

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

In the Matter of The Empire District	)	
Electric Company d/b/a Liberty, The	)	
Empire District Gas Company, Liberty	)	
Utilities (Missouri Water), LLC d/b/a Liberty	)	
Utilities, and Liberty Utilities (Midstates	)	<b><u>File No. AU-2021-0072</u></b>
Natural Gas) Corp. d/b/a Liberty Utilities	)	
for Accounting Authority Orders Allowing	)	
the Electric, Gas, Water, and Wastewater	)	
Utilities to Record and Preserve Costs	)	
Related to COVID-19	)	

**STAFF RESPONSE**

**COMES NOW** the Staff of the Missouri Public Service Commission, and for its *Staff Response* to the Commission’s order directing responses to certain inquiries, states as follows:

**Procedural History**

1. On September 17, 2020, The Empire District Electric Company, The Empire District Gas Company, Liberty Utilities (Missouri Water), LLC, and Liberty Utilities (Midstates Natural Gas) Corp. (collectively “Liberty”) applied in a single application for four accounting authority orders (AAOs) related to COVID-19 for the four companies.

2. The Commission granted the intervention requests of Midwest Energy Consumers Group, Missouri School Boards’ Association, the National Housing Trust, and Renew Missouri, in its order issued on October 19, 2020. In a separate order issued that same day, the Commission directed the parties to develop and submit a joint proposed procedural schedule. The parties filed said joint proposed procedural schedule on November 9, 2020. As of the date of this filing, the Commission has not ordered a procedural schedule in this matter.

3. In an order issued on November 18, 2020, the Commission stated that to determine why the Commission should not separate the application in this matter into individual files, the Commission was seeking input from the parties. The Commission posed several questions (inquiries) and directed all parties to respond no later than November 23, 2020.

### **Staff's Responses to Commission's Inquiries**

4. Staff provides below its responses to the inquiries posed in the Commission's November 18, 2020, Order. As Staff notes, Staff believes there is considerable administrative efficiencies gained by allowing Liberty's requests for AAOs in the application filed in this matter to remain in one case file, as opposed to separating the requests into multiple case files that require multiple, and sometimes redundant, filings. If Liberty's requests remain in one case file, Staff intends to address each of the four companies' requests separately in any of Staff's testimony, other exhibits, or legal briefs filed in this matter.

#### **1) Do the four AAO requests involve related questions of law or fact?**

**Please specify areas of dis-similarity as well.**

Yes. Liberty's AAO request in this matter contains a request for four of its utilities, representing three different utility types, the authority to defer certain costs related to the COVID-19 pandemic. Staff has not filed testimony in this matter, but typically in any AAO request, Staff analyzes primarily whether the event that precipitated the utility's request for an AAO is extraordinary, and secondarily, whether the financial impacts the utility has experienced from such an extraordinary event are material. Staff would utilize this same

analysis for each of Liberty's AAO requests. And Staff acknowledges that while the actual dollar impacts for each of Liberty's utilities from the COVID-19 pandemic may be different, the overall operational impact experienced by each of the utilities from the pandemic is likely the same.

**2) If these four requests are kept in a single file, how are the parties intending to separately address the AAO requests for the four companies in testimony, exhibits, and witnesses? Explain how the parties intend to address the different utilities' provision of different services, different costs, and different customers. The Commission would also note that each utility has separate Commission approved rates for service, and separate tariffs. Also, while all utilities share some rules, electric, gas, and water utilities are regulated under different chapters of the Commission's rules.**

Staff anticipated Liberty's AAO requests would be processed and considered in this single case filing. As such, Staff conducted discovery by asking separate data requests of each company included in this request. Staff further planned that any testimony it would file in this matter would separately address Staff's recommendation for each company. Additionally, to the extent applicable, Staff anticipated addressing each of the companies' requests in any brief it files in this matter.

Staff began discovery in this matter soon after Liberty filed its application containing its requests for AAOs. Staff has submitted several rounds of data requests to Liberty to gather information and ultimately inform Staff's position

in this matter. In each round of discovery, Staff submitted data requests in EFIS under the current file number (AU-2021-0072) to the four different companies and thus far each company has responded to each of Staff's data requests in EFIS with its respective company's information.<sup>1</sup> Staff has been able to gather information on the different utilities' costs, savings, usages, and tariff provisions in this single case file.

To the extent testimony may be needed in this matter, Staff has assigned one Staff witness to address the same issue or issues across companies. For instance, Staff has one Staff auditor assigned to look at all the costs for each utility for which Liberty seeks the authority to defer costs. Staff anticipated that this Staff auditor would file one piece of testimony in this matter that addresses Staff's recommendation for each of the different utilities' requests. Should the Commission separate these requests, this would require Staff's witness to then need to file four separate pieces of testimony in four separate case files. This becomes particularly burdensome on the administrative support staff who are tasked with formatting and filing.

Staff had anticipated filing one legal brief in each round of post-hearing briefing ordered in this matter. Staff planned to address any company-specific facts in evidence or applicable laws and rules in this one brief.

