

**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 and  
Wastewater Service Provided in its  
Missouri Service Areas

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Case No. WR-2024-0104

**OPC POSITION STATEMENT**

**COMES NOW** the Office of the Public Counsel (“OPC” or “Public Counsel”) and submits the following positions regarding the remaining contested issues:

Missouri law dictates that the public is entitled to public utility rates for essential utility services that are “just and reasonable”, and that the services provided are “safe and adequate.”<sup>1</sup> Liberty Water’s proposed rate increase is not just and reasonable, and its utility services are far from adequate.

The OPC requests the Public Service Commission (“Commission”) consider the public’s pleas when it deliberates on each issue. The public has told the Commission that the services received from Liberty Water are far below what is to be expected from a Missouri public utility. The magnitude of the requested increase is unprecedented and will be harmful to those the Commission is tasked with protecting. Rather than benefiting from reduced bills through economies of scale, Liberty’s water and sewer customers are now being allocated large sums that will

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<sup>1</sup> Section 393.130 RSMo.

double or even triple their water or sewer bills without any meaningful system improvements. That is, unless the Commission determines that such an impact is not just and reasonable and holds this Company to account. Each issue the Commission decides in this case presents an opportunity for the Commission to do just that.

### **1. Resource Planning**

*OPC Position:* The OPC has not taken a position on this issue but may take a position in the evidentiary hearing and/or briefing.

### **2. Depreciation Rates**

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

*OPC Position:* The Commission should order Staff's consolidation of current ordered depreciation rates to one universal schedule supplemented with a new depreciation rate for account 323 Other Power Production Equipment. The Commission should also order the corrections made by OPC witness John Robinett. The depreciation rates recommended by Liberty lack supporting data to allow Liberty to meet its burden of proof to substantiate a change. (Robinett Rebuttal).

### **3. Customer First Program O&M**

- a. What amount, if any, of O&M expense associated with the Customer First Program be included in the revenue requirement?
- b. Should the Customer First Program investment be excluded from the Bolivar revenue requirement?

*OPC Position:* The OPC supports the Staff's recommendation to not include Customer First O&M expense because such amounts are not known and measurable and the program was not fully operational during the test year. (Foster Direct)

#### **4. Bolivar Sewer System**

*OPC Position:* The OPC has not taken a position on this issue but may take a position in the evidentiary hearing and/or briefing.

#### **5. Cash Working Capital**

- a. What is the correct billing lag for Cash Working Capital?
- b. What is the appropriate Cash Working Capital Requirement to be included in the cost of service?
- c. Should a 37-day or 365-day or the midpoint of 182.5 day expense lag be used in calculating the cash working capital requirement for both federal and state income tax?

*OPC Position:* The Commission should order a 365-day expense lag as recommended by Staff “due to Liberty Water and its affiliates operating at a net loss (NOL) for the last three years.” This is consistent with the Commission’s resolution of this issue in Spire Missouri’s last rate case. (Niemeier and Horton Direct). The OPC has not taken a position on CWC issues (a) and (b) but may take a position in the evidentiary hearing and/or briefing.

#### **6. Payroll Expense, Payroll Taxes, & Employee Benefits**

*OPC Position:* The OPC has not taken a position on these issues but may take a position in the evidentiary hearing and/or briefing.

#### **7. Incentive Compensation**

- a. Should Liberty be permitted to recover incentive compensation amounts tied to the Company’s financial objectives, growth objectives or employee compensation cash outlay?

*OPC Position:* No. Disallowing these incentive compensation amounts is consistent with past Liberty cases because “[t]hese awards benefit Liberty Water’s shareholders, not Liberty Water’s ratepayers.” In addition, “there is no cash outlay for this equity-

based incentive compensation” in that “Liberty Water is simply awarding stock options to its employees.” (Horton Rebuttal)

b. Should Liberty demonstrate customer benefit such as lower rates to be permitted to recover any incentive compensation amounts that are tied to the Company’s financial objectives, growth objectives, or employee compensation?

