
**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 d/b/a Liberty Utilities)

File No. WR-2018-0170

STAFF'S INITIAL BRIEF

Respectfully Submitted,

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COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Initial Brief*, states as follows:

INTRODUCTION AND BACKGROUND

Liberty Utilities (Missouri Water) LLC d/b/a Liberty Utilities (also referred to herein as “Company” or “Liberty Utilities”), is a regulated water corporation and sewer corporation pursuant to §§ 386.020(59), (49), and (42) RSMo. Supp. 2018.¹ Liberty Utilities serves approximately 1,954 water customers and 416 sewer customers.² The customers are located within 14 certificated areas, receiving service under 11 different sets of tariffed rates.³ Liberty Utilities acquired these certificated areas over several acquisition cases. The Commission last set rates for Liberty Utilities’ service areas on: April 2, 2007 for the Silverleaf properties service areas,⁴ February 1, 2011 for the KMB Properties service areas,⁵ and lastly on November 12, 2009,

¹ All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (“RSMo.”), as currently amended and effective.

² Ex. 105, Harrison Direct Testimony, Schedule PRH-d2, *Review and Audit of Liberty Utilities Water and Sewer* (Review and Audit), p. 1.

³ *Id.*

⁴ See, Case No. WR-2006-0425.

⁵ See, Case No. WR-2010-0345.

for City of Noel service area.⁶ This action is the first rate case Liberty Utilities has filed for a rate adjustment for all of its 14 total certificated service areas.

RELEVANT PROCEDURE

On December 15, 2017, Liberty Utilities filed a rate increase request letter pursuant to the then-existing Small Utility Rate Case Procedures, 4 CSR 240-3.050.⁷ Liberty Utilities sought a \$995,844 increase to its water revenues and a \$196,617 increase to its sewer revenues.⁸ On February 14, 2018, the Commission granted the applications to intervene of Orange Lake Country Club, Inc. and Silverleaf Resorts, Inc., (together, “Silverleaf Resorts”) and the Ozark Mountain Condominium Association (“OMCA”). On May 24, 2018, Staff, Liberty Utilities, and the Office of the Public Counsel (“Public Counsel”) filed a *Partial Disposition Agreement*.⁹ The *Partial Disposition Agreement* resolved a few but not the majority of issues in the matter.¹⁰

On August 3, 2018, Staff and Liberty Utilities filed a *Non-Unanimous Stipulation and Agreement* (“Stipulation”).¹¹ The Stipulation, if approved, would resolve all remaining issues in the case except for rate case expense.¹² The Stipulation provides for a total cost of service of \$1,690,117 for water operations, which represents an increase of \$818,800 (a 92.4% increase) over present rate revenues authorized by the

⁶ See, Case No. WR-2009-0395.

⁷ In April 2018, the Commission rescinded the Small Utility Rate Case Procedures and the adopted Staff Assisted Rate Case Procedure, 4 CSR 240-10.075. This matter progressed under the prior iteration of the regulations to avoid retroactive application of the new rule.

⁸ Ex. 105, Schedule PRH-d2, *Review and Audit*, p. 1.

⁹ EFIS Item No. 34.

¹⁰ *Id.*, at p. 3, 4.

¹¹ EFIS Item No. 72.

¹² *Id.*

current tariffs. The Stipulation also provides for a total cost of service of \$455,163 for sewer operations, which represents an increase of \$196,782 (a 75.8% increase) over present rate revenues authorized by the current tariffs.¹³ The Stipulation identifies that any Commission determination at hearing as to the appropriate amount of rate case expense would be in addition to the above, agreed-to amounts.¹⁴

On August 13, 2018, Public Counsel late-filed notice that it did not object to the Stipulation.¹⁵ That same day, Silverleaf Resorts also late-filed a *Response to the Non-Unanimous Stipulation and Agreement* that it purported to be an objection to the Stipulation.¹⁶ Finally, OMCA filed an *Objection to Non-Unanimous Stipulation and Agreement and Request to Latefile Same*.¹⁷ The Commission has taken with the case any determinations regarding the Stipulation, and the function and applicability of the subsequent responses.¹⁸

While the procedural questions remain live as to whether Silverleaf Resorts and OMCA have properly objected to the Stipulation,¹⁹ for the purposes of presenting a case

¹³ EFIS Item No. 72, *Non-Unanimous Stipulation and Agreement*, p. 1, ¶¶ 1, 1.A.

¹⁴ *Id.*, p. 6, ¶ 12.

¹⁵ EFIS Item No. 88. OPC subsequently filed its *Office of the Public Counsel's Clarification of its Response to Non-Unanimous Stipulation and Agreement*, EFIS Item No. 92, which said essentially the same remarks as its first *Response to Non-Unanimous Stipulation and Agreement*.

¹⁶ EFIS Item No. 93. See also, EFIS Item No. 95. Staff Counsel notes that nowhere in the *Response to the Non-Unanimous Stipulation and Agreement* filing does Silverleaf Resorts use the word "object." Moreover, Silverleaf Resorts' subsequent filing on the same day responding to Staff's *Notice of No Objections* also does not say that Silverleaf Resorts objects to the Stipulation, but instead argues that Silverleaf Resorts adequately objected by implication via its witness's pre-filed surrebuttal testimony filed after the Stipulation.

¹⁷ EFIS Item No. 97

¹⁸ Hrg. Tr. Vol. 5, 34:17-35:18.

¹⁹ Commission practice rule 4 CSR 240-2.115(2)(B) provides that "[e]ach party shall have seven days from the filing of a nonunanimous stipulation and agreement to file an objection to the nonunanimous stipulation and agreement. Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing." Furthermore, 2.115(2)(C) provides that "[i]f no party timely objects to a nonunanimous

to the Commission at hearing, Staff views the Stipulation as a joint position between Liberty Utilities and Staff.²⁰ Specifically, Staff respectfully recommends that the Commission make findings of fact and conclusions of law consistent with the terms in the Stipulation as the proper resolution leading to the most just and reasonable rates for Company and customers.²¹

LEGAL STANDARD

The Commission's statutory duty is, after due consideration of all relevant factors,²² to set "just and reasonable" rates.²³ The United States Supreme Court has explained that "[t]he rate-making process ... i.e., the fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests."²⁴ Missouri Courts have reiterated that balance, stating a "just and reasonable" rate is one that balances the interests of the various stakeholders in the light of the public interest.²⁵ A just and reasonable rate is fair to both the utility and to its customers²⁶ and is no more than is

stipulation and agreement, the Commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement."

²⁰ Practice rule 4 CSR 240-2.115(2)(D) indicates that if a nonunanimous stipulation and agreement is timely objected to, that documents becomes a joint position of the signatories at hearing, but no signatory is bound by the terms of the agreement.

