

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

In the Matter of Liberty Utilities (Midstates Natural Gas) Corp. d/b/a Liberty's Fuel Costs Related to the Extraordinary Weather Event of February 2021)
)
) **File No. GU-2021-0276**

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), through counsel, and for its *Staff Recommendation* states:

1. On August 25, 2021, Liberty Utilities (Midstates Natural Gas) Corp. (“Liberty”) filed its *Verified Winter Storm Uri AAO Application*. Liberty requests an accounting authority order (“AAO”) allowing it to accumulate and defer as a regulatory liability costs related to Winter Storm Uri. Specifically, Liberty seeks to defer the following costs: (1) February 2021 fuel and purchased gas costs, (2) carrying costs on the total February 2021 fuel and purchased gas costs at Liberty’s weighted average cost of capital, and (3) outside legal fees related to Winter Storm Uri.

2. On October 27, 2021, the Commission ordered Staff to file its recommendation by November 16, 2021.

3. “An AAO permits ‘extraordinary items’ to be deferred and accounted for in a future accounting period.”¹ “[B]ecause establishment of an AAO deviates from the Commission’s general ratemaking methodology, the Commission has substantial discretion in determining whether an AAO is appropriate in a particular case.”²

4. As explained in the attached Memorandum, Staff recommends the Commission deny Liberty's request. Liberty requested extended recovery of fuel and

¹ *Office of Public Counsel v. Every Missouri, West, Inc.*, 609 S.W.3d 857, 866 (Mo. App., W.D. 2020) (citing *State ex rel. Aquila, Inc. v. Public Service Commission*, 326 S.W.3d 20, 27 (Mo. App., W.D. 2010)).

² *Id.*

purchased gas costs related to Winter Storm Uri in its current purchased gas adjustment (“PGA”) case, Case No. GR-2022-0128. The accounting treatments Liberty seeks in this AAO request (Case No. GU-2021-0276) and the PGA case (Case No. GR-2022-0128) are duplicative. Staff recommended in the PGA case that the Commission allow Liberty to extend its ACA recovery period. The Commission has not ruled in this matter.

5. Similar to the Winter Storm Uri fuel and purchased gas costs, Liberty requested extended recovery of carrying costs in its current PGA case (Case No. GR-2022-0128). Staff recommends that carrying costs not be deferred in this case (Case No. GU-2021-0276), because the Commission will handle them in the PGA case.

6. And finally in this case (Case No. GU-2021-0276), Liberty requested AAO treatment for outside legal fees of \$37,404 it incurred related to Winter Storm Uri. These costs are immaterial and should not be included in an AAO.

WHEREFORE, for the above reasons Staff recommends that the Commission deny Liberty’s request.

Respectfully submitted,

/s/ Karen E. Bretz

Karen E. Bretz

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing have been emailed to all parties and/or counsel of record on this 16th day November, 2021.

/s/ Karen E. Bretz

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. GU-2021-0276
Liberty Utilities (Midstates Natural Gas) Corp.

FROM: Kimberly K. Bolin, Utility Regulatory Manager

DATE: /s/ Kimberly K. Bolin 11/16/2021 /s/ Karen Bretz 11/16/2021
Auditing Department/Date Staff Counsel's Office/Date

SUBJECT: Staff Recommendation for the Denial of the Application of Liberty Utilities (Midstates Natural Gas) Corp.'s Fuel Costs Related to the Extraordinary Weather Event of February 2021

DATE: November 16, 2021

On August 25, 2021, Liberty Utilities (Midstates Natural Gas) Corp. ("Liberty" or "Company") filed an Application for an accounting authority order ("AAO") permitting Liberty to track and defer, beginning February 2021, to a regulatory asset: (1) fuel and purchased gas costs from February, 2021; (2) carrying costs on the total February, 2021 fuel and purchased gas expenditures at the Company's weighted average cost of capital; and (3) other costs specifically related to Winter Storm Uri, including outside legal fees. Staff recommends that the Commission deny Liberty's request for an AAO permitting Liberty to track and defer to a regulatory asset certain costs associated with Winter Storm Uri.

Accounting Authority Order

An AAO is an order from the Commission allowing a utility to account for a reporting item in a different manner than normally prescribed for the utility's financial records. An AAO allows a utility to defer costs associated with an extraordinary event. Under normal accounting practices, a utility would charge to expense as incurred on its income statement all costs associated with an extraordinary event. If deferral of those costs is authorized through an AAO, the utility treats the costs associated with an extraordinary event as a regulatory asset and records them on its balance sheet to be amortized over some established period of time. If a utility experiences extraordinary savings those savings can also be deferred, but as a regulatory liability, with the regulatory liability then later returned to its customers through an amortization in rates. Examples of savings that have been deferred to an AAO are savings related to the closing of a generating plant and income tax rate reductions.

An AAO gives the utility an opportunity to obtain rate recovery of the deferred items in the future. AAOs have usually been used to allow utilities to capture certain unanticipated costs that have not been included in ongoing rate levels. The Commission has taken the position that the costs in question must be associated with an event that is extraordinary, unusual or unique in

nature and not recurring. The costs associated with the event must be material. The classic example of an extraordinary event is the occurrence of a natural disaster, such as a wind or ice storm or major flood that affects a utility's service territory.

