

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

In the Matter of the Application of The Empire)
District Electric Company, The Empire District)
Gas Company, Liberty Utilities (Midstates Natural)
Gas) Corp., and Liberty Utilities (Missouri Water))
LLC for an Affiliate Transactions Rule Variance)
File No. AO-2018-0179

NONUNANIMOUS STIPULATION AND AGREEMENT

COMES NOW The Empire District Electric Company, The Empire District Gas Company, Liberty Utilities (Midstates Natural Gas) Corp., and Liberty Utilities (Missouri Water) LLC (collectively the “Applicant Utilities”) and Staff of the Missouri Public Service Commission (“Staff”), through Staff Counsel’s Office (collectively the “Signatories”) and file their Nonunanimous Stipulation And Agreement (“Stipulation”) pursuant to 4 CSR 240-2.115.¹ For their Stipulation, the Signatories state as follows:

1. Applicant Utilities filed: on December 29, 2017, an *Application for Variance* (“*Application*”); on January 29, 2018, Exhibit A to the *Application*, which is a copy of the November 27, 2017, *Money Pool Agreement*; and on December 21, 2018, the Direct Testimony of Mark T. Timpe and a copy of the November 27, 2017, *Money Pool Agreement* and a copy of the August 24, 2018, Joinder Agreement to the Money Pool Agreement of Liberty Utilities (New England Natural Gas Company) Corp.²

¹ See also Section 536.060 RSMo. 2016.

² Mr. Timpe states at page 7 of his Direct Testimony: “The Applicants have not yet executed the Money Pool Agreement as its participation as a lender under the Money Pool Agreement is subject to the regulatory approval requested here.”

2. Applicant Utilities sought two variances from the Commission's Affiliate Transactions Rules to participate in a proposed Money Pool³ Agreement with each other and other affiliate companies. The first variance, identified in paragraph 15 at page 5, paragraph 21 at page 7, and the Wherefore clause at page 8 of the Application, is for a variance from the competitive bidding requirements detailed in the Rules. (4 CSR 240-20.015(3)(A) and 4 CSR 240-40.015(3)(A)). The second variance, also identified in paragraph 21 at page 7 and the Wherefore clause at page 8 of the Application, is for a variance from the asymmetrical pricing standards. (4 CSR 240-20.015(2)(A) and 4 CSR 240-40.015(2)(A)).

3. Applicants also requested a waiver respecting the 60-day notice requirement of Commission Rule 4 CSR 240-4.017 ex parte notice requirements.

4. Members of Staff's Auditing and Financial Analysis Departments reviewed Applicant Utilities' Application, other available information, and information obtained through data requests. On May 31, 2018, Staff filed a Memorandum Recommendation suggesting that the Commission deny the Application because it lacks an adequate or acceptable explanation as to why the proposed Money Pool must be structured and operated in a manner inconsistent with the Commission's Affiliate Transactions Rules.

5. Staff and Applicant Utilities continued to talk, Staff continued to submit data requests to Applicant Utilities, and Applicant Utilities continued to respond to said data requests, and developments occurred. As a consequence, Staff and Applicant Utilities have entered into the instant Nonunanimous Stipulation and Agreement.

³ The Direct Testimony of Mr. Timpe at page 7 describes the current "Money Pool Agreement" in question as "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."

SPECIFIC PROVISIONS AGREED TO BY APPLICANT UTILITIES AND STAFF

6. The Signatories recommend that the Commission approve the variance request contained in Applicant Utilities' Application and Direct Testimony from the competitive bidding requirements of Rules 4 CSR 240-20.015(3)(A) and 4 CSR 240-40.015(3)(A), pursuant to the following terms:

a. Applicant Utilities may borrow from the Money Pool only if the interest rate on borrowing from the Money Pool does not exceed the actual interest cost for the funds obtained or used to provide the funds borrowed by the Applicant Utility.

b. Applicant Utilities may not borrow from the Money Pool if the Applicant Utility determines that it can borrow at lower cost directly from outside banks or other third party financial institutions or through the sale of its own commercial paper.

