 4 CSR 240-40.015(3)(A) do not, however, provide when these demonstrations would be made, how often they would be required, or what standards would need to be met. As explained at the hearing, the Missouri Applicants are seeking a variance out of an abundance of caution. A large number of entities will be participating in the Money Pool, and there will be a very large number of financial transactions. (Tr., Vol. 2, p. 88) Also, subsection (10) of the rules specifically contemplates the granting of variances.

The evidence presented demonstrates that the Missouri Applicants have shown good cause for the Commission to grant them a variance from the bidding requirements of the Commission's affiliate transactions rules for the purpose of them joining and participating in Liberty Utilities' regulated utility money pool. As explained by Mr. Timpe, the interest charges to money pool borrowing participants will be based on either LUCo's Credit Facility or its commercial paper program.

Both of these funding vehicles are based on LUCo's investment grade credit ratings. The borrowing rates are already competitively set by the very dynamic commercial loan and commercial paper markets. These markets effectively provide continuous bidding which well exceeds any annual competitive bidding requirement. Competitive forces amongst LUCo's bank group participants will also ensure that best available credit pricing and fees are made available to LUCo which in turn will be passed along to money pool participants.

(Ex. 1, p. 4)

The Missouri Utilities will receive the lowest cost available financing and higher interest income earned on excess fund balances. As participants in the Money Pool, the Missouri Utilities will have an opportunity to earn a higher rate of return on their excess cash than they could earn on those funds in a stand-alone money market fund, as any portion of excess funds lent to borrowing participants will receive interest at the higher loan rate, and the remaining funds will be invested in high grade overnight money market instruments. When there is borrowing by a Missouri Utility, the benefit comes from the loan interest rate being based on the lowest available borrowing rate under the LUCo Credit Agreement or the commercial paper rate, the pricing of which is based on LUCo's investment-grade credit rating. The borrowing rates available to participants are expected to be as low as, if not lower than, the rates participants could otherwise obtain for themselves. (Ex. 1, pp. 4-5)

Although not directly relevant to the variance request, the fee sharing methodology in the Money Pool Agreement is also reasonable and appropriate.

Those who are borrowers under the money pool will bear their fair share of the costs of the LUCo Credit Facility. Likewise, since all of the participants benefit from the existence of the LUC Credit Facility, by way of knowing they have credit available on demand when needed to support their operations and capital expenditure programs, it is only appropriate that each participant absorb its apportionment of the LUCo Credit Facility fees. Furthermore, the participants in both the regulated and unregulated money pools will share proportionately in these costs. As such, the money pool is designed to prevent any cross-subsidization amongst its participants.

(Ex. 1, pp. 9-10) Mr. Timpe explained that on a quarterly basis, he or his designee will run reports in JPMorgan's treasury management system which will show the money pool activity of each participant, including borrowing and investing by day. These reports will be used to determine the average balances for borrowing participants which is the basis for allocating fees under Section 1.07(a) of the money pool agreement. Any unallocated line of credit fees will be apportioned based on the four-factor methodology noted in Section 1.07(b) of the money pool agreement. The cost allocation methodology set forth in Section 1.07 has been acceptable to the public service commissions in Massachusetts, New Hampshire, and Illinois, to-date. (Ex. 1, p. 10) As explained above, since all Money Pool participants benefit from the existence of the LUC Credit Facility by having credit available on demand when needed to support their operations and capital expenditure programs, it is only appropriate that each participant absorb a portion of the fees, even if they are not a borrower within a particular time period.

The execution of the Stipulation and the submission of the Joint Response also demonstrate good cause for the granting of the requested variance. Staff and the Missouri Utilities agreed upon numerous consumer protections to be tied to the grant of the requested variance, as set forth in the Stipulation. Commissioner Hall raised concerns at the evidentiary hearing in this matter and asked about possible modifications to the Stipulation, such as the inclusion of a condition that the Money Pool would not serve as a profit source for LUCo.

Q: The money pool is not designed as a revenue source for LUCo, is it?

A: It is not.

Q: And, in fact, it's designed to benefit all of the rate payers at the subsidiaries of LUCo; is that correct?

A: I would agree with that.

Q: And the way that I read the provisions of the stipulation, it's designed to make that

clear, isn't it, that if there is a -- if there is an avenue through which a subsidiary could either receive a higher return on its funds or pay lower borrowing costs than going through the fund, it should do so?

A. Yes, sir.

Q. Is there a way that we could make that clearer such that it being a condition of the variance that LUCo doesn't benefit financially from the applicants' participation in the fund?

...

Q. But you would not be opposed to that?

A. It was not designed to be a revenue generator, so --

Q. So if we were to -- if the Commission were to ask for language from your counsel that would provide that specific protection, you don't have a concern about that?

A. I personally do not.

(Tr., Vol. 2, pp. 87-88)

The Money Pool Agreement was designed to benefit all participants, including the Missouri Utilities, and their customers, and was never designed or intended to be a profit source for LUCo. As such, to address the concerns raised by Commissioner Hall, Staff and the Missouri Utilities submitted their Joint Response.

WHEREFORE, the Missouri Utilities submit their Initial Post-Hearing Brief and request that the Commission grant the Missouri Utilities a variance from sections 4 CSR 240-20.015(3)(A) and 4 CSR 240-40.015(3)(A), the bidding requirements of the Commission's electric and gas affiliate transaction rules. The Missouri Utilities request such additional relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Diana C. Carter
Diana C. Carter MBE #50527
428 E. Capitol Ave., Suite 303

Jefferson City, Missouri 65101
Joplin Office Phone: (417) 626-5976
Cell Phone: (573) 289-1961
E-Mail: Diana.Carter@LibertyUtilities.com

CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 18th day of July, 2019, and sent by electronic transmission to the Staff of the Commission and the Office of the Public Counsel.

/s/ Diana C. Carter