BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Request of Liberty Utilities (Midstates Natural Gas) Corp. d/b/a Liberty to Implement a General Rate Increase for Natural Gas Service in the Missouri Service Areas of the Company	**Case No.** GR-2024-0106

THE OFFICE OF THE PUBLIC COUNSEL'S STATEMENT OF POSITION

COMES NOW the Office of the Public Counsel ("OPC") and for its Statement of Position, states as follows:

1. Cost of Capital

a. What capital structure should the [Public Service] Commission [("Commission")] use in this case to determine a revenue requirement for Liberty [Midstates]?

The proper capital structure for the Commission to use to set Liberty Midstates' authorized rate-of-return ("ROR") is 47.50% common equity and 52.50% long-term debt.[1] This common equity ratio is consistent with Algonquin Power & Utilities Company's ("APUC") historical targets for its regulated utility business segment, which APUC owns through Liberty Utilities Co. (LUCo).[2]

At present, APUC is in a state of transition due to its underperforming non-regulated investments, failed acquisitions, and announced divestments.[3] Therefore,

[1] *Direct Testimony of David Murray*, p. 4, GR-2024-0106, EFIS Item No. 50.
[2] Id. at p. 5 to 6 and p. 12.
[3] *Surrebuttal Testimony of David Murray*, p. 11 to 12 and p. 18 to 20, GR-2024-0106, EFIS Item No. 141.

despite LUCo's recent actual capital structures containing approximately 60% common equity, LUCo's credit rating has not been raised above 'BBB.'[4] In fact, LUCo's recent debt costs have been more consistent with debt assigned a 'BBB-' rating.[5]

b. What is the appropriate cost of debt that the Commission should apply in this case to determine a revenue requirement for Liberty?

The appropriate cost of debt for purposes of setting Liberty Midstates' authorized rate-of-return is 3.97%.[6] This recommended cost of debt is based on LUCo's embedded cost of long-term debt as of the updated test year, December 31, 2023, and does not include any affiliate debt financing transactions.[7] Further, it is based on all third-party debt issuances before LUCo's cost of debt increased due to debt investors' concerns about the uncertainty surrounding LUCo's pending acquisition of Kentucky Power Company from American Electric Power Company, and APUC's weakened financial condition caused by its non-regulated business segment.[8]

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[4] *Direct Testimony of David Murray*, p. 11, GR-2024-0106, EFIS Item No. 50.
[5] *Rebuttal Testimony of David Murray*, p. 6 to 7, GR-2024-0106, EFIS Item No. 91.
[6] *Direct Testimony of David Murray*, p. 4, GR-2024-0106, EFIS Item No. 50.
[7] Id. at p. 13.
[8] *Rebuttal Testimony of David Murray*, p. 6 to 7, GR-2024-0106, EFIS Item No. 91.

c. **What is the appropriate return on common equity ("ROE") that the Commission should apply in this case to determine a revenue requirement for Liberty?**

The appropriate ROE is 9.5%.[9] The OPC's witness, David Murray, estimates Liberty Midstate's cost of common equity to be approximately 8.5%.[10] An authorized ROE over the cost of equity will allow Liberty Midstates to attract capital because the opportunity to earn a ROE higher than the COE creates shareholder value. In fact, investors recognize that although utilities' COE has increased since 2022, authorized ROEs of 9.5-9.6% are still meaningfully higher than a COE of 8.5%. Therefore, they do not expect authorized ROEs to meaningfully increase.[11]

2. Contract Customers

a. **Has Liberty [Midstates] provided support for determining whether the negotiated flexed rate for customers served under the Negotiated Gas Sales Service tariff is prudent?**

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

b. **If not, what is the appropriate amount of revenue imputation to offset Liberty [Midstates'] revenue requirement[?]**

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

[9] Id.
[10] Id. at p. 14.
[11] *Direct Testimony of David Murray*, p. 23, GR-2024-0106, EFIS Item No. 50; *Surrebuttal Testimony of David Murray*, p. 25, GR-2024-0106, EFIS Item No. 141.

3. Depreciation

a. What depreciation rates should be ordered by the Commission?

The Commission should order that Liberty Midstates' maintain its current depreciation rates, which follows the argument Staff supported in its direct testimony.[12]

b. Should Staff's proposed adjustments to reallocate negative reserve be included in Liberty Midstates' Cost of Service?

No, it should not. Neither the Company nor Staff discussed Liberty Midstates' reserve transfers in testimony. Staff's depreciation expert did not explain what its recommended reserve transfers were, where those reserve transfers should go, or why those transfers were necessary.[13] Further, there is no explanation of whether the accumulated reserves were reallocated within a single functional group, or among multiple functional groups.[14]

c. Should Liberty Midstates be able implement General Plant Amortization accounting?

