

**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) Case No. _____
Liberty Utilities (Missouri Water) LLC for Approval of)
Their Cost Allocation Manual.)

**APPLICATION FOR APPROVAL OF CAM, CONDITIONAL REQUEST FOR
VARIANCE, AND, IF NECESSARY, REQUEST FOR WAIVER**

COME NOW The Empire District Electric Company (“Empire Electric”), The Empire District Gas Company (“Empire Gas”), Liberty Utilities (Midstates Natural Gas) Corp. (“Liberty Midstates”), and Liberty Utilities (Missouri Water) LLC (“Liberty Utilities”) (collectively, the “Applicants”), by and through counsel, and request approval of their Cost Allocation Manual (“CAM”), conditionally request a variance from one component of Rules 4 CSR 240-20.015(2)(A) and 4 CSR 240-40.015(2)(A), and, if necessary, request a waiver of the 60-day notice requirement of Rule 4 CSR 240-4.020(2). In this regard, the Applicants respectfully state as follows to the Missouri Public Service Commission (“Commission”):

Background Information

1. Empire Electric is a Kansas corporation with its principal office and place of business at 602 Joplin Street, Joplin, Missouri, 64801. Empire Electric is engaged in the business of providing electrical and water utility services in Missouri to customers in its service areas. Empire is an “electrical corporation,” a “water corporation,” and a “public utility” as those terms are defined in §386.020, RSMo., and is subject to the jurisdiction and supervision of the Commission as provided by law.

2. Empire Gas is a corporation organized and existing under the laws of the State of Kansas, with its principal office located at 602 Joplin Street, Joplin, Missouri, 64801. Empire

Gas provides natural gas service and is a “gas corporation” and a “public utility” as those terms are defined in §386.020, RSMo., and is subject to the jurisdiction and supervision of the Commission as provided by law.

3. Liberty Midstates is incorporated under the laws of the State of Missouri, with its principal office located at 2751 North High Street, Jackson, Missouri, 63755. Liberty Midstates provides natural gas service and is a “gas corporation” and a “public utility” as those terms are defined in §386.020, RSMo., and is subject to the jurisdiction and supervision of the Commission as provided by law.

4. Liberty Utilities is a Limited Liability Company organized under the laws of the State of Missouri, with its principal office located at 2751 North High Street, Jackson, Missouri, 63755. Liberty Utilities, formerly Algonquin Water Resources of Missouri, LLC d/b/a Liberty Utilities, is a “small company” within the meaning of the Commission’s rules and is a water and sewer utility subject to the jurisdiction and supervision of the Commission as provided by law.

5. The Applicants have no pending or final unsatisfied judgments or decisions against them from any state or federal agency or court which involve customer service or rates, which have occurred within the three years immediately preceding the filing of this Application. The Applicants have no overdue Commission annual reports or assessment fees. The documents of incorporation and certificates of authority or incorporation from the State of Missouri for Empire Electric, Empire Gas, and Liberty Midstates were previously filed with the Commission (Case Nos. EF-94-39, EM-2000-369, GO-2006-0205, GM-2012-0037, and GN-2014-0090) and are incorporated herein by reference.

6. Correspondence, communications, and orders in regard to this Application should be directed to the undersigned counsel.

Request for Approval of CAM

7. RSMo. §393.140(4) provides that the Commission shall have the power to prescribe uniform methods of keeping accounts, records and books to be observed by regulated utilities and may prescribe, by order, forms of accounts, records, and memoranda to be kept by each regulated utility, and RSMo. §393.140(11) provides that the Commission may require each regulated utility to file with the Commission all forms of contract or agreement and all rules and regulations relating to rates, charges, or service. As authorized by these statutes and in an effort “to prevent regulated utilities from subsidizing their non-regulated operations,” the Commission implemented affiliate transaction rules: 4 CSR 240-20.015 for Electric Utilities and 4 CSR 240-40.015 for Gas Utilities.

8. Rule 240-20.015(3)(D) provides that each regulated electric corporation shall use a “Commission-approved CAM” for transactions involving the purchase of goods or services from an affiliated entity, and Rule 240-40.015(3)(D) provides that each regulated gas corporation shall use a “Commission-approved CAM” for transactions involving the purchase of goods or services from an affiliate. In compliance with these Rules, and to ensure that the Applicants’ affiliate transactions comply with these rules, the Applicants seek Commission approval of the CAM attached hereto. For ease of operation, Liberty Utilities is a party to this Application, even though the Commission’s rules do not require water corporations to operate pursuant to Commission-approved CAMs.

9. The CAM attached hereto is applicable to Algonquin Power & Utilities Corp. (“APUC”) and its subsidiaries, which include the Applicants. APUC also owns other distribution utilities, as well as independent power production facilities in the United States and Canada. APUC is a publicly traded holding company and, as the ultimate “parent” of the Applicants,

provides financial and strategic management, corporate governance, and oversight of administrative and support services to the Applicants and its other subsidiaries. Appendix 9 of the APUC CAM is specific to Empire Electric, Empire Gas, and Liberty Midstates.

10. Rule 4 CSR 240-20.015 for Electric Utilities and Rule 4 CSR 240-40.015 for Gas Utilities are nearly identical, with the same affiliate transaction requirements and restrictions for both regulated gas companies and regulated electric companies.

a. Subsection two contains the operational standards for affiliate transactions.

