

**Exhibit No.:**  
**Issue(s):**  
**Witness/Type of Exhibit:**  
**Sponsoring Party:**  
**Case No.:**

\_\_\_\_\_  
Rate Case Expense  
Payne/Direct  
Public Counsel  
WR-2024-0104

**DIRECT TESTIMONY**  
  
**OF**  
  
**MANZELL PAYNE**

Submitted on Behalf of the Office of the Public Counsel

**LIBERTY UTILITIES (MISSOURI WATER) CORP.**  
**D/B/A LIBERTY UTILITIES'**

FILE NO. WR-2024-0104

August 20, 2024

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**DIRECT TESTIMONY**

**OF**

**MANZELL M PAYNE**

**LIBERTY UTILITIES (Missouri Water) CORP. D/B/A LIBERTY**

**CASE NO. WR-2024-0104**

1 **Q. Please state your name, title, and business address.**

2 A. My name is Manzell Payne. I am a Utility Regulatory Auditor for the Office of the Public  
3 Counsel (“OPC” or “Public Counsel”), P.O. Box 2230, Jefferson City, Missouri 65102.

4 **Q. What are your qualifications and experience?**

5 A. My educational background includes a Bachelor of Arts degree in Accounting from  
6 Westminster College in Fulton, Missouri received in 2020.

7 Prior to joining the Office of Public Counsel in July 2023, I worked as an analyst and  
8 auditor in the banking industry for four and half years. The responsibilities during my time  
9 as an analyst included risk analysis, tracking/monitoring expenditures, auditing of business  
10 financial statements and business plans. Through my various analysis and auditing work in  
11 the banking industry, I had the opportunity to review an individual or company’s credit  
12 worthiness.

13 Since joining the OPC, I have attended the National Association of Regulatory Utility  
14 Commissioners (“NARUC”) Rate School and other seminars and trainings relating to  
15 utility regulation.

16 **Q. Have you testified previously before the Missouri Public Service Commission?**

17 A. Yes, I have previously testified before the Missouri Public Service Commission  
18 (“Commission”). Please refer to schedule MMP-D-1 attached hereto for a list of cases in  
19 which I have testified.

20 **Q. What is the purpose of your direct testimony?**

21 A. The purpose of my direct testimony is to address Liberty Utilities (Missouri Water) Corp. and  
22 Liberty Utilities (Sewer) Corp. d/b/a Liberty<sup>1</sup> rate case expense.

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<sup>1</sup> Heretofore “Company”, “Liberty Water” or “Liberty Sewer.”

1 **RATE CASE EXPENSE**

2 **Q. How would you define rate case expense?**

3 A. Rate case expense is the total cost that a utility will incur to prepare, present, argue, and  
4 conclude a general rate case. Examples of rate case expenses can be outside legal counsel  
5 fees, consultant fees, customer notice, and depreciation studies.

6 **Q. What has been the Commission's position on rate case expense in the past?**

7 A. The Commission has employed a 50/50 sharing mechanism for those rate case expenses that  
8 are not mandatory to initiate a rate case. Expenses such as customer notice fees, depreciation  
9 studies and filing costs are necessary to introduce a case. The Commission's most recent  
10 relevant decision on rate case expenses was in the Spire Missouri Rate Case Nos. GR-2017-  
11 0215 and GR-2017-0216, where the Commission held Spire Missouri to a 50/50 sharing  
12 mechanism with customers. In its Amended Report and Order, the Commission found:

13 Therefore, it is just and reasonable that the shareholders and the ratepayers  
14 who both benefited from the rate case, share in the rate case expense. The  
15 Commission finds that in order to set just and reasonable rates under the  
16 specific facts in this case, the Commission will require Spire Missouri  
17 shareholders to cover half of the rate case expense and the ratepayers to  
18 cover half with the exception of the cost of customer notices and the  
19 depreciation study.

20  
21 On February 9, 2021, the Missouri Supreme Court affirmed the Commission's decision.<sup>2</sup>

22 **Q. How should the Commission calculate the correct amount of rate case expense to be**  
23 **included in Liberty Water and Liberty Sewer rates?**

24 A. First, the Commission should exclude any rate case expense that Liberty Water and Liberty  
25 Sewer incurred in Case Nos. WR-2018-0170 and SR-2018-0171, respectfully. The Company  
26 has fully recovered their rate case expense from the previous case since it has been almost 6  
27 years since it was concluded on October 24, 2018.<sup>3</sup> Next, the Commission should normalize  
28 the reasonable and prudent rate case expense amount over 4 years, as the Company will file a  
29 general rate case within three years and new rates will go in effect presumably a year after.

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<sup>2</sup> *Spire Missouri, Inc. v. Pub. Serv. Comm'n*, 618 S.W.3d 225, 233 (Mo. banc 2021).