No. Liberty Midstates should not be permitted to implement General Plant Amortization accounting methods. General Plant Amortization accounting makes it more difficult for regulators to update the depreciation rates assigned to Liberty Midstates' assets and to conduct prudence reviews.[15]

Because this method of accounting does not yield historical retirement data, tracking the money rather than the assets, the depreciation information in that

[12] *Surrebuttal Testimony of John A. Robinett*, p. 2, GR-2024-0106, EFIS Item No. 140.
[13] Id.
[14] Id.
[15] Id. at p. 6 to 9.

account will always remain the same.[16] It will, therefore, be impossible to analyze the actual lives of assets without additional work for any individual conducting that analysis.[17] The purpose of depreciation is to determine the proper monetary recoupment a utility's shareholders should receive for the appropriate return on investment, based on the life of that investment. It would, therefore, require more work to determine proper depreciation rates with General Plant Amortization accounting.

General Plant Amortization accounting tracks money rather than assets in that account, so only two values matter:

1) total account additions in a vintage year and

2) the amortization period for recouping <u>that cost</u>.[18]

What General Plant Amortization accounting does not track is how long the asset itself remains in service. Therefore, it's harder for auditing staff to determine if an asset that the Company purchased was, in fact, prudent.

If the Commission does permit the Company to implement General Plant Amortization accounting, Liberty Midstates should still be required to keep a record of their assets' original cost and retirement data.[19] Further, Liberty Midstates should retire all general plant that currently exceeds its amortization period.[20] That way,

[16] Id at p. 7.
[17] Id at p. 8.
[18] Id. at p. 6. (emphasis added).
[19] Id. at p. 9.
[20] *Direct Testimony of John A. Robinett*, p. 7, GR-2024-0106

the implementation of this accounting method will create less hardship for regulators in their oversight duties.

4. Rate Design and Related Issues

a. Should the NEMO/WEMO rate district be consolidated with the SEMO rate district?

The OPC does not take a position on this issue at this time, but this office reserves the right to discuss this issue in briefing.

b. What is the appropriate rate design, including customer charge and volumetric rates, for each customer class and each district (if applicable)?

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

5. Revenues

a. What normalized revenues and billing determinants are appropriate for establishing rates in this case?

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

6. Capitalized Transition/Transaction Costs

a. Should capitalized transition and transaction costs stemming from Case No. GM-2012-0337 be removed from the cost of service and written off of Liberty Midstates' books and records?

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

7. Prepayments

a. Is it appropriate to include the PSC assessment in rate base so that Liberty Midstates[] can earn a return on it?

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

8. Customer Advances

a. Is it appropriate to include the last known amount or a 13-month average of customer advances in rate base?

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

9. Cash Working Capital

a. Should a 37-day expense lag or a 365-day expense lag be used in calculating the [C]ash [W]orking [C]apital requirement for both federal and state income taxes?

A 365-day lag should be used for Cash Working Capital (CWC) calculations due to Liberty Midstates' current use of a net operating loss carryover ("NOLC") tax position.[21] Company witness Timothy Lyons mistakenly highlights IRS quarterly estimated tax payment dates as the lag time.[22] Liberty Midstates, Public Service Commission Staff ("Staff"), and OPC have all acknowledged that the Company will not have a tax obligation.

[21] Surrebuttal Testimony of John S. Riley, p. 2, GR-2024-0106, EFIS Item No. 132.
[22] Id.

b. Should a 168.5-day expense lead or 14.13-day expense lead be adopted for the PSC Assessment?

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

c. Should a 159.31-day expense lag or 293.53-day expense lag be adopted for property taxes?

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

d. Should gas costs be included in the Cash Working Capital calculation?

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

10. <u>Property Tax Tracker Regulatory Asset</u>

a. What amount should Liberty Midstates[] be permitted to include as the property tax tracker base to measure against actual property tax expense[] that will be recovered as a regulatory asset in rate base and over what period of time should the regulatory asset be amortized?

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

11. <u>Payroll and Payroll Tax Expense</u>

a. What is the amount of payroll expense that should be included in Liberty Midstates' cost of service and how should the annualized level of overtime expense be calculated?

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

b. Should certain Liberty Utilities employee salaries be excluded from the cost of service?

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

c. What capital percentage should be applied to annualized payroll expense?

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

d. What amount of payroll tax expense should be included in the cost of service?

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

12. Uncollectible Expense

a. What amount of uncollectible expense should be included in the cost of service in this case?