- i. Unless a variance or waiver is obtained, the regulated utilities shall not participate in any affiliated transactions which are not in compliance with the Commission's Rules. Except for corporate support functions, a regulated utility shall not provide a financial advantage to an affiliate, meaning that a regulated utility shall not compensate an affiliate for goods or services above the lesser of the fair market price ("FMP") or the fully distributed cost ("FDC") to the regulated utility to provide the goods or services for itself and shall not transfer information, assets, goods, or services of any kind to an affiliate below the greater of the FMP or the FDC. (2)(A), (B), and (D).
- ii. Customer information shall be shared only with consent of the customer. (2)(C).
- iii. Certain disclosures and disclaimers regarding affiliate relationships are required. (2)(E) and (F).

b. Subsection three contains the evidentiary standards for affiliate transactions.

- i. When the regulated utility purchases from an affiliate, competitive bids should be obtained or it must be demonstrated why competitive bids are neither necessary nor appropriate, there must be documentation of the same, and a Commission-approved CAM must be used. (3)(A), (B), and (D).
- ii. When the regulated utility provides to an affiliate, the regulated utility must consider, calculate, allocate, and document costs and the fair market price. (3)(C).

c. Subsection four contains record keeping requirements for the regulated utilities,

including the requirement that regulated utilities keep their books and records separate from those of its affiliates and that affiliate transaction reports be provided yearly to the Staff of the Commission and the Office of the Public Counsel.

d. Subsection five contains record keeping requirements for parent corporations and other affiliates, and subsection six deals with access to the records of affiliates.

e. Subsection seven provides that affiliate transaction records shall be maintained for a period of not less than six years, and subsection eight provides for enforcement of the Commission's Rules.

f. Subsection nine provides that each regulated utility must train and advise its personnel as to the requirements of the affiliate transaction rules.

11. The CAM attached hereto, including Appendix 9, was designed to comply with the Commission's affiliate transaction rules, as discussed above, and to prevent the Applicants from subsidizing their non-regulated affiliates.

Conditional Request for Variance

12. Subsection ten of Rule 4 CSR 240-20.015 (electric) and Rule 4 CSR 240-40.015 (gas) provides that a variance from the standards set forth in the rules may be obtained.

13. Pursuant to the Commission's affiliate transaction rules, an affiliate transaction is any transaction "for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service" between a regulated utility and an affiliate. As noted above, except for corporate support functions, a regulated utility shall not provide a financial advantage to an affiliate, meaning that a regulated utility shall not compensate an affiliate for goods or services above the lesser of the fair market price ("FMP") or the fully distributed cost ("FDC") to the regulated utility to provide the goods or services for itself and shall not transfer information,

assets, goods, or services of any kind to an affiliate below the greater of the FMP or the FDC. This “asymmetrical pricing” requirement is found in subpart (2)(A) of the affiliate transaction rules.

14. If a Missouri-regulated gas or electric utility provides a good or service to an affiliate, it must sell the good or service at the greater of FMP or FDC. The problem arises when the receiving affiliate is also a Missouri-regulated gas or electric utility, since a Missouri regulated gas or electric utility must buy from an affiliate at the lower of FMP or FDC.

15. As noted above, the stated purpose of the affiliate transaction rules is to prevent regulated utilities from subsidizing their non-regulated operations. Empire Electric, Empire Gas, and Liberty Midstates are affiliates of each other, subject to the rules referenced above, but are also each regulated by the Commission. As such, the asymmetrical pricing requirements are unworkable and, arguably, do not apply.

16. Few affiliate transactions between the Applicants are contemplated, but the Applicants, including those subject to the gas and electric affiliate transaction rules, will engage in at least some transactions with each other.

17. To the extent the Commission believes a variance is required, the Applicants request a variance from the asymmetrical pricing requirements of Rules 4 CSR 240-20.015(2)(A) and 4 CSR 240-40.015(2)(A), to allow the Applicants to engage in transactions with each other at cost (instead of at the lower or greater of FMP or FDC).

18. The Applicants request that this variance apply to transactions with any and all affiliated Missouri-regulated utilities and request that the variance apply to all transactions except those governed by tariffed rates.

Motion for Waiver

19. This case is not likely to be a contested case within the meaning of Commission Rule 4 CSR 240-4.020(2). Additionally, since the issue of the Empire Electric and Empire Gas CAM has been before the Commission in various forms since 2011, it would serve no purpose to wait sixty days before filing the Application for Commission approval.

20. The Applicants represent to the Commission that they did not engage in any conduct which would have constituted a violation of any ex parte rule or standard of conduct if a 60-day notice had been filed pursuant to 4 CSR 240-4.020(2).

21. Accordingly, to the extent that the Commission may find it to be applicable, the Applicants request a waiver from the provisions of Commission Rule 4 CSR 240-4.020(2) to allow for the filing of this Application.

WHEREFORE, Empire Electric, Empire Gas, Liberty Midstates, and Liberty Utilities respectfully request approval of their CAM, an order of the Commission granting a variance from the asymmetrical pricing requirements of the affiliate transaction rules, and, if necessary, a waiver of the 60-day notice requirement of Rule 4 CSR 240-4.020(2). The Applicants request such additional relief as is necessary or appropriate under the circumstances.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was filed in EFIS on this 30th day of June, 2017, with notice of the same being sent to all counsel of record. I further certify that a copy of this document was sent by electronic transmission to the Staff of the Commission and to the Office of the Public Counsel.

/s/ Diana C. Carter