

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

In the Matter of the Application of Rate Increase)
Request for Liberty Utilities (Missouri Water) LLC) Case No. WR-2018-0170
d/b/a Liberty Utilities)

**THE OFFICE OF THE PUBLIC COUNSEL’S RESPONSE
TO MOTION TO STRIKE**

COMES NOW the Office of the Public Counsel (“OPC” or “Public Counsel”), by and through counsel, and for its Response to Liberty Utilities LLC (“Liberty Utilities” or “Company”) *Motion to Strike the Office of the Public Counsel’s Response to Non-Unanimous Stipulation and Agreement* states as follows:

1. On August 3, 2018, Liberty Utilities and the Public Service Commission Staff (“Staff”) filed a Non-unanimous Stipulation and Agreement regarding Liberty Utilities requested rate increase.
2. First, contrary to Liberty Utilities’ highlighted portion of its filing, Public Counsel did not, and was absolutely clear that it does not object to the Non-Unanimous Stipulation.
3. Commission rule 4 CSR 240-2.070(13) gives any party “ten days from the date of the filing to respond to any pleading unless otherwise ordered by the Commission.” Notably there are no specific requirements for the form of a response.
4. The Company is overreacting. Public Counsel stated *twice* in its Response and Clarification pleadings that it does not object to the Stipulation. Instead, and importantly, OPC stated twice it was not filing in opposition; instead OPC stated that it “cannot endorse the Stipulation.” *Office of the Public Counsel’s Response to Non-Unanimous Stipulation*, p. 2.

5. When Staff Counsel inquired, Public Counsel confirmed that it does not object to the Stipulation and filed its *Office of the Public Counsel's Clarification of its Response to Non-Unanimous Stipulation* by which in para. 1 it clarified, "Public Counsel neither opposes, [nor supports] the Non-Unanimous Stipulation."

6. Further, Public Counsel explained that it does not oppose the revenue requirement results, but does have concerns that the information concerning the Return on Equity of 9.75% is incomplete because it does not include the context of capital structure.

7. What OPC did is precisely what the Commission contemplated in Commission Rule 4 CSR 240-2.115(E): "A party may indicate that it does not oppose all or part of a nonunanimous stipulation and agreement."

8. The affidavit of OPC witness Ms. Keri Roth elaborates the basis for OPC's concern. The Commission's rule 4 CSR 240-2.075(13) does not designate or limit the form of the response that can be made "to any pleading".

9. The Supreme Court's rules include the following unambiguous and straightforward statement: **55.24. Pleadings, How Construed:** All pleadings shall be so construed as to do substantial justice.

10. The Commission should ignore Liberty Utility's attempt to mischaracterize Public Counsel's filing as an objection to the Stipulation, and consider OPC's filings under the rule under which Public Counsel filed its responsive pleading—Rule 4 CSR 240-2.075(13).

WHEREFORE, the OPC requests the Commission to overrule Liberty Utility's *Motion to Strike the Office of the Public Counsel's Response to Non-Unanimous Stipulation and Agreement*, and to grant any other and further relief as is just in the circumstances.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY: /s/ Lera L. Shemwell

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CERTIFICATE OF SERVICE

We hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 14th day of August, 2018, with notice of the same being sent to all counsel of record.

/s/ Lera Shemwell