²¹ Staff makes this recommendation as an alternative resolution should the Commission decline to treat the Stipulation as unanimous.

²² ***State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission***, 585 S.W.2d 41, 49 (Mo. banc 1979).

²³ Sections 393.130 and 393.140, RSMo.

²⁴ ***Fed. Power Comm'n v. Hope Nat. Gas Co.***, 320 U.S. 591, 603 (1944).

²⁵ See ***State ex rel. Union Electric Co. v. Public Service Commission***, 765 S.W.2d 618, 622 (Mo. App., W.D. 1988) ("Ratemaking is a balancing process").

²⁶ ***St. ex rel. Valley Sewage Co. v. Public Service Commission***, 515 S.W.2d 845 (Mo. App., K.C.D. 1974).

necessary to “keep public utility plants in proper repair for effective public service, [and] . . . to insure to the investors a reasonable return upon funds invested.”²⁷

ISSUES FOR DETERMINATION

Setting aside the procedural question regarding the Stipulation, based upon the parties’ pre-filed testimony and the *List of Issues* filed on August 3, 2018,²⁸ there were only eight contested issues for Commission determination. Those issues were: (1) return on equity, (2) capital structure, (3) rate case expense, (4) customer service issues, (5) whether to adopt Silverleaf Resort’s phase-in of rates, (6) customer charge, (7) commodity charge, and (8) whether to exempt the Silverleaf Resort’s service area from a subsequent rate case proceeding.²⁹ Following argument regarding the Stipulation, this brief will present those topics in that same order.

ARGUMENT – THE STIPULATION

The Commission should adopt the Non-Unanimous Stipulation and Agreement

On August 3, 2018, Staff and Liberty Utilities filed their Stipulation resolving all issues except for the amount of rate case expense to be included in rates.³⁰ When Staff filed Stipulation, the parties to this matter received actual notice of the filed Stipulation.³¹

²⁷ *St. ex rel. Washington University et al. v. Public Service Commission*, 308 Mo. 328, 344-45, 272 S.W. 971, 973 (banc 1925).

²⁸ EFIS Item No. 86, *List of Issues, Order of Witnesses, Order of Cross-Examination and Order of Opening Statements*.

²⁹ See, EFIS Item No. 86.

³⁰ EFIS Item No. 72, *Non-Unanimous Stipulation and Agreement*, p. 1, ¶¶ 1, 1.A.

³¹ EFIS Item No. 90, *Notice of No Objections to Nonunanimous Stipulation and Agreement, Request to Modify Hearing Schedule, and Motion for Expedited Treatment*, Exhibit A.

Commission Regulation 4 CSR 240-2.115(2) provides, in relevant part, that:

(A) A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all of the parties.

(B) Each party shall have seven (7) days from the filing of a nonunanimous stipulation and agreement to file an objection to the nonunanimous stipulation and agreement. Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing.

(C) If no party timely objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement.

The plain language of these practice rule regulations is exceedingly clear. Failing to timely object to a non-unanimous agreement waives that party's right to hearing, and allows the Commission to treat the agreement as unanimous.

Applying Commission Regulation 4 CSR 240-2.050 Computation of Time, with the filing date of August 3, the deadline to file an objection was 11:59:59 p.m. on Friday, August 10. No party filed responses or objections to the Stipulation until Monday, August 13.³² As a result, the operation of 4 CSR 240-2.115(2)(B) and 2.115(2)(C) provide that the Commission may treat the Stipulation as unanimous.

Moreover, treating the Stipulation as unanimous does not violate any parties' due process rights. The Due Process Clauses require that in order to deprive a person of an interest or right, the person must receive notice and an opportunity for a hearing appropriate to the nature of the case.³³ Due process contemplates the opportunity to be heard at a meaningful time and in a meaningful manner.³⁴ "Due process merely affords the *opportunity* to be heard and, thus, a party can waive his due process right to be

³² EFIS Item Nos. 88, 93, 95, 97.

³³ **Moore v. Bd. of Educ. of Fulton Pub. Sch. No. 58**, 836 S.W.2d 943, 947 (Mo. 1992)(citing, **Belton v. Board of Police Com'rs of Kansas City**, 708 S.W.2d 131, 137 (Mo. banc 1986)).

³⁴ **Id.**,(citing, **Nixon v. Williamson**, 703 S.W.2d 526 (Mo. App.1985)).

heard by voluntarily absenting himself from the proceedings.”³⁵ Essentially, if a party has been afforded due process prior to their voluntarily waiving the due process right, then there is no violation of due process.³⁶ To waive a right, a party “must have had both knowledge of the existing right and the intention of foregoing it.”³⁷

The Commission has afforded due process to the parties. Upon request of Staff,³⁸ the Commission issued a procedural schedule and scheduled a hearing.³⁹ The parties prepared for hearing over the course of several months; conducting discovery, drafting and pre-filing testimony, filing pre-hearing motions, and continuing settlement discussions.⁴⁰ Staff and Liberty Utilities filed the Stipulation on August 3, of which the parties had knowledge. Commission Rule 4 CSR 240-2.115(2) spells out the procedural requirements to parties’ existing rights, and the plainly worded procedural obligations and consequences by not making timely objections.

By treating the Stipulation as unanimous, the Commission can approve the Stipulation without need for making findings of fact or conclusions of law on those issues resolved. Most importantly, *the Stipulation includes agreements by Liberty Utilities that are otherwise unavailable from the evidence presented at hearing.* These agreements include forward looking ADIT tax treatment,⁴¹ certain accounting

³⁵ **Moore v. Bd. of Educ.**, 836 S.W.2d 943, 947 (Mo. 1992)(citing, **Birdwell v. Hazelwood School Dist.**, 491 F.2d 490, 494 (8th Cir.1974)).

³⁶ **Moore v. Bd. of Educ.**, 836 S.W.2d 943, 947 (Mo. 1992).

³⁷ **Kerth v. Polestar Entertainment**, 325 S.W.3d 373, 385 (Mo. App. 2010)(citing, **Am. Econ. Ins. Co. v. Powell**, 134 S.W.3d 743, 746–47 (Mo.App. S.D.2004)).

³⁸ EFIS Item No. 34, *Partial Disposition Agreement and Request for Hearing*.

³⁹ EFIS Item No. 40, *Order Setting Procedural Schedule and Other Procedural Requirements*.

⁴⁰ See, EFIS docket WR-2018-0170.

⁴¹ EFIS Item No. 72, *Non-Unanimous Stipulation and Agreement*, p. 2, ¶ 1.E.

practices,⁴² and certain customer service and operational agreements.⁴³ If the Commission does not at the outset adopt the Stipulation as unanimous, these agreements lose the force, effect, and authority of the Commission's formal approval.

