

**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

STAFF RECOMMENDATION

COMES NOW Staff of the Missouri Public Service Commission (“Staff”), through Staff Counsel’s Office, and files its Staff Recommendation pursuant to the April 19, 2018, Joint Response To Regulatory Law Judge’s Instructions (“Joint Response”). In response to the direction of the Regulatory Law Judge (“RLJ”) at the Prehearing Conference held on Thursday, April 12, 2018, the Parties (the Applicants,¹ Staff, and the Office of the Public Counsel (“Public Counsel”)) filed a report on Thursday, April 19, 2018, describing how they proposed to proceed in File No. AO-2018-0179. The Parties suggested that, no later than May 31, 2018, Staff file a Memorandum Recommendation respecting Applicants’ December 29, 2017, *Application For Variance* (“Application”). The Joint Response further suggested that if Staff’s Filing opposed Applicants’ request for variances, the Parties agreed to meet and/or confer by conference call soon afterwards to determine if there is a basis for continued discussion; i.e., the Parties will determine whether they will be able to reach a settlement of the issues, or whether it will be necessary to set a procedural schedule. Pursuant to that proposal, and for its *Recommendation*, Staff respectfully states as follows:

1. The Applicants’ December 29, 2017, *Application for Variance* seeks two variances from the Commission’s Affiliate Transactions Rules necessary to allow

¹ The Applicants are The Empire District Electric Company, The Empire District Gas Company, Liberty Utilities (Midstates Natural Gas) Corp., and Liberty Utilities (Missouri Water) LLC.

them to participate in a proposed Money Pool² Agreement with other affiliate companies. The first, 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 (B) and 4 CSR 240-40.015(3)(A) and (B)). The second, 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)).

2. Members of Staff's Auditing Department have reviewed the Applicants' Application and all other available information. Staff submits its verified Recommendation in Staff's *Memorandum* attached hereto as Appendix A.

3. As explained in more detail in Staff's *Memorandum*, Staff recommends that the Commission deny both variance requests contained in the Applicants' Application. Staff is of the opinion that the Applicants have failed to show "good cause" for the requested variances, as required by Commission Rule,³ and the Applicants have not provided an adequate or acceptable explanation as to why the proposed Money Pool must be structured and operated in a manner inconsistent with the Affiliate Transactions Rules. It is Staff's opinion that the Applicants' participation in the Money Pool as currently structured, in conjunction with the approval of the requested

² The Application For Variance defines "Money Pool" in paragraph 16 as "a cash management arrangement among utilities, under which a utility may make short-term loans (less than 365 days) to other affiliates when they have excess cash, and may make short-term borrowings from other affiliates when they have short-term cash needs. Excess funds will also be invested in short-term high-quality liquid investments (such as money market funds) after borrowing participant needs have been met. LUCo is the administrator of the Money Pool and guarantees all loans by eligible borrowers. . . ."

³ 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))

variances, could result in transactions that increase the Applicants' cost to provide service to Missouri utility customers.

4. In its April 19, 2018, Joint Response, the Parties requested until June 7, 2018, to advise the Commission whether discussions are occurring among the Parties and should continue, or the Parties will provide the Commission a proposed procedural schedule to be set by the Commission.

WHEREFORE, for the foregoing reasons discussed in detail in Staff's *Memorandum*, Staff recommends the Commission deny the Applicants' *Application for Variance*. In addition, in keeping with its April 19, 2018, *Joint Response To Regulatory Law Judge's Instructions*, Staff states that the Parties will further report to the Commission no later than June 7, 2018, to advise the Commission whether fruitful discussions are occurring among the Parties or that the Parties will provide the Commission a proposed procedural schedule to be set by the Commission.

Respectfully submitted,

/s/ Mark Johnson

Mark Johnson, Mo. Bar #64940
Senior Counsel
(573) 751-7431 (Telephone)
mark.johnson@psc.mo.gov (E-mail)

/s/ Steven Dottheim

Steven Dottheim, Mo. Bar #29149
Chief Deputy Staff Counsel
(573) 751-7489 (Telephone)
steve.dottheim@psc.mo.gov (E-mail)

Attorneys for Staff of the
Missouri Public Service Commission

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 31st day of May, 2018.

/s/ Steven Dottheim