

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 10th day of July, 2019.

In the Matter of the Application of Liberty Utilities)
(Missouri Water) LLC and Franklin County Water)
Company Inc. for Liberty Utilities to Acquire)
Certain Water Assets of Franklin County Water)

File No.: WA-2019-0036

**ORDER APPROVING TRANSFER OF ASSETS
AND GRANTING CERTIFICATE OF
CONVENIENCE AND NECESSITY**

Issue Date: July 10, 2019

Effective Date: August 9, 2019

On March 13, 2019, Liberty Utilities (Missouri Water) LLC d/b/a Liberty Utilities (hereinafter, "Liberty Utilities") filed an *Application for Authority to Transfer Utility Assets and Certificated Area of Franklin County* ("Application") with the Missouri Public Service Commission ("Commission") seeking an order authorizing Liberty Utilities to acquire the franchise and operating assets of Franklin County Water Company, Inc. ("Franklin County"), including its Certificate of Convenience and Necessity ("CCN"). With the transfer, Liberty Utilities would acquire all customers served by Franklin County, substantially all operating assets used to serve those customers, and all CCNs issued by the Commission.

The Franklin County water distribution assets are located in rural Franklin County, Missouri, near the City of St. Clair, Missouri, and serve approximately 189 single-family residential customers in an area known as "Lake Saint Clair." Liberty Utilities and Franklin County have entered into an Asset Purchase Agreement ("Agreement") providing for the

sale of the assets, property and real estate used in and comprising Franklin County's water distribution system, all as set out in the Agreement.

On March 19, 2019, the Commission issued its *Order Directing Notice and Order Directing Filing*. No applications to intervene were filed. Staff filed a *Report and Recommendation* ("Staff's Recommendation") on June 10, 2019, recommending that the Commission approve Franklin County's sale and transfer of utility assets and CCN to Liberty Utilities subject to conditions. Staff, however, did not support the consolidation of rates described in the Application. Liberty Utilities filed no objection to Staff's Recommendation. Staff recommends that the Commission do the following:

1. Authorize Franklin County to sell and transfer utility assets to Liberty Utilities and transfer the CCN currently held by Franklin County to Liberty Utilities upon closing on any of the respective systems;
2. Retain the existing Franklin County rates of \$5.70 customer charge and \$2.61 commodity charge;
3. Upon closing on the Franklin County water system, authorize Franklin County to cease providing service, and authorize Liberty Utilities to begin providing service;
4. Require Liberty Utilities to submit tariff sheets *prior* to closing on Franklin County assets, to include existing Franklin County water rates, a service area map, and service area written description, to be included in its EFIS water tariff P.S.C. MO No. 14, all applicable specifically to water service in its Franklin County service area;

5. Require Liberty Utilities to create and keep financial books and records for plant-in-service, revenues, and operating expenses (including invoices) in accordance with the NARUC Uniform System of Accounts;
6. Require Liberty Utilities, going forward, to keep and make available for audit and review all invoices and documents pertaining to the capital costs of constructing and installing the water and sewer utility assets;
7. Approve depreciation rates for water and sewer utility plant accounts as described in Attachment 1 of Staff's "Memorandum" attached to its Recommendation;
8. Make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding;
9. Require Liberty Utilities to provide to the Customer Experience Department Staff an example of its actual communication with the Franklin County customers regarding its acquisition and operations of the Franklin County water system assets, and how customers may reach Liberty Utilities regarding water matters, within ten (10) days after closing on the assets;
10. Require Liberty Utilities to include the Franklin County customers in its established monthly reporting to the Customer Experience Department Staff. Such reporting has been previously ordered by the Commission's Order Approving Application in WO-2011-0350 and is currently provided by Liberty Utilities. Such reporting includes, but is not limited to, such metrics as: 1) Calls Offered, 2) Call Center staffing, 3) Average Speed of Answer, 4) Abandoned Call Rate, 5) Number of Estimated Bills, 6) Number of

Consecutive Estimated Bills, and 7) calls answered by IVR (Integrative/Interactive Voice Response Unit);

11. Require Liberty Utilities to distribute an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water service to the Franklin County customers prior to the first billing from Liberty Utilities, consistent with the requirements of Commission Rule 4 CSR 240-13.040(3)(A-K); and
12. Require Liberty Utilities to provide to the Customer Experience Department Staff a sample of (10) billing statements from each of the first three months of bills issued to Franklin County customers within thirty (30) days of such billing.