The Commission has full discretion to adopt the Stipulation between Staff and Liberty Utilities as unanimous Stipulation and Agreement. No non-signatory party met the plainly-worded procedural requirements of 4 CSR 240-2.115, nor provided sufficient good cause to allow the Commission to waive that procedural requirement. Nor would adoption of the Stipulation as unanimous violate any party's due process rights, as the parties received actual notice of the Stipulation and, moreover, had received proper due process throughout the proceedings.

For all the foregoing reasons, the Commission should adopt the Stipulation. However, if the Commission does not adopt the Stipulation, the Commission should resolve the issues before it with findings and conclusions consistent with the terms of the Stipulation, as Staff's case supports the terms of the Stipulation, as argued below.

ARGUMENT – HEARING ISSUES

What is the appropriate return on equity for Liberty Utilities?

The appropriate return on equity (ROE) that the Commission should order is 9.75%.⁴⁴ While this amount is less than Staff financial analysis expert witness

⁴² *Id.*, p. 4, ¶¶ 3.A, 3.C, 4, and 5.

⁴³ *Non-Unanimous Stipulation and Agreement*, p. 5-6, ¶¶ 8 - 11.

⁴⁴ EFIS Item No. 72, Stipulation, p. 2, ¶ 1.C; see also, Ex. 105, Harrison Direct, Schedule PRH-d2, p. 2; Ex. 109, Murray Substitute Rebuttal, 3:1-2 (supporting a 10% ROE for the filed case).

David Murray's filed recommendation of 10%, this ROE amount was agreed to between Liberty Utilities and Staff in the Stipulation.⁴⁵

In supporting his recommendation, Mr. Murray testified that his rate of return (ROR) recommendation is the same as his prior recommendation for Liberty Midstates, an affiliated natural gas entity.⁴⁶ Mr. Murray stated that his ROR recommendation for Liberty Utilities is similar to Liberty Midstates because both Liberty Midstates and Liberty Utilities' water operations are financed under the same corporate structure, with its debt financing being supplied by Liberty Utilities Company (LUCo) through Liberty Utilities Finance GP1.⁴⁷ Mr. Murray testified that, additionally, the gas and water utility industries have similar business risk profiles.⁴⁸ When asked about differences between business risk profiles between gas utilities and water utilities, Mr. Murray testified that to the contrary "there's a lot of similarities."⁴⁹

Mr. Murray acknowledged Silverleaf Resorts' opposing expert's source of Duff & Phelps as an authoritative source for estimating cost of capital,⁵⁰ and that Staff uses it when "testing the reasonableness of its own cost of equity estimates."⁵¹ But, and importantly, Mr. Murray identified that the results derived from relying only on a Duff & Phelps based risk-premium assessment for a return on equity was a "S&P 500 Market required return on equity. Not a utility required return on equity."⁵²

⁴⁵ Stipulation, p. 2, ¶ 1.C.

⁴⁶ Ex. 109, Murray Substitute Rebuttal, 2:7-9.

⁴⁷ Ex. 109, Murray Substitute Rebuttal, 2:10-13.

⁴⁸ *Id.*

⁴⁹ Hr. Tr. Vol. 5, 118:9-10.

⁵⁰ *Id.*, 2:6-8.

⁵¹ *Id.*, 2:8-9.

⁵² Hr. Tr. Vol. 5, 114:14-20.

He identified that Duff & Phelps is “just a general corporate resource.”⁵³ Mr. Murray testified that “it obviously goes into all sorts of different industries. But the market risk premium that Duff & Phelps provides needs to be – you know, needs to be adjusted for utility-specific issues.”⁵⁴

By comparison, in addition to the markets, Mr. Murray testified he relied on the Commission’s previous decisions as guidance as to a fair and reasonable allowed ROE, giving its most recent allowed ROE of 9.8% in the Spire Missouri gas rate cases the most weight.⁵⁵ Because of Liberty’s water operations leveraged capital structure, Mr. Murray’s testimony recommended a 20 basis point increase to the allowed ROE, by evaluating recent spreads between ‘BBB’ rated bonds and ‘A’ rated bonds.⁵⁶

Because Mr. Murray’s ROE recommendation better captures the needs of utility investors, rather than broad market investors, Mr. Murray’s recommendation is the most reasonable and the Commission should adopt his recommendation.

What is the appropriate capital structure for Liberty Utilities?

Staff and the Company’s Stipulation is silent as to capital structure.⁵⁷ However, if the Commission does not adopt the Stipulation and determines a capital structure, Staff recommends the Commission adopt Staff’s filed capital structure of 42.83% common equity and 57.17% debt.⁵⁸

⁵³ *Id.*, 122:14-15.

⁵⁴ *Id.*, 122:15-19.

⁵⁵ Ex. 110, Murray Surrebuttal, 3:10-12.

⁵⁶ *Id.*, 3:13-16.

⁵⁷ EFIS Item No. 72, *Stipulation*, p. 2, ¶ 1.C.

⁵⁸ Ex. 105, Harrison Direct, Schedule PRH-d2, p. 2; Murray Substitute Rebuttal, 3:1-3.

Staff expert witness Mr. Murray's capital structure recommendation is based upon the actual capital structure of Liberty Utilities' water operations corporate parent entity, LUCo.⁵⁹ Because the water corporation does not independently issue any debt,⁶⁰ it is reasonable to apply the capital structure of the entity that actually finances all of the regulated operations within the United States, including Liberty Midstates and Liberty Utilities (Missouri Water) LLC.⁶¹ Moreover, Mr. Murray testified, this approach was previously considered acceptable by the Commission, as the Commission previously approved of this capitalization approach in the prior rate case, Case No. GR-2014-0152 for Liberty Utilities' similarly situated natural gas affiliate, Liberty Midstates.⁶²

Liberty Utilities has proposed using a hypothetical capital structure of 53 percent equity to 47 percent long-term debt, which was agreed to by Liberty Midstates in the settlement of its recent gas rate case, Case No. GR-2018-0013, that only applies for purposes of its natural gas infrastructure system replacement surcharge, or ISRS.⁶³ However, as Mr. Murray identified, this hypothetical capital structure is inappropriate for the Commission's use. Here, Mr. Murray testified that the hypothetical "assumes Liberty Water (matching Liberty Midstates) is capitalized with much more equity than what the parent company, Algonquin Power and Utilities Corporation ("APUC"), considers appropriate for its low-risk regulated utility assets."⁶⁴ While potentially

⁵⁹ Ex. 109, Murray Substitute Rebuttal, 3:8-9.

⁶⁰ Ex. 109, Murray Substitute Rebuttal, 3:12-13.

⁶¹ Ex. 109, Murray Substitute Rebuttal, 3:8-11.