AAOs deviate from the Commission's general ratemaking methodology, but the Commission has "substantial discretion" in determining whether an AAO is appropriate in a particular case.¹ However, the Commission has limited the use of AAOs in the past to extraordinary events. Staff agrees with Liberty that Winter Storm Uri was an extraordinary event of a material nature for purposes of Liberty's request to identify, track, document, accumulate, and defer associated costs and revenues. Nonetheless, Staff recommends that the Commission deny Liberty's application for the reasons explained below.

Liberty's Request for an AAO

Liberty requests an AAO permitting Liberty to track and defer, to a regulatory asset, the costs associated with Winter Storm Uri. The costs to be deferred include: (1) fuel and purchased gas costs from February 2021; (2) carrying costs on the total February 2021 fuel and purchased gas expenditures at the Company's weighed average cost of capital; and (3) other costs specifically related to Winter Storm Uri, including outside legal fees.

On September 16, 2021, Liberty filed its Application for Approval of Amendment of Rider PGA and Motion for Waiver of 60-Day Notice Filing Requirement ("tariff change request") in Case No. GT-2022-0079, requesting changes to its Purchased Gas Adjustment Clause that will allow it the flexibility to spread the recovery of the gas costs from the Cold Weather Event over a longer period than the currently required 12 months. On October 14, 2021, the Missouri Public Service Commission ("Commission") approved the tariff change request.

On November 4, 2021, Liberty filed tariff sheets in Case No. GR-2022-0128 to reflect changes to its PGA and ACA factors. Additionally, in Case No. GR-2022-0128, Liberty requested deferring the recovery of the extraordinary fuel and purchased gas costs and operational flow order ("OFO") penalties related to Winter Storm URI by extending the ACA recovery period to three years, which is a longer period of time than normal. These extraordinary costs and penalties are the same costs and penalties that it requests to be deferred to an AAO in this proceeding. As such, the accounting treatments Liberty seeks in this AAO request (Case No. GU-2021-0276) and the PGA/ACA filing (Case No. GR-2022-0128) are largely duplicative in that both requests are designed to allow Liberty to retain costs on its balance sheet for potential later rate recovery.

Staff recommended in Case No. GR-2022-0128 that the Commission approve Liberty's tariff sheets on an interim and refundable basis and that Liberty be allowed to defer costs in order to extend its ACA recovery period. The Commission has not issued an order in that proceeding. The Commission will resolve Liberty's request to retain Winter Storm Uri fuel and

¹ *Office of Pub. Counsel v. Evergy Mo. West, Inc.*, 609 S.W.3d 857, 866 (Mo. App. W.D. 2020).

purchased gas costs and OFO penalties on its balance sheet for potential later rate recovery in Case No. GR-2022-0128. For this reason, Staff is opposed to Liberty being allowed to defer its extraordinary fuel and purchased gas costs and OFO penalties in an AAO.

Additionally, in this case Liberty is requesting carrying costs be applied to the deferrals, using Liberty's weighted average cost of capital of 7.4%, as approved in its last rate case (Case No. GR-2018-0013). This WACC carrying cost rate is greater than "prime minus 2%" typically applied to ACA balances. Liberty requested extended recovery of carrying costs in its PGA/ACA case (Case No. GR-2022-0128), and Staff may object to inclusion of these higher carrying costs in a future mandatory ACA filing.² Staff recommends that carrying costs not be deferred in this case, because the Commission will handle them in the ACA/PGA case.

Lastly, Liberty is requesting to recover other non-gas costs specifically related to Winter Storm Uri, including outside legal fees in the amount of \$37,404. Legal fees of this nature are not recoverable through Liberty's PGA/ACA mechanism. Staff recommends that an AAO should not be granted for these legal fees due to the immaterial nature of the costs.

Staff Recommendation

Staff recommends that the Commission deny Liberty's request for an AAO for fuel and purchased gas costs, OFO penalties, and related carrying costs, because the Commission will resolve the issue of whether they should be deferred in Case No. GR-2022-0128. Staff also recommends that the Commission deny Liberty's request to defer outside legal fees because they are immaterial.

² *Staff Memorandum*, Case No. GR-2022-0128, P. 4 (Nov 12, 2021).

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Liberty Utilities (Midstates)
Natural Gas) Corp. d/b/a Liberty's Fuel) **File No. GU-2021-0276**
Costs Related to the Extraordinary)
Weather Event of February 2021)

AFFIDAVIT OF KIMBERLY K. BOLIN

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

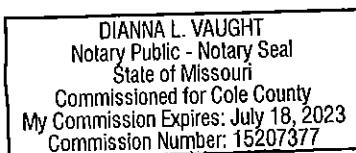
COMES NOW, Kimberly K. Bolin and on her oath declares that she is of sound mind and lawful age; that she contributed to the attached *Staff Recommendation in Memorandum form*; and that the same is true and correct according to her best knowledge and belief.

Further the Affiant sayeth not.

Kimberly K. Bolin
Kimberly K. Bolin

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 16th day of November, 2021.



Dianna L. Vaught
Notary Public