Liberty Utilities filed no comments opposing Staff's Recommendation.

Liberty Utilities is a water corporation under Missouri law,¹ subject to the regulation, supervision and control of the Commission with regard to providing water service to the public. The Commission has jurisdiction to rule on the Application because Missouri law requires that "[n]o. . .water corporation. . .shall merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do."² The Commission will deny the application only if approval would be detrimental to the public interest.³

¹ Section 386.020(59), RSMO 2016

² Section 393.190.1, RSMO 2016.

³ *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo. 1934).

Liberty Utilities now serves approximately 3,300 water customers in Missouri. Liberty Utilities' greater size and its ability to gain access to the financial resources necessary to maintain or improve service will benefit customers currently served by the much smaller Franklin County. Once the proposed sale and transfer is approved, those customers currently being served by Franklin County will receive their water service from Liberty Utilities.

Based upon the information provided in the Application and upon the verified Recommendation and Memorandum of Staff, the Commission finds that the proposed transfer of assets set forth in the Agreement and subject to Staff's proposed conditions is not detrimental to the public interest. The Commission finds, however, that Liberty Utilities' request for a rate increase for Franklin County customers as a part of the acquisition is not reasonable. The Commission finds that the existing Franklin County rates of a \$5.70 customer charge and a \$2.61 commodity charge are just and reasonable.

With these rates and subject to the conditions recommended by Staff, the Commission finds that the *Application* should be approved, with the exception that the request to transfer Franklin County's certificate of convenience and necessity to Liberty Utilities cannot be granted. The Application requests transfer of Franklin County's CCN to Liberty Utilities, and the Staff has acceded to that request. A CCN, like a driver's license, is based upon the licensee's personal qualifications and is non-assignable. The Commission, however, will *sua sponte* consider whether to grant Liberty Utilities a CCN for the Franklin County service area.

The Commission may grant a water corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for

the public service.”⁴ The Commission applies the five “Tartan Criteria” established in *In the Matter of Tartan Energy Company, et al.*, 3 Mo. PSC 3d 173, 177 (1994) when deciding whether to grant a new CCN. The criteria are: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant’s proposal must be economically feasible; and (5) the service must promote the public interest. For all of the reasons that the Commission finds for authorizing the transfer of the water operation assets to Liberty Utilities and stated above, the Commission finds that the factors for granting a certificate of convenience and necessity to Liberty Utilities have been satisfied. The Commission will grant Liberty Utilities a certificate of convenience and necessity for the Franklin County service area.

The COMMISSION ORDERS THAT:

1. Subject to the conditions recommended by the Commission Staff which are delineated in the body of this Order, the *Application of Liberty Utilities (Missouri Water) LLC d/b/a Liberty Utilities* is granted, except as stated in the next paragraph;
2. Liberty Utilities shall retain the existing Franklin County rates of a \$5.70 customer charge and a \$2.61 commodity charge. That part of the *Application* requesting the transfer of Franklin County’s CCN to Liberty Utilities is denied, and Liberty Utilities is granted a CCN as stated below;
3. Franklin County is authorized to sell and transfer to Liberty Utilities and Liberty Utilities is authorized to acquire the water system located in Franklin County,

⁴ Section 393.170.3, RSMO.

Missouri, described in the *Application* and the Asset Purchase Agreement entered into between those parties;

4. Liberty Utilities is granted a Certificate of Convenience and Necessity to provide water service within the Franklin County service area as more particularly described in the *Application*, subject to the conditions and requirements contained in Staff's *Recommendation* and set out above, effective upon the date of closing of the purchase transaction;

5. Liberty Utilities and Franklin County are authorized to do and perform, or cause to be done and performed, all such acts and things, as well as make, execute and deliver any and all documents as may be necessary, advisable and proper to the end that the intent and purposes of the approved transaction may be fully effectuated;

6. In issuing this order, the Commission is making no ratemaking determination regarding any potential future regulatory oversight;

7. This order shall become effective on August 9, 2019



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and
Coleman, CC., concur.

Graham, Regulatory Law Judge

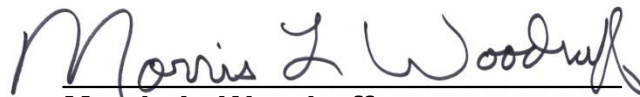
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission,
at Jefferson City, Missouri, this 10th day of July 2019.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

July 10, 2019

File/Case No. WA-2019-0036

**Missouri Public Service
Commission**

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Commission**

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.