⁶² Ex. 109, Murray Substitute Rebuttal, 3:14-17.

⁶³ Ex. 4, Magee Surrebuttal, 3:16-21; Hrg. Tr. Vol. 5, 100:10-101:5.

⁶⁴ Ex. 109, Murray Substitute Rebuttal, 3:5-7.

beneficial to the Liberty Utilities water operations, adopting a capital structure that the parent corporation APUC itself considers more equity than necessary does not balance the interests of the Company and the rate payer.

Because Mr. Murray's proposed capital structure is based on the actual capital structure of the financing entity that actually issues debt and is therefore subject to the markets, and because the structure is considered appropriate by Liberty Utilities' parent entity APUC itself, the Commission should adopt Mr. Murray's recommendation.

What is the appropriate amount of rate case expense and amortization period?

Staff recommends that the currently known amount of rate case expense allowable for recovery is \$30,061.⁶⁵ Further, Staff recommends that prudently incurred rate case expenses "through the end of the case"⁶⁶ will be reviewed by Staff for recovery.⁶⁷ Additionally, Liberty Utilities' rate of return expert witness testified that, while still in flux, he would estimate about \$20,000 in total for that testimony in the case.⁶⁸ However, at this point in time, whether that amount adds upon the Staff's recommended number, or if some portion of those costs are already considered, is not yet known.

Concerning the period of time and method of recovering the rate case expense, Staff recommends that the Commission adopt the Stipulation, and order an amortization of the rate case expense over a three year period.⁶⁹ However, if the Commission does not adopt the Stipulation, but the Commission wants the utility to recover exactly the

⁶⁵ Ex. 107, Harrison Surrebuttal, 2:22-23 ("The amount of rate case expense for water should be \$23,604 and the amount for sewer should be \$6,457.").

⁶⁶ Ex. 107, Harrison Surrebuttal, 3:20-23.

⁶⁷ Hrg. Tr. Vol. 5, 149:14-150:17.

⁶⁸ Hrg. Tr. Vol. 5, 93:22-94:8.

⁶⁹ Hrg. Tr. Vol. 5, 143:1-4.

amount of its rate case expense, no more, no less, Staff would recommend an amortization with anything that is over- or under-recovered be dealt with in the next rate case.⁷⁰

Has Liberty Utilities adequately responded to customer service issues?

During the course of this small water rate case proceeding, certain customer service issues were identified, including concerns regarding operations affecting condominium owners at the Ozark Mountain Resort in Kimberling City, Missouri, concerns identified in Staff's investigation, and concerns described at a local public hearing. Liberty Utilities has adequately responded to these concerns as discussed in more detail below.

A. Operations Affecting Condominium Owners at the Ozark Mountain Resort in Kimberling City, Missouri

Liberty Utilities has adequately responded to operations affecting condominium owners at the Ozark Mountain Resort in Kimberling City, Missouri. Mr. Don Allsbury filed Direct Testimony in this case which described historical service issues⁷¹ that occurred between February 2009 and January 2018 and which included a series of discrete events and one ongoing multi-week incident that occurred in 2015.⁷² In rebuttal testimony, Staff witness David Roos noted the following: (1) Liberty Utilities personnel were slow to respond to main breaks in 2009 and there was no backup for critical Liberty Utilities personnel, (2) Liberty Utilities personnel were slow to resolve water

⁷⁰ Hrg. Tr. Vol. 5, 156:20-157:2.

⁷¹ Ex. 401, Allsbury Direct 2:3-5.

⁷² Ex. 112, Roos Rebuttal 1:20-2:4.

pressure issues in 2015, and (3) Liberty Utilities personnel passively responded to water meter issues in 2015 and 2018.⁷³

In determining whether Liberty Utilities adequately responded to these events and issues, Staff met with Liberty Utilities' Operations Manager and examined responses to data requests. After this meeting and review, and considering Mr. Allsbury's direct testimony, Staff concluded the water pressure events were caused by a combination of equipment failure and operator error.⁷⁴ The water-pressure events did not end until a pressure relief valve was replaced and properly adjusted.⁷⁵ Furthermore, the contract operator attempted to work directly with customers and did not relay all customer inquiries back to Liberty Utilities.⁷⁶ Since the events of 2015, Liberty Utilities has replaced the contract operators with Liberty Utilities employees.⁷⁷

Staff determined the incidents described in Mr. Allsbury's Direct Testimony have been resolved, in part because the water system has been repaired and is currently a reliable source of water.⁷⁸ Moreover, Liberty Utilities agreed to institute changes to bring it into compliance with 4 CSR 240-13.040 as part of the Partial Disposition

⁷³ Ex. 112, Roos Rebuttal 9-15.

⁷⁴ Ex. 112, Roos Rebuttal 2:18-3:8.

⁷⁵ Ex. 112, Roos Rebuttal 3:8-10.

⁷⁶ Ex. 112, Roos Rebuttal 3:11-13.

⁷⁷ Ex. 112, Roos Rebuttal 3:13-14; *see also* Ex. 2, Schwartz Rebuttal 7:8-16:

As discussed earlier in my rebuttal testimony, prior to April 2018, Ozark Mountain was primarily operated by an outside contractor, R K Water Operations LLC. In April 2018, after several issues concerning the quality of service provided by R K Water Operations, the Company made the decision to terminate its contract. The Ozark Mountain water and wastewater system is now operated by Company employees. The Company's transition to direct operation of its water and wastewater systems dates back to May 2017 when the Company hired Mr. Paul Carlson to manage and operate its Missouri water/wastewater systems. Both Mr. Carlson and the Company are committed to providing high quality, safe, reliable service to the Company's water/wastewater customers in Missouri.

⁷⁸ Ex. 112, Roos Rebuttal 3:17-19. Mr. Allsbury did not file any surrebuttal testimony responding to or otherwise rebutting Staff's conclusion on these matters. Hrg. Tr. Vol. 5, 201:1-10.

Agreement.⁷⁹ Based on the foregoing, Liberty Utilities has adequately responded to operations affecting condominium owners at the Ozark Mountain Resort in Kimberling City, Missouri.