<sup>3</sup> Case Nos. WR-2018-0170 and SR-2018-0171 rates were effective October 2018.

1 Finally, the Commission should employ the same 50/50 sharing mechanism it has in the past  
2 to further reduce the rate case expense.

3 **Q. Are there any specific items that the Commission should disallow recovery of related to**  
4 **rate case expense?**

5 A. Yes. The Commission should disallow the inclusion of excessive attorney, consultant, and  
6 witness fees, as these costs are imprudent and only for the benefit of the Company.

7 **Q. Can you specify the OPC's concern around the Company's outside attorney fees,**  
8 **consultant fees, and outside witness fees in this case?**

9 A. Yes. The amount of attorney, witness, and consultant fees incurred by Liberty Water and  
10 Liberty Sewer are imprudent, in that it far exceeds the amount that should be considered  
11 reasonable. Liberty Water's and Liberty Sewer's customers should not be held responsible for  
12 funding the Company's excessive and expensive attorneys, witness, and consultant fees every  
13 time the Company has a rate case.

14 **Q. Can you provide detail on why customers should not be held responsible for Liberty**  
15 **Water's and Liberty Sewer's excessive attorney, consultant, and witness fees?**

16 A. Yes. While it may be reasonable for a utility to retain additional legal services when pursuing  
17 a rate increase request before the Commission, there is also a point where the costs of such  
18 service exceed what a reasonable person would spend. However, when the utility is able to  
19 recover at least half these costs from ratepayers, the downside to shareholders for pursuing  
20 these excessive costs becomes minimized. The upside to shareholders of having a high-priced,  
21 well-recognized name as a consultant, meanwhile, remains the same. Therefore, the cost-  
22 benefit analysis changes for the utility, encouraging it to hire outside consultants and  
23 expensive law firms even when those consultants and firms are not necessary to present the  
24 Company's case. The Company has experienced personnel, both internally and via affiliates,  
25 who can provide testimony to support the Company's position. Rate payers are already paying  
26 for the employees and should not have to pay for additional consultants or attorneys.

1 **Q. Can you provide an example of these excessive costs?**

2 A. Yes. The Company has seven (7) employees of Liberty Utilities Co.<sup>4</sup> at some level acting as  
3 witnesses in this case. On top of its employees, the Company has spent a significant sum,  
4 hiring five (5) additional individuals to act as consultants and/or witnesses. Therefore, in total,  
5 the Company has 12 witnesses in this case, six (6) of whom are also participating in Liberty  
6 Utilities (Midstates Gas) rate case (GR-2024-0104).

7 **Q. Did the Company issue a request for proposal (RFP) seeking bids for the scope of work  
8 for their consultants in this case?**

9 A. No. The Company did not issue an RFP or otherwise seek bids for the consultants in this case,  
10 which are the same consultants and/or their businesses as the ones used in Liberty Utilities  
11 (Midstates Gas) current gas case, No. GR-2024-0106.

12 **Q. Did the Company issue an RFP or other bids for the scope of work of their consultants  
13 or vendors in the Liberty Midstates gas case, GR-2024-0106?**

14 A. No. Responding to Staff Data Request 0125 in Case No. GR-2024-0106, question No. 4,  
15 “Copies of each specific RFP issued to acquire each consultants service.” Liberty Midstates  
16 stated:

17 For this specific rate case the Company did not utilize a formal RFP process. However,  
18 they entered into contracts with consultants that have been utilized in other  
19 jurisdictional rate cases/proceedings. These past positive experiences, coupled with  
20 the Consultants’ specific understanding of the Company, contributed to their  
21 selection.

22 In response to Data Request 0125 Case No. GR-2024-0106, question No. 9, “If an RFP was  
23 not issued, provide all documentation to support authorization to forgo the competitive bid  
24 process. Also provide all documentation of the process that was used to select the  
25 person/company hired.” The Company stated:

26 There was not a competitive bid process. Once the Company received the proposals  
27 from the consultants, they evaluated the proposals, taking into consideration each

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<sup>4</sup> This company is higher-level affiliate than Liberty Midstates.

1 consultant's qualifications, price, timeline, and experience. In addition, please see  
2 response to part 4 above.

3 **Q. In the current cases, WR-2024-0104 and SR-2024-0105, why do you believe that the**  
4 **Company did not issue a request for proposal or seek other bids?**

5 A. The Company is utilizing the same consultants and/or businesses that were utilized in the gas  
6 case, GR-2024-0106. In the gas case, the Liberty Utilities (Midstates Gas) responded to Staff's  
7 Data Request that they are using the consultants that they have used in other rate cases and  
8 only reviewed the proposal of the consultants that they had decided to use. No competitive  
9 bid process was utilized in that case, and I believe this to be the scenario for the current Case  
10 Nos. WR-2024-0104 and SR-2024-0105.