*OPC Position:* Yes. It is not just and reasonable to require Missouri ratepayers to compensate Liberty shareholders for incentive compensation where the Company has not met its burden of establishing ratepayer benefits.

## **8. Travel & Training Expense**

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

*OPC Position:* The OPC has not taken a position on this issue but may take a position in the evidentiary hearing and/or briefing.

## **9. Contract & Outside Services**

a. What amount should Liberty be permitted to include in revenue requirement for Contract and Outside Services expense?

*OPC Position:* The OPC has not taken a position on this issue but may take a position in the evidentiary hearing and/or briefing.

## **10. Rate Case Expense**

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

*OPC Position:* Yes. The Commission should continue its practice of recognizing that rate cases provide significant benefits for shareholders, and that it is just and reasonable to require a sharing of that expense. (Payne Direct and Surrebuttal).

i. What amount should be included in revenue requirement for rate case expense?

ii. What amount should be excluded from revenue requirement for

rate case expense?

iii. What amount of the Depreciation Study costs should be included in revenue requirement?

*OPC Position:* Taking issues i-iii together, the OPC recommends the Commission include 100% of the depreciation study costs and customer notice costs, exclude the excessive consultant costs (James Fallert Consulting and FTI Consulting), and apply a 50/50 sharing to the remaining rate case expenses. (Payne Direct and Surrebuttal).

b. Over what time period should rate case expense be normalized/amortized for non-depreciation related rate case expenses?

*OPC Position:* Rate case expense should be normalized over a 4-year period. This period best represents the period before new rates to become effective in Liberty's next rate case. In addition, normalizing the expense "ensures that the cost is recovered consistently over time, providing stable and predictable rates for customers." (Payne Direct and Surrebuttal).

c. What is the appropriate amortization normalization period for costs associated with the Depreciation Study?

*OPC Position:* The OPC has not taken a position on this issue but may take a position in the evidentiary hearing and/or briefing.

**11. Property Tax Expense, Property Tax Tracker, & Property Tax Tracker Amortization**

**12. Pension & OPEB Expense / Tracker**

**13. Revenues**

**14. Other Miscellaneous Revenues**

**15. Allocation Factors**

**16. Income Tax Expense**

*OPC Position:* The OPC has not taken a position on Issues 11-16 but may take a position in the evidentiary hearing and/or briefing.

## **17. Accumulated Deferred Income Taxes**

- a. What amount should be included in accumulated deferred income taxes?

*OPC Position:* The proper amount of accumulated deferred income taxes should be \$1,480,719. (Riley Surrebuttal).

## **18. Excess Accumulated Deferred Income Taxes**

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

*OPC Position:* The proper amount of excess accumulated deferred income taxes should be \$304,527. (Riley Surrebuttal).

## **19. Plant in Service**

*OPC Position:* The OPC has not taken a position on this issue but may take a position in the evidentiary hearing and/or briefing.

## **20. Depreciation Reserve**

*OPC Position:* The OPC has not taken a position on this issue but may take a position in the evidentiary hearing and/or briefing.

## **21. Bolivar Regulatory Asset**

- a. What amount, if any, should be included in Liberty rate base for the Bolivar Regulatory Water Asset and Sewer Asset?
- b. What amount of the regulatory asset should be recovered as an expense?
- c. Over what period of time should the regulatory water asset and the regulatory sewer asset be amortized?

*OPC Position:* The Commission should exclude the Bolivar regulatory asset in its entirety because this amount represents an acquisition premium that provides no benefits to ratepayers, and follows an acquisition that Liberty achieved without being transparent with the citizens of Bolivar on future rate increases.

## **22. Contributions in Aid of Construction (“CIAC”), CIAC Reserve, Amortization of CIAC**

*OPC Position:* The OPC has not taken a position on this issue but may take a position in the evidentiary hearing and/or briefing.

## **23. Deferred Tank Painting**

*OPC Position:* The OPC has not taken a position on this issue but may take a position in the evidentiary hearing and/or briefing.