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

b. Should an additional amount of uncollectible expense be included in the cost of service for possible bad debt associated with the incremental revenue increase requested in this case?

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

13. Fuel Expense

a. What amount of fuel expense should be included in the cost of service?

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

14. Miscellaneous Expense

a. Is it appropriate for Liberty Midstates[] to include promotional items in their cost-of-service calculation?

The OPC does not take a position on this issue at this time, but reserves the right to discuss it in briefing.

15. Rate Case Expense

a. What amount of rate case expense should be excluded from Liberty Midstates' revenue requirement?

The Commission should exclude at least a portion of the outside consultant and attorney fees that the Company has included in its calculation of rate case expense.[23] One third (1/3) of Liberty's witnesses in this case are outside consultants.[24] The consultants' positions benefit the Company at the cost of ratepayers, such as a shift to Generalized Plant Amortization accounting[25] or a 10.8% ROE.[26] It is, therefore, hard to find the benefits Liberty Midstates' customers derive from the excessive outside hires.

Further, the Company's additional Local Public Hearing notices sent to customers in the NEMO/WEMO service areas should not be included. The Company had to send those notices out due to the fact that they did not consider their customers who receive a virtual bill, originally. Further, the additional hearing was the most

[23] *Direct Testimony of Manzell Payne*, p. 5, GR-2024-0106, EFIS Item No. 51.
[24] Id. at p. 3 to 4.
[25] *See Generally Direct Testimony of Dane Watson*, GR-2024-0106, EFIS Item No. 15.
[26] *See Generally Direct Testimony of John Cochrane*, GR-2024-0106, EFIS Item No. 16.

well attended one, by far. These factors concern the OPC and lead to a question as to how those original customer notices were sent to customers.

b. What amount of customer notice costs should be included in Liberty Midstates' revenue requirement?

The amount that the Company included for customer notice cost, minus any amount for the additional customer notices, should be included in this case. The OPC's reasoning for this consideration is explained above.

c. What amount of depreciation study costs should be included in Liberty Midstates' revenue requirement?

The full cost of Liberty Midstates' depreciation study, amortized over a five (5) year period, should be included in its revenue requirement.

d. Should rate case expense be subject to a 50/50 sharing mechanism?

The Company's rate case expense should follow Commission precedent and be subject to a 50/50 sharing mechanism.[27] The Commission has considered the 50/50 sharing mechanism to be the most appropriate method of handling rate case expense in the past because it highlights the fact that both customers and shareholders benefit from a rate case.[28] Further, given Liberty Midstates' excessive reliance on outside consultants, it would be inappropriate to shift those costs entirely onto customers.

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[27] *Direct Testimony of Manzell Payne*, p. 5, GR-2024-0106, EFIS Item No. 51.
[28] *See Amended Report and Order*, p. 52, GR-2017-0125 and ER-2017-0216, EFIS Item No 594.

e. Should rate case expense be normalized or amortized and over what period of time?

The Commission should normalize its determination of a reasonable and prudent rate case expense amount over a four-year (4-year) period, as Liberty Midstates is required to file a general rate case within three (3) years due to Infrastructure System Replacement ("ISRS") filing requirements.[29]

16. <u>Training and Travel Expense</u>

a. What amount of training and travel costs should be included in Liberty Midstates' cost of service in this case?

The OPC does not take a position on this issue at this time, but this office reserves the right to discuss this issue in briefing.

17. <u>Employee Benefits Expense</u>

a. What amount of 401(k) match expense should be included in Liberty Midstates' cost of service in this case?

The OPC does not take a position on this issue at this time, but this office reserves the right to discuss this issue in briefing.

18. <u>Customer First Operations & Maintenance Expense</u>

a. What is the appropriate amount of operations & Maintenance expense to include in Liberty Midstates' cost of service for hosting and maintenance agreements related to the new Customer First software transition?

The OPC does not take a position on this issue at this time, but this office reserves the right to discuss this issue in briefing.

[29] Mo. Rev. Stat. § 393.1012.2.

19. Business Development Costs

a. Should labor and non-labor costs associated with business development activities be included in the cost of service?

The OPC does not take a position on this issue at this time, but this office reserves the right to discuss this issue in briefing.

20. Allocations

a. Test Year Expense Disallowance: Should allocated costs such as late fees, advertising expenses, care and housing allowances, and awards/gifts be included in the cost of service?

The OPC does not take a position on this issue at this time, but this office reserves the right to discuss this issue in briefing.

b. Allocation Factor Update: Should the 2022 or 2023 corporate allocation factors be used in determining the appropriate amount of cost to allocate to Liberty Midstates?