B. Customer Service Issues Identified in Staff's Investigation and Concerns Described at the Branson Local Public Hearing

During Staff's investigation, Staff identified call center customer service issues; in response the Company agreed in the Partial Disposition Agreement filed on May 24, 2018, that:

(2) Within thirty (30) days of the effective date of an order approving this Partial Disposition Agreement, the Company agrees to implement the recommendations contained in the Customer Experience Department Report, attached hereto as Attachment B and incorporated by reference herein, and provide proof of implementing the recommendations to the Manager of the Commission's Customer Experience Department and to OPC:

- (a) The Company's call center representatives will include the Company name "Liberty Utilities" in the opening response to after-hours telephone calls;
- (b) The Company agrees to ensure the accuracy of information presented on all Company billing statements.
- (c) The Company agrees to use the four (4) credit criteria provided in Commission Rule 4 CSR 240-13.030(C) when determining whether it may collect a deposit from new customers.
- (d) The Company agrees to comply with Commission Rule 4 CSR 240-13.040.
- (e) The Company agrees to review and update the information presented in the Company rights and responsibilities brochure and website to eliminate all inaccurate statements and ensure that this information is consistent with Company practices and Commission rules. (A link to the Company's tariffs must be provided.).⁸⁰

Based on this, Liberty Utilities adequately responded to customer service issues identified in Staff's investigation.

⁷⁹ Ex. 112, Roos Rebuttal 3:21-4:1.

⁸⁰ Ex. 111, Parish Surrebuttal 3:12-4:17.

A local public hearing was held in Branson, Missouri, on Monday, July 23, 2018, in which customers commented on the lack of customer notices by Liberty Utilities and shared concerns with Liberty Utilities' call center and overall customer service.⁸¹ The concern regarding lack of notices included notices of boil advisories and notice of Local Public Hearings.⁸² Concerns regarding the call center and overall customer service included testimony regarding difficulty in reaching a live person when calling the customer service number.⁸³

At the evidentiary hearing, Ms. Jill Schwartz stated that the company constantly reviews its customer service for improvement and her understanding was that the customer service representatives had begun answering the phone "Liberty Utilities" for after-hours calls, that the phone number presented on bills had been updated, and that the phone numbers on the website had also been updated.⁸⁴ Ms. Schwartz stated that as to boil orders or advisories, a plan is in place where, when the issue involves fewer than 25 or 30 meters, door hangers are provided on each customer's door.⁸⁵ Where a larger outage or issue may occur, Liberty Utilities will utilize an A-frame-type board notification placed at the entrance of the property affected by the advisory or order.⁸⁶

⁸¹ Ex. 111, Parish Surrebuttal 1:19-23.

⁸² Ex. 111, Parish Surrebuttal 2:1-3. With respect to the concerns regarding notice of local public hearing, Liberty represented that on the day of the hearing approximately eighty-five notices were returned for insufficient address. *Id.* 2:6-7.

⁸³ Ex. 111, Parish Surrebuttal 3:1-4.

⁸⁴ Hrg. Tr. Vol. 5, 208:6-210:16.

⁸⁵ Hrg. Tr. Vol. 5, 215:21-216:1.

⁸⁶ Hrg. Tr. Vol. 5, 216:2-10.

In the Stipulation, Liberty Utilities agreed to take certain action with respect to customer service issues.⁸⁷ These actions directly relate to issues identified and as such, Liberty Utilities has adequately responded to these customer service issues.

Rate Design – Phase-In of Rates

A. Should Rates for Holliday Hills, Ozark Mountain, and Timber Creek service areas be phased-in over a period of five years?

As a matter of law and policy, rates for the Holliday Hills, Ozark Mountain, and Timber Creek (“Silverleaf”) service areas should not be phased-in⁸⁸ over a period of five years. First, this proposal as set forth by William Stannard on behalf of Silverleaf Resorts, Inc. and Orange Lake Country Club, Inc., is specific to these Silverleaf service areas and thus not inclusive of all of Liberty Utilities’ service territories.⁸⁹ Allowing a phase-in for rates on a subset of systems (“Subset”) raises a legal issue of preferential treatment; more specifically, the Subset receiving a phase-in would not be covering the cost to serve that area, which could result in undue harm to other customers.⁹⁰ Furthermore, no reason as to why the Subset deserves special treatment has been

⁸⁷ See EFIS Item No. 72, *Non-Unanimous Stipulation and Agreement*, p. 5-6, ¶¶ 8-11.

⁸⁸ A phase-in rate design is an approach to rate design that allows for rates to be increased on an incremental basis to reach the ultimate Commission approved revenue requirement during some future period. Ex. 103, Busch Surrebuttal, 3:14-16.

⁸⁹ Ex. 302, Stannard Refiled Rebuttal, 25:6-10; Ex. 103, Busch Surrebuttal, 4:5-8.

⁹⁰ Ex. 103, Busch Surrebuttal, 7:15-18. A question was asked at hearing regarding the authority to order phase-ins for a water utility, Hrg. Tr. Vol. 5 46:16-23; Staff notes that there is a statute relating to electric companies that statutorily allows for phase-ins and the ability *under statute* for phase-ins of water companies is uncertain. See *In the Matter of the Water Rate Request of Hillcrest Util. Operating Co., Inc.*, WR-2016-0064, 2016 WL 3882158, at *21 (July 12, 2016). As a matter of ratemaking policy, phase-ins for water utilities may be appropriate in certain circumstances. See Ex. 103, Busch Surrebuttal, 3:18-4:2. However, in this case, a rate-making principle would be violated by providing the Subset preferential treatment through the phase-in. See notes 89-91 and accompanying text.

identified by the party proposing this phase-in.⁹¹ For these reasons, the proposed phase-in is inappropriate as a matter of law.

Even if legal justification could be given, as required under the *Laundry* case, to show a difference in service having a reasonable relation to the amount of the difference at issue,⁹² the proposed phase-in is not appropriate for a number of reasons. First, Staff is mindful of the impact a rate increase has on customers and updated its proposed customer charge and commodity rates to better balance the interests of customers and Liberty Utilities, rather than applying an across-the-board percentage increase as was proposed by Mr. Stannard.⁹³ Though the updates to the customer charge and commodity rate do represent an increase in the amounts currently paid by customers, these rates are not out of line with other small water utilities.⁹⁴

The proposed phase-in design for customer charges and commodity rates raises concern, especially with regard to rate treatment in years three and four of the proposed phase-in.⁹⁵ For instance, the year three customer charge proposed would

⁹¹ Ex. 103, Busch Surrebuttal, 7:18; see also *State ex rel. Laundry, Inc. v. Public Service Com'n*, which provides:

All individuals have equal rights both in respect to service and charges. Of course, such equality of right does not prevent differences in the modes and kinds of service and different charges based thereon. There is no cast iron line of uniformity which prevents a charge from being above or below a particular sum, or requires that the service shall be exactly along the same lines. But that principle of equality does forbid any difference in charge which is not based upon difference in service, and, even when based upon difference of service, must have some reasonable relation to the amount of difference, and cannot be so great as to produce an unjust discrimination.

34 S.W.2d 37, 45 (Mo. 1931).

⁹² *Laundry*, 34 S.W. 2d at 45.