## **24. Customer First**

- a. Should the Commission order that the Company earn no return on the Customer First asset until such time that the Company fixes the billing and customer service issues?

*OPC Position:* Yes. Liberty’s roll-out of Customer First has been a failure. Customers should not be required to pay the Company a return on an asset until it works. Until the many problems are corrected, it is not just and reasonable to allow the Company to earn a return on Customer First. (Schaben Rebuttal and Surrebuttal).

## **25. WO-2022-0253 Investigatory Docket**

- a. Should Liberty accompany its Customer First transition with improvements to how it approaches customer service?
- b. Should the Commission order Liberty to provide Staff with updates on Onsolve and measures of success in its utilization, including the number or customers capable of receiving boil advisory text messages and any process or procedural changes implemented to increase the number or customers’ mobile phone numbers on file?
- c. Should the Commission order Liberty to ensure CSRs utilize account

notes to document all conversations with customers and actions taken on accounts?

*OPC Position:* Yes, for issues 25 a, b, and c.

## **26. Cost of Capital**

a. What capital structure should the Commission use in this case to determine a revenue requirement for Liberty?

*OPC Position:* The Commission should “set Liberty Water’s ratemaking common equity ratio at 47.5% rather than Algonquin Power & Utilities Company’s (“APUC”) consistent request of approximately 52.5% to 53% for its Missouri utility companies. APUC manages its operating utility subsidiaries’ capital structures through affiliate financing transactions. Liberty Water, as well as its Missouri sister subsidiaries, do not issue their own debt or equity to third parties. In past rate cases involving APUC’s regulated Missouri utility subsidiaries, the Commission cited this fact when deciding to authorize a capital structure consistent with the ratios APUC targeted and maintained for Liberty Utilities Co. (“LUCo”), which directly and indirectly issues debt on behalf of its United States’ regulated utilities.” (Murray Direct, Rebuttal and Surrebuttal).

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

*OPC Position:* It is appropriate that an embedded cost of debt of 4.29% be applied to OPC witness David Murray’s recommended 52.5% debt ratio. LUCo’s embedded cost of long-term debt is based on all third-party debt issued directly by LUCo, indirectly by LUF and legacy operating subsidiary debt. Mr. Murray appropriately adjusted the coupons on LUCo’s January 12, 2024 debt issuances based on pricing information provided to APUC from its investment bankers. (Murray Direct, Rebuttal and Surrebuttal)

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



*OPC Position:* The appropriate return on common equity (ROE) is 9.25%. This amount recognizes that the cost of equity sufficient to attract capital is within the range of 7.5% to 8.5%. Mr. Murray's analysis considers capital market conditions, investor expectations and recent average allowed ROEs to determine a fair and reasonable range is 9.0% to 9.5%. (Murray Direct, Rebuttal and Surrebuttal).

## **27. Venice on the Lake Distribution System**

## **28. Ozark Mountain Water Tank**

## **29. Tank Inspections**

## **30. Water Loss**

*OPC Position:* The OPC has not taken a position on Issues 27-30 but may take a position in the evidentiary hearing and/or briefing.

## **31. Rate Design/Rate Consolidation**

a. Should Liberty's Class Cost of Service (CCOS) Study be used to allocate the cost of service and develop rates, should Staff's rate design be utilized, or should rate increase, if any, be spread across the customer classes on an across-the-board basis?

*OPC Position:* The OPC has not taken a position on this issue but may take a position in the evidentiary hearing and/or briefing.

b. Should the Commission authorize the combining of Liberty's current tariffed areas to four (4) rate districts: Bolivar water, all other water, Bolivar Sewer, all other sewer?

*OPC Position:* The OPC has not taken a position on this issue but may take a position in the evidentiary hearing and/or briefing.

c. If rate increases are approved by the Commission for Bolivar in any amount greater than 20% should such increases be phased in over multiple years with no associated carrying costs?

