

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

In the Matter of the Revenue Effects Upon)
Missouri Utilities of the Tax Cuts and) File No. AW-2018-0174
Jobs Act of 2017.)

RESPONSE TO ORDER

COME NOW The Empire District Electric Company ("EDE"), The Empire District Gas Company ("EDG"), Liberty Utilities (Missouri Water) LLC ("Liberty Water"), and Liberty Utilities (Midstates Natural Gas) Corp. ("Liberty Midstates") (collectively, the "Companies"), and, in response to the *Order Opening a Working Proceeding Regarding the Effects Upon Missouri Utilities of the Tax Cuts of 2017 and Directing Response* ("Order") issued on January 3, 2018, respectfully state as follows to the Missouri Public Service Commission ("Commission"):

Introduction

On December 22, 2017, the Staff of the Commission ("Staff") moved to open a working docket regarding "the effect on Missouri utilities and ratepayers of a tax reform now being enacted by the Congress of the United States." And, on December 27, 2017, Staff filed its Motion to Solicit Input. The Order, among other things, directs Commission-regulated electric and gas corporations and Missouri-American Water Company to respond to Staff's questions, as set forth in Staff's Motion to Solicit Input, by January 31, 2018. Outlined below are the Companies' responses to these questions. The Companies, however, believe it is also important to address related challenges.

The Companies are pleased to participate in this working docket and look forward to working with Staff, the Office of the Public Counsel, and other stakeholders to ensure our Customers receive the appropriate benefit of any cost savings as a result of the Tax Cuts and Jobs Acts of 2017 (the "Act") and all other relevant factors. The Companies believe cost savings from

the Act should, and ultimately will, be passed on to utility customers, but there are noteworthy challenges facing all parties and the Commission.

The first challenge is the prohibition against “single-issue ratemaking.” Missouri law generally requires that utility rates only be adjusted based on the Commission’s consideration of “all relevant factors.” Unless an exemption is specifically authorized by statute, all relevant cost and revenue changes must be properly considered before rates may be adjusted.¹ This is partially because “there are always increases and off-setting decreases in other costs that are not reflected in current rates.”² As such, rates may not be adjusted to reflect a change in tax law, or any other single factor, in isolation. This limitation applies whether the utility is facing increasing costs (as is typically the case) or decreasing costs (as is the case with the Act).

Second, it is important to consider that the Act is only slightly over one month old and the changes to the federal tax code are comprehensive and complex. Due to the complexity of the Act and the relatively short time from its issuance, the Companies are still in the process of evaluating the full implications of the Act and are unable, at this point, to state what amounts represent the proper levels of income taxes for cost of service calculations. However, the calculations attached hereto in response to question (e) represent the Companies’ preliminary estimates.

A third challenge is the fact that it would be difficult, if not impossible, to determine the impact of the change in federal corporate tax rates on Missouri retail rates without consideration of all relevant factors. A utility’s cost of service is a multifaceted process which requires in depth analysis of data to ultimately outline the costs a utility must incur to provide safe and reliable

¹ *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41 (Mo banc 1979).

² *In the Matter of the Application of Missouri-American Water Company*, Report and Order, p. 18, MoPSC File No. WU-2017-0351 (December 20, 2017).

service to its customers. It is important to note that another significant component of a utility's revenue requirement is the utility's authorized rate of return.

A fourth challenge to consider regarding the impact that changes in the federal corporate income tax may have on a utility's revenue requirement is that the requested calculation as outlined in Staff's question (e) does not take into consideration the additional capital investments which have been made by each company since its last general rate case, nor does it take into account any changes in operating performance. Therefore, it does not properly reflect an accurate analysis/basis to determine if the utility is earning its authorized rate of return.

Due to statutory requirements associated with its Fuel Adjustment Clause, EDE is required to have new retail base rates filed for evaluation by September 2019. Liberty Midstates, in Docket No. GR-2018-0013, and Liberty Water, in Docket No. WR-2018-0170, are currently in the process of having their retail base rates evaluated for reasonableness.

The Companies' Responses to Staff's Questions

a. What is the appropriate avenue for effectuating change to utility rates as a result of the federal income tax reductions?

Response: The only methods of effectuating a change to utility rates in Missouri are a rate case and a complaint case. *See* Sections 386.390 and 393.150, RSMo.

As would be the case in either a rate case or complaint case, the Commission should consider all relevant factors when effectuating a rate change based on the effect of tax reform. Depending upon the time that has passed since a utility company's last rate case and other factors, it can be quite probable that other costs of service have changed that could potentially impact the cost of service. It is therefore important to not view the tax reform in a vacuum, but

rather to see it as a component (albeit a significant component) of the utility's total cost of service.

b. Is a different avenue appropriate for regulated corporations and Commission-regulated pass-through entities such as S Corporations, LLCs, and partnerships?

Response: No, the Companies believe the avenue discussed in (a) above should be followed for Commission-regulated limited liability companies (LLC) pass-through entities. The Companies have no other pass-through entities (such as S Corporations and Partnerships) and, therefore, take no position on this issue.

c. What is the appropriate mechanism(s) for effectuating change to utility rates as a result of the federal income tax reductions?

Response: See the Companies' response to (a) above.

d. How does the change to the federal income tax affect pending rate cases? Can the change be considered in the pending rate cases?

Response: In respect to pending rate cases, the Companies would defer the decision to the Commission based on the circumstances (such as test year, update period, and true-up period) in each case.

e. Please calculate the first-year approximate annual Missouri jurisdictional change in cost of service for your utility that is projected to result from implementation of the Tax Cuts and Jobs Acts of 2017 (all other things being equal) and provide supporting workpapers for this calculation.

Response: See the attached Confidential³ Appendix A, which displays the requested calculations for the Companies. The current revenue requirement for EDE and EDG that serve as the basis for the Missouri retail base rates are the direct result of settlement agreements. EDE and

³ Appendix A has been identified as Confidential in accordance with Commission Rule 4 CSR 240-2.135(2)(A)5 (reports, work papers, or other documentation produced by internal or external auditors or consultants.)

EDG have attempted to calculate a range of the revenue requirement factors, but it is important to note these items were not expressly ordered by the Commission. Consequently, the attached calculations were completed to provide an approximate estimate of the change in cost of service, with and without the federal corporate income tax reduction. The range of the revenue requirement factors were either compiled based upon the last rate case application for each company or, where appropriate, the resulting Commission Order.

WHEREFORE, EDE, EDG, Liberty Water, and Liberty Midstates respectfully request that the Commission consider the responses provided herein and find this response to comply with the *Order Opening a Working Proceeding Regarding the Effects Upon Missouri Utilities of the Tax Cuts of 2017 and Directing Response*.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By: /s/ Diana C. Carter
Diana C. Carter MBE#50527
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, Missouri 65102
Phone: (573) 635-7166
Fax: (573) 635-3847
E-mail: dcarter@brydonlaw.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed in EFIS on this 31st day of January, 2018, with notification sent to all parties.

/s/ Diana C. Carter