⁹³ Ex. 102, Barnes Surrebuttal, 5:7-9 (“Staff’s rate design is reasonable as it properly allocates the fixed and variable charges that minimize the impact on customer bills while allowing Liberty the opportunity to recover its cost of service.”); Ex. 302, Stannard, Refiled Rebuttal, 22:20-22.

⁹⁴ Ex. 103, Busch Surrebuttal, 6:11-12.

⁹⁵ Ex. 103, Busch Surrebuttal, 6:17-18.

be \$17.46 and the commodity rate \$11.61.⁹⁶ In year four the increase would be \$21.62 and \$14.38, respectively.⁹⁷ Recognizing that these are not annual increases, they nevertheless represent a significant increase in a short amount of time.⁹⁸ Such a significant increase does not comport with the notion of rate stability.⁹⁹ Indeed, Mr. Stannard provided rate shock mitigation as a rationale for proposing a phase-in.¹⁰⁰ However, this rationale does not apply to the Subset.

Rate shock mitigation is a consideration in determining rates. “The term ‘rate shock’ is used to describe the effect of an extremely large increase in revenue requirement.”¹⁰¹ Due to this focus on the effect of the increase, the concept of rate shock is relative and should be examined on a case-by-case basis. In examining the potential for rate shock to Silverleaf’s timeshare owners, an appropriate beginning step is to evaluate the increase as compared to other Liberty Utilities’ service areas. According to Staff’s recommended revenue requirement (at the time of filing Surrebuttal testimony), the increase for the Silverleaf Subset was on the lower end of the spectrum compared to the increases in the Noel and KMB systems.¹⁰²

In this case, the number of meters in the Silverleaf Subset and the way in which the Silverleaf Subset pays its utility bills are likewise relevant considerations of rate

⁹⁶ Ex. 103, Busch Surrebuttal, 6:18-19.

⁹⁷ Ex. 103, Busch Surrebuttal, 6:19-20.

⁹⁸ Ex. 103, Busch Surrebuttal, 6:22-7:1.

⁹⁹ Ex. 103, Busch Surrebuttal, 7:3-6; see *also* Ex. 3, Schwartz Surrebuttal, 6:19-23 (“In addition to the Company’s inability to recover its cost of service in years 1 and 2, Mr. Stannard’s proposal will generate wild swings in customer rates for a 5 year period. These constant changes in rates will further generate questions, confusion and frustration for customers and have no apparent basis or justification.”).

¹⁰⁰ Ex. 103, Busch Surrebuttal, 7:1-3; Ex. 302, Stannard Refiled Rebuttal, 28:1-3.

¹⁰¹ *In Re Missouri-Am. Water Co.*, 200000366, 2007 WL 4302535, at *4 (Dec. 4, 2007).

¹⁰² Ex. 103, Busch Surrebuttal, 4:12-16.

shock. For example, there are 371 water meters in the Silverleaf Subset¹⁰³ which are billed to the Silverleaf Resorts' System or the Orange Lake Country Club property manager.¹⁰⁴ The timeshare owners are responsible for the payment of water and sewer service under certain property Declarations and a portion of funds collected from the timeshare owners' maintenance fees are used to pay the utility invoices.¹⁰⁵ Thus, some 36,686 timeshare owners¹⁰⁶ ultimately pay the cost of water service at 371 meters.¹⁰⁷ Mathematically, this means that *approximately 99 customers pay toward one meter* and any increase would then be "passed through" under the maintenance fee provision of the Declaration to that volume of timeshare owners. Thus, the potential rate shock of a rate increase is significantly mitigated.

While Staff does not generally oppose as a matter of policy the use of phased-in rates when it is in the public interest to take a slower rate increase approach based on the magnitude of the rate increase compared to existing rates,¹⁰⁸ for the foregoing reasons such a situation does not exist in this case. Therefore, the proposed phase-in of rates for the Silverleaf Subset should be denied.

B. Should carrying costs be allowed to be recovered if rates are phased-in?

If rates are phased-in, Liberty Utilities should be able to recover carrying costs. Staff is not familiar with any type of rate phase-in that does not compensate the utility

¹⁰³ Hrg. Tr. Vol. 5, 275:2-278:24.

¹⁰⁴ Hrg. Tr. Vol. 5, 276:25-277:4

¹⁰⁵ Hrg. Tr. Vol. 5, 277:5-278:24; See also Ex. 304, Affidavit of Hugh Rosenblum

¹⁰⁶ Ex. 302, Stannard Refiled Rebuttal, 5:2 ("36,686 timeshare owners").

¹⁰⁷ Hrg. Tr. Vol. 5, 278:18-24.

¹⁰⁸ Ex. 103, Busch Surrebuttal, 3:18-4:2.

for the cost of not receiving its full, Commission approved revenue requirement.¹⁰⁹ Thus, an undue burden could be placed on the utility by not including the carrying costs.¹¹⁰

What are the appropriate customer charge and commodity charge amounts?

In summary, Staff recommends that the Commission adopt Staff's rate design methodology for the Liberty Utilities water and sewer systems as applied in the direct,¹¹¹ rebuttal,¹¹² and surrebuttal testimonies¹¹³ of its expert rate design witness Matthew Barnes, and presented in Attachment A of the Stipulation.¹¹⁴

The purpose of rate design is to develop rates for a given utilities' tariffed operations in a manner to provide the Company an opportunity to collect its Commission-approved revenue requirement.¹¹⁵ Staff starts with the cost of service for each tariffed service area, and bases the rate design on the actual revenue requirement for each system.¹¹⁶ The rate structure used generally consists of a fixed monthly customer charge and a commodity (usage) charge.¹¹⁷ The customer charge is developed by comparing certain costs that are generally considered fixed.¹¹⁸

¹⁰⁹ Ex. 103, Busch Surrebuttal, 5:21-22.

¹¹⁰ Ex. 103, Busch Surrebuttal, 7:22-23.

¹¹¹ Ex. 100, Barnes Direct, 7:8-8:4; Schedule MJB-d2, Schedule MJB-d3.

¹¹² Ex. 101, Barnes Rebuttal, 6:14-19, Schedule MJB-r1.

¹¹³ Ex. 102, Barnes Surrebuttal, 5:7-9.

¹¹⁴ EFIS Item No. 72, *Non-Unanimous Stipulation and Agreement*, p. 3, ¶ 2, Attachment A, p. 5-14.

¹¹⁵ Ex. 100, Barnes Direct, 2:10-12.

¹¹⁶ Ex. 100, Barnes Direct, 2:13-16.

¹¹⁷ Ex. 100, Barnes Direct, 2:16-18.

¹¹⁸ Ex. 100, Barnes Direct, 2:18-19.