*OPC Position:* The Commission should not authorize any rate increase above the 19% increase that Liberty convinced Bolivar residents would be likely to occur with this rate increase. However, should the Commission allow Liberty to raise rates beyond what Bolivar customers believed would occur when they voted to sell the system, OPC supports phasing in rates for Bolivar.

d. Should any rate increase ordered for Bolivar water customers be capped? If yes, what cap should the Commission order?

*OPC Position:* Yes. The messaging provided by Liberty to the citizens of Bolivar before the city voted to sell the system stated that the 2024 rate increase would be approximately 19%. Liberty did not disclose to the citizens of Bolivar that this 19% did not apply to the water system, as Liberty now asserts, nor did Liberty disclose its known plan to raise rates for the Customer First program. The citizens of Bolivar that spoke at the public hearing and through filed comments consistently state that they were told by Liberty prior to voting to sell their system that the 2024 rate increase would not be this high. Liberty should be held to that 19% figure that convinced Bolivar to sell its system. (Schaben Rebuttal and Surrebuttal).

e. Should non-Bolivar customers pay higher rates as a result of a Bolivar rate cap?

*OPC Position:* No. Non-Bolivar residents should not be charged a subsidy that is above their cost of service.

f. Should the excess revenue requirement on Bolivar's sewer system be used to (1) offset the Bolivar water rates, (2) decrease the Bolivar sewer customers' current rates, or (3) decrease the Bolivar sewer regulatory asset?

*OPC Position:* The OPC has not taken a position on this issue but may take a position in the evidentiary hearing and/or briefing.

### **32. Rate Case Expense Disallowance**

a. Should Liberty be allowed to recoup the billed amount from FTI Consulting

for Thomas O'Neill's CCOS study?

*OPC Position:* No. The rate case expenses incurred by Liberty in this case are excessive and the costs for these outside consultants should be borne by Liberty and its shareholders that made the decisions to retain these consultants. (Payne Direct and Surrebuttal).

### **33. Preventative Maintenance Plan**

### **34. Normalized Residential Customer Usage**

### **35. Administrative and General ("A&G") Expense**

*OPC Position:* The OPC has not taken a position on Issues 33-35 but may take a position in the evidentiary hearing and/or briefing.

### **36. Affordability/Policy**

a. Is affordability of water and sewer service a concern given the magnitude of the proposed rate increase? If yes, how should the Commission consider affordability when it decides each issue before it?

*OPC Position:* Yes. The public feedback on Liberty's proposals contains a common theme that the proposed rate increases are not affordable. The Commission should always protect the Missouri public against "rate shock." Most customers under Liberty's proposed rate increase would experience huge rate increases that will constitute rate shock for many Liberty customers. Doubling or tripling the water and sewer bills for vulnerable populations could have a devastating ripple effect on their ability to have sufficient money for proper nutrition, medicine, and other essential utility services like space heating. These concerns should be present as the Commission deliberates on every issue before it. (Schaben Rebuttal and Surrebuttal).

**37. Should the Company be directed to study whether to base sewer rates on winter water usage and present the results of that study in the next rate case?**

*OPC Position:* Yes. During one of the local public hearings in Bolivar, a member of the public suggested basing sewer rates on winter water usage to exclude warm weather water usage that does not flow through the sewer (such as watering lawns). The OPC supports this idea as it has the potential of better aligning costs with cost causation. However, given Liberty's problems with usage data, it is unable to make those determinations at this time. OPC supports a study on this to be presented in the next rate case. (Seaver Rebuttal).

**38. Should Liberty be authorized to use general plant amortization accounting?**

*OPC Position:* No. Unlike electric and natural gas companies, the use of general plant amortization is inconsistent with the water and wastewater accounting guidelines from the National Association of Regulatory Utility Commissioners ("NARUC") adopted by the Commission in 20 CSR 4240-50.030. (Robinett Surrebuttal)

Respectfully submitted,

/s/ Marc Poston

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 8th day of November 2024.

***/s/ Marc Poston***

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