The Commission could model this method in any order where it renders its

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<sup>1</sup> At the time of this filing, Staff has submitted a total of 85 data requests in EFIS in File No. AU-2021-0072 to the various Liberty utilities included in this request. A breakdown of how many data requests Staff submitted to each company in this matter is as follows:

- |   |                  |
|---|------------------|
| • The Empire District Gas Company                       | 23 data requests |
| • The Empire District Electric Company/Liberty Electric | 19 data requests |
| • Liberty Utilities (Midstates Natural Gas) Corp.       | 22 data requests |
| • Liberty Utilities (Missouri Water), LLC               | 21 data requests |

decisions on the requests in this matter by addressing each utility's request separately and noting the findings of facts and conclusions of law separately for each utility.

**3) Will any administrative efficiencies be gained by keeping the four requests combined, and do they outweigh the potential for disparate outcomes?**

Yes, there will be administrative efficiencies gained by retaining the four requests in this single case file, and in Staff's opinion the administrative efficiencies significantly outweigh other administrative concerns.

In Staff's response to inquiry 2), Staff notes that it has already begun its investigation of Liberty's AAO requests by submitting data requests to the four companies for which Liberty is requesting an AAO. Procedurally, it's not clear to Staff how the already submitted and responded to data requests that are in EFIS in this case file would be treated if the requests in this matter were to be separated.

Additionally, Staff views the possible issues in each of the AAO requests in this matter to be common among the utilities included in this matter. Because of the commonalities of issues, Staff anticipates that the same Staff witness would provide testimony on the same issues for each company. Staff envisioned this would be accomplished by the Staff witness filing one piece of testimony that provides Staff's recommendation for all four utilities. Similarly, Staff anticipated filing one brief that would address all four utilities' requests in each round of post-hearing legal briefing in this matter.

A decision to separate Liberty's AAO requests into separate case filings would need to address the treatment of the data requests already submitted and responded to in this matter, and would certainly result in far more testimony, other exhibits, and legal brief filings than Staff or other parties had anticipated and planned for.

Staff suggests the Commission proceed with consideration of Liberty's AAO requests in this single case filing, and Staff provides a recommendation below in Paragraph 5 on how the Commission may ensure it receives the information needed to proceed in this manner.

**4) Assuming that the Commission divides this file into four separate applications, is it expected that the issues and witnesses would be similar enough to conduct a combined hearing?**

Yes. Staff reiterates that from its perspective there are considerable administrative efficiencies gained by having one case file for this matter. However, should the Commission decide that more than one case file is necessary under the circumstances, Staff believes the issues typical for AAO requests of this nature are similar enough,<sup>2</sup> and Staff's witnesses addressing such issues likely being the same for all cases, that a combined hearing is both possible and advisable.

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<sup>2</sup> If this were to be a fully litigated matter, Staff suggests the issues list filed in File No. EU-2020-0350, *List of Issues, List and Order of Witnesses, Order of Opening Statements, and Order of Cross Examination*, EFIS No. 54, filed on September 9, 2020, is representative of the types of issues Staff would expect in this matter. Staff further expects that the issues would be substantially the same, or even entirely the same, for each of the four utilities included in Liberty's AAO request.

**5) Current interveners shall identify the AAO applications in which they desire to be parties.**

Pursuant to Commission Rule 20 CSR 4240-2.010(10), Staff is a party to any Commission proceeding unless Staff files a notice of its intention to not participate within the established intervention period. Staff did not file such a notice in this matter, and therefore, Staff anticipates it would be a party to any separate proceedings that may stem from this matter.

**Staff's Recommendation**

5. Staff's recommendation is that the Commission proceed with the consideration of Liberty's AAO requests in this one case file. Staff's counsel believes there is no law or rule prohibiting the Commission from doing so, and further suggests there are significant administrative efficiencies in continuing to proceed in this manner. Staff has already begun discovery in this case file, and Staff has planned to provide a separate recommendation, and any company-specific information supporting this recommendation, in any testimony, other exhibits, or legal briefs it files in this matter. The Commission can ensure that other parties also provide separate recommendations for each utility by ordering parties to do so in any procedural schedule order the Commission issues in this matter.<sup>3</sup> The Commission can then rely on the company-specific information and recommendations in this case when it issues its order rendering decisions on the requests in this matter.

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<sup>3</sup> Staff recognizes that while no party's application to intervene filed in this matter stated it had an interest in only one or some of the Liberty utilities' requests contained in this matter, ultimately a party may decide that they do not have a position on one or some of the requests. If so, a party could simply state it does not have a position on a specific utility's request in any of the filings it makes in this matter.

**WHEREFORE**, Staff submits its *Staff Response* and provides its responses and recommendations as set forth herein for the Commission's consideration.

Respectfully submitted,

**/s/ Jamie S. Myers**

Jamie S. Myers  
Associate Counsel  
Missouri Bar No. 68291  
Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 526-6036 (Telephone)  
(573) 751-9285 (Fax)  
[jamie.myers@psc.mo.gov](mailto:jamie.myers@psc.mo.gov)

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 23<sup>rd</sup> day of November, 2020, to all counsel of record.

**/s/ Jamie S. Myers**