Commodity charges are generally developed by comparing the remaining costs and the usage characteristics of each system.¹¹⁹

Staff followed this process for designing rates for Liberty Utilities. The Auditing Staff determined an appropriate manner to allocate costs to each of Liberty Utilities' water and sewer service systems,¹²⁰ or the cost of service for each tariffed service area with a given rate. Water and Sewer Staff then developed Liberty Utilities' water and sewer rate design based on the actual revenue requirement for each water and sewer service system.¹²¹ Water and Sewer Staff evaluated the best apportionment of fixed and other costs to go into the customer and commodity charges.¹²²

In the Stipulation, Staff agreed to—and Staff witness Mr. Barnes' alternative rate design approach in his testimony evaluated¹²³—the consolidation of the “KMB water operation.”¹²⁴ Consolidating the KMB water operations would leave Liberty Utilities with three separately tariffed water district rates and two separately tariffed sewer district rates¹²⁵ upon which to calculate appropriate customer and commodity charges for those districts' costs of service. While Liberty Utilities originally proposed a different consolidation approach,¹²⁶ it has since agreed to Staff's alternative approach as

¹¹⁹ Ex. 100, Barnes Direct, 2:19-20.

¹²⁰ Ex. 100, Barnes Direct, 2:13-15.

¹²¹ Ex. 100, Barnes Direct, 2:15-16.

¹²² Ex. 100, Barnes Direct, 7:6; Schedule MJB-d2; Ex. 102, Barnes Surrebuttal, 2:3-4:13 (discussing the reasoning behind the commodity and customer charge allocations as applied to Silverleaf Resorts).

¹²³ Ex. 101, Barnes Rebuttal, 6:12-19.

¹²⁴ Ex. 100, Barnes Direct, Table 1, 2:12-13; EFIS Item No. 72, *Non-Unanimous Stipulation and Agreement*, p. 3, ¶ 2, Attachment A, p. 2, 6-7.

¹²⁵ Ex. 101, Barnes Rebuttal, 6:18-19.

¹²⁶ Ex. 1, Schwartz Direct, 8:15-19.

presented in the Stipulation.¹²⁷ No other party has presented any contrary testimony or opposed this consolidated rate design approach.

Based upon the agreed-to revenue requirement in the Stipulation, and using the methodology in testimony, Staff witness Mr. Barnes calculated the following customer charge amounts: \$23.88 for a 5/8" meter at the Noel water system, \$30.04 for a 5/8" meter at the consolidated KMB water system, and \$26.65 for the smallest meters (both 5/8" and 3/4") at the Silverleaf water systems.¹²⁸ Staff further proposes the appropriate amounts for the sewer system customer charges are \$45.67 for the Cape Rock Village sewer system and \$37.07 for the Timber Creek and Ozark Mountain sewer system.¹²⁹

The appropriate amount for commodity charge, per thousand gallons, is \$3.04 for the Noel water service system, \$6.65 for the KMB water service system, and \$6.73 for the Silverleaf water service system. The appropriate amount for the commodity charge is \$26.97 for the Timber Creek and Ozark Mountain sewer system. These amounts can be found in Attachment A to the Stipulation and Agreement filed August 3, 2018.

It is important to note that the above proposed customer charge and commodity charge rates *do not include rate case expense*. These numbers are what rates would be if the Commission approved the Stipulation with no determination as to rate case expense. Thus, Staff is recommending the Commission approve the *methodology* to reach these rates,¹³⁰ more than approving the rates themselves.

¹²⁷ Ex. 3, Schwartz Surrebuttal, 7:10-12.

¹²⁸ EFIS Item No. 72, *Non-unanimous Stipulation and Agreement*, Attachment A, p. 1-3.

¹²⁹ *Id.*, Attachment A, p. 4.

¹³⁰ EFIS Item No. 72, *Non-Unanimous Stipulation and Agreement*, p. 3, ¶ 2, Attachment A, p. 5-14.

The only party to propose a contrary rate design methodology is Silverleaf Resorts. Silverleaf's expert witness, William Stannard, first recommends a phase-in of rates for the Silverleaf Resorts system for a period of five years,¹³¹ and then a roughly 76% across-the-board increase to the existing customer and commodity charges beginning on the fifth year.¹³² Silverleaf Resorts witness Mr. Stannard supports this methodology by essentially arguing that the Staff's position of having a higher customer charge to lower commodity charge ratio¹³³ should be rejected because it would "likely pose affordability challenges for Liberty Utilities' customers served on the Silverleaf water and sewer systems."¹³⁴

As already shown above, Silverleaf Resorts' proposed phase-in of rates may present improper rate discrimination,¹³⁵ creates bill instability through five years of changing rates,¹³⁶ and fails to provide for the actual cost of service for two years without carrying costs.¹³⁷ Moreover, Silverleaf Resorts' argument of affordability ignores the reality of Silverleaf Resorts' own operations.

At hearing, Silverleaf Resorts' presented the affidavit of Hugh Rosenblum, the Vice President of Financial Services for Orange Lake Country Club, Inc., one of the two intervenors representing the Silverleaf Resorts' interests. Mr. Rosenblum's affidavit stated that:

¹³¹ Ex. 302, Stannard Refiled Rebuttal, 25:6-10; Ex. 303, Stannard Surrebuttal, 17:1-5 (Table 13); 15:8-12 (Table 10).

¹³² *Id.*

¹³³ Ex. 303, Stannard Surrebuttal, 12:11-15.

¹³⁴ Ex. 302, Stannard Refiled Rebuttal, 25:8-10.

¹³⁵ See, argument above, p. 18-20.

¹³⁶ Ex. 103, Busch Surrebuttal, 7:3-6; see also Ex. 3, Schwartz Surrebuttal, 6:19-23.

¹³⁷ Ex. 103, Busch Surrebuttal, 7:22-23.

[T]he Time-share owners (“Owners”) are financially and legally responsible for the payment of water and sewer services provided by Liberty Utilities (Missouri Water) pursuant to the Declarations of the varying properties.

A portion of the funds collected from Owners as maintenance fees are used to pay the invoices from Liberty Utilities.

[Emphasis added.]

First, bills from Liberty Utilities are not the sole costs that timeshare owners of Silverleaf Resorts pay.¹³⁸ According to Silverleaf’s own exhibit, Timeshare owners pay a “maintenance fee” from which only “a portion of the funds collected” are used by a Silverleaf Resort entity to pay the invoices from Liberty Utilities. Thus Silverleaf Resorts not only charges timeshare owners for utility costs separately from the utility bills, but the maintenance fees include other, unknown and unrelated costs to the utility service. Second, and importantly, timeshare owners *do not pay the Liberty Utilities bills directly themselves*. Instead, Orange Lake Country Club Inc. or Silverleaf Resorts, Inc., pays those bills. Third, as already described above, the roughly 36,686 timeshare owners¹³⁹ of Silverleaf Resorts then are responsible for only a portion of the roughly 371 water meters invoiced by Liberty Utilities to Silverleaf Resorts. Mathematically speaking, about *99 timeshare owners pay toward one meter*. When asked on the stand whether Mr. Stannard had seen or was aware of Mr. Rosenblum’s Affidavit, the following exchange occurred:

Q. Okay. Are you familiar with the exhibits that were just offered by your attorney and admitted into evidence, the affidavits from Mr. Rosenblum, Ms. Howell and Mr. Hall?