c. Applicant Utilities will not borrow from outside the Money Pool in order to make loans to Borrowing Affiliates.

d. An Applicant Utility may only loan funds through the Money Pool if the Applicant Utility cannot earn a higher rate of return on investments of similar risk in the open market, or if the Applicant Utility will earn no less than the rate the Applicant Utility would have earned on investments in existing short-term investments accounts maintained by the Applicant Utility during the period in question.

e. Staff supports a variance of the competitive bidding requirement with respect to borrowing rates so long as Liberty Utilities funds the Money Pool

** _____ ** (without any mark-up in the interest rate). If Liberty Utilities' ** _____ _____ , ** then the waivers of the Commission's Affiliate Transactions Rules are rescinded, and the requirements of those Rules immediately are in full force and effect.

f. An Applicant Utility shall maintain evidence of the competitiveness of the rates associated with the funds borrowed from or lent into the Money Pool on an ongoing basis, and provide such evidence to Staff upon request.

g. During the period that outside borrowing or lending is being utilized by an Applicant Utility, any administrative costs that are not related to a specific borrowing or lending under the Liberty Utilities Co. ("LUCo") Credit Agreement should not be charged to that Applicant Utility.

h. On the same date it files its annual Affiliate Transactions Report, Applicant Utilities will submit an annual report⁴ to the Commission for the prior calendar year, which summarizes the activities of the Money Pool, including monthly summaries of investments, earnings, borrowings and interest rates for all participants.

i. Applicant Utilities will file a copy of any proposed amendment to the Money Pool Agreement, with the Commission and serve a copy of the filing on Staff, Public Counsel, and any party to the Applicant Utilities' most recently preceding Money Pool case before the Commission.

⁴ Liberty Utilities (Missouri Water) LLC, will submit its annual report concurrently with the submission of the reports for The Empire District Electric Company, The Empire District Gas Company, and Liberty Utilities (Midstates Natural Gas) Corp.

j. Applicant Utilities agree that they will not lend surplus funds to the Money Pool which will be loaned to a future LUCo affiliate which is a future member of the Money Pool without filing notice with the Commission and serving a copy of the filing on Staff, Public Counsel, and any party to the Applicant Utilities' most recently preceding Money Pool case before the Commission. In its filing the Applicant Utilities are required to

- 1). identify the full name of the future member,
- 2). identify the future member's affiliate relationship with Applicant Utilities,
- 3). describe the future member's corporate organization, and
- 4). state the future member's business purpose.

7. The Signatories agree that Applicant Utilities have shown "good cause" for the requested competitive bidding variance, as required by Commission Rules,⁵ and Applicant Utilities have provided an acceptable explanation as to why the proposed Money Pool should be structured and operated in a manner not entirely consistent with the Affiliate Transactions Rules. Further, the Signatories agree that Applicant Utilities' participation in the Money Pool as structured pursuant to the terms of the instant Stipulation, will not result in transactions that increase Applicant Utilities' cost to provide service to Missouri utility customers.

8. While Applicant Utilities requested a variance from the asymmetrical pricing requirements of 4 CSR 240-20.015(2)(A) and 4 CSR 240-40.015(2)(A) in their Application, the Signatories agree that such a waiver is now unnecessary for Applicant

⁵ 4 CSR 240-20.015(10)(A)(1); 4 CSR 240-2.060(4); 4 CSR 240-40.015(10)(A)(1); and 4 CSR 240-2.060(4).

Utilities to participate in the Money Pool as structured pursuant to the terms of the instant Stipulation.

9. The Signatories further recommend that the Commission approve the waiver request contained in Applicant Utilities' Application for the 60-day notice ex parte requirements of 4 CSR 240-4.017(1). The Signatories agree that Applicant Utilities have shown "good cause" for the requested waiver, as required by Commission Rules,⁶ and Applicant Utilities have provided an acceptable explanation.