The OPC does not take a position on this issue at this time, but this office reserves the right to discuss this issue in briefing.

21. State Income Tax Stub Period and ADIT

a. What amount of accumulated deferred income tax (ADIT) should be included as an offset to rate base?

The OPC does not take a position on this issue at this time, but this office reserves the right to discuss this issue in briefing.

b. Should Liberty Midstates defer the revenue requirement difference based on the change in state tax rate, for the period of January 1, 2020[,] through the effective date of rates in this case, to be returned to customers in Liberty Midstate[s'] next rate case?

The OPC does not take a position on this issue at this time, but this office reserves the right to discuss this issue in briefing.

c. What is the appropriate amount of net operating lost to apply to the federal and state excess accumulated deferred income tax for return to customers?

The amount of net operating loss ('NOL") that should be included in this case is the past NOL that is specifically associated with accelerated depreciation.[30] Accelerated depreciation is the amount of depreciation (used) in the company's tax return less the mount included in rates.[31]

The NOL associated with accelerated depreciation is the tax depreciation less the financial/regulatory depreciation multiplied by the federal tax rate. There is no state NOL as Missouri does not recognize NOL.[32]

22. <u>Non-Revenue Requirement Related Items</u>

a. Should Liberty Midstates continue to provide the same type of quarterly surveillance and actual earnings information related to their natural gas operations, separately by the rate divisions that are ultimately determined as part of this case?

The OPC does not take a position on this issue at this time, but this office reserves the right to discuss this issue in briefing.

b. Should Liberty Utilities periodically perform compensation studies for all employees, including those at the director level and above?

The OPC does not take a position on this issue at this time, but this office reserves the right to discuss this issue in briefing.

[30] *Surrebuttal Testimony of John S. Riley*, p. 4, GR-2024-0106, EFIS Item No. 132.*)*
[31] Id. at attachment JSR-S-02c.
[32] Id. at attachment JSR-S-03—MO1120.

c. Should Liberty utilities periodically perform internal audits regarding time reporting to ensure compensation levels allocated to Liberty Midstates are appropriate?

The OPC does not take a position on this issue at this time, but this office reserves the right to discuss this issue in briefing.

d. Should Liberty Midstates maintain its SAP general ledger with detail similar to that of the legacy Great Plains general ledger with minor accounts and certain coding?

The OPC does not take a position on this issue at this time, but this office reserves the right to discuss this issue in briefing.

23. Customer Service

a. Should the Commission order Liberty Midstates to change its IVR to prompt callers to select their state? If so, should the Commission order Liberty Midstates to include Missouri-specific metrics in the existing Monthly Performance Report?

The OPC does not take a position on this issue at this time, but this office reserves the right to discuss this issue in briefing.

b. Should the Commission order Liberty Midstates to investigate and resolve the issue(s) causing an increase in the number of estimated bills it generates per month?

The OPC does not take a position on this issue at this time, but this office reserves the right to discuss this issue in briefing.

24. Weather Normalization Adjustment Rider ("WNAR")

a. Should the Commission approve the continuation of Liberty Midstates' WNAR, with modifications?

No. The Commission should only approve the continuation of Liberty Midstates' WNAR, with modifications, if the Company explains what those modifications are. Liberty Midstates has not provided any such explanation.[33] The WNAR is a *privilege* not a *right*. Further, the Company has the burden of proof to support its tariff changes in a rate case,[34] which—at present—the Company has not done.

b. If so, what modifications should be made?

If the Company provides evidentiary support for its modifications, the OPC may support them. The issue with the Commission approving Liberty Midstates' WNAR right now is that the Company has not provided an explanation of, or support for, its modifications.[35] The OPC is not arguing that Liberty Midstates' modifications of the WNAR are not appropriate, just that there is a process that the Company should follow to make those modifications.

Moreover, the Commission should choose *either* Staff's weather normalization calculations *or* the Company's, rather than create a third option. That way, coefficients will be available for the WNAR.

WHEREFORE, the Office of the Public Counsel respectfully submits its *Statement of Positions* in this case for the purpose of Commission consideration.

By: **/s/ Anna Kathryn Martin**

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[33] *Direct Testimony of Lena M. Mantle*, p. 3, GR-2024-0106, EFIS Item No. 49.
[34] *Surrebuttal Testimony of Lena M. Mantle*, p. 4, GR-2024-0106, EFIS Item No. 130.
[35] Id. at p. 2.

Certificate of Service

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this fourth (4th) of October, 2024.

/s/ Anna Martin