¹³⁸ Ex. 304, Affidavit of Hugh Rosenblum

¹³⁹ Ex. 302, Stannard Refiled Rebuttal, 5:2 (“36,686 timeshare owners”).

A. I have not seen those.

Q. You've not seen those.

* * *

Q. Okay. I'm handing the witness what's been marked as Exhibit 304 and I'll just give you a moment to review this. Have you seen this document before?

A. No, I have not.

Q. You've not seen this document before? Okay. Do you have any reason to doubt the information on this document?

A. No, I do not.

Q. Okay. I'm going to ask you a question. So there's a line in here that says, A portion of the funds collected from the owners -- and owners in this document are identified as timeshare owners. A portion of the funds collected from owners as maintenance fees are used to pay the invoices from Liberty Utilities. Do you have any understanding of how the timeshare owners actually pay Liberty Utilities for the water used?

A. I do not, no.

Q. So you have -- you can't speak to that information at all?

A. No, I cannot.¹⁴⁰

Without knowing how the timeshare owners of Silverleaf Resorts pay for the utility service provided by Liberty Utilities through Silverleaf Resorts—the actual entity paying the Liberty Utilities invoices—the arguments about customer affordability, and shifting costs to either the customer or commodity charge as raised by Silverleaf Resorts against Staff's proposals fail to hold water. They do not reflect reality, but instead a hypothetical scenario where Silverleaf Resorts timeshare owners pay the utility directly.

While Mr. Stannard focused on Silverleaf Resorts, Mr. Barnes' rate design reviewed the actual usage data for all of the Liberty Utility water and sewer service

¹⁴⁰ Hrg. Tr. Vol. 5, 270:20-272:10.

areas to develop his rate designs for each service area.¹⁴¹ Moreover, when examining Silverleaf Resorts' interpretation of the Silverleaf Resorts' own usage numbers, Mr. Barnes identified that Silverleaf Resorts' impression of the nature of its usage was contrary to its proposal:

Of the roughly 7,000 monthly bills [Silverleaf reviewed], two accountholders account for over 3,000 of those monthly bills. Of those two accountholders, 1,300 monthly bills have zero usage. However, those same two accountholders also have the highest (2,100) monthly bills as well. * * *

This information shows that these accountholders put a tremendous strain on the system. To ensure that the system is capable of producing sufficient usage during peak usage, the system has to be built to meet peak demand. Thus, the accountholders who are causing the highest stress on the system should be the ones paying for that system. Thus, even if a substantial amount of the accountholders monthly bills are for zero usage, the system has to be built to support the one or two months when usage is maxed. **This means that the fixed costs for having a properly sized system should be collected from those customers every month through the customer charge.**¹⁴²
[Emphasis added.]

Staff's rate design proposal is the most reasonable approach that balances the needs of the utility and the needs of the customers. Therefore, Staff recommends the Commission adopt Staff's proposed methodology as presented in the Stipulation, Attachment A, for setting the Customer charge and Commodity charge, as updated by the Commission's decision on the proper rate case expense.

¹⁴¹ EFIS Item No. 72, *Non-Unanimous Stipulation and Agreement*, Attachment A, p. 6, 8, 10, 12, 14.

¹⁴² Ex. 103, Barnes Surrebuttal, 2:18-3:9.

Should Silverleaf / Orange Lake be exempted from consideration in a subsequent rate case?

Silverleaf Resorts service area should not be exempted from consideration in a subsequent rate case. Staff does not agree with the concept of rate cases only for specific service areas operated by a utility.¹⁴³ Rather, a rate case should look at a utility's complete book and records and consider all relevant factors.¹⁴⁴ Limiting a review to one system, or otherwise exempting systems, will cause rate case expense to be higher for all customers due to more rate cases for a utility and the potential for the utility to over-collect shared costs and expenses not being allocated to each service area appropriately.¹⁴⁵ Therefore, neither Silverlake nor Orange Lake should be exempted from consideration in another rate case.

CONCLUSION

For all of the reasons provided above, Staff recommends that Commission treat the Stipulation as unanimous, and enter an order approving the terms of the Stipulation. Alternatively, Staff recommends that if the Commission does not treat the Stipulation as unanimous, that it make findings and conclusions consistent with the terms of the

¹⁴³ Ex. 103, Busch Surrebuttal, 13:8-9.

¹⁴⁴ Ex. 103, Busch Surrebuttal, 13:9-10; see *also* Ex. 3, Schwartz Surrebuttal, 3:6-16:

Although Silverleaf is currently served by a separate rate schedule, it is part of Liberty Utilities (Missouri Water) LLC, the legal entity and operating utility that file[d] the rate case. In order for the Company to achieve fair and reasonable rates for all of its customers, all of the revenues, expenses and investments need to be reviewed as part of a rate case. This is particularly important to ensure the proper allocation of the costs of shared services and corporate overhead allocations. Additionally, Liberty's goal over time is to continue to move in the direction of rate consolidation of its water and sewer systems as a means of efficiently managing the costs to operate these smaller systems. Simply put, there is no basis to exclude Silverleaf from the Company's next rate case.

¹⁴⁵ Ex. 103, Busch Surrebuttal, 13:10-13; see *also* Ex. 103, Busch Surrebuttal, 12:19-21 ("If certain customers are excluded from the [examination of relevant factors of rate case] review, then those allocations will not be recognized in rates for the excluded service area and the utility will collect revenues in excess of those authorized by the Commission.").

Stipulation. As presented in its testimony, at hearing, and as argued in this brief, Staff's recommended resolution to the various issues presented supports the terms of the Stipulation.

Moreover, aside from Silverleaf Resorts' proposed rate phase-in, no party presented any evidence at hearing that contradicted the terms of the Stipulation. The Stipulation's return on equity is within the ranges presented by the parties. While silent as to capital structure, Staff's filed capital structure supports the revenue requirement in the document. The Stipulation includes provisions for going-forward customer service and operational protections. The Stipulation provides for a rate design that balances the interests of company and customer for all of the service areas, not just for the benefit of one customer for one service area over others.

WHEREFORE, Staff respectfully submits its *Staff's Initial Brief* in the above-captioned matter.

Respectfully submitted,

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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 31st day of August, 2018.

/s/ Jacob T. Westen