GENERAL PROVISIONS

10. This Stipulation is being entered into solely for the purpose of settling this docket. Except as explicitly agreed otherwise herein, none of the Signatories shall be deemed to have approved or acquiesced in any question of Commission authority, ratemaking or procedural principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence that may underlie this Stipulation or for which provision is made in this Stipulation. Except as explicitly provided herein, none of the Signatories shall be prejudiced or bound in any manner by the terms of this Stipulation in this or any other proceeding.

11. If the Commission does not unconditionally approve this Stipulation without modification, and notwithstanding its provision that it shall become void thereon, neither this Stipulation nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Signatory has to a hearing on the issues presented by the Stipulation, regarding cross-examination or a decision in accordance with Section 536.080.1 RSMo. 2016 or Art. V,

⁶ 4CSR 240-4.017(1)(D).

Section 18 Mo. Const. The Signatories shall retain all procedural and due process rights as fully as though this Stipulation had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that may have been offered or received in support of or in opposition to this Stipulation shall thereupon become privileged as reflecting the substantive content of settlement discussions, and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

12. To assist the Commission in its review of this Stipulation, the Signatories also request that the Commission advise them of any additional information that the Commission may desire from the Signatories related to the matters addressed in this Stipulation, including any procedures for furnishing such information to the Commission.

13. If requested by the Commission, the Staff shall submit to the Commission a memorandum responsive to the Commission's request. Each Signatory shall be served with a copy of any memorandum and shall be entitled to submit to the Commission within five (5) days of receipt of the Staff's memorandum, a responsive memorandum which shall also be served on all Parties. The contents of any memorandum provided by any Signatory are its own and are not acquiesced in or otherwise adopted by the other Signatory to this Stipulation, whether or not the Commission approves and adopts this Stipulation.

14. The Staff also shall provide, at any agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests. The Staff shall, to the extent reasonably practicable, provide the other Signatories with advance notice of when the Staff shall respond to the

Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

15. Except as specified herein, the Signatories to the Stipulation shall not be prejudiced, bound by, or in any way affected by the terms of this Stipulation: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding, should the Commission decide not to approve the Stipulation or in any way condition its approval of the same, except as stated herein. Because this is a Stipulation for the purpose of settling matters in this case, it shall not be cited as precedent or referred to in testimony in any subsequent or pending judicial or administrative proceeding, except that this shall not be construed to prohibit reference to its existence in future proceedings, including proceedings to enforce compliance with its terms.

16. The provisions of this Stipulation have resulted from extensive discussions and negotiations among the Signatories and are interdependent and non-severable. If the Commission does not approve this Stipulation unconditionally and without modification, or if the Commission approves the Stipulation with modifications or conditions to which a Signatory objects, then this Stipulation shall be void and none of the Signatories shall be bound by any of the agreements or provisions hereof.

17. In the event the Commission accepts the specific terms of this Stipulation, the Signatories waive their respective rights: a) to cross-examine witnesses pursuant to Section 536.070(2) RSMo.; b) to present oral argument and written briefs pursuant to

Section 536.080.1 RSMo.; c) to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo.; and d) to judicial review pursuant to Section 386.510 RSMo. This waiver applies only to a Commission Order respecting this Stipulation issued in this proceeding approving this Stipulation unconditionally and without modification, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Stipulation.

18. This Stipulation contains the entire agreement of the Signatories concerning the issues addressed herein.

19. This Stipulation does not constitute a contract with the Commission. Acceptance of this Stipulation by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigatory powers or other statutory powers which the Commission presently has. Thus, nothing in this Stipulation is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information.

WHEREFORE, for the foregoing reasons which are addressed in Applicant Utilities' Application and Direct Testimony and Staff's Direct Testimony In Support Of The Nonunanimous Stipulation And Agreement, the undersigned Signatories respectfully request that the Commission issue an Order approving all of the terms and conditions of this Stipulation And Agreement.

Respectfully submitted,

/s/ Diana Carter

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail on Counsel for the Parties of record to this case, on this 24th day of January, 2019.

/s/ Steven Dottheim