11 **Q. Can you explain why the Company's lack of an RFP process is a problem?**

12 A. Yes. When corporations make major financial decisions without seeking bids, there is no real  
13 cost control for the Company to follow. Moreover, the Company cannot determine whether it  
14 is getting the best price for the services it is seeking. Past association breeds familiarity but  
15 does not guarantee a competitive price. If the choice that Liberty Corp. makes is unduly  
16 expensive or if its services are not up to par, the Corporation has locked in its captive  
17 customers without doing the appropriate research. The Company has several experienced  
18 attorneys and witnesses currently on payroll. With such an abundant workforce in this case,  
19 the Company has no excuse for entering into contracts based solely on past performances and  
20 understanding of the Company. Failing to conduct an RFP regarding the consultants in this  
21 case is an irresponsible use of Customer funds and should be disallowed in its entirety.

22 **Q. If the Commission has ruled on a 50/50 sharing mechanism in the past, should that not**  
23 **help the burden of customers having to pay for excessive fees born by the Company for**  
24 **rate case expense?**

25 A. Although the Commission has previously ruled that a 50/50 sharing be the standard for rate  
26 cases, the Company still has the ultimate say on who they choose for their outside attorneys  
27 and consultants and can, therefore, pick the most expensive consultants and attorneys. The  
28 Company's lack of an RFP process to choose the numerous consultants active in this case,  
29 support a substantial disallowance regarding the rate case expense here.

1 **Q. Do you have a disallowance for consultant fees?**

2 A. Yes. I recommend the Commission disallow from rate case expense 100% of the fees  
3 associated with outside attorneys, consultants, and vendors, including the following:

- 4 • James Fallert Consulting (James Fallert)
- 5 • FTI Consulting (John Cochrane and Thomas O'Neill)

6 **Q. Why have you only recommended that three consultants out of the five in this case be  
7 disallowed?**

8 A. The remaining rate case expenses pertaining to other two consultants, Timothy Lyons  
9 (ScottMadden) and Dane Watson (Alliance Consulting Group) are due to the topics of which  
10 each consultant is a witness for. Timothy Lyons' rate case expenses are due to cash working  
11 capital (CWC)<sup>5</sup>. Dane Watson's rate case expenses are due to the depreciation study (the  
12 commission mandates a depreciation study be performed every 5 years). At this time I have  
13 excluded the costs from my 100% disallowance, however, I may have additional  
14 disallowances for each in the future if deemed to be imprudent.

15 **Q. Please summarize your recommendations for rate case expense treatment in this case.**

16 A. I have four recommendations regarding how the Commission should treat Liberty Water and  
17 Liberty Sewer's rate case expense in this case:

- 18 1. Liberty Water and Liberty Sewer's rate case expense should follow Commission precedent  
19 and the Company follow the 50/50 rate case sharing.
- 20 2. The Commission should disallow any rate case expense that has carried through from Case  
21 Nos. WR-2018-0170 and SR-2018-0171, as these cases were close to 6 years ago, and those  
22 expenses have already been reimbursed.
- 23 3. Rate case expense should be normalized over 4 years.
- 24 4. The Commission should disallow at least a portion of outside consultant fees due to the  
25 Company having an excessive number of consultants and cost of their work. Specifically, I  
26 recommend the disallowance of fees associated with James Fallert Consulting and FTI  
27 Consulting.

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<sup>5</sup> The recommendation for a 50/50 sharing for rate case expense still applies to the expenses of Timothy Lyons due to his work on the CWC study.



1 **Q. Does this conclude your direct testimony?**

2 A. Yes it does.

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


In the Matter of the Request of Liberty Utilities    )  
(Missouri Water) LLC d/b/a Liberty for Authority   )  
to Implement a General Rate Increase for Water    )           Case No. WR-2024-0104  
and Wastewater Service Provided in its Missouri    )  
Service Areas   )

**AFFIDAVIT OF MANZELL PAYNE**

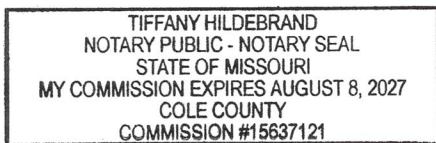
STATE OF MISSOURI    )  
  )    ss  
COUNTY OF COLE    )

Manzell Payne, of lawful age and being first duly sworn, deposes and states:

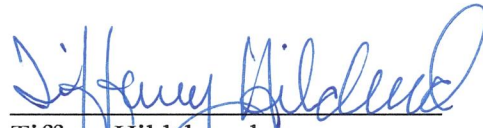
1. My name is Manzell Payne. I am a Utility Regulatory Auditor for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my direct testimony.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Manzell Payne  
Utility Regulatory Auditor

Subscribed and sworn to me this 20<sup>th</sup> day of August 2024.



My Commission expires August 8, 2027.

  
\_\_\_\_\_  
Tiffany Hildebrand  
Notary Public